**Contracts (Fall 2015 to Winter 2016)**

**Prof. Steve Calandrillo**

Class Times: MW 10:30-12:20  
Office Hours (Room 419): Fall TuTh 12:20-1:30; Winter W 12:30-1:30  
(please shoot me an email first at stevecal@uw.edu)

**Course Description & Objectives:**

Contract law deals with the making and breaking of promises, and the consequences that stem from those actions. It is largely a common-law subject, meaning judicial interpretation, custom and traditions, rather than just statutory rules, have shaped contract law over time. However, we must still strive to take an integrated approach to contract law – because some promises can be broken with impunity while shattering others has severe consequences.

So, in taking this class, think carefully about how to best structure a societal approach to contract formation and enforcement. For instance, what criteria should determine which promises we will enforce and which ones we will not? And what should be the remedy if one’s promise is broken? Keep in mind, it can destroy the value of a person’s word if we do not allow them to enter into a contract, or if we refuse to enforce the one they have already signed.

The primary goals of this class are to:

- Analyze cases and learn basic principles of contract law by reading cases
- Understand how different courts apply contract law and achieve varying results
- Apply precedent and contract law to new factual situations
- Learn how to interpret contracts using various methods and approaches
- Use basic skills for contract negotiation and drafting
- Understand some of the basic policy considerations involved in contract law and judicial decision making

**Required Texts:**
- Course Reader available online at the UW course website

**Syllabus:**

I have broken down the course into 5 parts:

- Part I - Principles of Promissory Obligation
- Part II - Remedies for Breach of Contract
- Part III - Assent
- Part IV - Policing the Bargain
- Part V - Performance and Nonperformance
Grading – Exams and Course Participation:

*Exams:* There will be a 1.5 hour midterm exam at the conclusion of the fall quarter, and a 3.5-hour final exam at the conclusion of winter. Both will be closed-book. The midterm exam will count 10% towards your final grade in the course, and the winter one 90%. By necessity, the winter final exam will be cumulative of both quarters’ material.

If you would like to use a computer to type your exam, Exam4 software must be used (alternatively, students are free to write their exams using bluebooks). Please note that there are several sample exams of mine on the UW course website to help prepare students for the midterm and final.

*Contract Drafting:* We will engage in one practical and substantial contract negotiation and drafting exercise during the winter quarter. You will be grouped in teams of two, and will negotiate and draft a contract solution to a hypothetical problem. I will not assign a separate letter or points grade for this exercise, but reserve the right to factor your drafting effort into your course grade if your exam performance places you on the margin between two grades.

*Class Participation:* Please do attend and participate in class— it’s the best way to learn, do well, and enjoy your first year of law school. While your final grade in this course will generally equal the sum of your grades on the midterm and final exams, your participation in class can affect your course grade if it is on the borderline between two grades. (I should add that participation quality counts far more than quantity— please don’t feel pressure to raise your hand out of fear that I am simply counting the number of times you speak; I assure you that is not the case).

*Note:* There is a mandatory grading curve in all 1L courses:
- A: less than or equal to 15% of the class
- A-: less than or equal to 40% minus (the % given to A)
- B+: more than 75% minus (the % given A or A-)
- B, B-, C, D and F: % discretionary

And finally, please relax— though 1L grades are important, they are not the meaning of life!

*Access and Accommodations:*

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the
University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

With that, I welcome you to contracts! I hope you will enjoy taking this course as much as I will love teaching it.
Part I. Principles of Promissory Obligation

A. Freedom to Contract; Freedom of Contract
   1. Freedom to Contract
      Kessler, Gilmore, and Kronman (2)
      Hurley v. Eddingfield (3-4)
      Great Atlantic & Pacific Tea Co. (5)
      Runyon v. McCrary and accompanying material (6-27)
   2. Freedom of Contract
      Unger, The Critical Legal Studies Movement (28-33)
      Bailey v. Alabama (34-42)
      M. Weber, Economy and Society (43-44)

