

SCHEDULE OF READING ASSIGNMENTS**Part I & II**

This schedule of class meetings and reading assignments **is likely to change**. In general, read ahead an additional two cases (from where we left off) for each successive class. See the “Class Policies” document for more information about reading expectations and class meeting times/format.

Text = Epstein, et al., *Making and Doing Deals: Contracts in Context* (6th ed. 2022)

RST = Restatement Second of Contracts, located in the statutory supplement or online

UCC = Uniform Commercial Code, located in the statutory supplement or online (for Article 1, references are to the 2001 official text)

**Additional reading, not keyed to any of the above sources are either publicly available or posted to the relevant Canvas module.

#	DATE	TOPIC	READING	GOALS & QUESTIONS
1	W 1/21	A short overview of contracts	<ul style="list-style-type: none"> Text 12-18, 24-28, 30-37 How Lawyers “State the Case” (posted) 	<u>Policy & Theory</u> Begin to understand the themes of contract law and the purpose of contract enforcement.
Part I. Assent				
2	Th 1/22	The nature of assent <ul style="list-style-type: none"> <i>Lucy v. Zehmer</i> (QUIZ) <i>Kolodziej v. Mason</i> (QUIZ) 	<ul style="list-style-type: none"> Text 43-65 Fla. Stat. 725.01 Rubric on subjective vs objective assent (posted) 	<u>Policy & Theory</u> What is the difference between the objective and subjective theories of assent? Why does contract law opt for the objective approach? <u>Close Reading</u> Find the subjective exception to the objective rule of assent, which is referenced (though not applied) in <i>Lucy</i> .
3	F 1/23 W 1/28	Offer versus preliminary <ul style="list-style-type: none"> <i>Loneragan v. Scolnick</i> <i>Interstate v. Barclay</i> Leonard v. Pepsico, 88 F. Supp. 2d 116 (S.D.N.Y. 1999) <p>*Pay attention to <i>Lefkowitz v. Great Minneapolis Supply</i>, n.3.1, text p. 84)</p>	<ul style="list-style-type: none"> Text 66-78, 82-84 (n.2.3 to n.3.1) RST §§ 24, 26 UCC §§ 1-201(b)(3), 2-201(1), 2-204 Rubric on ads as offers (posted) 	<u>Policy & Theory</u> What justifies the general rule on ads as offers? What justifies the exception? Who do these rules protect and against what? <u>Sources of Law</u> How does the UCC differ from the RST in terms of its authority and scope? What is the relationship between these two “codifications”? <u>Rule Synthesis</u> How do the rules on ads fit within the previous rules on offers generally? How would you organize an outline of the materials so far on assent?

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4	Th 1/29	Destruction of the offer <ul style="list-style-type: none"> • <i>Dickinson v. Dodds</i> (QUIZ) • <i>Beall v. Beall</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 96-104, 107-08, 113-20 • UCC § 2-205 • Problems on Merchant's Firm Offer (posted) 	<u>Reading Statutes</u> Read 2-205 and make a list of every element that the statute requires for the creation of a "firm offer." Using the language of the section, identify the consequences of creating a firm offer, as well as the <i>two</i> possible ways of determining the duration of a firm offer. Use this rubric to answer the questions in the posted exercise.
5	F 1/30	Method & manner of acceptance <ul style="list-style-type: none"> • <i>La Salle v. Vega</i> (QUIZ) • <i>Davis v. Jacoby</i> 	<ul style="list-style-type: none"> • Text 126-30, 137-46 • RST §§ 32, 50(1) • UCC § 2-206 	<u>Clarifying Doctrine</u> If the two parties in <i>La Salle</i> signed both signed the contract of sale, then why does the plaintiff/buyer lose? What rule explains this result? <u>Practice Point: Drafting</u> Which party do you think drafting party in <i>La Salle</i> include the rider regarding the effective execution of the contract of sale?
6	W 2/4	Attempted revocation <ul style="list-style-type: none"> • <i>Ellefson v. Megadeth</i> • <i>Marchiondo v. Scheck</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 166-71 • RST §§ 45, 63, 66 	<u>Practice Point: Arguing in the Alternative</u> Go back to <i>Davis</i> after reading <i>Marchiondo</i> . Based on the latter case, what <u>alternative arguments</u> would you have made for the Davises regarding acceptance? In other words, if <i>Davis</i> had found the contract to be unilateral, can the Davises still win? <u>Practice Point: Preparing for Remand</u> What should counsel for the seller do following the decision for the broker in <i>Marchiondo</i> ? Can seller still win this case? What argument should he make and what facts would he need to support it?

