

Contracts  
Course Law 101-103 (Day Section)  
Course Law 101-201 (Evening Section)  
Professor Evans  
Fall 2007

**Syllabus**

**Course Purpose:** This course is designed to provide first-year law students with several fundamental skills needed by law students and legal practitioners, including how to read and analyze cases; how to identify, sort, and work with facts; how to identify legal rules; how to synthesize legal materials; how to think critically about the law; how to respond to and make legal arguments; how to engage in oral advocacy; and how to write “like a lawyer,” in an organized and structured manner. This course also is designed to provide law students with a basic understanding of the substantive law of Contracts in the United States. Regardless of where and how lawyers practice, they encounter Contracts law. Contracts figure prominently in local, national, and international commerce between business entities. Contracts also are a staple of consumer law: click-through agreements on the Internet, residential leases, contracts for the sale of real estate, rental car agreements, the tiny print on the back of an airline ticket, etc. Contracts also figure in the business of law itself. Retainer agreements between lawyers and clients are contracts, as are the settlement agreements that resolve most civil litigation outside of court, and the agreements between lawyers and their employers. Even criminal law involves Contracts law: plea bargain agreements, for example, are contracts. This course deals with how contracts are formed, which contracts are valid, when a contract has been breached, defenses to contractual liability, the various remedies for breach, and quasi-contractual theories of liability based on detrimental reliance and unjust enrichment. This course also is designed to introduce the student to legal methodology and the techniques of statutory interpretation.

**Class Times:** The day section of this course will meet Tuesdays and Thursdays from 2:30 p.m. to 3:45 p.m. in Room 803 (Lewis). The evening section of this course will meet Thursdays from 5:50 p.m. to 8:30 p.m. in Room 905 (Lewis).

**Office Hours:** Room 825 (tentative), Tuesdays and Thursdays 4:00 p.m. to 5:30 p.m. (tentative), or by appointment. I encourage students to meet with me to discuss the course material, their career interests, or any other matter.

**Contact Information:** My e-mail address is mevans15@depaul.edu. Please post questions about substantive and procedural matters in the class should be posted to Blackboard (see below). Please e-mail me directly regarding personal, confidential, or private matters, or about any other matter that you are uncomfortable posting on Blackboard. Blackboard permits anonymous posting.

**Required Texts:** The required casebook for this course is Randy E. Barnett, *Contracts: Cases and Doctrine* (3d ed. 2003). In addition, from time to time you may be required to purchase one or more course supplements.

**Optional Readings:**

**UCC/Restatement Supplement:** In many Contracts courses, professors require students to purchase a supplement containing selected provisions of the Uniform Commercial Code (UCC) and the Restatement (Second) of Contracts. One example is Farnsworth’s *Selections for Contracts*, published by Foundation

Press in 2003. Because the Barnett casebook we will be using includes the text of most of the UCC and Restatement provisions we will deal with, however, I believe a supplement of this sort is unnecessary for this course. Students who nonetheless would like to have a supplement are not discouraged from purchasing one. If you do purchase a supplement containing provisions of the UCC and Restatement, try to get one that contains official comments. The official comments to the Restatement and the UCC often are quite illuminating.

Hornbooks: The course is designed so that students should be able to understand the material based on the casebook, the professor's handouts, and the class sessions. That said, students sometimes find it helpful to consult outside materials. The three hornbooks referenced in the Barnett casebook – E. Allan Farnsworth, *Contracts* (4th ed. 2004); Joseph M. Perillo, Calamari & Perillo on *Contracts* (5th ed. 2003); and, John Edward Murray, Jr., *Murray on Contracts* (4th ed. 2001) – are wonderful resources to supplement the casebook and class discussions. As you will see, the units in the Barnett casebook cross reference specific sections of these three hornbooks. I use all of these books myself, relying particularly heavily on Farnsworth. In addition to the hornbooks, students may enjoy Marvin A. Chirelstein's *Concepts and Case Analysis in the Law of Contracts*, also published by Foundation Press, as a general aide in understanding the Contracts curriculum. Each of these hornbooks, as well as the Chirelstein book, should be available from the law library reserve desk.

