

**CONTRACTS I**  
**FALL 2010**

**PROFESSOR ALLEN BLAIR**

Office Hours

Mondays 11:00 – 12:00  
Wednesdays 8:30 – 10:00; 11:00 – 12:00  
Thursdays 2:30 – 4:00

*Other Times By Appointment*

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*[T]he law does not consist of a series of unchangeable rules or principles engraved upon an indestructible brass plate or, like the code of Hammurabi, upon a stone column. Every system of justice and of right is of human development, and the necessary corollary is that no known system is eternal. In the long history of the law can be observed the birth and death of legal principles. They move first with the uncertain steps of childhood, then enjoy a season of confident maturity, and finally pass tottering to the grave. . . . The law is merely a part of our changing civilization. The history of law is the history of . . . society. Legal principles represent the prevailing mores of the time, and with the mores they must necessarily be born, survive for the appointed season, and perish.*

\* \* \*

*The truth of the warning as to the nature of law must be determined by each student anew for himself [or herself]. This requires long study and experience, a comparative study of cases both in books and in life . . . .*

ARTHUR L. CORBIN, ANSON ON CONTRACTS v-vi (3d Am. ed. 1919).

Introduction

As Arthur Corbin suggested nearly a century ago, the law constantly changes. Contract law — that body of law governing private agreements — is no exception, and as a relative newcomer, contract law might even change more than some other areas of law. This semester and year we will seek to expose not only the rules and principles underlying current contract law, but we will also explore how contracts and the act of contracting define and are defined by our culture, thus giving us ways of thinking about how the law might or should change. We will not merely learn and discuss doctrine, but we will instead strive to answer the following question: “What is it that lawyers do when faced with problems involving commitments framed as contracts?”

Required Texts

- CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (6th ed. 2007) (“Casebook”).
- CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, RULES OF CONTRACT LAW (2010-11 Statutory Supplement) (“Statutory Supplement”).

Preparation and Participation

This is a challenging course. By far, the most important requirement is showing up prepared. Being prepared means that, with respect to each of the primary cases that we study, you need to know: (a) the

facts of the case; (b) the procedural history of the case (i.e., how did the case get to the court that it's in?); (c) who won the case; (d) the substantive legal issues addressed in the case; and (e) the court's reasoning in the case (i.e., why did winner win?). Additionally, you need to evaluate how each case relates to other cases and materials that we are studying or have studied. Being prepared, in short, means that you will likely need to read the primary cases more than once (at the beginning, I'd recommend reading them at least three times).

Though labor intensive, this should also be a fun course. Contract law is intellectually exciting, and it is preeminently useful to any lawyer's practice. It really doesn't matter if you want to practice family law, criminal law, commercial law, or the law of environmental protection for the moon. Contract principles and rules form an ingredient of pretty much every practice.

My hope, then, is that we will have many energetic discussions during the course of the semester and everyone will jump into the cases and materials with both feet. I expect that all of us will contribute to one another's learning. This last point requires that you engage respectfully and professionally with your colleagues and with me.

While my honest hope is that you will all participate without any prodding by me, because you'll find all or at least portions of the class exciting and useful, at the very least, I expect that: (a) you will be able to respond cogently to questions that I direct at you randomly during classes; (b) that you will lead us off on analyzing a couple (at least three or more) cases over the course of the semester; and (c) you will attend carefully to the contributions made by your colleagues.

### Fundamental Goals

In summary form, over the course of this semester and year, I expect you to learn to:

- Determine which body of substantive contract law applies to a particular situation;
- Comprehend the fundamental rules of the common law of contracts, as well as selected elements of statutory contract law, as they presently exist (see the *Simplified One-Page Outline of Contracts* handout for a brief overview of these rules);
- Ask pertinent legal and factual questions about a given contract situation and consult and understand the appropriate sources of law that will help you answer those questions;
- Formulate and communicate situation-specific strategies and arguments regarding contracts and contract disputes; and
- Discuss and critically evaluate some of the theories and assumptions at the core of existing contract law and think cogently about the continuing development of contract law.

