ASPEN CASEBOOK SERIES

BARNETT
OMAN

CONTRACTS
Cases and Doctrine

Seventh Edition

10050858-0003

ISBN 978-1-5438-2627-2

BARNETT
OMAN

CONTRACTS
Cases and Doctrine

Seventh Edition

ASPEN PUBLISHING

EDITORIAL ADVISORS

ASPEN CASEBOOK SERIES

Patrick Hotung Professor of Constitutional Law
Georgetown University Law Center

Rollins Professor of Law
William & Mary Law School

ASPEN PUBLISHING

To contact Customer Service, e-mail customer.service@aspenpublishing.com, call 1-800-950-5259, or mail correspondence to:

Aspen Publishing
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-5438-2627-2

Names: Barnett, Randy E., author. | Oman, Nathan, author.
Title: Contracts : cases and doctrine / Randy E. Barnett, Patrick Hotung Professor of Constitutional Law, Georgetown University Law Center; Nathan B. Oman, Rollins Professor of Law, William & Mary Law School.
Description: Seventh edition. | Frederick, MD: Aspen Publishing, [2021] | Series: Aspen casebook series | Includes bibliographical references and index. | Summary: "A casebook for the Contracts course for first-year law students"—Provided by publisher.
Identifiers: LCCN 2020043058 (print) | LCCN 2020043059 (ebook) | ISBN 9781543826272 (hardcover) | ISBN 9781543826289 (ebook)
Subjects: LCSH: Contracts—United States. | LCGFT: Casebooks (Law)
Classification: LCC KF801.A7 B35 2021 (print) | LCC KF801.A7 (ebook) | DDC 346.7302/2—dc23
LC record available at https://lccn.loc.gov/2020043058
LC ebook record available at https://lccn.loc.gov/2020043059

About Aspen Publishing

Aspen Publishing is a leading provider of educational content and digital learning solutions to law schools in the U.S. and around the world. Aspen provides best-in-class solutions for legal education through authoritative textbooks, written by renowned authors, and breakthrough products such as Connected eBooks, Connected Quizzing, and PracticePerfect.

The Aspen Casebook Series (famously known among law faculty and students as the "red and black" casebooks) encompasses hundreds of highly regarded textbooks in more than eighty disciplines, from large enrollment courses, such as Torts and Contracts to emerging electives such as Sustainability and the Law of Policing. Study aids such as the *Examples & Explanations* and the *Emanuel Law Outlines* series, both highly popular collections, help law students master complex subject matter.

Major products, programs, and initiatives include:

- **Connected eBooks** are enhanced digital textbooks and study aids that come with a suite of online content and learning tools designed to maximize student success. Designed in collaboration with hundreds of faculty and students, the Connected eBook is a significant leap forward in the legal education learning tools available to students.
- **Connected Quizzing** is an easy-to-use formative assessment tool that tests law students' understanding and provides timely feedback to improve learning outcomes. Delivered through CasebookConnect.com, the learning platform already used by students to access their Aspen casebooks, Connected Quizzing is simple to implement and integrates seamlessly with law school course curricula.
- **PracticePerfect** is a visually engaging, interactive study aid to explain commonly encountered legal doctrines through easy-to-understand animated videos, illustrative examples, and numerous practice questions. Developed by a team of experts, PracticePerfect is the ideal study companion for today's law students.
- The **Aspen Learning Library** enables law schools to provide their students with access to the most popular study aids on the market across all of their courses. Available through an annual subscription, the online library consists of study aids in e-book, audio, and video formats with full text search, note-taking, and highlighting capabilities.
- Aspen's **Digital Bookshelf** is an institutional-level online education bookshelf, consolidating everything students and professors need to ensure success. This program ensures that every student has access to affordable course materials from day one.
- **Leading Edge** is a community centered on thinking differently about legal education and putting those thoughts into actionable strategies. At the core of the program is the Leading Edge Conference, an annual gathering of legal education thought leaders looking to pool ideas and identify promising directions of exploration.

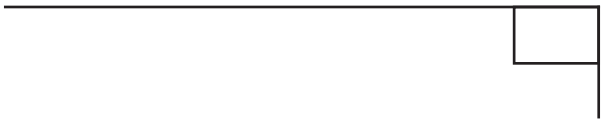
To my wife, Beth, and my kids, Laura and Gary, for all their love and support.
—Randy E. Barnett

For Jacob and Beth, third party beneficiaries.
—Nathan B. Oman

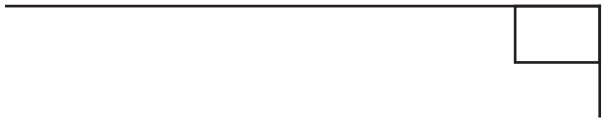
33

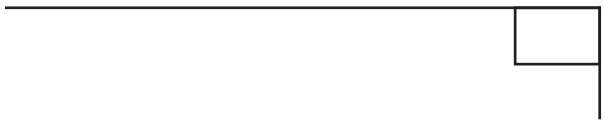
371

465



519





667

883

961

963

993

1095

In the beginning there was the textbook. It consisted of explanatory text. Students studied contracts largely on their own using treatises such as those by Blackstone and Kent or summaries of these treatises written by learned practitioners. Next came the casebook. It consisted of cases. Casebooks were developed for teaching contracts in the university classroom setting using the "case method." Then came the multivolume modern specialized treatises, the Restatements, the Realist Revolution, the Uniform Commercial Code, and, most recently, an explosion of legal scholarship with an increasing emphasis on legal theory.

As contracts casebook authors struggled to cope with each of these developments, contracts casebooks were transformed into an amalgam of highly edited cases and "squibs," fragments of law review articles, excerpts from the Uniform Commercial Code and the Restatement—and, of course, the ubiquitous "note material." The idea was to integrate the diverse sources of contract law in a single tightly edited volume. However, this evolution from casebook to integrated snippets of material has resulted in several undesirable consequences.

First, contracts teaching materials are now predigested. Practicing lawyers and legal scholars must scan whole cases, whole articles, and whole statutes to glean the information relevant to their problem. Unfortunately, to get everything into a single volume, cases, articles, and other materials are so heavily edited that students are not required to sift through the materials themselves. The scanning has already been done for them by the casebook author. Rather than gleaning the message of a case or an article, the challenge posed to students and professors by today's casebooks is to decipher the casebook *author's* message hidden in the structure of the materials.

