

CONTRACTS
Spring 2020
W/Th/F 10:45-12:00pm
Rm. 345
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Office Hours: Th 1:15-2:45, Room 312A
(and by appointment)

Course Description

This is a course about promises. We all make promises in our lives, for all sorts of reasons: promises to our families and friends, promises to co-workers and acquaintances, and promises in business and other transactional settings. All promises are not created equal, however. Some create only moral obligations, not legal ones. If we choose not to honor those promises, all that is lost is the value of our good word. On the other hand, certain promises, have *legal* consequences. Those are promises that may be enforced through the judicial system. If we renege, the promisee may bring a lawsuit and the court will hold us responsible for the obligation we assumed. It is the availability of legal recourse that makes a commitment more than just a promise; it makes the promise contractual.

The initial objective of this course will be to discover which kinds of promises create contracts, which do not, and for what reasons. To do so, we will learn about the doctrines of offer, acceptance, and consideration, which are the “ingredients” of an enforceable commitment. Once we learn how binding contractual obligations arise, we will spend the rest of the semester learning how parties can avoid carrying out those same obligations and what happens when they do. We will study contract interpretation, the effect of unexpected changes in circumstance, and how the law responds when performance is incomplete, defective, or simply refused.

Throughout the course you should be aware of the continuing tension between two diametrically opposed judicial impulses: (1) the desire to enforce the letter of the parties’ agreement, and (2) the desire to achieve a “fair” or “just” result. Both impulses are motivated by laudable goals. The former seeks to respect the private law created by the parties, thereby promoting predictability and efficiency in transactional settings and reducing litigation. The latter seeks to avoid mechanical enforcement of contracts, effectuate party intent, and ensure that neither side is taken advantage of or unjustly enriched. Understanding this tension should help guide you in reading contradictory cases, parsing muddled doctrine, and puzzling out the various other ambiguities that are the hallmark of lawyers’ work.

A secondary objective of the course is to develop a framework for understanding transactional practice. Contract law is the foundation on which all economic business is conducted, and it is used strategically by parties to achieve certain goals. In this way, Contracts differs from “public law” courses, like Criminal Law or Torts, that concern how society regulates and punishes anti-social or other unwelcome behavior. The disputing parties in contracts cases were, at one time, partners trying to achieve a shared goal. In reading the case material, you should therefore think not only about the legal rules that govern contracts and the particular result in the case, but also about why the parties’ contract failed in the first place. Consider how either party might have used contract tools more effectively to prevent the dispute at hand and how you might have counseled that party to structure the transactional relationship (or the steps to reaching agreement) more strategically. Developing this mindset is the first step toward becoming a transactional

attorney who can effectively represent clients in negotiating, drafting, and ultimately effectuating any type of deal.

Learning Objectives

The over-arching learning objectives for this course are as follows:

- (1) to obtain a foundational understanding of the sources, scope and content of contract law doctrine, including the differences between common law rules and the commercial code;
- (2) to hone your ability to read, analyze, and reason from cases and statutes, and to cogently articulate your understanding orally and in writing;
- (3) to identify areas where the law is unclear or in conflict and understand how lawyers operate and counsel clients in light of those uncertainties;
- (4) to develop a preliminary understanding of the professional skills and responsibilities involved in representing transactional clients, including introductory drafting and counselling skills.

More detailed objectives tied to individual assignments can be found in the schedule of reading assignments and may be supplemented over the course of the semester.

Required Materials

The casebook for the course is Cases and Materials on Contracts: Making and Doing Deals, by Epstein, Markell and Ponoroff (5th ed. 2018). While the casebook will be the primary source for class assignments and instruction, you must also purchase Selections for Contracts (2019), edited by Farnsworth, et al., which is a paperback compilation of the statutory provisions covered in the casebook. A recent past edition of this publication is also acceptable. From time to time, I will supplement these two sources by posting materials to the course website hosted by TWEN.

For anyone who is interested in expanding their understanding of how lawyers use contracts and contract law, I have ordered Threedy, Developing Professional Skills: Contracts (2013), a paperback workbook containing a series of short exercises on law contract practice. This book is not required. However, it is inexpensive and fun. For those of you who think you might want to go into business or commercial law, it is a good resource for testing your understanding of the law while also getting a feel for what transactional lawyers actually do.

