

SYLLABUS - Part 1
Contracts 9 – Fall 2022
Prof. Helen Hadjiyannakis Bender

, **Subject to Adjustments**

Learning Outcomes: The learning outcomes listed below are the principal goals for this course:

- Identify and apply the basic principles of contract law covered in the course.
 - Critically read, interpret and analyze different types of contractual provisions, as well as primary and secondary sources of contract law, including cases, statutes, restatements and treatises.
 - Consider how contract law might undermine or promote social justice.
 - Begin to engage in transactional aspects of contract design.
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Casebook: Calamari, Perillo, Bender & Brown, Cases and Problems on Contracts (West Acaemic, 7th ed.)

In the topics listed below, page numbers always refer to the casebook; section (§) numbers refer to the Uniform Commercial Code (UCC) or the Restatement (Second) of Contracts (Rs (2d)), as indicated.

The Topics do not correspond to a particular class. Assignments for each class will be posted on TWEN (password “Corbin). Both the individual class assignments and the related “Course Materials” and “Supplementary Materials” are keyed to the syllabus topic numbers.

TOPIC #

1. Intent to Contract *or NOT*; Intent to Memorialize

Part 1. Subjective v. Objective Intent

Rs(2d) definitions of “Contract” and “Agreement”, p.1

Lucy v. Zehmer, p. 1

Problems 2-4, p.16

Part 2. Intent to Memorialize Informal Agreements

Texaco v. Pennzoil, p.6

Course Materials: Memorandum of Agreement

2. A. Promise distinguished from expressions of opinion, predictions, mere statements of intent and statements of fact:

Rs(2d) definition of “Promise”, p. 18

Problem 2-4, p.27

Hawkins v. McGee, etc., pp.21-25

Rs(2d) § 344 - Purposes of Remedies, p.27

Supplementary Materials: Seinfeld Car Rental Reservation, ABA Model Letters of Intent

B. Offer distinguished from donative promises, preliminary negotiations: Ads, price quotations, etc.

Rs(2d) definition of “Offer”, p.28

Problem 1, p.28

Ads for the sale of goods: *Leonard v. Pepsico*, p.28

Course Materials: Rs(2d) § 26 Preliminary Negotiations

links to three “Pepsi Stuff” commercials & news story,

Lucy’s Million Dollar Idea

Problem 3, p.41

Price quotes:

Real property: *Loneragan v. Scolnick*, p.35 & Problems 5 & 6, p.41

Goods: *Fairmount Glass Works v. Crunden-Martin*, p.37 & Problem 8, p.41

Construction services: Problems 9-12, p.42

3. Indefiniteness of the Agreement

Part 1. Course Materials: The next issue in *Texaco*: Is the agreement fatally indefinite?

Traditional Common Law Approach:

(1) Purport to agree: Problem 1, p.92 & *Fairmount* (last par., p. 40)

(2) Agreement is silent: Problems 2 & 3, p.92

Silence as to duration:

Haines v. City of New York, p.42

Wagenseller v. Scottsdale Memorial Hospital, p.45

Problem 4, p.93

(3) Agree to Agree: *Jos. Martin, Jr. Deli. v. Schumacher*, p.59

Distinguish Agreement to Negotiate:

Copeland v. Baskin Robbins, p.62 & Problem 7, p.93

(4) Performance options

Fairmount, again (only one carload was specified, p.39-40)

Part 2. Uniform Commercial Code & Restatement (2d) View:

UCC:

See Appendix A for UCC Revised Article 1 & Article 2

Basic principles: UCC § 1-103(a)

Common Law Supplementation: UCC § 1-103(b)

Definition of "goods": UCC § 2-105(1)

Hybrid contracts: *BMC Ind. v. Barth Ind.*, p.70

Definitions of "agreement" and "contract": UCC § 1-201(b)(3) & (12)

General Provision on Indefiniteness: UCC § 2-204 (3)

Selected Gap Fillers:

UCC §§ 2-305(1) & (4) (price)

2-307 (single lot)

2-308(a) (place of delivery)

2-309(1) (time)

[See also UCC § 2-309(2) & (3) (duration and termination provisions) -- discussed under Topic 14, *infra*]

2-310(a) (payment terms)

2-311(1) & (2) (performance options)

SW Engineering v. Martin Tractor, p.78

Problems 5 & 6, p.93

Restatement (2d): *Oglebay Norton v. Armco*, p.82

Part 3. Severability: *Eckles v. Sharman*, p.89

4. The Acceptance

Part 1. Preliminary Problems

Who may accept the offer?

