

**CONTRACTS**  
**Spring 2023**

**Prof. Rachel Arnow-Richman**  
[rarnowrichman@law.ufl.edu](mailto:rarnowrichman@law.ufl.edu)  
(352) 273- 0645

**Class Meetings**

W/Th/F 9:00-10:15am  
Rm. HH-382

**Office Hours**

Fri 10:30-11:30am (HOL 377)  
Mon 3:30-4:30pm (Zoom)

**Course Description**

This is a course about promises. We all make promises in our lives, for all sorts of reasons: promises to our families and friends, promises to co-workers and acquaintances, and promises in business and other transactional settings. All promises are not created equal, however. Some create only moral obligations, not legal ones. If we choose not to honor those promises, all that is lost is the value of our good word. On the other hand, certain promises, have *legal* consequences. Those are promises that may be enforced through the judicial system. If we renege, the promisee may bring a lawsuit and the court will hold us responsible for the obligation we assumed. It is the availability of legal recourse that makes a commitment more than just a promise; it makes the promise contractual.

The initial objective of this course will be to discover which kinds of promises create contracts, which do not, and for what reasons. To do so, we will learn about the doctrines of offer, acceptance, and consideration, which are the “ingredients” of an enforceable commitment. Once we learn how binding contractual obligations arise, we will spend the rest of the semester learning how parties can avoid carrying out those same obligations and what happens when they do. We will study contract interpretation, the effect of unexpected changes in circumstance, and how the law responds when performance is incomplete, defective, or simply refused.

Throughout the course you should be aware of the continuing tension between two diametrically opposed judicial impulses: (1) the desire to enforce the letter of the parties’ agreement, and (2) the desire to achieve a “fair” or “just” result. Both impulses are motivated by laudable goals. The former seeks to respect the private law created by the parties, thereby promoting predictability and efficiency in transactional settings and reducing litigation. The latter seeks to avoid mechanical enforcement of contracts, effectuate party intent, and ensure that neither side is taken advantage of or unjustly enriched. Understanding this tension should help guide you in reading contradictory cases, parsing muddled doctrine, and puzzling out the various other ambiguities that are the hallmark of lawyers’ work.

A secondary objective of the course is to develop a framework for understanding transactional practice. Contract law is the foundation on which all economic business is conducted, and it is used strategically by parties to achieve certain goals. In this way, Contracts

differs from “public law” courses, like Criminal Law or Torts, that concern how society regulates and punishes anti-social or other unwelcome behavior. The disputing parties in contracts cases were, at one time, partners trying to achieve a shared goal. In reading the case material, you should therefore think not only about the legal rules that govern contracts and the particular result in the case, but also about why the parties’ contract failed in the first place. Consider how you might have counseled either party to structure the deal differently or draft the contract language more strategically in order to avoid the resulting litigation. Developing this mindset is the first step toward becoming a transactional attorney who can effectively represent clients in negotiating, drafting, and ultimately effectuating any type of deal.

### **Learning Objectives**

The over-arching objectives for this course are for you to learn/obtain the following:

- (1) a foundational understanding of the sources, scope, and content of contract law doctrine, including the differences between common law rules and the commercial code;
- (2) the ability to read, analyze, and reason from cases and statutes, as well as to understand how those processes differ based on the type of authority;
- (3) the ability to cogently and concisely articulate principles of law and legal arguments orally and in writing;
- (4) the ability to identify areas where the law is unclear or in conflict and begin to understand how lawyers operate and counsel clients in light of those uncertainties;
- (5) a preliminary understanding of the professional skills and responsibilities involved in representing transactional clients, including introductory drafting and counselling skills.

More specific objectives tied to individual assignments can be found in the separately posted “Reading Assignments” document and the course modules on the course website hosted by Canvas.

### **Required Materials**

The casebook for the course is Cases and Materials on Contracts: Making and Doing Deals, by Epstein, Markell and Ponoroff (6th ed. 2022). While the casebook will be the primary source for class assignments and instruction, you must also purchase Selections for Contracts, edited by Farnsworth, et al., which is a paperback compilation of the statutory provisions covered in the casebook. The current or any recent past edition of this publication is acceptable. From time to time, I will supplement these two sources by posting materials or citations to Canvas.