B. Grounds for Enforcing Promises
   Introduction
      Cohen, The Basis of Contract (45-46)
      Restatement of Contracts, Second, § 1 and Comment, § 17 (47)
   1. Formality
      Fuller, Consideration and Form (48-50)
      Comment: Formalism and the Seal (51-57)
   2. Bargain/consideration
      Hamer v. Sidway (58-61)
      Restatement of Contracts, Second, §§ 71, 81 (62)
      Fried, Contract As Promise (63-64)
      Posner, Economic Analysis of Law (65-67)
      Williams v. Carwardine (68)
      Fischer v. Union Trust Co. (69-70)
      Comment: “Nominal” Consideration (71-74)
   3. Benefit conferred
      Mills v. Wyman (75-77)
      Webb v. McGowin (78-82)
      Restatement of Contracts, Second, § 86 and Comment a (83-84)
      Note (84-85)
      Edson v. Poppe (86)
      Muir v. Kane (86)
      In re Schoenkerman’s Estate (87)
      In re Crisan Estate (88-91)
4. Reliance/promissory estoppel
   Kirksey v. Kirksey (92-93)
   Ricketts v. Scothorn (94)
   Question (94)
   East Providence Credit Union v. Geremia (95-99)
   Question (99)
   Goodman v. Dicker (100-101)
   Feinberg v. Pfeiffer Co. (102-110)
   Restatement of Contracts, Second, § 90(1) (111)
   D’Ulisse-Cupo v. Board of Notre Dame High School (112)
   Question (112)
   Atiyah, The Rise and Fall of Freedom of Contract (113-117)
   Hillman, Questioning the “New Consensus” on Promissory Estoppel (118-131)

C. Fairness and Other Public Policy Limits on Enforcing Promises
   1. “Inadequate” consideration; Unconscionability
      Batsakis v. Demotsis and accompanying note (132-136)
      Embola v. Tuppela (137)
      American Home Improvement, Inc. v. MacIver (138-141)
      U.C.C. § 2-302 and first paragraph of Comment 1 (142)
      Restatement of Contracts, Second, § 208 and Comment (143-144)
      Dawson, Unconscionable Coercion (145)
      Waters v. Min Ltd. (146-149)
      Williams v. Walker-Thomas Furniture Co. (150-151)
      Shapiro, Courts, Legislatures, and Paternalism (152-154)
      Sandel, Liberalism and the Limits of Justice (155-157)
      Schwartz, A Reexamination of Nonsubstantive Unconscionability (158-172)

   2. “Illusory” promises and related fairness issues
      Wickham & Burton Coal Co. v. Farmers’ Lumber Co. (173-176)
      Gurfein v. Werbellovsky (177)
      Restatement of Contracts, Second, § 77 and Comment (178-179)
      Wood v. Lucy, Lady Duff-Gordon (180-181)
      Note (181-183)
      U.C.C. §§ 1-304; 2-306(2), & Comment 5 (184)
      Restatement of Contracts, Second, § 205 and Comment (185)
      Omni Group, Inc. v. Seattle-First Nat’l Bank (186-190)
      Corenswet, Inc. v. Amana Refrigeration, Inc. (191-194)
      Smith v. Price’s Creameries (195-199)
      Gianni Sport Ltd. v. Gantos, Inc. (200-202)
      Questions (202)
      Kessler, Gilmore, and Kronman, Contracts: Cases and Materials (203-217)

   3. Other statutory/public policy considerations
      Sharma v. USC (218-223)
Part II. Remedies for Breach of Contract

A. Monetary Damages

Introduction
Introductory Note (2-4)

1. The basic measure: expectation damages
   Hawkins v. McGee and accompanying note (5-10)
   Sullivan v. O’Connor (11-13)
   Comment: Controls over Jury Verdicts (14-17)
   Groves v. John Wunder Co. and accompanying note (18-28)
   Restatement of Contracts, Second, § 347 and Comment (29-30)
   Restatement of Contracts, Second, § 348 and Comment (31-32)
   Peavyhouse v. Garland Coal & Mining Co. (33-34)
   Question (34)
   Laurin v. DeCarolis Construction Co. (35-36)
   Comment: Damages As Punishment for Contract Breach (37-40)
   Louise Caroline Nursing Home, Inc. v. Dix Construction Corp. (41-43)

