

**University of Miami
School of Law**

CONTRACTS
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INTRODUCTION TO THE COURSE
Fall 2010

Welcome to *Contracts*. It was my favorite first-year course in law school, and I hope it will be yours as well. If not, at least know that when practicing lawyers are asked which law school course was particularly helpful to their careers, more choose *Contracts* than any other course (by a 2 to 1 margin).¹

I. MATERIALS

A. Required Materials

(1) The casebook for this course is MACAULEY, ET.AL. CONTRACTS: LAW IN ACTION (2ND ED., 2003) (hereinafter referred to as “Casebook”).

(2) You also will need to purchase a copy of RESTATEMENT 2ND CONTRACTS & US UCC ARTICLE 2, 4th ed. (James E. Byrne, ed. 2008) (hereinafter referred to as “Supplement”).

(3) Materials also will be posted on the course website:
<http://contractslawinaction.law.miami.edu/>

You will notice that there are almost no Florida materials and that the Casebook has many cases from Wisconsin. Contract law is substantially uniform throughout the U.S., except for the State of Louisiana where they use the Civil Law of Obligations. This is why the subject of contracts is one of the 6 covered by the *Multi-State* portion of, e.g., the Florida Bar Examination. When relevant, I will discuss Florida divergences from the material we are studying.

¹. F. ZEMANS & V. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION 146 (ABA, 1981)(In a survey of Chicago lawyers, 50.3% named Contracts, 25.2% Property, 23.5% Torts, 16.4% Civil Procedure and 16% Constitutional Law)

B. *Recommended Materials*

Hornbooks, commercial outlines, and canned briefs are not recommended. If you feel compelled to buy something of this sort, however, I suggest E. FARNSWORTH, *CONTRACTS* (Aspen), the most nuanced of the available materials. The problem with all these materials is that they teach legal "rules." While learning the "black-letter" law is part of legal education, it is the least difficult part of first-year education. You should emphasize learning the skills that allow you to reason beyond these "rules" in order to present your client's case. As you will quickly learn, while citizens may think that the role of the courts is to enforce rules, *lawyers are rule skeptics*. Lawyers know that their job is to help courts do "justice"; and normally that means something other than a regurgitation and application of fixed, clear ("black letter") rules.

II. MECHANICS

A. *Battle Plan/Rules of the Road*

1. PACE/SYLLABUS

We will proceed through the material at varying paces, depending on your needs, not a syllabus, so it is important that you pay attention to in-class instructions. At the end of the last class each week, I will let you know how far I expect to get the following week, so that you can arrange your study and problem-solving time accordingly. (Should I ever forget to do so, please don't hesitate to remind me).

The syllabus that will be distributed will not notice the sections of the UCC (UNIFORM COMMERCIAL CODE), the CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG), or the RESTATEMENTS OF CONTRACT that are referenced in the casebook reading. Nonetheless, **whenever the casebook mentions a section of the UCC or the RESTATEMENT, you should look to the Supplement and carefully read the section.** You need to bring both the Casebook and the Supplement to class with you, every day.

2. COURTESY

A first-year classroom is a formidable setting in which to speak (not to mention think), and thus it is unrealistic to expect that the "Socratic" give-and-take will ever be very comfortable. Please do not add to the inherent difficulties by raising your hand or whispering when someone else has been called on to speak. (The sanction for violating this rule is that you may be asked to repeat what the person you've interrupted has just said!) Learning to listen and learning by listening are central parts of your law school education.

Do not make any disparaging comments about your classmates' efforts! Like you, they are trying to express difficult ideas in complex grammatical forms. (I am the only one authorized to make such comments and recognizing the difficulty you all are experiencing, I try to limit such comments).

As a courtesy to your fellow students as well as me, please try to arrive promptly for every class. If for some reason you must be late, please use the rear entrance, enter as quietly as possible, and sit in an open seat in the back of the room. But as late-comers are bound to disturb some students, do make every effort to arrive on time. (You should expect parking delays and lines at the snack bar). Do not pack up your belongings until the class is dismissed. Pagers and cell phones should be turned off or placed on vibrate during class. You will (either individually or collectively) lose the right to use computers in the classroom if there is abuse. Any activity not directly related to the subject being studied is forbidden, that includes reading or writing e-mails, playing games, surfing the web, watching DVDs and instant messaging in which disparaging comments are made about your classmates.

University regulations prohibit eating or drinking in the classroom. But... (Pack it in/ Pack it out) (Insects are a major problem in South Florida).

3. TAPE RECORDINGS

You may record the class for your own use, or have someone record it for you if you are going to be absent. *You may not, however, transcribe the recordings.* If there is any violation of this restriction, I will refer the offending individual(s) to the Honor Council.

4. OFFICE HOURS

The best time to see me is immediately following class. Please do not *ever* try to see me any time before class, as I will be preparing. To visit me at other times, make an appointment by contacting Mr. Richard Cornier, 305-284-5432 or by dropping by if my office door (G370) is open. **Do make an appointment or e-mail me to continue the class' conversation or raise problems.** My e-mail is rosen@law.miami.edu. We can set up a in-person appointment via e-mail.

