

Contracts II Section 329
Professor Meyerson
Spring 2020

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COURSE INFORMATION AND SYLLABUS

Meeting Times: Tuesdays and Thursdays, 1:30pm - 2:45pm

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.

You are entitled to 3 absences per semester. A student with more than 3 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 case briefs for every case assigned. Details on how your briefs 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

The course packet, sold at the bookstore, will contain 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 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%: Submitted case briefs

10%: Closed-book midterm examination

80%: 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 contract interpretation, excuses and defenses, and damages, they will learn how to structure legal arguments in a logical sequence. They will also will learn how to be precise with legal language, how to apply the concept of “objective intent,” and how to work collaboratively to solve legal problems.

Office Hours

My scheduled Office Hours for Spring, 2020 are:

Tuesdays and Thursdays: 12:30- 1:20, 3:00 – 3:45 (except for faculty meetings)

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 be, 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 might possibly 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:

If you are a student with a documented disability who requires an academic accommodation, please contact Ms. Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or kschulz@ubalt.edu.

CLASS RULES

You are required to be on time, attend class regularly, and be prepared for class; adequate class attendance, preparation, and participation are also essential if you wish to understand the material.

You must plan on attending every class session. According to ABA rules, a student with more than 5 unexcused absences will not be permitted to take the final.

If you miss a class, you must obtain the class notes from the missed class *before* attending the next class, and write me to let me know: 1) that you have received the notes; 2) from whom you received the notes; and 3) if you have any questions about what you missed.

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. Unless told otherwise, for each class, you are responsible for: **1) any unfinished material from the preceding assignment: PLUS 2) the assignment for that day's class. 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, you must **give me a note *prior* to class.** This will avoid embarrassment for both of us.

INTERNET and CELL-PHONES

Texting or Internet use during class will be prima facie evidence of unsatisfactory class participation.

TWEN Assignments

You must place your case briefs for each class assignment in the appropriate drop box on TWEN. Answers must be submitted by 12:00 midnight on the evening before class. For **each assigned case**, please submit a case brief, following the class template. No case brief should exceed one page, and many will be shorter. [When you have completed your briefs, you should be able to answer all of the questions I placed with the assignments.] After you have read the assignment and attempted to write your brief, you are permitted to discuss your answer with others in the class. Whatever you hand in, though, must be your own work and with your own language.

I do not mind wrong answers; I am deeply offended by a lack of a good faith effort.

You may "pass" on any three assignments of your choice. If you want to pass on a particular day, you must nonetheless submit a page to your drop box, stating both the assignment number and how many passes you have used [ie Assignment 11, pass 1]

These assignments are worth 10% of your grade. To get the full 10%, you must complete the required number of assignments and make a good faith effort on them all.

The TWEN assignments do NOT include the syllabus questions. They are to help you know what to focus on when you read, and to help you gauge your understanding of the cases.

GROUP WORK: We will do a lot of work in small groups. This is an essential part of class. Accordingly, no one will be permitted to leave the room during group work.

Template for Case Briefs for Contracts II

Case Name, Court, Year

Rule[s] of Law: For each major rule of law in a case, please give a short grammatical statement of the legal rule. Since a rule of law can be used in future cases, your statement of a rule will not contain the names of the parties to the case you are reading. A good “rule of law” can be understood by an intelligent ninth grader. I am not impressed by long sentences or big words. You may not simply quote the court, the UCC, or Restatement in giving a rule, as rules must be readily understandable in order to be useful. Note also that many cases have more than one rule.

Reason for rule [if given]

Legally Significant Facts: Describe in simple sentences the “story” of the case, ie what happened to the parties, that is either legally significant (used to decide the case) or bizarrely interesting.

Application of Law to Fact: Why did whoever win win? (To do this, you need to apply the facts to at least one of the rules you describe above)

Dissent (if any): What is the specific disagreement the dissent has with the majority opinion?

SYLLABUS AND QUESTIONS

1) Introduction to Damages I

Adams v. Lindblad Travel, Inc., Hadley v Baxendale RS §§ 347 & 350-52

What is the goal of contract damages?

