

CONTRACTS (503-1001) – Fall 2016
TuTh 1:30 – 3:25 p.m. (BSL 102)

SYLLABUS

Course Materials

DAVID EPSTEIN, BRUCE MARKELL & LAWRENCE PONOROFF, MAKING AND DOING DEALS: CONTRACTS IN CONTEXT (4th ed. 2014)(“Markell”)

E. ALLAN FARNSWORTH, CONTRACTS (4th ed. 2004)(“Farnsworth”)

STEVEN J. BURTON & MELVIN A. EISENBERG, CONTRACT LAW: SELECTED SOURCE MATERIALS (2016 ed.)(“Statute Book”)

Course Description

An overview of general contract law, this course explores common and statutory law governing contract formation, interpretation, performance and enforcement, as well as some of the forces shaping contract law's development.

Learning Outcomes

The objective of this course is to provide an introduction to and overview of the nature and concept of contracts as well as the contracting process, contract construction, contract enforcement, remedies, and related issues. The course is designed to provide an overview of the theory and operation of contracts, including the practicalities of contract dispute resolution. Considerable attention will also be given to the lawyer's role and conduct when negotiating contracts as well as seeking their enforcement or resolution of disputes. At the conclusion of the course, students should be capable of representing contracting parties and recognizing common contracting issues as well as having a rough sense of the realistic range of outcomes in a contract dispute.

Attendance Policy

Attendance is required and attendance will be taken every class period, either by roll call or circulation of a sign-in sheet. Students should write legibly on the sign-in sheet. A student should sign only his or her own name to the sign-in sheet. Anyone missing more than 20 percent of the class periods (six (6) or more classes) will fail the course. Unauthorized absences will be considered in calculating the student's class participation score, which is a component of the final grade. If you are absent for what you believe is an appropriate excuse (e.g., illness), please notify me in writing, preferably via email and I will consider the absence and treat it accordingly for purposes of calculating your class participation score. Absences due to job interviews, work, or other pursuits will generally not be excused. If a student is absent from class, you may arrange

with a classmate to audiotape the class.

Grading Policy

For each student, a raw score will be calculated based on the final examination (80 percent of the raw score) and class participation (20 percent of the raw score). Students will be given an anonymous ID number for taking the final exam. After exams are graded (on a zero-to-100 raw score, names will be matched with the exam scores prior to addition of the class participation grades (on a zero-to-25 raw score) to calculate the overall raw score for each student. Final grades will be determined by applying the School of Law curve to the raw scores of the class.

Class participation grades will be determined by class attendance, preparation, contribution to class discussion, and successful completion of any assigned class exercises. Although any assigned class exercise will not in itself be a scored component of your class participation grade, your performance in these activities will be evaluated and considered in calculating your class participation grade. Students who do consistently excellent work on the exercises may have class participation scores increased while students who do subpar work on the exercises will receive lower class participation grades.

The final examination will be a three-hour *closed book* essay examination involving a primary fact pattern or several smaller fact patterns followed by questions. Copies of exams from past courses I have taught are on file in the Law Library. Please be advised that some past examinations were open book. The examination for this course will be closed book.

Seating Chart

Please take your assigned seat as per the seating chart posted at the back of the classroom. Please continue to use this seat for the remainder of the semester and use the name placards distributed on the first day of class. Persons with any special seating requests should contact me before the initial class or see me after the initial class meeting.

Honor Code

Students are expected to uphold the Academic Honor Code of the William S. Boyd School of Law. Violations of the Honor Code may be prosecuted and may lead to sanctions, including expulsion. Irrespective of the outcome of any Honor Code proceedings, I reserve the right to consider ethically questionable behavior in calculating class participation scores as a component to the final grade. In addition, students are advised that a student's law school record may be subject to review by the State Bar of Nevada or other bar examiners and may affect a student's subsequent application for admission to the bar. Of particular concern: students should do their own work and should avoid plagiarism or the use of unauthorized materials. Misrepresentation of any sort is particularly subject to condemnation and sanction.

