

WESTERN STATE UNIVERSITY COLLEGE OF LAW
SYLLABUS & READING ASSIGNMENTS – VERSION 1.0 (8/17/13)

COURSE: **CONTRACTS I**
SECTIONS: **111 –B & C**
SEMESTER: **FALL 2016**
TIME: **M 6:15 – 8:15 P.M. (Section C)**
 T 2:00p.m. – 4:00 p.m. (Section B)
PROFESSOR: **MOHR**

- I. **REQUIRED BOOKS.** The required books must be brought to all classes. You are expected to have read any statute (UCC section) or Restatement sections in the Selections to which the cases in the Casebook or supplement refer.

E. Allan Farnsworth, William F. Young, Carol Sanger, Neil B. Cohen & Richard R. Brooks, Cases & Materials on Contracts (8th ed. Found. Press 2013) (“Casebook”).
E. Allan Farnsworth, William Young & Carol Sanger, Selections for Contracts 2015 (“Selections”).
Kevin Mohr, Fall 2016 Supplemental Case Materials (2016) (“Supp.”) (Available Week #1).

II. **OPTIONAL TEXTS**

Marvin A. Chirelstein, Concepts and Case Analysis in Contracts (7th ed. Found. Press 2013) (*Highly* recommended).
E. Allan Farnsworth, Contracts (4th ed. Aspen 2004) (Hornbook); or
Joseph M. Perillo, Calamari & Perillo on Contracts (7th ed. West 2013) (Hornbook).

Chirelstein's text is a relatively short and excellent overview of many topics, including conditions and breach, that are central to this course. I recommend that every student purchase a copy if you have not already done so. Both the Farnsworth and Calamari & Perillo *texts* are “Hornbooks,” one-volume treatises on contract law. They go into considerably more depth than Chirelstein, can be dense at times, and probably contain more information than you need at this point in your legal career. Nevertheless, some students have found them an excellent supplement to certain areas of the course. Copies of both should be on reserve at the Library.

- III. **COURSE OBJECTIVES & GOALS.** Contracts I, the first semester of your course in the law of contracts, is a one semester, two-unit course. This course, similar to the second-semester, three-unit Contracts II, has three main objectives or goals: *First*, to help students develop legal *analytical skills*. In particular, students should hone their ability to identify relevant facts and legal issues, to carefully analyze and utilize cases, rules of law and public policy, and to reach reasonable conclusions based on that analysis. *Second*, to provide students an opportunity to *master rules* regarding contract formation and remedies for breach of contract, and the rationales that support these rules. *Finally*, the course is intended to develop each student's ability to *express* his or her *understanding* of legal issues, both orally and in writing. You should not consider these three goals as independent of one another; rather, they are inextricably intertwined. As you improve your analytical skills, your ability to understand the substantive law – contracts rules & standards – will increase substantially. Without some understanding of substantive contract law and an ability to identify relevant facts and law, you will be unable to express your ideas adequately on legal issues. Moreover, until you try to express your understanding of the law *in your own words*, you cannot be sure you have properly analyzed the law and facts and fully understand the concepts upon which you base your conclusions. *See also IV. Classroom Participation, below.*

- IV. **CLASSROOM PARTICIPATION.** Legal education is a cooperative venture. You must be prepared to participate in each class. You may have your final grade increased by up to two (2) grade points (e.g., from 2.5 to 2.7) to reflect consistent and outstanding contributions to class

discussions. Please note two things, however. **First**, providing an answer to a question I ask or volunteering in class do not by themselves amount to a “consistent and outstanding” contribution. **Second**, there is a difference between being unprepared and being unable to answer a particular question. You will *not* be down-graded for venturing an incorrect answer. One of the best ways to learn how to think and analyze like a lawyer is to take chances, put your ego on the line, and venture a reasoned view of how a matter should be resolved. **Nevertheless, if you “pass” or if you are demonstrably unprepared when I call on you, you will lose 0.1 grade points (out of 4.0) on your final grade.**¹ See V. *Class Attendance, below*. Moreover, when you “pass” or are demonstrably unprepared, I will call on you in each succeeding class until you satisfactorily demonstrate you are prepared.