For anyone who is interested in expanding their understanding of how lawyers use contracts and contract law, I recommend Threedy, Developing Professional Skills: Contracts (2013), a paperback workbook containing a series of short exercises on implementing contract doctrine in practice. This book is not required. However, it is free with your West Academic

subscription and fun to explore. For those of you who think you might want to go into business or commercial law, it is a good resource for testing your understanding of the law while also getting a feel for what transactional lawyers actually do.

### **In-Class Participation**

You have doubtlessly heard many times by now that law school courses are designed not to teach you “the law,” but to facilitate your discovery of how lawyers use law and predict legal results. This is done through careful reading, case analysis, and application of legal principles to particular scenarios. Thorough preparation of the assigned readings, combined with articulation and application of the ideas they contain in class, are crucial to your understanding of the basic concepts of the first-year curriculum.

Therefore all students should expect to be called on to participate in class on a random basis over the course of the semester. However, unlike classes where you are in the “hotseat” for an entire case discussion, I endeavor to follow a “3 question” rule: no more than three substantive questions per student before moving on to another participant. You will therefore be “on” for shorter windows, but with greater frequency. Your voluntary and solicited class participation, along with other sources of credit described below, will comprise approximately fifteen percent of the final grade. Class participation will be evaluated daily and will be based on both the quality and consistency of your contributions.

Invariably there will come a day when you are unable to adequately prepare for class. You should not skip class on such occasions. Instead, you may inform me in writing before the start of the class, a maximum of two times per semester, and receive a “pass” for those days. Passes should be requested in writing, on a full piece of paper, and placed on my desk by the start of class. Passes submitted by email must arrive no later than 30 minutes before the start of class and it is recommended that you confirm I received your pass when you arrive. All passes must contain your full name, the date, and a number (1 or 2) indicating first or second pass. You do not need to include the reason you are requesting a pass. If you do not inform me that you are taking a pass before class, and you are unprepared when called on, I will reduce your participation credit for the semester by half. Please keep track of your passes. Submitting a third pass will be treated as an unprepared with the same consequences to participation credit.

### **Attendance, Communication and Professionalism**

The ABA requires that students attend eighty percent of all class meetings. This means you are permitted approximately five absences total over the course of the semester. In general, I do not expect you to explain or notify me of ordinary (1-2 day) absences, and I do not distinguish between “excused” and “unexcused” absences. I prefer to treat students as lawyers who manage their own schedules and exercise judgment about how to balance competing commitments. The two exceptions to this policy are absences related to COVID and for religious holiday observances. Such absences will be excused and not count toward your ABA attendance requirements. Regardless of the reason for your absence, please exercise professionalism in communicating about and making up for your absence. Exercising professionalism in this

context means taking ownership of your choices, being circumspect in the amount of personal information you share, and most importantly, making appropriate accommodations for what you miss in a way that is respectful of and minimally burdensome to your supervisor (professor) and colleagues (classmates). For more information, see the UF Law [attendance policy](#).

Please be mindful that you are presenting yourself professionally when communicating in other class-related contexts as well such as email. Despite the ease with which we can communicate with one another, your colleagues (and especially your supervisors) will expect you to treat email as you would other forms of professional interaction. Always be respectful in addressing the recipient, concise in presenting your message, and circumspect about including personal information. Try to consolidate requests to reduce email traffic. Before sending an email to a school administrator, professor, or other professional contact, ask yourself whether the message you drafted would be appropriate to send to an important partner in your law firm or a judge hearing your case.

Similarly, you are expected to display professionalism at all times in the classroom. This includes arriving on time, turning off sound on computers, cell phones and other devices, and avoiding distracting behavior (texting, web surfing, entering and leaving the room unnecessarily), etc. In the midst of the pandemic, professionalism also includes accommodating the reasonable expectation that everyone in the room will wear a properly fitting mask at all times. This is necessary to reduce the risk of illness and consequent loss of class time for those affected, as well as to ensure that everyone in the room can focus on the material at hand without undue concern for their safety. Please be respectful and supportive of your classmates in other ways as well: while your robust participation is most welcome, if you are a frequent contributor consider making space for others and listen carefully to what they say.