5. Questions and Conversations

This course has a website: <http://contractslawinaction.law.miami.edu/>

The website contains important information and readings. As important, questions that are e-mailed to me and my responses to them will be posted on the website. The name of the author(s) of the question will not be posted. Please e-mail me questions if you are confused. If you are confused, it is likely that others are also confused. Similarly, if my responses raise further questions, ask them. If you are frightened of showing your confusion (and you shouldn't be, confusion is normal for first-year law students). If you wish anonymity, you may post your question to the website. The website is moderated.

6. PROFESSIONALISM

From the first day of class, I will treat you as new professionals. To emphasize that you are entering an honorable profession and are entitled to be treated as such with requisite dignity, I will refer to each of you by your last names in class. To demonstrate that you are acting with dignity toward others, I also expect you to refer to your classmates by their last names, even if you are on more familiar terms with them outside of class.

The American Bar Association Model Rules of Professional Conduct (and the Rules Regulating the Profession adopted by the Supreme Court of Florida) require that in their professional conduct each lawyer meets the following standards:

Rule (4-) 1.1. **Competence:** A Lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

Rule (4-) 1.3: **Diligence:** A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule (4-) 3.1: **Meritorious Claims and Contentions:** A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

I expect you to meet these standards in class preparation, participation and performance.

B. Grading/Examinations

Grades will be based primarily upon your performance on a final that will be given at the end of the semester. The final exam will be in a "open-book" format. You will be permitted to bring any written materials into the examination room. I will not know until I write the exam what percentage of it will be issue-spotter essays, multiple-choice questions or short answers.

At my discretion, I also may raise or lower a final grade, up to one-half grade, on the basis of class participation.

III. CLASS ATTENDANCE, PARTICIPATION, AND PREPARATION

I do not take attendance. Nevertheless, I want to outline the reasons for my beliefs that regular class attendance and preparation are crucial to your legal education, and that active class participation can form an extremely important component as well.

A. Attendance

It is a common lay perception - one I shared prior to entering law school - that "the law" is a body of "rules" and "doctrines," which the student must simply memorize and be able to regurgitate on demand on an examination, and, ultimately, in the courtroom. Were that the case, one might legitimately ask why legal educators don't just sell law students the "rule"-books and send them home to memorize them.

It is a common perception among first-year law students that learning how to digest cases is what law school adds to the "rules." Were that the case, one might legitimately ask why legal assistants, (once called "paralegals"), are trained in six weeks and the first year of law school lasts for nine

As you will soon learn, the ability to commit "the rules" to memory will be of relatively little value to you as either a law student or a lawyer. To be sure, the good lawyer needs to have an instinct for "what the rules are" and to know how to find them quickly when she needs them. But the crucial skills to be mastered during your first year are rule-application and case-analysis, *not* rule-memorization nor case-digesting

You cannot develop these skills simply by reading and re-reading the cases and rules; real learning requires active intellectual engagement with the materials, and, at least at first, such engagement is all but impossible on your own. Rather, it is best accomplished *in the classroom*, where we will undertake a seemingly relentless "Socratic" inquiry in case after case, in order to help you to think analytically and critically about the materials and, ultimately, to be able to do so on your own.

Attendance is also advised as this course is not composed of independent classes. We are constantly building on prior discussions and fitting material together so that what was obscure on one class becomes clarified in another.

B. *Participation*

Silent participation in this inquiry, however, is not enough. For much of what we're up to is teaching you how to *communicate* about the law. It doesn't matter whether you think you want to be a trial lawyer; *every* lawyer must be able to "talk legal" to her clients, her partners, her adversaries. The best way to learn how to "talk legal" is simply to *do* it.

I intend to engage you in professional conversation. As such, I am seeking informed and intelligent conversation, not a theatrical performance. You should not be concerned about the level or style of your forensic performance. Nor should you be concerned about getting the "correct" answer. You will be expected to argue for your position. This does not mean quarreling or being assertive. It means providing reasons. A lawyer (and a law student) always asks, "Why?" The aim is to advance our collective understanding, not to "win" debates.

C. *Preparation*

Of course, you cannot effectively participate, silently or otherwise, in our discussions unless you are well prepared for class. My questions will assume that you have read and thought about each case carefully, and you will find it difficult to follow our analysis---let alone actively participate in it---unless you've done the work ahead of time. There will, of course, be times when the various demands on your lives will make proper preparation impossible. In those circumstances, I suggest that you come to class anyway and at least try to skim the assigned materials beforehand, so that you can make some sense out of the class discussion.

D. *Special Accommodations*

If you need special accommodations, please contact Dean Marni Lennon, mlennon@law.miami.edu, 305-284-2599, as soon as possible.

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I hope you find these suggestions helpful. Once again, I welcome you to the course, and I look forward to meeting you.