LAW 202F – Contracts

Professor Robert Bartlett

**Administrative Matters:**

Instructor Name: Robert Bartlett

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Class Meeting Times: M/T/W from 10:00 to 11:10

Zoom Room ID for Class: <https://berkeley.zoom.us/j/98414670386>

Virtual Office Hours: 3 pm to 5 pm Wednesdays and by appointment

Zoom Room ID for Office Hours: <https://berkeley.zoom.us/j/93630496051>

## Course Description

This course provides an overview of the law of contracts, or what might more appropriately be described as the “law of promises.” In life, we often make and break our promises. Why is it that some of these promises come with the enforcement authority of the State, while others are relegated to simple morality? To the extent we draw such a distinction between legally enforceable and non-enforceable promises, how does one ensure that a promise falls into one category rather than the other? When we make a legally enforceable promise, how does a court go about interpreting what it means, determining whether a breach has occurred, and fashioning an appropriate remedy? Finally, what does the law have to say about the fact that the promises we make are also a function of our personal circumstances—for instance, age, gender, race, class, and power more generally. What does the law have to say about that critical fact? Answering these and other questions relating to legal enforcement of promises constitutes the subject of this class.

## Learning Outcomes

By the end of the semester, students should be able to:

* Describe and apply to real and hypothetical facts:
  + the legal rules for forming a contract;
  + the legal rules for interpreting contract language;
  + the legal rules that determine when contractual duties are owed;
  + the legal rules that determine when contractual duties are excused or unenforceable;
  + the consequences for non-performance of contractual duties.
* Describe the underlying polices informing these rules and use them when applying the law;
* Draft a basic contract that would be legally enforceable;
* Understand how and why the knowledge of contract law can be both empowering and disenfranchising for different members of society.
* Understanding the distributional implications of the common law of contracts and why the desire to address them may require policy interventions outside the common law of contract.

**Required Materials:**

The required text for this course is Randy Barnett & Nate Oman, Contracts: Cases and Doctrine (6th ed.) (2016) (our “Casebook”).

In addition, we will also be referencing with some frequency Articles 1 & 2 of the Uniform Commercial Code and the Restatement (Second) of Contracts. In general, the relevant provisions of these items are found in the Casebook, although it can be helpful to consult the “comments” that accompany these provisions, which are not always included in the Casebook excerpts. Accordingly, I always recommend reading these excerpts alongside the official comments. Westlaw offers electronic access to both texts:

UCC: [**UCC-TEXT**](http://web2.westlaw.com/search/default.wl?fn=_top&rs=WLW9.04&rp=/search/default.wl&ifm=NotSet&mt=Westlaw&vr=2.0&sv=Split&DB=UCC-TEXT)

Restatement (Second) Contracts: [REST-CONTR](https://1.next.westlaw.com/Browse/Home/SecondarySources/RestatementsPrinciplesoftheLaw/RestatementoftheLawContracts?originationContext=typeAhead&transitionType=CategoryPageItem&contextData=(sc.Default))

For students interested in using a Contracts treatise to supplement the required readings, I would recommend using E. Allen Farnsworth, Contracts (online library link [here](https://libproxy.berkeley.edu/login?qurl=http%3A%2F%2Fprod.resource.cch.com%2Fresource%2Fscion%2Fpublication%2FWKUS_TAL_15922%3Fcfu%3DTAA%26cpid%3DWKUS-Legal-Cheetah%26uAppCtx%3Dmarc)) and John D. Calamari & Joseph M. Perillo, Contracts (online library link [here](https://libproxy.berkeley.edu/login?qurl=https%3A%2F%2Fsubscription.westacademic.com%2FBook%2FDetail%2F23717)).

From time to time, I will also be distributing additional materials either in class or via bCourses (see below).

**bCourses; Reading Assignments:**

I manage course announcements and assignments through bCourses. You should already be enrolled in the course bCourse website located at: <https://bcourses.berkeley.edu/courses/1495341>. If you are unable to access the bCourse site, please contact me as soon as possible. Reading assignments for this course will be posted weekly on the course website on bCourses (ordinarily after class on Wednesday evenings). In addition, a copy of this syllabus, additional class materials, and class slides will be found there. I will also use bCourses to distribute announcements to the class.

## Remote Instruction Information and Rules:

1. *Class Recordings and Making Up Missed Classes.*

Class meetings will be offered online via Zoom at: <https://berkeley.zoom.us/j/98414670386>. I will record each meeting and post it on bCourses following class. You are *strongly* encouraged to attend classes live on Zoom, which will provide the most engaging and enriching experience. If you are unable to attend in real-time, you will be required to (i) review the class recording for which you were unable to attend and (ii) submit a brief response to one of the questions posted under “Assignments” for the appropriate week. **Response answers must be submitted online (through bCourses) by the beginning of the following week’s classes (i.e., you have until the following Monday to submit a response)**. If you (i) do not attend a live session and (ii) fail to submit a response on bCourses within this time frame, you will not receive participation credit for that class, which will adversely affect your grade (see below for grading rules). Additionally, please note that regardless of your mode of attendance and participation, you are responsible for all content covered in each class meeting.

