

CASES AND PROBLEMS ON
CONTRACTS

Fifth Edition

John D. Calamari
Joseph M. Perillo
Helen Hadjiyannakis Bender

American Casebook Series®

THOMSON
— ★ —
WEST

CASES AND PROBLEMS ON
CONTRACTS
Fifth Edition

By

John D. Calamari

*Late Agnes and Ignatius M. Wilkinson Professor of Law
Fordham University*

Joseph M. Perillo

*Distinguished Professor of Law, Emeritus
Fordham University*

Helen Hadjiyannakis Bender

*Associate Professor of Law
Fordham University*

AMERICAN CASEBOOK SERIES®

THOMSON
—★—™
WEST

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series and West Group are trademarks registered in the U.S. Patent and Trademark Office.

COPYRIGHT © 1978, 1989 WEST PUBLISHING CO.

© West, a Thomson business, 2000, 2004

© 2007 Thomson/West

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

Printed in the United States of America

ISBN: 978-0-314-16661-6



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



West's Law School Advisory Board

JESSE H. CHOPER

Professor of Law,
University of California, Berkeley

DAVID P. CURRIE

Professor of Law, University of Chicago

YALE KAMISAR

Professor of Law, University of San Diego
Professor of Law, University of Michigan

MARY KAY KANE

Professor of Law, Chancellor and Dean Emeritus,
University of California,
Hastings College of the Law

LARRY D. KRAMER

Dean and Professor of Law, Stanford Law School

WAYNE R. LaFAVE

Professor of Law, University of Illinois

JONATHAN R. MACEY

Professor of Law, Yale Law School

ARTHUR R. MILLER

Professor of Law, Harvard University

GRANT S. NELSON

Professor of Law,
University of California, Los Angeles

JAMES J. WHITE

Professor of Law, University of Michigan

Preface to the Fifth Edition

The scope of the material that a student should master in a basic contracts course has increased disproportionately to the amount of curricular time available for its mastery. The temptation is to give the student fleeting exposure to masses of issues to the detriment of honing of analytical skills and to the sacrifice of an in-depth mastery of the subject.

The methodology used in this casebook started as an experiment and we deem the experiment a success. The problem method in tandem with case dissection engenders student interest, enlarges their store of knowledge and, most important, requires them to exercise analytic thinking not only in the classroom, but also while doing their assignments.

The principal cases have been edited, but less drastically than in many of the recent casebooks. Numbered footnotes are from the original materials and retain their original numbering. When the editors have added footnotes or other materials, these are indicated by the abbreviation, "Ed."

Coverage of the entire book is not recommended even for professors who enjoy the luxury of a six-hour course. Because the casebook is keyed into the Calamari and Perillo Hornbook, it is possible to cover some topics or subtopics by assigning the problems alone. On the other hand the professor may decide to omit discussion of some of the problems in class. In short, the casebook can be treated as a menu.

We lament the passing of our late co-editor, John D. Calamari, but his ideas continue to animate ours.

We welcome comments on the form and content of this coursebook. Send them to JPerillo@law.fordham.edu, or to Hbender@law.fordham.edu.

JOSEPH M. PERILLO
HELEN HADJIYANNAKIS BENDER

*

Copyright Acknowledgements

We are grateful to the following authors, law reviews and publishers for their gracious permission to reprint copyrighted materials: (1) Fordham Law Review for B. Harnett & J. V. Thornton, "The Insurance Condition Subsequent: A Needle in a Semantic Haystack," 17 Fordham Law Review 220 (1948); (2) New York Law School Review for "When in an Actor Unique, Unusual or Extraordinary," 65 U.S.L.Rev. 354 (1931); (3) New York University Law Review for R. Childres, "Conditions in the Law of Contracts," 45 N.Y.U.L.Rev. 33 (1970); (4) Larry Di Matteo for permission to use an excerpt from his book, *The Evolution of Contractual Intent* 55-56 (1998); (5) Daniel Friedman for an excerpt from "The Efficient Breach Fallacy," 18 J.Leg.Stud. 1 (1989); (6) Alan Schwartz for "The Case for Specific Performance," 89 Yale L.J. 272 (1989); (7) the Journal of Legal Studies for Richard A. Posner, *Gratuitous Promises in Economics and Law*, 6 J.Leg.Stud. 411 (1977); (8) The Harvard Law School Record for Jorie Roberts, "Hawkins Case: A Hair-Raising Experience," *Harvard Law Record*, Vol. 66, No. 6, March 17, 1978; (9) the Journal of Legal Studies, The University of Chicago, and A.W. Brian Simpson for A.W.B. Simpson, "Quackery and Contract Law: The Case of the Carbolic Smoke Ball," 14 J.Leg.Stud. 345 (1985). Copyright 1985 by The University of Chicago. All rights reserved.

