

CONTRACTS II
SPRING 2011

PROFESSOR ALLEN BLAIR

Office Hours

Tuesdays 11:00 – 12:30

Thursdays 11:00 – 12:30

Other Times By Appointment

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A profitable approach to the law of contract, and perhaps to law in general, is to view legal doctrine, rules, principles, and standards as reflecting the value system of the culture in which the legal system is embedded.

FRIEDRICH KESSLER, CONTRACTS 1 (3d ed. 1986).

Introduction

Picking up where we left off last semester, we will continue to expose the black-letter rules at the heart of current contract law and to explore how contracts and the act of contracting define and are defined by our culture. As was true last semester, our overarching goal will be to answer the following question: “What is it that lawyers do when faced with problems involving contracts?”

Please remember that this is a year-long course. This means that I expect you to remember what you learned last semester, and I expect that you will be able to integrate the new material that we cover with the material that we’ve already covered. You should, therefore, review your notes from last semester at least occasionally as we move through the new materials, and you should not lose track of the basics (offers, acceptances, consideration, the statute of frauds, good faith, etc.).

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

At this point, you are well aware of how the course works. Please keep up the good work, keep participating vigorously and regularly, and continue to come to class fully prepared. This said, I encourage those of you who were a bit quiet in the fall to speak up more this semester. I will be giving you regular opportunities to practice making arguments. My advice is to take advantage of those opportunities.

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 (or Alternative)

TWEN sucked for me last semester. I may, however, keep it for the spring simply because you are all already registered and I know how (sort of) to use it. I've been assured by West that my problems have all been resolved. We'll see. If we run into issues again, we will likely switch to Lexis's version of TWEN. I will keep you posted.

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 two in-class quizzes 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

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

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.

1/18 **Casebook 349-370**

- *Joyner v. Adams* (352)
- *Frigalimint Importing Co. v. B.N.S. Int'l Sales Corp.* (361)

1/20 **Casebook 370-385**

- *C&J Fertilizer, Inc. v. Allied Mutual Ins. Co.* (370)

Handout – *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.* and Questions

Handout – *Trident Ctr. v. Conn. Gen. Life Ins. Co.* and Questions

1/25 **Casebook 385-410**

- *Thompson v. Libby* (385)
- *Taylor v. State Farm Mutual Auto. Ins. Co.* (394)

Handout – Parol Evidence Rule Hypos

1/27 **Casebook 410-434**

- *Sherrodd, Inc. v. Morrison-Knudsen Co.* (410)
- *Nanakuli Paving & Rock Co. v. Shell Oil Co.* (418)

2/1 **Casebook 517 - 537**

- *Dodson v. Shrader*
- *Hauer v. Union State Bank*

Handout – Introduction to Regulation of the Bargaining Process

2/3 Casebook 537 - 548

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

Handout – *Wolf v. Marlton Corp.* and Notes

Handout – Theoretical Tools: Efficiency and Contract Design

2/8 Casebook 548 – 567

- *Odorizzi v. Bloomfield Sch. Dist.*
- *Syester v. Banta*

2/10 Casebook 567 – 578

- *Hill v. Jones*

Handout – *Danann Realty Corp v. Harris* and Notes

2/15 Casebook 584 - 599

- *Williams v. Walker-Thomas Furniture Co.*

Handout – Theoretical Tools: Cognitive Biases and Behavioral Economics

Catch up, if necessary, from previous assignments.

2/17 First Quiz

No reading assignment for this day.

2/22 Casebook 599 – 625

- *Higgins v. Superior Court of Los Angeles County*
- *Adler v. Fred Lind Manor*

2/24 Casebook 632 - 661

- *Valley Med. Specialists v. Farber*
- *R.R. v. M.H. & another*

3/1 Casebook 663 - 684

- *Lenawee County Bd. Health v. Messerly* (664)
- *Wil-Fred's, Inc. v. Metro. Sanitary Dist.* (674)

3/3 Casebook 684 - 711

- *Karl Wendt Farm Equip. Co. v. Int'l Harvester Co.* (687)
- *Mel Frank Tool & Supply, Inc. v. Di-Chem Co.* (701)

