

ASPEN PUBLISHERS

■ Laurel A. Vietzen

# UNDERSTANDING, CREATING, AND IMPLEMENTING CONTRACTS

An Activities-Based Approach

SECOND EDITION



Wolters Kluwer  
Law & Business

ASPEN PUBLISHERS

# Understanding, Creating, and Implementing Contracts



An Activities-Based Approach

**Second Edition**

**Laurel A. Vietzen**

Elgin Community College



**Wolters Kluwer**

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

© 2011 Aspen Publishers. All Rights Reserved.

<http://lawschool.aspenpublishers.com>

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Aspen Publishers  
Attn: Permissions Department  
76 Ninth Avenue, 7th Floor  
New York, NY 10011-5201

To contact Customer Care, e-mail [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com), call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Aspen Publishers  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-90168

#### Library of Congress Cataloging-in-Publication Data

Vietzen, Laurel A.

Understanding, creating, and implementing contracts : an activities-based approach / Laurel A. Vietzen. — 2nd ed.

p. cm.

Includes index.

ISBN 978-0-7355-9016-8

1. Contracts—United States. 2. Legal assistants—United States—  
Handbooks, manuals, etc. I. Title.

KF801 .Z9V54 2010

346.7302—dc22

2010019486

# Understanding, Creating, and Implementing Contracts



An Activities-Based Approach

## **EDITORIAL ADVISORS**

**Deborah E. Bouchoux, Esq.**  
Georgetown University

**Therese A. Cannon**  
Executive Associate Director  
Western Association of Schools and Colleges

**Katherine A. Currier**  
Chair, Department of Paralegal and Legal Studies  
Elms College

**Cathy Kennedy**  
Paralegal Program Director  
Legal Studies Department  
Globe University/Minnesota School of Business

**Susan M. Sullivan**  
Director, Graduate Career Programs  
University of San Diego

**Laurel A. Vietzen**  
Professor and Instructional Coordinator  
Elgin Community College

**William I. Weston**  
Dean, College of Legal Studies  
Kaplan University

---

## About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading provider of research information and workflow solutions in key specialty areas. The strengths of the individual brands of Aspen Publishers, CCH, Kluwer Law International and Loislaw are aligned within Wolters Kluwer Law & Business to provide comprehensive, in-depth solutions and expert-authored content for the legal, professional and education markets.

**CCH** was founded in 1913 and has served more than four generations of business professionals and their clients. The CCH products in the Wolters Kluwer Law & Business group are highly regarded electronic and print resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

**Aspen Publishers** is a leading information provider for attorneys, business professionals and law students. Written by preeminent authorities, Aspen products offer analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

**Kluwer Law International** supplies the global business community with comprehensive English-language international legal information. Legal practitioners, corporate counsel and business executives around the world rely on the Kluwer Law International journals, loose-leaves, books and electronic products for authoritative information in many areas of international legal practice.

**Loislaw** is a premier provider of digitized legal content to small law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

Wolters Kluwer Law & Business, a unit of Wolters Kluwer, is headquartered in New York and Riverwoods, Illinois. Wolters Kluwer is a leading multinational publisher and information services company.

---

---

# List of Contracts and Clauses

---

Option to Purchase Land	28
Consignment	28-29
Software Limited Warranty	59
Premarital Agreement Acknowledgments	89
Plea Agreement	89-90
Formal Recital of Consideration	106-107
Confession of Judgment	124
Exculpatory Clause	127
Indemnification	127
Declaration of Self-sufficient Minor	145
Power of Attorney for Property	151-155
Premarital Agreement	170
Surety	174
Buyer-Broker Agency	188
Property Insurance Clause from Mortgage	191
Prohibition on Assignment	195
Sublease Clause	195
Boilerplate: singular/plural; masculine/feminine; joint and several liability	196
Mortgage Contingency	205
Assignment/Novation	206
Force Majeure	208
Time Is of the Essence	211
Satisfaction Clause	212
Jury Instructions	226



Consequential Damages	230
Liquidated Damages	231
Attorneys, Fees, and Costs	232
Parts of Sample Employment Contract	
Identifications	246
Recitals	247
Consideration	247
Defined Terms	249
Body	249
Signatures	250
Merger Clause	252
Severability Clause	269
Franchise Contract	291-319



