

# Contracts Syllabus

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## ***Subjects Covered in this Syllabus —***

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## 1. Course Books

The course books are listed below. The first three books are required and will be covered in class. The last two recommended but not required. They can help you study before and after class.

1. **“The casebook”:** Whaley & Horton, *Cases, Problems & Materials on Contracts*. (8th edition).  
To buy the right edition, make sure it has this **ISBN: 9781543802498**.  
This is a red, hardbound book. It’s the center of the course.
2. **“The rules supplement”:** *Rules of Contract Law 2017–2018*.  
The date is on the book’s cover. The one you want has a **GREEN** and **TAN COVER**.  
To buy the correct edition, make sure it has this **ISBN: 9781454875345**.  
When another book refers to a provision of the Uniform Commercial Code or the Restatement of Contracts, *read that provision in the rules supplement*. You won’t understand the provision unless you read its *exact* wording.
3. **“The photocopy supplement”:**  
Don’t buy this in the bookstore. It’s distributed in the photocopy room in the basement of the law school. Ask there for this section’s Contracts Supplement and tell the people there my name. They’ll charge a photocopy materials fee.
4. **“The E&E”:** Blum, *Contracts: Examples and Explanations (7th edition — don’t buy an earlier one)*.  
To buy the correct edition, make sure it has this **ISBN: 9781454891451**.  
This book is *recommended* — and *not* required.  
Students say it helps them understand the course. Some say it’s better to read a chapter after the material is covered in class (“it brings things together”). Others say it’s better to read it beforehand (“it helps break things down into understandable chunks”).
5. **A law dictionary:** Any law dictionary. They’re all fine. But a small dictionary is better than a big one, just because it’s easier to handle.  
Use it for every course — not just this one. When reading in preparation for class, look up every word you don’t understand.

Bring to class the casebook, the rules supplement, and the photocopy supplement. But *don’t* bring the E&E or a dictionary. They’ll help you while studying at home, but not in class.

## 2. Contacting Me Outside of Class

To make an appointment, contact me directly. *The most reliable method is email.*

email address: Richard.k.neumann@hofstra.edu

office:	Room 213 — at the very end of the corridor that begins opposite room 206 (a classroom)
telephone:	516-463-5881 — <i>but email works much better</i>
secretary:	Joyce Cox, room 216. Tel: 516-463-6339 <a href="mailto:Joyce.a.cox@hofstra.edu">Joyce.a.cox@hofstra.edu</a>

### 3. Assignments

On Friday or Saturday each week, I'll send you by email the assignments for the following week's classes. This course does **not** use TWEN or Blackboard.

### 4. Class Schedule

Class meets for 90 minutes — with no break. (A 90-minute class doesn't need a break.)

We won't meet on these Fridays:

March 15  
March 29

To make up those classes, class will begin at 9:30 on the following Fridays:

February 1  
February 8  
February 15  
February 22  
March 1  
March 8

On those six days, we'll take a ten-minute break half-way through.

### 5. Attendance

A sign-in sheet will be circulated at the beginning of every class. **You're responsible for making sure that you sign it.** This **must** be done in the classroom or immediately afterward in my office. My secretary will not allow you to sign the attendance sheet in her office. At the end of every class, ask yourself, "Did I sign the sign-in sheet?" If you can't recall having done it, come up to the front of the room and sign it before I leave. Do this quickly. We have to clear the room so that the next class or scheduled activity can begin.

Falsifying a signature on an attendance sheet can lead to failure in the course and a charge of academic dishonesty under Part I(3)(e) of the school's Code of Student Conduct. When you apply for

admission to the bar, a character committee will investigate whether you're honest enough to be entrusted with clients' work. By law, a school is required to report proven instances of academic dishonesty to the character committee of any state where you apply for admission to the bar. *Signatures are spot-checked by comparing them to other examples of your signature on file with the law school.*

If you have the sign-in sheet at the end of class, please give it to me on your way out. As a courtesy to other students, please do this *quickly*. Other students become impatient when they wait in the front of the class to sign a sheet that has not appeared.

In each semester in Contracts, you're entitled to five unexcused absences. An excused absence is one caused by illness, family emergency, or something else that *prevents* attendance in class. If you're absent for this kind of reason, send me email right away so my secretary can take that into account when tabulating attendance records.

You must keep track of your unexcused absences. The school will **not** notify you when you are close to the limit. Your grade will be affected by excess unexcused absences. See *Final Grades* below.

## 6. Seating Chart

To help me get to know you individually, you'll sit in a designated seat that you choose. For the first two or three classes, sit anywhere you like. Get a feel for the room and where in it you are most comfortable. Then I'll announce that at the next class, you should sit where you want to sit for the rest of the school year. At that class, I'll pass around a seating chart. You'll write your name where the seat is, and that will become your seat.

