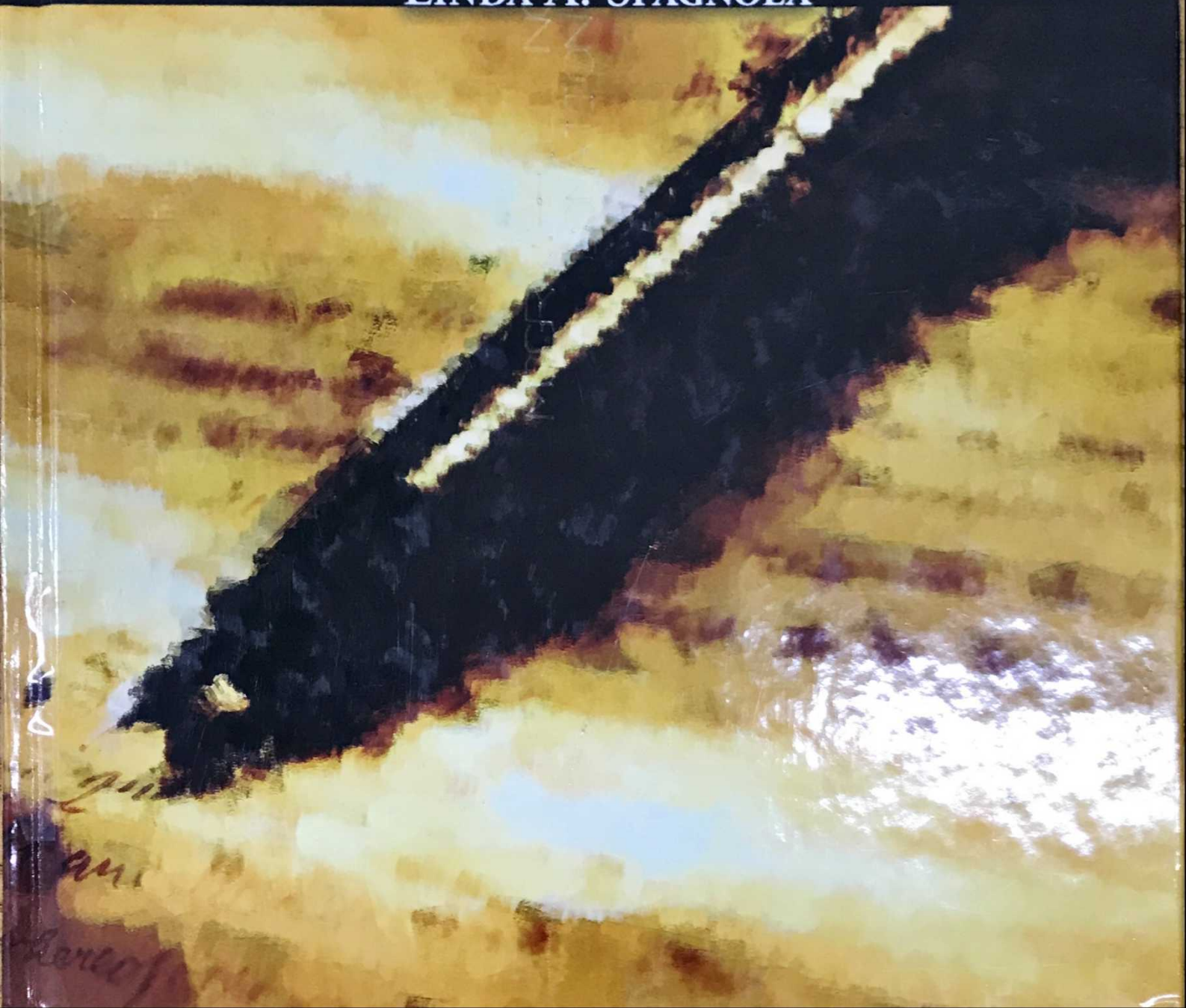
Contracts for Paralegals

Legal Principles and Practical Applications

Linda A. Spagnola



Contracts for Paralegals

Legal Principles and Practical Applications

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This book is dedicated to

Dale Glendon Higgins, my grandfather, from whom I inherited my intellectual curiosity;

Lois Marie Higgins, my grandmother, from whom I inherited my courage to try new things;

Susan H. Wendling, my mother, from whom I inherited my work ethic;

Patrick James Deeney, my stepfather, for knowing I could do it;

Raymond and Marietta Spagnola, my in-laws, for being proud of me;

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and to my dear husband, Raymond Pasquale Spagnola, for laughing with me, at me, and in spite of me through this whole endeavor. "Happiness is good medicine."

What do each of the textbook sections have in store for the paralegal student?

PART ONE

"The secret of getting ahead is getting started. The secret of getting started is breaking your complex overwhelming tasks into small manageable tasks, and then starting on the first one."
—Mark Twain

The first task in analyzing a contract is to determine whether the requisite elements are present. There must be a valid offer supported by legally recognizable consideration and properly accepted with conditions and third-party interests, if any, satisfactorily set forth. Without these basic elements, there is nothing for a court to enforce. An improperly formed contract is not a contract at all; the inquiry ends without a remedy in contract law.

