

Focus Casebook Series

Contract Law in Focus

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Contract Law in Focus

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*To Christine, Marguerite, and Dolores—
with love and gratitude for honoring the unspoken contract of our sister bond.*

L.M.P.

*In loving memory of Leverett H. Kelly,
to whom I owe so much.*

M.K.

The Focus Casebook Series

Help students reach their full potential with the fresh approach of the **Focus Casebook Series**. Instead of using the “hide the ball” approach, selected cases illustrate key developments in the law and show how courts develop and apply doctrine. The approachable manner of this series provides a comfortable experiential environment that is instrumental to student success.

Students perform best when applying concepts to real-world scenarios. With assessment features, such as Real Life Applications and Applying the Concepts, the **Focus Casebook Series** offers many opportunities for students to apply their knowledge.

Focus Casebook Features Include:

Case Previews and Post-Case Follow-Ups — To succeed, law students must know how to deconstruct and analyze cases. Case Previews highlight the legal concepts in a case before the student reads it. Post-Case Follow-Ups summarize the important points.

Case Preview



In re Hlavin

As the hypothetical of Mary Jones and her loaves of bread illustrates, the number of potential disputes about the kinds of debt that are or are not to be considered consumer debts is simply limitless. The lawyer has to recognize when the issue matters and can be contested. As you read *In re Hlavin*, a case involving the 11 U.S.C. §707(b) dismissal for abuse provision,

consider the following questions:

1. Why is it the debtors and not the bankruptcy trustee who are arguing that their home mortgage is not a consumer debt?
2. What does this court say about whether the home mortgage is or isn't a consumer debt?

Post-Case Follow-Up



Is this opinion making a distinction between the reposessor himself disturbing the peace and his committing an act that motivates another to disturb the peace once the reposessor is gone? Would the result in this case have been different if the activities of the repossessors had awakened the debtor or the neighbor and the one awakened had shouted at them out of a window something like, “Stop, thief! I’ve called the police”?

See *Robinson v. Citicorp National Services, Inc.*, 921 S.W.2d 52 (Mo. Ct. App. 1996), and *Chrysler Credit Corp. v. Koontz*, 661 N.E.2d 1171 (1996). If the debtor’s husband had raced outside with a firearm while the repossessors were pulling away from the property? If he or the neighbor had fired a firearm at the fleeing repossessors? If a sleeping child had been in the car unseen by the reposessor when the car was driven off? See *Chapa v. Traciers & Associates*, 267 S.W.3d 386 (Tex. App. 2008)? If the reposessor had violated a driving ordinance in the course of repos-

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Real Life Applications — Every case in a chapter is followed by Real Life Applications, which present a series of questions based on a scenario similar to the facts in the case. Real Life Applications challenge students to apply what they have learned in order to prepare them for real-world practice. Use Real Life Applications to spark class discussions or provide them as individual short-answer assignments.

In re Hlavin: Real Life Applications

1. Would the result in *Hlavin* have been different if the loans secured by their home had originally been taken out to fund a failed business venture? What if they had been taken out for home improvement or a vacation but then actually used to fund a business venture? Would it matter if they told the bank the money was being borrowed for home improvement or vacation but intended it to be used to fund a business venture? What if the home loans had been taken out for mixed personal/business reasons?
2. If the debtors in *Hlavin* had 30 different consumer debts totaling \$75,000 and only one business debt totaling \$76,000, would that court find that they had “primarily consumer debts” under §707(b)(1)? What would be the result if a court utilized one of the alternative approaches to this question mentioned in *Hlavin*?

Applying the Concepts — These end-of-chapter exercises encourage students to synthesize the chapter material and apply relevant legal doctrine and code to real-world scenarios. Students can use these exercises for self-assessment or the professor can use them to promote class interaction.

Applying the Concepts

1. Assume you are consulted by the following potential bankruptcy clients. Which of these appear at first blush to be candidates for a consumer bankruptcy filing as opposed to a non-consumer or business filing?
 - a. The individual owners of an unincorporated video rental store whose business has plummeted due to the popularity of Internet movie-streaming services.
 - b. A married couple both employed but who have abused their credit card spending and now owe more than they make together in a year.
 - c. A recently divorced woman with two children whose ex-husband is unemployed and not contributing child support and who is having trouble paying her monthly living expenses.
 - d. A married couple, one of whom has suffered major health problems resulting in medical expenses in excess of what they can expect to earn in ten years.

Preface

Ensure student success with the Focus Casebook Series.

FOCUS APPROACH

In a law office, when a new associate attorney is being asked to assist a supervising attorney with a legal matter in which the associate has no prior experience, it is common for the supervising attorney to provide the associate with a recently closed case file involving the same legal issues so that the associate can see and learn from the closed file to assist more effectively with the new matter. This experiential approach is at the heart of the *Focus Casebook Series*.

Additional hands-on features, such as Real Life Applications, Application Exercises, and Applying the Concepts provide more opportunities for critical analysis and application of concepts covered in the chapters. Professors can assign problem-solving questions as well as exercises on drafting documents and preparing appropriate filings.

