



CLASS POLICIES AND ASSIGNMENTS FOR SCHWARTZ CONTRACTS II CLASS

SEMESTER: Spring 2011

TEXTS

REQUIRED: Michael Hunter Schwartz and Denise Riebe, *CONTRACTS: CONTEXT AND PRACTICE CASEBOOK* (2009, Carolina Academic Press)

Steven J. Burton, *CONTRACT LAW: SELECTED SOURCE MATERIALS*
(Thompson West, most recent edition available)

Michael Hunter Schwartz, *EXPERT LEARNING FOR LAW STUDENTS* (2d ed. Carolina Academic Press 2008)

Michael Hunter Schwartz, *EXPERT LEARNING FOR LAW STUDENTS WORKBOOK* (2d ed. Carolina Academic Press 2008)

TEXTS

RECOMMENDED: Marvin A. Chirba, *CONCEPTS AND CASE ANALYSIS IN THE LAW OF CONTRACTS* (Foundation Press, most recent edition)

John D. Calamari & Joseph M. Perillo, *CONTRACTS* (West Publishing Co., most recent edition)

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- **Expectations:** I expect you to:
 - have fun (the research on learning shows that students learn more in class when feel like class is fun);
 - care as passionately about your learning as I do;
 - treat the class as a professional obligation;
 - impose high expectations on me, on yourself, and on your peers;
 - be respectful to me and your peers;
 - discover for yourself why Remedies is the single most exciting course in law school!



- **Course Objectives:**

- I. Affective Goals.
 - A. The teacher and students will have an enjoyable and challenging learning experience;
 - B. The students will choose to self-regulate their learning and develop themselves as professionals.
- II. Values. Students will:
 - A. Demonstrate respect for students, staff, and faculty.
 - B. Develop an attitude of cooperation with students, faculty, lawyers, and judges.
 - C. Understand the multiple roles of a contract lawyer.
 - D. Continue to formulate his or her version of the moral lawyer.
 - E. Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection
- III. Skills Goals. Students will:
 - A. Given a contract between two or more parties and facts relating to a dispute,
 - 1. Be able to identify the contract law issues raised by the contract and the facts;
 - 2. Be able to develop the arguments reasonable lawyers representing all involved parties would make with respect to those issues;
 - 3. Be able to predict how a court would evaluate those arguments and resolve the dispute.
 - B. Be able to effectively self-regulate their learning in the course.
- IV. Content Goals. Students will know, with a high degree of accuracy, the rules that govern:
 - A. The remedies for breach of contract
 - B. The parol evidence rules
 - C. Contract interpretation
 - D. The creation, effect and occurrence of express conditions
 - E. The creation, effect and occurrence of constructive conditions
 - F. The excuse and discharge of conditions
 - G. Contract performance law under Article II of the UCC
 - H. If time permits:
 - 1. Third party beneficiaries
 - 2. Assignment and delegation

- **Teaching and Learning Methods:**

- Socratic-style teaching
- Lecture
- Clicker questions
- Partially-completed graphic organizers
- Small group work (only rarely)

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- **Course Grading:**

- **Contract Analysis Exercise—5% of Course Grade:** On the first day of class, you must bring a contract to class that you wish to study over the course of the semester. Your contract must be at least five pages in length and must be approved by me. **On April 19**, you will hand in a two-page paper, double-spaced, 12-point times new roman font in which you analyze the legal effect or potential problems with five terms of your contract. If you turn in your work on time and your work reflects a good faith effort and is solely your own work, you will get full credit. ***You may hand in a draft of any part of the paper for feedback at any time before April 12.*** For your benefit, however, I will give you evaluative feedback on your work. Your final exam will include a question that requires you to analyze the legal effects of terms of a contract you never have seen before
- **Contract Drafting Exercises—5% of Course Grade:** Throughout the semester, I will ask you to draft 5 contract terms (each worth 1% of your course grade). If you turn in your work on time and your work reflects a good faith effort and is solely your own work, you will get full credit. **You may not use any supplemental resource (paper or web-based) for these assignments.** For your benefit, however, I will give you evaluative feedback on your work. Your final exam will include a contract drafting experience.
- **Final Exam—90% of Course Grade:** You will have 5-6 hours to complete your exam. The exam will include essay, short essay and multiple choice questions. It may also include short answer questions. You **will** be allowed (and encouraged but not required) to type your exams and should **not** use exam soft.
- **Adjustment for Extraordinary Class Participation:** I may adjust your final course grade for extraordinary class participation as follows: I will adjust two-tenths upward (e.g., from a 3.0 to a 3.2) the grades of students whose class participation is consistently superior. To achieve this “extraordinary” standard, students must volunteer to participate during most class sessions (whether I call on them or not), must always be prepared for class and paying attention when I call on them, and must contribute ideas and analysis that reflect original and valuable insight.