Class Conduct

All students will be expected to observe a modicum of decorum, civility and personal

hygiene (i.e., at least minimum compliance with state and federal health laws) while in class. This means, at a minimum:

- Be seated in your assigned seat on time. I am prepared to be reasonable. Sometimes late arrival is unavoidable. Within reason, I would rather have you come late rather than skip class (you should feel that way, too). However, chronic tardiness will adversely affect your class participation score. Late arrivals in excess of 10 minutes will be counted as an absence unless there are compelling circumstances.
- Once class begins, I expect students to remain seated (unless asked to move as part of a class exercise). Students with any special medical needs should inform me. Otherwise, I will assume that absent unusual circumstances, students are capable of sitting still and deferring bathroom breaks, etc. until the completion of class.
- No eating in class (except for judicious and discreet use of cough drops or lozenges as necessary); beverages are permitted but should be in closed containers. Students are responsible for keeping their respective seating areas neat and clean.
- No hats, caps or other headgear may be worn in class. I do not expect to be required to remind students of this requirement. Or, as the (hopefully eternally memorable) Tony Soprano put it: "This ain't a ballpark."
- **No use of any electronic devices will be permitted in class. This includes laptop computers, tablets, phones, Palm Pilots, Blackberry, Game Boy, etc. Any student violating this rule will be counted as absent on that class day and will be warned. If there is a second violation, I will ask the Registrar to drop the student from the course.**
- No side conversations during class. If you have a question about the reading, class discussion, or other aspects of the course, ask me. If the question is too idiosyncratically individual to discuss before the entire class, we can address it after class, during office hours, or by phone or email. If you are bored in class, I apologize -- but this does not permit you to distract others or give you permission to stop trying to focus on the course material and class discussion. Remember, your boredom may not be entirely my fault.
- No snide commentary or disparaging remarks about the comments of other students. Typically, the sociopolitical views of a law school class range from Karl Marx to Attila the Hun. The theological spectrum typically ranges from Madeline Murray O'Hare atheism to double born-again zealotry (sometimes for more than one god). The academic abilities of the typical class are more tightly clustered but on certain days even the best students will say something that may appear to be "wrong" or even "dumb." I expect all students to show civility toward one another and respect for the views of one another -- but not to be shy about expressing their

own views. Disagreement and discussion is encouraged but should be conducted in a civil and professional manner. In addition to doing this because you want to at least act like a good person, your own self-interest should compel civility. Remember, ten years from now, the fellow student you are tempted to attack in class may be a judge presiding over your biggest case or a legislator presiding over legislation vital to one of your clients.

I reserve the right to make specific additions or modifications to this informal code of class conduct should it become necessary. Violation of class conduct norms will result in reductions in the student's class participation score. In extreme cases, disciplinary action will be pursued.

UNLV-required Disclosures:

Academic Misconduct—Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This Student Honor Code (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the UNLV Student Conduct Code and the Law School Student Policy Handbook. Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code, as set forth below. <https://portal.law.unlv.edu/files/portal/Student%20Handbook.12-13.Honor%20Code.pdf>

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at: <https://www.unlv.edu/studentconduct/student-conduct>.

Academic Success Program/CASE—The Boyd Academic Success Program assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues.

The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period. More information can be found here: <https://law.unlv.edu/academics/asp/current-students>

Copyright—The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

Disability Resource Center (DRC)—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

Law Library—The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

Religious Holidays Policy—Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

Rebelmail—Rebelmail is UNLV's official email system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students' email prefixes are listed on class rosters. The suffix is always @unlv.nevada.edu. The law school has two

general email lists for students: INFO and ADMIN-MSGs. Some faculty will use TWEN or personal gmail groups to send specific class messages.

CLASS MEETING TIMES

We will be holding class on the following indicated dates. Please note that there will be some regularly scheduled class times on which we will not meet as well as at least one make-up class and a review session.