2. Rationales for the expectation measure (and their limitations)
   Why Not Reliance? (44)
   Sharp, Promissory Liability (45)
   Dawson, Restitution or (Expectation) Damages? (46)
   Restatement of Contracts, Second, Reporter’s Note to Ch. 16 (47-48)
   Posner, Economic Analysis of Law (49)
   Holmes, The Path of the Law (50-52)
   Friedmann, The Efficient Breach Fallacy (53-58)
   Craswell, Contract Remedies, Renegotiation, and Efficient Breach (59-62)
   Dworkin, Is Wealth a Value? (63-70)
   Posner, Economic Analysis of Law (71-72)

3. Limitations on recovery of expectation damages
   a. Avoidable damages
      Clark v. Marsiglia (73-74)
      Leingang v. City of Mandan Weed Board (75)
      Parker v. Twentieth Century-Fox Film Corp. (76-83)
      Mitigation Problem (84)
      Restatement of Contracts, Second, § 350 and Comment (85-87)
      U.C.C. §§ 2-703; 2-706(1); 2-711; 2-712 (88-89)
b. **Foreseeability/Consequential Damages**  
*Hadley v. Baxendale* (90-93)  
*Kerr Steamship Co. v. Radio Corp. of America* (94)  
*Lamkins v. International Harvester Co.* (95)  
*Victoria Laundry (Windsor) Ltd. v. Newman Industries, Ltd.* (96-97)  
Note: “Liable To Result” (98)  
Note: *Foreseeability Today* (99-101)  
U.C.C. § 2-715 and Official Comment 1, 2 (102)  
Restatement of Contracts, Second, § 351, Comment (103-104)  
*Valentine v. General American Credit, Inc.* (105-107)  
Restatement of Contracts, Second, § 353 and Comment (108)

c. **Uncertain damages**  
*Fera v. Village Plaza, Inc.* (113)  
Restatement of Contracts, Second, § 352 and Comment (114)

4. **Alternative interests: Reliance and Restitution**
   a. **Reliance damages in lieu of expectation damages**  
   Restatement of Contracts, Second, § 349 and Comment (121)  
   *L. Albert & Son v. Armstrong Rubber Co.* (122)
   
   b. **Damages in promissory estoppel cases**  
   Comment: *Promissory Estoppel Damages* (123-125)  
   Review Restatement of Contracts, Second, § 90 & Comment d (126)  
   *Hillman, Questioning the “New Consensus” on Promissory Estoppel* (127-132)
   
   c. **Restitution as a remedy for breach of contract**  
   *United States v. Algernon Blair, Inc.* (133-135)  
   Problem (136)  
   *Oliver v. Campbell* (137)  
   Note: *Discontinuity at Full Performance* (138-139)  
   Restatement of Contracts, Second, § 373 and Comment (140-141)

5. **Contractual provisions setting damages (“Liquidated damages”)**  
*City of Rye v. Public Service Mutual Insurance Co.* (142-144)  
*Banta v. Stamford Motor Co.* (145)  
*Muldoon v. Lynch* (146)  
Question (146)  
Restatement of Contracts, Second, § 356(1) and Comment (147-148)  
U.C.C. § 2-718(1) and Official Comment 1 (149)  
*Wilt v. Waterfield* (150)  
Comment: *The Penalty Rule and “Efficiency”* (151-152)
B. Specific Performance
Van Wagner Advertising Corp. v. S&M Enterprises (153-158)
Curtice Brothers Co. v. Catts (159-160)
Restatement of Contracts, Second, § 360 (161)
U.C.C. § 2-716(1) and Official Comment 1, 2 (162)
Note (163)
American Broadcasting Co. v. Wolf (164-173)
Posner, Economic Analysis of Law (174)
Schwartz, The Case for Specific Performance (175-176)

C. Restitution as a remedy for the materially breaching party
Britton v. Turner (177-181)
Note (182)
Thach v. Durham (183)
U.C.C. § 2-718(2) and Official Comment 2 (184)
Reynolds v. Armstead (185)
Part III. Assent

