

Contracts, Law 5000 (4 credits)
Spring 2023
Syllabus v. 1.0 (12/14/22)

Professor Mark Fenster
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Office: Holland Hall Room 371

Class meetings:

- T-Th 10:45-noon, Holland 345

Office hours:

- Tu 4:00-5:00 (online) at <https://ufl.zoom.us/j/3415941766>
- W 3:00-4:00 (in person) &
- by appointment.

Texts:

- Two books are required:
 - The course packet (with source materials specified in this syllabus), available from the course Canvas page and in printed form from [Target Copy](#) (noted in the assignment below in *italics*); and
 - A UCC and Restatement supplement. I like and have ordered JAMES BYRNE (ed.), *CONTRACTS TEXTS: RESTATEMENT 2D CONTRACTS, UCC ARTICLE 2 & CISG - 6TH EDITION* and will refer to it in class, but these materials are available elsewhere, including on Westlaw and Lexis and in used editions of the Byrne text and similar materials available from other publishers. *The key is to have easy access to the Restatement (2d) of Contracts and the Uniform Commercial Code Art. 2.*
- This book is suggested:
 - David G. Epstein et al., *A Short and Happy Guide to Contracts* (any edition – note also that it is available for free at <https://subscription.westacademic.com/Book/Detail?id=26271>). I have included cross-references to the relevant chapter/ pages in the syllabus below.
- Any additional assignments, including problems, will be available for download from the course's Canvas site.

Supplemental Texts: You may find additional supplemental texts prove helpful in understanding the subject. I will have discussed them in my introductory video for the course.

Course Description and Student Learning Outcomes: The objective of this course is for you to develop a greater understanding of the private law of contracts. We will cover contract formation, quasi-contracts (agreements for which remedies are available in the absence of a contract), defense to the enforcement of contracts, damages of various sorts that are available for breach, contract interpretation, performance and non-performance, and, if we have time, the rights and responsibilities of third-party beneficiaries.

Among other objectives, at the end of this course, students should:

- gain facility in contract law doctrine;
- understand some of the basic dynamics of transactional practice, including contract drafting and editing;

- learn some of the basic concepts of private law and business law, and be prepared to take more advanced courses in the business law curriculum;
- increase their understanding of the litigation process and rudimentary civil procedure;
- continue to develop close reading and critical thinking skills; and
- gain some experience in writing in preparation for legal practice and the exam.

Class Preparation: You should arrive in class having read the materials closely, including the statutory and Restatement excerpts that require careful reading, as well as discussion problems. You should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted below and I will announce specific class assignments in class and posted on the Canvas page. You should expect to have about 60 pages of reading each week.

Guidelines for Preparation: Feel free to produce a case brief for yourself if you'd like, although you may find taking a less formal set of notes to be more helpful and efficient. In the first semester of law school, you should learn not only the subject matter of the particular courses you are taking but also the very basic concepts of law and the basic institutions and processes of the legal system. Be prepared to answer the following questions every day about every case and note you've read the night before:

- Who are the parties of the case?
- What are the facts?
- What level of court decided the case you've read:
 - state or federal court?
 - trial or appellate court?
 - If appellate, intermediate appellate or supreme court?
- What is the procedural posture of the case—that is, at what stage of the civil process was the decision under review that is being challenged made?
- If the case is on appeal, what error was allegedly made in the trial court?
- What is the “holding” of the case?
 - That is, what is the legal proposition on which the court bases its decision?
- What is the rationale of the case?
 - That is, how does the court explain the “holding,” and
 - how does the court explain the application of that holding to the particular facts of the case?
- What “policy” arguments support the result in the case?
 - That is, what are the positive anticipated consequences flowing from the holding and its application?
- What are the counterarguments to the holding and its application?
- Ultimately, considering the court's reasoning and the consequences of the decision, was the case decided “correctly”?