How are damages calculated in *Adams*?

What are “consequential damages” and why didn’t the plaintiff in *Hadley* recover them?

2) Introduction to Damages II

Mader, S. J. Groves & Sons Co., Gruber and Anglia TV

What are the limitations on consequential damages?

What is the policy rationale[s] for each limitation?

In *Gruber and Anglia TV*:

a) What does the “new business rule” as described in *Gruber* have to do with the concept of “reasonable certainty”?

b) In *Gruber and Anglia TV*, what are the different rules on reliance damages for pre-contract expenses? Which is better?

3) UCC, Lost Volume, and Employment

Chronister Oil, In re WorldCom, Inc.; UCC §§ 2-703, 2-706(1), 2-708--712, 2-718(2)

Chronister Oil: What does “cover” mean? Why did the plaintiff lose?

In Re WorldCom, Inc.:

a) What is meant by the phrase “lost volume seller”? What needs to be proven for the seller-victim to recover damages as a lost volume seller?

b) What are the rules on mitigation of damages for victim-employees?

Consider the following example:

Employee has a job as an associate at a law firm specializing in “Mergers and Acquisitions.”

Employee has a one-year contract for \$5000/month.

After 4 months, Employee is wrongfully fired by the law firm.

Employee stays home and watches Judge Judy for the next 8 months.

Employee sues for 8 months damages, at \$5000/month = \$40,000

a) What will a court award?

b) What if the only other job in the city is in entertainment law, paying \$ 5,000/month?

c) What if employee takes job at night shift at McDonald's earning \$1000/month [a total of \$8,000 for the period]?

4) Construction Damages & Punitive Damages

Jacob & Youngs; Emery, Patton; UCC § 2-718(1) RS § 355

How does a court figure out damages in construction breach? When are damages not awarded for the “cost of repair”?

What is rule for punitive damages and WHY?

What does *Patton* court mean by “efficient breach”?

5) Liquidated Damages & Restitution

NPS; Kvassay; Lake River Corp.; and Oliver

In *NPS; Kvassay; Lake River Corp.*

Define “liquidated damages.” When do courts enforce liquidated damages clauses?

In *Oliver*

What is meant by “restitution”? When does a plaintiff prefer restitutionary damages to expectancy damages? When is a plaintiff unable to recover restitutionary damages?

6) Specific Performance I

Centex Homes Corp.; Laclede Gas Co.; Northern Indiana PSC; and American Brands; UCC §2-716(1); RS §§ 371,373

When does a plaintiff get Specific Performance?

How does this rule apply to different types of contract such as land and the UCC?

7) Specific Performance II

Schlegel; Meyer; Duane Sales; Beverly Glen Music, Inc.; Karpinski and Howard Schultz

Schlegel; Meyer:

What is meant by “equitable defenses” and why do courts relying on them to avoid awarding specific performance?

Duane Sales:

When does a plaintiff get *both* specific performance and damages?

Beverly Glen Music, Inc.; Karpinski and Howard Schultz

How and why do the rules change for specific performance when applied to an EMPLOYEE who breaches?

When is a covenant not to compete legitimate? Illegitimate?

How does the reasoning in *Karpinski* and *Howard Schultz* differ?

8) Contract Interpretation I RS § 203

Read the “CONTRACT INTERPRETATION ASSIGNMENT”

For each Contract: Identify the critical word or phrase [no more than 10 words, probably less] that the court will need to interpret to decide who wins the dispute described in the facts. Then, say who will win and why. [This will substitute for your TWEN brief]

9) Contract Interpretation II

Frigaliment Importing; Beanstalk Group

What is the key contractual word or phrase in each case?

How does the court in each case decide their meaning?

In *Frigaliment*: List the different sources of meaning referenced by the court? Which do you find most convincing?

In *Beanstalk*: How does Judge Posner determine the meaning of the contractual language?

