

CONTRACTS I
FALL 2008

PROFESSOR ALLEN BLAIR

Office Hours

Monday 9:00 – 10:00
Tuesday 11:00 – 12:00
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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 is constantly changing. Contract law — that body of law governing private agreements and promises — 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 doctrines, rules, principles and standards 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 try not merely to identify the “rules of contract law” but instead 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 (2008-2009 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, and perhaps more importantly, you need to evaluate how each individual 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.

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 answer 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 four) cases over the course of the semester; and (c) you will respectfully attend to the contributions made by your colleagues.

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 future groups of reading assignments on TWEN (and any alterations to those assignments), I will also be regularly posting preparation questions that are designed to help you focus on key information and concepts in the reading assignments, and I will post extra materials, including handouts PowerPoint slides that I show in class.

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%).

The Final Examination

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

The Quizzes

I will give two in-class quizzes during the semester. I will give you a warning one week prior to each quiz. One of the quizzes will be given around the middle of the semester, and one will be given towards the end of 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.

Short Writing Requirement

During the semester, you will be required to turn in two short papers. One of these papers will consist of a set of responses to several exercises. (Please see the Contracts in Action Exercises already posted on TWEN.) The other paper will be a Complaint or an Answer. I will distribute, by mid-semester, a hypothetical dispute. You will be paired up with a classmate. One of you will draft a Complaint, based on the facts of the hypothetical, and one of you will draft an Answer to that Complaint. (We will return to this hypothetical in the spring, when you will then be drafting discovery requests. I want you to keep the same partners both semesters. Accordingly, you may want to start contemplating who to partner with.)

Reading Assignments

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 do not anticipate that I will be reordering the materials much). My hope is that we will get through the concept of good faith during this first semester – through approximately page 497.

Rather than trying to predict how quickly we will move through these pages, however, I will only try to predict the first seven assignments. Unless I instruct you otherwise, we will read one assignment per class period. I will distribute another six-assignment list no later than September 9. After that, I will continue distributing assignment lists every couple of weeks until we are finished.

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. **Casebook 1-33**

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.

- 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 Exercise

2. **Casebook 33 - 51**

- Chapter 2: Enforcing Promises, cont'd
 - Offer and Acceptance: Bilateral Contracts
 - *Loneragan 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)

Handout – Contracts Intro to Vocabulary

3. **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)

4. **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: Consideration5. **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.

6. **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)

7. **Casebook 128 - 143**

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

Handout – Theoretical Tools: Ex Ante/Ex Post