## 7. Class Participation

Active participation in class discussions is not optional. One of the course learning goals (see number 10 below) is to gain the ability to "express your analysis orally . . . in a manner that meets the standards of the legal profession." Lawyers must be able to explain their thinking. How well you do that can have a profound effect on your career. Employers care a great deal about this, and it's the most obvious thing they look for in job interviews.

For the first week, I'll ask for volunteers in class. After that, I'll cold-call (call on students by name regardless of whether they have volunteered). *The best way to do well when called on is to do the assignment thoroughly before class.* Know your stuff. And think hard about what it means.

## 8. Professionalism

Professional schools are very different from college. In college, you were responsible only to yourself — which meant that if you studied poorly, only you would be hurt. Professional schools aren't

run that way.

When a law school teacher looks at you, the teacher sees the thousands of future clients who'll depend on you after you graduate. The teacher, the school, and you are responsible to those clients.

From the first day you walk into the law school building as a student, ***you are expected to behave like a professional.*** Your work and conduct will be judged according to professional standards, which are much more demanding than the standards you experienced in college.

Class is a business meeting. ***You are expected to behave in class with the same level of professionalism that governs a lawyer's behavior in any meeting where the lawyer is an active participant.***

- It's unprofessional to *arrive late* without a compelling reason. If you walk into class late, you *must* see me after class and explain why. Unless you provide a compelling reason for tardiness, you'll be counted as having an unexcused absence. Compelling reasons do not include things like "I couldn't find a parking space." A professional plans ahead and allows extra time to arrive early at professional obligations.
- It's unprofessional to *leave the room* except in an emergency. If you leave the room during class, you *must* see me after class and explain why. If you don't explain an emergency, you'll be counted as having an unexcused absence. Needing to use the restroom isn't an emergency. In a courtroom, a trial will go on for hours. If you ask for a restroom break in the middle of a cross-examination, the judge's jaw will drop in astonishment. This isn't college. *Class is a business meeting.*
- It's unprofessional to *chat with people sitting next to you* while a business meeting is in progress. Chatter makes it hard for others to hear and for those speaking to make themselves heard. If you do this in class, other students will get angry at you and dislike you. If you distract others in this way, you and I will have a private conversation about maturity.
- If you're *cold-called in class and don't respond at all, as though absent*, you'll be counted as absent. If you have signed the attendance sheet and don't respond when called on, you and I will have a private conversation about honesty.
- You'll be counted as absent for any class in which you *violate the rules on electronic devices* explained below.

## **9. No Laptops or Other Electronic Devices During Class**

You may not use a laptop, tablet, cell phone, or any other electronic device during class. If you violate this rule, I will ask you to see me after class, and you may be counted as absent.

Research shows that students who use laptops learn less than students who don't use them.<sup>1</sup>

Several studies have shown that laptop-using students do worse on exams than handwriting students.<sup>2</sup> According to two of these researchers, “students who took notes on laptops performed worse on conceptual [exam] questions than students who took notes longhand” because laptop note takers tend to “transcribe lectures verbatim rather than processing information and reframing it in their own words.”<sup>3</sup>

Commenting on these studies, another writer said that “there is something about typing that leads to mindless processing. And there is something about ink and paper that prompts students to go beyond merely hearing and recording new information — and instead to process and reframe” so they learn more deeply.<sup>4</sup>

Students say in surveys that they are more satisfied with the learning environment in no-laptop courses. Although some students prefer to use laptops, a larger number of students in the surveys say that classrooms are quieter, they can hear the teacher and other students better, and they feel more engaged in the classroom experience with fewer distractions.

(An exception to this policy exists for a student who has been designated by the Office of Student Affairs to take notes for another student who is receiving an accommodation. This exception doesn't cover taking notes for your friends. In fact, a student designated by the Office of Student Affairs doesn't know the identity of the student who will use the notes. If you are a designated note-taker, please sit in the last row of the classroom.)

## 10. Course Learning Goals

The following should be **your goals** as a student. They are the benchmarks against which you will be evaluated throughout the course. (*Italicized citations are to the law school's Learning Outcomes for Graduating Law Students, which appears on the school's website.*)

1. **Know thoroughly** the following:
  - the fundamental rules and policies of contract law — 1(a)

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<sup>1</sup> *Students are Better Off without a Laptop in the Classroom*, SCIENTIFIC AMERICAN, July 11, 2017; *The Writing's on the Wall*, NATIONAL JURIST, Fall 2018, at 10.

<sup>2</sup> *Should Teachers and Professors Ban Student Use of Laptops in Class?* N.Y. TIMES, Nov. 27, 2017.

