

CONTRACTS — Fall 2012

**Tues./Thurs./Fri. 9:00 – 10:15 a.m.
Room 205**

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SYLLABUS AND POLICIES

Welcome to Contracts, and to your first semester of law school!

I realize that “contract law” may sound daunting, and perhaps boring to some of you. The good news, however, is that you have more experience with contracts than you may realize – and contract law can be fun!

We form contracts on a daily basis, and often modify and break contracts without even realizing it. We continually weigh the costs and benefits of our decisions, and negotiate deals that reflect our perceptions of what is most valuable. Contracts are not merely commercial legal constructs. Instead, they are very familiar. During the semester, take note of the various contract issues you encounter in your daily lives.

Contract law also is fairly rational and equitable. It aims to produce results that both “make sense” and “seem fair.” This also means that it encompasses complex webs of law and theory enmeshed in economic and social policies. On one level, contracts often reflect economic decisions based on the “dollars and cents” relative to a particular deal. Contracts are also highly human and relational in that we often make contracting decisions based on our instincts and relationships. Indeed, very different considerations may drive one’s decision to buy a Dell computer versus one’s decision to permit an ex-spouse to have visitation rights under a child custody agreement.

During the semester, we will focus on learning basic contract law through the economic, political, and social lenses that shape the law. In addition, we will learn both common and statutory law governing contracts and sales. We will spend the bulk of our time, however, on common contract law that judges have developed over time through judicial opinions. This means that we will devote most of our time to reading and analyzing opinions excerpted in your casebook for this course.

We will also learn statutory sales law under the Uniform Commercial Code (UCC) Article 2. It is important to note that the UCC is uniform model legislation that policymakers develop and propose for adoption by individual states. Accordingly, the uniform version of the UCC reprinted in your supplement is not “law” per se. Instead, the UCC is only law to the extent that states adopt it. For example, the bulk of UCC Article 2 is law in Colorado because the Colorado legislature adopted it. However, you

should be aware that Colorado law may diverge from the uniform version in some areas. Furthermore, UCC Article 2 recently was revised, and Colorado (along with the rest of the states) is currently considering whether and to what extent to adopt the revised version. Moreover, you must always research a particular state's law when practicing in that state instead of simply relying on the uniform version of the UCC.

Above all, I look forward to working with you! Please do not hesitate to talk with me about your questions and concerns. Learning is an interactive process, and I am here to help you through that process.

Class Schedule: Class will meet from 9:00 – 10:15 a.m. on Tuesdays, Thursdays, and Fridays in Room 205. The five extra minutes added to each day will make up for 2 missed days we would otherwise have to make up. **These days of NO CLASS are Thursday, September 27 and Friday, September 28.**

Required Materials: The casebook for this course is McGovern, Lawrence & Hull, Contracts and Sales: Contemporary Cases and Problems (2d ed. 2002). You should also have its companion Statutory Supplement by the same authors. In addition, I may distribute additional materials via handouts in class and/or TWEN. It is essential that you register for the website set up for this class on TWEN.

Course Reserve: Several hornbooks and treatises are on reserve in the library in a *General Contracts Reserve* for this and other Contracts courses. There also are additional resources and consumer-oriented DVDs on a *Schmitz Contracts Reserve*. In addition, other materials may be placed on reserve during the semester, and there is a test bank in the library that includes all my past exams for your practice.

Office Hours: I will hold office hours on Tuesdays, from 3:30 – to 5 p.m., or by appointment. Also, I am happy to set up meetings/coffee with study groups. It is my pleasure to answer your questions and assist you in learning.

Participation, Attendance, and Grading: Class attendance, preparation and participation are essential. Your contribution to this class will enhance everyone's course experience. In an effort to reinforce this, I have decided to follow what has come to be known as the "Present and Prepared Sign-In Policy." This means that there will be a copy of the seating chart circulated around the room during the beginning of class, and if you are present and prepared (P&P) to be called on, you may circle your name on the chart and you will be counted as P&P for that day, whether I call on you or not. If you are P&P for 80% or more of our regularly scheduled classes, your grade will automatically rise by two points. If you do not feel adequately prepared but want to attend class, I encourage you to come to class and not circle your name. All must sign in by the time the chart has circulated around the class, and you may not sign in after class.

There is a serious penalty for being caught bluffing or having another student sign in for you when you are absent. Your final grade will be lowered if you have another sign in for you when you are absent. Your grade also will be lowered if you sign

in as P&P and I call on you and you are not prepared. Hopefully, this will not be necessary.

To be prepared, you must have read the entire assignment, made a good faith effort to think about the issues, and answer questions. I am not seeking perfect answers, but you must be willing and able to discuss the material, including material assigned for that day as well as related material from previous assignments. In addition, I will assign problems from the book in advance of the class in which we will discuss the problems. You should put extra effort into preparing assigned problems, and be ready to respond to questions that emanate from these problems.

