

Syllabus For

CONTRACTS I

(Course No. 202-11; 3 credits)

Senior Associate Dean Gregory E. Maggs

"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." Restatement (Second) of Contracts § 1

Content of the Course:

Contracts is a two-semester course. You will take Contracts I this fall and Contracts II next spring. You will receive separate grades for each. I will teach section 11 both semesters.

Contracts I covers most of the common law of contracts. It examines the formation and enforcement of contracts, the law of restitution, the statute of frauds, the doctrines policing the bargaining process, and the remedies available for breach of contract.

Contracts II covers more advanced topics in the common law of contracts. It also covers the law of sales under article 2 of the Uniform Commercial Code. You will receive a separate syllabus for Contracts II in January.

Class Schedule:

This class will meet on Mondays from 9:55 a.m. to 10:50 a.m., on Thursdays from 1:40 p.m. to 2:35 p.m, and on Fridays from 11:00 a.m. to 11:55 a.m. The class will not meet on Labor Day, September 7, or during the week of the first-year mid-term examinations, October 19-23. The class will meet on Tuesday, November 24, which is a "constructive Friday." The last day of class is Thursday, December 3.

Office Hours, Email, Telephone, Website:

My office is in E-Building room 208. You can meet with me during my office hours (which I will announce in class) or at different times if these hours are not convenient.

Please feel free to contact me by email or telephone. My email address is gmaggs@law.gwu.edu. My office telephone number is (202) 994-6288.

At my website ([docs.law.gwu.edu/facweb/gmaggs](http://docs.law.gwu.edu/facweb/gmaggs)), you can obtain copies of this syllabus and copies of my past examinations and their grading guides. I also have posted on the website a set of video review lectures that you may find helpful.

Required Books:

We will use two books this semester, one casebook and one supplement:

Casebook: Farnsworth, et al., Cases and Materials on Contracts (Foundation Press 7th ed. 2008).

Supplement: Burton & Eisenberg, Contract Law: Selected Source Materials (West Publishing 2009)

Final Examination:

This course will have an open-book examination on Thursday, December 17, at 2:00 p.m. In completing the examination you may use any written materials that you bring with you.

Class Participation:

You are expected to come to class prepared to discuss the assigned reading. If you are unprepared or if you are going to be absent, let me know before class.

You will need to bring your casebook and supplement to class every day because we will be looking at them very closely.

Recording of Classes:

This course will follow the law school's "Class Recording Policy," which is available at the Student Affairs Office website. This policy permits students to request the recording of classes when they will be absent for religious reasons, family

emergencies, and certain other causes. Please make requests for recording and address questions about the policy to the Student Affairs Office.

Reading Assignments:

At the end of each class, I will tell you how far on the following outline to read for the next class.

You should read and study each section of the Restatement (Second) of Contracts assigned below. You can find the sections in your supplement.

You do not have to read the notes and problems following the assigned text and cases in our casebook unless they are specifically assigned.

Please look up any legal words or phrases that you do not understand in a law dictionary. Look up other words in a regular dictionary.

I. BASES FOR ENFORCING PROMISES

A. HISTORICAL BASES

Text, pp. 29-32

B. CONSIDERATION AS A BASIS FOR ENFORCEMENT

1. Promise or Performance Bargained for in Exchange

Hamer v. Sidway, pp. 34-37

Note (1), p. 37

Restatement §§ 71(1) & (2), 79(a) & (b)

Note (3), p. 38

Text, pp. 39-40

Fiege v. Boehm, pp. 40-45

Restatement §§ 72, 74(1)

Note (1), p. 45

2. Distinguishing Bargains from Non-Bargains

Feinberg v. Pfeiffer Co., pp. 46-50

Notes (1) - (2), p. 50

Mills v. Wyman, p. 50-51

Note (1), p. 51

Kirksey v. Kirksey, pp. 56

Notes (1)-(2), p. 57

Syllabus Appendix No. 1, Part 1

Text, pp. 58

Lake Land Employment v. Columer, pp. 58-64

3. Promises as Consideration

Text, p. 69

Strong v. Sheffield, pp. 69-71

Note (1), pp. 71

Restatement § 2(1)

