

Course Title	Contracts 1
Professor	Samuel F. Ernst
Term	Fall 2026
Meetings	Thursdays, 3:00 – 4:50 p.m.

Professor's Contact Information

Email Address	sernst@wsulaw.edu
Office Hours	Please email me for an appointment

General Course Information

Required Texts & Materials	<i>Cases, Problems, and Materials on Contracts</i> by Whaley & Horton (9 th Edition 2023); ISBN No. 978-1-5438-0249-8 (hereafter, "Casebook")
Recommended Text	<i>Foohy et al., Comprehensive Commercial Law: 2026 Statutory Supplement</i> , Aspen, ISBN 9798899639876.

Course Objectives (and their relation to Programmatic Learning Outcomes)	• 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: 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 (Doctrinal Knowledge and Legal Analysis) • 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. • (Advocacy of Legal Argument) • 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. (Communication)
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Course Policies

Attendance, Preparedness, and Class Participation	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. You should prepare for approximately four hours for each hour of class.
Accommodations	<u>DISABILITY SERVICES STATEMENT:</u> 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 Room 276. 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 Halim Dhanidina at hdhanidina@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."
Grading Method	10% of the grade is awarded for consistent attendance and preparation for active participation as determined by the index card assignment described immediately below. 20% of the grade is determined by a midterm exam. 70% of the grade is determined by a final exam.

Index Card Assignment	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: • 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. 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. Students may be asked to discuss any case assigned for that day, and not just the case noted on the student's card.
Midterm	Multiple Choice
Final Exam	Essay and Multiple Choice

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 or on Westlaw.
I. CONTRACT FORMATION	
1. Thursday, August 20	A. The Requirement of Mutual Assent Please read: • “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) <i>Do you understand the test for determining if there is mutual assent to contract?</i> <i>Do you understand the difference between an express contract and an implied-in-fact contract?</i> B. The Offer Please read: • <i>PFT Roberson</i> (handout) • <i>Lefkowitz</i> (pg. 34) • <i>Continental Labs</i> (pg. 39) <i>What is the definition of an offer?</i> <i>What is the test to determine if an offer has been made?</i>

2. Thursday, August 27	C. Acceptance Please read: • <i>Kortum-Managhan</i> (handout) • <i>ProCd</i> (handout) • UCC § 2-204 (Statutory Supplement) <i>What is required to show acceptance?</i> <i>What is the test for determining if someone has accepted a contract modification that waives constitutional rights?</i> • <i>Beard Implement Co.</i> (pg. 44) • <i>Fujimoto</i> (pg. 50) • UCC § 2-206 (Statutory Supplement) <i>Who made the offer in Beard Implement Co. v. Krusa? Why was no acceptance made?</i> <i>How was the contract accepted in Fujimoto v. Rio Grande Pickle Co.?</i>
3. Thursday, September 3	C. Acceptance, cont. Please read: • <i>Day v. Caton</i> (pg. 54) • <i>Davis v. Jacoby</i> (handout) <i>Under what circumstances can an offer be accepted by silence?</i> <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> D. Termination of the Power of Acceptance Please read: • <i>Dickenson</i> (pg. 63) • <i>Peterson</i> (Pg. 72) • UCC §§ 2-205, 1-201(37), and 2-104 (Statutory Supplement) <i>What is the test for determining if revocation by conduct has occurred?</i> <i>How did the defendant withdraw the offer in Petterson v. Pattberg?</i>

4. Thursday, September 10	D. Termination of the Power of Acceptance, cont. Please read: • <i>Loring</i> (pg. 79) • <i>Phillips</i> (pg. 83) • <i>Morrison</i> (pg. 86) <i>What is the test for determining if an offer has expired as too old, absent any deadline stated in the contract?</i> <i>Did the court rule that the offer had not expired in Phillips v. Moor?</i> E. The Battle of the Forms: UCC § 2-207 Please read: • <i>Livingston v. Evans</i> (handout) • UCC §§ 2-207, 2-314 (Statutory Supplement) <i>Can you explain the mechanics of how UCC § 2-207 operates?</i>
5. Thursday, September 17	E. The Battle of the Forms; UCC § 2-207, cont. Please read: • <i>Commerce v. Bayer</i> (pg. 99) • <i>Klocek v. Gateway</i> (pg. 110) <i>Can you address hypotheticals applying UCC § 2-207?</i> F. Indefiniteness Please read: • <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) <i>What is the test for determining if a contract is void as indefinite?</i>

