BACKGROUND

Contract law is your first-year introduction to the world of deal-making, bargained-for exchange, and trade. This is the world that many transactional lawyers work in, and it—not dispute resolution—is what many clients seek an attorney’s help with. Whether an attorney is drafting a commercial lease, an executive compensation contract, a divorce agreement, a contract for the sale of goods, a loan, or a corporate merger document, he or she relies upon contract law and the foundation for exchange that it provides. But contract law applies more broadly, even when lawyers aren’t drafting tailored contractual language. When you purchase insurance, sign a lease for an apartment, or install a piece of software on your computer, you have entered into a contract. In addition, many other courses in law school—including labor and employment, sales, insurance, construction, commercial law, and family law—build on the basic principles of contract law that we will cover here. It is a foundational course in the truest sense.

Beyond learning the substantive law of contracts, contract doctrine provides an excellent opportunity to develop your skills as a lawyer: making legal and policy arguments, reasoning carefully, reading closely, and analyzing cases and statutes. In this sense it is akin to your other first-year courses.

LOGISTICS

Class Schedule: Class will meet from 10:45-11:55 a.m. on Tuesdays, Thursdays and Fridays. All regular class meetings will be in Room 206. Please note that several classes on the Syllabus below have been rescheduled. I apologize in advance if this causes inconvenience, and will try to minimize disruption to this schedule as much as unexpected disruption in my own schedule permits.

Required Materials: The casebook for this course is Knapp, Crystal and Prince, Problems in Contract Law: Cases and Materials (5th ed. 2003). (No, a copy of the 4th edition will not work.) You should also purchase the softcover publication that I have assigned: Knapp, Crystal & Prince, Rules of Contract Law (most recent edition). These materials should be brought to class every day.

Note: You should become accustomed to referencing the Rules of Contract Law book to gain understanding of Restatement and UCC provisions mentioned in cases or in class. In other words, if a case centers on a given code provision, look it up. Read it. Figure out what you don’t understand about it. (Don’t worry as much if a case just mentions a code provision in passing—those are probably less important,
and there are a lot of them. But if a case really centers on a Restatement or UCC provision, you should read it carefully, and more than once, prior to class.)

Optional Readings: Many students find consulting a hornbook or treatise helpful. Several are on reserve in the library, including E. Allan Farnsworth, *Contracts* (3d ed. 1999); John Calamari and Joseph Perillo, *Contracts* (4th ed. 1998); John Murray, *Murray on Contracts* (4th ed. 2002). In addition, there is an excellent student study aid on reserve—Blum’s *Contracts: Examples and Explanations*.

Office Hours: I am tentatively planning to have office hours on Tuesday afternoons from 1:00-3:00. This is tentative until we discuss it in class to see whether you all have free time during that period. In addition, feel free to come by my office at any time, or to talk with me after class. If you would like to schedule an appointment, please do so by email.

I am also happy to go to lunch or coffee with students to meet more informally. If possible, I’d prefer to schedule these lunches on Tuesdays at noon, and to meet with groups of three or more students at a time. When you have pulled a group together, just talk to me after class and we’ll schedule a time to get together.

TWEN Site: Please sign up for the class TWEN site, and be sure to enter an email address there that you actually check regularly, because if I need to cancel class, change an assignment, or otherwise get in contact with you I will do it by emailing you through the TWEN site. I will also periodically post PDF files with copies of the PowerPoint slides, etc., on the TWEN site.

Participation, Attendance, and Grading: In this class, much of the learning will take place during our discussions—not from merely memorizing the doctrine. Participation and attendance are thus extremely important. I will be enforcing the 20% rule, and honestly hope that no one will be absent that much. In addition, although I will accept “unprepared” slips (so long as they are on the desk at the front of our room before the start of class), please submit no more than three over the course of the semester without talking to me about it. I am reserving the right to count late arrivals as absences, due to their disruptive impact on me and the class.

Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. In this class, I ask that you inform me of such absences in advance and in writing at least a day or two before the absence. For the campus policy on religious observances, see http://www.colorado.edu/policies/fac_relig.html.

Your grade will be based primarily on a final exam. The exam will be "limited open book"—meaning that you will be allowed to bring the textbook, the supplement, and any notes or outlines that you have prepared yourself. In other words, no commercial outlines, no hornbooks or copies thereof, no outlines you got from a friend, no copies of materials I have created, no outlines substantially created by someone else. Please keep this in mind as you study during the semester in order to avoid upsetting surprises at exam time.
I am also reserving the right to add class participation points to your final grade or to deduct points based on excessive absences, poor preparation, or a lack of participation in class.

