Professor Contact Information

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Course Overview

Contract law is the set of rules governing legally enforceable promises. Last semester, you considered a number of issues related to the legal enforceability and interpretation of contracts, including:

- The bases for enforcing promises (consideration, reliance, unjust enrichment);
- How contracts are formed (offer and acceptance);
- How and under what circumstances the promises in a contract may be modified;
- When words that sound like promises will not be enforced as such (puffery, inchoate agreements);
- When various unstated promises will be taken to be implicit within a bargain (implied terms, etc.);
- When contracts must be in writing and signed in order to be enforced (the statute of frauds);
- What constitutes the bargain between the parties when different versions of an agreement exist (the parol evidence rule); and
- When a promisor may avoid performing because of improprieties in the bargaining process, the substantive unfairness of the deal, or public policy concerns.

This semester, we will consider at least five additional topics:

- What are the appropriate remedies when a contract is breached?
- Under what circumstances may a party to a contract withhold performance based on the other party’s deficient performance?
• When may a party to a contract avoid performing because of events occurring after execution of the agreement?
• Under what circumstances may third-parties enforce or become liable on promises in a contract to which they are not a party?
• What are the interpretive principles courts regularly apply in interpreting vague and ambiguous contracts?

If time permits, we may also delve deeper into a few first semester topics.

**Required and Recommended Texts**

The required texts for this semester are the same as those from last semester:

- **McGovern, Lawrence, & Hull, Contracts and Sales: Contemporary Cases and Problems** (3d ed. 2013);
- **McGovern, Lawrence & Hull, Selected Rules of Contract Law** (statutory supplement to Contracts and Sales: Contemporary Cases and Problems (3d ed. 2013)).

An excellent supplemental source, which I highly recommend but do not require, is:


**Assignments and Topics to be Considered**

I will give specific reading assignments every day. If we do not finish the material assigned for a particular class, you should, for the next class, review any material we did not cover and complete any newly assigned reading. (In other words, “We read that a couple of days ago” is not an adequate excuse for being unfamiliar with previously assigned material.)

Following is a list of topics we will consider, along with the corresponding pages from the casebook. Supplemental cases and materials, many of which are referenced below, will be available on TWEN.
I. **Contract Remedies**

a. What Does It Mean to Enforce a Contract? [Naval Institute]

b. Specific Performance
   i. Inadequacy of Legal Remedy [325-30]
   ii. Construction and Employment Contracts [330-44]
   iii. Equitable Defenses [344-47]
   iv. Rethinking the Preference for Money Damages [Sara Creek]

c. Damages
   i. The Basic Formula for Expectancy Damages [Restatement § 347; handout on expectancy damages formula; Vitex]
   ii. Expectancy vs. Reliance and Restitution [348-58]
   iii. Time of Measuring Value [358-62]
   iv. Crediting the Defendant’s Performance [363-65]
   v. The Right to Sue for Payments Not Yet Due [365-71]
   vi. Limitations on Recovery
      1. Foreseeability, Certainty [371-77; Kenford]
      2. Avoidability [379-86; Luten Bridge; Parker]
      3. Economic Waste [387-91; Peevyhouse; Groves; Jacob & Youngs]
      4. Emotional Distress [391-96]
   vii. Liquidated Damages Provisions [396-409; Carborundum]

d. Remedies Under UCC Article 2
   i. Buyers’ Remedies [410-31]
   ii. Sellers’ Remedies [431-39; R.E. Davis]

II. **Performance and Breach**

a. An Overview of Responses to Breach: Termination, Rescission, Setoff, and Suspension [441-49]
b. When May a Party Terminate or Rescind?
   i. Express Conditions [450-70; Luttinger]
   ii. Constructive Conditions and Material Breach [470-76; River Brands; Kingston; Stewart; Plante]
   iii. Permissible Responses to Failure of a Condition [Walker & Co.; K&G Construction]
   iv. Anticipatory Repudiation [476-82; Hochster; Diamond]

c. Effect of Rescission and Restitution
   i. Generally [483-88]
   ii. Divisible Contracts [488-93; Gill]
   iii. Delay as a Bar to Restitution [493-95]
   iv. Breaching Party’s Right to Restitution [495-500]
   v. Innocent Party’s Action for Restitution [500-02]
   vi. Breach of an Accord [502-04]

d. Acceptable Responses to Breach Under UCC Article 2
   i. Buyers’ Potential Responses [504-18]
   ii. Sellers’ Potential Responses [518-31]

