

# ***Contracts II Syllabus***

*(subject to change)*

**Spring 2021**

**Tuesday & Thursday, 1:30 to 2:45**

**Room 120**

**Law 512-3 § 002**

Prof. Drennan

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618-453-8729 (office)

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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 (9<sup>th</sup> 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. 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 Law School final exam period is from Tuesday April 27 to Friday May 7. The day and time for this exam had not been set at the time this Syllabus was prepared.

**Course Description:** This course continues the study of contract law from Contracts I. After 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. We also will study the rights and duties of third parties, consequences of nonperformance, anticipatory repudiation, damages, and the duty of good faith in contract performance and enforcement.

**EMERGENCY PROCEDURES:** *We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.*

**DISABILITY POLICY.** *SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or [disabilityservices.siu.edu](http://disabilityservices.siu.edu). You may request accommodations 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. Accommodation [request](#) and [renewal](#) forms can be found here: <https://law.siu.edu/academics/>.*

**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) 453-2461, or [siucares@siu.edu](mailto: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](mailto:judiray@siu.edu), and her phone number is 618- 453-3135.*

**COVID-19.** As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the [SIUC COVID-19 response](#)

**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.

**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.

**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.
- Describe when the implied obligations of good faith and fair dealing might apply and the potential consequences.

## ***Contracts II – Spring 2021***

### ***Projected Reading Schedule as of 1/11/21 (subject to change)***

***All page references are to the Knapp Casebook (9th ed. 2019) unless otherwise indicated***

Class #1: Tuesday, January 19, 2021: Review of Syllabus; Implied Terms pages 481 to 492 top (including *Wood v. Duff-Gordon* and *Leibel v. Raynor Mfg.*); Supplemental Reading Materials Part 1, page 2..

Class #2: Thursday, January 21, 2021: Warranties pages 546 to 557 (including *Bayliner Marine*); Supplemental Reading Materials Part 1 pages 3 to 15 (on warranties, including *Ferragamo v. Mass. Bay Transp. Auth.*, 481 N.E.2d 477 (Mass. 1985) and *Shaffer v. Victoria Station*, 588 P.2d 233 (Wash. 1978)).

Class #3: Tuesday, January 26, 2011: Avoiding Contract Enforcement—minors and their capacity to contract; Supplemental Reading Materials Part 1 pages 15 to 23 (including *Halbman v. Lemke*, 298 N.W.2d 562 (Wis. 1980) and *Webster Street Partnership, Ltd. v. Sheridan*, 368 N.W.2d 439 (Neb. 1985) both regarding the majority rules for minors); pages 571-578 middle (including *Dodson v. Shrader* on non-majority approaches for minors)

Class #4: Thursday, January 28, 2021: Avoiding Contract Enforcement cont.—mental incapacity; 579-591 top (including *Sparrow*); Supplemental Reading Materials Part 1 pages 23 to 27 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, February 2, 2021: 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; Supplemental Reading Materials Part 1 pages 27 to 42 (including *Halpert v. Rosenthal*, edited version of 267 A.2d 730 (R.I. 1970) (regarding innocent misrepresentation) and *Jordan v. Knafel*, significantly edited version of 880 N.E.2d 1061 (Ill. App. 2007) (regarding fraudulent misrepresentation))

Class #6: Thursday, February 4, 2021: Avoiding Contract Enforcement—continued discussion of misrepresentation and then covering nondisclosure: pages 611 bottom to 632 middle (including *Syester v. Banta* and *Hill v. Jones*); briefly discuss haunted house stories in Supplemental Reading Materials Part 1, pages 43 to 48.

Class #7: Tuesday, Feb. 9, 2021: 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*); Supplemental Reading Materials Part 1, at pages 49 to 54 (including 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. 11, 2021: Consumer Protection Legislation 677 top—680 top; Avoiding Contract Enforcement-public policy and covenants not to compete, 680-695 top (including *Valley Medical*); Supplemental Reading Materials Part 1, pages 54 to 63 (including *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. 16, 2021: Justification for Nonperformance-Mutual Mistake, 719-730 middle (including *Lenawee County Bd. of Health v. Messerly*); Supplemental Reading Materials Part 1, pages 64 to 69 (including case on mistake of fact v. mistake of law—edited version of *United States v. Williams*, 2014 WL 3537046 (S.D. N.Y. 2014), and additional note on *Michael Jordan* case as a “mistake” case?)

