Contract Law

RULES, CASES, AND PROBLEMS

SAMPLE TEACHER'S MATERIALS

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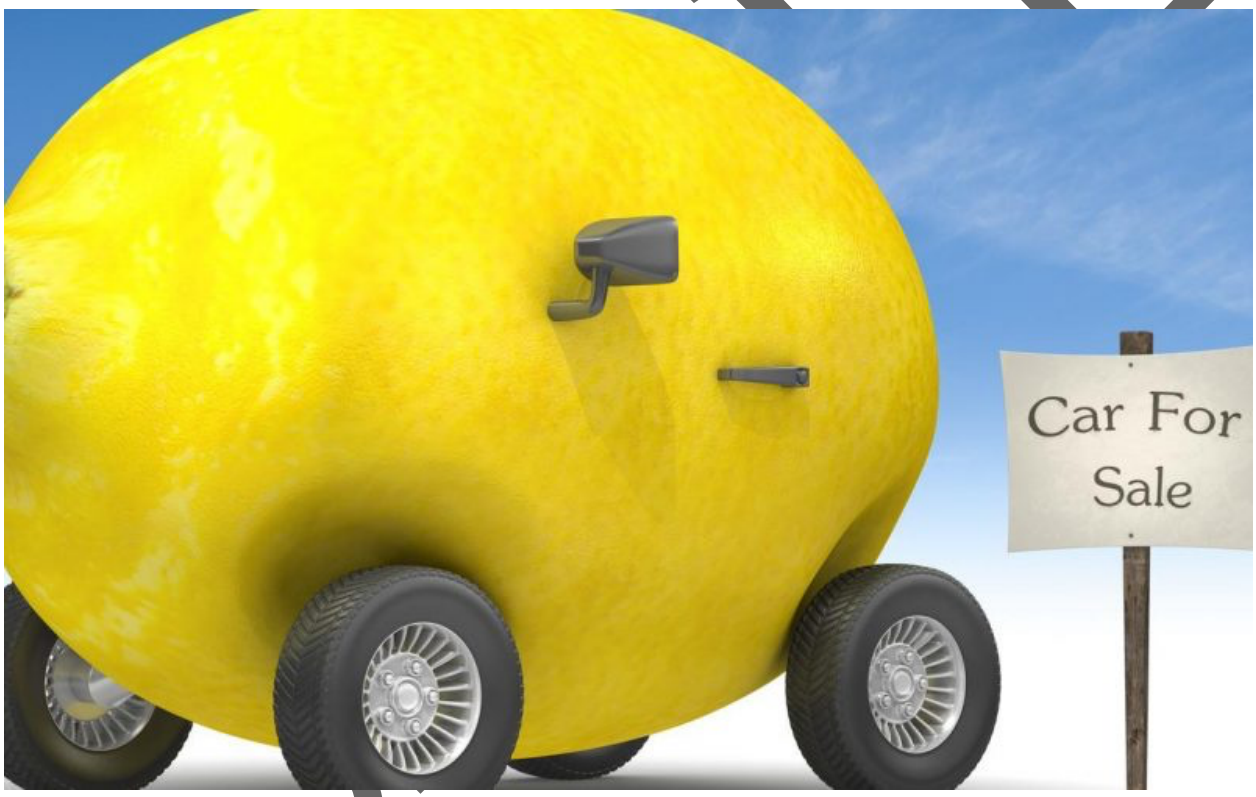
ESSAY QUESTIONS, MODEL ANSWERS, AND RUBRICS FOR SELF-ASSESSMENT

Contract Law

Essay Questions, Model Answers, and Rubrics for Self-Assessment

MODULE I

"The Infant and the Lemon"



ESSAY 01 (MODULE I) – Question: "The Infant and the Lemon"

Dobson entered an oral contract with Rosini Motor Company ("Rosini") for the purchase of a used automobile. At the time of contracting, Dobson was an infant. The two agreed that Dobson would pay $2,500 for the vehicle, and Rosini would bear liability for any expenses incurred by reason of repairs needed to put the vehicle in "proper working condition."

Dobson paid the purchase price. Two months later, Dobson was required to pay Apichell Motors, an automobile repair company, $350 for repairs. Another two months passed, and Dobson was forced to pay $450 to Rosini for even more repairs. The car continued to be mechanically defective.

Four months after the contract was entered, Dobson notified Rosini that he disaffirms the contract and provides Rosini with the precise location of the vehicle. "Disaffirmance" is "the act by which a person who has entered into a voidable contract as, for example, an infant, disagrees to such contract and declares he will not abide by it."

Dobson brings a claim against Rosini to recover the purchase price of the car and the amount he was required to spend on repairs.

Will Dobson be permitted to void the contract because he is an infant and the car is not a necessary?

Write out your answer using the IRAC+ paradigm.

See Dobson v. Rosini, 20 Pa. D. & C. 2d 537 (1960).

ESSAY 01 – Model Answer: "The Infant and the Lemon"

ISSUE

The issue is **whether** Dobson, an "infant," can recover the purchase price of a car and/or the amount spent on repairs, where the contract regards his purchase of a car and the facts do not say why he needed that car.

RULES

Under the common law of contracts, "a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday." R2d § 14. R2d refers to the eighteenth birthday because the vast majority of states established by statute that the age of majority begins on a person's eighteenth's birthday; prior to that, persons are "infants." R2d § 14 cmt. a. The specific

exception to this general rule is that "an infant is liable for the value of necessaries furnished him." *Webster St. P'Ship*. "Necessaries" are flexibly defined as things for which the particular infant has an action need. *Id.*

ANALYSIS

Here, the facts clearly establish that Dobson is an infant, so court's decision should turn on whether the contract regards a "necessary."

Dobson's Arguments:

- Dobson will argue that the car is not a necessary because there are no facts showing he actually needed this car.
- Dobson will argue that he is entitled to $3,300, which reflects the amounts he paid for the vehicle and its repairs, because he is an infant who contracted for a non-necessary and thus he can avoid the contract and get his money back.
- Dobson will argue that he is entitled to refund on the purchase price of the vehicle because he was an infant who disaffirmed the purchase contract by returning the car to Rosini.
- Dobson will argue that he is entitled to return of the cost of the vehicle and reimbursement of repair costs because he disaffirmed the contract.

Rosini's Arguments:

- Rosini will argue that people need cars to survive in modern society, making them *de facto* necessaries, so a contract for a car is not voidable even by an infant.
- Rosini will argue that it is not liable for any refund to Dobson because Dobson implicitly affirmed the contract by asking for payment of repairs per the contract.