Text, p. 72

Mattei v. Hopper, pp. 72-75

Text, p. 83

Wood v. Lucy, Lady Duff-Gordon, pp. 83-85

Note (2), p. 85-86

Syllabus Appendix No. 10, Part 1

Restatement §§ 202(1), 205

C. RELIANCE AS A BASIS FOR ENFORCEMENT ("Promissory Estoppel")

1. Development of Reliance as a Basis for Enforcement

Text, p. 89

Syllabus Appendix No. 2

Ricketts v. Scothorn, pp. 89-91

Text, pp. 91-93  
[Allegheny College v. Nat'l Ch. C. Bank]

Syllabus Appendix No. 1, Part 2

Restatement § 90

2. Elements of Promissory Estoppel

Feinberg v. Pfeiffer, pp. 94-95

Cohen v. Cowles Media Co., pp. 98-99

Note, p. 99

Note (4), p. 97

D. RESTITUTION AS AN ALTERNATIVE BASIS FOR RECOVERY

Text, pp. 105-106

Syllabus Appendix No. 3

Cotnam v. Wisdom, pp. 106-109

Note (2), p. 109

Callano v. Oakwood Park Homes Corp., pp. 110-112

Problem, pp. 109-110

[Schott v. Westinghouse Electric]

E. "MORAL OBLIGATION" AS A BASIS FOR ENFORCEMENT

Text, pp. 86-88

Notes (1) & (2), pp. 51-52

Restatement §§ 14, 82, 83, 85

Webb v. McGowin, pp. 52-55

Note (1), p. 55

Restatement § 86

Problem, pp. 88-89

[Dementas v. Estate of Tallas]

II. CONTRACT FORMATION

A. ASSENT

Restatement § 21

Text, pp. 116-117

Lucy v. Zehmer, pp. 117-120

Text, pp. 123-124

B. OFFERS

Text, p. 126

Restatement §§ 24, 26

Owen v. Tunison, pp. 127-128

Note, p. 128

Harvey v. Facey, p. 129

Note (1), pp. 129-130

Fairmout Glass v. Crunden-Martin, pp. 130-133

Text, pp. 133-134

Lefkowitz v. Great Minn. Surplus, pp. 134-135

C. ACCEPTANCE

Text, p. 147

Restatement §§ 4, 30, 32, 54(1), 56, 60

International Filter v. Conroe Gin, pp. 147-151

Notes (1) & (3), p. 151

White v. Corlies and Tift, pp. 152-154

Note (2), p. 154

Ever-Tite Roofing v. Green, pp. 154-155

Note, p. 156

Text, pp. 156-157

[Carlill v. Carbolic Smoke Ball Co.]

Note (1), p. 158

Text, p. 158

Restatement § 60

Allied Steel v. Ford Motor Co., pp. 158-160

Notes (1) & (2), pp. 160-161

Text, pp. 166-167

[Hobbs v. Massasoit Whip Co.]

Restatement § 69(1)

Note, p. 167

D. LAPSE, REVOCATION, AND REJECTION OF OFFERS

Text, pp. 167-169, 170-171

Restatement §§ 36, 41, 42, 43, 48

Dickinson v. Dodds, pp. 171-174

Text, pp. 180-181

Problem, pp. 181-182

[Earle v. Angell]

Note (3), pp. 125-126

Text, pp. 182-183

Restatement §§ 38, 39, 59

Text, pp. 188-189

[M. & St. L. v. Columbus Rolling-Mill]

Problem, pp. 189-190

E. MAILBOX RULE

Restatement § 63

Text, pp. 185-187

F. LIABILITY DESPITE APPARENTLY FAILED NEGOTIATIONS

Text, pp. 220-221

Restatement §§ 45, 87(2)

