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CONTRACT LAW

合同法学 (第3版)

EMILY FINCH AND STEFAN FAFINSKI

王梓 注释 孙新强 审校

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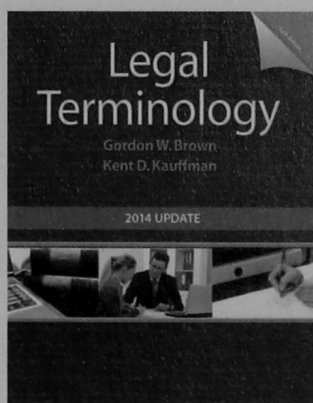
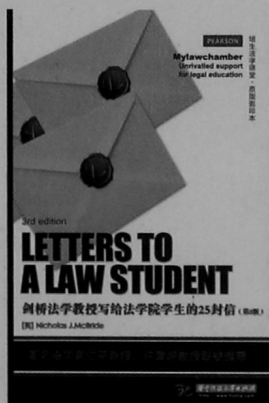
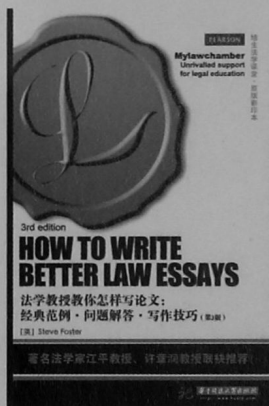
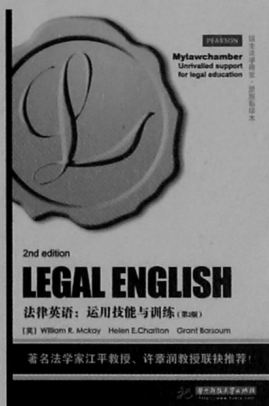
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提高你的法律英语技能



Written to help you develop the essential skills needed to succeed on your course and prepare for practice.

著名法学家江平教授、许章润教授为

《西方法学经典教材系列》题词

教材所收皆为精品，精准阐释了英美法制的专门领域，而篇幅适中，书写畅达，值得一读。

——中国政法大学终身教授 江 平

采撷异域法意，以接济和光弘本土法律精神，助推中国转型，进而建政立制，本套教材正当时也！

——清华大学法学院教授 许章润

华中法学出版学术顾问

(按姓氏笔画为序)

方流芳 刘春田 张 军 郭寿康

《合同法学》导读

由英国 PEARSON 出版社授权华中科技大学出版社出版的《法学初阶——西方法学经典教材系列·影印双语注释本》已经与读者见面了。该系列涵盖了国内法学本科生必修的法学课程内容，是一套非常适合中国法学院校本科生系统了解与学习英美法系课程内容的经典教材，同时该教材兼顾法律英语的学习目的。

《法学初阶——西方法学经典教材系列·影印双语注释本》，通过中英文双语注释的方式，把原汁原味的英国各类部门法的内容介绍给读者，这是该系列教材与以往出版的影印版法学书籍最大的不同之处。注释者依据国内法学院校教授英美法系课程内容和法律英语教学的特点，在参考《布莱克法律字典》、《元照英美法词典》、《牛津法律大辞典》等多部权威字典基础上，采取中英文双语注释的方式，将教材中重要的法律词汇一一作出解释。这样，便于大家学习英美法系课程内容，同时也能够更快地掌握法律英语。

《法学初阶——西方法学经典教材系列·影印双语注释本》的出版，旨在将英美法系中（英国各部门法）的法律内容介绍给中国法学院校的老师与同学们，大家可以借助中英文注释这一桥梁，便捷、准确地了解英国法律。

出版者希望采用该系列教材的法学院校师生们，喜欢我们这样的编排方式，并从中受益，也期待师生们对其提出宝贵意见！

下面是对这套法学经典教材之一《合同法学》的介绍。

在该教材中，作者采用简明易懂的语言将其重点知识，如契约与合同的目的，合同双方与第三方，胁迫、错误、欺诈等合同无效或者可撤销的要素，合同的解除及赔偿等内容一一做了介绍与阐释。教材每一章节之始，作者为其内

容的重点知识词汇编制了知识网络图，这种最为直观的方式，可以使学生在学习前就对其有一个完整及初步的了解。同时，每一章节还配有相关的案例以及分析，这样可以帮助学生理解相关知识并熟悉司法实践过程，提高运用能力。每一章节还附有部分内容的知识图表，便于学生对所学的知识能够得到及时的总结和梳理。

《合同法学》这本教材语言简明易懂，便于老师和学生在短时间内，掌握合同法学的主要内容，并了解英国法是从怎样的角度和思路介绍合同法内容的。教材附录部分的重点词汇，可以使学生很快地理解重点词汇的含义，以扫清阅读和学习障碍。

与此同时，为了保证本教材中英文注释的准确性，出版社邀请了北京航空航天大学法学院教授法学博士孙新强担任专业审校，确保该教材注释内容的专业精准和学术权威。

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This book is dedicated to STG.

