

Contracts
Professor Stephen Ware
Fall 2020

<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, 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.

In-Person and Possible Distance Learning. Our course is scheduled for 9:20-10:15 on Mondays and 11:40-12:35 on Mondays, Tuesdays, and Wednesdays. I intend to teach our course in Room 203 of Green Hall, and the Law School informs me that all of you plan to be there. I use the words "intend" and "plan" because I hope we will all try to be flexible to adapt to changed circumstances if needed. For instance, we may all be required to shift from in-person to online, in which case I plan to use Zoom, so we can have synchronous class sessions. Or we may have to adapt to class sessions in which some students are in Room 203 while others are participating remotely with Zoom. In any event, I aim for this semester to be as normal a law school experience as reasonably possible. For participating online, [this](#) is a helpful list of tips from KU.

Office Hours. Thursdays and Fridays from 2-4pm, I intend to be fully available to students. But always feel free to call or email me, and we can talk by video if you prefer. I enjoy talking with students and it is an important part of my job, perhaps especially this semester. 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.

Required Reading and Grading. You may use either paper or digital versions of these two required books: TRACEY GEORGE & RUSSELL KOROBKIN, *K A COMMON LAW APPROACH TO CONTRACTS* (2d ed. 2017), and JAMES E. BYRNE, *CONTRACTS TEXTS* (5th or 6th 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 of this syllabus lists the reading for one class session. The sections of the Restatement of Contracts and the Uniform Commercial Code (UCC) referred to in the casebook are part of each reading assignment.

Your grade for the course will be determined by the final exam (55%), mid-term exam (20%), your classroom performance (15%), and the two assignments discussed next (10%). The assignments for two class sessions include sending emails to me. Only your initial submission of each of those two 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. All assigned readings and classroom discussions are subject to 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 in 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 is fine 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 we will discuss in that class. You should know what the statutes (such as the UCC) 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 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.” 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. This course tests written communication on the exam and other written assignments, while it tests spoken communication in the classes 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 reflects 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 it includes many viewpoints. 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.

These points about class discussion apply to all students, whether participating in-person or online. Again, I aim for this semester to be as normal a law school experience as reasonably possible.

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. If that situation arises, you should take the initiative in contacting me to discuss solutions to the problem.

If you come to class without previously asking me for a pass, 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 environment

stressful then I encourage you to reconsider whether your preparation for class is adequate. If you prepared well 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 class 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, 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.

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. Audio or video recording of class is prohibited without my written permission.

Accommodations. 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 or 785-864-4357.

In the assignments below, you do not need to do the Problems unless the particular assignment below says to “do” particular Problems. You do, however, need to read sections of the Restatement of Contracts and the Uniform Commercial Code referred to in the casebook pages assigned for that class session.

Chapter 1 – Promise		
1	Introduction to the Study of Contract Law	xix-xxi, 1-8
2	Promises	9-14, do Problems 1-3
Chapter 2 – Contract Formation: Consideration and Mutual Assent		
A. Consideration		
3	Consideration: Bargained-for Exchange and Gratuitous Promises	15-24
4	Consideration continued	24-31
5	Consideration: Conditional Promises	32-39

6	Consideration: Illusory Promises	40-49, skip <i>Rehm-Zeiher</i>
B. Mutual Assent		
7	Mutual Assent: The Theory of Assent	50-59
8	Preliminary Negotiations	59-72
9	Offer	74-83
10	Offer continued	83-99
11	Acceptance	100-113
12	Termination of Offers	114-124
13	<p>1st graded assignment. At least thirty minutes before class, send me an email attaching 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. In a separate document attached to the same email:</p> <ol style="list-style-type: none"> 1. Quote one promise and name the promisor and the promisee; 2. Quote the other promise and name the promisor and the promisee; and 3. Explain whether these two promises are consideration for each other and why or why not. <p>Before doing this, re-read the first two pages of the syllabus, read Rest. §§ 1, 2 and 159, and consider the difference between a promise and a representation.</p>	
Chapter 3 – Affirmative Defenses to Contract Enforcement		
14	Statute of Frauds	127-139
15	Statute of Frauds, UCC Article 2	139-148
16	Statute of Frauds continued	148-155
17	Infancy	156-168 (skip problems)
18	Incapacity	168-187 (skip <i>Farnum</i>)
19	Duress	188-198
20	Misrepresentation	199-209
21	Misrepresentation continued	210-215
22	Unconscionability	216-223
23	Unconscionability continued	224-228, do Problems 1-3
24	Public Policy	229-246
25	Public Policy continued	246-255
26	Graded Mid-Term Exam	
27	Discuss mid-term exam	
Chapter 4 – Contract Interpretation		
28	Standard Form Contracts	257-269
29	Lack of Choice	287-286
30	Battle of the Forms	297-307
31	Parol Evidence Rule	309-316
32	Parol Evidence Rule continued	316-325
33	Interpretation	327-336
34	Interpretation continued	337-350
35	Implied Duty of Good Faith	355-362, 375-379

Chapter 5 – Defining Performance Obligations: Conditions and Excuses		
36	Types of Conditions	383-393
37	<p>2nd graded assignment. At least thirty minutes before class, send me an email attaching a contract. Highlight in yellow one or more of its express conditions. In a separate document attached to the same email:</p> <ol style="list-style-type: none"> 1. Name the parties to the contract; 2. In one concise sentence using the words “duty” and “conditioned” clearly specify whose duty to do what is conditioned on what occurring; and 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 and why. <p>Before doing this, re-read the first two pages of the syllabus.</p>	
38	Substantial Performance & Material Breach	395-406
39	Excusing Conditions: Prevention, Waiver, and Divisibility	413-421
40	Mistake	431-432, 442-450
41	Impracticability and Frustration of Purpose	452-456, 465-474
Chapter 6 – Remedies		
42	Punitive Damages and Specific Performance	481-485, 498-501, 507-509
43	Expectation Damages	517-527, Re-read 10-13
44	Expectation Damages continued	531-538, Re-read 403-406
45	Mitigation (Avoidability) and Foreseeability	539-543, 559-561
46	Reasonable Certainty and Stipulated Damages	593-596, 598-605 (skip <i>TAL Financial</i>)
Chapter 7 – Contract Rights of Non-Parties		
47	Third-party Beneficiaries	607-618, 626-627
48	Assignment and Delegation	637-647
Chapter 8 – Alternative Bases for Liability: Non-Contract Claims		
49	Promissory Estoppel	657-666
50	Quasi-Contract	694-704
51	Flexible Day	
52	Review	
Final Exam		