MINIMAL PREPARATION FOR CLASS: ISSUE STATEMENTS. To be minimally prepared, I expect that for every assigned case, every student will have **typed** an issue statement (**double-spaced, minimum 12-point font – ARIAL font only**) that incorporates both facts and law. See *Case Briefs: How to Brief A Case (Mohr), Section II.D.*, on writing issue statements. Occasionally during the semester, I will collect these issue statements without warning. **Failure to submit a satisfactory issue statement will result in your being downgraded 0.1 grade points (out of 4.0) on your final grade.** Finally, bring **HARD COPIES** of your issue statements to class; merely having them on your computer will result in you being given the **same 0.1 grade point reduction**.

If I ask for an issue statement, submit it with your **NAME – NOT** your exam number.

- V. **CLASS ATTENDANCE.** Attendance and participation are required for all classes.² Being on time for class is a simple courtesy to your fellow students and your professor. Coming late to class counts as **a class absence**.³ Leaving early or leaving for a prolonged period of time during class without prior permission, also counts as **a class absence**. Students may have **no more than two (2) class absences** (out of the 14 class periods we meet.) Students who miss more than the permitted number of classes will be administratively dismissed from the course.

You – and you alone – are responsible for keeping track of your attendance; you will not receive a warning that you have reached the allowed number of absences.

- VI. **COMMERCIALY-PREPARED STUDY AIDS.** Commercially-prepared study aids such as course outlines, canned briefs, etc. are not allowed during class. I will confiscate any such materials brought to class.
- VII. **EXAMINATIONS AND GRADING.** Each student will receive a numeric grade for the course. Course grades will be based on several elements: (1) **Class Participation** (your grade *may* be adjusted based on class participation, as described in *IV. Class Participation, above*); (2) **Written Assignments**, announced from time to time (**10%** of final course grade); (3) A **Mid-term Essay Examination**, scheduled during **Week #9 during the regular class period on Monday, October**

¹ See footnote 2, below. Because the schedule and class coverage of reading assignments is relatively fluid, you may be responsible for material we cover during two succeeding class periods. It is *your responsibility* to keep track of how far we have gone each week & be prepared for cases that you may have read a week or even two weeks before. See *XIII. Course Schedule*.

² Each student, however, may be excused for *any* reason from *participating* in an *attended* class *once* during the semester by requesting an excuse from me *prior to* commencement of class that day. If you request an excuse by *e-mail*, you must send the e-mail the *day before* class. Unless I confirm your request *before* class, however, you will *not* be excused. **This “one free pass” does not allow you to take an extra absence.**

³ In addition, you will be the first person I call on. **If you are unprepared, you will also lose 0.1 grade points (out of 4.0) on your final grade.** See “*Minimal Preparation for Class,*” above.

24, 2016 (Section C) and Tuesday, October 25, 2016 (Section B) (20% of final course grade); and (4) A Final Examination, given during the final examination period, on Friday, Dec. 2, 2016. (70% of final course grade) (The number of questions on the Final Exam will be determined at a later date, but the exam will include essay questions and possibly multiple choice questions). **Written assignments will generally be take-home assignments. All exams will be closed-book.** The grading of all essays will focus on your analytical ability. **Practice Examinations:** I will distribute at least two previously-given Mid-term exams *about* one week to 10 days before the Mid-term, and will review one or both at a specially-scheduled class review session. I will also distribute previously-administered final exam essays toward the end of the semester and will review one or both during a review session. See *XIX. Course Schedule*.

VIII. **FORMAT GUIDELINES FOR WRITTEN ASSIGNMENTS.** Unless otherwise instructed, all Written Assignments must:

- Be **typed**
- Be **double-spaced**
- Have **one-inch** margins on all sides
- Have not more than **28 lines** on any page
- Have all pages **paginated** by typing the page number at the **bottom center** of the page (You may place the page number within the margin on the bottom of the page)
- Have the **following typeface: Arial 12-point. No other font or size is acceptable.**
- Have as its only **identifying mark** your **Exam Number** (not your Student Number)
- Have all block quotations **double-spaced**
- Not have any **footnotes**

Failure to adhere to *any* of the foregoing guidelines will result in a grade of "0" for the assignment.