We are, as ever, grateful to all who have offered feedback on the last edition of *Law Express: Contract Law*, particularly the anonymous academic reviewers who provided some suggestions for improvement. We have been pleased to incorporate these as best we could.

Emily Finch and Stefan Fafinski
Wokingham
January 2012

Publisher's acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.

Introduction

Contract law is one of the core subjects required for a qualifying law degree so it is a compulsory component of most undergraduate law programmes. It is usually taught as a first or second year subject as many of its concepts are relatively straightforward.

This revision guide will help you to identify the relevant law and apply it to factual situations which should help to overcome preconceived notions of the 'right' outcome in favour of legally accurate assessments of the liability of the parties. The book also provides guidance on the policy underlying the law and it identifies problem areas, both of which will help you to prepare for essay questions. The book is intended to supplement your course materials, lectures and textbooks; it is a guide to revision rather than a substitute for the amount of reading (and thinking) that you need to do in order to succeed. Contract law is a vast subject—you should realise this from looking at the size of your recommended textbook—so it follows that a revision guide cannot cover all the depth and detail that you need to know and it does not set out to do so. Instead, it aims to provide a concise overall picture of the key areas for revision—reminding you of the headline points to enable you to focus your revision, identify the key principles of law and use these effectively in essays and problem questions.

REVISION NOTE

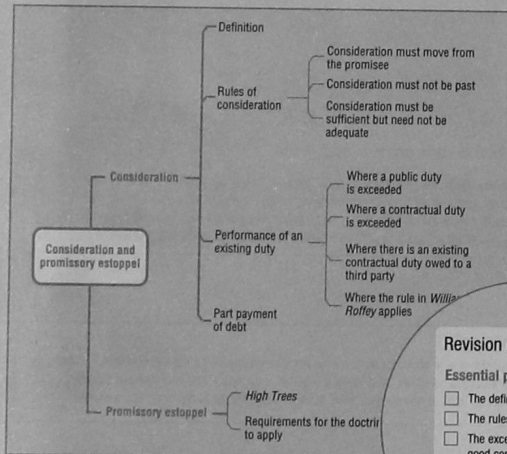
Things to bear in mind when revising contract law:

- Do use this book to guide you through the revision process.
- Do not use this book to tell you everything that you need to know about contract law but make frequent reference to your recommended textbooks and notes that you have made yourself from lectures and private study.
- Make sure that you consult your syllabus frequently to check which topics are covered and in how much detail.
- Read around the subject as much as possible to ensure that you have sufficient depth of knowledge. Use the suggested reading in this book and on your lecture handouts to help you to select relevant material.

- Take every possible opportunity to practise your essay-writing and problem-solving technique; get as much feedback as you can.
- You should aim to revise as much of the syllabus as possible. Be aware that in contract law many questions that you encounter in coursework and examination papers could combine different topics, e.g. contract formation, misrepresentation and mistake. Therefore, selective revision could leave you unable to answer questions that include reference to material that you have excluded from your revision; it is never a good idea to tackle a question if you are able to deal with only part of the law that is raised.
- Do take the time to acquire as many past examination papers from your institution as possible. While this book gives guidance to certain types of questions, you should try to answer previous questions from your own institution. This will ensure that you are familiar with the structure and requirements of your own examination and give you plenty of exposure to the types of question preferred by your own institution.

Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.

Guided tour



Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your own revision notes. [p. 26]

Revision checklists – How well do you know each topic? Use these to identify essential points you should know for your exams.

But don't panic if you don't know them all - the chapters will help you revise each point to ensure you are fully prepared. Print the checklists off the companion website and track your revision progress!

Revision checklist

Essential points you should know:

- ☐ The definition of consideration
- ☐ The rules relating to 'good' consideration
- ☐ The exceptions to the general rule that per good consideration
- ☐ The rules relating to part payment of debt
- ☐ The development and operation of promissory estoppel

Sample questions with Answer guidelines

– Practice makes perfect!

Read the question at the start of each chapter and consider how you would answer it. Guidance on structuring strong answers is provided at the end of the chapter. Try out additional sample questions online.

Sample question

Could you answer this question? Below is a typical essay question that could arise on this topic. Guidelines on answering the question are included at the end of the chapter, whilst a sample problem question and guidance on tackling it can be found on the Companion Website.

