

ASPEN CASEBOOK SERIES

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CONTRACTS
**Cases, Discussion,
and Problems**

*Fourth
Edition*

 Wolters Kluwer

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CONTRACTS

CASES, DISCUSSION, AND PROBLEMS

Fourth Edition

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Wolters Kluwer

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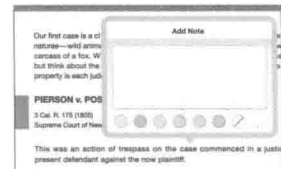
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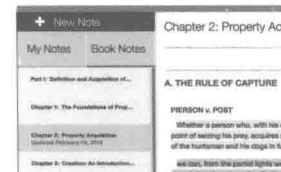
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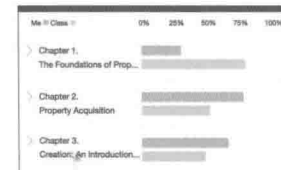
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*To Helen, Trevor, Nicole, Shelley, Matt,
Bryce, Kylie, William, Lexie, and Katherine, with love
—B.A.B.*

*As my father (and Zorba the Greek) would have said, to “the Full Catastrophe.”
Love and thanks to all in the Bushaw, Jacobs, Parker and Skoda family
—A.C.B.*

Our Approach to the Fourth Edition

We are grateful to have had the privilege of developing and refining the book through successive editions and have enjoyed teaching from it. We think that our approach and selection of materials has worked well, and we are gratified to have received positive comments on the book from our own students as well as from professors who have adopted it and students who have used it at other schools. In revising for the fourth edition, we have maintained the tone, style, and approach of the book while incorporating new ideas for teaching the subject and making selective changes to the book to update and enhance it, based on our own experience and suggestions from others. Although we have kept most of the cases that were in the third edition, we have added or substituted new interesting and compelling cases. We have also retained most of the problems from the third edition, but have added many new problems, including a number based on material that was previously in the form of notes. A new feature of this book is the addition of self-assessment multiple choice questions for each chapter, located at the end of the book.

Our philosophy and approach in writing this book has always been to present materials that are challenging and interesting but at the same time readable, clear, and accessible to students. Edited court opinions form the foundation of this book. We combine those opinions with full interconnecting explanatory text and with questions and problems designed to encourage students to think about and apply the legal principles raised by the cases or by other materials in the assignment. We and our students have found that the combination of text, court opinions, questions, and problems allows for more focused class preparation and enhances class discussion. We have therefore been careful, in revising this book for its fourth edition, to preserve what we consider to be the strongly beneficial features of the book and to adhere to its philosophy and approach. In each of the following sections, we outline the changes we have made in the fourth edition.

Our General Philosophy and Approach

Even a casual browsing of this book will reveal that it does not follow the traditional form of a casebook. It is not simply a collection of edited court opinions, extracts from law journal articles, and citations. Rather, it is an interwoven

combination of explanatory text, edited court opinions, notes, questions, and problems. Throughout, we intend to provide a coherent and guided treatment of the subject of contract law and, more generally, of legal reasoning, argument, philosophy, and practice. In adopting this approach, we attempt to give students a sufficiently complete set of readings for each class assignment to enable them to prepare effectively for a rich and challenging class discussion.

The law is infinitely complex. We welcome the complexities and subtleties of contract law and recognize that it presents many questions that have no ready answers. However, we believe that there is no need to aggravate the law's complexity by keeping students in the dark about matters that, if presented clearly, can help them focus on more challenging issues, understand central rules, learn to apply principles and policies of law, and develop a sense of the overall structure and purpose of doctrine. We are confident that this book amply challenges any student but that it does so without creating undue confusion and consequent frustration. Having taught from this book for many years, we are convinced that this approach allows students to reach a subtler and more sophisticated appreciation of contract law and analysis.

This book is designed to foster, and to make more rewarding and effective, the collaborative discourse between the professor and students and among students. In our experience, the conversation is deeper, and the experience more enjoyable and enlightening, if the reading prepares students by providing context, background, and basic information and explanation that helps them understand the issues that will be tackled in class discussion. Although the book provides considerably more information and explanation than is commonly found in casebooks, this does not preempt class discussion or spoon-feed the students. On the contrary, it allows them to attain a level of knowledge and understanding before entering the classroom that greatly enhances their ability to make a meaningful contribution to class discussion and to engage in the kind of critical thinking and rigorous analysis that is so vital to an understanding of the law.

