Course Overview

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Introduction

In Contracts we will study how people make arrangements to exchange goods and services in a way that state and federal courts will enforce within the U.S. We will also briefly compare how some foreign jurisdictions treat these arrangements. Contract law has ancient roots in the Anglo common law tradition, and its principles continue to exert tremendous influence on how individuals, business entities, and public agencies order their affairs.

Contract law is studied in the first year of law school because the concepts are fundamental to understanding the U.S. legal system. The study of contract law is fundamental in at least two ways. First, contract doctrines operate at the boundary between private ordering and public regulation. They enable, among other things, a market economy, and to some extent they temper some harsh consequences of that economy. They operate, in some respects, to distinguish moral or ethical obligations from legally enforceable obligations – a distinction that many students of law find both intriguing and problematic. A good portion of this course is devoted to analyzing how and why contract doctrines promote or constrain free-market private ordering and whether those doctrines promote, or disserve, the public or common good.

Second, contract law is fundamental to your future studies in law school and to legal practice. For example, you will find that your study of Property often involves contracts for its sale or licensing. In your second and third year studies, you will find that entire courses are devoted to subjects built upon a contract foundation – Sales, Payment Systems, Secured Transactions, Real Estate Transactions, Intellectual Property Licensing, Business Organizations, Consumer Protection, Employment Law. Contract law is not relevant just to business-y courses. Every international and tribal treaty is a contract. “Cap & trade” environmental regulations are contracts. Adoptions, surrogacy parenting, sperm donor agreements, pre-nuptial agreements, settlements of law suits, and plea bargains in criminal prosecutions are all contracts. You will find that most of these topics are now heavily regulated by legislation or agency rules, but the legislation and rules reflect common law contract principles. In this course, you will get a preview of how legislation can build upon and influence common law contract doctrine in our study of portions of the Uniform Commercial Code and some consumer protection statutes.

In sum, the principles of contract law reflect cultural, moral and political values (often contested ones) and are crucial to our entire legal and economic system. Disputes arising from broken contracts often spotlight those values and can reveal stresses and impending changes in the law and in society generally. To that end, we will devote some time, especially in winter quarter, to analyzing some contemporary contract issues that implicate contested political, social and economic values.

A word about the texts and the organization is necessary. The Macaulay casebook reflects a particular theoretical stance toward law in general and contract law in particular. That is a “law & society” approach. In a nutshell, the authors of the casebook don’t believe that it’s particularly useful to study law as if it is a set of rules that can be neatly distinguished from the social context in which the rules operate. The casebook suggests that contract doctrines may
operate differently – maybe the rules themselves are different – depending on the context. Thus, a contract dispute between two businesses, a dispute between long-time domestic partners over promises of support, and a dispute over who gets custody of a child conceived artificially may each be treated very differently by the courts even though the contract vocabulary might be very similar. I agree with the authors.

At the same time, I recognize that many students come to law school with an expectation of learning a body of fairly determinate rules of law, and students are properly concerned with being able to do things like pass the bar exam which largely tests one’s knowledge of rules of law as if they were fairly determinate. The study aid, EXAMPLES AND EXPLANATIONS – CONTRACTS, is very helpful for learning rules.

Finally, I have assigned a text, SKILLS AND VALUES: CONTRACTS (2011). This is published by LexisNexis and has associated materials on LN’s webcourse site. These materials will help you apply the law you are learning in realistic, but simple, practice settings. I think you will find that its short chapters and exercises, on-line examples, and self-assessment will help you understand why contract law matters and help you develop practical lawyering skills.
Learning Objectives

Theory & Perspective

-To recognize the types of human interactions and transactions U.S. lawyers generally treat as subject to contract rules of law.
-To recognize the importance of contract rules and principles in the U.S. legal, economic and political systems and culture.
-To consider the impact of contract rules on commercial practices, and the impact of commercial practices on contract rules.
-To consider the impact and relevance of contract rules on long-term relationships, both commercial and not so commercial.
-To appreciate the importance of social context in the operation and impact of contract rules in and out of court.
-To distinguish among legal arguments depending on whether they are based on deference to legal authority, institutional competence, principle, or empirical data – or something else, such as power, familiarity, stereotypes, or simple error.