Assessment advice – Not sure how best to tackle a problem or essay question? Wondering what you may be asked? Use the assessment advice to identify the ways in which a subject may be examined and how to apply your knowledge effectively.

ASSESSMENT ADVICE

Essay questions

Essay questions on consideration are relatively common. Since consideration is a topic that sets out a few basic principles, each of which has a number of exceptions, rules or modifications, then it is quite easy to set an essay which requires you to consider one or more areas within the topic and explore its rules of operation in depth. As with any essay question, it is important to have a good in-depth knowledge of the area and its supporting cases. This will enable you to demonstrate your knowledge in applying the subject matter directly to the question at hand.

Key definitions – Make sure you understand essential legal terms. Use the flashcards online to test your recall!

KEY DEFINITION: Mirror image rule

The principle that a valid acceptance must correspond exactly with the terms of the offer is sometimes referred to as the mirror image rule.

Key cases and Key statutes – Identify and review the important elements of the essential cases and statutes you will need to know for your exams.

KEY CASE	KEY STATUTE
Brinkibon v. Stahag Stahl [1983] 2 AC 34 <i>Concerning: acceptance by non-instantaneous communications</i>	Sale of Goods Act 1979, s. 17 <i>A sale by auction is complete when the auctioneer puts the hammer down, or in other cases when the auctioneer makes any bidder may bid.</i>

Make your answer stand out – This feature illustrates sources of further thinking and debate where you can maximise your marks. Use them to really impress your examiners!

✓ **Make your answer stand out**

If you are discussing the idea of consideration it is important to remember that although consideration is straightforward when the value is pecuniary, i.e. can be expressed in terms of a sum of money, this is not the only way in which something can be viewed as valuable. For example, in *White v. Bluett* (1853) LJ Ex 36 a son

Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.

📌 **EXAM TIP**

The postal rule is often encountered in problem questions on contract formation. Although most students conclude that where a letter of acceptance has been posted then the postal rule applies, the vast majority of those often forget to discuss the conditions

Revision notes – Get guidance for effective revision. These boxes highlight related points and areas of overlap in the subject, or areas where your course might adopt a particular approach that you should check with your course tutor.

📌 **REVISION NOTE**

William Tweddle was also unable to enforce the contract due to the common law rule on privity of contract. This is covered in Chapter 3. You must remember that this sort of agreement may now be subject to the Contracts (Rights of Third Parties) Act 1999, which is also considered in Chapter 3.

Don't be tempted to . . . – This feature underlines areas where students most often trip up in exams. Use them to spot common pitfalls and avoid losing marks.

! **Don't be tempted to . . .**

You must remember that the postal rule (if it applies at all) *applies to acceptances only, and not to the revocation of an offer by post*. It is a very common error to state that an offer was revoked by letter at the time that the letter was posted because of the postal rule. Be careful to avoid falling into this trap.

Read to impress – Focus on these carefully selected sources to extend your knowledge, deepen your understanding, and earn better marks in coursework as well as in exams.

READ TO IMPRESS

McKendrick, E., 'Invitations to Tender and the Creation of Contracts' [1991] *Lloyd's Maritime and Commercial Law Quarterly* 31.

Mitchell, P. and Phillips, J., 'The Contractual Nexus: Is Reliance Essential?' (2002) 22 *Oxford Journal of Legal Studies* 115.

Glossary – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms.

Glossary of terms

1

Agreement and contractual intention

Revision checklist

Essential points you should know:

- ☐ The definitions of offer and acceptance
- ☐ The distinction between an offer, an invitation to treat and a counter offer
- ☐ The rules on communication and withdrawal of offers
- ☐ The rules relating to communication of acceptances
- ☐ The presumptions of legal intent which arise in social, domestic and commercial situations

第一章注释

序号	页	表格	行	词汇	中文注释	English
1	5	1		Offer	要约	An expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed.
2				Acceptance	承诺	Final and unqualified expression of assent to the terms of an offer.
3				Auction	拍卖	A sale of property to the highest bidder.
4				Mere Statements of Price	仅仅陈述价格	
5				Revocation	要约的撤销	The rescinding, annulling or withdrawal of an offer.
6				Counter Offers	反要约	Contracts. An offeree's new offer that varies the terms of the original offer and that therefore rejects the original offer.
7				Standard Form Contracts	格式合同	A usu. preprinted contract containing set clauses, used repeatedly by a business or within a particular industry with only slight additions or modifications to meet the specific situation.
8				Tenders	请求受领	Contracts. Attempted performance that is frustrated by the act of the party for whose benefit it is to take place. The performance may take the form of either a tender of goods or a tender of payment.