Further, because highly edited casebooks inevitably take on a heavy dose of their authors' views of contracts, novice professors are forced either to learn and accept the author's viewpoint or to swim heroically against the tide. Experienced professors with independent minds are less likely to engage in fighting the casebook and are more likely to supplement it with their own materials, perhaps eventually abandoning the casebook altogether. While it is inevitable that the author's views will be reflected in any casebook, the more heavily edited and integrated a casebook is, the more difficult it becomes for teachers to project to students their own views of contract.

Finally, to make room for more cases about complex commercial transactions, contracts casebooks have increasingly abandoned the classic cases that contracts professors still debate to this day. Complicated

commercial fact patterns make contracts seem remote from the life experience of average first-year law students, who are required to take the course but may or may not be interested in pursuing careers practicing commercial law. As a result, contracts professors are at a competitive disadvantage with their colleagues who teach seemingly more engaging first-year subjects such as criminal law or torts.

This book charts a different course. It contains far fewer cases that are more lightly edited than has become the norm. In addition to commercial transactions, we have favored a mix of classic and very recent cases involving provocative controversies,[1] memorable fact patterns,[2] and public figures.[3] These are cases that lend themselves to discussing both basic contract doctrine and the broad philosophical, economic, and political implications of adhering to these legal rules and principles.

In place of vexatious note material, students will find "Study Guides" before most cases and, after each topic, "Reference" citations to the most popular and respected contract treatises.[4] In this way, students receive useful questions and suggestions *before* they read a case and ready access to more comprehensive and authoritative explanations of the material than is possible in a casebook. Each section also includes relevant provisions of the Uniform Commercial Code and the Restatement (Second) of Contracts.

We believe it is safe to say that this casebook contains a larger portion of the scholarship providing context on the famous contracts cases than any other. These "relational background" materials will enrich the students' understanding of the cases and will stimulate a deeper classroom discussion than will cases or statutes alone. Students actually *enjoy* them! They also illustrate that opinions of appellate courts are often surprisingly incomplete and that one's sympathies for the parties may shift upon learning more about the facts. In addition, historical, comparative, ethical, economic, statutory, procedural, empirical, commercial, and theoretical "background materials" were selected and edited to engage students with the subject of contracts and spark debate, but also to be accessible. They can be assigned as required or optional reading, or they may be skipped altogether without detracting from doctrinal coverage, thereby greatly shortening the book.

This seventh edition makes a few changes. We have shortened the section dealing with the statute of frauds and omitted the materials dealing with reformation under the parole evidence rule. We have added

---

1. For example, surrogacy agreements, failed vasectomies, involuntary servitude, palimony claims, sexual harassment, reporters' promises of confidentiality, and children's rights.

2. For example, Chevy Corvettes, Carbolic Smokeballs, custom stereos, oil embargoes, cancelled coronations, football players, opera singers, college catalogues, employment manuals, computer software, and pregnant cows.

3. For example, Shirley Maclaine, Robert Reed, Brooke Shields, Jack Dempsey, Lee Marvin, Lillian Russell, and Elvis.

4. References are provided to Randy E. Barnett, The Oxford Introduction to U.S. Law: Contracts (2010), E. Allan Farnsworth, Contracts (4th ed. 2004), John D. Calamari & Joseph M. Perillo, Contracts (6th ed. 2009), and John E. Murray, Murray on Contracts (5th ed. 2011).

additional material on restitution and included cases dealing with cryptocurrencies and smart contracts, public policy exceptions during a pandemic, and emotional support animals. Here is a brief summary of what's been taken out and what's been added:

- In Chapter 3, we have added Attorney General v. Blake, Snepp v. United States (squib), Al-Ibrahim v. Edde, and Pelletier v. Johnson.
- In Chapter 4, we have deleted Register.com, Inc. v. Verio, Inc. and materials from the Uniform Computer Information Transactions Act and Uniform Electronic Transactions Act.
- In Chapter 6, we have added Carter Baron Drilling v. Badger Oil Corp. and C.R. Klewin Inc. v. Flagship Properties, Inc. We deleted The Travelers Insurance Co. v. Bailey, Restatement (Second) of Contracts §155, Cloud Corp. v. Hasbro, Inc., and materials from on the "E-SIGN" Act, Uniform Electronic Transactions Act, and the Uniform Computer Information Transactions Act.
- In Chapter 14, we have added Cohen v. Clark.
- In Chapter 16, we have added Hanford v, Connecticut Fair Ass'n, Inc. and deleted Meyer v. Hawkinson.
- In Chapter 17, we have added B2C2 Ltd v. Quoine Ltd Pte and materials form the UK Jurisdiction Taskforce, Legal statement on cryptoassets and smart contracts.

For those professors who wish to teach contract theory by means of excerpts from legal scholarship, the anthology *Perspectives on Contract Law*[5] continues to mesh harmoniously with the organization of this casebook. In contrast to the complex and sometimes idiosyncratic organization of some other casebooks, a great effort was made to adhere to a comprehensible organization reflecting the cause of action for breach of contract: Enforcement, Mutual Assent, Enforceability, Performance and Breach, and Defenses. While starting with enforcement or remedies is sometimes controversial (and we explain this choice in the introduction to Chapter 2), the modular construction of the casebook permits professors easily to reorder these topics as they see fit.

Randy E. Barnett & Nathan B. Oman

November 2020

5. Randy E. Barnett & Nathan B. Oman, *Perspectives on Contract Law* (5th ed. 2018).

This book would not have been possible without the assistance of a great many persons. First are the wonderful people at Little, Brown and now Aspen Publishers of Wolters Kluwer. Their commitment to excellence by means of repeated peer reviews of the original proposal and successive drafts immeasurably improved the final product. Special thanks are due to Carol McGeehan, who originally conceived of this project, Betsy Kenny, who ably assisted her in shepherding it from conception to completion, and Tony Perriello, who deftly edited the manuscript for the first edition. Randy would like to acknowledge his debts as well to the professors who gave selflessly of themselves as anonymous reviewers of the original manuscript: Miriam A. Cherry, Kevin Davis, David A. Hoffman, Kristin Madison, Katherine E. White, and Noah D. Zatz. Although he does not know who of them suggested which improvements to the text, he knows that, as a group, they functioned as an original coauthor—looking over his shoulder to ensure that the book responded to the diverse needs and preferences of other contracts teachers. In addition, Ian Ayres, Sheldon Halpern, Alexander Mieklejohn, and Anthony Jon Waters provided useful suggestions. Several professors who used earlier editions of this casebook made a great many excellent suggestions for its improvement: Mark Chinen, Marcus Cole, Adrienne Davis, Mark Drumbl, Harold Dubroff, Mark Gergen, Grace Giesel, Henry Greely, Matthew Harrington, Michael Kelly, Kristin Madison, Carol Rose, Peter Siegleman, Robert Shepherd, Jim Smith, Eric Talley, Kellye Testy, William Vukowich, Kathy White, Christopher Wonnell, and David Snyder. My eagle-eyed BU colleague Mark Pettit (and contracts teacher *extraordinaire*) performed an enormous service by noting numerous typos and mistakes in the second edition.