*

Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

- AFLAC, Inc. v. Williams**, 264 Ga. 351, 444 S.E.2d 314 (Ga.1994), **743**
- Aldana v. Colonial Palms Plaza, Ltd.**, 591 So.2d 953 (Fla.App. 3 Dist.1991), **839**
- Alexander H. Revell & Co. v. C.H. Morgan Grocery Co.**, 214 Ill.App. 526 (Ill. App. 1 Dist.1919), **813**
- American Brands, Inc. v. Playgirl, Inc.**, 498 F.2d 947 (2nd Cir.1974), **764**
- American Trading & Production Corp. v. Shell Intern. Marine Limited**, 453 F.2d 939 (2nd Cir.1972), **638**
- Angel v. Murray**, 113 R.I. 482, 322 A.2d 630 (R.I.1974), **232**
- Anglia Television Ltd. v. Reed**, [1971] 3 All E.R. 69 (CA (Civ Div) 1971), **692**
- Associates Loan Co. v. Walker**, 76 N.M. 520, 416 P.2d 529 (N.M.1966), **852**
- Audette v. L'Union St. Joseph**, 178 Mass. 113, 59 N.E. 668 (Mass.1901), **453**
- Austin Instrument, Inc. v. Loral Corp.**, 324 N.Y.S.2d 22, 272 N.E.2d 533 (N.Y. 1971), **255, 390**
- Avco Delta Corp. Canada Ltd. v. United States**, 484 F.2d 692 (7th Cir.1973), **805**
- Azevedo v. Minister**, 86 Nev. 576, 471 P.2d 661 (Nev.1970), **886**
- Balfour v. Balfour**, 2 K.B.571 (CA 1919), **5**
- Ballard v. El Dorado Tire Co.**, 512 F.2d 901 (5th Cir.1975), **695**
- Banco Do Brasil S.A. v. State of Antigua and Barbuda**, 268 A.D.2d 75, 707 N.Y.S.2d 151 (N.Y.A.D. 1 Dept.2000), **290**
- Bartus v. Riccardi**, 55 Misc.2d 3, 284 N.Y.S.2d 222 (N.Y.City Ct.1967), **508**
- Bateman Eichler, Hill Richards, Inc. v. Berner**, 472 U.S. 299, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985), **951**
- Beall v. Beall**, 45 Md.App. 489, 413 A.2d 1365 (Md.App.1980), **197**
- Beanstalk Group, Inc. v. AM General Corp.**, 283 F.3d 856 (7th Cir.2002), **357**
- BMC Industries, Inc. v. Barth Industries, Inc.**, 160 F.3d 1322 (11th Cir. 1998), **68**
- Brackenbury v. Hodgkin**, 116 Me. 399, 102 A. 106 (Me.1917), **144**
- Briggs Mfg. Co., United States v.**, 460 F.2d 1195 (9th Cir.1972), **36**
- Brower v. Gateway 2000, Inc.**, 246 A.D.2d 246, 676 N.Y.S.2d 569 (N.Y.A.D. 1 Dept.1998), **445**
- Burger King Corp. v. Family Dining, Inc.**, 426 F.Supp. 485 (E.D.Pa.1977), **569**
- Cantrell-Waind & Associates, Inc. v. Guillaume Motorsports, Inc.**, 62 Ark. App. 66, 968 S.W.2d 72 (Ark.App.1998), **529**
- Cantu v. Central Educ. Agency**, 884 S.W.2d 565 (Tex.App.-Austin 1994), **146**
- Carlill v. Carbolic Smoke Ball Co**, [1893] 1 Q.B. 256 (CA 1892), **107**
- Cazares v. Saenz**, 208 Cal.App.3d 279, 256 Cal.Rptr. 209 (Cal.App. 4 Dist.1989), **632**
- Cedars Sinai Medical Center v. Mid-West Nat. Life Ins. Co.**, 118 F.Supp.2d 1002 (C.D.Cal.2000), **191**
- Centex Homes Corp. v. Boag**, 128 N.J.Super. 385, 320 A.2d 194 (N.J.Super.Ch.1974), **756**
- Chronister Oil Co. v. Unocal Refining and Marketing (Union Oil Co. of California)**, 34 F.3d 462 (7th Cir.1994), **700**
- C & J Fertilizer, Inc. v. Allied Mut. Ins. Co.**, 227 N.W.2d 169 (Iowa 1975), **582**
- Cochran v. Dellfava**, 136 Misc.2d 38, 517 N.Y.S.2d 854 (N.Y.City Ct.1987), **961**
- Cohen v. Kranz**, 238 N.Y.S.2d 928, 189 N.E.2d 473 (N.Y.1963), **622**
- Cohn v. Fisher**, 118 N.J.Super. 286, 287 A.2d 222 (N.J.Super.L.1972), **890**

