

CONTRACTS II – LAW 1706 B
Professor Ronald J. Colombo – Spring 2017

CLASS SYLLABUS (v. 3.0)

Course Description:

The concept of contract, which is concerned with relations based upon consent, is central in law as well as in political philosophy and theology. The course in contracts provides an opportunity to explore conflicts between fundamental social values, such as stability versus reform and freedom of contract versus regulation of fairness in dealing. The study of contracts also provides an introduction to a variety of lawyering skills, including analysis, drafting, counseling, statutory construction, and adversary method.

This Contracts II course covers the essential elements of contract interpretation and the remedies available upon a party's nonperformance / breach of contract.

Learning Objectives

By the end of this course, students should:

- Have acquired a knowledge of the essential elements of contract interpretation and the remedies available upon a party's nonperformance / breach of contract
- Appreciate the challenge of balancing several important and, at times, competing values within a coherent legal framework
- Know how to extract rules and policy from judicial opinions
- Be able to identify issues and holdings in judicial opinions
- Recognize the various sides of a given legal issue, and effectively articulate the strengths and weaknesses of each
- Distinguish or harmonize, as appropriate, cases on the basis of law and/or fact

Class times & location:*

Mondays, 2:10 pm – 3:30 pm &
Wednesdays, 2:10 pm – 3:30 pm

Room 230

* Unless otherwise indicated.

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Course Materials:

Required

- IAN AYRES & GREGORY KLASS, STUDIES IN CONTRACT LAW (8th ed. 2012) (the “Casebook”) [available for purchase at the Hofstra University Bookstore]
- CONTRACT LAW: SELECTED SOURCE MATERIALS (Steven J. Burton & Melvin A. Eisenberg eds., 2015)*

Highly Recommended (but not required)

- BLACK’S LAW DICTIONARY[†]

Attendance & Lateness:

You are expected to arrive on time and prepared for each class.

Moreover, the rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. **Thus, you may miss no more than six class hours (or four classes) in this three-credit class.**

* Sections of the Uniform Commercial Code (UCC) and the Restatement of Contracts (Second) will be assigned throughout the semester, and it is essential that you read them. These sections are freely available for viewing and printing on Westlaw and LEXIS (instructions on how to do this are set forth at the end of this Syllabus). Given the demands of law school (especially upon a first-year student), I believe that most of you would prefer the convenience of a hard-copy book containing these sections, and for this reason I am assigning the Burton & Eisenberg text. If you wish to skip the textbook, and download the UCC and Restatement provisions yourself, you are welcomed to do so.

[†] Any version or edition will do. Other, less expensive dictionaries are available and suitable as well (and some online legal dictionaries are free to use). The critical thing is to have at your fingertips some reliable source for looking up legal terms with which you are unfamiliar.

I will provide dated sign-in sheets for each regularly-scheduled class. **Your signature (or lack thereof) on these sheets shall presumptively determine your attendance at (or absence from) any given class.** Each student is individually responsible for signing the attendance sheet in. Falsification of sign-in sheets (by, for example, signing another student's name) is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by not attending class, or by failing to sign in, you will be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs – NOT with me or my secretary. **I shall mark an absence as excused if and only if I receive a note or email from the Office of Student Affairs to that effect.**

Lastly, late arrivals are disruptive to the class. For this and other reasons, please make every effort to arrive on time to class.

TWEN:

This course shall use “TWEN” (The West Education Network), “an online extension of the law school classroom.” Important course information, materials, and announcements will be made available / communicated via TWEN. Please sign up for TWEN as soon as possible. This course can be accessed as “Contracts II (Spring 2017) – COLOMBO”. If you have TWEN-related questions, please ask one of our librarians at the library's reference desk for assistance.

Laptops in the Classroom:

Several studies have suggested that laptops in the classroom, for a variety of reasons, undermine, rather than enhance, the educational experience. For this reason, a growing number of professors, at Hofstra and elsewhere, have banned the use of laptops in the classroom.

Although I do not ban laptops in my classrooms, I strongly discourage their use. Although different students learn in different ways, if you are like most students, you will follow class discussion better, and get more out of each class, if you leave your laptop at home.

To help encourage you to attend class without your laptop, I am going to have a podcast (MP3 audio file) of each class made available to you on a timely basis. These podcasts can be accessed via the University's Blackboard system under the name of this course. For help with Blackboard, please contact the Law School's helpdesk via lawhelp@hofstra.edu or phone (516-463-4192). Hopefully, this will reduce the need that many students have to transcribe every word of classroom discussion. That said, **do not rely on these podcasts as a substitute for smart, careful note taking.** Among other reasons for this, technical malfunctions are always a possibility, which could cause a particular class session to not properly be recorded.

Lastly, since laptops can distract even those students who are not using them (as computer screens displaying a video game, the latest breaking news, or ballgame scores can sometimes, admittedly, be a bit more interesting than the study of law), I shall require that those **students who insist on bringing their laptops to class seat themselves in the last row, and the side rows, of the classroom.** I do this not to punish or penalize such students in any way, but rather to protect non-laptop using students from the distractions posed by ubiquitous computer screens within their field of view.

