

Contracts II Syllabus

(subject to change)

Spring 2020

Tuesday & Thursday, 1:30 to 2:45

Room 202

Law 512-3 § 002

Prof. Drennan

wdrennan@siu.edu

618-453-8729 (office)

314-943-4683 (cell)

Room 220

Office Hours: Wed 11:30–1:30pm

Required Materials: SAME AS CONTRACTS I

Problems in Contract Law: Cases and Materials, by Knapp, Crystal, and Prince (9th ed. 2019), 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 8, 2020 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 and studying certain implied terms (during the first week), we will study various situations in which courts refuse to enforce agreements that satisfy the basic elements of contracts 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, damages, and perhaps the duty of good faith in contract performance and enforcement.

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 aid 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: 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. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or <https://disabilityservices.siu.edu>. You may request accommodation at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course 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 a minimum of 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 minimum 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:

- Determine whether a seller has made express or implied warranties in a transaction.
- 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.
- Quantify the monetary damages recoverable in a breach of contract lawsuit and identify the other remedies that might be available.
- If time permits, describe when the implied obligations of good faith and fair dealing might apply and the potential consequences.

Contracts II – Spring 2020
Projected Reading Schedule as of 1/8/20 (subject to change)
All page references are to the Knapp Casebook (9th ed. 2019) unless otherwise indicated

Class #1: Tuesday, January 14, 2020: Review of the essay problems from the final exam for Contracts I; Implied Terms pages 481 to 486 middle (including *Wood v. Duff-Gordon*).

Class #2: Thursday, January 16, 2020: Implied Terms cont. 486 middle to 492 top (including *Leibel v. Raynor Mfg.*); Warranties pages 546 to 557 (including *Bayliner Marine*).

Class #3: Tuesday, January 21, 2020: Avoiding Contract Enforcement—minors and their capacity to contract; [TWEN Page cases - *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 571-578 middle (including *Dodson v. Shrader* on non-majority approaches for minors)

Class #4: Thursday, January 23, 2020: Avoiding Contract Enforcement cont.—mental incapacity; 579-591 top (including *Sparrow*); TWEN Page case regarding incapacity due to drugs or alcohol – *Gonzalez v. Jurella*, 2015 WL 9943596; begin discussion of duress 591 to 601 middle (including *Totem Marine*)

Class #5: Tuesday, January 28, 2020: Avoiding Contract Enforcement—completion of discussion of duress; undue influence, 601 middle to 610 middle (including *Odorizzi v. Bloomfield School District*); beginning discussion of misrepresentation 610 & 611; TWEN Page case—*Halpert v. Rosenthal*, edited version of 267 A.2d 730 (R.I. 1970) (regarding innocent misrepresentation); TWEN Page case -- *Jordan v. Knafel*, significantly edited version of 880 N.E.2d 1061 (Ill. App. 2007) (regarding fraudulent misrepresentation)

Class #6: Thursday, January 30, 2020: Avoiding Contract Enforcement—continued discussion of misrepresentation and then covering nondisclosure: pages 611 bottom to 632 middle (including *Seyster v. Banta* and *Hill v. Jones*); briefly discuss haunted house stories material posed on TWEN Page.

Class #7: Tuesday, Feb. 4, 2020: Lawyers Professional Ethics, 632-638 middle (including *Park 100*); Avoiding Contract Enforcement—unconscionability; basic principles, 638 bottom-650 middle (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, 650 middle to 664 top (including *Higgins*)

Class #8: Thursday, Feb. 6, 2020: Consumer Protection Legislation 677 top—680 top; Avoiding Contract Enforcement—public policy and covenants not to compete, 680-695 top (including *Valley Medical*); TWEN page case: *Jordan v. Knafel*, edited version of 823

N.E.2d 1113 (Ill. App. 2005) (this time regarding the “public policy” doctrine and blackmail)

Class #9: Tuesday, Feb. 11, 2020: Justification for Nonperformance-Mutual Mistake, 719-730 middle (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); [TWEN page material -- additional note on *Michael Jordan* case as a “mistake” case?]