Class Participation

You have doubtlessly heard many times by now that law school courses are designed not to teach you “the law,” but to facilitate your discovery of how lawyers use law and predict legal results. This is done through careful reading, case analysis, and application of legal principles to particular scenarios. Thorough preparation of the assigned readings, combined with articulation and application of the ideas they contain in class, is crucial to your understanding of the basic concepts of the first-year curriculum.

To that end, all students should expect to be called on to participate in class on a random basis over the course of the semester. Your voluntary and solicited class participation (along with other sources of credit described below) will comprise approximately ten percent of the final grade. Class participation will be evaluated daily and will be based on the quality and consistency of your contributions.

Invariably there will come a day when you are unable to adequately prepare for class. You should not skip class on such occasions. Instead, you may inform me in writing before the start of the class, a maximum of two times per semester, and receive a “pass” for those days. Your pass must be in writing, on a full piece of paper, and contain your full name, the date, and a number (1 or 2) indicating first or second pass. It does not need to include the reason you are requesting a pass. If you do not inform me that you are taking a pass before class, however, and you are unprepared when called on, I will reduce by half your participation credit for the semester. Please keep track of your passes. Anyone who submits a third pass will lose half their participation credit.

Attendance, Communication and Professionalism

The ABA requires that students attend eighty percent of all class meetings. There will be a daily sign-in sheet, and I will record your attendance as a component of your class participation grade. Beyond that, I neither expect nor desire you to explain or notify me ordinary (1-2 day) absences. I prefer to treat students as lawyers who manage their own schedules and exercise judgment about how to balance competing personal and professional commitments. Handling absences professionally means taking responsibility for your choices, being circumspect in the amount of personal information you share, and most importantly, making appropriate accommodations for what you miss in a way that is respectful of and minimally burdensome to your supervisor/professor and colleagues/classmates. For more information about UF’s attendance policy see <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>.

Please be mindful that you are presenting yourself professionally in communicated regarding other class-related generally as well. This is particularly important with respect to email. Although email is an easy and often informal method of communication, in the work world, your colleagues (and especially your supervisors) will expect you to treat it as you would other forms of professional interaction. Consider first whether your email is necessary. If so, be professional in addressing the recipient, concise in presenting your message, and circumspect about including personal information. Before sending an email to a school administrator, professor, or other professional contact, ask yourself whether the message you drafted would be appropriate to send to an important partner in your law firm or a judge hearing your case.

Similarly, you are expected to display professionalism at all times in the classroom. This includes arriving on time, turning off the volume on computers, cell phones and other devices, and avoiding distracting behavior (texting, web surfing, entering and leaving the room unnecessarily), etc. It also includes being respectful and supportive of your classmates. While your robust participation is most welcome, if you are a frequent contributor consider making space for others and listen carefully to what they say.

The choices you make in and out of class today, and throughout your J.D. program, are an expression of your development as a professional. Treat class as you would a meeting with your law firm colleagues and consider interactions with faculty the equivalent of dealing with a supervising partner. This is an important part of what you are learning in law school.

Assessment

In addition to participation, your grade will be based on one midterm, one final exam, and a series of short quizzes. The quizzes will be in the form of 1-5 question multiple choice questions and administered via TWEN. The midterm and final will be essay-style exams consisting of 1 fact pattern for the midterm and 2-3 fact patterns for the final. You will be permitted to consult notes, subject to some limitations, during the administration of all exams and quizzes.

At several points over the course of the semester you will also receive short, “practice” essay exam questions to help you review and prepare for the midterm and final. These are not required assignments, but you will receive additional participation credit for turning in a draft answer by the assigned date. More information about quiz administration, exam preparation and review, exam content, and participation credit opportunities will be provided in class and over the course of the semester.

Final grades for the course will be based on the following approximate percentages: Class participation (10%), quizzes (10%), midterm (20%), final (60%). Grade distribution will follow UF’s grading policy available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. All assessments are subject to UF’s student honor code. For more detail please see <http://www.dso.ufl.edu/students.php>.

Assessment is your responsibility as well as mine. Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. You will receive instructions about when and how to complete course evaluations during the last two or three weeks of the semester. Summary results of these assessments are available at: <https://evaluations.ufl.edu/results/>.

