

Contracts
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Syllabus (Version 2.1)

There is no spoon.

– *The Matrix* (1999)

The law changes constantly. City councils, state legislatures, Congress, governors, the President, local, state, and federal administrative agencies, and, most importantly for our purposes, state and federal courts, change the precise contours of the law, its scope, or its application nearly every day. Most of the changes are very small and easily overlooked by those not immediately involved in the process. Because change is a constant in both the study and the practice of law, legal education should focus on helping you develop the analytical tools that will help you best serve those who seek your counsel. *The keys to a good legal education* (indeed, most post-secondary education) are *developing the vocabulary and skills* that will enable you to *consult the appropriate sources, ask pertinent questions* in a language those sources will understand, and *formulate situation-specific answers or strategies* based on the answers you uncovered to your questions. In an environment of constant change, “right” answers can become obsolete; but a lawyer trained to ask the “right” questions, to know whom, where, and how to ask, and to process and critically evaluate what she learns, will be more readily able to formulate the best answer applicable to a situation at hand and, if necessary, to convince the ultimate decisionmaker that her answer is the best answer. But, why take my word for it?

[T]he law does not consist of a series of unchangeable rules or principles engraved upon an indestructible brass plate or, like the code of Hammurabi, upon a stone column. Every system of justice and of right is of human development, and the necessary corollary is that no known system is eternal. In the long history of the law can be observed the birth and death of legal principles. They move first with the uncertain steps of childhood, then enjoy a season of confident maturity, and finally pass tottering to the grave. . . . The law is merely a part of our changing civilization. The history of law is the history of man and of society. Legal principles represent the prevailing mores of the time, and with the mores they must necessarily be born, survive for the appointed season, and perish.

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The truth of the warning as to the nature of law must be determined by each student anew for himself. This requires long study and experience, a comparative study of cases both in books and in life....

ARTHUR L. CORBIN, ANSON ON CONTRACTS v-vi (3d Am. ed. 1919).

Goals and Objectives

With that in mind, I aspire, at a minimum, to:

- ◆ explore with you the fundamental elements of the common law of contracts, as well as selected elements of statutory contract law, as they presently exist, and some of the theories and policies underlying or critiquing existing contract law and shaping its continuing development;
- ◆ equip you to (a) determine which body of substantive contract law applies to a particular situation, (b) carefully and thoughtfully read the relevant authorities (both binding and persuasive), (c) formulate a sound argument regarding, if not a resolution of, the situation, and (d) communicate your argument or resolution and the rationale underlying it in a variety of ways to the appropriate audience;
- ◆ challenge you to critically evaluate the applicable law, relevant authorities, and the conclusions you draw from reading and thinking about them; and, thereby,
- ◆ prepare you for more advanced courses requiring a substantive knowledge of contract law, the skills identified above (none of which are peculiar to the study of contracts), or both, as well as, eventually, the bar exam and your professional life.

Class Meetings

We will meet **Mondays** and **Wednesdays** from **1:30 p.m. to 3:00 p.m.** and **Thursdays** from **9:00 a.m. to 10:30 a.m.** in **BSL 110**. We will also meet from 1:30 p.m. to 3:00 p.m. on Tuesday, April 26th (which is an “administrative Monday” to make up for Presidents’ Day). We will not meet Presidents’ Day (February 21) or during spring break (March 14-18). I reserve the right to make up any class I must miss. At present, the only scheduled class meeting that I know I am *likely* to miss is Thursday, April 14th – but that is not yet carved in stone. In addition to our scheduled class meetings and any make-ups, I will hold one or more optional review sessions. I will announce dates, times, and locations well in advance.

Small-Group Meetings

In addition to our scheduled class meetings, I intend to set aside time over the course of the semester to meet with each of you in one or both of two small-group settings. Shortly after the semester begins, I will circulate a sign-up sheet for “**brown bag**” lunches: 60-75 minute gatherings, limited to six students or fewer per session, in which we can discuss whatever is on your minds. I also want to periodically offer, for no more than 15-20 students per session, **enrichment classes** devoted to topics or themes such as contract archaeology, contract negotiation and drafting, contract theory and policy, contracts in popular culture, contracts in the Supreme Court, hot topics, international and comparative contracts, Nevada contract law, and sports and entertainment contracts – each of which we can only nibble at the edges of in a five-credit course. Participation in a brown bag lunch or enrichment class is purely voluntary; however, I will ask that, if you choose to sign up for an enrichment class, you attend and come prepared to get, and to help your classmates get, the most out of it.

Office Hours

My office is **RAJ 428**. My office hours this semester will be **Mondays 3:30-5:00 P.M., Wednesdays 3:30-5:00 P.M., or Thursdays 11:00 A.M.-12:30 P.M.**, depending on the week. In addition, feel free to drop by anytime I am in my office. I will either see you then or arrange a time to meet with you. I always try to accommodate requests to schedule an appointment either during or outside of my posted office hours. You may also e-mail me at keith.rowley@unlv.edu. I check my e-mail frequently, whether or not I am in town or in the office, and will respond as promptly as I can (generally “cc”-ing the whole class unless doing so would be inappropriate).