Knowledge

-To know the elements of an enforceable contract.
-To understand the fundamental rules, principles and policies U.S. courts typically use to resolve disputes concerning contract formation, performance, breach, and remedies for breach.
-To understand generally the influence of the Restatement (Second) of Contracts on domestic state contract law, to understand its organization, to use it as a research tool, and to have detailed understanding of selected provisions.
-To understand generally the effect of Articles 1 and 2 of the Uniform Commercial Code on formation, performance, and enforcement of contracts for the sale of goods, to understand the organization of Articles 1 and 2, to use the UCC as a research tool, and to have detailed understanding of selected UCC provisions in these Articles.
-To be aware of selected international treaties and trade agreements that may affect the formation and enforcement of contracts in the U.S.

Skills

-To read, interpret, and synthesize appellate opinions about contract disputes with professional competence.
-To predict the outcome of a real or simulated contract dispute in light of appellate opinions studied in the course.
-To read and interpret a statutory text with professional competence.
-To predict the outcome of a client objective or dispute in light of a statute studied in the course.
-To deploy in speech and in writing with basic professional competence the vocabulary and reasoning techniques U.S. lawyers typically use to analyze facts and advise clients, draft written
agreements and other documents, and advocate before courts concerning contractual interactions.

-To read and interpret with professional competence clauses that are commonly included in commercial agreements and standardized consumer forms.
-To draft with basic competence a written agreement for a simple transaction between two parties.

-To have basic competence in researching an issue of contract law in a particular jurisdiction.
-To have a basic familiarity with secondary sources, such as treatises and practice manuals, to support the practice of law involving contracts.

-To be able to write a very good answer to a representative bar exam question involving contract law.

-To be able to select and articulate good reasons why a legislature, court, or other decision-maker should make or apply contract rules in one way or another if it wishes to achieve a particular objective.
Assessment and Grading

Contracts is a seven-credit, two-quarter course for which you will receive one final grade on your transcript at the conclusion of Winter Quarter 2014.

I have divided the course into four modules. Those are: 1) Remedies for Breach of Contract; 2) Formation of Contract Obligation; 3) Performance, Breach and Interpretation of Contract; and 4) Affirmative Defenses to Contract Obligation and Excuses for Breach. We will study 1 and 2 in Autumn and 3 and 4 in Winter.

Midterm and Final Exams (70%)

There will be four “exams” that will take place after we complete each module. Collectively, the exams will count for approximately 70 points, or 70% of your grade for the course. After we complete module 1 in late October, I will give an in-class, practice, mini-midterm. I will assess and provide feedback on that exam but it will not count toward your course grade (except that you are required to take it.) At the end of Module 2 and during the 1L exam period in December, I will give a midterm exam testing the content of Modules 1 and 2. That will be worth approximately 15 points – or 15% of your total grade. In mid-February 2014, I will give another mini-midterm on Module 3. It will be graded for approximately 10 points or 10% of your final grade. The final exam will take place during 1L exam week in March 2014, will test all 4 modules and will be graded for approximately 45 points or approximately 45% of the total grade).

I will grade exams anonymously. Both exams will be modified open book. This means that you may access your notes (in hard copy or on your hard drive) and the assigned texts, but nothing else. Students who use a computer to write a graded exam must use Exam4 software. Academic Services will provide you with the details on that software before the December midterm.

The remaining approximate 30 points or 30% can be earned through participation in one group presentation/performance, either in autumn or winter (up to 10 points), participation in drafting a group answer to two hypothetical exercises for 5 points each (up to 10 points), and taking 5 quizzes for 2 points each (up to 10 points). You can also expect several short written exercises and occasional in-class quizzes from time to time in each quarter that are required but not graded.

Group Presentation/Performance (10%)

You must participate in one group project. You have a choice about which one. Students who wish to participate in the first project must so declare by October 9. I will remind the class of this deadline. Students who wish to participate in the second project must so declare by the start of Winter Quarter. I will remind the class of this deadline.
1. In Autumn, in early November, students will have an opportunity to perform a redacted version of Shakespeare’s tragedy, *The Merchant of Venice*. The performance will take place during class before your classmates and interested members of the law school community. The Macaulay casebook includes two excerpts from the play, and its rich relevance to our studies will soon become apparent.

There are opportunities for about 10 - 12 students to participate meaningfully in this activity (i.e. about half the class). The tasks included researching the literature on the legal issues in the play, revising the script (with deference to Shakespeare’s language), direction, acting, and leadership of a post-production discussion. I will assist students who select this project in defining its scope.