3/15 Casebook 713 - 731

- *Alaska Packers' Assoc. v. Domenico* (715)
- *Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.* (723)

3/17 Casebook 731 – 740; 783 - 785

- *Brookside Farms v. Mama Rizzo's, Inc.* (731)
- Catch up from previous assignments, if necessary.*

3/22 Casebook 785 - 806

- *Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co.* (786)
- *J.N.A. Realty Corp. v. Cross Bay Chelsea, Inc.* (796)

3/24 Casebook 806 - 817

- *Jacob & Youngs, Inc. v. Kent* (806)

Handout – Material Breach and Jacob & Youngs**3/29 Casebook 817 - 843**

- *Sackett v. Spindler* (817)
- *Truman L. Flatt & Sons Co. v. Schupft* (825)
- *Hornell Brewing Co. v. Spry* (833)

3/31 Casebook 851 – 861

- *Roesch v. Bray*
- *Handicapped Children's Ed. Bd. V. Lukaszewski*

Handout – Intro to Damages**4/5 Casebook 861 - 874**

- *Am. Standard, Inc. v. Schectman*
- *Hadley v. Baxendale*

Please consider the following questions about Hadley in advance of class:

1. The miller's lost profits resulted from the defendant's failure to ship the crankshaft as promised. Why, then, as a matter of policy, shouldn't the breaching defendant be required to compensate the miller for its losses? (Think of at least two alternative answers (though you may come up with more). At least one of your answers should have something to do with the incentives that would exist absent the rule in the case.)
2. What are direct damages? In *Hadley*, what would the direct damages have been? What are consequential damages?

3. To test the merits of the *Hadley* rule, consider its application in the following hypothetical twists on the basic situation:
- a. Imagine that the carrier knows that the weather between Gloucester and Greenwich will be terrible. As a result, there is a 10% chance that the crankshaft will be delayed by three days unless the carrier employs twice the usual number of horses that would be used to transport it. This precaution would cost the carrier an extra \$200. But the carrier knows that the miller would lose \$1,000 each day that the mill is shut down, and the carrier knows that the miller has no means of minimizing these losses. In light of the rule announced in *Hadley*, does it make sense for the carrier, assuming that the carrier is a rational economic actor,¹ to spend the extra \$200 on additional horses?
 - b. Now imagine a slightly different scenario. The carrier knows that the weather between Gloucester and Greenwich will be terrible. As a result, there is a 10% chance that the crankshaft will be delayed by three days. There is nothing, however, that the carrier can do about this. The carrier knows that the miller would lose \$1,000 each day that the mill is shut down. The carrier also knows, however, that the miller could avoid the shutdown by renting a spare crankshaft for \$50 a day, so long as it reserves the spare ahead of time and commits itself to pay at least three-days' rental. How does the rule announced in *Hadley* impact the miller's incentive to rent the spare? Should the availability of the spare have any impact on the carrier's liability if the crankshaft is delayed?

4/7 **Casebook 874 - 890**

- *Florafax Int'l, Inc. v. GTE Market Res., Inc.*
- *Rockingham County v. Luten Bridge Co.*

Please consider the following questions before class:

1. In *Florafax*, what are Florafax's direct damages?
2. What lessons should a lawyer designing and drafting contracts take away from *Florafax*?

Handout – PeevyHouse v. Garland Coal & Questions
Handout – Efficiency and Contract

4/12 **Casebook 890 – 910**

- *Havill v. Woodstock Soapstone Co., Inc.*
- *Jetz Serv. Co. v. Salina Props.*

4/14 **Casebook 965 – 983**

- *Wartzman v. Hightower Productions, Ltd.*
- *Walser v. Toyota Motor Sales, USA, Inc.*

4/19 **Second Quiz – No Other Assignment**

4/21 **Contract Negotiation/Drafting Exercise – Handout**

¹ Here's a chance to employ the expected value formula I gave you during the contract design hypo.

4/26 **Casebook** 983 – 1007

- *United States ex rel. Coastal Steel Erectors, Inc. v. Algernon Blair, Inc.*
- *Lancellotti v. Thomas*
- *Ventura v. Titan Sports, Inc.*

4/28 **Review**