Required Texts

Our principal texts will be David G. Epstein, Bruce A. Markell & Lawrence Ponoroff, *Making and Doing Deals: Contracts in Context* (2d ed. 2006), and *Contract Law: Selected Source Materials* (Steven J. Burton & Melvin A. Eisenberg eds. 2010).¹ The UNLV Bookstore should stock both titles. I will also assign additional materials, which I will distribute via the Internet, via e-mail, and in class.

Optional Materials

Because of the pace of this course, you may benefit from referring to one of the leading hornbooks – E. Allan Farnsworth, *Contracts* (4th ed. 2004) or Joseph M. Perillo, *Calamari & Perillo on Contracts* (6th ed. 2009) – or one or more of Marvin Chirelstein, *Concepts and Case Analysis in the Law of Contracts* (6th ed. 2010), Jeffrey Ferriell, *Understanding Contracts* (2d ed. 2009), Robert A. Hillman, *Principles of Contract Law* (2d ed. 2009), or Michael B. Kelly, *Inside Contracts: What Matters and Why* (2010), to further supplement the required readings. The Weiner-Rogers Law Library has copies of each and the UNLV Bookstore will have copies of Farnsworth (which Professor Stempel requires for his students), and should have copies of several of the others, for purchase. I generally prefer Farnsworth and Hillman; but Kelly’s book is just out and each title has its relative strengths and weaknesses.

Supplementary Materials

Burton & Eisenberg reproduce the relevant provisions of the Uniform Commercial Code (“UCC”) and the *Restatement (Second) of Contracts*; but, they do not reproduce most of the comments and illustrations that help you understand and apply those provisions. The Law Library has multiple copies of the UCC, including the official comments and illustrations, and the *Restatement (Second)*, including the reporter’s notes, comments, and illustrations.²

¹ If you can find a 2009 edition of this supplement at a discount, feel free to use it. The differences between the 2009 and 2010 editions should be *de minimis*. If you wish to use something other than the 2009 or 2010 edition of Burton & Eisenberg, you should check with me first.

² The American Law Institute also publishes, in conjunction with West, a three-volume, softbound Student Edition of the *Restatement (Second) of Contracts*. The student edition contains everything included in the three hardbound volumes. I purchased this set when I was in law school and it proved helpful several times in my law school courses, while working on the law review and as a judicial clerk, and in practice. I continue to use it today.

The Law Library and UNLV Bookstore have copies of my book, *Questions & Answers: Contracts* (rev. 1st ed. 2006), and Brian A. Blum, *Contracts: Examples & Explanations* (5th ed. 2010).³ Both are good resources for a student looking to test her ability to apply the legal concepts about which she will read and we will discuss in class. CALI (www.cali.org) offers a library of contracts tutorials, almost invariably structured in a question and answer format, which you can work on-line, download, or work from a CD-ROM available from the law library.

If you are truly ambitious, the Law Library has copies of the three leading American multi-volume contracts treatises: *Corbin on Contracts*, *Williston on Contracts*, and *Farnsworth on Contracts*. *Corbin on Contracts*, which the late Grant Gilmore (contracts scholar extraordinaire and principal draftsman of the original Article 9 of the UCC) called “the greatest law book ever written,” currently consists of 15 volumes, thirteen of which are part of a comprehensive Revised Edition being prepared under the auspices of Professor Joseph M. Perillo (of Fordham University Law School), the balance of which are the “original” edition authored by the late Arthur Linton Corbin (of Yale Law School) himself, as updated by various pocket part authors over the last 50 years. Professor Richard A. Lord (of Campbell University’s Norman Adrian Wiggins School of Law) completed the Fourth Edition of *Williston on Contracts* in 2004. It is in 31 volumes and is updated annually. The three-volume *Farnsworth on Contracts* (3d ed. 2004) represents a strong effort by the principal author (late of Columbia Law School) of the *Restatement (Second) of Contracts* to provide greater coverage than afforded by a hornbook without the painstaking detail of *Corbin* or *Williston*. For additional guidance on UCC issues, the Law Library offers James J. White’s & Robert S. Summers’s four-volume *Uniform Commercial Code* (5th ed./6th ed. 2006-10) treatise and one-volume hornbook (6th ed. 2010).

Obviously, I do not expect any of you to read all of the foregoing this semester, this year, or even this lifetime. My aim is to offer you access to as much helpful information as you desire. I have my own copies of virtually all of the above and many more useful references. If you find yourself pressed and unable to locate a resource that you want to review, come by my office. If I am in, and if I am not using the book you want, you may look at it in my office.

Class Web Site

I have created a LexisNexis Web Course, which provides a secure site to which I can post assigned and supplemental materials not included in the required texts, PowerPoint slide shows, topic outlines, and the like. It also provides an interactive discussion board and a means for me (and you) to send e-mails to the entire class. **If the e-mail address associated with your current LexisNexis Custom ID or LexisNexis password is not the e-mail address you normally use, please contact the law school’s LexisNexis representative to update your e-mail address. If you do not have a LexisNexis Custom ID or LexisNexis password, please get one as soon as possible.** In the interim, you’ll find copies of some course materials at <http://www.law.unlv.edu/faculty/rowley/>. Please check your e-mail and the web site regularly.

