

**DEPAUL UNIVERSITY
COLLEGE OF LAW**

**CONTRACTS – Section 101
Fall 2017**

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Welcome to the course in Contracts.

In this course, you will learn the basics of contract doctrine. But this is only part of our agenda. Perhaps more importantly, the study of Contracts provides a classic introduction to the common law and the methodology of working with the common law. This is why the principal book for the course is a casebook rather than a normal text book. In the casebook you will read edited versions of opinions from a variety of appellate courts. Because appellate court opinions are the source of legal rules in areas governed by the common law, it is critical that you learn how to read them and how to determine what they stand for and what they do not stand for. Accordingly, we will spend considerable time reading and dissecting appellate court opinions. As we do so, we will simultaneously build our understanding of contemporary contract doctrine by identifying and synthesizing the legal rules contained in the cases.

Although Contracts is perhaps the classic common law course, not all contract law is governed by the common law. Some areas of contract law are governed by statute. (I use the term “common law” here to refer to the body of legal rules created by courts on a case by case basis using the system of precedent. This is in distinction to areas of the law in which a state or federal legislature has passed laws or statutes to set out the rules.) In particular, every state except Louisiana (which based its legal system largely on the Napoleonic Code and French law rather than on English Common Law) has adopted the Uniform Commercial Code (UCC). Article 2 of the Uniform Commercial Code is a set of laws or statutes adopted by the legislature in each state to govern certain contracts, namely contracts involving the sale of goods (things that are moveable, e.g. books, hats, automobiles, televisions, etc.). Accordingly, we will also look at some of the basic rules in Article 2 of the UCC and examine how they compare to the common law rules for other contracts. This will require us to focus as well on the methodology for working with statutes to learn how to read and apply them.

Thus, learning outcomes for the course include: developing an understanding of basic contract doctrine, developing the ability to read and analyze appellate court opinions to make intelligent judgments about what they stand for (or do not stand for), developing skill at reading and applying statutes, developing skill at legal reasoning and analysis, and enhancing one’s ability to articulate, communicate, and defend a legal argument.

Required Texts:

1. Barnett, Contracts Cases and Doctrine, (6th ed.), Wolters Kluwer (2017)
2. Selected Commercial Statutes, West (any recent edition)
3. Blum, Contracts Examples and Explanations, (7th ed.) Wolters Kluwer (2017)

Supplemental Reading:

Perillo, Contracts, Hornbook Series, West (2014) (on reserve in the Law Library)

This is what we refer to as a “hornbook.” It is not a casebook. Rather it is a normal text book on the law of contracts. There are no assigned readings in the Perillo hornbook. However, you may find it helpful if you desire additional explanation or overview of material we cover in class.

Office Hours:

You are welcome to stop by my office (Lewis 703) any time. I will usually be there for a couple of hours before class. Please be aware that I typically keep the door shut to keep out noise, not students. Do not hesitate to knock. If you prefer to make an appointment, please contact me by email (d.gaebler@depaul.edu). I encourage you to visit. I am eager to get to know you and I look forward to chatting with you about contracts, law school, or whatever.

Class Attendance:

Regular attendance is required. I am aware that some students may unavoidably miss an occasional class. However, excessive absence (more than 5 absences over the course of the semester) may result in lowering the final grade for the course. **If you do miss a class, it is not necessary to inform me in advance or to explain the absence.** I will assume it is for a good reason. Attendance is tracked by attendance sign-in sheets each class. It is your responsibility to make sure you sign the sign-in sheet at every class. If your name does not appear on the sign-in sheet, you will be considered absent for that class.

Preparation and Class Participation:

This is a course in the law of contract. Not surprisingly, therefore, the course will deal with the substantive rules and principles of contract law. However, as indicated above, other primary goals of the course include helping you develop your ability to understand, analyze, and describe appellate court opinions, statutes, and legal issues. Participation in class discussion is your opportunity to practice these skills. It is, therefore, a requirement

of the course that you be prepared for class and that you participate in class discussions on a regular basis.

