

Syllabus & Course Policy Statement: Contracts II
Spring 2009
Professor Byrne

Revised 16 December 2008

1. Objectives

Contracts is a two part course. The purpose of Contracts II is to expose the student to the doctrinal foundations of unfairness, overreaching, unconscionability, interpretation and construction of contracts, performance, remedies, mistake, impracticability, frustration, third party beneficiaries, assignment, and delegation.

The focus of the course will be on commercial contractual relationships and performance rather than the theoretical bases of contract formation addressed in Contracts I.

The goals of the course are to acquaint students with principles of analysis of specific problems and issues, drafting, comprehension of the law of a particular case, formulation of a synthesis of related case law in regards to a particular issue, and utilization of the Uniform Commercial Code.

2. Materials

a. Case Book

The case materials are contained in Farnsworth, Young, & Sanger *Contracts: Cases & materials* (Foundation Press 6th Ed., 2001). This text is the same version as was used in Contracts I.

From time to time supplementary materials will also be provided.

b. Statutes and Restatements

Recourse will be had to the American Law Institute's Restatement of Contracts (Second), Uniform Commercial Code Article 2 (Sales), and the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention). They are contained in *Restatement 2d Contracts & US UCC Article 2: 4th Edition* published by the Institute of International Banking Law & Practice.

Excerpts from the ICC pamphlet on Force Majeure and INCOTERMS 2000 will also be made available.

Students are reminded that the UNIDROIT Principles of Contract Law are available at <http://www.unidroit.org/english/principles/contracts/principles2004/blackletter2004.pdf>

These materials may be taken into the examination and the questions will be based on the assumption that the student has access to them during the examination.

c. **Supplemental Materials**

It is also suggested that the student find and have recourse to a reliable source of model clauses or contract forms for reference. The law library contains several.

There are a number of treatises, study aids, and professional tools available to assist your understanding of contracts and the law of sales. The leading treatise is Farnsworth, *Contracts* (Aspen Press 4th ed. 2004) which was required in Contracts I and which should be used in Contracts II. Another well known text is Rohwer and Skroki, *Contracts* (5th Ed. 1997).

3. **Exercises**

- a. Drafting Exercises. Students are encouraged to update the draft contracts prepared during Contracts I. This contract as amended may be brought into the examination.
- b. Attendance at a judicial session or the equivalent and preparation of a written report.

As a class assignment and in lieu of a class, you are to attend one session of a trial or hearing or the functional equivalent involving a commercial matter (and preferably a contract issue). To this end,

- i. You are to identify a relevant case, and, in the process, learn how to access a court docket. Ideally, the case should be a civil case. You may select a case at any court, federal or state, regardless of the location. You must determine how to access the court calendar.
- ii. You are to examine the record of the case filed with the clerk.
- iii. You must attend the hearing personally. If it is cancelled or postponed, find another court in session and sit in on that session regardless of whether it is civil or criminal.
- iv. To record your efforts, you must submit a one page statement identifying the name and number of the case, the court in which it was heard, the judge, the cause of action, the procedural posture of the case, the particular aspect which you observed, and your observations.
- v. Please note that this exercise does not justify absence from class in another course.

- vi. Those students who are unable to attend a hearing should propose in writing an acceptable alternative.
- vii. The assignment is due by the last class for the spring semester. It must be filed in the appropriate manner on the course TWEN site.

This exercise is the equivalent of one class session. Failure to complete it may result in the reduction of a grade by one point as permitted under the Academic Regulations.

4. **Grades & Examination**

Grading will be based upon a three hour final examination which is scheduled to take place on 30 April 2009, beginning at 6:00 PM (18.00 hours).

The examination will (1) fairly reflect the material treated in the course; (2) test skills of organization of facts, analysis and statement of issues, and their resolution; (3) test theoretical knowledge, practical skills and the ability to address specific problems in a successful manner; and (4) test ability to function and perform under time pressure.

The examination will consist of multiple choice and essay questions in a proportion to be determined.

For the essay portion, where a problem is given, a superior answer will not only state applicable rules and identify issues, but will apply the rules to the issues in the context of the factual problem to obtain a principled resolution.

A correct multiple choice answer will be the best answer among the choices given.

The examination will require familiarity with the doctrinal materials covered relating to the reading assignments whether or not discussed in class, the matters covered in class, relevant provisions of current Articles 1, 2, 2A, and 7 of the Uniform Commercial Code as well as the Restatement (Second) of Contracts, any designated state and federal statutes from the statutory supplements, the United Nations Convention on the International Sale of Goods, the UNIDROIT Principles and the excerpts on Force Majeure and INCOTERMS that are handed out.

If the Law School makes available a program of computerized examinations, students may use it. If computerized examinations are permitted, students will be advised by the Records Office regarding details.

Rescheduling of the Examination. Requests for rescheduling of the examination must be made directly to the Records Office and not to the Instructor.

Examination Review. No student may communicate about the examination with the instructor before the grade key is released. All examination reviews will be conducted

according to a written procedure that will be posted. Interviews with the instructor will only be given pursuant to this procedure.