2. In Winter, in late February, students will have an opportunity to create a presentation for the class, and interested members of the law school community, on corporate supply chain contracts. U.S. businesses rely on supply chain contracts to secure goods or services from other businesses here in the U.S. and around the world. These contracts have come under increasing scrutiny in recent years because they can involve suppliers with low labor or environmental standards. Think LED factories in China or textile factories in Bangladesh. The core issue for our class is whether U.S. business can and should use their supply chain contracts to require suppliers to meet higher labor and environmental standards.

There are opportunities for at least 12 students to work on the research and presentation. I, and other members of the law school faculty, will assist students who select this project in defining its scope.

**Assessment of Group Presentation/Performance:**

All students who participate in good faith in the project will receive the same grade. Up to 10 points are available. It is my intention to work with all participating students to define the scope of each project and the criteria by which we will assess their contributions to learning and engagement for all the students in the course. In other words, this is an opportunity for students to define their own goals, agree on a way to achieve them, and then judge whether they have met them. (You will discover that setting these goals and figuring out how to reach them will become a kind of group contract.)
Small group collaborative writing assignments (10%)

There will be multiple opportunities for group work, but two will be graded, each for 5%. There will be one in Autumn and one in Winter. The point here will be to work together (4 or 5 students) to solve a hypothetical contract problem, write up the answer, and post it for class review and discussion. All students, who participate in good faith in a given small group, will receive the same grade on the answer.

Quizzes (10%)

There will be 5 short graded quizzes, 3 in Autumn and 2 in Winter. Each will be worth 2 points. If you answer a quiz on time, you will receive one point. You will get the appropriate fraction of 1 point for each correct answer.
Expectations for Class Time

Reading

I expect you to read the assigned materials in Macaulay, CONTRACTS LAW IN ACTION casebook, and in Danzig, CAPABILITY PROBLEM, with care before class. Those, together with the exercises in Skills & Values – Contracts, form the heart of the course. In contrast, Examples & Explanations is primarily useful as a study aid for you. It organizes and explains basic contract rules quite well. I will spend little to no time on it in class because it is self-explanatory. You should decide for yourself how best to use E&E. In past years, some students liked to read it first or in conjunction with other assigned materials; others preferred to complete a unit – say on contract remedies – and then read the related chapter in E&E as a review.

You will find in the Schedule of Assignments references to sections of the Restatement (Second) of Contracts and to the Uniform Commercial Code that are pertinent to the assigned readings. These can be daunting to read, much less understand. Especially early on, you may find that it is easier to grasp concepts by reading E&E first. In autumn quarter, in particular, I will spend considerable time helping you to learn to read these materials, especially the UCC, and I will identify those sections in the UCC and, to a lesser extent in the Restatement, that you must grapple with in some depth and those that you can relegate to background information.

Class Participation

Class discussions and active participation in them and in in-class exercises are very important to your learning and to your classmates’ learning. I will do my best to make class challenging but not frightening. I expect you to have read the assignments before class, and I urge you to respond when called upon and to participate actively and voluntarily in discussions. If, on occasion, you are not prepared for class, it is still better to attend. Please let me know in advance if you prefer not to be called upon on a given day.

Significant numbers of unexcused absences or notable lack of class participation, especially when called upon, may affect your final grade even though I am not assigning points to attendance or class participation. For example, if your exam numerical score lies near a break point between letter grades and I have discretion under the law school’s grading policy to assign either letter grade, poor class participation would make it more likely that you would receive the lower grade, while notably good class participation would make it likely that you would receive the higher grade. The same is true for attendance.

I urge you to review course materials and your notes at least weekly. Review and reflection after class is as important as preparation before. I recommend that you avoid trying to take notes on everything said during a class discussion. For most students, it will be much more efficient to listen attentively, participate, and jot down the main themes. A few minutes of review later the same day with the addition of a few more details to your notes, if necessary,
will help you learn more and retain it. I am happy to go over any student’s notes one-on-one if you want some more guidance on note-taking.