- Collins v. Reynard**, 154 Ill.2d 48, 180 Ill.Dec. 672, 607 N.E.2d 1185 (Ill.1992), 17
- Cooper v. Holder**, 21 Utah 2d 40, 440 P.2d 15 (Utah 1968), 854
- Copeland v. Baskin Robbins U.S.A.**, 117 Cal.Rptr.2d 875 (Cal.App. 2 Dist.2002), 83
- Copeland Process Corp. v. Nalews, Inc.**, 113 N.H. 612, 312 A.2d 576 (N.H. 1973), 913
- Cousineau v. Walker**, 613 P.2d 608 (Alaska 1980), 400
- Crabtree v. Elizabeth Arden Sales Corporation**, 305 N.Y. 48, 110 N.E.2d 551 (N.Y.1953), 875
- C.R. Klewin, Inc. v. Flagship Properties, Inc.**, 220 Conn. 569, 600 A.2d 772 (Conn.1991), 862
- Deli v. University of Minnesota**, 578 N.W.2d 779 (Minn.App.1998), 323
- De Pol v. Sohlke**, 30 N.Y.Super.Ct. 280, 7 Rob. Pr. 280 (N.Y.Super.1867), 768
- Detroit Bank and Trust Co. v. Chicago Flame Hardening Co., Inc.**, 541 F.Supp. 1278 (N.D.Ind.1982), 815
- Diamond Fruit Growers, Inc. v. Krack Corp.**, 794 F.2d 1440 (9th Cir.1986), 169
- Dienst v. Dienst**, 175 Mich. 724, 141 N.W. 591 (Mich.1913), 905
- Donovan v. Bachstadt**, 91 N.J. 434, 453 A.2d 160 (N.J.1982), 708
- Donovan v. Middlebrook**, 95 A.D. 365, 88 N.Y.S. 607 (N.Y.A.D. 1 Dept.1904), 824
- Drake v. Wickwire**, 795 P.2d 195 (Alaska 1990), 619
- Drennan v. Star Paving Co.**, 51 Cal.2d 409, 333 P.2d 757 (Cal.1958), 312
- Drewen v. Bank of Manhattan Co.**, 31 N.J. 110, 155 A.2d 529 (N.J.1959), 819
- Duane Sales, Inc. v. Carmel**, 57 A.D.2d 1003, 394 N.Y.S.2d 307 (N.Y.A.D. 3 Dept.1977), 776
- Dynamic Mach. Works, Inc. v. Machine & Elec. Consultants, Inc.**, 444 Mass. 768, 831 N.E.2d 875 (Mass.2005), 552
- Eastern Air Lines, Inc. v. McDonnell Douglas Corp.**, 532 F.2d 957 (5th Cir. 1976), 647
- Eckles v. Sharman**, 548 F.2d 905 (10th Cir.1977), 97
- Edmund J. Flynn Co. v. Schlosser**, 265 A.2d 599 (D.C.App.1970), 482
- Emanuel Law Outlines, Inc. v. Multi-State Legal Studies, Inc.**, 899 F.Supp. 1081 (S.D.N.Y.1995), 512
- Erhlich v. Diggs**, 169 F.Supp.2d 124 (E.D.N.Y.2001), 869
- Erickson v. Grande Ronde Lumber Co.**, 162 Or. 556, 94 P.2d 139 (Or.1939), 811
- Estate of (see name of party)**
- Fairmount Glass Works v. Crunden-Martin Woodenware Co.**, 106 Ky. 659, 51 S.W. 196 (Ky.1899), 39
- Fall River Trust Co. v. B. G. Browdy, Inc.**, 346 Mass. 614, 195 N.E.2d 63 (Mass.1964), 860
- Federal Deposit Ins. Corp. v. Registry Hotel Corp.**, 658 F.Supp. 311 (N.D.Tex. 1986), 856
- Feinberg v. Pfeiffer Co.**, 322 S.W.2d 163 (Mo.App.1959), 300
- Fiege v. Boehm**, 210 Md. 352, 123 A.2d 316 (Md.1956), 222
- First American Commerce Co. v. Washington Mut. Sav. Bank**, 743 P.2d 1193 (Utah 1987), 926
- 407 East 61st Garage, Inc. v. Savoy Fifth Ave. Corp.**, 296 N.Y.S.2d 338, 244 N.E.2d 37 (N.Y.1968), 663
- Francois v. Francois**, 599 F.2d 1286 (3rd Cir.1979), 391
- Franklin v. Jordan**, 224 Ga. 727, 164 S.E.2d 718 (Ga.1968), 842
- Fujimoto v. Rio Grande Pickle Co.**, 414 F.2d 648 (5th Cir.1969), 148
- Gallon v. Lloyd-Thomas Co.**, 264 F.2d 821 (8th Cir.1959), 386
- Gardner Zemke Co. v. Dunham Bush, Inc.**, 115 N.M. 260, 850 P.2d 319 (N.M. 1993), 160
- Gem Broadcasting, Inc. v. Minker**, 763 So.2d 1149 (Fla.App. 4 Dist.2000), 119
- General Credit Corp. v. Imperial Cas. & Indem. Co.**, 167 Neb. 833, 95 N.W.2d 145 (Neb.1959), 458
- George v. Davoli**, 91 Misc.2d 296, 397 N.Y.S.2d 895 (N.Y.City Ct.1977), 342
- Goldbard v. Empire State Mut. Life Ins. Co.**, 5 A.D.2d 230, 171 N.Y.S.2d 194 (N.Y.A.D. 1 Dept.1958), 920
- Gottlieb v. Tropicana Hotel & Casino**, 109 F.Supp.2d 324 (E.D.Pa.2000), 210
- Greenfield v. Philles Records, Inc.**, 750 N.Y.S.2d 565, 780 N.E.2d 166 (N.Y. 2002), 918
- Grouse v. Group Health Plan, Inc.**, 306 N.W.2d 114 (Minn.1981), 317
- Gruber v. S-M News Co.**, 126 F.Supp. 442 (S.D.N.Y.1954), 690
- Hadley v. Baxendale**, 9 Ex. 341, 156 Eng. Rep. 145 (Ex Ct 1854), 683
- Haines v. City of New York**, 396 N.Y.S.2d 155, 364 N.E.2d 820 (N.Y. 1977), 53
- Hamer v. Sidway**, 124 N.Y. 538, 27 N.E. 256 (N.Y.1891), 202
- Harrington v. Taylor**, 225 N.C. 690, 36 S.E.2d 227 (N.C.1945), 292
- Hawkins v. McGee**, 84 N.H. 114, 146 A. 641 (N.H.1929), 19, 679

