CONTRACTS
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Washington University
School of Law
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Introduction

Aims and Objectives:

The course on contracts, like other first year courses in law school, has several competing objectives. One is to introduce the basic concepts and principles of the law of contracts. Other less significant aims include learning how to use the tools of law —how to read and analyze judicial decisions, statutes, and contracts as well as to identify and articulate legal rules and principles from a variety of legal materials. Learning the law of contract also involves learning about a similar variety of law-related processes—judicial, legislative, and contracting itself.

In offering legal services to clients and as effective actors in the legal process, all lawyers must be able to structure transactions, to identify and apply legal rules and principles in myriad contexts, and, above all, to predict the outcome of future litigation. Also, as effective critics and reformers, lawyers need to have some vision of the law, its capacities, limits, and dangers. In each of these and other possible roles, lawyers need to understand the interplay of legal principles and rules within the legal process in diverse economic, political, and social contexts. Consequently, the course on contracts has as demanding a mix of objects for study as aims.

Approach and Perspectives

The law of contracts can be studied from several perspectives. One approach is to treat the subject primarily as a corpus of rules and principles that have developed and been applied in disparate contexts. Many casebooks adopt at least a variation of this doctrinal or “classic” approach. By giving the student a sense of security with a seemingly coherent set of basic principles, subject to change through equally coherent processes, the “classic” approach may produce a false sense of the law and the legal process. Like the rules and principles of all areas of law, contract law is subject to the potential for continuous adaptation and transformation. To be sure, some principles appear to be especially enduring. Yet, even the most venerable doctrines of Common Law contracts—as we will see—are subject to modification and a change as the cultural contexts within which such doctrines are applied evolve. In fact, in the Common Law the idea of “contract” itself is a relatively recent—about two centuries—import from modern Roman Law (continental European “civil” law). And the formalist notion of contract doctrine was in fact a short-lived phenomenon of the late 19th and early 20th centuries. Unfortunately for student and teacher alike, contract law is far too complex and dynamic to be taught adequately from a purely doctrinal perspective. In this course, the attempt is
thus made to study the law of contract in the context of the social tensions—the conflicts of changing values and beliefs—that cause legal rules to atrophy, to harden, or to transform. Remember the lawyer’s primary skill is to predict accurately what courts will do, not to merely restate what they have done!

Throughout the course we will focus on a set of closely related concerns: The central issue will be whether the non-breaching party (the promisee) is entitled to a remedy in contract and if so, what remedy. No remedy is available unless a valid contract has been formed and the party against whom the claim is made (the promisor) has a duty of immediate performance and has failed to perform that duty without excuse. Because of the emphasis on the availability and appropriateness of contract remedies, many courses actually begin with an examination of contract policies and approaches through the prism of the remedial relief available to a party as among the breach of a duty for immediate performance. We will be concerned initially, however, with the issue of formation. As we proceed you might keep in mind five basic questions: To use the technical language of contract law: First, is there a Contract (or has a Contract been formed)? Second, have all conditions to performance been satisfied? Third, if not, does the nonfulfillment of any unsatisfied condition discharge any party from the duty to perform? Fourth, has there been a unexcused breach? And finally, if so, what remedy or remedies are available under the terms of the contract itself or by law?

Recommended Study Aids

Strongly recommended as a study aid—especially in working through doctrinal issues—is the most recent edition of the single volume treatise on contract law by Columbia Law School’s Professor E. Allen Farnsworth, published by Little, Brown and Company. Farnsworth’s *Contracts* has proven to be a useful text for many students. (Please note that Professor Farnsworth is also the editor of a casebook as well as a set of secondary materials published by West, which should not be confused with the recommended treatise.)

Class Discussion and Assignments

The purpose of class discussion and dialogue is to develop student problem-solving skills. Law consists of word alone. The ability to read statutes, to analyze cases, to predict what courts will do requires lawyers to understand and use words with professional care. The classroom is thus a kind of laboratory in which students are asked to articulate answers to questions—with as much emphasis in a sense on the words used as the answer itself—as if the two could ever be separated! You should also be guided by two fundamental rules—all equally absolute but stated in order of priority:

**Rule One: Attend Class**

**Rule Two: Be Prepared**

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**E-Mail**

All students are required to have an e-mail account and to use their e-mail facility on a regular basis. Questions that are not answered in class should be asked by e-mail to enable the answer (without the name of the student posing the question) to be distributed to the entire class. E-Mail will also be used to provide additional materials and problems for class discussion.

