

Professor Jacob Katz Cogan
Office: Room 409
Telephone: 556-0105

Fall 2008

jacob.cogan@uc.edu

Contracts

Materials: The required books for this class are Knapp, Crystal, & Prince, *Problems in Contract Law: Cases and Materials* (6th ed. 2007) (KCP) and Knapp, Crystal, & Prince, *Rules of Contract Law, 2007-2008* (2007). The first of these is a casebook. The second contains excerpts from the Uniform Commercial Code (UCC), the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the Restatement (Second) of Contracts (R2d). When I assign excerpts from the UCC, the CISG, and the R2d, you should read them as carefully as you read the cases and other materials in the casebook. Occasionally, I will assign cases that are not in the casebook; these will be posted on the College of Law's website.

Assignments: At the end of each class, I will tell you what material you should prepare for the next several classes. I expect you to put in two to three hours of preparation for each class period. Part of that time should be spent on preparation for the next class: reading the assigned materials carefully, briefing the assigned cases, and (when a problem from the casebook is assigned) outlining your answer to the problem. But you should also devote time on a regular basis to reviewing your notes from previous classes and to making a course outline.

Class Format: Much of class will consist of me asking you questions about the assigned materials. Mostly, I will call on you randomly, though at times I will ask for volunteers. You will not know in advance which days you will be called on. I understand that issues may arise on occasion that prevent you from being prepared on a particular day. If that happens, please let me know before class begins that you would prefer not to be called on that day. You do not need to give me a reason. That said, class participation is an important component of the course, and it will be considered in your final grade (as noted below). If a student is consistently unprepared, the student may be withdrawn from the course or excluded from the final exam in accordance with the College of Law's Rules.

Attendance: Regular class attendance is required. Unexcused absences will lower your grade, and excessive unexcused absences may result in your withdrawal from the course or exclusion from the final exam. Excused absences (e.g., illness, family emergency, religious observance) will not put you in such jeopardy. If you are seeking an excused absence, please give me a brief explanation in writing (by email).

Grading: Your grade will be based on a final exam and class participation. In considering class participation and its positive or negative impact on your final grade, I will take into account such things as: your level of preparation, as reflected in whether and how well you answer questions in class; your classroom performance generally (e.g., your willingness and ability to engage in classroom discussion in a considered and thoughtful manner); and attendance (e.g., excessive absences and/or tardiness). The assigned problems will not be graded, but failure to submit a problem or problems will be taken into account in the class participation component as well.

Class Communications: I will make announcements in class and, occasionally, by email. When communicating by email, I will use your UC email address. You are responsible for checking your UC email regularly.

Office Hours: I will be in my office and available to talk about the course or law school more generally on Mondays from 3PM to 4PM. I am also available at other times by appointment.

Course Syllabus

Note: Syllabus subject to revision during the course of the term.

I. Introduction

KCP pp. 2-17
U.C.C. §§ 2-102, 2-105
CISG art. 1

II. Contract Formation

A. Mutual Assent

1. The Objective Theory of Contract

Lucy v. Zehmer (handout)
<http://www.aalscontracts.com/lucyvzehmer.html>
R2d §1, 2, 4, 21, 201
CISG art. 8

2. Offer and Acceptance

a. Bilateral Contracts

KCP pp. 33-38
Lonergan v. Scolnick
R2d §§ 17, 22, 24, 26, 33, 63
UCC §§ 2-204, 2-206
CISG arts. 14, 15, 16(1), 18(2)

KCP pp. 44-51
Normile v. Miller
R2d §§ 36, 38, 39, 43, 50, 58-60, 69

b. Unilateral Contracts

KCP pp. 51-57 (through bottom of the page); 58-63
Petterson v. Pattberg
Cook v. Coldwell Banker/Frank Laiben Realty Co.
Comment: Remedies for Breach of Contract
R2d §§ 32, 45

c. Oral Contracts

KCP pp. 63-70
Harlow & Jones, Inc. v. Advance Steel Co.
Comment: Introduction to the CISG
R2d § 22
UCC § 2-204

B. Consideration

KCP pp. 71-75; 78-85 (through note 6)
Hamer v. Sidway
Pennsy Supply, Inc. v. American Ash Recycling Corp.
R2d §§ 71, 74, 79

KCP pp. 87-89 (until the block quote); 93-99 (excluding note 3)
Dougherty v. Salt
Batsakis v. Demotisis
R2d §§ 73, 77, 79(b), 81

KCP pp. 99-105 (up until the Comment)
Plowman v. Indian Refining Co.

C. Applying the Concept of Mutual Assent: Problems

1. Irrevocable Offers

KCP pp. 108-19 (through note 5)
James Baird Co. v. Gimbel Bros., Inc.
Drennan v. Star Paving Co.