---

# Preface

---

Since 1989 I have been a full-time teacher in, and coordinator of, an ABA-approved paralegal program. Before that, I was a transactional lawyer in private practice and worked with many excellent paralegals. My experiences in practice, in surveying countless graduates and employers, and in working to obtain initial approval and reapproval by the ABA have taught me the importance of:

- Teaching students to be independent learners so that they can arrive on the job as self-starters
- Integrating ethics into every topic
- Integrating the use of research and communications skills into every topic
- Ensuring that students have adequate computer skills
- Encouraging students to engage with the material so that they retain what they learn
- Teaching state-specific law and procedures

It is not easy to achieve these goals with a traditional textbook. Many such books tend to speak in generalities. Many paralegal teachers are adjuncts and may not have the time or resources to create challenging, practical, state-specific assignments to supplement the texts. They may want to develop alternatives to the lecture format, or they may be trying to offer the class alternative formats: online, hybrid, or even independent study.

This book is intended to go beyond the limitations of the traditional textbook and lecture format to:

- Engage students by making them responsible for finding local law
- Require students to use computer skills to complete assignments
- Include enough hands-on assignments (and guidance for doing those assignments) to ensure that a course offered in an alternative format will be the equivalent of a traditional class
- Include assignments requiring student-led discussion of cases as an alternative to lecture in a classroom setting or to stimulate interaction in an online setting
- Ensure hands-on experience doing legal research, summarizing cases, and finding their own answers so that students can hit the ground running in a law office

- Make students aware of job opportunities and the skills required for those opportunities
- Be adaptable to schools that schedule in semesters, trimesters, or quarters and to schools that integrate contract law into a course that includes other topics

The sample cases are not cases that were highly controversial or that were landmarks in the development of law. Paralegals must understand legal theory, but they are not responsible for developing strategy or arguing cases. The cases were chosen to provide short, easy-to-read vignettes of the real-life practice of law. Many involve lawyers and paralegals as parties. They are intended to give students insights that will help ease the transition from school to the law office.

## Textbook Resources

The companion Web site for *Understanding, Creating, and Implementing Contracts: An Activities-Based Approach*, Second Edition at [http://www.aspenparalegaled.com/vietzen\\_contracts](http://www.aspenparalegaled.com/vietzen_contracts) offers additional resources for students and instructors, including:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other handheld device.
- Instructor resources to accompany the text
- Links to helpful Web sites and updates

The text comes packaged with four months of prepaid access to Loislaw's online legal research database at <http://www.loislawschool.com>.

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available on CD-ROM or for download from the companion Web site.

Laurel A. Vietzen

May 2010

---

# Acknowledgments

---

The author gratefully acknowledges permission from the following sources to use excerpts from their works:

The Illinois State Bar Association, 424 South Second Street, Springfield, IL 62701-1779, 800-252-8908, [www.isba.org](http://www.isba.org). ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.

The Chicago Daily Law Bulletin<sup>®</sup>, 415 North State Street, Chicago, IL 60610, 312-644-7800.

Opinion 218 of the D.C. Bar's Legal Ethics Committee (issued June 18, 1991) (Washington, D.C., The District of Columbia Bar). Copyright 2006 by the District of Columbia Bar. Reprinted by permission of the Publisher.

Ethics Committee of the Colorado Bar Association, <http://www.cobar.org>, 1900 Grant Street, Suite 900, Denver, Colorado, 80203, 301-860-1115.

The Alaska Court System, 820 W. 4th Ave., Anchorage, AK 99501.

---

# Note to Students

---

Students have historically demonstrated their mastery of course material by taking tests. Tests remain an important part of assessment. In this course, you will probably take several tests so that you and your instructor can determine how well you have achieved the knowledge-based goals outlined at the beginning of each chapter.

Employers want more. The paralegal field demands graduates who can apply that knowledge and perform assignments with little or no on-the-job training. To demonstrate your ability to do the job, you should assemble a portfolio of work. Your portfolio can be burned to a CD, uploaded to a Web site, or assembled into a folder or binder. The contents will depend on the job you are seeking. In interviewing for a job at a small general practice firm, you might submit a portfolio containing a selection of assignments from all of your classes. If you are looking for a job in contract compliance, you will want to include many of the assignments you do in this class.

The chart at the beginning of each chapter is intended to correlate the skills employers want with the assignments you will do. Knowing that employers value these skills should inspire you to do your best work and, when appropriate, follow your instructor's comments and suggestions to create an improved version for your portfolio. Of course, many of the skills, such as reading and briefing a case, require lots of practice. Assignments calling for those skills are, therefore, repeated in almost every chapter. Choose your best effort for your portfolio.