Many improvements to previous drafts of this book were stimulated by class discussion with contracts students at Northwestern University, Harvard Law School, Boston University School of Law, William & Mary Law School, and Georgetown University Law Center. Finally, Randy wishes also to thank his extraordinary research assistants: Dan Brown at Chicago-Kent College of Law (Class of 1994), at Boston University, Saba Khairi (Class of 1995), Kristin Taylor, Andrew White, Kathleen Eagan (Class of 1996), Leslie Ravestein (Class of 2000), Lourdes German (Class of 2004) and, at Harvard Law School, Jaime Byrnes (Class of 2004). In addition to their other contributions, these students are solely responsible for researching and writing the wonderful judicial biographies that set this casebook apart by giving readers a sense of the men and women who struggled both to decide the cases before them and to justify their decisions. The idea to include judicial biographies in a casebook was

innovated by Professor Curtis R. Reitz and a few of his biographies are included here as well. The cases and materials on legal ethics in Chapters 6, 7, and 16 were suggested by the W M. Keck Foundation's project on legal ethics, which is administered by Geoffrey Hazard, Jr. and Susan Koniak. Nate wishes to thank Steven Prawitt (W&M, Class of 2022) and Yusuf Jafri (W&M, Class of 2022) who assisted with the preparation of the seventh edition.

The authors also wish to thank the following authors and publishers for permitting us to include excerpts from these works:

American Law Institute, Restatement of the Law, Contracts ©1932 by The American Law Institute. Reproduced by permission. All rights reserved. Restatement of the Law, Second Contracts © 1981 by The American Law Institute. Reproduced by permission. All rights reserved.

Barnett, Randy E., A Consent Theory of Contract, 86 Colum. L. Rev. 269 (1986). Copyright ©1986 by Columbia Law Review. Reprinted with permission.

Barnett, Randy E., and Becker, Mary E., Beyond Reliance: Promissory Estoppel, Contract Formalities, and Misrepresentations, 15 Hofstra L. Rev. 443 (1987). Copyright © 1987 by Hofstra Law Review. Reprinted with permission.

Bennett, James, G.M. Settles Suit Over Plant Closing, New York Times, April 15, 1994. Copyright ©1994 by The New York Times Company.

Bernstein, Lisa, Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry, 21 J. Legal Stud. 115 (1992). Reprinted with permission.

Blinkoff, Samuel, Note, Contracts: Acceptance of an Offer for a Unilateral Contract: Effect of Tender, 14 Cornell L.Q. 81 (1928). Copyright © 1928 by Cornell University. All rights reserved.

Cox, Stephen, Mysteries of the Titanic, Liberty, May 1997. Copyright © 1997 Liberty. Reprinted with permission.

Cunningham, Lawrence A., Contracts in the Real World: Stories of Popular Contracts and Why They Matter. Copyright © 2012 Cambridge University Press. Reprinted with permission.

Danzig, Richard, Hadley v. Baxendale: A Study in the Industrialization of the Law, 4 J. Legal Studies 249 (1975). Copyright © 1975 by Journal of Legal Studies, University of Chicago Law School. Reprinted with permission.

Danzig, Richard, The Capability Problem in Contract Law (1978 ed.). Copyright ©1978 by Foundation Press. Reprinted with permission.

Danzig, Richard, and Watson, Geoffrey R., The Capability Problem in Contracts (2d. ed. 2004). Copyright © 2004 by Foundation Press. Reprinted with permission.

Delong, Sidney W., The New Requirement of Enforcement Reliance in Commercial Promissory Estoppel: Section 90 as Catch-22. Wisconsin Law Review 943, 953, 1003-1008, 1009-1014, 1021 (1997). Copyright © 1997 University of Wisconsin Law Review. Reprinted with permission.

Dobbs, Dan B., Introduction to Equity and Equitable Remedies. Reprinted from Handbook on the Law of Remedies, copyright ©1993 by West Publishing Company. Reprinted with permission.

Epstein, Richard, Pleadings and Presumptions, 40 U. Chi. L. Rev. 556 (1973). Copyright © 1973 by University of Chicago Law Review. Reprinted with permission.

Etherington-Smith, Meredith and Pilcher, Jeremy, The "It" Girls: Lucy, Lady Duff-Gordon, The Couturiere "Lucille," and Eleanor Glynn, Romantic Novelist XIII-XIV 174-178. Copyright © 1986 by Harcourt Brace Jovanovich. Reprinted by permission.

Farnsworth, E. Allan, Contracts (2d ed. 1990). Copyright © 1990 by Allan E. Farnsworth. Reprinted with permission.

Farnsworth, E., Allan, Farnsworth on Contracts (4th ed. 2004). Wolters Kluwer.

Farnsworth, E. Allan and Young, William F., Contracts (4th ed. 1988). Copyright © 1988 by Foundation Press.

Frug, Mary Joe, Shirley MacLaine and the Mitigation of Damages Rule: Re-Uniting Language and Experience in Legal Doctrine, from Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook, 34 Am. U. L. Rev. 1065, 115-1119 (1985).

Fuller, Lon L., Basic Contract Law (1947 ed.). Copyright © 1947 by West Publishing Company. Reprinted with permission.

Furmston, M. P., ed., Cheshire, Fifoot & Furmston's Law of Contract (12th ed. 1991). Copyright ©1991 by Butterworth & Co., Ltd. Reprinted with permission.

Gilmore, Grant, The Death of Contract. Copyright © 1974 by the Ohio State University Press. All rights reserved. Reprinted with permission.

