**Contracts, Law 5000 (4 credits)**

# Spring 2021

**Syllabus v. 1.0 (1/6/21)**

Professor Mark Fenster

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Classes:

* Sect. 1: TuWeTh 1:15-2:30, HH - 285B
* Sect. 2: TuWeTh 8:30-9:45, HH - 285C

Office hours: T-Th 2:30-3:30 & by appointment, at <https://ufl.zoom.us/j/3415941766>

**Text:** All assignments are in Michael Hunter Schwartz and Adrian J. Walters, Contracts: A Context and Practice Casebook (2d ed., Carolina Academic Press 2015) *or* Schwartz & Walters, Contracts (3d ed. 2020), unless otherwise noted (your choice as to which edition you use); James Byrne, Contracts Texts: Restatement 2d Contracts, UCC Article 2 and CISG (6th ed. [note: or 5th ed.), Institute of International Banking Law and Practice) (noted in the assignment below in *italics*); and individual assignments available for download at the course’s Canvas site.

**Supplemental Texts:** You may find supplemental texts to be helpful in understanding the subject. I have discussed them in my introductory video for the course.

**Course Description and Student Learning Outcomes**: The objective of this course is for you to develop a greater understanding of the private law of contracts. We will cover contract formation, quasi-contracts (agreements for which remedies are available in the absence of a contract), defense to the enforcement of contracts, damages of various sorts that are available for breach, contract interpretation, performance and non-performance, and, if we have time, the rights and responsibilities of third-party beneficiaries.

Among other objectives, at the end of this course, students should:

* gain facility in contract law doctrine;
* understand some of the basic dynamics of transactional practice, including contract drafting and editing;
* learn some of the basic concepts of private law and business law, and be prepared to take more advanced courses in the business law curriculum;
* increase their understanding of the litigation process and rudimentary civil procedure;
* continue to develop close reading and critical thinking skills; and
* gain some experience in writing in preparation for legal practice and the exam.

**Class Preparation:** You should arrive in class having read the materials closely, and more than once. You should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted below (see below, “Contracts Assignments”), and specific class assignments will be announced in class and posted on the front page of the TWEN site. You should expect to have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance written preparation, you should expect to spend at least two hours preparing for every class hour.

**Guidelines for Preparation:** Feel free to produce for yourself a case brief if you’d like, although you may find taking a less formal set of notes to be more helpful and efficient. In the first semester of law school, you should learn not only the subject matter of the particular courses you are taking but also the very basic concepts of law and the basic institutions and processes of the legal system. Be prepared to answer the following questions every day about every case and note you’ve read the night before:

* Who are the parties of the case?
* What are the facts?
* What level of court decided the case you’ve read:
  + state or federal court?
  + trial or appellate court?
    - If appellate, intermediate appellate or supreme court?
* What is the procedural posture of the case—that is, at what stage of the civil process was the decision under review that is being challenged made?
* If the case is on appeal, what error was allegedly made in the trial court?
* What is the “holding” of the case?
  + That is, what is the legal proposition on which the court bases its decision?
* What is the rationale of the case?
  + That is, how does the court explain the “holding,” and
  + how does the court explain the application of that holding to the particular facts of the case?
* What “policy” arguments support the result in the case?
  + That is, what are the positive anticipated consequences flowing from the holding and its application?
* What are the counterarguments to the holding and its application?
* Ultimately, considering the court’s reasoning and the consequences of the decision, was the case decided “correctly”?

**Office Hours:** I will hold office hours immediately after my afternoon class with Section 1 (to begin as soon as I get to my office on in-class days, and immediately after on Zoom days). Office hours will be via Zoom only this semester. My regular office hours will be devoted exclusively to Contracts-related materials and I will allow into the Zoom meeting all Contracts students, no matter their section. I encourage you to use appointments outside of office hours to discuss matters outside of the class materials but can meet individually about personal or individual issues by appointment.

**Small Group Meetings:** In order for us to get to know each other better, I plan to have small group meetings with you all over the course of the semester. I’ll soon make an announcement about how that will work.

**In Person/ Zoom:** As per guidance by the Law School administration, we will hold our first two weeks of classes in-person. Although the majority of our classes this semester will continue to be in-person, I will hold classes on Zoom. I have not yet decided how I will decide which class will be held in each modality, but I will endeavor to make that decision at least a week in advance. Certain extenuating circumstances about the progress of infection on campus, in the city, and among us may well force us to retreat to Zoom. *Note: Unless you receive permission from me prior to class, I will expect that you will leave your camera on if you are joining the class via Zoom, and I will mark absent those who fail to do so.*

**Common Courtesy (late arrivals, getting up during class):** Please do not arrive late to class or leave class early absent extenuating circumstances. Please be certain to obtain essential items or relieve yourself before class begins. If you think you will need to get up on a regular basis during class, *including because you anticipate that you will need to go to the bathroom*, please choose a seat near one of the exits. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates. I also reserve the right to lock the doors at the beginning of class and to remove anyone from class who is being disruptive.