Office Hours: My office hours are listed above. I am teaching two courses this semester and will share my office hours with both sets of students. My other course is Statutory Interpretation, which does not typically generate a lot of office hours traffic. Normally, I will invite multiple students from the same course to share their time to facilitate discussion and use our time more efficiently. Tuesday office hours will be via Zoom only. Depending on the state of COVID-19 spread, I may hold in-person office hours outside or request that everyone attending wear masks. I encourage you to use appointments outside of office hours to discuss matters unrelated to the class materials. I will hold individual appointments outside of office hours in-person or remote by agreement.

Individual and Small Group Meetings: I encourage you to meet with me outside of office hours to discuss things besides Contracts. I find the best way is for you to form a small group (2-4 students) and contact me so we can set up a time to meet for 30-45 minutes to discuss law school, career plans, your backgrounds, etc. I prefer small groups (it's more pleasant and efficient for me that way), but I am willing to meet with individuals for whom that wouldn't work.

In Person/ Zoom: Although most classes this semester will be in-person, I will occasionally hold classes on Zoom. I have not yet decided how I will decide which class will be held in each modality, but I will endeavor to make that decision at least a week in advance. Certain extenuating circumstances about the progress of infection on campus, in the city, and among us may well force us to retreat to Zoom (hint: get yourself vaccinated if you aren't already!). *Note: Unless you receive permission from me prior to class, I will expect that you will leave your camera on if you are joining the class via Zoom, and I will mark absent those who fail to do so.*

Common Courtesy (late arrivals, getting up during class): Please do not arrive late to class or leave class early absent extenuating circumstances. Please be certain to obtain essential items or relieve yourself before class begins. If you think you will need to get up on a regular basis during class, *including because you anticipate that you will need to go to the bathroom*, please choose a seat near one of the exits. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates. I also reserve the right to lock the doors at the beginning of class and to remove anyone from class who is being disruptive.

Attendance/ Participation: Attendance is required, as per the requirements of both the ABA and the Law School. Each day, I will have at the front of the classroom an attendance chart for you to initial before class begins.

- If you are "prepared," I can cold-call on you. Before I may not review the attendance chart before class, feel free (and without shame) to respond to a cold-call by saying that you did not sign in that day.
- To be "prepared" you must have read the assignment and have made a good faith effort to think through the materials so that I may cold-call on you. You do not have to have perfect answers to the questions we might pose, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If I call on you and I believe you are not prepared even though you have signed in as prepared, I reserve the right to lower your final grade. Also, I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to dock your final grade.
- If you are not "present and prepared" for 10 or more of our regularly scheduled classes, your grade for the semester will be adversely affected. Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.
- *You may not sign in as present and prepared if you arrive late for class or if you forget to sign in before class.*
- If you have a medical reason for missing class, you must contact me ASAP before or soon after class and provide documentation for your absence to be excused. To be excused from class for religious holidays, students must contact me beforehand by e-mail.

Seating: I will circulate a seating chart on the second class meeting. You must occupy the same seat each day. It will help me learn your names—a skill with which I was not born, sadly—and provide some order to the class sessions.

Exam and grading: The cumulative final exam will serve as the basis for your grade. As of December 20, 2022, the exam is scheduled for Friday, May 5, 2023.

The exam is “limited open book”: you may bring your casebook; you may *not* bring any additional commercial materials (supplements, commercial outlines, etc.). You *must* bring your statutory supplement with you. You may only use notes and notations you have made on your casebook and statutory supplement; as per the Law School’s rules, you may not bring notes or outlines to the exam. The exam will have a four-hour time limit and will consist of essay questions of varying lengths.

I grade your exams anonymously. After a blind grade is assigned, I may boost borderline grades if the student has participated actively in the class. Participation is judged by quality, not quantity. I may also lower grades for excessive absences or disruptive behavior.

