

# CONTRACTS

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**M, Tu, Th 3:35 – 5:00**

Syllabus: Revision 1.0

[Case names refer to cases in Farnsworth, Young, Sanger, Cohen & Brooks casebook, 7<sup>th</sup> ed., 2008; "Course Webpage" is <http://www.law.berkeley.edu/10029.htm>. **Case assignments include all Notes following cases.** UCC sections and Restatement sections are found in the Uniform Commercial Code and Restatement 2<sup>nd</sup>, Contracts, both available either in various softbound books or online at Westlaw and LEXIS. Supplemental cases, denoted by "Supp." in this syllabus, are available on the course webpage.]

## **1/10: Intro. To Enforcement**

Intro, *Hawkins, Bayliner Marine*, Problem, 1-8

## **1/11: Enforcement II**

Intro. And *U.S. Naval Institute*, Note on Purpose of Remedies; *Sullivan v. O'Connor*; Economics of Remedies, 8-23

## **1/13: Intro. to Consideration**

Intro. Material; *Hamer v. Sidway*; Note on Gratuitous Promises; *Fiege v. Bohm*, 29-45

## **1/17: \*\* No Class – MLK Day \*\***

## **1/18: Past Consideration**

*Feinberg v. Pfeiffer Co.*, 46; *Mills v. Wyman*, 50; *Webb v. McGowin*, 52-56.

## **1/20: Bargain Requirement**

*Kirksey v. Kirksey*, 56; *Lake Land Employment Group*, 58; Notes on Employee Handbooks and Rewards, 64-67.

### **1/24: Bargain II**

Promises as Consideration, 67; Intro and *Strong v. Sheffield*, 69; Intro and *Mattei v. Hopper*, 72.

### **1/25: Requirements Contracts**

Intro and *Eastern Air Lines*, 76; *Wood v. Lucy*, 83, Note on Substitutes, 86.

### **1/27: Reliance as a Basis of Enforcement**

Intro and *Ricketts v. Scothorn*, 89; Note on Promissory Estoppel, 91; *Feinberg v. Pfeiffer*, 94; Restatement 2<sup>nd</sup> § 90; *Cohen v. Cowles Media*, 95-100; *D&G Stout v. Bacardi Imports, Inc.*, 100.

### **1/31: Restitution**

Intro. and *Cotnam v. Wisdom*, 105; *Callano v. Oakwood Park Homes Corp.*, 110; *Pyeatte v. Pyeatte*, 113

### **2/1: \*\* No Class \*\***

### **2/3: Assent**

Intro. (116) and *Lucy v. Zehmer*, 117; Notes, 122-126.

### **2/7: The Offer**

Intro. and *Owen v. Tunison*, 126; *Harvey v. Facey*, 129; *Fairmount Glass*, 130; Note on Ads as Offers, 133; *Lefkowitz v. Great Minneapolis Surplus Store*, 134.

### **2/8: Mistakes; Acceptance**

Notes on Construction Contracts and Mistaken Bids, 137; *Elsinore Union*, 139; Intro. and *International Filter Co.*, 147.

### **2/10: Acceptance (Cont'd)**

*White v. Corlies and Tift*, 152; *Ever-Tite Roofing*, 154; Note on Notice in Unilateral Contracts, 156; Intro. and *Allied Steel*, 158.

## **2/14: Acceptance II**

Note on Shipment of Goods, 161; *Corinthian Pharma. Systems*, 161; Note on Silence, 166; Intro. to Termination, 167; Note on Lapse, 168; Notes on Revocation and Option Contracts, 170; *Dickinson v. Dodds*, 171; Problem, p. 175.

## **2/15: Firm Offers**

Firm Offers and *Ragosta v. Wilder*, 176; Notes on Death of Offeror, Rejection of Mirror Image Rule, Rejection of Irrevocable Offer, Battle of the Forms, and Mailbox Rule, Problem, 180-188.

## **2/17: Battle of the Forms and UCC § 2-207**

Notes on Acceptance Varying Offer, Problem, Standard Forms and “Battle of the Forms,” Transcending Mirror Image Rule, 188; *Dorton v. Collins and Aikman*, 193; Note on Materiality, 198; *C. Itoh* and Note on Different or Additional Terms, 199-202; *Northrop*, 202, Problem, 205.

**2/21: \*\* No Class: President’s Day \*\***

## **2/22: Shrinkwrap and Clickwrap Contracting**

Note on Contract First, Terms Later, 205; (216) and *ProCD v. Zeidenberg*, 211; *Hill v. Gateway*, 215; Note on Revising Article Two, 219; Materials on ALI Principles of Electronic Contracts (2010), to be distributed.

## **2/24: Precontractual Liability**

Intro. (220) and Note on Revocability, 221; *Drennan*, 222; Note on Liability When Negotiations Fail, 228.

## **2/28: Precontractual Liability II**

*Cyberchron Corp.*, 234; Note on Preliminary Binding Agreement and *Channel Home Centers*, 239; Intro and Problem, 246-249; *Toys, Inc. v. Burlington Co.*, 249; Note on Flexible Pricing, 251.

## **3/1: Statute of Frauds**

Intro. and Notes on Contemporary Statutes, 257-270; *C.R. Klewin*, 270; Notes on Informal Extensions of Employment, Lifetime Agreements, Interests in Real Property, 277-280; Suretyship Clause and *Power Entertainment*, 268; Note on the One-Year Clause and Problems, 274; Note on Employment Agreements, 276.

