

Syllabus For

CONTRACTS

(Course No. 6202-21; 4 credits)

Professorial Lecturer Gregory E. Maggs

"A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." Restatement (Second) of the Law of Contracts § 1.

Content of the Course:

This course covers most of the common law of contracts and key aspects of the law of sales under Article 2 of the Uniform Commercial Code. The nine topics addressed are: (1) the requirement of a basis for enforcing contracts, (2) the formation of bargains, (3) the requirement of a writing for certain kinds of contracts (i.e., contracts covered by a "statute of frauds"), (4) doctrines for policing bargains, (5) remedies for breach of contract; (6) determining the terms of a contract; (7) the performance and breach of contracts, (8) entitlement to enforce a contract; and (9) the scope of Article 2 of the Uniform Commercial Code.

Learning Outcomes (ABA Accreditation Standards 301 & 302)

Syllabus Appendix Item #22 identifies the expected "learning outcomes" for this course.

Class Schedule:

This class will meet on Mondays and Tuesdays from 6:00-8:00 p.m. The class, however, will not meet on Martin Luther King's Birthday (January 17), Washington's Birthday (February 21) or during the spring recess (March 7-11). The last day of class is Tuesday, April 19.

Office Hours, Telephone, and Email:

Because I am a part-time instructor, I do not have an office at the Law School. My office is at the U.S. Court of Appeals for the Armed Forces, 450 E Street, N.W., Washington, D.C. Until

COVID-19 restrictions on visitors are lifted, I will hold on-line office hours at times to be announced. You may reach me directly by email at [gmaggs@law.gwu.edu](mailto:gmaggs@law.gwu.edu) or through my assistant, Ms. Veronica Sevier, at [veronica.sevier@armfor.uscourts.gov](mailto:veronica.sevier@armfor.uscourts.gov).

### Required Books:

We will use two books this semester, one casebook and one supplement:

Casebook: Farnsworth, et al., Cases and Materials on Contracts (Foundation Press 9th ed. 2019)

Supplement: Burton & Eisenberg, Contract Law: Selected Source Materials Annotated (West 2021) [Please note: Used copies of earlier editions of the supplement are equally usable and may be much less expensive.]

### Final Examination:

This course is scheduled to have an "open-book" final examination on Tuesday, April 26, at 6:30 p.m. The Law School will provide additional details on how the examination will be administered.

You can find copies of my previous final examinations (and their grading guides) on the Law School class portal and also at my website (<http://maggs.us/gwlaw/home.htm>).

### Review Videos

I have prepared nine short review videos that summarize the topics covered in this course. You can find links to these review videos on the Law School class portal and also at my website (<http://maggs.us/gwlaw/home.htm>).

### Class Participation and Slides Shown in Class:

Please complete the reading assignments before each class session. During the class session, please have your books and the syllabus available and open because we will look at them very carefully. Shortly before each class, I will post on the portal the slides that will be shown in the class.

### Recording of Classes and Absences:

All classes will be recorded. If you are not feeling well, please stay home and watch the recording. Recorded classes will be accessible through the Law School's web portal.

## Reading Assignments:

At the end of each class, I will tell you how far on the following outline to read for the next class.

You should read and study each section of the Restatement (Second) of the Law of Contracts assigned below. You can find these sections in your supplement. You should also read the assigned items in the Syllabus Appendix, which are located at the end of this syllabus.

You do not have to read the notes and problems following the assigned text and cases in our casebook unless they are specifically assigned.

Please look up any legal words or phrases that you do not understand in a law dictionary. Look up other words in a regular dictionary.

### I. BASES FOR ENFORCING PROMISES

#### A. HISTORICAL BASES

Text, pp. 48-51

#### B. CONSIDERATION AS A BASIS FOR ENFORCEMENT

##### 1. Promise or Performance Bargained for in Exchange

Hamer v. Sidway, pp. 53-57

Note (1), p. 57

Restatement §§ 71(1) & (2), 79(a) & (b)

Note (4), pp. 58-59

Text, p. 60

Text, pp. 61-62

Restatement §§ 72, 74(1)

Dyer v. Nat'l By-Products, Inc., pp. 62-66

Syllabus Appendix Item #1

Note (1), p. 66

##### 2. Distinguishing Bargains from Non-Bargains

Feinberg v. Pfeiffer Co., pp. 68-72

Notes (1)-(2), p. 72

Mills v. Wyman, pp. 73-74

Note (1), p. 74

Kirksey v. Kirksey, p. 80

Notes (1)-(2), p. 81

Syllabus Appendix Item #2

Text, pp. 83

Lake Land Employment v. Cumber, pp. 83-89

Syllabus Appendix Item #3

3. Illusory and Implied Promises as Consideration

Restatement § 2(1)

Text, pp. 96

Strong v. Sheffield, pp. 96-98

Note (1), pp. 98-99

Text, pp. 99-100

Mattei v. Hopper, pp. 100-104

Text, p. 111

Wood v. Lucy, Lady Duff-Gordon, pp. 111-113

Note (3), pp. 114-115

Restatement §§ 202(1), 205

C. RELIANCE AS A BASIS FOR ENFORCEMENT ("Promissory Estoppel")

1. Development of Reliance as a Basis for Enforcement

Text, p. 118

Syllabus Appendix Item #4

Ricketts v. Scothorn, pp. 119-121

Syllabus Appendix Item #5

Text, pp. 122-124

[Allegheny College v. Nat'l Ch. C. Bank]

Syllabus Appendix Item #6

Restatement § 90(1)

2. Elements of Promissory Estoppel

Feinberg v. Pfeiffer, pp. 125-126

Text, p. 126

Problem, p. 128

Cohen v. Cowles Media Co., pp. 133-134

Note, pp. 134-135

Note (3), pp. 127-128

D. RESTITUTION AS AN ALTERNATIVE BASIS FOR RECOVERY

Text, pp. 142-144

Syllabus Appendix Item #7

Cotnam v. Wisdom, pp. 144-147

Note (1), p. 147

Callano v. Oakwood Park Homes Corp., pp. 148-150

Problem, p. 148

[Schott v. Westinghouse Electric]

E. "MORAL OBLIGATION" AS A BASIS FOR ENFORCEMENT

Text, pp. 115-118

Notes (1) & (3), pp. 74-75

Restatement §§ 14, 82, 83, 85

Webb v. McGowin, pp. 75-78

Harrington v. Taylor, pp. 78-79

Note (1), p. 79

Restatement § 86

Problem, p. 118

[Dementas v. Estate of Tallas]