IX. **PENALTY FOR LATE ASSIGNMENTS.** Written assignments are due at the beginning of class. Late assignments will be penalized by deducting one point from the total of 100 points for the course for each day OR part of day the assignment is late. For example, if an assignment is due in class on Monday night, but you do not turn it in until Wednesday morning, I will deduct 2 points from the 100 course points. I will also deduct a point for each weekend day an assignment is late.

All written assignments must be submitted (i) at the beginning of the class period if the class meets on the due date OR (ii) time-stamped and hand-delivered to a faculty assistants on the Second Floor of the School Building between 9:00 a.m. and 6:00 p.m. After 6:00 p.m., you must time-stamp and deposit your assignment in the drop box near the reception desk on the First Floor. You are not permitted to e-mail a graded written assignment so plan accordingly.

X. **OFFICE HOURS.** My scheduled office hours are Tuesdays, from 12:00 to 1:00 p.m. and 4:30 to 6:15 p.m. To make an appointment during these times, write your name in one of the slots in the Appointment Book on the Second Floor. Although you may come in without an appointment during those hours, you should first call one of faculty assistants to confirm I do not have a conflicting appointment.

I am also available to see you during other hours on days that I am on campus. For appointments during non-office hours, you must arrange with me directly. You can leave messages at 714-459-1147. Speak clearly and slowly and leave your name and phone number. You can also reach me by e-mail at kejmohr@netscape.net [*preferred address*] or kmohr@wsulaw.edu. See *Virtual Class, below*.

XI. **VIRTUAL CLASS.** I have set up a Virtual Computer Classroom (a course web page) on Lexis-Nexis. I will post course information on that site, including announcements of assignments, updates to the Syllabus, handouts and practice questions and exams. We will also be able to conduct further class discussion on-line. **Everyone must sign on; it is a course requirement.** I

regularly e-mail students with information relevant to the course; you are responsible for signing up with a valid e-mail address that you check regularly. Each of you will be responsible for signing up for the course and checking the page on a regular basis.

- XII. **RECORDING CLASSES:** If you want to audio-record a class, you must ask for permission *in person in the classroom* before each class. Otherwise, no recording is permitted.

NO VIDEO-RECORDING OR PHOTOGRAPHS ARE PERMITTED DURING ANY CLASS.

- XIII. **CLASSROOM TIME, MAKE-UP CLASSES & SPECIAL CLASS SESSIONS.** Because of some State Bar obligations I have, I may have to cancel a class and reschedule it. If that occurs, I will provide you with sufficient notice of both the cancelled class and rescheduled class session.
- XIV. **PREPARING FOR CLASS.** Please note that the Course Schedule on the following pages is divided into five columns: Week, Dates, Pages, Topic and Main Cases & Notes. The first, second and fourth columns are self-explanatory. The "Pages" (third) column gives you the range of pages within which the specific reading assignments are contained. The last column sets out the minimal reading you must do for each class, including the notes after the main cases that you need to read and consider.

When you see the name of a case underlined, you need to check the Fall 2016 Supplemental Case Materials (Supplement) where I have included the case. You are responsible for reading and briefing the case in the Supplement.

Where a case appears in the casebook in a short version and in the Fall 2016 Supplement in its complete form, you are responsible for reading and briefing the complete version of the case in the Supplement.

I have tried to pare the material to manageable lengths. You should not view this as my discouraging you from reading the other pages not expressly listed in column five.

