

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW**  
**FALL 2021**

**Course:** Contracts I  
Course Number: LAW 602  
Section Number: 329

**Instructor:** Professor Michael Meyerson  
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(410) 802-4554

**Office Hours:** I will have official “office hours” at the following times:  
Tuesdays 9:30 – 10:20; 12:15 – 1:20  
Thursdays: 9:30 – 10:20

**IMPORTANT:** If you cannot find a time that is convenient to you, *please* let me know and we will find a mutually convenient time to talk. You should be assertive in making appointments. I will try to be flexible in finding a suitable time to meet

**Class Days/Time:** Tuesdays and Thursdays 10:30- 11:45

**Course Description:**

This course will present an introduction to the formation of contractual arrangements. Among the topics covered will be mutual assent, including offer and acceptance; consideration; promissory estoppel; and the statutes of fraud.

**Course Materials:**

Most of the cases we will be reading this semester are in the course packet. I will be posting the first few cases on our TWEN site in case there is any difficulty getting the packet. Additional readings may be distributed throughout the semester.

**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.

**Grades:**

Your grade will be determined as follows:  
10%: Homework [We will discuss this in class]  
10%: Midterm examination  
80%: Final examination.

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

**Course Expectations:**

American Bar Association Standards for Law Schools establish *minimum* guidelines for the amount of work students should expect to complete for each credit earned. Under these *minimum*

guidelines, students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class. **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.

### **Class Attendance and Preparation:**

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.

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. You are entitled to 3 absences per semester. **A student with more than 3 unexcused absences** will not be permitted to take the final and will receive a grade of FA (failure due to excessive absence).

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

### **Course Web Site:**

This course has a TWEN page that will contain 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.

### **Zoom and Panopto:**

Some class sessions may be held over Zoom.

During a Zoom class, you must have your video on. If you have extraordinary circumstances that make it impossible or uncomfortable to use video, please reach out to me before class.

All class recordings are for the sole use of the class and may not be reproduced by students for any other purpose. Faculty cannot reproduce students' voices or images from the class for any other purpose without additional student consent. All such recordings are protected by a UB login process based on where they are posted. Students who turn off their camera and do not remain present for the class session may be subject to the Honor Code for misrepresenting attendance.

There may also be a few class sessions that will be asynchronous, meaning taped in advance. I will let you know which sessions they are.

### **Class Cancellation:**

If I must cancel a class, notices will be sent to students via UB email.

### **Academic Integrity:**

We in the legal profession take the Honor Code very seriously. It will be considered a violation of the Honor Code if you use other people's work in answering homework. Using

language for your assignments from other students or any outside sources, including on-line resources, is considered plagiarism, and will result in either a loss of points for your grade or other disciplinary proceedings.

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 the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at [https://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/index.cfm](https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm).

### **Course Evaluations**

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

### **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 accommodation for academic programs, exams, or access to the University's facilities, please contact Ms. Keri Hickey, Director of Student Support in the Law School's Office of Academic Affairs, at [khickey@ubalt.edu](mailto:khickey@ubalt.edu) or the University's Office of Disability and Access Services at [das@ubalt.edu](mailto:das@ubalt.edu).

### **Mental health/general student issues:**

Dean Paul Manrique ([pmanrique@ubalt.edu](mailto:pmanrique@ubalt.edu); 410-837-5283) or Ms. Keri Hickey, Director of Student Support ([khickey@ubalt.edu](mailto:khickey@ubalt.edu); 410-837-4414). Both are located in the 7th floor Dean's Suite and welcome students to walk in (in person!) and are also able to schedule phone and Zoom appointments.

### **Academic Support:**

Prof. Marta Baffy ([mbaffy@ubalt.edu](mailto:mbaffy@ubalt.edu); 410-837-6370.). Prof. Baffy is located on the 5th floor in Room 513.

### **Bar Exam Support/Questions:**

Prof. Neal Kempler ([nkempler@ubalt.edu](mailto:nkempler@ubalt.edu); 410-837-4358). Prof. Kempler is located on the 5th floor in Room 514.