A. The Making of Agreements

Introduction

Introductory Note (2-3)

1. Objective versus subjective theories of contract
   Embry v. Hargadine-McKittrick Dry Goods Co. (4-7)
   Question (8)
   Hotchkiss v. National City Bank of New York (9)

2. Is there an “offer”: Intention to be bound (or not)
   Keller v. Holderman (10)
   Moulton v. Kershaw (11-13)
   Sharp, Promissory Liability (14)
   Problem (15)
   Problem (16)

3. Indefiniteness
   Joseph Martin, Jr. Delicatessen v. Schumacher (17-20)
   Question (20)
   Note (21)
   Restatement of Contracts, Second, § 33 and Comment b (22)
   U.C.C. § 2-305(1), (4) and Official Comment 1, 2, 4, 6 (23-24)
   Southwest Eng’g Co. v. Martin Tractor Co. (25-26)
   U.C.C. § 2-204 and Official Comment (27)
   Question (28)

4. Misunderstandings
   Raffles v. Wichelhaus (29-30)
   Questions (30)
   Flower City Painting Contractors v. Gumina Constr. Co. (31-32)
   Problem (1) (33)
   Restatement of Contracts, Second, § 20 (34-35)

5. Termination of offers
   a. In general
      Restatement of Contracts, Second, § 36 (36)
   b. Lapse of time
      Textron, Inc. v. Froelich (37)
   c. Death or incapacity of offeror or offeree
      Davis v. Jacoby (38-44)
      Question (44)
      Note (Restatement of Contracts, Second, § 32) (45)
d. **Revocation**
   
   *Dickinson v. Dodds* (46-48)
   Restatement of Contracts, Second, § 25 and Comment (49)
   *Petterson v. Pattberg* (50-54)
   *Wormser, The True Conception of Unilateral Contracts* (55-56)
   Comment: *The Unilateral Contract* (57-58)
   Restatement of Contracts, Second, § 45 and Comment (59)
   *Brackenbury v. Hodgkin* (60-62)
   Question (62)
   
   Note: *Doubt as to the Form of Acceptance* (Restatement of Contracts, Second § 62) (63-64)
   Review U.C.C. § 2-204(1)-(2) (65)
   U.C.C. § 2-206(1) and Official Comment 1, 3 (65)
   *James Baird Co. v. Gimbel Bros., Inc.* (66-69)
   *Drennan v. Star Paving Co.* (70-74)
   *E.A. Coronis Assoc. M. Gordon Constr. Co.* (75)
   Restatement of Contracts, Second, § 87 and Comment (76)
   Question (77)

6. **Valid means of acceptance**
   
   a. **General concepts**
      
      *Livingstone v. Evans* (78-79)
      Questions (79-80)
      Comment: *The “Deviant Acceptance” at Common Law* (81-83)
   
   b. **The “battle of the forms”**
      
      *Contract Formation Through the Exchange of Printed Forms* (84-86)
      U.C.C. § 2-207 and Official Comment (87-89)
      *Idaho Power Co. v. Westinghouse Electric Corp.* (90-94)
      Comment: *The Qualified or Conditional Acceptance* (95-98)
   
   c. **The mailbox rule**
      
      Restatement of Contracts, Second, § 63 and Comment (99)
      Problem (100)
   
   d. **Silence as acceptance**
      
      *Day v. Caton* (101-103)
      Restatement of Contracts, Second, § 69(1) (104)
      *Hobbs v. Massasoit Whip Co.* (105-106)
      Comment: *The Privilege of Silence* (107-110)

B. **Written Contracts, the Statute of Frauds and the Parol Evidence Rule**

   **Introduction**
   
   Introductory Note (111)
   The Statute of Frauds (112-122)
   U.C.C. § 2-201 and Official Comment (123-126)
1. **Parol Evidence Rule; Integration and additional or inconsistent terms**  
   *Mitchill v. Lath* (127-132)  
   Note: *Believability and “Naturalness”* (133-134)  
   *Hatley v. Stafford* (135-141)  
   Restatement of Contracts, Second, § 209, § 213(1) and Comment, § 214, § 216 and Comment (142-144)

