

## Syllabus: SEMINAR ON THEORIES OF CONTRACT LAW

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Room: 240A  
Friday, 10:00-11:50 a.m.

### **Assigned Texts**

Peter Linzer, ed., A Contracts Anthology 2<sup>nd</sup> (Anderson, 1995).

Charles Fried, Contract as Promise (Harvard 1981).

Grant Gilmore, Death of Contracts 2d (Ohio State 1997).

### **Supplemental Sources**

The above books have been ordered by the Hamline Law School Book Store. They will be the basis for early classroom discussions, although there may be additional readings in articles and cases also assigned to supplement the texts. The supplementary readings will be easily located on line. Also, you may locate some cases in your contracts casebook.

While I have not assigned it, you may find Farnsworth, Contracts 4<sup>th</sup> (Aspen 2004) a useful source of explanation of legal doctrine.

### **Introduction**

This seminar will examine the development of the underlying theories of contract law in the twentieth century. Beginning with the work of Oliver Wendell Holmes elevating the objective theory of contracts, contract theory has gone through successive generations of development. These include theories of Legal Realism, Corbin's theories of subjective intention, Fuller's reliance theories, the Critical Legal Studies movement, and efficiency based theories of law and economics.

The law has been influenced by these developments but has never fixed on a settled theory of purpose for contract law. This setting of theory in flux will be explored in the context of specific doctrines. The first half of the seminar will explore the theoretical literature in relationship to the doctrines of consideration, promissory estoppel, and unconscionability. In the second half of the semester, students will write extensive research papers and present them to the seminar for critique. Each paper will address some combination of theory and doctrine of interest to the student.

### **Goals**

Contract law is one of the basic common law subjects. The common law has a specific method of legal analysis by which Judges, and hence society, make the law of agreements. To fully understand this method is a necessity for understanding the law. While the basic contracts course explores this method, it is primarily an introduction focusing upon cases and rules of law. Discussions of theory and policy are present, but minimal. This seminar's primary goal is to expand your understanding of the theoretical and policy aspects of contract analysis and their uses in a mature understanding of Anglo-American legal methods. We will do this by focusing upon academic literature, but we also will ground academic inquiry by going back to cases,

primarily some of the basic cases that you read in Contract law in the areas of Consideration, promissory estoppel and unconscionability.

The second major goal of this (as of any) seminar is to develop your legal research, writing and oral presentation skills. Generally the first half of the seminar will focus on readings and class discussions, the second half will feature your research, drafting and oral presentations on topics selected by you (with my pre-approval).

### **Class Attendance and Participation**

Classes should be very interactive and driven by your interests. I will expect you to attend all classes well prepared and to contribute to the advancement of ideas as we proceed. Final grades will be affected by participation as follows: Final grades will be raised by one letter grade for regular, prepared, high quality participation. Final grades may be reduced by one letter grade for consistent lack of preparation or failure to participate.

While I expect attendance at all classes, I recognize that perfection is rare. Therefore, the rule of attendance will be that two absences will be regarded as excessive and may result in withdrawal from the course. If you do experience an attendance difficulty, contact me immediately and I will attempt to make some reasonable accommodations.

### **Course Grade**

In addition to class participation (see above), your grade in the course will be based upon your submission of a paper on a topic agreed upon with me and upon your oral presentation of that paper to the class. The percent breakdown of the grade will be:

- |                                     |     |
|-------------------------------------|-----|
| a) Substantial First Draft of Paper | 25% |
| b) Oral Presentation                | 15% |
| c) Final Draft of Paper             | 60% |

### **Scheduling of Papers**

The paper topics will be selected, and presentations scheduled, early in the semester. First drafts will be due on the Wednesday of the week before the presentation. Papers will be distributed to the class by me in the class before the presentation of that paper. The final drafts will be due on the first day of the examination period. Presentations will be scheduled as much as possible by voluntary agreement, the dates will be finalized by drawing lots.

### **REQUIREMENTS FOR THE PAPER**

The paper should be from 25-40 pages long. They must be thoroughly researched, academically rigorous and footnoted (or endnoted) using either the ALWD or the Bluebook system of citation. Each paper must be grounded in an analysis that uses one or more theories of Contract Law to analyze a specific contract doctrine or problem. As stated above, the topic must be approved by me, but there will be ample flexibility in selecting topics. I will begin the process by circulating a list of topic ideas very early in the semester.

## Schedule of Class Assignments

### Class 1, January 22, 2008

Contracts Anthology pp. 27-44  
The Death of Contract (the book is a short one)

Cases:

Hamer v. Sidway, 124 N.Y. 538, 27 N.E. 256 (N.Y. Ct. App. 1891) (This case is in all contracts case books.)

Baehr v. Penn-o-Fex Oil Corp., 258 Minn. 533, 104 N.W.2d 661 (1960) (In Knapp 5<sup>th</sup> Ed.)

Pennsy Supply, Inc. v. American Ash Recycling Corp. of Pa., 895 A 2d 595 (Penn Sup. Ct. 2006). (In Knapp 6<sup>th</sup> Ed.)

### Class 2, January 29

- 1) Contracts as Promise pp.1-39
- 2) Contracts Anthology pp. 46-78; 10-118, 284-296, 338-360.
- 3) Supplementary Article and Cases:
  - a) James D. Gordon III, A Dialogue about the Doctrine of Consideration, 75 Cornell L. Rev. 987 (1990).
  - b) handout from Ayres and Speidel.
  - c) Cases: Rickets v. Scothern, 57 Neb. 51, 77 N.W. 365 (Neb 1898).  
Cohen v. Cowles Media Company, 479 N.W. 2d 387 (Minn. 1992).