

Contracts
Prof. Hadfield
USC Fall 2009

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Course Outline

This is a course about a fundamental way in which legal relations are organized: through agreement. And it is a course about what happens when people change their minds about what they agreed to and about what happens when they never really agreed but the law treats them as if they did. We are going to read many cases, many pages of a treatise about contracts, many sections of the restatement of the law of contracts, and many sections of a statute governing contracts. Your goal is NOT to memorize all of this “law.” It is to figure out the basic principles of contract law, to recognize when a particular fact situation raises issues that these basic principles address, to learn how to work with them to make fact-specific and rhetorically rich arguments and counterarguments, and to develop your capacity for judging what, on balance, are good and bad arguments in order to predict what a court might do if it heard these arguments and had to resolve the issue you identified. It is very important to remember the goal is to learn a SKILL, not to become a walking contracts treatise. Farnsworth already wrote a pretty good one and you can look up what he wrote any time you need to, now and throughout your career as a lawyer. (Incidentally, Farnsworth on your shelf will be a good friend for many years to come.)

By the end of the course you should be able to write an outline that consists of no more than 1-2 pages of basic principles to encapsulate the key concepts of contract law. If it’s longer than that, you haven’t looked deeply enough into the basics and you’re more likely to be memorizing ‘law’ instead of becoming a competent analyzer of contracting problems. Remember this if you find yourself getting overwhelmed by the quantity of information coming at you. Come to me, early, for help with figuring out what the takeaway lesson is. Don’t take off-the-shelf outlines or outlines from other law school classes, here or elsewhere, as your guide. Most of these outlines treat the goal of a law school course as absorbing the names, facts and holdings of cases. We are going to do that but only on the path to our real goal: understanding the basic principles of contract law and learning how to really, really use them.

The goal of learning how to DO contracts in this course is accomplished in significant part through four problems that you will do during the course of the semester in a group with three other students. By working on these problems you will practice the skills you’re trying to learn and deepen your understanding of contract principles. These four problems (together with class participation) will count towards your final grade. We will



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discuss each problem in class after you submit your memo analyzing the problem; memos will generally be due the day before we discuss them.

Here's why we do group work and how it's graded. There are several reasons that I use group work in almost all classes that I teach, and have done so since I began teaching contracts in 1990. First, the only real way to learn how to DO contracts is to raise arguments and counterarguments with other people. Law is a fundamentally interactive dialectical process; it is NOT a mechanical application of rules. We all see situations differently, and the most important thing that happens in the development of the analysis, argument and decision of case in law is the process by which different frameworks on situations are shifted through dialogue between a group of people all of whom are trained as lawyers. It is critical to hear how others see a situation, to learn how to frame the way you see it, and to recognize, objectively, which pieces of which perspective are those that are most likely to match up with the perspective of other lawyers (the other side, for example) and judges. You learn by problem-solving together in a group when you get good at a giving a strong presentation of your perspective, get it understood by the others in the group, understand their presentation of their analysis, and then step back and say, now which of those analyses is the one that is stronger, and in what way? Learning how to do this is critical to learning how to do law. I have taught using this method many times and it substantially increases the quality of legal analysis for all students.

Second, it's more fun.

Third, it allows me to give you practice in doing exactly what I'm going to ask you to do on the final exam, and most importantly, for me to give you feedback throughout the semester on what you're doing well and what you need to work on. I can do that because I can grade 20 group memos four times a semester; I can't grade 80 individual memos four times a semester.

Fourth, the practice of law always involves working in groups. Learning how to work with other people is another important professional skill. Like it or not, the days of being a solo artist are over....This is part of your professional training and I take that part of legal education seriously. You should be developing professional habits of reliability, hard work, taking responsibility, respect for others, and timeliness.

Here's how group work works. You will work in groups of 4, selecting your own group. I advise you to identify people who have a similar attitude and set of constraints as you. I will set a minimum standard that groups will meet in person twice for an hour for each assignment—once before significant work is started on the assignment and once after a first draft has been produced. You are welcome to work more than this, but you should find other students who are similarly minded and also have the flexibility that requires. (If you have kids or live off campus or have a job, for example, it's harder to coordinate than if you live on campus, on your own and have no plans for any life outside of the law school for the next several months...) Additionally, I will set a minimum standard that emails asking for comments on a draft or input will be returned within 24 hours: no faster can be expected; no longer can be acceptable—unless you agree



differently. For each memo, one person will be the point-person who will be responsible for coordinating the work on the memo and writing up the final draft. Another person will be the spokesperson for the group for the day we discuss the memo in class.

Here's how memos are graded. Each memo is graded out of 15 points, and will be graded on the same distribution—half of the grades will be 12s and 11s; half will be 13s and 14s. For the rare extraordinary result, I may give a 15; for the rare inadequate result, I may give a 10. I will also distribute written feedback on the memos. The point-person gets the grade out of 15; the others in the group get a proportional grade out of 5. Thus at the end of the semester each of you will have a total grade out of 30 for the memos.

After submitting the memo, each group member will also submit to me, confidentially, an allocation of points for their group members (as well as any feedback anyone wants to give me about the assignment): 1 or 2 per person. These are '**professionalism points**'—for meeting as planned, for participating in the discussion, for contributing ideas and feedback, for timely responses to email, for respectful listening, etc. This will give a total possible points from your group members of between 3 and 6. To this I will add my own points out of 4 at the end of the semester based on my assessment of your efforts in class.

Finally, for each class, groups will be 'on call.' On those days, I will call on people in those groups for the discussion. The spokespeople for each group will be on call on the days we discuss memos.

