

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)

["FARN"]: FARNSWORTH, CONTRACTS (2004) (optional)

["BB"]: BLUM, CONTRACTS: EXAMPLES AND EXPLANATIONS (2004) (optional)

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:

ospace.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
 - a. Distinguishing Expectation and Reliance Interests. RB pp. 60-77.
 - i. *Hawkins v. McGee* (and practice problem that follows)
 - ii. *Sullivan v. O'Connor*
 - iii. Restatement 2nd of Contracts § 347
 - b. Market Measures, “Multiple Markets” Problems, and Cost versus Diminution; RB 78-92; 929-48.
 - 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.
 1. *Chicago Coliseum Club v. Dempsey.*
 2. *Anglia Television Ltd. v. Reed.*
 3. Restatement 2nd of Contracts §§ 346, 349, 352.

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*
4. Restatement 2nd of Contracts §§ 371; 374.

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*
3. *Garrity v. Lyle Stuart, Inc.*
4. UCC §§ 2-718, 2-719; Restatement 2nd of Contracts §§ 355, 356; Federal Arbitration Act § 2

3. Specific Performance and Equitable Relief

a. Contracts for Land. RB 193-202.

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

b. Contracts for Goods. RB 206-11.

- 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

- i. Verbal/Written Acceptance: The Mirror Image Rule and the (so-called) “Battle of the Forms.” RB 335-39; 456-69; 473-83.

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 & Tiff*
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

a. Legal Benefit / Detriment and the “Bargain Theory” of Consideration. RB 615-19; 622-28; 635-37.

- 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*
- ii. *Webb v. McGowin (I and II)*.
- iii. Restatement 2nd of Contracts § 86.

c. Preexisting Duty Rule and Modification. RB 658-72.

- 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

i. Promissory Estoppel: RB 722-31.

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*
 - ii. *Byers v. Federal Land Co.*
 - iii. *Vokes v. Arthur Murray, Inc.*
 - iv. Restatement 2nd of Contracts §§ 159, 162, 164, 167, 168, 169. Restatement 2nd of Torts §§ 524; 530.
 - 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*
 - ii. Restatement §§ 87, 90.
- c. Tortious Interference with Contract and with Prospective Economic Advantage; Unfair Business Practices. RB 272-85.
- 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. *Frigalment 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*
 - 2. *Trident Center v. Connecticut General Life Ins. Co.*
 - 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.*
 - ii. *Royal Business Machines, Inc. v. Lorraine Corp.*
 - iii. *CBS Inc. v. Ziff-Davis Publishing Co.*
 - 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*

- ii. *Howard v. Federal Crop Insurance Corp.*
- 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*