The choices you make in and out of class today, and throughout your J.D. program, are an expression of your development as a professional. Treat class as you would a meeting with your law firm colleagues and consider interactions with faculty the equivalent of dealing with a supervising partner or judge. This is an important part of what you are learning in law school.

### **Assessment**

There will be three forms of assessment: participation (in and out of class), quizzes, and one final exam.

*Participation.* Beyond the in-class participation requirements (described above), there will be the option of acquiring participation credit outside of class. I will regularly post discussion prompts on Canvas that extend class discussions or cover aspects of the reading we were unable to address. I will also offer the opportunity to acquire credit by completing practice exam questions (described below). These forms of additional participation will be credited proportionately (considering quality and effort) and be added to your in-class participation credit.

*Quizzes.* Over the course of the semester, you will complete a series of “micro” quizzes administered via Canvas. Each will consist of 1-3 multiple choice questions regarding a particular case or statute. Please see the separately posted “Quiz Information” document for more about the quiz content, frequency, and anticipated schedule.

*Exam.* The exam will be an in-class, essay-style exam consisting of 2-3 fact patterns. You will be permitted to consult your course materials, subject to some limitations, during exam administration. At several points over the course of the semester you will also receive practice essay exam questions to help you review and prepare for the final. You will also have the option of taking a practice final exam. These are not required assignments, but you will receive additional participation credit for turning in a draft answer by the assigned date. More information about exam preparation, review, and exam content will be provided in class and over the course of the semester. For questions about exam accommodation and delay, see the law school’s policy available [here](#).

Final grades for the course will be based on the following approximate percentages: Participation (15%), quizzes (15%), and final (70%). Grade distribution will follow UF’s [grading policy](#). All assessments are subject to UF’s student [Honor Code](#).

Assessment is your responsibility as well as mine. Students are expected to provide feedback on the quality of instruction in this course by completing [online evaluations](#). You will receive instructions about when and how to complete course evaluations during the last two or three weeks of the semester. [Summary results](#) of these assessments are available for your review.

### **Accommodations & Assistance**

Most students require or can benefit from assistance with or adjustments to their learning experience at some point in their careers, and I am happy to work with you to discuss pathways to success that suit your learning style. If you believe you require a more formal accommodation due to a physical or mental disability, please register with the [Disability Resource Center](#) as a first step. Once registered, students will receive an accommodation letter that must be presented to the Assistant Dean for Student Affairs when requesting accommodation. If this applies to you, please initiate this procedure as early as possible in the semester and prior to reaching out to me.

### **Office Hours and Access**

I will hold in-person office hours on Fridays after class and virtual office hours on Monday afternoons. You are also welcome to drop in any time my office door is open or ajar or schedule an appointment with me by email. For those who prefer to meet in person, I am generally available on campus on Wednesdays, Thursdays, and Fridays. On Mondays and Tuesdays, I am available exclusively by Zoom.

### **Class Recordings**

In light of ongoing health concerns, all UF law classes this semester are being video recorded. The Office of Student Affairs will determine when students may have access to these recordings, which will be password protected and available on Mediasite. If you wish to make your own audio recording may do so provided it is for your personal use only. Student-made recordings may not be published or shared with any person or entity through any medium or platform without the permission of the instructor.

### **Modality Adjustments & Cancellations**

This course will meet live in person unless otherwise specified. I anticipate possible adjustments to the course schedule the week of April 5, the details of which will be announced later in the semester. In the event that a class must be cancelled, you should anticipate that there will be either a live make-up on Friday after our regularly scheduled meeting time or a Zoom make up on Monday (prior to Crim Law).

### **Readings and Assignments**

It is anticipated that you will spend approximately two out-of-class hours reading and preparing for each one hour of class time. A tentative schedule of topics and reading assignments is contained in the separately posted "Reading Assignments" document. I will keep you informed in class and via Canvas of my coverage expectations for upcoming classes, any schedule changes, and any deletions or additions to the reading list. I discourage you from reading too far ahead, as this will generally result in you having an insufficient recollection of the material to participate effectively. Should you find yourself lucky enough to be "ahead," please review previously completed readings prior to the relevant class meeting.