

CONTRACTS II: SPRING 2024
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Classroom: Room 5
Meetings: Mon/Wed. 9:00 am

Course Description:

In last semester's contracts class, you focused on a fundamental question: When are *private* promises *legally* enforceable? In doing so, you learned to distinguish between promises that courts will recognize as a legal contract and those that courts will not.

This spring, we will study various issues that arise from promises that are recognized as contracts. We begin our course by examining the consequences of broken promises. What remedies are available to compensate the non-breaching party? We will then focus on questions of interpretation. What will courts do when parties disagree about the "correct" meaning of language that was bargained for in the past? What types of evidence should a court consider or reject when fixing the meaning of ambiguous contractual language?

We will then turn to the performance of a contract, focusing on ways to determine whether a promise has been satisfied or broken, whether it can be altered, and whether certain unsatisfied promises should be excused. Finally, we will turn to questions about persons other than the parties to a contract. What special rules govern contracts between parties that create benefits for others? Should third parties be allowed to challenge or enforce contracts between others?

Throughout the course, our discussions will periodically return to overarching questions about the extent to which law does and should limit "freedom of contract," as well as other theoretical questions.

Learning Outcomes:

1. Understand, use, and critique the substantive law relating to contract performance, remedies, excuse, and third-party beneficiaries.
2. Understand how contract law encompasses debate over the competing meanings of written words, and develop the ability to deploy established methodologies to resolve ambiguous meaning.
3. Contribute to ongoing debates about the benefits and consequences of a relatively unrestricted freedom of contract.
4. Articulate cogent legal arguments and react to changing facts and expectations.
5. Recognize and resolve ethical dilemmas in the legal context.

Required Texts:

Miriam A. Cherry, *Contracts: A Real World Casebook*, **Second Edition** (“Textbook”). (You should already own this book from Contracts I.)

Other reading materials will be posted to Canvas.

Attendance:

Regular attendance is necessary to perform well in this class and is a baseline expectation. Students will be asked to sign in during class sessions, and a penalty will be applied to a student’s final grade for more than two unexcused absences (see “Final Grade” below). In the event of illness or a genuine emergency (e.g. unexpected childcare obligations, etc.), you will not be marked absent as long as you let me know, as soon as possible, via email.

Class Participation:

By default, all students receive full credit for class participation. I may subtract from this credit for in-class performance that demonstrates total unpreparedness.

Each of our cases (after Day 1) will be assigned in advance to one case expert. Every student will serve as a case expert once throughout the semester. The case expert will be primarily (though not exclusively) responsible for leading our initial discussions of their case. We will then open up our discussion of each case to the entire class.

Our sessions will work best when we have a lively and engaged class discussion. I expect all students (regardless of whether you are a case expert for the day) to have read every case and to be prepared to contribute to our class sessions.

Neither the case expert nor any other participants will ever lose class participation points for “wrong” answers in our class discussions, and you are never expected to come with everything figured out. You are expected to have done the reading and to come to class prepared to explore, question, participate, and learn.

Final Grade:

Ninety percent (90%) of your grade will be based on the final exam given in person at the Law School, using the standard Law School grading scale published in the Bulletin. It will be a three (3) hour exam consisting of multiple choice, short answers, and issue-spotter essays. The exam will be open book and open note. No commercially prepared study materials or access to the internet will be allowed during the exam.

Five percent (5%) of your grade will be awarded for timely, good-faith completion of interim review assignments for each course section. Students will receive full credit so long as their submissions are timely, complete, and demonstrate effort and engagement. More details will be provided before each interim review is given.

The final five percent (5%) of your grade is awarded for class attendance and participation. All students receive this credit by default. Points are only deducted for more than two unexcused absences or if your performance as a case expert demonstrates a complete lack of preparedness. See above for more details.

Meeting and contacting me:

I am reachable by email and (outside of emergencies and holidays) will respond to all emails about our class within 24 hours. Feel free to email questions to me. Please use the email address listed on the syllabus (rather than the messaging function within Canvas). For complex questions, my response may be to ask you to come by my office so we can discuss in person.

I am generally on campus during business hours, Monday through Thursday, and you should feel free to visit anytime my door is open. My formal office hours are Wednesday, from 2:00 pm to 4:00 pm. If you have another class (or childcare obligation, etc.) during that time, please email me to confirm an alternative meeting time—or simply drop in when my door is open.

Recordings:

My general policy (technology permitting) will be to record each class session and post the recording to our Canvas site afterward. Please do not share our recordings beyond our class, record our class on personal devices, or take pictures of in-class content. All relevant material will be posted to Canvas and made available to everyone who needs it.

Disability Accommodation:

If I can reduce disability-related barriers to the course and you feel comfortable sharing your needs with me, please contact me. Some accommodations require time to provide—the sooner you tell me, the better. If you require disability-related accommodations that I cannot individually provide (such as a notetaker, extended time on exams, or professional captioning), please contact the Law School’s Registrar Denise Boessen (Room 203) and the Associate Dean for Academic Affairs Ben Trachtenberg. They will advise you as to the steps you need to take, such as establishing an Accommodation Plan with the Disability Center.

Intellectual Pluralism:

The School of Law community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Policy on the Use of Artificial Intelligence:

Large language models, such as ChatGPT, implicate a variety of ethical and practical issues in the legal context. Though they have their uses, they can also generate inaccurate

or outdated answers and, in some cases, have led to attorneys being sanctioned. (*See, e.g.*, Benjamin Weiser & Nate Schweber, [*The ChatGPT Lawyer Explains Himself*](#), N.Y. Times (June 8, 2023)). At a minimum, you should never use them for any task where you have not been authorized to do so—and you should not assume that you are allowed to use them in the absence of express authorization.

We will not be using these tools in our class. Their use to generate answers to any questions (regardless of how that question is asked or whether that question is graded) is prohibited and implicates the Honor Code. See below.

Academic Integrity:

Academic integrity is fundamental to the activities and principles of the School of Law. Moreover, awareness of and full compliance with all ethical rules is mandatory for practicing lawyers. The law school community (and state bar associations) regard breaches of the School of Law’s Honor Code as extremely serious matters. In the event that you violate Academic Integrity rules on *any* portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. Note that Honor Code proceedings are generally reported to state bar associations as part of character and fitness review.

When in doubt about *any* aspect of the Honor Code, feel free to email me or talk to me after class or during office hours. Always err on the side of asking before acting.

Schedule of Assignments

Class 1 (1/17): Course Introduction

- Carefully review the course syllabus.
- Textbook: 543–546
 - *Hawkins v. McGee*

An updated version of this syllabus and a complete schedule of assignments will be available on our Canvas site, which will open up prior to our first day of class.