Basics. Two books are required for this course: E. ALLAN FARNSWORTH ET AL., CASES AND MATERIALS ON CONTRACTS (8th ed. 2013) and JAMES E. BYRNE, CONTRACTS TEXTS (4th or 5th edition).

You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. Each row of the table starting on Page 4 lists the reading for one class session. On Fridays we have two class sessions so we read two rows. For example the plan for our second day of class, Friday August 28, is both Assignments 2 and 3. The sections of the Restatement of Contracts and the Uniform Commercial Code referred to in the casebook are part of each reading assignment, whether or not they are also listed on this syllabus.

The assignments for four class sessions include sending emails to me. I may show what you send me for these assignments to the entire class so please consider that lack of privacy in deciding what to send me.

Your grade for the course will be determined by the exam (85%), and classroom performance including four assignments just noted (15%).

Exam. You may use any written material (such as outlines, books, notes) during the exam. It is completely “open book.” You may also use a calculator. You may take the exam on your laptop computer if you do so with the exam software supported by the law school. The exam software must in the closed mode so that you cannot access any other program on your computer during the exam. All assigned reading and classroom discussion is fair game for testing on the exam. If you have questions about the assigned reading after our class discussion of it, please do not hesitate to contact me. I try to make the exam correspond to the course so topics that receive a lot of attention in the reading and the classroom play a bigger role on the exam than topics that receive less attention in the reading and the classroom. But I am not able to make this correspondence perfect.

I prefer that the entire class take the exam at its scheduled time. I will provide alternate exam times only to the extent the school’s rules require me to do so for individual students.

Classroom performance. Should law professors use class time to lecture or to question students? I believe that some time devoted to lecture may be appropriate because lecturing can be an efficient way to convey information from someone who has it to someone who needs it. But you should not need to acquire much information during class. You can acquire nearly all the relevant information before class by doing the assigned reading, thinking about it and discussing it with your classmates. In short, you should come to each class knowing the law that will be discussed in that class. You should know what the statutes say and what the courts have held. You should know the basic arguments in favor of those statutes and holdings and the basic arguments against those statutes and holdings.
If students know all this before class starts, then what is the purpose of our class time? One purpose is simply to test whether you have learned before class what you should have learned. If the professor asks straightforward questions about the reading (e.g., “what argument did Plaintiff make to the appellate court?”) and you have trouble answering them quickly and confidently then you are receiving feedback suggesting that your class preparation or your ability to speak under pressure is deficient. Either way, you benefit from getting that feedback throughout the semester, rather than learning on the exam or later about the deficiencies. Of course, it is not only questions directed to you personally that give you feedback. After each question directed to one of your classmates, you should think about how you would answer it and compare the answer you would have given to the answer your classmate gave. In a good law school class, much of the learning occurs through this process.

Another very important purpose of class time is to give you opportunities to “learn by doing.” We lawyers are often good at learning by reading and that is good because many lawyers do a lot of reading for their jobs. But reading alone is not sufficient preparation for the practice of law. Nearly all lawyers’ careers require them to engage in effective communication about the law. While written communication about the law is a large part of many lawyers’ jobs, so is spoken communication about the law. In this course, written communication will be tested on the exam and spoken communication will be tested in the classroom throughout the semester.

During class, I may call on students who have not raised their hands, as well as students who have. Your classroom performance grade is based on the quantity and quality of both forms of participation. I want you to raise your hand and voluntarily contribute to the class discussion because I believe volunteering to speak about law is good training for the practice of law and because the class discussion tends to be better when many viewpoints are represented. So the classroom performance part of the grade rewards students who frequently raise their hands and say things that contribute to the education of the class.

On the other hand, I try to ensure that every student makes a significant number of contributions to the class discussion over the course of the semester. Therefore, students who raise their hands less frequently than their classmates are more likely to be called on when I am not looking for volunteers.

