

# WESTERN STATE COLLEGE OF LAW

## Contracts II -- Spring 2014

Professor Lori A. Roberts

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Office Hours: T/F 9-12pm (by appointment only; email me at least 24-hours in advance for an appointment.)

- *Before the first day of class, you must enroll in the Lexis Course Web Page titled "Contracts II – Spring 2014 – Roberts." I will use this web page to post additional material and to make class announcements throughout the semester. Please sign-up on the web page for automatic email alerts or check the web page regularly because you are responsible for all material and announcements posted on this web page.*

### **Course Objectives**

Contracts II is the continuation of the course begun as Contracts I in Fall 2013. It continues to study the substantive law of Contracts and to increase students' ability to analyze individual cases and to synthesize case materials.

By the end of the course, given a contract between two or more parties and the accompanying factual context, students should be able to identify the contract law issues raised by the contract and the facts, be able to develop appropriate legal arguments on both sides of the issues raised, and predict how a court would evaluate the arguments and resolve the dispute. The substantive contract law topics covered in this course include:

- The Parol Evidence Rule
- Contract Interpretation (identifying and interpreting ambiguities; filling contract gaps)
- Express Conditions
- Constructive Conditions
- Excuse of Condition and Discharge
- Anticipatory Repudiation and Failure of Assurances
- Impracticability, Impossibility and Frustration of Purpose
- Damages
- Third Party Beneficiaries
- Assignments and Delegations

### 1. **Required Texts (bring to each class)**

- E. Allan Farnsworth, William F. Young, Carol Sanger, Neil B. Cohen & Richard R. Brooks, Cases & Materials on Contracts (7th ed. Found. Press 2008).

- E. Allan Farnsworth, William Young & Carol Sanger, Selections for Contracts 2013 (“Selections”).

2. **Recommended Texts**

- Marvin A. Chirba, Concepts and Case Analysis in the Law of Contracts, Foundation Press (most recent ed.)
- Joseph M. Perillo, Calamari and Perillo on Contracts, 6<sup>th</sup> Ed. West Publishing (2009)

3. **Class Attendance and Participation**

- Attendance is mandatory. You are allowed to miss a maximum of two classes. You will be required to sign-in at the beginning of each day of class. If you arrive late or leave early, you may be marked absent for the entire class. If you miss more than two (4) classes during the semester, you may be dropped from the class. If you plan to miss a class, you should make arrangements with a classmate to get the notes.
- You must be prepared to participate in each class. There is a significant difference between being unprepared and being unable to answer a particular question; you will never be down-graded for venturing an incorrect answer or asking a relevant question. You may have your final grade increased by up to .2 to reflect consistent and outstanding contributions to class discussions.
- If you are unprepared for class, please notify me in writing before the start of class (either by email or by giving me a note with your name on it before class.) This does not excuse your lack of preparation in any manner, but it will serve as a reminder to me to not call on you during that class period so that the other students’ learning experience is not disrupted by spending class time on students who are unprepared. I reserve the right to decrease the final grade of any student by up to .2 if the student is consistently unprepared in class, fails to participate in good faith in any in-class group activities, fails to complete any writing assignments in good faith, or otherwise fails to conduct themselves in a professional manner in class (this includes, but is not limited to, using your computer during class for non-class related activities, checking emails and texts on your phone during class, or otherwise acting in an unprofessional manner in any aspect of the class.)

5. **Promptness**

- Classes will begin promptly at the scheduled time. Please be in your seat for the start of the class. If you are unavoidably late, please enter as quietly as possible and try not to disrupt the class.

7. **Commercial Outlines**

- You may not recite from commercial outlines, briefs, or other commercial study aids. Please do not bring these materials into the classroom; if you do so, they must be closed at all times.

8. **Computer Use**

- You may use a personal computer during class for note taking only. You may not be on the Internet during class for any non-class related activity. If you use your computer for case briefing, please have the document open before we begin discussing the case so as not to waste time bringing it up.

9. **Reading Assignments**

- You should be prepared to discuss the assigned material during each class. You do not need to prepare written responses to any of the exercises that are part of the assigned reading, unless specifically noted on the syllabus. However, please read and think about your response to all of the exercises because we may review these as a class or in small groups during class time.

