

COMPARATIVE PERSPECTIVES ON CONTRACT LAW

Wednesday, 2:00 P.M. – 3:50 P.M.

Office hours:

Tuesday, 11:00 A.M.– 12:50 P.M.

Room 911

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COMPARATIVE PERSPECTIVES ON CONTRACT LAW

COURSE MATERIALS

Casebook (CB)

Beale et al., Cases, Materials and Text on Contract Law (2d Ed.)

Handouts (HO)

Many of our readings will come from books and law review articles on contract theory.

All such readings will be posted on the TWEN board.

Statutory and Code Materials

I have posted English translations of the German *BGB* and the French *Code civil*, as well as the Restatement (Second) of Contracts on TWEN. You should have the relevant sections Codes accessible during class.

COURSE REQUIREMENTS

Your grade will be based on six short response papers (12.5% each), posts to the TWEN discussion board (12.5%) and class participation (the remaining 12.5%).

Response Papers

- The response papers should address that week's reading. Avoid general observations and summaries of the readings, and instead try to focus on a single topic or issue that is common to the cases or articles and use it to make a short argument or commentary.
- They must be 500-1000 words in length.
- They are due at **2:00 P.M.** on Tuesday before our class meetings, and should be submitted using the **TWEN Assignment Dropbox**.
- You are free to choose the six class sessions for which you write response papers, however, three of the papers should address doctrinal materials (i.e., cases and code provisions) and three of the papers should address theoretical materials (i.e. law review articles or treatise excerpts).
- It is acceptable (and encouraged!) to address both types of material in a single response paper, however, please note at the top of each paper if you want it to count for a doctrinal or theoretical response paper.

TWEN Board Posts

- For the eight weeks in which you do not write a response paper, you are responsible for posting a short question about the readings to the TWEN board. The question does not need to be long or complicated, but should indicate what you found interesting, difficult, confusing, etc. about the reading for that week.
- All questions should be posted by **11:00 A.M.** on Wednesdays.

Class Participation

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- This class is a seminar and all students are expected to participate regularly. Although I will not formally call on students, you should be prepared to take the “lead” on a least one case as well as participate in discussions about the theoretical materials.
- **Laptop policy.** Laptops are not allowed in this class.

PART I: INTRODUCTION AND SCOPE OF THE LAW OF CONTRACTS

Class 1, Introduction to civil law and common law, and contracts

HO: Merryman, *The Civil Law Tradition Excerpts*

BGB (Germany), Table of Contents, §§ 305, 311; Code civil (France), Table of Contents 1.101; Restatement § 1

HO: Burrows, *Dividing the Law of Obligations*

Class 2, The boundaries of the law of contract: contract and tort

CB: 86 – 96; 105 – 121 (begin at § 3.2.B.2.1)

HO: Gilmore, THE DEATH OF CONTRACT (excerpts)

PART II: OFFER AND ACCEPTANCE

Class 3, Offer

CB 241 – 273

Class 4, Offer and Acceptance

CB 273 – 313

Class 5, Finish Offer and Acceptance

CB (finish discussions of cases from classes 3 and 4, please reread materials we have not yet covered)

HO: Niblett, *Rewards and Prizes: Incentivizing Search for Socially Valuable Information*

PART III: TOPICS IN ENFORCEABILITY

Class 6, Theories of enforceability

CB: 66 – 72

HO: Barnett, *A Consent Theory of Contract*

HO: Atiyah, *Contracts, Promises and the Law of Obligations*

Class 7, Cause and Objet

CB: 170 – 187

HO: Klimas textbook (French *objet* cases)

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Class 8, *Cause, objet* and Consideration

Finish and recap readings from Class 7

CB: 189 – 207 (English consideration cases)

Restatement § 71

Class 9, Gift promises and Promissory Estoppel

HO: Waltons Stores v. Maher (Australia)

HO: Eisenberg, *The World of Contract and the World of Gift*

HO: Gordley, *The Enforceability of Promises in European Contract Law: Promises of Gifts* (sections on France, Germany and Greece)

PART IV: TOPICS IN REMEDIES

Class 10, Fault, the nature of the debtor's obligation, and the choice of remedies

HO: Reading from Beale, et al. First Edition

HO: The fusion fallacy (Australia)

Class 11, Specific Performance I

CB: 840 – 842, 845 - 850

HO: De Bauffremont v. de Bauffremont, Société X v. P (France, read w/CB pp. 680 – 81)

HO: Schwartz, *The Case for Specific Performance*

Class 12, Specific Performance II

CB: 856 – 887

Class 13, Money damages I

CB: 995 - 1009

HO: Scalise, *Why No "Efficient Breach" in the Civil Law?*

Class 14, Money Damages II

CB 1011 - 1034

HO: Friedmann, *The Efficient Breach Fallacy*