It is my responsibility to involve every student and to deter any student from dominating class discussions. I have – and we collectively will have -- zero tolerance for remarks by anyone that disparage the integrity, intelligence or other personal characteristics of anyone in the class. At the same time I believe students need to engage in rigorous, even heated, debate on issues in the course materials in order to hone their critical thinking and to build important skills for legal practice, business, policy-making, and civic leadership. We can disagree with each other on issues but we should refrain from disparaging persons. If you find anything I do or say offensive, please let me know promptly so I can make my own “course correction.” If you find anything other students say or do offensive, please let them and me know in an appropriate manner. That may mean that some issues should be raised in a private discussion outside of class.

Finally, I deliberately vary my teaching methods depending on a given day’s topic and to keep our classroom lively. For example, in one class I may lecture; in another, I may ask you questions; in another, I may mostly answer your questions. Some classes will involve charts and pictures and other visual aid materials; some not. I like to draw (badly) on the board. I am not a fan of Power Point. Only a few lectures will be supported by PPT slides. Often classes will require you to participate in some hands-on activity -- draft or revise a contract clause, interview a client, present a “moot” argument. As to your participation – try your best to listen actively and try to contribute to class discussions. There are no stupid comments in first-year law school.

Do not check your messages and surf the Web during class. Those distractions will impede your learning, and it is unfair to other students who may see your screen and be distracted without their consent. If I detect that your use of a laptop or other device is interfering with other students’ concentration – or with my own – I may bar you from using the device in class.

Attendance

I expect students to attend every day unless they have a good reason not to. Please do stay home at the onset of colds or flu. Not only will you prolong your own illness by dragging yourself to school, but also you’ll infect all the rest of us!

If possible, please let me know in advance (by email or voice mail) of your need to be absent and ask a classmate to take notes for you. I will not devote office hours to summarizing a missed class. In case of prolonged absence, please contact me as soon as possible about arrangements for helping you. In general, American Bar Association rules provide that a student may not receive credit for a course unless he or she has attended at least 80% of the scheduled classes.
Podcasts

This class will not be recorded except in exceptional circumstances or upon request of a student who must be absent. Podcasting does not capture the kinds of discussions and activities we will generally have during class. Nevertheless, if you know you must miss a class, please let me know as soon as possible. If the activity that day is suitable for capture on podcast, I will ask our IT team to record the class.

Course site, Email, Discussion Lists, etc.

The course materials will be posted on the law school’s website, and we will use various tools provided by Canvas, our learning management system. That system enables discussions, quizzes, and various group activities on line. The one exception is that the Skills & Values – Contracts text uses on-line materials that are hosted by LexisNexis. You will have to register for my LexisNexis Contracts webcourse.

I will use email to make announcements, such as corrections or changes to the syllabus, class cancellations, etc. You may also use email to communicate with me – for example, to let me know if you must be absent or to schedule an appointment. I welcome questions about the course by email but please be mindful that I am likely to forward my answer to you to the whole class if the issue is one of general interest.

Office Hours

Remember the value of face-to-face conversations, especially about complicated issues. For those kinds of issues, I urge you to use my office hours instead of email. You can come alone or with study partners. This is a small class. I actually can meet and talk with each of you. Take advantage of that.

Students, who use office hours early and regularly, clear up questions while the topic is fresh. In addition, your feedback is very helpful to me. I need to hear from you what you do and do not understand while I am still teaching the topic. Hearing from you helps me know what material I might need to address again or explain in a different way. I am also interested in each of you as individuals – what you want to do, what your background is, how you learn best.
Academic Integrity and Conduct

Your work in this course is subject to the University’s and the Law School’s policies, including by not limited to, the Honor Code, http://www.law.washington.edu/Students/Academics/HonorCode.aspx, and the Conduct Code, http://www.washington.edu/students/handbook/conduct.html. Please review these and other important policies on the law school’s web site, http://www.law.washington.edu/Students/Academics/Default.aspx

Disability-Related Needs

To request academic accommodations due to a disability, please contact Disability Resources for Students (DRS) at:

011 Mary Gates
Box 352808
Seattle, WA 98195-2808
uwdrs@uw.edu
206-543-8924 (Voice)
206-543-8925 (TTY)
206-616-8379 (Fax)

If you have a letter from DRS, please present the letter to me so we can discuss the accommodations you might need in this class.

Nondiscrimination Policy

The University of Washington, as an institution established and maintained by the people of the state, is committed to providing equality of opportunity and an environment that fosters respect for all members of the University community. Please review Executive Order 31 for more information at: https://www.washington.edu/admin/rules/policies/PO/EO31.html.

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