

ANTONIN SCALIA LAW SCHOOL

## **Contracts for JM Students**

Law 075 (R01)

Syllabus, Fall 2021

Wednesday, August 25 – November 17, 2021

**Professor Matthew Richardson**  
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### **Course Materials:**

- *Contracts in the Real World*, (Second Edition), Lawrence A. Cunningham, (Cambridge University Press 2016, 2d Ed. • ISBN-10: 1316506584; ISBN-13: 978-1316506585) (“Contracts”) \$36 on Amazon
- *Contracts Texts: Restatement 2d Contracts, UCC Article 2 & the CISG 4th Edition*, [Professor James E. Byrne](#), \$30 used on Amazon. (“Texts”) (Institute of International Banking Law & Practice; 4th edition (2008)), ISBN-10: 188887046X; ISBN-13: 978-1888870466) also available **free** online at Hein
- FDIC/JPMorgan Chase Purchase & Assumption Agreement for the Acquisitions of Washington Mutual [https://www.fdic.gov/about/freedom/washington\\_mutual\\_p\\_and\\_a.pdf](https://www.fdic.gov/about/freedom/washington_mutual_p_and_a.pdf) and Amendments <https://www.fdic.gov/about/freedom/amendments-purchase-assumption-agreement.pdf>
- Recommended: *The Wall Street Journal*.

### **Grading:**

Grades for the course will be based on a final exam (70%) and class participation (30%). Students are expected to come to class having done the assigned reading and to be prepared to discuss it to trigger lively discussions in which students will be asked to advocate for opposite sides of each case.

**Learning Outcome:**

By the end of the course, the student should have learned:

- How to identify the basic principles that impact the creation and execution of a contract so that they know how to approach business contracts.
- The basic tools available beyond the four corners of a contract to interpret, analyze and build contract terms.
- How litigation impacts contracts, negotiations, and settlements.
- How to think strategically and proactively to anticipate problems and developments.

**Calendar & Reading List**

DATE	SUBJECT	REFERENCE MATERIALS
August 25	Introduction to the US Legal System & Contracts	<p style="text-align: center;">American Legal Systems  <a href="https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page">https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page</a></p> <p style="text-align: center;">Introduction to American Legal System  <a href="https://www.law.northwestern.edu/law-school-life/student-services/orientation/documents/Orientation-Reading-Slocum-Ch_022.pdf">https://www.law.northwestern.edu/law-school-life/student-services/orientation/documents/Orientation-Reading-Slocum-Ch_022.pdf</a></p> <p style="text-align: center;">Introduction to Contract Law, Chapter  <a href="https://saylordotorg.github.io/text_law-for-entrepreneurs/s11-introduction-to-contract-law.html">https://saylordotorg.github.io/text_law-for-entrepreneurs/s11-introduction-to-contract-law.html</a></p> <p style="text-align: center;">Requirements of A Legally Binding Contract  <a href="https://www.nolo.com/legal-encyclopedia/contracts-basics-33367.html">https://www.nolo.com/legal-encyclopedia/contracts-basics-33367.html</a></p>

