I. Introduction to Contract Law

A. Basic Concepts: Terminology, Pedagogy, and Theory
   Epstein, Markell & Ponoroff, pp. vii-viii, 1-24 & 800-803
   Cohen, The Basis of Contract, 46 HARV. L. REV. 553, 571-85 (1933)
   Restatement (Second) of Contracts §§ 1-3
   UCC §§ 1-201(b)(3), (12), (26) & (27), * 1-303 & 2-106(1)**

B. Basic Concepts: Governing Law
   Burton & Eisenberg, pp. iii-ix
   UCC §§ 1-102, 1-103(b), 1-108, 2-102, 2-105(1) & 2-107(1)-(2)
   UETA §§ 2(1), (4), (5), (7), (8), (13) & (16), 3 & 5
   E-SIGN §§ 7001(a) & 7002(a)
   CISG arts. 1-3, 6 & 10
   In re Trailer & Plumbing Supplies, 578 A.2d 343 (N.H. 1990)
   Asante Technologies, Inc. v. PMC-Sierra, Inc., 164 F. Supp. 2d 1142 (N.D. Cal. 2001)

* The American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Law (NCCUSL) comprehensively revised UCC Article 1 in 2001. As of January 1, 2011, thirty-nine states, including Nevada, have enacted their own versions of Revised Article 1. The 2010 Burton & Eisenberg supplement reproduces the uniform version at pp. 3-19. Unless I tell you otherwise, we will study uniform Revised Article 1.

** ALI and NCCUSL extensively amended UCC Article 2 in 2003. To date, only Oklahoma has enacted any of the 2003 amendments; every state except Louisiana has enacted its own version of pre-amended Article 2. Unless I tell you otherwise, we will study uniform pre-amended Article 2, which the 2010 Burton & Eisenberg supplement reproduces at pp. 21-107.
II. Contract Formation

A. Mutual Assent
   Epstein, Markell & Ponoroff, pp. 39-66
   Rowley, You Asked For It, You Got It ... Toy Yoda: Practical Jokes, Prizes, and
   Restatement (Second) §§ 4 & 17-23
   U.C.C. § 2-204

B. Offer: Basic Principles
   Epstein, Markell & Ponoroff, pp. 66-81 & 135-139
   Rowley, You Asked For It ..., pp. 548-552
   Restatement (Second) §§ 24, 26-27, 29 & 31-34
   CISG arts. 14, 15(1) & 24
   Lefkowitz v. Great Minneapolis Supply Store, 86 N.W.2d 689 (Minn. 1957)
   Donovan v. RRL Corp., 27 P.3d 702 (Cal. 2001)

C. Terminating the Offer
   Epstein, Markell & Ponoroff, pp. 81-98
   Restatement (Second) §§ 35-44, 46 & 48-49
   CISG arts. 16(1) & 17

D. Preserving the Offer
   Epstein, Markell & Ponoroff, pp. 98-108
   Restatement (Second) §§ 25 & 87
   UCC § 2-205
   CISG arts. 15(2) & 16(2)

E. Acceptance: General Principles
   Epstein, Markell & Ponoroff, pp. 108-135
   Restatement (Second) §§ 30, 32, 50, 52, 56-61, 63-68 & 70
   UCC § 2-206
   UETA § 15
   CISG arts. 18 & 20-23

F. Non-Promissory Acceptance
   Epstein, Markell & Ponoroff, pp. 135-152 & 24-31
   Restatement (Second) §§ 45, 51, 53-54, 62 & 69
   Petterson v. Pattberg, 161 N.E. 428 (N.Y. 1928)
   Bio-Tech Pharmacal, Inc. v. International Business Connections, LLC, 184
   ProCD, Inc. v. Zeidenberg, 86 F.3d 1447 (7th Cir. 1996)
G. Special Case: “The Battle of the Forms”
Epstein, Markell & Ponoroff, pp. 152-182 (skip Egger v. Nesbit)
UCC § 2-207
CISG art. 19
Ionics, Inc. v. Elmwood Sensors, Inc., 110 F.3d 184 (1st Cir. 1997)

H. Consideration
Epstein, Markell & Ponoroff, pp. 233-277
Rowley, You Asked For It ..., pp. 552-559
Restatement (Second) §§ 71-79, 81 & 89
UCC § 2-209
Dougherty v. Salt, 125 N.E. 94 (N.Y. 1919)