Please realize that final grades in the class must conform to the law school's median and mean. Therefore, if most of you take advantage of the P&P policy, the raw grades will have to be lowered in order to leave room for the P&P adjustments, and if you choose not to be P&P for at least 80% of the classes, you will be penalized. If most of you do not take advantage of the P&P policy, then those who do will benefit. Therefore, there is no disadvantage to participating and a distinct disadvantage if you do not.

Because participation is very important to your learning, I also wish to acknowledge students' special effort and contribution to the class. Therefore, I will add from 1 to 3 points to the final grade of those who participate consistently and thoughtfully in class discussion. *This means that you potentially could earn up to 5 points for combined P&P and "special effort" participation!*

Exam: Your grade for this course will be based primarily on a three-hour (plus fifteen minutes for thinking/organizing) final essay exam. You may bring with you to the exam the required casebook and supplement, and any notes or outlines *that you have prepared (alone or with a study group)*. *This means you only may bring in an outline you helped prepare.* You may not bring other books, treatises, nutshells, commercially prepared outlines, outlines from a friend, etc.

On-Line Resources: Again, this course has its own website through Westlaw's TWEN system. I may post messages regarding class, as well as supplemental readings, and other materials on this site.

ASSIGNMENTS

**This syllabus is subject to change. Please do not read too far ahead of class.*

**Please also note that the page numbers in the far right column refer to the casebook, but you also should make sure to read any sections of the Restatement 2nd of Contracts and/or the UCC Article 2 (reprinted in your Supplement) that are referred to in the casebook reading assignments. Also note that we are skipping certain cases and problems as noted (due to time constraints).*

Chapters 1 & 2: Introduction & Basis for Enforcement of Promises

Tuesday August 28	Intro & Contracts Basics *See First Assignment Posting!	pp. 1-13 & Contract Examples (you bring in)
Thursday August 30	Consideration & Consideration Substitutes Skip: §2.03[A] (pp. 16-20) & <i>In re Estate of Casey</i> (pp. 23-25)	pp. 13-25
Friday August 31	Week 1 Wrap Up: Contracts in Context Holmes, <i>The Path of the Law</i> , 10 Harv. L. Rev. 457-478 (1896)	Handout
Tuesday September 4	Promissory Estoppel Skip: Prob. C (p.34)	pp. 25-35
Thursday September 6	Implied in Law Contracts Skip: Probs. E & F (pp. 40-41)	pp. 35-46
Friday September 7	Offer Skip: Prob. A (p.55)	pp. 47-64
Tuesday September 11	Acceptance & Discrepancies Between Offer and Acceptance Pt I	pp. 64-72
Thursday September 13	Discrepancies Between Offer and Acceptance Pt II Skip: Prob. C (p.73), <i>Ohio Grain Co.</i> (pp. 79-81), Prob. D (pp. 81-82)	pp. 73-88
Friday September 14	Modifications Skip: <i>Gilbert Steel</i> (pp. 90-91), <i>Mathis</i> (pp. 98-101), Prob. B (p. 103), §4.03 (pp. 104-112)	pp. 89-104
Tuesday September 18	Express Warranties vs. “Puffing”	pp. 113-125
Thursday September 20	Inchoate Agreements Skip: Prob. B (pp. 138-39)	pp. 125-138

Friday September 21	Implied Terms Skip: Prob. C (p. 141), <i>Casa D'Angelo</i> (pp. 151-55)	pp. 139-151
Tuesday September 25	Good Faith in Various Contexts Skip: Prob. G (p. 166), §§5.02[B][4] & [5]	pp. 156-166
Thursday September 27	NO CLASS	
Friday September 28	NO CLASS	
Tuesday October 2	The Statute of Frauds Part I Skip: Prob. A (pp. 180-81), Prob. B (pp. 183-84)	pp. 175-192
Thursday October 4	The Statute of Frauds Part II Skip: Prob. C (pp. 196-97), Prob. D (p. 199), Prob. E (p. 200)	pp. 192-205
Friday October 5	Paul Chessin: Real World Contracts in Action	*Readings posted on TWEN per the handout (also posted on TWEN)
Tuesday October 9	The Parol Evidence Rule Part I Skip: Prob. F (pp. 217-18), Rest of Ch. 6 (pp. 221-242)	pp. 206-221
Thursday October 11	Incapacity & Fiduciary Relationship Skip: Prob. B (pp. 248-49)	pp. 243-252
Friday October 12	Mistake of Fact Skip: §7.04 (pp. 267-87)	pp. 253-267
Tuesday October 16	Adhesion Contracts & Unconscionability Skip: Prob. C (pp. 291-92), <i>Williams and Patterson</i> (pp. 298-302)	pp. 287-309
Thursday October 18	UCC Article 2 Sale of Goods: Warranty Disclaimers and Remedy Limitations Skip: Prob. F (p. 318) and <i>Wille</i> (pp. 319-322)	pp. 309-325 *Propertyrom.com Contract posted on TWEN!
Friday October 19	Specific Performance Part I	pp. 327-339

