

Contracts (Winter 2019, 7 credits)

Prof. Steve Calandrillo

Class Times: M-Th 10:30-12:20
Office Hours (Room 419): Tu,Th 12:30-1:30
(please shoot me an email first at stevecal@uw.edu)

Course Description & Learning Outcomes:

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
- 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-hour, multiple choice, closed-book midterm exam halfway through the quarter (counts 10% of your grade), and a 2-hour, closed-book, multiple choice final exam at the conclusion of the course (counts 90% of your grade).

The midterm exam is aimed at providing formative & summative assessment/feedback on an exam without draconian consequences. I note that the Multistate Bar Exam (MBE) is entirely multiple choice/closed book, yet there are no law school courses at UW that allow students to gain experience taking this type of test. The stakes are far too high on the MBE for students to have never experienced that kind of test in law school.

Drafting Practice Multiple Choice Questions:

The Multistate Bar Exam that you'll take upon graduation contains 200 multiple choice questions on your 1L subjects, yet virtually no 1L course at UW tests students using multiple choice questions. To gain practice in multiple choice testing, I ask students to draft multiple choice questions for each section of our Syllabus (two questions each for Parts I, II and III, and one question each for Parts IV & V), along with model answer explanations, and upload those on to our Canvas webpage. The questions/answers for each section are due on the day we finish each of the respective sections of the Syllabus. I have posted some sample questions to give students a sense of what they might look like. I won't assign a grade for this, but reserve the right to factor in your effort to your class participation.

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 be determined by your exam scores, 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!

Disability Related Needs:

To request academic accommodations due to a disability, please contact Disability Resources for Students, 448 Schmitz Hall, 206-543-8924 (V/TTY). If you have a letter from Disability Resources for Students, please present the letter to me so that we can discuss the accommodations you might need in this class.

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

Contracts (Winter 2019, 7 credits)
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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)

Hillman, *Questioning the “New Consensus” on Promissory Estoppel* (112-125)

C. Fairness and Other Public Policy Limits on Enforcing Promises

1. “Inadequate” consideration; Unconscionability

Batsakis v. Demotsis and accompanying note (126-130)

Embola v. Tuppela (131)

American Home Improvement, Inc. v. MacIver (132-135)

U.C.C. § 2-302 and first paragraph of Comment 1 (136)

Restatement of Contracts, Second, § 208 and Comment (137-138)

Dawson, *Unconscionable Coercion* (139)

Waters v. Min Ltd. (140-143)

Williams v. Walker-Thomas Furniture Co. (144-145)

Shapiro, Courts, *Legislatures, and Paternalism* (146-148)

Sandel, *Liberalism and the Limits of Justice* (149-151)

Schwartz, *A Reexamination of Nonsubstantive Unconscionability* (152-166)

2. “Illusory” promises and related fairness issues

Wickham & Burton Coal Co. v. Farmers’ Lumber Co. (167-170)

Gurfein v. Werbellovsky (171)

Restatement of Contracts, Second, § 77 and Comment (172-173)

Wood v. Lucy, Lady Duff-Gordon (174-175)

Note (175-177)

U.C.C. §§ 1-304; 2-306(2), & Comment 5 (178)

Restatement of Contracts, Second, § 205 and Comment (179)

Omni Group, Inc. v. Seattle-First Nat’l Bank (180-184)

Corenswet, Inc. v. Amana Refrigeration, Inc. (185-188)

Smith v. Price’s Creameries (189-193)

Gianni Sport Ltd. v. Gantos, Inc. (194-196)

Questions (196)

Kessler, Gilmore, and Kronman, *Contracts: Cases and Materials* (197-211)

3. Other statutory/public policy considerations

Sharma v. USC (212-217)

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)

Peevyhouse v. Garland Coal & Mining Co. (33-34)

Question (34)

Laurin v. DeCarolus 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: “*Liabile 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**
Freund v. Washington Square Press, Inc. (109-112)
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**
Security Stove & Mfg. Co. v. American Ry. Express Co. (115-120)
 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)

[Midterm Exam here]

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)

Brackenburg 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)

Federal Dep. Ins. Corp. v. W.R. Grace & Co. (160)