Use of Laptops in Class:

While laptops may prove useful in class for looking at cases on D2L (although it is much better to print the cases out) or for consulting your case briefs during class, **use of laptops for taking class notes is highly discouraged!!!** Taking notes on your laptop tends to create an in-the-ear-and-out-the-fingers approach without engaging the brain. It is much harder to remain engaged with what is going on in class when taking notes on your laptop – **really!! Research backs this up!!**

Recording Classes:

Audio or video recording of classes is strictly prohibited. To foster a more effective learning environment and to promote informal and spontaneous discussion, students should not be intimidated by the possibility that their mistakes may be recorded by other students. Exceptions to this policy may be made by the instructor in extreme circumstances and with notice to the class.

Classroom Department:

To maintain an appropriate classroom atmosphere and an effective learning environment for all students, please adhere to the following guidelines:

1. If you wish to speak during class, please raise your hand and wait to be called on. If I do not call on you (and sometimes I may decide that it would be disruptive of the flow of discussion to stop for a question), do not interrupt the class or keep your hand in the air indefinitely. Instead, you may ask your question after class.
2. I understand that it may be necessary from time to time to whisper to a neighbor to get information relevant to the class. However, to avoid creating a distraction for other students or the instructor, keep private conversation with your neighbors to a minimum.
3. Again, to avoid creating a distraction, be on time. If you must enter the classroom after class has started (and this should not happen often) do so as discretely as possible. If you become ill or have an emergency and must leave the classroom during class, (and, again this should be very rare) do so as discretely as possible. If you know in advance that you must leave class early, please let me know in advance.

4. This is perhaps an idiosyncrasy of mine, but it is also a pet peeve. If a student should sneeze during class (which creates an involuntary but inevitable interruption), it is not necessary to compound the distraction by blurting out “Bless you.”
5. **PLEASE DO NOT USE CELL PHONES DURING CLASS!!**

Students with Disabilities:

Students seeking disability-related accommodations are required to register with DePaul’s Center for Students with Disabilities (CSD) enabling you to access accommodations and support services to assist your success. There are two office locations:

- Loop Campus – Lewis Center #1420 – (312) 362-8002
- Lincoln Park Campus – Student Center #370 – (773) 325-1677

Students are also invited to contact me privately to discuss your challenges and how I may assist in facilitating the accommodations you will use in this course. This is best done early in the term and our conversation will remain confidential.

Academic Integrity:

DePaul University is a learning community that fosters the pursuit of knowledge and the transmission of ideas within a context that emphasizes a sense of responsibility for oneself, for others and for society at large. Violations of academic integrity, in any of their forms, are, therefore, detrimental to the values of DePaul, to the students’ own development as responsible members of society, and to the pursuit of knowledge and the transmission of ideas. Violations include but are not limited to the following categories: cheating; plagiarism; fabrication; falsification or sabotage of research data; destruction or misuse of the university’s academic resources; alteration or falsification of academic records; and academic misconduct. Conduct that is punishable under the Academic Integrity Policy could result in additional disciplinary actions by other university officials and possible civil or criminal prosecution. Please refer to your Student Handbook or visit Academic Integrity at DePaul University (<http://academicintegrity.depaul.edu>) for further details.

Grades:

Your grade for this course will be based on a written, in-class, final examination. The final examination will be given on December 13, 2017. The final examination will be closed book with two exceptions. First, you will be permitted to use your UCC, provided there is nothing written in it except for annotations directly related to the UCC itself.

Second, for each exam, you may have up to **4 sides** of 8 x 11 paper (2 sheets on both sides or 4 sheets on one side only) on which you may write anything you want, as long as it is your own work product. The final examination will be graded on an anonymous basis. However, I reserve the right to adjust your grade for the course based on the quality of your in-class performance. Such adjustments will normally be few in number and will not normally exceed 1/3 of a grade. Your in-class performance includes your participation in class discussion as well as your performance on any ungraded written assignments or quizzes. As noted above, excessive absence may result in lowering of your final grade for the course.

