

**Contracts, Fall 2023**  
**Professor Stephen Ware**  
<https://sware.ku.edu/contracts/>

**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, problem-solving, and written and oral communication, as well as heighten students' awareness of professional and ethical responsibilities to clients and the legal system.

**When and Where our Class Meets.** Our course is scheduled for 10:20-11:15 on Mondays, Tuesdays, Wednesdays, and Thursdays in Room 203. In addition to our regularly scheduled sessions, our class is scheduled to meet Friday Sept. 15 at 12:30-1:25 in 203.

**Talking with Me.** Mondays, Tuesdays, and Thursdays, I intend to be fully available to students in the afternoons, except Thursdays 2:15-3:45. I will be available plenty of other times as well, and you are always welcome to schedule an appointment or stop by my office (414C), call 785-864-9209, or email [ware@ku.edu](mailto:ware@ku.edu). Please do not be shy. Talking with students is an important part of my job, and I enjoy it.

**Required Reading and Grading.** You may use either paper or digital versions of these two required books:

1. TRACEY GEORGE & RUSSELL KOROBKIN, K: A COMMON LAW APPROACH TO CONTRACTS (3d ed. 2021), and
2. JAMES E. BYRNE, CONTRACTS TEXTS (5<sup>th</sup> or 6<sup>th</sup> edition).

Each row of the table ending this syllabus lists the casebook pages to read for one class session.

Your grade for the course will be determined by the final exam (64%), midterm exam (20%), your classroom performance (8%), and the two assignments discussed next (8%). The assignments for two class sessions include submitting work you do on your own as you would an exam. Only your initial submission of each of these assignments will be graded; any follow-up will be for learning, not grading. One purpose of these assignments is to develop practical skills that benefit from studying examples of real contracts, so:

- 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, exhibits, schedules, or the like 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 precisely (e.g., “Paragraph 3” or “Clause G”), is better than you not highlighting and not referencing them precisely.

These criteria may affect grading. I may show what you submit for these assignments to the entire class, so please consider that lack of privacy in deciding what to submit.

**Exams.** You may use any written material (such as outlines, books, notes) during the midterm and final exams. They are completely “open book,” “open computer,” and “open internet,” except that you may not communicate with anyone except me during the exam. You may take the exams on your computer if you do so with the exam software supported by the law school. I expect each exam to have a word limit.

All assigned readings and classroom discussions are subject to testing on the exams. If you have questions about the reading after our class discussion of it, feel free to contact me. I try to make the exams correspond to the course, so topics that receive a lot of attention in the reading and in class play a bigger role on the exams, but I am not able to make this correspondence perfect.

I prefer that the entire class take the exams at their scheduled times. I will provide alternate exam times only to the extent the school’s rules require for individual students.

**Classroom performance.** Should law professors use class time to lecture or to question students? I believe some lecture is fine to convey information, 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. (Study groups help many law students, especially 1Ls.) In short, you should come to each class knowing the material we will discuss in that class.

If students know the material before class starts, then what is the purpose of our class time? One purpose is simply to test how well you learned before class. If I ask 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 an exam or later about the deficiencies. 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 many good law school classes, much of the learning occurs through this process.

Another very important purpose of class time is to give you opportunities to “learn by doing.” Speaking about the law, like writing about the law, is central to many lawyers’ careers. While our exams should help develop your skills writing about the law, our class sessions should help

develop your skills speaking about the law. And class discussion tends to improve as it includes more voices and viewpoints. So, the classroom performance part of the course grade rewards students who frequently volunteer (raise their hands) and contribute well, and I may call on students who have not raised their hands, as well as students who have.

If you are unable to prepare for a particular class, no worries if you tell me ahead of class (“May I have a pass today?”) and you have been volunteering good contributions to our class discussion throughout the semester. By contrast, if you have gone a few days without volunteering in class then you should not be asking for a pass. If you have gone a few days without volunteering and are unable to prepare for a particular class, then you should contact me privately to discuss the situation.

Are you a bit stressed by a course in which the professor may call on any student at any time, and classroom performance is graded, albeit lightly? Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, a law school class is a relatively safe, low-stakes environment in which to develop important professional skills. Please challenge yourself to get the most out of it, rather than shying away from it. I am here to help you with that, so if you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

**Attendance and lateness.** Accreditation standards governing the Law School say that “[a] law school shall require regular and punctual class attendance.” Perfection is not required, so you may miss a class or two because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is no worry and you do not need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions about the material we covered. Similarly, you may be late or leave early once or twice for reasons like those listed above. Again, this is no worry and no need to contact me about it.

By contrast, if you are going to miss class or be late or leave early more than a couple of times during the course that is a worry. If that happens, you should take the initiative and contact me to discuss how we can address the situation and keep you on track with the course and your classmates. If you miss some or all of a class session three or more times, I may send you an email warning. If after I do that, you miss some or all of a class session three more times, I may exclude you from the final exam.

**Computers and other electronics in class.** Subject to exceptions I will announce, you may use a computer in class, but only for working on this course. Audio or video recording of class is prohibited without my written permission.

**Disability Accommodations.** Classroom and testing accommodations are available to eligible students registered with the Student Access Center. If you believe you may qualify for accommodations, please reach out to [access@ku.edu](mailto:access@ku.edu) or to Dean Terranova, [leaht@ku.edu](mailto:leaht@ku.edu), who serves as the accommodation’s liaison for the law school.

