

ASPEN CASEBOOK SERIES

CRANDALL
WHALEY

Cases, Problems, and Materials
on
CONTRACTS

*Seventh
Edition*



Wolters Kluwer

ASPEN CASEBOOK SERIES

CASES, PROBLEMS, AND MATERIALS
ON
CONTRACTS

SEVENTH EDITION

THOMAS D. CRANDALL

SCHOLAR IN RESIDENCE
GONZAGA UNIVERSITY SCHOOL OF LAW

DOUGLAS J. WHALEY

PROFESSOR EMERITUS
MORITZ COLLEGE OF LAW
THE OHIO STATE UNIVERSITY



Wolters Kluwer

Copyright © 2016 Thomas D. Crandall and Douglas J Whaley.

Published by Wolters Kluwer in New York.

Wolters Kluwer Legal & Regulatory Solutions U.S. serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. (www.WKLegaledu.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 utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.WKLegaledu.com, or a written request may be faxed to our permissions department at 212-771-0803.

To contact Customer Service, e-mail customer.service@wolterskluwer.com, call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer
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 978-1-4548-6465-3

Library of Congress Cataloging-in-Publication Data

Names: Crandall, Thomas D., author. | Whaley, Douglas J., author.

Title: Cases, problems, and materials on contracts / Thomas D. Crandall, scholar in residence, Gonzaga University School of Law; Douglas J. Whaley, professor emeritus, Moritz College of Law, the Ohio State University.

Other titles: Contracts

Description: Seventh edition. | New York : Wolters Kluwer, 2016.

Identifiers: LCCN 2015049968 | ISBN 9781454864653

Subjects: LCSH: Contracts—United States. | Contracts—United States—Cases.
| LCGFT: Casebooks.

Classification: LCC KF801.A7 C7 2016 | DDC 346.7302/2—dc23

LC record available at <http://lcn.loc.gov/2015049968>



SUSTAINABLE
FORESTRY
INITIATIVE

Certified Sourcing
www.sfiprogram.org
SFI-01042

SFI label applies to the text stock

CasebookConnect.com

REGISTER NOW to access the Study Center for:

- Hundreds of practice questions
- Progress trackers to save you time
- Selections from popular study aids
- Tutorial videos

Combine this wealth of resources with an enhanced ebook and outlining tool and you will **SUCCEED** in law school

Use this unique code to connect your casebook today

**Go to www.casebookconnect.com
and redeem your access code
to get started.**

PLEASE NOTE: Each access code can only be used once. This access code will expire one year after the discontinuation of the corresponding print title and must be redeemed before then. CCH reserves the right to discontinue this program at any time for any business reason. For further details, please see the Casebook Connect End User License Agreement.

PIN9111149082

31902

CASES, PROBLEMS, AND MATERIALS
ON
CONTRACTS

EDITORIAL ADVISORS

Erwin Chemerinsky

Dean and Distinguished Professor of Law
Raymond Pryke Professor of First Amendment Law
University of California, Irvine School of Law

Richard A. Epstein

Laurence A. Tisch Professor of Law
New York University School of Law
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Senior Lecturer in Law
The University of Chicago

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School

James E. Krier

Earl Warren DeLano Professor of Law
The University of Michigan Law School

Richard K. Neumann, Jr.

Professor of Law
Maurice A. Deane School of Law at Hofstra University

Robert H. Sitkoff

John L. Gray Professor of Law
Harvard Law School

David Alan Sklansky

Stanley Morrison Professor of Law, Stanford Law School
Faculty Co-Director, Stanford Criminal Justice Center

About Wolters Kluwer Legal & Regulatory Solutions U.S.

Wolters Kluwer Legal & Regulatory Solutions U.S. delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory solutions portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.

This book is dedicated

*by Thomas Crandall to
my mother, Mary Coy, 1917-2011,*

*and by Douglas Whaley to
my husband, David Vargo*

ACKNOWLEDGMENTS

We would like to begin by thanking our many students through the years who taught us almost as much law as we taught them. In particular do we thank the students who suffered through this book in earlier forms, pointed out difficulties, and offered suggestions.