In addition, there will be a mid-term examination during the middle of the semester. This exam will be graded, and will count for 5% of your final grade. In other words, it will count enough to matter if you do well, but not enough to really damage your final standing should you do poorly.

I should also note that students and faculty each have responsibility for maintaining an appropriate learning environment. Students who fail to adhere to such behavioral standards may be subject to discipline. Faculty have the professional responsibility to treat all students with understanding, dignity and respect, to guide classroom discussion and to set reasonable limits on the manner in which they and their students express opinions. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender variance, and nationalities. See policies at http://www.colorado.edu/policies/classbehavior.html and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code.

Outlines: I encourage the sharing of outlines among the entire class. As you will quickly learn, there is no substitute for doing your own studying and outlining; seeing someone else’s outline is thus no more than a helpful guide. At the same time, sharing outlines can greatly reduce stress during the first year and may give you a sense of how your classmates are studying. There is no obligation to do so, however, and this will in no way be reflected in your grade.

To facilitate the exchange of outlines, the library will have an “outlines” folder on reserve for this class. You may submit a copy of your outline to it for general consumption. You may also post your outline to the Westlaw TWEN site.

Students with Disabilities: If you qualify for accommodations because of a disability, please submit to me a letter from Disability Services in a timely manner so that your needs may be addressed. Disability Services determines accommodations based on documented disabilities. For more information, please contact: 303-492-8671, Willard 322, or www.Colorado.EDU/disabilityservices.
If I simply list pages, I am referring to the Knapp & Crystal textbook.

 ► In this first section of the course—roughly the first three weeks—we examine the foundational doctrine upon which all contracts rest. This doctrine deals with how a contract is formed. The traditional formation sequence goes something like this: an "offer" is made by the "offeror"; the offer is or is not "accepted" by the "offeree"; and, assuming something called "consideration" is exchanged, a contract is formed. This traditional sequence raises a host of questions that we will consider. What constitutes an offer? How do you make one, and how do you know if someone is making one to you? If you want to accept an offer, what do you have to do—what constitutes acceptance? What is "consideration," and why is it needed for an offer and acceptance to magically turn into what the law considers a binding contract? (Put differently, why shouldn't just an offer and an acceptance suffice?)

During these first weeks of your first semester, you will both be absorbing a lot of doctrine and trying to figure out the skills needed to survive as a lawyer. In addition to our in-class discussions of doctrine, I will try to provide some guidance on those skills. In particular, during this initial three weeks you should focus on learning how to read cases. That might sound easy, but it isn’t. To read a case requires learning to absorb and understand the legally-relevant facts of the case; to be able to disassemble and re-assemble the logic and arguments of the case; to be able to figure out why the case came out as it did; and to be able to state the rule or holding of the case. Much of our time in these first weeks will be using these early formation cases as a means to acquiring these foundational skills.

Chapter 1: An Introduction to the Study of Contract Law

Tuesday, August 29 pages 1-24
Burch v. Second Judicial District Court of Nevada

Thursday, August 31
Rollins v. Foster on TWEN site
(Not in book)

Chapter 2: Enforcing Promises: Bases of Legal Obligation

2A. Intention To Be Bound: The Objective Theory of Contract

Friday, September 1 pages 25-40
Ray v. William G. Eurice & Bros., Inc.
Park 100 Investors, Inc. v. Kartes

[NOTE: We will be skipping ahead at this point and covering a part of Chapter 3, then returning to the remainder of Chapter 2.]
Chapter 3: Reaching Agreement: The Process of Contract Formation

3A. Offer and Acceptance: Bilateral Contracts

Tuesday, September 5                  pages 161-177
Lonergan v. Scolnick
Izadi v. Machado (Gus) Ford, Inc.
Normile v. Miller

3B. Offer and Acceptance: Unilateral Contracts

Thursday, September 7                 pages 177-189
Petterson v. Pattberg
Cook v. Coldwell Banker/Frank Laiben Realty Co.

Chapter 2 (REPRISE)

2B. Enforcing Exchange Transactions: The Doctrine of Consideration

Friday, September 8                   pages 40-59
Hamer v. Sidway
Baehr v. Penn-O-Tex Oil Corp.
Dougherty v. Salt

Tuesday, September 12                 pages 59-73
Batsakis v. Demotsis
Plowman v. Indian Refining Co.