Commercial Outlines and Commercial Case Briefs: Use of commercial outlines (such as Gilbert or Emmanuel) is not prohibited, and these outlines may at times help students to situate cases and units of the course into the overall scheme of Contracts law, but I do not advise relying heavily on them. They contain inaccuracies. Furthermore, on the exams in this course, you will be tested on your mastery of the material we covered in the casebook and in class, not on what you may see in a commercial outline. Exams that mimic outside material rather than material assigned in this course ordinarily do not fare well. In addition to commercial outlines, some students are tempted to use commercial case briefs keyed to the casebooks used in law school. I strongly do not recommend using these materials. They are of very poor quality. Furthermore, succeeding in my class and student learning are dependent on students preparing their own case briefs.

Student-Oriented Supplements: Of the student-oriented supplements that are available, I find Blum's *Contracts: Examples and Explanations* to be the most useful. It also offers the additional advantage of practice problems (and explanations) that you may find helpful in preparing for the final exam. If I were to recommend a study aid, this would be my choice.

Dictionaries: You are required to consult an English language dictionary (such as Webster's or, my favorite, American Heritage) and a legal dictionary (such as Black's Law Dictionary). The cases you read, particularly at the beginning of the course, often contain language or legal terminology that is unfamiliar to you, so your preparation requires you to look up some of these words from time to time. Fortunately, Webster's and American Heritage are available for free on the Internet; Black's should be available through your free student Westlaw account. All of you have (or will soon be receiving) Westlaw passwords. Part of being prepared for class means having looked up the words and legal terms with which you are not familiar prior to coming to class.

**Blackboard**: There will be an electronic classroom site for this course called Blackboard. I plan to use the site to post class announcements, course materials, and practice problems. I also encourage you all to use Blackboard to post your thoughts and questions about the course.

**Grading Policy:** Your grade for this course will reflect your performance on the final exam, your completion of any additional assignments announced during the course of the semester, and your class participation. Class participation incorporates preparedness, contributions, professionalism, and attendance. Please help me to create an optimal learning environment. My hope is that students will arrive to class on time, attend classes whenever possible, arrive at class thoroughly prepared to get the most out of class, engage in classroom discussion, and minimize disruptive activities such as coming and going. I may raise or lower a student's grade for the course by up to one full letter based on participation.

**Exams:** Exams in this course will be “partially open book”: you will be able to use an outline of your own making during the exam. The outline may include your class notes and my class handouts. There is no page limit on the outline, but it must be your own work. You may not bring commercial outlines or any other materials to the exam. You also will have the use of an exam supplement, to be provided by the school at the time of the exam, containing the provisions of the UCC and Restatement (Second) of Contracts that we studied. I anticipate that your grade on the exams will depend heavily on your ability to write clear and organized answers and, in particular, on your ability to write in an “IRAC” format, something you will be studying soon. In order to help you internalize the technique for essay exam writing, I may provide you with one or more practice exams during the course of the semester.

Exams may include multiple-choice, short answer, or essay questions. In the second semester, the final exam will be cumulative: it will cover material from the entire year, although it will heavily emphasize new, second semester material.

**Feedback:** I welcome your feedback about class. If there are aspects of the class or my teaching style that you believe could be improved, please let me know. I welcome constructive criticism and I would much rather learn of your concerns during the semester – when I can make improvements – than after the semester is over. Also, please let me know if you are having trouble hearing me in class or seeing classroom exhibits. Finally, if there are aspects of the class that you find particularly helpful, please let me know so I can do more of them. During the course of the semester, I may survey the class to obtain your feedback on how the class is going.

**Reading Assignments:** A tentative list of the reading assignments is attached. Most of the assigned reading will come out of the Barnett casebook. On occasion, however, you will be assigned to read material from the Course Supplement in addition to, or instead of, the casebook.

