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## 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 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 outside of class for every class period. Part of that time you should spend preparing 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 each class will consist of me asking you questions about the materials you have read. 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 If a student is consistently unprepared, the student may be withdrawn from the course or excluded from the final exam in accordance with the College of Law's Rules.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 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 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 Tuesdays from 3PM to 4PM. I am also available at other times by appointment.

## Course Syllabus

### 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://aalscontracts.com/pages/36/index.htm>  
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.  
R2d § 22  
UCC § 2-204

#### B. Consideration

KCP pp. 71-75; 78-84 (through note 4)  
Hamer v. Sidway  
Pennsy Supply, Inc. v. American Ash Recycling Corp.  
R2d §§ 71, 74, 79

KCP pp. 87-89 (until the quote); 93-99 (excluding note 3)  
Dougherty v. Salt  
Batsakis v. Demotsis  
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. 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 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, 370-81 (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

### **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

Turner v. Benson

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