

# Contents



Preface xix  
Acknowledgments xxiii

## **Introduction. Fundamentals 1**

### **Chapter 1. Promise 9**

*Hawkins v. McGee* 10  
Problems 13

### **Chapter 2. Contract Formation: Consideration and Mutual Assent 17**

#### **A. Consideration 17**

##### **1. Bargained-for Exchange and Gratuitous Promises 18**

*Hamer v. Sidway* 18  
*Langer v. Superior Steel Corp.* 21  
*In re Greene* 23  
*Mills v. Wyman* 26  
*Levine v. Blumenthal* 28  
*Alaska Packers' Ass'n v. Domenico* 30  
Problems 33

##### **2. Conditional Promises 34**

*Kirksey v. Kirksey* 35  
*Allegheny College v. National Chautauqua County Bank of Jamestown* 37  
Problems 41

**3. Illusory Promises 42**

- Strong v. Sheffield* 43  
*Wood v. Lucy, Lady Duff-Gordon* 45  
*Rehm-Zeiher Co. v. F.G. Walker Co.* 46  
*Mattei v. Hopper* 49  
Problems 51

**B. Mutual Assent 52****1. The Theory of Mutual Assent 52**

- Embry v. Hargadine, McKittrick Dry Goods Co.* 53  
*Lucy v. Zehmer* 56  
*Empro Manufacturing Co. v. Ball-Co Manufacturing, Inc.* 61  
*Joseph Martin, Jr., Delicatessen v. Schumacher* 64  
Problems 66

**2. Offer 68**

- Interstate Industries, Inc. v. Barclay Industries, Inc.* 69  
*Nordyne, Inc. v. International Controls & Measurements Corp.* 72  
*Craft v. Elder & Johnston Co.* 74  
*Lefkowitz v. Great Minneapolis Surplus Store, Inc.* 75  
*Consolidated Freightways Corp. of Delaware v. Williams* 77  
*Leonard v. Pepsico, Inc.* 80  
Problems 89

**3. Acceptance 90**

- Carlill v. Carbolic Smoke Ball Co.* 92  
*Glover v. Jewish War Veterans of the United States of America,*  
*Post No. 58* 97  
*Corinthian Pharmaceutical Systems, Inc. v. Lederle Laboratories* 98  
Problems 102

**4. Termination of Offers 104**

- Ever-Tite Roofing Corp. v. Green* 106  
*Dickinson v. Dodds* 108  
*Morrison v. Thaelke* 111  
Problems 114

**Chapter 3. Affirmative Defenses to Contract Enforcement 117****A. The Statute of Frauds 118**

- C.R. Klewin, Inc. v. Flagship Properties, Inc.* 119  
*McInerney v. Charter Golf, Inc.* 124  
*Bazak International Corp. v. Mast Industries, Inc.* 130  
*Waddle v. Elrod* 138  
*Chomicky v. Buttolph* 143  
Problems 145

**B. Infancy 147**

- Halbman v. Lemke* 148  
*Dodson v. Shrader* 152  
*Webster Street Partnership, Ltd. v. Sheridan* 155  
Problems 158

**C. Incapacity 159**

- In re Marriage of Davis* 160  
*Hauer v. Union State Bank of Wautoma* 165  
*Farnum v. Silvano* 171  
*First State Bank of Sinai v. Hyland* 174  
Problems 178

**D. Duress 180**

- Duncan v. Hensley* 181  
*Austin Instrument, Inc. v. Loral Corp.* 184  
*Centech Group, Inc. v. Getronicswang Co.* 188  
Problems 190

**E. Misrepresentation 191**

- Swinton v. Whitinsville Savings Bank* 192  
*Weintraub v. Krobatsch* 193  
*Stambovsky v. Ackley* 197  
*Stroup v. Conant* 201  
*Vokes v. Arthur Murray, Inc.* 203  
Problems 206

**F. Unconscionability 208**

- Williams v. Walker-Thomas Furniture Co.* (1964) 209  
*Williams v. Walker-Thomas Furniture Co.* (1965) 210  
*Frostifresh Corp. v. Reynoso* (1966) 213  
*Frostifresh Corp. v. Reynoso* (1967) 215  
*Zapatha v. Dairy Mart, Inc.* 215  
Problems 219

