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# DEATH OF CONTRACT: SECOND EDITION



## Synopsis

Format Paperback Subject Contract Law Publisher Ohio State University Press

## Book Information

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## Customer Reviews

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Lots of food for thought when thinking about what we are told to think or believe and where those myriad propositions and fictions are propounded as rules (are they a priori or a posteriori?) that we are to think, believe, and perhaps practice, come from, whether it relates to the law of contract, the law, or life in general. Great book -- don't neglect the notes!

I reread this book each year before I teach a class in Contracts to first year law students. Though the book is half a century old, the points still resonate. Since it is based on lectures it is an easy read. Gilmore was a genius and this is a wonderful book.

The lectures that led to "The Death of Contract" were erudite, droll, and irreverent. They debunked the idea that classical contract law was a tidy system based on centuries of precedent -- and they added up to just over 100 pages! Anyone who struggled through a contracts course at law school or wondered whether contract law was really handed down on Mount Sinai should read this book. But readers shouldn't be taken in by the accolades of "greatness" found in other reviews. For one thing, anyone who hasn't studied contracts would have trouble following (let alone caring about) the

central arguments of the book. For another, the focus is relentlessly doctrinal, with little reference to the social, historical and biographical contexts in which contract law was shaped and reshaped. Bottomline: "The Death of Contract" is really for lawyers only -- especially for those lawyers who remember with distaste the sacred cows of their first year law school curriculum. I was surprised to find myself gripped by doctrinal issues I haven't thought about in 25 years. But others will miss the point.

This book originated from a series of lectures, and retains its easy going, natural speech, style. While for other subjects this might be a benefit, for the topic of this book it is a liability. Even with its natural style -- the book could probably be read in one sitting -- this is not an appropriate book for the general reader. Gilmore assumes too much knowledge from the reader. The book would not even be appropriate for a law student, certainly for one studying second-year contracts. The reader must first have a good grasp of the law of contract before his premise can be fully appreciated. Gilmore is obviously speaking to a highly educated crowd. Gilmore spends too much time arriving at the premise of the lectures. Gilmore devoted two full chapters providing the legal background of his thesis. The first two chapters are fodder and is not directly relevant to his thesis. Once he is there the premise could be summarized in two rather than one hundred pages. The premise itself is questionable. Gilmore asserts that the components of the traditional formulation of contract from the Nineteenth Century is dead. The law of contract has been, he asserts, subsumed to the law of tort, and all those features of the traditional contract -- offer, acceptance, consideration -- have been unrecognizably changed. Gilmore attributes the "death" of contract to Justice Holmes who introduced the objective stand of contract, and to the schizophrenic makeup of the Restatement on Contract, the result legal predispositions of its editors and authors, Williston and Corbin, the giants of Twentieth Century contract law. Gilmore questions the necessity of formulating a Restatement, both the first and second series. The greatest culprit according to Gilmore is the influence of promissory estoppel, which he argues tore the guts out of the law of contract. Gilmore overstates the matter. There exists an overlap between contract and tort, but recent trend in the California Supreme Court has been to retract from the series of California cases Gilmore likes to point to as representing the most blatant intrusions of tort into contract. Further, the innovations introduced by the Restatements and the modern application of contract law is a response to the abuses which existed in the common law, which Gilmore would prefer over modern trends. The law of contract is not dead; it has evolved. Green's thesis is not without merit. There is a reason why his book is relegated to the endnotes of casebooks. His thesis gives perspective of how far the law has

progressed, and how far it can go. This is not, however, essential reading.

Must have book for any Business Lawyer.

This is a great book, was in great condition, and the order was filled promptly. Some later scholarly work discredits Gilmore's take on *Raffles v. Wichelhaus*, but nonetheless, provides an interesting window into the development and evolution of contract law through the 20th Century.

When I took Contracts as a first-year law student, I read the cases, went to class, and didn't have the faintest idea what it all meant. It seemed to be a mind-numbing mix of similar facts with different conclusions. Then I read this book and--voila--it all seemed to flow together so cohesively and clearly. And, on top of that, the book is well written, has flashes of humor, and is very short. What a great book this is for any law student.

Deathly boring.

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