Again, remember that you are responsible for (i) **preparing a typed issue statement for each case listed by name in column five, and (ii) bringing a hard copy of each issue statement to class.**

- XV. **COMPLIANCE WITH ABA STANDARD 310.** This Course is in compliance with ABA Standard 310 regarding requirements for credit hours earned. See http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_310_guidance_memorandum.authcheckdam.pdf
- XVI. **ARGOSY UNIVERSITY INSTITUTIONAL LEARNING OUTCOMES.**
1. **Analytical Reasoning.** Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems
 2. **Effective Communication.** Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation
 3. **Information Competency.** Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action
 4. **Interpersonal Effectiveness.** Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals
 5. **Personal and Professional Integrity and Ethical Behavior.** Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. **Professional Competence.** Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

XVII. **WESTERN STATE COLLEGE OF LAW – PROGRAMMATIC LEARNING OUTCOMES.**

1. **Doctrinal Knowledge.** Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

2. **Practice Skills.** Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

3. **Legal Analysis.** Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

4. **Legal Research.** Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

5. **Communication.** Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

6. **Advocacy of Legal Argument.** Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

7. **Client Sensitivity and Cultural Competency.** Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on

those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

8. **Legal Ethics.** Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

XVIII. **DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

XIX. **COURSE SCHEDULE.** Please note that class coverage of reading assignments is fluid, i.e., we will not always cover all of the assigned material during the scheduled class periods. Often, we will carry over the assignments to the next week, particularly at the beginning of the semester. It is your responsibility to keep track of how far we have gone in the previous class and make sure you are prepared. You will not be excused from being prepared because you read the case two weeks before and “don’t remember” it.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
1	8/22 8/23	1-4 647-650 8-30; 617-618; 630-634 Handout	CHAP. 1 <u>BASIS FOR ENFORCING PROMISES</u> SEC. 1. ENFORCEABLE PROMISES ⁶ SEC. 2. REMEDYING BREACH ⁷ <u>CASE BRIEFING – INTRODUCTION</u>	INTRODUCTION (1-2) Hawkins v. McGee (2-3); Notes 1-3 (3-4) INTRO & Note (9-10); PURPOSE OF REMEDIES: THREE PROTECTED INTERESTS (14-15); Laredo Hides v. H&H Meat Co. (647-649); Notes 1-3 (649-650); REMEDIES FOR BREACH (617-618); SPECIFIC PERFORMANCE: Laclede Gas v. Amoco Oil Co. (630-634); REMEDIES IN PRACTICE (27-30); Note 1 (30) Handout on “How To Brief A Case” ⁸
2	8/29 8/30	125-140 140-147	CHAP. 2 <u>THE BARGAINING PROCESS</u> SEC. 1. THE NATURE OF ASSENT ⁹ SEC. 2. THE OFFER – INTRODUCTION	INTRO (125-126); Lucy v. Zehmer (126-129); Notes 1-3 (129-130); Specht v. Netscape (131-135) ; Long v. Provide Commerce (Supp. 28); INTENT IN CONTEXT (139); Notes 1&4 (139-140) INTRO (140-141); Owen v. Tunison (142-143); Note (143); PROBLEM (143); Harvey v. Facey (144); Notes 1&2 (144-145); Fairmount Glass Works v. Grunden-Martin (145-147); Notes (147).

⁴ Dates in regular font are for Section C, which meets on Monday night; dates in **bold font** are for **Section B**, which meets Tuesday afternoons.

⁵ All page references are to the Farnsworth Casebook. A reference to “Supp. ____” means the listed case is in the Fall 2016 Case Supplement.

⁶ What societal aims are furthered when the state, through its courts, enforces a promise that a person has made?

⁷ We will return to the issue of remedies for breach at the end of the second semester of this year-long Contracts course.

⁸ The handout, “How To Brief A Case,” has been available to you since early August.

