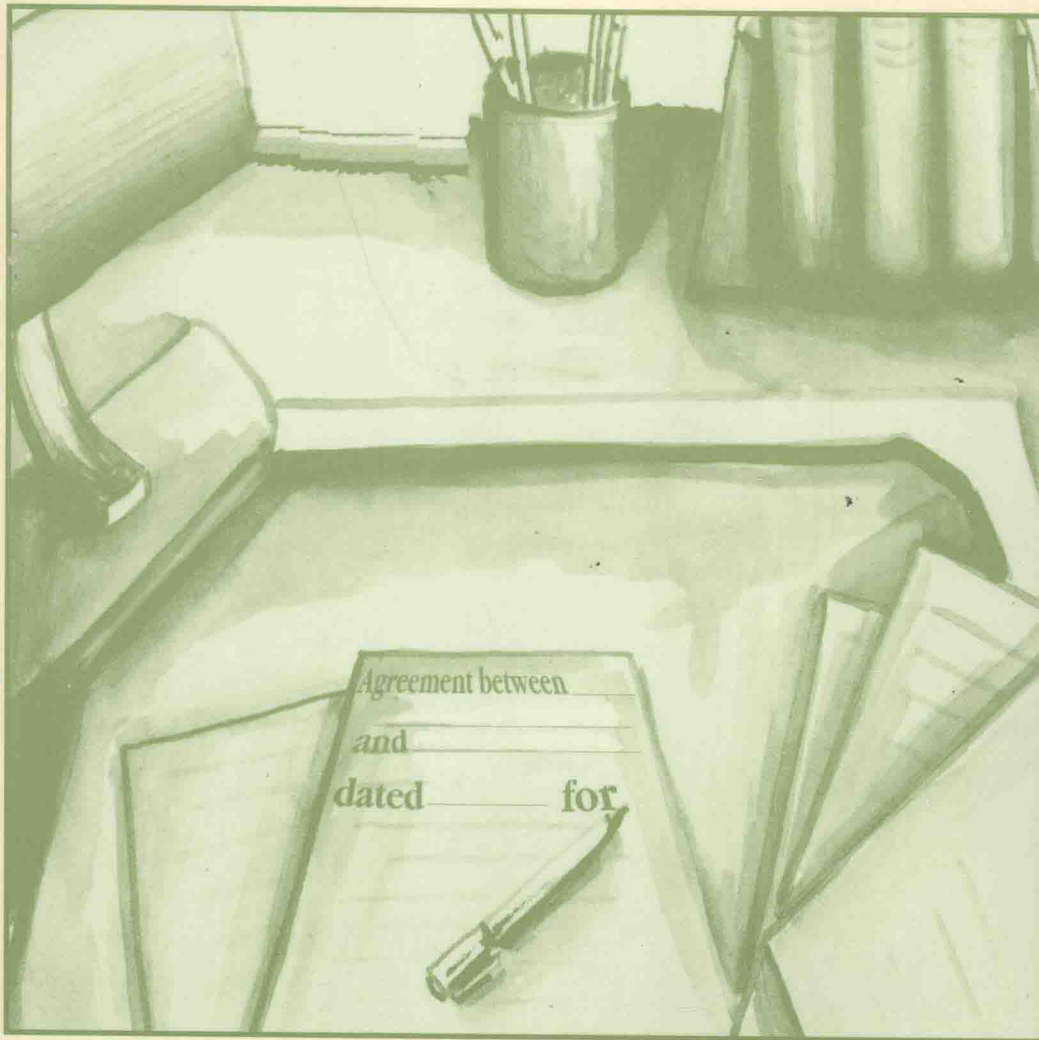


Contracts

Third Edition

Brian A. Blum



EXAMPLES & EXPLANATIONS

ASPEN
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CONTRACTS

Examples and Explanations

Third Edition

Brian A. Blum

Professor of Law

Lewis & Clark Law School

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*To Helen, Trevor, and Shelley,
with Love*

Preface

I expect that most readers of this book will be first-year law students who will use it as a resource to assist in learning and understanding the law of contracts—to prepare for class, to unravel and supplement class materials and discussion, and to review and prepare for exams. In deciding on the scope, depth, and approach of the book's coverage, I have aimed at their needs. My focus has been on what is likely to be most appropriate and helpful to a person who approaches contract law as a novice and is trying to assimilate and understand not only the details, but also the larger issues of this complex subject.

