案·例·举·要 影印系列

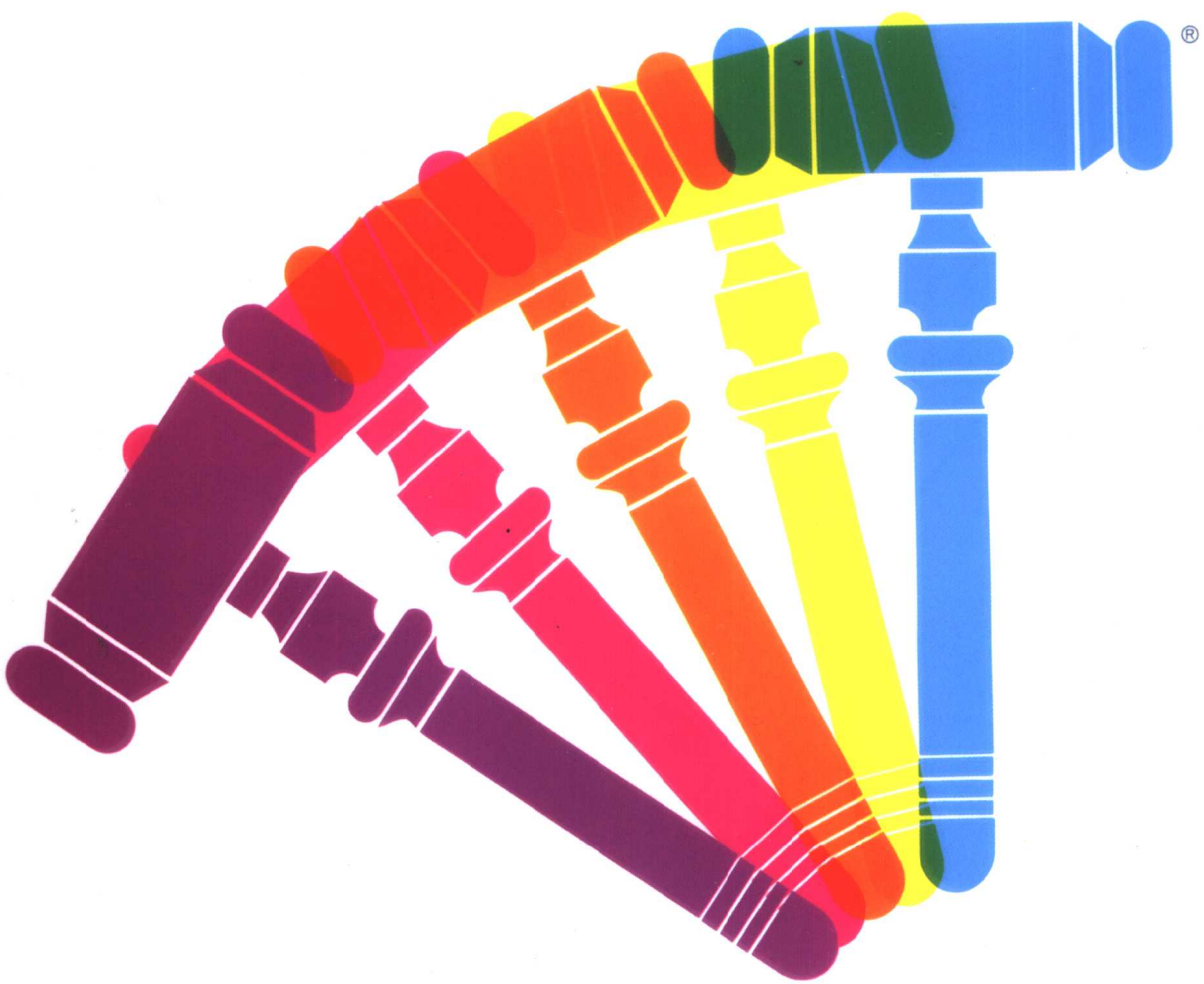
Casenote™ Legal Briefs

Keyed to Knapp, Crystal and Prince's Problems in Contract Law

对应于克纳普、克里斯特尔和普林斯合著的案例教程《合同法问题研究：案例与资料》

合同法

Contracts



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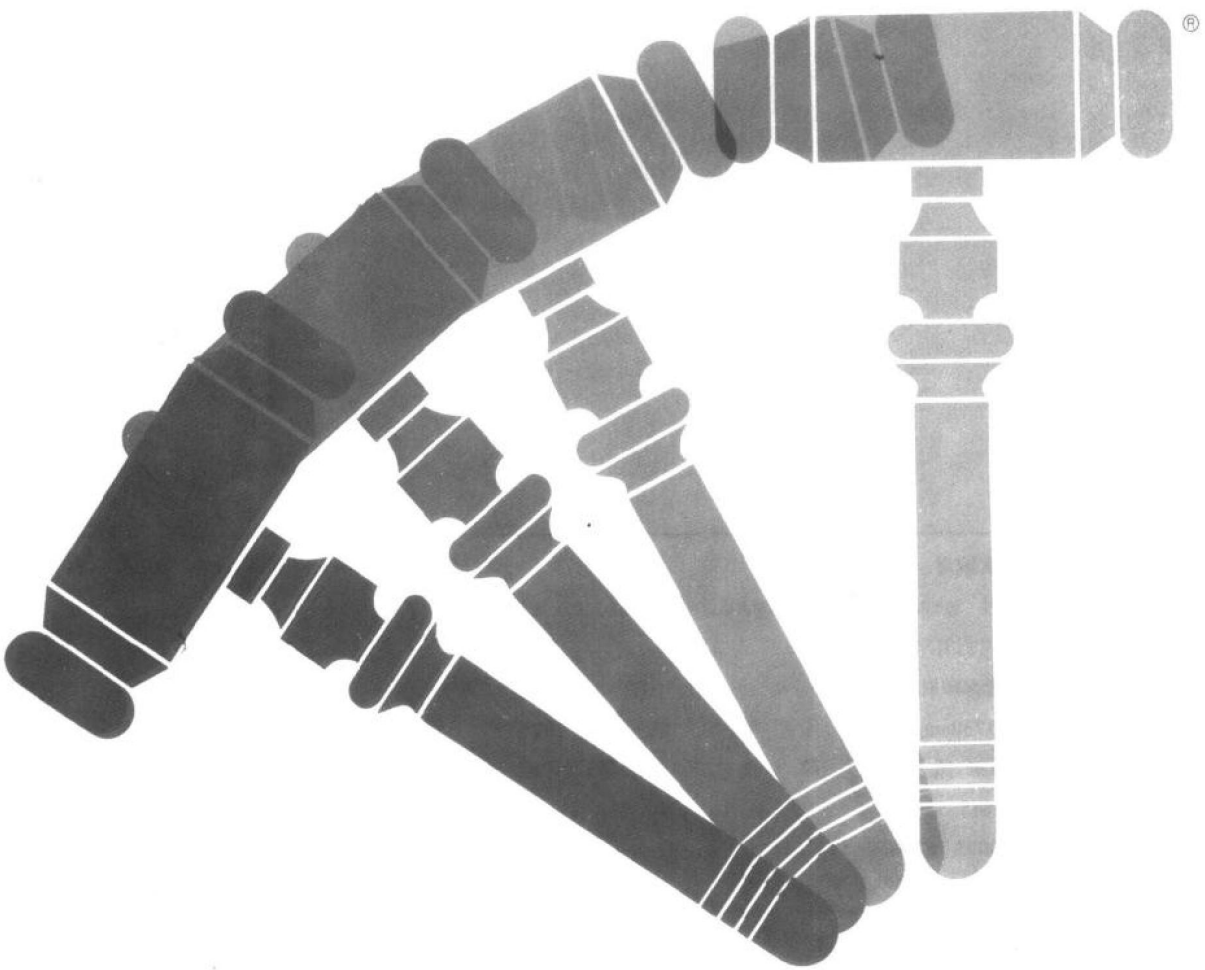

中信出版社
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图书在版编目（CIP）数据

合同法（案例举要影印系列）/—影印本.—北京：中信出版社，2003.8

书名原文：Contracts

ISBN 7-80073-762-4

Ⅰ.合… Ⅱ.合同法-案例-分析-美国-英文 Ⅲ.D971.23

中国版本图书馆CIP数据核字（2003）第042407号

合同法

HETONGFA

责任编辑：王黎嘉 袁婉君

出版发行：中信出版社（北京市朝阳区东外大街亮马河南路14号塔园外交办公大楼 邮编 100600）

经 销 者：中信联合发行有限公司

承 印 者：北京牛山世兴印刷厂

开　　本：880mm×1230mm 1/16 **印　　张**：9 **字　　数**：180千字

版　　次：2003年8月第1版 **印　　次**：2003年8月第1次印刷

京权图字：01-2003-2645

书　　号：ISBN 7-80073-762-4/D·58

定　　价：28.00元

NOTE TO STUDENTS

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Casenote Legal Briefs should never be used as a substitute for assigned casebook readings. They work best when read as a follow-up to reviewing the underlying opinions themselves. Students who try to avoid reading and digesting the judicial opinions in their casebooks or on-line sources will end up shortchanging themselves in the long run. The ability to absorb, critique, and restate the dynamic and complex elements of case law decisions is crucial to your success in law school and beyond. It cannot be developed vicariously.

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HOW TO BRIEF A CASE

A. DECIDE ON A FORMAT AND STICK TO IT

Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Any format, as long as it presents the essential elements of a case in an organized fashion, can be used. Experience, however, has led *Casenotes* to develop and utilize the following format because of its logical flow and universal applicability.

NATURE OF CASE: This is a brief statement of the legal character and procedural status of the case (e.g., "Appeal of a burglary conviction").

There are many different alternatives open to a litigant dissatisfied with a court ruling. The key to determining which one has been used is to discover *who is asking this court for what.*

This first entry in the brief should be kept as *short as possible.* The student should use the court's terminology if the student understands it. But since jurisdictions vary as to the titles of pleadings, the best entry is the one that apprises the student of who wants what in this proceeding, not the one that sounds most like the court's language.