Douglas Whaley would like to express his gratitude and admiration for the late Professor Pierre Loiseaux, of the University of California at Davis School of Law, who taught him Contracts all too long ago at the University of Texas. He would also like to thank Jerry Bunge and Barbara Shipek for their help in the preparation of this book. Finally, he would like to acknowledge the research aid of many years' worth of student assistants at Ohio State, most particularly John Walker, class of 1988.

Image of Karl N. Llewellyn. Photograph courtesy of Yale Law School. Used by permission.

We would also like to thank the following authors and copyright holders for permission to use their materials:

American Law Institute, Restatement of Contracts §§59, 90, 133 and Restatement (Second) of Contracts §§20, 27, 36, 38, 50, 69, 70, 71, 74, 77, 82, 86, 87, 90, 129, 130, 131, 139, 161, 181, 202, 203, 206, 207, 212, 213, 216, 229, 234, 240, 241, 242, 252, 280, 302, 309, 311, 324, 326, 328, 332, 333, 347, 349, 353, 355, 356, 371, 373. Copyright © 1932 and 1981 by the American Law Institute. Reprinted with permission of the American Law Institute.

Childress, Conditions in the Law of Contracts, 45 N.Y.U. L. Rev. 33 (1970). Reprinted by permission.

Corbin, A., Contracts §§29, 30, 110, 156, 380, 381, 605, 965 (1962). The Yale Law Journal by Yale Law School, Copyright © 1962. Reproduced with permission of Yale Law Journal Company, Inc. via Copyright Clearance Center.

CASES, PROBLEMS, AND MATERIALS
ON
CONTRACTS

SUMMARY OF CONTENTS

<i>Contents</i>		<i>xi</i>
<i>Acknowledgments</i>		<i>xxvii</i>
CHAPTER 1	INTRODUCTION TO THE STUDY OF THE LAW OF CONTRACTS	1
CHAPTER 2	INTENT TO CONTRACT: OFFER AND ACCEPTANCE	7
CHAPTER 3	CONSIDERATION	171
CHAPTER 4	REMEDIES	309
CHAPTER 5	THE STATUTE OF FRAUDS	469
CHAPTER 6	THE PAROL EVIDENCE RULE AND INTERPRETATION OF THE CONTRACT	535
CHAPTER 7	AVOIDANCE OF THE CONTRACT	609
CHAPTER 8	CONDITIONS AND PROMISES: PERFORMANCE AND BREACH	819
CHAPTER 9	ANTICIPATORY REPUDIATION	931
CHAPTER 10	THIRD-PARTY BENEFICIARIES	955
CHAPTER 11	ASSIGNMENT AND DELEGATION	995
<i>Table of Cases</i>		<i>1041</i>
<i>Index</i>		<i>1047</i>

CONTENTS

Acknowledgments

xxvii

CHAPTER

1

INTRODUCTION TO THE STUDY
OF THE LAW OF CONTRACTS

1

CHAPTER

2

INTENT TO CONTRACT: OFFER
AND ACCEPTANCE

7

I.	Introduction: The Principle of Mutual Assent	7
	Problem 1	7
	<i>Lucy v. Zehmer</i>	8
	Note	14
	Problem 2	14
	<i>Kolodziej v. Mason</i>	15
	Problem 3	24
	Note on Social Contracts	25
	<i>Stepp v. Freeman</i>	26
	Note	32
	Problem 4	32
	<i>Nguyen v. Barnes & Noble Inc.</i>	32
II.	The Offer	40
	A. Preliminary Negotiations	40
	<i>PFT Roberson, Inc. v. Volvo Trucks North America, Inc.</i>	40