5. **Materials permitted to be Taken into Examination**

Only the following materials may be taken into the examination: *Restatement 2d Contracts and U.S. UCC Article 2*, the text of the UN Sales Convention (should you download it), the UNIDROIT Principles (should you download it), and other statutory handouts, if any, and your draft contract. In order to facilitate consultation of UCC Article 2 or the Restatement 2d Contracts, a physically separate photocopy of their Table of Contents may be made and used. In addition, the assigned contract as revised by the student may be brought into the examination. No other materials may be brought into the examination.

These materials may be annotated. "Annotated" means the emphasis of certain portions of the material or its explanation in the material itself by cross-references to other statutory or regulatory provisions, by a comment or gloss, or by reference to a case or hypothetical. The focus of the annotation should be on the meaning of the particular provision or section being annotated. The insertion in the statutory material of outlines, extensive lists of questions and answers, or general information does not constitute an annotation which may be used on the examination.

Any questions regarding the meaning or interpretation of this policy must be given to the instructor in writing so as to avoid confusion and all answers (as well as questions) will be publicly posted. So as to permit all students to benefit from this process, the deadline for such questions is one day prior to the last class for the semester.

6. **Class Participation, Assignments, & Assignments**

It is expected that students will be regularly prepared for class as part of the attendance requirements. Reading assignments will be given in class and posted from time to time. The assignments will focus on the pages on which the cases appear but students would be well advised to read accompanying textual material as well. Preparation includes the completion of class assignments.

As indicated above, failure to complete an assignment may result in lowering of a grade in accordance with applicable Academic Regulations.

Law School policy does not permit recordation of class absent express faculty consent and any artificial recordation of Contracts II is not permitted. The purpose of this policy is to encourage students to learn to take effective notes without artificial assistance. It is my opinion that this skill is essential for a junior attorney. "Recordation" includes the use of any device to tape, record, or otherwise memorialize what is said in class or to photograph, image, or otherwise record any slides, power points, or data rendered on charts or the white board. This policy also applies to the power point slides used in class. They will not be handed out although students may view them after class. It does not apply to the use of a computer to key notes because the computer is, in this respect, no different than a typewriter

or pen. Where note taking is rendered difficult due to a disability, application for special assistance should be made to the appropriate University department.

7. **Attendance**

A seating chart will be circulated at the first class. Please select a seat. Attendance will be taken at the beginning of each class based on this chart. Any student not seated in the seat selected at the time class is scheduled to begin will be marked absent. Anyone coming to class after attendance has been taken is responsible after class for advising the instructor of his or her presence. At the discretion of the instructor, an attendance sheet may be circulated for signature in which case it is governed by the Honor Code and only the student named may indicate his or her presence by signing.

At least two questions from the examination will be taken from material covered in class and not reflected in the text or materials handed out.

There is no need to request permission or to inform the instructor regarding an absence. The maximum number of absences permitted will be allowed for this course under law school regulations. As it is assumed that all students will conduct themselves as professionals, there is no need to advise the instructor in advance of an absence.

Cancelled classes will be announced in advance in class whenever possible and notices posted in accordance with University policies in addition to TWEN. To the extent possible, make up classes will be scheduled as extensions of regularly scheduled classes. Please be prepared to discuss possible make up classes at the first class session.

8. **Notices**

Notices will be posted in accordance with Law School regulations. In addition, TWEN will be utilized to send notices to students. If you do not receive such notices, it is your responsibility to contact me. If your email address changes, it is your responsibility to change it in the TWEN system.

9. **Office Hours and Individual Appointments**

Professor Byrne will be available for one half hour after each class unless otherwise required to be elsewhere in which case notice will be given. He will also remain in the classroom from time to time after class to answer questions and provide general comments on law school and study techniques. Students are not required to attend these after class sessions.

Professor Byrne is also available by appointment. He can be contacted through Ms. Hickey, his Faculty Secretary at (703) 993-8271.

10. **Topics to be studied**

Finding the Law of a Contract
Parol Evidence Rule
Interpretation and Construction of Contracts
Gap Filling Provisions
INCOTERMS & Other Delivery Terms
Conditions
Substantial Performance & Similar Mitigating Doctrines
Breach
Anticipatory Repudiation
Mutual Mistake
Impracticability and Impossibility
Frustration
Remedies
Limitations
Liquidated Damages & Penalties
Third Party Beneficiaries
Assignment
Delegation
Unfairness
Overreaching
Unconscionability

11. **Pace of Reading Assignments**

The class will be conducted with a view toward mastery of concepts and techniques rather than coverage of preset materials at a preordained pace. To assist students in estimating coverage, a tentative schedule of readings will be posted but they are subject to modification. Any changes to the assignment for the next class will be announced at the end of each class and sent via TWEN to the email account that you register with it. Special assignments or those due to be submitted will be both announced in class and posted.

12. **Methods of Instruction**

The following methods of instruction will be utilized.

1. Case Analysis

Students will be expected to answer questions about assigned cases and materials.

2. Hypothetical Problems

Students will be expected to find principled resolutions to hypothetical questions, drawing on their mastery of the course content.

3. Drafting Exercises

Drafting exercises will be assigned to enable students to draft contract clauses.

4. Guest Speakers

As schedules permit, attorneys experienced in the field will be invited to appear so that students may practice eliciting information from them.

5. Simulated Trial Experience

Students will be required to attend a trial or hearing and report on it. Attention will be paid to the significance of the procedural posture of cases.

6. Writing Exercises.

From time to time, students will be required to engage in writing exercises.