

**CONTRACTS
FALL 2021**

SYLLABUS

Professor [Darren Bush](#)

Office: TUII-126

Office Phone: 713.743.3346

Dbush@central.uh.edu

Office Hours: Monday, Wednesday, 12:00 p.m. – 1:00 p.m. and by appointment.

TEXTS

1. PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (8TH ED.) by Knapp, Crystal and Prince.
2. The second text is a companion text to the casebook that includes sections of the Restatement of Contracts 2d, the Convention on Contracts for the International Sale of Goods (the CISG), and the Uniform Commercial Code (the UCC). The UCC is state legislation, drawn up by a team of scholars and experts, and adopted, at least partially, by every state's legislature. In this sense, it is "national" -- although it is not federal legislation. Conversely, the Restatement is not legislation at all; it is a compilation of generally accepted contract principles. Although not "law" in the sense of legislation, it can be very persuasive with judges and, as you will see as you read the cases, it is frequently cited in judicial opinions.

CLASS PARTICIPATION AND ATTENDANCE

Attendance: The Law Center Student Handbook reads in part: "The Law Center has a minimum 80% attendance policy for students. Any student who attends fewer than the minimum percentage of classes may be dropped automatically from the class. Faculty members are free to impose stricter attendance standards. Faculty members may consider those who come in late or leave early as absent, or may decline to let a late student attend that day."

You must come to class unless you have a legitimate reason for not doing so. Illness is a legitimate reason. Out of consideration for your colleagues, do not come to class if you are ill. I will keep track of attendance and I expect you to do the same. Absences in violation of law center policy may be sanctioned by a reduction in the final grade or, in egregious cases, by involuntary withdrawal from the class.

Participation: I expect everyone to have read and thought about the problems and the cases and other readings assigned for each day's class. This is for your benefit, as learning is not a passive endeavor. It is also for my benefit, so that I can see how you're thinking about the class, and to know where I've been unclear in my presentation.

Illness or other issues: If you miss class due to illness or for any other reason, please get notes from your colleagues. If someone asks you for notes for a missed day of class, I expect you to do the human thing and share with them the notes for that day. This is different than being asked for your notes for every day, of the course. You may also discuss what you missed with me, but please do so as soon as possible after you have returned from your illness (but not while you are contagious).

EXAMS AND GRADING

I will give a practice exam toward the midpoint of the course. It will be ungraded, but we will go over the exam in class.

There will be one final exam. Your exam will be comprehensive, 24-Hour take home. You will be allowed to bring to the exam whatever (inanimate) objects bring you comfort, except (i) those prohibited by law and University Policy; (ii) commercial outlines, and; (iii) outlines created by other students (apart from any group outlines created by students consisting entirely of members of this course). More information on the final exam will be provided before the exam period.

CLASS TIMES AND OFFICE HOURS

Class Meeting Times: TBD

Office Hours: By Zoom appointment until courses resume in person. To schedule an appointment, simply e-mail me. I carry my cell phone habitually and generally will get back to you rather rapidly. You may also leave a message with Amanda Parker, who will contact me. Ms. Parker's telephone number is 713.743.2481.

READING ASSIGNMENTS

1. Read and bring the Syllabus to class (copy on your computer is fine). Read Text (Knapp, Crystal & Prince 8th ed.), pp. 1-41. Be prepared to brief *Ray v. Eurice & Bros.* Read Restatement (Second) of Contracts [R2] Sections 1, 2, 4, 17(1), and 20. Cf. (means "compare") section 20 with section 153.
2. Brief *Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954). The case will be e-mailed to you.
3. Timing Issues: Offer & Acceptance, pp. 41-51 (class discussion will focus on *Lonegran* and the notes). R2 sections 24, 26, 36.
4. O&A continued: pp. 60-75, R2 45, 25.

