# CONTRACTS

FARNSWORTH

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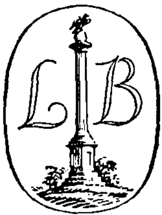


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# CONTRACTS

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**To Karen**
**and other readers**

# Preface

Perhaps books on contracts should not have prefaces. Langdell, in his preface to the first casebook in 1871, stressed the rationality of contract law, viewing law as a "science" and suggesting that if "the fundamental legal doctrines . . . could be so classified and arranged that each should be found in its proper place, and nowhere else, they should cease to be formidable from their number." Williston, in the preface to his treatise in 1920, emphasized the universality of contract law, aspiring "to treat the subject of contracts as a whole, and to show the wide range of application of its principles." These prefatory remarks have been scoffed at in recent years as exaggerating the rationality and the universality of the subject. Though these examples counsel silence, tradition dictates that I venture a few remarks on why I have written this book.

First, I wanted to write a book that would be of use to law students taking a course in contracts. I recalled the books that I found helpful in following my contracts teachers, Karl N. Llewellyn and Edwin W. Patterson, and envisioned the kind of book that students might find useful in understanding me or one of my colleagues. With this goal in mind, I have tried to emphasize those topics that figure prominently in most contracts courses, to organize and illustrate them in a way that will be comprehensible to a reader with only a general background, and to draw on sources befitting education at the university level.

Second, I wanted to write a book that would be of use to lawyers seeking a general treatment of some area of contract law. I recalled the sort of book that I kept on my shelves after graduation from law school and had occasion to consult in the years that followed. To this end, I have attempted to feature matters that occur with some frequency in litigation or otherwise in practice, to present them in such a way as to expose their

practical significance, and to support the text with references that lead the reader to more thorough treatments of the subject.

In attempting to do these things, I have piled up many debts. Some are to colleagues and students, at Columbia and elsewhere, who have commented on chapters in draft. Of these, my longtime colleague and collaborator William F. Young requires particular mention. Other debts are to my student assistants, notably Leslie A. Bogen, Julia L. Brickell, Stephen Chawaga, Paul Feuerman, Thomas D. Graber, Kevin Koloff, C. Allen Parker, and Warren Scharf, each of whom had responsibility for one or more of the chapters, and Ruth Piekarski, who undertook the added burden of harmonizing the chapters. I am also indebted to Brenda A. Fox-Johnson for her care and patience in typing the manuscript, and to the reference staff of the Columbia Law Library for invaluable assistance. I am grateful to the Columbia University Center for Law and Economic Studies and to the Kayden Research Fund for financial support, and to my publisher for its efforts to show that a law book can be handsome as well as useful.

*E. Allan Farnsworth*

New York, 1982

# Acknowledgments

The American Law Institute has kindly given its permission for the reprinting of excerpts from the Restatement (Second) of Contracts (copyright 1981 by the American Law Institute) and the Restatement of Contracts (copyright 1932 by The American Law Institute). The American Law Institute and the National Conference of Commissioners on Uniform State Laws have kindly given their permission for the reprinting of parts of the Uniform Commercial Code, including Comments (copyright 1978 by The American Law Institute and the National Conference of Commissioners on Uniform State Laws). Thanks also go to the Foundation Press for permission to adapt the introductory discussion in Chapter 1 of the Restatements of Contracts and most of the material in the Biographical Appendix from Farnsworth and Young, Cases and Materials on Contracts (3d ed. 1980) (copyright 1980 by the Foundation Press), and the introductory discussion in Chapter 1 of the Uniform Commercial Code from Farnsworth and Honnold, Cases and Materials on Commercial Law (3d ed. 1976) (copyright 1976 by the Foundation Press). The Columbia Law Review, and the Yale Law Journal and Fred B. Rothman & Co. have kindly given permission to use copyrighted material from my articles as indicated by footnotes in Chapters 7 and 12.

# Special Note

Following the practice of the Uniform Commercial Code and the Restatements, I have used the masculine singular pronoun to include the feminine and the neuter in order to avoid distraction. The Restatement (Second) of Contracts is referred to simply as the Restatement Second, and the first Restatement of Contracts simply as the Restatement or the first Restatement.

Citations of cases are usually followed by an explanatory parenthesis with a brief excerpt or other indication of the relevance of the case to the discussion. If a case is referred to more than once within a section, later citation is by cross-reference to refer the reader to the earlier parenthesis. Of course the material in parenthesis gives only a hint of the opinion itself, the only safe guide to the holding of the case.

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