Contracts I Review Video I (on portal)

## II. CONTRACT FORMATION

### A. ASSENT

Restatement § 21

Text, pp. 161-163

Lucy v. Zehmer, pp. 163-166

### B. OFFERS

Text, pp. 184-185

Restatement §§ 24, 26

Owen v. Tunison, pp. 186-187

Note (1), p. 187

Note (2), pp. 187-188

[Harvey v. Facey]

Fairmount Glass v. Crunden-Martin, pp. 189-191

Text, pp. 192-193

Lefkowitz v. Great Minn. Surplus, pp. 194-196

### C. ACCEPTANCE

Text, p. 204

Restatement §§ 4, 30, 32, 54(1), 56, 60

Wucherpfenning v. Dooley, pp. 205-207

International Filter v. Conroe Gin, pp. 207-211

Notes (1) & (3), p. 211

White v. Corlies and Tift, pp. 212-214

Note (2), p. 215

Ever-Tite Roofing v. Green, pp. 215-217

Notes (1)-(2), pp. 217-218

Text, pp. 218-219  
[Carlill v. Carbolic Smoke Ball Co.]

Note (1), p. 219

Restatement § 69(1)

Text, pp. 225-226  
[Hobbs v. Massasoit Whip Co.]

Note, pp. 226-227

D. LAPSE, REVOCATION, AND REJECTION OF OFFERS

Text, pp. 228-230, 231-232

Restatement §§ 25, 36, 41, 42, 43, 48

Dickinson v. Dodds, pp. 233-235

Text, p. 246-247

Problem, pp. 247-248  
[Earle v. Angell]

Note (4), pp. 183-184

Restatement §§ 38, 39, 59

Text, pp. 248-249 & Syllabus Appendix Item #8  
[Minn. & St. L. v. Columbus Rolling-Mill]

E. MAILBOX RULE

Restatement § 63

Text, pp. 249-251

U.S. Life Ins. v. Wilson, pp. 251-255

F. LIABILITY DESPITE APPARENTLY FAILED NEGOTIATIONS

Text, pp. 238-239, 240-241

Restatement §§ 45

Drennan v. Star Paving, pp. 241-245

Hoffman v. Red Owl Stores, pp. 299-302

Note (1), p. 302

Channel Home Centers v. Grossman, pp. 316-322

G. DEFINITENESS

Restatement § 33

Text, pp. 323-324  
[Varney v. Ditmars]

Text, pp. 328-329

Toys, Inc. v. F.M. Burlington Co., pp. 324-326

Syllabus Appendix Item #9

Note (1), p. 326

Contracts I Review Video II (on portal)

III. THE REQUIREMENT OF A WRITING FOR ENFORCEABILITY

A. PROMISES TRADITIONALLY COVERED BY A STATUTE OF FRAUDS

Restatement §§ 110, 111, 112, 124, 125, 130

Text, pp. 339-343, 345-347

Syllabus Appendix Item #10

Text, pp. 348-349, 357-358

Syllabus Appendix Item #11

C.R. Klewin v. Flagship Properties, pp. 349-355

Text, pp. 359-362, 386-389

Syllabus Appendix Item #12

Beaver v. Brumlow, pp. 389-396

Note (4), pp. 396

Text, pp. 362-364

Langman v. Alumni Ass'n, pp. 364-365

B. REQUISITES OF WRITING AND SIGNING

Text pp. 370-372, 372-374, 382-383

Restatement § 131

C. POLICY CONSIDERATIONS AND EXCEPTIONS

Text, p. 397

Restatement §§ 139, 375

Monarco v. Lo Greco, pp. 397-400

Contracts I Review Video III (on portal)

IV. POLICING THE BARGAIN

A. CAPACITY

1. Introduction

Text, pp. 415-417

2. Infancy

Text, pp. 417-418

Restatement §§ 7, 14

Syllabus Appendix Item #13 & Item #14

Douglass v. Pflueger Hawaii, pp. 418-423

Notes (1), (2), (4), pp. 423-426

3. Mental Infirmity

Restatement § 15(1)

Ortelere v. Teachers' Retirement, pp. 426-429

Cundick v. Broadbent, pp. 430-432

B. DURESS, MODIFICATION, AND ATTEMPTED MODIFICATION

Text, pp. 435-436

Restatement §§ 73, 175(1), 176(1)

Text, p. 438

Alaska Packers' Ass'n v. Domenico, pp. 438-441

Text, pp. 443-444

[Schwartzreich v. Bauman-Basch]

Note (1), p. 444

Watkins & Sons v. Carrig, pp. 445-448

Restatement § 89

C. UNDUE INFLUENCE

Restatement § 177(1) & (2)

Text, p. 461

Howe v. Palmer, pp. 461-465

Note (3), p. 466

[Odorizzi v. Bloomfield School Dist.]

D. MISREPRESENTATION, CONCEALMENT, NON-DISCLOSURE

Text pp. 468-469, 478

Restatement §§ 159, 160, 162, 164(1)

Swinton v. Whitinsville Savings Bank, pp. 470-471

Kannavos v. Annino, pp. 473-476

Restatement § 161(d)

Note (1), p. 465

E. MISTAKE

Text, pp. 1021-1022

Restatement §§ 151, 152, 154

Stees v. Leonard, pp. 1022-1025

Text, pp. 1039-1040

[Wood v. Boynton]

[Sherwood v. Walker]

Restatement §§ 153, 161(b)

F. DENYING SPECIFIC PERFORMANCE

Text, pp. 594-595, 885-886

Restatement §§ 359(1), 360, 364(1)(c)

McKinnon v. Benedict, pp. 595-597

Notes (1)-(2), pp. 597-598

Tuckwiller v. Tuckwiller, pp. 598-600

G. PUBLIC POLICY

Restatement § 178(1)

Syllabus Appendix Item #15

Text, p. 601

Black Industries, Inc. v. Bush, pp. 601-604

Note (1), p. 604

H. AVOIDING CLAUSES IN ADHESION CONTRACTS

Text, pp. 607-608

Restatement § 206

Note (3), pp. 614-615

[Galligan v. Arovitch]

Restatement § 211

Text, pp. 618-621

[Klar v. H & M Parcel Room]

Restatement § 178(1)

O'Callaghan v. Waller & Beckwith, pp. 610-614

Notes (1) & (2), p. 614

Text, pp. 635-636

Restatement § 208

Williams v. Walker-Thomas Furniture, pp. 637-641

U.C.C. § 2-302(1) & cmt. 1 (in supplement)  
Contracts I Review Video IV (on portal)

