

Contracts Syllabus

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1.

Meeting Outside of Class

If you wish, I can meet with you for as long as you want and as many times as you want, preferably by Zoom. *Don't be shy about asking.* I can meet with you individually or with your study companions. To make an appointment, contact me by email at Richard.k.neumann@hofstra.edu.

2.

Course Books

The books are listed under the line below. **A**, **B**, and **C** are required. **D** and **E** are recommended but not required.

For books **A** and **B**, don't buy a digital-only version such as Amazon's eTextbook. It's ok to buy a bundled version if you get *both* a digital version *and* a hard copy book. But the digital is only for study outside class. During class, you won't have access to digital versions, and you must have hard copy books.

The photocopy supplement (**C**) is available only in hard copy.

For books **D** and **E**, digital versions are fine. You'll be using them only outside class.

A. “The casebook” — Whaley & Horton, *Cases, Problems & Materials on Contracts*. (8th edition).

This is a red, hardbound book. It's the center of the course. To buy the correct edition, make sure its **ISBN** is **9781543802498**. If you rent the book, it might have a different ISBN: **9781543807974**. Either is OK.

B. “The rules supplement” — Knapp, Crystal & Prince, *Rules of Contract Law 2019*.

The date (2019) is on the book's cover. The one you want has a **blue and grey cover**. To buy the correct edition, make sure its **ISBN** is **9781454894520**.

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.

One of a lawyer's core skills — and a very important one in this course — is interpreting words. You will do that throughout the course in the rules supplement.

C. “The photocopy supplement”

This is distributed in the photocopy room in the law school basement. Ask there for this section's Contracts Supplement and tell the people there my name. They'll charge a photocopy materials fee.

D. “The E&E” — Blum, *Contracts: Examples and Explanations (8th edition)*.

To buy the correct edition, make sure its ISBN is **9781543807639**.

This book is *recommended* — 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”).

E. A law dictionary — *any* law dictionary.

Several law dictionaries are available as free cell phone apps. Check your phone’s app store. You might try downloading two of them so that if one isn’t helpful, you can use the other as a backup. Don’t pay for one of these. Most of the free ones are good enough.

Use it for every course — not just this one. When reading in preparation for class, look up every word you don’t understand. *Every word*. Really.

3.

Assignments

On Friday or Saturday each week, I’ll send you by email the assignments for the following week’s classes. See “How the Course Is Organized” on pages 12–14.

This course does **not** use Blackboard. Practicing lawyers live on email, and so will we.

4.

Class Schedule

Class is 90 minutes with no break.

We will **begin at 10:20** and **finish at 11:50 am** — *ten minutes later than the times on the registrar’s schedule*. This is to give you ample time to do whatever you need to do before class and get settled in the classroom.

Class will not meet on Friday, February 24. We *might* not meet on Friday, March 24.

If the university is closed because of snow, we’ll meet by Zoom. (See “Zoom Classes” below.) Class will not be cancelled.

If a class — other than Feb. 24 and March 24 — is canceled, we might make it up by extending other classes rather than scheduling makeup sessions. For example, we can make up a canceled class (90 minutes) by extending nine other classes by ten minutes each so that they end at noon rather than 11:50.

5. Zoom Classes

On most Fridays, we'll meet by Zoom rather than in the classroom. In Contracts, some things actually work better in Zoom. You'll see why during the course.

Under the N.Y. State Board of Law Examiners' rules, no more than one-third of a first-year course's class time can occur online. To be sure we stay on that side of that limit, a few Friday classes will be in our classroom (room 230) instead of Zoom. That is because of the possibility of snow closures. If on a Monday or Wednesday, the school is closed, we'll meet on Zoom that day, which would risk pushing us over the limit if every Friday class is on Zoom.

During a Zoom class, you must be alone in a quiet space that is 100% under your control and where you can't be interrupted. For most students, that means being at home or in some other private space. For these reasons, you are not permitted to be in the law school building during a Zoom class unless you have another class immediately before the Zoom class.¹

We use the Zoom chat box only to take attendance. To make comments and ask questions, use the raise-hand feature instead.

Lawyers and judges use Zoom on a daily basis. *Start developing professional online habits now.*

Hardware: During a Zoom class, you must be participating via a computer — not a cell phone or tablet.

Visual setting: Don't sit where a light source, like a window, is behind you. Adjust your lighting so your face can be seen on the webcam clearly. You might experiment with moving lamps and your camera until you can see your brightly-lit face on the screen.

¹ . About 15 students are in this situation. If you are one of them, I will contact you before school starts to work out arrangements for you.

Sound: Be in the quietest place available to you. Close your door if necessary to reduce background noise. Keep yourself on mute unless you are talking.

Identification: Make sure that Zoom shows your full name under your picture. If you haven't already done this, click on the three dots in the upper-right corner of your picture and rename yourself. If you're known by a nickname instead of your given first name, please use it instead of your first name. But you must use your last name as well.

