Contracts
Section 4
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Required Materials

Farnsworth, et al., *Contracts: Cases and Materials* (8th ed.)

Course Outcomes

Upon completion of the course, you will

- Have a thorough and integrated understanding of the U.S. law of contracts, including knowledge of important variations among the states.
- Be able to examine, analyse, interpret, and assess critically the effectiveness of the relevant legal doctrines.
- Be an engaged participant in debates regarding emerging and contemporary issues in contract law.
- Have the cognitive and technical skills to generate critical and creative ideas relating to the different bases of liability (contract, promissory estoppel, and restitution).
- Have the cognitive and technical skills to examine, research, and analyse independently existing and emerging legal issues in the law of contracts.

Arrangements and Course Requirements

1. There will be a 4 hour final examination, to be held in class. You will be permitted to consult your casebook, other course materials, your notes and outline, or any other materials you bring with you to the exam, but you will not have access to your hard drives or the internet.

2. In class you may use laptops for the taking of notes only. No other use of electronic devices is allowed. I tend to walk around during class, so I can tell. I reserve the right to ban laptops at any point during the semester and move to a designated note-taker regime instead.
3. You are required to attend every class, barring sickness or special excuse given by me. Please be sure to read the rules about attendance in the Student Handbook: http://www.law.nyu.edu/academicservices/degreerequirements/jdprogram/generalrequirements/index.htm.

4. Please be prepared for class. By this I mean:
   - Please do the assigned readings before class;
   - Please do whatever background work is necessary to absorb the readings (such as looking up terms you are not familiar with and cross-references in the text such as citations of the Restatement);
   - Be ready to state the main legal issues and questions pursued in the assigned cases as well as their facts;
   - Be prepared to evaluate the outcome as well as the reasoning of the assigned cases;
   - Prepare (and ask) questions about material that confuses or consternates you.

5. At the end of each class I will designate a number of you (chosen at random from those not so far selected) to be primarily responsible for discussion at the next class. I will also, of course, take volunteers and answer questions at any time. Class participation can affect your grade by up to one step in either direction (e.g. B to B+).

6. Please always have both your casebook and your book of source materials with you in class.

7. If you feel you’d like to consult some secondary materials, I recommend Concepts and Case Analysis in the Law of Contracts by Marvin Chirelstein. Contracts by Farnsworth is a helpful textbook. But there’s absolutely no need for you to buy or read either.

8. For one class, Professor Issacharoff and I will swap. You will have Procedure during our normal class time on October 11, and Contracts on October 15, during your Procedure time slot, 10:50 to 12:40.

9. There are three teaching assistants for the class: Devika Balaram, Hillel Buechler, and Suzy Yaster. All are 3Ls who took contracts with me in the spring of 2017. The main role of the TAs will be to write sample problems in collaboration with me and go over them with you in person; each TA will be responsible for one lawyering section.

10. I will be having seven lunches with groups of about 12 of you, all concentrated in the first several weeks. The dates are Sept: 11, 13, 18, 20, 25, 27 and Oct 2. Lunch will be in VH 428 from noon to one. I will bring sign-up sheets to class.
Syllabus

Page numbers are for the casebook. The problems, and notes not specifically assigned, are optional.

Class No.

A. Introduction to Contract Remedies

1. Pp. 9-30, inc. nn. 1-3 to Naval, nn. 1 & 3 to Sullivan, all notes to The Economics of Remedies, all notes to White, and n. 1 to Remedies in Practice.

B. Enforceability

Consideration: The bargain theory

2. Pp. 31-42, 48-51, 58-60, inc. all notes to Hamer, all notes to Gratuitous Promises, all notes to Feinberg, and all notes to Kirksey; also study carefully Restatement of Contracts II §§ 71, 79, 81.


Promissory Estoppel: Reliance


Restitution: Unjust Enrichment

5. Pp. 112-22, inc. all notes.

Statute of Frauds, with Introduction to the UCC


Overview on Enforceability
Intent to Enter Legal Relations
“Moral Consideration”
Substance and Form

7. Pp. 52-7, 90-91, 136-8 inc. all notes; Restatement II § 21; Balfour v. Balfour, [1919] 2 K.B. 571 (available on Westlaw; read headnote and opinion of
Atkin, L.J.); *Rose and Frank Co. v. J. R. Crompton, Ltd.*, [1923] 2 K.B. 261 (available on Westlaw; read headnote and opinion of Scrutton, L. J.); *Pillans and Rose v. Van Mierop and Hopkins* (posted on NYU classes).

C. Formation of Contract

*Precontractual Liability*

8. Pp. 184-93, inc. all notes; *James Baird Co. v. Gimbel Bros.* 64 F.2d 344 (1933) (available on Westlaw)

9. Pp. 234-58, inc. all notes

*Assent: Objective and Subjective Misunderstanding*


*Parol Evidence Rule and Interpretation*

11. Pp. 405-20, with all notes.


*Offer Definiteness*


*Acceptance*

14. Pp. 156-84, inc. n. 2 to *White*, note to *Ever-Tite*, n. 2 to *Allied Steel*, all notes to *Dickinson*. Note that we will not discuss *Corinthian* in class, though you should read it.

*Standard Form Contracts: “Contracts of Adhesion”*

The Battle of the Forms
Rolling Assent


D. Remedies

Specific Performance

17. Pp. 617-39, with all notes.

Measuring Expectation

18. Pp. 639-60, with all notes.

Nonpecuniary Loss

19. Pp. 661-674, with all notes.

Limitations on Damages: Avoidability and Foreseeability

20. Pp. 674-99, with all notes.

Limitations on Damages: Certainty
Liquidated Damages


E. Performance and Breach

Conditions, Implied Conditions, and Forfeiture

22. Pp. 725-37; 742-7; 749-66; 769-76; with all notes.

Total and Partial Breach; Anticipatory Repudiation

23. Pp. 779-81; 786-91; 799-824, with all notes.

E. Excuses

(On the topic of capacity, you should read, on your own, Restatement of Contracts II, chapter 2)
Duress, Undue Influence, and the Preexisting Duty Rule

24. Pp. 356-86, with all notes

Misrepresentation
Mistake


Impracticability


Frustration
Remedies

27. Pp. 899-902, 905-23, with all notes.

F. Unconscionability and Public Policy