Drennan v. Star Paving, pp. 222-227

Text, p. 230

Hoffman v. Red Owl Stores, pp. 230-233

Channel Home Centers v. Grossman, pp. 239-245

G. DEFINITENESS

Restatement § 33

Text, pp. 246-247

[Varney v. Ditmars]

Toys, Inc. v. F.M. Burlington Co., pp. 249-250

Note (1), p. 250

III. THE REQUIREMENT OF A WRITING FOR ENFORCEABILITY

A. INTRODUCTION TO THE STATUTE OF FRAUDS

Text, pp. 257-260, 260-262

Restatement §§ 110, 111, 112, 124, 125, 130

Syllabus Appendix No. 4

C.R. Klewin v. Flagship Properties, pp. 270-275

Note (4), pp. 276-277

Langman v. Alumni Ass'n, pp. 299-300

B. REQUISITES OF WRITING AND SIGNING

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C. EXCEPTIONS TO THE WRITING REQUIREMENT

Text, p. 305

Restatement §§ 129, 139, 375  
Syllabus Appendix No. 5, Part 1  
Richard v. Richard, pp. 280-283  
Note (1), pp. 283-284  
Monarco v. Lo Greco, pp. 305-308  
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#### IV. POLICING THE BARGAIN

##### A. CAPACITY

###### 1. Introduction

Text, pp. 310-312

###### 2. Infancy

Restatement §§ 7, 14

Syllabus Appendix Nos. 6 & 7

Kiefer v. Fred Howe Motors, Inc., pp. 312-314

Note (1), p. 314

###### 3. Mental Infirmity

Restatement § 15(1)

Ortelere v. Teachers' Retirement, pp. 316-318

Cundick v. Broadbent, pp. 319-321

##### B. DURESS, MODIFICATION, AND ATTEMPTED MODIFICATION

Text, pp. 322-323

Restatement §§ 73, 175(1), 176(1)

Text, pp. 324-325

Alaska Packers' Ass'n v. Domenico, pp. 325-327

Text, pp. 329-330

[Schwartzreich v. Bauman-Basch]

Note (1), p. 330

Watkins & Sons v. Carrig, pp. 331-334

Restatement § 89

C. MISREPRESENTATION, CONCEALMENT, NON-DISCLOSURE

Text pp. 352-353, 360-361

Restatement §§ 160, 162, 164(1)

Swinton v. Whitinsville Savings Bank, pp. 353-354

Kannavos v. Annino, pp. 356-359

Restatement § 161(d)

D. MISTAKE

Text, p. 808

Restatement §§ 151, 152, 154

Stees v. Leonard, pp. 808-810

Text, p. 815

[Wood v. Boynton]

[Sherwood v. Walker]

Note (1), pp. 815-816

Restatement §§ 153, 161(b)

E. DENYING SPECIFIC PERFORMANCE

Text, pp. 454, 583-584

Restatement §§ 359(1), 360, 364

McKinnon v. Benedict, pp. 455-457

Notes (1)-(2), p. 457

Tuckwiller v. Tuckwiller, pp. 458-459

F. PUBLIC POLICY

Restatement § 178(1)

Syllabus Appendix No. 8

Black Industries, Inc. v. Bush, pp. 460-462

Syllabus Appendix No. 10, Part 3

Note (1), pp. 462-463

G. EXCULPATION CLAUSES IN ADHESION CONTRACTS

Text, pp. 465-466

Restatement §§ 178, 206, 208, 211

Note (3), p. 472

[Galligan v. Arovitch]

Text, pp. 473-474

[Klar v. H & M Parcel Room]