In revising this book for its third edition, I have renewed my efforts to provide an accessible and helpful treatment of the law of contracts. I have not changed the focus or approach of the prior editions, nor the extent or nature of its coverage. Instead, I have concentrated on matters of detail, altering text and diagrams only to the extent necessary to update the materials and to add clarity, adding fresh examples and explanations and cases, and changing or removing those original examples and explanations that called for refinement.

The Treatment of the Sale of Goods in the Third Edition: The Revisions of UCC Articles 1 and 2

Article 2 of the Uniform Commercial Code (UCC), which governs contracts for the sale of goods, is an important part of the contracts course. Since the second edition of this book, there have been two significant changes to the UCC as it relates to sales of goods. Article 1 was revised a short while ago, and Article 2 is in the final stages of revision. (The process of revision is described in Section 2.7.1). Although the revisions of Article 1 have not been widely enacted at the time of writing this third edition, and the revisions of Article 2 have not yet become law in any state, that process is already under way. This edition continues to base its discussion of sales of goods on the current provisions of Articles 1 and 2, but also explains, throughout the book, what changes have been made in the revisions of Articles 1 and 2. These explanations are integrated into the text, usually in the form of explanatory footnotes.

The Style, Approach, and Purpose of This Book

Like many other law school courses, contract law is typically taught by means of discussing and debating cases and other materials that have been assigned for reading in advance of the class session. A terrible flood of information is unleashed by this process, and few students can assimilate and appreciate it all by simply studying the casebook and listening in class. Supplementary reading is indispensable to understanding and digesting what is covered in class. To be most useful, such a supplementary text should be written with an awareness of the coverage, depth, and scope of most contracts courses, and with a sense of what students are likely to need by way of additional reading. In writing this book, I have tried to keep that goal in mind. Relying on my own experience as a teacher of contract law, and on the content of casebooks, I have tried to maintain the discussion in this book at the level that may be expected in a typical contracts class.

To achieve this purpose, it is not enough to outline legal rules or to state doctrine. Although it is surely one of the aims of a contracts class to teach the current rules of law governing contracts, a knowledge of current legal rules is only one of the components of an adequate understanding of contract law. Students are also expected to learn the derivation and development of the rules, their historical and contemporary rationale, the public policies that they are meant to serve, and the way in which they coalesce to form a coherent body of law. Because neither rules nor their underlying policies are static, and are often unsettled and the subject of controversy, students must also be exposed to the uncertainties of the law and must learn to develop the ability to evaluate critically and to form judgments. In addition, like so many other courses in law school, a contracts course serves the goal of exposing students to broader issues of legal process, legal analysis, dispute resolution, and lawyering skills such as drafting, advising, and evaluating the strength of a case. This book attempts to encompass this range of learning.

Although this book contains much textual discussion of the rules and policies of contract law and of the themes mentioned above, it is not a traditional treatise. Its purpose is not to provide a highly detailed and comprehensive exposition of the law of contracts, with exhaustive citation of authority. Its principal aim is the clear and accessible explanation of the fundamentals of the law, with a particular concentration on what information is likely to be helpful for a student who approaches the subject for the first time. For this reason, it tries to articulate assumptions and to express doctrine and policy accurately, while avoiding finicky distinctions and qualifications that are more likely to confuse than to elucidate.