Accommodations & Assistance

Most students require or can benefit from assistance with or adjustments to their learning experience at some point in their careers, and I am happy to work with you to discuss pathways to success that suit your learning style. If you believe you require a more formal accommodation due to a physical or mental disability, please register with the Disability Resource Center at <http://www.dso.ufl.edu/drc/> as a first step. Once registered, students will receive an accommodation letter that must be presented to the Assistant Dean for Student Affairs when requesting accommodation. If this applies to you, please initiate this procedure as early as possible in the semester and prior to reaching out to me.

Office Hours and Access

I will hold regular office hours Thursdays. However, you are welcome to drop in any time my office door is open (or partly open). You may also schedule an appointment with me by email. Be aware that I am visiting this semester from the University of Denver and expect to be on campus on Wednesdays, Thursdays, and Fridays. If you need to reach me on a Monday or Tuesday, please do so by email. If needed, I can arrange to conference with you via Zoom or another video platform.

Readings and Assignments

A tentative schedule of topics and reading assignments follows. It is anticipated that you will spend approximately 2 hours out of class reading and preparing for in class assignments for every 1 hour in class. I will keep you informed in class and via TWEN of my coverage expectations for upcoming classes, any schedule changes, and any deletions or additions to the reading list. I discourage you from reading too far ahead, as this will generally result in you having an insufficient recollection of the material to participate effectively. Should you find yourself lucky enough to be “ahead,” please review previously completed readings prior to the relevant class meeting.

Assigned reading that is not in the text is either publicly available or posted on TWEN. This include the relevant sections of the prior edition of the casebook, which are consolidated as a .pdf document. You are responsible for the “notes” and “questions” in the text that accompany any of the assigned cases. You are

also responsible for those portions of the Uniform Commercial Code (“UCC”) and the Restatement 2d of Contracts (“RST”) referred to in the text, although in most cases I have noted the important sections in the assignment schedule. Unless otherwise indicated, references to Article 1 of the UCC refer to the current revised version of Article 1 of the code, that is the 2001 official text, not the “pre-revision” version (2000 official text), which also appears in many supplements.

For all assignments listed below:

Text = Epstein, etal., *Making and Doing Deals: Contracts in Context* (5th ed. 2018)

4th ed. = Epstein, etal., *Making and Doing Deals: Contracts in Context* (4th ed. 2014) (posted doc)

