

Contracts

Professor Lillquist
Fall 2006

Preliminaries

The required textbook is EDWARD J. MURPHY ET AL., *STUDIES IN CONTRACT LAW* (6th ed. 2003), and the required supplement is *CONTRACT LAW: SELECTED SOURCE MATERIALS* (2006 ed.).

Regular class attendance and participation are required. For this class, I have adopted the Law School's Class Attendance Policy, which requires students to attend a minimum of 75% of class sessions or be administratively withdrawn from the course. A class attendance sheet will be distributed during every session, which you will be required to sign. Please note that under the Class Attendance Policy, I have no discretion to excuse absences from class.

Your grade will be based on a midterm examination, to be given October 16, 2006, and a final examination, to be given in December. I also will feel free to use whatever discretion the law school rules allow me for class participation.

The course website is located on Blackboard. I will post day-to-day assignments there, along with course materials. In addition, there is a discussion board section, which I encourage the class to use and I will occasionally post questions there.

My office is Room 409. My e-mail address is lillquire@shu.edu. My phone number is 642-8844. I have an open-door policy and you are welcome to come and talk to me whenever I am in my office, or, for that matter, whenever you see me in the hallways, the cafeteria, or elsewhere. In addition, you may of course schedule an appointment to see me. Finally, I maintain "Coffee Hour" on Tuesdays at 3:30 in the Coffee Lounge: I'll be happy to talk about Contracts or just about any other topic.

Course Syllabus

The following is the schedule for the course. Please note that I may add or delete materials depending upon the progress that we make. Page references are to the Murphy casebook, unless otherwise noted.

References styled “Restatement (Second) § ____” are to the indicated section of the Second Restatement of Contracts. References to “U.C.C. § ____” are to the indicated section of the Uniform Commercial Code. **Please note: unless otherwise indicated, we will be using the revised version of Article 1, which is found on pages 139 to 155 of CONTRACT LAW: SELECTED SOURCE MATERIALS, and the pre-2003 version of Article 2, which remains the law in all of the states and is found on pages 21 to 107 of CONTRACT LAW: SELECTED SOURCE MATERIALS).** Do not, unless instructed, refer to the pre-2001 version of Article 1 or amended Article 2. Finally, references to “CISG Article ____” are to the indicated Article of the United Nations Convention on Contracts for the International Sale of Goods, which is found on pages 348 to 372 of CONTRACT LAW: SELECTED SOURCE MATERIALS. Other statutory material can be found at the indicated places in the statutory supplement.

- I. Introduction to the Law of Contracts: An Overview
 - A. A Beginning Problem: Promissory Liability
 - 1-18
 - Restatement (Second) § 1
 - U.C.C. § 2-102
 - B. Consideration and Promissory Estoppel: Enforcing Promises
 - 36-43, 128-33
 - Restatement (Second) §§ 17, 22, 24, 50, 71 & 90
 - U.C.C. § 1-103
 - C. Unconscionability
 - 534-43
 - U.C.C. § 2-302
 - Restatement (Second) § 208
 - D. Conditions: Performance of the Obligation
 - 18-21, 738-47, 779-84
 - Restatement (Second) §§ 224-28
 - E. Introduction to Remedies
 - 191-206
 - Restatement (Second) §§ 344, 345, 347, 350, 359 & 360
 - U.C.C. § 2-716
 - CISG Article 74

- II. The Bases of Promissory Liability
 - A. Consideration Doctrine
 - 1. The Bargain Requirement
 - 43-52
 - Restatement (Second) §§ 72, 75 & 80
 - 2. Nominal Consideration and Formalities
 - 52-60
 - Restatement (Second) § 81
 - U.C.C. § 2-203
 - 3. Adequacy of Consideration
 - 60-80
 - Restatement (Second) §§ 73, 74 & 79
 - 4. Limitations on Consideration
 - a. The Pre-Existing Duty Rule
 - 80-94
 - Restatement (Second) §§ 73 & 89
 - U.C.C. §§ 1-201(20), 1-304, 1-306 & 2-209
 - CISG Article 29
 - b. Mutuality of Obligation
 - 94-109
 - Restatement (Second) § 228
 - U.C.C. § 2-306
 - B. Moral Obligation Doctrine: More on Gifts and Unjust Enrichment
 - 109-28
 - Restatement (Second) §§ 82, 83 & 86
 - C. Promissory Estoppel Doctrine
 - 134-64
 - Restatement (Second) § 90(1) & (2)
 - D. The Statute of Frauds
 - 1. “Within the Statute”: How to Determine Which Promises Are Governed by the Statute
 - 164-76
 - U.C.C. §§ 1-108, 2-105 & 2-201
 - Amended U.C.C. § 2-201 (page 158)
 - CISG Article 11

2. “Compliance with the Statute”: How a Party Satisfies the Statute
 - 176-90; *First Bank* (handout)
 - Restatement (Second) §§ 139 & 375
 - U.C.C. §§ 1-201(37), 1-205, 2-104(1), 2-105 & 2-107(1) & (2)
 - Amended U.C.C. § 2-212 (handout)
 - E-SIGN § 7001(a) (page 341)