CONCLUSION

The court should find that Rosini has not alleged sufficient facts to show that this particular infant needed this particular vehicle. Therefore, Dobson will clearly be able

to avoid this contract. However, if Rosini bring additional facts that show that Dobson actually needed this vehicle, then the contract probably will not be voidable.

- While it may be true that vehicles are often necessaries, the law requires specific showing that this particular infant, Dobson, had a particular need for this vehicle.
- The burden is on Rosini to prove that the car was necessary for Dobson.
- The facts are insufficient to show necessity, so Dobson should prevail on his claim that he voided the purchase agreement for this vehicle.

Additional Notes:

The court should not find, however, that Rosini must pay for the repairs. Although Rosini contractually promised to pay for repairs of the vehicle, Dobson now seeks to void the entire contract. The law does not permit Dobson to disaffirm the contract in part and affirm it in part. Rather, the law requires disaffirmance of the whole, or none, of the contract. Dobson cannot cherry pick the better parts of the deal and omit the worse ones. Since Dobson disaffirms the contract in seeking the larger sum of the purchase price, Dobson must also disaffirm his claim for damages regarding the smaller sum of the repairs.

Therefore, the damages that the court should rule that Dobson may recover $2,500, the purchase price paid for the vehicle, but not $900, the amount spent on vehicle repairs.

ESSAY 01 – Self-Assessment Rubric: "The Infant and the Lemon"

MODULE I ESSAY RUBRIC	High Credit (3 points)	Medium Credit (2 points)	Low Credit (1 point)	Zero Credit (0 Points)
Issue	Stated that the issue is "whether an infant can recover the price of the car and/or repairs"	Stated that the issue is "whether an infant can recover the price of the car and/or repairs";	Did not state the correct issue (e.g., did not use the key legal term "infant" and/or did not	Did not write an issue statement

	or "whether the infant can avoid a car purchase agreement" and "where the facts do not say whether the infant needed the car."	did not indicate the key facts in the "where" clause.	address voidability or return of purchase price)	
Rule	Wrote verbatim R2d § 14, wrote or summarized R2d § 14 cmt. a., and cited both.	Wrote verbatim R2d § 14 but did not explain it (whether by paraphrasing or writing the comment) and/or did not cite to authority.	Did not state any appropriate rules	Did not cite any rules
Analysis	Presented at least one of Dobson's arguments and at least one of Rosini's arguments as found in the bullet points in the sample answer.	Presented one of Dobson's argument or one of Rosini's arguments, but not both.	Did not present any of the argument for either party found in the sample answer. This includes stating "naked facts," meaning, facts with no	Did not present any facts or analysis

			analysis (such as lacking as "because" clause.)	
Conclusion	Correctly concluded that Dobson can avoid the contract because Rosini did not allege facts showing the car was a necessary for Dobson, and expressed this conclusion with certainty.	Correctly concluded that Dobson can avoid the contract (or, alternatively, that he is entitled to return of the purchase price) but did not explain why or presented an equivocal conclusion.	Incorrectly concluded that Dobson cannot avoid the contract.	Did not write a conclusion
+	Timely submitted the assignment, using the IRAC+ writing paradigm, with zero or minimal distracting errors (e.g., typos, grammar mistakes), in	Timely submitted the assignment, using the IRAC+ writing paradigm, with some distracting errors, submitted in the wrong format (e.g., PDF instead of	Timely submitted a document with many distracting errors, did not employ the IRAC+ writing paradigm, submitted a in the wrong format (e.g., PDF instead of	Did not submit the assignment prior to the deadline

SAMPLE DISCUSSION GROUP EXERCISE

Contract Law (Hybrid) Fall 2023 Discussion Group Exercise

Plaintiff–Defendant–Judge Instructions by Week

To complete this exercise, refer to the Fact File on the Learning Management System.

Phase 1,

Phase 1 involves a claim by plaintiffs representing Patriot following by a defense by defendants representing Casanova and a judgment by the judges. This phase occurs after August immersion and before October immersion so that students are briefed on this exercise during August immersion and debriefed on it during October immersion.

Phase 1, Part 1: Plaintiffs' Complaint regarding Contract Claim – Due Sunday, [September 3, 2023]

Groups representing plaintiff Patriot: each group, where each group works collaboratively as a team but each group works separately from the other groups, shall review the fact file and collaboratively draft a document, styled the "***Plaintiff's Memorandum regarding Contract Claim***," that presents the best arguments for your client, the plaintiff, regarding the issue of whether the Agreement in the fact file is legally binding, and which anticipates and counters the most likely counterarguments by defendant.

Plaintiff groups must submit their Plaintiff's Memoranda regarding Contract Claim via D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR PLAINTIFF GROUPS IN PHASE 1:

- The issue is whether the defendant made a legally enforceable promise to the plaintiff.
- Rules regarding this issue are located exclusively in Chapter 1 of the R2d, which includes R2d §§ 1-8. Do not cite rules from outside this chapter.
- You can frame or explain the rules in the light most favorable to your client.
- Perhaps obviously, the plaintiff group should argue that the defendant did make such promises, because that is the theory under which a plaintiff may recover.
- Do not address issues regarding capacity or incapacity to contract.

- This is a persuasive writing exercise, so follow the tips your Instructor provided regarding using IRAC+ for persuasive analysis.
- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, the Plaintiff respectfully requests this Honorable Court to [ISSUE X RULING] because [Y REASONING]."

Phase 1, Part 2: Defendant's Response regarding Contract Claim – Due Sunday, [September 17]

Groups representing defendant Casanova: each group, where each group works collaboratively as a team but each group-team works separately from the other groups, shall review the fact file and collaboratively draft a document, styled the "***Defendant's Response Memorandum regarding Contract Claim***," that refutes the arguments by the plaintiff in your triad and presents the best arguments for your client, the defendant.

Defendant groups must submit their Defendant's Response Memoranda regarding Contract Claim via D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR DEFENDANT GROUPS IN PHASE 1:

- Defendants must respond to each argument that their corresponding plaintiff group raised in the Plaintiff's Memorandum regarding Contract Claim.
- Defendants must make an issue statement and cite rules, as plaintiffs did, but may choose to frame the facts or emphasize aspects of the rules or rule explanations that benefit their client's position.
- Defendants should not raise new issue that their corresponding plaintiff did not raise. There will be an opportunity to raise crossclaims later.
- This is a persuasive writing exercise, so follow the tips your Instructor provided regarding using IRAC+ for persuasive analysis.
- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, the Defendant respectfully requests this Honorable Court to [ISSUE X RULING] because [Y REASONING]."

