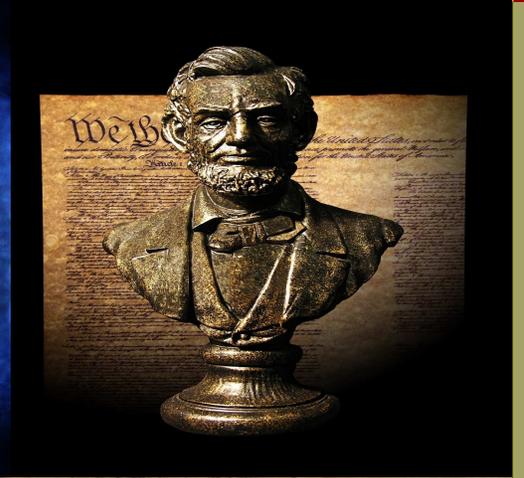


NATIVE AMERICAN UNIVERSITY



Contracts

Contracts

CONT 101 & 102 Course Schedule

Week #1 – 2

Material	Subject
Text	Chapter 1, Introduction to Contract Law, Pages 1 - 54
Roadmap Outline	Read and Begin Q & A for Chapter 1, Pages 1 – 24
CD-ROM	Video Lecture Series #1 thru #29 (no notes)
Audio	Listen to all (no notes) Gilbert's 1 st Year Audio Program Contracts Audio Tapes 1 – 4

Week #3 – 4

Material	Subject
Text	Review Chapter 1, Pages 1 – 54
Roadmap Outline	Read and Finish Q & A for Chapter 1, Pages 1 - 24
CD-ROM	Video Lecture Series #1 thru #29 (take notes using freeze frame in Windows Media Player)
Audio	Listen to all (take notes on 5 X 7 cards) Tapes 1 – 4

End of Week #4

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #5 – 6

Material	Subject
Text	Chapter 2, Formation, Pages 55 - 110
Roadmap Outline	Read and Begin Q & A for Chapter 2, Pages 25 - 100

Week #7 – 8

Material	Subject
Text	Complete Chapter 2, Formation, Pages 55 - 110
Roadmap Outline	Continue Q & A for Chapter 2, Pages 25 - 100
CALI	Contract Formation I and II by Mathew C. McKinnon
Brief 4 Cases – Chapter 2	Hurley v. Eddingfield (Contract Obligations), Pg. 56 Poughkeepsie Buying Service, Inc. v. Poughkeepsie Newspapers, Inc. (Advertisers), Pg. 64 School Trustees of Trenton v. Bennett (Assumpsit) Pg. 99 Hadley v. Baxendale (Damages Calculation), Pg. 106
Audio	Listen to Tapes 1A, 1B & 2A

End of Week #8

Study Record	Study Record Due (include any Roadmap Assignments)
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Week # 9 – 10

Material	Subject
Text	Chapter 2, Preliminary Agreements, Pages 55 - 110
Roadmap Outline	Continue Q & A for Chapter 2, Pages 25 - 100

Week # 11 – 12

Material	Subject
Text	Chapter 2, Duration, Pages 55 - 110
Roadmap Outline	Finish Q & A for Chapter 2, Pages 25 - 100
CALI	Drafting Contracts Using “Shall”, “May” and “Must” by Debra R. Cohen
CALI	Drafting with “And” and “Or” by Marjorie A. McDiarmid
CALI	“Drafting a Contract: The Sale of Goods” by Scott J. Burnham
CALI	“Exploring a Contract” by Scott J. Burnham

End of Week #12

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #13 – 14

Material	Subject
Text	Chapter 3, Consideration, Pages 111 – 552
Roadmap Outline	Read and Begin Q & A for Chapter 3, Pages 101 - 166
CALI	“ITT v. LTX: An Interactive Exploration of Article 2” by Scott J. Burnham
CALI	“Defenses” by Scott J. Burnham
Brief Statutes	Uniform Commercial Code Sec.1-201, Pg. 113 California Civil Code (1872) Sec. 1606, Pg. 550
Brief Secondary Authorities	Submit Secondary Authorities: Restatement of Contracts Second Sec. 1, Pg. 111 Restatement of Contracts Second Sec. 2, Pg. 111 Restatement of Contracts Second Sec. 3, 17, 18, 22, 23 & 24, Pg. 112