Webcam: To be counted as present, you must keep your webcam on during the entire class unless you have permission in advance to turn it off.

Multitasking — Don't even think about it: When you're in a Zoom meeting, it will be obvious to a teacher if you check email, look at websites, text, or do other things with your phone. Shut down all other windows on your computer during your Zoom session so you can be fully present during class.

6.

Course Learning Goals

The following are adapted from the law school's learning outcomes requirements. These should be among your goals in this course:

- A. *Knowledge and understanding of substantive and procedural law*
 - (1) contracts law
 - (2) sources of law and the process of law creation and evolution
 - (3) the roles and differing characteristics of sources of law (common law, legislation, treaties, and judicial interpretation of them)

- B. *Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context*
 - (1) extracting rules and policy from cases, statutes
 - (2) analyzing, interpreting and arguing differing interpretations of rules and statutes
 - (3) analyzing and structuring transactions

- C. *Exercise of proper professional and ethical responsibilities to clients and the legal system. Develop the ability to —*
 - (1) communicate orally
 - (2) present written and oral communications conduct oneself in professional settings in a manner that meets the standards of the legal profession
 - (3) conduct him or herself in accordance with standards of professional

- conduct;
- (4) fulfill a lawyer's commitment to competence, integrity, accountability, and social responsibility;
- (5) apply the principles and policies reflected in the law governing lawyers, including a lawyer's duty of loyalty to clients, fiduciary duties, and obligation of zealous representation.

D. Entry-level lawyering capabilities needed for competent and ethical participation as a member of the legal profession. Develop the ability to —

- (1) strategic planning and developing a plan to accomplish a goal
- (2) problem-solving in light of a client's objectives
- (3) anticipating consequences and assessing risks
- (4) recognizing the most common ethical and professional liability dilemmas and resolving them with high professional standards

7.

Attendance

A sign-in sheet will be circulated at the beginning of every class. **You are 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.

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.

On days when we meet by Zoom, sign in via the chatbox. You must do this at the beginning of class. For attendance purposes, we treat the time you sign in as the time you entered class, and a significantly late sign-in can be treated as an unexcused absence.

You're entitled to four 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.

Keep track of your unexcused absences. No one will notify you when you are close to the limit.

Sign-in sheet signatures are spot-checked by comparing them to other examples of your signature on file with the law school. Falsifying a signature on an attendance sheet can lead

to failure in the course and to 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.

8. Seating Chart

To help me get to know you individually, you'll sit in a designated seat that you choose. For the first few classes, sit anywhere you like. Get a feel for where you are most comfortable. Then I'll pass around a seating chart. You'll write your name where the seat is, and that will become your seat.

9. Class Participation

Active participation in class discussions is *not* optional. 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 few classes, I'll ask for volunteers in class. After that, I'll cold-call (call on students by name regardless of whether they have volunteered).

10. No Laptops or Other Electronic Devices During In-Person Classes

When we meet in room 230, ***you may not use a laptop, tablet, cell phone, or any other electronic device.*** 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 take handwritten notes learn more than students who use laptops.²

² . Colleen P. Murphy, Christopher J. Ryan, Jr. & Yajni Warnapala, *Note-Taking Mode and*

Several studies have shown that laptop-using students do worse on exams than handwriting students.³ 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.”⁴

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.⁵

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.)

11. Professionalism

In college, you were responsible only to yourself — which meant that if you studied poorly, only you would be hurt. But that’s not true in a profession. When a law school teacher looks at you, the teacher sees the thousands of future clients who will depend on

Academic Performance in Two Law School Courses, 68 J. Leg. Educ. 207 (2019) (“when controlling separately for LSAT, handwriters had a higher combined GPA in [two required casebook] courses than laptop users”); *The Writing’s on the Wall*, NATIONAL JURIST, Fall 2018, at 10; and *Students are Better Off without a Laptop in the Classroom*, SCIENTIFIC AMERICAN, July 11, 2017.

3 . *Should Teachers and Professors Ban Student Use of Laptops in Class?* N.Y. TIMES, Nov. 27, 2017.

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

5 . 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>

you after you graduate. In a law school class, **you are expected to behave like a professional.**

Class is a business meeting. **Behave in class with the same level of professionalism that governs a lawyer's behavior in a professional meeting where the lawyer is an active participant.**

It is **unprofessional to arrive late** without a compelling reason. If you arrive in class late, you must contact me after class and explain why. Unless you provide a compelling reason for tardiness, you can 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 is **unprofessional to leave the room** except in an emergency. If you leave class, even temporarily, you must contact me after class and explain why. Needing to use the restroom is not an emergency. In a courtroom, a trial will go on for hours. If you ask for a restroom break in the middle of cross-examining a witness, the judge's jaw will drop in astonishment. *Class is a business meeting. (Have you ever seen a teacher leave a classroom during class to use the restroom?)*

It is **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 professional 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.