Course Materials Rs(2d) § 29

Manner of Acceptance:

Problems 1-3, p.111

Carlill v. Carbolic Smoke Ball, etc., pp.96-101

Course Materials: Two Carbolic Smoke Ball ads & photo
Leonard v. Pepsico, p.102 (discussing *Carbolic Smoke Ball*)

Knowledge of the Offer and Intent to Accept:

compare *Broadnax v. Ledbetter*, p.94

with *MCC Marble v. Ceramica Nuova*, p.95 & *Lucy v. Zehmer*, p.1
Problem 6, p.112

Offer inviting a single acceptance or a series of acceptances

Course Materials: Rs(2d) §§ 31 & 47

Problem 10, p.113

Notice of Acceptance:

Acceptance by Performance

Course Materials: Rs(2d) § 54

Carbolic Smoke Ball at pp. 97-98

Problem 7, p. 112

Acceptance by Promise

Problem 8(a) & (b), p.112

Short Examination Question, p.113 -- Practice Exams – Sample Answers

Written Assignment – analyze problem 1, p. 16. Consider <i>Lucy v. Zehmer</i> , <i>Carbolic Smoke Ball</i> , <u>Supplementary Materials: Ryan Leslie’s \$1 Million Reward Offer and Summary Judgment Motion.</u>
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Part 2. Acceptance by Silence or Exercise of Dominion

Silence:

Course Materials: Rs(2d) § 69

Problem 1, p. 121

Day v. Caton, p.113

Wilhoite v. Beck, p.115 & Problem 2, p.121

Rs(2d) § 69 ill. 5 & 6

Exercise of Dominion:

Problems 4-6, p.121 (answer according to the common law)

39 US Code ' 3009, p.101 (How does the statute change
the answers to Problems 4-6?)

Problems 7 & 8, p.122

Bank and Credit Card Problems, p.122

Multiple-Choice Question, p.123 -- Practice Exams – Sample Answers

Review offer and acceptance: Problem 1, p.16 and Problem 4, p.41

5. Manner of Acceptance - Indifferent offers--UCC & Restatement (2d)

UCC: Formation in General: UCC § 2-204 (1) & (2)

Manner of Acceptance: UCC § 2-206

Rs(2d): *Horton v. Daimler Chrysler Financial Services*, p.123

Course Materials: Rs(2d) § 32

Problems 1-5, p.127

6. Medium of Acceptance - Prescribed Medium and the Mailbox Rule

Is the medium of acceptance prescribed?

Fugimoto v. Rio Grande Pickle Co., p.127

Problems 1-3, p.133

Does the Mailbox Rule apply?

Problem 7, p.133

Cantu v. Central Education Agency, p.130

Problems 4-6, p.133

Multiple-Choice Question, p.134 -- Practice Exams – Sample Answers

7. Termination of the Power of Acceptance of a Revocable Offer

Problems 1-7, p.139

Swift v. Smigel, p.134

Problems 8-12, p.140

Examination Question & Multiple-Choice Question, p.141

Practice Exams – Sample Answers

8. Counter Offers and the Battle of the Forms

A. Mirror Image Rule, Last Shot Principle and UCC § 2-207

Part 1. Common Law (mirror image rule & last shot principle):

Problem 1, p.160

Ardente v. Horan, p.142

Problem 2&4, p.160 (Problem 4 is based on a pre-UCC case, so answer according to the common law.)

Part 2. UCC § 2-207:

(a) Written Expression of Acceptance (of offer)

Dorton v. Collins & Aikman, p.145, UCC § 2-104 (definition of “merchant”)

Course Materials: UCC § 2-104 & Official cmts. 2&3 (note *practices* merchants)

UCC § 2-207 Official Cmts. 3, 4 & 5

Diamond Fruit Growers v. Krack, p.154

Compare with CISG Art. 19

Course Materials: CISG Art. 19, Chart to compare UCC § 2-207 with CISG Art. 19

Written Assignment: Fill out the Chart (<u>Course Materials</u>) for the UCC and the CISG.

