PREFACE

The law of contracts is an evolving field of study, yet it is stable at its core. In the modern period, changes have occurred from the pressures of new case law, updated theories of economic efficiency or individual consent, developments in the broader law of private obligations, and new techniques and domains of commercial practice and dispute resolution. Yet the greatest change to the law of contracts, as a field of teaching and study, has come from the institutional pressure to reduce the study of the subject to a single-semester, less than six-credit course. This requires distilling the core of the subject matter without sacrificing relevance or richness. This book has been designed to offer a sophisticated and challenging course on the law of contracts, within these pressing constraints. It offers a fundamentally different approach from the lengthy compilations and bibliographies that represent the more conventional approach to the teaching and study of contract law.

Our first commitment, therefore, is to pedagogy. We present the following materials in an order that makes most sense from the perspective of students. We follow, primarily, a doctrinal presentation, drawing on the best features of the case method. We also include notes and questions to prompt students to reflect on, and understand, the models of reasoning employed, the policy issues that arise, or the assumptions that are unquestioned, within the unfolding body of caselaw. Using these vehicles, our goal is to introduce the deep-seated topics of concern to the law of contracts, with selective brevity: insights from law and economics, history and philosophy; assumptions about fairness and welfare, the science of cognition or the communication of consent; or newer commentary on the evolving operation of boilerplate or adhesion contracts, or of the effect of arbitration clauses. Although the presentation is primarily of cases, we explore their different implications for contractual counseling and drafting as well as dispute settlement. We include more substantive material on the law of restitution, and on international and comparative developments, than is usual in such a course. In these and other topics, we have sought to include various references without sacrificing the pace or momentum of the course.

Our goal has also been to produce a well-rounded book that opens up the broader jurisprudential issues without favoring any single presentation. While we acknowledge the significance of the rich vein of contract theory—of canonical scholarship and of the literature it has in its turn generated—that has guided the development of Anglo-American contract law, we have drawn on this theory to inform our selection of material, rather than reproduce it. If anything, our main perspective is conceptual. We consider that, like learning the grammar of language, a law student equipped with the conceptual structure of contract law is able to confront the countless legal situations that await him or her. But so, too, must the student understand the basic functions of contract law,

its justification, and its consequences. We hope that this text, as one element of a comprehensive private law and public law J.D. curriculum, supplies the basis.

JAMES STEVEN ROGERS
KATHARINE G. YOUNG

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