As part of the effort to clarify legal principles and the relationships between contracting parties, I have used diagrams extensively. I believe that visual representations can be a great help in clarifying and reinforcing verbal exposition.

The Use of Examples and Explanations

It is difficult to learn the law by studying abstract principle. Concrete examples are needed to place doctrine in context and to show how it operates to affect behavior and to resolve disputes. Examples are therefore used extensively in the text itself to illustrate concepts under discussion. In addition, a distinctive feature of this book is the use of “examples and explanations,” which take up a substantial part of each chapter. Their purpose is not only to provide further illustration and wider discussion of the subject matter of the text, but also to give students a means of self-testing on the topics covered. The examples pose questions based on hypothetical facts, and the explanations analyze and offer a resolution of the problems. As a general rule, the examples and explanations do more than simply provide a means of reviewing what has been stated in the text. To resolve them adequately, one must use reasoned argument and must thoughtfully apply the principles set out in the text. You will therefore benefit the most from them if you do not merely read through them, but rather take the time to formulate your own answer to an example before reading its explanation. This will allow you to test your knowledge and understanding of the material, to practice identifying issues, and to develop skills in composing and organizing answers to the kind of questions commonly found in exams.

The Organization of This Book in Relation to Your Contracts Course

There are a number of different ways to organize a contracts course, and the casebooks reflect quite a diverse approach to the sequence in which material may be covered in class. It is therefore quite possible that your contracts course will not follow the same sequence as the chapters in this book. (For example, some courses begin with remedies for breach of contract, which is not covered here until Chapter 18, and some begin with consideration doctrine, which is not reached until Chapter 7.) This book has been written with an eye on the divergent ways in which the topics of contract law are presented in class, so a student should have no trouble reading chapters out of order. To use this book in the same sequence as your contracts course, simply refer to the table of contents or index to find the part of the book that deals with the subject under discussion in class. Cross-references are included in each chapter to help give you an idea of where to find allied topics or further reference to the subject under discussion.

A Recommendation about Chapters 1 through 3 and the Glossary

Irrespective of the organization of your class, I do recommend, however, that you read Chapters 1, 2, and 3 as soon as possible. These short chapters are

intended as an introduction to some of the root principles of contract law and legal analysis. They contain basic information and guidance on core concepts, terminology, and case analysis that may not be articulated fully or at all in your class materials or discussion. A little time spent in working through these chapters at the beginning of the semester may save you needless puzzlement and confusion. Also, you should refer to the glossary at the end of the book for short definitions of terms that may be unfamiliar to you.

The Use and Citation of Authority in This Book

To make this book as readable and accessible as possible, I have kept citation of authority to a minimum. You will find none of the detailed footnotes and citations that you would expect in a treatise or law review article. However, some sources of authority are such an integral part of the process of learning contract law that to omit them would impede understanding. These sources are referred to constantly throughout the book. They are:

1. The RESTATEMENT (SECOND) OF CONTRACTS (referred to in the book in abbreviated form as Restatement Second), a compendious and highly influential formulation of the rules of contract law.
2. Article 2 of the Uniform Commercial Code (UCC), a statute governing contracts for the sale of goods.
3. Court opinions, a vital source of law in our system. Although a case (or string of cases) could be cited for (and often against) almost every proposition in this book, I have been very selective in using caselaw. In the text itself, I refer only to a handful of cases that have achieved monumental status in the law of contracts. I cite and discuss cases regularly but selectively in the explanations. These cases are not used simply to support conclusions, but have been chosen either because they are good illustrations of the issue under discussion or because they provide an interesting contrast to the facts of the problem. Because I feel that it is helpful for students to be familiar with at least some of the cases used in the explanations, I have preferred cases that are included in casebooks, and especially those that are important or popular enough to be found in several casebooks. You should therefore not be surprised to find that you have studied a number of the cases discussed in this book.

Brian A. Blum

January 2004

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CONTRACTS

Examples and Explanations

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