³ Brian Blum is a friend and has, no doubt, made some improvements between the Fourth Edition (2007) and the Fifth Edition. That said, there has been no sea change in contract law over the past three years that would likely make any of his analysis or the suggested answers in his Fourth Edition misleading. So, if you can save more than a pittance by using the Fourth Edition, I don’t think Brian will begrudge you the lost royalties.

Reading Assignments

I have posted to the LexisNexis Web Course a Reading List for roughly the first half of the semester, as well as copies of any items from Part I of the Reading List that are not in the required texts. (I also posted the Reading List to the BSL portal.) I reserve the right to modify assignments as circumstances dictate. As the semester progresses, I will post the balance of the Reading List, as well as copies of any Reading List items that are not in the required texts, to the LexisNexis Web Course at least a week before the class meeting in which I expect to discuss them. **For our first two classes**, read the materials in **Reading List Topics I.A and I.B**, as well as the **Course Introduction** and **Governing Law** outlines, all of which you will find on the LexisNexis Web Course. If you need paper copies, please check with Nettie Mann in RAJ 414.

Grades

Grades are not a reflection of your value as a human being (or, in some instances, your potential as a lawyer). However, they can be important, everything else being equal, in securing a place on the *Nevada Law Journal*, a certain summer job, a judicial clerkship, or other post-law school employment. Moreover, there is a strong correlation between Boyd students' grades and their performance on the Nevada Bar Exam. I will make every effort to fairly evaluate your written and in-class performance and to assign you a grade that fairly reflects that performance.

Class Participation

Teaching you how to “think like a lawyer” about contracts and related matters works best if you regularly prepare for, attend, and participate in class. I reserve the right to raise or lower your final grade by up to one-half letter (*e.g.*, from B to B+ or from A- to B+) based on your class attendance and class participation. **I also reserve the right to drop any student who misses ten or more class meetings (with or without excuse) or to reduce a student's course grade by one-half letter grade for each class missed following his or her ninth absence.**

Optional Assignments

I may make one or more optional assignments during the course of the semester. You may choose whether to complete each assignment and submit your work. If you do, your grade on the optional assignment will count toward your course grade – thus reducing the weight of the final exam – unless counting it would lower your course grade; if you do not, it will not count against you, but your final exam grade will weigh more in calculating your course grade.

Periodic Quizzes

I plan to offer several short quizzes throughout the semester to allow you and me to better assess your grasp of key concepts, some of the nuances surrounding them, and the cumulative nature of the material. I hope to administer these using the LexisNexis Web Course. Because I have not tried this before, there may be a bug or two to work out. Bear with me and be flexible if I need to find another way to administer the quizzes. Whether I will require these quizzes or make them optional will depend on the ease with which I can administer them and you can complete them securely. We'll discuss this more in the first week or two of the semester.

Exam(s)

The **final exam**, scheduled for **Monday, May 9th**, will test the breadth of your knowledge of the concepts and materials we will have covered, the depth of your knowledge, and your analytical skills. When I last taught this course, I gave the exam as two hours of multiple-choice questions and three hours of essays/problem-solving, with a two-hour break in between. While grueling, this is perhaps the best way to test your mastery of such a large mass of material and your ability to apply it to a variety of fact patterns. (It is also a decent preview of how a bar exam works.) This semester, I may opt for an exam a portion of which is timed and the rest of which is take home. We'll talk more about this as the semester progresses. I *may* also offer a shorter **mid-term exam** immediately before or after Spring Break. If I do, your mid-term grade will account for 20% of your final course grade (prior to class participation).

Calculating Your Course Grade

I plan to calculate your course grade in the following manner:

Final Exam	50% to 100%
Mid-Term Exam	0% or 20%
Periodic Quizzes	0% to 20%
Optional Assignments	0% to 10%
Class Participation	+5% to -5%

Law school policy permits me to (1) factor into your course grade nonanonymous work and class participation, as well as your performance on anonymously-graded exams, and to (2) combine anonymous and nonanonymous grade components *after* obtaining your anonymous IDs from the registrar, *provided that* I disclose that fact in writing before the end of the first week of the semester. Consider this my written disclosure to you that I will decide whether to count any of your optional assignment grades, and will calculate your final course grade, incorporating class participation, *after* I obtain your exam IDs. Never fear. I take grades too seriously and value my reputation as a fair grader too much to play favorites.

Accommodating Disabilities

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the Disability Resource Center (DRC). The DRC coordinates all academic accommodations for students with documented disabilities. The DRC reviews and houses student disability documentation and provides students with an official Academic Accommodation Plan to present to their professors if the DRC concludes that an accommodation is warranted. UNLV strongly discourages faculty from accommodating students without an Academic Accommodation Plan.

The DRC is located in the Student Services Complex (SSC-A), Room 143. Its contact numbers are: Tel: (702) 895-0866; TTY: (702) 895-0652; Fax: (702) 895-0651. *For additional information, visit: <http://studentlife.unlv.edu/disability/>.*