RST = Restatement Second of Contracts, located in the statutory supplement

UCC = Uniform Commercial Code, located in the statutory supplement

	DATE	TOPIC	ASSIGNMENT	GOALS & QUESTIONS
1.	1/15	A short overview of contracts	<ul style="list-style-type: none"> • Text 12-18, 29-37 • How Lawyers “State the Case” (posted) 	<p><u>Policy & Theory</u> Begin to understand the themes of contract law and the purpose of contract enforcement.</p>
Part I. The Process of Reaching Agreement				
2.	1/16	<p>The nature of assent</p> <ul style="list-style-type: none"> • <i>Lucy v. Zehmer</i> • <i>Kolodziej v. Mason</i> 	<ul style="list-style-type: none"> • Text 43-62 • Rubric on subjective vs objective assent (posted) 	<p><u>Policy & Theory</u> What is the difference between the objective and subjective theories of assent? Why does contract law opt for the objective approach?</p> <p><u>Close Reading</u> Find the subjective exception to the objective rule of assent, which is referenced (though not applied) in <i>Lucy</i>.</p>
3.	1/17, 1/22	<p>Offer versus preliminary</p> <ul style="list-style-type: none"> • <i>Lonergan v. Scolnick</i> • <i>J.D. Fields v. U.S Steel</i> • <i>Leonard v. Pepsico</i> <p>(pay attention to <i>Lefkowitz v. Great Minneapolis Supply</i>, n.3.1, text p. 86)</p>	<ul style="list-style-type: none"> • Text 66-81, 85-90 (n.2.3 to n.3.6) • 4th ed. 53-62 • RST §§ 24, 26 • UCC §§ 1-303, 1-201(3), 2-102, 2-204 • Rubric on ads as offers (posted) • “A Long but Necessary Digression” (posted) 	<p><u>Policy & Theory</u> What justifies the general rule on ads as offers? What justifies the exception? Who do these rules protect and against what?</p> <p><u>Sources of Law</u> How does the UCC differ from the RST in terms of its authority and scope? What is the relationship between these two “codifications”?</p> <p><u>Rule Synthesis</u> How do the rules on ads fit within the previous rules on offers generally? How would you organize an outline of the materials so far on assent?</p>
4.	1/23	<p>Destruction of the offer</p> <ul style="list-style-type: none"> • <i>Dickinson v. Dodds</i> • <i>Beall v. Beall</i> 	<ul style="list-style-type: none"> • Text 92-99, 109-16 • UCC § 2-205 • Problems on Merchant’s Firm Offer (posted) 	<p><u>Reading Statutes</u> Read 2-205 and make a list of every element that the statute requires for the creation of a “firm offer.” Using the language of the section, identify the consequences of creating a firm offer, as well as the <i>two</i> possible ways of determining the duration of a firm offer. Use this rubric to answer the questions in the posted exercise.</p>
5.	1/24	<p>Fulfilling the requirements of acceptance</p> <ul style="list-style-type: none"> • <i>Davis v. Jacoby</i> • <i>Marchiondo v. Scheck</i> 	<ul style="list-style-type: none"> • Text 132-42, 158-62 • RST §§ 50(1), 32, 45 • UCC § 2-206 	<p><u>Practice Point: Arguing in the Alternative</u> Go back to <i>Davis</i> after reading <i>Marchiondo</i>. Based on the latter case, what <u>alternative arguments</u> would you have made for the Davises regarding acceptance? In other words, if <i>Davis</i> had found the contract to be unilateral, can the Davises still win?</p> <p><u>Practice Point: Preparing for Remand</u> What should counsel for the seller do following the decision for the broker in <i>Marchiondo</i>? Can seller still win this case? What argument should he make and what facts would he need to support it?</p>

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6.	1/29	Acceptances that deviate from the offer: The common law mirror image rule • <i>Gresser v. Hotzler</i> • <i>Fairmount Glass v. Crunden-Martin</i>	• Text 167-75 • RST §§ 58, 59, 61 • <i>Fairmount Glass v. Crunden-Martin</i> , 51 S.W. 196 (Ct App KY 1899)	<u>Policy & Theory</u> What justifies the common law “mirror image” rule? Under what circumstances does this rule protect the offeror? Under what circumstance might it create incentives for opportunistic behavior? <u>Close Reading</u> Based on your reading of <i>Gresser</i> , what is the status of the supposed “materiality” exception to the mirror image rule in Minnesota? Is it clear that such an exception has been recognized? If in a subsequent case you represented purchasers who had revised only the survey date and not the closing date under similar facts, what would you advise them about the status of their agreement?
7.	1/30 1/31	Acceptances that deviate from the offer: The UCC battle of the forms • <i>Dorton v. Collins & Aikman</i> . • <i>Klocek v. Gateway</i> • <i>Berkson v. Gogo</i>	• Text 37-41, 175-86, 193-223 • UCC § 2-207 • Problems on “Battle of the Forms” (posted)	<u>Policy & Theory</u> Why does the UCC reject “mirror image”? Generally speaking, is the UCC rule more generous to offerors or offerees? <u>Practice Point: Life under 2-207</u> If you are drafting an offer for a purchase or sale of goods, what would you do to try to prevent the inclusion of undesirable additional terms by the offeree? If you represent an offeree, what would you do in accepting an offer of sale or purchase in order to ensure your terms are included in the deal?
Part II. Consideration and Consideration Alternatives				
8.	2/5	Consideration as an element of contractual obligation • <i>Kirksey v. Kirksey</i> • <i>Hamer v. Sidway</i>	• Text 271-75, 283-91 • RST § 71 • Smart Solutions hypo (posted)	<u>Rule Synthesis</u> What is the definition of consideration according to <i>Hamer</i> ? According to RST 71? Can the two rules be reconciled? <u>Policy & Theory</u> Does the fact that the plaintiff in <i>Kirksey</i> was a woman make it more or less likely that the parties contemplated an “exchange”? How does the language of the offeror in <i>Kirksey</i> differ from the language of the offeror in <i>Hamer</i> ? Is the difference legally significant? Does the gender of the offeree explain the difference (or the court’s view of it)?
9.	2/6	Contract modification and consideration • <i>Alaska Packers’ Ass’n v. Domenico</i> • <i>Angel v. Murray</i>	• Text pp. 297-308 • RST §§ 73, 89 • UCC § 2-209(1)	<u>Policy & Theory</u> What is the relationship between issues of consideration and issues of assent in these cases? How do concerns about the presence or lack of both contract elements inform the doctrine and results in each case? <u>Clarifying Doctrine</u> Using both cases, enumerate all possible arguments that may be raised by a party in <i>response to</i> a defense based on PELDR. <u>Practice Point: Drafting</u> What is the single most critical word in the contract in <i>Angel</i> ? How should the trash collector have changed the terms of the original deal to avoid the modification problem in the case?