**Attendance/ Participation:** Attendance is required, as per the requirements of both the ABA and the Law School. Each day, I will announce two passwords, one for those who are “present and prepared” to be called on and one for those who are merely present.

* If you are “prepared,” I can cold-call on you. I will not have access to your attendance code, so it is up to you to inform me that you are not prepared when I call on you.
* To be “prepared” you must have read the assignment and have made a good faith effort to think through the materials so that I may cold-call on you. You do not have to have perfect answers to the questions we might pose, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If I call on you and I believe you are not prepared even though you have signed in as prepared, I reserve the right to lower your final grade. Also, I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to dock your final grade.
* If you are not “present and prepared” for 10 or more of our regularly scheduled classes, your grade for the semester will be adversely affected. Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.
* You may not sign in as present and prepared if you arrive late for class or if you forget to sign in before class.
* If you have a medical reason for missing class, you must contact me ASAP before or soon after class and provide documentation for your absence to be excused. To be excused from class for religious holidays, students must contact me beforehand by e-mail.

**Seating/ name plates:** Usually, I have a seating chart for the class that requires students to occupy the same seat each day. We will probably not be able to do that this semester, so please remember to bring your name plate to class every day and display it in front of you so I can learn your names. Warning: learning names is not one of my talents, so if I forget your name, please don’t take it personally.

**Exam**: The cumulative final exam will serve as the basis for your grade. You may bring your casebook and any notes you have made to the exam; you may *not* bring any additional commercial materials (supplements, commercial outlines, etc.). You *must* bring your statutory supplement with you. The exam will have a four-hour time limit and will consist of short-answer and essay questions.

I will grade your exams anonymously. After a blind grade is assigned, I may boost borderline grades if the student has participated actively in the class. Participation is judged by quality, not quantity. I may also lower grades for excessive absences or disruptive behavior. As of December 7, 2020, the exam is scheduled for Monday, April 26, at 8:30 AM.

**Writing assignments**: Each student will be required to submit two short writing assignments. I will make assignments in advance, ideally on Thursday or Friday for the following week; your paper will be due by 6 PM on the evening before the class period when you will lead discussion of the problem or case you have been assigned. The papers will be approximately 2 pages in length and will be ungraded. I will give you feedback on the paper prior to the beginning of class. Failure to submit the paper in a timely manner will incur a penalty on your final exam.

**Class Cancellations**: I do not currently have plans to cancel class during the term. If I cancel any classes, I will plan make them up later in the semester as time and our schedules permit.

**Policy Related to Make-up Exams or Other Work:** The law school policy on delay in taking exams can be found at: http://www.law.ufl.edu/students/policies.shtml#12.

**Statement Related to Accommodations for Students with Disabilities:** Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**Academic honesty**: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**Information on Levin College of Law Grading Policies**: The Levin College of Law grading policy is available at: <http://www.law.ufl.edu/students/policies.shtml#9>.

**Online course evaluation process**: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>.  Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>.  Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**COVID**:

* Many students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.
* You must wear approved face-coverings at all times during class and within buildings. Following and enforcing these policies and requirements are shared responsibilities. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
* Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
* Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/.
* Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/.

**Course recordings of class discussions:** Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**Contracts Reading Assignments**

The assignments listed below are divided somewhat roughly as encompassing one assignment per one class period. Unless I state otherwise, you should do the entire reading for class, *and prepare all of the problems and exercises included in the casebook*. I will clarify the precise reading assignment at the beginning and end of each class. Depending upon where we are in the calendar when we reach the end of this list of assignments, I will revise the syllabus with additional assignments or by deleting listed ones.

Assignments in the Schwartz casebook second edition are in plain text; *the same assignments in the third edition are* *in* *italics*; and assignments in the Byrne supplement (or wherever you find the relevant provisions) are in underline*.* I have only included the Restatement 2d of Contracts and UCC Article 2 section numbers for assignments in the Byrne book; the book’s organization explains itself and you will easily be able to find the sections’ location. Be sure to read the Restatement and UCC sections carefully and alongside the relevant casebook reading. The comments and notes that follow the section can be helpful; reviewing and trying to understand the illustrations can prove excellent ways to study for class and ultimately for the exam. (Note: I have on occasion used the illustrations as inspiration for exam questions.)

