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Fall Semester 2018

CONTRACTS: MONDAY, WEDNESDAY, THURSDAY, 3.30pm-4.50pm.
F109

CLASS BLOG: <https://www.blenderlaw.com/contracts/>.¹

This is how I manage the course. You should be familiar with the material on the blog as the final exam may reflect this material as well as material in the Casebook.

I will post details of assignments for class on the blog to supplement this outline syllabus. I will also post questions for discussion and links to useful resources. I will update the blog at the end of each week (after the Thursday class), but may add material at other times. You should check the blog at least once each week during the semester. If I would like you to look at material on the blog at times other than the end of a week/the weekend I will announce this fact in class.

COURSE BOOKS: Macauley, Whitford, Hendley & Lipson, *Contracts: Law in Action* Vol. 1 (4th Ed. 2016)² and Burton & Eisenberg, *CONTRACT LAW, SELECTED SOURCE MATERIALS ANNOTATED*.³

Please be sure to read (carefully) all sections of the UCC and Restatement 2d referred to in the readings for the class - you can find these in the Source Materials book.

¹ **Cautionary note:** on the blog I make available the assignments and materials for previous semesters. In Fall 2013 and Fall 2014 I used a different Casebook from the one I am using this semester and this means that the materials relating to those semesters, including the midterms and final exams don't always fit well with the materials as they are organized in our book. In Fall 2015 I used the previous edition of the book we are using and in Fall 2016 and Fall 2017 I used the same book we are using. There weren't huge variations between the 2010 and 2016 editions of the book. What does vary from semester to semester is the additional material I assign. I like to assign some relatively current materials during the semester.

² As of August 3, 2018, Carolina Academic Press quoted prices for this book of \$183 (hardcover) and \$146 (looseleaf).

³ As of August 3, 2018, Amazon quoted a price of \$53 for the 2018 edition of this book.

OFFICE HOURS: I am happy to discuss the course and any questions you may have about the material in person, either before or after class or in my office, or by email if that is convenient for you. I am happy for you to drop by my office - I plan to be in my office between 2.00 pm and 3.20 pm on Mondays and Wednesdays, although I am also available at other times. If you would like to make an appointment to speak to me please contact me by email to do so. Please do be sure to ask me if you have questions about the material either in or out of class. It is much better to clear up uncertainties as they arise rather than waiting until the end of the semester.

ASSESSMENT AND ATTENDANCE: Your performance in this course will be assessed by means of a three-hour, in-class, **closed book** examination. I will take attendance. You are entitled to three **unexplained** absences from class during the semester. I reserve the right to lower the grade of anyone who misses more than three classes without informing me of the reason for their absence. If you miss a significant number of classes you risk being dropped from the course. If you miss a class please do ask me if you have any questions about the material you missed. Consistent **and useful** participation in class **may** raise your grade.

OUTLINE OF THE SEMESTER PLAN: We will cover the material in the Casebook in order as we progress through the semester. I provide detailed reading assignments via the class blog. Before Fall Break we will be studying remedies. I expect to be able to cover the material in the section of the book on Contract and Continuing Relations, some of the material on Social Control of Free Contract and some additional material I will provide for you via the blog. Please note that working through the materials tends to take longer at the beginning of the semester and that we will speed up as the semester progresses.

A NOTE ON READING CASES: We begin the semester by reading an entire judgment of the 1st Circuit Court of Appeals, and a document titled "Introduction to Contracts" which contains an excerpt from a judgment of the 2nd Circuit Court of Appeals in a case raising similar issues. Mostly this semester we will be reading edited judgments of different courts, although at the end of the semester we will read some more complete judicial opinions.

Especially to begin with you will need to read judgments much more slowly and carefully than you read other sorts of text. You cannot skim a judgment as you might other sorts of text because almost every word matters in a judgment. Reading a judgment is not about getting a sense of a story— the words have a different significance. Words in judicial opinions can change peoples' lives. In the two cases we begin with the authors of the different opinions have very different reactions to essentially the same situation. The case does not involve issues of life or death, such as the determination of whether a particular person qualifies for asylum or not, but it makes a difference to the rights the person seeking a legal remedy has. The reading you will be doing this semester is important.

A standard approach to briefing cases will encourage you to focus (among other things)

on the facts of the case, on the legal rule or rules the court applies, and on the application of the legal rule to the facts. But these aspects of a case are more complicated than they might seem to begin with.

If you are a lawyer writing a brief for a case you are working on you will need to make an argument for a view of your case that will benefit your client. You will need to identify statutes and/or cases that will help you make the best argument for your client. In order to be able to help your client you need to understand that judicial opinions are often ambiguous and can be interpreted in different ways. And the ambiguities may relate to what the facts are, to what the legal rules are, and to how the legal rules apply to the facts. So one main objective of the first semester contracts class is going to be to try to identify and understand the ambiguities in the cases we study.

It is also important to bear in mind that when you are in law school one of the purposes of studying cases is to understand how the legal system works. We are beginning to understand the legal system through a study of contract law, but contract law is only part of a larger system. *Meyer v Kalanick* illustrates the interaction between contracts, the Federal Arbitration Act, and antitrust law — contracts have implications for the effectiveness of various statutes as a result of the Supreme Court's interpretation of the reach of the Federal Arbitration Act. At various points during the semester we will notice connections between contract law and other areas of law and policy.

DISABILITIES: If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact the Office of Disability Services for information about available opportunities, resources, and services. The office telephone number is 305-284-9907. You may also visit the Office of Disability Services website at www.law.miami.edu/disability-services .