CONTRACTS

CASES AND COMMENT

TENTH EDITION

JOHN P. DAWSON
WILLIAM BURNETT HARVEY
STANLEY D. HENDERSON
DOUGLAS G. BAIRD

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by

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PREFACE TO THE TENTH EDITION

With the appearance of the Tenth Edition, the book is now well into its sixth decade. More than a thousand teachers and hundreds of thousands of law students across the country have subjected the book to the scrutiny of the classroom. This edition, the seventh for one of us and the second for the other, carries forward the main themes put in place by Jack Dawson and Burnett Harvey. We remain committed to preserving and building upon the book's distinctive character, especially its use of canonical cases, its sensitivity to the history and evolution of doctrine, and its close attention to the legal consequences of breach.

This is a teaching book, a vehicle for the formal study of contract law's rules and processes and the values they are supposed to serve. There is an informational base and a culture to be passed on, a critical and inquiring element to be shared. Every case tells a story, and every story presents a problem rooted in a particular context. Having entered the realm of legal rules, a territory containing an assortment of landmarks, many blurred or at odds with one or more others, students must consider the possible ways of handling a problem, and defend choices when alternative outcomes are possible by reason of competing facts or principles. It is a range of possibilities, not facile answers to hard questions, that one must master.

Since the beginning, the editors of this book have believed that contract law is best understood—the broad conceptions as well as the formal rules and technical formulations—by beginning with a focus on the nature of the legally enforceable promise. The underlying purposes of contract law (what it seeks to protect, and how it hopes to accomplish its aims) are revealed most clearly when problems are looked at from a perspective of taking care of harms or losses, or gains held unjustly. Students must see that the limitations of contract in our society are no small part of the story of its functions, and that the business of "enforcing" (perhaps dismantling) unkept bargains has much to contribute in the fixing of those limits and, accordingly, the forming of a working understanding of the law of contract as a whole. In a word, when a dispute over an obligation voluntarily assumed ends up in court, the great question of "when" to enforce cannot be detached from the also-great question of "how" to enforce.

There are a few additional introductory points. One is that the materials used to educate law students—particularly students in their first year—typically focus on the past, on disputes courts have already considered and decided, often long ago. But there is a larger sense in which history, long a particular emphasis of this book, is important, indeed indispensable. Legal rules and standards, if they are to attract a following in law offices and courts, must be explained, which is to say, understood. And if we are to truly understand where we are in contracts today, we need to have a feel for where we once were, and how and why it happened that there was movement from one rule or doctrine to another, from one dividing line to a different test altogether for division. So a book purporting to organize the field of contract in order to facilitate understanding of the subject must, in some fashion, track the evolution of modern law. Only then will the nature of common law reasoning be fully revealed, and the process of "thinking like a lawyer" begin for the uninitiated. It must be remembered that the ideas making up the core subject matter of contract, as with most of the common law's major subdivisions, are constructed ideas. The problem, as we shall see, is that they are also undergoing constant reconstruction.

Students should also understand that a number of the problems raised in this book are unlikely to come through the door of today's practicing commercial lawyer. In the year 1869 an uncle rises to speak at a joyous family occasion, promising a favored nephew (then fifteen) a very large sum of money if the nephew, in the six years left before his twenty-first birthday, gives up alcohol, tobacco, swearing, and gambling. The nephew agrees and remains true to his word, presumably at some cost, but the uncle dies many years later (eighteen in fact) without having kept his side of the bargain. Even earlier in the 1800s, a farmer, learning of his brother's death in the farm country some seventy miles distant, writes to his brother's widow saying that he has more land than he can tend and that he wants her and her children "to do well." The letter concludes: "If you will come down and see me, I will let you have a place to raise your family." The widow and children make the move, again presumably at some cost, emotional as well as financial. They are given land to work, plus a house, but it all ends abruptly a year or two later, when they are evicted (we are not told why).

In both cases, we want to know whether the promises are legally enforceable, whether the victim of the broken promise can call upon the state to hold the other to it, by force if necessary. Each is an artifact of its own time and place. No giant corporation, no sophisticated bargain, is involved. Nevertheless, such situations provide excellent vehicles for exploring basic principles—such as the extent to which the law should enforce any promise seriously made and reasonably relied upon. Mastery of these and other cases that have become part of the canon increase our confidence in distinguishing between the hard and easy cases. Even more telling, they guide our deliberations in classifying the vast expanse of cases that properly fall somewhere between hard and easy. It is no small matter that the term "artifact," as commonly defined, denotes a thing "showing human workmanship or modification, a product of civilization or artistic endeavor." Again, it is the collective yield of cases litigated by many courts over many decades that gives "commonness" to our common law.

Those familiar with the book will see that this edition's general order of march is largely unchanged. Nevertheless, times of economic dislocation create their share of important legal disputes, and the last several years have been no exception. This edition introduces a number of new principal cases. It is worth noting, however, that these cases, many of which involved large corporate transactions involving tens of millions, or in one case hundreds of millions of dollars, call on the same themes and indeed often cite cases that have long been part of this text. The new material puts in clearer perspective the developments of the twentieth century and their implications for the twenty-first. As always, we have attempted to keep the materials to manageable length, and notwithstanding the addition of the new cases, this edition is about the same length as the previous one.