V. REMEDIES FOR BREACH

A. EXPECTATION, RELIANCE, AND RESTITUTION INTERESTS

Restatement §§ 344, 346, 347, 349, 359, 364, 371

Text, pp. 905-908

Text, p. 10

Sullivan v. O'Connor, pp. 13-18

Note (2), pp. 18-19

B. EXPECTATION DAMAGES AND INCENTIVES ("EFFICIENT BREACH")

Text, pp. 34-37

U.S. Naval Inst. v. Charter Comms., pp. 21-25

C. LIMITATIONS ON DAMAGES

1. Avoidability

Restatement § 350

Text, pp. 942-943

Rockingham v. Luten Bridge, pp. 943-945

Text, pp. 958-959

[Gandell v. Pontigny & Howard v. Daly]

Parker v. Twentieth Century-Fox, pp. 959-963

2. Incomplete or Defective Performance

Restatement § 348(2)

Text, pp. 796-797

Jacob & Youngs v. Kent, pp. 797-801

Groves v. John Wunder Co., pp. 923-928

Note (1), p. 928

Problem, p. 929

Peevyhouse v. Garland Coal, pp. 929-931

3. Unforeseeability

Restatement § 351

Text, pp. 964-965

Hadley v. Baxendale, pp. 965-968

4. Uncertainty

Restatement §§ 346(2), 348(3), 349, 352

Text, pp. 981-982

Note (2), p. 983

[Collatz v. Fox Wisconsin Amusement Corp.]

Note (2), p. 34

Fera v. Village Plaza, Inc., pp. 983-988

D. LIQUIDATED DAMAGES AND PENALTIES

Text, p. 995

Restatement § 356(1)

Dave Gustafson & Co. v. State, pp. 995-996

Problem (2), p. 997

Contracts I Review Video V (on portal)

VI. CONTRACT INTERPRETATION

A. PAROL EVIDENCE RULE CONCERNING PRIOR AGREEMENTS

Text, pp. 489-490

Restatement §§ 209(1), 210, 213, 214(b), 216(1)

Notes (2) & (3), pp. 501-502

Syllabus Appendix Item #16

Mitchill v. Lath, pp. 490-495

Masterson v. Sine, pp. 496-501

B. REFORMATION FOR MUTUAL MISTAKE OR FRAUD AS TO CONTENT

Restatement §§ 155, 166

Bollinger v. Central Penn. Quarry, pp. 503-504

Note (3), p. 504

C. INTERPRETING CONTRACT LANGUAGE

1. Introduction

Text, pp. 507-508, 524

Problem (1) (d), p. 525

2. Parol Evidence Rule Concerning Meaning of Terms

Restatement § 214(c)

Hurst v. W.J. Lake & Co., pp. 542-543

Pacific Gas v. G.W. Thomas Co., pp. 508-511

Note (2), p. 512

Trident Center v. Conn. General, pp. 520-523

3. Misunderstandings

Text, pp. 558-559

Restatement § 201

Raffles v. Wichelhaus, pp. 559-560

Syllabus Appendix Item #17

Frigalment v. Int'l Sales, pp. 535-540

Colfax Envelope v. Local No. 458, pp. 562-567

Note (2), p. 567

D. IMPLIED TERMS

Text, p. 672

Dalton v. Educational Testing Service, pp. 672-675

Syllabus Appendix Item #18

Note (1), pp. 675-676

Contracts II Review Video I (on portal)

VII. CONDITIONS AND THE DUTY TO PERFORM

A. EXPRESS CONDITIONS

Text, pp. 755-756

Restatement §§ 224, 225(1), 228, 229

Luttinger v. Rosen, pp. 756-758

Note (1), p. 758

Gibson v. Cranage, p. 770-771

Note (1), pp. 771

Problem, pp. 772-773

B. CONSTRUCTIVE CONDITION OF PERFORMANCE BY THE OTHER PARTY

1. Introduction

Text, pp. 778-779

Restatement §§ 226, 237, 241

2. Independent and Dependent Performances

Kingston v. Preston, pp. 779-780

Syllabus Appendix Item #19

3. Substantial Performance and Material Breach

Text, pp. 803-805

Walker & Co. v. Harrison, pp. 805-809

Jacob & Youngs v. Kent, pp. 797-801

Note (4), p. 802

Plante v. Jacobs, pp. 919-921

4. Restitution Despite a Material Breach

Text, pp. 824-825

Restatement § 374(1)

Britton v. Turner, pp. 825-831

Note (2), p. 831

5. Divisibility of Performances

Restatement § 240

Kirkland v. Archbold, pp. 833-835

C. IMPRACTICABILITY AND FRUSTRATION OF PURPOSE

Text, pp. 1046, 1050

Restatement §§ 261, 265

Taylor v. Caldwell, pp. 1050-1053

Notes (1)-(2), pp. 1053-1054

Krell v. Henry, pp. 1087-1089

Note (1), pp. 1089-1090

Contracts II Review Video II (on portal)

VIII. WHO MAY ENFORCE A CONTRACT

A. THIRD PARTY BENEFICIARIES

Text, pp. 1117-1119

[Bain v. Gillispie]

Restatement §§ 302, 304

Seaver v. Ransom, pp. 1125-1128

B. ASSIGNEES

Text, pp. 1168-1169, 1173-1174

[Shiro v. Drew]

Syllabus Appendix Item #20

Restatement §§ 317, 336

Herzog v. Itrace, pp. 1170-1172

Contracts II Review Video III (link on portal)

IX. SCOPE OF ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE

A. SCOPE OF UCC ARTICLE 2

Syllabus Appendix Item #21

Burton & Eisenburg, Supplement, p. 3

Note (1), p. 7

Note (1), p. 574

Sally Beauty Co. v. Nexxus Products, pp. 1162-1167

B. Examples of Differences from the Common Law

1. Statute of Frauds

Text, pp. 383-385

2. Merchant Rules

Text, p. 237

Note (1), pp. 237-238

Text, pp. 403-404

St. Ansgar Mills v. Streit, pp. 405-409

3. Implied Warranties

Text, pp. 570-572

Koken v. Black & Veatch Construction, pp. 572-574

Text, p. 575

Lewis v. Mobil Oil Corp., pp. 575-579

Contracts II Review Videos IV, V, & IX (on portal)

Prof. Professor Mixup's Special Guest Lecture  
(on portal) [optional]

