CONTRACTS I
SECTION 329

COURSE INFORMATION AND SYLLABUS

Meeting Location and Times:
Room 403 Mondays and Wednesdays: 1:30 pm - 2:45 pm

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.)
You absolutely can neither be on the Internet nor text during class. You are required to turn off your access to wireless Internet 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
The Course Packet you will purchase from the bookstore 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). In contrast to the above books, students have found that the commercial outlines can be detrimental to their class performance. These outlines generally focus on material that I consider irrelevant and are sometimes simply incorrect.

Grading

Your grade will be determined as followed:
10%: Written answers to syllabus questions
10%: One-hour closed-book midterm examination
80%: Three-hour, closed-book final examination.

I will post old exams on-line as the semester progresses.

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

Office Hours

My scheduled Office Hours for Fall, 2015 are:
Mondays, 3:00 – 4:30
Wednesdays 12:00-1:15 [except for days with faculty meetings], 3:00 – 4:30

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.
CONTRACTS I
SYLLABUS AND QUESTIONS

[Note: You should answer all questions. You do NOT need to hand in questions marked by an asterisk (*))

Assignment 1 UCC or Common Law?; Determining Intent

Read the background to both the UCC & Restatement [pp 373 and 390] in the back of the Packet], UCC §§2-102, & 2-105 (1), BMC Industries, Inc. v. Barth Industries, Inc., [p10] and Lucy v Zehmer [p 14] and answer the following questions:

After BMC,
1) Some contracts fall under the UCC and others are governed by the Common Law. What determines under which set of rules a contract falls?
2) What is a “movable good”?
In Lucy v Zehmer,
3) Why does the Court find that there is a contract even if the seller was joking?
4) What do you think is meant by the phrase “the Objective Theory of Contracts”?

Assignment 2 More Intent, Offer

Read § 1-201(3) & (11), RS §§1, 2, & 3 Balfour v. Balfour [p 20], Hawkins v McGee [p 24], RS §24 and the facts of Sard and Cirafici [p 39-40],

1) What’s the difference between a “contract” and an “agreement”?
After Balfour v. Balfour:
2) Did the husband or wife win the case on appeal?
3) Use the "Objective Theory" to explain the holding

4) What is an offer?

Hawkins v McGee
5) What is the offer in Hawkins?
*6) What are the policy reasons for and against the court’s ruling?
*7) Is the court’s holding consistent with the “Objective Theory”?
*8) After you read the facts of Sard and Cirafici: Is there an offer in either or both cases?
Assignment 3  Preliminary Negotiations
Read *Leonard v Pepsico* [p 29], *Lonergan* [p 40], *Fairmont* [p42] and RS 26

A) *Leonard v Pepsico*
   *1) What is the purported offer?
2) What is the usual rule for advertisements and offers? Why?
3) How does that rule apply to this case?*

B) Imagine that the facts from *Lonergan* were an exam question:
4) What three communications MIGHT arguably be offers?
5) What does the court conclude about whether each is an offer, and why?
   *6) 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*,
7) What does the Court think is the most important language in the communications for determining if an offer has been made?

Assignment 4  Intent to Memorialize
Read *Texaco* [p 45] and RS §27 and UCC §2-204 (1), (2)

In *Texaco*:
1) 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?
   *2) Try to restate these factors in simpler language.
3) When, according to the court, was the contract created?
4) What language in the press release did the court find most important?
   *5) What facts were most relevant for the court in resolving the final three factors?*

Assignment 5  Indefiniteness (a)
Read *Academy Chicago Publishers* [p 62], *Haines* [p 65], and *Wagenseller* [p 69] and RS §33

1) What is the difference between the legal and plain English meaning of “indefiniteness”?
   *2) What terms are not clear from the contracts in *Academy Chicago Publishers, Haines* and *Wagenseller*?
3) How does the Court “fill in the blanks” in, *Haines* and *Wagenseller*? Why doesn’t the court “fill in the blanks in *Academy Chicago Publishers*?
4) Also, in *Wagenseller*: define an “at-will contract.”
Assignment 6  Indefiniteness (b)
Read *Southwest Engineering* [p 84], UCC §§2-204(3), 2-305 (1), 2-307, 2-308 (a), 2-309 (1), 2-310 (a), and *Joseph Martin* [p 89], *Copeland* [p 94], and *Oglebay* [p 103]

A) In *Southwest Engineering*:
1) How does the U.C.C. approach to “filling in the blanks” differ from the common law?