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10.	2/7 2/12	Promissory estoppel as an alternative to consideration <ul style="list-style-type: none"> • <i>Ricketts v. Scothorn</i> • <i>Weitz Co. v. Hands</i> • <i>BMI v. Centronics</i> 	<ul style="list-style-type: none"> • Text 326-46, 357-58, 261-70 • RST § 90 	<u>Clarifying Doctrine</u> What differences are there between the holding in <i>Ricketts</i> and RST 90? How would RST 90 have applied to the facts in <i>Ricketts</i> ? <u>Policy & Theory</u> Which theory deviates more from basic contract law, promissory estoppel or the past benefit exception? In which case of the three in this assignment is the deviation most justified?
	2/13 2/14	Midterm review and administration		
Part III. Policing the Bargain				
11.	2/19 2/20	Misrepresentation and non-disclosure <ul style="list-style-type: none"> • <i>Halpert v. Rosenthal</i> • <i>Swinton v. Whitinsville Savings</i> • <i>Weintraub v. Krobatsch</i> 	<ul style="list-style-type: none"> • Text 387-400 • Rubric on misrepresentation & non-disclosure (posted) • Problems on misrepresentation & non-disclosure (posted) 	<u>Rule Synthesis</u> Can <i>Swinton</i> be reconciled with <i>Weintraub</i> ? Or are you simply better off buying a house in New Jersey than in Massachusetts? <u>Practice Point: Industry norms and third parties</u> Why does the standard Colorado buy/sell agreement require sellers to make so many disclosures? (Cont'd on next page) If such disclosures are not legally mandated, why are they included in the standard contract? Who drafted the form and what are their interests?
12.	2/21	Duress and undue influence <ul style="list-style-type: none"> • <i>Austin Instruments v. Loral Corp.</i> (two opinions) • <i>Odorizzi v. Bloomfield School District</i> 	<ul style="list-style-type: none"> • Text 401-14 • <i>Austin v. Loral</i>, 316 N.Y.S.2d 528 (app. ct. decision) 	<u>Clarifying Doctrine</u> What is the difference between the doctrines of duress and undue influence? <u>Policy & Theory</u> Does the fact that the plaintiff in <i>Odorizzi</i> is gay have any bearing on the result of the case? Would you describe the court as tolerant of plaintiff's sexual orientation? Patronizing? Indifferent? <u>Practice Point: Anticipating Litigation</u> Was Loral's July 22 letter a strategic move? If you were Loral's attorney, how would you have handled their situation? <u>Review</u> Is there a pre-existing legal duty issue in <i>Austin</i> ?
13.	2/26	Illegality and public policy <ul style="list-style-type: none"> • <i>Hanks v. Power Ridge Restaurant</i> 	<ul style="list-style-type: none"> • Text 414-20, 564-67 • Problems on Illegality and Public Policy (posted) 	<u>Policy & Theory</u> What is an "exculpatory clause?" Why does it present a public policy issue? <u>Practice Point: Drafting</u> What specific language in the <i>Hanks</i> contract absolves the ski resort of liability for this particular injury?

