

Contracts Syllabus 2012
Version 1.0
Section A

Professor Chandler
Monday, Tuesday, Thursday 10:30-11:50 a.m.

I.

Primary Materials: CONTRACTS—THE CASEFILE METHOD (available for approximately \$54.95 in electronic form at <http://www.casefilemethod.com/Default.aspx>; Tina Stark, Drafting Contracts, How and Why Lawyers Do What They Do (2007).

II.

Course objectives: By the end of this course, you should be able to (1) establish whether a contract has been formed; (2) interpret the contract's terms; (3) determine whether a contract has been breached; (4) determine whether the breach is excused; (5) determine what damages, if any, there are for a contract's breach; (6) determine what, if any, remedies are available to an aggrieved party or third party if a court determines that a contract was not formed; (7) be able to draft enforceable and sensible basic contracts; (8) be able intelligently to review contracts.

III.

Evaluation: Your performance will be evaluated based on a 10-hour take-home examination. I reserve the right to raise or lower your grade by one unit based on extraordinarily good (or bad) contributions to the class, including insightful classroom comments, and other demonstrations of intelligent leadership.

IV.

Attendance and Preparation: I call on students randomly. By entering the classroom, students warrant that they are generally prepared for all material assigned on the syllabus through the date of class to the standard of a reasonable law student and that, in particular, they have prepared responses to any problem assigned for that day. Students wishing to disclaim the warranty may do so by sitting in the back row of the classroom. Breach of a non-disclaimed warranty may result in my lowering your grade one unit. Regarding attendance, I will distribute a roll sheet at some point during the class. You must not fail properly to sign the roll sheet (or be constructively absent) on more than eight occasions on which it is distributed. It is your responsibility to determine your attendance status via communication with my secretary. Violation of the attendance rule will result in an inability to take the final exam in this course. It is your responsibility to sign the roll sheet during the class in which it is circulated. It is a falsification of an attendance record to sign a roll sheet for a class session that you did not attend almost all of. Also, please avoid entering late or leaving prematurely. It is distracting to other students and to me.

V.

Pedagogical Method: Much of law school uses the sequential study of appellate

cases as the main method of instruction. “Learning to think like a lawyer” consists of linking and reconciling the studied cases so that, at the end, you have a mental map of the subject area that should be a sort of internal “Restatement” of the law. There is much to be said for this method, and you will find me falling more often than I might like into its basin of attraction. But in other ways it is poor preparation for the practice of law. Clients do not come to you with a cluster of appellate cases. They come to you with personalities, contexts, and problems. And it is often your job to use the instruments of law to pursue their interests. The CASEFILE method that I will be using in this class helps simulate that real world. In CASEFILE, you are an actor in a real jurisdiction (generally a young associate in a law firm). A client comes to you with a problem and wants your help. Quite unrealistically, a packet of cases and statutes (the case file) magically appears before you with information that should be relevant to your problem. Your job is then to advocate on behalf of the client. Is this approach more than the traditional method in disguise with characters conjured up in order to enliven study of the law? Perhaps. But it also helps shift your focus to what may be a more mature one in which the law is seen not just as a bunch of cases and abstractions but as a tool for actually solving, in an ethical way, the problems of real people.

VI.

In the final third of the course, we switch to what most “contracts lawyers” really do, which is draft and review contracts. You will learn about all the basic aspects of contract drafting, including contractual components. I teach this material in part because I find it interesting in and of itself, but also because the process of synthesizing a contract forces you to clarify and make concrete your understanding of contract law. It will also force you to use clear and concise written language, a skill which will carry over to all areas of legal practice. I am confident that this portion of the course will significantly improve your understanding of contract law and will enable you to better integrate your review of law and fact when working for real clients.

VII.

The only way I know of to learn how to draft contracts is to draft contracts. This work is important but challenging. In order to make the workload manageable for the final third of the course and to emulate the behavior of many law practices, I want you to create your own law firms of up to four students. You can work as a solo practitioner though I strongly discourage the practice. As in a real firm, it will be up to the participants to ensure active participation by all members; please realize that on the final exam all students will need to know how to perform the tasks addressed in this segment of the course. Please let me know by Monday, October 29 the names of all the lawyers in each lawfirm. Pick your partners with care. I will call on firms rather than individuals in this portion of the class. Mostly, I will ask the lawfirm a few minutes before class begins to e-mail me their responses to certain assigned exercises. We will then examine those responses in class. To facilitate this practice, students should prepare their exercises using Google Docs. (If you don't know how to use this program, learn. You do not need a gmail account to use this service). To promote readability on the projector, students responses should use a 16 point Arial font and 1.5 space.

VIII.

This course is not as heavy on “doctrine” as some other contracts courses. I do not, for example, cover the many intricacies of the statute of frauds as thoroughly as some others. For those questing for more black letter law, the most efficient way I know to learn the subject is to read the Restatement of Contracts (Second). I have provided an excerpted version of this document on the course materials page. Many of the commercial supplements are basically recapitulations of the Restatement.

IX.

