Course description and objectives

We will be studying the law of agreements. Among other aspects of this law, we will study how legal agreements are formed, the mechanisms for making them legally enforceable, and the consequences of failing to keep them. This is the substantive focus of the course. But we will have another, even more important objective: developing the skills of legal analysis. To achieve this objective, we will study cases, that is, the decisions of appellate courts that are reviewing the correctness of decisions reached by lower courts.

The skills of legal analysis include the ability to read a story (viz., the facts of a case) and determine which facts are legally relevant; the ability to articulate the legal question raised by those facts; and the ability to apply legal principles to answer that question. Most of our class time will be devoted to developing these skills. As a result, the teaching methodology may well be different from the methodology you have encountered in your prior studies. Instead of delivering a lecture on the principles of the law of contracts, I will be asking questions, lots of questions, typically directed to one person at a time, and the class hour will proceed based on the answers given to those questions. In this so-called Socratic approach to teaching and learning, it is essential that each of you listen very carefully to the questions and formulate your own answers. It is not essential that your class notes record everything that I say. To put it another way, it is much more important for your mind to be engaged than for your fingers to be engaged. Vicarious participation in the dialog is essential.

Laptop usage

I recommend that you not use a laptop computer to take notes in class. Laptops create a tremendous temptation to transcribe everything that is said, almost inevitably at the expense of thinking, that is, thinking about how you would answer the question. Again, vicarious participation in the dialog is essential. If you nevertheless choose to bring a laptop (or other electronic device) to class, you may use it only to take class notes. Use for any other purpose is distracting to your classmates, interferes with their concentration, and is inconsiderate. To be clear, use of a laptop during class to check (or send) e-mails, to surf the Internet, to send or receive instant messages, or to play games is expressly prohibited. Video and audio recording also are prohibited.

Attendance and preparation

Regular attendance and thorough preparation are essential to your direct and vicarious participation in class discussions, and they are required. In the event of illness or emergency, you are permitted to be absent or unprepared eight times during the semester.
• Anyone who is absent more than eight times is subject to exclusion from the course. The reason for an absence does not matter, and since illness is likelier in November than in September, it’s a good idea to hoard the allowance for use late in the semester.
• Among other things, preparation for class encompasses the completion of a written brief for each principal case to be discussed. If you are not prepared for class discussion, please give me a written note before class.

Standing assignment
At the end of each class, I will tell you the materials to prepare for the next class (or I will send you an e-mail with that information). If I fail to do either of these, please be prepared to discuss 2 cases or 10 pages, whichever is more, from where the preceding class ends.

Written assignments
Over the course of the semester, there will be several written exercises for you to complete, as well as a mid-term examination in October. The mid-term exam will be graded on a numeric basis; the other assignments will be graded on a pass-fail basis. Each of these assignments will have a deadline, and papers that are late will receive a failing grade.

Make-up classes
Since this course is not scheduled to meet on Mondays, we will use Mondays to make up regularly scheduled classes that need to be canceled. We will meet on Monday, August 21, and Monday, August 28. These classes will meet in the usual room at the usual times.

Course materials
Dawson, Harvey, & Henderson, Cases and Comment on Contracts (8th ed. 2003) (but not the Dawson, Harvey Appendix to the casebook)
Greenfield, Contracts Supplement (available in Room 301)

About me
I have been teaching at Washington University since 1969. In addition to Contracts, I teach courses on commercial law and consumer law. I feel profoundly fortunate to be here, teaching Contracts, and I look forward to working with you this semester. My wife (Claire Halpern) and I also look forward to inviting you to our home for a potluck dinner in October.

My office is Room 548, in the northeast corner of the fifth floor. I am in my office pretty much all the time and welcome your visits at any time in the afternoon. (In the morning I will be preparing for class.) My phone number is 935-6428, and my e-mail address is michael.greenfield@wustl.edu. I strongly prefer to communicate face-to-face, and I hope you will drop by my office (or make an appointment to see me) when you have questions.
We will proceed through the casebook, omitting material as follows. When a case is omitted, please also omit all note cases and textual material that follow it.

