

**Contracts**  
**Professor Stephen Ware**  
**Summer 2019**

**Learning Outcomes.** This course has two main purposes. One is to study the law and practice of contracts. Successfully completing this course will advance students' knowledge of the formation, interpretation, and performance of contracts, as well as remedies for breach of contracts. In addition, successfully completing this course will advance students' skills. An important purpose of the course is to develop students' skills in legal analysis and reasoning, legal research, problem-solving, and written and oral communication, as well as heighten students' awareness of professional and ethical responsibilities to clients and the legal system.

**Basics.** This course requires two books: E. ALLAN FARNSWORTH ET AL., *CASES AND MATERIALS ON CONTRACTS* (8th ed. 2013), and JAMES E. BYRNE, *CONTRACTS TEXTS* (4<sup>th</sup> or 5<sup>th</sup> 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 5 of this syllabus lists the reading for one class session. 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.

Your grade for the course will be determined by the two-hour exam (58%), your classroom performance (15%), and the three assignments discussed next (27%). Only your initial submission of each of those three assignments will be graded; any follow-up will only be for learning, not grading. One purpose of these assignments is to help develop practical skills that benefit from studying examples of real contracts. Therefore, when these assignments ask you to email me a contract:

- a contract you find is better than one you create;
- a contract you believe has been used by real parties is better than a contract that may have never been used (such as an example contract between imaginary parties like XYZ Corp. and John Doe);
- a contract showing all the names of the real parties who used it is better than a contract hiding those names, or with blank spaces for the parties' names;
- a contract showing the terms agreed to by the parties is better than a contract hiding some of those terms, or with blank spaces for terms;
- a contract including its appendices or schedules, if any, is better than a contract omitting them;
- a pdf or doc is much better than a jpg or other file more suited to pictures than words; and
- you highlighting (in yellow) the portions of the contract especially relevant to the assignment, and referring to them clearly (e.g., "Paragraph 3" or "Clause G"), is better than you not highlighting and not referencing them clearly.

I may show what you submit for these assignments to the entire class so please consider that lack of privacy in deciding what to send me.

**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 be 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 class play a bigger role on the exam than topics that receive less attention in the reading and in class. 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 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, factual questions about the reading (e.g., “what argument did Plaintiff make to the appellate court?”) and you have trouble answering 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 other assignments, while 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 class discussion because I believe doing this is good training for the practice of law and because 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.

Students who raise their hands less frequently than their classmates are more likely to be called on when their hands are not raised.

If you are unable to prepare for a particular class, better for you 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 a day or two without contributing to class discussion then you should not be asking me for a pass. If you have gone a day or two 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. I am here to help you with that. If you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

**Attendance and lateness.** You may miss a class or two during the course 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. Similarly, you may be late once or twice during the course 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 class or be late more than a couple of times during the course 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.** Our class will not meet July 5. To earn this, our class will meet July 2 from 1:40 to 3:00, as well as our regularly scheduled 10:40 to 12:00. I am sorry for any inconvenience this causes.

If you have a disability for which you intend to request a classroom or exam accommodation, you may contact the Assistant Dean for Academic and Student Affairs, Leah Terranova, at [leaht@ku.edu](mailto:leaht@ku.edu) or 785-864-4357.

I like to have lunch with students. We can go across the street to the DeBruce Center Cafe and, within limits, the school will buy our lunches. 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](mailto:ware@ku.edu) and my phone number is 785-864-9209. Please do not hesitate to contact me about this course or anything else.

<u>Class</u>	<u>Assignment</u>
<b>I. Formation of Contracts</b>	
<b>A. Elements of Formation</b>	
1.	339 - 354 (after note 3), Rest. §§ 12 - 16
<b>B. Defenses to Enforcement</b>	
Pressure: Duress, Pre-Existing Duties, and Undue Influence	
2.	356 - 368 (after note 2), 371 - 372 Rest. §§ 73, 89, 175 - 177, 279, 283 374 - 387, UCC § 2-209 and its comments
Concealment, Misrepresentation, and Mistake	
3.	387 - 397, Rest. §§ 1, 2, 159 - 164 Rest. 2d of Torts §§ 525, 526, 551 Review: 841 – 859, Rest. §§ 151 - 154
Impracticability and Frustration of Purpose	
4.	862 (skip Mineral Park) - end of 870, 882 - 884, Rest. §§ 261, 262, 266 899 - 901, 910 – 915, Rest. § 265
Unconscionability	
5.	489 - 499, 482 - 485, 501 - 512, 522 - 525, Rest. § 208, 211, UCC § 2-302
Public Policy	
6.	574 - 583, 588 - 594 Rest. §§ 178, 179, 186 - 188