1. *Protocol for Online Communication, Video and Professionalism*

The relevant skills to participate in remote instruction are not only technology skills. You also need to exercise good communication, judgment, and professionalism. To that end, please follow these recommendations for conduct in remote classes on Zoom:

* Your ability to engage meaningfully with your instructor and classmates will be enhanced if you can talk to each other and see each other. I realize that this will not always be possible for a variety of reasons. But please use video when it is possible, unless I give other instructions.
* The benefits of video will be compromised if your background is distracting for your classmates. If you cannot avoid being in a place with distractions in the background, consider using a [virtual background](https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background).
* Along the same lines, try to present yourself with the same professionalism you bring to in-person classes. In other words: wear appropriate clothes and sit upright facing your screen as you would face the instructor in class.
* Note that recordings of Zoom classes typically capture images of participants, screen-shared material, and a transcript of all chats that are displayed to the meeting host. As such, (1) all of your participation should be class-appropriate (i.e. avoid snarky comments in the chat); (2) you must not distribute class recordings (including video, audio, or screenshots).
* Do not share your screen with the class unless instructed to do so by me.
* Keep yourself on “mute” when you are not speaking. This will help to minimize background noise for everyone.
* When you would like to speak in class, use the “raise hand” function in the “participants” pane. Then, wait for me to call on you before speaking. Alternatively, you can also ask a question using the chat function, which I will try to answer as I address questions from the class.

1. *Technological Assistance*

If technical difficulties prevent you from completing course work, please alert me immediately. However, understand that I cannot assist you with technical problems. Please use the technical support resources described below. Be sure to document all interactions with tech support (e.g., save emails and transaction numbers). The following instructions have been provided to me by the law school:

*“Berkeley Law students are entitled to general software support for their computers from the law school, and certain free software downloads from UC Berkeley, while enrolled.  If you have issues with internet access or computer equipment required to participate in classes remotely, they should contact* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu)*. Information, links, and instructions for many common computer/technical questions can be found in the* [*law library's online computing guide*](http://libguides.law.berkeley.edu/computing/home)*.*

*For bCourses, Zoom, and technical support questions, please email* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu) *or you can use the* [*Student Computing chat*](https://www.law.berkeley.edu/library/dynamic/internal/techChat.php)*. In both cases, someone will respond to you during our regular business hours.*

*If you have research-related questions, please contact the reference librarians by filling out the* [*reference request form*](https://www.law.berkeley.edu/library/dynamic/students/researchRequest.php)*. You can also reach reference librarians during business hours by using the* [*law library’s chat service*](https://www.law.berkeley.edu/library/dynamic/internal/chat.php)*.”*

**Grading:**

Your grade in the course will be comprised of the following components: performance on the final exam, completion of an issuer-spotter “midterm,” and class attendance and participation.

*Exam (90%).* The largest component of your grade for this course (90%) will be based on a take-home exam to be administered during the law school’s exam period. In keeping with the law school’s exam policy during the current public health crisis, the final exam will be available to download and complete starting at 8:30 a.m. on the first day of the exam period (December 8th) and must be completed and uploaded to the online exam interface by 12 p.m. (noon) Pacific Time on the last day of the exam period (December 17th). Among other things, the exam will be designed to test your mastery of the learning objectives noted previously. The exam will be open book; however, it will have a strict word limit. I will provide more information regarding the format of the exam later in the semester.

*Issue-spotter “midterm” (5%).*  In late September, I will assign a take-home Issuer Spotter Exercise that is designed to resemble the type of legal questions you will be asked to answer on the final exam (as well as during the course of your legal careers). The midterm will be graded credit/no-credit and will comprise 5% of your final grade.

*Class attendance and participation (5%).* Much of our class discussion will be driven by the readings and other materials assigned for each class. As such, absent special circumstances noted below, I expect students to attend each class session and to be prepared to discuss the assigned materials. To ensure robust class discussion, we will use a “panel system” in which approximately 4-5 randomly-selected students must be prepared to be called on during the class either to discuss the assigned materials or to otherwise facilitate discussion of relevant issues for that day. I will announce the names of these students when I post the Reading Assignments each week on bCourses. Please be advised that your assignment to a panel does not necessarily mean that I will call on you (though it is highly probable!). It is instead a system for me to know that students are available to engage in discussion promptly and to reduce the technological challenges that can accompany straight cold-calling (e.g., my being unable to identify who is present, students inadvertent speaking while on “mute”, etc.).