Thursday, September 14                pages 73-85
Kirksey v. Kirksey
Greiner v. Greiner
Wright v. Newman

▶ The next section of the course embellishes on these first few weeks of formation doctrine. In this next portion, we complicate everything we’ve studied so far. First (Section 2C) we talk about the doctrine of promissory estoppel, which complicates the traditional story of consideration by acknowledging that in some instances contract law should enforce clear promises, despite the lack of bargained-for-exchange. Then we turn to the doctrine of restitution (Section 2D), which provides another alternative theory of enforcement—that in some instances the law should prevent “unjust enrichment,” not just enforce bargains or promises. We then (Sections 3C-3G) go back and complicate offer and acceptance—having pretty much totally turned consideration on its head already.

Throughout this section of the course, keep your head. Yes, it complicates what you’ve just learned. But it makes sense, and if you look at this doctrine as an evolution or a process, you’ll see how the law has changed over time and why.
In terms of skills, by this point in the course you should be getting comfortable with reading cases and with following (most of) the discussion of those cases in class. (If you’re not, let me know.) At this point, you should start to turn your attention to assembling the various cases into streams or chunks of doctrine. Go back to the offer-acceptance-consideration cases. How do the various cases fit together? Can you see the doctrine? Can you see how there is a primary rule, and then how sub-rules or exceptions are created that fit within or under that primary rule? Start paying attention to the ways cases combine and fit together (or how they conflict). That is the central task of this portion of the semester.

2C. Protection of Promisee Reliance: The Doctrine of Promissory Estoppel

Friday, September 15
Allegheny College v. National Chautauqua County Bank
King v. Trustees of Boston University
Problem 2-1

Tuesday, September 19
Katz v. Danny Dare, Inc.
Shoemaker v. Commonwealth Bank

2D. Liability for Benefits Received: The Principle of Restitution

Thursday, September 21
Credit Bureau Enterprises, Inc. v. Pelo
Commerce Partnership 8098
Watts v. Watts

Friday, September 22
Mills v. Wyman
Webb v. McGowin
Problem 2-2

Chapter 3 (REPRISE)

3C. Limiting the Offeror’s Power to Revoke: The Effect of Pre-Acceptance Reliance

Tuesday, September 26
James Baird v. Gimbel Bros., Inc.
Drennan v. Star Paving Co.

Thursday, September 28
Berrymean v. Kmoch
Pop’s Cones, Inc. v. Resorts Intl. Hotel, Inc.
Problem 3-1

Friday, September 29
In class mid-term exam (please note that I will probably use the lunch hour as well for this exam.)
At this point we have largely finished the formation materials. (That’s not entirely accurate—some of what follows is certainly concerned with preconditions for formation, but it’s more or less accurate.) In the next section of the course we focus on a few discrete issues that are important and varied. First we talk about the Statute of Frauds (SOF). The SOF requires that certain contracts—not all contracts—be in writing to be enforceable in a court of law. This is a formal legal requirement; requiring that contracting parties jump through the hoop of writing down their contract in a specific way serves certain social, legal, and economic ends, and it imposes certain costs. At this point you will recognize some of the arguments we will get into about the costs and benefits of such formalism—we will have had similar arguments when talking about offer, acceptance, consideration, and promissory estoppel.

Chapters 5 will then turn to contract interpretation. How do you know what a contract means? What if it is ambiguous? What if it doesn’t look ambiguous on its face, but the two parties before the court offer very different interpretations of the meaning of the words contained in the contract? How should a judge decide what a contract means? Can she look only at the contract, or can she look outside of the contract itself (at other texts, at letters to and from the parties, etc.) to determine its meaning? What are the advantages and disadvantages of different approaches to interpretation?

Chapter 5 also raises the problem of Parol Evidence. (Note that Parol in Contracts has no “E” on the end. There is a legal term “parole,” but it is not a contract term, it is a criminal law term. Don’t confuse the two.) The Parol Evidence Rule (PER) deals with when a judge may or may not look at written or other evidence to alter or contradict a written contractual agreement. Note that this is different than the Statute of Frauds in Chapter 4—there we were talking about whether the SOF
requires that something be in writing. Here in the PER we are talking about what kind of evidence can counter a written contract.

Chapter 6 brings up a different issue—when the law will insert terms into a contract that the parties didn’t put there themselves. This might seem confusing, particularly given that throughout the formation materials at the start of the course we talked about contracts as a manifestation of the intentions of the parties, as a way for parties to express themselves in the world, and as evidence of exchange (where every contract term theoretically has a “price” associated with it). Why should a court ever insert a term that the parties did not? What are the arguments for doing so, and the arguments against?