Class #10: Thursday, Feb. 13, 2020: Unilateral Mistake; TWEN page case – *Wilfred's Inc.*, edited version of 372 N.E.2d 946 (Ill. App. 1978); Unilateral mistake pages 730 to 741 (including *BMW Financial v. Deloach*)

Class #11: Tuesday, Feb. 18, 2020: Impossibility, Impracticability, and Frustration, 741 bottom to 757 (including *Hemlock Semiconductor*); TWEN Page case *Aluminum Company of America v. Essex Group*, 499 F. Supp. 33 (Penn Dist. 1980)

Class #12: Thursday, Feb. 20, 2020: Impossibility, Impracticability, and Frustration cont. 757-768 middle (including *Mel Frank Tool & Supply*); TWEN Page cases – *River Phoenix Estate, Wasserman Theatrical Enterprise, Board v. Elaine Lukaszewski*

Class #13: Tuesday, Feb. 25, 2020: Contract Modification, 771 middle-789 bottom (including *Alaska Packers* and *Kelsey-Hayes Co*)

Class #14: Thursday, Feb. 27, 2020: Assignment and Delegation of Contractual Rights and Duties 1115 middle-1134 middle (including *Herzog v. Irace* and *Sally Beauty v. Nexxus Products*)

Class #15: MIDTERM WEEK March 2-6:

SPRING BREAK WEEK: Sunday, March 7 to Sunday March 15

Class #16: [MAKE-UP CLASS?]: Rights and Duties of Third Parties 1093-1114 top (including *Vogan* and *Chen* cases).

Class #17: Tuesday, March 17, 2020: Consequences of Nonperformance—Express Conditions, 803 to 818 (including *enXco Development*)

Class #18: Thursday, March 19, 2020: Express Conditions continued, 818 bottom to 827 (including *J.N.A. Realty*); TWEN Page case on “waiver” – *Savre Auto Repair v. Santoyo*, 865 N.W.2d 419 (N.D. 2015)

Class #19: Tuesday, March 24, 2020: Material breach 829 top; modified version of *Jacob & Youngs* on TWEN page; pages 841 bottom to 849 middle (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 26, 2020: Anticipatory Repudiation, 849 middle to 867 middle (including *Truman L. Flatt & Sons Co* and *Hornell Brewing Co v. Spry*)

Class #22: Tuesday, March 31, 2020: Expectation Damages, 873-895 top (including *Crabby's Inc.* and *Lukaszewski*)

Class #22: Thursday, April 2, 2020: Expectation Damages cont. 895 top to 901 (including *American Standard v. Schectman*); Restriction on the Recovery of Expectation Damages- Foreseeability, 902 to 921 (including *Hadley v. Baxendale* and *Florafax*)

Class #23: Tuesday, April 7, 2020: Restriction on the Recovery of Expectation Damages- Mitigation 921 bottom to 941 middle (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 9, 2020: Nonrecoverable Damages: Attorney Fees, Mental or Emotional Distress, and Punitive Damages, 948 middle to 971 middle (including *Zapata*, and *Erllich v. Menezes*)

Class #25: Tuesday, April 14, 2020: Agreed Remedies 1069 middle to 1086 top (including *Barrie School*); TWEN Page case *Vanderbilt Univ. v. Dinardo*, 174 F.3d 751 (6th Cir. 1999)

Class #26: Thursday, April 16, 2020: Specific Performance 1045 middle to 1059 middle (including *City Stores*); TWEN Page cases -- *Channing v. Penn State* and *Dallas Cowboys Football Club v. James B. Harris*; End of Semester Challenge?

Class #27: Tuesday, April 21, 2020: ??? – Reliance Damages pages 1001 to 1012 (including *Waltzman v. Hightower*); Restitutionary Damages pages ??? to ???; End of Semester Challenge?

Class #28: Thursday, April 23, 2020: ??? [Duty of Good Faith?]; End of Semester Challenge?

Final Exam: Friday 8:15 am, May 8, 2020

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