- Hewitt v. Hewitt**, 77 Ill.2d 49, 31 Ill.Dec. 827, 394 N.E.2d 1204 (Ill.1979), **931**, 947
- Hicks v. Bush**, 225 N.Y.S.2d 34, 180 N.E.2d 425 (N.Y.1962), **479**
- Hill v. Gateway 2000, Inc.**, 105 F.3d 1147 (7th Cir.1997), **175**
- Himmel, In re**, 125 Ill.2d 531, 127 Ill.Dec. 708, 533 N.E.2d 790 (Ill.1988), **941**
- Hobbs v. Massasoit Whip Co.**, 158 Mass. 194, 33 N.E. 495 (Mass.1893), **125**
- Hochster v. De La Tour**, 2 Eillis & Bl. 678, 118 Eng.Rep. 922 (QB 1853), **615**
- Hoffman v. Chapman**, 182 Md. 208, 34 A.2d 438 (Md.1943), **430**
- Hoffman v. Horton**, 212 Va. 565, 186 S.E.2d 79 (Va.1972), **34**
- Howard Schultz & Associates of the Southeast, Inc. v. Broniec**, 239 Ga. 181, 236 S.E.2d 265 (Ga.1977), **785**
- H.R. Moch Co. v. Rensselaer Water Co.**, 247 N.Y. 160, 159 N.E. 896 (N.Y.1928), **800**
- Indoe v. Dwyer**, 176 N.J.Super. 594, 424 A.2d 456 (N.J.Super.L.1980), **606**
- Industrial America, Inc. v. Fulton Industries, Inc.**, 285 A.2d 412 (Del. Supr.1971), **104**
- Inman v. Clyde Hall Drilling Co.**, 369 P.2d 498 (Alaska 1962), **454**
- In re (see name of party)**
- Ionics, Inc. v. Elmwood Sensors, Inc.**, 110 F.3d 184 (1st Cir.1997), **164**
- Jacob & Youngs v. Kent**, 230 N.Y. 656, 130 N.E. 933 (N.Y.1921), **495**
- Jacob & Youngs v. Kent**, 230 N.Y. 239, 129 N.E. 889 (N.Y.1921), **491**, 716
- J.J. Shane, Inc. v. Aetna Cas. & Sur. Co.**, 723 So.2d 302 (Fla.App. 3 Dist. 1998), **474**
- Kagan v. K-Tel Entertainment, Inc.**, 172 A.D.2d 375, 568 N.Y.S.2d 756 (N.Y.A.D. 1 Dept.1991), **849**
- Karpinski v. Ingrassci**, 320 N.Y.S.2d 1, 268 N.E.2d 751 (N.Y.1971), **781**
- K. D. v. Educational Testing Service**, 87 Misc.2d 657, 386 N.Y.S.2d 747 (N.Y.Sup.1976), **11**, 452
- K & G Const. Co. v. Harris**, 223 Md. 305, 164 A.2d 451 (Md.1960), **501**
- Kibler v. Frank L. Garrett & Sons, Inc.**, 73 Wash.2d 523, 439 P.2d 416 (Wash. 1968), **240**
- Kirksey v. Kirksey**, 8 Ala. 131 (Ala.1845), **205**
- Klocek v. Gateway, Inc.**, 104 F.Supp.2d 1332 (D.Kan.2000), **179**
- Knapp v. American General Finance Inc.**, 111 F.Supp.2d 758 (S.D.W.Va. 2000), **438**
- Krell v. Henry**, [1903] 2 K.B. 740 (CA 1903), **657**
- Kvassay v. Murray**, 15 Kan.App.2d 426, 808 P.2d 896 (Kan.App.1991), **738**
- Laclede Gas Co. v. Amoco Oil Co.**, 522 F.2d 33 (8th Cir.1975), **759**
- Lake River Corp. v. Carborundum Co.**, 769 F.2d 1284 (7th Cir.1985), **741**
- Lancellotti v. Thomas**, 341 Pa.Super. 1, 491 A.2d 117 (Pa.Super.1985), **522**
- Largent Contracting, Inc. v. Great American Homes, Inc.**, 1990 WL 176723 (Tenn.Ct.App.1990), **604**
- Lawrence v. Anderson**, 108 Vt. 176, 184 A. 689 (Vt.1936), **899**
- Lawrence v. Fox**, 20 N.Y. 268 (N.Y.1859), **790**
- Lee v. Joseph E. Seagram & Sons, Inc.**, 552 F.2d 447 (2nd Cir.1977), **338**
- Lenawee County Bd. of Health v. Messerly**, 417 Mich. 17, 331 N.W.2d 203 (Mich.1982), **418**
- Leonard v. Pepsico, Inc.**, 88 F.Supp.2d 116 (S.D.N.Y.1999), **25**, **114**
- Locke v. Warner Bros., Inc.**, 66 Cal. Rptr.2d 921 (Cal.App. 2 Dist.1997), **532**
- Lonergan v. Scolnick**, 129 Cal.App.2d 179, 276 P.2d 8 (Cal.App. 4 Dist.1954), **37**
- Lovekamp, In re Estate of**, 24 P.3d 894 (Okla.Civ.App. Div. 1 2001), **289**
- Lucas v. Hamm**, 56 Cal.2d 583, 15 Cal. Rptr. 821, 364 P.2d 685 (Cal.1961), **806**, **811**
- Lucy v. Zehmer**, 196 Va. 493, 84 S.E.2d 516 (Va.1954), **1**
- Macke Co. v. Pizza of Gaithersburg, Inc.**, 259 Md. 479, 270 A.2d 645 (Md. 1970), **829**
- Mader v. Stephenson**, 552 P.2d 1114 (Wyo.1976), **686**
- Malm, State v.**, 143 Conn. 462, 123 A.2d 276 (Conn.1956), **101**
- Market Street Associates Ltd. Partnership v. Frey**, 941 F.2d 588 (7th Cir. 1991), **544**
- Martin v. Schoenberger**, 8 Watts & Serg. 367 (Pa.1845), **519**
- MCC-Marble Ceramic Center, Inc., v. Ceramica Nuova d'Agostino, S.p.A.**, 144 F.3d 1384 (11th Cir.1998), **15**
- McGee v. United States Fidelity & Guaranty Co.**, 53 F.2d 953 (1st Cir. 1931), **22**
- McIntosh v. Murphy**, 52 Haw. 29, 52 Haw. 112, 469 P.2d 177 (Hawai'i 1970), **880**
- Methodist Mission Home of Tex. v. N___ A___ B___**, 451 S.W.2d 539 (Tex. Civ.App.-San Antonio 1970), **396**
- Meyer v. Benko**, 55 Cal.App.3d 937, 127 Cal.Rptr. 846 (Cal.App. 2 Dist.1976), **775**
- Mezzanotte v. Freeland**, 20 N.C.App. 11, 200 S.E.2d 410 (N.C.App.1973), **264**

