

Law 511-2 & 512-2 — Contracts I & II

Fall 2018 – Spring 2019

Southern Illinois University School of Law

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COURSE MATERIALS

The required text is [Bishop & Barnhizer's Contracts: Cases and Theory of Contractual Obligation, 2d Ed. \(9781628101102\)](#). Clean used copies are usually available for a fraction of the bookstore's price on [Amazon.com](#). If you sign up for [Amazon Student](#), you can get free 2-day shipping on all your purchases. Additional optional supplements are listed on TWEN, the online page for this course to which I will be posting material throughout the year, and which I will use to communicate with you as needed. Make sure that you are registered for the course's TWEN page as soon as possible.

You will also need to reference portions of the Restatements of Contracts, Restatements of Agency, and the Uniform Commercial Code. Links to these materials are/will be posted to TWEN. While I have not assigned an overpriced statutory supplement, it is *imperative* that you intimately familiarize yourself with the Restatement and UUC sections discussed in the cases and in class. Additional materials, which will complement the casebook, will be posted to TWEN.

GRADING

Class participation will determine 10 percent of your grade. You get these points by raising your hand to ask and respond to questions, and to make comments. It's you think that you are entirely unclear on something that it's most important for you to raise your hand to ask for clarification. I prefer to take volunteers, but I will call on people from a randomized list if needed.

I track attendance to enable the law school to comply with its [attendance rules](#). Attendance does not *directly* affect your grade other than as the law school's attendance rules dictate. If you are absent, however, you cannot participate in class discussion or absorb the material as well, especially if it is material that is not in the casebook. You miss class at your peril.

You will also be required to prepare and turn in two writing assignments—one each semester—as part of our Writing Across the Curriculum (WAC) program, which requires that all courses include a writing assignment in addition to the final exam. The specifics of the assignments will be distributed later in the semester.

The remainder of your grade will be based on a final exam that will be administered on ~~December 4, 2018, at 8:15 a.m.~~ May 10, 2019, at 8:15 a.m.

FORMATIVE BAR-STYLE ASSESSMENT

There will be a formative bar-style assessment the week of ~~September 24~~ March 4. There will be no new material covered this week. ~~There will be a review session on Wednesday, September 26. The assessment will be administered on Thursday, September 27, from 10:00-11:30am.~~ The assessment will not count against your grade. It is also mandatory—you must take it to pass the class.

LEARNING OBJECTIVES

At the end of this full-year course, students will be able to

- Analyze a judicial opinion to isolate the legal rules.
- Identify the methods for determining the damages recoverable in a breach of contract lawsuit.
- Identify various situations in which a promise may be broken, but the legal system will not grant money damages or a specific performance remedy to the injured party.
- Identify the necessary elements of an enforceable contract and make effective arguments whether those necessary elements are present in a particular factual situation.
- Identify other legal approaches for recovering money damages for the breaking of a promise even when a contract does not exist.
- Determine when an agreement must be in writing to be legally enforceable.
- Describe the warranties a merchant will be deemed to make when selling goods unless the merchant negates those warranties in the contract.
- Advise parties on how to disclaim implied promises.
- Identify when a person is deemed to lack capacity to enter into a contract, and analyze the probable results when such a person nonetheless makes a promise.
- Explain when an otherwise valid contract will be unenforceable because of (i) economic duress, (ii) undue influence, (iii) misrepresentation or nondisclosure, unconscionability, (vi) mistake, or (vii) public policy.
- Argue persuasively whether a party's failure to perform a contract will be legally excused because of impossibility, impracticability, frustration of purpose, waiver, or excuse.
- Advise a client regarding the client's obligations under a contract when the other party has breached the contract or indicated that it will breach the contract.

In sum, at the end of the full-year course, you will (1) learn a great deal of hard contract law (by learning rules and principles), and (2) be able to predict a great deal of the hard contract law that we do not study (by understanding contract theory).