CONCISE RULE OF LAW: A statement of the general principle of law that the case illustrates (e.g., "An acceptance that varies any term of the offer is considered a rejection and counteroffer").

Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is *the* rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is simply the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e., those bearing upon or leading up to the issue.

The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the "facts" will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. "Hard" facts must be included. Both must be *relevant* in order to be listed in the facts entry. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion.

The facts entry should never be longer than one to three *short* sentences.

It is often helpful to identify the role played by a party in a given context. For example, in a construction contract case the identification of a party as the "contractor" or "builder" alleviates the need to tell that that party was the one who was supposed to have built the house.

It is always helpful, and a good general practice, to identify the "plaintiff" and the "defendant." This may seem elementary and uncomplicated, but, especially in view of the creative editing practiced by some casebook editors, it is sometimes a difficult or even impossible task. Bear in mind that the *party presently* seeking something from this court may not be the plaintiff, and that sometimes only the cross-claim of a defendant is treated in the excerpt. Confusing or misaligning the parties can ruin your analysis and understanding of the case.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question (e.g., "May an offer be accepted by performance?").

The major problem presented in discerning what is *the* issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *"obiter dictum"* or merely *"dictum."* While dicta may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks *who wants what* and then goes on to ask *why did that party succeed or fail in getting it.* Once this is determined, the "why" should be turned into a question.

The complexity of the issues in the cases will vary, but in all cases a single-sentence question should sum up the issue. *In a few cases,* there will be two, or even more rarely, three issues of equal importance to the resolution of the case. Each should be expressed in a single-sentence question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: "Close the book; look at the title on the cover." Chances are, if it is Property, the student need not concern himself with whether, for example, the federal government's treatment of the plaintiff's land really raises a federal question sufficient to support jurisdiction on this ground in federal court.

The same rule applies to chapter headings designating sub-areas within the subjects. They tip the student off as to what the text is designed to teach. The cases are arranged in a casebook to show a progression or development of the law, so that the preceding cases may also help.

It is also most important to remember to *read the notes and questions* at the end of a case to determine what the editors wanted the student to have gleaned from it.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the "reasoning" of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry; the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case (e.g., "Decision of the trial court for Mr. Smith (P) reversed").

The foregoing format is designed to help you "digest" the reams of case material with which you will be faced in your law school career. Once mastered by practice, it will place at your fingertips the information the authors of your casebooks have sought to impart to you in case-by-case illustration and analysis.

B. BE AS ECONOMICAL AS POSSIBLE IN BRIEFING CASES

Once armed with a format that encourages succinctness, it is as important to be economical with regard to the time spent on the actual reading of the case as it is to be economical in the writing of the brief itself. This does not mean "skimming" a case. Rather, it means reading the case with an "eye" trained to recognize into which "section" of your brief a particular passage or line fits and having a system for quickly and precisely marking the case so that the passages fitting any one particular part of the brief can be easily identified and brought together in a concise and accurate manner when the brief is actually written.

It is of no use to simply repeat everything in the opinion of the court; the student should only record enough information to trigger his or her recollection of what the court said. Nevertheless, an accurate statement of the "law of the case," i.e., the legal principle applied to the facts, is absolutely essential to class preparation and to learning the law under the case method.

To that end, it is important to develop a "shorthand" that you can use to make margin notations. These notations will tell you at a glance in which section of the brief you will be placing that particular passage or portion of the opinion.

Some students prefer to underline all the salient portions of the opinion (with a pencil or colored underliner marker), making marginal notations as they go along. Others prefer the color-coded method of underlining, utilizing different colors of markers to underline the salient portions of the case, each separate color being used to represent a different section of the brief. For example, blue underlining could be used for passages relating to the concise rule of law, yellow for those relating to the issue, and green for those relating to the holding and decision, etc. While it has its advocates, the color-coded method can be confusing and time-consuming (all that time spent on changing colored markers). Furthermore, it can interfere with the continuity and concentration many students deem essential to the reading of a case for maximum comprehension. In the end, however, it is a matter of personal preference and style. Just remember, whatever method you use, underlining must be used sparingly or its value is lost.

For those who take the marginal notation route, an efficient and easy method is to go along underlining the key portions of the case and placing in the margin alongside them the following "markers" to indicate where a particular passage or line "belongs" in the brief you will write:

N (NATURE OF CASE)
CR (CONCISE RULE OF LAW)
I (ISSUE)
HC (HOLDING AND DECISION, relates to the CONCISE RULE OF LAW behind the decision)
HR (HOLDING AND DECISION, gives the RATIONALE or reasoning behind the decision)
HA (HOLDING AND DECISION, APPLIES the general principle(s) of law to the facts of the case to arrive at the decision)

Remember that a particular passage may well contain information necessary to more than one part of your brief, in which case you simply note that in the margin. If you are using the color-coded underlining method instead of margin notation, simply make asterisks or checks in the margin next to the passage in question in the colors that indicate the additional sections of the brief where it might be utilized.