B) After UCC §§2-204(3), 2-305 (1), 2-307, 2-308 (a), 2-309 (1), 2-310, consider the following hypothetical:

On August 1, 2011, Giant Supermarket and Entenmann’s Bakery, Inc., sign the following agreement: “Entenmann’s Bakery and Giant agree that Entenmann's Bakery will sell Giant 100 boxes of Chocolate Frosted Donuts, and Giant promises to pay for them.” Please answer the following questions and explain your answer:

2) Can Entenmann’s ship 50 boxes of donuts on August 15 and the other 50 on September 1?
3) Where and when will Giant be able to take possession of the Donuts?
4) When and how much must Giant pay?
5) Compare *Joseph Martin*, *Copeland*, and *Oglebay* – Can there ever be an enforceable “agreement to agree”? If so, how? If not, why not?

Assignment 7  Acceptance
Read RS §§35, 41, 50, *Owen* [p 113], *Long* [122], *Industrial America* [p 125], and, RS 30, 32, 51, 53 & 62, and UCC §2-206 (1)(a)

1) Define acceptance.
2) After *Owen*: What is the difference between a unilateral and a bilateral contract?
*3) Why wasn’t the arbitration clause enforceable?*
How can a “doubtful contract offer” be accepted? In a “doubtful” situation, what is the legal significance of the beginning of performance?
5) What does *Industrial America* say about the "motive" to accept?
*6) Why should the broker be paid when the jury found that he had not relied on the offer?*

Assignment 8  Acceptance and Silence
Read *Cantu* [p 128], *Carlill* [p 131], RS §§54 & 56, *Day* [p 135], *Wilhoite* [p 137], *Hobbs* [p 142] and RS §§63 & 69 (1)

1) *Cantu*: What is the “mailbox rule”? How could one argue that it was not consistent with the Objective Theory of K’s?
   *Carlill*:
*2) Where was the offer and the acceptance?
3) What is the "rule" on notice of acceptance?


**Assignment 9  Revocation**

_Petterson_ [p 144] and _Dickinson_ [p 148], and RS §§ 42, 43, 46, 48

a) _Petterson:_
   i) When can an offer be revoked?
   ii) Where do the majority and dissent differ in _Petterson_?

b) _Dickinson:_
   i) Why could the offeror break his promise to keep the offer open in _Dickinson_?
   ii) What is the difference between direct and indirect revocation (RS §§42 &43)?

**Assignment 10  Option Contracts, Rejection, and Counter-Offers**

Read _Beall_ [p 153], _Humble Oil_, [p 158] and _Motel Services_ [p 163] as well as RS §§ 25, 36, 38, 40, 45, 62, 87; and UCC § 2-205

a) How are rejections (RS 38) and counter-offers (RS 39) similar and different?

b) After reading _Beall_ and _Humble Oil_:
   i) What is an option K?
   ii) How is it created?
   iii) How long does an option contract last? Can it be terminated earlier than the end of its stated term?

c) _Motel Services_ and RS §§45 & 62: What is the effect of partial performance of a unilateral contract offer [or of a doubtful contract offer] on the ability of the offeror to revoke?

d) How is §2-205 different from the common law rule?

**Assignment 11  Mirror Images and 2-207**

_Dorton_ [p 171] and _Diamond Fruit_ [p 181]

RS §§42 & 43; UCC §2-207 & Comments 1, 4, and 5

a) From _Dorton, Diamond Fruit_, and §2-207
   i) What is the effect of an acceptance that is not identical to the offer under the common law?
   ii) What is the last shot doctrine?
   iii) To see how the last shot doctrine is changed for UCC cases by §2-207, complete the Worksheet for 2-207 [p 170]

b) _Dorton_:
   i) How does the Court decide if there was an “acceptance”?
   ii) How will the Court decide if the “arbitration” provision is part of the K?

c) _Diamond Fruit_: How does sec. 3 of 2-207 lead to the result in _Diamond Fruit_? Is it a “fair” result?
Assignment 12  Virtual Contracts

*Hill* [p 191], *Kloeck* [p 196],

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 13  Consideration

*Davies* [p 217], *Hamer* [p 220], *Kirksey* [p 224], *Gottlieb* [p 225], *Weed* [p 230] and *Fiege* [p 233] 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?
*d) Why do you think courts created the rule requiring that there need be consideration for an agreement to be enforceable?
e) *Fiege*: Why is give up a losing lawsuit detrimental?