Phase 1, Part 3: Judgement regarding Contract Claim – Due Sunday, [October 1]

Groups acting as judges: each judge group, where each group works collaboratively as a team but each group-team works separately from the other groups, shall review the Plaintiff's Memorandum regarding Contract Claim from their corresponding plaintiff's group in their triad, the Defendant's Response Memorandum regarding Contract Claim from their corresponding defendant's group in their triad, and with the fact file, and collaboratively draft a document, called the "***Judge's Opinion Memorandum regarding Contract Claim***," that determine which side in your triad (plaintiff or defendant) should win this phase of the case.

Judge groups must submit their Judge's Opinion Memoranda via the assignment dropbox on D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR JUDGE GROUPS IN PHASE 1:

- Judges must respond each argument that their corresponding plaintiff and defendant groups raised in the Plaintiff's Memorandum regarding Contract Claim.
- Judges can and should evaluate whether each side (plaintiff/defendant) accurately cited and explained rules and fairly characterized the facts of the case.
- Judges must make an issue statement and cite rules, as plaintiffs and defendants did, but should frame the facts or emphasize aspects of the rules or rule explanations that demonstrate a neutral position.
- Judges cannot raise new issue that the parties did not address, not can judges add facts from the record tip the balance toward one side or the other.
- This is an objective writing exercise, so follow the tips in Attachment D regarding objective analysis.
- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, this Court has determined to [ISSUE X RULING] because [Y REASONING]."

<u>Phase 1, Part 4: Appellate Decision regarding Contract Claim – Rendered during October Immersion</u>

At October immersion, Professor Oranburg acting as the appellate judge will promulgate a decision regarding the case. This ends Phase 1.

<u>Phase 2,</u>

Phase 2 involves a counter-claim by defendants representing Cananova following by a cross-defense by plaintiffs representing Patriot and a judgment by the judges. This phase occurs after October immersion and before classes end so that students are briefed on this exercise during August immersion and debriefed on it via a video issued prior to the reading and exam period. After October immersion, Defendant will have the opportunity to raise new claims in a new briefing that begins Phase 2.

Phase 2, Part 1: Defendant's Memorandum regarding Contract Defenses – Due Sunday, [October 22, 2023]

Groups representing defendant Casanova: each group, where each group works collaboratively as a team but each group-team works separately from the other groups, shall review the fact file and collaboratively draft a document, styled the "***Defendant's Memorandum regarding Contract Defenses***," that presents the best arguments for your client, the defendant, regarding the issue of whether the Agreement is void or voidable by defendant Casanova because of some defense(s) to contract formation (e.g., incapacity, mistake, misrepresentation, duress, undue influence, unconscionability, etc.), and which anticipates and counters the most likely counterarguments by defendant.

Defendant groups must submit their Defendant's Memoranda regarding Contract Defenses via D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR DEFENDANT GROUPS IN PHASE 2:

- You must determine what issue is the most relevant. Your goal is to move the court to render the Agreement void or voidable by asserting some defense(s) to contract formation, but which defense(s) you should raise is up to you. Your success or failure in this effort will depend in large part of your legal judgment regarding what defense(s) are most relevant and persuasive under the given facts.
- Rules regarding this issue are located exclusively in R2d Chapter 2 (Capacity), Chapter 6 (Mistake), Chapter 7 (Misrepresentation, Duress, and Undue Influence), and Chapter 8 (Public Policy). Do not cite rules from outside these chapters.
- You can frame or explain the rules in the light most favorable to your client.
- Perhaps obviously, the defendant group should argue that the contract is voidable, because that is the theory under which the plaintiff may be barred from recovery.

- Do not address issues regarding offer, acceptance, or consideration. Focus only on defenses to formation, not issues regarding formation itself.
- Do not address issues regarding contract interpretation. Your goal is to void the contract, such that it does not matter what the contract means to say.
- This is a persuasive writing exercise, so follow the tips your Instructor provided regarding using IRAC+ for persuasive analysis.
- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, the Defendant respectfully requests this Honorable Court to [ISSUE X RULING] because [Y REASONING]."

<u>Phase 2, Part 2: Plaintiff's Cross-Response – Due Sunday, [November 5]</u>

Groups representing plaintiff Patriot: each of your groups, where each group works as a team but each group works separately from the other groups, shall review the fact file and collaboratively draft a document, styled the "***Plaintiff's Response Memorandum regarding Contract Defenses***," that refutes the arguments by the defendant in your triad and presents the best arguments for your client, the plaintiff, regarding whether the Agreement is void or voidable.

Defendant groups must submit their Defendant's Response Memoranda regarding Complaint via D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR PLAINTIFF GROUPS IN PHASE 2:

- Plaintiffs must respond to each argument that their corresponding defendant group raised in the Defendant's Memorandum regarding Contract Defenses.
- Plaintiffs must make an issue statement and cite rules, as plaintiffs did, but may choose to frame the facts or emphasize aspects of the rules or rule explanations that benefit their client's position.
- Plaintiffs should not raise new issue that their corresponding plaintiff did not raise. You need not, and should not, raise any new issues that suggest the argument you want to enforce is void or voidable. Restrict your argument and counterarguments to issues that the defendant in your triad raised in its Contract Defenses.
- This is a persuasive writing exercise, so follow the tips your Instructor provided regarding using IRAC+ for persuasive analysis.

- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, the Plaintiff respectfully requests this Honorable Court to [ISSUE X RULING] because [Y REASONING]."

Phase 2, Part 3: Judgement regarding Cross-Claim – Due Sunday, [October 1]

Each judge group shall review the Defendant's Memorandum regarding Contract Defenses from their corresponding defendant's group in their triad, the Plaintiff's Response Memorandum regarding Contract Defenses from their corresponding plaintiff's group in their triad, and with the fact file, and collaboratively draft a document, styled the "***Judge's Opinion Memorandum regarding Cross-Claim***," that determine which side (plaintiff or defendant) should win this phase of the case.

Judge groups must submit their Judge's Opinion Memoranda via the assignment dropbox on D2L by the deadline indicated on D2L. Late work is penalized.

Submissions must be in Word (.doc or .docx) format and cannot exceed 1500 words. Your submission must include the name of your group and the names of all your group members. This "meta-data" does not count toward your word limit.