We have an excellent tutor for this course, Angeles Garcia. Please feel strongly encouraged to attend her tutoring sessions and to ask her questions. She is intended, however, as a supplement for both my instruction and your hard work. She is not a substitute for either.

X.

Classroom Computer Use Policy. During class students may use computing devices (including, without limitation, laptops, netbooks, smart phones or devices similar to iPads) to take notes, review course materials, or review materials directly related to the topic under discussion. Students may not use computing devices in a way that does not relate directly to current classroom activities. Here is a non-exclusive list of per se violations: having an e-mail client open; having a chat or messaging client open; interacting with Facebook, Twitter, or social networking sites; visiting a web site that does not relate directly to the topic under discussion; any sort of game playing or viewing of any animation; playing games or watching movies. I reserve the right to enforce this rule by any reasonable means. I also reserve the right, as an experiment, to declare certain classes or portions of classes as “laptop free,” during which I will insist that laptops be turned off and put away. Persons found to have violated computer use rules may not use their computers in my class for the remainder of the semester.

XI.

Office hours:

A. Office hours will be on Wednesdays (2:30-4) in his office or by appointment.
Best way to reach Professor Chandler: email me at schandler@uh.edu

XII. Website

The course website is <https://sites.google.com/site/sjccontractsclass/>. Please check it frequently.

XIII. Contracts philosophies.

Professor Chandler’s contracts philosophy: Contract law is fascinating for a number of reasons. First, along with concepts of property, its evolution in the United States and a largely parallel evolution across much of the world has been the engine for the capitalist economy that has

increased material wealth over the past several centuries. So, simply to understand, manipulate, and possibly appreciate the world one inhabits, a thorough understanding of contract law is important and desirable. You will have been given the tools to acquire this power by the end of the semester. Second, testing contract law against modern economic theory is intriguing. Many contract rules were developed when the formalisms and perhaps some of the insights of economic theory had not yet developed. So it is interesting to see how the rules that resulted correspond to various economic theories, including game theoretic models and the new insights of behavioral economics. Third, contracts relates to a personal interest in software architecture and computation: just as software is generally supposed to yield meaningful results over an almost infinite variety of data and events, so too contracts and contract law combine to yield allocations of property and responsibilities over all possible world states. Using the primitives of natural language in a parsimonious way to achieve the desired allocations helps sharpen lawyers' thoughts and benefits the world by enhancing trade and reducing disputes.

Syllabus

No.	Date	Topic	Reading
1	8/27/2012	Course Introduction; Contract Remedies I	Ponzetti's Promise [CF #45.0] [[discusses triad of contract remedies]]; Texas Civil Practice & Remedies Code sections 38.001-38.006; Lap Pool [CF #46.0] [[remedies when performance is "inefficient]]; Restatement (Second) of Contracts §§1, 2, 4, 344-370 (these will be addressed periodically during the Remedies section)
2	8/28/2012	Contract Remedies II	Gabby Hayes [CF #47.0] [[specific performance]];
3	8/30/2012	Contract Remedies III: Hadley v. Baxendale & Restitution	Spare the Rod [CF #53.0] [[the rule of Hadley v. Baxendale]]; A Slippery Path [CF #50.0] [[restitution & breaching party remedies]];

4	9/4/2012	Contract Remedies IV: Reliance and Formula Damages	Durin's Bain [CF #49.0] [[reliance]]; Grand Trip [CF #48.0] [[formula damages]]
5	9/6/2012	Contract Remedies V: Certainty & Proportionality	Top Cream [CF #52.0] [[speculative damages]]; \$17.60 [CF #54.0] [[proportionality]];
6	9/7/2012*	Mitigation + Review	Pippin's Place [CF #55.0] [[duty to mitigate]];
7	9/10/2012	Economic Analysis of Contracts	Kaplow & Shavell pp. 2-21 (available on course materials page); Kaplow & Shavell pp. 47-54 (available on course materials page)
8	9/11/2012	Consideration & Material Benefit Rule	Restatement (Second) of Contracts §§ 71, 73, 74, 77, 79, 81, 82, 83, 84, 85, 86, 87, 89, 90, 95; B is for Beresford [CF # 3.0] [[consideration]]; Datamagic [CF #3.3] [[introduction to form contracts]]
9	9/13/2012	Material Benefit Rule & Promissory Estoppel	Estate of Vernon Gagne I [CF # 4.0]; Vernon Gagne II [CF #5.0] [[consideration substitutes]]
10	9/17/2012	Offer and Acceptance	How Much for that Houseboat [CF #7.0] [[contract formation]]; Restatement (Second) of Contracts Chapter 3
11	9/18/2012	Battle of the Forms, Indefiniteness & Modification;	Clockwork Fabricators [CF #12.0] [[UCC 2-207]]; Read UCC 2-207 seven times over;; Little Action [CF #8.0] [[invitations]]

