**Note to readers:** This course was a seminar on the common law of contracts intended for civil lawyers. It was taught in Taiwan in 2015 to a mix of Taiwanese and foreign exchange students from other civil law jurisdictions. The course was taught from a comparative perspective but the syllabus reads more like a partial syllabus for an ordinary common law contracts course. English and American perspectives are both covered. Specific topics were selected to highlight areas of difference between the civil law and common law. I started each class with ~45 minute lectures that gave some of this comparative background, and would be happy to share copies of those lectures.

**Comparative Contract Law**

**National Taiwan University College of Law, Fall 2015**

**Visiting Professor Joshua Karton (Queen’s University, Canada)**

**Course Outline**

Week 1 9/15 General Introduction

Week 2 9/22 The Common Law Method (Including a Brief History Lesson)

Week 3 9/29 Enforceability of Promises Part I: The Concept of Consideration and its Function

Week 4 10/6 Enforceability of Promises Part II: Agreements to Negotiate and Pre-Contractual Liability

Week 5 10/13 Enforceability of Promises Part III: Misrepresentations and Completed Contracts

Week 6 10/20 Enforceability of Promises Part IV: Consideration and Contractual Modifications

Week 7 10/27 Enforceability of Promises Part V: The Privity Rule

Week 8 11/3 Contract Terms Part I: Objective Interpretation and the Exclusionary Rules

Week 9 11/10 Contract Terms Part II: Standard Terms and Limitation Clauses

Week 10 11/17 No Class

Week 11 11/24 Contract Terms Part III: Good Faith and Related Implied Terms

Week 12 12/1 Contract Terms Part IV: Changed Circumstances

Week 13 12/8 Remedies Part I: The Interests Protected, Expectation Damages

Week 14 12/15 Remedies Part II: Suspension of Performance and Termination of Contracts

Week 15 12/22 Remedies Part III: Stipulated Damages and the Theory of Efficient Breach

Week 16 12/29 Remedies Part IV: Restitutionary and Punitive Damages

Week 17 1/5 Remedies Part V: Specific Performance and Injunctions

**Course Expectations**

The main objective of this course is to introduce Taiwanese and other students from civil law backgrounds to the common law mentality and the case law method. We will use contract law as a medium for this exploration, partly because contract law is my area of specialty but also because anyone who wants to do legal work related to international trade or commerce should have some familiarity with the common law of contracts. It is more likely to be “useful” to Taiwanese students than other areas of private law. Accordingly, students will also gain a solid understanding of Anglo-American contract law. The substantive course material will be taught in comparative perspective, with frequent reference to corresponding doctrines under Taiwanese law. Specific topics have been chosen to highlight the similarities and differences between the common law and civil law of contracts.

The course will be taught seminar-style in English, with an emphasis on in-class discussions. Each week, I will begin the class with a lecture that will introduce the common law doctrines up for discussion. Then we will work through some assigned cases, taken mostly from the US and UK. I expect you to take the lead in discussing the cases and identifying the legal principles expressed in them—this is the heart of the common law way of thinking about law. To help drive the discussions and to get students involved in the discussion, each student will prepare two cases at different points in the semester and will give brief presentations in class on the cases. More information on these case presentations will be given in the first class.

The cases are intended as the primary course material. However, I have also assigned readings from a popular English student textbook to help give you some helpful background to understand the cases, as well as academic writings that will enrich your understanding of Anglo-American contract theory and practice. For most of the academic writings, I have identified the key pages that are required reading. Students are, of course, encouraged to read the whole thing.

**Assessment**

The final grade in this class has three components:

* There will be a take-home final exam worth 50% of your final grade. The exam will be distributed and collected by email, so exchange students who will have left Taiwan before the exam week can complete the exam at home.
* Students will be graded on participation in class discussions. This is a seminar-style class and discussions are important. As part of this, you will be required to give a presentation to the class on two cases we will read. I will assign the cases for presentation after the class roster is finalized, so if you will have to be absent for one or more class sessions, we can schedule your presentations for days when you will be able to attend. Participation, including the two presentations, is worth 25% of your final grade.
* Students will write and submit a minimum of five case briefs over the course of the semester. For the two cases you will present to the class, you must submit a case brief, which means that you must choose at least three additional cases over the course of the semester on which to write a brief. The five mandatory case briefs are worth 5% each, for a total of 25% of your final grade. If you write more than five briefs, you can earn bonus points which I will add to your total.

I will explain the case briefs and class presentations in more detail in class.

**Notes to the Readings**

All readings marked “MCW” are from Mindy Chen-Wishart, *Contract Law* (4th edn 2012). A copy is on course materials reserve in the library. All other readings are available online on CEIBA and as a photocopied course pack.

For each week, please read the assigned readings in the order they are listed below, starting with the MCW textbook, then the cases, and finally the assigned academic writings. (Files may appear in a different order on CEIBA.) I want you to form your own opinion of the common law doctrines and the cases applying them before you read someone else’s opinion.