B.	Statement of Opinion or Intention	45
	Problem 5	45
C.	Solicitations	45
	Problem 6	45
	<i>Lefkowitz v. Greater Minneapolis Surplus Store, Inc.</i>	46
	Note on Deceptive Practices	48
	Problem 7	49
D.	Written Contract to Follow	49
	<i>Continental Laboratories v. Scott Paper Co.</i>	50
	Notes and Questions	54
	Problem 8	54
III.	Acceptance	55
A.	Effect of Acceptance	55
	Problem 9	55
	Problem 10	55
	<i>Kortum-Managhan v. Herbergers NBGL</i>	57
	<i>ProCD, Inc. v. Zeidenberg</i>	65
B.	Manifesting Assent	72
	Restatement (Second) of Contracts §50	72
	<i>Beard Implement Co. v. Krusa</i>	72
	Notes and Questions	80
	<i>Fujimoto v. Rio Grande Pickle Co.</i>	81
	Problem 11	84
	Problem 12	85
C.	Silence as Acceptance	86
	Problem 13	86
	<i>Day v. Caton</i>	87
	Notes and Questions	89
	Problem 14	89
	Problem 15	90
D.	Knowledge of Offer	90
	Problem 16	90
E.	Mode of Acceptance	91
	<i>Davis v. Jacoby</i>	92
	Questions	99
	Problem 17	99
IV.	Termination of the Power of Acceptance	99
	Restatement (Second) of Contracts §36	99
A.	Revocation by Offeror	100
	Problem 18	100
	<i>Dickinson v. Dodds</i>	100
	Questions	104
	<i>Petterson v. Pattberg</i>	104
	Questions	108
	Problem 19	109
	Note on Revocation and Option Contracts	111
	Problem 20	111

Problem 21	112
Problem 22	112
Problem 23	113
B. Lapse of Time	114
Restatement (Second) of Contracts §41	114
<i>Loring v. City of Boston</i>	114
Question	117
Problem 24	117
Problem 25	118
<i>Phillips v. Moor</i>	118
Note on the Risk of Loss	121
C. Termination by Death or Incapacity of the Offeror or Offeree	121
Restatement (Second) of Contracts §48	121
Problem 26	122
D. Termination by Rejection	122
Problem 27	122
Restatement (Second) of Contracts §38	123
E. The “Mail Box” Rule	123
<i>Morrison v. Thielke</i>	123
Problem 28	130
Note on Option Contracts	131
Note on Offers in International Sales	131
F. Termination by Counteroffer and the “Battle of the Forms”	131
1. The Common Law	131
<i>Livingstone v. Evans</i>	131
Note	133
Problem 29	133
2. The Uniform Commercial Code	134
Problem 30	134
<i>Commerce & Industry Ins. Co. v. Bayer Corp.</i>	136
Note	142
Problem 31	143
Problem 32	143
<i>Klocek v. Gateway, Inc.</i>	144
V. Indefiniteness	152
Corbin on Contracts §29	152
<i>Walker v. Keith</i>	153
Notes and Questions	160
<i>Rego v. Decker</i>	160
Question	164
Problem 33	165
Problem 34	165
Assessment Multiple Choice Questions and Answers	165

CHAPTER		
3		
CONSIDERATION		171
I.	The Basic Concept	171
	A. Definition	171
	Adam Smith, <i>The Wealth of Nations</i> (1776)	171
	Problem 35	172
	Corbin on Contracts §110	172
	Restatement (Second) of Contracts §71	172
	<i>Hamer v. Sidway</i>	173
	Questions	177
	Problem 36	177
	B. Sufficiency	177
	Problem 37	177
	<i>Williams v. Ormsby</i>	178
	C. Adequacy of Consideration	187
	<i>Batsakis v. Demotsis</i>	187
	Questions	190
	<i>Schnell v. Nell</i>	190
	Question	193
	Problem 38	193
	Restatement (Second) of Contracts §87	194
	<i>Noohi v. Toll Bros., Inc.</i>	194
II.	Forbearance as Consideration	204
	<i>Fiège v. Boehm</i>	204
	Problem 39	209
	Restatement (Second) of Contracts §74	210
	Problem 40	210
	Problem 41	211
	Problem 42	211
III.	The Illusory Promise	212
	Problem 43	212
	<i>Wood v. Lucy, Lady Duff-Gordon</i>	212
	Notes	214
	<i>Sylvan Crest Sand & Gravel Co. v. United States</i>	214
	Question	218
	Problem 44	218
	<i>McMichael v. Price</i>	218
	Problem 45	223
	Corbin on Contracts §156	223
	Problem 46	224
	Restatement (Second) of Contracts §77	224
IV.	Past Consideration	224
	<i>Hayes v. Plantations Steel Co.</i>	224
	Note	230
	<i>Mills v. Wyman</i>	230