- Tuesday, August 30 – Regular Class Meeting – First Class
- Thursday, September 1 – Regular Class Meeting
- Tuesday, September 6 – Regular Class Meeting
- Thursday, September 8 – Regular Class Meeting
- Tuesday, September 13 – Regular Class Meeting
- Thursday, September 15 – Regular Class Meeting
- Friday, September 16 – Make-Up Class – 3:30-5:30 p.m.
- Tuesday, September 20 – Regular Class Meeting
- Thursday, September 22 – Regular Class Meeting
- Tuesday, September 27 – Regular Class Meeting
- Thursday, September 29 – Regular Class Meeting
- Friday, September 30 – Make-Up Class – 3:30-5:30 p.m.
- Tuesday, October 4 – Regular Class Meeting
- Thursday, October 6 – Class Will Not Meet
- Tuesday, October 11 – Class Will Not Meet
- Thursday, October 13 – Class Will Not Meet
- Tuesday, October 18 – Regular Class Meeting
- Thursday, October 20 – Regular Class Meeting
- Tuesday, October 25 – Regular Class Meeting
- Thursday, October 27 – Regular Class Meeting
- Tuesday, November 1 – Regular Class Meeting
- Thursday, November 3 – Regular Class Meeting
- Tuesday, November 8 – Regular Class Meeting
- Thursday, November 10 – Regular Class Meeting
- Tuesday, November 15 – Regular Class Meeting
- Thursday, November 17 – Regular Class Meeting
- Friday, November 18 – Make-Up Class – 3:30-5:30 p.m.
- Tuesday, November 22 – Regular Class Meeting
- Tuesday, November 29 – Regular Class Meeting
- Friday, December 2 – Make-Up Class – 3:30-5:30 p.m.
- To Be Announced – Review Session
- Wednesday, December 14 – Final Exam

CLASS ASSIGNMENTS

I. The Historical Background of Contract Law and Contracts Courses The Nature, Concept and Definition of Contract

Markell, pp. 1-39

R.R. v. M.H. (p. 2)

Review Farnsworth §§ 1.1-1.11

II. Determining the Existence or Non-Existence of a Contract

A. Mutual Assent

Markell, pp. 41-69

Lucy v. Zehmer (p. 42)

Leonard v. Pepsico, Inc. (p. 53)

Gleason v. Freeman (p. 63)

Review Farnsworth, §§ 3.1 - 3.15

B. Offers (and their destruction and preservation)

Markell, pp. 69-121

Lonergan v. Scolnick (p. 70)

Maryland Supreme Corp. v. Blake Co. (p. 74)

Sateriale v. R.J. Reynolds Tobacco Co. (p. 83)

Dickinson v. Dodds (p. 98)

Minnesota Linseed Oil Co. v. Collier White Lead Co. (p. 103)

Beall v. Beall (p. 110)

Bd of Control, Eastern Michigan Univ. v. Burgess (p. 116)

Review Farnsworth, §§ 3.1-3.15

Statute Book: Review UCC Article 2; read UCC §§ 1-201; 2-204; 2-201, 2-207

Restatement Contracts §§ 25; 30, 32, 40, 45, 50, 54, 59-61, 69

C. Acceptance

Markell, pp. 121-183

1. Control over Acceptance

Ever-Tite Roofing Corp. v. Green (p. 125)

Davis v. Jacoby (p. 131)

Maryland Supreme Corp. v. Blake Co. (139)

2. Effectiveness of Promissory Acceptance

Hendricks v. Behee (p. 141)

3. Effectiveness of Acceptance by Performance

Carlill v. Carbolic Smoke Ball Co. (p. 149)

Marchiondo v. Scheck (p. 156)

4. Acceptance by Silence or Inaction

Laredo National Bank v. Gordon (p. 161)

Gresser v. Hotzler (p. 166)

Dorton v. Collins & Aikman Corp. (p. 174)

Diamond Fruit Growers, Inc. v. Krack Corp. (p. 183)

Klocek v. Gateway, Inc. (p. 190)

5. Electronic Acceptances

Hancock v. American Telephone & Telegraph Co., Inc. (p. 202)

Review Farnsworth, §§ 3.1 - 3.15; Read §§ 3.16 B 3.22
Statute Book, UCC § 2-207

D. Terms of the Agreement

Markell, pp. 183-259

Raffles v. Wichelhaus (p. 213)

Varney v. Ditmars (p. 217)

Walker v. Keith (p. 231)

Moolenaar v. Co-Build Cos., Inc. (p. 237)

Budget Marketing, Inc. v. Centronics Corp. (p. 247)

Review Farnsworth, §§ 3.32-3.30
Statute Book: UCC § 2-204
Restatement §§ 17, 20, 33

III. Factors Affecting Enforceability

A. Consideration and its Substitutes

Markell, pp. 261-373

Reed v. University of North Dakota (p. 267)