- Miami Coca-Cola Bottling Co. v. Orange Crush Co.**, 296 F. 693 (5th Cir.1924), **267**
- Miller v. NBD Bank, N.A.**, 701 N.E.2d 282 (Ind.App.1998), **125**
- Mitchill v. Lath**, 247 N.Y. 377, 160 N.E. 646 (N.Y.1928), **333**
- Monroe St. Properties, Inc. v. Carpenter**, 407 F.2d 379 (9th Cir.1969), **490**
- Motel Services, Inc. v. Central Maine Power Co.**, 394 A.2d 786 (Me.1978), **140**
- Nanakuli Paving and Rock Co. v. Shell Oil Co., Inc.**, 664 F.2d 772 (9th Cir. 1981), **365**
- National Controls, Inc. v. Commodore Bus. Machines, Inc.**, 163 Cal.App.3d 688, 209 Cal.Rptr. 636 (Cal.App. 1 Dist. 1985), **704**
- Nelson v. Rice**, 198 Ariz. 563, 12 P.3d 238 (Ariz.App. Div. 2 2000), **414**
- New York Bronze Powder Co., Inc. v. Benjamin Acquisition Corp.**, 351 Md. 8, 716 A.2d 230 (Md.1998), **462**
- Northern Corp. v. Chugach Elec. Ass'n**, 518 P.2d 76 (Alaska 1974), **643**
- Northern Indiana Public Service Co. v. Carbon County Coal Co.**, 799 F.2d 265 (7th Cir.1986), **762, 948**
- Oglebay Norton Co. v. Armco, Inc.**, 52 Ohio St.3d 232, 556 N.E.2d 515 (Ohio 1990), **90**
- Old West Enterprises, Inc. v. Reno Escrow Co.**, 86 Nev. 727, 476 P.2d 1 (Nev. 1970), **928**
- Oliver v. Campbell**, 43 Cal.2d 298, 273 P.2d 15 (Cal.1954), **752**
- Ortelere v. Teachers' Retirement Bd. of City of New York**, 303 N.Y.S.2d 362, 250 N.E.2d 460 (N.Y.1969), **376, 384**
- Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.**, 69 Cal.2d 33, 69 Cal.Rptr. 561, 442 P.2d 641 (Cal. 1968), **347**
- Paradine v. Jane**, Aley, 26, 82 Eng.Rep. 897 (KBD 1647), **628, 670**
- Parker v. Bell Ford, Inc.**, 425 So.2d 1101 (Ala.1983), **510**
- Patton v. Mid-Continent Systems, Inc.**, 841 F.2d 742 (7th Cir.1988), **724**
- Peevyhouse v. Garland Coal & Min. Co.**, 382 P.2d 109 (Okla.1962), **716**
- Pennsy Supply, Inc. v. American Ash Recycling Corp. of Pennsylvania**, 895 A.2d 595 (Pa.Super.2006), **206**
- Petterson v. Pattberg**, 248 N.Y. 86, 161 N.E. 428 (N.Y.1928), **136**
- Pettit v. Liston**, 97 Or. 464, 191 P. 660 (Or.1920), **373**
- Pollard v. Shaffer**, 1 U.S. 210, 1 L.Ed. 104 (1787), **669**
- Potter v. Hatter Farms, Inc.**, 56 Or.App. 254, 641 P.2d 628 (Or.App.1982), **894**
- ProCD, Inc. v. Zeidenberg**, 86 F.3d 1447 (7th Cir.1996), **127, 135**
- Protectors Ins. Service, Inc. v. United States Fidelity & Guar. Co.**, 132 F.3d 612 (10th Cir.1998), **679**
- Raffles v. Wichelhaus**, [1864] 2 Hurl. & C. 906, 159 E.R. 375 (Exchequer Ct.1864), **361, 362**
- Ridge Runner Forestry v. Veneman**, 287 F.3d 1058 (Fed.Cir.2002), **260**
- Rockingham County v. Luten Bridge Co.**, 35 F.2d 301 (4th Cir.1929), **687**
- Roth Steel Products v. Sharon Steel Corp.**, 705 F.2d 134 (6th Cir.1983), **246**
- Roto-Lith, Limited v. F. P. Bartlett & Co.**, 297 F.2d 497 (1st Cir.1962), **164**
- Rouse v. United States**, 215 F.2d 872, 94 U.S.App.D.C. 386 (D.C.Cir.1954), **821**
- R & R of Connecticut, Inc. v. Stiegler**, 4 Conn.App. 240, 493 A.2d 293 (Conn. App.1985), **578**
- Sally Beauty Co., Inc. v. Nexxus Products Co., Inc.**, 801 F.2d 1001 (7th Cir. 1986), **833**
- Salsbury v. Northwestern Bell Telephone Co.**, 221 N.W.2d 609 (Iowa 1974), **309**
- Sanchez v. Life Care Centers of America, Inc.**, 855 P.2d 1256 (Wyo.1993), **6, 117, 284**
- Scavenger, Inc. v. GT Interactive Software, Inc.**, 273 A.D.2d 60, 708 N.Y.S.2d 405 (N.Y.A.D. 1 Dept.2000), **527**
- Schlegel v. Moorhead**, 177 Mont. 456, 582 P.2d 336 (Mont.1978), **774**
- Schlegel v. Moorhead**, 170 Mont. 391, 553 P.2d 1009 (Mont.1976), **770**
- Schwartzreich v. Bauman-Basch**, 231 N.Y. 196, 131 N.E. 887 (N.Y.1921), **228**
- Seale v. Bates**, 145 Colo. 430, 359 P.2d 356 (Colo.1961), **843**
- Seaver v. Ransom**, 224 N.Y. 233, 120 N.E. 639 (N.Y.1918), **796**
- Seaver v. Ransom**, 180 A.D. 734, 168 N.Y.S. 454 (N.Y.A.D. 3 Dept.1917), **799**
- Segall, Attorney, In re**, 117 Ill.2d 1, 109 Ill.Dec. 149, 509 N.E.2d 988 (Ill.1987), **236**
- Sharp v. Holthusen**, 189 Mont. 469, 616 P.2d 374 (Mont.1980), **566**
- Shaughnessy v. Eidsmo**, 222 Minn. 141, 23 N.W.2d 362 (Minn.1946), **908**
- Sheldon v. Blackman**, 188 Wis. 4, 205 N.W. 486 (Wis.1925), **285**
- Shipsview Corp. v. Beeche Systems Corp.**, 1996 WL 590910 (N.D.N.Y.1996), **556**
- Shoemaker v. Commonwealth Bank**, 700 A.2d 1003 (Pa.Super.1997), **305**
- Singleton v. Foreman**, 435 F.2d 962 (5th Cir.1970), **957**