Class #10: Thursday, Feb. 18, 2021: Unilateral Mistake; Supplemental Reading Materials Part 1, pages 70 to 78 (including *Wil-Fred’s, Inc. v. Metro. Sanitary Dist.*, 372 N.E.2d 946 (Ill. App. Ct. 1978); pages 730 to 741 (including *BMW Financial v. Deloach*) [Note: You may merely “skim” the excerpt from Andrew Kull, *Unilateral Mistake: The Baseball Card Case*, 70 WASH. U.L.Q. 57 (1992) at Supplemental Reading Materials Part 1 at pages 78 to 85]

Class #11: Tuesday, Feb. 23, 2021: Impossibility, Impracticability, and Frustration, 741 bottom to 757 (including *Hemlock Semiconductor*); Supplemental Reading Materials Part 1, pages 85 to 97 (including *Aluminum Company of America v. Essex Group*, 499 F. Supp. 33 (Penn Dist. 1980))

Class #12: Thursday, Feb. 25, 2021: Impossibility, Impracticability, and Frustration cont. 757-768 middle (including *Mel Frank Tool & Supply*); Supplemental Reading Materials Part 1, pages 98 to 111 (including – *River Phoenix Estate, Wasserman Theatrical Enterprise, Board v. Elaine Lukaszewski*)

Class #13: Tuesday, March 2, 2021: Contract Modification, 771 middle-789 bottom (including *Alaska Packers* and *Kelsey-Hayes Co*); Supplemental Reading Materials Part 1, page 112.

Class #14: Thursday, March 4, 2021: Assignment and Delegation of Contractual Rights and Duties 1115 middle-1134 middle (including *Herzog v. Irace* and *Sally Beauty v. Nexxus Products*); Supplemental Reading Materials Part 1, page 112-113.

Class #15: Mid-term exam for Contracts II is Thursday, March 11. The time of the day of the exam had not been announced when this Syllabus was prepared. The Law School’s mid-term week is March 8-12:

[Note: NO SPRING BREAK THIS SEMESTER]

Class #16: [A RECORDED MAKE-UP CLASS WILL BE POSTED ON THE COURSE TWEN PAGE WHEN ANNOUNCED BY THE PROF] Rights and Duties of Third Parties 1093-1114 top (including *Vogan* and *Chen* cases).

Class #17: Tuesday, March 16, 2021: Consequences of Nonperformance—Express Conditions, 803 to 818 (including *enXco Development*)

Class #18: Thursday, March 18, 2021: Express Conditions continued, 818 bottom to 827 (including *J.N.A. Realty*); Supplemental Reading Materials Part \_\_\_\_, pages \_\_\_\_ to \_\_\_\_ (including a case on waivers – *Savre Auto Repair v. Santoyo*, 865 N.W.2d 419 (N.D. 2015))

Class #19: Tuesday, March 23, 2020: Material Breach 829 top; modified version of *Jacob & Youngs* in Supplemental Reading Materials Part \_\_\_\_, pages \_\_\_\_ to \_\_\_\_; pages 841 bottom to 849 middle (including *Sackett v. Spindler*); Supplemental Reading Materials Part \_\_\_\_, pages \_\_\_\_ to \_\_\_\_ (including *Health Related Services, Inc. v. Golden Plains Convalescent Center, Inc.*, 806 S.W.2d 102 (Mo. Ct. App. 1991))

Class #20: Thursday, March 25, 2021: Anticipatory Repudiation, 849 middle to 867 middle (including *Truman L. Flatt & Sons Co* and *Hornell Brewing Co v. Spry*)

Class #22: Tuesday, March 30, 2021: Expectation Damages, 873-895 top (including *Crabby's Inc.* and *Lukaszewski*)

Class #22: Thursday, April 1, 2021: 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 6, 2021: Restriction on the Recovery of Expectation Damages-Mitigation 921 bottom to 941 middle (including *Rockingham County v. Luten Bridge* and *Maness v. Collins*); Supplemental Reading Materials Part \_\_\_\_, at pages \_\_\_\_ to \_\_\_\_ (including *Chicago Coliseum Club v. Dempsey*, 265 Ill. App. 542 (1932))

Class #24: Thursday, April 8, 2021: Nonrecoverable Damages: Attorney Fees, Mental or Emotional Distress, and Punitive Damages, 948 middle to 971 middle (including *Zapata*, and *Erlich v. Menezes*)

Class #25: Tuesday, April 13, 2021: Agreed Remedies 1069 middle to 1086 top (including *Barrie School*); TWEN Page case *Vanderbilt Univ. v. Dinardo*, 174 F.3d 751 (6<sup>th</sup> Cir. 1999)

Class #26: Thursday, April 15, 2021: Specific Performance 1045 middle to 1059 middle (including *City Stores*); Supplemental Reading Materials Part \_\_\_\_, at pages \_\_\_\_ to \_\_\_\_ (including *Channing v. Penn State* and *Dallas Cowboys Football Club v. James B. Harris*; Quizzing -- End of Semester Challenge?)

Class #27: Tuesday, April 20, 2021: Perfect Tender Rule & Right to Cure, including *Moulton Cavity & Mold Inc.*, 396 A.2d 1024 (Me. 1979) Quizzing—End of Semester Challenge?

Class #28: Thursday, April 22, 2021: Implied Obligation of Good Faith 492 & 493, 508-523 (including *Morin Building* and *Locke v. Warner Bros*)

**Final Exam: Date & Time not yet been announced when this Syllabus were prepared.**

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