**Examinations and Grades**

The course will have a **closed-book**, three hour final examination taken at the scheduled time at the end of the semester. The final exam will comprise from two to four problems with varying complexity to be answered as indicated. Any necessary or relevant statutory materials (e.g., provisions of UCC, article 2) will be distributed with the examinations. Your grade will be based on both the quality of your preparation and participation in class (10%) and the final examination (90%).

**Course Materials**


**Assignments**

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<td>The Study of Contracts and Introduction to Common Law Method</td>
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| Class 2 (Aug. 22) | Handout |

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<td>CB, pp. 29-42</td>
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* Subject to change
Class 4 (Aug. 24)  **Contractual Assent**
CB, pp. 43-48  
*Kobil Development Corp. v. Mignot*  
Problems 3.1, 3.2

Class 5 (Aug. 28)  
CB, pp. 48-60  
Problem 3.3  
*Lucy v. Zehmer*  
Problem 3.4

Class 6 (Aug. 29)  **Offer and Acceptance**
CB, pp. 61-83, 85-86  
*Fairmount Glass Works v. Grunder-Martin Woodware Co.*  
Problem 4.2  
*People v. Braithwaite*  
Problem 4.1

Class 7 (Aug. 30)  **Acceptance**
CB, pp. 85-102  
*Keller v. Bones*  
*Roth v. Malson*  
Problems 5-1, 5-2, 5-3

Class 8 (Aug. 31)  
CB, pp. 102-107  
*Glover v. Jewish War Veterans of U.S., Post No. 58*  
Problem 5-4

No class Sept. 4 – Labor Day

Class 9 (Sept. 5)  **Termination of the Power of Acceptance**
CB, pp. 107-117  
*Vaskie v. West American Insurance Co.*  
Problem 5.5  
*Hendricks v. Bebee*
Problem 5.6
*Dickerson v. Dodds*

Problem 5.7

Class 10 (Sept. 6)  
**Bilateral and Unilateral Contracts and Perspectives**

CB, pp. 117-129  
*Carhill v. Carbolic Smoke Ball Co.*

*Harris v. Northland Ford Dealers*

Problems 5-8, 5-9

Class 11 (Sept. 7)  
**Offer and Acceptance under the UCC: Basic Principles**

CB, pp. 131-157  
UCC §2-206

*ProCD v. Zeidenberg*

Problem 6.2

Class 12 (Sept. 11)  
**Battle of the Forms**

Handout

CB, pp. 138-157  
Problems 6.3, 6.4, 6.5

*Klocek v. Gateway, Inc.*

Class 13 (Sept. 12)  
**Preliminary and Incomplete Agreements**

CB, pp. 159-173  
*Academy Chicago Problems v. Cheever*

*Joseph Martin, Jr. Delicatessen Inc. v. Schomacher*

Problem 7.1

*Jenkins v. County of Schleglkill*

Class 14 (Sept. 13)  
**Statute of Frauds**

CB, pp. 175-189  
Problem 8.1

*C.R. Klewin, Inc. v. Flagship Properties, Inc.*

Problem 8.2

*Burns v. McCormick*
Class 15 (Sept. 14)  CB, pp. 189-191  UCC 2-201
Problem 8.3

Class 16 (Sept. 18)  Consideration
CB, pp. 193-203  Congregation Kadimah Toras-Moche v. Deleo
Hamer v. Sidway
Patel v. American Board of Psychiatry and Neurology, Inc.
Problem 9.1

Class 17 (Sept. 19)  CB, pp. 204-218  Carlisle v. T & R Excavating, Inc.
Apfel v. Prudential-Backe Securities, Inc.
Batsakis v. Demotsis

Class 18 (Sept. 20)  Preexisting Duty Rule and Settlements
CB, pp. 218-227  State v. Avis
Fiege v. Boehm

Class 19 (Sept. 21)  Mutuality
Handout
Iacono v. Lyons
Wood v. Lucy, Lady Duff-Gordon
Problem 9.2

Class 20 (Sept. 25)  Promissory Estoppel
CB, pp. 241-258  Deli v. University of Minnesota
Wright v. Newman
In re Morton Shoe Co.