	<p>Restatement of Contracts Second Sec. 86, Pg. 551</p> <p>I Williston on Contracts Sec. 112, Pg. 472</p>
Brief 18 Cases - Chapter 3	<p>Balfour v. Balfour (Contract Promises), Pg. 116</p> <p>Hertzog v. Hertzog (Implied Contract), Pg. 147</p> <p>Hewitt v. Hewitt (Implied Contract), Pg. 155</p> <p>Lefkowitz v. Great Minneapolis Surplus Store, Inc. (Indefinite Contracts), Pg. 183</p> <p>Hill v. Waxberg (Bargain in Good Faith), Pg. 203</p> <p>United States v. Braunstein (Assent), Pg. 253</p> <p>Roth-Lith, Ltd. v. F. P. Bartlett & Co. (Contract Forms), Page 260, Reference CD Lesson #6</p> <p>Woodburn v. Northwestern Bell Telephone Co. (Contract of Adhesion), Pg. 276</p>

Week #13 – 14 (Continued)

	<p>Siegel v. Spear & Co. (Bargain & Reliance), Pg. 285</p> <p>Drennan v. Star Paving Co. (Firm Offers), Pg. 326, Reference CD Lesson #4</p> <p>Rhode Island Tool Co. v. United States (Consideration), Pg. 354</p> <p>Carlill v. Carbolic Smoke Ball Co. (Unilateral-v-Bilateral), Pg. 373</p> <p>Swindell & Co. v. First National Bank (Requirements Contracts), Pg. 424</p> <p>Wood v. Lucy, Lady Duff-Gordon (Obligation Contracts), Pg. 451</p> <p>Kirksey v. Kirksey (Gratuitous Promise), Pg. 473***</p> <p>Hamer v. Sidway (Gratuitous Promise), Pg. 483*</p> <p>Mills v. Wyman (Doctrine of Consideration), Pg. 523**</p> <p>Lawrence v. Oglesby (Moral Consideration), Pg. 547</p>
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Audio	Listen to Tape 2A
<p>Professor Comments:</p> <p><u>Hamer v. Sidway</u>: This case is an old favorite. Collectors of trivia should note that Alton B. Parker, who wrote the opinion, ran as the Democratic candidate for President in 1904 and was badly defeated by Theodore Roosevelt, receiving only 140 electoral votes out of a total of 476. At His grandparents’ golden wedding anniversary, William Story II, was promised \$5,000.00 by his uncle, William Story, if he would “refrain from drinking liquor, using tobacco, swearing, and playing cards or billiards for money” until he reached 21. He refrained (for six years). (The record shows that the trial court found that the nephew had been “in the habit of drinking liquor occasionally and using tobacco”, and that after the promise was made to him he “on one occasion...refused to use the same when suffering from fever and ague in the West” –perhaps Ann arbor, where he was in college.) The uncle kept the money and died 12 years later. The executor refused to pay the nephew’s assignee. The court holds that the promise was enforceable because there was “consideration”. Note that the nephew make no promise to abstain, nor did he give up the right to indulge, despite the court’s suggestion that “he abandoned” his right to indulge.</p> <p>It was the forbearance itself that was consideration – “if he would refrain”.</p> <p>Of course the nephew “agreed”, but, as will become clear later, if an offer seeks performance, a promise to perform is not acceptance. In this case, there is only one promise. As to the nephew’s situation if the uncle had revoked before the nephew reached 21.</p> <p>On giving up smoking as a benefit to the other party, the New York Times for December 7, 1968, under the headline “Plant pays \$3,900.00 to Nephew For Giving Up Smoking”, reports that a spokesman for the employer said that the \$10.00 a month paid to employees who gave it up was well worth it, cutting sick leave and saving about 30 minutes a day lost in smoking. It may be of interest that he said that while a student at Yale “I was free from all dissipations; I had never danced, played cards...or drunk anything but water”. See 38 Chicago-Kent L. Rev.1.</p> <p>Note that the nephew gets his promised \$5,000.00 expectation. If recovery were Measured by the restitution interest, the value in money to the uncle of his</p>	

Week # 13 – 14 (Continued)

Professor Comments: (continued)

Namesake's abstinence would be uncertain indeed. If recovery were measured by the reliance interest, the value to the nephew of the lost delights of indulgence would be equally uncertain. It would, of course, be possible to make justifiable reliance a basis for enforceability and still use expectation as the measure of recovery.

Note the abandonment of "benefit" and "detriment" in Restatement Second Sec. 71.

But the advocate should not be unaware of their historical importance, for many contemporary cases, still speak in these terms. For a New York case following Hamer on the point that consideration need not be a benefit but may be a detriment, see *Holt v. Feigenbaum*, 419 N.E. 2nd 332 (N.Y.1981). For discussion of Holmes's role in the development of the bargain theory, see G. Gilmore, *The Death of Contract* 19-21 (1974); but see Speidel, *Book Review*, 27 *Stan.L.Rev.* 1161 (1975). See also Braucher, *Freedom of Contract and the Second Restatement*, 78 *Yale L.J.* 598, 599-607 (1969).