In the alternative, students can achieve this “extraordinary” standard through making extraordinary postings to the course webpage for this course. To achieve this “extraordinary” standard, students must post at least 10 posting to the course webpage that reflect extraordinary insight, find interesting connections between current events or disputes and the concepts we are studying *at the time*, or ask questions that reflect insight.



- **Assignments: Attached are the assignments for the class.** Assignments include materials found in the casebook, the UCC/ Restatement supplement, and the Expert Learning books. *Because my teaching is student-centered and therefore adjusts based on how well the students are learning, it is likely the schedule of assignments will be modified over the course of the semester.*
- **Office Hours, Appointments and E-mail:** My office hours are: Tuesdays and Thursdays, 1-5 pm. I also make appointments to accommodate students in need of my attention. I always arrive to class several minutes before the scheduled start of class, and I do take questions at such times. I will respond very promptly to any question posed by e-mail (*see my e-mail address above*).
- **Course Web Page:** The course will have use the same TWEN webpage we used last semester.
- **Disability Services:** Washburn University School of Law strives to assure equal access and full participation by persons with disabilities. If you require services because of a disability, you may notify Lynette Petty, Assistant Dean, in the Law Clinic, Room 160, or email her at lynette.petty@washburn.edu. This voluntary self-identification allows the University to prepare any necessary and appropriate support services to facilitate your learning. Any requests for exam accommodations should be directed to Dean Petty and should be made at least four weeks prior to the exam to allow adequate time to document and process the request.
- **Select Mission of the University:** Washburn University shall prepare qualified individuals for careers, further study and life long learning through excellence in teaching and scholarly work. Washburn University shall make a special effort to help individuals reach their full academic potential. *Washburn University Board of Regents, 1999*
- **Academic Misconduct Policy:** All students are expected to conduct themselves appropriately and ethically in their academic work. Inappropriate and unethical behavior includes (but is not limited to) giving or receiving unauthorized aid on examinations or in the preparation of papers or other assignments, or knowingly misrepresenting the source of academic work. Washburn University's Academic Impropriety Policy describes academically unethical behavior in greater detail and explains the actions that may be taken when such behavior occurs. For guidelines regarding protection of copyright, consult www.washburn.edu/copyright/students. For a complete copy of the Academic Impropriety Policy, contact the office of the Vice President for Academic Affairs, Morgan 262, or go online to: www.washburn.edu/admin/fac-handbook/FHSEC7.htm#VIII.



- **Official E-Mail Address:** Your Washburn University e-mail address will be the official address used by the University for relaying important messages regarding academic and financial information. It may also be used by your instructors to provide specific course information. E-mail messages sent to your Washburn University e-mail address will be considered your official notification for important information. If you prefer to use an alternate e-mail address to receive official University notices, you can access your MyWashburn e-mail account, choose the "Options" tab, and select "Settings", scroll to the bottom of the screen and enter the e-mail address you would like your Washburn emails forwarded to in the "mail forwarding" area. Click on save changes. This will complete the process of forwarding your Washburn e-mail.



Assignments and Activities

Week, Day	Subjects	Student Class Preparation Activities	Classroom Activities
Tues., Jan. 11	Course Design Contract Meaning <ul style="list-style-type: none"> Introduction to contract reading 	<ul style="list-style-type: none"> Review Syllabus Read pages 411-418 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> and answer the questions therein Bring the contract you intend to study this semester Looking at the contract you are bringing to class, identify as many of the terms listed in the Chart on page 412 as you can. Use sticky notes to label those terms in your contract. 	<ul style="list-style-type: none"> Discuss Syllabus Discuss sample contract and assigned problems Compare contracts with a peer
Thurs., Jan. 13	Contract Meaning <ul style="list-style-type: none"> Liquidated (Agreed) Damages Clauses 	<ul style="list-style-type: none"> Read the Chapter Problem, page 359 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> Read pages 359-366 and 369-371 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> and answer the questions therein (case is <i>Leeber</i>) (skip <i>Hayes</i> case and related exercises) Drafting Exercise I: Draft liquidated damages clause in the Chapter Problem (Due Jan. 18) 	<ul style="list-style-type: none"> Discuss assigned case and problems Correct the assigned liquidated damages clause and then hand it in
Tues., Jan 18 Thurs., Feb. 3 Tues., Feb. 8 Thurs., Feb. 10	Contract Meaning <ul style="list-style-type: none"> Parol Evidence Rule 	<ul style="list-style-type: none"> Read the Chapter Problem on page 419 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> (Jan. 18) Study Rest. 2d Contracts, §§209-211, 213-215 (Jan. 18) Read pages 420-441, 446-457 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> and answer the questions therein (cases are <i>Mitchill</i>, <i>Masterson</i>, <i>Lee</i>, <i>Morris</i>, <i>Bethlehem Steel</i>, and <i>Pacific Gas & Electric</i>) (Jan. 18, Feb. 3: 420-438; Feb. 8: 438-441, 446-450; Feb. 10: 450-457) Prepare for oral arguments for the Chapter Problem (Feb. 10) Drafting Exercise 2: Complete Exercise 10-18 in writing and hand it in on Feb. 15. 	<ul style="list-style-type: none"> Discuss assigned cases and restatement sections Discuss analysis of hypos and answers to questions Oral arguments (Feb. 10)



