

CONTRACTS (520-1)
Professor Ben-Shahar
Summer 2007

General Information

The assigned readings are from Murphy, Speidel, and Ayres, Studies in Contract Law (6th ed. 2003) (hereinafter: MSA). Supplemental materials (cases and excerpts from articles) will be distributed and can also be found on the course webpage (http://www.umich.edu/~omri/Contracts_index.html). The recommended statutory source book is Burton and Eisenberg, Contract Law: Selected Source Materials.

Office Hours

Office hours are Wednesday, 2:00-3:00. My office is 900LR. You are always welcome to e-mail me (omri@umich.edu) with any questions, concerns and comments you have regarding class, or to schedule an appointment outside office hours. It's also ok to stop by my office with questions any time, but I may not be in.

Attendance and Participation

Class participation and attendance are required. Unless you voluntarily participate in class discussion, you will be called on randomly to discuss the reading materials. Excessive absences or repeated cases of unpreparedness would result in grade reduction. A student's positive contribution to class discussion will be considered substantially in grading decisions.

Readings

Reading assignments are listed below. Unless otherwise announced in class, you should read and prepare the materials in the topic that follows the one most recently discussed.

Examination

The final exam will contain two parts. The first, a two-hour in-class examination will contain multiple-choice questions. No laptops or any other materials are allowed in this part. The second part is a six-hour take home exam that contains essay questions and for which you can use any materials.

Accommodations

If you believe you need an accommodation for a disability or other personal circumstances, please let me know at your earliest convenience. Some aspects of this course may be adjusted to facilitate your participation and progress. I will treat any information you provide as private and confidential.

Part I: Principles of Promissory Obligation

A. Grounds for Enforcing Promises

Introduction

MSA (1-16)

Restatement, Second, of Contracts, §§ 1, 2, 4

1. Consideration

MSA (36-50)

Restatement §§ 17, 71, 72, 79

2. Formality

MSA (52-55, 72-75)

3. Reliance

MSA (128-145)

Restatement § 90

5. Benefit

MSA (109-116; 121-124)

Restatement, §§ 82, 83, 86

B. Limits on Promissory Obligation

1. Adequacy of Values Exchanged

MSA (62-66, 75-79)

Restatement, § 79

Batsakis v. Demotsis, 226 S.W.2d 673 (Tex. 1949)

2. Mutuality

MSA (94-107)

3. Pre-Existing Duty and Modification Doctrine

a. General

MSA (80-93)

Restatement, §§ 73, 89

UCC § 2-209

b. Modification of Debt

UCC §1-207

MSA (1034-1039)

c. Waiver

MSA (754-758)

Wisconsin Knife v. National Metal Crafters, 781 F.2d 1280 (7th Cir. 1986)

4. The Statute of Frauds

MSA (164-171; 173-175; 177-181; 184-188)

UCC §§ 1-206, 2-201, 1-201(39) and (46)

Restatement §§ 110, 129-131, 139

UETA – Uniform Electronic Transactions Act §§ 7, 8(a) (in Burton & Eisenberg)

Part II: Remedies for Breach of Contract

A. Introduction to remedies

MSA (191-200)
Hawkins v. McGee, 146 A. 641 (N.H. 1929)
Restatement § 344
UCC § 1-106

B. The expectation measure of damages

1. Lost Profits

MSA (901-903, not including *Lowy*)

2. 'Cost of Completion' versus 'Diminution in Value'

MSA (780-788, 933-945)

3. The Expectation Measure under the UCC

a. 'Cover' and 'Resale' Damages

UCC §§ 2-703, 2-706, 2-711, 2-712

MSA (897-900)

b. 'Contract-Market Differential'

UCC §§ 1-106, 2-708, 2-713

MSA (916-920)

Neri v. Retail Marine Corp., 285 N.E. 2d 311 (NY 1972)

Nobs Chemical v. Koppers, 616 F.2d 212 (5th Cir. 1980)

Excerpts from Ben-Shahar & Bernstein, *The Secrecy Interest in Contract Law*

4. Mitigation of damages

Rockingham County v. Luten Bridge, 35 F.2d 301 (4th Cir. 1929)

Parker v. 20th Century Fox, 474 P.2d 689 (Cal. 1970)

Excerpts from Frug, *Re-reading Contracts*

5. Foreseeability

MSA (206-208)

Evra v. Swiss Bank, 673 F.2d 951

UCC § 2-715

6. Uncertainty

MSA (960-964)

Kenford Co. v. Erie County, 493 N.E.2d 234 (NY 1986)

C. Reliance damages

Security Stove v. American Ry. Express, 51 S.W.2d 572 (1932)

Restatement §349

D. The Restitution Remedy

1. Restitution in favor of the Breached-Against Party

MSA (908-910, 948-949)

United States v. Algernon Blair, Inc., 479 F.2d 638 (4th Cir. 1973)

Rosenberg v. Levin, 409 So.2d 1016 (1982)

Restatement §§ 370, 371, 373

2. Restitution in favor of the Breaching Party

MSA (795-802)
Restatement § 374

E. Specific performance

MSA (200-202; 970-974; 979-995)
UCC § 2-716

F. Liquidated damages

MSA (1003-1017)
UCC § 2-718

Part III. Contract Formation

A. The Objective Test of Assent

MSA (230-240; 393-394; 648-653)
Restatement §§17-20, 201
UCC §§ 2-204

B. Offer

1. What is an Offer?

MSA (245-262)
Restatement §§ 24, 26, 29, 33
FTC Regulations—Retail Food Store Advertising §§ 424.1, 424.2 (in Burton & Eis.)

