CONTRACTS

Robert P. Merges
643-6199
rmerges@law.berkeley.edu

Spring 2011
M, Tu, Th 3:35 – 5:00

Syllabus: Revision 1.0

[Case names refer to cases in Farnsworth, Young, Sanger, Cohen & Brooks casebook, 7th 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 2nd, 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


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 2nd § 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; Pyatte v. Pyatte, 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: So 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


3/15: K Interpretation

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

3/17: Interpretation

Notes, 395-400; Frigaliment 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


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. 20th 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
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 Stees, 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


4/26: 3rd Party Interests

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