Writing assignments: Each student will be required to submit two short, ungraded writing assignments. They will be directly assessed, with my guidance, by two 2Ls TAs. The papers will be approximately 2 pages in length. I’ll give more details on them later in the semester. Failure to submit assignments in a timely manner, or failure to make a good-faith effort on them, will incur a penalty on your final exam.

Class Cancellations: I do not currently have plans to cancel class during the term. If I cancel any classes, we will make them up later in the semester as time and our schedules permit.

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

Class recordings: Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil

cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Preferred Name and Pronouns: It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory. To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas.

Discourse, Inclusion, and the Classroom Ethos: As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. I therefore encourage each of us to:

- commit to self-examination of our values and assumptions,
- speak honestly, thoughtfully, and respectfully,
- listen carefully and respectfully,
- reserve the right to change our mind and allow for others to do the same, and
- allow ourselves and each other to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

Contracts Reading Assignments

The assignments listed below are divided somewhat roughly as encompassing the number of class periods in parentheses by the Subject Matter title. Unless I state otherwise, you should do the entire reading for class *and prepare all the problems and exercises included in the casebook*. I will clarify the precise reading assignment at the beginning and end of each class. Depending upon where we are in the calendar when we reach the end of this list of assignments, I will either revise the syllabus with additional assignments or delete listed ones.

Assignment number	Subject Matter (anticipated number of class periods in parentheses)	Materials & Readings:
1	Introduction to class and to transactional lawyering (1)	Videos: Syllabus; Intro to course. Readings: Packet, pp. 1-10 (Note: The syllabus refers to the packet pages, which are the small numbers in the lower corner of each page) <i>Short & Happy</i> , "Introduction."
2	Introduction to contracts litigation (1)	Readings: Packet, pp. 11-32 <u>Rst § 1 & Introduction (p. 132 of Burton & Eisenberg book)</u>
3	Mutual Assent: Communication of Present Intent (1½-2)	Readings: Packet, pp. 33-52 <u>Rst §§ 17-22, 24, 50, 59, 61, 33</u> <i>Short & Happy</i> , pp. 1-3
4	Offers to Contract (1½-2)	Readings: Packet, pp. 53-75 <u>Rst §§ 24-27</u> <i>Short & Happy</i> , pp. 4-6
5	Problems of Offers and Acceptance: How to Accept, Limit Acceptance, and Revoke (1½-2)	Readings: Packet, pp. 77-102 <u>Rst §§ 50-62</u> <i>Short & Happy</i> , pp. 6-21, 25-26
6	Consideration: Basic Issues (1)	Packet, pp. 103-120 <u>Rst §§ 71, 77, 79, 82-83, 86</u> <i>Short & Happy</i> , pp. 47-53
7	Consideration Issues: Pre-Existing Duty, Past/Moral Consideration, Settlement of Invalid Claims (1)	Packet, pp. 121-136 <u>Rst §§ 71-77, 79, 89</u> <i>Short & Happy</i> , pp. 53-58