II. CONSIDERATION	
6. Thursday, September 24	ASSESSMENT SESSION Practice questions will be handed out prior to this session. A. The Basic Concept of Consideration Please read: • <i>Hammer v. Sidway</i> (pg. 133) • <i>Batsakis</i> (pg. 145) • <i>Schnell v. Nell</i> (pg. 148) <i>What is the definition of consideration?</i> <i>What does it mean to say that the courts will require consideration to be “sufficient” but will not require it to be “adequate”?</i> <i>What is the definition of “nominal consideration”?</i>

7. Thursday, October 1	B. Forbearance as Consideration C. The Illusory Promise Please read: • <i>Fiege v. Bohm</i> (pg. 156) • <i>Wood v. Lucy, Lady Duff Gordon</i> (pg. 163) • <i>Sylvan Crest</i> (handout) • <i>McMichael</i> (handout) • UCC §§ 2-309, 2-306 (Statutory Supplement) <i>What is the standard for determining whether forbearing from bringing a legal claim constitutes sufficient consideration?</i> <i>Under what reasoning do courts enforce contracts that are alleged to be supported by illusory consideration?</i> <i>What is a requirements contract and how do courts render them enforceable?</i> D. Past Consideration Please read: • <i>Hayes v. Plantation Steel</i> (pg. 171) • <i>Mills v. Wyman</i> (pg. 175) • <i>Webb v. McGowin</i> (pg. 179) <i>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?</i> <i>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"?</i> <i>What is the rule of Webb v. McGowin that permits past consideration to support a contract?</i>
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8. Thursday, October 8	E. The Preexisting Duty Rule Please read: • <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 <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> F. Promissory Estoppel Please read: • <i>Alleghany College</i> (pg. 195) • <i>Universal Computer Systems</i> (pg. 202) <i>What are the elements of promissory estoppel?</i> <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> Please read: • <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 <i>Which element(s) of promissory estoppel could not be established in James Baird Co. v. Gimbel Bros.?</i>
9. Thursday, October 15	Midterm Exam (multiple choice)

III. REMEDIES FOR BREACH OF CONTRACT AND FOR RELATED EQUITABLE REMEDIES

10. Thursday, October 22

A. Expectation Damages

Please read:

- *Hawkins v. McGee* (pg. 239)
- *Peevyhouse* (handout)

What is the definition of expectation damages?

What is the rule for determining whether the measure of expectation damages should be the cost of completion or the value of completion?

B. Reliance Damages

Please read:

- *Anglia Television* (Pg. 255)
- *Freund v. Washington Square Press* (handout)

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?

11. Thursday, October 29

C. Limitations on Recovery: (Certainty, Foreseeability, and Avoidability)

Please read:

- *Hadley v. Baxendale* (pg. 273)
- *AM/PM Franchise Ass'n* (pg. 276)
- UCC § 2-714 (Statutory Supplement)

What are the different categories of damages claimed in AM/PM Franchise Association v. Atlantic Richfield Company?

Please read:

- *Rockingham County* (pg. 285)
- *Parker* (Pg. 290)

What is the test for determining whether an offer of substitute employment renders damages for wrongful termination avoidable?

12. Thursday, November 5	D. Damages by Agreement E. Punitive Damages Please read: • <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) <i>What is the test for determining whether a liquidated damages clause is enforceable? Under the common law? Under the UCC?</i> <i>Under what circumstances are punitive damages available?</i> F. Damages Under the UCC Please read: • 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) <i>Do you understand the mechanics of measuring damages under the UCC?</i> <i>What is a "lost volume seller"?</i>
13. Thursday, November 12	G. Restitution Please read: • <i>Maglica v. Maglica</i> (handout) • <i>Feingold</i> (handout) • <i>U.S. v. Algernon Blair</i> (Pg. 330) <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> <i>Why didn't Feingold get quantum meruit damages in Feingold v. Pucello?</i> Please read: • <i>Rosenberg v. Levin</i> (Pg. 333) • <i>Britton v. Turner</i> (Pg. 339) <i>What are the elements of a quantum meruit claim?</i>

14. Thursday, November 19	H. Specific Performance Please read: • <i>Centex Homes</i> (Pg. 345) • <i>Laclede Gas Co.</i> (Pg. 349) • <i>Lumley v. Wagner</i> (Pg. 352) <i>What must be proven to obtain a specific performance remedy? Under what circumstances is specific performance unavailable?</i> ASSESSMENT SESSION Practice questions will be handed out prior to this session.
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These descriptions and timelines are subject to change at the discretion of the Professor.

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:

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.