III. Impossibility and Related Doctrines
   a. Impossibility and Impracticability [533-43; Taylor]
   b. Frustration of Purpose [543-48; Krell; Swift Canadian]
   c. Who Bears Risk of Loss? [449-59]

IV. Rights and Duties of Third-Parties
   a. Third-Party Beneficiaries
      i. Intended and Incidental Beneficiaries [561-70]
      ii. Defenses Assertable in Suit by Beneficiary [570-77]
   b. Assignment and Delegation
i. Assignability and Delegability [577-87]
ii. Defenses Against Assignee [588-95]
iii. Liability of Assignor to Assignee [595-96]
iv. Assignor’s Liability to Promisee [596-99]
v. Liability of Assignee [599-608]

V. Contract Interpretation and Construction [Materials TBA]

Attendance and Classroom Participation

Attendance – I will send around an attendance sheet at the beginning of every regularly scheduled class. (Attendance will not be taken at makeup classes.) If you miss class more than seven times during the semester, you will be dropped from the course. This is a strict liability policy; there will be no excused absences. In essence, you may miss class seven times for any reason whatsoever. If you miss class eight times, you will be dropped even if the eighth absence was for a good reason.

I may adjust a student’s grade downward if he or she misses five or more classes. [NOTE: Do not read this policy to suggest that missing up to five classes is unproblematic. Extensive experience has shown that students who miss more than a handful of classes perform poorly on my exams.]

Class Participation – I expect that you will complete the reading assignment each day and be prepared to discuss it in class. I will “cold call” on students to discuss the reading. When a student is called on and is unprepared, the entire class suffers. Accordingly, if you have not done the reading, please let me know in advance of class that you would like to take a “pass” for the day. You may avail yourself of this option twice without it affecting your grade. Thereafter, or if you are unprepared when called upon, you risk being penalized for deficient classroom performance. In general, I reserve the right to reward exceptional class participation or penalize poor or inappropriate class participation¹ in determining the final grade.

¹ Please note that I will not penalize you for getting an answer wrong, provided that you made a mistake despite having done the reading. All of us make occasional mistakes when asked to think on our feet. I have found that one of the toughest parts of being a lawyer is learning to give an answer (oral or written) in the face of uncertainty. One of the goals of Socratic method is to help you overcome the fear of speaking
Office Hours

I maintain an “open door” office policy, which means that you may come by my office (Room 316) any time to discuss questions concerning the course material. I trust you’ll be understanding if I’m busy at the moment and suggest that we get together later. I am frequently out of the office, so feel free to call or email me to set up a pre-arranged meeting time. You’re always welcome to call or text my mobile number, 773.580.7123. I turn the phone off when I don’t want to be disturbed.

Grading

The grade for this class will be based on a student’s examination grade, potentially adjusted for attendance and class participation, as noted. The examination will be a mix of multiple choice questions and “issue spotter” essay questions. It will be administered on a “limited open book” basis, meaning that you may bring with you your casebook and statute book, your class notes, any handouts I have given you, and any outline that you have prepared in whole or in part. You may not bring commercial materials or an outline prepared entirely by someone else.

Information Regarding Disabilities

If you need accommodations because of a disability, if you have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please see me privately after class, contact me via email (lambertt@missouri.edu) or telephone (773.580.7123), or come by my office (Room 316). Alternatively, you may contact Associate Dean S. David Mitchell to discuss appropriate accommodations.

Intellectual Pluralism

The School of Law community welcomes intellectual diversity and respects students’ rights. Students who have questions concerning the quality of instruction in

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when you’re uncertain, so I will not penalize good faith efforts that prove unsuccessful. That said, you may be penalized if it is apparent that your wrong answer is the result of poor preparation.
this class may address concerns to either the Dean or the Director of the Office of Students rights and Responsibilities. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the semester.

**Academic Integrity**

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the Law School community must be confident that each person’s work has been responsibly and honorably acquired, developed and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The Law School Community regards breaches of the Law School’s Honor Code as extremely serious matters. In the event that you violate our Academic Integrity Rules on any portion of the work required for this class, you may expect a failing grade, as well as possible disciplinary sanctions ranging from probation to expulsion.

**Recordings of Course Activities**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.