# Preface to Modern Law of Contracts 2025–2026 Edition

The first volume of this treatise was published forty years ago, and it has been updated or supplemented annually (sometimes semi-annually) for four decades. Contract law is as old as human civilization although the basic structure of what we know as the "common law" of contracts has been with us for "only" about eight centuries. Even so, various aspects of the common law have antecedents in ancient law codes. Lawyers, businesspeople and ordinary contracting citizens should not be too surprised that the fundamentals of much of what we describe as "contract law" have not changed very much in forty years. Differences around the edges of rules or doctrines, and various additional regulations or statutory policies have affected particular contracts, as have numerous externalities. For an ordinary contracting partner, variations around the "edges" may be of more immediate consequence than the stability of core concepts.

Externalities of one sort or another often affect contractual relationships. The Preface to the 2025 edition noted the importance of the doctrines of frustration and impossibility, which have roots in the seventeenth century, in connection with contracts affected by the restrictions imposed during the Covid-19 pandemic, or by wars in various locations, or by glitches in high tech digital systems. The aftereffects of the pandemic are still, to a degree, affecting performance. Hostilities in Ukraine, the Middle East and elsewhere affect transportation, banking exchanges, the flow of petroleum products, tourism and other commercial activities. As this Preface was being drafted, another failure of a major digital services provider caused large scale disruptions in a variety of industries. The litigation arising from the failure of Crowdstrike programs in the summer of 2024, which disrupted airline schedules across the United States, is ongoing and has not yet resulted in the publication of any additional useful judicial precedents. Add to the mix a range of natural and climate-related disasters, and it is easy to understand that lawyers and their clients should negotiate and draft agreements that account for a range of possible actions or events that may substantially affect performance.

The first edition of this treatise was drafted, for the most part, on a mid-1980s desktop computer which had a small RAM and which accepted floppy disks for saving files. The author and his then editor worked to make each chapter fit onto one floppy disk because using two disks for a single chapter was awkward. And, to be extra careful, each floppy was copied onto another floppy in case of accidental damage to a disk or loss of one. In hindsight the process seems cumbersome, but at the time it was a great step forward from handwritten drafts on legal pads or multiple typewritten chapters on selectric typewriters. The process in the first quarter of the twenty-first century is simpler and faster, although a glitch in systems controlling the cloud could wipe out, at least temporarily, huge quantities of data. The mention of changes in the technology used to research, edit, draft and publish books is of interest primarily to authors and editors, but these changes from handwork, to analog work to digital work are indicative of other changes and technological developments that can affect the core concepts of contract law.

Artificial intelligence in all its manifestations is sometimes touted as one means to simplify and make more efficient the negotiation and performance of commercial agreements. To a considerable extent, AI can be helpful with respect to standard transactions between repeat players. Various forms of what might be called "AI" have been used for a long time in standardized, ordinary sales agreements. Company "X" may have easily predictable needs for diesel fuel or some kind of widget. A simple algorithm can be helpful in sending purchase orders, acknowledgements, bills of lading, invoices, and so forth. Any consumer who is a regular buyer from a major seller such as Amazon is already aware of the ease with which algorithms can predict a buyer's interest in certain categories of products. All moves smoothly until there is a problem, and then the usual rules of contract law apply—even if until the moment of the problem, the transaction has been initiated and controlled by an embedded form of AI.

More difficult problems can arise with more complex agreements, especially when one agreement is tied in with another agreement and that one with a third and so on. The dramatic rush several decades ago to reinforce the Citicorp Tower in midtown Manhattan after the primary architect became concerned that the building, as constructed, might not be strong enough to withstand stresses from high winds

is but one example. That story had a happy ending for all concerned, but the construction of the building, as with many buildings, involved a complex series of intersecting and interacting contracts among architects, structural engineers, contractors and their sub-contractors, vendors (e.g. steel fabricators), owners and financing agencies. The use of AI could improve efficiency and could provide embedded cross-checks for safety and durability but could also make the discovery of a possible weak link more difficult. Lawyers advising clients on such projects may be fully aware of construction law and the law of construction contracts, but, to be competent counselors, the clients' lawyers should also understand the operation of AI and the extent to which the agreements are based upon AI information.

Over the course of several decades of the twentieth century, academics and others debated the extent to which contract interpretation and enforcement should rely on objective standards or on more subjective standards based on the relationships of the parties and the surrounding circumstances. Objectivity has certain virtues -clarity, predictability, a sense of justice. But objectivity, carried to the extreme, can run afoul of basic common sense and the common expectations of participants in various markets. The effects of external factors, whether new technology, weather or war, can overwhelm the parties if they are required to abide by strictly objective rules. Case law reflects that reality and throughout this edition, and earlier editions, there are examples of judges deciding cases within the context presented—even when that context may differ from what the original contract negotiators anticipated. Thus, the law of contracts continues to provide examples of the human condition as lived, not simply as imagined.

This 40th edition has been trimmed somewhat. The various mentions of Article 2A of the Uniform Commercial Code, which deals with equipment leases, have been removed. That article largely follows the pattern of Article 2 on sales with modest variations to reflect that underlying title to leased goods does not pass from the lessor to the lessee. The relatively small number of Article 2A judicial decisions have made no meaningful changes to basic contract law. Various repetitive sections within chapters have been shortened or removed in the hope that researching for relevant information may be faster and smoother.

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