Although the law of contract is largely settled, there is at present no widely accepted comprehensive theory either of its main principles and doctrines or of its normative basis. Contract law theory raises issues concerning the relation between law and morality, the role and the importance of rights, the connection between justice and economics, and the distinction between private and public law....

Contemporary discussions about [contract theory] usually divide ... according to whether the analysis should be approached from traditional moral philosophy or from economic analysis. From traditional moral philosophy, the analysis is generally in terms of autonomy and consent, and more specifically through ideas about promising and (to a lesser extent) corrective justice .... Economic analysis, by contrast, tends to focus on when remedies are available, and which remedies are available, and to consider whether parties are being given the optimal incentives to act in accordance with the purposes ascribed (by lawmakers or judges) to the law.  

All theories of contract offer insight and ... some are better at explaining different aspects of contract law. [No] one meta-principle or theory can explain all of contract law. By implication, ... any general theory of contract must be integrative in nature – it must build upon different “unified” contract theories....

Ultimately, contract theory should reflect the pragmatism of contract law. Contract law is a reflection of a continuing framework of compromises between competing values, interests, and norms....

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**Goals and Objectives**

In your first-year Contracts class, you devoted most of your time to studying and discussing contract law. Fair enough. This is, after all, law school. But simply knowing the law, while necessary, is not sufficient to consider yourself well educated and well prepared to face the myriad challenges that will present themselves in your life after law school. Law changes. Society changes. Business practices change. As a wise person once said, with apologies to any vegans among you, “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.” Many of the changes in contract law that have occurred in the past and that will occur in the future – whether at the hands of judges or legislatures – were and will be driven by theoretical or policy-based critiques of existing law and were and will be shaped by theoretical or policy-based prescriptions.

In this course, I aspire to, among other things:

◆ (re-)introduce you to a number of schools of positive and normative contract theory and some of the ways in which they can be – indeed, in many cases, already have been – applied to (1) understanding existing legal rules and institutions and at least some of the rationales underlying them, (2) critiquing existing legal rules and institutions and at least some of the rationales underlying them, and (3) improving legal rules and institutions and at least some of the rationales underlying them;

◆ further hone your research, analytical, and writing skills in ways that will serve you well in your future legal endeavors;

◆ apply those skills to discussing and assessing the explanations and arguments made in the assigned course materials and in one another’s written work and in-class discussion and presentations; and

◆ enable those of you who have chosen to do so to satisfy the graduation writing requirement by writing a paper on any substantive topic you choose, provided that explore your topic using one or more of the contract theories and policy perspectives we will explore this semester.

**Class Meetings and Individual Conferences**

Class will meet every Wednesday from 9:00 to 10:55 a.m. in Room 203 unless I announce otherwise. I reserve the right to schedule a make-up for any class I must miss. I will also meet with each of you individually once during the semester to discuss your choice of paper topic and at least once later in the semester to discuss the status of your paper.

**Office Hours**

My office is Room 428. My “posted” office hours this semester are Wednesdays from 2:00-5:00 P.M. I am in my office (except for occasional forays to the Library or committee
meetings) almost every afternoon and many mornings, too. Feel free to “drop in.” I will either see you at that time, or arrange a time to meet with you. I will also make every effort to accommodate you in the event that you would like to schedule an appointment either during or outside of my posted office hours. You may also e-mail me at keith.rowley@ccmail.nevada.edu. I check my e-mail frequently, usually beginning around 8:00 a.m. and often as late as 1:00 a.m., whether I am in town or not. I will respond to your e-mails as promptly as I can.

Course Materials

There are four required books: Charles Fried, *Contract as Promise: A Theory of Contractual Obligation* (1981), Grant Gilmore, *The Death of Contract* (Ronald K.L. Collins ed. 1995), Dori Kimel, *From Promise to Contract: Towards a Liberal Theory of Contract* (2004), and Stephen A. Smith, *Contract Theory* (2004). All of these titles should be available in the UNLV Bookstore, as well as online from their publishers, Amazon.com, bn.com, etc. I have also placed a copy of each of the four principal texts, as well as a number of other books of interest, in the Reserve Room of the Weiner-Rogers Law Library. I will also assign law review articles, book chapters, essays, and working papers, and recommend other readings, which I will distribute in class, provide links to on the class web site, or make available at the law library.

I intend to make some of the reading assignments such that each student has a choice of what to read, so that we can benefit from a greater variety of perspectives without requiring everyone to read everything. We’ll talk more about this the first day of class.

Grades

Unlike most (or all) of the courses you have taken to date in law school, your grade in this seminar will not be determined primarily (or exclusively) by your performance on an end-of-semester exam. Instead, your grade will be based on your participation in class discussions and the paper you will write between now and the end of the semester.