## Syllabus Appendix Items

### Table of Contents

1. Correction for <u>Dyer v. Nat'l By-Products</u> . . . . .	20
2. Commentary on <u>Kirksey v. Kirksey</u> . . . . .	20
3. Commentary on <u>Lake Land Employment Group v. Columer</u> . .	20
4. Equitable Estoppel and Promissory Estoppel . . . . .	21
5. Commentary on <u>Ricketts v. Scothorn</u> . . . . .	22
6. Commentary on <u>Allegheny College</u> . . . . .	22
7. The Law of Restitution . . . . .	23
8. The Mirror Image Rule . . . . .	25
9. Procedure in <u>Toys, Inc. v. F.M. Burlington Co.</u> . . . . .	26
10. The Statute of Frauds Marriage Provision . . . . .	27
11. The Statute of Frauds One-Year Provision . . . . .	28
12. The Statute of Frauds Part Performance Doctrine . . . . .	29
13. Voidable Contracts of Infants . . . . .	30
14. Liability of Infants in Torts . . . . .	31
15. Public Policy Exceptions . . . . .	31
16. Tests for Whether a Writing is a Complete Integration .	32
17. Correction for <u>Raffles v. Wichelhaus</u> . . . . .	33
18. Correction for <u>Dalton v. ETS</u> . . . . .	33
19. Examples of Independent Covenants . . . . .	33
20. Assignment . . . . .	34
21. Questions about the Scope of UCC Art. 2 . . . . .	35
22. ABA Learning Outcomes . . . . .	37

---

**Appendix Item #1. Correction for Dyer v. Nat'l By-Products**

The opinion in the casebook contains an editing error. Please replace the fourth paragraph of case (which repeats most of the third paragraph) with the following paragraph:

Following extensive discovery procedures, the employer filed a motion for summary judgment claiming there was no genuine factual issue and that it was entitled to judgment as a matter of law. The motion was resisted by Dyer.

---

**Appendix Item #2. Commentary on Kirksey v. Kirksey**

"It is often difficult to determine whether words of condition in a promise indicate a request for consideration or state a mere condition in a gratuitous promise. An aid, though not a conclusive test in determining which construction of the promise is more reasonable is an inquiry whether the happening of the condition will be a benefit to the promisor. If so, it is a fair inference that the happening was requested as a consideration. . . . In case of doubt, where the promisee has incurred a detriment on the faith of the promise, courts will naturally be loath to regard the promise as a mere gratuity, and the detriment incurred as a mere condition. But in some cases it is so clear that a conditional gift was intended that even if the promisee incurred detriment, the promise has been held unenforceable." 1 Samuel Williston, Contracts § 112 (1924).

---

**Appendix Item #3. Commentary on Lake Land Employment Group v. Columer**

Lake Land Employment Group v. Columer is an example of a case that does not follow the bargain theory of consideration. Professor Richard A. Lord has criticized the reasoning of the decision, but not its result. He writes:

It would be better for the courts to forthrightly acknowledge that they are holding the employee to his or her restrictive covenant despite the absence of consideration, on the policy ground that the employer has a reasonable expectation that its secrets and competitive advantages will be respected and preserved. Of course, this makes a restrictive covenant--long said to be a disfavored species of agreement--enforceable without consideration. But this is what the courts are doing, and they might as well be honest about it. . . .

[Lake Land Employment Group v. Columber] held that the employer's forbearance from firing an at-will employee constituted consideration sufficient to enforce the restriction despite the fact that the employer's forbearance was, by its nature, illusory. . . . This is not to say that such agreements ought not to be enforced. In most of the cases where the courts do enforce such agreements, the employees engage in patently bad faith conduct--stealing customer lists, pirating trade or secret information, contacting customers prior to departure, and so forth--and deserve to be held to their covenants. However, there is simply no consideration, at least in the traditional bargained-for benefit or detriment sense, for the employee's promise. Nevertheless, the majority of courts indulge the fiction that consideration is present.

Richard A. Lord, The At-will Relationship in the 21st Century: a Consideration of Consideration, 58 Baylor L. Rev. 707, 766-67 (2006).

Must the Ohio Supreme Court follow the bargain theory of consideration?

---

#### **Appendix Item #4. Equitable Estoppel and Promissory Estoppel**

Black's Law Dictionary (7th ed. 2001) defines "equitable estoppel" as follows:

*equitable estoppel.* A defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. . . . -- Also termed *estoppel by conduct; estoppel in pais*.

The Restatement (Second) of the Law of Torts § 894 gives the following illustration of equitable estoppel:

A owns Blackacre. By a mistake in a survey he fails to include within his fence a small field that he erroneously believes to belong to his neighbor B. B, who is uncertain of his boundaries, asks A whether the field belongs to A. In mistaken reliance upon the survey, A replies that it does not. Relying upon this statement, B cuts and disposes of the trees upon it. B is not liable to A for these acts . . . .

\* \* \*

Black's Law Dictionary defines "promissory estoppel" as follows:

*promissory estoppel*. The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. . . .

The Restatement (Second) of the Law of Contracts § 90 gives the following illustration of promissory estoppel:

A promises B not to foreclose, for a specified time, a mortgage which A holds on B's land. B thereafter makes improvements on the land. A's promise is binding and may be enforced by denial of foreclosure before the time has elapsed.

---

**Appendix Item #5. Commentary on Ricketts v. Scothorn**

These decisions [i.e., decisions like Ricketts v. Scothorn] . . . involved far more than the usual application of "equitable estoppel." That concept applied to a representation of fact made by one party and relied on by the other. The estopped party was precluded from alleging or proving facts that contradicted its representation. But cases like Ricketts involved a promise, not a representation of fact. The promisor was "estopped" to raise the defense of lack of consideration in his promise. This type of estoppel came to be known as "promissory estoppel." . . . In 1933, on the authority of cases such as these, the American Law Institute promulgated § 90 of the Restatement of Contracts, which was destined to become its most notable and influential rule.

E. Allan Farnsworth, Contracts 92-93 (4th ed. 2004) (footnotes omitted).

---

**Appendix Item #6. Commentary on Allegheny College v. National Chautauqua County Bank**

Judge Kellogg wrote a dissenting opinion in Allegheny College in which he said:

The Chief Judge finds in the expression, 'In loving memory this gift shall be known as the Mary Yates Johnston Memorial Fund,' an offer on the part of Mary Yates Johnston to contract with Allegheny College. The expression makes no such appeal to me. Allegheny College was not requested to perform any act through which the sum offered might bear the title by which the offeror states that it shall be known. The sum offered was termed a "gift" by the offeror. Consequently, I can see no reason why we should strain ourselves to make it, not a gift, but a trade. . . . To me the words used merely expressed an expectation or wish on the part of the donor and failed to exact the return of an adequate consideration.