The Problem in Note 4 illustrates the point that the consideration need not "move" from the promisee. Benefit to promisor works better than detriment to promisee here, but of course the test of bargain eliminates the need to either.

Why is the gratuitous promisee in a worse position than the donee of a chattel? One possibility is that delivery to the donee in the case of a gift is a formality that has no counterpart in the case of a gift promise, now that the seal has been abolished. Consider both the "evidentiary" and "cautionary" functions of the requirement of delivery. Another possibility is that in both instances inertia prevails – the law leaves the parties where it finds them. A student who advocates the former ground may be asked to consider whether the law should provide some sort of formality. The text suggests examples.

**Mills v. Wyman: The doctrine of consideration, with all of its deficiencies, has been remarkably resistant to attempts to reduce its importance by providing substitutes. The most important exception to this generalization has, of course, been the recognition of reliance as an alternative basis for enforcing promises.

Although this is scarcely the place for a full treatment of legislative proposals for the reform of consideration, it seems appropriate here to ask the student to try to answer a different sort of question than that involved in the preceding materials.

If the cases do not seem to be uniformly rightly decided, what statutory language would you propose to remedy this? First, however, it may help to look at more cases.

If consideration for a promise is something given in exchange for a promise, its can hardly be something that preceded the making of the promise. “Past” consideration cannot be consideration, it is often said. In this subsection we see the problem posed by action in the past; in the next subsection we consider restitution as a solution to the problem.

Feinberg v. Pfeiffer makes the point as to “past consideration”. Since consideration requires an exchange, Feinberg’s 37 years of prior service could not be consideration.

No redrafting of the resolution could circumvent this. Her 18 months of subsequent service and her retirement were not in the past and either could have been consideration but neither was bargained for. This could have been changed by an appropriate recital in the resolution, assuming that she had Accepted.

Week # 13 – 14 (Continued)

In Mills v. Wyman, the court also concludes that there was not consideration.

But the case differs from Feinbarg, in which there was a contract between the parties. Mills, the “Good Samaritan”, cared for Wyman’s son Levi, age 25, for about two weeks when Levi, long having ceased to live with his father, fell ill on his return from a voyage. Wyman, out of a “transient feeling of gratitude” promised Mills in writing to pay his expenses, and then broke his promise.

The court gives the classic answer of “no consideration”. Since “there was nothing paid or promised for it”, per-formance is left “to the conscience of him who makes it”. See again the quotation from Adam Smith. Williston’s defense of the rule is more pragmatic – where do you draw the line? Such exceptions as are generally recognized are clearly defined.

Williston opined, in what circumstances should an attorney advise a client, who wishes not to ignore a debt of which the client has been relieved in a bankruptcy proceeding, to promise to pay the debt rather than merely to pay it as extra money comes to hand?
Answer: Never.

Webb v. McGowin is an even more heart-rending case of “moral obligation”.

On August 3, 1925, Joe Webb saved the life of J. Greely McGowin (president of the company), and became himself crippled for life. On January 1, 1935, after nearly ten years of payments, McGowin died and on January 27 the payments stopped.

Although McGowin got nothing in exchange for his promise, the court enforced it. (as a footnote to the footnote on page 69, the information from counsel for the McGowin estate, Calvin Poole, was repeated in a later letter to his grandson and namesake who, as a law student at the University of Alabama, was about to present the estate’s side of the case in his contracts class – an interesting exercise for any student).

That this case is a departure from the usual rules on consideration, and one that not all courts would make. Is it significant that Lee Taylor reneged after paying only a small sum in that case, while McGowin paid for nearly ten years? Does that show anything about the promisor’s seriousness or awareness of the significance of his promise?

Might Webb have had a claim to restitution for the benefit conferred on McGowin as a result of Webb’s heroism? If so, his surrender of that claim, if bargained for, could have been consideration. This leads into the next subsection, where it is indicated that Webb had no such claim. In that respect Webb differs from *Boothe v. Fitzpatrick*, discussed by the court, because there would have been a claim in that case even in the absence of a promise. But if Webb had honestly believed that he had a claim, would that not have been enough under *Fiege*?

At this point the student can be asked for solutions to the problem posed by action in the past: (1) the traditional view (*Mills v. Wyman*); (2) a judicial liberalization of the traditional view (*Webb v. McGowin*); (3) legislation directed at moral obligation in particular (the new York statutes); (4) the language of Restatement Second Sec. 86 (regarded as a statute); or (5) more general legislation (the Penn. & N.M. stats).