TIPS FOR JUDGE GROUPS IN PHASE 2:

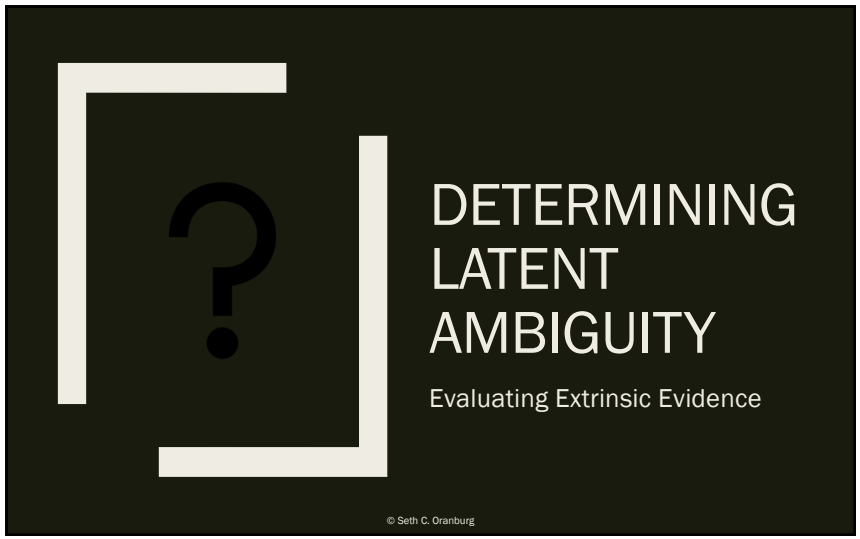
- Judges must respond each argument that their corresponding plaintiff and defendant groups raised in the Plaintiff's Memorandum regarding Contract Claim.
- Judges can and should evaluate whether each side (plaintiff/defendant) accurately cited and explained rules and fairly characterized the facts of the case.
- Judges must make an issue statement and cite rules, as plaintiffs and defendants did, but should frame the facts or emphasize aspects of the rules or rule explanations that demonstrate a neutral position.
- Judges cannot raise new issue that the parties did not address, not can judges add facts from the record tip the balance toward one side or the other.
- This is an objective writing exercise, so follow the tips in provided by your Instructor regarding using IRAC+ for objective analysis.
- Conclude the analysis by plainly stating what the court should do to resolve the case. I suggest that you style this in the form of, "Therefore, this Court has determined to [ISSUE X RULING] because [Y REASONING]."

Phase 2, Part 4: Appellate Decision regarding Cross-Claim – Rendered before Reading and Exam Week

Prior to the Reading and Exam Week, Professor Oranburg acting as the appellate judge will promulgate a decision regarding the case. This ends Phase 2.

* * *

SAMPLE SLIDESHOW



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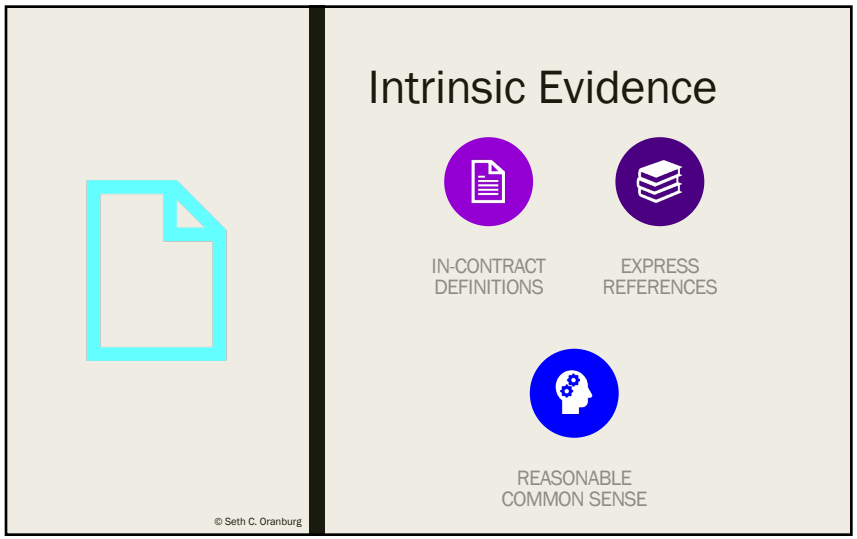

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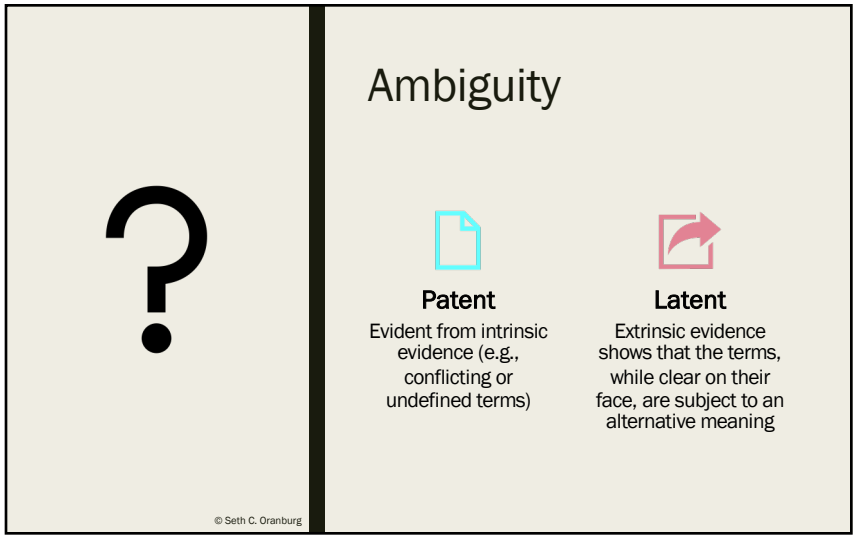

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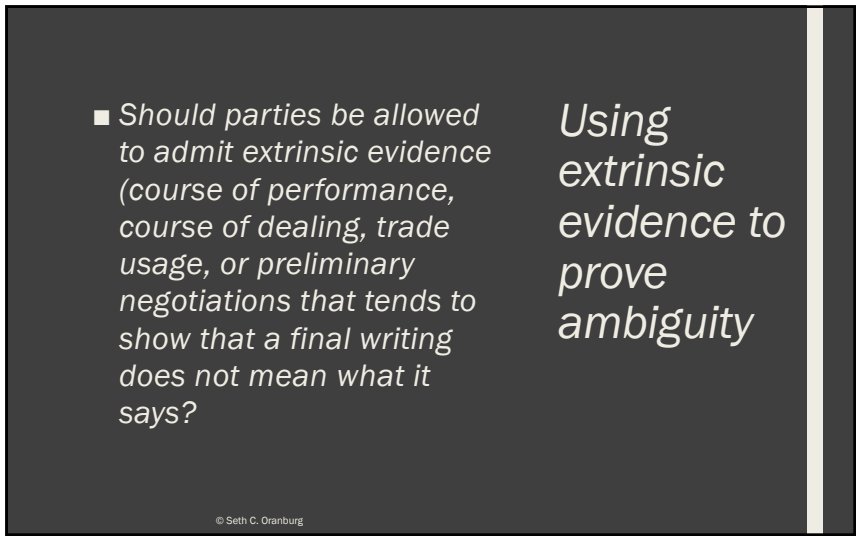

