

WESTERN STATE COLLEGE OF LAW
CONTRACTS 2 – Spring 2021
SYLLABUS AND COURSE POLICIES

Professor Todd Brower
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Office hours:

Office Hours via Zoom meeting room. Please sign up at least 12 hours in advance so that I can open the Zoom room at the correct time. Make appointments by via google doc located at:

https://drive.google.com/file/d/1ho48io_ovNNypoSyxGigfXwnDTt5yr1t/view?usp=sharing

Contracts 2 students: Monday/Wednesday: 3:00 - 6:00 PM

Constitutional Law 2 students: Tuesday: 2:00 – 6:00 PM

Available for questions by email: tbrower@wsulaw.edu

Syllabus

Texts and course webpage

Required Text: **Epstein, Markell, & Ponoroff, Cases and Materials on Contracts: Making and Doing Deals, (5th Ed., West 2018).**

There is a **required course webpage** available at <https://lawschool.lexisnexis.com> then search for Lexis Classroom and our course. You will need a passcode to access the course. The passcode is "MH6WRA".

Recommended Materials: There are many additional materials that some students use to understand and practice concepts in Contracts. The choice which materials to use, if any, is entirely yours. I strongly recommend that before you purchase anything, you review possibilities in the library or from your friends/upper-class students. That way you can see what materials work best for you before spending your hard-earned cash. Law school textbooks are expensive enough without committing more money to materials that you may or may not find appropriate. I do not recommend relying on commercial outlines or prepared briefs. While they have a certain value in summing up the concepts and material covered, they are no substitute for developing your own outline and taking notes on the cases. The process of outlining and synthesizing is itself one of the best ways to study and master the material.

Available supplemental materials can be found in the syllabus to Contracts I.

The required textbook is to be brought to all classes. It is very important to do all the reading, as not all materials will be discussed in class. You are required to read, watch, and do all required assignments before class in addition to the casebook reading. Additional assignments and handouts may be assigned as need arises.

You are also responsible for checking the course webpage and doing assignments online in the time allotted. Readings and problems and outside assignments are to be completed by the due dates even though class is online. Once assignment and submission deadlines have passed, you will not be able to submit or access those materials unless specifically mentioned or permitted.

Preparation and work for class is normally expected to be at least two hours of out of class work for every hour we spend in class. This includes not only the required reading, but also the assignments, quizzes, and material found on the course webpage.

Important information for this class

This class is structured differently from most other law school classes in several respects; it calls on you, the student, to be responsible for different things, for different parts of your learning, and for different activities both in class and outside. Much of our class time will be spent discussing problems assigned on the course webpage. You are to work through and write short and long answers (as instructed in each assignment online) to those problems before class; we will discuss them and solutions to them in class. This is how you will learn to apply the cases and materials to act like a lawyer and solve concrete Contracts law problems and issues.

Because this class is entirely online, you are responsible for making your best efforts to learn the material from the website, any supplements you find useful, and materials posted online. Much of your learning will primarily take place offline. I also may have videos or other outside materials in the course webpage that are required and will explain basic concepts and legal doctrine. All of that material is your responsibility to have completed before coming to class, so that in-class time will be spent on working on things that need to be done in real time, like doing problems and deciding how to spot issues, using cases like a practicing lawyer would and making appropriate arguments and solutions to concrete problems. Our in-class time together to focus on things on which you may need a teacher to work with you.

Course Coverage and Objectives

Contracts 2, the second semester of your course in the law of contracts, is a one semester, three-unit course. This course, like the first-semester, two-unit Contracts 1,

has three primary objectives or goals: (1) Students should develop good legal analytical skills, including the ability to recognize relevant facts and legal issues, analyze and utilize cases, rules of law, and public policy to come to reasonable legal conclusions based upon their analysis. (2) Students should master the fundamental rules of contract formation and remedies for breach of contract. (3) Students should be able to clearly express their understanding of the legal issues through oral and written means. Please also see the WSCL objectives listed at a later section of this document.