<sup>3</sup> Pam A. Mueller & Daniel M. Oppenheimer, *The Pen Is Mightier Than the keyboard: Advantages of Longhand Over Laptop Note Taking*, PSYCHOLOGICAL SCIENCE (2014).

<sup>4</sup> Wray Herbert, *Ink on Paper: Some Notes on Note Taking*, at <http://www.psychologicalscience.org/index.php/news/were-only-human/ink-on-paper-some-notes-on-note-taking.html>

- the three sources of law: common law, legislation, and judicial interpretation of legislation — 3(a)
2. **Be able to do** the following at an introductory level:
- conduct yourself in professional settings in a manner that meets the standards of the legal profession — 7(a)
  - express your analysis orally and in writing in a manner that meets the standards of the legal profession — 5(h) & 7(a)
  - analyze transactions as well as the process of contracting and the lawyer's role in deals — 5(g)
  - extract rules and policy from cases and statutes — 5(a)
  - problem-solve in light of a client's objectives, anticipating consequences and assessing risks — 6(b)

## 11. How the Course Is Organized

The course is organized into units, outlined below.

We won't cover the E&E in class. E&E chapters are listed here to give you an idea, if you're using the E&E, of what fits where. It's up to you to decide how much to use the E&E — and whether to use it at all. (The E&E is only a recommended book — not a required one.)

1. **Deals and Basic Contract Concepts**  
casebook — pp. 1 through 6  
photocopy supplement — chapter 1  
E & E — chapter 1
2. **Sources of Contract Law**  
photocopy supplement — chapter 2  
E & E — chapters 2 & 3
3. **Meeting of the Minds**  
casebook — chapter 1  
photocopy supplement — chapter 3  
E & E — chapters 4, 5 & 6
4. **Consideration**  
casebook — chapter 2  
photocopy supplement — chapter 4  
E & E — chapters 7 & 8

5. **Statute of Frauds**
  - casebook — chapter 4
  - photocopy supplement — chapter 5
  - E & E — chapter 11
  
6. **Lawyers and Problem-Solving**
  - photocopy supplement — chapter 6
  
7. **Risks of Not Knowing: Mistakes of Fact, Representations, Warranties**
  - casebook — chapter 6 (parts I, II & III) plus chapter 5 (pp. 594–597)
  - photocopy supplement — chapter 7
  - E & E — chapters 13 (§§13.1–13.7) & 15 (§§15.1–15.6)  
and some of chapter 13's and chapter 15's Examples/Explanations
  
8. **Parol Evidence**
  - casebook — chapter 5 (part I)
  - photocopy supplement — chapter 8
  - E & E — chapter 12
  
9. **Interpretation**
  - casebook — chapter 5 (part II)
  - photocopy supplement — chapter 9
  - E & E — chapter 10
  
10. **Professionalism**
  - photocopy supplement — chapter 10
  
11. **Third-Party Beneficiaries**
  - casebook — chapter 9
  - photocopy supplement — chapter 11
  - E & E — §§19.1 & 19.2 and some of chapter 19's Examples/Explanations
  
12. **Assignment, Delegation, and Other Transfers**
  - casebook — chapter 10
  - photocopy supplement — chapter 12
  - E & E — §§19.3 & 19.4 and some of chapter 19's Examples/Explanations
  
13. **Conditions, Promises, Performance, and Breach**
  - casebook — chapter 7
  - spring photocopy Supplement — chapter 13
  - E & E — chapters 16 & 17 (except §17.7)
  
14. **Anticipatory Repudiation**
  - casebook — chapter 8
  - photocopy supplement — chapter 14
  - E & E — §17.7 and some of chapter 17's Examples/Explanations
  
15. **Negotiation**
  - photocopy supplement — chapter 15

16. **Additional Grounds for Avoidance**

casebook — chapter 6 (parts IV–VIII)  
photocopy supplement — chapter 16  
E & E — chapters 13 (§§13.8-13.14); 14; & 15 (§§15.7– 15.9)  
and some of those chapters' Examples/Explanations

17. **Remedies**

casebook — chapter 3  
photocopy supplement — chapter 17  
E & E — chapters 9 & 18 (read ch.18 before ch.9)

## 12. Podcasts

An MP3 recording will be made of each Contracts class. If you find that a particular class was difficult to understand, you might want to download the recording and listen to it again. This is not a requirement. It is a resource, which you can use as you see fit.

If you miss a class, it's a good idea to listen to the MP3 recording. But listening to the recording does **not** satisfy the attendance requirement. The recording cannot substitute for being in class.

Please don't expect perfection in these recordings. The recording can't capture everything that happens in class. Nothing visual is recorded. Nothing written on the board or shown on a screen will be in the recording. Even the best recording will fail to capture at least some of what's said, especially student comments and questions. We can't put a microphone at every student's seat, for example.