KCP pp. 136-37
Problem 2-1

KCP pp. 138-39 (through first full paragraph)

R2d §§ 87, 63(b)
UCC §§ 2-205, 2-104(1), 2-105(1), 1-201(39) & (46)
CISG art. 16(2)

2. Battle of the Forms

KCP pp. 143-63
Princess Cruises, Inc. v. General Electric
Brown Machine, Inc. v. Hercules, Inc.
UCC § 2-207

KCP, pp. 163-65
Problem 2-4

Filanto v. Chilewich (handout)
CISG arts. 19, 18(1), 8(3)

Problem 2-4 (again) applying the CISG

3. Agreements to Agree and Open Terms

KCP pp. 167-88
Walker v. Keith
Quake Construction, Inc. v. American Airlines, Inc.
R2d § 27
UCC §§ 2-204(3), 2-305

4. Electronic Contracting

KCP pp. 193-212
Brower v. Gateway 2000, Inc.
Register.com, Inc. v. Verio, Inc.
R2d § 69(1)
UCC § 2-206

D. Liability in the Absence of Bargained-For Exchange

1. Promissory Estoppel

KCP pp. 216-22

Kirksey v. Kirksey

Greiner v. Greiner

R2d § 90(1)

KCP pp. 228-34 and notes 3-4 on pages 235-36

King v. Trustees of Boston University

R2d § 90(2)

KCP pp. 237-44

Katz v. Danny Dare, Inc.

2. Restitution

KCP pp. 255-66, 273-86

Credit Bureau Enterprises, Inc. v. Pelo

Watts v. Watts

KCP pp. 286-99 (except note 4 on pp. 297-99)

Mills v. Wyman

Webb v. McGowan

R2d §§ 82, 83, 86

KCP pp. 300-1

Problem 3-2

E. Statute of Frauds

KCP pp. 302-14

Crabtree v. Elizabeth Arden Sales Corp.

R2d §§ 110, 131-134

KCP pp. 323-32

Alaska Democratic Party v. Rice

R2d § 139

KCP, pp. 332-34

Problem 4-1

KCP pp. 335-46

Buffaloe v. Hart

UCC §§ 2-201, 1-201(39) & (46)

CISG art. 11

III. Contract Interpretation

A. Principles of Interpretation

KCP, pp. 350-70 (except pp. 358-61 and note 7 on pp. 369-70)

Joyner v. Adams

Frigalimint Importing Co. v. B.N.S. International Sales Corp.

R2d §§ 20, 201-204, 206-207, 222-223

UCC §§ 1-205, 2-208
CISG arts. 8-9

KCP, 370-82 (except notes 3-4 on pp. 379-80)
C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.
R2d § 211

B. The Parol Evidence Rule

1. The Common Law Rule

KCP, pp. 382-418 (except notes 5-6 on pp. 407-10)
Thompson v. Libby
Taylor v. State Farm Mutual Automobile Insurance Co.
Sherrodd, Inc. v. Morrison-Knudsen Co.
R2d §§ 209-211, 213-217

2. The UCC Rule and Trade Usages

KCP, pp. 418-31 (through note 5)
Nanakuli Paving & Rock Co. v. Shell Oil Co.
UCC §§ 2-202, 1-205, 2-208

KCP pp. 432-34
Problem 5-1

3. Parol Evidence under the CISG

MCC-Marble Ceramic Center v. Ceramica Nuova D'Agostino (handout)
KCP, pp. 408-10 (note 6)
CISG arts. 6, 8, 9, 11

C. Supplementing the Agreement

1. Reasons for Implied Terms

KCP, pp. 437-48
Wood v. Lucy, Lady Duff-Gordon
Leibel v. Raynor Manufacturing Co.
UCC §§ 2-306(2), 2-308, 2-309
CISG arts. 31, 33

2. Implied Obligation of Good Faith

KCP, pp. 448-80
Seidenberg v. Summit Bank
Morin Building Products Co. v. Baystone Construction, Inc.
Locke v. Warner Bros., Inc.
R2d § 205
UCC §§ 1-102(3), 1-203, 1-201(19), 2-103(1)(b), 2-306(1)
CISG art. 7(1)

IV. Enforcement Issues

A. Grounds Not to Enforce a Contract

1. Problems with the Parties

a. Minority and Mental Incapacity

KCP, pp. 517-37 (except Problem 7-1)

Dodson v. Shrader

Hauer v. Union State Bank of Wautoma

R2d §§ 14-16

UCC § 1-103

CISG art. 4

2. Problems with the Process

a. Duress and Undue Influence

KCP, pp. 537-56

Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.