	DATE	TOPIC	ASSIGNMENT	GOALS & QUESTIONS
14.	2/27 2/28	Unconscionability • <i>Williams v. Walker-Thomas Furniture I & II</i> • <i>Vernon v. Qwest Communic.</i>	• Text 429-42 • UCC § 2-302 • Problem on counseling WT Furniture (posted)	<u>Clarifying Doctrine</u> What is the difference between the doctrines of public policy and unconscionability? <u>Policy & Theory</u> What is the relationship between adhesion contracts and the unconscionability doctrine? <u>Review</u> Are there assent issues in <i>Vernon</i> ? If so, what alternative argument can you articulate for the plaintiffs?
-- SPRING BREAK --				
Part IV. Contract Interpretation				
15.	3/11	Introduction to interpretation • <i>Threadgill v. Peabody Coal</i>	• Text 465-70 • 4 th ed. 484-88 • UCC §§ 1-201(b)(3), 1-303 (reread)	<u>Practice Point: Choosing the Form of Contract</u> Why didn't the <i>Threadgill</i> parties use a written agreement? Would you advise either or both parties to do so next time? What should the written contract say? <u>Clarifying Doctrine</u> What is the difference between a usage of trade, a course of dealing and a course of performance
16.	3/12 3/13	Implied duty of good faith • <i>Wood v. Lady Duff-Gordon</i> • <i>Locke v. Warner Bros.</i> • <i>Stokes v. DISH</i>	• Text 471-73, 495-96, 476-93 • RST § 205 • UCC §§ 1-304, 1-2-1(b)(20) 2-305, 2-308, 2-309(1) and (2), 2-314	<u>Clarifying Doctrine</u> What does the implied duty of good faith require parties to do? Is the test for breach of the duty objective or subjective? <u>Practice Point: Evidence of Subjective Intent</u> How does one prove subjective bad faith?
17.	3/18 3/19	The parol evidence rule • <i>Town Bank v. Real Estate</i> • <i>Barker v. Price</i> • <i>Apex v. Sharing World</i>	• 4 th ed. 488-520 • RST §§ 209, 210, 213(1) and (2), 214-216 • UCC § 2-202	<u>Clarifying Doctrine</u> What are the rules for determining whether an agreement is partially or completely integrated? What is an "integration" in the first place? <u>Practice Point: Drafting</u> What is an "integration" clause? Why should a lawyer include it in drafting a contract? <i>Must</i> a lawyer include it? Would the inclusion of such a clause have made a difference in <i>Barker v. Price</i> ?
18.	3/20	Ambiguous express terms • <i>Frigalment Importing v. B.N.S. International</i> • <i>Gassner v. Rayner</i>	• Text 534-43, 547-554, 564-67	<u>Clarifying Doctrine</u> What is the relationship between contract ambiguity and the parol evidence rule? <u>Practice Point: Drafting</u> In light of the result, how might the insurance company have altered the disputed clause in <i>Gassner</i> ? (n.4, p. 554)