**Lunch.** I like to have lunch with students. We can go across the street to the DeBruce Center Cafe, and within limits the Law 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 at noon (so we'll be back to the Law School well before 1:30) and please copy the other student(s) on that email message.

The numbers in the right column refer to pages in the casebook. The assignments below do not include the Problems but do include the sections of the Restatement of Contracts and the Uniform Commercial Code referred to in the casebook.

1	Introduction to the Study of Contract Law	xix-xxi, 1-8
<b>Mutual Assent</b>		
2	Mutual Assent: The Theory of Assent	52-61
3	Preliminary Negotiations	61-66
4	Offer	68-72, 74-77
5	Offer continued	77-88
6	Acceptance	90-102, skip <i>Glover</i>
7	Termination of Offers	104-108, 111-113
<b>Restitution</b>		
8	Quasi-Contract	667-677
<b>Consideration</b>		
9	Promises	9-13, 17-23
10	Consideration	26-28, 30-33, <i>Angel v. Murray</i> , 322 A.2d 630 (R.I. 1974)
11	Consideration continued	108-110, UCC §§ 2-205
12	Consideration: Conditional Promises	34-40
13	Consideration: Illusory Promises	42-51, skip <i>Rehm-Zeiher</i>
<b>Reliance</b>		
14	Promissory Estoppel	631-639

15	<p><b>1st graded assignment.</b> Re-read the first two pages of the syllabus. At least an hour before class, submit a pdf of a two-party contract, other than a lease, of four pages or less. Yellow highlight in the contract's terms only one promise by each party. Do not highlight anything else. Read Rest. § 2, and carefully check to ensure you're highlighting promises.</p> <p>Also submit at least an hour before class just four numbered sentences in which you:</p> <ol style="list-style-type: none"> <li>1. Quote one highlighted promise and name the promisor and promisee.</li> <li>2. What is the consideration for that #1 promise?</li> <li>3. Quote the other highlighted promise and name the promisor and promisee.</li> <li>4. What is the consideration for that #3 promise?</li> </ol> <p>Be careful to avoid:</p> <ol style="list-style-type: none"> <li>1. Descriptions of present performance (e.g., "hereby sells") as opposed to promises of future performance;</li> <li>2. Promises that may be too indefinite to be a commitment (e.g., "promises to employ", in contrast to "promises to pay \$20 per hour");</li> <li>3. Describing the contract as though it has only promisor or one promisee; and</li> <li>4. Talking about consideration for the contract as opposed to consideration for a promise.</li> </ol>
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<b>Defenses to Contract Enforcement</b>		
16	Statute of Frauds	117-129
17	Statute of Frauds, UCC Article 2	130-138
18	Statute of Frauds continued	138-145, UCC § 2-201(3)
19	Infancy	147-158
20	Incapacity	159-178 (skip <i>Farnum</i> )
21	Duress	180-189
22	Misrepresentation	191-201
23	Misrepresentation continued	201-206
24	Review and apply	Review all previous material
25	<b>Graded Midterm Exam</b>	
26	Discuss midterm exam	
27	Unconscionability	208-218
28	Public Policy	221-244, Restatement §§ 186-88, and news about the Federal Trade Commission.
Fall break		
<b>Contract Terms</b>		
29	Standard Form Contracts	247-259
30	Lack of Choice	259-267
31	Battle of the Forms	278-287
32		Review previous assignment
33	Parol Evidence Rule	290-296
34	Parol Evidence Rule continued	297-305
35	Parol Evidence Rule continued	Review previous two assignments

36	Interpretation	307-318
37	Interpretation continued	321-337
38	Implied Duty of Good Faith	339-346, 359-363
<b>Performance Obligations: Conditions and Excuses</b>		
39	Types of Conditions	367-377
40	<p><b>2nd graded assignment.</b> At least an hour before class, submit a pdf of a contract. Highlight in yellow an express condition to one or more duties owed by <u>one</u> party. Do not highlight anything else. Be sure the condition you highlight is not a condition to duties owed by more than one party, or a condition to the formation of the contract.</p> <p>Also submit at least an hour before class three short sentences in which you:</p> <ol style="list-style-type: none"> <li>1. Name the parties to the contract;</li> <li>2. In one concise sentence using the words “duty” and “conditioned,” clearly specify whose duty to do what is conditioned on what occurring; and</li> <li>3. In another concise sentence, say the role this condition (as distinct from the duty conditioned) plays in the agreement, that is, who benefits from that condition (not who benefits from the duty) and why.</li> </ol> <p>Before doing this, re-read the first two pages of the syllabus.</p>	
41	Substantial Performance & Material Breach	379-389 (Read these cases in reverse order, so you’re reading them oldest to newest. <i>Kent</i> is important.)
42	Excusing Conditions: Prevention, Waiver, and Divisibility	394-402
43	Mistake	412-413, 420-428
44	Impracticability and Frustration of Purpose	430-434, 444-453
<b>Remedies for Breach</b>		
45	Punitive Damages and Specific Performance	10-13, 459-463, 476-479, 484-487
46	Expectation Damages	494-504
47	Expectation Damages continued	386-389, 508-514
48	Mitigation (Avoidability) and Foreseeability	516-520, 536-538, Restatement §§ 250, 251, 253.
49	Reasonable Certainty and Stipulated Damages	569-572, 574-581 (skip <i>TAL Financial</i> )
<b>Contract Rights of Non-Parties</b>		
50	Third-party Beneficiaries	583-594, 602
51	Assignment and Delegation	612-621
52	Review	
Final Exam		