CONTENT SNAPSHOT

The introduction discusses the structure and sources of contract law, noting its origins in state-level, common law decisions. It also addresses some of the ways the law divides contract law, defining goods that are regulated by the Article 2 of the Uniform Commercial Code.

Chapter 1 provides an overview of three things: the important role contracts play in the economy and society; the elements a party must prove in order to obtain relief from breach of contract and the general framework of remedies available to the prevailing party; and some of the themes that recur in later chapters of the book and in other courses.

Chapter 2 begins the discussion of Assent: the requirement that all parties to a contract agree to the same terms. It focuses on how to determine whether an offer has been made that would allow the other party to create a contract by accepting.

Chapter 3 concludes the discussion of Assent by identifying the ways that a party may accept an offer: usually in words, but sometimes by performance or by silence. It also addresses some of the ways agreements change during the process of reaching assent.

Chapter 4 introduces the concept of consideration and reviews the classical “benefit-detriment” approach and the Holmesian modern “bargain” theory.

Common challenges to consideration, such as gratuitous promises, conditional gifts, sham consideration, illusory promises, and adequacy of consideration are discussed.

Chapter 5 reviews instances in which promises are enforced without consideration, including promissory estoppel and promissory restitution and the attendant application of the material benefit rule. Issues of past consideration, moral obligation, the preexisting duty rule, and modifications made in good faith are addressed.

Chapter 6 examines the role and burden of proof for contract defenses in defeating claims of breach. The contract defenses of incapacity, physical and economic duress, and undue influence are considered.

Chapter 7 continues the discussion of contract defenses, focusing on the ways inaccurate information may allow one party to avoid a contract, beginning with deceptive information provided by the other party or, sometimes, a third party (misrepresentation). It also addresses situations where one party's mistake might justify refusing to enforce the contract even if the other party did not cause the mistake.

Chapter 8 surveys limits on the enforceability of contracts taking into account the protection of both societal and individual interests. The policy constraints of unconscionability, illegality, statute of frauds, and exceptions to the statute of frauds are explored.

Chapter 9 addresses the techniques of interpretation, examining the kinds of information lawyers use to interpret contracts and the ways they use that information. Particular attention to problems that arise when one party objects that a written contract does not accurately reflect the agreement the parties reached.

Chapter 10 looks at conflicts which may arise when party rights and duties are not explicitly addressed in their contracts. Implied terms grounded in good faith and fair dealing, commercial reasonableness, and UCC gap fillers are reviewed. The chapter also discusses express and implied warranties and output and requirements contracts under the UCC.

Chapter 11 discusses conditions, which define whether one party's duty to perform has become due. It addresses both express conditions (specified by the parties) and conditions implied by the law, including circumstances when one party's breach may excuse the other party from needing to perform.

Chapter 12 addresses instances when a party may lawfully repudiate a contract, even if the other party has substantially performed their contract duties, or if a party raises concerns about whether or not contract duties will be performed when due. This chapter considers the UCC's perfect tender rule and efforts to cure in goods transactions. The concepts of anticipatory repudiation, retraction of a repudiation, and demands of adequate assurances of due performance are probed.

Chapter 13 recognizes that the failure to perform due to changed circumstances, after the contract was entered into, may allow parties to be excused from their contract duties. This chapter explores excuses that arise from changed circumstances, such as impossibility, impracticability, and frustration of purpose, and addresses the role of force majeure clauses in contracts.

Chapter 14 discusses third party contract rights, including agreements creating rights and duties for those who are not parties to the original contract or instances when a party to a contract transfers their contract rights or duties to another party.

The chapter reviews intended and incidental third party beneficiaries, the assignment of rights, the delegation of duties, and the use of novations.

Chapter 15 discusses the damages a party may collect for breach of contract, including market measures, incidental damages, and consequential damages. It introduces several doctrines that limit damages (avoidability, foreseeability, and uncertainty) and the ways the parties may limit damages by agreement in the contract itself.

Chapter 16 addresses additional remedies parties might seek for breach of contract, primarily court orders compelling a party to perform all or part of what was promised. It also addresses relief for unjust enrichment, an alternative to damages for breach, allowing a monetary recovery even if courts refuse to enforce the contract.

RESOURCES

Casebook: The casebook is structured around text, cases, and application exercises. Highlighted cases are introduced with a *Case Preview*, which sets up the issue and identifies key questions. *Post-Case Follow-ups* expand on the holding in the case. *Real Life Applications* present opportunities to challenge students to apply concepts covered in the case to realistic hypothetical cases. *Application Exercises* offer a mix of problem solving and research activities to determine the law of the state where the student plans to practice. State law application exercises better prepare the student to actually handle cases. *Applying the Concepts* feature provides occasions for critical analysis and application of concepts covered in the chapter.

Other resources to enrich your class include Practice Skills Exercises, or supplementary material such as *Examples & Explanations: Contracts, Sixth Edition* by Brian A. Blum. Ask your Wolters Kluwer sales representative or go to WKLegaledu.com to learn more about building the product package that's right for you.

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