The economy of utilizing "shorthand" in marking cases for briefing can be maintained in the actual brief writing process itself by utilizing "law student shorthand" within the brief. There are many commonly used words and phrases for which abbreviations can be substituted in your briefs (and in your class notes also). You can develop abbreviations that are personal to you and which will save you a lot of time. A reference list of briefing abbreviations will be found on the following page.

C. USE BOTH THE BRIEFING PROCESS AND THE BRIEF AS A LEARNING TOOL

Now that you have a format and the tools for briefing cases efficiently, the most important thing is to make the time spent in briefing profitable to you and to make the most advantageous use of the briefs you create. Of course, the briefs are invaluable for classroom reference when you are called upon to explain or analyze a particular case. However, they are also useful in reviewing for exams. A quick glance at the fact summary should bring the case to mind, and a rereading of the concise rule of law should enable you to go over the underlying legal concept in your mind, how it was applied in that particular case, and how it might apply in other factual settings.

As to the value to be derived from engaging in the briefing process itself, there is an immediate benefit that arises from being forced to sift through the essential facts and reasoning from the court's opinion and to succinctly express them in your own words in your brief. The process ensures that you understand the case and the point that it illustrates, and that means you will be ready to absorb further analysis and information brought forth in class. It also ensures you will have something to say when called upon in class. The briefing process helps develop a mental agility for getting to the *gist* of a case and for identifying, expounding on, and applying the legal concepts and issues found there. Of most immediate concern, that is the mental process on which you must rely in taking law school examinations. Of more lasting concern, it is also the mental process upon which a lawyer relies in serving his clients and in making his living.

ABBREVIATIONS FOR BRIEFING

The following list of abbreviations will assist you in the process of briefing and provide an illustration of the technique of formulating functional personal abbreviations for commonly encountered words, phrases, and concepts.

acceptance	acp
affirmed	aff
answer	ans
assumption of risk	a/r
attorney	atty
beyond a reasonable doubt	b/r/d
bona fidepurchaser	BFP
breach of contract	br/k
cause of action	c/a
common law	c/l
Constitution	Con
constitutional	con
contract	K
contributorynegligence	c/n
cross	x
cross-complaint	x/c
cross-examination	x/ex
cruel and unusual punishment	c/u/p
defendant	D
dismissed	dis
double jeopardy	d/j
due process	d/p
equal protection	e/p
equity	eq
evidence	ev
exclude	exc
exclusionary rule	exc/r
felony	f/m
freedom of speech	f/s
good faith	g/f
habeas corpus	h/c
hearsay	hr
husband	H
in loco parentis	ILP
injunction	inj
inter vivos	I/v
jointtenancy	j/t
judgment	judgt
jurisdiction	jur
last clear chance	LCC
long-arm statute	LAS
majority view	maj
meeting of minds	MOM
minority view	min
Miranda warnings	Mir/w
Miranda rule	Mir/r
negligence	neg
notice	mtc
nuisance	nus
obligation	ob
obscene	obs
offer	O
offeree	OE
offeror	OR
ordinance	ord
pain and suffering	p/s
parol evidence	p/e
plaintiff	P
prima facie	p/f
probable cause	p/c
proximatecause	px/c
real property	r/p
reasonable doubt	r/d
reasonable man	r/m
rebuttable presumption	rb/p
remanded	rem
res ipsa loquitur	RIL
respondent superior	r/s
Restatement	RS
reversed	rev
Rule Against Perpetuities	RAP
search and seizure	s/s
search warrant	s/w
self-defense	s/d
specificperformance	s/p
statute of limitations	S/L
statute of frauds	S/F
statute	S
summary judgment	s/j
tenancy in common	t/c
tenancy at will	t/w
tenant	t
third party	TP
third party beneficiary	TPB
transferred intent	TI
unconscionable	uncon
unconstitutional	unconst
undue influence	u/e
UniformCommercial Code	UCC
unilateral	uni
vendee	VE
vendor	VR
versus	v
void forvagueness	VFV
weight of the evidence	w/e
weight of authority	w/a
wife	W
with	w/
within	w/I
without prejudice	w/o/p
without	w/o
wrongfuldeath	wr/d

GLOSSARY

COMMON LATIN WORDS AND PHRASES ENCOUNTERED IN LAW

A FORTIORI: Because one fact exists or has been proven, therefore a second fact that is related to the first fact must also exist.

A PRIORI: From the cause to the effect. A term of logic used to denote that when one generally accepted truth is shown to be a cause, another particular effect must necessarily follow.

AB INITIO: From the beginning; a condition which has existed throughout, as in a marriage which was void ab initio.

ACTUS REUS: The wrongful act; in criminal law, such action sufficient to trigger criminal liability.

AD VALOREM: According to value; an ad valorem tax is imposed upon an item located within the taxing jurisdiction calculated by the value of such item.

AMICUS CURIAE: Friend of the court. Its most common usage takes the form of an amicus curiae brief, filed by a person who is not a party to an action but is nonetheless allowed to offer an argument supporting his legal interests.

ARGUENDO: In arguing. A statement, possibly hypothetical, made for the purpose of argument, is one made arguendo.