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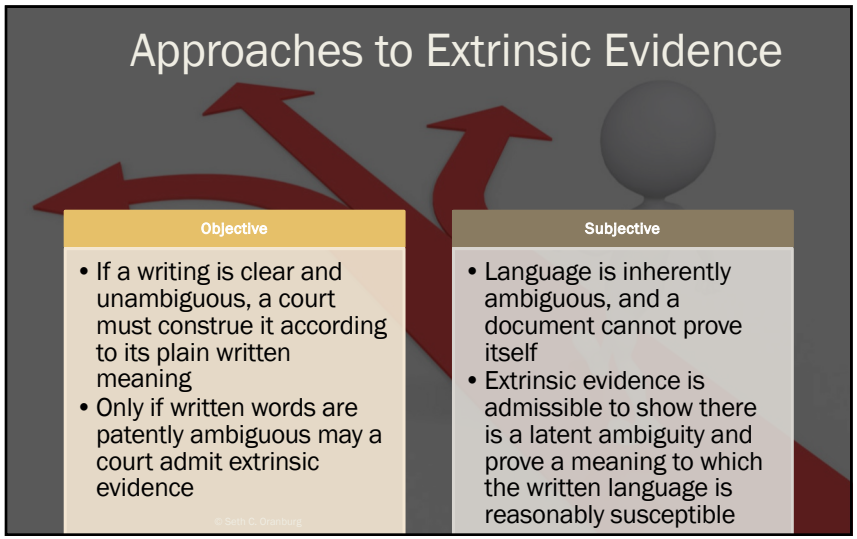

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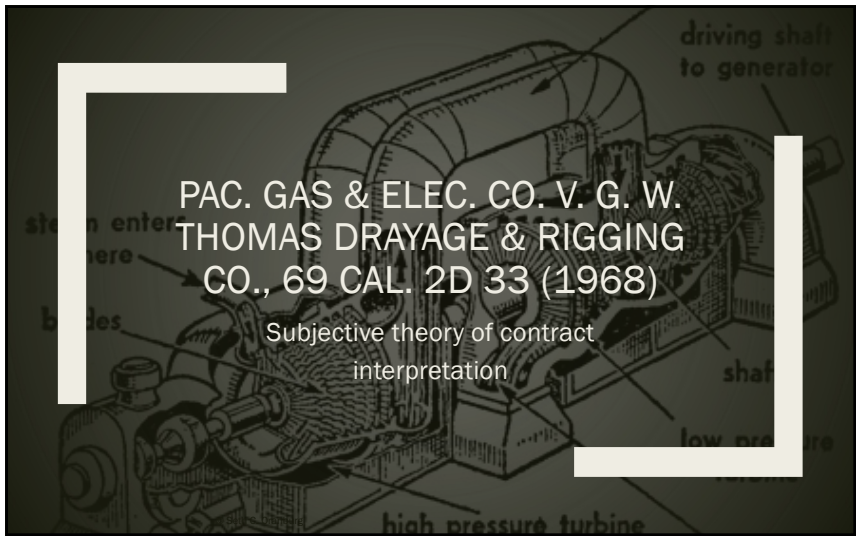

PAC. GAS & ELEC. CO. V. G. W. THOMAS DRAYAGE & RIGGING CO., 69 CAL. 2D 33 (1968)

Subjective theory of contract interpretation

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	C&A Majority	C&A Dissent	Pacific Gas
When is parol evidence admitted?	Only when the written instruments contains unclear or ambiguous language (patent ambiguity)	To determine if words that seem clear really have ambiguous meaning to the parties (latent ambiguity)	If "the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible."
How is this rule justified?	Parties desire certainty and finality when putting contracts into writing	Best means to determine the actual intent of the parties	Best means to determine the actual intent of the parties
What is the purported ambiguity?	Are salary and living expenses part of "supervision" or "actual cost?"	Are salary and living expenses part of "supervision" or "actual cost?"	Does the indemnity clause cover injury to Pacific or only to third parties?
What extrinsic evidence is to be admitted?	Communications between the parties before signing	Communications between the parties before signing	Statement by Pacific's agent, actions by Drayage Co in other contracts with Pacific, and "other proof"

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SAMPLE CLASS SCHEDULE

Contract Law

[Suggested][1] Class Schedule

[1] [Notes for Faculty: This schedule presumes two-hour class periods. To provide a buffer, and thus to avoid any risk of ABA non-compliance, calculation assume 100-minute meetings, although most two-hour classes will not include 20-minute breaks. For 1-hour class periods, simply plan two classes to cover one topic.

This schedule is suggested for a four-credit course in Contract Law taught to 1L JD students. The ABA Standard 310 (2023-2024) requires a four-credit class to meet for 3,000 minutes[1] (50 hours) of classroom instruction and to require 120 hours of out-of-class work. Time devoted to final examinations counts toward the classroom instruction requirement. This schedule exceeds that requirement slightly by planning for 28 scheduled meetings during a 14-week semester (2,800 minutes), plus a four-hour (240-minute) final exam.

To modify this schedule for more credit hours, simply add the practice essay assignments and practical activity projects provided with the casebook to fill the extra class periods.

To modify this schedule for fewer credit hours, or a slower paced class that includes more practice activities, you can: eliminate the remedies module (chapters 22-25), if that material is offered elsewhere in your curriculum; combine Bargains (chapter 3) and Offers (chapter 4); and combine Excuse (chapter 20) and Assent (chapter 21) into one lesson.]