		<p style="text-align: center;"><b>Restatement 2d of Contracts, §1-17</b></p> <p style="text-align: center;"><b>UCC – Skim Articles Headings</b></p>
September 1	<p>What is a Legal Contract: Creation of a Contract: Consideration, Offer &amp; Acceptance</p>	<p style="text-align: center;"><b>Contracts, Chapter 1</b></p> <p style="text-align: center;"><i>Homes v. Lerner</i>, 88 Cal Rptr. 2d 130 (Cal Super. 1999)  <i>King v. Boston University</i>, 647 N.E. 2d 1196 (mass. 1995)  <i>Elvin Assocs. v. Franklin</i>, 735 F.Supp 1177 (S.D.N.Y.)  <i>Leonard v. Pepsico</i>, 88 F.Supp. 2d 116 aff'd 210 F.3d 88 (2d. Cir 2000)  <i>Carlill v. Carbolic Smoke Ball Co</i>, 1 Q.B. 256 (Court of Appeal, England 1893)  <i>Carnival Cruise Lines, Inc. Shute</i>, 499 U.S. 585 (1991)  <i>Fteja v. Facebook</i>, 841 F.Supp.2d 829 (S.D. N.Y.2012)</p> <p style="text-align: center;"><b>WAMU P&amp;A, Articles I – II, VI, XII, Schedules</b></p> <p style="text-align: center;"><b>Restatement 2d of Contracts, §1-23, 71-94</b></p> <p style="text-align: center;"><b>UCC §1-303, 2-301, 2-314</b></p>
September 8	<p>Unenforceable Bargains: Duress, Mutual Mistake, Misrepresentation, Promissory Estoppel &amp; Unconscionability</p>	<p style="text-align: center;"><b>Contracts, Chapter 2</b></p> <p style="text-align: center;"><i>Waters v. Min Ltd.</i>  587 N.E.2d 231 (Mass 1992)  <i>Embola v. Tuppela</i>, 220 S.W.2d 789 (Wash. 1923)  <i>Jordan v. Knafel</i>, 823 N.E.2d 1113 (Ill. App. 2005), and 880 N.E. 1061 (Ill. App. 2007)  <i>Tompkins v. Jackson</i>, 2009 WL 513858 (N.Y. Sup. Ct. Feb. 3, 2009, Civil Action, 104745/2008).  <i>Marvin v. Marvin</i>, 18 Cal. 3d 660 (Cal 1976)  <i>Sokaitis v. Bakasaya</i>, 975 A.2d 51 (Conn. 2009), and 2010 WL 2383902, 49 Conn. Law Rep. 812 (Conn. Super, May 11, 2010)</p>

		<p align="center"><b>Restatement 2d of Contracts, §§ 84, 86, 110-111, 151-177, 178-185</b></p> <p align="center"><b>UCC §§ 1-103, 2-302</b></p> <p align="center"><b>WAMU P&amp;A, Articles III-IV</b></p>
September 15	Representations & Warranties	<p align="center"><b>CFI Reps &amp; Warranties</b></p> <p align="center"><a href="https://corporatefinanceinstitute.com/resources/knowledge/deals/ reps-and-warranties/">https://corporatefinanceinstitute.com/resources/knowledge/deals/ reps-and-warranties/</a></p> <p align="center"><b>The Effective Use of Reps &amp; Warranties in Commercial Real Estate Transactions</b></p> <p align="center"><a href="https://cdn.ymaws.com/acrel.site-ym.com/resource/collection/8CD585C9-0FD8-42C5-A162-9590402FE64E/a002089.pdf">https://cdn.ymaws.com/acrel.site-ym.com/resource/collection/8CD585C9-0FD8-42C5-A162-9590402FE64E/a002089.pdf</a></p> <p align="center"><b>M&amp;A Academy: Representations &amp; Warranties</b></p> <p align="center"><a href="https://www.morganlewis.com/-/media/files/publication/presentation/webinar/2016/ma-academy-representations-and-warranties-15nov16.ashx?la=en&amp;hash=75851124C313AFD18707B17275EAF549D097F410">https://www.morganlewis.com/-/media/files/publication/presentation/webinar/2016/ma-academy-representations-and-warranties-15nov16.ashx?la=en&amp;hash=75851124C313AFD18707B17275EAF549D097F410</a></p> <p align="center"><b>Restatement 2d of Contracts, §§159-177, 200-230</b></p> <p align="center"><b>WAMU, Articles IX-XI</b></p> <p align="center"><b>UCC §§ 2-312 to 2-317</b></p>
September 22	Excuses & Terminations	<p align="center"><b>Contracts, Chapter 3</b></p> <p align="center"><i>Simkins v. Black</i>, 19 N.Y.2d 46 (N.Y. 2912)</p> <p align="center"><i>Beachcomber Coins, Inc., v Boskett</i>, 400 A.2d 78 (N.J. 1979)</p> <p align="center"><i>Smith v. Zimbalist</i>, 38 P.2d 170 (Cal. App. 1934)</p> <p align="center"><i>Kel-Kim Corp. v. Central Markets, Inc.</i> 519 N.E.2d 295 (N.Y 1987)</p> <p align="center"><i>Berg v. Taylor</i>, 148 Cal App. 4<sup>th</sup> 809 (Cal. App. Dist. 2007)</p>