12	9/20/2012	Special Issues in the Formation of Unilateral Contracts & Indefiniteness	Major Litigation [CF #9.0][[unilateral contracts]]; Major Litigation II [CF 13.0][[indefiniteness]] skim Billy Farrell [CF #10.0][[more on unilateral contracts]]
13	9/24/2012	Regulation of the Bargaining Process: Statute of Frauds; Parol Evidence Rule	The Births [CF #18.0][[UCC statute of frauds]]; Humphrey's Bonus [CF #28.0][[Parol evidence rule]]; Restatement (Second) of Contracts Chapter 5, Restatement (Second) of Contracts §§ 209, 210, 211, 213, 214, 215, 216, 217
14	9/25/2012	Unconscionability and Public Policy	Scuba Accident [CF #24.0][[liability waivers]]; Justice By Any Other Name [CF #27.0][[arbitration clauses]]; Here's Danny [DF #16.1][[surrogacy contracts]]
15	9/27/2012	Interpretation	A Retired Cowboy with Nothing Better to Do [CF #30.0][[What is Chicken?]]; Restatement (Second) of Contracts §§ 20, 201, 202, 203, 204, 205, 206, 220, 221, 222,223
16	10/1/2012	Texas interpretation	Fiess v. State Farm Lloyds, 202 S.W.3d 744 (Tex. 2006)(available on TWEN) [[Texas insurance contract interpretation and the role of agencies]];
17	10/2/2012	Regulation of the Bargaining Process: Capacity; Duress; Fraud	Cooked Pudding [CF #19.0][[capacity]]; Keene Saab [CF #22.0][[fraud]]; Restatement (Second) of Contracts §§ 12-16; 162, 164, 167, 169, 174-177
18	10/4/2012	Nondisclosure	A Fisher of Sorts [CF #23.0][[sneakiness and the law]]

19	10/8/2012	Express conditions; Constructive Conditions	The Bonus [CF #31.0][[express conditions]]; Shooting a Database [CF #32.0][[Jacobs & Young v. Kent]]; Restatement (Second) of Contracts §§ 161, 224, 225, 226, 227, 228, 229
20	10/9/2012	Performance Standards: Warranties	Clyde [CF #33.0][[warranties and pets]]; Password Protection [CF #33.1][[UCC warranties; software]]; Soft Protect [CF #33.2][[warranty disclaimers]]
21	10/11/2012	Promise and Condition; Mistake	Detroit Lions [CF #36.0][[frustration/impracticability/mistake]]; Restatement (Second) of Contracts Chapter 6;
22	10/15/2012	Impossibility & Frustration	Agate Dog [CF #37.0][[impracticability]]; The Problem With Bones [CF #40.0][[frustration]]; Restatement (Second) of Contracts Chapter 11
23	10/16/2012	Breach	Sherman Trainer I [CF #41.0][[breach at common law]]; Sherman Trainer II [CF #42.0][[breach under the UCC]]; UCC 2-601 through 2-612; RS Chapter 10
24	10/22/2012	Scope of the UCC; Warranties	Bad Advice [CF #2.1][[UCC scope]]; Skim all of Articles 1 and 2 of the UCC; UCC 2-312 through 2-318; ;
25	10/23/2012	Buyer's Remedies	GO BLUE [CF #56][[UCC Damages]]; Visual Books [CF #57.1][[self-cover]]; ; UCC 2-711 through UCC 2-719
26	10/25/2012	Buyer's remedies	James Wins The Open [CF 57.1] + UCC 2-702 through 2-710
27	10/29/2012	Seller's Remedies	The Thinge [CF 58] Power Pod [CF 59]

28	10/30/2012	Third Parties: Contract as Property	A Man's Word [CF 60]; A Chewer [CF 61] RS2d Chaps. 14 & 15
29	11/1/2012	Third Parties II	UCC and FTC Rules; gitchee Gumme Mosquitos [CF 62]; Dancing Cars[CF 62.3]
30	11/5/2012	Contract Drafting: components, representations and warranties	DC 3-34; 425-441 (prepare to give me a tour of the Asset Purchase Agreement based on the reading)
31	11/6/2012	Recitals and Parties	DC 35-68; Do Exercise 5-3; 6-1.
32	11/8/2012	Definitions	DC 69-94; Exercise 7-1; 7-5
33	11/12/2012	Covenants	DC 95-132; Exercise 9-1
34	11/13/2012	Conditions, Discretionary Authority and Will v. Shall	DC 133-156
35	11/15/2012	Built in hold	TBA
36	11/19/2012	Drafting	Exercise 14-1
37	11/20/2012	Endgame provisions, general provisions, signatures	DC 157-197; Exercise 16-10

38	11/26/2012	Legalese, Sentence Structure, Tabulation	DC 201-234; Exercises 20-1 through 20-6
39	11/27/2012	Ambiguity, Numbers	DC 235-269; Exercises 21-1; 21-2; 21-3; 21-5; 21-11
40	11/29/2012	Miscellaneous, Reverse Engineering	DC 275-299; Exercises 23-2; 24-1
41	12/3/2012	TBA	TBA
42	12/4/2012	Review	No new reading!
EXAM	12/20/2012 9 am to 7 pm		