Week #15 – 16

Material	Subject
Text	Chapter 3, Pre-Existing Duty & Consideration, Pages 111 - 552

Week # 15 – 16 (Continued)

Roadmap Outline	Read and Finish Q & A for Chapter 3, Pages 101 - 166
CD-ROM	Video Lecture Series #8 (review notes)
Audio	Listen to Tapes 1B & 2A

End of Week #16

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #17 – 18

Material	Subject
Text	Chapter 4, Bargained for Exchange, Pages 553 - 704
Roadmap Outline	Read and Begin Q & A for Chapter 3, Pages 101 - 166
CD-ROM	Video Lecture Series #9 (review notes)
Audio	Listen to Tapes 3A, 3B, 4A & 4B

Week #19 – 20

Material	Subject
Text	Chapter 4, Bargained for Exchange, Pages 553 – 704
Roadmap Outline	Read and Finish Q & A for Chapter 3, Pages 101 - 166
CD-ROM	Video Lecture Series #9 (review notes)
Brief 3 Cases – Chapter 4	United States v. Bethlehem Steel Corp. (Consideration) Pg. 576

	Patterson v. Walker-Thomas Furniture Co. (Unconscionability), Pg. 603 Foakes v. Beer (Creditor / Debtor), Pg. 668
Audio	Listen to Tapes 3A, 3B, 4A & 4B
<p>Professor Comments:</p> <p>***<u>Kirksey v. Kirksey</u>: Now we turn to the problem of unsolicited action. If consideration must be bargained for, how can unsolicited action be consideration? In this subsection we see the problem; in the next subsection we consider “promissory estoppel” as a solution. From cases in which there was no exchange, we turn to cases in which there was no bargain.</p> <p>Kirksey v. Kirksey (page 473) is such a case. It can be counted on to provoke puzzlement and opposition. What did Judge Ormond’s “brothers” think? Evidently that the words, “If you will come down and see me”, were words of condition attached to a gratuitous promise, and not words of bargain.</p> <p>Two years later the same court explained that the letter in Kirksey contained “a mere gratuitous promise”. Forward v. Armstead, 12 Ala. 124 (1847). In Bibb v. Freeman, 59 Ala. 612 (1877), the court said it was “often a matter of great difficulty, to discern the line which separates promises creating legal obligations, from mere gratuitous agreement”. It gave Kirksey as an example.</p> <p>Broadnax v. Ledbetter (Note 2, page 97) involves a problem that is often treated not as one of consideration but as one of offer and acceptance – the offeree must know of the offer when accepting. The case is presented here in the belief that it follows logically from the requirement of bargain – Broadnax could not capture Vann as the result of bargaining by Ledbetter if he was unaware that Ledbetter was bargaining for Vann’s capture. The promisor must be seeking something from the promisee (Kirksey v. Kirksey) and the promisee must give it in response (Broadnax v. Ledbetter). The student who disagrees with the result should be asked, here as in Kirksey, whether this dissatisfaction is with the application of the doctrine of</p>	

Week # 19 - 20

<p>Professor Comments: (continued)</p> <p>consideration. If the latter, the student might be asked whether the German rule is preferable. At this point the student may be asked what major classes of promises are unenforceable under the requirement of consideration: (1) gift promises; (2) promises given in recognition of moral obligation; (3) promises of which the promisee was unaware.</p>

To what extent are these economically significant in a commercial society? Student dissatisfaction with the doctrine of consideration is likely to be strongest with respect to gift promises where there has been reliance, as in *Kirksey v. Kirksey*. So it is high time to take up reliance as an alternative basis for enforcement.

The Peppercorn Theory: There are few cases dealing with peppercorns or the like in connection with the requirement of consideration in general. Most of the decided cases relate to what is sufficient to support a promise not to revoke an offer, a matter dealt with in the discussion of option contracts. It may not be surprising to see \$1.00 as consideration for an option to buy a parcel of land but it would be surprising to see \$1.00 as consideration for a promise to sell the land – unless it is a disguised promise of a gift.

Fiege v. Boehm, however, affords a more practical setting for examining how little it takes to support a promise. In this instance, Boehm’s forbearance to pursue a claim that turned out, as a matter of fact, to have been worthless.

Nevertheless, she made the charge in “good faith”, the court concludes, and this is enough. What about an objective ingredient? It may be interesting to ask whether Boehm was in good faith. Does it appear that she disclosed everything to Fiege? Could she have made several such agreements if she had several partners?