- Southwest Engineering Co. v. Martin Tractor Co.**, 205 Kan. 684, 473 P.2d 18 (Kan.1970), **73**
- Specht v. Netscape Communications Corp.**, 306 F.3d 17 (2nd Cir.2002), **186**, 195
- Specht v. Netscape Communications Corp., 150 F.Supp.2d 585 (S.D.N.Y.2001), 187
- Speelman v. Pascal**, 222 N.Y.S.2d 324, 178 N.E.2d 723 (N.Y.1961), **826**
- State v. _____** (see opposing party)
- Stewart v. Newbury**, 220 N.Y. 379, 115 N.E. 984 (N.Y.1917), **486**
- Stop & Shop, Inc. v. Ganem**, 347 Mass. 697, 200 N.E.2d 248 (Mass.1964), **540**
- Summits 7, Inc. v. Kelly**, 178 Vt. 396, 886 A.2d 365 (Vt.2005), **278**
- Swartz v. War Memorial Commission of City of Rochester**, 25 A.D.2d 90, 267 N.Y.S.2d 253 (N.Y.A.D. 4 Dept. 1966), **539**
- Swift & Co. v. Smigel**, 115 N.J.Super. 391, 279 A.2d 895 (N.J.Super.A.D.1971), **153**, 385
- Taylor v. Caldwell**, 122 E.R. 309, [1863] 3 B. & S. 826 (Unknown Court 1863), **629**
- Texaco, Inc. v. Pennzoil, Co.**, 729 S.W.2d 768 (Tex.App.-Hous. (1 Dist.) 1987), **42**
- Texas Gas Utilities Co. v. S.A. Barrett**, 460 S.W.2d 409 (Tex.1970), **268**
- Thomas v. Thomas**, 114 Eng.Rep. 330, 2 Q.B.851 (QB 1842), **220**
- Thos. J. Dyer Co. v. Bishop Intern. Engineering Co.**, 303 F.2d 655 (6th Cir. 1962), **469**
- Tigg Corp. v. Dow Corning Corp.**, 962 F.2d 1119 (3rd Cir.1992), **272**
- Trident Center v. Connecticut General Life Ins. Co.**, 847 F.2d 564 (9th Cir. 1988), **351**
- Troutman v. Southern Ry. Co.**, 441 F.2d 586 (5th Cir.1971), **938**
- Turner Entertainment Co. v. Degeto Film GmbH**, 25 F.3d 1512 (11th Cir. 1994), **671**
- United States v. _____** (see opposing party)
- Untiedt v. Grand Laboratories, Inc.**, 552 N.W.2d 571 (Minn.App.1996), **360**
- Val-Ford Realty Corp. v. J.Z.'s Toy World, Inc.**, 231 A.D.2d 434, 647 N.Y.S.2d 488 (N.Y.A.D. 1 Dept.1996), **345**
- Van Iderstine Co. v. Barnet Leather Co.**, 242 N.Y. 425, 152 N.E. 250 (N.Y. 1926), **601**
- Vokes v. Arthur Murray, Inc.**, 212 So.2d 906 (Fla.App. 2 Dist.1968), **407**
- Vrooman v. Turner**, 69 N.Y. 280 (N.Y. 1877), **794**
- VRT, Inc. v. Dutton-Lainson Co.**, 247 Neb. 845, 530 N.W.2d 619 (Neb.1995), **496**
- Wagenseller v. Scottsdale Memorial Hosp.**, 147 Ariz. 370, 710 P.2d 1025 (Ariz.1985), **56**, 538
- Walker v. Keith**, 382 S.W.2d 198 (Ky. 1964), **77**
- Walker & Co. v. Harrison**, 347 Mich. 630, 81 N.W.2d 352 (Mich.1957), **498**
- Wassenaar v. Panos**, 111 Wis.2d 518, 331 N.W.2d 357 (Wis.1983), **732**
- Webb v. McGowin**, 27 Ala.App. 82, 168 So. 196 (Ala.App.1935), **293**
- Wedner v. Fidelity Sec. Systems, Inc.**, 228 Pa.Super. 67, 307 A.2d 429 (Pa.Super.1973), **745**
- Werner v. Xerox Corp.**, 732 F.2d 580 (7th Cir.1984), **319**
- Western Hills, Oregon, Ltd. v. Pfau**, 265 Or. 137, 508 P.2d 201 (Or.1973), **597**
- Western Oil Sales Corporation v. Bliss & Wetherbee**, 299 S.W. 637 (Tex.Com. App.1927), **846**
- Western Properties v. Southern Utah Aviation, Inc.**, 776 P.2d 656 (Utah App.1989), **661**
- Western Waterproofing Co., Inc. v. Springfield Housing Authority**, 669 F.Supp. 901 (C.D.Ill.1987), **802**
- Wheeler, State v.**, 95 Wash.2d 799, 631 P.2d 376 (Wash.1981), **140**
- White v. Berrenda Mesa Water Dist.**, 7 Cal.App.3d 894, 87 Cal.Rptr. 338 (Cal. App. 5 Dist.1970), **424**
- White v. McBride**, 937 S.W.2d 796 (Tenn. 1996), **214**, 452
- Wilhoite v. Beck**, 141 Ind.App. 543, 230 N.E.2d 616 (Ind.App. 1 Div.1967), **121**, 125
- Williams v. Walker-Thomas Furniture Co.**, 350 F.2d 445, 121 U.S.App.D.C. 315 (D.C.Cir.1965), **434**
- Wm. R. Clarke Corp. v. Safeco Ins. Co.**, 64 Cal.Rptr.2d 578, 938 P.2d 372 (Cal. 1997), **475**
- Wood v. Lucy, Lady Duff-Gordon**, 222 N.Y. 88, 118 N.E. 214 (N.Y.1917), **263**
- Yarbro v. Neil B. McGinnis Equipment Co.**, 101 Ariz. 378, 420 P.2d 163 (Ariz. 1966), **901**

