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**PROBLEMS IN
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Problems in Contract Law Cases and Materials

Eighth Edition

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Problems in Contract Law

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In memory of Robert B. McKay and Norman Redlich, former Deans of the N.Y.U. School of Law (1967-1975 and 1975-1988), with gratitude for their warm friendship and wise counsel.

C.L.K.

To my mother, Gladys Sorenture 1916-2014, whose joy for life will always be my inspiration.

N.M.C.

To Andrew, James and Callie – with love.

H.G.P.

Preface

The book you are holding (or perhaps reading in electronic form) is the eighth version of this collective work, which we call *Problems in Contract Law*. This book is “collective” not merely because it represents the long and happy collaboration of three friends and colleagues, but also “collective” because, like any law casebook, its content is the aggregate of the industry and insights of hundreds of judges, lawyers, and legal commentators, gathered from the accumulated wisdom of decades, even centuries. From the literally “cut-and-paste” days of the 1970s to the virtual world of the twenty-first century’s second decade, we have seen information technology undergo vast, even cataclysmic, change. And although contract law is commonly considered one of the more stable areas of law, it too has undergone tremendous change and remains today in a state of flux. Technological and sociopolitical developments are rapidly merging the American marketplace into a global one, and new forms of communication and data management have revolutionized the way contracts are made and administered, so much so that many now question whether the basic principles of the contract law of the last century can provide an adequate framework for the future. All of this makes a realistic survey of contract law for present-day law students a complicated and challenging undertaking.

To give the student some sense of the complexity of our legal world, this new edition attempts, like its predecessors, to sound several themes. The first and foremost of these, of course, is to give an overview of contract doctrine: the rules and principles, both common law and statutory, that make up what we think of as “contract law.” For this purpose, we continue to present a varied collection of judicial opinions for study and analysis, and we have added eleven new principal cases (plus citations to dozens more). As in previous editions, introductory text summarizes basic concepts, enabling the cases to focus on more challenging applications of doctrine, while the Notes and Questions after each case help the student to analyze that case and to place it in context with other parts of the material. Complementing case study with the problem method, we present throughout the book a series of lengthy, multi-issue Problems to help the student understand and apply the principles reflected in the text and cases studied. And through text, Notes, and occasional Comments, we point out some of the places where contract law overlaps with or is affected by other areas of law, such as Tort, Agency, Professional Responsibility, and forms of Alternate Dispute Resolution. New with this edition, Review Questions at the end of each chapter enable students to test their understanding of the concepts and rules presented.

With contract law—as with all areas of law—knowledge of doctrine is not the end of study, but only the beginning. Starting with the introduction in Chapter 1 and continuing throughout the book, we urge the student to view the material from a variety of other perspectives. The first of these is *historical*. Text, cases, and Comments describe the development of our common law of contract in the English courts of Law and Equity, and trace the historical progression of American contract law from Holmes and Williston through Corbin and Llewellyn to the present day. With this added historical perspective, students may better see contract law for what it really is: not simply a collection of discrete rules, but a complex and constantly evolving system.

The second perspective these materials stress is the *theoretical* one. From the outset, the student encounters the various strands of modern academic thought about contract law. The materials present extended quotations from scholars representing all modern schools of analysis (some notion of their number and variety can be gained from the Acknowledgments, which follow this Preface), and text, Notes, and Comments provide citations to dozens of other scholarly works, for the guidance of instructors or students who wish to pursue these questions further. (For easy reference we have again included in the back of the book a table of scholarly authorities cited, along with the usual tables of cases and statutes.)

Besides the historical and theoretical aspects, these materials focus on the *lawyering* perspective, reminding the student repeatedly that the rules of law we encounter have an impact on real people in real disputes, and that creative lawyering in the contract area requires not merely knowledge of the rules of law but the ability to analyze and predict the effects of various courses of conduct that a client might undertake, in the light of those rules. Many of the Notes following the cases invite the student to consider two practice-related questions: How could an attorney have either prevented this dispute from arising or helped her client to obtain a better outcome than was achieved in the actual case? How will this decision affect attorneys in the future, in their roles as counselors, negotiators, and advocates? The Problems, which often cast the student in the role of an attorney at the pre-dispute stage, also raise questions of both law and lawyering, but without the benefit of already-reached judicial outcomes. The Problems can serve a number of functions for the student, such as integrating various strands of doctrine and providing a useful preparation for law school essay-type examinations. Probably their most important purpose, however, is to suggest that in real life there is likely to be not just one answer to a client's problem but a whole range of possible answers, some of which are clearly wrong, but many of which are at least plausibly right, in varying degrees. Living with ambivalence and uncertainty is not always pleasant, but the ability to do so is surely a more necessary lawyering skill than mastering the niceties of citation form.

The book is comprised of 12 chapters, which fall generally into the following parts:

Introduction	Chapter 1
Formation	Chapters 2-4
Interpretation and implication	Chapters 5-6

Defenses and grounds for nonenforcement	Chapters 7-8
Breach and remedies	Chapters 9-11
Third parties	Chapter 12

Material on the UCC is integrated throughout wherever it is relevant to our understanding of the general law of contract. A separate supplement, *Rules of Contract Law*, reprints important provisions and comments from Articles 1, 2, and 9 of the UCC and the Restatement (Second) of Contracts, along with the Articles of the Convention on International Sales of Goods (CISG), the Principles of International Commercial Contracts, and other relevant statutes. It also presents supplemental CISG cases, material on contract drafting, a selection of sample law school examination questions (some with suggested answers), and additional background material on the arbitration of contract disputes.

This eighth edition of *Problems in Contract Law* marks a significant milestone in the history of this publication, and in the careers of all three of its authors. The first edition, prepared by Professor Knapp, appeared just forty years ago, in 1976, under the publishing imprint of Little, Brown and Company. Beginning with the second edition in 1987, Professor Crystal joined him as co-author, and made significant contributions to the book, both in substance and in style. With its third edition in 1993, the book first appeared—as it continues to do—under the auspices of the Aspen Casebook Series. In 1999, with the fourth edition, Professor Prince became the third co-author of the book, and made significant contributions of his own, both to the successive editions of the book itself and also to its supplement, *Rules of Contract Law*. Between the three of us, we thus have a combined total of over eight decades of experience in shaping and re-shaping the way that we present the body of contract law to successive generations of law students through these materials.

For each of us, collaboration on these materials has always been, and continues to be, not only an educational experience but a great pleasure as well. We hope that those who use this new volume will likewise find enjoyment as well as information in its pages. As our closing word to students and teachers about to embark on this journey with us, we sound once again the note that has introduced every edition of this book from the very start:

No study of law is adequate if it loses sight of the fact that law operates first and last *for, upon, and through* individual human beings. This, of course, is what rescues law from the status of a science and makes its study so frustrating, and so fascinating.

It was true in 1976, and it still is today.

Charles L. Knapp
Nathan M. Crystal
Harry G. Prince

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