BILL QUIA TIMET: A bill to quiet title (establish ownership) to real property.

BONA FIDE: True, honest, or genuine. May refer to a person's legal position based on good faith or lacking notice of fraud (such as a bona fide purchaser for value) or to the authenticity of a particular document (such as a bona fide last will and testament).

CAUSA MORTIS: With approaching death in mind. A gift causa mortis is a gift given by a party who feels certain that death is imminent.

CAVEAT EMPTOR: Let the buyer beware. This maxim is reflected in the rule of law that a buyer purchases at his own risk because it is his responsibility to examine, judge, test, and otherwise inspect what he is buying.

CERTIORARI: A writ of review. Petitions for review of a case by the United States Supreme Court are most often done by means of a writ of certiorari.

CONTRA: On the other hand. Opposite. Contrary to.

CORAM NOBIS: Before us; writs of error directed to the court that originally rendered the judgment.

CORAM VOBIS: Before you; writs of error directed by an appellate court to a lower court to correct a factual error.

CORPUS DELICTI: The body of the crime; the requisite elements of a crime amounting to objective proof that a crime has been committed.

CUM TESTAMENTO ANNEXO, ADMINISTRATOR (ADMINISTRATOR C.T.A.): With will annexed; an administrator c.t.a. settles an estate pursuant to a will in which he is not appointed.

DE BONIS NON, ADMINISTRATOR (ADMINISTRATOR D.B.N.): Of goods not administered; an administrator d.b.n. settles a partially settled estate.

DE FACTO: In fact; in reality; actually. Existing in fact but not officially approved or engendered.

DE JURE: By right; lawful. Describes a condition that is legitimate "as a matter of law," in contrast to the term "de facto," which connotes something existing in fact but not legally sanctioned or authorized. For example, de facto segregation refers to segregation brought about by housing patterns, etc., whereas de jure segregation refers to segregation created by law.

DE MINIMUS: Of minimal importance; insignificant; a trifle; not worth bothering about.

DE NOVO: Anew; a second time; afresh. A trial de novo is a new trial held at the appellate level as if the case originated there and the trial at a lower level had not taken place.

DICTA: Generally used as an abbreviated form of obiter dicta, a term describing those portions of a judicial opinion incidental or not necessary to resolution of the specific question before the court. Such nonessential statements and remarks are not considered to be binding precedent.

DUCES TECUM: Refers to a particular type of writ or subpoena requesting a party or organization to produce certain documents in their possession.

EN BANC: Full bench. Where a court sits with all justices present rather than the usual quorum.

EX PARTE: For one side or one party only. An ex parte proceeding is one undertaken for the benefit of only one party, without notice to, or an appearance by, an adverse party.

EX POST FACTO: After the fact. An ex post facto law is a law that retroactively changes the consequences of a prior act.

EX REL.: Abbreviated form of the term ex relatione, meaning, upon relation or information. When the state brings an action in which it has no interest against an individual at the instigation of one who has a private interest in the matter.

FORUM NON CONVENIENS: Inconvenient forum. Although a court may have jurisdiction over the case, the action should be tried in a more conveniently located court, one to which parties and witnesses may more easily travel, for example.

GUARDIAN AD LITEM: A guardian of an infant as to litigation, appointed to represent the infant and pursue his/her rights.

HABEAS CORPUS: You have the body. The modern writ of habeas corpus is a writ directing that a person (body) being detained (such as a prisoner) be brought before the court so that the legality of his detention can be judicially ascertained.

IN CAMERA: In private, in chambers. When a hearing is held before a judge in his chambers or when all spectators are excluded from the courtroom.

IN FORMA PAUPERIS: In the manner of a pauper. A party who proceeds in forma pauperis because of his poverty is one who is allowed to bring suit without liability for costs.

INFRA: Below, under. A word referring the reader to a later part of a book. (The opposite of supra.)

IN LOCO PARENTIS: In the place of a parent.

IN PARI DELICTO: Equally wrong; a court of equity will not grant requested relief to an applicant who is in pari delicto, or as much at fault in the transactions giving rise to the controversy as is the opponent of the applicant.

IN PARI MATERIA: On like subject matter or upon the same matter. Statutes relating to the same person or things are said to be in pari materia. It is a general rule of statutory construction that such statutes should be construed together, i.e., looked at as if they together constituted one law.

IN PERSONAM: Against the person. Jurisdiction over the person of an individual.

IN RE: In the matter of. Used to designate a proceeding involving an estate or other property.

IN REM: A term that signifies an action against the res, or thing. An action in rem is basically one that is taken directly against property, as distinguished from an action in personam, i.e., against the person.

INTER ALIA: Among other things. Used to show that the whole of a statement, pleading, list, statute, etc., has not been set forth in its entirety.

INTER PARTES: Between the parties. May refer to contracts, conveyances or other transactions having legal significance.

INTER VIVOS: Between the living. An inter vivos gift is a gift made by a living grantor, as distinguished from bequests contained in a will, which pass upon the death of the testator.

IPSO FACTO: By the mere fact itself.

JUS: Law or the entire body of law.