# Understanding, Creating, and Implementing Contracts



An Activities-Based Approach

---

# Summary of Contents

---

<i>List of Contracts and Clauses</i>	xxiii
<i>Preface</i>	xxv
<i>Acknowledgments</i>	xxvii
<i>Note to Students</i>	xxix
Introduction to Law and Preparation for Self-Guided Learning	1
1. What Is Contract Law?	21
2. Sources of Contract Law: Common Law and Uniform Commercial Code	49
3. Agreement	67
4. Invalid Assent	83
5. Consideration	103
6. Legality	121
7. Capacity	143
8. Statute of Frauds	165
9. Third Parties/Secured Transactions	181
10. Performance: Required or Excused?	203
11. Remedies	223
12. Contract Interpretation	245
13. Working with Contracts	265
<b>Appendix A</b> Sample Client Interview for Assignment	287
<b>Appendix B</b> Franchise Agreement	291
<i>Glossary</i>	321
<i>Index</i>	333

---

# Contents

---

<i>List of Contracts and Clauses</i>	xxiii
<i>Preface</i>	xxv
<i>Acknowledgments</i>	xxvii
<i>Note to Students</i>	xxix

---

## Introduction to Law and Preparation for Self-Guided Learning

---

A. Sources of Legal Authority	2
B. Steps in Preparing to Research a Legal Issue	3
C. Formulating a Query	5
<i>Assignment Intro-1: CALR Search Queries</i>	6
D. Primary Authority	6
1. Statutes	6
<i>Exhibit Intro-1: Example of State Statutes Organized         by Topic</i>	8
2. Judicial Decisions	9
a. Trial Courts vs. Appellate Courts	10
b. Reading Cases	10
c. Briefing Cases	11
<i>Facts</i>	12
<i>Issue and Holding</i>	12
<i>Reasoning</i>	12
E. Practical and Ethical Issues	12
<i>Assignment Intro-2: Prepare a Case Brief</i>	13

Review Questions	14
Crossword Puzzle	15
Case for Analysis	17

# 1




---

## What Is Contract Law?

---

Introduction	22
<i>Exhibit 1-1: What Does a Paralegal Do?</i>	23
A. What Is a Contract?	26
1. Types of Contract: Express or Implied	26
2. Types of Contract: Unilateral or Bilateral	26
<i>Assignment 1-1: Questions Concerning Exhibit 1-2</i>	27
<i>Exhibit 1-2: Sample Option and Consignment Contracts</i>	28
<i>Exhibit 1-3: Letters of Credit and Bills of Lading</i>	30
3. Other Classifications of Contracts	31
<i>Assignment 1-2: Find Examples of Unilateral and Implied Contracts</i>	31
B. Alternatives to Contract	31
1. Gifts	31
2. Promissory Estoppel	32
<i>Assignment 1-3: Discuss Hypothetical, Find Estoppel Case</i>	32
3. Quasi-Contract	33
<i>Assignment 1-4: Discuss Quasi-contract, Find a Case</i>	34
C. Practical and Ethical Issues	35
<i>Assignment 1-5: Find Relevant Ethical Rules</i>	35
Review Questions	37
Crossword Puzzle	38
Sample Cases: Finding and Briefing Cases for Assignments	40



## 2




---

## Sources of Contract Law: Common Law and Uniform Commercial Code

---

A. Common Law	50
<i>Assignment 2-1: Find Adoption of Restatement</i>	50
B. Uniform Commercial Code	51
1. Coverage	51
<i>Assignment 2-2: State Adoption of UCC</i>	51
<i>Exhibit 2-1: Coverage of the UCC</i>	53
<i>Assignment 2-3: Find Cases Defining “Goods”</i>	54
2. Departures from Common Law	54
C. Other Statutes	55
D. International Law	56
E. Administrative Law	56
<i>Exhibit 2-2: Information on Paralegal Positions from the FTC Web Site</i>	57
<i>Assignment 2-4: FTC and State Agencies in Contract Law</i>	58
<i>Exhibit 2-3: Example of a Limited Warranty</i>	59
F. Practical and Ethical Issues	59
<i>Exhibit 2-4: Dealing with Changes in the Law</i>	60
<i>Review: Research for Drafting, Interpreting, or Litigating a Contract Issue</i>	62
Review Questions	62
Crossword Puzzle	64