O'Callaghan v. Waller & Beckwith, pp. 467-471

Note (2), p. 471

Henningsen v. Bloomfield Motors, pp. 445-449

Note (2), p. 449-450

U.C.C. § 2-302(1) & cmt. 1, supp. pp. 40-41

V. REMEDIES FOR BREACH

A. EXPECTATION, RELIANCE, AND RESTITUTION INTERESTS

Restatement §§ 344, 346, 347, 349, 359, 364, 371

Text, pp. 606-608

Text, pp. 13-14

Sullivan v. O'Connor, pp. 14-19

Note (1), p. 19

B. EXPECTATION DAMAGES AND INCENTIVES ("EFFICIENT BREACH")

Text, p. 20-22

Syllabus Appendix No. 9

Note (2), p. 23

C. LIMITATIONS ON DAMAGES

1. Avoidability

Restatement § 350

Text, pp. 629-630

Rockingham v. Luten Bridge, pp. 630-631

Text, pp. 637-638

Parker v. Twentieth Century-Fox, pp. 638-643

2. Incomplete or Defective Performance

Restatement § 348(2)

Text, p. 644

Jacob & Youngs v. Kent, pp. 645-646

Notes (1) & (3), pp. 646-648

Groves v. John Wunder Co., pp. 648-653

Note (1), p. 653

Problem, p. 653

Peevyhouse v. Garland Coal, pp. 653-655

3. Unforeseeability

Restatement § 351

Text, pp. 656-657

Hadley v. Baxendale, pp. 657-659

4. Uncertainty

Restatement §§ 346(2), 348(3), 349, 352

Text, pp. 672-673

Note (2), p. 673

[Collatz v. Fox Wisconsin Amusement Corp.]

Note (2), p. 26

Fera v. Village Plaza, Inc., pp. 674-678

Notes (1), p. 678

D. LIQUIDATED DAMAGES AND PENALTIES

Text, p. 679

Restatement § 356(1)

Dave Gustafson & Co. v. State, p. 688

Problem (2), pp. 689-690

## **APPENDIX No. 1 : Commentary on Consideration Issues**

### **Part 1: Commentary on Kirksey v. Kirksey**

"It is often difficult to determine whether words of condition in a promise indicate a request for consideration or state a mere condition in a gratuitous promise. An aid, though not a conclusive test in determining which construction of the promise is more reasonable is an inquiry whether the happening of the condition will be a benefit to the promisor. If so, it is a fair inference that the happening was requested as a consideration. . . . In case of doubt, where the promisee has incurred a detriment on the faith of the promisee, courts will naturally be loath to regard the promise as a mere gratuity, and the detriment incurred as a mere condition. But in some cases it is so clear that a conditional gift was intended that even if the promisee incurred detriment, the promise has been held unenforceable." 1 Samuel Williston, Contracts § 112 (1924).

### **Part 2: Commentary on Allegheny College v. National Chautauqua County Bank:**

a. "The Chief Judge finds in the expression, 'In loving memory this gift shall be known as the Mary Yates Johnston Memorial Fund,' an offer on the part of Mary Yates Johnston to contract with Allegheny College. The expression makes no such appeal to me. Allegheny College was not requested to perform any act through which the sum offered might bear the title by which the offeror states that it shall be known. The sum offered was termed a 'gift' by the offeror. Consequently, I can see no reason why we should strain ourselves to make it, not a gift, but a trade. . . . To me the words used merely expressed an expectation or wish on the part of the donor and failed to exact the return of an adequate consideration." 159 N.E. 173, 177 (N.Y. 1927) (Kellogg, J., dissenting).

b. "The decision pushed the doctrine of consideration to its limit. It is difficult to imagine what opportunity the college had lost by making its deal with Mary, but courts are not in the habit of inquiring closely into such matters. One wonders if in all the years that students have dutifully studied this case, there has never been one that asked, 'Surely Judge Cardozo, you cannot be serious!'" E. Allan Farnsworth, Promises to Make Gifts, 43 Am. J. Comp. L. 359, 366 (1995).