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Part V. Performance, Breach and Excuse				
19.	3/25	Failure of an express condition <ul style="list-style-type: none"> • <i>Luttinger v. Rosen</i> • <i>Schindler v. Tully</i> • <i>EMH&T v. Triad</i> 	<ul style="list-style-type: none"> • Text 631-40 • 4th ed. 650-58 	<p><u>Clarifying Doctrine</u> What is the relationship between contract ambiguity and the rules of conditions? What about between the rules of conditions and the implied duty of good faith?</p> <p><u>Practice Point: Drafting</u> In light of the result in <i>EMH&T</i>, how would you redraft the contract for the GC? Do you think a sub would likely accept that change to the contract?</p>
20.	3/26 3/27	Unanticipated events <ul style="list-style-type: none"> • <i>Taylor v. Caldwell</i> • <i>Rte 6 Outparcels v. Ruby Tuesday</i> • <i>Mel Frank Tool v. Di Chem</i> 	<ul style="list-style-type: none"> • Text 669-78 • 4th ed. 724-32 • RST §§ 261, 265 • UCC §2-615(a) 	<p><u>Clarifying Doctrine</u> What is the difference between impossibility, impracticability and frustration? Are all three of these defenses available under both common law and UCC?</p> <p><u>Practice Point: Drafting</u> What should Di-Chem do next time if it would like to be able to extricate itself from this type of lease in the event of code changes?</p>
21.	4/1 4/2	Material breach <ul style="list-style-type: none"> • <i>Jacob & Young v. Kent</i> • <i>Grun Roofing v. Cope</i> • <i>Panike & Sons</i> 	<ul style="list-style-type: none"> • Text 708-18, 728-29, 739-44 • <i>Grun Roofing v. Cope</i>, 529 S.W.2d 258 (Tex. App. 1975) • RST § 241 • UCC §§ 2-601, 2-508 • “Mini-hypos” on breach (posted) 	<p><u>Close Case Reading</u> Did the contractor in <i>J&Y v. Kent</i> breach? If so, is the breach actionable? If so, why does Kent lose?</p> <p><u>Clarifying Doctrine</u> What is the relationship between material breach (MB) and substantial performance (SP)? What is the effect of a finding of MB or SP on the NBP’s performance obligation? On the scope of the remedy? How do these two concepts apply in UCC cases?</p> <p><u>Case Synthesis</u> What are the key facts in each of the two construction cases that influence the court’s decision on MB/SP? Under what types of circumstances are courts likely to characterize a breach as material?</p>
22.	4/3 4/8	Anticipatory repudiation <ul style="list-style-type: none"> • <i>Hochster v. De la Tour</i> • <i>Pavone v. Kirkee</i> • <i>Norcon Power v. Niagra Mohawk</i> 	<ul style="list-style-type: none"> • Text 745-67 • UCC § 2-609 	<p><u>Reading Statutes</u> Map out the requirements (elements) and the effect of 2-609. What right(s), if any, does this section give non-breaching parties (NBPs) that they do not enjoy at common law?</p> <p><u>Practice Point: Preparing for Remand</u> How will the common law equivalent of 2-609 apply on remand in <i>Norcon Power</i>? What arguments would you expect both parties to make?</p>

	DATE	TOPIC	ASSIGNMENT	GOALS & QUESTIONS
Part VI. Remedies				
23.	4/9 4/10	Money damages & the expectation measure <ul style="list-style-type: none"> • <i>Hawkins v. McGee</i> • <i>Lewin v. Levine</i> • <i>Peevyhouse v. Garland Coal & Mining Co.</i> 	<ul style="list-style-type: none"> • Text pp. 769-85, 791-800, 812-13, 816 • RST §§ 347, 374 • UCC §§ 2-706(1), 2-712 • “Mini-hypos” on damages (posted) 	<p><u>Clarifying Doctrine</u> What errors does the <i>Hawkins</i> court identify in the damages instruction below and how might such errors have affected the resulting award?</p> <p><u>Review & Synthesize</u> Articulate the difference between the two measures of expectation considered in <i>Peevyhouse</i>. How does the discussion of these two approaches compare to the majority and dissenting opinions in <i>Jacobs & Young v. Kent</i>?</p>
24.	4/15 4/16	Limits on damages <ul style="list-style-type: none"> • <i>Hadley v. Baxendale</i> • <i>Manoucheri v. Heim</i> 	<ul style="list-style-type: none"> • Text 851-59, 868-75 • UCC §§ 2-710, 2-715 	<p><u>Clarifying Doctrine</u> What is the difference between the two kinds of cases described in <i>Hadley</i> – “ordinary” and “special” circumstances cases – in terms of the availability of consequential damages? Which kind of case is <i>Hadley</i>? Which kind of case is <i>Manoucheri</i>?</p> <p><u>Practice Point: Calculating Damages</u> Do you agree with the court’s ruling on the proper measure of expectation damages in <i>Manoucheri</i>? What additional argument could you have made for the plaintiff that the award under-compensated him for his loss? What additional argument could you have made for the defendant-seller that the award over-compensated the plaintiff?</p>
25.	4/17	Liquidated damages <ul style="list-style-type: none"> • <i>Dobson Bay v. La Sonrisa</i> • <i>Kvassay v. Murray</i> 	<ul style="list-style-type: none"> • Text 882-901 • RST § 356(1) • UCC § 2-718(1) 	<p><u>Clarifying Doctrine</u> What is the difference between the liquidated damages rules discussed in <i>Dobson Bay</i>? In what kind of cases is this difference likely to affect the result?</p> <p><u>Close Reading</u> The UCC rule on liquidated damages refers to the “inconvenience or non-feasibility of otherwise obtaining an adequate remedy.” What do you think this means?</p>