III. Formation Defenses

A. Lack of Capacity
Epstein, Markell & Ponoroff, pp. 338 & 376-383
Restatement (Second) §§ 7-8, 12-16 & 48
RESTATEMENT (THIRD) OF AGENCY §§ 1.01, 2.01, 2.03 & 2.05 (2006)
Dodson v. Shrader, 824 S.W.2d 545 (Tenn. 1992)
Robertson v. C.O.D. Garage Co., 199 P. 356 (Nev. 1921)

B. Mutual Misunderstanding
Epstein, Markell & Ponoroff, pp. 183-187
Restatement (Second) §§ 17 & 20

C. Mistake
Epstein, Markell & Ponoroff, pp. 439-456
Restatement (Second) §§ 151-155
Optional: Rowley, To Err is Human, 104 MICH. L. REV. 1407 (2006)

D. Material Misrepresentation
Epstein, Markell & Ponoroff, pp. 361-376
Restatement (Second) §§ 159-164 & 166-172
E. Duress and Undue Influence
Epstein, Markell & Ponoroff, pp. 383-402
Restatement (Second) §§ 175-177

F. Unconscionability
Epstein, Markell & Ponoroff, pp. 427-439 & 31-37
Restatement (Second) § 208
UCC § 2-302

G. Illegality and Public Policy
Epstein, Markell & Ponoroff, pp. 403-427
Restatement (Second) §§ 178-181, 184 & 186-188

IV. Statutes of Frauds

A. Common Law Statutes of Frauds
Epstein, Markell & Ponoroff, pp. 339-345 (to Note 3.1)
Restatement (Second) §§ 110-112, 124-125, 130-132 & 134-137
Crabtree v. Elizabeth Arden Sales Corp., 110 N.E.2d 551 (N.Y. 1953)
Harriott v. Tronvold, 671 N.W.2d 417 (Iowa 2003)

B. Sale of Goods Statutes of Frauds & Electronic Contracting
Epstein, Markell & Ponoroff, pp. 345 (from Note 3.2)-352
UCC §§ 1-201(b)(37) & (43) & 2-201
UETA §§ 5, 7 & 8(a)
E-SIGN §§ 7001(a), 7002(a)(1), 7003(a)(1)-(3) & 7006
CISG art. 11
Donovan v. RRL Corp., 27 P.3d 702 (Cal. 2001)
GPL Treatment, Ltd. v. Louisiana-Pacific Corp., 914 P.2d 682 (Or. 1996)
V. **Contract Terms**

A. **Introduction to Construction and Interpretation**
   Epstein, Markell & Ponoroff, pp. 457-465
   Rowley, *Contract Construction and Interpretation: From the “Four Corners” to the Parol Evidence Rule* ..., 69 Miss. L.J. 73, 79-90 (1999)
   Restatement (Second) §§ 200 & 201

B. **Key Concept: Integration**
   Epstein, Markell & Ponoroff, pp. 466-473
   Rowley, pp. 100-113
   Restatement (Second) §§ 209-212

C. **Key Concept: Ambiguity**
   Epstein, Markell & Ponoroff, pp. 498-506 & 509-519
   Rowley, pp. 90-100
   Restatement (Second) §§ 219-223

D. **Interpretive Principles**
   Epstein, Markell & Ponoroff, pp. 528-532
   Rowley, pp. 113-163
   Restatement (Second) §§ 202-203 & 206-207

E. **The Common Law Parol Evidence Rule**
   Epstein, Markell & Ponoroff, pp. 519-527
   Rowley, pp. 238-267
   Restatement (Second) §§ 213-215

F. **The Parol Evidence Rule in Sales of Goods**
   Epstein, Markell & Ponoroff, pp. 480-486, 488-498 & 506-508
   Rowley, pp. 308-342
   UCC §§ 1-303 & 2-202

G. **Parol Evidence Rule Exceptions**
   Epstein, Markell & Ponoroff, pp. 474-479 & 486-488
   Rowley, pp. 268-308
   Restatement (Second) §§ 216-218
   *Mercury Investment Co. v. F.W. Woolworth Co.*., 706 P.2d 523 (Okla. 1985)
H. **Implied Terms**
Epstein, Markell & Ponoroff, pp. 542-565 (skip p. 547)
*Restatement (Second) §§ 204-205 & 228*
UCC §§ 1-201(b)(20), 1-304, 2-103(1)(b) & 2-306
*Morin Building Products v. Baystone Construction*, 717 F.2d 413 (7th Cir. 1983)