Week, Day	Subjects	Student Class Preparation Activities	Classroom Learning
Fri., Feb. 11, 9 am – 12 pm (Room 102) Tues., Feb. 15	Contract Meaning <ul style="list-style-type: none"> • Interpretation <ul style="list-style-type: none"> ○ Finding ambiguity ○ Resolving ambiguity 	<ul style="list-style-type: none"> • Read the Chapter Problem on pages 459-462 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK • Study Rest. 2d Contracts, §§ 201, 204-207 • Read pages 463-476, 481-488 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Frigaliment</i>, <i>Raffles</i>, and <i>Haines</i>) (Feb. 11: 463-470, 470-476, 481-482; Feb. 15: 483-488) • Hand in Drafting Exercise 2: Exercise 10-18 (Feb. 15). • Chapter Problem: Prepare for a meeting with the president of Omhaha; you will have three-five minutes to present your evaluation and recommendation (Feb. 15) 	<ul style="list-style-type: none"> • Discuss assigned cases and restatement sections • Discuss analysis of hypos and answers to questions • Meetings with president (in class, you will be assigned to be either the lawyer or the president)
Thurs., Feb. 17 Fri., Feb. 18, 2:30 – 4:15 (Room 102) Tues., Feb. 22	Contract Performance and Non-Performance <ul style="list-style-type: none"> • Express Conditions <ul style="list-style-type: none"> ○ Creation and effect ○ Occurrence ○ Pay when paid clauses ○ Time is of the essence clauses ○ Satisfaction clauses 	<ul style="list-style-type: none"> • Read the Chapter Problem on pages 491-492 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK • Study Rest. 2d Contracts, §§ 224-227 • Read pages 493-527 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Tacoma</i>, <i>Howard</i>, <i>Oppenheimer</i>, <i>Southern States Masonry</i>, <i>Pederson</i>, and <i>Mattei</i>) (Feb. 17: 493-507 [Note: We may not finish the <i>Howard</i> case]; Feb. 18: 507-523; Feb. 22: 523-527) • Drafting Exercise 3: Prepare a written answer to Exercise 12-7 (Due Mar. 8) 	<ul style="list-style-type: none"> • Discuss assigned cases and restatement sections • Discuss analysis of hypos and answers to questions



Week, Day	Subjects	Student Class Preparation Activities	Classroom Learning
Thurs., Feb. 24 Tues., Mar. 1 Thurs., Mar. 3 Fri., Mar. 4, 10:30- 11:45 am (Room 102)	Contract Performance and Non-Performance <ul style="list-style-type: none"> Constructive Conditions <ul style="list-style-type: none"> Creation and effect Occurrence 	<ul style="list-style-type: none"> Study Rest. 2d Contracts, §§ 232, 334, 241 Read pages 527-548 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Kingston, Price, Ziehen, Stewart, Plante</i>) (skip Question 2 in Exercise 12-11) (Feb. 24: 527-533, including Ex. 12-13, Q1; Mar. 1: 533-544; Mar. 3: 533-548) Hand in Drafting Exercise 3 (Mar. 8) Determine the order of performance for <i>every</i> obligation in the contract between Kingston and Preston (Mar. 4) 	<ul style="list-style-type: none"> Discuss assigned cases and restatement sections Discuss analysis of hypos and answers to questions Discuss the order of performance for <i>every</i> obligation in the contract between Kingston and Preston
Tues., Mar. 8	Contract Performance and Non-Performance <ul style="list-style-type: none"> Performance under Article 2 of the UCC 	<ul style="list-style-type: none"> Find and read the appropriate sections from Article 2 of the U.C.C. Read pages 549-550 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (Note: Please work on the exercises in your groups; these exercises are very hard.) 	<ul style="list-style-type: none"> Discuss analysis of hypos Hand in your written answer to Exercise 12-
Thurs., Mar. 10	Contract Performance and Non-Performance <ul style="list-style-type: none"> Divisibility 	<ul style="list-style-type: none"> Study Rest. 2d Contracts, § 240 Read pages 550-556 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Sterling</i> and <i>Tipton</i>) 	<ul style="list-style-type: none"> Discuss assigned cases and restatement section Discuss analysis of hypos and answers to questions
Tues., Mar. 15 Thurs., Mar. 17	Contract Performance and Non-Performance <ul style="list-style-type: none"> Excuse and discharge <ul style="list-style-type: none"> Non-occurrence Waiver, estoppel, and prevention and bad faith Extreme forfeiture 	<ul style="list-style-type: none"> Read pages 556-574 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Shultz, Prousi, Fay, and Alcazar</i>) (Mar. 15: 556-568; Mar. 17: 568-574) 	<ul style="list-style-type: none"> Discuss assigned cases Discuss analysis of hypos and answers to questions



