

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 you 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 you’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, 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 have the basics of the law school classroom mastered. This semester, I’m going to press you a little, challenging you to make rigorous and thoughtful arguments under a variety of circumstances. You should view the classroom time as an opportunity to explore not only the materials assigned but also your own capacity to construct and articulate arguments. This should be a fun semester, offering you many opportunities to “get in the game.”

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. Finally, I encourage those of you who were a bit quiet in the fall to speak up more this semester.

Fundamental Goals

In summary form, over the course of this semester (continuing from last), 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 will, however, be trying to use it once again. You'll need to register for the course page for me (I will not be using Professor Szto's page). If I run into issues with TWEN again, we will likely switch to Lexis's version of TWEN. I will keep you posted.

I use TWEN to post not only the Keynote slides (the Mac version of PowerPoint) but also required and optional handouts and materials.

Grading and The Exam

Because Contracts is a year-long course, I can and will test you on materials from the entire year.

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

After talking with Professor Szto, I understand that you began to cover the parol evidence rule and contract interpretation. It looks to me like you had just begun that topic, however, so we are going to do a little recap. It also looks to me like you did not cover the materials regarding good faith and fair dealing. Though I will, accordingly, not test you on that subject, I am going to post two handouts and one short video lecture on the subject (before the end of January, hopefully) so that you have at least heard something about it. It is an amorphous topic, but it is fundamental to modern contract law, so you should, for your own learning's sake, know a little about it. You may review the handouts and video lecture at your convenience.

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 Questions1/25 **Casebook 385-410**

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

Handout – Parol Evidence Rule Hypos1/27 **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 Process2/3 **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 Notes2/15 **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 Here's a chance to employ the expected value formula I gave you during the contract design hypo.

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**

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**