Class 21 (Sept. 26)  CB, pp. 258-274  East Providence Credit Union v. Geremia
Ypsilanti v. General Motors Corp.

Lord v. Souder

Problem 10.1

Class 22 (Sept. 27) CB, pp. 274-282 Hoffman v. Red Owl Stores, Inc.

Gruen Industries v. Biller

Problem 10.2

Class 23 (Sept. 28) Options and Firm Offers


Problem 11.2

Class 24 (Oct. 2) Unjust Enrichment and Material Benefit


Feingold v. Pucello

Estate of Cleveland v. Gordon

Problem 12.1

Class 25 (Oct. 3) Moral Obligation

CB, pp. 310-321 Webb v. McGowin

Dementas v. Estate of Tallas

Problem 12.2

Class 26 (Oct. 4) Policing Contracts: Improper Bargaining, Misrepresentation and Fraud

CB, pp. 323-344 Sarvis v. Vermont State Colleges

In re House of Drugs, Inc.

Stambovsky v. Ackley

Cummings v. HPG International, Inc.

Problem 13.1
Class 27 (Oct. 5)  
**Duress**

CB, pp. 345-355  
Problem 13.2

*Germantown Mfg. Co. v. Rawlinson*

*Quigley v. KPMG Peat Marwick, LLP*

Problem 13.3

**PRACTICE EXAM – Friday, Oct. 6, 1:30 – 3:00 p.m. (Exam begins in Rm. 202 at 1:30 p.m.)**

Class 28 (Oct. 9)  
**Economic Duress, Bad Faith and Contract Modification**

CB, pp. 356-369  
*Rinck v. Ass’n of Reserve City Bankers*

*Austin Instrument, Inc. v. Loral Corp.*

Problem 13.4

*Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.*

Class 29 (Oct. 10)  
**Undue Influence**

CB, pp. 369-381  
*Rudolf Nureyev Dance Foundation v. Nourreeva-Francois*

*Tinney v. Tinney*

*Odorizzi v. Bloomfield School District*

Class 30 (Oct. 11)  
**Unconscionability**

CB, pp. 381-391  
*NEC Technologies, Inc. v. Nelson*

Problems 13.5, 13.6, 13.7

Class 31 (Oct. 12)  
CB, pp. 391-402  
*Southwest Pet Products, Inc. v. Koch Industries, Inc.*

Problem 13.8


*Sosa v. Paulos*
Class 32 (Oct. 16)  **Illegality**

CB, pp. 403-421  *Danzig v. Danzig*

Stevens v. Rooks Pitts & Poust

Problem 14.1

*Harmon v. Mount Hood Meadows, Ltd.*

Class 33 (Oct. 17)  **Incapacity**

CB, pp. 421-439  *Webster Street Partnership, Ltd. v. Sheridan*

*Halbman v. Lemke*

*Zivich v. Mentor Soccer Club, Inc.*

Problem 14.2

*Farnum v. Silvano*

Problems 14.3, 14.4, 14.5

Class 34 (Oct. 18)  **Contract Interpretation and Construction**

CB, pp. 441-460  *Guilford Transportation Industries v. Public Utilities Commission*

*Frigaliment Importing Co. v. B.N.S. International Sales Corp.*

*Atwater Creamery Co. v. Western National Mutual Insurance Co.*

Problem 15.1

No Class Oct. 19 - 20 – Fall Break

Class 35 (Oct. 23)  CB, pp. 460-477  Problems 15.2, 15.3

*United Airlines, Inc. v. Good Taste, Inc.*

Class 36 (Oct. 24)  **Parol Evidence Rule**

CB, pp. 479-496  *Masterson v. Sine*

*Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.*
Problems 16.1, 16.2

Class 37 (Oct. 25)  CB, pp. 496-511  UCC 2-202
Problem 16.3

Bristow v. Drake Street, Inc.

UAW-GM Human Resource Center v. KSI Recreation Corp.

Problems 16.4, 16.5

Sound Techniques, Inc. v. Hoffman

Class 38 (Oct. 26)  Misunderstanding, Mistake and Changed Circumstances

CB, pp. 513-530  Raffles v. Wichelhaus

Konic International Corp. v. Spokane Computer Services, Inc.