Email and Office Hours:

My email and office hours are set forth above. For general administrative questions or concerns, please contact my secretary for assistance. For substantive questions or concerns, please *do not* email me, but rather meet with me during office hours, as such questions are much better addressed in person.

During my office hours, I will meet with students on a first-come, first-served basis. However, students who have made an appointment to meet with me (by signing up to do so via the "Office Hours Appointments" link on TWEN) will be seen during their respective 15-minute time-slots in preference to others.

If you do make an appointment to meet with me, please make every effort to be punctual. If you are late, and there are other students who wish to meet with me, you shall lose your appointment and need to wait your turn in the first-come, first-served queue. If you know ahead of time that you cannot make a scheduled office hours appointment, please delete your name from the TWEN sign-up sheet so that another student can make an appointment for the time in question. (And **if you show up to your appointment on time, and my door happens to be closed, or if I happen to still be meeting with someone else, please knock!**)

In the interest of maintaining student privacy, the TWEN sign-up sheet has been configured so as not to reveal to other classmates the names of those students who have signed up for an appointment.

A private text box has been added to the TWEN office-hours sign-up sheets. Please consider filling this box in with a short message (even if just a word or two) to help me prepare for our meeting.

I encourage you to take full advantage of my office hours. And please do not feel as though you need to limit the subject of our meetings to class matters *per se* -- I would be happy to discuss with you more general law school concerns, career questions, or anything else that would be appropriate.

In the event that it is not possible for you to meet with me during my regularly-scheduled office hours, please let me know (preferably via email) and we can arrange to meet at another time that works for both of us.

Workload

The American Bar Association requires that you spend at least six hours per week, on average, outside of class studying for this 3-credit course. This is in addition to the three hours a week we spend in class. This workload for the course has been formulated to meet that requirement.

Grading:

Your final grade shall be based primarily upon a final examination. The final examination will be closed-book, and consist of a combination of multiple choice and essay questions totaling 100 points. It will be graded anonymously.

Each multiple-choice question will be worth a set value (yet to be determined). The grade you receive for your final exam essay(s) will also be worth a set number of points (yet to be determined). The amount of points earned on your final exam essays will be predicated upon the following performance indicators:

Final Exam Essay Question Performance Indicators
Content of Each Answer (primary component of grade)
The content element will be judged on: <ul style="list-style-type: none">• How effectively the answer is organized• How clearly the answer is written• How accurate the answer's writing is• The preponderance of reasoned conclusions• How well the answer reflects your ability to interpret the given information• How directly the answer responds to the given question(s)• How well the answer identifies the issues presented by the questions(s)
Grammar (secondary component of grade)
The grammar element will be judged on a few key elements: <ul style="list-style-type: none">• Correct punctuation and spelling• Subject/verb agreement• Sentence construction• Use of complete sentences / articulation of complete thoughts

You will earn a letter grade for the course (from "A" to "F") that corresponds to your score on the final exam given the parameters set by the Law School's applicable grading curve.*

Some of my past exams for Contracts II are available via the Library's Exam Archives. I would encourage you to review these past exams as part of your preparation for the final exam in this course. Please bear in mind, however, that course coverage changes somewhat from year to year, and as such there may be material tested on prior exams that

* As this course is a small-section 1L course, the mean GPA of the assigned grades may not exceed 3.3.

would not be tested on this semester's exam (and vice versa). If you have questions related to the Exam Archives, please ask one of our librarians at the library's reference desk for assistance.

I reserve the right to increase or decrease your letter grade by one increment (e.g., from a "B" to a "B+") on account of your in-class performance throughout the semester. Pursuant to this policy, class participation that reflects preparation, thought, and engagement will be rewarded, while class participation that reflects the opposite will be penalized.

As per the schedule of assignments (below), you will also be given a mid-term Quiz. The Quiz will be closed book.

Although each Quiz will receive a grade in order for you to assess your progress in the course, **your grade on the Quiz will not be factored into your final grade for the course.** It is for informational purposes only. That said, should a student's performance on the Quiz be so deficient so as to reflect only minimal effort, **this will be noted and will factor negatively into my assessment of your class participation.**

It goes without saying that the more you put into your preparation for the Quiz, the more you will get out of this experience. Therefore, I urge you to treat the Quiz seriously.

Assignments

Planned assignments, including the estimated class date for which each is due, are set forth below. Unless otherwise notified, you should come to class prepared to discuss a given assignment on the estimated date specified.

