Course Syllabus
Contracts (Law 202F)
Version 1.0 (August 11, 2009)

UC Berkeley School of Law
Module 6, Section 3
M, Tu, W, 3:20-4:45
Room 12

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References as used in the syllabus are for the required, recommended, and optional readings for the course, and are as follows:

[“RB”]: BARNETT, R., CONTRACTS: CASES AND DOCTRINE (2008)
[“CH”]: CHIRELSTEIN, CONCEPTS & CASE ANALYSIS IN THE LAW OF CONTRACTS (2001) (recommended)
[“HN”]: Supplementary Handouts (distributed throughout the term)

The required text for the course will be the Randy Barnett casebook, supplemented periodically with materials provided in handouts available on the course website (see below). In addition, I am recommending the Marvin Chirelstein book as a companion, reader. The Chirelstein book provides a nice nutshell-like review of many of the cases we’ll be reading this term. In addition, some students like to consult an authoritative contracts treatise to assist them. To this end, Farnsworth's well-known treatise can be a useful reference (though not required reading). Finally, Blum’s book contains a number of helpful practice problems and summaries that some students will find useful (but is also not required).

I have promulgated a page on the web dedicated to this class at:

bspace.berkeley.edu

From this website, students can check course announcements, reading assignments, practice problems and retrieve copies of both the syllabus and handouts. In addition, from this website you can download copies of each day’s notes, which will be available at least one hour each day before lecture (though frequently the night before). I will be posting a weekly reading assignment each Friday afternoon that follows the sequence of this syllabus. I expect everyone to have read the assigned materials on the day designated for discussion. Given that this is a small section, I will rely upon (and welcome) volunteers in class discussions; nevertheless, should the volunteer system falter or prove otherwise unworkable, I reserve the option of calling on students randomly in the course. Grades for this course will be based on scores for the final exam (currently scheduled for 12:30 PM on Monday, December 14th). There will also be two ungraded assignments during the term (due on Sept 12 and Oct. 31, respectively). I also plan to make some use of participation points (at least at the margin) in assigning final grades.

The course is divided into four parts, one introductory and three topical. "Part 0" is introductory, and is designed to give you some perspective about the structure of the course and the normative underpinnings of contract law. "Part 1" discusses remedies for breach of contract. "Part 2" addresses the determination of duties and breach under a contract. "Part 3" examines the doctrines governing contract formation, and includes an examination of the existing doctrinal constraints on contracting. Note: I may, from time to time, issue revisions to this syllabus during the term, depending on news events, recent cases, and our pace in class.
Part Zero: Introduction to Contract Law

1. Normative Underpinnings
   a. Policy foundations of contracts and contract law

2. Preview of Course
   a. The Basic Doctrinal Landscape. CH Chapters 1-8; RB pp 3-11; 14-15; 16-21; (You may skip the Shaheen v. Knight and In Re. Baby M cases; we will not discuss them now, but instead we will return to public policy doctrine at the end of the term).

Part One: Remedies for Breach of Contract

1. General
   a. The reason for beginning with remedies. HN

2. Money Damages
      i. Hawkins v. McGee (and practice problem that follows)
      ii. Sullivan v. O’Connor
      iii. Restatement 2nd of Contracts § 347
   
      i. Hooker & Sons v. Roberts
      ii. Tongish v. Thomas
      iii. Groves v. John Wunder Co.
      iv. Peevyhouse v. Garland Coal Mining Co.
      v. Restatement 2nd of Contracts § 348; UCC §§ 1-106, 2-102, 2-105, 2-106
   
   c. Limitations on Expectation Damages (and sometimes Reliance)
      i. Foreseeability. RB 93-112.
         1. Hadley v. Baxendale
         2. Martinez v. Southern Pacific
         3. Morrow v. First National Bank
         4. Restatement § 351.
      
      ii. Certainty. RB 112-127.
         2. Anglia Television Ltd. v. Reed.
iii. Avoidability. RB 131-153

1. *Rockingham County v. Luten Bridge.*
2. *Parker v. Twentieth Century Fox*
3. Restatement 2nd of Contracts § 350.

iv. Lost Volume Sellers / Buyers. RB 154-59.

1. *Neri v. Retail Marine Corp.*
2. UCC §§ 2-708- 2-710, 2-718

d. Alternative forms of monetary relief

i. Restitution. RB 249-60; 265-71.