10) Parol Evidence I UCC §§ 2-202;1-205; RS §§ 209,210,213-17

Interstate Industrial Uniform Rental Service; Val-Ford; Nanakuli; and Luria Bros

Define Parol Evidence.

What is purpose of the Parol Evidence rule?

What is the difference in the rules for completely integrated agreements and partially integrated agreements?

In *Val-Ford*: Why did the court allow in Parol Evidence?

According to *Nanakuli*, what does the UCC add to common law Parol Evidence rule?

What is the difference between *Nanakuli*'s definition of “consistent” and “contradict” and the one utilized in *Luria Bros*? Whose definition allows in more parol evidence?

11) Parol Evidence II

River's Edge Homeowners' Ass'n, Pacific Gas, Raffles, Colfax

Define Ambiguity.

How does the approach to deciding if language is ambiguous in *River's Edge* differ from that in *Pacific Gas*?

What are the different reasons for the differing approaches?

What was problem in *Raffles*? How was it resolved?

What does *Colfax* say is the real holding of *Raffles*?

12) Conditions v Promises I

Audette; General Credit Corp.; New York Bronze Powder Co., RS §§ 224-25

[NOTE: Make sure you can identify the key contractual language in each case.]

- 1) Why doesn't the insurance company have to pay in *Audette*?
- 2) What is the difference between a "condition" and a "duty"?
- 3) What are the differing consequences from the failure to fulfill a condition as opposed to failure to fulfill a duty?

13) Conditions v Promises II
Dyer; JJ Shane, Hicks, and Flynn

- 1) What is the key contract language in *Dyer*? Is it a condition? Why is there a different result in *JJ Shane*?
- 2) Compare *Hicks* and *Flynn*: In each case, what is the condition a condition to? How was this determined and why does it matter?
 [Hint: Find the most important language in each contract]

14) Constructive Conditions I
Stewart, Monroe Street, Jacobs & Young RS §234

- 1) Define Constructive Condition
- 2) In *Stewart* and *Monroe Street*, who needs to perform first? Why?
- 3) In *Jacobs & Young*, why does the homebuyer not get what the contract promised?

15) Constructive Conditions II
K+G Construction and Walker RS §§ 237,241,242

- 1) Define substantial performance.
- 2) What is difference between a material, an immaterial and a total breach?
- 3) What are the differing consequences of each?
- 4) When can you end a contract over a constructive condition?

16) UCC Conditions
Bartus; Parker; Emanuel Law Outlines UCC §§2-508; 2-601; 2-602(1); 2-606; 2-607(3a); 2-612; 2-307

- 1) Define the "perfect tender rule".
- 2) When does a seller who has delivered non-conforming goods get a second chance?
- 3) Assuming non-conforming goods, how does one a) accept the goods, b) reject the goods and c) revoke acceptance? How are damages calculated for each?
- 4) Read UCC §2-612 and define installment contracts and give the rule for rejecting non-conforming installment contract deliveries.

17) Quasi-Contract; Divisibility

Martin, Lancelotti, Gill UCC §2-718 (2), RS §240

- 1) In *Martin* and *Lancelotti*: What are the arguments for and against recovery by a **breaching** party for work done? Which approach would lead to fewer breaches?
What is the rule from UCC §2-718?
- 2) How are damages calculated for a “divisible K”? What makes a K divisible? [*Gill* and RS 240]
- 3) What is difference between quasi-K and divisibility?

18) Prevention

Cantrell-Waind; Swartz; Stop & Shop, Market Street

- 1) What is the rule of “wrongful prevention”?
- 2) How does the concept of assumption of risk fit into the doctrine of wrongful prevention?
- 3) Is there a “duty to cooperate”?

19) Estoppel; Forfeiture; Satisfaction

Shipsview Corp. , Burger King; Western Hills

- 1) What does “time is of the essence” mean?
- 2) How does a “waiver” occur? What is the legal consequence of a waiver?
- 3) Define forfeiture. What is the legal consequence of a finding of “forfeiture”?
- 4) What did the courts identify as being “forfeited” in *Burger King*?
- 5) How do courts determine if one party is “satisfied”?
- 6) When is this a subjective or an objective standard?