References: “Contracts” by Farnsworth, Pages 12 – 27

End of Week #20

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #21 – 22

Material	Subject
Text	Chapter 5, Formalized Contracts, Pages 705 - 752
Roadmap Outline	Read and Finish Q & A for Chapter 3, Pages 101 - 166
CD-ROM	Video Lecture Series #10 (review notes)
Brief Secondary Authority	Submit Secondary Authority: J. Ames, “Lectures on Legal History”, Pg. 723
Brief 1 Case – Chapter 5	<i>Sir Anthony Sturlyn v. Albany (Consideration)</i> , Pg. 706

Week #23 – 24

Material	Subject
Text	Chapter 6, Statute of Frauds, Pages 753 – 820
Roadmap Outline	Read and Finish Q & A for Chapter 4, Pages 167 - 184
CALI	“Defenses” by Scott J. Burnham
CD-ROM	Video Lecture Series #10 (review notes)
Brief Statute	Uniform Commercial Code Sec. 2-201, Pg. 780
Brief 3 Cases – Chapter 6	Lawrence v. Anderson (Statute of Frauds), Pg. 757

Week # 23 – 24 (Continued)

	Crabtree v. Elizabeth Arden Sales Corp. (Statute of Frauds), Pg. 783 Imperator Realty Co., Inc. v. Tull (Estoppel), Pg. 801
Audio	Listen to Tapes 3A, 3B, 4A & 4B

End of Week #24

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #25 – 26

Material	Subject
Text	Chapter 7, Parol Evidence Rule, Pages 821 – 860
Roadmap Outline	Read and Finish Q & A for Chapter 14, Pages 309 - 325
CD-ROM	Video Lecture Series #14 (review notes)
Brief Statute	Uniform Commercial Code Sec. 2-202, Pg. 842
Brief Secondary Authority	Submit Secondary Authority: “Corbin, The Parol Evidence Rule”, Pg. 825
	Mitchill v. Lath (Parol Evidence), Pg. 837

Brief 3 Cases – Chapter 7	Zell v. American Seating Co. (Parol Evidence),Pg. 852 American Seating Co. v. Zell (Parol Evidence),Pg. 859
Audio	Listen to Tape 2B

Week #27 – 28

Material	Subject
Text	Chapter 8, Mistake, Pages 861 – 972
Roadmap Outline	Read and Finish Q & A for Chapter 9, Pages 237 - 246
CD-ROM	Video Lecture Series #12
Brief Secondary Authority	Submit Secondary Authority: I Williston on Contracts Sec. 95, Pg. 866
Brief 5 Cases – Chapter 8	Hotchkiss v. National City Bank of New York (Mistake), Pg. 866 Raffles v. Wichelhaus (Mistake), Pg. 869 Ricketts v. Pennsylvania R.R. (Frustration), Pg. 883 Sherwood v. Walker (Mistake), Pg. 887 Krell v. Henry (Frustration), Pg.926
Audio	Listen to Tape 2A

Professor Comments:

Impracticality: Professor Harold Berman has argued that the doctrines of impossibility and frustration are out of place in relation to international trade transactions.

Examining the standard terms they employ, he infers that the parties rely not on the peculiar doctrines which might excuse performance in this or that country, but on the sanctity of contract, “their surest defense”, plus their own precautionary drafting of special clauses. A charter party, for instance, is not a “hit-or-miss effort to foresee the future”, but a “serious attempt to exhaust the possible allocations of risks”.

Berman, Excuse for Nonperformance in the Light of Contract Practices in International Trade, 63 Colum.L.Rev. 1413 (1963). (For less stringent Views, see Birmingham, A Second Look at the Suez Canal Cases, 20 Hast. L.J. 1393 (1969) (providing an economic analysis), and Schlegel, Of Nuts, and Ships, and Sealing Wax, Suez, and Frustrating Things, 23 Rutgers L.Rev. 419 (1969), both

Week # 27 – 28 (Continued)

Professor Comments: (continued)

suggesting a graduated response to differing equities). Does the court reject that view in the main case?

The Canal was closed again on June 5, 1967. at that time the tanker Washington Trader was about 84 miles from Port Said, on a voyage from Beaumont to Bombay. As in the main case, the claimant (owner of the vessel) sought to chare the charterer with the additional cost of the voyage around the Cape: about \$132,000.00 . This sum was almost a third of the freight paid at the agreed rate, as compared with the 14% overrun in Transatlantic. The closing took the Washington Trader more than 8,000 miles out of her way. (Note the example used in footnote 5 of the main case, of a vessel that has “traversed most of the Mediterranean Sea”). These figures did not persuade the court that the charterer should pay more than it had contracted for.