We will cover about one unit per class session (two units per class session in the evening section that meets just one time per week). The pace likely will be slower at the beginning of the semester, as much of what we will be doing will be so new to you. Please make sure you are always at least one unit ahead in your reading (two units in the evening section).

You will see that the Course Supplement contains Study Questions for each unit. Please consider these questions part of the reading assignment for each unit. Please make sure you have reviewed them as part of your preparation for each class session, just as you would the “note” material you find in many casebooks.

## Reading Assignments

A list of proposed reading assignments follows. Note that the reading assignments are divided by units rather than dates. In many cases, units are designed to be covered in a single class session; other units may require more than one class. This list of assignments is subject to change. Depending on the pace of the class and other factors that may arise, we very well may decide to omit one or more units during the course of the semester.

### **I. INTRODUCTION**

#### Unit 1:

Topic: Welcome and How to Brief Cases for Professor Evans  
Readings: Supplement, pp. 3-5: *Introduction to Case Briefing*  
Barnett, pp. 6-7 (How to brief a case)  
Supplement, pp. 13-16: *Pass v. Shelby Aviation* (brief this case)

#### Unit 2

Topic: Introduction (Self-Study: We will not be going over this material in class.)  
Readings: Supplement, pp. 6-9: *Introduction to Contract Law*  
Barnett, pp. ix-xxix, xxxi-xxxiii, 3-6

### **II. GOVERNING LAW**

#### Unit 3

Topic: What Law Governs: The Common Law or the UCC?  
Readings: Supplement, pp. 12-17: *Governing Law*  
Barnett, pp. 71-73, 78, 817  
Supplement, p. 18: *An Introductory Note on Terminology*

### **III. REMEDIES**

#### Unit 4

Topic: Introduction to Remedies; Damages: Expectation Damages  
Readings: Barnett, pp. 59-70; Supplement, p. 19

#### Unit 5

Topic: Damages: Introduction to Buyer's Damages under the UCC; Expectation Versus Market Price-Contract Price Differential in *Tongish v. Thomas*  
Readings: Barnett, pp. 79-85; Supplement, pp. 20-21

#### Unit 6

Topic: Foreseeability as the First Limitation on Damages Under the Common Law  
Readings: Barnett, pp. 86-104; Supplement, pp. 22-23

#### Unit 7

Topic: Certainty as the Second Limitation on Damages Under the Common Law; The Right to Nominal Damages; Damages Measured by the Reliance Interest as an Alternative to Damages Measured by the Expectation Interest; Two Contrary Approaches to the Question of Damages for Pre-Contract Reliance: *Chicago Coliseum Club v. Dempsey* versus *Anglia Television Ltd. v. Reed*  
Readings: Barnett, pp. 104-124; Supplement, pp. 24-25

#### Unit 8

Topic: Avoidability (Mitigation) as the Third Limitation on Damages Under the Common Law; Introduction to Seller's Damages Under the UCC; the Lost Volume Seller  
Readings: Barnett, pp. 124-146; Supplement, pp. 26-27  
Supplement, pp. 28-29: *Further Limitations on Damages: The Efficient Breach, Noneconomic Damages, Punitive Damages, and Attorneys' Fees*

#### Unit 9

Topic: Contracting Around Default Remedies by Including a Liquidated Damages Clause in the Agreement: Is the Liquidated Damages Clause Enforceable?; Availability of Punitive Damages for Breach of Contract  
Readings: Barnett, pp. 148-161, 145 (UCC § 2-718(1)); Supplement, p. 30

#### Unit 10

Topic: Introduction to Specific Performance; Specific Performance in Contracts for Land and for the Sale of Goods  
Readings: Barnett, pp. 179-198; Supplement, pp. 32-33

#### Unit 11

Topic: Specific Performance in Contracts for Personal Services  
Readings: Barnett, pp. 198-224; Supplement, pp. 37-38