**G. Public Policy 221**

- In the Matter of Baby M.* 221  
*Johnson v. Calvert* 232  
*Comprehensive Technologies International, Inc. v. Software Artisans, Inc.* 238  
*Edwards v. Arthur Andersen LLP* 242  
Problems 244

## Chapter 4. Contract Interpretation 247

### A. Standard Form Contracts 248

#### 1. Lack of Notice 249

*Healy v. N.Y. Central & Hudson River R.R. Co.* 249

*Specht v. Netscape Communications Corp.* 252

*Hill v. Gateway 2000, Inc.* 256

#### 2. Lack of Choice 259

*Armendariz v. Foundation Health Psychcare Services, Inc.* 260

*Frost v. ADT, LLC* 264

*O'Callaghan v. Waller & Beckwith Realty Co.* 268

*Tunkl v. Regents of the University of California* 272

Problems 276

### B. The Battle of the Forms 278

*Leonard Pevar Co. v. Evans Products Co.* 280

*Klocek v. Gateway, Inc.* 284

Problems 288

### C. The Parol Evidence Rule 290

*Gianni v. R. Russell & Co.* 291

*Masterson v. Sine* 294

*Nelson v. Elway* 297

*Davis v. G.N. Mortgage Corp.* 302

Problems 305

### D. Interpretation Part I: The Ambiguity Determination 307

*W.W.W. Associates, Inc. v. Giancontieri* 309

*Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* 312

*In re Soper's Estate* 315

Problems 318

### E. Interpretation Part II: Sources of Evidence 321

*Frigalimont Importing Co. v. B.N.S. International Sales Corp.* 322

*Nanakuli Paving And Rock Co. v. Shell Oil Company, Inc.,* 327

*Beanstalk Group, Inc. v. AM General Corp.* 331

Problems 337

### F. Interpretation Part III: The Implied Duty of Good Faith and Fair Dealing 339

*Dalton v. Educational Testing Service* 340

*Eastern Air Lines, Inc. v. Gulf Oil Corp.* 343

*Carmichael v. Adirondack Bottled Gas Corp.* 346

*Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Associates* 352

*Jordan v. Duff & Phelps, Inc.* 359

Problems 364

## Chapter 5. Defining Performance Obligations: Conditions and Excuses 367

### A. Conditions 368

#### 1. Types of Conditions 368

*Irving v. Town of Clinton* 369

*Main Electric, Ltd. v. Printz Services Corp.* 371

*Kingston v. Preston* 374

*Goodisson v. Nunn* 376

Problems 377

#### 2. Substantial Performance and Material Breach 379

*Maxton Builders, Inc. v. Lo Galbo* 380

*Sahadi v. Continental Illinois National Bank & Trust Co. of Chicago* 381

*Jacob & Youngs v. Kent* 386

*O.W. Grun Roofing & Construction Co. v. Cope* 390

Problems 392

#### 3. Excusing Conditions: Prevention, Waiver, Divisibility, and Restitution 394

*Cantrell-Waind & Associates, Inc. v. Guillaume Motorsports, Inc.* 395

*Clark v. West* 398

*Gill v. Johnstown Lumber Co.* 401

*Lowy v. United Pacific Insurance Co.* 403

*Stark v. Parker* 405

*Britton v. Turner* 408

Problems 410

### B. Excuse of Non-Performance of Duties 412

#### 1. Mistake 413

*West Coast Airlines, Inc. v. Miner's Aircraft & Engine Service, Inc.* 414

*City of Everett v. Estate of Sumstad* 415

*Wood v. Boynton* 417

*Beachcomber Coins, Inc. v. Boskett* 420

*Donovan v. RRL Corp.* 422

Problems 428

#### 2. Impracticability 430

*Taylor v. Caldwell* 431

*U.S. Bancorp Equipment Finance, Inc. v. Ameriquest Holdings LLC* 435

*Bush v. Protravel International, Inc.* 437