Much of the newly-added material is designed to further consolidate topics within the book's customary structure and headings. The effort to reduce the number of main and ancillary cases has continued. It must be stressed, however, that these alterations in no sense signal a departure from the case or "problem" method. The cases remain the principal source of problems for classroom discussion; the accompanying text, whatever its form, is designed to illuminate those problems and expand the base for discussion. Moreover, by keeping the text on as objective level as possible, this edition again seeks to accommodate differing conceptions and modes of analysis of contract, as well as divergent views of legal method. Students

should understand that a single book in the hands of different teachers can be a quite different thing. Through classroom approach and emphasis, aided by handouts and assigned readings, every teacher makes choices with a view to "personalizing" the course in Contracts. A particular challenge in organizing any casebook—especially one aimed at a national audience—is to steer a sufficiently "center-lane" path so as to allow the instructor room to provide the ultimate "take" on what it is that the book puts before the students.

We acknowledged in previous editions the contributions and support of many law teachers, now a list too long to repeat here. We are especially indebted to those in the academy who continue to offer suggestions (and criticisms). A special word of gratitude is again due Harvard's Clark Byse. His help and advice given over many years, first to his colleague and devoted friend Jack Dawson, and then to us, reaches far beyond contracts and the covers of this book.

Jack Dawson and Burnett Harvey are no longer here, but teachers who know about the study of contract in our nation's law schools will also know that Jack and Burnett created something worth preserving. We are privileged to be able to carry that tradition forward.

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Charlottesville, Virginia
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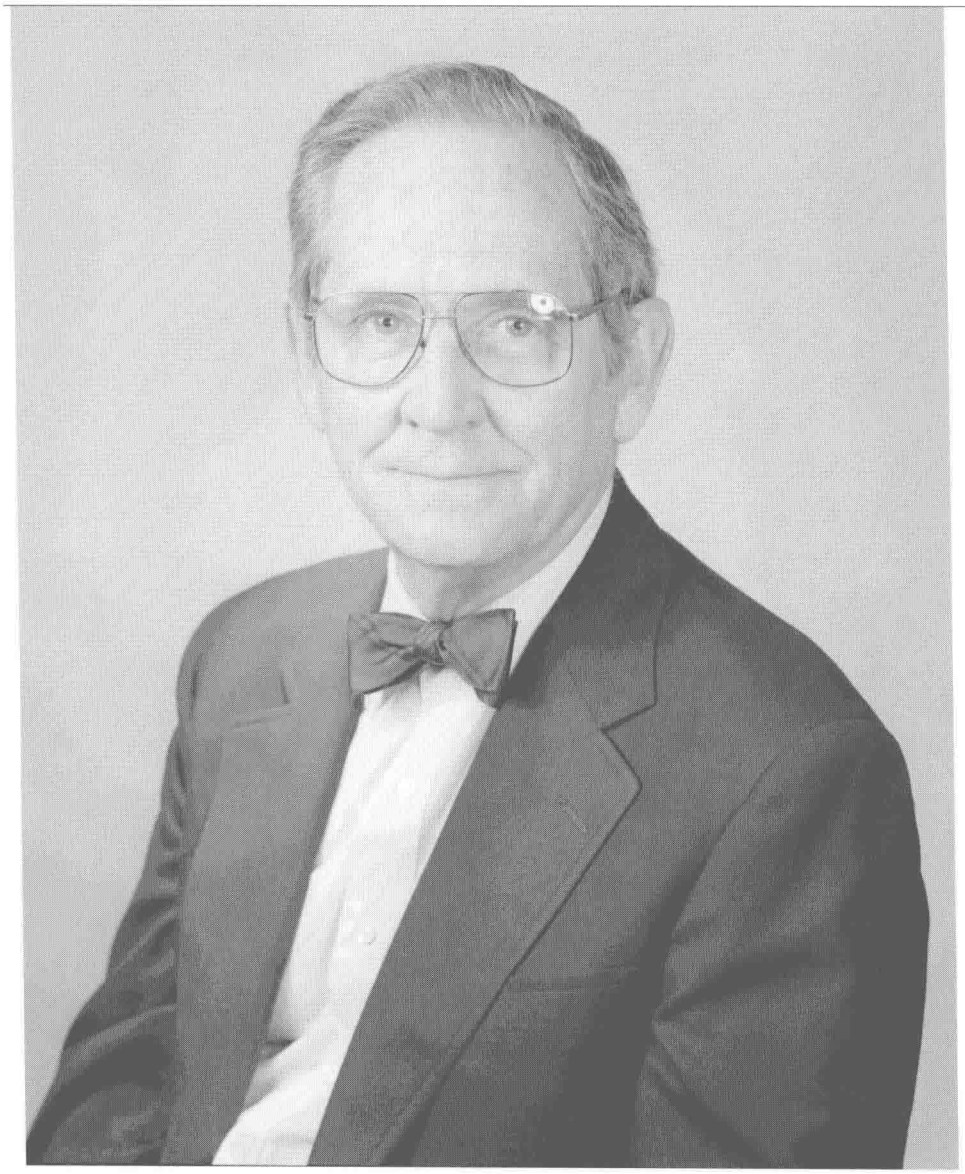
JOHN P. DAWSON
1902–1985



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