⁹ This section introduces the concept of assent, i.e., whether the parties manifested by words or actions that they voluntarily intended to be bound in a contractual relationship that creates reciprocal contractual duties. Courts usually determine assent by asking whether there was an offer, acceptance and consideration, all of which are covered during weeks 2-6.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
3	9/12 ¹⁰ 9/36	148-156 & Supp.	SEC. 2. THE OFFER – CON’T	ADVERTISEMENTS AS OFFERS: Lefkowitz v. Great Minneapolis Surplus Store (148-149); Note 2 (150); CONSTRUCTION CONTRACTS (151-152); MISTAKES IN OFFERS (152-153); <u>Elsinore Union Elem. School Dist. v. Kastorff</u> (Supp. 33); Notes 1-3 (153-154); *PROBLEM (155-156)
		156-165	SEC. 3. THE ACCEPTANCE – INTROD ¹¹	INTRO (156-157); White v. Corlies & Tift (162-164); Note 2 (164); Ever-Tite Roofing v. Green (164-165); International Filter v. Conroe Gin (157-160)
4	9/19 9/13	166-176	SEC. 3. THE ACCEPTANCE – CON’T	NOTIFICATION OF ACCEPTANCE IN UNILATERAL CONTRACTS (166-167); Notes 1&2 (167); Allied Steel v. Ford Motor Co. (167-169); Notes 1&2 (169-170); SILENCE NOT ORDINARILY ACCEPTANCE (175-176); Note (176);
		177-198 & Supp.	SEC. 4. TERMINATION OF THE POWER OF ACCEPTANCE ¹²	INTRODUCTION (177-178) (A) LAPSE OF OFFER (178); Notes 1-2 (178-179) (B) REVOCATION (179-80); LIMITING REVOCATION: OPTION CONTRACTS (181); Dickinson v. Dodds (181-183); Note 1 (183); PROBLEM (184); PROMISES SEEKING PERFORMANCE & REST § 45 (186-187); PROBLEM (187); REVOCABILITY & RELIANCE (187-188); Drennan v. Star Paving (188-192); Note 3 (192-193). (C) DEATH OF OFFEROR (193); PROBLEM (193-194) (D) CONSEQUENCES OF REJECTION (194-195); <u>Minneapolis & St. Louis Railway v. Columbus Rolling Mill</u> (Supp. 1). (E) “MAILBOX RULE”: CONTRACTS BY CORRESPONDENCE (196-197); PROBLEM (197-198).

¹⁰ There is **no class** on Labor Day, September 5, 2016.

¹¹ Once an offer has been made (and before it has been terminated through lapse, revocation or the death of the offeror), the offeree – the person to whom the offer has been directed – has the *power* to create a contractual relationship by accepting the offer.

¹² There are several ways by which an offer – which has the legal effect of conferring on the offeree the power of acceptance (see note 11) – can be terminated by the offeror, thus extinguishing the offeree’s power to create a contractual relationship.

<u>WEEK</u>	<u>DATE⁴</u>	<u>PAGES⁵</u>	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
5	9/26 9/20	30-37 48-58	CHAP. 1 <u>BASIS FOR ENFORCING PROMISES (CON'T)</u> SEC. 2. CONSIDERATION AS BASIS FOR ENFORCEMENT (A) CONSIDERATION FUNDAMENTALS (B) REQUIREMENT OF EXCHANGE: ACTION IN THE PAST	INTRODUCTION, ETC. (30-35); Hamer v. Sidway (35-38); Notes 1-4, 6 (38-40); PROBLEM (40-41); GRATUITOUS PROMISES (41); Notes (41-42); Dyer v. Nat'l By-Products (43-46) ; Note 3 (47). Feinberg v. Pfeiffer Co. (48-51); Notes 1&2 (51); Mills v. Wyman (52-53); Note 2 (53-54); Webb v. McGowin (54-57); Notes 1&3 (58).
6	10/3 9/27	58-70 71-91 92-100 236-239	SEC. 2. CONSIDERATION AS BASIS FOR ENFORCEMENT (CON'T) (C) REQUIREMENT OF BARGAIN (D) PROMISES AS CONSIDERATION¹³ SEC. 3. RELIANCE AS BASIS FOR ENFORCEMENT (PROMISSORY ESTOPPEL)¹⁴	Kirksey v. Kirksey (58-59); PROBLEM (60); EMPLOYEE HANDBOOKS (68); Notes 1&2 (69); REWARDS (70). INTRODUCTION (71); Notes 1&2 (72-73); Strong v. Sheffield (73-75); Notes 1&2 (75); PROBLEM (75); CONTRACTS FOR SALE OF REAL ESTATE (76); Mattei v. Hopper (76-79); Wood v. Lucy, Lady Duff-Gordon (86-88); Notes 1-3 (88-89); SUBSTITUTES FOR CONSIDERATION (90-91) Ricketts v. Scothorn (92-94); Notes 1&2 (94-95); DEVELOPMENT OF PROMISSORY ESTOPPEL (95-97); RESTATEMENT § 90 (97); Feinberg v. Pfeiffer (97-98); PROBLEM (98); RESTATEMENT (SECOND) § 90 (99); Notes 1-3 (99-100); PROBLEM (100); Hoffman v. Red Owl (236-239).
7	10/10 10/4	112-121	SEC. 4. RESTITUTION AS ALTERNATIVE BASIS FOR RECOVERY	INTRODUCTION (112-113); Cotnam v. Wisdom (114-116); Notes 1-3 (116-117); PROBLEM (117); Callano v. Oakwood Park Homes (117-119); Notes 2-5 (119-121)