10. **Examinations, Grades**

- Your final grade in the course will be based upon: (a) A midterm examination, scheduled for February 26<sup>th</sup> (15% of your final grade); and (b) A final examination, tentatively scheduled for May 15<sup>th</sup> from 1:00-4:00pm (85% of your final grade). The midterm and final exams will be closed book, closed notes. As noted above, you may have your final grade increased by up to .2 to reflect consistent and outstanding preparation and contributions in class. I also reserve the right to decrease the final grade of any student by up to .2 if the student is consistently unprepared in class, fails to participate in good faith in any in-class group activities, fails to complete any additional writing assignments in good faith, or otherwise fails to act in a professional in any aspect of the class.

11. **Practice Exams**

- We will spend time in class applying the material that we cover to hypothetical situations and I will also assign additional hypotheticals for you to analyze at home, which will simulate the type of questions that may appear on the Midterm and Final Exam. We will conduct in-class reviews of these hypotheticals. I will also post several Practice Exams on the Lexis Course Web Page, along with outlines of Expected Answers. I encourage you to complete the Practice Essays as part of your preparation for both the Midterm and Final Exams and review the Expected Answers. If, after your own review of the Expected Answer, you have further questions then I will review your written answers during my office hours (only if you have already completed the Practice Essay, have a complete written answer of your own, and have already reviewed the Expected Answer.)

## READING ASSIGNMENTS

### **CHAPTER 5: DETERMINING THE PARTIES' OBLIGATIONS UNDER THE CONTRACT: ASCERTAINING, INTERPRETING, AND SUPPLEMENTING THE AGREEMENT**

**Week 1      January 13 & January 15**

**The Parol Evidence Rule; The Use of Extrinsic Evidence of the Parties Intent**

Read: 365-401 (skip *Greenfield*)

**Week 2      January 22 (no class on January 20 due to MLK Day)**

**The Use of Extrinsic Evidence from the Commercial Context; The use of Extrinsic Evidence to Supplement or Qualify The Agreement: Course of Dealing, Useage of Trade, and Course of Performance**

Read: 401-421

**Week 3      January 27 & January 29**

**Objective Interpretation and Its Limits; Supplementing the Agreement with Terms Supplied By Law: Gap Fillers; Performing in Good Faith (*extra time??*)**

Read: 421-433; 451-452; 522-526

### **CHAPTER 8: PERFORMANCE AND BREACH**

**Week 4      February 3 & February 5**

**Conditions**

Read: 691-716

**Week 5      February 10 & February 12**

**Constructive Conditions of Exchange; Mitigating Doctrines**

Read: 716-745

**Week 6      February 18 (*legislative day – Monday classes meet today instead of Tuesday class*) & February 19**

**Suspending Performance and Terminating the Contract; Prospective Nonperformance**

Read: 745-765; 765-806 (skip *Kanvos, Cosden Oil* and *Norcon*)

**Week 7      February 24 & February 26**

**Catch-Up; Mid-term Review; Midterm Examination on February 26.**

## **CHAPTER 9: BASIC ASSUMPTIONS : MISTAKE, IMPRACTICABILITY AND FRUSTRATION**

**Week 8      March 3 & March 5**  
**Mutual Mistake; Impracticability of Performance**  
Read: 807-854 (skip *Selland* and *Eastern Airlines*)

*SPRING BREAK –March 10-14th*

**Week 9      March 17 & March 19**  
**Frustration of Purpose; Half-Measures**  
Read: 854—879 (skip *Northern Indiana Public Services Co.*)

## **CHAPTER 10: THIRD PARTIES: RIGHTS AND RESPONSIBILITIES**

**Week 10      March 24 & March 26**  
**Third Party Beneficiaries; Delegation of Duties**  
Read: 880-924 (skip *Grigerik*)

**Week 11      March 31 & April 2**  
**Assignments of Rights**  
Read: 925-958 (skip *Delacy Investments*)

## **CHAPTER 7: REMEDIES FOR BREACH**

**Week 12      April 7 & April 9**  
**Specific Relief; Measuring Expectations**  
Read: 584-629 (skip *Laclede* and *Laredo Hides*)

**Week 13      April 14 & April 16**  
**Limitations on Damages**  
Read: 629-672 (skip *Tongish*)

**Week 14      April 21 & April 23**  
**Liquidated Damages and Penalties**  
Read: 672- 690

**Week 15 April 28**  
**Review**