Kirksey v. Kirksey (p. 274)

Hamer v. Sidway (p. 279)
Hooters v. Phillips (p. 290)
Angel v. Murray (p. 302)
Harrington v. Taylor (p. 310)
Mills v. Wyman (p. 310)
Webb v. McGowin (pp. 316 & 320)
Ricketts v. Scothorn (p. 326)
Dargo v. Clear Channel Communications, Inc. (p. 331)
Dixon v. Wells Fargo Bank, N.A (p. 335)
Pavel Enterprises, Inc., v. A.S. Johnson, Inc. (p. 350)
Salisbury v. Northwestern Bell (p. 367)

Review Farnsworth, §§ 2.1 - 2.20, esp. § 2.19
Statute Book: Restatement §§ 71, 73, 74, 89;
Restatement, §§ 45, 71, 85, 86, 87, 90
UCC § 2-209

B. The Statute of Frauds

Markell, pp. 375-397

DF Activities Corp. v. Brown (p. 383)
McIntosh v. Murphy (p. 389)

C. Fraud and Its Cousins

Markell, pp. 397-411

Halpert v. Rosenthal (p. 398)
Swinton v. Whitinsville Savings Bank (p. 404)
Weintraub v. Krobatsch (p. 407)

Review Farnsworth, §§ 3.1, 4.9 B 4.20
Statute Book, Restatement §§ 159, 160, 162, 164

D. Capacity

Markell, pp. 412-418

Kiefer v. Fred Howe Motors, Inc. (p. 413)

Review Farnsworth, §§ 4.2-4.8

E. Duress and Undue Influence

Markell, pp. 418-439

Austin Instrument, Inc. v. Loral Corp. (p. 420)
Odorizzi v. Bloomfield School District (p. 433)

Review Farnsworth, Review §§ 4.16-4.20
Statute Book, Restatement §§ 175-176

F. Illegality and Public Policy

Markell, pp. 439-455

Hanks v. Powder Ridge Restaurant Corp. (p. 441)
Valley Medical Specialists v. Farber (p. 447)

G. Unconscionability

Markell, pp. 455-468

Williams v. Walker-Thomas Furniture Co. (p. 456 & p. 457)
Vernon v. Qwest Communications Int'l, Inc. (p. 464)

Review Farnsworth, §§ 4.26 - 4.29; 5.1 - 5.9
Statute Book: Restatement § 195
UCC § 3-302

H. Mistake

Markell, pp. 468-482

Grenall v. United of Omaha Life Ins. Co. (p. 476)

IV. Deciphering the Terms of the Deal

A. Terminology, Custom and Usage; Parol/Extrinsic Evidence

Markell, pp. 483-522

Threadgill v. Peabody Coal Co. (p. 484)
Traders Bank v. Dils (p. 506)

Review Farnsworth, §§ 7.2-7.6
Statute Book: Restatement §§ 1, 213,
UCC § 2-202

B. Recognizing and Resolving Ambiguity

Markell, pp. 523-568

Frigalment Importing v. B.N.S. International Sales (p. 523)
Random House v. Rosetta Books (p. 533)
Trident Center v. Connecticut General Life Insurance (p. 543)
Meyer v. State Farm Fire & Casualty (p. 557)
Broemmer v. Abortion Services of Phoenix (p. 560)

Review Farnsworth, §§ 7.1, 7.7 - 7.17
Statute Book: Restatement, §§ 203, 206, 211-214
UCC §§ 1-205, 2-208

V. Implied Terms

A. In General

Markell, pp. 569-577

Wood v. Lucy, Lady Duff-Gordon (p. 569)
Billman v. Hensel (p. 574)

Review Farnsworth, §§ 7.15-7.17
Statute Book: UCC §§ 1-103, 1-201, 1-203, 2-209, 2-609 2-305, 2-308, 2-312--2-318, 2-716 - 2-719
Restatement § 205

B. Good Faith and Fair Dealing

Markell, pp. 577-595

Locke v. Warner Brothers (p. 578)

C. Legislation, Warranty, and the UCC

Markell, pp. 596-642

Daughtrey v. Ashe (p. 597)
Webster v. Blue Ship Tea Room (p. 606)
Singer Company v. E.I. du Pont de Nemours (p. 622)
Office Supply Co., Inc. v. Basic/Four Corporation (p. 631)