## APPENDIX No. 2 : Equitable Estoppel and Promissory Estoppel

Black's Law Dictionary (7th ed. 2001) defines "equitable estoppel" as follows:

**equitable estoppel.** A defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. . . . -- Also termed *estoppel by conduct*; *estoppel in pais*.

The Restatement (Second) of Torts § 894 gives the following illustration of equitable estoppel:

A owns Blackacre. By a mistake in a survey he fails to include within his fence a small field that he erroneously believes to belong to his neighbor B. B, who is uncertain of his boundaries, asks A whether the field belongs to A. In mistaken reliance upon the survey, A replies that it does not. Relying upon this statement, B cuts and disposes of the trees upon it. B is not liable to A for these acts . . . .

\* \* \*

Black's Law Dictionary defines "promissory estoppel" as follows:

**promissory estoppel.** The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. . . .

The Restatement (Second) of Contracts § 90 gives the following illustration:

A promises B not to foreclose, for a specified time, a mortgage which A holds on B's land. B thereafter makes improvements on the land. A's promise is binding and may be enforced by denial of foreclosure before the time has elapsed.

## **APPENDIX No. 3 : The Law of Restitution**

An alternative to contract liability is liability for unjust enrichment under the law of restitution. The following excerpts come from the Restatement of the Law of Restitution (1937):

### **GENERAL PRINCIPLE OF LIABILITY FOR UNJUST ENRICHMENT**

#### **§ 1. Unjust Enrichment**

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

### **EXAMPLE OF LIABILITY FOR UNJUST ENRICHMENT**

#### **§ 22. Mistake As To Payee**

A person who has paid money to or for the account of another not intended by him, is entitled to restitution from the payee or from the beneficiary of the payment . . . .

\* \* \*

Illustrations:

\* \* \*

2. A owes John P. Adams \$100. Desiring to pay the bill, A looks in the directory to find Adams' address and mails a check to the address of the John P. Adams whose name appears in the directory, but who is not the Adams intended. This Adams appropriates and cashes the check, believing it to be on account of a transaction which he has forgotten. A is entitled to restitution from the recipient.

### **COMMON INSTANCES IN WHICH THERE IS NO UNJUST ENRICHMENT**

#### **§ 2 Officious Conferring of a Benefit**

A person who officiously\* confers a benefit upon another is not entitled to restitution therefor.

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\*The word "officious" is defined as "volunteering one's services where they are neither asked nor needed: MEDDLESOME." Merriam-Webster Online Dictionary (2006).

**APPENDIX No. 3 : The Law of Restitution (cont.)**

**§ 57 Gifts Made in Anticipation of Gratuity or Contract**

A person who has conferred a benefit upon another, manifesting that he does not expect compensation therefor, is not entitled to restitution merely because his expectation that the other will make a gift to him or enter into a contract with him is not realized.

**§ 110 Restitution From Beneficiary of a Contract with Third Person Who Has Failed to Perform**

A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person.

**EXCEPTION TO LIABILITY**

**§ 69. Change Of Circumstances**

(1) The right of a person to restitution from another because of a benefit received because of mistake is terminated or diminished if, after the receipt of the benefit, circumstances have so changed that it would be inequitable to require the other to make full restitution. . . .

**AMOUNT OF LIABILITY**

**§ 155. [Measure of Recovery by a Non-Tortious Recipient]**

(1) Where a person is entitled to restitution from another because the other, without tortious conduct, has received a benefit, the measure of recovery for the benefit thus received is the value of what was received, limited, if the recipient was not at fault or was no more at fault than the claimant, to its value in advancing the purposes of the recipient . . . .

\* \* \*

Comment:

d. \* \* \* Where the services of a physician have been rendered to an unconscious person in an emergency it is assumed that, if properly rendered, the one receiving them benefits by having had a better chance of recovery although in fact no recovery is effected.