**9/15 General Introduction**

**Readings:**

White, “The Study of Law as an Intellectual Activity”, from *Heracles’ Bow*

**9/22 The Common Law Method (Including a Brief History Lesson)**

**Readings:**

MCW pp 6-9

Hutchinson, “Making Moves: Legal Reasoning”, from *The Law School Book*

Williams, “Case Law Technique”, from *Learning the Law*

**9/29 Enforceability of Promises Part I: The Concept of Consideration and its Function**

**Readings:**

MCW pp 104-117

*Dalhousie College v Boutilier*

*Thomas v Thomas*

*Wood v Lucy, Lady Duff-Gordon*

Fuller, “Consideration and Form”, pp 814-822

Chen-Wishart, “Consideration and Serious Intention”, pp 10-13

**10/6 Enforceability Part II: Agreements to Negotiate and Pre-Contractual Liability**

**Readings:**

MCW pp 42-46, 87-93, 100-101

*Channel Home Centers, Division of Grace Corp v Grossman*

*Walford v Miles*

*British Steel Corp v Cleveland Bridge and Engineering*

Schwartz and Scott, “Precontractual Liability and Preliminary Agreements”, Parts I-II (pp 661-676)

**10/13 Enforceability Part III: Misrepresentations and Completed Contracts**

**Readings:**

MCW pp 202-218

*Dick Bentley Productions v Harold Smith (Motors)*

*Esso Petroleum v Mardon*

*Johnson v Healy*

**10/20 Enforceability of Promises Part IV: Consideration and Contractual Modifications**

**Readings:**

MCW pp 124-135

*Stilk v Myrick* and *Foakes v Beer*

*Williams v Roffey Brothers*

Chen-Wishart, “Consideration and Serious Intention”, remainder of article

**10/27 Enforceability of Promises Part V: The Privity Rule**

**Readings:**

MCW pp 166-184

*Dunlop Pneumatic Tyre Co v Selfridge*

*London Drugs v Kuehne & Nagel International*

Smith, “Contracts for the Benefit of Third Parties: in Defence of the Third-Party Rule” (entire)

Andrews, “Strangers to Justice No Longer”, pp 353-357

**11/3 Contract Terms Part I: Objective Interpretation and the Exclusionary Rules**

**Readings:**

MCW pp 368-369, 387-394

*Gianni v R Russel & Co*

*Investors Compensation Scheme v West Bromwich Building Society*

*Danielson v Danielson*

Staughton, “How do the Courts Interpret Commercial Contracts?” (entire)

Steyn, “Contract Law: Fulfilling the Reasonable Expectations of Honest Men” (entire)

**11/10 Contract Terms Part II: Standard Terms and Limitation Clauses**

**Readings:**

MCW pp 366-368, 394-402

*Interfoto Picture Library v Stiletto Visual Programmes*

*Tercon Contractors v British Columbia*

*Carnival Cruise Lines v Shute*

Epstein, “Unconscionability: A Critical Reappraisal”, Parts I, III, IV (pp 293-295, 301-315)

**11/17 No Class**

**11/24 Contract Terms Part III: Good Faith and Related Implied Terms**

**Readings:**

MCW pp 378-387

*Malik v BCCI*

*Yam Seng Pte Ltd v International Trade Corp*

*Kham & Nate’s Shoes No. 2 v First Bank of Whiting*

Farnsworth, “The Concept of Good Faith in American Law”

**12/1 Contract Terms Part IV: Changed Circumstances**

**Readings:**

MCW pp 277-295

*Krell v Henry* and *Herne Bay v Sutton*

*Davis Contractors v Fareham Urban District Council*

*Transatlantic Financing Corp v United States* 363 F.2d 312 (DC Cir 1966)

Posner & Rosenfield, “Impossibility and Related Doctrines in Contract Law: An Economic Analysis”, Introduction and Parts I and III (pp 83-97, 111-117)

**12/8 Remedies Part I: The Interests Protected, Expectation Damages**

**Readings:**

MCW pp 482-488

*Hawkins v McGee*

*Peevyhouse v Garland*

*Ruxley Electronics and Construction v Forsyth*

Friedmann, “The Performance Interest in Contract Damages”, pp 1-4

Eisenberg, “Actual and Virtual Specific Performance”, Part II (pp 7-12)

**12/15 Remedies Part II: Suspension of Performance and Termination of Contracts**

**Readings:**

MCW pp 461-476

*Kingston v Preston* and *Boone v Eyre*

*Bunge v Tradax*

Karton, “Suspension of Performance in International Commercial Arbitration”, pp 865-884

**12/22 Remedies Part III: Stipulated Damages and the Theory of Efficient Breach**

**Readings:**

MCW pp 556-563

*Lake River v Carborundum*

*Colonial at Lynnfield v Sloan*

Klass, “Efficient Breach is Dead; Long Live Efficient Breach”, pp 1-9, 17-20 (On p 17, begin with the paragraph that starts with “Finally, the simple theory paints…”.)

Shavell, “Is Breach of Contract Immoral?” (entire)

**12/29 Remedies Part IV: Restitutionary and Punitive Damages**

**Readings:**

MCW pp 485-486, 529-534

*Attorney-General v Blake*

*Whiten v Pilot Insurance*

Swan, “Punitive Damages for Breach of Contract” (entire, as edited)

**1/5 Remedies Part V: Specific Performance and Injunctions**

**Readings:**

MCW pp 539-549

*Cooperative Insurance Society v Argyll Stores*

*Warner Brothers v Nelson*

Eisenberg, “Actual and Virtual Specific Performance”, Part IVA - C (pp 23-30)

Schwartz, “The Case for Specific Performance”, Parts I-IV (pp 271-298)