#	Date	Topic(s)	Assignment(s)
1.		Introduction to the Course What Is a Contract?	Read Ch 1 Take Ch 1 Quiz
2.		Capacity and Incapacity	Read Ch 2 Take Ch 2 Quiz
3.		Bargains	Read Ch 3 Take Ch 3 quiz
4.		Offers	Read Ch 4 Take Ch 4 quiz
5.		Termination of the Offer	Read Ch 5 Take Ch 5 quiz
6.		Acceptance	Read Ch 6 Take Ch 6 quiz
7.		Consideration	Read Ch 7 Take Ch 7 quiz
8.		Promissory Estoppel	Read Ch 8 Take Ch 8 quiz
9.		Promissory Restitution	Read Ch 9 Take Ch 9 quiz
10.		The Statute of Frauds	Read Ch 10

			Take Ch 10 quiz
11.		Mistake	Read Ch 11 Take Ch 11 quiz
12.		Misrepresentation, Duress, and Undue Influence	Read Ch 12 Take Ch 12 quiz
13.		MIDTERM	MIDTERM
14.		Classifying Contractual Evidence	Read Ch 13 Take Ch 13 quiz
15.		Evaluating Intrinsic Contractual Evidence	Read Ch 14 Take Ch 14 quiz
16.		The Parol Evidence Rule	Read Ch 15 Take Ch 15 quiz
17.		Evaluating Extrinsic Evidence	Read Ch 16 Take Ch 16 quiz
18.		INTERPRETATION EXERCISE	INTERPRETATION EXERCISE
19.		Conditions	Read Ch 17 Take Ch 17 quiz
20.		Performance	Read Ch 18 Take Ch 18 quiz
21.		Anticipatory Repudiation	Read Ch 19 Take Ch 19 quiz

22.		Excuse	Read Ch 20 Take Ch 20 quiz
23.		Assent	Read Ch 21 Take Ch 21 quiz
24.		Expectation Damages	Read Ch 22 Take Ch 22 quiz
25.		Alternative Money Damages	Read Ch 23 Take Ch 23 quiz
26.		Equitable Remedies	Read Ch 24 Take Ch 24 quiz
27.		UCC Damages	Read Ch 25 Take Ch 25 quiz
28.		FINAL EXAM	FINAL EXAM

SAMPLE SYLLABUS

Contract Law

Professor [_____]	[Semester / Year]
[email / phone]	[4] credits

Course Description

CONTRACT LAW is your introduction to the law of voluntary obligations. We will answer questions including: When and how do people make promises that courts of law should enforce? How does law interpret the words and actions comprising oral and written promises? When and how can enforceable promises be undone or excused? If enforceable promises are broken without lawful excuse, what will the law do to remedy harms caused by that breach?

Through learning contract law, we coextensively learn legal skills applicable generally to the practice of law. Most of the law about ordinary contracts is common law: the accumulated and evolving mass of decisions by courts. By learning contract law, we learn how the common law system works, and you learn how to impact the common law system. Important types of contracts regarding sales of goods are controlled by the Uniform Commercial Code, adopted as statutes in nearly identical form by the legislatures of each of the states. By learning the contract law of sales, you learn statutory interpretation. We will study both the common law and statutory law of contracts. We thus learn to judge which party should prevail under law, and we learn to create effective arguments that accord with the rule of law and the interests of justice and equity.

By focusing on the law of voluntary obligations, contract law trains you to carefully parse what people said and did. With trivial exceptions, contracts are made of words, and these words are spoken and written amid interpersonal and professional contexts. As we learn to interpret contracts, we learn more broadly how lawyers and judges interpret words and actions generally. Learning to interpret contracts empowers you to derive meaning from regulations, statutes, and constitutions.

Contract law trains you to think and speak precisely. This course invites you to anticipate and provide contingencies with express terms. This course thus trains you to develop professional habits of thought as you learn rules and vocabulary.

Pre-Requisites

None

Required Texts

CONTRACT LAW: RULES, CASES, AND PROBLEMS, Seth C. Oranburg, 1st Ed. (2023 Carolina Academic Press) (the "Casebook").

CONTRACT LAW: STATUTORY SUPPLEMENT, Seth C. Oranburg, 1st Ed. (Carolina Academic Press 2024) (the "Supplement").

Core Knowledge for Lawyers: Contracts, Seth C. Oranburg, available at Login : Core Knowledge for Lawyers ("CKL"). Access is included with a purchase of a new Casebook.

The only materials you must purchase for this course are listed above. You will be responsible solely for material contained in these texts, along with supplemental materials I distribute.

Recommended Secondary Sources

WILLISTON ON CONTRACTS, Richard A. Lord, 4th Ed. (Thompson Reuters).

CORBIN ON CONTRACTS, Timothy Murray, Arthur L. Corbin, Joseph M. Perillo, John E. Murray, Jr., 2021 Ed. (Carolina Academic Press).

BLACK'S LAW DICTIONARY, Bryan A. Garner, 11th Ed. (Thomson West).

BALLENTINE'S LAW DICTIONARY, ed. Seth C. Oranburg, 3d Ed. (Carolina Academic Press).

These materials are some of the best-regarded and universally accepted secondary sources. These recommended study aides are generally available for free via your law library and your complementary access to Lexis and/or Westlaw.

Recommended Study Aids

QUESTIONS & ANSWERS: CONTRACTS, Scott J. Burnham, 3d Ed. (Carolina Academic Press)

Learning Objectives

When you finish this class, you will be able to:

Remember and explain the common law and statutory rules regarding contract formation, interpretation, performance, and breach of contracts, and applicable remedies for breach.

- Summarize the policy reasons that undergird contract doctrinal law.
- Apply the "IRAC" paradigm to contractual disputes by:
    - Spotting issues.
        - Identify which contract rules of law apply to novel fact patterns.
        - State applicable issues and stipulate key facts that cause these issue to arise.
    - Citing and explaining rules of law.
        - Explain the rules of law related to contract interpretation, performance, and remedies.
        - Break down contract rules into simpler elements.
        - Synthesize contract rules and rule explanations into complex rule statements.
    - Making fact-based analysis.
        - Identify which facts are relevant to which applicable rules.
        - Analyze which facts strengthen which party's argument.
        - Remember, analogize and distinguish facts from case law.
    - Concluding how a court should rule regarding a dispute.
        - Judge which party's arguments should prevail under the rule of law.
        - Discuss the tension between law and equity.
        - Determine whether equity requires a court to provide a remedy not required at law.

Attendance Policy

Please attend every class meeting. You should arrive on time and stay for the full duration of class. Absences, late arrivals, or early departures will be excused for good cause, such as medical or family emergencies, provided that prior notice is provided to me, when possible, before class according to the Communication policy.

SAMPLE VIDEO SCRIPT

Welcome to Contract Law

Welcome to Contract Law! In this course, we study whether and how people can create obligations that courts will enforce. Studying contract law is an essential part of the first-year law-school curriculum because this subject teaches you how law defines and supports voluntary relationships between people. Through this course, you will learn:

- the process of contract formation by mutual assent,
- the consideration doctrine,
- defenses to contract formation,
- interpretation of written and oral agreements,
- the doctrines of performance and breach,
- the calculation of money damages, and
- the application of special remedies.