These three goals are not independent; rather, they are inextricably connected, and you will need to master all of them. 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. Accordingly, you should seek to work on all of them when reading and preparing for class, when solving problems and hypotheticals, and when participating in class.

Examinations and Grading

Each student will receive a numeric grade for the course. Course grades will be based on the midterm, final examination, and successful completion of other exercises and quizzes given throughout the semester as well as class participation. The various final grade components are described below.

There is a required course webpage in this class. You will need to sign up for the course webpage and access the course webpage *well before the first class* meeting to complete all the tasks for that first class in addition to the readings. To access the course webpage, go to <https://lawschool.lexisnexis.com> then search for Lexis Classroom and our course. You will need a passcode to access the course. *The passcode is "MH6WRA".*

Midterm: There will be a graded midterm in this course that will count as 15% of your final course grade. The midterm is planned for Week 7, March 8, 2021. Format and further information to be available later in the semester.

Comprehension Checks/Quizzes: There will be graded online comprehension checks/quizzes. If the questions are objective/multiple choice/True-False questions, your score will be based on the average of all your times taking the quiz, so you will want to make your best efforts on the first attempt. But each quiz may be repeated until you pass – your eventual pass is factored into the average score and noted in the

record of class assignments. If the questions are short answer/essay-type questions, then your score will be calculated from your last work product submitted. The total of your scores on all your comprehension checks/quizzes will figure into your final grade along with your class participation points for a total of 10%. The dates of supplemental lectures and assignments, if any, will be determined throughout the semester. They will be announced on the course webpage.

Class Participation, including Discussion section of website: Class participation, including participation in asking and answering questions on the Discussion section of the course website, is expected and will count towards the overall course grade along with the comprehension checks/quiz points for a total of 10% of the final grade.

Final Exam: The final examination will count 75% of the course grade. The final exam will consist of various components that may include a multiple-choice section, a short-answer section, and/or an essay section. Details will be announced on the course webpage as soon as they become available.

Participation, Attendance and Zoom Protocols

Legal Education is a cooperative venture. My commitment to you is to be as prepared as possible for every class session, to have read and thought about the material in advance of the class, and to participate fully in the classroom. I expect no less of you than I do of myself. I do not expect you to know the answer to every question; I do expect that you will use your best efforts.

Because this class is online, a significant share of the participation burden is on you, the student. We will use the course website, casebook, PowerPoint, zoom tools, and other materials in class and you need access to them all as we discuss them. While I will strongly participate in helping your learning, the bulk of that responsibility is yours. Success in Contracts will not come from being a passive absorber of knowledge, but only from active engagement with the material, cases and problems.

Online classes begin promptly at the scheduled time. *There is a separate instruction document that has the online protocols for participation, for cam and microphone usage, etc.* Please ensure that you have read it and understand the protocols for this class. Please be in the zoom room and ready for the start of class. Students who arrive late disrupt the learning process for others and for me since I need to specifically let you into the zoom classroom.

Attendance and participation are required for all classes. There are no excused or unexcused absences. **In accordance with the WSCL student handbook, if you miss more than four (4) classes, you will be academically dismissed from the course.**

Additionally, if you arrive late or depart early without permission, you may be marked absent for the entire session.

Office Hours

I will be available for office hours by appointment via Zoom room at the times listed at the beginning of this syllabus. Please make appointments via the instructions there and do not contact me to schedule appointments. If you have scheduled an appointment and need to cancel, please cancel in the Google doc as soon as possible. Other students may be waiting for appointments and may be able to take your slot.

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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Reading Assignments and Class Preparation Assignments: TOPIC and PAGES

All pages are for the required textbook. Pages in parentheses are recommended as background to help you understand the other assigned pages. The material is important, but it will not generally be discussed in class. *The weeks assigned are guidelines, not guarantees.* Each class goes at its own pace; as the semester progresses, the exact timing of assignments will become more accurate. However, the listed pacing is the planned progression. Any changes will be announced on the course webpage.