## **APPENDIX No. 4 : Scope of the Statute of Frauds**

### **Restatement (Second) of Contracts § 124**

**A promise for which all or part of the consideration is either marriage or a promise to marry is within the Statute of Frauds, except in the case of an agreement which consists only of mutual promises of two persons to marry each other.**

Comment:

a. Engagement to marry. Mutual promises to marry were within the words of the English statute, but were not within the statutory purpose and were soon excluded by judicial interpretation. A number of American statutes explicitly except such promises from the marriage provision. They may, however, fall within the one-year provision. Statutes in many states bar actions for breach of a promise to marry.

Illustrations:

4. In consideration of A's marrying B, C orally promises A a settlement. C's promise is within the Statute of Frauds.

### **Restatement (Second) of Contracts § 130**

**\* \* \***

Comment:

b. Discharge within a year. Any contract may be discharged by a subsequent agreement of the parties, and performance of many contracts may be excused by supervening events or by the exercise of a power to cancel granted by the contract. The possibility that such a discharge or excuse may occur within a year is not a possibility that the contract will be "performed" within a year. This is so even though the excuse is articulated in the agreement. This distinction between performance and excuse for nonperformance is sometimes tenuous; it depends on the terms and the circumstances, particularly on whether the essential purposes of the parties will be attained. Discharge by death of the promisor may be the equivalent of performance in case of a promise to forbear, such as a contract not to compete.

## **APPENDIX No. 5 : Reliance as an Exception**

### Part 1

#### **§ 129 Action in Reliance; Specific Performance**

\* \* \*

Comment:

a. Historical note and modern justifications. This Section restates what is widely known as the "part performance doctrine." Part performance is not an accurate designation of such acts as taking possession and making improvements when the contract does not provide for such acts, but such acts regularly bring the doctrine into play. The doctrine is contrary to the words of the Statute of Frauds, but it was established by English courts of equity soon after the enactment of the Statute. . . . Enforcement has . . . been justified on the ground that repudiation after "part performance" amounts to a "virtual fraud." A more accurate statement is that courts with equitable powers are vested by tradition with what in substance is a dispensing power based on the promisee's reliance, a discretion to be exercised with caution in the light of all the circumstances. Compare § 90.

## **APPENDIX No. 6 : Voidable Contracts of Infants**

### **Restatement (Second) of Contracts § 7**

\* \* \*

Comment:

b. Grounds of avoidance. Typical instances of voidable contracts are those where one party was an infant, or where the contract was induced by fraud, mistake, or duress, or where breach of a warranty or other promise justifies the aggrieved party in putting an end to the contract.

\* \* \*

c. Consequences of avoidance.

\* \* \*

In many cases the power of avoidance exists only if the original situation of the parties can be and is restored at least substantially; but this is not necessarily the case. An infant, for instance, in many jurisdictions is allowed to avoid his contract without this qualification, so that when the infant exercises his power the parties frequently are left in a very different situation from that which existed when the contract was made.

### **Restatement of Restitution § 62**

Comment:

b. \* \* \* [A]n infant to whom a person has transferred a non-necessary in the course of a contract is not under a duty of restitution to the transferor upon failure to pay for it, if the subject matter or its product is not available at the time when restitution is sought.

\* \* \*

Illustrations:

1. A sells to B, [an infant], an automobile which B uses advantageously in his business but which is destroyed in use. A is not entitled to restitution from B although B fails to pay for the car.

**APPENDIX No. 7 : Liability of Infants in Tort**

**Restatement (Second) of Torts § 895I**

**One who is an infant is not immune from tort liability solely for that reason . . . .**

Comment:

a. For the protection of infants against their inexperience and the undue advantage that might otherwise be taken of them, the law gives them the power of disaffirming their contracts and conveyances, except to the extent that they will be liable for the reasonable value of necessaries furnished to them. So far as their liability in tort is concerned, however, infants are given no similar immunity. As a general rule, infants are subject to liability for their torts, whether they are committed intentionally or negligently or as a matter of strict liability. Thus there may be recovery from an infant for assault or battery, false imprisonment, trespass to land or chattels, conversion, negligence, defamation, seduction or deceit.

b. The immaturity of the infant is, however, to be taken into consideration in determining, in the first instance, whether the tort has been committed at all. In intentional torts, the state of mind of the actor is an essential element. For example, an intent to bring about a harmful or offensive physical contact is essential to battery (see § 16), and knowledge of the falsity of a statement and an intent to deceive may be required for deceit. (See Chapter 22). A child may be of such tender years that he has no awareness of these matters and is in fact incapable of the specific intent that is required. It may thus be found that the tort has not been committed and the event should be treated as an unavoidable accident.