Assignment 14  Pre-Existing Duty

*Schwartriech* [p 241], *De Cicco* [p 247], *Angel* [p 253] and RS §§ 73, 89

a) Define “pre-existing duty” and say why it poses a “consideration” problem.
b) How is this “problem” solved by the court in *Schwartriech*?
c) How does the court avoid the “pre-existing duty problem” in *De Cicco*?
d) What is the rule for modification announced in *Angel*?

Assignment 15  Accord and Satisfaction

*Kibler* [p 259] and *Segall* [p 265]
a) What is meant by “Accord and Satisfaction” and why wasn’t there one in *Segall*? b) On what do the majority and dissent disagree in *Kibler*? Whose argument is stronger and why?

Assignment 16  UCC Modification; Duress

*Roth Steel* [p 271] and *Austin Instruments* [p 283]
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 17  
**Mutuality of Consideration I**
*Ridge Runner* [p 290], *Wood* [p 294], *Mezzanote* [p 297], and *Miami Coca Cola* [p 301], and RS §§ 75, 77, 79

a) In *Ridge Runner*, define “illusory promise”.
b) Why was there an illusory promise in the case?  
c) What is the “rule” for “mutuality of obligation”? 

d) Why is there mutuality of obligation in *Wood* and *Mezzanote* but not *Miami Coca Cola*?

Assignment 18  
**Mutuality of Consideration II**
*Texas Gas* [p 302], *McNussen* [p 306] and *Central Adjustment Bureau* [p 315] and UCC § 2-306

a) *Texas Gas*: Why isn’t the promise in *Texas Gas* illusory?  
b) *McNussen* and 2-306 [Note: The Court in *McNussen* does not tell the story of the case in chronological order. There are at least three purported “agreements” in this case. You need to rearrange the story in chronological order to understand each “agreement.”]  
   i) In Jury Instruction No. 13, the jury is given two possible interpretations of “all milk.” Under one interpretation the contract is classified a “requirements contract,” and under the other it is classified an “output contract.” Which interpretation leads to which classification and why? 
   ii) Under both the case and UCC §2-306 (shown in the case), could the plaintiff dairy producers ever have delivered no milk to the defendants and not been in breach of the September contract?  
   iii) What was the legal significance of the August oral agreement, if any? 

b) *Central Adjustment Bureau*:  
   i) What is the relationship between at-will employment and problems with consideration?  
   ii) How does the *Central Adjustment Bureau* court turn a bad bilateral contract into a good unilateral contract?  

Assignment 19  
**Promissory Estoppel I**
*Feinberg* [p 326], *Shoemaker* [p 333], *Salsbury* [p 340] and RS2d §90

a) *Feinberg* and *Shoemaker*:  
   i) What does RS2d §90 say are the elements of Promissory Estoppel?  
   ii) How does it differ from the first Restatement’s section 90 {described in *Feinberg*}?  
   iii) Why was there no consideration in either case?  
   iv) How did the courts in *Feinberg* and *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) If you were suing to enforce a contract, would you rather win on Promissory Estoppel or consideration? Why?
Assignment 20  Promissory Estoppel II
_Drennan_ [p 343], _Grouse_ [p 350], _Werner_ [p 353] and RS 87(2)

a) _Drennan_ and RS 87: How does promissory estoppel work in the contractor/subcontractor situation? [HINT: each “bid” is offer]
b) _Grouse_: Can one reasonably rely on an at-will K? Why and why not?
c) In _Werner_:
   i) Find the promise;
   ii) How does the court calculate damages?

Assignment 21 [time permitting]  Statute of Frauds

Read Utah § 25-5-4 [p 360], _Pasquin_ [p 360], and _Cohn v. Fisher_ [p 364], 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?