		<p style="text-align: center;"><b>Restatement 2d of Contracts, §§261 to 272, 278 to 287</b></p> <p style="text-align: center;"><b>UCC §§ 2-601 to 2-616</b></p> <p style="text-align: center;"><b>WAMU, Articles VII-VIII</b></p>
September 29	Remedies	<p style="text-align: center;"><b>Contracts, Chapter 4</b></p> <p style="text-align: center;"><i>Goldberg v. Paris Hilton Entertainment</i>, 2009 WL 2525482 (S.D. Fla. Aug. 17, 2009)  <i>Western Pub. Co., Inc., v. MindGames, Inc.</i>, 944 F.Supp. 754 (E.D. Wisc 1996) <i>aff'd</i> 218 F.3d 652 (7<sup>th</sup> Cir 2000)  <i>Redgrave v. Boston Symphony Orchestra</i>, 855 F.2d 888 (1<sup>st</sup> Cir. 1988)  <i>Chicago Coliseum Club v. Dempsey</i>, 265 Ill. App 542, 1932 WL 2782 (Ill. App. 1<sup>st</sup> Dist. 132)  <i>Hawkins v. McGee</i>, 146 A.641 (N.H. 1929)  <i>Apple Records, Inc., v. Capitol Records</i>, 529 N.Y.S.2d 279 (N.Y. 1<sup>st</sup> Dept. 1988)  <i>Rockingham County v. Luten Bridge Co.</i>, 35 F.2d 30` (4<sup>th</sup> Cir 1929)  <i>Vanderbilt University v. DiNardo</i>, 174 F.3d 751 (6<sup>th</sup> Cir. 1999)</p> <p style="text-align: center;"><b>Restatement 2d of Contracts, §§197-199, 344-377</b></p> <p style="text-align: center;"><b>UCC §§ 2-701 to 2-706, 2-716 to 2-725</b></p>
October 6	Implied Contracts, Force Majeure, & Unjust Enrichment	<p style="text-align: center;"><b>Contracts, Chapter 5</b></p> <p style="text-align: center;"><i>Estate of Cleveland v. Gordon</i>, 837 S.W.2d 86 (Tenn. App. 1992)  <i>Bailey v. West</i>, 249 A.2d 414 (R.I. 1969)  <i>Songbird Jet Ltd. V. Amax, Inc.</i> 581 F.Supp 912 (S.D.N.Y. 1984)  <i>Baer v. Chase</i>, WL 1237859 (D.N.J. April 27, 2007)  <i>Rio Properties v. Armstrong Hirsch</i>, 94 Fed. Appx. 519 (9<sup>th</sup> Circuit. 2004); 254 Fed. Appx. 600 (9<sup>th</sup> Cir. 2007)</p>

