

**Contract Theory and Policy (LAW 790C)**  
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**Fall 2008**

**Reading List**

- 8/21:** STEPHEN A. SMITH, CONTRACT THEORY vii-viii, 3-6 & 41-53 (2004) [“SMITH”]  
Peter Benson, *Introduction*, in THE THEORY OF CONTRACT LAW: NEW ESSAYS 1-8 (Peter Benson ed. 2001) [“BENSON”]  
Brian Bix, *Contract Law Theory* (2006), available at <http://ssrn.com/abstract=892783>  
ROBERT A. HILLMAN, THE RICHNESS OF CONTRACT LAW: AN ANALYSIS AND CRITIQUE OF CONTEMPORARY THEORIES OF CONTRACT LAW 267-274 (1997) [“HILLMAN”]  
Emerson H. Tiller & Frank B. Cross, *What is Legal Doctrine?*, 100 NW. U. L. REV. 517 (2006)
- 8/28:** LARRY A. DIMATTEO, ROBERT A. PRENTICE, BLAKE D. MORANT & DAN BARNHIZER, VISIONS OF CONTRACT THEORY: RATIONALITY, BARGAINING, AND INTERPRETATION 1-33 (2007) [“DIMATTEO ET AL.”]  
Richard Craswell, *Two Economic Theories of Enforcing Promises*, in BENSON, pp. 19-44  
HILLMAN, pp. 7-41  
Curtis Bridgeman, *Why Contracts Scholars Should Read Legal Philosophy: Positivism, Formalism, and the Specification of Rules in Contract Law*, 29 CARDOZO L. REV. 1443 (2008)
- 9/4:** SMITH, pp. 7-37 & 54-97  
Melvin A. Eisenberg, *The Theory of Contracts*, in BENSON, pp. 206-223  
Seana Valentine Shiffrin, *The Divergence of Contract and Promise*, 120 HARV. L. REV. 708, 708-729 (2007)
- 9/11:** SMITH, pp. 106-136  
Eisenberg, *The Theory of Contracts*, in BENSON, pp. 223-264  
DIMATTEO ET AL., pp. 35-57  
HILLMAN, pp. 213-239  
Eric A. Posner, *Economic Analysis of Contract Law After Three Decades: Success or Failure?*, 112 YALE L.J. 829 (2003)
- 9/18:** SMITH, pp. 97-105 & 136-163  
Peter Benson, *The Unity of Contract Law*, in BENSON, pp. 118-205  
Randy E. Barnett, *A Consent Theory of Contract*, 86 COLUM. L. REV. 269 (1986)  
Shiffrin, *The Divergence of Contract and Promise*, pp. 729-753  
Jeffrey M. Lipshaw, *Objectivity and Subjectivity in Contract Law: A Copernican Response to Professor Shiffrin*, 21 CANADIAN J.L. & JURIS. 399 (2008)

**9/25: INDIVIDUAL TOPIC CONFERENCES**

**10/2:** WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, *available at* <http://shakespeare.mit.edu/merchant/full.html>

Daniela Carpi, *Law, Discretion, Equity in The Merchant of Venice and Measure for Measure*, 26 CARDOZO L. REV. 2317, 2317-2325 (2005)

*AND ONE OF THE FOLLOWING:*

Randy Lee, *Who's Afraid of William Shakespeare?: Confronting Our Concepts of Justice and Mercy in The Merchant of Venice*, 32 U. DAYTON L. REV. 1 (2006)

Josh Nisker, *The (Comic) Tragedy of Formalism in Shakespeare's The Merchant of Venice*, 15 DALHOUSIE J. LEGAL STUD. 257 (2006)

**10/9:** DiMATTEO ET AL., pp. 85-120 & 201-252

HILLMAN, pp. 173-211

Linda Mulcahy, *The Limitations of Love and Altruism – Feminist Perspectives on Contract Law*, in FEMINIST PERSPECTIVES ON CONTRACT LAW 1-19 (Linda Mulcahy & Sally Wheeler eds. 2005)

*AND ONE OF THE FOLLOWING:*

Gillian K. Hadfield, *An Expressive Theory of Contract: From Feminist Dilemmas to a Reconceptualization of Rational Choice in Contract Law*, 146 U. PA. L. REV. 1235 (1998)

Emily M.S. Houh, *Critical Interventions: Toward An Expansive Equality Approach to the Doctrine of Good Faith in Contract Law*, 88 CORNELL L. REV. 1025 (2003)

**10/16:** HILLMAN, pp. 241-266

Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724 (2001)

Dori Kimel, *The Choice of Paradigm for Theory of Contract: Reflections on the Relational Model*, 27 OXFORD J. LEGAL STUD. 233 (2007)

Ian R. Macneil, *Relational Contract Theory: Challenges and Queries*, 94 NW. U. L. REV. 877 (2000)

*AND ONE OF THE FOLLOWING:*

Jason Scott Johnston, *Should the Law Ignore Commercial Norms? A Comment on the Bernstein Conjecture and its Relevance for Contract Law Theory and Reform*, 99 MICH. L. REV. 1791 (2001)

Stewart Macaulay, *Relational Contracts Floating on a Sea of Custom?: Thoughts About the Ideas of Ian Macneil and Lisa Bernstein*, 94 NW. U. L. REV. 775 (2000)

**10/23: IN-CLASS PRESENTATIONS**

**10/30: IN-CLASS PRESENTATIONS**

**11/6: IN-CLASS PRESENTATIONS**

**11/13: INDIVIDUAL PAPER CONFERENCES**