Chapter 1. Omit the following:

Hawkins v. McGee, p. 3 (but read Comment, pp. 9-11)
Louise Caroline Nursing Home v. Dix Constr. Co., p. 38
Comment, p. 60-63 (but read UCC excerpts, Supp. pp. 9-10)
Freund v. Washington Square Press, Inc., p. 82
Introductory Note, p. 87-88
Boone v. Coe, p. 100 (but read Note, p. 102-03 and Supp. p. 11)
Pinches v. Swedish Evangelical Lutheran Church, p. 121
Vines v. Orchard Hills, p. 125
Fretwell v. Protection Alarm Co., p. 144
Laclede Gas Co. v. Amoco Oil Co., p. 162 (but read pp. 165-69 (to mid-page))
Comment 3, p. 169-70

Chapter 2. Omit the following:

Batsakis v. Demotsis, p. 214
Martin v. Little Brown & Co., p. 223
Allegheny College v. National Chautauqua County Bank, p. 247
Read Seavey v. Drake, p. 264, and Comment 1, p. 265-67, before East Providence Credit Union v. Geremia, p. 259; then read Comment 2, p. 268-71
Stearns v. Emery-Waterhouse Co., p. 275
Goodman v. Dicker, p. 278 (but read p. 280 (starting with the Restatement)-286)
Levine v. Blumenthal, p. 286
Feld v. Henry S. Levy & Sons, p. 308

Chapter 3. Omit the following:

Kabil Developments Corp. v. Mignot, p. 329
Emppro Mfg. Co. v. Ball-Co Mfg., Inc., p. 352
Wheeler v. White, p. 355
Allied Steel v. Ford Motor, p. 369
Peterson v. Pattberg, p. 378
Hoffman v. Red Owl Stores, p. 409
Idaho Power v. Westinghouse Co., p. 422
ProCD v. Zeidenberg, p. 431
Morrison v. Thoelke, p. 437
Morone v. Morone, p. 452
Long Island Trust v. International Institute, p. 477
Lipsit v. Leonard, p. 485
LaFazia v. Howe, p. 490
Hoffman v. Chapman, p. 497 (but read Interpretation, pp. 499-504)
In Chapters 4 and 5, we will omit most of the material in the casebook. Hence, the instructions shift, from listing omissions to listing the materials that you are to read. When a case is listed, please also read all digest cases, notes, comments, etc., following it.

Chapter 4.

Read the following cases:

Introductory Notes, p. 543, 561
Austin Instrument v. Loral, p. 562
Marton Remodeling v. Jensen, p. 590 (through mid-p. 597)
Sherwood v. Walker, p. 606
Hinson v. Jefferson, p. 628
Cushman v. Kirby, p. 640
Taylor v. Caldwell, p. 648
Kel Kim Corp. v. Central Markets, Inc., p. 663
Krell v. Henry, p. 675
Woollums v. Horsely, p. 688
Williams v. Walker-Thomas Furniture (Supp. p. 27)
Shapiro excerpt, pp. 698-99
Tymshare v. Covell, p. 708-09
Gianni Sport v. Gantos, p. 709

Chapter 5.

Read the following cases:

Corbin excerpt, p. 714
Howard v. Federal Crop Ins. Corp., p. 716
Gilbert v. Globe & Rutgers Fire Ins. Co., p. 742 (In addition, please read the digest of Semmes v. Hartford Insurance Co., p. 739)
Aetna Cas. & Sur. Co. v. Murphy, p. 760
Second Nat'l Bank v. Pan-American Bridge (Supp. p. 33)
Fursmidt v. Hotel Abbey, p. 773
Nichols v. Raynbred, p. 777
Kingston v. Preston, p. 780
Price v. Van Lint, p. 783
Ziehen v. Smith, p. 792
Oshinsky v. Lorraine Mfg., p. 815 (but omit Comment, p. 818-20)
Plante v. Jacobs, p. 829
Turner Concrete v. Chester Construction (Supp. p. 37)
Note, Breach by Anticipatory Repudiation, p. 856
Greguhn v. Mutual of Omaha, p. 857
Reigart v. Fisher, p. 865
On Briefing a Case

Purposes of preparing a brief
- Primary: to develop your ability to engage in legal analysis
- Secondary: to have something to refer to in class

Elements of a brief:
- Style (i.e. the name of the case), court, casebook page no.
- Statement of the relevant facts: facts that, if different, would make a difference in the outcome and facts that are essential to understanding the dispute
- Procedure and disposition by the lower court(s)
- Issue on appeal: the precise question the court must decide in order to dispose of the appeal; it must relate to the specific facts of the dispute but should be stated as generically as the facts permit; it should be stated so that, when it is answered, it states a rule of law
- Decision of the court: the declarative form of the issue, or, simply, yes or no
- Reasons for the court’s decision

Additional questions to consider:
- Could the court just as easily have decided the case another way?
- How did the court reach its decision, e.g., by using statutes, precedent, reasoning, assertion?
- How else might the court have reached its result, e.g., other statutes, reasoning, etc.?
- For what is the case precedent?
- Could the litigation have been avoided?