159 N.E. 173, 177 (N.Y. 1927) (Kellogg, J., dissenting).

Professor Allan Farnsworth commented on Allegheny College as follows:

The decision pushed the doctrine of consideration to its limit. It is difficult to imagine what opportunity the college had lost by making its deal with Mary, but courts are not in the habit of inquiring closely into such matters. One wonders if in all the years that students have dutifully studied this case, there has never been one that asked, "Surely Judge Cardozo, you cannot be serious!"

E. Allan Farnsworth, Promises to Make Gifts, 43 Am. J. Comp. L. 359, 366 (1995).

---

## **Appendix Item #7. The Law of Restitution**

An alternative to contract liability is liability for unjust enrichment under the law of restitution. The following excerpts come from the Restatement of the Law of Restitution (1937):

### GENERAL PRINCIPLE OF LIABILITY FOR UNJUST ENRICHMENT

#### § 1. Unjust Enrichment

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

### EXAMPLE OF LIABILITY FOR UNJUST ENRICHMENT

#### § 22. Mistake As To Payee

A person who has paid money to or for the account of another

not intended by him, is entitled to restitution from the payee or from the beneficiary of the payment . . . .

\* \* \*

Illustrations:

\* \* \*

2. A owes John P. Adams \$100. Desiring to pay the bill, A looks in the directory to find Adams' address and mails a check to the address of the John P. Adams whose name appears in the directory, but who is not the Adams intended. This Adams appropriates and cashes the check, believing it to be on account of a transaction which he has forgotten. A is entitled to restitution from the recipient.

COMMON INSTANCES IN WHICH THERE IS NO UNJUST ENRICHMENT

§ 2 Officious Conferring of a Benefit

A person who officiously\* confers a benefit upon another is not entitled to restitution therefor.

§ 57 Gifts Made in Anticipation of Gratuity or Contract

A person who has conferred a benefit upon another, manifesting that he does not expect compensation therefor, is not entitled to restitution merely because his expectation that the other will make a gift to him or enter into a contract with him is not realized.

§ 110 Restitution From Beneficiary of a Contract with Third Person Who Has Failed to Perform

A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person.

EXCEPTION TO LIABILITY

§ 69. Change Of Circumstances

(1) The right of a person to restitution from another because of a benefit received because of mistake is terminated or

---

\*The word "officious" is defined as "volunteering one's services where they are neither asked nor needed: MEDDLESOME." Merriam-Webster Online Dictionary (2006).

diminished if, after the receipt of the benefit, circumstances have so changed that it would be inequitable to require the other to make full restitution. . . .

AMOUNT OF LIABILITY

§ 155. [Measure of Recovery by a Non-Tortious Recipient]

(1) Where a person is entitled to restitution from another because the other, without tortious conduct, has received a benefit, the measure of recovery for the benefit thus received is the value of what was received, limited, if the recipient was not at fault or was no more at fault than the claimant, to its value in advancing the purposes of the recipient . . . .

\* \* \*

Comment:

d. \* \* \* Where the services of a physician have been rendered to an unconscious person in an emergency it is assumed that, if properly rendered, the one receiving them benefits by having had a better chance of recovery although in fact no recovery is effected.

---

**Appendix Item #8. The Mirror Image Rule**

The casebook cites Minneapolis & St. Louis Railway Co. v. Columbus Rolling-Mill Co., 119 U.S. 149 (1886). The Supreme Court stated the facts of this case as follows:

This was an action by a railroad corporation established at Minneapolis, in the state of Minnesota, against a manufacturing corporation established at Columbus, in the state of Ohio. The petition alleged that . . . the parties made a contract by which the plaintiff agreed to buy of the defendant, and the defendant sold to the plaintiff, 2,000 tons of iron rails, of the weight of 50 pounds per yard, at the price of \$54 per ton gross, to be delivered free on board cars at the defendant's rolling-mill in the month of March, 1880, and to be paid for by the plaintiff in cash when so delivered. . . . It was admitted at the trial that the following letters and telegrams were sent at their dates, and were received in due course, by the parties, through their agents:

December 5, 1879. Letter from plaintiff to defendant: "Please quote me prices for 500 to 3,000

tons 50-lb. steel rails, and for 2,000 to 5,000 tons 50-lb. iron rails, March, 1880, delivery."

December 8, 1879. Letter from defendant to plaintiff: "Your favor of the fifth inst. at hand. We do not make steel rails. For iron rails, we will sell 2,000 to 5,000 tons of 50-lb. rails for fifty-four (\$54) dollars per gross ton, for spot cash, F. O. B. cars at our mill, March delivery . . . . If our offer is accepted, shall expect to be notified of same prior to December 20, 1879."

December 16, 1879. Telegram from plaintiff to defendant: "Please enter our order for twelve hundred tons rails, March delivery, as per your favor of the eighth. Please reply."

December 18, 1879. Telegram from defendant to plaintiff, received same day: "We cannot book your order at present at that price."

December 19, 1879. Telegram from plaintiff to defendant: "Please enter an order for two thousand tons rails as per your letter of the sixth. Please forward written contract. Reply." The word "sixth" was admitted to be a mistake for "eighth."

December 22, 1879. Telegram from plaintiff to defendant: "Did you enter my order for two thousand tons rails, as per my telegram of December 19th? Answer."

After repeated similar inquiries by the plaintiff, the defendant, on January 19, 1880, denied the existence of any contract between the parties.

Question: Was there a completed offer and acceptance?

---

**Appendix Item #9. Procedure in Toys, Inc. v. F.M. Burlington Co.**

Toys Inc. sued F.M. Burlington for breach of contract, claiming that F.M. Burlington had promised to renew its lease of premises in a shopping mall for 5 years at the "prevailing rate" in the mall (determined to be \$10 per square foot) and then had breached that promise by renting the premises to someone else. The trial court granted summary judgment to Toys Inc., holding F.M. Burlington liable for breach of contract. Toys, Inc. v. F.M. Burlington Co., 582 A.2d 123, 124-125 (Vt. 1990).

F.M. Burlington appealed, arguing that the trial court should not have granted summary judgment to Toys Inc. because (1) the clause in the original lease granting Toys Inc. the option to renew the lease was too "vague and uncertain" to enforce, and (2) Toys Inc. "waived [any right to renew the lease] through its conduct." Id. at 125-126.

