

Themes of Contracts Class for Fall 2024 [For Essay/Thematic Questions]

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Freedom of contract

Do the materials you have read suggest that contract law really reflects the principle of freedom of contract or not?

Freedom of contract is taken to mean freedom to contract and freedom from contract. What sorts of limits on these freedoms have you seen in the materials you have studied?

Are there cases where you think that there is too much freedom of contract? Too little?

Contract law and fairness

How should contract law balance questions of fairness between contracting parties with more general systemic issues?

Do the cases you have read suggest that contract law is about fairness or something else?

In what cases do you think the results were unfair?

Would it be fair if contract law were more predictable and less uncertain so people could easily know how they should behave when making promises?

The idea of a distinction between the idea of the result in a particular case and the rule the case establishes could be relevant to this set of questions. A court that focuses on doing justice in a particular case might reach different results than a court that focuses on establishing a rule that will work in all similar cases [e.g. hard cases make bad law]. [Posner's discussion of rules and standards in the Mindgames case would be relevant here [CB p 551].

Promissory estoppel is based on the idea of a need to remedy injustice, and we saw a similar concern in the restitution cases [unjust enrichment]. Here the issue of providing remedies where there is injustice overlaps with the freedom of contract theme [how do we know when there is or is not a contract; does it matter if a disappointed party could obtain a remedy even when there is no contract; what is going on when courts find there is a contract implied in law).

Contract law and efficiency

We have read a number of opinions by Posner and Easterbrook that involve thinking about law from the perspective of economic efficiency and the economic interests of the parties.

Opportunism and contracts

A number of times through the semester we saw examples of people trying to behave opportunistically, trying to take advantage of contract law doctrine to get a benefit they really shouldn't get or to avoid obligations they should be subject to.