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

**Class 7,** *Cause* and *Objet*
- CB: 170 – 187
- HO: Klimas textbook (French *objet* cases)
Comparative Perspectives on Contract Law

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 Bauffrement v. de Bauffrement, 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