2. **Ambiguity**  
   Interpretation of Written Agreements (145-147)  
   *Bethlehem Steel Co. v. Turner Constr. Co.* (148-149)  
   *Berg v. Hudesman* (150-159)  
   U.C.C. § 2-202 and Official Comment (166-167)  
   Note (168)  
   Restatement of Contracts, Second, § 212 and Comment (169)

C. **Assent to Standardized Forms**  
   Introductory Note (170-172)  
   *Mundy v. Lumberman’s Mut. Cas. Co.* (173-175)  
   Comment: *Form “Contracts”* (176-179)  
   Gilmore, *Logic and Experience* (180-181)  
   U.C.C. §§ 2-314, 2-315, 2-316(2), (3) (182-183)  
   *Richards v. Richards* (184-189)  
   Note (189-190)  
   *Broemmer v. Abortion Services of Phoenix* (191-198)  
   *Hill v. Gateway 2000, Inc.* (199-203)  
   Restatement of Contracts, Second, § 209(1) (204)  
   Restatement of Contracts, Second, § 211 and Comment (204-05)  
   Comment: *Section 211 and “Reasonable Expectations”* (206-10)
Part IV. Policing the Bargain

A. Duress in Formation of Contracts

Farnsworth and Young, Contracts: Cases and Materials (2-4)
Duress Hypotheticals (5)

B. Revisions of Contractual Duty & Duress

Introductory Note (6)
Austin Instrument Co. v. Loral Corp. (7-11)
Wolf v. Marlton Corp. (12)
Alaska Packers’ Ass’n v. Domenico (13-17)
Schwartzreich v. Bauman-Basch, Inc. (18)
Questions (18-19)
Goebel v. Linn (20)
Brian Constr. & Dev. Co. v. Brighenti (21-25)
Note: Things “Not Anticipated” (26-28)
U.C.C. § 2-209(1) and Official Comment 1, 2 (29)
Fried v. Fisher (30-33)

C. Mistake and Nondisclosure

1. Mistake

a. Mutual mistake
Sherwood v. Walker (34-39)
Questions (40)
Note: Reformulating Sherwood (41-42)
Restatement of Contracts, Second, § 152 and Comment (43)
Restatement of Contracts, Second, § 154 and Comment (44-45)

b. Unilateral mistake
Osberg v. City of the Dalles (46-52)
Elsinore Union Elementary School Dist. v. Kastorff (53-58)
Restatement of Contracts, Second, § 153 (59)
Comment: Information and Mistake (60-61)

2. The duty to disclose information
Reed v. King (62-63)
Eytan v. Bach (64)
Note: Nondisclosure and Concealment (65-67)
Restatement of Contracts, Second, § 161(b) & Comment (68-69)
Part V. Performance and Nonperformance

A. Justifications for Nonperformance
   1. Failure of Conditions
      
      *Kingston v. Preston* (2-3)
      *Williston, Contracts* (4)
      Restatement of Contracts, Second, § 234 and Comment, § 238 (5)
      *Conley v. Pitney Bowes* (6-9)
      *Stewart v. Newbury* (10-13)
      Question (13)
      U.C.C. § 2-307 and Official Comment (14)

   2. Impossibility and Impracticability
      a. Development of the doctrine
         *Taylor v. Caldwell* (15-18)
         *Harrison v. Conlan* (19)
         *Garman* (20)
      b. Modern approach
         U.C.C. § 2-615 and Official Comment (25)
         *Mishara Constr. Co. v. Transit-Mixed Concrete Corp.* (26)
         *Unger, Law in Modern Society* (27-31)
         *Speidel, The New Spirit of Contract* (32-40)

   3. Frustration of purpose
      *Krell v. Henry* (41-45)
      Restatement of Contracts, Second, § 265 (46)
      *Posner & Rosenfield, Impossibility and Related Doctrines* (47-51)
      *Kull, Mistake, Frustration, and the Windfall Principle* (52-55)