1. As Remedy for Breach: *Bush v. Canfield*
2. As Credit for Breaching Party: *Britton v. Turner*
3. As Separate Cause of Action: *Cotnam v. Wisdom; Martin v. Little Brown*

ii. Alternative money damages. HN

1. Punitive Damages: *Freeman & Mills v. Belcher Oil*
2. Emotional Distress: *Pizzochero v. Vergados*

iii. Contracting around Contract Law: Stipulated Damages, Damages Limitations, and Arbitration Provisions. RB 159-62; 165-185

1. *Wassenaar v. Towne*
2. *Lake River v. Carborundum*
4. UCC §§ 2-718, 2-719; Restatement 2nd of Contracts §§ 355, 356; Federal Arbitration Act § 2

3. Specific Performance and Equitable Relief


i. *Loveless v. Diehl (I and II)*


i. *Scholl v. Hartzell*
ii. *Sedmak v Charlie's Chervrolet*
iii. UCC § 2-716.
c. Contracts for Personal Services. RB 211-22; 232-49
   
i. *In Re. Mary Clark, A Woman of Colour*
   ii. *Lumley v. Wagner*
   iii. *Dallas Cowboys v. Harris*
   iv. Note on *Lochner v. New York*
   v. UCC § 2-719
   vi. Cal. Bus & Prof. Code § 16600

**Part Two: Forming a Contract**

1. Mutual Assent (a.k.a. “Offer and Acceptance”)
   
a. Timing and Technical Issues. HN; RB 304; 316-17; 328-35; 339-42.
   
i. *Dickinson v. Dodds*
   ii. The Mailbox Rule and “Non-instantaneous” Communications
   iii. The Statute of Frauds
   iv. Restatement 2nd of Contracts §§ 17, 18, 19, 22, 24, 25, 26, 29, 33, 35, 36, 37, 42, 43; 63-66; UCC §§ 2-204; 2-205; 2-206; UCITA § 214
   
b. The “Objective” Theory of Assent. RB 289-304; 308-15; 333-34
   
i. *Embry v. Hargadine, McKittrick Dry Goods*
   ii. *Lucy v. Zehmer*
   iii. *Leonard v. Pepsico*
   iv. UCC §§ 2-205.
   
c. Invitational Talk. RB 305-07
   
i. *Nebraska Seed v. Harsh*
   ii. UCC §§ 2-305, 2-308, 2-309, 2-310.
   
d. Preliminary Agreements and Agreements to Agree. RB 319-28.
   
i. *Empro v. Ball-Co*
   ii. *Texaco v. Penzoil* (Factual background for this cases is at RB pp. 275-78)
   iii. Restatement 2nd of Contracts § 27.
   
e. Modes of Acceptance
   
      
      1. *Ardente v. Horan*
      2. *Step Saver Data Systems v. Wyse Technology*
      3. *ProCD v. Zeidenberg*
      4. *Hill v. Gateway 2000*
5. Klocek v. Gateway
6. Restatement 2nd of Contracts § 61; UCC § 2-207; Revised UCC § 2-207.

ii. Acceptance by Performance. RB 342-68

1. Carlill v. Carbolic Smoke Ball Co.
2. White v. Corlies & Tiffi
3. Petterson v. Pattenberg
4. Restatement 2nd of Contracts § 30, 32, 45, 50, 54, 62

iii. Acceptance by Silence. RB 368-69.

1. Hobbs v. Massasoit Whip
2. Restatement 2nd of Contracts § 69

2. Consideration


i. Hamer v. Sidway
ii. Dahl v. Hem Pharmaceuticals
iii. Restatement 2nd of Contracts §§ 24, 71, 74, 81.

b. Past / Moral Consideration. RB 640-56.

i. Mills v. Wyman
iii. Restatement 2nd of Contracts § 86.


i. Alaska Packers' Assn. v. Domenico
ii. Brian Construction & Dev't v. Brighenty
iii. Restatement 2nd of Contracts § 89; UCC § 2-209.

d. Adequacy of Consideration. RB 672-73; 675-79.

i. Dyer v. Nat'l By-Products
ii. Restatement 2nd of Contracts §§ 79, 364.

e. Some Exceptions to the Consideration Requirement


1. Ricketts v. Scothorn
2. Greiner v. Greiner
3. Baird v. Gimbel
4. Drennan v. Star Paving
5. Restatement 2nd of Contracts § 90.