If you are unable to prepare for a particular class, it is better to tell me ahead of class than to skip the class or risk being called on. If you ask ahead of class for a pass that day, I will grant it if your classroom performance throughout the semester has been adequate. By contrast, if you have gone several days without contributing to class discussion then you should not be asking me for a pass. If you have gone several days without contributing to class discussion and are unable to prepare for a particular class then you are not handling the course appropriately. You should take the initiative and contact me in my office to discuss solutions to the problem.

If you come to class without previously asking me for a pass then you are representing to me and your classmates that you are prepared and ready to contribute. If I call on you in class and you, at that point, ask for a pass or say that you are unprepared then your grade will suffer and your reputation for honesty will be jeopardized.
I recognize that many students find law school classes stressful if classroom performance is graded and the professor may call on any student at any time. If you find this sort of classroom environment stressful then I encourage you to reconsider whether your preparation for class is adequate. If you are well prepared for class then you have anticipated the issues raised by the questions the professor is asking and are ready to use the “book learning” you did before class. That said, even well-prepared students sometimes find speaking in class somewhat stressful. Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, the law school classroom is a relatively safe, low-stakes environment in which to develop important professional skills. Please get the most out of it, rather than shying away from it.

**Attendance and lateness.** You may miss a class or two during the semester because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is nothing to worry about and there is no need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions about what you missed. Similarly, you may be late once or twice during the semester for reasons like those listed above. Again, this is nothing to worry about and there is no need to contact me about it.

By contrast, if you are going to miss or be late more than a couple of times during the semester, that is a worry. If that happens to you then you should take the initiative and contact me to discuss how we can address the problem and keep you on track with the course and your classmates. Missing or being late for more than a couple of classes without contacting me would be a sign of disregard for the course and would make things more difficult for all concerned. Please do not be that student.

**Computers and other electronics in class.** You may use a computer in class but only for working on this course. Any other use of your computer during class is prohibited. And I reserve the right to declare some of our class time “computer-off periods.” Please silence computers, phones and any other electronic devices you bring to class. Audio or video recording of class is prohibited without my written permission.

**Miscellaneous.** The law school works with the Academic Achievement and Access Center (AAAC) on the KU campus to coordinate accommodations and services for students with disabilities. If you have a disability for which you intend to request a classroom and/or exam accommodation, you may contact KU Law Student Counselor, Leah Terranova, leaht@ku.edu, or any of your professors. You should notify someone at the beginning of the semester or as early as possible. The disability determination process can take time and accommodations may not be possible if requests are made late in the semester. The accommodation process is a collaborative one among the student, the AAAC, and the professor. More about the AAAC can be found at [www.achievement.ku.edu](http://www.achievement.ku.edu)

I like to have lunch with students. We can go across the street to the Burge Union and, within limits, the school will buy our lunches. To avoid crowds, I prefer to go at noon, rather than 12:30. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group and please copy the other student(s) on that email message.
My office is Room 414C, my email is ware@ku.edu and my phone number is 785-864-9209. Please do not hesitate to contact me about this course or anything else.

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**I. Formation of Contracts**

**A. Basis for Enforcing Promises**

Fundamentals of Consideration

3. 31 - 42, 52 - 58, Restatement §§ 17, 71-74, 79, 81, 86

The Requirement of a Bargain

4. 58 - 71, Rest. §§ 71-74

Promises as Consideration

5. 71 - 81 (skip prob. on 75), 86-91, Rest. §§ 75-77

6. At least thirty minutes before class, send me an email attaching a two-party contract, other than a lease, of four pages or less. Highlight in the contract’s terms, one promise by each party. In a document attached to the same email do the following:
   - With respect to each of these two promises, name the promisor and the promisee.
   - Explain whether these two promises are consideration for each other and why or why not.

Before doing this, re-read the third paragraph of the syllabus.