The owner sought to distinguish Transatlantic on the ground that a flat rate was contracted for there, whereas in the present case the freight was calculated on the basis of a prevailing rate (per ton) applicable to transport through the Canal. Gain the court was unpersuaded. American Trading & Pro. Corp. v. Shell Internat’l Marine Ltd., 453 F.2nd 939 (2nd cir.1972). In that case Judge Mulligan (seen earlier in Spang, page 539) wrote:

Matters involving impossibility or impracticability of performance of contract are concededly vexing and difficult. One is even urged on the allocation of such risks to pray for the “wisdom of Solomon”. (Citing Corbin). On the basis of all of the facts, the pertinent authority and a further belief in the efficacy of prayer, we affirm.

Reference: “Contracts” by Farnsworth, Pages 233 - 235

End of Week #28

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #29 – 30

Material	Subject
Text	Chapter 9, Conditions, Pages 973 - 1061
Roadmap Outline	Read and Finish Q & A for Chapter 15, Pages 325 - 344
CALI	“Contract Formation I & II” by Matthew C. McKinnon

CD-ROM	Video Lecture Series #15 (review notes)
Brief Statute	Uniform Commercial Code and perfect Tender Rule, Pg. 1005
Brief 1 Case – Chapter 9	Norrington v. Wright (Implication of Conditions), Pg. 990
Audio	Listen to Tapes 2B & 3A
<p>Professor Comments:</p> <p><u>Conditions</u>: Conditions are a major type of building block in the structuring of contractual obligations. We begin with the Restatement definition of “condition”, which does not differentiate between conditions inferred from an exchange of promises (constructive ones) and those established more directly as an application of contract language (express ones). This Section concerns the latter.</p> <p>International-Rotterdam, Inc. v. River Brand Rice Mills presents an attempt at cancellation by a commodity seller upon a buyer’s delay in giving shipping instructions. Although the delay was a matter of hours, the seller took preemptory</p>	

Week # 29 - 30 (Continued)

<p>Professor Comments: (continued)</p> <p>Cancellation by a commodity seller upon a buyer’s delay in giving shipping instructions. Although the delay was a matter of hours, the seller took preemptory action to seize a market advantage. The court concludes that the contract “made shipment in December of the essence” so that “the failure to give the notice on or before December 17 (two weeks in advance of December 31) was nonperformance...of a condition”. The decision has been subjected to a blunt assault, but students should be led to see that, in forward contracts in a fluctuating market, the time for delivery is closely tied to price.</p> <p>The letter of credit is an additional factor. To say that “time is of the essence” is to say that timely performance is a condition. These issues are not confined to contracts for the sale of goods, although timely performance is generally considered to be more important under such contracts than under contracts for the sale of land. A convenient way to get this across is through this drafting exercise.</p>

In consideration of Ship owner's promise to sail to Cadiz and return with cargo, Cargo Owner promises to pay freight (at a specified rate) and

- (a) Ship Owner promises to sail with the next wind.
- (b) Freight is to be payable only if Ship Owner sails with the next wind.
- (c) Ship Owner promises to sail with the next wind, and freight is payable only Ship Owner does so.
- (d) of course (b) and (c) leave open the possibility of relief for forfeiture. Moreover, (a) leaves open the possibility of a constructive condition of exchange. Such conditions are the subject of the section that follows.

Condition or measure of time? Peacock Construction asks whether an event (payment by the owner) is a condition or merely a convenient means of measuring the time for payment. It gives the almost universal answer that the event is merely a means of measuring time. A student can be asked to draft a provision that would assure a result for each party. For Peacock: "within 30 days after the following if the have all occurred". For Modern: "within 30 days after...full payment therefore by the Owner or in any event after the Owner should have paid".