#### Unit 12-A

Topic: Restitution as an Alternative Measure of Damages for the Nonbreaching Party  
Readings: Barnett, pp. 235-242; Supplement, pp. 40-42

#### Unit 12-B

Topic: Restitution as a Remedy for the Breaching Party  
Readings: Barnett, pp. 242-251; Supplement, pp. 40-42

#### Unit 12-C

Topic: Restitution (also Known as Quasi-contract; Unjust Enrichment; or Implied-in-Law Contract) as a Cause of Action as an Alternative to a Cause of Action for Breach of Contract; the Differences Between an Express Contract, an Implied-in-Fact Contract, and an Implied-in-Law Contract  
Readings: Barnett, pp. 251-258; Supplement, pp. 40-42

### **IV. MUTUAL ASSENT: OFFER AND ACCEPTANCE**

#### Unit 13

Topic: Introduction to Mutual Assent: The Objective Theory of Assent  
Readings: Barnett, pp. 275-290, re-read the parts of *Hawkins v. McGee* pertaining to mutual assent (pp. 62, 64); Supplement, pp. 50-51  
Supplement, pp. 52-54: *The Objective Theory of Assent*; Restatement (Second) of Contracts § 20(2)

#### Unit 14-A

Topic: Is There a Valid Offer; Distinguishing an Offer from a Request for Proposals and Preliminary Negotiations; When Is an Advertisement an Offer?; The Certainty Requirement  
Readings: Barnett, pp. 291-305; Supplement, p. 55 (including Restatement (Second) of Contracts §§ 12, 16)

#### Unit 14-B

Topic: Written Memorial Contemplated: When Is an Agreement in Principle Binding as a Contract?  
Readings: Barnett, pp. 306-314; Supplement, p. 55

#### Unit 15

Topic: Has the Offer Been Terminated by Revocation or by Other Means; Option Contracts and Firm Offers Under the UCC  
Readings: Barnett, pp. 314-321; Supplement, pp. 56-57

#### Unit 16

Topic: Is There a Valid Acceptance: Is the Mirror Image Rule Satisfied? Is the Acceptance Timely Under the Mailbox Rule or Otherwise? Is the Medium of Acceptance Proper? Is the Manner of Acceptance (Words, Conduct, Performance, or Silence) Proper?; Unilateral versus Bilateral Contracts  
Readings: Barnett, pp. 321-355; Supplement, pp. 58-61  
Supplement, pp. 62-63: *Empro v. Ballco and the Question of Precontractual Liability*

## V. INTERPRETATION

### Unit 17

Topic: Interpretation: Misunderstandings; Interpretation of Ambiguous Terms, Vague Terms, and Contract Language Generally

Readings: Barnett, pp. 377-393, 397-402; Supplement, pp. 67-70 (including Restatement (Second) of Contracts § 20)

### Unit 18

Topic: Gaps and Open Terms: Contracts that Fail for Indefiniteness (Uncertainty); Filling Gaps: The Court Supplies a Term; The Old Common Law Rule on Illusory Promises; Gap Filling in Particular Contexts: Requirements and Output Contracts and the Implied Duty of Good Faith, and Exclusive Dealings Contracts and the Implied Duty of Reasonable Efforts

Readings: Barnett, pp. 403-423; Supplement, pp. 71-73

### Unit 19

Topic: Form Contracts and Contracts of Adhesion

Readings: Barnett, pp. 424-438; Supplement, pp. 74-75

### Unit 20

Topic: Varying Acceptance Under the UCC: Battle of the Forms; Terms that Follow Later

Readings: Barnett, pp. 449-451 (UCC § 2-207); Supplement, pp. 76-78

Supplement, pp. 79-80: *Overview of the Battle of the Forms Under UCC § 2-207*

Supplement, pp. 81-82: *Teaching Problems on the Battle of the Forms*

Barnett, pp. 461-464 (*Klocek v. Gateway*)