

Course Title	Contracts 1
Professor	Samuel F. Ernst
Term	Fall 2024
Meetings	Thursdays, 12:15-2:15 p.m.

Professor's Contact Information

Email Address	sernst@wsulaw.edu
Office Hours	Wednesdays by appointment

General Course Information

Required Texts & Materials	<p><i>Cases, Problems, and Materials on Contracts</i> by Whaley & Horton (9th Edition 2023); ISBN No. 978-1-5438-0249-8 (hereafter, "Casebook")</p> <p><i>Comprehensive Commercial Law: 2024 Statutory Supplement</i>, ISBN No. 9798889062172</p>
Course Objectives	<ul style="list-style-type: none"> • Contract law governs the enforceability and enforcement of promises. In Contracts I students will learn the policies, principles, and rules relating to (1) contract formation; (2) the requirement of consideration to support a contract and its exceptions; (3) equitable bases for enforcing promises; (4) remedies for breach of contract and for equitable causes of action; and (5) the requirement of a writing for certain contracts. We will study the common law and select portions of the Uniform Commercial Code. Among the skills students will practice in relation to this objective are: <ol style="list-style-type: none"> 1) Close reading of complex materials 2) Finding the rule in a legal case and understanding the holding 3) Understanding the mechanics of statutory schemes and how they apply to fact patterns • Students will develop legal argument skills. This includes (1) evaluating facts and spotting legal issues; (2) analyzing legal rules and equitable principles as set forth in statutes and common law decisions; (3) applying legal rules, equitable principles, and policy considerations to articulate arguments in favor of clients. • Students will practice oral communication and active listening skills by responding to the professor's questioning and by presenting analysis in an organized, persuasive, and professional manner. • Students will practice diagnosing problems confronting clients, understanding clients' objectives, and generating strategies to achieving those objectives competently and ethically.

Course Policies

<p>Attendance, Preparedness, and Class Participation</p>	<p>This course requires regular attendance and preparation. 10% of the class grade is awarded for consistent attendance and active participation, as determined by the index card assignment described immediately below.</p> <p>You should prepare for approximately two hours for each hour of class.</p>
<p>Accommodations</p>	<p>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.</p> <p>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 Library Building, Room 275-B. 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 Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."</p>
<p>Grading Method</p>	<p>10% of the grade is awarded for consistent attendance and preparation for active participation as determined by the index card assignment described immediately below.</p> <p>30% of the grade is determined by a midterm exam.</p> <p>60% of the grade is determined by a final exam.</p>

<p>Index Card Assignment</p>	<p>10% of the class grade is determined by class preparedness and participation under the following procedure: For each class students should prepare an index card (3X5 inches) stating the following information:</p> <ul style="list-style-type: none"> • Your name • The name of a case in the reading • What you believe to be the holding of the case (This should be in the form of at least one complete sentence) • Whether you agree or disagree with the result of the case. <p>Please hand in your index card PRIOR TO EACH CLASS AS YOU ENTER THE CLASSROOM. Cards may not be submitted electronically, outside of the class, or after class because the cards are used as records demonstrating your punctuality and preparedness to participate in class.</p> <p>Students may be asked to discuss any case assigned for that day, and not just the case noted on the student’s card.</p>
<p>Midterm</p>	<p>Multiple Choice</p>
<p>Final Exam</p>	<p>Essay and Multiple Choice</p>

Assignments & Academic Calendar

Date:	Topics and Assigned Reading: Readings are from the casebook unless otherwise indicated. UCC provisions may be found in the Statutory Supplement.
I. CONTRACT FORMATION	
1. Thursday, August 22	<p>A. The Requirement of Mutual Assent</p> <p>Please read:</p> <ul style="list-style-type: none"> • “Introduction to the Study of the Law of Contracts” (pg. 1) • <i>Lucy v. Zehmer</i> (pg. 7) • <i>Meyer v. Uber Technologies</i> (pg. 12) • <i>Stepp v. Freeman</i> (pg. 26) • UCC §§ 1-103, 2-102, and 2-105(1) (Statutory Supplement) <p><i>Do you understand the test for determining if there is mutual assent to contract?</i></p> <p><i>Do you understand the difference between an express contract and an implied-in-fact contract?</i></p> <p>B. The Offer</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>PFT Roberson</i> (handout) • <i>Lefkowitz</i> (pg. 34) • <i>Continental Labs</i> (pg. 39) <p><i>What is the definition of an offer?</i></p> <p><i>What is the test to determine if an offer has been made?</i></p>

