

Contracts II Syllabus

(subject to change)

Spring 2019

Tuesday & Thursday, 1:30 to 2:45

Room 202

Law 511-3 § 001

Prof. Drennan

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618-453-8729 (office)

314-943-4683 (cell)

Room 220

Office Hours: Wed 11:30 – 2 pm

Required Materials: SAME AS CONTRACTS I

Problems in Contract Law: Cases and Materials, by Knapp, Crystal, and Prince (8th ed. 2016), part of the Aspen Casebook Series (the “Knapp Casebook”)

Writing Assignments: We will have one or more writing assignments during the semester. One writing assignment will be designated as our writing-across-the-curriculum assignment. Satisfactory completion of the writing-across-the-curriculum assignment is required to be eligible to take the final exam and complete the course.

Attendance Policy: Attendance will be taken at the beginning of class by passing around a roll sheet for you to sign. Under the Rules of the School of Law, a first year student may not accumulate absences in a course numbering in excess of twice the credit hours for the course during the semester. Thus, because we meet twice a week, **the maximum number of absences in this course is four (4) classes.** The Rules provide for three options if a student accumulates absences in excess of the allowable number. The professor may recommend that: (a) the student be given the lowest possible grade; (b) the student be given a “W”; or (c) the student be allowed to continue in the course with a grade reduction.

Midterm Exam, Final Exam & Grading: There will be a midterm exam that will constitute 10% of the grade for the course. Also, there will be a final exam (at the end of the semester) constituting 90% of the grade for the course. The final exam is scheduled for Friday, May 10, 2019 at 8:15 a.m.

Course Description: This course continues the study of contract law from Contracts I. After a review of the essay questions on the exam from Contracts I, we will study various situations in which courts refuse to enforce agreements that satisfy the basic elements we studied in Contracts I. Courts may refuse to enforce an otherwise valid agreement between the parties because of the incapacity of a party (for example because the party is a minor or lacks the requisite mental capacity), or because of duress or undue influence, the unconscionability of the bargain, or because the deal violates public policy. Also, there can be situations when a court will permit a party to fail to perform the duties it agreed to in a contract, for example because of mistake, changed

circumstances, or contractual modifications. With the time remaining, we will study the rights and duties of third parties, consequences of nonperformance, anticipatory repudiation, and damages.

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 www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in an 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.

Recording of Classes: Students and the professor may record classes from their regular location in the classroom, unless the professor announces in class that this policy has changed. Recordings of the class may not be shared with persons who are not enrolled in this class without the professor's prior consent. The professor may share recordings with members of the Law School's IT department or as otherwise necessary.

Disability Policy: The School of Law no longer makes determinations about appropriate accommodations for disabilities. Those decisions are now made by the University Disability Support Services ("DSS") Office. In regards to these procedures: 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.

Plagiarism: 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.

Workload Expectation: 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 two 75-minute blocks of time together each week (a 75-minute block each Tuesday and Thursday). ABA Interpretation 310-1 states that 50 minutes satisfies for an hour of classroom instruction, but an "hour" for out-of-class work is 60 minutes. 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.

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.

Student Learning Outcomes: At the end of this course, students will be able to:

- Analyze the probable results when a minor, or a person who lacks mental capacity, or has questionable capacity because of drugs or alcohol, signs a contract.
- Explain when an otherwise valid contract will be unenforceable because of (i) economic duress, (ii) undue influence, (iii) misrepresentation or nondisclosure, (iv) unconscionability, (v) mistake, or (vi) public policy.
- Argue persuasively whether a party's failure to perform a contract will be legally excused because of impossibility, impracticability, or frustration of purpose.
- 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.
- Analyze the rights and responsibilities that third parties might have under a contract.
- Describe when the implied obligations of good faith and fair dealing might apply and the potential consequences.
- Quantify the monetary damages recoverable in a breach of contract lawsuit and identify the other remedies that might be available.

Contracts II – Spring 2019
Projected Reading Schedule as of 1/4/19 (subject to change)
All page references are to the Knapp Casebook (8th ed. 2016) unless otherwise indicated

Class #1: Tuesday, January 15, 2019: Review of the essay problems from the final exam for Contracts I; Avoiding contract enforcement—minors and their capacity to contract; [supplemental cases to be posted on TWEN - *Halbman v. Lemke*, 298 N.W.2d 562 (Wis. 1980) and *Webster Street Partnership, Ltd. v. Sheridan*, 368 N.W.2d 439 (Neb. 1985) regarding majority rules for minors]; pages 555-562 middle (including *Dodson* on non-majority approaches for minors)

Class #2: Thursday, January 17, 2019: Avoiding contract enforcement—mental incapacity; 562 middle–574 top (including *Sparrow*); supplemental case to be posed on TWEN regarding incapacity due to drugs or alcohol – *Gonzalez v. Jurella*, 2015 WL 9943596; begin discussion of duress 574-584 top (including *Totem Marine*)

Class #3: Tuesday, January 22, 2019: Avoiding contract enforcement—completion of discussion of duress; undue influence, 584-592 middle (including *Odorizzi*); beginning discussion of misrepresentation 592 & 593; TWEN page case--*Jordan v. Knafel*, significantly edited version of 880 N.E.2d 1061 (Ill. App. 2007) (regarding fraudulent misrepresentation)

Class #4: Thursday, Jan. 24, 2019: Avoiding contract enforcement, continued discussion of misrepresentation: 594-603 (focus on fraudulent overreaching with *Syster v. Banta*); nondisclosure, 603-616 middle (including *Jennings*); briefly discuss haunted house material to be posed on TWEN