LEX LOCI: The law of the place; the notion that the rights of parties to a legal proceeding are governed by the law of the place where those rights arose.

MALUM IN SE: Evil or wrong in and of itself; inherently wrong. This term describes an act that is wrong by its very nature, as opposed to one which would not be wrong but for the fact that there is a specific legal prohibition against it (malum prohibitum).

MALUM PROHIBITUM: Wrong because prohibited, but not inherently evil. Used to describe something that is wrong because it is expressly forbidden by law but that is not in and of itself evil, e.g., speeding.

MANDAMUS: We command. A writ directing an official to take a certain action.

MENS REA: A guilty mind; a criminal intent. A term used to signify the mental state that accompanies a crime or other prohibited act. Some crimes require only a general mens rea (general intent to do the prohibited act), but others, like assault with intent to murder, require the existence of a specific mens rea.

MODUS OPERANDI: Method of operating; generally refers to the manner or style of a criminal in committing crimes, admissible in appropriate cases as evidence of the identity of a defendant.

NEXUS: A connection to.

NISI PRIUS: A court of first impression. A nisi prius court is one where issues of fact are tried before a judge or jury.

N.O.V. (NON OBSTANTE VEREDICTO): Notwithstanding the verdict. A judgment n.o.v. is a judgment given in favor of one party despite the fact that a verdict was returned in favor of the other party, the justification being that the verdict either had no reasonable support in fact or was contrary to law.

NUNC PRO TUNC: Now for then. This phrase refers to actions that may be taken and will then have full retroactive effect.

PENDENTE LITE: Pending the suit; pending litigation underway.

PER CAPITA: By head; beneficiaries of an estate, if they take in equal shares, take per capita.

PER CURIAM: By the court; signifies an opinion ostensibly written "by the whole court" and with no identified author.

PER SE: By itself, in itself; inherently.

PER STIRPES: By representation. Used primarily in the law of wills to describe the method of distribution where a person, generally because of death, is unable to take that which is left to him by the will of another, and therefore his heirs divide such property between them rather than take under the will individually.

PRIMA FACIE: On its face, at first sight. A prima facie case is one that is sufficient on its face, meaning that the evidence supporting it is adequate to establish the case until contradicted or overcome by other evidence.

PRO TANTO: For so much; as far as it goes. Often used in eminent domain cases when a property owner receives partial payment for his land without prejudice to his right to bring suit for the full amount he claims his land to be worth.

QUANTUM MERUIT: As much as he deserves. Refers to recovery based on the doctrine of unjust enrichment in those cases in which a party has rendered valuable services or furnished materials that were accepted and enjoyed by another under circumstances that would reasonably notify the recipient that the rendering party expected to be paid. In essence, the law implies a contract to pay the reasonable value of the services or materials furnished.

QUASI: Almost like; as if; nearly. This term is essentially used to signify that one subject or thing is almost analogous to another but that material differences between them do exist. For example, a quasi-criminal proceeding is one that is not strictly criminal but shares enough of the same characteristics to require some of the same safeguards (e.g., procedural due process must be followed in a parol hearing).

QUID PRO QUO: Something for something. In contract law, the consideration, something of value, passed between the parties to render the contract binding.

RES GESTAE: Things done; in evidence law, this principle justifies the admission of a statement that would otherwise be hearsay when it is made so closely to the event in question as to be said to be a part of it, or with such spontaneity as not to have the possibility of falsehood.

RES IPSA LOQUITUR: The thing speaks for itself. This doctrine gives rise to a rebuttable presumption of negligence when the instrumentality causing the injury was within the exclusive control of the defendant, and the injury was one that does not normally occur unless a person has been negligent.

RES JUDICATA: A matter adjudged. Doctrine which provides that once a court of competent jurisdiction has rendered a final judgment or decree on the merits, that judgment or decree is conclusive upon the parties to the case and prevents them from engaging in any other litigation on the points and issues determined therein.

RESPONDEAT SUPERIOR: Let the master reply. This doctrine holds the master liable for the wrongful acts of his servant (or the principal for his agent) in those cases in which the servant (or agent) was acting within the scope of his authority at the time of the injury.

STARE DECISIS: To stand by or adhere to that which has been decided. The common law doctrine of stare decisis attempts to give security and certainty to the law by following the policy that once a principle of law as applicable to a certain set of facts has been set forth in a decision, it forms a precedent which will subsequently be followed, even though a different decision might be made were it the first time the question had arisen. Of course, stare decisis is not an inviolable principle and is departed from in instances where there is good cause (e.g., considerations of public policy led the Supreme Court to disregard prior decisions sanctioning segregation).

SUPRA: Above. A word referring a reader to an earlier part of a book.

ULTRA VIRES: Beyond the power. This phrase is most commonly used to refer to actions taken by a corporation that are beyond the power or legal authority of the corporation.

ADDENDUM OF FRENCH DERIVATIVES

IN PAIS: Not pursuant to legal proceedings.

CHATTEL: Tangible personal property.

CY PRES: Doctrine permitting courts to apply trust funds to purposes not expressed in the trust but necessary to carry out the settlor's intent.