## **3/3: S o F II**

*Richard v. Richard*, 280; Note on Sales of Goods and *St. Ansgar*, 285-295; Notes on 2-201(3) and Estoppel, 294; Intro and *Monarco*, 305.

### **3/7: Capacity to Contract**

Intro. to Policing, 310; Intro and *Kiefer*, 312; *Ortolere*, 316; *Cundick*, 319.

### **3/8: Modification and Coercion**

Intro. (322) and Notes on Pressure and the Pre-Existing Duty Rule, 322-325; *Alaska Packers*, 325; Note on Rescission, 329; *Watkins & Son v. Carrig*, 331; Notes on Yielding to Threat, Avoiding Pre-existing Duty Rule, and Partial Payment, 334-338.

### **3/10: Duress and Misrepresentation**

Intro. and *Austin Instrument, Inc.*, 340; Intro. and *Odorizzi v. Bloomfield School Dist.*, 345; Intro. (352) and *Swinton*, 353; *Kannavos*, 356; Note on Misrepresentation, 360; *Vokes*, 362.

### **3/14: Parol Evidence**

Intro. (365) and *Gianni v. R. Russell & Co.*, 368; *Masterson v. Sine*, 371; *Bollinger v. Central Penn. Quarry*, 377; Note on Parol Evidence and Sale of Goods, 379; Note on NOM Clauses, 380.

### **3/15: K Interpretation**

Intro, 381-382; *Greenfield*, 386; *WWW Associates*, 390; Intro and *Trident Center*, 391.

### **3/17: Interpretation**

Notes, 395-400; *Frigalment Importing Co.*, 401; *Hurst*, 407; Intro and *Nanakuli Paving*, 410; *Colfax Envelope*, 426

**3/21-3/25: \*\* No Class, Spring Break \*\***

### **3/28: Gap Fillers**

Intro and Notes on Gap Filling and *Koken*, 430-437; Intro and *Lewis*, 437; Intro and *South Carolina Electric & Gas*, 441; Note on Express Warranties, 450.

### **3/29: Equity**

Intro. (453) and *McKinnon*, 455 ; *Tuckwiller*, 458; *Black Industries*, 460.

### **3/31: Standard Form and Adhesions Ks**

Intro (465) and *O'Callaghan*, 467; Note on Agreeing to Boilerplate, 473; Note on the Duty to Read, 477; Intro and *Carnival Cruise Lines*, 479; Intro (494) and *Williams v. Walker Thomas Furniture*, 497.

### **4/4: Intro to Remedies: Specific Performance**

Intro. (583) and *Klein*, 588; *Walgreen Co.*, 602; Note on Specific Performance, Efficiency and the Coase Theorem, 604.

### **4/5: Expectation Damages**

Intro. (606) and *Vitex Mfg. Corp.*, 609; *Laredo Hides Co.*, 613; *R.E. Davis Chem. Co. v. Disonics, Inc.*, 619; Note on Losing Contracts, 625.

### **4/7: Avoidability**

Intro. (629) and *Rockingham County*, 630; Note on Avoidability Under Contracts for Sale of Goods and Problems, 632; Intro. (637) and *Parker v. 20<sup>th</sup> Century Fox*, 638; *Jacob & Youngs v. Kent*, 645.

### **4/11: Foreseeability**

*Groves v. John Wunder Co.*, 648; *Peevyhouse*, 653; *Hadley v. Baxendale*, 657; *Delchi Carrier v. Rotorex*, 661; *Kenford Co. v. County of Erie*, 664.

### **4/12: Certainty; Liquidated Damages**

Intro (672) and *Fera v. Village Plaza*, 674; Intro. (679) and *Wasserman's, Inc.*, 680; *Dave Gustafson & Co. v. State*, 688.

### **4/14: Conditions**

Intro. to Chapter and Intro (691) and *Luttinger v. Rosen*, 692; Intro. and *Internatio-Rotterdam, Inc.*, 695; Notes on Separate Contracts (699) and Condition, Duty or Both, 700; Problem, 701; *Peacock Construction Co.*, 701; Intro (708) and Notes on Prevention and Waiver, 709.

### **4/18: Constructive Conditions**

Intro (716) and *Kingston v. Preston*, 717; Note on Time for Performance, 718; *Stewart v. Newbury*, 719; Note on Concurrent Conditions, 721; Intro, 723 and *Jacob and Youngs*

(reprise), 724; Note on the Perfect Tender Rule, 731; Intro, 735; *Kirkland*, 742; Note on Suspending Performance and Terminating the Contract, 745.

#### **4/19: Anticipatory Repudiation**

Intro. (765) and *Hochster v. De La Tour*, 766; *Kanavos*, 771; *McCloskey*, 776; *Cosden Oil*, 783; *Pittsburgh-Des Moines Steel Co.*, 795.

#### **4/21: Mistake and Impracticability**

Intro to Chapter 9, 807; Intro and *Steas*, 808; Note on Sale of Goods: Two Famous Cases, 815; Intro, 821; *Taylor v. Caldwell*, 825; Note on Impossibility and Impracticability under Article 2, 829; Note on *Force Majeure* Clauses, 842

#### **4/25: Frustration of Purpose**

*Eastern Air Lines, Inc. v. Gulf Oil Corp.*, 848; *Krell v. Henry*, 854; Problems, 833; *Swift Canadian Co.*, 834.

#### **4/26: 3<sup>rd</sup> Party Interests**

Intro and Notes, 880-883; *Lawrence v. Fox*, 883; Note on Distribution Networks, 893.