Goldberg, Victor, Framing Contract Law: An Economic Perspective 45-46, 48-49, 52-53, 55-58, 281-284. Cambridge, Mass.: Harvard University Press. Copyright © 2006 by the President and Fellows of Harvard College. Reprinted by permission of the publisher.

Llewellyn, Karl N., for the poem regarding White and Corlies, found in AA.A.IVI of the Karl N. Llewellyn Papers at the University of Chicago Law School. Reprinted with permission of the owner, the University of Chicago Law School.

Maine, Sir Henry, Ancient Law (1864 ed.). Copyright © 1963 by Sir Henry Maine. Reprinted with permission of Beacon Press.

Marotta-Wurgler, Florencia, Some Realities of Online Contracting, 19 Sup. Ct. Econ. Rev. 11 (2011). Copyright © 2011 University of Chicago Press. Reprinted with permission.

National Conference of Commissioners on Uniform State Laws, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Thirty-fifth Annual Meeting, Uniform Informational Transactions Act, and the Uniform Electronic Transactions Act. Reprinted by permission of the Uniform Law Commission.

Petzinger, Thomas, The Texaco-Pennzoil Wars. Copyright © 1987 by Thomas Petzinger. Reprinted with permission of The Putnam Publishing Group.

Pomeroy, A Treatise on Equity Jurisprudence (2d ed. 1892). Copyright © 1892 by Bancroft-Whitney Company. Reprinted with permission of Bancroft-Whitney, a division of Thomson Legal Publishing, Inc.

Richman, Barak, Weinstock, Jordi, and Mehta, Jason, A Bridge, A Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of

Rockingham County v. Luten Bridge Co., 84 N.C. L.Rev. 1841, 1 851-1879, 1906-1908 (2006). Copyright © 2006. Reprinted with permission.

Roberts, Jorie, Hawkins Case: A Hair-Raising Experience, Harvard Law Record, vol. 66, no. 6, March 11, 1978, p. 1. Copyright © 1978 by Harvard Law Record. Reprinted with permission.

Simpson, A. W. B., Contracts for Cotton to Arrive: The Case of the Two Ships Peerless, 11 Cardozo L. Rev. 287 (1990). Copyright © 1990 by Cardozo Law Review. Reprinted with permission.

Simpson, A. W. B., Quackery and Contract Law: The Case of the Carbolic Smokeball, 14 J. Legal. Stud. 345 (1985). Copyright © 1985. University of Chicago Press. Reprinted with permission.

Simpson, A. W. B., The Doctrine of Consideration—Introduction. Reprinted from A History of the Common Law of Contract: The Rise of the Action of Assumpsit (1975 ed.). Out of Print. Reprinted with permission.

Threedy, Deborah L., A Fish Story: Alaska Packers Association v. Domenico, 2000 Utah L. Rev. 185. Copyright © Deborah L. Threedy. Reprinted with permission.

Von Mises, Ludwig, Human Action (revised ed. 1963). Copyright © 1963 by Contemporary Books. Reprinted with permission Waddams, Stephen, Dimensions of Private Law: Categories and Concepts in Anglo-American Legal Reasoning 23-27 (2003). Copyright © 2003 by Cambridge University Press. Reprinted with permission of Cambridge University Press.

Weintraub, Russell J., A Survey of Contract Practice and Policy, 1992 Wis. L. Rev. 1. Copyright © 1992 by the Board of Regents of the University of Wisconsin System. Reprinted with permission of the Wisconsin Law Review.

Whitford, William C. and Macaulay, Stewart, Hoffman v. Red Owl Stores: The Rest of the Story, 61 Hastings L.J. 801 (2009). Reprinted with permission of William C. Whitford, Stewart Macaulay, and University of California, Hastings College of the Law. Reprinted with permission.

Williams, Sandra Boyd, The Indiana Supreme Court and the Struggle Against Slavery, 30 Indiana Law Review 305, 307-309 (1997). Copyright ©1997 Indiana University Law Review. Reprinted with permission.

Randy E. Barnett & Nathan B. Oman

November 2020

I

Enforcing Private Agreements

1

Introduction to Contract Law

A. Studying Contract Law

This book is organized around the cause of action for breach of contract. When one party to a lawsuit alleges that another person has breached a contract, certain legal consequences follow. What are these consequences? What must a party to a lawsuit establish to justify the use of legal coercion against another person? What responses are available to the other person to avoid the imposition of legal sanctions? The law of contract provides answers to these questions, and we shall examine each of these questions in turn. While this is by no means the only way to approach the study of contracts, it does provide a framework or structure within which to organize, in a coherent fashion, a great diversity of doctrines and theories.

1. The Structure of This Book

In Part I, we examine the *remedies* for breach of contract. Although a contract is created before remedies for its breach become an issue, the initial study of remedies will prove useful to understanding the elements of contract and breach. As explained in the introduction to Chapter 2, the different remedies being sought in the cases we shall read in Parts II, III, and IV reveal subtle differences in the underlying theories of obligation. Were the study of remedies left to the end, we would be unable to appreciate these differences. This should really come as no surprise. Judges are well aware that their decisions will be *enforced* and that enforcement will have serious consequences for both parties to the lawsuit. They are mindful of these consequences when deciding what must be shown to establish a breach of contract. In other words, were it not for the coercive remedies that result from a finding of breach of contract, the elements of contract formation and performance might well be very different than they are. For this reason, we begin our study of contract law by examining some public policy limitations that have been placed on the use of legal coercion to enforce contracts (Chapter 1) and then turn to the different types of remedies that may be imposed on the party in breach (Chapters 2 and 3).

In Parts II, III, and IV, we will study the three principal elements of an action for breach of contract: mutual assent, enforceability, and breach. Part II covers the element of *mutual assent*. How mutual assent

is normally reached is discussed in Chapter 4. Assessing the meaning of the parties' assent is the subject of Chapter 5. Chapter 6 concerns the special problems that surround written manifestations of assent. Finally, in Chapter 7, we examine complications for "mutual" assent that arise when more than two parties are involved in the making or are affected by the enforcement of a contract.