Class Attendance and Participation

I envision this class being highly interactive and, to some extent at least, directed by your own interests and intellectual curiosity. Therefore, whether you enrolled for the two- or three-credit version of this course, I expect you to attend every class meeting (there will be no more than thirteen, after all) and to participate in our discussion of the assigned readings, your and other students’ paper topics, and your and other students’ written work. I reserve the right to drop any student from this class who misses three or more class meetings (with or without excuse). Alternatively, I reserve the right to reduce your course grade by up to one full letter grade for each class you miss following your second absence.

Papers and Presentations

Those students who enroll for the two-credit version of the class must write one 15-25 page paper during the course of the semester. *This paper will not satisfy your graduation writing requirement*. I must pre-approve all topics, which you should choose no later than Wednesday,
October 12th. Each student will present his or her short paper in class. I will try to give you the option of doing so while you are still working on the paper, so that you may benefit from your classmates’ comments and suggestions, or after you have finished it. While I do not require students writing short papers to submit a draft before submitting your final paper, I encourage you to do so. All short papers are due on or before Friday, **December 9th**.

Those students who enroll for the **three-credit** version of the class must write one 30-50 page paper during the course of the semester. This paper will satisfy your graduation writing requirement. I must pre-approve the topic for your paper, which you should choose no later than October 5th. You must both submit a substantial **first draft** of the paper to me and present your work-in-progress in class no later than Wednesday, **November 9th**. You must submit a second draft and make a second in-class presentation no later than Wednesday, November 30th. You must submit the **final draft** of your paper no later than Friday, **December 16th**.

When grading each paper, I will consider its substantive quality and your use or critique of one or more elements of, and one or more “schools” of, contract theory, as well as the paper’s structure, grammar, punctuation, style, and citation form. Citations in all papers must conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005). For general guidance on grammar, punctuation, and style, I recommend Bryan A. Garner, *The Elements of Legal Style* (2d ed. 2002), which you may want to purchase to have your own copy handy for the various types of writing you must do in law school, clerking for a judge, and practicing law. For insights into choosing a paper topic and writing your paper, I recommend the relevant portions of either Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (2d ed. 2005), or Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students* (3d ed. 2005). Copies of both Volokh and Fajans & Falk are in the Reserve Room of the Weiner-Rogers Law Library.

I will calculate your course grade in the following manner:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paper</td>
<td>75%</td>
</tr>
<tr>
<td>Class Participation</td>
<td>25%</td>
</tr>
</tbody>
</table>

**A Cautionary Note**

With respect to both your written answers to any assignments I make during the semester and your course paper, your written work product must be your own. While our in-class discussions will (I hope) be highly collaborative, you may not work on the written assignments jointly with another student, and you may seek only comments and suggestions from your classmates regarding your course paper.

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4 This includes, but is not limited to, your in-class presentation(s) of your paper and your in-class comments on and questions about your classmates’ papers.
Reading Assignments

I want to “customize” the course readings to some extent based on your interests. Thus, I don’t yet have a completed the Reading List for the semester, and I reserve the right to modify the readings as the semester progresses. **For the first class meeting, read pp. vii-ix and 3-53 of Stephen A. Smith, *Contract Theory*, pp. 5-37 of Grant Gilmore, *The Death of Contract*, pp. 1-8 from Peter Benson’s *Introduction to The Theory of Contract Law: New Essays* (Peter Benson ed. 2001), and Emerson H. Tiller & Frank B. Cross, *What is Legal Doctrine?* Copies of Benson and Tiller & Cross will be in your law school mailboxes by 5 p.m. August 23.**

Class E-Mail List/Lexis Web Course

Once I know who is enrolled in the course, I will create a class e-mail list and may also create a Lexis Web Course page, which includes an interactive “discussion board.” You should check your e-mail and the web site(s) for announcements and assignment changes, electronic versions of supplemental cases and handouts, sample questions and answers, etc.

Accommodating Disabilities

If you have a documented disability that may require assistance, you will need to contact Disability Services (DS) for coordination in your academic accommodations. Disability Services is located within Learning Enhancement Services (LES), in the Reynolds Student Services Complex (SSC), Room 137. The telephone number is 895-0866 or TDD 895-0652.

One Final Thought

*For lawyers, it goes without saying that the nature and extent of contractual liabilities are matters of enduring professional concern. But because the nature of their discipline makes them more immediately interested in practical questions, lawyers tend to adopt theories of liability without testing them too rigorously .... [Lawyers demonstrate] virtually no disposition to inquire into the nature of promises, or to probe into the reasons for their legal enforceability.*

I hope that, by the end of this semester, we will prove that Professor Atiyah’s gig at uninquisitive lawyers is an overgeneralization.

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