**Failure to be prepared for discussion on your assigned “panel day” (or being absent when called upon without providing prior notice to me, as noted below) is highly likely to result in a downward adjustment of your grade**. Additionally, the use of video is particularly important when you are assigned to a panel in order to facilitate orderly class discussion; as such, please let me know if you anticipate problems or other issues with your use of video when assigned to a panel.

As noted above, all classes will be recorded to accommodate students who may be unable to attend a live session for any number of reasons related to the current public health situation. *If you are unable to attend a session and have been assigned to a panel for that day, please notify me of your expected absence in advance of class, if possible*. If you are unable to provide advance notice due to an emergency, please contact me as soon as possible with an explanation for the lack of advance notice so that it does not adversely affect your grade. Students who miss their assigned panel will be re-assigned to a later panel. As noted above, any student who misses a live session—regardless of whether it is a “panel day”—must review that day’s class recording and submit a brief response to one of the questions posted under “Assignments” on bCourses for the appropriate week within the required timeframe discussed above.

Compliance with these participation requirements will constitute 5% of your final grade. That is, either (a) not participating on an assigned “panel day” without advance notice and without otherwise securing my agreement that the missed class will not adversely affect your grade, or (b) missing a live class and not submitting an online response it by the deadline noted above will adversely affect your participation grade. Please keep in mind that the basis for this policy is to minimize the risk that you will fall behind in the material, which I view as especially important given the amount of material we will be covering.

## School-wide Policies

1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

2) Students who need classroom accommodations or want to discuss implementation of their accommodations, including accommodated exams, in this class are advised to contact Kyle Valenti, Associate Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) or Kyle Kate Dudley, Assistant Director of Student Services, Accessible Education ([kylekatedudley@law.berkeley.edu](mailto:kylekatedudley@law.berkeley.edu)) as soon as possible.

3) The [Academic Honor Code](https://www.law.berkeley.edu/academics/registrar/academic-rules/academic-honor-code/) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any question about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

4) If you are in need of economic, food, or housing support, you can find help at [basicneeds.berkeley.edu](https://basicneeds.berkeley.edu/) You may be eligible for money to buy groceries via [calfresh.berkeley.edu](http://calfresh.berkeley.edu/) or our Food Assistance Program. If you need food immediately, please visit our UC Berkeley Food Pantry at [pantry.berkeley.edu](https://pantry.berkeley.edu/)

5) The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance and procedures, please access the full text: <http://policy.ucop.edu/doc/4000385/SVSH>

Resources: If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email [ask\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu).

Path to Care Center Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including: sexual harassment, emotional abuse, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone (510) 642-1988 or email <http://sa.berkeley.edu/dean/confidential-care-advocate>.

**Class Outline (subject to change):**

The following outline provides a general overview of the topics we will cover throughout the semester. As noted above, reading assignments for each class will be posted on bCourses approximately one week in advance.

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| --- | --- | --- |
| **Date** | **Class #:** | **Topic** |
| 8/17 | 1 | Introduction to Contract Law |
| 8/18 | 2 | Introduction to Contract Law; Contract Damages |
| 8/19 | 3 | Contract Remedies |
| 8/24 | 4 |
| 8/25 | 5 |
| 8/26 | 6 |
| 8/31 | 7 |
| 9/1 | 8 |
| 9/2 | 9 |
| 9/7 | No Class – Labor Day |
| 9/8 | 10 |
| 9/9 | 11 |
| 9/14 | 12 |
| 9/15 | 13 |
| 9/16 | 14 | Contract Formation – Mutual Assent |
| 9/21 | 15 |
| 9/22 | 16 |
| 9/23 | 17 |
| 9/28 | 18 |
| 9/29 | 19 |
| 9/30 | 20 | Contract Formation – Missing & Vague Terms |
| 10/5 | 21 |
| 10/6 | 22 |
| 10/7 | 23 |
| 10/12 | 24 |
| 10/13 | 25 |
| 10/14 | 26 | Contract Formation – Determining Which Promises are Enforceable |
| 10/19 | 27 |
| 10/20 | 28 |
| 10/21 | 29 |
| 10/26 | 30 |
| 10/27 | 31 |
| 10/28 | 32 | Contract Interpretation – Implied Duties, Express Warranties, and Conditions |
| 11/2 | 33 |
| 11/3 | 34 |
| 11/4 | 35 |
| 11/9 | 36 | Breach of Contract & Anticipatory Repudiation |
| 11/10 | 37 |
| 11/11 | No Class – Veterans Day |  |
| 11/16 | 38 | Contract Defenses |
| 11/17 | 39 |
| 11/18 | 40 |
| 11/23 | 41 |
| 11/24 | 42 |