Part III covers the element of *enforceability.* Not all manifestations of mutual assent will be enforced. In Chapter 8, we examine various theories that have been offered to distinguish those commitments that will be enforced from those that will not and we attempt to apply these theories to a controversial case. We then turn our attention to the three categories of doctrine that have been used by courts to answer the question of enforceability. In Chapter 9, we examine the doctrine of consideration. In Chapter 10, we consider the even older body of law that would enforce those manifestations of assent that are accompanied by some evidence of intention to be legally bound. In Chapter 11, we discuss the doctrine of promissory estoppel that has arisen as an alternative to the doctrine of consideration.

Parts II and III concern the elements of a valid contract. A cause of action for breach of contract requires that the party seeking relief establish an additional element: that the other party has failed to meet its obligation of performance and is therefore in breach. In Part IV, we approach the issue of *performance and breach* from two directions. Chapter 12 concerns the requirement of "good faith" performance and the ways that the requirement of performance can be expanded, limited, or modified by the parties' consent. In Chapter 13, we examine how lawyers use conditions to define when non-performance is justified and, therefore, not a breach. Then, in Chapter 14, we study the types of breaches that justify not merely money damages, but the unilateral cancellation of the contract by the victim of the breach, as well as another variation on the expectation interest.

The prima facie case of breach of contract comprises the elements of mutual assent, enforceability, and breach, discussed in Parts II, III, and IV. If a court knew nothing more about a particular transaction than that a breach of contract had occurred, it would be justified in awarding a remedy against the party in breach. But the party in breach may bring further facts and circumstances to the attention of the court that are deemed to be sufficient to rebut the normal legal consequences of the prima facie case of breach of contract. Alternatively, prior to any breach a party to a contract that satisfies the elements of mutual assent and enforceability may affirmatively assert a *defense* to avoid its enforcement. Defenses to contractual obligation are the subject of Part V.

In Chapter 15, we study the defenses of incompetence and infancy, which are based on the capacity of the party, against whom enforcement is sought, to assent to a contract. These defenses are often used affirmatively to bar enforcement of a contract before any breach has occurred. Chapter 16 concerns situations in which a party's assent is obtained by improper means, such as by fraud, duress, or undue influence. Finally, in Chapter 17, we conclude our study of contract law by considering the defenses of mistake, impracticability, and frustration, which are based on the failure of an assumption that was basic to the contract, as well as attempts by parties to allocate the risks of changed circumstances.

2. The Three Dimensions of Law

The first year of law school can be at once exhilarating and frustrating. Some days everything makes perfect sense. On others, the process seems to threaten one's very soul. One of the sources of this feeling of dislocation is that legal analysis takes place on three distinct levels. Students are therefore forced to think in fundamentally different ways, sometimes simultaneously. One of the antidotes to frustration is to make explicit these "three dimensions of law."

All law is three-dimensional. The three levels on which the law of *any* subject simultaneously exists are doctrine, facts, and theory. The dimension of *doctrine* consists of the rules and principles of law by which judges justify their decisions. This is what the general public thinks of as "the law" and is probably the only dimension of law many of you expected to study in law school. In this casebook, we shall learn the rules and principles primarily by reading the "classic" cases that have become famous for establishing them, the Restatement (Second) of the Law of Contract (published by the American Law Institute), and the Uniform Commercial Code.[1] In addition, we shall study some recent and controversial cases in which these traditional principles have either been reaffirmed or modified. For students desiring additional information about the rules and principles covered in the text, page references to the three most popular treatises or hornbooks are provided, along with references to an overview of contract law that I have authored. Be sure to check with your professor to see which of these books, if any, he or she prefers you to use as references.

The dimension of *facts* is the actual application of doctrine by courts and its effects on contracting parties and the public at large. While it is difficult to study legal practice in the classroom, we will gain important insight into practice by studying the many different fact situations contained in the appellate cases in this casebook. In addition, the factual backgrounds of many of the classic cases have been examined in rich detail by legal historians. To provide a broader context as well as to highlight the inherent limitations of appellate court opinions, liberal excerpts from these writings are included. Such excerpts designated as "Relational Background" provide additional information about the relationship between the parties, their particular transaction, and the subsequent litigation. You will learn that the reported cases often omit tantalizing facts that may affect your sympathies for the parties. "Historical Background" material places the case it follows in a wider historical context. In some of these cases, we shall also critically examine the lawyer's conduct in light of the rules of professional conduct that govern the ethics of legal practice. In the final analysis, however, practice cannot be taught. It must be experienced. This is an important function of "clinical" legal education.

The dimension of *theory* consists of the rationales or reasons for legal doctrine. The principal source of theory is the "common sense" of lawyers and judges, but often these intuitions are implicitly or explicitly informed by other disciplines such as history, economics, or philosophy.

1. See E. Allan Farnsworth, Contract §§1.8-1.9 (4th ed. 2004).

The number of possible rules we might apply to cases is virtually infinite. Legal theory tells us why we have chosen the ones we have. In cases where there are no existing rules, legal theory tells us what the new rule should be. In cases where the rules conflict, legal theory tells us which rule should prevail. In sum, an intuitive grasp of the theories that underlie legal doctrine helps practicing lawyers to predict how courts will behave in the absence of doctrine or in the face of conflicting doctrines. For this reason, in addition to inquiring about the rules and principles to be found in the cases, statutes, and Restatement sections in this book, your professor may ask about the underlying rationale or theory that accounts for these doctrines. And many professors who stress legal theory will supplement this casebook by assigning readings from books and law review articles—both classic and recent.

3. The Restatement and the Uniform Commercial Code

Some cases like Hadley v. Baxendale (Chapter 2) are famous for the rules they originated, and lawyers consult appellate court decisions to determine the law in their jurisdictions. But cases are more often studied in law school because of their facts—the more colorful and memorable the better. It is next to impossible to understand rules of law without knowing the sorts of factual problems the rules are designed to address. This is why we do not simply study a list of "black letter" rules. At some point, however, facts are not enough. As noted above, this casebook stresses two sources of law in addition to judicial decisions: the Restatement (Second) of Contracts and the Uniform Commercial Code.