The Use of Case Analysis as a Teaching Tool

We continue to use the widely accepted pedagogy of case analysis as our principal teaching tool. Mastery of case analysis is fundamental, and it must be taught thoroughly to any person who aims to function as a lawyer in our legal system. We have edited cases carefully and sometimes quite rigorously to keep them to a manageable length and to focus the students' attention on the issues relevant to class discussion. In addition to using edited court opinions as principal cases, we also recount the facts and decisions of other cases to form the basis of problems.

We focus primarily on modern cases, and include a significant number of very recent ones. We believe in presenting modern cases because students

find them more relevant and have more confidence that the opinions provide up-to-date expositions of the law. This is not to say that we disregard those older cases that remain superb teaching tools or that have become so well known that they have achieved iconic status. You will find a number of these cherished cases in the book. However, where we include an older case, we make a point of providing contextual discussion or a newer case as well so that students are able to appreciate the older case's relationship to the current state of the law.

Apart from their value as analytical tools, cases are also narratives. They tell stories about real people and actual events. A good story helps brighten what might otherwise be a dry discourse. We therefore try to include cases, where possible, with provocative and interesting facts. If the facts are funny or outrageous, or if they involve a well-known public figure or a timely social issue, so much the better.

The Use of Questions and Problems

We include questions on most cases or groups of cases. The questions are designed to aid the students' preparation for class by drawing their attention to difficult or crucial aspects of the doctrine and encouraging them to think about discussion points. Students should be able to answer every question from information provided in the book. Often, there is no one right answer to a question; thoughtful analysis can lead to different points of view.

We use problems to supplement or extrapolate from associated principal cases or to raise issues that may be covered more effectively by a problem. Some problems test students' understanding of, or their ability to apply, principles drawn from the preceding case. Others are connected to textual explanation and are used instead of a principal case to allow students to apply the principles expounded in the text to a new factual situation, or to test understanding of the text. Some problems are based on reported cases summarized in the text, while others present hypothetical facts. Often problems call on students to consider how particular issues should be handled in practice, and periodically they present legal issues in a planning or transactional context. Some of the problems are relatively quick and simple while others require more complex analysis. Most problems are open to more than one analysis and require students to articulate and justify their resolution of the problem.

Self-Assessment Questions

We have added new self-assessment multiple choice questions to this edition of the book. The purpose of these questions is give students a means of self-testing their understanding of the materials after completing each chapter of the book. There are self-assessment questions and answers for each chapter of the book, located at the end of the book.

The Purpose of the Interconnecting Text

The cases, problems, and questions are bound together by interconnecting text throughout the book. It concisely introduces and explains concepts, places materials in context, and informs an exploration of the genuinely subtle and challenging aspects of contract law. We try to make the text clear and concrete, so it often includes explanatory examples or hypotheticals. Exposition is also used to incorporate commentary, criticism, and theoretical perspectives from legal scholarship. Also, because we believe that it is vital for students to see the relationship among the many topics that form contract law, we use the text, problems, and questions to help students discover the connections and analogies among different aspects of the course.

The Exploration of Issues Beyond Contract Law

While we devote most of our effort to drawing out the principles, policies, norms, and theory of contract law, we make it a point to go beyond this primary subject matter to explore the broader legal and societal fabric of which contract law forms an inseparable part. We pay particular attention to legal process, analysis, and argument. We raise litigation and procedural questions to help students to realize that procedural issues can significantly affect the resolution of contract disputes and to encourage students to discover connections between their contracts and their civil procedure courses. As much as possible, we have integrated issues of legal ethics into our discussion. Where the cases are conducive to the introduction of other themes, such as agency, consumer protection, or the relationship between contract and tort, we take the opportunity to raise them.

Planning and Drafting Issues

Our primary focus on cases means that most contract issues appear through the lens of litigation. However, it is important to realize that most contracts do not end up in litigation. In this edition, we continue our approach of including questions and problems that raise transactional issues and that shift focus from doctrinal analysis or dispute resolution to provide exposure to the practical skills involved in advising clients, negotiating and drafting contracts.

Standard Contracts and Contracting Via Technology

Because standard contracts are so prevalent, we place particular emphasis on them throughout the book. As part of this focus, we pay close attention to the process of contracting through communications technology, including Internet-based contracts.