ii. Charitable Subscriptions: RB 731-35

1. Allegheny College v. National Chautauqua

iii. Ceremonial Consideration & Option Contracts: RB 696-697

1. Restatement 2nd of Contracts § 87

3. Defects in Formation

a. Incapacity: RB 957-79

   i. Ortelere v. Teachers’ Retirement Board of NY
   ii. Webster St. Partnership v. Sheridan
   iii. Shields v. Gross
   iv. Restatement 2nd of Contracts §§ 12, 14, 15

b. Misrepresentation. RB 762; 981-95

   i. Halpert v. Rosenthal

c. Duress. RB 999; 1004-11

   i. Austin Instrument v. Loral Corp.
   ii. United States v. Progressive Enterprises
   iii. Restatement 2nd of Contracts §§ 174, 175, 176.

d. Unconscionability. RB 1024-32; 1037-47.

   i. Williams v. Walker-Thomas Furniture Co.
   ii. Gatton v. T-Mobile
   iii. UCC § 2-302; Restatement 2nd of Contracts §§ 208, 211.

4. Miscellaneous Topics

a. Implied-In-Fact Contracts. HN

   i. Stepp v. Freeman
   ii. Kashmiri v. UC Regents

b. Promissory Estoppel as a Separate Cause of Action. RB 752-70.
i. *Hoffman v. Red Owl Stores*
i. Restatement §§ 87, 90.


i. *Lumley v. Guy*
ii. *Texaco v. Pennzoil*
iii. Restatement 2nd of Contracts § 766; Cal. Bus. & Prof. Code § 17200

**Part Three: Obligations and Breach**

1. Construction / Interpretation of Duties

a. Gap Filling, Implied Terms and the Duty of Good Faith. HN; RB 420-44. 815-31

i. *Goldberg Corp. v. Levy & Crawford Clothes, Inc.*
ii. *Mutual Life Insurance Co. of New York v. Tailored Woman*
iii. *Stop & Shop, Inc. v. Ganem*
iv. *Sondra Locke v. Warner Brothers*
v. *Texaco v. Pennzoil*
vi. Restatement 2nd of Contracts §§ 33, 34, 204.

b. Interpreting Express Language

i. Subjective / Objective Agreement. RB 395-406; 415-419.

1. *Raffles v. Wichelhaus*
2. *Frigaliment Importing v. B.N.S.*
3. Restatement 2nd of Contracts §§ 200, 201, 202; UCC 2-208

ii. Parol Evidence Rule. RB 492-506

1. *Pacific Gas & Electric Co. v. G.W. Thomas Drayage*
3. Restatement 2nd of Contracts § 209, 210, 213, 214, 216; UCC 2-202

c. Express/Implied Warranties. HN; RB 831-48; 853.

i. *Gonzalez v. Pepsico, Inc.*
iv. UCC § 2-313; 2-314; 2-315; 2-316.

d. Conditions versus Promises. RB 857-867

i. *Internatio-Rotterdam v. River Brand Rice Mills*

iii. *Chirichella v. Erwin*

iv. Restatement 2nd of Contracts § 227

2. Contract Excuses / Implied Conditions

   a. Mistake

      i. Mutual Mistake. RB 1051-59; 1065-73.

         1. *Sherwood v. Walker*
         2. *Lenawee County Board of Health v. Messerly*
         3. Restatement 2nd of Contracts §§ 151, 152, 154, 157, 158

      ii. Unilateral Mistake. HN

         1. *Donovan v. RRL Corporation*
         2. Restatement 2nd of Contracts §§ 153, 160, 161

   b. Changed Circumstances

      i. Impracticability / Impossibility. RB 1091-99

         1. *CAN & American Casualty v. Arlyn Phoenix*
         2. *Transatlantic Financing Corp. v. United States*
         3. Restatement 2nd of Contracts §§ 261, 263; UCC §§ 2-613, 2-615

      ii. Frustration of Purpose. RB 1099-1104; 1109

         1. *Krell v. Henry*
         2. Restatement 2nd of Contracts § 265

3. Breach and Repudiation

   a. Material / Total Breach and Repudiation. RB 910-18

      i. *Walker & Company v. Harrison*
      ii. *Lane Enterprises, Inc. v. L.B. Foster Co.*
      iii. Restatement 2nd of Contracts § 241

   b. Material Breach under the UCC. RB 919-25

      i. *Ramirez v. Autosport*
      ii. UCC §§ 2-508; 2-601; 2-607.

   c. Substantial Performance: RB 883-91

      i. *Jacob & Youngs, Inc. v. Kent*