PART TWO

Once the parameters of a valid contract have been set, the student can examine the affirmative defenses that may be available to the defendant. Affirmative defenses are facts and circumstances set forth that essentially defeat the plaintiff's claim, even if all the allegations against the defendant are true. Certain defects in the formation of the purported agreement will nullify the attempt at creating a legally binding contract. This means that while all the requisite elements exist, a valid offer has been made supported by legally recognizable consideration, and the offeree has accepted, something in the surrounding circumstances has gone wrong.

This goes to the heart of enforceability of a contract. Once a party has brought the contract before the court, the party against whom the suit was filed can assert that there were defects in the formation of the contract; although it appears that the requisite elements are present, there were circumstances affecting the formation that make it impossible to enforce performance.

PART THREE

Assuming that all the elements of a valid contract exist, as discussed in Part I, and there are no defenses to formation, as discussed in Part II, the parties stand on solid ground to perform their mutual contractual obligations. If the parties perform their obligations in accordance with the contract's terms, there is no further analysis needed. The contract has been executed and the parties owe no further legal duties to each other. Both have received the benefits they expected and have no need to resort to the legal system to resolve any issues.

However, just as *"the course of true love never did run smooth,"*[1] neither does the course of performance of many contracts. Broadly speaking, any performance that does not perfectly conform to the contract's requirements can be considered a breach of contract and potentially give rise to a claim for legal relief. Part III is the discussion of what happens when a party does not tender "perfect performance."

PART FOUR

Finally, the last step in contract analysis has been reached. Now that a breach has been established, the nonbreaching party needs to recover damages from the breaching party. Damages are the legal remedies available and may take many forms. Remedies in the law attempt to put the nonbreaching party in the same position he or she would have been in had the breach not occurred.

The first step in this process of recovery is to file a lawsuit, as any attempt at "self-help" by agreement of the parties (as discussed in the preceding chapter) has not solved the problem. Alternatively, with the rise in alternate dispute resolution, a party may elect to arbitrate the matter to avoid the expense and time involved in litigation. The nonbreaching party must resort to the courts or other tribunal to establish the enforceable right to recoup losses incurred by the breach.

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[1] William Shakespeare, *A Midsummer Night's Dream* I. i. 134.

Once the lawsuit is filed, the plaintiff (nonbreaching party bringing the lawsuit) will need to establish that harm has occurred due to the breach. This is the element of causation. The breach must have been the thing that caused the plaintiff's harm. If the plaintiff was harmed due to another independent occurrence, then the breaching party (defendant) may not be at fault for the harm. Without any real harm done by the defendant, the plaintiff's case must be dismissed.

Lastly, this attribution of fault must show that the court can make the defendant either pay money or perform an act to compensate the plaintiff for the harm. If there is nothing the court could do to help the plaintiff recoup the losses, then there are no legal remedies available; the law is simply not equipped to act on behalf of the plaintiff. The case, therefore, must be dismissed.

PART FIVE

The first four parts of the text have discussed and are governed by the common law principles of contract law. This final chapter shows that the Uniform Commercial Code [UCC] carves exceptions out from the stringent rules of contract law. Why? The underlying purpose of the entire UCC is practicality. These rules have been propagated in response to the very nature of commercial transactions. The "exceptions" to the general rules of contract law better reflect what really happens in commercial transactions. The UCC tries to protect and preserve these agreements and the expectations of the parties involved.

Where there appears to be leniency, do not presume weakness. The UCC also sets certain standards of conduct. While the rules governing the formation of the transaction may be more flexible, the conduct must be of a certain quality to merit that leniency. Certain ground rules apply to this grant of freedom in construction and performance. Article 1 of the UCC sets these ground rules: § 1-203 requires that the parties adhere to the principles of "good faith and fair dealing," § 1-204 requires "reasonableness" in response times in acting upon the agreement, and § 1-205 requires that the parties should and can rely on the normal course of dealing and trade practices in the industry, thereby making some assumptions taken by one or both parties reasonable in light of what normally occurs in that type of commercial transaction. Note that all of these ground rules can change depending on the particular industry involved. It may be reasonable to delay a shipment in the shoe industry by one week, but this kind of delay in the produce industry might be completely unacceptable as the goods will be destroyed in that time.

Therefore, do not think of the UCC as putting holes in the fabric of contract law, but rather as weaving a safety net. The small transgressions against the strict principles of common law may slip through unnoticed, but the larger issues will be caught.

It is completely beyond the scope and page capacity of this text to explain every section in Article 2. The most important sections are presented so that the student can gain an understanding of the general requirements of the UCC.

An alternate way to view the formation of contracts is via a timeline. The book is set up chronologically; intuitively, we know that a contract must be formed before it can be breached.

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