Remedies

Disputes over contracts almost always involve a “bottom line.” One of the parties seeks the payment of damages or some other remedy from the other. Contract remedies are therefore a major aspect of contract law. We follow the traditional organization of the contracts course by beginning with the formation of contracts and focusing on remedies toward the end of the book, in Chapters 20 and 21. However, the entire book is written with sensitivity to remedial issues, and we raise them throughout. Therefore, students will have acquired a basic knowledge of remedies even before reaching the more intensive exposure to remedies in Chapters 20 and 21. This should be particularly helpful in shorter courses, where there is not enough time to cover remedies in detail. For courses where there is more time to allocate to remedies, but not enough to cover Chapters 20 and 21 fully, we have divided those chapters into smaller, self-contained units so that shorter assignments can be made. We are aware that some professors prefer to begin the contracts course with remedies and we have therefore designed Chapters 20 and 21 so that students do not need to have studied other topics before working with them.

Sales of Goods

Some contracts courses do not cover sales of goods under the Uniform Commercial Code (UCC) Article 2 in detail or at all, and defer a significant portion of the coverage of sales of goods to an upper-class course. We do cover sales of goods throughout this book but have attempted to make the book adaptable so that a professor who wishes to limit the students’ exposure to sales of goods can do so. Our treatment includes discussion of applicable UCC Article 2 provisions in each chapter, and we regularly compare UCC provisions to analogous rules of general contract law. We have found that a thorough treatment of sales of goods alongside common law contracts works well. It makes students constantly aware that sales of goods may be subject to different rules and allows the students to contrast those rules with the common law as we progress through the course. It also helps them appreciate the influence of the UCC on the development of the common law.

We include in the materials the text of the applicable provisions of Article 2 of the UCC, together with relevant general provisions from Article 1.¹ We have found that students appreciate having all the relevant statutory material in the book. They do not need a separate statutory supplement. (However, some

¹ Article 1 was revised in 2001. That revision has been widely enacted by states, and it is used in this book. There was an attempt to revise Article 2 in 2003, but the revision was not enacted by any state and was eventually abandoned. Other than a brief mention to alert students to this history, we do not deal with the failed effort to amend Article 2.

professors still prefer to assign a statutory supplement that sets out the entire text and Official Comments of these articles.)

Global Perspectives

To introduce students to a global perspective on contract law, we include notes at the end of most chapters on the UNIDROIT Principles of International Commercial Contracts (Third Edition, promulgated in 2010) and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The notes are brief and merely expose students in broad terms to the similarities and differences between domestic law and the law that may be applicable to transactions across international borders. We also refer to comparative law perspectives where we feel that it is illuminating to do so.

We have enjoyed writing this fourth edition. We hope that others enjoy it too and find it enlightening, supportive, and challenging.

Brian Blum
Amy Bushaw

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We owe thanks to many people who helped us with this book in all of its four editions. We have had able research assistance from several Lewis & Clark students. Our students in successive contracts classes have challenged, encouraged, and informed us by their reactions to these materials. We have also received welcome and helpful comments and suggestions from colleagues who have adopted this book and sometimes from their students as well. We thank them for having taken the trouble to communicate with us.

We are grateful for the guidance, enthusiasm, and excellent editorial, publication, and postpublication work by many members of staff at Wolters Kluwer. Provisions from the Restatement, Second, of Contracts and the Official Text of the Uniform Commercial Code (copyright © by the American Law Institute) are reprinted with permission.

To enhance the readability of cases and to minimize distractions, we have followed a number of editing conventions in our reproduction of court opinions:

1. We have eliminated all citations that we feel are not needed for teaching purposes. Although we indicate omission of text from an opinion by ellipsis, we do not indicate the omission of citations in cases.
2. We have eliminated footnotes in cases without indication. We have retained only those footnotes that we consider useful or necessary for teaching purposes. In many places, we have added our own footnotes to opinions as explanations or comments on the case. Within cases, our footnotes conclude with the abbreviation "EDS." to distinguish them from the court's footnotes. We have renumbered footnotes in cases so that all footnotes in each chapter are consecutive.
3. Where appropriate to reduce length or complexity, we have substituted our own summaries of the facts of cases or of discussion in opinions. Our own text within cases is enclosed in square brackets.
4. We have brought some uniformity to divergent citation forms in the cases, but some inconsistencies remain because of citation practices or rules in different jurisdictions.
5. We have altered paragraph breaks in opinions where readability called for this adjustment.
6. We have corrected obvious typographical or grammatical errors in opinions without indication.

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