Wood v. Boynton

Mattson v. Rachetto

Estate of Nelson v. Rice

Dingeman v. Reffitt

Class 39 (Oct. 30)  CB, pp. 530-537  Revisit: Drennan v. Star Paving

Problem 17.1

Rancourt v. Verba

Class 40 (Oct. 31)  CB, pp. 537-558  UCC 2-615

Paradine v. Jayne

Taylor v. Caldwell

Ling v. Board of Trustees of Doane College

Clark v. Wallace Co. Coop. Equity Exchange

Opera Co. of Boston v. Wolf Trap Foundation

Krell v. Henry
7200 Scottsdale Rd. General Partners v. Kuhn
Problem 17.2

Class 41 (Nov. 1)  **Conditions**

CB, pp. 559-779  Problem 18.1

*Koch v. Construction Technology Inc.*

*Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co.*

Problem 18.2

*Jacob & Youngs, Inc. v. Kent*

Problem 18.3

Class 42 (Nov. 2)  CB, pp. 579-590  Problem 18.4

*Incomm, Inc. v. Therma-Spa, Inc.*

Problems 18.5 through 18.9

Class 43 (Nov. 6)  CB, pp. 590-600  *Mercedes-Benz Credit Corp. v. Morgan*

*Gould v. Artisoft, Inc.*

Problem 18.10

*Sullivan v. Bullock*

*J.N.A. Realty v. Cross Bay Chelsea, Inc.*

Class 44 (Nov. 7)  **Material Breach and Substantial Performance**

CB, pp. 601-614  *Seydel v. Ige*

*Worcester Heritage Society, Inc. v. Trussell*

*Lyon v. Belosky Construction, Inc.*

*Carrig v. Gilbert-Varker Corp.*

Problem 19.1
Class 45 (Nov. 8)  **UCC**


Problems 19.2, 19.3

*Ramirez v. Autosport*

Problem 19.4

*Graulich Caterer, Inc. v. Hans Holterbosch, Inc.*

Problems 19.5, 19.6


Class 46 (Nov. 9)  **Remedies: Expectation Damages**

CB, pp. 637-653  *Freund v. Washington Square Press*

*Carpel v. Saget Studios, Inc.*

*Procopis v. G.P.P. Restaurants, Inc.*

Class 47 (Nov. 13)  **Handicapped Children’s Education Board v. Lukaszewski**

Problems 20.1, 20.2

*Peevyhouse v. Garland Coal & Mining Co.*

Class 48 (Nov. 14)  **Limitations on Recovery: Certainty and Foreseeability**


*Locke v. United States*

*ESPN, Inc. v. Office of Commissioner of Baseball*

Class 49 (Nov. 15)  **Hadley v. Baxondale**

*Wullschleger & Co. v. Jenny Fashions, Inc.*

*Kenford Co. v. County of Erie*

Class 50 (Nov. 16)  **Mitigation Principle**
Class 51 (Nov. 20)  Remedies under the UCC

Handout
CB, pp. 660-672, 706-708  Problems in Handout

Class 52 (Nov. 21)  Reliance Damages

CB, pp. 707-725  Sullivan v. O’Conner

Hollywood Fantasy Corp. Gabor

Sullivan v. Oregon Landmark One, Ltd.

Albert & Son v. Armstrong Rubber Company

Wartzman v. Hightower Productions

Thanksgiving Break:  Nov. 23 and 24

Class 53 (Nov. 27)  Restitution

Handout
CB, pp. 725-737  Bausch & Lomb, Inc. v. Bressler

Problem 20.5


Class 54 (Nov. 28)  Agreed Remedies

CB, pp. 737-749  Lake River Corp. v. Carborundum Co.

Problem 20.6

Wedner v. Fidelity Security Systems, Inc.

Problem 20.7

Class 55 (Nov. 29)  Noneconomic and Noncompensatory Damages
Class 56 (Nov. 30)  

**Specific Performance and Injunctions**

CB, pp. 763-784  

*Van Wagner Advertising Corp. v. S&M Enterprises*  

*Bloch v. Hillel Torah North Suburban Day School*  

*NY Giants v. LA Chargers*  

*Ticor Title Insurance v. Cohen*

**SPECIAL REVIEW SESSION -- Friday, Dec. 1, 1:30 – 3:00 p. m. in Rm. 202.**