PER AUTRE VIE: For another's life; in property law, an estate may be granted that will terminate upon the death of someone other than the grantee.

PROFIT A PRENDRE: A license to remove minerals or other produce from land.

VOIR DIRE: Process of questioning jurors as to their predispositions about the case or parties to a proceeding in order to identify those jurors displaying bias or prejudice.

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CHAPTER 1
AN INTRODUCTION TO THE STUDY OF CONTRACT LAW

QUICK REFERENCE RULES OF LAW

1. **Contract Law Through Case Study: An Example.** A federal court may hear only claims involving fraud in the inducement of the arbitration clause itself and not claims of fraud in the inducement of the contract as a whole or generally, and will decide in favor of enforcing an arbitration clause unless circumstances of unconscionability preclude a claimant from accessing a proper form in which to adjudicate her claims. (Rollins, Inc. v. Foster)

   [For more information about fraud, see Casenote Law Outline on Contracts, Chapter 3, The Bargain in Litigation, § IV, Defenses centered on the Deceptive or Coercive Formation Tactics of One of the Parties.]

ROLLINS, INC. v. FOSTER

Services provider (D) v. Customer (P)

991 F.Supp. 1426 (M.D. Ala. 1998).

NATURE OF CASE: Petition to compel arbitration and stay state court proceedings.

FACT SUMMARY: When Foster (P) filed claims alleging misrepresentation, breach of contract, conspiracy and negligence, and sought a declaratory judgment that an arbitration clause in a services contract was invalid, Rollins (D) and Orkin Exterminating (D) brought a petition in federal court to compel Foster (P) to arbitrate the claims she had brought against them in state court.

CONCISE RULE OF LAW: A federal court may hear only claims involving fraud in the inducement of the arbitration clause itself and not claims of fraud in the inducement of the contract as a whole or generally, and will decide in favor of enforcing an arbitration clause unless circumstances of unconscionability preclude a claimant from accessing a proper form in which to adjudicate her claims.

FACTS: Foster (P) contacted Orkin (D) about spraying her trailer home for roaches and said she wanted only three months of coverage. Foster (P) had limited reading ability and signed a contract for extermination services with Orkin (D) establishing a two-year service relationship which included a credit agreement, an arbitration clause and a clause permitting the assignment of the contract to Rollins (D). Foster (P) later sued for misrepresentation and breach of contract, seeking punitive and compensatory damages, and alleging that the contract was procured through fraud, suppression and/or deceit. Rollins and Orkin (D) filed a petition to compel arbitration and stay the state court proceedings under the Federal Arbitration Act (FAA). Foster (P) claimed that the court should not grant the petition because the contract, including the arbitration clause, had been fraudulently induced and was also unconscionable.

ISSUE: May a federal court hear only claims involving fraud in the inducement of the arbitration clause itself and not claims of fraud in the inducement of the contract as a whole or generally and will a federal court decide in favor of enforcing an arbitration clause unless circumstances of unconscionability preclude a claimant from accessing a proper form in which to adjudicate her claims?

HOLDING AND DECISION: (Thompson, C.J.) Yes. A federal court may hear only claims involving fraud in the inducement of the arbitration clause itself and not claims of fraud in the inducement of the contract as a whole or generally. The FAA makes enforceable a written arbitration provision in a contract evidencing a transaction involving commerce. Issues relating to the making and performance of a contract as a whole, not specific to the arbitration class or agreement, should be heard by the arbitrator. Foster's (P) allegations regarding the Orkin (D) agent's misrepresentations make the contract voidable, not void. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Foster (P) has not sufficiently demonstrated any circumstances precluding arbitration of her claims since she has not proved that she would be left without recourse in any forum because she cannot afford the costs of arbitration. The arbitration clause contained in the contract Rollins and Orkin (D) had with Foster (P) is thus not unconscionable, but is valid and enforceable. The petition to compel arbitration is granted.

EDITOR'S ANALYSIS: The court in this case discussed the four factors Alabama courts use to determine unconscionability. Whether there is an absence of meaningful choice on one party's part; whether the contractual terms are unreasonably favorable to one party; whether there was unequal bargaining power among the parties; and whether there were oppressive, one-sided, or patently unfair terms in the contract are all considered. The rescission of a contract or a portion of a contract is an extraordinary remedy usually reserved for the protection of the unsophisticated and uneducated.

[For more information about fraud, see Casenote Law Outline on Contracts, Chapter 3, The Bargain in Litigation, § IV, Defenses centered on the Deceptive or Coercive Formation Tactics of One of the Parties.]

QUICKNOTES

FEDERAL ARBITRATION ACT, 9 U.S.C.A. §§ 1-16, - Provides that a federal court should stay state court proceedings pending the outcome of arbitration for any issue referable to arbitration under an agreement in writing for such arbitration, but prohibits the enforcement of an arbitration clause that is invalid upon such grounds as exist at law or in equity for the revocation of any contract.

FRAUD IN THE FACTUM - Occurs when a testator is induced to execute a testamentary instrument as a result of a misrepresentation as to the nature of the document or its provisions.