5. Other Mutual Assent issues: Brief Harlow & Jones, 424 F. Supp. 770 (will be emailed to you) and comment; UCC 2-204(1), 2-207(3)), pp. 75-83 (*Walker v. Keith* and notes)
6. Consideration: Text, pp. 98-105; *Kirksey v. Kirksey*, 8 Ala. 131 (1845)(case will be e-mailed). Brief *Hamer* and *Kirksey*. R2d 71, 79.
7. Text, pp. 105-132. Brief *Pennsy* and *Plowman*.
8. *Batsakis v. Demotsis*, 226 S.W.2d 673 (1949)(case will be e-mailed).
9. Promissory Estoppel: Read *Wright v. Newman*, 467 S.E.2d 533 and *Greiner v. Greiner*, 293 P. 759 (cases will be e-mailed).
10. Read pp. 213-240. Brief *King* and *Katz*.
11. Text, pp. 241-50. Brief *Aceves*.
12. Text, pp. 260-270. R2 45, 87(2), and 90. Brief *Baird* and *Drennan*.
13. Text, pp. 251-259 and 270-276. Brief *Berryman* and *Pop's*.
14. Electronic Contracting. Text, pp. 190-207.
15. Restitution in the absence of agreement. Text, pp. 282-292. Restatement of Restitution 116 (quoted on p. 289 of the text) and 117. Brief *Pelo*. And pp. 294-301. Brief *Commerce*.
16. Promissory Restitution, pp. 314-326. Brief *Mills* and *Webb*.
17. Statute of Frauds. Text, pp. 333-363. Brief the three cases.
18. Statute of Frauds: UCC Text, pp. 366-375. Brief *Hart*.
19. TAKE PRACTICE EXAM. We will go over it the following class.
20. Implied Promises: Text, pp. 471-480. Brief *Wood* and *Leibel*. Good Faith: Text, pp. 498-502. Brief *Morin*
21. Good Faith continued: Text, pp. 503-525. Brief *Locke* and *Donahue*.
22. Requirement of Sufficient Certainty: Text, pp. 75-82. Revisit *Walker*. Ambiguous Terms/No Mutual Assent. Read and brief *Raffles v. Wichelhaus*. 159 Eng. Rep. 375 (1864)(The Peerless Case)(will be emailed to you).
23. Ambiguity Prong of the PER: Text, pp. 422-435 (skip note 1 on p. 431). Brief *Taylor*. Contextualist Methodology: Text, pp. 393-401. Brief *Frigaliment*.
24. Whose Meaning? Text, pp. 381-393, 401-411. Brief *Joyner* and *C & J Fertilizer*.

25. Integration Prong of the PER; Read and brief *Mitchell v. Lathe*, 160 N.E. 646 (1928). Text, pp. 381-392, and note 1, p. 431. Brief *Thompson*.
26. Integration continued. Text, pp. 435-462. Brief *Sherrod* and *Nanakuli*.
27. Problems p. 463/ Express Conditions: Text, pp. 785-800. Brief *exXco*.
28. Implied or Constructive Conditions: Text, pp. 809-21. Brief *Jacob & Youngs*.
29. Implied or Constructive Conditions: Text, pp. 821-28. Brief *Sackett*.
30. Defenses and Excuses. Text, pp. 555-583. We will briefly go over minority and mental incapacity, and focus on duress (*Totem Marine*).
31. Undue Influence, Misrepresentation and Nondisclosure: Text, pp. 584-616. Brief *Odorizzi, Syester, Stechschulte*.
32. Unconscionability and Public Policy: Text, pp. 622-632, 662-691. Brief *Williams, Valley Medical* and *In re Baby*. Prepare Problem 7-3 for discussion in class (page 694).
33. Mistake: Text, pp. 701-723. Brief *Lewanee* and *DePrince*.
34. Mistake: Changed Circumstances: Pp. 724-754. Brief *Waddy* and *Mel Frank*. Problem 8-1.
35. Changed Agreements/Modifications: pp. 757-784. Brief *Alaska Packers, Kelsey-Hayes* and *Brookside Farms*.
36. Contract Remedies: Text, pp. 851-857, 1012-1014.
37. Restrictions on Recovery: Text pp. 874-883, p. 875 note 2 - p. 877, Comment, pp. 939-941. Prob. 10-1, page 941.
38. Practice Assignment: Spot the issues with the standard lease form.
39. Review and hand out Final Exam.

THE COMPLETE LIST OF MANDATORY AND RECOMMENDED SYLLABUS LANGUAGE

ABA MANDATORY SYLLABUS LANGUAGE

Learning Outcomes: Through and as a result of this course, students will: (1) demonstrate understanding of the tools of contract analysis (see course title); (2) demonstrate understanding of basic issues of contract law (see course title); (3) understand judicial review of contract litigation (implied in course title but see course description) and (4) understand the economic implications of enforcement or lack of enforcement of promises (see course title).

ACADEMIC ENRICHMENT PROGRAM

The Law Center Student Handbook reads: “The Academic Enrichment Program (AEP) is designed to provide academic support, counseling, and advice to first year students. In order to assist new students with developing the skills necessary for successful completion of law school, AEP offers open tutorial programs in the fall and spring. Second and third year law students with strong academics serve as Academic Enrichment Tutors, for first year fall classes. The tutors meet regularly, with first year students in the open sessions, to assist them with enhancing their law school study skills.”

My teaching assistant’s name and contact information will be provided to you the first day of class.

ANTI-DISCRIMINATION AND SEXUAL MISCONDUCT POLICIES

UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University System’s [Anti-Discrimination Policy SAM 01.D.07](#) and [Sexual Misconduct Policy SAM 01.D.08](#).

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

COUNSELING AND PSYCHOLOGICAL SERVICES

[Counseling and Psychological Services](#) ("CAPS") can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the ["Let's Talk" program](#), a drop-in consultation service at convenient locations and hours around campus.

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students:

<https://www.tlaphelps.org/law-students>.

HONOR CODE

The UHLC Honor Code applies to all aspects of my class. *You are responsible for knowing all Honor Code provisions and for complying with the Honor Code.* Please ask me if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to my course. *It is an Honor Code violation to review the graded or ungraded assignments distributed to, or written by, any of my students from prior years.*

ONLINE INSTRUCTION REQUIREMENTS

In the event that this course is offered online, by accessing the online class you agree to comply with all University of Houston requirements as if you were sitting in a physical classroom at the time you are online. While of course there will be some exceptions because life happens (family members, pets), inappropriate behavior will cause me to turn off your cam or expel you from the session. Additional requirements will be sent under separate document.

PREFERRED NAME

I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

UNIVERSITY MANDATORY SYLLABUS LANGUAGE

The University of Houston requires the following language. To the extent that the University in the course of the semester or after this syllabus has drafted changes any language, the University's new language governs and not that contained in the syllabus:

Face Covering Policy (should we revert to a face-to-face classroom)

To reduce the spread of COVID-19, the University [requires face coverings](#) on campus including classrooms for both faculty and students. Face coverings must cover your mouth and nose and be worn throughout the class session. A mask with a valve is not considered an adequate face covering and should not be used, as it can expel exhaled air, increasing the risk to others. Eating or drinking during class is discouraged and is not an excuse for removing the face covering for any extended length of time. For additional information on the use of face coverings, please see [Face Covering FAQs](#). Failure to comply with the requirement to wear a face covering in class will result in your being asked to leave the classroom immediately and a disciplinary referral through the Dean of Students Office. Requests for accommodations relating to the face covering policy may be directed to the [Center for Students with DisABILITIES \(CSD\)](#).

Required Daily Health Self-Assessment (should we revert to on-campus courses)

Your presence in class each session means that you have completed a daily self-assessment of your health/exposure and you:

- Are NOT exhibiting any [Coronavirus Symptoms](#)
- Have NOT tested positive for COVID-19
- Have NOT knowingly been exposed to someone with COVID-19 or suspected/presumed COVID-19

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [COVID-19 Diagnosis/Symptoms Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's

recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through the class e-mail distribution list.