20) Anticipatory Breach and Intervening Excuses I

Hochster, Daniels, Drake, Paradine, Taylor v Caldwell, UCC §2-609 & Comments; RS §§ 250-53 & 256

- 1) According to *Hochster*, when can someone sue for a breach BEFORE performance is due?
Why does *Daniels* reach the opposite conclusion?
- 2) Define repudiation.
- 3) How does the UCC right to demand assurances [UCC §2-609] change the common law?
- 4) What was the rationale for forcing the lessee to pay in *Paradine*?
- 5) What is the modern rule, and rationale, from *Taylor v Caldwell*?

21) Intervening Excuses II

American Trading, Eastern Air Lines UCC §2-615 & Comments; RS §261
Krell ,Western Properties, RS §265

- 1) In *American Trading*, under what theories did the ship owner seek recovery? Why did it lose?
- 2) What is the difference between impracticability and impossibility?

- 3) What is the role of assumption of risk in the court's decision?
- 4) What is the function of a "force majeure clause"?
- 5) What is meant by "frustration"?
- 6) Why was frustration found in *Krell* and *Western Property*?

22) Duress, Undue Influence

Gallon; *Resolution Trust Corp. v. Ruggiero*; and *Francois*

Duress and Undue Influence:

What are the legal rules for each? What are the elements that need to be proven?

What facts in each case do the courts rely on to determine if a contract may be avoided under either doctrine?

23) Capacity and Misrepresentation

Pettit v Liston and *Ortelere v. Teachers' Retirement Bd* RS §§ 14 and 15
Cousineau; Vokes

a) *Pettit v Liston*

- i) What is the difference between executed and executory K's?
- ii) Trick question: Which kind of K is the K in *Pettit*?
- iii) What is the most important way that the law of contracts for minors differ from that for adults?

b) In *Ortelere v. Teachers' Retirement Bd* :

- i) What are the two types of mental disability?
- ii) Where does the dissent disagree with the majority: On the facts, law or both?
- iii) Whose argument is stronger, the majority or the dissent?

c) *Cousineau; Vokes*

What are the elements of common law fraud? What facts in *Cousineau* were most important for the court?

When can you rely on an opinion?

What is the difference between fact and opinion?

24) Mistake, Reformation

Wood, Sherwood, Lewanee, Wil-Fred's Inc., and Bollinger RS §§ 151-154

1. What is a "mistake" in terms of contract law?
2. Looking at *Wood, Lewanee, and Sherwood v Walker*:
When can one avoid a K due to mistake? Who bears the "risk of a mistake"?
3. Why is there a different rule for avoiding a K due to a unilateral mistake?
4. Why isn't "Reformation" controlled by the Parol Evidence rule?

25) Unconscionability

Sitogum; Amoco Oil

UCC §2-302 & Comments

- 1) Define Unconscionability.
- 2) What is the "test" for Unconscionability [look at UCC 2-302, and Comments 1,2,3]?
- 3) What is the difference between "procedural unconscionability" and "substantive unconscionability"?

26) Standard Form Contracts I

K.D.; C & J Fertilizer RS §211

- 1) Define a "contract of adhesion".
- 2) Should the courts treat "contracts of adhesion" differently from other contracts?
- 3) How did the court in *K.D.* treat the "contract of adhesion" in a different way than if it were a "normal" contract?
- 4) How does the *C & J Fertilizer* court's treatment of "contracts of adhesion" differ from *K.D.*'s?

27) Standard Form Contracts II

Gelbman; Armendariz, Hancock v. AT&T Co

- 1) How do these cases treat form contracts?
- 2) What is the relationship between the “law of unconscionability” and the “law of form contracts”?
- 3) Reviewing the cases in the last three assignments, which possible way of dealing with form contracts makes the most sense to you and why?
- 4) *Hancock*: Does [and should] the nature of Internet contracting change our rules?