Notes	233
Problem 47	234
Restatement (Second) of Contracts §82	234
Problem 48	235
<i>Webb v. McGowin</i>	235
Notes and Questions	239
Problem 49	240
Restatement (Second) of Contracts §86	240
Problem 50	240
V. The Preexisting Duty Rule	240
A. The Basic Concept	240
<i>Harris v. Watson</i>	240
<i>Stilk v. Myrick</i>	241
<i>Lingenfelder v. Wainwright Brewery Co.</i>	242
Problem 51	244
Problem 52	244
Problem 53	245
Problem 54	245
Problem 55	245
B. Past Due Monetary Debts	246
Problem 56	246
Problem 57	246
Problem 58	247
<i>Clark v. Elza</i>	247
Problem 59	251
Problem 60	252
VI. Promissory Estoppel	252
A. Historical Development	253
<i>Allegheny College v. National Chautauqua County Bank</i>	253
Questions	260
B. Basic Applications	260
Restatement of Contracts §90	260
Restatement (Second) of Contracts §90	260
Problem 61	261
Problem 62	261
Problem 63	262
<i>Universal Computer Systems v. Medical Services</i>	
<i>Association of Pennsylvania</i>	262
Notes	268
<i>James Baird Co. v. Gimbel Bros.</i>	269
<i>Branco Enterprises, Inc. v. Delta Roofing, Inc.</i>	272
Notes and Questions	276
C. The Limits of the Doctrine	277
<i>Hoffman v. Red Owl Stores</i>	277
Questions	288
Notes	289
<i>Dixon v. Wells Fargo Bank</i>	290
VII. The Need for Consideration	301
Assessment Multiple Choice Questions and Answers	302

CHAPTER		
4		
REMEDIES		309
I.	Damages	309
A.	Introduction	309
B.	Measuring Expectation Damages	311
	<i>Hawkins v. McGee</i>	311
	Questions and Notes	315
	Problem 64	315
	<i>Peevyhouse v. Garland Coal & Mining Co.</i>	316
	Questions	322
	<i>John Thurmond & Associates, Inc. v. Kennedy</i>	323
	Questions	330
	Problem 65	330
C.	The Reliance Interest	330
	<i>Sullivan v. O'Connor</i>	330
	<i>Anglia Television Ltd. v. Reed</i>	336
	Questions and Notes	339
	Note on the Presumption of Breaking Even	339
	Problem 66	339
D.	Limitations on the Recovery	340
	1. Certainty	340
	<i>Freund v. Washington Square Press</i>	341
	Note on Nominal Damages	344
	Problem 67	345
	<i>Humetrix, Inc. v. Gemplus S.C.A.</i>	345
	2. Foreseeability	353
	<i>Hadley v. Baxendale</i>	353
	Notes and Questions	355
	Problem 68	355
	<i>AM/PM Franchise Assn. v. Atlantic Richfield Co.</i>	356
	Problem 69	365
	Problem 70	365
	3. Avoidability	366
	<i>Rockingham County v. Luten Bridge Co.</i>	366
	Question	371
	Problem 71	372
	Problem 72	372
	<i>Parker v. Twentieth Century-Fox Film Corp.</i>	372
	Notes and Questions	379
	Problem 73	380
	Problem 74	380
	4. Damages by Agreement	381
	Restatement (Second) of Contracts §356(1)	381
	<i>Lake River Corp. v. Carborundum Co.</i>	381
	Notes	387