### Attendance

Missing more than three classes will constitute excessive absence for purposes of the Law School's attendance policy. If a conflict arises with a particular class, please let me know as soon as possible. I will endeavor to make reasonable accommodations to folks who have personal, religious, or other conflicts and let me know about such conflicts in a timely manner.

### Computer Use

You may use laptop computers or other electronic devices in class to take notes and access course-related materials. You should not use your laptop or electronic devices for other purposes.

### TWEN

You will need to register for this course's page on TWEN as soon as possible. (If you are uncertain about how to do this, please stop by the library and ask for assistance.) In addition to posting extra materials, including handouts and pdf versions of Keynote (the Mac version of PowerPoint) slides that I show in class, I will occasionally post non-mandatory supplemental materials that might interest you.

### Grading and The Exam

Although Contracts is a year-long course, you will be graded at the end of both the fall and the spring semesters.

Your grade this semester will be based on a final examination (80%) and two quizzes (20%). Additionally, I reserve the right to bump grades up or down based on exceptional participation.

#### *The Final Examination*

The final examination will be a three-hour, closed-book test. We will discuss the structure and format of the examination, as well as my expectations regarding the examination, in more detail as the semester progresses.

#### *The Quizzes*

I will give one take-home and one in-class and quiz during the semester.

*These quizzes are treated like the final exam. I cannot excuse you from taking them. If you have a conflict, you must seek a special accommodation from the Dean of Student and Multicultural Affairs. I will oppose any accommodation request unless: (a) you have a preexisting conflict and you have made arrangements with me in advance; or (b) you have a significant personal or family emergency and you contact me as expeditiously as possible.*

#### Grade Bumps

I reserve the right to bump a final grade up or down one-half letter grade step for exceptional (either positive or negative) participation. Few, if any, grades will be bumped.

### Reading Assignments and Schedule

We'll cover a significant portion of the textbook this year. We will, however, be jumping around a little bit, so please pay close attention to the reading assignments.

*If we fall behind schedule, I will distribute revised assignment lists as soon as possible.*

Also, please notice that I do not generally assign sections out of the Supplement. **You should, however, review the portions of the Supplement relevant to the assigned readings.** If a case,

for instance, references § 90 of the Restatement (Second) of Contracts, then I will expect that you have, as part of your preparation for the class, read and considered § 90.

8/23 **Casebook 1-33**

- *Ray v. William G. Eurice & Bros., Inc.* (Md. Ct. App. 1952)(23)

**Handout – Contracts Group Discussion Exercise**

**Handout –Intro to Contracts Vocabulary**

8/25 **Casebook 33 - 44**

- *Loneragan v. Scolnick* (Cal. Dist. Ct. App. 1954)(34)
- *Izadi v. Machado (Gus) Ford, Inc.* (Fla. Dist. Ct. App. 1989)(38)

**Handout – Simplified One-Page Outline of Contract Law**

8/30 **Casebook 44 - 51**

- *Normile v. Miller* (N.C. 1985)(44)

**Handout – Offer and Acceptance Overview**

**Handout – Offers and Promises**

**Handout – Offer and Acceptance Hypos**

9/1 **Casebook 51 – 63**

- *Petterson v. Pattberg* (N.Y. Ct. App. 1928)(53)
- *Cook v. Coldwell Banker/Frank Laiben Realty Co.* (Mo. Ct. App. 1998)(58)

9/8 **Casebook 64 - 70**

- *Harlow & Jones, Inc. v. Advance Steel Co.* (E.D. Mich. 1976) (64)

**Handout – Varney v. Ditmars and the Common Law Indefiniteness Doctrine**

9/13 **Casebook 143-163**

- *Princess Cruises, Inc. v. General Electric Co.* (4th Cir. 1998) (144)
- *Brown Machine, Inc. v. Hercules, Inc.* (Mo. Ct. App. 1989) (153)

**Handout – 2-207 Hypos**

9/15 **Casebook 71 – 93**

- *Hamer v. Sidway* (N.Y. Ct. App. 1891)(72)
- *Pennsy Supply, Inc. v. Am. Ash Recycling Corp. of Penn.* (Penn. Sup. Ct. 2006)(78)
- *Dougherty v. Salt* (N.Y. Ct. App. 1919)(87)