Tuesday October 23	Specific Performance Part II Skip: Prob. B (pp. 341-42), §8.01[C] (pp. 346-350)	pp. 340-346
Thursday October 25	Damages Intro (Especially Rest. 2 nd §§347 & 349 in your Supplement) & Damages Worksheet Skip: Prob. D (p. 350)	pp. 350-351 & Damages Worksheet posted on TWEN
Friday October 26	Expectancy vs. Reliance Damages Skip: Prob. E (pp. 362-63)	pp. 351-362
Tuesday October 30	Time of Measuring Value & Crediting the Defendant's Performance Skip: Prob. G (pp. 369-70) *Contracts Class Crazy Costume Contest!	pp. 363-369
Thursday November 1	Right to Sue for Payments Not Yet Due & Limitations on Damages Part I	pp. 370-384
Friday November 2	Limitations on Damages Part II Skip: Probs. H (p. 387) & J (p. 395)	pp. 384-395
Tuesday November 6	Tort vs. Contract Damages & Liquidated Damages Skip: Probs. K (p. 398), L (p. 400), N (p. 413-14); Gary and Schrenko	pp. 396-408 & 412-413 (Prob. M)
Thursday November 8	UCC Art. 2 Buyer's Specific Performance & Buyer's Damages Part I Skip: Tower City Grain and Jon-T Farms	pp. 414-424
Friday November 9	UCC Art. 2 Buyer's Damages Part II Skip: Probs. O (p. 427) & P (pp. 429-30); S.J. Groves Sons (pp. 430-32)	pp. 424-436
Tuesday November 13	UCC Art. 2 Seller's Specific Performance & Damages Skip: Prob. R (pp. 437-38) & Foxco Indus. (pp. 440-42)	pp. 436-44
Thursday November 15	Termination, Rescission, Setoff, and Suspension	pp. 445-455
Friday November 16	Express Conditions Skip: Probs. A (p. 460), B (p. 466-67), C (p. 469-70) & D (473-74); MacFadden (pp. 470-73)	pp. 455-469
Tuesday	NO CLASSES THIS WEEK DUE TO FALL	

November 20 through Friday November 23	BREAK AND THANKSGIVING BREAK! Enjoy Your Time Off!	
Tuesday November 27	Implied Conditions & Material Breach Skip: Prob. E (p. 479)	pp. 474-486
Thursday November 29	Effect of Rescission and Restitution Part I Skip: Prob. G (p. 492)	pp. 486-497
Friday November 30	Effect of Rescission and Restitution Part II Skip: Prob. H (pp. 504-05); §9.03[E] (pp. 508-10)	pp. 497-508
Tuesday December 4	UCC Art. 2 Buyer's Rejection, Revocation & Cancellation Skip: Probs. K-M (pp. 516-18) & N (p. 521); <i>Connecticut Investment Casting</i> (pp. 519-21) & <i>Bowen</i> (pp. 521-22)	pp. 510-516, 518-519 (Note) & 523-526
Thursday December 6	UCC Art. 2 Seller's Cancellation, Rescission & Recovery Skip: Prob. O (pp. 530-31); <i>Cherwill-Ralli</i> (pp. 528-30) & <i>Burk</i> (pp. 532-33)	pp. 526-539
Friday December 7	REVIEW & GO OVER PRACTICE EXAM!	
Monday December 17	Final Exam – GOOD LUCK! 8:15 a.m. Room 205 (overflow Room 305)	

CU POLICY STATEMENTS

(Provost Requirements)

(1) 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 be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, Willard 322, and <http://www.Colorado.EDU/disabilityservices>

If you have a temporary medical condition or injury, see guidelines at <http://www.colorado.edu/disabilityservices/go.cgi?select=temporary.html>

(2) Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. In this class, please let me know in advance of the class if you will be missing class due to a religious observance.

(3) Professional courtesy and sensitivity are important in this class, and especially with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at <http://www.colorado.edu/policies/classbehavior.html> and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code

(4) The University of Colorado at Boulder policy on Discrimination and Harassment, the University of Colorado policy on Sexual Harassment and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of sexual harassment or discrimination or harassment based upon race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH, the above referenced policies and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>

(5) All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution, and law students are also subject to the CU Law Honor Code. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council. Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion).