

University of Houston Law Center

**Contracts
Section C**

Peter Linzer

Note from Professor Linzer:

This is last year's syllabus, offered just to give you a rough idea of where we'll go. I will write you later this summer to give you better information.

-P.L.

Syllabus for the Fall Term, 2012

(This syllabus is a replica of **the previous year's syllabus**. It is here to give you an example of what the assignments for the present calendar year will entail. However, Professor Linzer always tinkers, so the following information will probably not be exactly the same as this year's)

About the Reading Assignments

The books in the course are:

Charles L. Knapp, Nathan M. Crystal and Harry G. Prince, Problems In Contract Law: Cases and Materials (7th ed. 2012, Aspen Publishers/Wolters Kluwer Law and Business) ("**KC&P**");

Steven J. Burton and Melvin A. Eisenberg, Contract Law: Selected Source Materials Annotated (Latest ed.) ("**Supp.**"); and

Peter Linzer, A Contracts Anthology (2d ed. 1995 Anderson Publishing Co. (now Lexis)) ("**Anthology**").

The Assignments

I

Contracts and Law

Monday, August 27, 2012: What Are Contracts? How Should We Enforce Them? Sources of Contract Law. Legal Theory. **KC&P xxi-xxiii, 1-17** (what the course is about and the sources of contract law in general); **Supp. III-IV** (on statutes and Restatements) **2** (on the Uniform Commercial Code), **150** (on the Restatement Second of Contracts), **311** (on the Uniform Electronic Transactions Act ("UETA"), **312** (on the Electronic Signatures In Global and National Commerce Act ("E-SIGN"), **338** (on software contracts), and **356** (on the United Nations Convention on the International Sale of Goods ("the CISG"))).

Tuesday, August 28, 2012: Why Are Promises Enforced? How to Brief a Case. Intention to

Be Bound: KC&P 17-43.

II Offer and Acceptance

Thursday, August 30, 2012: Lawyers as People. Relying on “Technicalities” to Help Your Client to Win. Offer and Acceptance in Bilateral Contracts. Anthology xvii-xviii, 1-3. KC&P 40-60. Restatement Second (R2K) §§ 24, 33 (always read the Comments), CISG Article 18 (both in Supp.).

Monday, September 3, 2012: Labor Day. Stay home! Barbecue!

Tuesday, September 4, 2012: Unilateral Contracts, and More on Offer and Acceptance. KC&P 61-71; R2K § 45. Anthology 271-84 (Note on Hofeldian Analysis and Arthur L. Corbin, Offer and Acceptance and Some of the Resulting Legal Relations, 26 Yale L.J. 169 (1917).)

Thursday, September 6, 2012: “Agreements to Agree”. KC&P 73-97. Available but not required: Anthology 304-27 (the articles by Profs. Knapp and Farnsworth discussed in Note 3 on page 184).

III Consideration: Of Bargains and Other Things

Monday, September 10, 2012: What Is a Bargain, and Do We Need It? KC&P 97-118. R2K §§ 71, 79. Available, but not required, Anthology 284-96 (Lon L. Fuller, Consideration and Form).

Tuesday, September 11, 2012: More On Equivalency of Value. KC&P 119-42.

IV Contract Formation Under Article 2 of the Uniform Commercial Code

Thursday, September 13, 2012: The Code Changes the Common Law. Supp. 2 (note on the UCC), UCC §§ 1-103, 1-201 (10), (20), Official Comment to §§ 1-201 (10) and (20) (Supp. 9), 1-302 and Comment, 1-304 and Comment, 1-305, 2-102, 2-103 (1) (b), 2-105 (1) and Comment, 2-204 and Comment. CISG Articles 1, 2 and 6 and Introductory Note (Supp. 358-60, 361). KC&P 142-58. Note that you are asked to read the Code sections and comments, and CISG articles first. (Note the potential for confusion between the CISG’s “articles,” which are the equivalent of UCC sections.) In the future, whenever a statutory or Restatement section is assigned, read any accompanying Comments.

Monday, September 17, 2012: The Battle of the Forms. KC&P 159-88. Read UCC § 2-207 and CISG Art. 19 after you read through KC&P 168 Note 4. Then finish the KC&P reading.