In addition to this doctrinal knowledge, contract law also provides an ideal background to learn legal analysis, such as:

- using treatises to understand common law doctrine,
- reading cases, statutes and codes,
- citing and explaining rules from statutes and cases,
- interpreting written language in context,
- distinguishing relevant from irrelevant facts,
- breaking down rules into simpler elements,
- combining rules into more complex statements,
- analogizing and distinguishing facts with case law,
- formulating arguments using the “IRAC” paradigm,

- evaluating relative strength of parties' arguments, and
- predicting how courts will resolve legal disputes.

Participating in this course will build your affective skills, too, including:

- engaging with groups of colleagues and faculty, and
- critiquing others' written work,
- receiving criticism on your writing and analysis,
- sharing your opinions while listening to colleagues, and
- justifying your positions with logic and reason.

You will also develop an appreciation for how judges balance obedience to equal justice under the rule of law with safeguards for fairness and equity.

To succeed in this endeavor, you will need to be motivated, responsible, ethical, open-minded, and persevering. This course provides an opportunity to cultivate these qualities.

You will find the course materials are organized into modules and chapters to help you understand how the pieces fit together into the big picture of contract law.

Modules represent large domains and categories of legal concepts. For example, our first module, mutual assent, deals with a variety of rules, cases, and principles that all relate to the process of formation of contracts.

Topics represent more specific components of legal knowledge. For example, the module on mutual assent is split into three chapters – the offer, duration of the offer, and acceptance of the offer – to help you understand the phases of the contract formation process.

Within chapters, you will find specific rules of law, cases which demonstrate those rules, and practice problems that test your understanding of those rules. The rules come primarily from two sources, which will be explained in our first module: the Restatement (Second) of Contract ("R2d") and the Uniform Commercial Code ("UCC"). Some rules or modifications to rule also come from cases that you will read.

For example, the chapter on offers features rules defining "offer" (R2d 24), distinguishing offer from preliminary negotiations (R2d 26), and establishing requirements for offers such as reasonable certainty of their terms (R2d 33). That chapter also includes a case discussing whether an advertisement can be an offer (*Lefkowitz*) whether an offer is binding even when one party claims it was just a joke (*Lucy*).

Your first job is to read the rules and cases carefully. You may have to look up terms that are unfamiliar to you in a legal dictionary such as Black's Law Dictionary. You should refer frequently to the comments in the R2d and to commentary provided by your professor in writing, via video, and in class for help identifying and resolving tricky and counter-intuitive legal rules and principles. By actively reading and listening, you should remember and understand the rules of law.

The second step is to apply those rules to new scenarios. Cases show you how experiences lawyers and judges applied rules to the facts of those cases. Then it is your turn to work out hypothetical problems involving contractual scenarios that will be presented to you in a process known as application.

As the course progresses, you will have to assimilate multiple rules and relate them to one another. In other words, you will need to analyze complex sets of rules such that you can organize, classify, interpret, generalize, and combine them. This ability to inventory and utilize increasingly large sets of rules that apply to a frequent problem is vital for lawyering in the real world, since legal problems are rarely so simple as to be resolvable by a single rule or precept.

When you read cases, you will observe parties' arguments and judges' evaluations of them. But you will soon need to create legal arguments of your own based on your analysis of rules and your evaluation of facts. As you progress through this course, you will increasingly be asked to discriminate between relevant and irrelevant information, to decide what information benefits or hinders a given party's legal objective, and to draft intelligible legal arguments on both sides of a case. Ultimately, you will be able to synthesize an entire situation involving a conflict about a contract and resolve which party should prevail in a court of law.

To help you matriculate from novice to competence and proficiency in contract law doctrine, and each topics proceeds via the same four steps. First, the course presents high-level concepts in a straightforward, conversational tone that tries to avoid legal jargon and to include illustrations and examples so that you gain a basic understanding

of the ideas. Second, the course presents the rules of law as drawn verbatim from contemporary sources, so you become familiar with the legal lexicon and authorities. Third, the course presents cases that illustrate the legal concepts in complex, real-world situations accompanied by lawyers' arguments and judges' opinions. This helps you to see how the rules are applied and to analyze the purpose of the rules. Fourth, the course proposes practice problems so that you can test your understanding and practice your ability to formulate your own legal arguments and to evaluate the relative strength and weakness of cases.

As you engage with this course, try to keep in mind the notion that contract law enforces voluntary bargains because parties anticipated that exchange would make themselves better off, and their self-motivated transaction thereby increases social welfare. In order words, contract law is a way to facilitate the transfer of property to the person who values it most. This also explains why courts do not enforce certain contracts, such as a contract to assassinate someone, because while bargain may increase the welfare of the party who ordered the hit (and the financial welfare of the hitman), those private benefits are outweighed by the public harm from murder.

This course teaches Contract Law cases from a discovery approach; that is, it uses to illustrate how the law is necessary to solve real disputes in the real world. As you read cases in this book, try to conceptualize the legal issue as a problem that the law must to solve, and the rules as methods of solving such problems. That will help you learn how to apply legal rules to solve real-world problems.

This course approach is designed to help you take every step of this legal journey. Your professor is your guide on this potentially life-changing experience. The goal is for you to emerge from this course of study not only knowing the rules of contract law, but also possessing new skills in resolving the complexity of civil disputes.

I wish you the best of luck on this grand adventure!

Contract Law

Our study of contract law naturally begins by discussing the nature, purpose, history, and evolution of contract law.

Contracts law regards whether and how people can create obligations that courts will enforce. Note that people must create their own obligations under Contract Law. In

other words, contract law is voluntary: if you do not want to be liable under Contract Law, then you can choose not to form a contract.

This makes contract law different from other legal subjects. Criminal Law, for instance, applies to you regardless of whether you agree with it or not. Consider the debate over assisted suicide, where terminally ill people like Theresa Hobbins asked doctors like Jack Kevorkian to end their lives. In that case, the Michigan Supreme Court ruled that the State of Michigan could impose criminal penalties for assisted suicide, regardless of whether both parties wanted to engage in that action voluntarily and willingly.

Criminal law, constitutional law, administrative law, tax law, and procedural law are all part of our "public law," which governs the relationship between persons and governments. Public law is not voluntary, at least not on an individual basis. You cannot decide that you are allowed to commit burglary or avoid paying taxes. You can only vote for lawmakers who you hope will change the public laws with which you disagree.