No.	Topic	Casebook	Other	Estimated Date
1	Introduction; Parol Evidence Rule	612-617	Rest (2d) §§ 209-210, 213-216	1/11/17 (Wed)
2	Parol Evidence Rule (cont'd)	617-634	UCC § 2-202	1/18/17 (Wed)
3	Interpretation	636-653	UCC §§ 2-305 to 2-311[skim]; Rest (2d) §§ 202-203; Principles of Contract Interpretation [TWEN]	1/23/17 (Mon)
4	Duty of Good Faith	669-678, 719-729	UCC § 1-203, Rest (2d) § 205	1/25/17 (Wed)
5	Warranties; Express Conditions	729-739; 740-753	UCC § 2-313, UCC § 2-314, UCC § 2-315, UCC § 2-316, Rest (2d) § 224	1/26/17 (Thurs)
6	Conditions: Express Conditions; Excuse of Express Conditions	753-759, 764-771	Rest (2d) § 229, 230	1/30/17 (Mon)
7	Conditions: Constructive Conditions; Precedent, Concurrent, Subsequent; Substantial Performance	772-780	Rest (2d) § 230	2/1/17 (Wed)
8	Conditions: Substantial Performance of Constructive Conditions; Divisible Contracts	780-799	Rest (2d) § 240 Rest (2d) § 241	2/6/17 (Mon)
9	Impracticability	799-801, 806-821	Rest (2d) § 261	2/8/17 (Wed)
10	Frustration of Purpose	834-852	Rest (2d) § 265	2/13/17 (Mon)
11	Anticipatory Repudiation	853-859, 867-876	UCC § 2-609, UCC § 2-610, UCC § 2-611	2/15/17 (Wed)
12	Remedies / Common Law Money Damages	883-894	<i>Hawkins</i> decision [TWEN]	2/22/17 (Wed)
13	Remedies / Common Law Money	894-903, 904-906		2/27/17 (Wed)

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No.	Topic	Casebook	Other	Estimated Date
	Damages; Lost Volume			
14	Remedies / UCC Approach	36-37, 882-883, 903-904, 907-910, 921-922	UCC § 1-106, UCC § 2-508, UCC § 2-703, UCC § 2-706(1), UCC § 2-708, UCC § 2-709(1)(b), UCC § 2-710, UCC § 2-711, UCC § 2-712, UCC § 2-713, UCC § 2-715, UCC § 2-716	3/1/17 (Wed)
15	[reserved]			3/6/17 (Mon)
16	Remedies/ Substantial Performance	922-926*, 931-938	*re-read <i>Jacob & Youngs v. George Kent</i>	3/8/17 (Wed)
17	Remedies / Consequential Damages	939-949*	*read <i>Hadley v. Baxendale</i> (39-43); Rest (2d) § 351	3/13/17 (Mon)
18	Remedies / Consequential Damages (cont'd)	949-957	UCC § 2-712, UCC § 2-715 UCC § 2-718 UCC § 2-719	3/15/17 (Wed)
19	Remedies / Mental Anguish and Punitives	957-971	Rest (2d) § 353	3/20/17 (Mon)
20	Remedies / Equitable Relief	979-996, 999-1008	UCC § 2-716	3/22/17 (Wed)
21	Remedies / Liquidated Damages	1010-1025	UCC § 2-718; Rest (2d) § 356	3/27/17 (Mon)
22	Remedies / Limitation of Damages	1026-1035	UCC § 2-719	3/29/17 (Wed)
23	[reserved]			4/3/17 (Mon)
24	Third Party Interests / Assignment	1077-1095	Rest (2d) §§ 317, 322	4/5/17 (Wed)
25	Third Party Interests / Delegation	1095-1100	Rest (2d) § 318; UCC § 2-210	4/17/17 (Mon)
26	Third Party Interests / Third Party Beneficiaries	1100-1115	Rest (2d) § 302;	4/19/17 (Wed)

27	Third Party Interests / Third Party Beneficiaries (cont'd)	1115-1119		4/24/17 (Mon)
28	[Review]			4/26/17 (Wed)

*To make up for missed class time, these three classes will each meet for an additional half hour as follows: from 2:10 – 4:00 pm on (dates).

Key:

Casebook: IAN AYRES & GREGORY KLASS, STUDIES IN CONTRACT LAW (8th ed. 2012)
Rest (2d): Restatement (Second) of Contracts
UCC: Uniform Commercial Code
TWEN: Item available on TWEN site under “Handouts” link.
skim: read for basic familiarity (no need to memorize or fully comprehend)

Note:

Unless otherwise indicated via brackets (e.g., “Principles of Contract Interpretation [TWEN]”), the materials listed in the column entitled “Other” can be found on in the Statutory Supplement assigned for this course.

With regard to the UCC (Uniform Commercial Code) provisions, you are responsible for the original (or “current”) version of the text, and not the versions amended or proposed from 2000 onward (regardless of the source you use to locate them).

Using Westlaw and LEXIS to find Restatement and UCC provisions:

In the event that you do not have a copy of the Statutory Supplement, the assigned Restatement and UCC provisions can be located electronically.

In order to find a Restatement section on Westlaw (for example, Rest (2d) § 71), simply type in the “Find by citation” box:

REST 2d CONTR 71

In order to find a UCC section on Westlaw (for example, UCC § 2-209), simply type in the “Find by citation” box:

UCC 2-209

Sometimes (as in the example of UCC § 2-209), this search will result in two or three results – the original (“current”) version, and amended version. You are responsible for the original (“current”) version (which is usually the last of the results displayed on Westlaw), and not amended versions (dating from 2000-present).