ASSIGNMENTS:

For purposes of the assignments, the principal casebook (Barnett, Contracts Cases and Doctrine, (6th ed.)) will be referred to simply as “**Barnett**.” Blum, Contracts Examples and Explanations, (7th ed.) will be referred to as “**E & E**.” And, the statutory supplement will be referred to simply as the **UCC**. Some additional cases will be posted on D2L.

INTRODUCTION AND BACKGROUND

Please read the following materials in Examples & Explanations during the first two to three weeks of class.

E & E: Chapter 1 (pgs. 1-14) then test yourself with the examples on p. 14-15 and the explanations of the examples on pgs. 15-17.

Chapter 2, Sections 2.1 – 2.6 (pgs. 19-28).

Chapter 3 (pgs. 43-51) and the example and explanation on pages 51-59.

Also note there is a nice section on briefing cases in Barnett at pgs. 9-11.

1. Introduction to Remedies for Breach of Contract

E & E: Sections 18.1 and 18.2 (Chapter 18, Sections 1 and 2) (pgs. 665-672)

D2L: Hawkins v. McGee

Barnett: McGee v. United States Fidelity & Guarantee (pgs. 38-40) and associated materials (pgs. 40-42). Note that the case of Hawkins v. McGee appears in Barnett at p. 35. However, some important information is edited out of the opinion in the text which is why I posted the full opinion on D2L.

2. Introduction to Remedies Continued

Barnett: Sullivan v. O'Connor (pgs. 44-49). After reading the Sullivan case, work your way through the problem on pgs. 43-44.

3. Introduction to Remedies Continued

D2L: Peevyhouse v. Garland Coal and Mining Co. (note the Peevyhouse case is in the Barnett book at p. 913, but the version in the book has edited out parts of the case that we will use in class.)

Barnett: Background material for Peevyhouse on pgs. 920-927)
Groves v. John Wunder Co. (pgs. 908-913)

4. Calculating Expectation Damages

E & E: Section 18.3 (pgs. 672-681)
Barnett: J.O Hooker & Sons v. Roberts Cabinet Co. (pgs. 50-56)

5. Limitations on Expectation Damages – Foreseeability of Harm Herein of Hadley v. Baxendale, the most famous Contracts case of all

E & E: Sections 18.5, 18.6.1, and 18.6.2 (pgs. 683-691)
Barnett: Hadley v. Baxendale (pgs. 69-72)
Note by Richard Danzig (pgs. 73-80)
Restatement of Contracts 2d, Section 351 (p. 84)
D2L: Victoria Laundry v. Newman Industries
Barnett: Morrow v. First National Bank (85-87)
Martinez v. Southern Pacific Transportation (pgs. 80-84)

6. Limitations on Expectation Damages – Certainty of Harm Herein of Reliance Damages

E & E: Section 18.6.5 (pgs. 699-704)
D2L: Freund v. Washington Square Press, Inc.
Barnett: Security Stove & Mfg. v. Am. Ry. Express (pgs. 103-108)
Chicago Coliseum v. Dempsey (pgs. 88-93)
Background material on Dempsey (pgs. 94-98) (Recommended)
Anglia Television v. Reed (pgs. 101-103)

7. Limitations on Expectation Damages – Avoidability of Harm -- Herein of Mitigation of Damages

E & E: Section 18.6.3, parts a-c (pgs. 691-696)
Barnett: Rockingham County v. Luten Bridge Co. (pgs. 110-113);
Background material on Rockingham (pgs. 113-119)
Barnett: Shirley MacLaine Parker v. Twentieth Century-Fox (pgs. 120-
126)
Background material on Shirley MacLaine Parker (pgs. 127-129)
Restatement §350 on p. 131
D2L: Olds v. Mapes-Reeves Construction Co.

TO BE CONTINUED

PLEASE NOTE

SYLLABUS IS SUBJECT TO CHANGE