On the other hand, "private law" governs the relationship between persons. Private law is, for the most part, voluntary; that is, people decide whether to be bound by private law by choosing to engage in certain actions or transactions. Private law subjects include tort law, property law, family law, and contract law. In private law systems, the law provides a framework and regulations for structuring activity and resolving disputes. The goal of such systems is promoting individual autonomy.

Private Law

Contract law is private law, meaning, contract law involves the relationship amid persons. This contrasts with public law, which involves the relationship between individuals and the state. As the Roman lawyer in the third century Domitius Ulpianus explained, "*privatum, quod ad singulorum utilitatem*," meaning, private law is for the benefit of the individual.

How does contract law benefit individuals? Contract law provides a framework for enforcement of promises and agreements. Essentially, the state will enforce certain promises and agreement so that individuals can plan mutual affairs with more reliability on one another than can otherwise be achieved. Contracting thus has an essentially economic function. The purpose of contract law is to allow people to make the world better off through their private decisions to make themselves better off through trade.

Economics assumes that when a person makes a voluntary trade, that person does so in order to make themselves better off. For example, if you go to the record store (do those still exist?) and purchase a record for $10, economics assumes that you rationally did that because you prefer having the record more than having $10. Meanwhile, the record store only sold you that album because it valued having $10 more than having the album. After the trade, you and the record store are presumptively both better off because you both now have something you value more than what you had before.

When one or more person in society becomes better off without making anyone worse off, that represents an overall improvement to social welfare. You are a part of society, and society is now better off because of the trade you made with the record store.

This prior example is of a spot trade, in which contracts did not necessarily come into play. But the value of contracts becomes obvious when you consider trades that cannot happen at the same time. To understand this concept, imagine that you have an apple orchid in Washington State. Every Fall your apple trees produce about two thousand apples. But you can only eat about one hundred of these apples and sell about nine hundred of them at your local farmer's market. The other thousand apples go to waste—and you are quite frankly sick of apples by November. Then you hear about an orange farmer in Southern California who has an annual surplus or oranges and call her. You offer to ship her one thousand apples when they mature in September if she agrees to ship you one thousand oranges when they mature in November.

Without contract law, you could not rely on a stranger's promise to ship oranges to you, so you might not be willing to ship apples to her first or even to enter into and count on this bargain at all. But, thanks to contract law, you have some assurances that the strange orange farmer will either ship your oranges when the times comes or will have to pay you the value of those oranges, so you can ship the apples in confidence that you will be made better off by doing so. Either way, you are better off than having a thousand apples rotting on the ground around you. Contract law allows you to rely on a stranger's promise to buy these apples when they are ripe, and that encourages you to create the orchard in the first place.

Common Law

Contract law has evolved over thousands of years of human civilization. For millennia, courts have enforced private agreements so that people would be more willing to trade with strangers. The legacy of Roman Law was passed to England through the Norman

Invasion, where it mixed with local customs and then evolved along its own lines. The American colonies inherited the English system then made it their own as the passage of time and the distance between the continents allowed the systems to drift apart.

Over its long history, contract law has really not changed its purpose. It was and is a system of voluntary liability that promotes individual autonomy in economic matters. The dual notions of freedom to contract (meaning, the right to make binding agreements) and freedom from contract (meaning, the right not to be bound without one's volition) have generally persisted throughout the ages.

That said, the details and nuances of contract law have changed and continue to change as culture, society, and technology evolve. Moreover, since contract cases are usually heard as a matter of state law and not federal law, the common law has not developed identically across America. The level of details and the degree of differences makes studying contract law challenging. This course attempts to make it easier to begin learning contract law by identifying what is truly common about American common law of contracts and teaching the principles that apply generally.

R2d and UCC

Contract law invokes its own use of language. Certain terms that are used in everyday parlance take on a special meaning in contract law. For example, in Webster's Dictionary, the word "bargain" is defined as "something acquired by or as if by negotiation." But, under contract law, bargaining is not synonymous with or even necessarily related to negotiating. Therefore, is it critical to look up the legal and contractual meaning of key terms and not to rely on intuition or common knowledge.

Thankfully, the American Law Institute has made the work of understanding a contract much easier than codifying it. The R2d, while not a perfect representation of the myriad approaches among all the states, is a reasonable approximation of the common law that is well organized and relatively easy to read. Meanwhile, the UCC has been adopted in virtually all U.S. jurisdictions, thus harmonizing the law of sales throughout the country.

This course will teach you the common law of contracts as found in the R2d while pointing out where the UCC differs meaningfully from the common law. Your first task in applying this knowledge will be to determine whether the UCC applies so that you will apply the appropriate body of law.

Voluntary Liability

Contract liability only results from intentional words and actions. This distinguishes contracts from torts, which can be intentional (like intentional infliction of emotional distress) or accidental (like negligence). Since contract liability must arise from intentional conduct, a preliminary question to ask is whether a party had the capacity to form legally enforceable intentions in the first place.

No one can be bound by contract who has no legal capacity to incur at least voidable contractual duties. R2d § 12(1).

This general rule requiring capacity to contract is followed by several specific instances of incapacity.

A natural person who manifests assent to a transaction has full legal capacity to incur contractual duties thereby unless he is (a) under guardianship, (b) an infant, (c) mentally ill or defective, or (d) intoxicated. R2d § 12(2).

The result of this rule is that contracts formed with people who are under guardianship, infants, mentally ill, or intoxicated may be voided or cancelled by the party who lacked capacity at the time of signing. Once an incapacitated party regain its capacity, that party may reaffirm its obligations such that they can no longer be voided.

Once again, we need to be careful to learn the special legal meaning of terms used in contract law. You may have some ideas about what "infant" means, for example, but if you do not look up the precise legal meaning of this term, then you run the serious risk of getting the law wrong.

Contractual liability is voluntary, and willingness to be bound by a contract is evidenced by a manifestation of intention to be bound by its terms. Therefore, the ability of parties to form and manifest intention is essential to the contract formation process. The law presumes that infants and people under guardianship lack this capacity to form an intention to be bound because of an inability to understand what that means. This presumption extends to the mentally ill and, to a lesser extent, to the intoxicated.

What's Next

In the next module, you will learn what a manifestation of mutual assent looks like. But you should keep in mind that even when something objectively looks like mutual assent to an outside observer, it is possible that subjectively one or both parties did not actually understand the bargain or consent to it. This is just one of many examples of the tension between objective manifestation and subjective intentions that runs throughout contract law.