<b>II. Contract Terms</b>	
The Parol Evidence Rule	
7.	405 - 416, Rest. §§ 209 - 216
8.	<p>418 - 420, UCC § 2-202</p> <p><b>Graded assignment #1.</b> At least thirty minutes before class, send me an email attaching a writing containing a merger clause (also known as an integration clause). Highlight in yellow the merger clause and whatever one other clause is most relevant to the hypothetical lawsuit below. The body of the email should consist of your first and last name plus two short sentences:</p> <ol style="list-style-type: none"> <li>1. name the parties to the writing and briefly what each is promising the other in that writing;</li> <li>2. describe a realistic hypothetical lawsuit in which you say which party would sue the other for breach of which term; and</li> <li>3. in that lawsuit, name the party that would try to persuade the court that the terms of the parties' agreement included what prior or contemporaneous term not in the writing.</li> </ol> <p>Before doing this, re-read the first page of the syllabus.</p>
Interpretation	
9.	421 - 445, Rest. §§ 20, 200-204
10.	459 - 461, 467 - 471, 487, 550 - end of 554, 567 - 574, Rest. § 205. UCC §§ 2-313 to 2-317

<b>III. Contract Performance</b>	
Express Conditions	
11.	<p>725 - 728, 733 - 739 (note 2), 744 - 746 Rest. §§ 224-230</p> <p><b>Graded assignment #2.</b> At least thirty minutes before class, send me an email attaching a contract. Highlight in yellow only one of its express conditions. Do not pick a condition to formation of the contract. Pick a condition to a party's duty. The body of the email should consist of your first and last name plus three short sentences:</p> <ol style="list-style-type: none"> <li>1. name the parties to the contract and briefly what each is promising the other;</li> <li>2. using the words "duty" and "conditioned" clearly specify whose duty to do what is conditioned on what occurring; and</li> <li>3. say the role this condition (as distinct from the duty conditioned) plays in the agreement, that is, who benefits from that condition and why. To do this, imagine the duty without the condition.</li> </ol> <p>Before doing this, re-read the first page of the syllabus.</p>
Constructive Conditions	
12.	<p>749 - 766, Rest. §§ 231-239, 241 UCC §§ 2-503, 507, 508, 511, 513, 601, 602, 606, 607, 608, 612, 711</p>
Divisibility and Restitution; Suspending Performance	
13.	<p>767 - 795 (skip notes on 768), Rest. §§ 240 - 242, 250, 253, 374</p>
Anticipatory Repudiation	
14.	<p>799 - 810, 816-824, Rest. §§ 238, 250 - 253</p>

<b>IV. Remedies for Breach</b>	
Measuring Expectation	
15.	617 – 618, 639 - 674 (skip Vitex), Rest. §§ 344-349, 355, 371 UCC §§ 2-706, 708, 709, 712, 713
Specific Performance	
16.	<p>617 - 621, 628 (note 2) - 639 Rest. §§ 345, 357-360 UCC §§ 2-709, 716</p> <p><b>Graded assignment #3.</b> At least thirty minutes before class, send me an email attaching a Word document containing two hypothetical stories you have written. In one story, plaintiff is an individual (not business) buyer of goods who accepted low quality goods from the seller and did not revoke acceptance or obtain higher-quality replacement goods for another source. See § 2-714. Buyer at all times intends to consume the goods, rather than use them to raise the value of something Buyer’s owns, resell the goods, or otherwise use them to make money. Students who do well on this assignment carefully comply with the previous sentence!</p> <p>In the other story, plaintiff is an individual (not business) buyer of services who accepted low quality services from the seller (service provider) and did not obtain higher-quality replacement services from another source. This Buyer at all times intends to consume the services, rather than use them to raise the value of something Buyer’s owns, resell the services, or otherwise use them to make money. Students who do well on this assignment carefully comply with the previous sentence!</p> <p>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.</p> <p>Before doing this assignment, re-read the first page of the syllabus.</p>

Avoidability, Forseeability, and Certainty	
17.	674 - 676, 682 (introduction to Parker) - 687, Rest. § 350; 687 - 692, 705- 708 note 1, Rest. §§ 351-352
Review	
18.	