(b) Written Confirmation (of contract):

Review *Dorton*

Problem 6, p.161

Examination Question & Multiple-Choice Questions, p.162

Practice Exams – Sample Answers

B. Terms on or in the box: “shrinkwrap”

“Rolling Contract” Analysis:

ProCD v. Zeidenberg, p.163

Hill v. Gateway 2000, p.170

compare *Klocek v. Gateway*, p.174 (using standard K analysis)

9. E-commerce: “clickwrap” - “browsewrap” - “hybrid”

Tompkins v. 23andMe, Inc., p.180

Kim, The Wrap Contract Morass, p.187

Course Materials: South Park- Business Casual G-Men

Meyer v. Uber Technologies, p.198

compare Course Materials: Kauders v. Uber Technologies

10. Option Contracts

Consideration: *Beale v. Beale*, p.212

Without consideration: Rs(2d) § 87, p.215

Statutes: UCC § 2-205 & N.Y.G.O.L. § 5-1109 (See Course Materials)

Problems 1 & 2, p.218

compare Right of First Refusal: Problem 3, p.218

Offer for a Unilateral Contract - Beginning Performance:

Rs(2d) § 45, p. 215

Problems 4, 5 & 7, p.219; reconsider Problem 10, p.140

11. What Is Consideration?

Kim v. Son, p.221

Hamer v. Sidway, p.222

Problems 1-5, p.239

Kirksey v. Kirksey, p.225

Gottlieb v. Tropicana Hotel and Casino, p.231

Course Materials: *Barfield v. Commerce Bank*

Problems 7 & 8, p.239

Fiege v. Boehm, p.234

12. Pre-Existing Duty Rule

Part 1. Pre-Existing Duty Owed to Promisor

Problems 1-3, p.251 (Problem 3 is based on a pre-UCC case, so answer according to common law.)

Schwartzreich v. Bauman-Basch, p.240

Course Materials: Rs(2d) § 89 – Modification of Executory Contract

Part 2. Pre-Existing Duty Owed to Third Person

Course Materials: Rs(2d) 73 & comment d

Part 3. Discharge of Obligation

Accord & Satisfaction: *Kibler v. Frank L. Garrett & Sons*, p.248

UCC § 1-308

Course Materials: “Accord & Satisfaction cases – focus on Consideration”, NY’s version of UCC § 1-308.

13. Statutory Changes & Duress

Part 1. Statutory Changes

UCC sections on modification and release:

Modification: § 2-209

Course Materials: UCC § 2-209 comment 2.

Release: § 1-306

UCC sections relating to good faith:

Good faith definition: § 1-201(b)(20)

Variation by Agreement: § 1-302

Obligation of Good Faith: § 1-304

Course Materials: NY statutes on consideration and no oral modification:

NYGOL § 5-1103 (modification and discharge)

§ 15-301 (NOM clauses)

§ 15-303 (release)

§ 5-1105 (past consideration) *revisit Problem 4 on p.239*

§ 5-1109 (firm offer) *see Topic 10*

§ 5-1113 (reward for lost property) *revisit Problem 6 on p.112*

Part 2. Duress (limited to modification of contracts):

Austin Instrument v. Loral, p.385

14. Consideration in Bilateral Contracts

(a) Illusory promise:

Problem 1, p.27

Course Materials: Hustler Ad

Ridge Runner Forestry v. Veneman, p.260

compare *Texas Gas Utilities Co. v. S.A. Barrett*, p. 268

(b) Implied promise:

Exclusive dealing:

Wood v. Lucy, Lady Duff-Gordon, p.262

UCC § 2-306(2) & Problem 1, p.283

Financing Condition: *Mezzanotte v. Freeland*, p. 264

Exercise of Discretion: *Mezzanotte*, again (condition of satisfaction)

(c) Requirement and Output Contracts:

UCC § 2-306(1)

High demand: Problem 2, p.283

Low demand: *Wiseco v. Johnson Controls*, p. 274 & Problem 3, p.283

(d) Termination provisions:

Miami Coca-Cola Bottling Co. v. Orange Crush, p.267

UCC § 2-309 (2) & (3)

(e) Option Contract Analysis: *Miami Coca-Cola*, last par, p.267-68

Unilateral Contract Analysis (Forging a Good Unilateral Contract, etc.):

Problems 4 & 5, p.283

Hiring at Will: *Summits 7 v. Kelly*, p.279

Multiple-Choice Question, p. 284 -- Practice Exams – Sample Answers

15. Omitted

16. Promissory Estoppel

Feinberg v. Pfeiffer, p.299

Salsbury v. Northwestern Bell Telephone, p.308

Course Materials: Naming Rights: "Avery Fisher Hall renamed David Geffen Hall"

Problems 1, 2, 4 & 5, p.319

Drennan v. Star Paving, p.311

Examination Questions 1-3, pp.320-327 -- Practice Exams – Sample Answers