¹³ The cases in the section on Promises as Consideration ask first, whether a promise can be consideration and, second, whether the party seeking to enforce the contract ever promised to do anything, thus warranting the court to enforce the contract – i.e., enforce the other party's promise to do (or refrain from doing) something.

¹⁴ Treat **Promissory Estoppel** as an alternative basis of recovery, i.e., a cause of action separate from a contract cause of action. Do **NOT** think of it as a "substitute for consideration." See *Hoffman v. Red Owl* (at pages 237-238)

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
8	10/17 10/11		CATCH-UP/WRAP-UP OF WEEKS 1-7	
--	10/23		MID-TERM REVIEW SESSION ¹⁵	10:00 a.m. to 12:00 p.m. [TENTATIVE]
9	10/24 10/25		MID-TERM EXAMINATION	

¹⁵ **Review Session:** I have *tentatively* scheduled a review session for the Mid-term Examination on Saturday afternoon, October 11, 2014, between 12:00 a.m. and 2:00 p.m., during which I will review one or two Midterms I have given in the past. The session is scheduled to accommodate both of my Contracts I sections. Although I do not require attendance at the review session, I highly recommend that you attend. Therefore, you should arrange your schedule accordingly.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
10	10/31 10/18		CHAP. 3 DEFENSES TO CONTRACT FORMATION I: THE STATUTE OF FRAUDS ¹⁶	
		273-279	SEC. 1. INTRODUCTION	INTRODUCTION (273-274); (A) WHAT STATUTE DOES & DOES NOT DO (274-276); (B) BACKGROUND (276-277); (C) WHY A STATUTE (277-279)
		280-298	SEC. 2. STATUTORY SCOPE	(A) <u>DURATION OF PERFORMANCE: ONE YEAR & LIFETIME CLAUSES</u> . Introduction (280-281); C.R. Klewin v. Flagship Properties (281-286); Notes 1-3 (286-287); INFORMAL EXTENSIONS OF EMPLOYMENT (287-288); LIFETIME AGREEMENTS (288-289). (B) <u>INTERESTS IN REAL PROPERTY</u> . Introduction (290); CONTRACTS FOR SALE OF LAND (291); PROBLEMS (291); INTEREST IN LAND (291-292). (C) <u>SURETYSHIP CLAUSE</u> . SURETYSHIP AGREEMENTS (290-291); Langman v. Alumni Ass'n (294-295) ; MAIN PURPOSE RULE (295-296) ; Central Ceilings v. National Amusements (296-298) .
		299-310	SEC. 3. SATISFYING THE STATUTE OF FRAUDS	(A) CONTENT OF A WRITING (299-302); (B) ISSUES OF FORM (302); Problem (303); Crabtree v. Elizabeth Arden (303-307) ; Signing (308); Problems (308-309); (C) STATUTE OF FRAUDS IN DIGITAL AGE (309-310).
		313-326	SEC. 5. EXCEPTIONS TO STATUTE OF FRAUDS	(A) RELIANCE BASED: (1) Part Performance (313-315); (2) Estoppel (322); Monarco v. LoGreco (323-325); Notes 1-4 (325-326).
		334-338	SEC. 6. ASSESSING THE STATUTE	(A) ETHICAL PRACTICES & THE STATUTE OF FRAUDS (334-336); (B) WHITHER THE STATUTE OF FRAUDS? (337-338)