Week, Day	Subjects	Student Class Preparation Activities	Classroom Learning
Mon., Mar. 21 to Sun., Mar. 27	SPRING BREAK	SPRING BREAK	SPRING BREAK
Tues., Mar. 29 Thurs., Mar. 31	Contract Performance and Non- Performance <ul style="list-style-type: none"> • Excuse and discharge <ul style="list-style-type: none"> ○ Anticipatory repudiation ○ Failure of assurances 	<ul style="list-style-type: none"> • Study Rest. 2d Contracts, §§229, 250-251 • Read pages 574-596 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Wallace Real Estate Investments, Inc.</i>, <i>K & G Construction</i>, <i>Cobb</i>, <i>Drake</i>, <i>AMF</i>) (Mar. 29: 574-583; Mar. 31: 583-597) • Drafting Exercise 4: Prepare a written answer to Exercise 12-34 (Due Apr. 5) 	<ul style="list-style-type: none"> • Discuss assigned cases and restatement section • Discuss analysis of hypos and answers to questions
Tues., Apr. 5 Thurs. Apr. 7 Tues., Apr. 12 Thurs., Apr. 14	Contract Performance and Non- Performance <ul style="list-style-type: none"> • Excuse and discharge <ul style="list-style-type: none"> ○ Impracticability and impossibility ○ Frustration • Contract Reading 	<ul style="list-style-type: none"> • Study Rest. 2d Contracts, §§261 and 265 and Article 2, §§ 2-609, 2-615 • Read pages 596-610, 614-619, 631-632 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Taylor</i>, <i>NAPUS</i>, <i>American Trading and Production Co.</i>, and <i>Krell</i>) (Apr. 5: 596-607; Apr. 7: 607-610; Apr. 12: 614-619, 631-632) • Hand in Drafting Exercise 4 (Apr. 5) • Prepare an outline of the client letter and the two-page memorandum assigned as Task 1 in the Chapter Problem (Apr. 14) • Drafting Exercise 5: Prepare a written answer to Exercise 15-15 (pages 751-752, second issue only) (Due., Apr. 21) 	<ul style="list-style-type: none"> • Discuss assigned cases and restatement section • Discuss analysis of hypos and answers to questions
Tues., Apr. 19 Thurs., Apr. 21 Tues., Apr. 26	Third Party Beneficiaries	<ul style="list-style-type: none"> • Study Rest. 2d Contracts, §§ 302, 309, 311, and 313 • Read pages 640-652, 657-667, 668-674, 675-678 of CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK and answer the questions therein (cases are <i>Lawrence</i>, <i>Seaver</i>, <i>H. R. Moch</i>, <i>Martinez</i>, <i>Robson</i>, and <i>Rouse</i> (skip <i>Heyer</i> and Exercises 13-7, 13-11, 13-14, 13-15) (Apr. 19: 640-652; Apr. 21: 657-667; Apr. 26: 668-674, 675-678) • Hand in Analysis of Your Contract and the Contract Itself (Apr. 19) • Hand in Drafting Exercise 5 (Apr. 21) 	<ul style="list-style-type: none"> • Discuss assigned cases and restatement section • Discuss analysis of hypos and answers to questions



Week, Day	Subjects	Student Class Preparation Activities	Classroom Learning
Thurs., Apr., 28, Room 102, 8 - 10 am	Review for Final Exam	Requirements to Attend Review To attend the review, you must complete and print out the following: <ul style="list-style-type: none"> • Read pages 715-725, 728-729 (skip Exercise 15-8), 730-732, and 751-752 of <i>CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK</i> and complete all of Exercise 15-1 (questions 1-3), and prepare outlines of answers to Exercises 15-4 and 15-9 	<ul style="list-style-type: none"> • • • Discuss answers to questions, analysis of hypos and draft contract clause
Fri., May 13 8 am to 5 pm	FINAL EXAM	FINAL EXAM	FINAL EXAM

