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PROBLEMS IN CONTRACT LAW

Cases and Materials

Second Edition

Problems in Contract Law
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To my father, James Lincoln Knapp, attorney and Judge (1963-1981) of the Muskingum County (Ohio) Court of Common Pleas—in honor of his example, both personal and professional.

Charles Knapp

To the memory of my father, William H. Crystal; and to my mother, Gladys S. Sorentrue; my wife, Nancy McCormick; and my children, Abraham and Miriam—with love and gratitude.

Nathan Crystal

Preface

When the first edition of this book was prepared, a decade ago, many of our social institutions had recently been called into serious question by those—students and others—who heard in the spirit of "the Sixties" a call to action. Hardly immune from this process, legal education at that time faced serious challenge from many who were then currently engaged in or affected by it. Traditional modes of instruction were attacked; traditional curricula were questioned; the rules of law taught in law school were derided as not "relevant" to modern life. At that point in time, it seemed important to stress the extent to which the rules of contract law could still be important to lawyers and their clients in the modern world and to suggest that the study of law in law school could provide a solid foundation for a career in lawyering. The title *Problems in Contract Law* was chosen to reflect two related notions: that the rules (both common law and statutory) of contract law could be usefully approached through multi-issue, integrative problems; and that those rules, once mastered, could be creatively used by attorneys to solve the problems of their clients.

Today much has changed. A decade ago, many students appeared to reject the established social order; most students today appear willing at least to accept the fact of its existence, while continuing to press for improvement and reform. Where once legal academe appeared to write off contract law as a field for investigation, scholars now practically fall over each other in their eagerness to present, defend, and debate new theories of contract law and contract formation. Not so long ago, the movement from classical to modern contract law appeared to be a one-way street, with the ultimate triumph of modern liberalism a sure bet; more recently, countersigns have begun to appear. While the reaction against modern contract law is by no means as

strong as the reaction against the "liability explosion" of modern tort law, it must be taken into account by anyone attempting to predict future growth in this area. This book represents our attempt to incorporate these developments in an up-to-date survey of contract law.

This new edition of these materials, like its predecessor, represents a blend of the orthodox with the modern. For those instructors who rely on the traditional case method of instruction, we have tried to present an ample body of judicial opinions, with particular emphasis on recent cases. (More than half of the decisions in the book were handed down after 1970.) Throughout these materials, introductory text presents historical background and summarizes basic concepts, reducing the need for lecture in the classroom. (See, for example, the summary in the text of Chapter 5 of the major exceptions to the parol evidence rule.) As a result, most cases go beyond the routine application of rules to facts and focus on more difficult, challenging aspects of doctrine. Following each case are Notes and Questions, which raise issues based on the principal case or describe related developments.

While recognizing that the course in contract law has traditionally been the major vehicle for instruction in case analysis, we have also continued to use the problem method adopted in the first edition. Most of the problems presented in these materials are lengthy, multiple-issue questions. Normally presented at the end of sections or chapters, the problems can conveniently be used to review and expand on case material that has already been discussed in class. Many of the problems are also adaptable for use as the focus of initial class discussion, rather than simply as review. Problems not discussed in class can be used for review by students individually or in study groups. While all of the problems call for legal analysis of the issues raised, many also invite the student to exercise other lawyering skills: drafting, counseling, and fact investigation.

Teachers and students of contract law today must, of course, be concerned not only with the analyses reflected in judicial opinions but also with the growing body of contract scholarship, which will inevitably affect future judicial decisions. The materials therefore include excerpts from and commentary on all the major schools of contemporary contract scholarship. (See, for example, the extended discussion in Chapter 11 of the "efficient breach" hypothesis advanced by scholars who employ the tools of economic analysis.) Most of this theoretical material is provided in the Notes and Questions that follow the cases or in the separate Comments; these may be assigned for class discussion or designated as outside or optional reading.

The book comprises 14 chapters, which fall generally into five parts:

Formation	Chapters 1-4
Interpretation and implication	Chapters 5, 6
Defenses or grounds for nonenforcement	Chapters 7-9
Breach and remedies	Chapters 10-13
Third parties	Chapter 14

Both among and within the chapters, the flow of the materials has a historical theme: the transformation of contract law from the classical period (roughly from 1850 through 1920) to modern contract law (particularly as expressed in the Uniform Commercial Code and the revised Restatement of Contracts). Thus, Chapter 2 develops the classical rules of offer-and-acceptance and the doctrine of consideration; Chapters 3 and 4 go on to explore modern limitations on those doctrines, such as the concept of promissory estoppel and the UCC rules for the "battle of the forms." Material on the Code is integrated throughout, except for the material on warranties and remedies under UCC Article Two; this material is given separate treatment in Chapter 13. (Teachers at schools with an upper level Sales course may choose to omit this chapter, or cover it only selectively.) A separate supplement reprints important provisions and comments from Articles One, Two, and Nine of the Uniform Commercial Code and from the Restatement (Second) of Contracts.

For us, collaboration in preparation of these materials has been not only an educational experience but a great pleasure as well. We hope that those who use this book will likewise find not only information but enjoyment in its pages. As our last word to students and teachers about to embark on this journey with us, we repeat the admonition of the preface to the first edition:

> 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.

Charles L. Knapp
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