The Supreme Court of Vermont held that the renewal clause was not too indefinite to enforce. Id. at 126. But the court reversed and remanded the case to the trial court, concluding that the trial court should not have granted summary judgment to Toys Inc. because there were material factual issues about whether Toys Inc.'s "conduct subsequent to its initial letter exercising the option was so inconsistent with the intent to renew that [Toys Inc.] waived the taking of the option." Id. at 127.

No reported decision describes what happened after the remand to the trial court.

---

#### **Appendix Item #10. The Statute of Frauds Marriage Provision**

Restatement (Second) of the Law of Contracts § 124. Contract Made Upon Consideration of Marriage

A promise for which all or part of the consideration is either marriage or a promise to marry is within the Statute of Frauds, except in the case of an agreement which consists only of mutual promises of two persons to marry each other.

Comment:

a. Engagement to marry. Mutual promises to marry were within the words of the English statute, but were not within the statutory purpose and were soon excluded by judicial interpretation. A number of American statutes explicitly except such promises from the marriage provision. They may, however, fall within the one-year provision. Statutes in many states bar actions for breach of a promise to marry.

Illustrations:

\* \* \*

4. In consideration of A's marrying B, C orally promises A a settlement.\* C's promise is within the Statute of Frauds.

---

**Appendix Item #11. The Statute of Frauds One-Year Provision**

Restatement (Second) of the Law of Contracts § 130. Contract Not To Be Performed Within A Year

(1) Where any promise in a contract cannot be fully performed within a year from the time the contract is made, all promises in the contract are within the Statute of Frauds until one party to the contract completes his performance.

(2) When one party to a contract has completed his performance, the one-year provision of the Statute does not prevent enforcement of the promises of other parties.

Comment:

\* \* \*

b. Discharge within a year. Any contract may be discharged by a subsequent agreement of the parties, and performance of many contracts may be excused by supervening events or by the exercise of a power to cancel granted by the contract. The possibility that such a discharge or excuse may occur within a year is not a possibility that the contract will be "performed" within a year. This is so even though the excuse is articulated in the agreement. This distinction between performance and excuse for nonperformance is sometimes tenuous; it depends on the terms and the circumstances, particularly on whether the essential purposes of the parties will be attained. Discharge by death of the promisor may be the equivalent of performance in case of a promise to forbear, such as a contract not to compete.

These rules often produce counter-intuitive results. Based on these rules, which of the following promises are "within" the statute of frauds and therefore not enforceable unless evidenced by a signed writing? Circle the correct answer.

---

\* In this context, the term "settlement" means a "conveyance of property . . . to provide for one or more beneficiaries, usu. members of the settlor's family, in a way that differs from what the beneficiaries would receive as heirs under the statutes of descent." Black's Law Dictionary (10th ed. 2014).

1. a promise to do something for six months: YES / NO
2. a promise to do something for four years: YES / NO
3. a promise to do something for exactly one year: YES / NO
4. a promise to do something for life: YES / NO
5. a promise to pay money over a multi-year period: YES / NO
6. a promise that can be completed in less than one year which is exchanged for a promise that must take more than one year to complete: YES / NO
7. a promise that must take more than one year to complete which was exchanged for a promise or performance that has now been completed: YES / NO
8. a promise that realistically will take more than one year to complete but that the contract does not prohibit completing in less than one year (see C.R. Klewin v. Flagship Properties): YES / NO
9. a promise that could be discharged or excused in less than a year but that could not be fully performed in one year (see comment b. above and text, p. 359): YES / NO

---

**Appendix Item #12. The Statute of Frauds Part Performance Doctrine**

Restatement (Second) of the Law of Contracts § 129 Action in Reliance; Specific Performance

\* \* \*

Comment:

a. Historical note and modern justifications. This Section restates what is widely known as the "part performance doctrine." Part performance is not an accurate designation of such acts as taking possession and making improvements when the contract does not provide for such acts, but such acts regularly bring the doctrine into play. The doctrine is contrary to the words of the Statute of Frauds, but it was established by English courts of equity soon after the enactment of the Statute. . . . Enforcement has . . . been justified on the ground that repudiation after "part performance" amounts to a "virtual fraud." A more accurate statement is that courts with equitable powers are vested by tradition with what in substance is a

dispensing power based on the promisee's reliance, a discretion to be exercised with caution in the light of all the circumstances. Compare § 90.

---

### **Appendix Item #13. Voidable Contracts of Infants**

#### **Restatement (Second) of the Law of Contracts § 7**

\* \* \*

Comment:

b. Grounds of avoidance. Typical instances of voidable contracts are those where one party was an infant, or where the contract was induced by fraud, mistake, or duress, or where breach of a warranty or other promise justifies the aggrieved party in putting an end to the contract.

\* \* \*

c. Consequences of avoidance.

\* \* \*

In many cases the power of avoidance exists only if the original situation of the parties can be and is restored at least substantially; but this is not necessarily the case. An infant, for instance, in many jurisdictions is allowed to avoid his contract without this qualification, so that when the infant exercises his power the parties frequently are left in a very different situation from that which existed when the contract was made.

#### **Restatement of the Law of Restitution § 62**

Comment:

b. \* \* \* [A]n infant to whom a person has transferred a non-necessary in the course of a contract is not under a duty of restitution to the transferor upon failure to pay for it, if the subject matter or its product is not available at the time when restitution is sought.

\* \* \*

Illustrations:

1. A sells to B, [an infant], an automobile which B uses advantageously in his business but which is destroyed in use. A

is not entitled to restitution from B although B fails to pay for the car.

---

**Appendix Item #14. Liability of Infants in Torts**

**Restatement (Second) of the Law of Torts § 895I**

**One who is an infant is not immune from tort liability solely for that reason . . . .**

Comment:

a. For the protection of infants against their inexperience and the undue advantage that might otherwise be taken of them, the law gives them the power of disaffirming their contracts and conveyances, except to the extent that they will be liable for the reasonable value of necessities furnished to them. So far as their liability in tort is concerned, however, infants are given no similar immunity. As a general rule, infants are subject to liability for their torts, whether they are committed intentionally or negligently or as a matter of strict liability. Thus there may be recovery from an infant for assault or battery, false imprisonment, trespass to land or chattels, conversion, negligence, defamation, seduction or deceit.

b. The immaturity of the infant is, however, to be taken into consideration in determining, in the first instance, whether the tort has been committed at all. In intentional torts, the state of mind of the actor is an essential element. For example, an intent to bring about a harmful or offensive physical contact is essential to battery (see § 16), and knowledge of the falsity of a statement and an intent to deceive may be required for deceit. (See Chapter 22). A child may be of such tender years that he has no awareness of these matters and is in fact incapable of the specific intent that is required. It may thus be found that the tort has not been committed and the event should be treated as an unavoidable accident.