Tuesday, September 18, 2012: Electronic Contracting – Herein of Clickwrap, Shrinkwrap, and Contracts of Adhesion. KC&P 188-206. Review *Feldman v. Google, Inc.*, KC&P 20-25. ALI

V.
Liability Without Bargains
(Reliance and Restitution)

Thursday, September 20, 2012: Reliance On Donative Promises. **KC&P 209-28. R2K §§ 2, 4, 90 and Comments.**

Monday, September 24, 2012: Williston Defendspr Promissory Estoppel (Though He Doesn't Like the Term); Promises of Pensions and Mortgage Modifications. **Pe338-49. KC&P 228-45.**

Tuesday, September 25, 2012: Reliance In Making Business Contracts. **KC&P 245-61 (top), 266-76 (top).**

Thursday, September 27, 2012: The Basics of Restitution. **KC&P 276-95. Anthology 327 (Note on Restitution's Role in Contract). Recommended but not required, John W. Wade, *Restitution for Benefits Conferred Without Request*, Anthology 328-37.**

Monday, October 1, 2012: Implied-in-Fact Contracts Distinguished (Herein of Hanky-Panky): "Promissory" Restitution (a Term I Don't Like, but That Makes a Point). **KC&P 295-323.**

VI
The Statute of Frauds

Tuesday, October 2, 2012: The Basics. **KC&P 325-46. R2K §§ 110, 116, 124, 130, 131, 132 (in Supp.).**

Thursday, October 4, 2012: Reliance Under the Second Restatement; Sales of Goods Under the Code and the CISG, Electronic Contracting. **KC&P 346-71. R2K§ 139. UCC 2-201. CISG Arts. 11-13. UETA Introductory Note (Supp. 312), §§ 6 and 7, including Comments. E-SIGN Introductory Note (Supp. 332), §§ 7001 [= § 101] (a) (1), (2), 7003 (a) (3), 7006.**

VII
Interpretation

Monday, October 8, 2012: The Basics of Interpretation. **KC&P 373-93. R2K §§ 200-04, 206-07. Read Supp. 199 (note on Raffles v. Wichelhaus). Entertaining but not required: A. W. Brian Simpson, Contracts for Cotton to Arrive: the Case of the Two Ships *Peerless* (Supp. 200-18).**

Tuesday, October 9, 2012: Reasonable Expectations; The Strict Parol Evidence Rule. **KC&P 393-416. R2K §§ 211-13, 215.**

Thursday, October 11, 2012: The Broader Approach to Extrinsic Evidence. KC&P 416-30. R2K §§ 214, 216. UCC 2-202. Required: Anthology 405-12 (Arthur L. Corbin, *The Interpretation of Words and the Parol Evidence Rule*); Anthology 422-25 (L. Gordon Crovitz, *Saving Contracts From High Weirdness*, Wall Street Journal, August 3, 1988). Recommended but not required, Anthology 412-22 (E. Allan Farnsworth, “*Meaning*” in the Law of Contracts).

Monday, October 15, 2012: Trade Usage. KC&P 431-56. UCC 1-303. Anthology 511-12 (Note on trade usage). Available but not required, Anthology 512-26 (Amy H. Kastely, *Stock Equipment for the Bargain in Fact: Trade Usage, “Express Terms,” and Consistency Under Section 1-205 [now 1-303].*)

Tuesday, October 16, 2012: Implied Terms – of Default Rules, Gap-filling and Good Faith. KC&P 457-84. Anthology 470-71 (note on good faith). UCC 1-201 (b)(20); 1-302; 1-304; 2-103 (1)(b); 2-306 (2) and its Comment 5. R2K §§ 204-05. Available but not required, the “Summers-Burton-Debate” in the Anthology, 471, 481. Really fun reading but not required, Walter F. Pratt, Jr., *American Contract Law at the Turn of the Century*, Anthology 147-56.

Thursday, October 18, 2012: Satisfaction Clauses (herein of Richard Posner and Clint Eastwood) and At-will Employment. KC&P 484-509.

VIII Defenses to Contracts

Monday, October 22, 2012: Capacity, Duress and Undue Influence. KC&P 533-35 (top), 553-71. Anthology 487 (Note on Economic Duress).

Tuesday, October 23, 2012: Fraud, Misrepresentation and Non-Disclosure. KC&P 571-99. R2K §§ 161-64.