**Writing Center:**

Information about the UB Law Writing Center may be found here:

[http://law.ubalt.edu/academics/academic-support/legal\\_writing\\_center/index.cfm](http://law.ubalt.edu/academics/academic-support/legal_writing_center/index.cfm).

An announcement will be sent to students when the Writing Center is open for business.

## ASSIGNMENTS

(Note: the assignments are subject to change during the semester.)

### **Assignment 1**                      **UCC or Common Law?**

Read the background to both the UCC & Restatement, UCC §§2-102, 2-105 (1), and 2-106, and *Colorado Carpet Installation, Inc. v. Palermo*

Note that the UCC & Restatement are both found in the back of the Packet, after the last case.

### **Assignment 2**                      **Determining Intent I**

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

### **Assignment 3 Determining Intent II, Introduction to Offers**

Read *Hawkins v McGee*, the facts from the “hypotheticals” of *Sard* and *Cirafici*, and RS §24

### **Assignment 4**                      **Preliminary Negotiations**

Read *Leonard v Pepsico*, *Loneragan*, *Fairmont*, and RS §26

### **Assignment 5**                      **Intent to Memorialize**

Read *Texaco* and RS §27 and UCC §2-204 (1), (2)

### **Assignment 6**                      **Indefiniteness I**

Read *Academy Chicago Publishers*, *Haines*, and *Wagenseller* and RS §33

### **Assignment 7**                      **Indefiniteness II**

Read *Southwest Engineering* [p 83], 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?

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:

i) Can Entenmann’s ship 50 boxes of Donuts on August 15 and the other 50 on September 1?

ii) Where and when will Giant be able to take possession of the Donuts?

iii) When and how much must Giant pay?

c) Compare *Joseph Martin, Copeland, and Oglebay* – Can there ever be an enforceable “agreement to agree”? If so, how? If not, why not?

### **Assignment 8 Acceptance I**

Read RS §§35, 41 50, *Owen* [p111], *Long* [121], RS 30, 32, 51, 53 & 62, and UCC §2-206(1)(a)

- a) Define acceptance.
- b) After *Owen*:
  - i) What is the difference between a unilateral and a bilateral contract?
  - ii) Why wasn't the arbitration clause enforceable?
- c) After *Long*, RS §§32 and 62, and UCC §2-206 (1)(a):
  - i) How can a “doubtful contract offer” be accepted?
  - ii) In a “doubtful” situation, what is the legal significance of the beginning of performance?

### **Assignment 9 Acceptance II**

Read *Industrial America* [p 124], *Trinity Homes* [p 126], *Carlill* [p 129], RS §§54, 56, 63

- a) What does *Industrial America* say about the "motive" to accept?
- b) Why should the broker be paid even though the jury found that he had not relied on the offer?
- c) *Trinity Homes*
  - i) Put the traditional “mailbox rule” in your language? Give an example of how it works?
  - ii) Should the “mailbox rule” apply to texts or emails?
- d) *Carlill*:
  - i) Where was the offer and the acceptance?
  - ii) What is the "rule" on notice of acceptance?

### **Assignment 10 Acceptance by Silence**

Read *Day* [p 133], *Wilhoite* [p 135], *Hobbs* [p 140] and RS §69 (1)

- a) When, if ever, do silence and inaction manifest assent?
- b) How does the rule relate to the objective theory of contracts?

### **Assignment 11 Revocation**

*Petterson* [p 142] and *Dickinson* [p 147], 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 12 Option Contracts, Rejection, and Counter-Offers**

Read *Beall* [p 152], *Humble Oil*, [p 156] and *Bridge City Family* [p 163] as well as RS §§ 25, 36, 38, 39, 40, 45, 62, 87; and UCC § 2-205

- a) After reading *Beall* and *Humble Oil*:
  - i) What is an option K?
  - ii) How is it created?

iii) Can an option K be terminated earlier than the end of its stated term? If so, how? If not, why not?

b) *Bridge City Family* [p 161]

- i) Find every offer and counteroffer in *Bridge City Family*;
- ii) Which “offer” was accepted?
- iii) Where did the court find the terms of that offer?