2. Termination of an offer

MSA (360-364; 370-373; 381-387)
Restatement, Second, of Contracts, §§ 36, 39, 41, 42
UCC §§ 2-205, 2-206

C. Acceptance

1. Acceptance by Promise

MSA (284-288; 320-324; 311-317)
Restatement §69
UCC § 2-206

2. Acceptance by Silence

MSA (311-317)

3. Acceptance by Performance

MSA (288-291; 296-304; 376-379)
Restatement §§ 45, 54, 62

4. The "Battle of the Forms"

MSA (325-340)
UCC § 2-207
Proposed Amendment of UCC Article 2, §2-207 (in Burton & Eisenberg)

D. Incomplete Manifestations of Assent

1. "Shrinkwrap", "Clickwrap", "Browsewrap"

- MSA (342-358)
- UCITA §§ 112, 208,209
- ALI Principles of Software Contracting §§ 2.01, 2.02
- Ticketmaster v. Tickets.com*, 2003 WL 21406289 (C.D.Cal.)
- 2. Implied contracts
 - MSA (12-16)
 - Day v. Caton*, 119 Mass. 513 (1876)
 - 39 U.S.C § 3009 [Mailing of Unordered Merchandise] (in Burton & Eisenberg)
- 3. Indefiniteness and Gap-Filling
 - MSA (400-404, 408-420, 425-426)
 - UCC §§ 2-201(1), 2-204(3), 2-305, 2-306, 2-308, 2-309
- 4. Business norms
 - Nankuli Paving & Rock v. Shell Oil*, 664 F.2d 772 (9th Cir. 1981)
 - Excerpts from Ben-Shahar, *The Tentative Case Against Flexibility*
 - UCC §1-205, 2-208
- E. Precontractual Understandings
 - 1. Agreements to Agree
 - MSA (427-449)
 - 2. The Parol Evidence Rule
 - MSA (615-629, 638-640)
 - Restatement* §§ 209-216
 - Excerpts from Kosinski, *Who Gives a Hoot About Legal Scholarship?*

Part IV: Defenses to Contractual Obligation

- A. Duress
 - MSA (523-530)
 - Restatement* §§ 175, 176
 - Excerpts from Bar-Gill & Ben-Shahar, “*The Law of Duress ...*”
- B. Unconscionability
 - 1. General
 - MSA (534-548, including *Jones v. Star Credit*)
 - UCC § 2-302
 - Uniform Consumer Credit Code § 5.108 (in Burton & Eisenberg)
 - FTC Regulations—Door-to-Door Sales § 429.1 (in Burton & Eisenberg)
 - 2. Arbitration Clauses
 - MSA (553-560)
 - Obliv v. Winiacki*, 374 F.3d 488 (7th Cir. 2004)
 - Brower v. Gateway 2000*, 246 A.D.2d 246 (NY 1998)
 - Federal Arbitration Act § 2 (in Burton & Eisenberg)
- C. Mistake
 - 1. Mutual mistake
 - MSA (479-490)

- Restatement* §§ 152,154
- 2. Unilateral mistake
 - MSA (472-476)
 - Restatement* § 153
- D. Nondisclosure and misrepresentation
 - MSA (498-500; 507-512)
 - Restatement* §§ 161-164
- E. Impossibility and impracticability
 - MSA (813-817; 821-824; 827-831; 845-848)
 - UCC* § 2-615
 - Restatement* § 265
- F. Agreements unenforceable on grounds of public policy
 - MSA (575-577; 581-585; 597-608)

Part V: Performance

- A. The duty of good faith
 - MSA (670-672; 681-689; 697-700)
 - UCC* § 2-306
- B. Substantial performance
 - MSA (780-784)
 - UCC* §§ 2-508, 2-601 to 2-608, 2-612
- C. Conditions of performance
 - MSA (739-747)
- D. Anticipatory repudiation
 - MSA (862-875)
 - UCC* §§ 2-609, 2-610, 2-611, 2-723
 - Restatement* § 253
- E. Warranties
 - MSA (723-736)
 - UCC* §§ 2-313, 2-314, 2-315, 2-316
 - Magnuson-Moss Warranty Act §§ 102(a), 104, 108 (in Burton & Eisenberg)
 - Proposed Amendment of UCC Article 2*, §2-313A, 2-313B (in B&E)