Reliance as a Basis of Enforcement

7. 92 (Section 4) - 97, 48 - 51, 97 - 100, Rest. §§ 71, 90

Restitution as a Basis for Recovery

8. 112 - 121, Rest. §§ 370 – 371
B. Creating Contractual Duties

The Nature of Assent
9. 125 - 139 (before notes), Rest. §§ 17-18

The Offer
10. 140 - 153 note 1, Rest. § 24
    Skip problems on 143 and 151
    Skip Harvey v. Facey

The Acceptance
11. 156 - 167 note 1, Rest. §§ 30, 50;
    175 - 176 (re: silence), 40 note 5, 72-73 note 2

Termination of the Power of Acceptance
12. 177 - 186, 193 - 194, Rest. §§ 38-43, 63
13. 194 - 202 (skip problem on 199)

UCC Battle of the Forms
    UCC § 2-207 and its comments
15. 221 - 234

Precontractual Liability
16. 186 - 193, 234 - 240 (note 3); Rest. §§ 45, 87, 90

The Requirement of Definiteness
17. 112-113, 258 - 271, Rest. § 33

II. Defenses to Enforcement

Statutes of Frauds
18. 273 - 281 (do problem on 281)
    290 - 300 (skip Central Ceilings and problem after it)
    308 - 310 (skip problems)
    Rest. §§ 131 - 139

19. 310 - 312
    UCC § 2-201 and its comments
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<td>Public Policy</td>
<td>482 - 485, 501 - 512, Rest. § 211</td>
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<td>418 - 420, UCC § 2-202</td>
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Class

32. Assignment
At least thirty minutes before class, send me an email attaching a writing containing a merger clause (also known as an integration clause). The writing must be no longer than four pages. In a document attached to the same email, do the following:

- Name the parties to the writing.
- Describe a realistic lawsuit between these parties in which one party would try to persuade the court that the terms of the parties’ agreement included one or more terms not found on the writing.
- Be realistic in describing what those alleged terms might be.

Before doing this, re-read the third paragraph of the syllabus.

Interpretation

33. 421 - 433
34. 433 – 445, Rest. §§ 20, 200-204
35. 459 - 461, 467 - 471

Good Faith

36. 487, 550 - end of 554, 567 - 574, Rest. § 205

IV. Contract Performance

Express Conditions

37. 725 - 728, 733 - 739 (note 2), 744 - 746
Rest. §§ 224-230
38. At least thirty minutes before class, send me an email attaching a contract. Highlight one or more of its express conditions. In a document attached to the same email, name the parties to the contract and, using the word “duty,” discuss that condition and the role it plays in the agreement. For example, who benefits from that condition and why. Before doing this, re-read the third paragraph of the syllabus.

Constructive Conditions

39. 749 - 755, 756 - 762, Rest. §§ 231-239, 241
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<td>41. 767 - 778 (skip notes on 768), Rest. §§ 240, 374</td>
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<td>46. 661 - 674</td>
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Class

Assignment

47. At least thirty minutes before class, send me an email attaching a document containing two hypothetical stories you have written. In both stories the plaintiff is a buyer -- one is a buyer of services, and the other is a buyer of goods who accepted the goods and did not revoke acceptance. In both stories, the buyer at all times intends to consume the goods or services rather than resell them or otherwise use them in a business. In both stories, describe the seller’s (clear and undisputed) breach and then calculate damages showing the dollar amount the court should award the buyer. Provide enough (hypothetical) facts and citations to legal authority to show that your calculations are accurate. If you believe these calculations require you to assume precise answers to questions that in the real world would be the subject of disagreement then predict who would say what in those disagreements. Before doing this assignment, re-read the third paragraph of the syllabus.

Specific Performance

48. 617 - 621, 628 (note 2) - 639
Rest. §§ 345, 357-360
UCC §§ 2-709, 716

Avoidability

49. 674 - 676, 682 (introduction to Parker) - 687,
Rest. § 350

Forseeability and Certainty

50. 687 - 692, 705- 708 note 1, Rest. §§ 351-352

Review

51. Review