VI. **Non-Performance and Excuse**

A. **Introduction to Discharge and Breach**
Epstein, Markell & Ponoroff, pp. 617-618
*Restatement (Second) § 235*

B. **Express and Implied Conditions**
Epstein, Markell & Ponoroff, pp. 618-619 & 625-654
*Restatement (Second) §§ 224-227, 229, 231-234 & 245*

C. **Modification/Substitution/Accord/Disclaimer/Waiver**
Epstein, Markell & Ponoroff, pp. 660-669
*Restatement (Second) §§ 89 & 278-281*
UCC § 2-209
*Centex Homes v. Buecher*, 95 S.W.3d 266 (Tex. 2002)

D. **Impossibility, Impracticability, and Frustration of Purpose**
Epstein, Markell & Ponoroff, pp. 670-688
*Restatement (Second) §§ 261-271*
UCC § 2-615

E. **Material Breach**
Epstein, Markell & Ponoroff, pp. 713-736
*Restatement (Second) §§ 236-238 & 240-243*
UCC § 2-601
*Goldston v. AMI Investments, Inc.*, 655 P.2d 521 (Nev. 1982)

F. **Anticipatory Repudiation**
Epstein, Markell & Ponoroff, pp. 691-713
*Restatement (Second) §§ 250-251, 253-254 & 256-257*
UCC §§ 2-609 to 2-611
VII. Remedies

A. Introduction to Remedies
   Epstein, Markell & Ponoroff, pp. 759-760 & 737-747
   Restatement (Second) §§ 344-345 & 378

B. Specific Performance and Agreed Remedies
   Epstein, Markell & Ponoroff, pp. 760-771, 777-781 & 793-794
   Restatement (Second) §§ 356-362, 364-365 & 367
   Mason v. Fakhimi, 865 P.2d 333 (Nev. 1993)
   Sutton v. Epperson, 631 So.2d 832 (Ala. 1993)

C. Money Damages
   Epstein, Markell & Ponoroff, pp. 799-830
   Restatement (Second) §§ 346-349 & 353-355
   TEX. CIV. PRAC. & REM. CODE § 38.001

D. Foreseeability, Causation, and Certainty
   Epstein, Markell & Ponoroff, pp. 831-838 & 846-861
   Restatement (Second) §§ 351-352

E. Mitigation of Damages
   Epstein, Markell & Ponoroff, pp. 861-882
   Restatement (Second) § 350
   Rockingham County v. Luten Bridge Co., 35 F.2d 301 (4th Cir. 1929)

F. Restitutionary Remedies (With and Without a Contract)
   Epstein, Markell & Ponoroff, pp. 882-885 & 988-998
   Restatement (Second) §§ 370-371, 373-377 & 384

VIII. Enforceability in the Absence of a Contract

A. Promissory Estoppel
   Epstein, Markell & Ponoroff, pp. 292-313, 330-338 & 352-361
   Restatement (Second) §§ 90, 129 & 139

B. Pre-Acceptance Reliance
   Epstein, Markell & Ponoroff, pp. 329 & 218-231
   Restatement (Second) § 87(2)
   Hoffman v. Red Owl Stores, Inc., 133 N.W.2d 267 (Wis. 1965)
C. Promissory Restitution
   Epstein, Markell & Ponoroff, pp. 277-291 & 987-88
   Restatement (Second) §§ 82 & 84-86

D. Quasi-Contract and Non-Promissory Restitution
   Epstein, Markell & Ponoroff, pp. 955-982
   Restatement of Restitution §§ 1-2, 112 & 116-117 (1937)***

IX. Third Party Rights and Duties

A. Third Party Beneficiaries
   EMP, pp. 911-932
   Restatement (Second) §§ 302, 304, 307-309, 311 & 315

B. Assignment and Delegation
   EMP, pp. 932-945
   Restatement (Second) §§ 317-318, 321-322, 326, 328, 332, 336, 338
   Herzog v. Irace, 594 A.2d 1106 (Me. 1991)

*** The ALI is in the process of finalizing a Restatement (Third) of Restitution and Unjust Enrichment.
(There is no Second Restatement on the subject: due to the passage of time, the ALI decided to call this a Third
Restatement because most of the other recent and current Restatement projects are Third Restatements.) If I can
locate a version of the relevant provisions of the Restatement (Third) by the time we get to this topic, I will provide
you with the corresponding provisions. There won’t be any case law applying the Third Restatement; but the
similarities and differences between the first and Third Restatements may be illuminating.