<p>2. Thursday, August 29</p>	<p>C. Acceptance</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Kortum-Managhan</i> (handout) • <i>ProCd</i> (handout) • UCC § 2-204 (Statutory Supplement) <p><i>What is required to show acceptance?</i></p> <p><i>What is the test for determining if someone has accepted a contract modification that waives constitutional rights?</i></p> <ul style="list-style-type: none"> • <i>Beard Implement Co.</i> (pg. 44) • <i>Fujimoto</i> (pg. 50) • UCC § 2-206 (Statutory Supplement) <p><i>Who made the offer in Beard Implement Co. v. Krusa? Why was no acceptance made?</i></p> <p><i>How was the contract accepted in Fujimoto v. Rio Grande Pickle Co.?</i></p>
<p>3. Thursday, September 5</p>	<p>C. Acceptance, cont.</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Day v. Caton</i> (pg. 54) • <i>Davis v. Jacoby</i> (handout) <p><i>Under what circumstances can an offer be accepted by silence?</i></p> <p><i>What is the difference between a bilateral and a unilateral contract? What is the test for determining whether a contract is bilateral or unilateral? What if the parties intent is ambiguous?</i></p> <p>D. Termination of the Power of Acceptance</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Dickenson</i> (pg. 63) • <i>Peterson</i> (Pg. 72) • UCC §§ 2-205, 1-201(37), and 2-104 (Statutory Supplement) <p><i>What is the test for determining if revocation by conduct has occurred?</i></p> <p><i>How did the defendant withdraw the offer in Petterson v. Pattberg?</i></p>

<p>4. Thursday, September 12</p>	<p>D. Termination of the Power of Acceptance, cont.</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Loring</i> (pg. 79) • <i>Phillips</i> (pg. 83) • <i>Morrison</i> (pg. 86) <p><i>What is the test for determining if an offer has expired as too old, absent any deadline stated in the contract?</i></p> <p><i>Did the court rule that the offer had not expired in Phillips v. Moor?</i></p> <p>E. The Battle of the Forms: UCC § 2-207</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Livingston v. Evans</i> (handout) • UCC §§ 2-207, 2-314 (Statutory Supplement) <p><i>Can you explain the mechanics of how UCC § 2-207 operates?</i></p>
<p>5. Thursday, September 19</p>	<p>E. The Battle of the Forms; UCC § 2-207, cont.</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Commerce v. Bayer</i> (pg. 99) • <i>Klocek v. Gateway</i> (pg. 110) <p><i>Can you address hypotheticals applying UCC § 2-207?</i></p> <p>F. Indefiniteness</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Walker v. Keith</i> (pg. 114) • <i>Rego v. Decker</i> (121) • UCC § 2-311 (Statutory Supplement) • Glance at UCC §§ 2-305, 2-308, 2-309, and 2-310 (Statutory Supplement) <p><i>What is the test for determining if a contract is void as indefinite?</i></p>
<p>II. CONSIDERATION</p>	

**6. Thursday,
September 26**

ASSESSMENT SESSION 1

Practice questions will be handed out prior to this session.

A. The Basic Concept of Consideration

Please read:

- *Hammer v. Sidway* (pg. 133)
- *Batsakis* (pg. 145)
- *Schnell v. Nell* (pg. 148)

What is the definition of consideration?

What does it mean to say that the courts will require consideration to be “sufficient” but will not require it to be “adequate”?

What is the definition of “nominal consideration”?

7. Thursday, October
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B. Forbearance as Consideration

C. The Illusory Promise

Please read:

- *Fiege v. Bohm* (pg. 156)
- *Wood v. Lucy, Lady Duff Gordon* (pg. 163)
- *Sylvan Crest* (handout)
- *McMichael* (handout)
- UCC §§ 2-309, 2-306 (Statutory Supplement)

What is the standard for determining whether forbearing from bringing a legal claim constitutes sufficient consideration?

Under what reasoning do courts enforce contracts that are alleged to be supported by illusory consideration?

What is a requirements contract and how do courts render them enforceable?

D. Past Consideration

Please read:

- *Hayes v. Plantation Steel* (pg. 171)
- *Mills v. Wyman* (pg. 175)
- *Webb v. McGowin* (pg. 179)

Why wasn't it sufficient consideration to support the promise of a pension that Hayes worked for the Plantations Steel Company from 1947 until 1972?