Webb v. Nat'l Union Fire Insurance (161-165)

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 (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

American Trading & Prod. Corp. v. Shell Int'l Marine, Ltd. (21-24)

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, Winter 2019, 7 credits)

| <u>Class</u> | <u>Day</u> | <u>Date</u> | <u>Assignment to read before that class session</u> |
|--|------------|-------------|---|
| 1. | Monday | 1/7 | Part I.A.1 |
| 2. | Tuesday | 1/8 | Part I.A.2, Part I.B. Introduction, and Part I.B.1 through <i>Fuller</i> |
| 3. | Wednesday | 1/9 | Finish Part I.B.1 and Part I.B.2 |
| 4. | Thursday | 1/10 | Part I.B.3 |
| 5. | Monday | 1/14 | Part I.B.4 |
| 6. | Tuesday | 1/15 | Part I.C.1 through Shapiro |
| 7. | Wednesday | 1/16 | Finish Part I.C.1, Part I.C.2 through <i>Omni</i> |
| 8. | Thursday | 1/17 | Finish Part I.C.2, Part I.C.3 (submit 2 multiple choice Q's tonight) |
| No Class Monday 1/21 – MLKJ Day | | | |
| 9. | Tuesday | 1/22 | Part II.A. Introduction, Part II.A.1 through RSC, 2 nd § 348 |
| 10. | Wednesday | 1/23 | Finish II.A.1, Part II.A.2 through RSC, 2 nd , Reporter's Note |
| 11. | Thursday | 1/24 | Finish Part II.A.2 |
| 12. | Monday | 1/28 | Part II.A.3.a, Part II.A.3.b through <i>Hadley</i> |
| 13. | Tuesday | 1/29 | Finish Part II.A.3.b |
| 14. | Wednesday | 1/30 | Part II.A.3.c, Part II.A.4.a, Part II.A.4.b |
| 15. | Thursday | 1/31 | Part II.A.4.c, Part II.A.5 through <i>Question after Muldoon</i> |
| 16. | Monday | 2/4 | Finish Part II.A.5, Part II.B through <i>Note on II-163</i> |
| 17. | Tuesday | 2/5 | Finish Part II.B, Part II.C (submit 2 multiple choice questions) |

Midterm: Thursday 2/7 (no class the day before; use that time to study)

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| 18. | Monday | 2/11 | Part III.A Intro, III.A.1, III.A.2, III.A.3 through <i>Martin Deli</i> ; (review midterm exam during lunch) |
| 19. | Tuesday | 2/12 | Finish Part III.A.3, Part III.A.4, Part III.A.5.a, Part III.A.5.b |
| 20. | Wednesday | 2/13 | Part III.A.5.c, Part III.A.5.d through U.C.C. § 2-206(1) |
| 21. | Thursday | 2/14 | Finish Part III.A.5.d, III.A.6.a, III.A.6.b through U.C.C. § 2-207 |
| No Class Monday 2/18 (President's Day) | | | |
| 22. | Tuesday | 2/19 | Finish Part III.A.6.b, III.A.6.c, III.A.6.d |
| 23. | Wednesday | 2/20 | Part III.B Introduction, III.B.1 |
| 24. | Thursday | 2/21 | Part III.B.2, III.C through <i>Mundy</i> |
| 25. | Monday | 2/25 | Finish Part III.C (submit 2 multiple choice questions) |
| 26. | Tuesday | 2/26 | Part IV.A, IV.B through <i>Questions on pp. 18-19</i> |
| 27. | Wednesday | 2/27 | Finish Part IV.B, IV.C.1.a |
| 28. | Thursday | 2/28 | Part IV.C.1.b, IV.C.2 (submit 1 multiple choice question) |
| 29. | Monday | 3/4 | Part V.A.1, V.A.2.a |
| 30. | Tuesday | 3/5 | Part V.A.2.b, V.A.3 |
| 31. | Wednesday | 3/6 | Part V.B.1 (submit 1 multiple choice question) |
| [no class from 3/7-13; use that time to study] | | | |
| 32. | Thursday | 3/14 | Final Exam Review Session |

*** Fine Print Legal Disclaimer: Assignments for each date are estimates only, and subject to change on short notice.**