The Restatement is the product of the American Law Institute (ALI), a private nonprofit select group of practicing lawyers, judges, and law professors. One of the institute's principal projects is the production of "restatements of the law" of numerous subjects. Their stated purpose is to "address uncertainty in the law through a restatement of basic legal subjects that would tell judges and lawyers what the law was." Although these Restatements are supposed to be summaries of existing law, by systematizing their subjects, they inevitably reshape the law being summarized. Sometimes the Restatement also tries its hand at consciously reforming the law in response to complaints by legal scholars or practitioners or both. Supreme Court Justice Benjamin Cardozo explained the importance of the Restatements as follows:

> When, finally, it goes out under the name and with the sanction of the Institute, after all this testing and retesting, it will be something less than a code and something more than a treatise. It will be invested with unique authority, not to command, but to persuade. It will embody a composite thought and speak a composite voice. Universities and bench and bar will have had a part in its creation. I have great faith in the power of such a restatement to unify our law.[2]

2. Benjamin N. Cardozo, The Growth of the Law 9 (1924).

Each Restatement has a reporter or reporters who are the focal point for organizing the massive task of drafting proposals, eliciting feedback, and trying to accommodate criticisms. The reporters also draft the comments, illustrations, and reporters' notes that follow each black letter rule. Here is how the ALI describes the drafting process:

> The project's Reporter initially prepares a *Preliminary Draft* of one or more substantial segments of the project for review by the Advisers. Preliminary Drafts are normally also reviewed by the Members Consultative Group for the project.
>
> When the Director determines that the subject matter of a Preliminary Draft is ready for consideration by the Council, the Reporter prepares a *Council Draft*, which incorporates revisions made in light of the previous review by the Advisers and Members Consultative Group. Upon completion of its review, the Council may decide that all or part of the draft should be revised and resubmitted. Most often it will conclude that all or part, subject to revisions agreed to, should be submitted to the ALI membership at an Annual Meeting.
>
> A *Tentative Draft*, incorporating any revisions directed or agreed to by the Council, is submitted to the Annual Meeting for action by the membership. It is distributed in advance to the membership as a whole, which is invited to submit written comments and suggestions, and it is also made available to the entire legal community. At the close of the discussion, the Tentative Draft, subject to any changes resulting from the Annual Meeting, may be approved in whole or part or remanded in whole or part to the Reporter for further revision and eventual resubmission to the membership.
>
> The Council may conclude that a draft is not yet ready for action by the membership but would nevertheless benefit from discussion at the Annual Meeting. It may therefore direct that the draft, as revised following the Council Meeting, be submitted to the membership for discussion only. Such a draft is denominated a *Discussion Draft*.
>
> The drafting cycle continues until each segment of the project has been accorded final approval by both the Council and the membership. When extensive changes are required, the Reporter may be asked to prepare a *Proposed Final Draft* of the entire work, or appropriate portions thereof, for review by the Council and membership. Review of such a draft is not de novo, and it will ordinarily be limited to consideration of whether the changes previously decided upon have been accurately and adequately carried out. Upon final approval of the project, the Reporter, subject to oversight by the Director, prepares the Institute's *official text* for publication.

The first Restatement of Contracts was published in 1932. Its reporter was the famous Harvard contracts professor Samuel Williston. The Restatement (Second) of Contracts was commenced in 1962 and completed in 1979; it carries a 1981 publication date. Its original reporter was Harvard law professor Robert Braucher (1916-1982). When Professor Braucher was appointed to a seat on the Supreme Judicial Court of Massachusetts in 1971, Columbia law professor E. Allan Farnsworth (1928-2005) became the reporter. In this casebook, we will sometimes compare sections from the first and second Restatements to determine the significance of revisions. For example, in Chapter 11, we contrast the two versions of §90 that define the doctrine of promissory estoppel to see how the theory of that doctrine evolved between the first and second Restatements.

The other principal source of legal doctrine we will study is the Uniform Commercial Code (UCC). A product of the nineteenth-century movement to harmonize and make uniform the laws of the 50 states, the UCC is a joint product of the ALI and the National Conference of Commissioners on Uniform State Laws (NCCUSL). The conference describes itself as providing

> states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.
>
> Uniform Law Commissioners must be lawyers, qualified to practice law. They are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas where uniformity is desirable and practical.

The conference has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act, the Uniform Limited Partnership Act, and the Uniform Interstate Family Support Act. NCCUSL describes its drafting process as follows:

> Each uniform act is years in the making. The process starts with the Scope and Program Committee, which initiates the agenda of the Conference. It investigates each proposed act, and then reports to the Executive Committee whether a subject is one in which it is desirable and feasible to draft a uniform law. If the Executive Committee approves a recommendation, a drafting committee of commissioners is appointed. Drafting committees meet throughout the year. Tentative drafts are not submitted to the entire Conference until they have received extensive committee consideration.
>
> Draft acts are then submitted for initial debate of the entire Conference at an annual meeting. Each act must be considered section by section, at no less than two annual meetings by all commissioners sitting as a Committee of the Whole. With hundreds of trained eyes probing every concept and word, it is a rare draft that leaves an annual meeting in the same form it was initially presented.
>
> Once the Committee of the Whole approves an act, its final test is a vote by states—one vote per state. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act.
>
> At that point, a Uniform or Model Act is officially promulgated for consideration by the states. Legislatures are urged to adopt Uniform Acts exactly as written, to "promote uniformity in the law among the states." Model Acts are designed to serve as guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions.
>
> When drafting is completed on an act, a commissioner's work has only begun. They advocate the adoption of uniform and model acts in their home jurisdictions. Normal resistance to anything "new" makes this the hardest part of a commissioner's job. But the result can be workable modern state law that helps keep the federal system alive.

In 1940, the conference decided to address the issue of commercial relations. In 1942, Karl Llewellyn (1893-1962) of Columbia was named the principal drafter of the UCC. His assistant on the project was Soia Mentschikoff (1915-1984), who joined the faculty of the Harvard Law School in 1947 as its first female professor. In 1949, she was named associate chief reporter. The two were married in 1947 and, in 1951, both joined the faculty of the University of Chicago School of Law.

It took 10 years to draft the UCC and another 14 years to see it adopted by the legislatures of every state except Louisiana, which still uses a version of the Napoleonic Code. Article 2 of the UCC concerns the *sale* of *goods*. Students must know that if a contractual transaction is *not a sale* or *does not involve goods*, it is not covered by Article 2 of the UCC. So a sale of land or an employment services contract is still regulated by the common law of each state, not by the UCC. The case of J.O. Hooker & Sons v. Roberts Cabinet Co. (Chapter 2) discusses how to categorize contracts dealing with both goods and services. One reason for the revision of the Restatement was to incorporate the various reforms adopted in the UCC to harmonize both documents. Still, the Restatement (Second) is of greatest importance with the many contracts that do not involve the sale of goods and are not governed by the UCC.