Review Farnsworth, §§ 5.1- 5.9

VI. Satisfaction and Conditions

Markell, pp. 643-791

A. Conditions

National Fuel Gas v. Hartford Fire Ins. (p. 648)
Evans, Mechwart, Hambleton & Tilton v. Triad Architects (p. 650)

B. Excusing Conditions to Avoid Forfeiture

Acme Markets v. Federal Armored Express (p. 659)

C. Consequences of Preventing a Condition from Occurring

D. Waiver, Estoppel, Etc.

Alderman v. Davidson (p. 672)
Zwick v. Lodewijk Corp. (p. 678)
Wisconsin Knife Works v. National Metal Crafters (p. 687)

E. Post-Formation Events Excusing Performance

Taylor v. Caldwell (p. 703)
Route 6 Outparcels, LLC v. Ruby Tuesday, Inc. (714)
Krell v. Henry (p. 718)
Mel Frank Tool & Supply v. Di-Chem (p. 724)

F. Repudiation and Adequate Assurance of Performance

Norcon Power Partners v. Niagara Mohawk Power (p. 739)

G. Excuse from Material Breach

Jacob & Youngs v. Kent (p. 764)
ESPN v. Commissioner of Baseball (p. 782)

Review Farnsworth, §§ 8.1 - 8.7; 8.8 - 8.23
Statute Book: Restatement §§ 224, 227, 229, 235-237, 240, 261, 262
UCC §§ 2-507, 2-601, 2-609; 2-612, 2-615

VII. Enforcement and Remedies

A. Specific Performance

Markell, pp. 793-822

Ash Park, LLC v. Alexander & Bishop, Ltd. (p. 796)

Review Farnsworth, §§ 12.1 - 12.9
Statute Book, UCC § 2-716(1)

B. Agreed Remedies

Markell, pp. 823-844

Carr-Gottstein Properties v. Benedict (p. 823)

Nohe v. Roblyn Dev. Corp. (p. 826)

Kvassay v. Murray (p. 823)

Rodriguez v. Learjet (p. 838)

Review Farnsworth, § 12.18

Statute Book: Restatement § 356

UCC §§ 2-718, 2-719

C. Money Damages

Markell, pp. 845-949

1. In General

Hawkins v. McGee (p. 847)

Groves v. John Wunder Company (p. 859)

Peeyhouse v. Garland Coal & Mining (p. 864)

Fuji Photo Film v. Zalmen Reiss & Assoc. (p. 885)

2. Limitations on Money Damages

Parker v. Twentieth Century-Fox Film Corp. (p. 897)

R.R. Donnelley & Sons Co. v. Vanguard Trans. Systems (p. 904)

Hadley v. Baxendale (p. 909)

ESPN v. Commissioner (p. 924)

Hollywood Fantasy Corporation v. Gabor (p. 931)

D. Restitution

Markell, pp. 882-885

United States v. Algernon Blair (p. 940)

Review Farnsworth, §§ 12.8 - 12.20

Statute Book: Restatement §§ 344, 346, 347

UCC § 1-106; 2-713; 2-714, 2-715, 2-719

VIII. Quasi-Contract and Restitution

Markell, pp. 951-988

Schott v. Westinghouse Electric (p. 958)
Cablevision of Breckenridge v. Tannhauser Condo. Ass'n (p. 964)
Webb v. McGowin note (p. 983)
Pull v. Barnes (p. 985)

Review Farnsworth, §§12.19 & 12.20
Restatement, § 371

IX. Third-Party Beneficiaries

Markell, pp. 989-1012

Midwest Grain Products v. Productization (p. 1000)
Olson v. Etheridge (p. 1005)

Review Farnsworth, §§ 10.1 - 10.9
Statute Book, UCC § 2-138

X. Assignment and Delegation

Markell, pp. 1013-1034

Macke Company v. Pizza of Gaithersburg (p. 1016)
Rumbin v. Utica Mutual Insurance (p. 1021)
Sally Beauty v. Nexxus Products (p. 1026)

Review Farnsworth, §§ 11.1 - 11.11
Statute Book: Restatement, §§ 317-318
First Restatement, § 160
UCC § 2-210