8	Promissory Estoppel (1-1½)	Packet, pp. 137-154 <u>Rst § 90</u> <i>Short & Happy</i> , pp. 62-70
9	Review (1)	TBA
10	UCC I: Scope and Formation (1-1½)	Packet, pp. 155-176 <u>U.C.C. §§ 1-103, 1-201, 2-102, 2-105, 2-107, 2-204, 2-205, 2-206</u> <i>Short & Happy</i> , pp. 17-18
11	UCC II: Merchants and Terms (1½)	Packet, pp. 177-195 <u>Rst § 61; U.C.C. §§ 2-104, 2-207, 2-314</u> <i>Short & Happy</i> , pp. 25-33
12	Defenses I: Capacity and Statute of Frauds (1½)	Packet, pp. 197-222 [Note: pp. 217 and 218 are flipped; read 218 first.] <u>Rst §§ 12, 14-16, 110</u> <i>Short & Happy</i> , pp. 71-75.
13	Defenses II: Assent-Based Defenses (Fraud, Misrepresentation, Duress, and Mistake) (1½)	Packet, pp. 223-241 (skip Problem 15.4) <u>Rst §§ 151-168, 174-176</u> <i>Short & Happy</i> , pp. 78-82 Note: For Problem 15.1, read: Rst § 159 & cmt. (a); 160 & cmt. (a) & (b); 161 & cmt. (a) & (b); 162 & cmt. (a) & (b); 163 & cmt. (a); 164 & cmt. (a); & 167 & cmt. (a).
14	Defenses III: “Policy”-Based Defenses (1½)	Packet, pp. 243-286 <u>Rst §§ 178-181, 188, 208, UCC § 2-302</u> <i>Short & Happy</i> , pp. 83-86
15	Review (1)	TBA
16	Parol Evidence I (1)	Packet, pp. 287-305 <u>Rst §§ 209-215</u> <i>Short and Happy</i> , pp. 87-95
17	Parol Evidence II (2)	Packet, pp. 307-324 <u>Rst §§ 212, 214</u> <i>Short and Happy</i> , pp. 96-98 Parol Evidence Problems (handout)
18	Contract Interpretation I (1)	Packet, pp. 325-346 <u>Rst §§ 200-204</u> <i>Short and Happy</i> , pp. 95-108
19	Contract Interpretation II (1)	Packet, pp. 347-348
20	Express Conditions (1)	Packet, pp. 349-364

		<u>Rst §§ 224-227</u> <i>Short & Happy</i> , pp. 116-124
21	Implied Terms I (1)	Packet, pp. 365-386 <u>Rst §§ 205-207</u> <i>Short and Happy</i> , Ch. 4C, pp. 102-108 (2 nd ed.)
22	Implied Terms II and Review of Contractual Language (1)	Packet, pp. 387-388
23	Performance and Breach (1)	Packet, pp. 389-412 <u>Rst §§ 236-239, 241-242</u> <i>Short and Happy</i> , pp. 113-124
24	Excused Performance: Impracticability and Frustration of Purpose (1)	Packet, pp. 413-434 (skip Problem 22.2) <u>Rst §§ 261 and 265, UCC §§ 2-615</u> <i>Short and Happy</i> , pp. 124-127, 129-131
25	Anticipatory Repudiation & Assurances (1/2)	Packet, pp. 435-441 <u>Rst §§ 250-251, 255, UCC §§ 2-609, 2-610</u> <i>Short and Happy</i> , pp. 110-113
26	Measure of Damages (1-1 1/2)	Packet, pp. 443-468 <u>Rst §§ 344-348</u> <i>Short & Happy</i> , pp. 136-142
27	Limits on Damages: Foreseeability, Avoidability, and Certainty (1)	Packet, pp. 469-487 (before problems) <u>Rst §§ 350-352</u> <i>Short & Happy</i> , pp. 143-151
28	Damages Problems (1)	Packet, pp. 487-489 (all problems)
29	Restitution and Reliance: Restitution (1)	Packet, pp. 491-521 (Note: pay no attention to p. 493) Rst §§ 370-374 <i>Short & Happy</i> , pp. 151-153
30	Restitution and Reliance: Reliance (1)	Packet, pp. 523-538 <u>Rst § 349</u>
31	Coercive Equitable Relief (1)	Packet, pp. 539-560 <u>Rst §§ 357-361, 364-367 and UCC §2-716</u> <i>Short & Happy</i> , pp. 134-136
32	Agreed (“Liquidated”) Damages (1)	Packet, pp. 561-576 <u>Rst § 356; UCC § 2-718</u> <i>Short & Happy</i> , pp. 154-155
33	Third Party Beneficiaries and Assignment and Delegation	Readings on Canvas <u>Rst §§ 302, 304, 309, 317-318, 322-324; UCC § 2-210</u>
34-end	Review	TBA