FRAUD IN THE INDUCEMENT - Occurs when a testator is induced to execute a testamentary instrument as a result of the misrepresentation of certain facts existing at the time of its creation that may have effected the manner in which the testator disposed of his property.

UNCONSCIONABLE - A situation in which a contract, or a particular contract term, is unenforceable if the court determines that such term(s) are unduly oppressive or unfair to one party to the contract.

CHAPTER 2
THE CLASSICAL SYSTEM OF CONTRACT LAW: MUTUAL ASSENT AND BARGAINED-FOR EXCHANGE

QUICK REFERENCE RULES OF LAW

1. **The Objective Theory of Contract.** A party is bound to a signed document which he has read with the capacity to understand it, absent fraud, duress, and mutual mistake. (Ray v. William G. Eurice & Bros., Inc.)

   [For more information on unilateral blunders, see Casenote Law Outline on Contracts, Chapter 1,§ IV, Impact of Ambiguity and Mistake on the Bargain.]

2. **The Objective Theory of Contract.** A contract of guaranty cannot be enforced by the guarantee, where the guarantor has been induced to enter into the contract by fraudulent misrepresentations or concealment on the part of the guarantee. (Park 100 Investors, Inc. v. Kartes)

   [For more information about fraud, see Casenote Law Outline on Contracts, Chapter 3, The Bargain in Litigation, § IV, Defenses centered on the Deceptive or Coercive Formation Tactics of One of the Parties.]

3. **Offer and Acceptance: Bilateral Contracts.** Before a contract can be formed, there must be a meeting of the minds of the parties as to a definite offer and acceptance. (Lonergan v. Scolnick)

   [For more information on preliminary negotiations, see Casenote Law Outline on Contracts, Chapter 1, § II, The Offer.]

4. **Offer and Acceptance: Bilateral Contracts.** If a seller rejects a purchase offer by making a counteroffer, which is not accepted, the prospective purchaser does not have the power to accept the counteroffer after receiving notice of the counteroffer's revocation. (Normile v. Miller)

   [For more information on counter-offers, see Casenote Law Outline on Contracts, Chapter 1, § III, The Acceptance.]

5. **Offer and Acceptance: Unilateral Contracts.** An offer to enter into a unilateral contract may be withdrawn at any time prior to performance of the act requested to be done. (Petterson v. Pattberg)

   [For more information on termination of an offer, see Casenote Law Outline on Contracts, Chapter 1, § I, Agreement Process — Manifesting Mutual Consent.]

6. **Offer and Acceptance: Unilateral Contracts.** In the context of an offer for a unilateral contract, the offer may not be revoked when the offeree has accepted the offer by substantial performance. (Cook v. Coldwell Banker/ Frank Laiben Realty Co.)

   [For more information about fraud, see Casenote Law Outline on Contracts, Chapter 3, The Bargain in Litigation, § IV, Defenses centered on the Deceptive or Coercive Formation Tactics of One of the Parties.]

7. **Offer and Acceptance: Unilateral Contracts.** An employee handbook or other policy statement creates enforceable contractual rights if the traditional requirements for contract formation are present. (Duldolao v. Saint Mary of Nazareth Hospital Center)

   [For more information on formation of contracts, see Casenote Law Outline on Contracts, Chapter 1, § III, The Acceptance.]

8. **Enforcing Exchange Transactions; The Doctrine.** In general, a waiver of any legal right at the request of another party is a sufficient consideration for a promise. (Hamer v. Sidway)

   [For more information on valuable consideration, see Casenote Law Outline on Contracts, Chapter 2, § I, Valuable Consideration: The Bargained for Incursion of Legal Detriment.]

9. **Enforcing Exchange Transactions; The Doctrine.** While forbearance to bring suit is deemed consideration, there must be some showing that forbearance was bargained for and was not merely conveniently granted unilaterally by one party. (Baehr v. Penn-O-Tex Oil Corp.)

   [For more information on legal detriment, see Casenote Law Outline on Contracts, Chapter 2, § I, Valuable Consideration: The Bargained for Incursion of Legal Detriment.]

10. **Enforcing Exchange Transactions; The Doctrine.** A note which is not supported by consideration is unenforceable. (Dougherty v. Salt)

    [For more information on donative transactions, see Casenote Law Outline on Contracts, Chapter 2, § I, Valuable Consideration: The Bargained for Incursion of Legal Detriment.]

11. **Enforcing Exchange Transactions.** Past services are not sufficient consideration to support the enforceability of a contract to provide continuing payments to former employees. (Plowman v. Indian Refining Co.)

    [For more information on past consideration, see Casenote Law Outline on Contracts, Chapter 2, § I, Valuable Consideration: The Bargained for Incursion of Legal Detriment.]

12. **Enforcing Exchange Transactions.** Past services are not sufficient consideration to support the enforceability of a contract to provide continuing payments to former employees. (Batsakis v. Demotsis)

    [For more information on past consideration, see Casenote Law Outline on Contracts, Chapter 2, § I, Valuable Consideration: The Bargained for Incursion of Legal Detriment.]