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7	Th 2/5	Deviant acceptances: The common law mirror image rule <ul style="list-style-type: none"> • <i>Gresser v. Hotzler</i> (QUIZ) • <i>Fairmount Glass v. Crunden-Martin</i>, 51 S.W. 196 (Ct App KY 1899) 	<ul style="list-style-type: none"> • Text 176, 179-86 • RST §§ 58, 59, 61 	<u>Policy & Theory</u> What justifies the common law “mirror image” rule? Under what circumstances does this rule protect the offeror? Under what circumstance might it create incentives for opportunistic behavior? <u>Close Reading</u> Is discussion in <i>Gresser</i> of a supposed “materiality” exception to the mirror image rule in Minnesota dicta or holding? If in a subsequent case you represented purchasers who had revised only the survey date and not the closing date under similar facts, what would you advise them about the status of their agreement?
8	F 2/6, W 2/11	Deviant acceptance: The UCC battle of the forms <ul style="list-style-type: none"> • <i>SFEG v. Blendtec</i> • <i>Klocek v. Gateway</i> • <i>Berkson v. Gogo</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 186-209, 211-30 • UCC § 2-207 • Problems on “Battle of the Forms” (posted) 	<u>Policy & Theory</u> Why does the UCC reject “mirror image”? Generally speaking, is the UCC rule more generous to offerors or offerees? <u>Practice Point: Life under 2-207</u> If you are drafting an offer for a purchase or sale of goods, what would you do to try to prevent the inclusion of undesirable additional terms by the offeree? If you represent an offeree, what would you do in accepting an offer of sale or purchase in order to ensure your terms are included in the deal?
9	Th 2/12	Indefinite and deferred “agreements” <ul style="list-style-type: none"> • <i>Varney v. Ditmars</i> (QUIZ) • <i>Moolenaar v. Co-Build Co.</i> • <i>Weigel Broadcasting v. TV-49</i> 	<ul style="list-style-type: none"> • Text 244-50, 256-58, 265-84 (thru n.3.1) • UCC §§ 2-305, 2-308, 2-309(1) and (2), 2-314 	<u>Policy & Theory</u> Do cases like <i>Varney</i> and <i>Moolenaar</i> concern K formation (Q1 “is there a K”?) or K interpretation (Q2 “what are the terms”?) Does the answer depend on source of law (UCC v. CL)? Policy? Something else? <u>Practice Point</u> What is a “letter of intent” as a matter of practice (i.e., why do negotiating parties use them?) and as a matter of law (i.e., do they have legal force or other legal significance?)

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Part II. Considerations and Alternatives				
10	F 2/13	Consideration as an element of contractual obligation <ul style="list-style-type: none"> • <i>Kirksey v. Kirksey</i> • <i>Hamer v. Sidway</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 299-300, 316-25 • RST § 71 	<p><u>Rule Synthesis</u> What is the definition of consideration according to <i>Hamer</i>? According to RST 71? Can the two rules be reconciled?</p> <p><u>Policy & Theory</u> Does the fact that the plaintiff in <i>Kirksey</i> was a woman make it more or less likely that the parties contemplated an “exchange”? How does the language of the offeror in <i>Kirksey</i> differ from the language of the offeror in <i>Hamer</i>? Is the difference legally significant? Does the gender of the offeree explain the difference (or the court’s view of it)?</p>
11	W 2/18	Contract modification and consideration <ul style="list-style-type: none"> • <i>Alaska Packers v. Domenico</i> (QUIZ) • <i>Angel v. Murray</i> 	<ul style="list-style-type: none"> • Text pp. 325-38 • RST §§ 73, 89 • UCC § 2-209(1) 	<p><u>Policy & Theory</u> What is the relationship between issues of consideration and issues of assent in these cases? How do concerns about the presence or lack of both contract elements inform the doctrine and results in each case?</p> <p><u>Clarifying Doctrine</u> Using both cases, enumerate all possible arguments that may be raised by a party in <i>response to</i> a defense based on PELDR.</p> <p><u>Practice Point: Drafting</u> What is the single most critical word in the contract in <i>Angel</i>? How should the trash collector have changed the terms of the original deal to avoid the modification problem in the case?</p>
12	Th 2/19	Promissory estoppel as an alternative to consideration <ul style="list-style-type: none"> • <i>Ricketts v. Scothorn</i> (QUIZ) • <i>Pettersen v. Monaghan</i> 	<ul style="list-style-type: none"> • Text 355-66 • RST § 90 	<p><u>Clarifying Doctrine</u> What differences are there between the holding in <i>Ricketts</i> and RST 90? How would RST 90 have applied to the facts in <i>Ricketts</i>?</p> <p><u>Policy & Theory</u> In which of the two cases in this assignment does the use of promissory estoppel to enforce an otherwise non-binding promise seem more justified? Does your answer align with the results? Can you think of other cases you have read where application of the theory would seem as if not more justified?</p>