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BASIC CONTRACT LAW FOR PARALEGALS

FIFTH EDITION



Wolters Kluwer

Law & Business

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Basic Contract Law for Paralegals

Fifth Edition

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Wolters Kluwer

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To Sarah — my first, and best, teacher

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Introduction

This book provides the paralegal student and practitioner with a quick, simple, and straightforward text on the law of contracts. It helps to clarify this very complex area of law using numerous practical examples of how to draft and interpret different types of contracts. This book is not intended to discuss every nuance of contract law, nor is it designed as a casebook for law students. *Basic Contract Law for Paralegals* is meant to be an easy-to-use, readable reference tool for the legal assistant.

The reader should be aware of the fact that there are two legal sources of law with respect to contract formation and interpretation. The first, and traditional source, is the common law, that law that has developed over the centuries based on judicial precedent (and sometimes codified by specific state statute). The second source of contract law is the Uniform Commercial Code (UCC), a form of which has been adopted by every jurisdiction in the country. The UCC regulates contracts for the sale of goods and contracts between merchants. Contracts for services or between non-merchants are still governed by the common law. Throughout the text the distinction between these two sources, whenever significant, will be specifically addressed.

The most important aspect of all laws is the relationship between the parties in dispute. The law is primarily concerned with relationships between and among individuals. In contract law, the value of the contract in monetary terms is of secondary importance; the relationship between the contracting parties is the most important determining factor. The simple contract for the sale of a morning newspaper and the multipage document for the development of a \$20 million shopping center both involve identical legal principles. Because the law is concerned with principles and relationships, the logical starting point for the analysis of any legal problem is the legal relationship of the parties.

The most common problem encountered in analyzing a legal situation is that everyone immediately wants to jump to the end result — “What can I

get” — rather than discerning the actual rights and liabilities of the parties. It is more important to identify each element of the relationship to determine whether or not a legal dispute exists.

Contracts is only one area of law that defines particular relations between persons; it is not the exclusive area of law applicable to a given situation. To determine a person’s rights and liabilities, first you must determine what area of law — for instance, contracts, torts, bankruptcy — best applies to the problem. Then you must determine that all of the requisite elements of the legal relationship, as defined by that area of the law, exist. You cannot bend the law to fit the facts; if the facts do not fit into a particular legal theory, that theory is incorrect and a new one must be found. Keeping this general principle in mind will help in your analysis of all legal problems.

The role of the paralegal with respect to contracts is multidimensional. A paralegal is often called on to draft the initial agreement for the client and, as negotiations develop, to see that all subsequent changes are incorporated into the document. If a problem arises, the paralegal is generally responsible for making the initial analysis of the contract in dispute to determine all potential rights and liabilities of the client. And finally, the legal assistant will work with the attorney to determine the appropriate remedies available to the client. To perform these tasks, the legal assistant must be conversant with all of the elements of basic contract law and drafting.

Basic Contract Law for Paralegals

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