

Contracts II Syllabus

(as of Jan. 6, 2023) (subject to change)

Spring 2023
Tuesday & Thursday, 1:30 to 2:45
Room 202
Law 512-3 Section 1

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“A will speaks at death.” Clev. St. L. Rev. 1017, 1021 (2013) (“Not Quite Dead Yet!”)
“A will can save one’s family from being put into a quagmire pit of legal conundrums.” –
Henrietta Newton Martin
“Put not your trust in money, but put your money in trust.” – Oliver Wendell Holmes (1858)

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”)

As indicated in the Projected Reading Schedule (at the end of this document), we will also cover a significant amount of “Bonus Material” from the TWEN page for the course.

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 and bar-assessment 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 dates and times for these exams had not been set when 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.

Office Hours: Tuesdays from 12:15 to 1 pm, and Thursdays from 2:45 to 3:30 pm, and by appointment; may be by phone or zoom.

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

DISABILITY POLICIES. *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. 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, <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.*

COVID-19. SIU's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit

SIUC's COVID website (siu.edu/coronavirus), which includes the Saluki Safety Plan. People can also send an email to pandemicinfo@siu.edu

Safety and Awareness Facts and Education: Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>

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.
- Evaluate contract law's success or failure in providing consumers and merchants access to justice regardless of economic power through doctrinal regimes, such as warranty law, unconscionability, excuse due to lack of mental capacity, and more.

Contracts II – Spring 2023

Projected Reading Schedule as of Jan. 6, 2023 (subject to change) All page references are to the Knapp Casebook (9th ed. 2019) unless otherwise indicated. The Bonus Material will be posted on the course TWEN page.

Class #1: Tuesday, January 17, 2023: Review of Syllabus; Implied Terms pages 481 to 492 top (including *Wood v. Lucy, Lady Duff-Gordon* and *Leibel v. Raynor Mfg.*)

- Bonus Material for Class #1.

Class #2: Thursday, January 19, 2023: Warranties pages 546 to 557 top (including *Bayliner Marine*)

- Bonus Material for Class #2 (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 24, 2023: Avoiding Contract Enforcement—minors and their capacity to contract [Note: On this topic, it may be better to read the cases from the bonus material (*Halbman* and *Webster Street Partnership*), because they represent the majority position, before you read the *Dodson* case in the Casebook.] ;

- Bonus Material for Class #3 (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);
- Casebook pages 571-578 middle (including *Dodson v. Shrader* on non-majority approaches for minors)

Class #4: Thursday, January 26, 2023: Avoiding Contract Enforcement cont.—mental incapacity; 579-591 top (including *Sparrow*);

- Bonus Material for Class #4—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 31, 2023: 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;
- Bonus Material for Class #5 (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, Feb. 2, 2023: 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*);
- Bonus Material for Class #6 (briefly discussing haunted house stories)
- Class #7: Tuesday, Feb. 7, 2023: Lawyers Professional Ethics, 632 middle-638 middle (including *Park 100*); Avoiding Contract Enforcement-Unconscionability; basic principles, 638 bottom-650 middle (including *Williams v. Walker-Thomas Furniture*);
- Bonus Material for Class #7 (including case on unconscionability and price—*Ahern v. Knecht* (edited version of 563 N.E.2d 787 (Ill. App. 2002))); MERELY SKIM material on unconscionability and arbitration agreements, 650 middle to 664 top (including *Higgins*)
- Class #8: Thursday, Feb. 9, 2023: Consumer Protection Legislation 677 top—680 top; Avoiding Contract Enforcement-public policy and covenants not to compete, 680-695 top (including *Valley Medical*);
- Bonus Material for Class #8 (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. 14, 2023: Justification for Nonperformance-Mutual Mistake, 719-730 middle (including *Lenawee County Bd. of Health v. Messerly*);
- Bonus Material for Class #9 (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. 16, 2023: Unilateral Mistake; pages 730 middle to 741 (including *BMW Financial v. Deloach*)
- Bonus Material for Class #10 (including *Wil-Fred’s, Inc. v. Metro. Sanitary Dist.*, 372 N.E.2d 946 (Ill. App. Ct. 1978)); [Note: merely SKIM the excerpt from Andrew Kull, *Unilateral Mistake: The Baseball Card Case*, 70 WASH. U.L.Q. 57 (1992)]

Class #11: Tuesday, Feb. 21, 2023: Impossibility, Impracticability, and Frustration, 741 bottom to 757 (including *Hemlock Semiconductor*)

- Bonus Material for Class #11 (including *Aluminum Company of America v. Essex Group*, 499 F. Supp. 33 (Penn Dist. 1980))