CASES AND PROBLEMS ON
CONTRACTS
Fifth Edition

*

Summary of Contents

	Page
PREFACE	iii
COPYRIGHT ACKNOWLEDGEMENTS	v
TABLE OF CASES	xxi
Chapter 1. The Agreement Process	1
1. Intent to Contract	1
2. The Offer	17
3. Intent to Memorialize and Indefiniteness	42
4. The Acceptance	101
5. When May an Offer to a Unilateral Contract No Longer Be Revoked?	136
6. Acceptance of Indifferent Offers and Acceptance by Promise	144
7. Mistake in Transmission.....	153
8. Termination of a Revocable Offer.....	153
9. Counter-Offers and the Battle of the Forms	160
10. E-Commerce.....	186
11. Option Contracts	197
Chapter 2. Consideration	202
1. What Is Consideration?	202
2. Pre-Existing Duty Rule	228
3. Duress and Statutory Changes	246
4. Consideration in Bilateral Contracts and Mutuality of Obli- gation	260
Chapter 3. Moral Obligation and Consideration	285
Chapter 4. Promissory Estoppel	300
Chapter 5. Parol Evidence and Interpretation	333
1. The Parol Evidence Rule	333
2. Interpretation	347
Chapter 6. Capacity of Parties	373
Chapter 7. Avoidance for Misconduct or Mistake	386
1. Duress	386
2. Undue Influence.....	391
3. Misrepresentation and Non-Disclosure	400
4. Mistake	414
5. Reformation.....	430
6. Unconscionability and Duty to Read	434

	Page
Chapter 8. Conditions, Performance and Breach	453
1. The Nature and Effect of Express Conditions, the Time Classification of Conditions	453
2. Distinguishing Express Conditions From Other Provisions	458
3. Constructive Conditions	486
4. Constructive Conditions Under the UCC	508
5. Less Than Substantial Performance: Quasi-Contractual Recovery	519
6. Recovery by a Party in Default: Divisibility, Independent Promises, and Separate Contracts	527
7. Wrongful Prevention and Noncooperation	529
8. Waiver, Estoppel, and Election	552
9. Relief From Forfeiture	566
10. Conditions of Satisfaction	597
11. A "Realist" Looks at Conditions	612
12. Prospective Failure of Condition and Breach by Repudiation	615
Chapter 9. Impossibility or Impracticability, and Frustration	628
1. Hardship	628
2. Impossibility	629
3. Frustration	657
4. Impracticability	669
Chapter 10. Enforcement Remedies	679
1. Damages	679
2. Restitution	752
3. Specific Performance	756
Chapter 11. Third Party Beneficiaries	790
1. Intended, Incidental, Creditor and Donee Beneficiaries	790
2. Defenses, Vesting and Relative Rights of the Parties	811
Chapter 12. Assignment and Delegation	824
1. The Nature and Effect of an Assignment	824
2. Deviants From the Norm	826
3. Are the Rights Assignable and Performances Delegable?	829
4. Other Problems Relating to Assignment and Delegation	846
5. Defenses, Counterclaims, Vesting and Latent Equities	852
Chapter 13. The Statute of Frauds	862
1. The One Year Provision	862
2. The Memorandum	875
3. Effect of Part or Full Performance, Rescission and Modification and the One Year Provision	880
4. Statute of Frauds and Sales of Goods	886
5. The Suretyship Statute of Frauds	899
6. Statute of Frauds and Marriage	905
7. Statute of Frauds and Real Property	908

