FARNSWORTH ON CONTRACTS

E. ALLAN BARNSWORTH

TERRO EDITION



FARNSWORTH on CONTRACTS

Third Edition

E. ALLAN FARNSWORTH

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Reporter, Restatement (Second) of Contracts

VOLUME I



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Preface

Perhaps books on contracts should not have prefaces. Langdell, in his preface to the first casebook in 1871, stressed the rationality of contract law, viewing law as a "science" and suggesting that if "the fundamental legal doctrines . . . could be so classified and arranged that each should be found in its proper place, and nowhere else, they should cease to be formidable from their number." Williston, in the preface to his treatise in 1920, emphasized the universality of contract law, aspring "to treat the subject of contracts as a whole, and to show the wide range of application of its principles." These prefatory remarks were later scoffed at as exaggerating the rationality and the universality of the subject. Though these examples counsel silence, I follow tradition in venturing a few remarks on the reason for this treatise.

First, I have tried to write a book that would be of use to lawyers seeking a general treatment of some area of contrat law. I recalled the sort of book that I kept on my shelves after graduation from law school and had occasion to consult in the years that followed. To this end, I have attempted to feature matters that occur with some frequency in litigation, in arbitration, or otherwise in practice, to present them in such a way as to expose their practical significance, and to support the text with references that lead the reader to more thorough treatments of the subject.

Second, I have attempted to suggest some of the academic writing that might be of help as well as of interest to lawyers. This includes material ranging from law and economics to legal philosophy. Although scholarly literature is sometimes regarded as remote from the daily practice of law, it is my hope that an occasional citation in the context of a practical problem may dispel this notion. More personal and theoretical treatment of many topics can be found through the citations to my book *Changing Your Mind: The Law of Regretted Decisions*.

This multivolume treatise contains all of the text, footnotes, and marginal heads of the one-volume textbook exactly as in that edition, but expands the treatment in three principal ways. First, I have written additional sections, identifiable by letters following the section numbers, that amplify the discussion in the textbook or add material on such topics as drafting that may be of special interest to the practitioner. Second, I have considerably expanded the footnotes, adding many more secondary sources as well as cases. The cases have been carefully selected to emphasize leading cases and recent cases with helpful discussion of prior law. Third, I have increased the number of tables to facilitate a practitioner's access to material in the treatise. For the sake of convenience in shifting from one work to the other, the numbering of both sections and footnotes in the one-volume textbook has been carried over to this multivolume treatise.

In attempting to do these things, I have piled up many debts. Some are to colleagues and students, at Columbia and elsewhere, who have commented on chapters in draft. Of these, my longtime colleague and collaborator William F. Young requires particular mention. Other debts are to my student assistants. Those who have contributed to this edition include Lori A. Alvino, Diana Eng, Phineas Leahy, Craig E. Leen, Seth R. Meisels, Matthew A. Schwartz and Peng Tan, and John K. White, Jr., all of the Columbia School of Law. I remain grateful to those mentioned in the second edition: Steven L. Baglio, Gregory Gordon, Kyu Kahn, Spencer Lehv, Steven R. Meier, Donald More, Elizabeth A. Nowicki, Cynthia D. Richards, Douglas Stalgren, William J. Sushon, and Eva N. Valik, all of the Columbia School of Law, and to Arthur J. Mahoney, Patricia R. Sigman, and Rebecca Harrison Steele of the Stetson College of Law. The same holds true for those mentioned in the first edition: Mary Rose Alexander, Timothy Beeken, Leslie A. Bogen, Julia L. Brickell, Margret Ann Carfagno, Stephen Chawaga, Michael A. Clouser, D. Scott Coward, Paul Feuerman, Thomas D. Graber, Oliver J. Herzfeld, Kevin Koloff, Marlyn Ann Marincas, James Michael Meyer, C. Allen Parker, John V.N. Philip, Ruth Piekarski, Abraham D. Piontnica, Warren Scharf, and Cynthia Starnes all of the Columbia School of Law. I am also indebted to the reference staff of the Columbia Law Library and Brian J. Donnelly, for invaluable assistance. For financial support I am grateful to the Columbia

Preface

University School of Law. Finally, I owe a debt to my publisher for its efforts to show that a law book can be handsome as well as useful.

E. Allan Farnsworth October 2003

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70 Colum. L. Rev. 1145 (1970), in §12.4, and to the Yale Law Journal along with Fred B. Rothman & Co. for permission to adapt Farnsworth, "Meaning" in the Law of Contracts, 76 Yale L.J. 939 (1967), in §§7.7, 7.8, 7.9, 7.10 and 7.12 and adapt Farnsworth, Your Loss or My Gain? The Dilemma of the Disgorgement Principle in Breach of Contract, 94 Yale L.J. 1329 (1985), in §§12.20a, 12.20b and 12.20c.

Note on Citations

In this treatise, sections of the revised version of Article 2 of the Uniform Commercial Code are designated "UCC-R" and sections of the original version (the immediately previous version) are designated "UCC-O". The Restatement (Second) of Contracts is referred to simply as "Restatement Second," and the first Restatement of Contracts simply as "Restatement" or "first Restatement." Citations of cases are usually followed by an explanatory parenthetical phrase with a brief excerpt or other indication of the relevance of the case to the discussion. If a case is referred to more than once within a section, later citation is by cross-reference to refer the reader to the earlier parenthetical information. Of course the material in parentheses gives only a hint of the opinion itself, the only safe guide to the holding of the case. No notation is made of a higher court's refusal to review a case, including denial of certiorari by the United States Supreme Court.

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