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| **Class #** | **Subject Matter** | **Materials & Readings:**  **2d ed/ *3d ed (in italics);* supplemental materials underlined** |
| 1 | Introduction to class | Videos: Syllabus; Intro to course.  Readings: “Stormy Daniels” contract (via Canvas); pp. xxix-xxxiii, 3-12; *xxxvii-xlii, 3-14* |
| 2 | Mutual Assent: Communication of Present Intent | pp. 18-29, 38-39 (2nd ed.); *21-33, 43-44 (3rd ed.)*  Rst §§ 17, 22, 24, 50, 59, 61, 33  UCC §§ 2-204(3), 2-305, 2-308 to 2-310 |
| 3 | Special Offer Rules | pp. 39-55; *44-64*  Rst §§ 26-27 |
| 4 | Special Offer Rules (continued); Matter of Acceptance | pp. 60-73; *70-85* (in both, skip exercises 2-22 & 2-23)  Rst §§ 50, 30, 32, 45, 51, 60, 62, 65, 69 |
| 5 | Termination of Power to Accept | pp. 74-90, 92-95; *86-105, 108-111*  Rst §§ 36-43; 48, 63, 66-68 |
| 6 | Review of Chapter 2; Chapter Problem | pp. 15-17, 105; *17-19, 123* |
| 7 | Adequacy of Consideration; Past & Moral Consideration | pp. 111-122 (incl ex. 3-6), 126-129; *129-142 (incl. ex. 3-6), 146-151*  Rst §§ 71, 79, 82-83, 86 |
| 8 | Invalid Claims and Pre-Existing Duty | pp. 130-139; *151-162*  Rst §§ 71, 73, 74 and U.C.C. §2-209(1) |
| 9 | Illusory Promise and Chapter Problem | pp. 146-151, 155-161, 107-110; *170-176, 180-187, 125-128*  Read closely Rst § 77 & comments and illustrations |
| 10 | Promissory Estoppel | pp. 167-186, *197-219*  Rst § 90 |
| 11 | Sample Exam Questions #4-1 & 4-3 | pp. 165-167, *193-196* |
| 12 | Misrepresentation & Mistake | pp. 193-211, 221-236; *229-249, 259-278*  Rst §§ 151-162 |
| 13 | Duress (including non-competes) & Illegality | pp. 238-243, 250-260, *280-286, 295-307*  Rst §§ 174-176, 178-181, 188 |
| 14 | Incapacity, Unconscionability, and Statute of Frauds | pp. 260-274, 306-323  Rst §§ 12, 14-16, 110, 208 |
| 15 | Chapter Problem, Review, Catch-Up | pp. 191-193, 275 #3; *226-227 324 #3* |
| 16 | Measure of Damages | pp. 282-290, 295-310; *332-341, 347-365*  Rst §§ 344-349 |
| 17. | Avoidability and Feasibility | pp. 310-333; *365-392*  Rst §§ 350-351 |
| 18. | Feasibility and Certainty | pp. 333-347; *392-409*  Rst § 352 |
| 19. | Reliance Damages | pp. 347-363; *409-427*  Rst § 349 |
| 20. | Damages Problem; Restitution | pp. 281-282 (Ex. 6-2), 368-378; *331-332 (Ex. 6-2), 433-445*  Rst §§ 370-374 |
| 21. | Restitution | pp. 378-383, 365-367; *446-451, 431-433* |
| 22. | Agreed (“Liquidated”) Damages | pp. 385-398 (including problem),  *455-470 (including problem)*  Rst § 356 |
| 23 | Coercive Equitable Relief | pp. 399-419 (including problem); *473-496 (including problem)*  Rst §§ 359-360, 362, 364, 366 and UCC §2-716 |
| 24 | Contract Meaning | pp. 437-445; *517-525* |
| 25 | Parol Evidence (1) | pp. 447-471; *528-555 (including 10-7)*  Rst §§ 209-215 |
| 26 | Parol Evidence (2) | pp. 475-476, 479-492; *560-561, 566-580* |
| 27 | Parol Evidence Problem; Contract Interpretation (1) | pp. 447, 499-506; *527-528, 587-596*  Rst §§ 201, 204-207 |
| 28 | Contract Interpretation (2) | pp. 506-523; *596-616* |
| 29 | Contract Interpretation Problem; Express Conditions (1) | pp. 495-498, 529-543; *583-586, 623-640*  Rst §§ 224-227 |
| 30 | Express Conditions (2) | pp. 543-563 (through #2); *640-662 (through #2)* |
| 31 | Constructive Conditions | pp. 563-583; *663-687*  Rst §§ 232, 234, 241 |
| 32 | Divisibility & Excuse and Discharge | pp. 586-591, 592-604; *689-696, 696-710*  Rst §§ 240 |
| 33 | Extreme Forfeiture, Anticipatory Repudiation & Assurances | pp. 604-613, 624-632; *710-721, 734-743*  Rst §§ 229, 250-251, 255, UCC §§ 2-609, 2-610 |
| 34 | Impracticality and Frustration of Purpose | pp. 633-648, 650-655; *745-763, 765-771*  Rst §§ 261 and 265, UCC §§ 2-615 |
| 35 | Conditions Review and Third Party Beneficiaries | pp. 527-528 (Task 1), 671-683; *621-622 (Task 1), 793-805*  Rst §§ 302, 309, 311, 313 |
| 36 | Vesting of 3PB Rights and Battle of Forms (1) | pp. 699-704, 95-99 (only q. 1 in ex 2-40); *823-829, 111-115 (only q. 1 in ex 2-40);*  *Diamond Growers* and *Paul Gottlieb* cases (from Canvas)  Rst § 61 and UCC 2-207 |
| 37-end | Course Review | pp. 742-748, 750-751 (15-5, 15-6, 15-7); *874-882, 883-886 (15-5, 15-6, 15-7*) |