*Why is it relevant to the outcome of *Mills v. Wyman* that Levi Witman "had long ceased to be a member of his father's family"?*

*What is the rule of *Webb v. McGowin* that permits past consideration to support a contract?*

<p>8. Thursday, October 10</p>	<p>E. The Preexisting Duty Rule</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Harris v. Watson</i> (pg. 183) • <i>Stilk v. Myrick</i> (pg. 184) • <i>Lingenfelder</i> (pg. 185) • <i>Clark v. Elza</i> (pg. 189) • UCC §§ 2-209, 3-311 <p><i>What would be your argument that the contract modification in Stilk v. Myrick was supported by new consideration and that the case was therefore wrongly decided?</i></p> <p>F. Promissory Estoppel</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Alleghany College</i> (pg. 195) • <i>Universal Computer Systems</i> (pg. 202) <p><i>What are the elements of promissory estoppel?</i></p> <p><i>What is the rule for determining whether somebody is an agent who can bind his or her employer to a promise made on the employer's behalf?</i></p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>James Baird Co.</i> (pg. 207) • <i>Branco Enterprises</i> (pg. 210) • <i>Hoffman v. Red Owl Stores</i> (pg. 214) • UCC § 1-103 <p><i>Which element(s) of promissory estoppel could not be established in James Baird Co. v. Gimbel Bros.?</i></p>
<p>9. Thursday, October 17</p>	<p>Midterm Exam (multiple choice)</p>
<p>III. REMEDIES FOR BREACH OF CONTRACT AND FOR RELATED EQUITABLE REMEDIES</p>	

<p>10. Thursday, October 24</p>	<p>A. Expectation Damages</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Hawkins v. McGee</i> (pg. 239) • <i>Peevyhouse</i> (handout) <p><i>What is the definition of expectation damages?</i></p> <p><i>What is the rule for determining whether the measure of expectation damages should be the cost of completion or the value of completion?</i></p> <p>B. Reliance Damages</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Anglia Television</i> (Pg. 255) • <i>Freund v. Washington Square Press</i> (handout) <p><i>Why would a plaintiff elect to pursue reliance damages, rather than expectation damages? For example, why didn't the plaintiff prove expectation damages in Anglia Television v. Reed or Freund v. Washington Square Press?</i></p>
<p>11. Thursday, October 31</p>	<p>C. Limitations on Recovery: (Certainty, Foreseeability, and Avoidability)</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Hadley v. Baxendale</i> (pg. 273) • <i>AM/PM Franchise Ass'n</i> (pg. 276) • UCC § 2-714 (Statutory Supplement) <p><i>What are the different categories of damages claimed in AM/PM Franchise Association v. Atlantic Richfield Company?</i></p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Rockingham County</i> (pg. 285) • <i>Parker</i> (Pg. 290) <p><i>What is the test for determining whether an offer of substitute employment renders damages for wrongful termination avoidable?</i></p>

<p>12. Thursday, November 7</p>	<p>D. Damages by Agreement</p> <p>E. Punitive Damages</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Lake River Corp.</i> (pg. 297) • <i>Schurtz v. BMW</i> (pg. 304) • <i>Hibschman</i> (pg. 310) • UCC §§ 2-718, 2-719 (Statutory Supplement) <p><i>What is the test for determining whether a liquidated damages clause is enforceable? Under the common law? Under the UCC?</i></p> <p><i>Under what circumstances are punitive damages available?</i></p> <p>F. Damages Under the UCC</p> <p>Please read:</p> <ul style="list-style-type: none"> • Pages 315-321 • UCC §§ 2-601, 2-712, 2-713, 2-714 (Buyer’s Damages) (Statutory Supplement) • UCC §§2-709, 2-706, 2-708 (Seller’s Damages) (Statutory Supplement) <p><i>Do you understand the mechanics of measuring damages under the UCC?</i></p> <p><i>What is a “lost volume seller”?</i></p>
<p>13. Thursday, November 14</p>	<p>G. Restitution</p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Maglica v. Maglica</i> (handout) • <i>Feingold</i> (handout) • <i>U.S. v. Algernon Blair</i> (Pg. 330) <p><i>What is the measure of damages for quantum meruit? For example, how would damages be measured for Mrs. Maglica if she proved quantum meruit?</i></p> <p><i>Why didn’t Feingold get quantum meruit damages in Feingold v. Pucello?</i></p> <p>Please read:</p> <ul style="list-style-type: none"> • <i>Rosenberg v. Levin</i> (Pg. 333) • <i>Britton v. Turner</i> (Pg. 339) <p><i>What are the elements of a quantum meruit claim?</i></p>

14. Thursday, November 21	<p>H. Specific Performance</p> <p>Please read:</p> <ul style="list-style-type: none">• <i>Centex Homes</i> (Pg. 345)• <i>Laclede Gas Co.</i> (Pg. 349)• <i>Lumley v. Wagner</i> (Pg. 352) <p><i>What must be proven to obtain a specific performance remedy? Under what circumstances is specific performance unavailable?</i></p> <p>ASSESSMENT SESSIONS 2 and 3</p> <p>Practice questions will be handed out prior to this session.</p>
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These descriptions and timelines are subject to change at the discretion of the Professor.