

ANTICIPATED SCHEDULE OF READING ASSIGNMENTS

For all assignments:

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

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

UCC = Uniform Commercial Code, located in the statutory supplement (for Article 1, references are to the 2001 official text)

**Additional reading, not keyed to any of the above sources are either publicly available or posted to the relevant Canvas module.

	DATE	TOPIC	READING	GOALS & QUESTIONS
1	1/19	A short overview of contracts	<ul style="list-style-type: none"> • Text 12-18, 29-37 • How Lawyers “State the Case” (posted) 	<u>Policy & Theory</u> Begin to understand the themes of contract law and the purpose of contract enforcement.
Part 1. Assent				
2	1/20	The nature of assent <ul style="list-style-type: none"> • <i>Lucy v. Zehmer</i> (QUIZ) • <i>Kolodziej v. Mason</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 43-62 • Fla. Stat. § 725.01 • Rubric on subjective vs objective assent (posted) 	<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? <u>Close Reading</u> Find the subjective exception to the objective rule of assent, which is referenced (though not applied) in <i>Lucy</i> .
3	1/21, 1/26	Offer versus preliminary <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>, 88 F. Supp. 2d 116 (S.D.N.Y. 1999) <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) • 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) 	<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? <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”? <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?

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4	1/27	Destruction of the offer • <i>Dickinson v. Dodds</i> (QUIZ) • <i>Beall v. Beall</i> (QUIZ)	• Text 92-99, 109-16 • UCC § 2-205 • Problems on Merchant's Firm Offer (posted)	<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.
5	1/28	Fulfilling the requirements of acceptance • <i>La Salle v. Vega</i> (QUIZ) • <i>Davis v. Jacoby</i>	• Text 124-26, 132-42 • RST §§ 32, 50(1) • UCC § 2-206	<u>Clarifying Doctrine</u> If the two parties in <i>La Salle</i> signed both signed the contract of sale, then why does the plaintiff/buyer lose? What rule explains this result? <u>Practice Point: Drafting</u> Which party do you think drafting party in <i>La Salle</i> include the rider regarding the effective execution of the contract of sale?
6	2/2	Acceptance by performance • <i>Hendricks v. Behee</i> • <i>Marchiondo v. Scheck</i> (QUIZ)	• Text 142-45, 149-50, 158-62 • RST §§ 45, 63, 66	<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? <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?

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7	2/3	Deviant acceptance: The common law mirror image rule <ul style="list-style-type: none"> • <i>Gresser v. Hotzler</i> (QUIZ) • <i>Fairmount Glass v. Crunden-Martin</i>, 51 S.W. 196 (Ct App KY 1899) 	<ul style="list-style-type: none"> • Text 167-75 • RST §§ 58, 59, 61 	<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> Is discussion in <i>Gesser</i> of a supposed “materiality” exception to the mirror image rule in Minnesota dicta or holding? 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?
8	2/4, 2/9	Deviant acceptance: The UCC battle of the forms <ul style="list-style-type: none"> • <i>Dorton v. Collins & Aikman</i>. • <i>Klocek v. Gateway</i> • <i>Berkson v. Gogo</i> (QUIZ) 	<ul style="list-style-type: none"> • 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?
9	2/10	Indefinite and deferred “agreements” <ul style="list-style-type: none"> • <i>Varney v. Ditmars</i> (QUIZ) • <i>Moolenaar v. Co-Build Co.</i> • <i>BMI v. Centronics</i> 	<ul style="list-style-type: none"> • Text 232-38, 243-44, 252-70 	<u>Policy & Theory</u> Do cases like <i>Varney</i> and <i>Moolenaar</i> concern K formation (Q1 “is there a K?”) or K interpretation (Q2 “what are the terms?”) Does the answer depend on source of law (UCC v. CL)? Policy? Something else? <u>Practice Point</u> What is a “letter of intent” as a matter of practice (i.e., why do negotiating parties use them?) and as a matter of law (i.e., do they have legal force or other legal significance?)

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Part II. Considerations and Alternatives				
10	2/11	Consideration as an element of contractual obligation <ul style="list-style-type: none"> • <i>Kirksey v. Kirksey</i> • <i>Hamer v. Sidway</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 271-75, 283-91 • RST § 71 • Smart Solutions hypo (posted) 	<p><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?</p> <p><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)?</p>
11	2/16	Contract modification and consideration <ul style="list-style-type: none"> • <i>Alaska Packers v. Domenico</i> (QUIZ) • <i>Angel v. Murray</i> 	<ul style="list-style-type: none"> • Text pp. 297-308 • RST §§ 73, 89 • UCC § 2-209(1) 	<p><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?</p> <p><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.</p> <p><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?</p>
12	2/17, 2/18	Promissory estoppel as an alternative to consideration <ul style="list-style-type: none"> • <i>Ricketts v. Scothorn</i> (QUIZ) • <i>Weitz Co. v. Hands</i> • <i>BMI v. Centronics</i>, 927 F.2d 421 (8th Cir. 1991) (edited version posted) 	<ul style="list-style-type: none"> • Text 326-46, 357-58 • RST § 90 	<p><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>?</p> <p><u>Policy & Theory</u> In which case of the three in this assignment is the use of promissory estoppel to enforce an otherwise non-binding promise most justified? Can you think of other cases you have read where application of the theory would seem as if not more justified?</p>