Reference: "Contracts" by Farnsworth, Pages 192 - 195

Week # 31 – 32

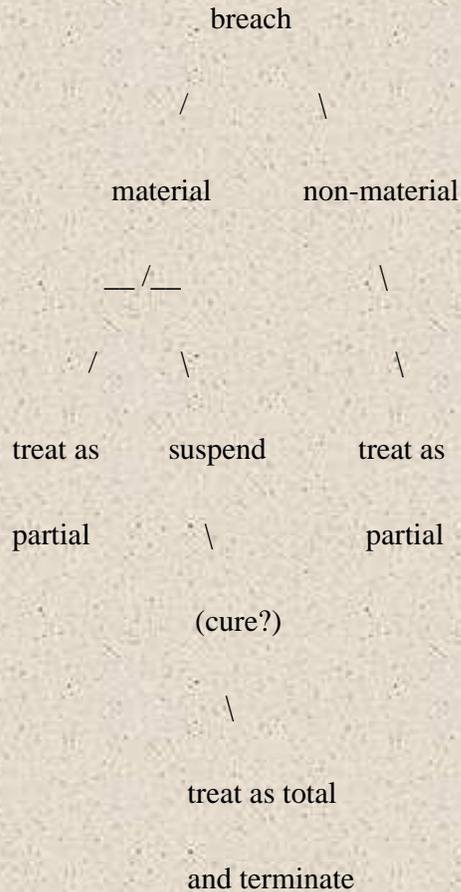
Material	Subject
Text	Chapter 10, Remedies, Pages 1061 - 1328
Roadmap Outline	Read and Finish Q & A for Chapter 22, Pages 451 - 470
CALI	"Third Party Beneficiaries" by Matthew C. McKinnon
CALI	"Illegal Promises" by Scott J. Burnham
CALI	"Lack of Capacity" by Scott J. Burnham
CALI	"Void, Voidable, and Unenforceable Contracts" by Scott J. Burnham
CD-ROM	Video Lecture Series #17 & #20 (review notes)
Brief Statutes	Uniform Commercial Code Sec. 2-716, Pg. 1101 Uniform Commercial Code Sections 2-706, 2-708, 2-710, 2-712, 2-713 & 2-715, Pg. 1132 Uniform Commercial Code Sections 2-718 & 2-719,

Week # 31 – 32 (continued)

	<p>Pg. 1239</p> <p>Uniform Commercial Code Sec. 2-316, Pg. 1256</p> <p>Uniform Commercial Code Sections 2-610 & 2-611, Pg. 1307</p>
Brief 3 Cases – Chapter 10	<p>Lumley v. Wagner (Specific Performance) Pg. 1075</p> <p>Hadley v. Baxendale (Damages), Pg. 1138</p> <p>Daniels v. Newton (Damages), Pg. 1270</p>
Audio	Listen to Tapes 4A & 4B
<p>Professor Comments:</p> <p><u>Anticipatory Repudiation</u>: Walker & Co. v. Harrison (page 735) is such a case. Harrison leased for three years a neon advertising sign, agreeing to pay Walker monthly. When, as he saw it, they failed to maintain the sign, he sent an angry telegram, upon which Walker sued him. Students can be expected to see that Walker's failure, minor though it may have been, was a breach. The point is that it was not a material breach – not one that triggered the operation of the doctrine of constructive conditions of exchange. Therefore his telegram was a repudiation and he was liable.</p> <p>What could Harrison have done? Students will have to engage in a little guesswork, since some of these suggestions involve material that is yet to come. All we know is that what he did do was foolish.</p> <ol style="list-style-type: none"> (1) Grin and bear it and claim damages for partial breach. Hire a teenage to clean off the sign and send Walker the bill. (This takes no advantage of the doctrine of constructive conditions of exchange). (2) Wait and try to coax a repudiation out of Walker. (Perhaps combine with (1)). (3) Subtract damages from partial breach from one month's rent. (4) Hold back on one month's rent. (Harrison could not justify this on the ground of setting off his damages, unless they were greater than one month's rent). (5) Ask for assurances. (6) Send telegram giving ultimatum as to time to clean sign. 	

Facts reminiscent of those in Harrison's case appeared in *C.L. Maddox, Inc. v. Coalfield Servs.*, 51 F.3rd 76 (7th Cir.1995).

Here is a chart illustrating possible options for an aggrieved party.



Week # 31 – 32 (Continued)

Professor Comments: (continued)

Here is a charge to a jury on material breach. Jury Instructions for Contract Cases 450 (1995):

To prevail, the plaintiff has the burden to prove one of two things in this regard: either that it did not breach the contract as the defendant contends or that any such breach was not material.

Whether a breach is material must be measured in light of what the parties intended at the time they entered into their contract. You may consider such factors as:

- (1) Whether the breach would defeat the basic purpose of the contract.
- (2) Whether the breach would cause disproportionate prejudice to the defendant.
- (3) Whether custom considers such a breach to be material.
- (4) Whether excusing the breach would allow the plaintiff to obtain an reasonable and unfair advantage.

