



# MURRAY ON CONTRACTS

FIFTH EDITION



John Edward Murray, Jr.



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*FIFTH EDITION*

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# PREFACE

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Like the previous edition, the fifth edition of this treatise responds to numerous challenges. Thousands of new cases evidence the vitality in the law of contracts. Many of these cases are discussed or cited in this edition, not because they are new, but because they manifest emerging concepts of contract law. They may confirm or reject earlier trends or suggest new dimensions in the common law or the interpretation and construction of statutes that affect the social institution of contract. They must be examined and understood to assure a comprehension of twenty-first century contract law.

As the last edition was submitted for publication, the most recent draft of Article 2 of the Uniform Commercial Code which transformed classical contract law had appeared and was under discussion for possible enactment in state legislatures. Almost a decade later, it has become clear that neither a revised nor amended version of Article 2 will be enacted in the foreseeable future. While a few references to the amended draft appear in appropriate places as a matter of history or interest, other references have been removed to allow for other developments. The Uniform Computer Information Transactions Act (UCITA) suffered the same fate when controversy surrounding it made it clear that it would not be pursued beyond its initial enactments in Maryland and Virginia.

Contract law is anything but static. Both the common law of contracts and elaborations of the contract law of the Uniform Commercial Code continue to expand. The Restatement (Second) of Contracts continues to play a major role in contracts adjudication as courts weigh the Restatement analyses against other traditional and new analyses. The current applications, interpretations and constructions pervade the entire volume. Similarly, the Vienna Convention (CISG), which became U.S. law in 1988 has been adopted in more than seventy nations and constitutes the law governing the overwhelming majority of contracts for the international sale of goods. More than ever before, the law student, practitioner and judge must have a substantial awareness of this critical dimension of contract law which is found throughout this treatise. The UNIDROIT Principles that complement CISG, providing valuable insights in contract law as seen through an international lens, are found at appropriate points. Since the last edition, the Uniform Electronic Transactions Act (UETA) has been enacted in all but a handful of jurisdictions. UETA as the elaboration of its federal counterpart, the Electronic Signatures in Global and Network Commerce Act ("E-Sign"), must be understood as electronic contracts have become commonplace.

The treatise continues to pursue the rich history of innumerable contract doctrines from early common law to the present time without which the student of contract lacks a foundation to understand the current evolution of any part of contract doctrine. Absent an understanding of past mistakes and poor analyses, they could easily appear as superficial new doctrines without a hint of retrogression. The landmark cases continue to be found and others that are on the verge of becoming landmarks are also emphasized. The last third of the twentieth century presented a bevy of new contract theories and it is important for any comprehensive treatment of contract law to note their current status.

While the reporting of new case law and statutory developments is a critically important dimension of any comprehensive treatise, a critique of the evolving doctrine of contract as evidenced by these developments is equally important. Such a critique is impossible absent an immersion in batches of cases and related material to provide bases for any serious analysis. Every topic in this treatise is based on innumerable "immersions" in the cases and statutes that have appeared since the last edition. The effort to meet the challenges in analyzing modern contract law have been arduous, fascinating

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## *PREFACE*

and joyful. I dedicate this book to my students and my wife, Liz, without whom it would not have been possible.

John E. Murray, Jr.  
Pittsburgh, Pennsylvania  
2011

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