Odorizzi v. Bloomfield School District

R2d §§ 174-177

b. Misrepresentation and Nondisclosure

KCP, pp. 556-78

Syester v. Banta

Hill v. Jones

R2d §§ 161-164, 168-169, 173

3. Problems with the Substance of the Contract

a. Unconscionability

KCP, pp. 584-99 (except note 6 on pp. 595-96)

Williams v. Walker-Thomas Furniture Co.

Comment: Consumer Protection Legislation

UCC § 2-302

R2d § 208

b. Public Policy

KCP, pp. 632-47 (except problem 7-2)

Valley Medical Specialists v. Farber

R2d §§ 178, 181, 187-188

B. Justifications for Nonperformance

1. Mistake

KCP, pp. 663-74

Lenawee County Board of Health v. Messerly

R2d §§ 152-154, 157

2. Impossibility, Impracticability, and Frustration

KCP, pp. 684-711

Karl Wendt Farm Equipment Co. v. International Harvester Co.
Mel Frank Tool & Supply, Inc. v. Di-Chem Co.

R2d §§ 261-265

UCC §§ 2-613, 2-615

CISG art. 79

KCP, pp. 711-13

Problem 8-1

3. Modification

KCP, pp. 715-40

Alaska Packers' Assn v. Domenico
Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.
Brookside Farms v. Mama Rizzo's, Inc.

R2d §§ 73, 89

UCC § 2-209

CISG art. 29

KCP, pp. 713-15

Problem 8-3

4. Express Conditions Not Met

KCP, pp. 783-804

Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co.
J.N.A. Realty Corp. v. Cross Bay Chelsea, Inc.

R2d §§ 84, 224-27, 228, 229, 245

KCP, pp. 804-806

Problem 10-1

5. The Other Party's Material Breach

KCP, pp. 806-24

Jacob & Youngs, Inc. v. Kent

Comment: The Doctrine of Constructive Conditions

Sackett v. Spindler

R2d §§ 234-35, 237, 240-42

UCC §§ 2-601, 2-608, 2-508

CISG arts. 25, 49(1)(a), 51(2)

6. The Other Party's Anticipatory Repudiation

KCP, pp. 824-41

Truman L. Flatt & Sons Co. v. Schupf

Hornell Brewing Co. v. Spry

R2d §§ 250, 251, 253, 256

UCC §§ 2-609, 2-610, 2-611

CISG arts. 71-73

KCP, p. 842
Problem 10-2

V. Damages

A. Expectation Damages

1. Computing Damages

KCP, pp. 845-68
Roesch v. Bray
Handicapped Children's Education Board v. Lukaszewski
American Standard, Inc. v. Schectman
R2d §§ 344, 347, 348, 349
U.C.C. §§ 2-703, 2-711
CISG art. 74-76

2. Restrictions on Recovery: Foreseeability, Certainty & Causation

KCP, pp. 868-86
Hadley v. Baxendale
Florafax International, Inc. v. GTE Market Resources, Inc.
R2d §§ 351, 352
UCC §§ 2-710, 2-715, 2-719
CISG art. 74

3. Restrictions on Recovery: Mitigation

KCP, pp. 886-910
Rockingham County v. Luten Bridge Co.
Havill v. Woodstock Sopstone Company, Inc.
Jetz Service Co. v. Salina Properties
R2d § 350
UCC § 2-708(2)
CISG art. 77

4. Nonrecoverable Damages

KCP, pp. 911-35
Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Co.
Erlich v. Menezes
Comment: Recovery of Punitive Damages
R2d §§ 353, 355

KCP, pp. 935-37
Problem 11-1 (assume that the common law applies, not the U.C.C.)

B. Other Remedies

1. Reliance Damages

KCP, pp. 965-83
Wartzman v. Hightower Productions, Ltd.
Walser v. Toyota Motor Sales, U.S.A., Inc.
R2d § 349

2. Restitution

KCP, pp. 983-95

U.S. ex rel. Coastal Steel Erectors, Inc. v. Algernon Blair, Inc.
Lancellotti v. Thomas

R2d §§ 370-371, 373-377

UCC § 2-718(2)-(4)

3. Specific Performance

KCP, pp. 1009-31

City Stores Co. v. Ammerman
Reier Broadcasting Co. v. Kramer

R2d §§ 359-360, 362-67

UCC § 2-716

CISG arts 46, 62, 28

4. Agreed Remedies: Liquidated Damages and Penalty Clauses

KCP, pp. 1031-44

Westhaven Associates, Ltd. v. C.C. of Madison, Inc.

R2d § 356, 361

UCC § 2-718