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Edward J. Murphy: The Man and the Casebook

Richard E. Speidel*

I had the good fortune to meet Ed and Mary Ann Murphy at a contracts workshop at New York University Law School in the Summer of 1962. It was the end of my first year of teaching, but they had been at Notre Dame since 1957. Ed had five years of teaching under his belt and had already compiled a set of teaching materials for his contracts course. We immediately hit it off and exchanged letters and articles¹ over the next few years. Ed continued to send revised copies of his contracts materials and I used them with great success in my contracts course at the University of Virginia in 1967-68. We then had conversations with Harold Eriv at Foundation Press, and a contract to publish followed. The first edition of Murphy and Speidel, *Studies in Contract Law* was published in 1970. The fact that a fourth edition was published in 1991² attests to a sufficient demand for the product and, more importantly, to a successful collaboration.

Although we sometimes disagreed on matters beyond our joint venture,³ we almost always agreed on the essentials of what the book should be. We learned from and respected each other. We worked to keep abreast of developments in the shifting domain of contract.⁴ We confronted government contracts and incorporated Article 2 of the Uniform Commercial Code and the emerging law of consumer protection into the materials. The new Restatement⁵ was treated with respect. Both of us read the "economic analysis" literature and used what we understood. We added a chapter on arbitration and emphasized the duty of good faith in contract performance and enforcement. Our chapter on remedies, with its unique organization, was more comprehensive than in most casebooks. We searched for better cases, interesting articles and insightful studies about contract law. We provided a matrix of notes, references, problems and arguments around the cases selected. We encouraged students to keep the book as a research tool when the course was over.

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1 See Edward J. Murphy, *Another "Assault on the Citadel": Limiting the Use of Negotiable Notes and Waiver-of-Defense Clauses in Consumer Sales*, 29 OHIO ST. L.J. 667 (1968); Edward J. Murphy, *Facilitation and Regulation in the Uniform Commercial Code*, 41 NOTRE DAME LAW. 625 (1966).

2 EDWARD J. MURPHY & RICHARD E. SPEIDEL, *STUDIES IN CONTRACT LAW* (4th ed. 1991) [hereinafter *STUDIES*].

3 We never really discussed differences between Murphy, the committed Catholic layman (see Douglas W. Kmiec, *A Tribute to Professor Edward J. Murphy*, 71 NOTRE DAME L. REV. 3 (1995)) and Speidel, the recalcitrant Methodist. These differences never entered the collaboration arena and Ed made no effort to insert his particular jurisprudential perspective into our casebook. See, e.g., Edward J. Murphy, *The Sign of the Cross and Jurisprudence*, 69 NOTRE DAME L. REV. 1285 (1994); Edward J. Murphy, *Conflicting Ultimates: Jurisprudence as Religious Controversy*, 35 AM. J. JURIS. 129 (1990).

4 See Richard E. Speidel, *Afterword: The Shifting Domain of Contract*, 90 NW. U. L. REV. 254 (1995).

5 RESTATEMENT (SECOND) OF CONTRACTS (1979).

Once the first edition was completed, it was always a joy to revise a book that had become an important part of our lives. That joy was compounded when I travelled to South Bend. There, I could visit with Mary Ann and sit at that large kitchen table with increasing numbers of children and friends (and later grandchildren) who seemed to eat there every day. The twenty pound box of cereal was clearly invented for the Murphys.

Ed Murphy's approach to contracts is reflected in our casebook which has influenced law students all over the country. My best estimate is that over 80,000 law students have used the book over the last twenty-five years. In addition, many professors who, for unknown reasons, don't teach from the book keep it close by for reference. We have had some impact. Although it is sometimes difficult to see where Ed's ideas stop and mine begin (or vice versa),⁶ it is easy to see Ed's concepts in the original mimeographed materials still shining through in the fourth edition. For example, there is still the introductory chapter with its incisive comment on the history, nature and contemporary role of contract law.⁷ This is followed by a series of introductory cases, problems and text that provide an overview of the course.⁸ Carefully selected cases, such as *Jacob & Youngs v. Kent*,⁹ are first treated in the introduction and return where appropriate throughout the book.

The cases and problems have changed over the years, but the approach has remained. Thus, Chapter 2, which explores various bases of promissory liability, still precedes Chapter 3, which treats contract formation. We believed that the students should know something about why promises are enforced and the scope of contract remedies before they learn the principles of offer and acceptance. They should also have a sense of doctrinal development. Thus, the cases are selected to illustrate change over time and are meshed with original notes and extracts to provide historical context.¹⁰ Along the way there are problems to solve,¹¹ a few jokes and a poem or two to lighten the load.

As might be expected from two Midwesterners, the book had a mainstream orientation. Its emphasis was upon contract law as developed and applied in courts. We were concerned about the judicial process and the various roles played by lawyers therein. Yes, we discussed the importance of contract practice in the shadow of the law and the importance of settlement. Yes, we noted and sometimes applied the various theories about contract that have competed for control over the last twenty-five years. But we always returned to contract law in the courts. The problems are complex and important. First year students can get their arms around them, and lawyers and judges wrestle with them all of the time. They are the stuff of contract law and a perfect place to start a legal education.

6 We both felt free to blame the other when something did not work in class.

7 STUDIES, *supra* note 2, at 1-16.

8 *Id.* at 16-96.

9 129 N.E. 889 (N.Y. 1921).

10 For an illustrative sample, see STUDIES, *supra* note 2, at 120-30, 135-37, 138-39, 188-91 and 203-05.

11 See, e.g., STUDIES, *supra* note 2, at 172-73, 215-16, 251 and 622-23.

Although this phase of our collaboration is over the book goes on. Ian Ayers of Yale Law School will join me in the fifth edition, entitled Murphy, Speidel and Ayers, *Studies in Contract Law*. Ed knew of and was pleased with the collaboration with Ian. Ed also knew that his intellect and spirit would continue to inspire me in this latest endeavor. As usual, he was right.

