

CONTRACTS
(Fall 2008)

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Course Description

This course introduces and explores the function of contracts and covers the evolution and application of common law doctrines and, where applicable, those provisions of the Uniform Commercial Code governing the contracts process.

In large part, this course is about promises. We all make promises—to a landlord to pay rent, to an online merchant to pay for an item, to a friend to attend a party, to a lender to pay a loan. All promises, however, are not created equal. Some promises create legal obligations, some moral obligations, and some create both. Certain promises have legal consequences. These promises, once made, may be enforced in the courts. If we make a promise and renege, the other party (the promisee) may bring a lawsuit and hold us responsible (in some way) for the obligation we assumed. It is the availability of legal recourse that makes a commitment more than just a promise; it makes that promise a contract. Throughout this course, we will discuss what kinds of promises create legally enforceable contracts. To do so, we will discuss contract formation (i.e. offer and acceptance) and the doctrine of consideration. We will also study some of the defenses that make a contract unenforceable. After learning how a binding obligation can arise, we will discuss the parties' performance of a contract and when failure to perform might be excused. We will also discuss remedies available when there is a contract breach/failure to perform. Additionally, we will discuss third-party beneficiaries and assignments.

Casebook and Supplement

The required texts for this course are available for purchase at the DePaul University Bookstore. The following texts are required:

- Epstein, Markell & Ponoroff, Making and Doing Deals: Contracts in Context (2d ed. Lexis 2006) (the “Casebook”).
- Selections for Contracts (Foundation Press 2008) (“the Supplement”) (all assignments in the Restatement (Second) of Contracts and the Uniform Commercial Code are available in the Supplement).

Class Assignments and Class Preparation

Please prepare one numbered assignment per class. The assigned readings must be completed PRIOR to each class. For example, the assigned readings for Class No. 1 below must be completed before the first scheduled class for this course. To be properly prepared for the next class, you will be required to be familiar with any material that you prepared for the previous class, but which we did not cover. Each student is expected to: (1) carefully read the assignment for each class, including any provisions from the Uniform Commercial Code and the Restatement (Second) of Contracts; (2) brief the assigned cases; and (3) be prepared to discuss the class assignments.

You may skim the questions following the cases in your Casebook, and although you should be prepared to attempt to answer them in class, you do not need to write out answers to these questions. Each student should, however, write out his or her case briefs (see below for additional information on case briefs). Punctual and regular class attendance, preparation, and participation are integral to understanding the concepts discussed, and tested, in this course.

First Week Assignments

Please note: CB= Casebook; RST=Restatement (Second) of Contracts; UCC= Uniform Commercial Code (references will be to sections of the UCC). All references to UCC provisions are to the original “2000 Official Text” in the Supplement (unless otherwise noted below). A syllabus delineating additional assignments for the semester will be available on the first day of class.

Introduction

1. What is a contract? What is a lawyer’s role in contract law? What are sources of Contract Law?

CB pp. 1-7 (Sections 1 & 2),14-37; RST §§ 1, 344; UCC §§ 2-102, 2-105(1), 1-103, 1-102(1)-(3).

Part I. Is there a Deal? The Process of Reaching Agreement

2. Has your client made a deal? Determining mutual assent.

CB pp. 39-58; RST §§ 17, 27.

Preparing Cases for Class (Briefing)

In order to prepare for each class, you should carefully read and brief each and every case throughout the semester. Importantly, this task includes looking up any terms that you do not know. In addition to ensuring that you are prepared for class, briefing will enable your ability to read and understand cases, and to use them in your legal analysis.

Please consider and answer the following questions to brief each assigned case:

1. **Who are the parties in this case (Ex.* Plaintiff/Defendant; Appellant/Appellee)?**
2. **What are the relevant, key (legally significant) facts? Consider:** What facts led the parties to a lawsuit and/or appeal? What facts are critical to the Court's decision?
3. **What is the Procedural History of the Case?** (Ex. Is this an appellate case? If so, what was in dispute in the lower court? What did the lower court find regarding that issue? Was there a judge or jury in the lower court?)
4. **What is the legal issue/question before the present Court?**
5. **What relief is the Plaintiff/Appellant seeking (Ex. Damages? Performance? Injunctive Relief?) What is the basis of Plaintiff/Appellant's argument for this relief? What is the opposing party's argument/theory?**
6. **What is the decision or holding of the Court? What relief, if any, is granted to the Plaintiff/Appellant?**
7. **What is the Court's reasoning for its decision?** What rules/authorities did the Court apply in reaching its decision?
8. **What is your analysis of the Court's decision?** Do you agree or disagree with the Court's decision and/or reasoning? Why? What are other reasons for the outcome of the case?

*Ex. = Example