---

**Appendix Item #15. Public Policy Exceptions**

**Restatement (Second) of the Law of Contracts § 189**

A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of marriage.

\* \* \*

Illustrations:

1. A pays B, his twenty-one-year-old child, \$100,000 in return for B's promise not to marry for ten years. B's promise is unreasonably in restraint of marriage and is unenforceable on grounds of public policy.

Restatement (Second) of the Law of Contracts § 192

A promise to commit a tort or to induce the commission of a tort is unenforceable on grounds of public policy.

\* \* \*

Illustrations:

\* \* \*

2. A makes an agreement with B under which A promises that he will excavate a city street without permission from the city. A's promise is to interfere tortiously with an interest in property of the city and is unenforceable on grounds of public policy.

---

### **Appendix Item #16. Tests for Whether a Writing is a Complete Integration**

Note (2) on page 501 refers to two tests for determining whether a writing is a complete integration. What our textbook calls the "strict formulation" is also known as the Four Corners test, while what the textbook describes as the "modern view" is also known as the All Circumstances or All Evidence test.

Describing the Four Corners Test, Harvard Professor Samuel Williston wrote in his famous Contracts treatise: "If [the parties] provide in terms that the writing shall be a complete integration of their agreement or that it shall be but a partial integration, or no integration at all, the expressed intention will be effectuated. The parties, however, rarely express their intention upon this point in the writing . . . . It is generally held [when nothing is expressed in the writing] that the contract must appear on its face to be incomplete in order to permit parol evidence of additional terms." 2 Williston on Contracts § 663, at 1226-1227 (1920). In other words, courts are to determine whether a writing is complete by looking only at what is within the four corners of the document, without considering extrinsic evidence.

Advocating the adoption of the All Circumstances test, Yale Professor Arthur Corbin took a different view in his competing Contracts treatise: "Whether any specific written document has been assented to by the parties as the complete and accurate

'integration' of the terms of their contract is an ordinary question of fact. In determining this question, no relevant evidence is excluded on the mere ground that it is offered in the form of oral testimony." Corbin on Contracts 535 (1952). In other words, courts may consider all available evidence to determine whether a writing is complete.

The Four Corners test (Williston's view) has always been the majority view. The American Law Institute, however, adopted the All Circumstances Test (Corbin's view) in Restatement (Second) of the Law of Contracts § 210 and comment b.

---

#### **Appendix Item #17. Correction for Raffles v. Wichelhaus**

The textbook incorrectly identifies Mr. Milward and Mr. Mellish as "Lord Judges." They were not judges. Instead, Mr. Milward was the barrister representing Raffles, while Mr. Mellish was the barrister representing Wichelhaus. The case report summarizes the oral arguments that these lawyers made on appeal. Within these summaries, the bracketed sentences paraphrase the questions and comments that two of the judges in the case, Chief Baron Pollock and Baron Martin, made during the oral argument. (At the time, the Court of the Exchequer heard appeals in common law civil cases.)

---

#### **Appendix Item #18. Correction for Dalton v. ETS**

The fourth full paragraph of the edited opinion in Dalton v. Educational Testing Service condenses and combines several paragraphs from the full opinion. The first of these paragraphs says in full:

The contract, however, did require that ETS consider any relevant material that Dalton supplied to the Board of Review. The Registration Bulletin explicitly afforded Dalton the option to provide ETS with relevant information upon notification that ETS questioned the legitimacy of his test score. Having elected to offer this option, it was certainly reasonable to expect that ETS would, at the very least, consider any relevant material submitted in reaching its final decision.

663 N.E.2d 289, 292 (N.Y. 1995).

---

#### **Appendix Item #19. Examples of Independent Covenants**

Restatement (Second) of the Law of Contracts

§ 232 When it is Presumed that Performances are to be Exchanged under an Exchange of Promises

\* \* \*

Illustration 3.

A employs B under a five-year employment contract, which contains a valid covenant under which B promises not to engage in the same business in a designated area for two years after the termination of the employment. It expressly provides that "this covenant is independent of any other provision in this agreement."

After B has begun work, A unjustifiably discharges him, and B thereupon engages in business in violation of the covenant. A's employing B and B's working for A are to be exchanged under the exchange of promises. The quoted words indicate an intention that A's employing B is not to be exchanged for B's refraining from engaging in the same business.

If the court concludes that this intention is clearly manifested, A has a claim against B for damages for breach of his promise not to compete.

\* \* \*

Here are some modern examples of cases involving independent covenants:

Board of Mgrs. of Mews at North Hills Condominium v. Farajzadeh, 712 N.Y.S.2d 722, 724-725 (N.Y. Dist. Ct. 2000) (condominium owner not excused from paying condominium fee even though condominium association failed to repair leaky skylight; owner's remedy was to sue for damages), affirmed as modified 730 N.Y.S.2d 180 (N.Y. S. Ct. App. Term 2001).

Kobayashi v. Orion Ventures, Inc., 678 N.E.2d 180, 187 (Mass. App. 1997) (owner of delicatessen was not excused from paying rent even though the landlord broke a promise not to lease space to a competitor in the same building; the remedy was for the owner of the delicatessen to sue the landlord for damages).

Fischer v. Nat'l Indus. Servs., 735 S.W.2d. 114, 116 (Mo. App. 1987) (employer was not excused from paying a bonus to a departing executive even though the executive broke a promise not to compete; remedy was to sue executive for damages).

---

**Appendix Item #20. Assignment**

Restatement § 317(a) provides: "An assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance." This brief statement answers two questions.

The first question is: How are assignments are made? The answer is by "a manifestation of the assignor's intention to transfer" rights. For example, if A wants to assign to C all of the rights that A has against B, A could simply say something like: "I assign my rights against B to C." This sentence would be "a manifestation of the [A]'s intention to transfer" A's rights against B to C.

The second question is: What is the effect of an assignment? The answer is that "the assignor's right . . . is extinguished . . . and the assignee acquires [the] right." The Restatement gives this illustration: "A has a right to \$100 against B. A assigns his right to C. A's right is thereby extinguished, and C acquires a right against B to receive \$100."