In terms of skills, at this point in the semester you should be outlining in preparation for exams. We are three hundred pages into the book—that’s a lot of material under the bridge. You should begin to outline that material (or do some equivalent review process). I will talk at length in the sessions I do for all 1Ls and in class about skillful outlining, so I won’t get into it here. But start—don’t wait for Fall Break (or worse yet, Thanksgiving).

Chapter 4: The Statute of Frauds

4A. General Principles: Scope and Application

Thursday, October 12  
Crabtree  
Winternitz  
Alaska Dem. Party v. Rice

4B. The Sale of Goods Statute of Frauds UCC 2-201

Friday, October 13  
Buffaloe v. Hart  
Bazak International

Chapter 5: The Meaning of the Agreement: Principles of Interpretation and the Parol Evidence Rule

5A. Principles of Interpretation

Tuesday, October 17  
Joyner v. Adams  
Frigaliment  
C&J Fertilizer

5B. The Parol Evidence Rule

Thursday, October 19  
Tompson v. Libby  
Taylor v. State Farm

Friday, October 20  NO CLASS TODAY
The next two chapters of the book deal with means of avoiding enforcement or justifying nonperformance. Both may seem a little bit of a hodge-podge. But these are also fun and interesting chapters, because they take a different cut at some of the same foundational questions we’ve been talking about throughout the semester. At this point, we’ve talked about formation and about what it takes to make and enforce a contract, and we’ve talked about why enforcing contracts is a good idea. But here, in Chapters 7 & 8, you have to look at the opposite question: when shouldn’t we enforce? When should we limit the parties’ ability to order their own affairs through contract? When should we be suspicious of such private ordering, and why?

These are sensitive questions. For centuries, women and minorities had no right to contract—as well as no right to own property, etc. And even today, these same enforcement issues raise delicate questions. Should the mentally handicapped have the right to contract? Should children? Should people have the right to contract to sell anything? What about their bodies, either through sexual conduct or by selling an organ? If a man can sell sperm, can a woman sell eggs? If a woman can sell eggs, can she sell the right to use her womb to fertilize and carry a fetus to term? If not, why not? And if she can sell her womb, should she be allowed to sell one of her kidneys? We will talk about all of these issues.
Chapter 7: Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy

7A. Minority and Mental Incapacity

Tuesday, October 31 (!)  
Dodson v. Shrader  
Hauer v. Union State Bank  

pages 507-526

7B. Duress and Undue Influence

Thursday, November 2  
Totem Marine Tug  
Odorizzi  

pages 526-543

7C. Misrepresentation and Nondisclosure

Friday, November 3  
Syester v. Banta  
Hill v. Jones  

pages 543-564

7D. Unconscionability

Tuesday, November 7  NO CLASS TODAY  

pages 564-598

Thursday, November 9  
Williams v. Walker Thomas  
Adkins v. Labor Ready  
Cooper v. MRM  

pages 564-598

7E. Public Policy

Friday, November 10  
Valley Medical Specialists  
Borelli  
RR v. MH & Another  

pages 598-633

Chapter 8: Justifications for Nonperformance: Mistake, Changed Circumstances, and Contractual Modifications

8A. Mistake

Mon. Nov. 13 MAKEUP CLASS 12:00-12:50  
Lenawee County Board of Health  
Wil-Fred’s Inc.  

pages 633-652
This last section of the course is tough, in large part because it is last. At this point you have 700 pages of contracts under your belts, and any more doctrine may start to feel a little insulting! At the same time, it is important to cover these last topics, even though we will do so in a somewhat cursory fashion because of the looming end-of-term. My goal in this last section is to introduce you to these issues, but not belabor them. I want you to know Hadley v. Baxendale, but I won’t fret if you can’t do complex damages calculations.

Skill-wise, at this point you should really be preparing for exams. I would hope that by this point you would have an outline more-or-less done, or at least be close. I would hope that you would be doing practice exams, talking about your answers with friends or a study group, revising your outline, and creating short, usable aids to bring into the exam. My advice is to do lots of practice questions, and to WRITE THEM OUT in a timed environment. The more you flex your writing muscles under timed conditions, the better off you’ll be on the real exams.

Chapter 11: Expectation Damages

11A. Computing the Value of Plaintiff’s Expectation

Tuesday, November 28    pages 807-831
Handicapped Children’s Education Board
American Standard

11B. Restrictions on the Recovery of Expectation Damages

Thursday, November 30    pages 831-847
Hadley v. Baxendale
Florafax
11C. Restrictions II: Mitigation

Friday, December 1
Rockingham
Boehm

Tuesday, December 5 – In-Class Review Session

Thursday, December 7 – In-Class Practice Exam

Friday, December 8 – In-Class Review Session