**Handout – Case Exercise: Consideration**9/20 **Casebook 93 - 107**

- *Batsakis v. Demotsis* (Tex. Ct. Civ. App. 1949)(93)
- *Plowman v. Indian Refining Co.* (E.D. Ill. 1937)(99)

**Handout – Consideration Hypos**

*Catch up, if necessary, from earlier assignments.*

9/22 **Casebook 122 – 128; 138 - 143**

- *Berryman v. Knoch* (Kan. 1977) (122)

**Handout – Options and Other Irrevocable Offers**9/27 **Casebook 108 - 122**

- *James Baird Co. v. Gimbel Bros., Inc.* (2d Cir. 1933) (109)
- *Drennan v. Star Paving Co.* (Cal. 1958) (112)

9/29 **Casebook 122-143**

- *Pop's Cones, Inc. v. Resorts Int'l* (N.J. Sup. Ct. 1998) (128)

**Handout – Theoretical Tools: Ex Ante/Ex Post**10/4 **Casebook 167-191**

- *Walker v. Keith* (Ky. Ct. App. 1964)(168)
- *Quake Construction, Inc. v. American Airlines, Inc.* (Ill. 1990) (177)

10/6 **Casebook 193-214**

- *Brower v. Gateway 2000, Inc.* (NY Ct. App. 1998) (195)
- *Register.com, Inc. v. Verio, Inc.* (2d Cir. 2004) (204)

10/11 **Casebook 215-228**

- *Kirksey v. Kirksey* (Ala. 1845) (217)
- *Greiner v. Greiner* (Kan. 1930) (218)
- *Wright v. Newman* (Ga. 1996) (222)

**Handout – Theoretical Tools: Rules Versus Standards**10/13 **Casebook 237-253**

- *Katz v. Danny Dare, Inc.* (Mo. Ct. App. 1980) (238)
- *Shoemaker v. Commonwealth Bank* (Penn. Sup. Ct. 1997) (244)

10/18 **Casebook 253-273**

- *Credit Bureau Enters., Inc. v. Pelo* (Iowa 2000) (255)
- *Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co.* (Fla. Ct. App. 1997) (266)

10/20 **Casebook 273-300**

- *Watts v. Watts* (273)

*Skim through once these two cases – take no more than 30 minutes to review:*

- *Mills v. Wyman* (286)
- *Webb v. McGowin* (291)

**Handout – Excerpts from *Where's Emily Litella When You Need Her: The Unsuccessful Effort to Craft a General Theory of Obligation of Promise for Benefit Received***

*I will distribute the Take Home Quiz on this Date. It will be due on or before October 25.*

10/25 **Casebook 303-323**

- *Crabtree v. Elizabeth Arden Sales Corp.* (306)
- *Winternitz v. Summit Hills Joint Venture* (314)

10/27 **Casebook 323-334**

- *Alaska Democratic Party v. Rice* (323)

**Handout – Statute of Frauds Hypos**

11/1 **Casebook 335-347**

- *Buffaloe v. Hart* (336)

**Handout – More on 2-201**

11/3 **Casebook 437-442**

- *Wood v. Lacy, Lady Duff-Gordon* (438)

**Handout – The Default Rule Paradigm**

**Handout – Relational Contracting**

11/8 **Casebook 442-462**

- *Leibel v. Raynor Mfg. Co.* (442)
- *Seidenberg. V. Summit Bank* (451)

11/10 **Casebook 465-480**

- *Morin Building Prods. Co. v. Baystone Constr., Inc.* (465)
- *Locke v. Warner Bros., Inc.* (470)

11/15 **Casebook 480-491**

- *Donahue v. Federal Express Corp.* (480)

11/17 **In-Class Quiz** – No Reading Assignment (*I will give a short lecture at the start of class explaining how the implied terms and good faith fits into the work that we will begin next semester*)

11/22 **Casebook 462 - 465**

**Handout – *Empire Gas Corp. v. Am. Bakeries* and Output and Requirements Contracts**

11/29 **Contracts Jeopardy**

12/1 **Review Session – Last Class**