III. A Further Introduction to Remedies

- A. Foreseeability
 - 206-11
 - Restatement (Second) § 351
- B. Mental Anguish
 - 211-21
 - Restatement (Second) § 353
- C. Punitive Damages
 - 221-29
 - Restatement (Second) § 355

IV. The Bargain Context

- A. The Objective Test of Assent
 - 230-45; *Belgian Stallion Problem* (handout)
- B. The Offer
 - 245-76
 - Restatement (Second) §§ 24, 26, 30, 32, 33 & 50
 - U.C.C. §§ 2-204, 2-205 & 2-206
- C. The Acceptance
 1. Means of Acceptance
 - a. Acceptance by Promise
 - 284-96
 - Restatement (Second) §§ 35, 36, 41, 50-54, 56, 58, 62 & 69
 - U.C.C. § 2-207
 - Amended U.C.C. §§ 2-206 & 2-207 (pages 161-63)
 - CISG Articles 14-18 & 20-21
 - b. Acceptance by Performance
 - 296-311
 - Restatement (Second) §§ 23, 45, 60 & 62

- c. Problems with Acceptance
 - 311-25
 - Restatement (Second) §§ 63, 64 & 69
 - Revised U.C.C. § 2-204 (pages 159-61)
 - 2. Counter-Offers
 - 325-48, Counter-Offer Problems (handout)
 - Restatement (Second) §§ 59 & 61
 - CISG Article 19
 - U.C.C. §§ 2-104(1) & (3) & 2-207
 - D. Termination of the Offer
 - 360-70
 - Restatement (Second) §§ 36-43, 46 & 48
 - E. Irrevocable Offers
 - 370-91
 - Restatement (Second) § 87
 - F. Defective Expression of Agreement
 - 391-400
 - Restatement (Second) §§ 20 & 33
 - G. Indefinite Expression of Agreement
 - 400-07
 - H. Incomplete and Deferred Agreements
 - 407-49
 - U.C.C. § 2-204
- V. Regulating the Bargaining Process: Limitations on Contracts
- A. Capacity to Contract
 - 450-70
 - Restatement (Second) §§ 12-16
 - B. The Mistake Doctrine
 - 470-95
 - Restatement (Second) §§ 152-54
 - C. Fraud and the Duty to Disclose
 - 497-523
 - Restatement (Second) §§ 159-64, 168 & 169

- D. Duress & Undue Influence
 - 523-34
 - Restatement (Second) §§ 175-77
- E. Illegality
 - 572-92
 - Restatement (Second) §§ 178, 181 & 195
- VI. The Parol Evidence Rule and the Interpretation of Written Contracts
 - A. The Classic Parol Evidence Rule and its Evolution
 - 614-24 and handout on parol evidence
 - Restatement (Second) §§ 202(4), 209-11, 213-16, 222 & 223
 - B. The U.C.C. Approach to Parol Evidence; Evidence of Oral Conditions
 - 624-31
 - U.C.C. §§ 1-303, 2-202 2-207
 - Restatement (Second) § 217
 - CISG Articles 8, 9 & 11
 - C. Approaches to the Interpretation of Contracts
 - 638-48, 654-58
 - Restatement (Second) §§ 201-04, 212, 220 & 221
 - U.C.C. § 2-202
- VII. Performance of the Obligation
 - A. The Duty of Good Faith
 - 1. Introduction
 - 658-69
 - Restatement (Second) § 205
 - U.C.C. §§ 1-201(20) & 1-304
 - 2. Prevention, Hindrance and the Duty of Cooperation
 - 669-75, 677-81
 - 3. Good Faith & Discretion in Performance
 - 689-703
 - B. Return to Conditions
 - 1. Excuse of Conditions
 - 754-67
 - Restatement (Second) §§ 84, 89 & 229
 - U.C.C. §§ 1-306 & 2-209
 - 2. Constructive Conditions
 - 767-79
 - Restatement (Second) § 234

3. Standards of Performance: More on Substantial Performance and the U.C.C. Perfect Tender Rule
784-802; *T.W. Oil, Inc.* (handout)
Restatement (Second) § 240
U.C.C. §§ 2-106, 2-307, 2-508, 2-601, 2-602, 2-608 & 2-612
CISG Articles 46 & 49

VIII. Problems in Performance

- A. Impracticability
802-05, 808-27, 833-36
Restatement (Second) §§ 261-66
U.C.C. § 2-615
CISG Article 79

- B. Frustration of Purpose
845-58

IX. Breach of Contract and Remedies

- A. Anticipatory Repudiation
862-76
Restatement (Second) §§ 250, 251, 253 & 256
U.C.C. §§ 2-609 to 2-611
CISG Articles 71-73
- B. Compensatory Damages
 1. Payor's Breach
889-908
Restatement (Second) § 371
U.C.C. §§ 2-703, 2-706, 2-708, 2-709 & 2-710
 2. Performer's Breach
 - a. Direct Damages
927-47
U.C.C. §§ 2-612, 2-711 to 2-715 & 2-717
 - b. Consequential Damages
949-67
 3. Liquidated Damages
1000-09
U.C.C. § 2-718
Restatement (Second) § 356