

CONTRACTS I
FALL 2009

PROFESSOR ALLEN BLAIR

Office Hours

Tuesdays 8:30 – 9:30; 11:00 – 12:00

Wednesdays 9:30 – 11:00

Thursdays 8:30 – 9:30

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.

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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 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 (2009-2010 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 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 two and likely 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;
- 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 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 (70%), two in-class quizzes (20%), and fulfillment of a short writing requirement (10%). 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. I will give you the take-home quiz in early October. I will give you the in-class quiz in early November. I will announce exact dates sometime during the first few weeks of class.

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.

Short Writing Requirement

During the semester, you will be required to turn in a set of responses to several exercises. (Please see the Contracts in Action Exercises already posted on TWEN.) You should complete these exercises during the course of the semester. Ideally, you should try to complete one exercise every three or four weeks.

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 most of the textbook this year,¹ and we'll be moving through the textbook, for the most part, from front to back (in other words, I will not be reordering the materials much). I expect that we will get through the concept of good faith this semester – through approximately page 497.

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

Please note: On September 15, 17, 22, and 24, and on October 13 and 20, you will have an altered schedule for this course and Civil Procedure. Professor Coben will be out of town on September 15, 17 and October 13, so he and I have arranged to have you take a double session of Contracts on those days. You will, in other words, have Contracts from 8:00-9:15 and then again at the regular time from 9:30-10:45. You will not have Civil Procedure on these days. On September 22, September 24 and October 20, you will have a double session of Civil Procedure to make up the missed classes. You will, in other words, have Civil Pro at its regular time from 8:00-9:15 and then again from 9:30-10:45. You will not have Contracts on these days. *These changes should also be noted on Professor Coben's syllabus.*

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.

8/20 **Casebook 1-33**

- Chapter 1: An Introduction to the Study of Contract Law
- Chapter 2: Enforcing Promises: Bases of Legal Obligation
 - Mutual Assent – Intention to be Bound: The Objective Theory of Contract
 - *Ray v. William G. Eurice & Bros., Inc.* (Md. Ct. App. 1952)(23)

Handout – Case Supplement 1 (*Park 100 Investors, Inc. v. Kartes*, 650 N.E.2d 347 (Ind. Ct. App. 1995))

Handout – Contracts Group Discussion Exercise8/25 **Casebook 33 - 51**

- Chapter 2: Enforcing Promises, cont'd
 - Offer and Acceptance: Bilateral Contracts
 - *Lonergan v. Scolnick* (Cal. Dist. Ct. App. 1954)(34)
 - *Izadi v. Machado (Gus) Ford, Inc.* (Fla. Dist. Ct. App. 1989)(38)
 - *Normile v. Miller* (N.C. 1985)(44)

¹ I say “most” because in the second semester, we will be skipping a couple of short sections at the end of the book. We’ll discuss what those sections are next semester.

Handout –Intro to Contracts Vocabulary**Handout – Simplified One-Page Outline of Contract Law****8/27 Casebook 51 - 70**

- Chapter 2: Enforcing Promises, cont'd
 - Offer and Acceptance: Unilateral Contracts
 - *Petterson v. Pattberg* (N.Y. Ct. App. 1928)(53)
 - *Cook v. Coldwell Banker/Frank Laiben Realty Co.* (Mo. Ct. App. 1998)(58)
 - Other Methods of Reaching Mutual Assent
 - *Harlow & Jones, Inc. v. Advance Steel Co.* (E.D. Mich. 1976) (64)

Handout – Offers and Promises**Handout – Offer and Acceptance Hypos****9/1 Casebook 71 - 93**

- Chapter 2: Enforcing Promises, cont'd
 - Consideration
 - *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**9/3 Casebook 93 – 108**

- Chapter 2: Enforcing Promises, cont'd
 - Consideration
 - *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 first four assignments.

9/8 Casebook 108 - 128

- Issues in Applying the Concept of Mutual Assent
 - *James Baird Co. v. Gimbel Bros., Inc.* (2d Cir. 1933) (109)

- *Drennan v. Star Paving Co.* (Cal. 1958) (112)
- *Berryman v. Knoch* (Kan. 1977) (122)

9/10 **Casebook 128 - 143**

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

Handout – Theoretical Tools: Ex Ante/Ex Post

9/15 **Double Session of Contracts**

Session 1 – 8:00-9:15

Casebook 143-167

- Chapter 2, Contractual Obligation, cont'd
 - Qualified Acceptance: The “Battle of the Forms”
 - *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

Session 2 – 9:30-10:45

Casebook 167-193

- Chapter 2, Contractual Obligation, cont'd
 - Postponed Bargaining: “Agreements to Agree”
 - *Walker v. Keith* (Ky. Ct. App. 1964)(168)
 - *Quake Construction, Inc. v. American Airlines, Inc.* (Ill. 1990) (177)