Class #12: Thursday, Feb. 23, 2023: Impossibility, Impracticability, and Frustration cont. 757 bottom to 768 middle (including *Mel Frank Tool & Supply*)

- Bonus Material for Class #12 (including – *River Phoenix Estate, Wasserman Theatrical Enterprise, Board v. Elaine Lukaszewski*)

Class #13: Tuesday, Feb. 28, 2023: Contract Modification, 771 middle-789 bottom (including *Alaska Packers* and *Kelsey-Hayes Co*);

- Bonus Material for Class #13

Class #14: Thursday, March 2, 2023: Assignment and Delegation of Contractual Rights and Duties 1115 middle-1134 middle (including *Herzog v. Irace* and *Sally Beauty v. Nexxus Products*)

- Bonus Material for Class #14

Class #15: At the time this Syllabus was prepared, the dates for Midterm week had not been announced. If Midterm week is March 6 to 10, we will count Class #15 as the Midterm exam.

Class #16: [FOR THE MAKE-UP CLASS FOR MIDTERM WEEK, IT IS ANTICIPATED THAT A RECORDED 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).

SPRING BREAK—March 11 to March 19

Class #17: Tuesday, March 21, 2023: Consequences of Nonperformance—Express Conditions, 803 to 818 (including *enXco Development*)

- No Bonus Material for Class #17

Class #18: Thursday, March 23, 2023: Express Conditions continued, 818 bottom to 827 (including *J.N.A. Realty*)

- Bonus Material for Class #18 (including a case on waivers – *Savre Auto Repair v. Santoyo*, 865 N.W.2d 419 (N.D. 2015))

Class #19: Tuesday, March 28, 2023: Material Breach 829 top; pages 841 bottom to 849 middle (including *Sackett v. Spindler*)

- Bonus Material for Class #19 (including modified version of *Jacob & Youngs and Health Related Services, Inc. v. Golden Plains Convalescent Center, Inc.*, 806 S.W.2d 102 (Mo. Ct. App. 1991))

- Class #20: Thursday, March 30, 2023: Anticipatory Repudiation, 849 middle to 867 middle (including *Truman L. Flatt & Sons Co* and *Hornell Brewing Co v. Spry*)
- No Bonus Material for Class #20
- Class #21: Tuesday, April 4, 2023: Expectation Damages, 873-895 top (including *Crabby's Inc.* and *Lukaszewski*)
- No Bonus Material for Class #21
- Class #22: Thursday, April 6, 2023: Expectation Damages cont. 895 to 901 (including *American Standard v. Schectman*); Restriction on the Recovery of Expectation Damages-Foreseeability, 902 to 921 (including *Hadley v. Baxendale* and *Florafax*)
- No Bonus Material for Class #22
- Class #23: Tuesday, April 11, 2023: Restriction on the Recovery of Expectation Damages-Mitigation 921 bottom to 941 middle (including *Rockingham County v. Luten Bridge Co.* and *Maness v. Collins*);
- Bonus Material for Class #23: (including *Chicago Coliseum Club v. Dempsey*, 265 Ill. App. 542 (1932))
- Class #24: Thursday, April 13, 2023: Nonrecoverable Damages: Attorney Fees, Mental or Emotional Distress, and Punitive Damages, 948 middle to 957 bottom (including *Zapata*); Casebook pages 968 to 971 middle (notes #4 through #6, and the “Comment” on punitive damages after the Casebook’s version of *Erlich v. Menezes*)
- Bonus Material for Class #24 (including edited and re-organized version of *Erlich v. Menezes* from the version in the casebook);
- Class #25: Tuesday, April 18, 2023: Agreed Remedies 1069 middle to 1086 top (including *Barrie School*);
- Bonus Material (including *Vanderbilt Univ. v. Dinardo*, 174 F.3d 751 (6th Cir. 1999))
- Class #26: Thursday, April 20, 2023: Specific Performance 1045 middle to 1059 middle (including *City Stores*);
- Bonus Material (including *Channing v. Penn State* and *Dallas Cowboys Football Club v. James B. Harris*; Quizzing -- End of Semester Challenge?)
- Class #27: Tuesday, April 25, 2023: Bonus Material for Class #27: (including Perfect Tender Rule & Right to Cure, plus *Moulton Cavity & Mold Inc.*, 396 A.2d 1024 (Me. 1979)) Quizzing—End of Semester Challenge?
- No Bonus Material for Class #27
- Class #28: Thursday, April 27, 2023: Implied Obligation of Good Faith 492 & 493, 508-523 (including *Morin Building* and *Locke v. Warner Bros*)

- No Bonus Material for Class #28

Final Exam: The date and time of the Contracts II final exam had not yet been announced when this document was prepared.

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