Here is how to access a school podcast —

1. Log in to the Hofstra portal ([my.hofstra.edu](http://my.hofstra.edu))
2. Click on "My Apps"
3. Select the Echo360 app
4. You will be redirected to your Echo360 dashboard and should see your registered courses.
5. Click on the course, and you will see the available podcasts.

## 13. Five Tips about Learning

**1. Read aggressively:** Passive reading is what most people do most of the time — breezing through paragraphs, understanding some or most of what's on the page and guessing about the rest. You can't succeed in law school that way.

Aggressive reading is pulling apart, in your mind, what's on the page and wringing meaning out of it. Consciously or unconsciously, aggressive readers have silent dialogs with themselves about what they're reading. They ask themselves questions, which they then try to answer, for example:

“Why is the judge emphasizing this fact?”  
(a passive reader isn’t curious)

“What’s preventing me from understanding that paragraph?”  
(a passive reader doesn’t try to figure this out  
and just ignores the paragraph)

“What does that phrase mean? What must I do to find out?”  
(a passive reader just skims over the phrase)

Who’s in charge — the reader or the page? For a passive reader, the page is in charge because the passive reader lets words win at hiding meaning. An aggressive reader won’t allow words to do that. An aggressive reader interrogates until the words give up and confess what they mean.

Aggressive reading is one of the most important skills for success in law school. Some of the others are precise self-expression and self-disciplined work habits.

2. Use a **law dictionary** to look up words that seem like lawyer-talk. But don’t stop there. Look up any word or phrase that seems to be used in an unusual way. A term of art is a word or phrase that has a special meaning in a profession. Some terms of art obviously have a special meaning to lawyers, such as parol evidence, habeas corpus, and res ipsa loquitur. But others are deceptive. They look like words you’ve seen many times before — but they mean something different in the law. Examples are consideration, representation, condition, performance, avoidance, and remedy. *Look up in a law dictionary any word or phrase that seems to be used in an unusual way.*

3. If you’re not sure what a word means and if it isn’t in a law dictionary, look it up in a **general dictionary**. If you don’t have a general dictionary in book form, use Merriam-Webster Online. Bookmark it now in your browser. Architecture is a sight profession, few words and much drawing. Engineering is a numbers profession, few words and much math. But law is *all* words: reading, writing, talking, and listening. Lawyers have to be extraordinarily precise with language. And English has the largest vocabulary of any western language — which means that you’ll never stop learning new words and new meanings for words you already know. *If a word or phrase is new to you or is used in an unusual way, find out what it means. Don’t guess.*

4. In the **rules supplement**, you’ll read four separate bodies of law. To save a lot of thumbing back and forth, put four post-its in the rules supplement, one of the first page of each of the following:

1. the **UCC**
2. the **CISG**
3. the **Restatement**
4. the **UNIDROIT Principles**

Don't worry at this moment about what these things are. We'll cover them later. Just insert post-its so they're visible when the book is closed.

In studying for this course, whenever you see a reference to a provision of the Uniform Commercial Code or CISG or the Restatement or UNIDROIT, locate that provision in the rules supplement and *read it carefully*. Reading statutes and similar material — anything organized with section or article numbers — is hard. *Every word matters*.

**5. Outlining.** Every course is broken down into major topics, which are units within the course. The units in this course are listed elsewhere in this syllabus (see number 11 above). Outline each unit very soon after we finish it when your memory is fresh.

## 14. Exams

You'll take a midterm and a final. Each exam will include one essay question in which you'll decide how the law resolves a fact pattern plus some multiple-choice questions. An exam might also include a problem-solving question in which you create a plan for achieving a client's goals or give advice to a client about how to structure a transaction.

## 15. The Semester Grade

Here are the grade weights —

20%	midterm
10%	class attendance and participation
70%	final exam

Final grades are computed in two steps. *Step 1:* The points you earn through exams, exercises, and class participation are added together to produce your total point number. If you have excessive absences, points are subtracted (see the next paragraph). *Step 2:* Everybody's numerical point totals are curved to produce letter grades.

You're entitled to four unexcused absences. If you miss more than four classes and have not provided excuses for the extra absences (see *Class Attendance* above), your end-of-semester point total will be reduced by three points for each excess unexcused absence. For example, if your exams and class participation total 81 points and if you have six unexcused absences (two of which are penalized), your grade will be based on only 75 points.

## **16. Medical Conditions**

If you have a medical condition that might be relevant to school work, such as ADHD or dyslexia, please feel free to discuss it with me privately so we can work out something that could be helpful to you in this course and perhaps in school generally.