Problems 442

#### 3. Frustration of Purpose 444

*Krell v. Henry* 445

*Northern Indiana Public Service Co. v. Carbon County Coal Co.* 448

*Sub-Zero Freezer Co. v. Cunard Line Ltd.* 453

Problems 456

## Chapter 6. Remedies 459

### A. Punitive Damages 460

*White v. Benkowski* 460

*Delzer v. United Bank of Bismarck* 464

*Freeman & Mills, Inc. v. Belcher Oil Co.* 465

Problems 474

### B. Specific vs. Substitutional Performance 476

*Van Wagner Advertising Corp. v. S & M Enterprises* 477

*Laclede Gas Co. v. Amoco Oil Co.* 479

*Walgreen Co. v. Sara Creek Property Co.* 484

*City of Columbus v. Cleveland, Cincinnati, Chicago &  
St. Louis Railway Co.* 487

*Ryan v. Ocean Twelve, Inc.* 490

Problems 492

### C. Expectation Damages 494

*J.O. Hooker & Sons, Inc. v. Roberts Cabinet Co.* 495

*Egerer v. CSR West, LLC* 499

*Groves v. John Wunder Co.* 504

*Peevyhouse v. Garland Coal & Mining Co.* 508

Problems 514

### D. The Mitigation Principle 516

*Rockingham County v. Luten Bridge Co.* 516

*Bomberger v. McKelvey* 520

*Parker v. Twentieth Century-Fox Film Corp.* 524

*In re Worldcom, Inc.* 529

Problems 534

### E. The Foreseeability Requirement 536

*Hadley v. Baxendale* 536

*C. Czarnikow, Ltd. v. Koufos* 538

*Allen v. Jones* 547

*Jackson v. Royal Bank of Scotland* 550

Problems 558

### F. The “Reasonable Certainty” Requirement 560

*Kenford Co. v. County of Erie* 561

*Florafax International, Inc. v. GTE Market Resources, Inc.* 563

*Deutsch v. The Music Co.* 567

*Sullivan v. O’Connor* 569

Problems 573

**G. Stipulated Damages 574**

*TAL Financial Corp. v. CSC Consulting, Inc.* 575

*NPS, LLC v. Minihane* 578

Problems 581

**Chapter 7. Contract Rights of Non-Parties 583****A. Third-Party Beneficiaries 584****1. Status as a Third-Party Beneficiary 584**

*Lawrence v. Fox* 586

*Choate, Hall & Stewart v. SCA Services, Inc.* 588

*H. R. Moch Company, Inc. v. Rensselaer Water Company* 592

*Raritan River Steel Co. v. Cherry, Bekaert & Holland* 594

*Donnalley v. Sterling* 598

Problems 601

**2. Rights of a Third-Party Beneficiary 602**

*John F. Clark & Co. v. Nelson* 602

*Benton v. Vanderbilt University* 606

Problems 611

**B. Assignment And Delegation 612**

*Evening News Association v. Peterson* 613

*Sally Beauty Company, Inc. v. Nexxus Products Company, Inc.* 617

*Henderson v. Roadway Express* 621

*In re: Doctors Hospital of Hyde Park, Inc., Debtor.* 626

Problems 628

**Chapter 8. Alternative Bases for Liability:  
Non-Contract Claims 631****A. Promissory Estoppel 632**

*Ricketts v. Scothorn* 632

*Feinberg v. Pfeiffer Co.* 635

*Maryland National Bank v. United Jewish Appeal Federation  
of Greater Washington, Inc.* 640

*Alaska Airlines, Inc. v. Stephenson* 645

*Grouse v. Group Health Plan, Inc.* 648

Problems 650

**B. Pre-Contractual Negotiations Liability 651**

*Drennan v. Star Paving Co.* 652

*Corbin-Dykes Electric Co. v. Burr* 656

*Hoffman v. Red Owl Stores, Inc.* 658

Problems 666

**C. Quasi-Contract 667**

*Cotnam v. Wisdom* 668

*Pyeatte v. Pyeatte* 670

*Farese v. McGarry* 677

Problems 679

**Table of Cases 683**

**Index 689**