

Contracts I Section 339
Professor Meyerson
Fall 2017

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COURSE INFORMATION AND SYLLABUS

Meeting Times: Wednesdays and Fridays: 10:30 pm - 11:45pm

Location: Room assignments are available through MyUB.

Class Attendance, Preparation, and Participation: You are required to attend class regularly and be prepared for class; adequate class attendance, preparation, and participation are also essential if you wish to understand the material.

To conform with ABA and law school guidelines, you are entitled to 5 absences per semester. A student with more than 5 unexcused absences will not be permitted to take the final.

Unless told otherwise, for each class, you are responsible for: 1) any unfinished material from the preceding assignment: **PLUS** 2) the assignment following the one discussed in the preceding class. If you miss a class, you must obtain the class notes from the missed class *before* attending the next class.

Class participation is an essential part of process of becoming a lawyer. All students are expected to be prepared to participate in each class session, as I will call on students randomly and solicit volunteers. If you are not prepared to discuss the day's reading and the questions for the day's assignment, please give me a note prior to class. This will avoid embarrassment for both of us.

You must prepare written answers to the questions in the syllabus which accompany each assignment. Details on how your answers will be handed in will be provided in class.

Use of the Internet during class (This is huge.)

Repeated studies, as well as my own experience, prove that using the Internet or texting during class lowers class performance and exam grades. The fact that this may not have occurred in college for you is not relevant at all. I will ask you all to turn off your access to wireless Internet and put away your cell phone before the start of class. We will discuss this more on the first day. Suffice to say- texting or internet use during class will be prima facie evidence of unsatisfactory class participation.

I reserve the right to decrease a grade for unsatisfactory class participation or preparation.

Materials

This packet contains most of the cases we will be reading this semester. Additional readings may be distributed throughout the semester.

Some students have found certain supplemental books to be useful. In particular, students have found the following hornbooks or treatises helpful both in preparing for class and for exams: Farnsworth, **Contracts** (4th ed in paper, 2004), **Murray on Contracts** (5th ed. 2011), and Calamari and Perillo **Hornbook on Contracts** (7th ed. 2014), Brian A. Blum, **Examples & Explanations: Contracts** (6th ed. 2013)

In contrast to the above books, students have found that the commercial outlines and bar review texts can be detrimental to their performance on exams. These outlines generally focus on material that I consider irrelevant and are sometimes simply incorrect.

Course Website

This course has a TWEN page that links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information.

Grading

Your grade will be determined as followed:

10%: Homework [We will discuss this in class]

10%: One-hour closed-book midterm examination

80%: Three-hour, closed-book final examination.

As stated above, I reserve the right to lower grades for inadequate class attendance, preparation, and participation.

Course Expectations

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class in order to obtain a *minimum* passing grade. Far more time is needed for a good or excellent grade.

You are also expected to complete all reading and written assignments before class, to participate consistently in class discussion, to work collaboratively on all group assignments, and to be able to demonstrate that you have read and reflected on the issues raised in each assignment.

Student Learning Outcomes

Students will learn the rules of offer, acceptance and consideration; they will learn how to structure legal arguments in a logical sequence; they will learn how to be precise with legal language; and they will learn how to apply the concept of “objective intent.” They will also learn how to work collaboratively to solve legal problems.

Office Hours

My scheduled Office Hours for Fall, 2017 are:

Wednesdays: 9:30- 10:20, 12:00 – 1:20 (except for faculty meetings)

Fridays: 9:30- 10:20, 12:00 – 1:20

IMPORTANT: If you cannot find a convenient time, *please* let me know and we will find a mutually convenient time to meet or talk on the phone. You should be assertive in making appointments.

Class Cancellation:

If I must cancel a class, I will either let you know ahead of time or, if need me, notify you via email. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

If you have even the slightest doubt about whether certain actions would violate the Honor Code, please contact me or Associate Dean Dionne Koller.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

CONTRACTS I SYLLABUS AND QUESTIONS

[Note: Class preparation requires that you write out a “brief” for each case and answer all questions. We will discussing case “briefs” in class]

Assignment 1 UCC or Common Law?

Read the background to both the UCC & Restatement [pp 360 and 377 in the back of the Packet], UCC §§2-102, & 2-105 (1), and *BMC Industries, Inc. v. Barth Industries, Inc.* and answer the following questions:

- a) Some contracts fall under the UCC and others are governed by the Common Law. What determines under which set of rules a contract falls?
- b) What is a “movable good”?

Assignment 2 Determining Intent

Read *Lucy v Zehmer* [p 15], *Balfour v. Balfour* [p 21], and UCC § 1-201(3) & (11), RS §§1, 2, & 3

- a) In *Lucy v Zehmer*,
 - i) Why does the Court find that there is a contract even if the seller was joking?
 - ii) Throughout the course, I will refer to “the Objective Theory of Contracts.” Based on *Lucy*, what is the meaning of that phrase?
- b) What is the difference between a “contract” and an “agreement”?
- c) After *Balfour v. Balfour*:
 - i) Did the husband or wife win the case on appeal?
 - ii) Use the "Objective Theory" to explain the holding

Assignment 3 Introduction to Offers

Read *Hawkins v McGee* [p 25], RS §24 and the facts of *Sard* and *Cirafici* [p 38-39]

- a) What is an offer?
- b) *Hawkins v McGee*
 - i) What is the offer in *Hawkins*?
 - ii) What are the policy reasons for and against the court’s ruling?
 - iii) Is the court’s holding consistent with the “Objective Theory”? Why or why not?
 - iv) After you read the facts of *Sard* and *Cirafici*: Is there an offer in either or both cases?