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Part III. Policing the Bargain				
13	2/23, 2/24	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) 	<p><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?</p> <p><u>Practice Point: Industry norms and third parties</u> Why does the standard Florida buy/sell agreement require sellers to make so many disclosures?</p> <p>If such disclosures are not legally mandated, why are they included in the standard contract? Who drafted the form and what are their interests?</p>
14	2/25 (QUIZ)	Duress and undue influence <ul style="list-style-type: none"> • <i>Austin Instruments v. Loral Corp.</i> (casebook) • <i>Austin v. Loral</i>, 316 N.Y.S.2d 528 (app. ct. decision) • <i>Odorizzi v. Bloomfield School District</i> 	<ul style="list-style-type: none"> • Text 401-14 	<p><u>Clarifying Doctrine</u> What is the difference between the doctrines of duress and undue influence?</p> <p><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?</p> <p><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?</p> <p><u>Review</u> Is there a pre-existing legal duty issue in <i>Austin</i>?</p>
15	3/2	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) 	<p><u>Policy & Theory</u> What is an "exculpatory clause?" Why does it present a public policy issue?</p> <p><u>Practice Point: Drafting</u> What specific language in the <i>Hanks</i> contract absolves the ski resort of liability for this particular injury?</p>

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16	3/3	Unconscionability <ul style="list-style-type: none"> • <i>Williams v. Walker-Thomas Furniture I & II (QUIZ)</i> • <i>Vernon v. Qwest Communication</i> 	<ul style="list-style-type: none"> • 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?
17	3/4	Mistake <ul style="list-style-type: none"> • <i>In re estate of Nelson</i> • <i>Grenall v. United of Omaha</i> 	<ul style="list-style-type: none"> • Text 443-45 • RST §§ 152, 153, 154 RST §§ 152, 153, 154 	<u>Clarifying Doctrine</u> Explain the relationship between the rules of unilateral mistake, “risk of mistake,” and unconscionability.
	3/9-3/11	– SPRING BREAK –	Optional Practice Midterm (posted)	
Part IV. Contract Interpretations				
18	3/16	Introduction to interpretation <ul style="list-style-type: none"> • <i>Threadgill v. Peabody Coal</i>, 526 P.2d 676 (Co. App. 1974) (QUIZ) 	<ul style="list-style-type: none"> • Text 465-70 • 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
19	3/17, 3/18	Implied duty of good faith <ul style="list-style-type: none"> • <i>Wood v. Lady Duff-Gordon (QUIZ)</i> • <i>Locke v. Warner Bros.</i> • <i>Stokes v. DISH</i> 	<ul style="list-style-type: none"> • 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?

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20	3/23, 3/24	<p>The parole evidence rule*</p> <ul style="list-style-type: none"> • <i>Town Bank v. Real Estate</i> • <i>Trader Bank v. Dils (QUIZ)</i> • <i>Apex v. World Sharing (QUIZ)</i> <p>*These cases are not in your current text. They will be in a posted packet available on Canvas.</p>	<ul style="list-style-type: none"> • RST §§ 209, 210, 213(1) and (2), 214-216 • UCC § 2-202 	<p><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?</p> <p><u>Practice Point: Drafting</u> What is an “integration” (or “merger”) clause? When should a lawyer include it in drafting a contract? Do we know if there was such a clause in the promissory note at issue in <i>Trader Bank v. Dils</i>? Would the inclusion or absence of such a clause make a difference in that case?</p>
21	3/25	<p>Ambiguous express terms</p> <ul style="list-style-type: none"> • <i>Frigalment Importing v. B.N.S. International</i> • <i>Gassner v. Rayner</i> 	<ul style="list-style-type: none"> • Text 534-43, 547-54, 564-67 	<p><u>Clarifying Doctrine</u> What is the relationship between contract ambiguity and the parole evidence rule?</p> <p><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)</p>
Part V. Performance, Breach and Excuse				
22	3/30	<p>Failure of an express condition</p> <ul style="list-style-type: none"> • <i>Luttinger v. Rosen</i> • <i>Schindler v. Tully</i> • <i>EMH&T v. Triad</i>, 580 N.W.2d 802 (Ohio App. 2011) 	<ul style="list-style-type: none"> • Text 631-40 	<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>
23	3/31, 4/1	<p>Unanticipated events</p> <ul style="list-style-type: none"> • <i>Taylor v. Caldwell (QUIZ)</i> • <i>Rte 6 Outparcels v. Ruby Tuesday</i> • <i>Mel Frank Tool v. Di Chem</i>, 580 N.W.2d 802 (Iowa 1998) 	<ul style="list-style-type: none"> • Text 669-78 • 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>

	DATE	TOPIC	READING	GOALS & QUESTIONS
24	4/6, 4/7	Material breach <ul style="list-style-type: none"> • <i>Jacob & Young v. Kent</i> (QUIZ) • <i>Grun Roofing v. Cope</i>, 529 S.W.2d 258 (Tex. App. 1975) • <i>Panike & Sons</i> 	<ul style="list-style-type: none"> • Text 708-18, 728-29, 739-44 • 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>
25	4/8, 4/13	Anticipatory repudiation <ul style="list-style-type: none"> • <i>Hochster v. De la Tour</i> (QUIZ) • <i>Norcon Power v. Niagra Mohawk</i> (QUIZ) 	<ul style="list-style-type: none"> • Text 745-50, 758-67 • 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>
Part VI. Remedies				
26	4/14	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> (QUIZ) 	<ul style="list-style-type: none"> • Text pp. 769-85, 791-800, 810-13, 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>
	4/15	– NO CLASS –		

	DATE	TOPIC	READING	GOALS & QUESTIONS
27	4/20, 4/21	Limits on damages <ul style="list-style-type: none"> • <i>Hadley v. Baxendale</i> (QUIZ) • <i>Manoucheri v. Heim</i> • <i>Pencro v. Sprint</i> 	<ul style="list-style-type: none"> • Text 851-59, 868-75, 800-10 • 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>
28	4/22	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>