12.

Course Grades

Here are the grade weights —

- 15% midterm
- 10% class participation
- 75% final exam

After final exams, Contracts course grades are computed in two steps. *Step 1:* The points you earn through exams 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 *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.

13.

Six Suggestions about Learning

1. Read aggressively: Casually 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 cannot 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? How can I 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 a passive reader lets words win at hiding meaning. But an aggressive reader won't allow words to get away with 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.

2. Outline each unit of a course immediately after the class finishes that unit. Every course is broken down into major topics, which are units within the course. The units in Contracts are listed at the end this syllabus. See “How the Course Is Organized” on pages 12–14.

Immediately after we finish a unit, make your outline of that unit. *Do it then, while your memory is still fresh.* Don’t wait until April.

3. 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 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. Some Contracts examples are consideration, representation, condition, performance, and avoidance. *Look up in a law dictionary any word or phrase that seems to be used in an unusual way.*

Architecture is a sight profession — few words and much drawing. Engineering is a numbers profession — few words and much math. But law is entirely words — reading, writing, talking, and listening. Lawyers are precise with language.

4. 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*. 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.*

If you don’t already have a good general dictionary on your cell phone, find one in your phone’s app store. Merriam-Webster is reliable. So are some others.

5. Reading anything that has section or article numbers is especially hard. Contracts has three separate bodies of law, all of which are in the **rules supplement** (see page 2, above):

1. the Restatement
2. the Uniform Commercial Code (UCC)

3. the Convention on the International Sale of Goods (CISG)

In preparing for class, whenever you see a reference to one of these three bodies of law, find the specific provision in the rules supplement and *read it carefully. Every word matters.*

To save a lot of thumbing back and forth in the rules supplement, you might want to do the following: put a post-it on the first page of the Restatement portion of the rules supplement; put another post-it on the first page UCC page; and put a third post-it on the first CISG page. Insert the post-its so they're visible when the book is closed.

6. Keep your eye on the big picture. Everything in Contract law is part of one coherent whole. Everything is related to everything else. Think of the course as a journey. The map for that journey is “How the Course Is Organized” on pages 12–14. Ask yourself often during semester “Where are we?” and “What comes next?”

14.

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.

15.

How the Course Is Organized

The course is organized into units, outlined below.

We won't cover the E&E in class (see page 2 above). 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.)

Abbreviations —

“Ch.” = Chapter

“Chs.” = Chapters

“§” = a section inside a chapter

“E/Es” = Examples & Explanations at the end of an E&E chapter

	unit	casebook	photocopy supplement	E&E
1	<i>Deals & Basic Contract Concepts</i>	pp. 1–6	Ch. 1	Ch. 1
2	<i>Sources of Contract Law</i>		Ch. 2	Chs. 2 & 3
3	<i>Meeting of the Minds</i>	Ch. 1	Ch. 3	Chs. 4, 5 & 6
4	<i>Consideration</i>	Ch. 2	Ch. 4	Chs. 7 & 8
5	<i>Statute of Frauds</i>	Ch. 4	Ch. 5	Ch. 11
6	<i>Lawyers and Problem-Solving</i>		Ch. 6	
7	<i>Risks of Not Knowing: Mistakes of Fact, Representations, Warranties</i>	Ch. 6: parts I, II, III Ch. 5: pp. 594–597	Ch. 7	Ch. 13 (§§13.1–13.7 & some E/Es) Ch. 15 (§§15.1–15.6 & some E/Es)
8	<i>Parol Evidence</i>	Ch. 5: part I	Ch. 8	Ch. 12
9	<i>Interpretation</i>	Ch. 5: part II	Ch. 9	Ch. 10
10	<i>Professionalism</i>		Ch. 10	
11	<i>3d-Party Beneficiaries</i>	Ch. 9	Ch. 11	§§19.1 & 19.2 & some Ch. 19 E/Es

12	<i>Assignment, Delegation, and Other Transfers</i>	Ch. 10	Ch. 12	§§19.3; §19.4; & some Ch. 19 E/Es
13	<i>Conditions, Promises, Performance & Breach</i>	Ch. 7	Ch. 13	Chs. 16 & 17 (except §17.7)
14	<i>Anticipatory Repudiation</i>	Ch. 8	Ch. 14	§17.7 & some Ch. 17 E/Es
15	<i>Additional Grounds for Avoidance</i>	Ch. 6: parts IV–VIII	Ch. 15	§§13.8-13.14 Ch. 14 §§15.7–15.9 some of those chapters' E/Es
16	<i>Remedies</i>	Ch. 3	Ch. 16	Ch. 9 Ch. 18 (read Ch. 18 before Ch. 9)