In reading about Shiro v. Drew (p. 1174) and in reading Herzon v. Irace (p. 1170), consider carefully the wording of the purported assignments. Did the alleged assignor in fact manifest an intention to transfer a right such that the alleged assignor would no longer have the right and instead the alleged assignee would have the right?

---

## **Appendix Item #21. Questions about the Scope of UCC Art. 2**

Article 2 of the Uniform Commercial Code says in § 2-102 that "[u]nless context otherwise requires, this Article applies to transactions in goods . . . ." A number of important initial questions about the scope of article 2 arise from this simple statement.

### 1. Why does it matter whether the legal rules in article 2 apply to a transaction?

The legal rules in article 2 sometimes differ from ordinary common law contract rules. For example, contracts for the sale of goods may include implied warranties that other kinds of contracts would not.

### 2. What are goods?

Article 2 defines goods in § 2-105(1) and § 2-107(1) & (2). Read these definitions carefully because we will discuss them at considerable length. Non-goods include everything not

encompassed by the definition of goods, such as services, real estate, legal rights, etc.

3. What are transactions in goods?

Although § 2-102 indicates that article 2 applies generally to transactions in goods, most of the individual sections of article 2 concern only contracts for the sale of goods, sales of goods, and present sales of goods. Section 2-106(1) defines these terms. As we will see, article 2 has little relevance to other kinds of transactions in goods, such as bailments or gifts.

4. Does article 2 apply to contracts that involve both goods and non-goods (such as services)?

Contracts that involve both goods and non-goods (such as services) are called "hybrid" contracts. Courts have developed different tests to determine whether and how article 2 applies to these contracts. Most courts follow the "predominant purpose" test and apply article 2 if the predominant purpose of the contract was a sale of goods. Some courts apply the "gravamen of the complaint test" and apply article 2 if the breach of contracts involved the goods rather than the non-goods.

5. Does article 2 ever apply to contracts that do not involve sales or that do not involve goods?

In general, the common law governs contracts outside the scope of article 2. The courts, however, have the power to shape the common law. In some instances, courts have borrowed rules from article 2 and made them common law rules. In addition, courts sometimes apply article 2 to cases that involve transactions analogous to contracts for the sale of goods.

6. Does article 2 apply to international contracts for the sale of goods?

A multilateral treaty called the United Nations Convention on Contracts for the International Sale of Goods (CISG), rather than article 2, applies to many international contracts for the sale of goods. The text of the CISG is included in the supplement. The CISG is taught at this law school in International Business Transactions (Course No. 6522).

7. Does the common law and other non-U.C.C. law have any relevance to contracts that are governed by article 2?

Article 2 was not designed to provide a comprehensive set of contract rules. On the contrary, article 2 is said to "sit on top of" the common law, adding and changing some rules but leaving the rest of the common law in place. For example,

sections 2-205 and 2-209(1) create minor exceptions to the common law's requirement of consideration. Outside of these exceptions, however, the common law requirement of consideration continues to apply even though no provision in article 2 identifies consideration as a requirement. Section § 1-103(b) provides authority for supplementing the U.C.C. with common law principles.

8. Does article 2 apply to consumer transactions or just transactions involving merchants?

In general, article 2 applies to all contracts for the sale of goods, whether they involve consumers or merchants or both. Article 2, however, contains some special rules that apply only to sales by merchants, such as § 2-201(2) and § 2-314(1). The definition of a merchant appears in § 2-104(1).

---

**Appendix Item #22. ABA Learning Outcomes**

This appendix identifies the "learning outcomes" for this course in accordance with ABA Accreditation Standards 301 and 302 and the "Guidance" to these Standards.

**(a) Knowledge and understanding of substantive and procedural law**

Upon completing Contracts I, students should know and understand the law pertaining to:

1. bases for enforcing promises (i.e., consideration, reliance, and special cases of moral obligation) and restitution as an alternative theory of recovery;
2. the formation of bargains (i.e., offer, acceptance, and definiteness),
3. typical statute of frauds provisions (e.g., the marriage, year, land, executor, goods, and suretyship clauses) and their exceptions;
4. policing the bargaining process (i.e., infancy, mental capacity, mistake, misrepresentation, undue influence, duress, public policy, unconscionability, and construction of terms against the drafter);
5. enforcing contracts by specific performance and damages (including expectation, reliance, restitution, nominal, and liquidated damages);

6. determining the terms of a contract (i.e., parol evidence and implied terms);
7. the performance and breach of contracts (i.e., express and implied conditions, impracticability, and frustration of purpose);
8. entitlement to enforce a contract (i.e., third-party beneficiaries and assignments); and
9. the scope of Article 2 of the Uniform Commercial Code.

**(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context**

When assigned to read a contracts case, students should be able to:

1. identify and discuss the facts, the plaintiff's claim, the defendant's defense, the remedies sought, the pertinent legal rules, the issue for decision under these rules, the arguments of the parties, and the holding and reasoning of the court;
2. apply the holding to hypothetical variations of the facts;
3. discuss the logical strengths and weaknesses of the parties' arguments and the court's reasoning; and
4. identify and analyze competing policy considerations about what the law should be.

When given a hypothetical problem, students should be able to identify and discuss any claims and defenses that the parties might assert and any remedies that they might seek.

Students should be able to identify ambiguities in contractual terms and propose alternative ways to draft the terms.

Students should be able to parse and explain statutory provisions, identify ambiguities in statutory provisions, and suggest improved ways of drafting statutory provisions.

Students should be familiar with the history of the courts of law and courts of equity, the common law method, and the relationship of statutes to the common law.

**(c) Exercise of proper professional and ethical responsibilities to clients and the legal system**

Students should be able to evaluate the legal advice that was given in actual cases, suggest what would have been better legal advice, and formulate advice that should be given in the future in similar cases.

Students should be able to identify and discuss ethical issues that arise in willfully breaking promises, in raising technical defenses to avoid liability, and in giving legal advice that might encourage perjury.

- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession (including, but not limited to, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation)**

Students should be able to present arguments as if they were representing clients in contract disputes.

Students should be able to discuss controversial legal and policy issues in a professional and respectful manner.

Students should understand the role of lawyers in advising clients as they enter into contractual arrangements and resolve or litigate disputes.

Students should understand the basic structure of common contractual transactions familiar to all competent lawyers, including those involving general contractors and subcontractors; franchise agreements; employment at will; contracts to sell real estate; insurance; and so forth.