RECORDING CLASSES

I generally do not object to recording classes *if you must be absent because of an emergency*. In these cases, please let me know in advance of class and I will record or arrange for the recording of the class. Students may not record or arrange for the recording of classes without obtaining my prior permission.

WORKLOAD EXPECTATIONS

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend three 50-minute blocks of time together each week (a 75-minute block each Tuesday and Thursday). The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

INDEPENDENT WORK; BAN ON COLLABORATION; BAN ON PLAGIARISM

You are not allowed to obtain help on an assignment from any other person (including any other student) unless expressly authorized by the professor and then only to the extent expressly authorized. This ban on collaboration includes obtaining written materials from another student or communicating with another student about an assignment. This ban on collaboration applies to both graded and ungraded exercises. Permission to get help from someone else on one exercise does not necessarily give you permission to do so on another exercise. If you fail to comply with this requirement for independent work, you can be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. When in doubt about how to proceed, ask your professor.

Plagiarizing another’s work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as:

passing off another’s ideas, words, or work as one’s own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author’s work with quotation marks, footnotes, or other appropriate designation in such a way as to make clear the true author of the work.

EMERGENCY PROCEDURES

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at <http://www.bert.siu.edu>, Department of Safety’s website <http://www.dps.siu.edu> (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

DISABILITY POLICY

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

SALUKI CARES

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is (618) 453-3135.

ASSIGNMENTS

Part I

1. Sections 1.C and 1.D from Knapp, Crystal, & Prince, *Problems in Contract Law: Cases and Materials*. They are available for free preview on Amazon. These are the only pages from this book that we will be using, so you should not buy the book!

B&B 2-16.

Shaheen v. Knight (TWEN).

Sir Henry Maine, Ancient Law 168-70 (TWEN).

2. B&B 50-53 (*History of Consideration*. At this stage, we are interested in the history of assumpsit.); 759-66; 771-78; 795-97; 858-60.
3. B&B 766-71; reread 772-78; 778-95.

4. B&B reread 795-97; 797-808.
Damage Interest Problem (TWEN).
B&B 900-13.
5. Ludwig Von Mises, Human Action 97-98, 201-06 (TWEN).
B&B 808-33.
Morrow v. First National Bank of Hot Springs (TWEN).
6. B&B 833-46; 913-24.
7. B&B 846-58
Mistletoe Express Service v. Locke (TWEN).
8. B&B reread 858-861.
Scholl v. Hartzell (TWEN).
B&B 861-71.
Dallas Cowboys v. Harris (TWEN).
9. B&B 871-900.
10. *Bailey v. Alabama* (TWEN).
Embry v. Hargadine (TWEN).
B&B 21-47.
11. B&B 47-83.
12. B&B 83-98.
13. B&B 108-109; 219-233; 98-108
14. B&B 109-126.
15. B&B 127-144.
16. B&B 144-171.
17. B&B 171-205.

18. B&B 205-19.

19. B&B 233-61.

Empro Mfg. v. Ball-Co Mfg. (TWEN)

Specht v. Netscape (TWEN; trial and appeal opinions).

Register.com v. Verio (TWEN).

20. *Wagner v. Lectrox* (TWEN).

Schnell v. Nell (TWEN).

B&B 263-99.

21. B&B 299-320; 328-36; quickly read 321-28.

Quickly read *Trident Center* (TWEN; also discussed at B&B 326-27).

22. Professor Frank Snyder guest lecture.

23. B&B 336-50.

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Contracts I Above This Line

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Contracts II Below This Line

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Part III

1. B&B 350-88.

2. B&B 388-412

3. B&B 412-16.

Ferrara v. A.C. Nielsen (TWEN).

Evenson v. Colorado Farm Bureau (TWEN).

B&B 416-35.

4. B&B 417-50.

5. Justice Dingake (Botswana Supreme Court, Fiji judge) guest lecture.

6. B&B 451-71.

7. B&B 471-88.

8. B&B 499-521.

The remainder of the syllabus will be posted around the time of class 7.