In 2003, the ALI and NCCUSL completed work on proposed revisions of Article 2. After a highly contentious meeting of the Committee of the Whole in Denver, Colorado, the proposal was withdrawn due to strong opposition. And speaking of unsuccessful proposals by NCCUSL, in Chapter 10 we will study the Uniform Written Obligations Act that was drafted in 1925 with the assistance of Samuel Williston but was adopted by the legislatures of just two states. It remains, however, the law in Pennsylvania.

Students are always curious about the authoritative weight of these sources of law. A judicial decision is binding only within its relevant jurisdiction, though it may be persuasive in the courts of other jurisdictions, especially when considering a matter for the first time. The Uniform Commercial Code is a statute adopted by the legislatures of 49 states and is binding on courts; it supersedes any common law rules that are inconsistent with its provisions. By contrast, the Restatement is good "authority" in the literal sense: It is widely respected because of how it was drafted and the learned "authorities" who drafted it. For this reason, courts often adopt its provisions as the law. When a state appellate court is deciding what doctrine to adopt, following the Restatement is likely to be considered a safe option. Note, however, that courts have sometimes adopted provisions of the first Restatement as the law in their jurisdictions, and then have not since revisited the issue after the second Restatement was published.

4. How to Brief Cases for This Class

Because your ability to appreciate the classroom discussion of cases depends so heavily on your knowledge of the facts and the legal analysis of the court, many students find it useful to "brief" the cases on a separate sheet of paper. Some professors—myself included—even require their students to do so, especially during the first semester of law school. Cases

appearing in this material are either principal cases or are provided as background. *Background cases* are short excerpts and may not provide all the procedural and historical facts. They usually elaborate on or deviate from the principal cases they follow. They should be carefully studied (not skimmed), but your notes, or brief, of the case may be limited to the holding (if one is provided) and your analysis of how this material compares with the preceding principal cases. *Principal cases* are listed in italics in the table of contents and table of cases. Either all or a substantial portion of the case is reproduced in this casebook and is set apart from the rest of the text. They should be thoroughly briefed. This will greatly assist you in understanding the case, appreciating class discussion, and participating in class. Throughout this book, *Study Guide* questions are provided to guide and stimulate you while reading and briefing the cases. They are not intended to be comprehensive, and your professor may well choose to stress other issues.

There is no one right way to brief cases and eventually you will develop your own style, but you could do worse than to begin with this format:

a. Identify the PARTIES.
   - Who is suing whom? Determine who is the plaintiff/defendant, appellant/appellee, petitioner/respondent, etc.

b. Figure out the PROCEDURAL FACTS of the case.
   - What is the history of the *lawsuit itself*? For example, is this an appeal from the trial court to an appellate court? Was there a "finding of fact" in the lower court? By a judge or jury? The procedural context may govern which issues are to be argued.

c. Summarize the HISTORICAL FACTS that led to a lawsuit.
   - What happened between the parties that led someone to file a lawsuit?

d. What FORM OF RELIEF is being sought by the plaintiff/appellant?
   - For example, damages? Specific performance? Injunction?

e. Identify the ARGUMENTS of the parties.
   - What legal reason is the plaintiff/appellant/petitioner offering to justify the granting of relief? What arguments are made by the defendant/appellee/respondent against the granting of relief?

f. The OUTCOME of the case.
   - Who won? What, if any, relief was ordered by the court?

g. The REASONING of the court.
   - What reasons did the court offer for granting or denying relief? Did it summarize these reasons as a basic principle, or holding?

h. YOUR ANALYSIS.
   - Do you agree with the outcome of the case (who won)? How would you have decided the case?
   - Do you agree with the reasoning of the court? Can you give any other rationales for the outcome?
   - How does this case relate to other cases and materials you have read?
   - Both before and during the lawsuit, why have the parties behaved in the ways that they have?

Following many of the cases are various types of *background* materials that expand on the doctrinal material. These include relational, historical, comparative, ethical, economics, statutory, procedural, empirical, commercial, and theoretical background sections selected for their inherent interest to students and to enrich classroom discussion. Different professors will choose to emphasize different background materials, and few will discuss them all in class. Still, even if not assigned by your professor, you may find these additional readings to be interesting background to the assigned material. That is why they were included.

B. The Nature and History of Contract

The cases and materials in Sections B and C are intended to give you a "first look" at the basic issues of contract law. They raise fundamental questions about the enforcement of private agreements. These questions will not all be answered here, but will remain with us for the entire course.

Study Guide: *When reading the following case be sure to identify the court's response to each of the defendant's objections to the complaint. Although the elements or requirements of a contract will be covered in detail in Parts II and III, this case requires you to consider some preliminary questions about the nature and history of contract. For example, what does* assumpsit *mean? What is the difference between this cause of action and one in* negligence*? Why do you suppose that Pennsylvania (and many other states) refuses to imply a "warranty of cure" from the words and conduct of a physician? Notice also how the court here used precedent to justify its decision. In refusing to award damages here, did it adhere to the standards provided by Mamlin v. Genoe? After reading this case, consider why Pennsylvania might have passed a statute in 1975 that reads: "In the absence of a special contract in writing, a health care provider is neither a warrantor nor a gurantor of a cure."*

SHAHEEN v. KNIGHT

Court of Common Pleas of Lycoming County, Pennsylvania, 11 Pa. D. & C.2d 41 (1957)

Williams, P.J.*

Plaintiff, Robert M. Shaheen, is suing defendant physician because of an operation. He alleges defendant contracted to make him sterile. According to the complaint, the operation occurred on September 16, 1954, and a "blessed event" occurred on February 11, 1956, when

* *Charles Scott Williams* (1904-1966) was educated at Dickinson College (A.B., LL.B.) and served as President Judge on the Court of Common Pleas of Pennsylvania for two terms (1944-1954, 1954-1963). Prior to joining the bench, Williams served as U.S. Commissioner (1932-1936) and District Attorney (1936-1944) of Williamsport, Pennsylvania.—[This judicial biography was written by Kristin Taylor, hereinafter "K.T."]

plaintiff's wife, Doris, was delivered of a fifth child as a result of marital relations continued after the operation.

Plaintiff in his complaint does not allege any negligence by defendant. The suit is based on contract.