	Page
Chapter 14. Discharge of Contracts	913
1. Mutual Rescission	913
2. Release, Executory Accord, and Substituted Agreement	918
3. Novation, Account Stated, Tender, and Union of Right and Duty	925
Chapter 15. Bargains That are Illegal or Against Public Policy	931
1. Some Varieties of Public Policies	931
2. Effect of Illegality	948
Appendix	
A. Uniform Commercial Code 1991 Official Text	967
B. Revised UCC Articles 1 and 2	1023
C. Model Answers to Select Examination Problems	1091
INDEX	1095

Table of Contents

	Page
PREFACE	iii
COPYRIGHT ACKNOWLEDGEMENTS	v
TABLE OF CASES	xxi
Chapter 1. The Agreement Process	1
1. Intent to Contract	1
<i>Lucy v. Zehmer</i>	1
<i>Balfour v. Balfour</i>	5
<i>Sanchez v. Life Care Centers of America, Inc.</i>	6
<i>K. D. v. Educational Testing Service</i>	11
<i>MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova d'Agostino</i>	15
Problems	15
2. The Offer	17
(a) Offers Distinguished From Expressions of Opinion, Adver-	
tisements, Etc.	17
<i>Collins v. Reynard</i>	17
<i>Hawkins v. McGee</i>	19
<i>McGee v. United States Fidelity & Guaranty Co.</i>	22
<i>Leonard v. Pepsico, Inc.</i>	25
Problems	32
(b) Bids and Auction Sales	34
<i>Hoffman v. Horton</i>	34
Problems	35
(c) Offers Distinguished From Preliminary Negotiations and	
Price Quotations	36
<i>United States v. Briggs Manufacturing Co.</i>	36
<i>Loneragan v. Scolnick</i>	37
<i>Fairmount Glass Works v. Crunden-Martin Woodenware Co.</i>	39
Problems	41
3. Intent to Memorialize and Indefiniteness	42
<i>Texaco, Inc. v. Pennzoil, Co.</i>	42
<i>Haines v. City of New York</i>	53
<i>Wagenseller v. Scottsdale Memorial Hospital</i>	56
<i>BMC Industries, Inc. v. Barth Industries, Inc.</i>	68
<i>Southwest Engineering Co. v. Martin Tractor Co., Inc.</i>	73
<i>Walker v. Keith</i>	77
<i>Copeland v. Baskin Robbins U.S.A.</i>	83
<i>Oglebay Norton Co. v. Armco, Inc.</i>	90
<i>Eckles v. Sharman</i>	97
Problems	100
4. The Acceptance	101
(a) Preliminary Problems With Respect to Acceptance	101
<i>State v. Malm</i>	101
" <i>Industrial America</i> ", <i>Inc. v. Fulton Industries, Inc.</i>	104

	Page
4. The Acceptance—Continued	
<i>Carlill v. Carbolic Smoke Ball Co.</i>	107
A. W. Brian Simpson, Quackery and Contract Law: The Case of the Carbolic Smoke Ball	109
<i>Leonard v. Pepsico, Inc.</i>	114
Problems	117
(b) Acceptance by Silence and Conduct	119
<i>Gem Broadcasting, Inc. v. Minker</i>	119
<i>Wilhoite v. Beck</i>	121
<i>Miller v. NBD Bank, N.A.</i>	125
<i>Hobbs v. Massasoit Whip Co.</i>	125
<i>ProCD, Inc. v. Zeidenberg</i>	127
Problems	133
5. When May an Offer to a Unilateral Contract No Longer Be Revoked?	136
<i>Petterson v. Pattberg</i>	136
<i>State v. Wheeler</i>	140
<i>Motel Services, Inc. v. Central Maine Power Co.</i>	140
Problems	144
6. Acceptance of Indifferent Offers and Acceptance by Promise	144
<i>Brackenbury v. Hodgkin</i>	144
<i>Cantu v. Central Education Agency</i>	146
<i>Fujimoto v. Rio Grande Pickle Co.</i>	148
Problems	151
7. Mistake in Transmission	153
Problems	153
8. Termination of a Revocable Offer	153
<i>Swift & Co. v. Smigel</i>	153
Problems	158
9. Counter-Offers and the Battle of the Forms	160
<i>Gardner Zemke Co. v. Dunham Bush, Inc.</i>	160
<i>Diamond Fruit Growers, Inc. v. Krack Corp.</i>	169
<i>Hill v. Gateway 2000, Inc.</i>	175
<i>Klocek v. Gateway, Inc.</i>	179
Problems	185
10. E-Commerce	186
<i>Specht v. Netscape Communications Corp.</i>	186
Jane K. Winn and Brian H. Bix, Diverging Perspectives on Electronic Contracting in the U.S. and EU	196
11. Option Contracts	197
<i>Beall v. Beall</i>	197
Problems	200
Examination Questions and Multiple Choice Question	200
Chapter 2. Consideration	202
1. What Is Consideration?	202
<i>Adam Smith, The Wealth of Nations</i>	202
<i>Hamer v. Sidway</i>	202
<i>Kirksey v. Kirksey</i>	205
<i>Pennsy Supply, Inc. v. American Ash Recycling Corp.</i>	206
<i>Gottlieb v. Tropicana Hotel and Casino</i>	210
<i>White v. McBride</i>	214
<i>Eleanor Thomas v. Benjamin Thomas</i>	220
<i>Fiege v. Boehm</i>	222
Problems	226
2. Pre-Existing Duty Rule	228
<i>Schwartzreich v. Bauman-Basch, Inc.</i>	228