Class #5: Tuesday, Jan. 29, 2019: TWEN page case on innocent, material misrepresentation *Halpert v. Rosenthal*, edited version of 267 A.2d 730 (R.I. 1970); Avoiding contract enforcement—completion of discussion of misrepresentation and nondisclosure, Lawyers Professional Ethics, 616-622 middle (including *Park 100*)

Class #6: Thursday, Jan. 31, 2019: Avoiding contract enforcement—unconscionability; basic principles, 622 middle-633 (including *Williams v. Walker-Thomas Furniture*); TWEN page case on unconscionability and price--*Ahern v. Knecht* (edited version of 563 N.E.2d 787 (Ill. App. 2002)); unconscionability and arbitration agreements, 633-645 (including *Higgins*)

Class #7: Tuesday, Feb. 5, 2019: Consumer Protection Legislation 658 middle-661 middle; Avoiding enforcement—public policy and covenants not to compete, 661-675 (including *Valley Medical*); TWEN page case: *Jordan v. Knafel*, edited version of 823 N.E.2d 1113 (Ill. App. 2005) (this time regarding “public policy” doctrine)

Class #8: Thursday, Feb. 7, 2019: Justification for nonperformance-mutual mistake, 701-712 top (including *Lenawee County Bd. of Health v. Messerly*); TWEN page case on mistake of fact v. mistake of law – edited version of *United States v. Williams*, 2014 WL 3537046 (S.D. N.Y. 2014) (will be posted on TWEN); [To be determined – additional *Michael Jordan* case?]

Class #9: Tuesday, Feb. 12, 2019: Unilateral mistake, 712-724 (including *DePrince*); TWEN page case – *Wilfred's Inc.*, edited version of 372 N.E.2d 946 (Ill. App. 1978)

Class #10: Thursday, Feb. 14, 2019: Impossibility, impracticability, and frustration, 724 bottom-727 middle; [additional cases and materials to be determined]

Class #11: Tuesday, Feb. 19, 2019: 743-755 middle (including *Mel Frank Tool & Supply*); [additional material?]

Class #12: Thursday, Feb. 21, 2019: Contract modification, 755 middle-772 (including *Alaska Packers* and *Kelsey-Hayes Co*)

Class #13: Tuesday, Feb. 26, 2019: Assignment and Delegation of Contractual Rights and Duties 1077 middle-1095 top (including *Herzog v. Irace* and *Sally Beauty v. Nexxus Products*)

Class #14: Thursday, Feb. 28, 2019: Rights and Duties of Third Parties 1057-1077 middle (including *Vogan* and *Chen* cases).

Class #15 & Class #16: MIDTERM WEEK March 4-8: At the time this projected reading schedule was produced, the date for the Contracts mid-term has not yet been announced. [Note: As the schedule calls for a class during this week, this projected reading schedule will need to be adjusted.]

SPRING BREAK WEEK: No class on Tuesday, March 12 or Thursday, March 14

Class #17: Tuesday, March 19, 2019: Consequences of nonperformance-express conditions, 785-800 top (including *enXco Development*)

Class #18: Thursday, March 21, 2019: Express conditions continued, 800-809 bottom (including *J.N.A. Realty*); TWEN case on “waiver” – *Savre Auto Repair v. Santoyo*, 865 N.W.2d 419 (N.D. 2015)

Class #19: Tuesday, March 26, 2019: Material breach 809-810 top; modified version of *Jacob & Youngs* to be posted on TWEN page; pages 814 middle to 828 top (including *Sackett v. Spindler*); TWEN page case: *Health Related Services, Inc. v. Golden Plains Convalescent Center, Inc.*, 806 S.W.2d 102 (Mo. Ct. App. 1991)

Class #20: Thursday, March 28, 2019: Anticipatory repudiation, 828-845 middle (including *Truman L. Flatt & Sons Co* and *Hornell Brewing Co v. Spry*)

Class #21: Tuesday, April 2, 2019: Expectation damages, 851-871 top (including *Crabby's Inc.* and *Lukaszewski*)

Class #22: Thursday, April 4, 2019: Expectation damages cont. 871-877 (including *Schechtman*); Restriction on the recovery of expectation damages-foreseeability, 877 bottom-895 middle (including *Hadley v. Baxendale* and *Florafax*)

Class #23: Tuesday, April 9, 2019: Restriction on the recovery of expectation damages-mitigation 895 middle-913 top (including *Rockingham County v. Luten Bridge* and *Maness v. Collins*); TWEN page case -- *Chicago Coliseum Club v. Dempsey*, 265 Ill. App. 542 (1932)

Class #24: Thursday, April 11, 2019: Nonrecoverable Damages: Attorney Fees, Mental or Emotional Distress, and Punitive Damages, 919 bottom-943 top (including *Zapata*, and *Erllich v. Menezes*)

Class #25: Tuesday, April 16, 2019: Agreed Remedies 1034 bottom-1051 top (including *Barrie School*); TWEN page case-*Vanderbilt Univ. v. Dinardo*, 174 F.3d 751 (6th Cir. 1999)

Class #26: Thursday, April 18, 2019: Specific Performance 1012-1025 (including *City Stores*); TWEN page cases -- *Channing v. Penn State* and *Dallas Cowboys Football Club v. James B. Harris*

Possible Additional Materials:

Reliance damages 971-981 (including *Waltzman v. Hightower*); Restitutionary damages ???

Buyers and Sellers' Remedies under the UCC pages 943-950

Practical Drafting

Review Classes

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