Thursday, October 25, 2012: Unconscionability. KC&P 599-612. UCC 2-302. R2K§ 208. UNIDROIT Principles Art. 3.10 (in Supp.). Required: Anthology 494-510 (two notes on unconscionability surrounding Professor Arthur Leff’s famous and very important article, Unconscionability and the Code–The Emperor’s New Clause).

Monday, October 29, 2012: Mandatory Arbitration Clauses, the Federal Arbitration Act, and Federal Preemption of State Consumer Laws. KC&P 613-38.

Tuesday, October 30, 2012: Contracts Against Public Policy. KC&P 638-66. R2K §§ 178, 187-88. Anthology 433, 441-43. Do the problems on pages 663-66.

Thursday, November 1, 2012: Mistakes. KC&P 667-88. R2K §§ 151-54, 158. Anthology 564-66. Feel free to read Anthony Kronman’s article, *Mistake, Disclosure, Information, and the Law of Contracts*, Anthology 564-72, but it is not required. (I mentioned this article in connection with the duty to disclose and Laidlaw v. Organ.)

Monday, November 5, 2012: Changed Circumstances: Impracticability and Frustration of Purpose. KC&P 688-704, 713-17. Anthology 572-73. Required: Anthology 574-79 (Richard

Speidel's *The New Spirit of Contract*). Not required but highly recommended: Anthology 580-90 (John P. Dawson, *Judicial Revision of Frustrated Contracts: The United States* – the last article by a great legal scholar, strongly attacking Speidel and the Alcoa decision).

Tuesday, November 6, 2012: Election Day. Don't forget to vote! Modification of Contracts. KC&P 717-44. UCC 2-209.

IX Warranties

Thursday, November 8, 2012: What They Are and How to Disclaim Them. KC&P 515-32. UCC 2-313 to 2-316. Think about the Battle of the Forms and Material Alterations in this context.

X Consequences of Non-Performance

Monday, November 12, 2012: Express Conditions. KC&P 787-809. R2K §§ 224-29.

Tuesday, November 13, 2012: Material Breach; Anticipatory Repudiation. KC&P 809-36. R2K §§ 237, 240, 241, 250, 256. UCC 2-601, 2-608.

Thursday, November 15, 2012: Requests for Assurances; the Farnsworth Formula. KC&P 836-53. UCC 2-609. R2K § 251. Do Problem 10-2.

XI Remedies

Monday, November 19, 2012: Measuring Expectation Damages. KC&P 853-73. R2K §§ 344-45. UCC 2-710, 2-715 (1) and Comment 1. Anthology 236 (Note on Peevyhouse). Highly recommended but not required, Judith L. Maute, Peevyhouse v. Garland Coal & Mining Co. Revisited: The Ballad of Willie and Lucille, Anthology 236-50. (Professor Maute's article is discussed in Note 3 on page 872.)

Tuesday, November 20, 2012: Consequential Damages: Foreseeability, Certainty and the Rule of Hadley v. Baxendale. KC&P 874-91. R2K § 351. UCC 2-715 (2) and remaining Comments. Required: Richard Danzig, Hadley v. Baxendale: A Study in the Industrialization of the Law, Anthology 183-97(top).

Thursday, November 22, 2012: THANKSGIVING DAY. Take the day off from studying and stuff yourselves.

Monday, November 26, 2012: Mitigation of Damages. KC&P 891-916. Recommended but not required, Mary Joe Frug, *Re-reading Contracts: A Feminist Analysis of a Casebook*, Anthology 169-181.

Tuesday, November 27, 2012: Non-recoverable Damages; Remedies Under Article 2; Why Do We Give Expectation Damages? **KC&P 934 N. 2 - 956 (middle). UCC 2-701, -703, -711 & -712.**

Thursday, November 29, 2012: Efficient Breach of Contract; Disgorgement of Profits; Reliance Damages. **KC&P 956-88. Anthology 605-07 (Notes on Remedies and Efficient Breach). Restatement Third of Restitution and Unjust Enrichment § 39 (Supp.309) (“Profit From Opportunistic Breach”).** Email among Linzer, Andrew Kull and Doug Rendleman on disgorgement (sent by email).

Monday, December 3, 2012: Restitutionary Damages. **KC&P 989-1013.**

Thursday, December 6, 2012: Specific Performance and Some Thoughts On Liquidated Damages and On Third Parties. **KC&P 1013-37 (top).**