**APPENDIX No. 8 : Public Policy Examples**

**Restatement (Second) of Contracts § 189**

**A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of marriage.**

\* \* \*

Illustrations:

1. A pays B, his twenty-one-year-old child, \$100,000 in return for B's promise not to marry for ten years. B's promise is unreasonably in restraint of marriage and is unenforceable on grounds of public policy.

**Restatement (Second) of Contracts § 192**

**A promise to commit a tort or to induce the commission of a tort is unenforceable on grounds of public policy.**

\* \* \*

Illustrations:

\* \* \*

2. A makes an agreement with B under which A promises that he will excavate a city street without permission from the city. A's promise is to interfere tortiously with an interest in property of the city and is unenforceable on grounds of public policy.

## APPENDIX No. 9 : More on Efficient Breach

Note (2) on page 23 refers to the case of United States Naval Institute v. Charter Communications, 936 F.2d 692 (2d Cir. 1991). The case concerned a best selling novel called The Hunt for Red October. The author of the book, Tom Clancy, sold the copyright to a private publisher called the United States Naval Institute. The United States Naval Institute published the first edition of the book in hardcover, and sold the right to publish subsequent paperback editions to the Berkley Publishing Group. Because the United States Naval Institute was worried that paperback sales would cause a decrease in hardcover sales, it made Berkley promise that it would not publish the paperback version before October 1, 1985. But Berkley broke this promise and began selling the paperback version on September 15, 1985.

Using the hypothetical figures given at the bottom of page 7, determine what damages Berkley would have to pay the United States Naval Institute. If Berkley knew that it would have to pay damages for breaching the contract, why did it breach the contract? Were the damages too small to discourage the breach? If the United States Naval Institute receives these damages, will it be put in the same position it would have been if Berkley had not breached? Is this a case of efficient breach?

## **APPENDIX No. 10 : Errata**

Note: These errors appeared in the first printing of the 2007 edition of the Farnsworth casebook. They may be corrected in subsequent printings.

### **Part 1: Correction for Wood v. Lucy, Lady Duff-Gordon**

The casebook incorrectly says on page 85 that "[t]hree of the four judges dissented." Actually, three of the seven judges dissented. Judges Cuddeback, Mclaughlin, and Andrews concurred with Judge Cardozo. Chief Judge Hiscock and Judges Chase and Crane dissented.

### **Part 2: Correction for Monarco v. Lo Greco**

In the last paragraph on page 306, the editors have added bracketed text suggesting that the promise at issue fell within the "lifetime clause" of the statute of frauds in a former version of California Civil Code § 1624(5). A lower court opinion in the case, however, indicates that the promise actually fell within § 1624(6) of this statute of frauds, which covered "an agreement . . . to devise or bequeath any property, or to make any provision for any person by will." See Monarco v. Lo Greco, 211 P.2d 361, 263 (Cal. App. 1949).

### **Part 3: Correction for Black Industries v. Bush**

In summarizing the facts in the bracketed text on pages 460-461, the editors have mixed up the parties. The summary of the facts needs to be corrected as follows:

a. The letter stated that BLACK's compensation was to be the difference between BUSH's price to Black and the PRICE PAID BY HOOVER.

b. The Hoover company agreed to purchase the parts from BLACK ACTING IN THE NAME OF BUSH.

c. BUSH failed to complete the order and BLACK sued for damages.