We will stick to the outline shown below. It is most important to read the cases and Restatement or UCC sections before class; I will expect that you have done so and will be calling on people from time to time to discuss cases and Restatement or UCC sections. (Again, however, no need to memorize: you can have the case, the restatement, your notes with you.) The treatise sections will provide you with additional context and a way of understanding the scope of the topic we are covering. **You are not required to read the sections in Farnsworth.** They are there for those of you who want more background and context, or to test their understanding. If you do read Farnsworth, read it lightly and if you take any notes at all make them short ideas that help you with the material we've discussed in class. And it's probably best to read anything in Farnsworth after we've had the class on that topic. There will come no point in the course when I will quiz you or expect you to have picked up some detail in the treatise that we have never discussed. On the other hand, since a key part of becoming a lawyer is absorbing the values and judgment of other lawyers (the accumulated 'culture' of law), the more you read about how Farnsworth discusses cases and the law of contracts the more you will develop your 'feel' for how lawyers and judges think about contract problems.

In the outline below, cases are found in Epstein, Markell and Ponoroff; I do not assign the text in the casebook but you may well find it helpful to 'read around' the cases, thinking about the questions after the case or some of the supplementary materials. The Restatement sections (R) and the UCC sections are found in "Rules of Contract Law."



Assignments [amendments in bold]

Aug 25	Intro Intent to Contract	Lucy v Zehmer; Leonard v Pepsi R 1, 2, 4, 21, 26 UCC 2-204 <i>F 3-9; 26-37; 108-129</i>
Aug 26	Consideration Pre-existing Duty	Hamer v Sidway; Kirksey v Kirksey Alaska Packers v Domenico R 17, 71, 73, 74, 77, 79, 81 <i>F 45-79</i>
Aug 27	Promissory Estoppel Promissory Restitution Statute of Frauds	Ricketts v Scothorn; Webb v McGowin R 86, 90, 110 UCC 2-201 <i>F 90-106; 353-383</i>
Sept. 8 1-6 on call	Offer & Acceptance	Carlill v Carbolic Smoke Ball; Lonergan v Scolnick; R 22, 24, 32, 50, 58, 63 , 69 <i>F 129-52</i>
Sept. 9 7-12 on call	Offer & Acceptance	Dickinson v Dodds; Davis v Jacoby Egger v Nesbit; R 36, 43, 45, 87 UCC 2-205 <i>F 152-60; 175-89</i>
Sept. 10 13-18 on call	Offer & Acceptance	Dorton v Collins & Aikman R 38, 39, 59, 60 63 UCC 2-206, 2-207 <i>F 160-68; 170-75</i> Discussion of “issue spotting” Problem 1
Sept 22	Problem 1	Discussion Problem 1 due 5 pm Sept 21
Sept 23 1-6 on call	Mistake Misunderstanding	Raffles v Wichelhaus; Sherwood v Walker; Donovan v RRL R 20, 152-154, 157, 201 <i>F 445-52; 601-19</i>



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Sept 24 7-12 on call	Fraud Misrepresentation	Halpert v Rosenthal; Swinton v Whitinsville; Weintraub v Krobatsch R 161-164, 168, 169 <i>F 236-55</i>
Oct 6 13-18 on call	Definiteness Incompleteness	Varney v Ditmars; Walker v Keith; Moolenaar v Co-Build R 33 UCC 2-204, 2-305 <i>F 201-15</i>
Oct. 7 1-6 on call	Interpretation Parol Evidence	Nelson v Elway; Frigalimont v BNS; Trident Center v Connecticut R27 , 202, 203, 206, 209, 210, 213-216 UCC 1-205, 2-202, 2-208; 222, 223 <i>F 414-30; 439-45; 453-79</i>
Oct. 8 7-12 on call	Interpretation Good Faith Implied Terms	Wood v Lucy; Locke v Warner Hobin v Coldwell Banker R 204, 205 UCC 1-203 1-201(19) 2-103(1)(b) 2- <i>F 480-500</i>
Oct 22 (makeup 2:45-4:00)	Problem 2	Discussion Problem 2 due 5 pm Oct 19
Nov 3 13-18 on call	Duress & Modification	Angel v Murray; Totem v Alyeska Odorizzi v Bloomfield; R 89, 174-177 UCC 2-209 <i>F 255-76</i>
Nov 4 1-6 on call	Impossibility Conditions Waiver	Taylor v Caldwell Peacock v Modern; May v Paris; Clark v West R 224-226, 261, 263, 265 <i>F 503-27</i>
Nov 5 7-12 on call	Material Breach Repudiation	Hochster v De la Tour; Truman v Schupf; Gibson v Cranston; Jacob & Youngs v Kent



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		R 237, 241, 242, 250, 251 UCC 2-610, 2-611 <i>F</i> 527-35; 560-575; 581-89
Nov. 17	Problem 3	Discussion Problem 3 due 5 pm. Nov 16
Nov. 18 13-18 on call	Remedies	Hawkins v McGee; Hadley v Baxendale; ESPN v Baseball (p.846); Fair v Red Lion R 344, 347, 349-352 UCC 2-703, 2-710, 2-711, 2-715 <i>F</i> 764-68; 778-805
Nov. 19 1-9 on call	Remedies	Van Wagner v S&M; Walgreen v Sara Creek O'Brian v Langley Patton v Mid-Continent R 355, 356, 359-367 UCC 2-716. 2-718, 2-719 <i>F</i> 589-97; 729-38; 743-61; 811-820
Dec 1 10-18 on call	Public Policy Fairness	William v Walker-Thomas Hanks v Power Ridge Restaurant R.R. v. M.H. R 178, 187, 188 , 191, 208 UCC 2-302 <i>F</i> 313-34; 298-308; 619-42
Dec 2	Public Policy Efficiency	Brasher's Cascade
Dec 3	Problem 4	Discussion Problem 4 due 5 pm Nov 30



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