9/17 **Double Session of Contracts**

Session 1 – 8:00-9:15

Casebook 193-214

- Chapter 2, Contractual Obligation, cont'd
 - Electronic Contracting
 - *Brower v. Gateway 2000, Inc.* (NY Ct. App.) (195)
 - *Register.com, Inc. v. Verio, Inc.* (2d Cir. 2004) (204)

Session 2 – 9:30-10:45

Casebook 215-237

- Chapter 3, Liability in the Absence of Bargained-for Exchange
 - Promissory Estoppel
 - *Kirksey v. Kirksey* (Ala. 1845) (217)
 - *Greiner v. Greiner* (Kan. 1930) (218)
 - *Wright v. Newman* (Ga. 1996) (222)
 - *King v. Trustees of Boston University* (Mass. 1995) (229)

Handout – Theoretical Tools: Rules Versus Standards

9/29² Casebook 237-253

- Chapter 3, Liability in the Absence of Bargained-for Exchange
 - Promissory Estoppel
 - *Katz v. Danny Dare, Inc.* (Mo. Ct. App. 1980) (238)
 - *Shoemaker v. Commonwealth Bank* (Penn. Sup. Ct. 1997) (244)

Because you will have gone a full week without any Contracts, please read this assignment particularly carefully. We'll be picking up right where we left off on 9/17.

10/1 Casebook 253-273

- Chapter 3, Liability in the Absence of Bargained-for Exchange
 - Restitution
 - *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)

10/6 Casebook 273-302

- Chapter 3, Liability in the Absence of Bargained-for Exchange
 - Restitution
 - *Watts v. Watts* (273)
 - Promissory Restitution
 - *Mills v. Wyman* (286)
 - *Webb v. McGowin* (291)

² *Please remember that the double sessions of Contracts on 9/15 and 9/17 mean that you will not have Civil Procedure on those days. To make up for the missed Civil Procedure classes, you will have double sessions of Civ Pro on 9/22 and 9/24, and you will have no Contracts on those days.*

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 October 9.

10/8 **Casebook 303-323**

- Chapter 4, Statute of Frauds
 - General Principles
 - *Crabtree v. Elizabeth Arden Sales Corp.* (306)
 - *Winternitz v. Summit Hills Joint Venture* (314)

10/13 **Double Session of Contracts**

Session 1 – 8:00-9:15

Casebook 323-348

- Chapter 4, Statute of Frauds
 - General Principles
 - *Alaska Democratic Party v. Rice* (323)
 - Sale of Goods
 - *Buffaloe v. Hart* (336)

Handout – Statute of Frauds Hypos

Session 2 – 9:30-10:45

Casebook 349-370

- Chapter 5, Interpretation and the Parol Evidence Rule
 - Principles of Interpretation
 - *Joyner v. Adams* (352)
 - *Frigalimint Importing Co. v. B.N.S. Int'l Sales Corp.* (361)

10/22³ **Casebook 370-385**

- Chapter 5, Interpretation and the Parol Evidence Rule

³ *Please remember that the double session of Contracts on 10/13 means that you will not have Civ Pro on that day. To make up for the missed class, you will have a double session of Civ Pro on 10/20, and you will have no Contracts on that day.*

- Principles of Interpretation
 - *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

10/27 **Casebook 385-394** (REVIEW TAKE HOME QUIZ)

- Chapter 5, Interpretation and the Parol Evidence Rule
 - Parol Evidence Rule
 - *Thompson v. Libby* (385)

10/29 **Casebook 394-410**

- Chapter 5, Interpretation and the Parol Evidence Rule
 - Parol Evidence Rule
 - *Taylor v. State Farm Mutual Auto. Ins. Co.* (394)

Handout – Parol Evidence Rule Hypos

11/3 **Casebook 410-434**

- Chapter 5, Interpretation and the Parol Evidence Rule
 - Parol Evidence Rule
 - *Sherrodd, Inc. v. Morrison-Knudsen Co.* (410)
 - *Nanakuli Paving & Rock Co. v. Shell Oil Co.* (418)

11/5 **Casebook 437-442**

- Chapter 6, Supplementing the Agreement
 - The Rationale for Implied Terms
 - *Wood v. Lacy, Lady Duff-Gordon* (438)

Handout – The Default Rule Paradigm

11/10 **Casebook 434-435 (Problem 5-2)** **IN-CLASS QUIZ**

11/12 **Casebook 442-462**

- Chapter 6, Supplementing the Agreement
 - *Leibel v. Raynor Mfg. Co.* (442)
 - *Seidenberg. V. Summit Bank* (451)

11/17 **Casebook 462-480**

- Chapter 6, Supplementing the Agreement
 - *Morin Building Prods. Co. v. Baystone Constr., Inc.* (465)
 - *Locke v. Warner Bros., Inc.* (470)

11/19 **Casebook 480-497**

- Chapter 6, Supplementing the Agreement
 - *Donahue v. Federal Express Corp.* (480)

11/24 **Contracts Grand Master Competition** (exciting prizes will be provided to the winning teams)

12/1 **Review Session**