¹⁶ Generally, if a defense is available to a contracting party, the contract is rendered *unenforceable* even if, under an objective standard, there has been mutual assent – manifested by an offer evincing an intent to enter a contractual relationship with definite and certain terms, an acceptance of the offer's terms by the offeree, and consideration to support the agreed-to-bargain on both sides. In the case of the Statute of Frauds, a party defends against the contract being enforced by arguing that the contract into which it has entered with the plaintiff is of a type that must be in writing (e.g., a contract involving real property) and, because it is not in writing, the defendant's promises must not be enforced. This defense is disfavored because it results in an otherwise perfectly valid contract (i.e., one in which the parties truly mutually assented) being rendered unenforceable simply because it lacks the formality of a writing.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
11	11/7 10/1	339-340	CHAP. 4 DEFENSES TO CONTRACT FORMATION II: POLICING THE BARGAINING PROCESS	INTRODUCTION (339-340)
		340-354	SEC. 1. CAPACITY ¹⁷	INTRODUCTION (340-341); Douglass v. Fluegler (342-346) ; Notes 1-5 (346-348); Ortelere v. Teachers Retirement Bd. (349-351); Notes 1-2 (351-352); Cudnick v. Broadbent (352-354)
		357-386	SEC. 2. OVERREACHING ¹⁸ (A) PRESSURE IN BARGAINING	INTRODUCTION (357); Notes (358); PROBLEM (358); PRE-EXISTING DUTY RULE (359); Alaska Packers v. Domenico (359-361); Note 4 (362-363); AVOIDING PRE-EXISTING DUTY RULE: RESCISSION & MODIFICATION: Schwartzreich v. Bauman-Basch (363-364); Notes 1-3 (364-365); Watkins & Son v. Carrig (365-368); Note 1 (368); AVOIDING PRE-EXISTING DUTY RULE: NEW CONSIDERATION (371); PARTIAL PAYMENT (371-372). UNDUE INFLUENCE (380); Odorozzi v. Bloomfield School Dist. (380-385); Notes 1-3 (385-386)
12	11/14 11/8	387-396	SEC. 3. OVERREACHING (CON'T) (B) CONCEALMENT & MISREPRESENTATION	INTRODUCTION (387); Notes (387-388); Swinton v. Whitinsville Savings Bank (388-389); Notes 2 & 4 (390); PROBLEM (391); Kannavos v. Annino (391-394); PROBLEMS (395); MISREPRESENTATION (395-396); Note 1 (396)
		490-501	CHAP. 4 LIMITS ON THE BARGAIN AND ITS PERFORMANCE SEC. 1. UNFAIRNESS	INTRODUCTION (489-490) INTRODUCTION (490); McKinnon v. Benedict (491-493); Notes 1&3 (493); Tuckwiller v. Tuckwiller (494-495); Note 2 (495); Black Indus. v. Bush (496-498); Notes 1-3 (498-499); PUBLIC POLICIES, EXCESSIVE PROFITS AND GOVERNMENT CONTRACTS (499-501)

¹⁷ A contract may be rendered unenforceable because one of the parties lacked “capacity” to contract, e.g., the party was too young.