Assignment 4 Preliminary Negotiations

Read *Leonard v Pepsico* [p 27], *Lonergan* [p 40], *Fairmont* [p41] and RS 26

- a) *Leonard v Pepsico*

- i) What does the plaintiff argue the offer is?
- ii) What is the usual rule for advertisements and offers? Why?
- iii) How does that rule apply to this case?

b) Imagine that the facts from *Loneragan* were an exam question:

- i) What three communications MIGHT arguably be offers?
- ii) What does the court conclude about whether each is an offer, and why?
- iii) At the end of the case, the court says, “Another construction was possible.” What is the other possible way the critical language could have been interpreted (other than the way the court did)?

c) In *Fairmont Glass*,

- i) What does the Court think is the most important language in the communications for determining if an offer has been made?

Assignment 5 Intent to Memorialize

Read *Texaco* [p 44] and RS §27 and UCC §2-204 (1), (2)

In *Texaco*:

- i) What factors does the court utilize to determine whether there is a contract when there is a preliminary agreement, but a later writing is contemplated?
- ii) Try to restate these factors in simpler language.
- iii) When, according to the court, was the contract created?
- iv) What language in the press release did the court find most important?
- v) What facts were most relevant for the court in resolving the final three factors?

Assignment 6 Indefiniteness I

Read *Academy Chicago Publishers* [p 60], *Haines* [p 64], and *Wagenseller* [p 67] and RS §33

- i) What is the difference between the legal and plain English meaning of “indefiniteness”?
- ii) What terms are not clear from the contracts in *Academy Chicago Publishers*, *Haines* and *Wagenseller*?
- iii) How does the Court “fill in the blanks” in, *Haines* and *Wagenseller*?
- iv) Why doesn’t the court “fill in the blanks” in *Academy Chicago Publishers*?
- v) Also, in *Wagenseller*: define an “at-will contract.”

Assignment 7 Indefiniteness II

Read *Southwest Engineering* [p 82], UCC §§2-204(3), 2-305 (1), 2-307, 2-308 (a), 2-309 (1), 2-310 (a), and *Joseph Martin* [p 88], *Copeland* [p 92], and *Oglebay* [p 101]

a) In *Southwest Engineering*:

- i) How does the U.C.C. approach to “filling in the blanks” differ from the common law?

Assignment 14 **Virtual Contracts**

Hill [p 191], *Kloeck* [p 192]

- a) The courts in *Hill* and *Kloeck* reach opposing results. What is the basis of each court's analysis? b) Which do you think is stronger and why?

Assignment 15 **Consideration**

Davies [p 201], *Hamer* [p 204], *Kirksey* [p 208], *Gottlieb* [p 209], *Weed* [p 214] and and RS §§71, 74,79

- a) From *Davies* and *Weed*: Define “consideration,” “legal detriment,” and “bargained for”
b) Why is there the consideration in *Hamer* and *Gottlieb* but not in *Kirksey* or *Weed*?
c) Why is the phrase “adequate consideration” redundant?

Assignment 16 **Pre-Existing Duty**

Fiege [p 216], *Schwartriech* [p 224], *De Cicco* [p 230], and RS § 73

- a) *Fiege*: Why is give up a losing lawsuit “detrimental”?
b) Define “pre-existing duty” and say why it poses a “consideration” problem.
c) How is this “problem” solved by the court in *Schwartriech*?
d) How does the court avoid the “pre-existing duty problem” in *De Cicco*?

Assignment 17 **Common Law Modification, Accord and Satisfaction**

Angel [p 236], RS §89, *Kibler* [p 242] and *Segall* [p 248]

- a) What is the rule for modification announced in *Angel*?
b) What is meant by “Accord and Satisfaction”?
c) On what do the majority and dissent disagree in *Kibler*? Whose argument do you think stronger and why?
d) Why was there no accord and satisfaction in *Segall*?

Assignment 18 **UCC Modification; Duress**

Roth Steel [p 254] and *Austin Instruments* [p 266]

UCC §§1-102 (3), 1-203, 1-201(19), 2-103(1)(b), 2-209(1), (2)(4)(5)

- a) *Roth Steel* and UCC sections
 i) What is the UCC rule on modification?
 ii) What does “good faith” mean under the UCC?
- b) *Austin Instruments*
 i) Define duress [under common law].
 ii) On what do the majority and dissent disagree in *Austin Instruments*? Whose argument is stronger?

Assignment 22 **Promissory Estoppel II**

Shoemaker [p 313], *Salsbury* [p 319], *Drennan* [p 323], and RS §87(2)

a) *Shoemaker*:

- i) Why wasn't there consideration in *Shoemaker*?
- ii) How did the court in *Shoemaker* decide if the elements of Promissory Estoppel were met?

b) *Salsbury*:

- i) Why was there no consideration?
 - ii) How do the principles of Promissory Estoppel apply to charitable pledges?
- c) *Drennan* and RS §87: How does promissory estoppel work in the contractor/subcontractor situation? [HINT: each "bid" is offer]

Assignment 23 **Promissory Estoppel II**

Grouse [p 329], *Werner* [p 332]

a) *Grouse*: Can one reasonably rely on an at-will K? Why and why not?

b) In *Werner*:

- i) Find the promise;
- ii) How does the court calculate damages?

Assignment 24 [time permitting] Statute of Frauds

Read Utah § 25-5-4 [p 339], *Pasquin* [p 340], and *Cohn v. Fisher* [p 343], RS §§ 110, 130, 131, 132, 135, 137 & 139 and UCC §2-201

a) What types of transactions require a writing according to Utah § 25-5-4?

What common law transactions do not require a writing?

b) After *Pasquin*: how do we determine which transactions are within the "one-year provision"?

c) After *Cohn*:

- i) What transactions under the UCC require a writing?
- ii) What must a writing contain to satisfy the Code's Statute of Frauds?