

Contracts: Cases and Materials (7th Edition)

Farnsworth, Young, Sanger, Cohen and Brooks, editors

Chapter 1: Bases for Enforcing Promises. In an engaging new beginning, the chapter now starts with two cases that explore the meaning of promise. The cases are the old favorite, *Hawkins v. McGee*, and a 1999 case about the sale of a sport fishing boat that the buyer found wouldn't go as fast as promised. The cases provide an early and straightforward introduction to the common law and the UCC. The chapter then offers an introduction to remedies, before turning to the traditional bases for enforcing promises and quasi-promises: consideration, reliance, and restitution.

Chapter 2: Creating Contractual Obligations. This chapter, formerly "The Bargaining Process," treats contract formation under common law principles and under the UCC. It also includes a section on pre-contractual obligation.

Chapter 3: The Statute of Frauds. This chapter treats requirements, some old, some new, that agreements be documented, including rules about electronic documentation. It provides in some detail information about real-property transactions, about the "one-year clause," suretyship agreements, and contracts for the sale of goods. An opening section ("Overview") would suit an instructor who, within the confines of a 4 credit course, may have limited time to cover the subject.

Chapter 4: Policing the Bargaining Process. This is the first of two chapters that concern judicial and legislative policing against abuses in contracting. The focus in Chapter 4 is on the bargaining *process*; it includes capacity, duress, the pre-existing duty rule, and other common law measures concerning the behavior of negotiating parties. Chapter 6 pays attention to policing measures directed at fairness in the *substance* and *performance* of the deal. These two chapters were formerly part of a policing behemoth. In this chapter, and the two that follow, we take a somewhat more chronological approach to the contracting process.

Chapter 5: Determining the Parties' Obligations under the Contract: Ascertaining, Interpreting, and Supplementing the Agreement. This chapter proceeds from the assumption that the parties have bargained fairly and reached a deal. The focus here is on how the terms of the deal are ascertained (the parol evidence rule), how they are interpreted, and how they are supplemented (by default terms and implied terms, including warranties).

Chapter 6: Limits on the Bargain and Its Performance. At this point in the book, contract formation (mechanics and policing) and the tools for finding its terms should be in place. Even when a deal has been fairly reached, the law may still place limits on its enforcement out of a sense of fairness regarding its substance and performance. This chapter deals first with traditional common law measures and then focuses on adhesion contracts, unconscionability (looking

particularly at the treatment of mandatory arbitration clauses), and public policy. Materials on good faith are also included and highlighted in this section.

Chapter 7: Remedies. This chapter presents the doctrines developed to remedy breach through specific and substitute forms of relief. These include, principally, expectation damages, but also other money damages measures and specific performance. The chapter continues to emphasize the distinct problems of overhead and lost profits, lost volume, limitations on damages, and liquidated damages.

Chapter 8: Performance and Breach. Chapter 8 treats express and implied conditions as well as the doctrines that operate to mitigate the sometimes harsh effects of the failure of a condition: substantial performance, divisibility, and restitution. The chapter also covers anticipatory repudiation under the common law and the UCC provision for “assurance of due performance.”

Chapter 9: Mistake, Impracticability, and Frustration. This chapter provides a straightforward presentation of the problems that arise when the basic assumptions of contracting parties are mistaken or thwarted and performance is impeded by unexpected circumstances. These include existing circumstances not known to the parties at the time they enter the contract and events that occur after formation of the contract.

Chapter 10: Rights and Responsibilities of Third Parties. This chapter combines two interrelated topics that were formerly divided into two chapters: third-party-beneficiary contracts and the concepts of delegation and assignments. It illustrates how statutes and regulations bear on these matters, as well as policies espoused by the courts.