¹⁸ In cases involving overreaching, courts generally inquire whether there was an inequality of bargaining power that allowed one party to more or less “dictate” the terms of the contract to which the parties purportedly assented to voluntarily. The inequality in bargaining power can arise through one party holding all the economic cards, through a party’s undue influence over the other (often because of a fiduciary relationship between the parties), or through fraud, i.e., one party has more information than the other and misleads the other party into relying on the first party’s misrepresentations.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
13	11/21 11/15	501-522, 482-485 & Supp. 522-540 & Supp.	<p>CHAP. 4 LIMITS ON THE BARGAIN AND ITS PERFORMANCE</p> <p>SEC. 2. STANDARD FORM AND ADHESION CONTRACTS</p> <p>SEC. 3. UNCONSCIONABILITY¹⁹</p> <p>SEC. 4. PERFORMING IN GOOD FAITH</p>	<p>INTRODUCTION (501-502); Notes 1 & 2 (502-503); O'Callaghan v. Waller & Beckwith Realty (503-507); Notes 2 & 3 (507); PROBLEM (508); AGREEING TO BOILERPLATE – Klar v. H&M Parcel Room (510-512); Notes 1&2 (512-513); Graham v. Scissor-Tail (508-510); A & M Produce v. FMC Corp. (Supp.53); <u>California Grocers v. Bank of America</u> (Supp. 48); Henningsen v. Bloomfield Motors (482-485); DUTY TO READ & THE DUTY TO DISCLOSE (514-515); Note 3 (516); SOURCES OF POLICING: COURTS, LEGISLATURES AND AGENCIES (517-518); Doe v. Great Expectations (518-522)</p> <p>INTRODUCTION (522-523); UNCONSCIONABILITY: TWO VIEWS (524-525); Williams v. Walker-Thomas Furniture Co. (525-529); Notes 1-3, 5 (529-531); PRICE UNCONSCIONABILITY – Jones v. Star Credit (532-534); <u>California Grocers</u> (Supp. 37); Note 1 (534); Problem 2 (535); UNCONSCIONABILITY IN FRANCHISES (536-537); UNCONSCIONABILITY: ARBITRATION CLAUSES (538-539); Baltazar v. Forever 21 (Supp. 3); Sanchez v. Valencia Holdings (Supp. 9); Armendariz v. Foundation Health (Supp. 13); Notes 1 & 2 (539-540); <u>Wherry v. Award Inc.</u> (Supp. 37); <u>Trivedi v. Curexo Tech Corp.</u> (Supp. 40).</p> <p>[We will cover this topic during Spring Semester]</p>

¹⁹ Unconscionability is a defense developed in recent times that considers not only the substance of the bargain (substantive unconscionability, or a contract with terms unreasonably favorable to one party), but also procedural unconscionability (unfair surprise [e.g., small print], and oppression [i.e., inequality of bargaining power]), which considers how the weaker party might have been led to enter into the substantively unfair contract.

<u>WEEK</u>	<u>DATE</u> ⁴	<u>PAGES</u> ⁵	<u>TOPICS</u>	<u>MAIN CASES & NOTES</u>
14	11/28 11/22	577-588 & Supp.	SEC. 5. PUBLIC POLICY ²⁰ (A) ILLEGAL CONTRACTS	INTRODUCTION (574-575); Bovard v. American Horse Enterprises (577-579); Notes 1 (“In Pari Delicto”) & 2 (“Clean Hands”) (579-580); INDUCING OFFICIAL ACTION (583-585); Note 1 (585); COMMERCIAL BRIBERY (586-587); LICENSING LAWS (587-588); <u>Wright v. Issak</u> (Supp. 45); Notes (588)
		588-594	(B) JUDICIALLY-CREATED PUBLIC POLICY	INTRODUCTION (588-589); RESTRAINTS OF TRADE: Hopper v. All Pet Animal (589-592); Notes 1&3 (593-594)
15	TUESDAY, NOVEMBER 29, 2016	6:30 P.M.	REVIEW SESSION	
16	FRIDAY, DEC. 2, 2016	6:30 to 9:30 P.M.	FINAL EXAM	NOTE: The Final Exam is Three Hours Long.

²⁰ The public policy cases we will consider are of two general kinds: (i) those involving contracts that are simply illegal and thus are not enforced on public policy grounds (e.g., those involving bribery); and (ii) cases about, for example, agreements not to compete which, although generally legal, may be so restrictive that they offend a public policy, e.g., that people should be encouraged to work in the field in which they have developed expertise.