The course webpage for this course is located at <https://www.lexisnexis.com/lawschool/> - then search for Lexis Classroom and our course. You will need a passcode to access the course. The passcode is: "MH6WRA". You will need to sign up for the course webpage and access that webpage *before the first day of class* in order to get the links to the YouTube videos and other course material for that first day.

There are also mandatory comprehension checks/quizzes and/or questions about the cases in the readings each week. Before class starts on Monday of each week, you must complete the comprehension checks/quizzes and/or upload your answers to the questions online in the designated area of the course webpage when the assignment requires it. You should also bring a copy of your answers to class for that week since you will need them as references for the class discussion of those cases. If your assignment for that week does not require you to turn it in online, you will just need to bring a copy of your answers to class for that week. As noted above, your participation grade for this class is based in part on these assignments.

Schedule and Topics	Assignments and Casebook pages Pages in parentheses are for background. But they are important enough to include in assignments
<i>Week 1: 1/20 What are the terms of the deal?</i>	465-473, (473-475), 475-494 + Comprehension Check/Quiz & Discussion Items on webpage
<i>Week 1: 1/25</i>	Continued
<i>Week 2: 1/27, 2/1 Parol evidence and other extrinsic evidence to discern meaning</i>	497-508, 516-524
<i>Week 2: 2/1</i>	Continued
<i>Week 3: 2/3, Other extrinsic evidence to discover meaning</i>	534-543, 554, (565-567)
<i>Week 3: 2/8 Performance and Conditions</i>	631-648, (648-651)
<i>Week 4: 2/10, Excuse</i>	651-658, 666-669
<i>Week 4: 2/16 (Tuesday) Excuse, cont.</i>	669-670, 675-685
<i>Week 5: 2/17 Excuse, cont.</i>	679-691, 696-698 [skip case], 705 n.3-708
<i>Week 5: 2/22 Material Breach</i>	708-718, 721 [read Restatement 2d Contracts §241 from case], 726-739
<i>Week 6: 2/24</i>	Continued
<i>Week 6: 3/1, Anticipatory Repudiation</i>	745-758, 763 [Restatement 2d, §251]
<i>Week 7: 3/3</i>	Continued
<i>Week 7: 3/8 MIDTERM</i>	

Week 8: 3/10 Remedies: Damages 1	769-782, 782-798
3/15 SPRING BREAK	
3/17 SPRING BREAK	
Week 8: 3/22	Continued
Week 9: 3/24 Remedies: Damages 2	800-811
Week 9: 3/29, Remedies: Damages and Limitations 3	Reliance 820-832, Mitigation 838-846, Foreseeability, 851-857, 859-867, Certainty 867, 875-882
Week 10: 3/31	Continued
Week 10: 4/5	Continued, if necessary
Week 11: 4/7 Agreed Damages	882-894, (problem 900-901)
Week 11: 4/12, Non-Monetary Remedies	Specific performance 903-911, Rescission 926-928, Restitution 936-942
Week 12: 4/14	Continued
Week 12: 4/19 Third Party Rights	985-1005
Week 13: 4/21	Continued
Week 13: 4/26 Assignment/Delegation	1005-1009
Week 14: 4/28 A look back	
Week 14: 5/3	

MIDTERM and FINAL EXAM: Cumulative from beginning of semester to that point in the course; format to be determined.

The following are explicit goals and objectives for this course:

Doctrinal Knowledge

Students will demonstrate knowledge of the substantive law of Contracts 2, including the terms of the deal, conditions, performance and excuse, parol and other extrinsic evidence of terms, anticipatory repudiation and breach, remedies, third party rights, and assignments and delegations.

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.

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.

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

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.

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.

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.

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.

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).

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.

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.

Legal Ethics

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