Plaintiff does not claim that the operation was necessary because of his wife's health. He claims that in order to support his family in comfort and educate it, it is necessary to limit the size of his family, and that he would be emotionally unable to limit his family's size by reason or will power alone, or by abstention.

Plaintiff claims damages as follows: "That the Plaintiff, as a result, despite his love and affection for his fifth (5th) child, as he would have for any other child, now has the additional expenses of supporting, educating and maintaining said child, and that such expense will continue until the maturity of said child, none of which expense would have been incurred, had the Defendant, Dr. John E. Knight, fulfilled the contract and undertaking entered into by him, or fulfilled the representations made by him."

Defendant has filed preliminary objections to the complaint, alleging:

1. An alleged contract to sterilize a man whose wife may have a child without any hazard to her life is void as against public policy and public morals.
2. Under Pennsylvania law there is no [implied] "warranty of cure" by a physician.
3. That the complaint charges no lack of skill, malpractice, or negligence in any respect in the performance of the operation, a vasectomy, but merely seeks to recover upon the ground that the operation did not achieve the purpose sought and the results allegedly promised.
4. That while the complaint is said to be in assumpsit, it appears to be grounded on deceit, that is that the defendant made a statement, misrepresenting material facts, known to be false or made in ignorance or reckless disregard of its truth, with an intent to induce the plaintiff to act in reliance thereon, and the plaintiff, believing it to be true, did act thereon to his damage. If this be true the plaintiff has made no allegation of fraudulent intent on defendant's part, or any of the elements of deceit.
5. The duty of a physician or surgeon to bring skill and care to the amelioration of the condition of his patient does not arise from contract but has its foundation in public considerations which are inseparable from the nature and exercise of his calling; it is predicated by the law on the relation which exists between physician and patient, which is the result of a consensual transaction.
6. That the plaintiff has suffered no damage but "has been blessed with the fatherhood of another child."

We are of the opinion that a contract to sterilize a man is not void as against public policy and public morals. It was so held in Christensen v. Thornby, 192 Minn. 123, 255 N.W. 620. Also see 93 A.L.R. 570. It is argued,

however, that in the *Christensen* case the operation was for a man whose wife could not have a child without hazard to her life, whereas in the instant case claimant has contracted for sterilization because he cannot afford children.

It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in declaring such policy void: Mamlin v. Genoe, 340 Pa. 320. It has been said: "There must be a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people and in their conviction of what is just and right and in the interest of the public weal."

It is the faith of some that sterilization is morally wrong whether to keep [the] wife from having children or for any other reason. Many people have no moral compunctions against sterilization. Others are against sterilization, except when a man's life is in danger, when a person is low mentally, when a person is an habitual criminal. There is no virtual unanimity of opinion regarding sterilization. The Superior Court, in Wilson v. Wilson, 126 Pa. Superior Ct. 423, ruled that the incapacity to procreate is not an independent ground for divorce where it appears that the party complained against is capable of natural and complete copulation. This case so held whether or not there was natural or artificial creation of sterility, and recognized that in some cases there was artificial creation of sterility. It would appear that an exception would have been made had there been recognized any public policy against sterilization.

Defendant argues that there is no [implied] "warranty of cure" by physician[s] in Pennsylvania. He also argues that the duty of a physician or surgeon does not arise from contract and suggests that it is against public policy for such a contract to be upheld....

A doctor and his patient, however, are at liberty to contract for a particular result. If that result be not attained, the patient has a cause of action for breach of contract. The cause of action is entirely separate from malpractice, even though both may arise out of the same transaction. The two causes of action are dissimilar as to theory, proof and damages recoverable. Negligence is the basis of malpractice, while the action in contract is based upon a failure to perform a special agreement.... Damages in a contract action between doctor and patient are restricted in some jurisdictions.

In the instant case plaintiff is suing, according to his claim, under a special contract in which defendant agreed to make him "immediately and permanently sterile and guaranteed the results thereof." Defendant's "warranty of cure" argument therefore does not apply to this case.

We see little merit in defendant's argument that the action seems to be grounded on deceit and that therefore we should dismiss the complaint.

Defendant argues, however, and pleads, that plaintiff has suffered no damage. We agree with defendant. The only damages asked are the expenses of rearing and educating the unwanted child. We are of the opinion that to allow damages for the normal birth of a normal child is foreign to the universal public sentiment of the people.

Many consider the sole purpose of marriage a union for having children.

As Chief Justice Gibson said in Matchin v. Matchin, 6 Pa. 332 [1847]:

> The great end of matrimony is not the comfort and convenience of the immediate parties, though these are necessarily embarked in it; but the procreation of a progeny having a legal title to maintenance by the father; and the reciprocal taking for better, for worse, for richer, for poorer, in sickness and in health, to love and cherish till death, are important, but only modal conditions of the contract, and no more than ancillary to the principal purpose of it. The civil rights created by them may be forfeited by the misconduct of either party; but though the forfeiture can be incurred, so far as the parties themselves are concerned, only by a responsible agent, it follows not that those rights must not give way without it to public policy, and the paramount purposes of the marriage—the procreation and protection of legitimate children, the institution of families, and the creation of natural relations among mankind; from which proceed all the civilization, virtue, and happiness to be found in the world.

To allow damages in a suit such as this would mean that the physician would have to pay for the fun, joy and affection which plaintiff Shaheen will have in the rearing and educating of this, defendant's [sic] fifth child. Many people would be willing to support this child were they given the right of custody and adoption, but according to plaintiff's statement, plaintiff does not want such. He wants to have the child and wants the doctor to support it. In our opinion to allow such damages would be against public policy.

RESTATEMENT (SECOND) OF CONTRACTS

Study Guide: *Many of the cases in this book will be followed by sections taken from the Restatement (Second) of Contracts. The Restatement is an extremely influential source of law for courts dealing with contracts problems. (See page 6.) When you see these sections, try to apply them to the case or cases that immediately precede them. For example, apply the following definitions of contract, promise, and agreement to the facts of Shaheen v. Knight. Was there a promise according to the Restatement §2(1)? If so, how was the promise made (§4)? These sections are included here only for introductory purposes. They shall be of greater importance when studying manifesting assent in Part II. We shall consider the concept of bargain mentioned in §3 at length in Chapter 9.*

§1. CONTRACT DEFINED

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.