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

d) 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?

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

**Assignment 13 Common Law Mirror Images and 2-207**

*Dorton* [p 170] and *Diamond Fruit* [p 179]

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

a) From *Dorton*, *Diamond Fruit*, and §2-207

- i) At common law, what is the effect of an acceptance that is not identical to the offer?
- ii) What is the common law “last shot” rule (described in *Diamond Fruit*)?
- iii) To see how the last shot doctrine is changed for UCC cases by §2-207, complete the Worksheet for 2-207 [p 169]

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 14**                      **Virtual Contracts**

*Hill* [p 188], *Kloeck* [p 193]

- 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 202], *Hamer* [p 204], *Kirksey* [p 208], "Williston's Tramp," [p 209] *Lucky Calendar*, [p 210], *Weed* [p 212] and RS §§71, 74,79, 81

- a) From *Davies* and *Weed*: Define "consideration," "legal detriment," and "bargained for"
- b) Why is there the consideration in *Hamer* and *Lucky Calendar*, but not in *Kirksey* or *Weed*? [Hint: Look at *Williston's Tramp* and the Restatement sections for clues]
- c) Why is the phrase "adequate consideration" redundant?

#### **Assignment 16**                      **Pre-Existing Duty**

*Fiege* [p 214], *Schwartriech* [p 221], *De Cicco* [p 237], 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 232], RS §89, *Kibler* [p 238] and *Segall* [p 243]

- 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 249]

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

*Roth Steel* and UCC sections

- i) What is the UCC rule on modification?
- ii) What does "good faith" mean under the UCC?

#### **Assignment 19**                      **Mutuality of Consideration I**

*Ridge Runner* [p 260], *Wood* [p 264], *Mezzanote* [p 266], and RS §§ 75, 77, 79

- a) From *Ridge Runner*: define "illusory promise".
- b) Why was there an illusory promise in the case?
- b) What is the "rule" for "mutuality of obligation"?
- c) Why is there mutuality of obligation in *Wood* and *Mezzanote*?



## Assignment 20

## Mutuality of Consideration II

Read *Miami Coca Cola* [p 269], *Texas Gas* [p 270], *Ohio Fresh Eggs*, [p 275] and UCC § 2-306

- a) Why isn't there mutuality of obligation in *Miami Coca Cola*?
- b) *Texas Gas*: Why isn't the promise in *Texas Gas* illusory?
- c) *Ohio Fresh Eggs*
  - i) What is the difference between a "requirements contract," and an "output contract"?
  - ii) Why aren't they indefinite?
  - iii) Why did the court find that the agreement in the case was neither a "requirements contract" nor an "output contract"?

[Note: *Ohio Fresh Eggs* also contains a nice review of how to determine if a transaction is covered by the UCC]

## Assignment 21

## Reliance and Promissory Estoppel I

*Central Adjustment Bureau* [p 280], *Feinberg* [p 290], *Nephew's Buick* [297], and RS2d §90

- a) *Central Adjustment Bureau*:
  - i) Why might at-will employment K's cause problems with consideration?
  - ii) How does the *Central Adjustment Bureau* court turn a bad bilateral contract into a good unilateral contract?
- b) *Feinberg*
  - i) Why was there no consideration in *Feinberg*?
  - ii) What does RS2d §90 say are the elements of Promissory Estoppel?
  - iii) How does it differ from the first Restatement's section 90 {described in *Feinberg* and debated in *Nephew's Buick*}?
- c) If you were suing to enforce a contract, would you rather win on Promissory Estoppel or consideration? Why?

## Assignment 22

## Promissory Estoppel II

*Shoemaker* [p 298], *Salsbury* [p 304], *Drennan* [p 307], 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 III

*Grouse* [p 313], *Werner* [p 315]

- 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 347], *Pasquin* [p 323], and *Cohn v. Fisher* [p 326], 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?