End of Week #32

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #33 – 34

Material	Subject
Text	Chapter 11, 3 rd Party Beneficiaries, Pages 1329 - 1440
Roadmap Outline	Read and Finish Q & A for Chapter 24, Pages 489 – 514
Text	Chapter 12, Assignment, Pages 1441 – 1558
Roadmap Outline	Read and Finish Q & A for Chapter 24, Pages 489 - 514
CALI	“Contract Assignments” by Matthew C. McKinnon
CD-ROM	Video Lecture Series #23 (review notes)
Brief 2 Cases – Chapter 11	Lawrence v. Fox (3 rd Party Beneficiaries), Pg. 1333 Rouse v. United State (Rescission), Pg. 1428
Audio	Listen to Tapes 1 - 4

Week #35 – 36

Material	Subject
Text	Chapter 12, Assignment, Pages 1441 – 1558
Roadmap Outline	Read and Finish Q & A for Chapter 24, Pages 489 - 514
CD-ROM	Video Lecture Series #24 (review notes)
Brief Statutes	Uniform Commercial Code Sec.2-210, Pg. 1519 Uniform Commercial Code Sec.9-318, Pg. 1527 Commercial Code, Pg. 1556
Brief Secondary Authorities	Submit Secondary Authorities: Restatement of Contracts Second Sec.336, Pg. 1527 Restatement of Contracts Second Sec.342, Pg. 1553
Brief 3 Cases – Chapter 12	Sillman v. Twentieth Century-Fox Film Corp. (Assignment), Pg. 1466 Langel v. Betz (Delegation), Pg. 1500 Commercial Credit Corp. v. Orange County Machine Works (Assignment), Pg. 1529
Audio	Listen to Tapes 1 - 4

End of Week #36

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #37 – 38

Material	Subject
All	Review Material for Midterm Exam
CALI	“Misunderstanding and Mistake” by Scott J. Burnham
CALI	“The Statute of Frauds” by Scott J. Burnham
CALI	“Duress and Undue Influence” by Scott J. Burnham
CALI	“Unjust Terms” by Scott J. Burnham

End of Week #38

Midterm Examination- MBEs	Answer and submit all Midterm MBE Questions (listed on MBE page).
Midterm Examination - Essays	Answer the 2 Contracts Midterm Essay Questions posted at the end of this syllabus and submit via e-mail for grading. Graded Examinations returned via e-mail in 7-10 days.

Week #39 – 40

Material	Subject
Text	Chapter 9, Conditions, Pages 973 - 1060
Roadmap Outline	Read and Finish Q & A for Chapter 15, Pages 325 - 344
CD-ROM	Video Lecture Series #15 – 17 (review notes)
Audio	Listen to Tapes 2B & 3A

End of Week #40

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #41 – 42

Material	Subject
Text	Chapter 9, Concurrent & Subsequent Material Breach, Pages 973 - 1060
Roadmap Outline	Read and Finish Q & A for Chapter 15, Pages 325 - 344
CD-ROM	Video Lecture Series #15 – 17 (review notes)
Audio	Listen to Tapes 2B & 3A

Week #43 – 44

Material	Subject
Text	Chapter 9, Excusable Non-Performance, Pages 973 - 1060
Roadmap Outline	Read and Finish Q & A for Chapter 15, Pages 325 - 344
CD-ROM	Video Lecture Series #18 & #19

End of Week #44

Study Record	Study Record Due (include any Roadmap Assignments)
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Week #45 – 46

Material	Subject
Text	Chapter 10, Repudiation, Pages 1061 – 1328
Roadmap Outline	Read and Finish Q & A for Chapter 18, Pages 385 – 393
Text	Chapter 10, Equitable Relief

Week # 45 – 46 (Continued)

Roadmap Outline	Read and Finish Q & A for Chapter 10, Pages 1061 - 1328
Text	Chapter 10, Expectation Interest, Pages 1061 – 1328
Roadmap Outline	Read and Finish Q & A for Chapter 18, Pages 385 - 393
CALI	“Contract Tutorials on Damages” by Richard Warner
CALI	“Contract Tutorials on Remedies” by Richard Warner
CALI	“The Parol Evidence Rule” by Scott J. Burnham
CALI	“The Pre-Existing Duty Rule, Contract Modification, and Accord & Satisfaction” by John A. Humbach
CALI	“The Statute of Frauds” by Scott J. Burnham
CD-ROM	Video Lecture Series #19 – 29 (review notes)
Audio	Listen to Tapes 1 - 4

Week #47 – 48

Material	Subject
All	Review Material for Final Exam
CD-ROM	Video Lecture Series #1 - 29
Audio	Listen to Tapes 1 - 4

End of Week #48

Final Examination – MBEs	Answer and submit all Final MBE Questions (listed on MBE page).
Final Examination - Essays	Answer the 2 Contracts Final Essay Questions posted at the end of this syllabus and submit via e-mail for grading. Graded Examinations returned via e-mail in 7-10 days.

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns.

Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

Contact Information

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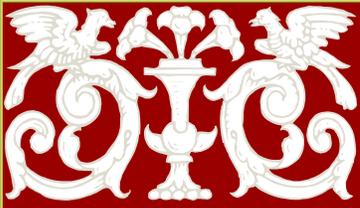
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