B. Unjustified Nonperformance & the Problem of Forfeiture
   1. The Perfect-Tender Rule & the Doctrine of Substantial Performance
      *Oshinsky v. Lorraine Mfg. Co.* (56-57)
      *Ramirez v. Autosport* (58)
      U.C.C. § 2-601, 602(1), 605(1), 703 (59-60)
      *Beck & Pauli Lithographing Co. v. Colorado Milling & Elevator Co.* (61)
      *Bartus v. Riccardi* (62-64)
      *Worldwide RV Sales & Service v. Brooks* (65)
      U.C.C. § 2-508 and Official Comment 1-3 (66-67)
      *Plante v. Jacobs* (68-71)
      *Jacob & Youngs v. Kent* and accompanying note (72-73)
# Contract Law Reading Assignment List*
(Prof. Calandrillo, Fall 2015 to Winter 2016)

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<td>Monday</td>
<td>9/28</td>
<td>Part I.A.1</td>
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<td>Wednesday</td>
<td>9/30</td>
<td>Part I.A.2, Part I.B. Introduction, and Part I.B.1 through <em>Fuller</em></td>
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<td>Monday</td>
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<td>Finish Part I.B.1 and Part I.B.2</td>
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<td>Part I.B.3</td>
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<td>Part I.B.4 through RSC, 2nd § 90(1)</td>
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<td>Finish Part I.B.4 and Part I.C.1 through <em>Batsakis</em></td>
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<td>Continue Part I.C.1 through Shapiro</td>
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<td>Finish Part I.C.1, Part I.C.2 through <em>Omni</em></td>
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<td>Part II.A. Introduction, Part II.A.1 through RSC, 2nd § 348</td>
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<td>Finish II.A.1, Part II.A.2 through RSC, 2nd, Reporter’s Note</td>
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<td>Finish Part II.A.2</td>
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<td>Part II.A.3.a, Part II.A.3.b through <em>Hadley</em></td>
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<td>Finish Part II.A.3.b</td>
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<td>Part II.A.3.c, Part II.A.4.a, Part II.A.4.b</td>
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<td>Part II.A.4.c, Part II.A.5 through <em>Question after Muldoon</em></td>
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<td>Finish Part II.A.5, Part II.B through <em>Note on II-163</em></td>
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<td>Wednesday</td>
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<td>Finish Part II.B, Part II.C</td>
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<td>Wednesday</td>
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<td>Midterm Review Session</td>
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**Winter 2016:**

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<td>Part III.A Intro, III.A.1, III.A.2, III.A.3 through <em>Martin Deli</em></td>
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<td>Part III.A.5.c, Part III.A.5.d through U.C.C. § 2-206(1)</td>
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<td>Part III.B Introduction, III.B.1</td>
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<td>Wednesday</td>
<td>1/27</td>
<td>Part III.B.2, III.C through <em>Mundy</em></td>
</tr>
<tr>
<td>Monday</td>
<td>2/1</td>
<td>Finish Part III.C</td>
</tr>
<tr>
<td>Wednesday</td>
<td>2/3</td>
<td>Part IV.A, IV.B through <em>Questions on pp. 18-19</em></td>
</tr>
<tr>
<td>Monday</td>
<td>2/8</td>
<td>Finish Part IV.B, IV.C.1.a</td>
</tr>
<tr>
<td>Wednesday</td>
<td>2/10</td>
<td>Part IV.C.1.b, IV.C.2</td>
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<tr>
<td>Monday</td>
<td>2/15</td>
<td>NO CLASS (Presidents Day)</td>
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<tr>
<td>Wednesday</td>
<td>2/17</td>
<td>Part V.A.1, V.A.2.a</td>
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<tr>
<td>Monday</td>
<td>2/22</td>
<td>Part V.A.2.b, V.A.3</td>
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<tr>
<td>Wednesday</td>
<td>2/24</td>
<td>Part V.B.1</td>
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<tr>
<td>Monday</td>
<td>2/29</td>
<td>Final Exam Review Session</td>
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<tr>
<td>Wednesday</td>
<td>3/2</td>
<td>Make-up Session if necessary</td>
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