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## Contracts

**Materials:** The required books for this course are Knapp, Crystal, & Prince, *Problems in Contract Law: Cases and Materials* (6th ed. 2007) (KCP) and Knapp, Crystal, & Prince, *Rules of Contract Law, 2009-2010* (2009). 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 If a student is consistently unprepared, the student may be withdrawn from the course or excluded from the final exam in accordance with the College of Law's Rules.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:** 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.

**Laptops:** Laptops may be used in-class for note-taking and appropriate legal research relevant to the course. Laptops and other electronic devices may not be used in class for any other purpose. I reserve the right to restrict or ban the use of laptops.

**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 12PM to 2PM. 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://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. 87-90; 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. 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. Incomplete Bargaining**

KCP pp. 167-88 (through note 5)

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

Frigalimont 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

## **IV. Enforcement Issues**

### **A. Grounds Not to Enforce a Contract**

#### **1. Problems with the Parties**

KCP, pp. 517-25 (except Problem 7-1)  
Dodson v. Shrader  
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**

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. 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

### **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