		<p align="center"><b>Restatement 2d of Contracts, §§178-199, 235 to 257, 261 to 272</b></p> <p align="center"><b>WAMU, Article IV</b></p>
October 13	Contract Interpretation: Parole Evidence & Statute of Frauds	<p align="center"><b>Contracts, Chapter 6</b></p> <p><i>F.B.T. Productions, LLC v. Aftermath Records</i>, 621 F.3d 958 (9<sup>th</sup> Cir 2010), cert denied, 131 S. Ct. 1677 (March 21, 2011)</p> <p><i>Rather v. CBS Corp.</i>, 68 A.D. 3d 49, 886 N.Y.S.2d 121 (N.Y. App. Div. 2009)</p> <p><i>Hollywood Foreign Press Association v. Dick Clark Productions</i> [COMPLAINT <a href="https://cases.justia.com/federal/district-courts/california/cacdce/2:2010cv08833/487677/1/2.pdf?ts=1377010021">https://cases.justia.com/federal/district-courts/california/cacdce/2:2010cv08833/487677/1/2.pdf?ts=1377010021</a>], 870 F.Supp. 881 (D.C.D.Cal. 2012)</p> <p><i>World Trade Center Properties. LLC v Hartford Fire Ins. Co.</i> 345 F.3d 154 (2d. Cir 2003)</p> <p><i>Miramax LLC v. New Line Cinema</i>, N.Y. Sup. Ct. N.Y. County No. 1161383/2013</p> <p><i>One Twelve, Inc. v. Sirius XM Radio Inc.</i>, 2012 WL 10007771 (N.Y. Sup. Ct. 2012), aff'd 961 N.Y.S. 2d 916 (App. Div.1<sup>st</sup> Dept 2013)</p> <p><i>Rosenthal v. Fonda</i>, 826 F.2d 1398 (Cal 1988)</p> <p align="center"><b>Restatement 2d of Contracts, §§110-111, 150</b></p> <p align="center"><b>UCC §§2-201 to 2-204, 2-209</b></p> <p align="center"><b>WAMU, Articles II</b></p>
October 20	Duties, Modifications & Good Faith	<p align="center"><b>Contracts, Chapter 7</b></p> <p><i>Wood v. Lucy, Lady Duff-Gordon</i>, 118 N.E. 214 (N.Y. 1917( (Cardozo J)</p> <p><i>B. Lewis Productions. V. Angelou</i>, 2008 WL 1826486 (S.D.N.Y. 2008) (citing previous decisions)</p> <p><i>Third Story Music v. Waits</i>, 48 Cal Rptr. 2d 747 (Call App. 2<sup>nd</sup> Dist. 1995). <i>review denied</i>, 1996 Cal. Lexis 1670</p> <p><i>Cussler v. Crusader Entertainment, LLC</i>, 2010 WL 718007 (Cal App. 2<sup>nd</sup> Dist. March 29, 2010)</p>

		<p><i>Bovis Lend Lease Inc. v. Lower Manhattan Development</i>, Index No. 2009-6063243 (N.Y. Sup. Ct. May 9, 2011)</p> <p><i>Fusari v. Team Love Child LLC</i>, Index No. 2010-650179 (N.Y. Sup.Ct. filed March 17, 2010) and <i>Germanotta v. Fusari</i>, Index No. 2010-650183 (N.Y. Sup.Ct. filed March 18, 2010)</p> <p><b>Restatement 2d of Contracts, § 200-223</b></p> <p><b>UCC §§2-301 to 2-311</b></p> <p><b>WAMU, Articles V-IX</b></p>
October 27	Conditions to Performance, Third Parties, Society & Public Policy	<p><b>Contracts, Chapter 8 &amp; 9</b></p> <p><i>Detmers v. Cosner</i>, 814 N.W.2d. 146 (S.D. 2012)</p> <p><i>The Charlie Sheen – Warner Saga</i></p> <p><i>Daneshjou Co., Inc. v Bullock</i>, 2009 WL 790200 (Tex. App., Austin, March 27, 2009)</p> <p><i>Doe v. Wal-Mart Stores, Inc.</i>, 572 F.3d 677 (9<sup>th</sup> Cir. 2009)</p> <p>Lawrence v. Fox, 20 N.Y. 268 (1859)</p> <p>Jon Waters, <i>The Property in the promise: As Study of the Third Party Beneficiary Rule</i>, Harvard Law Review 98 (1985)</p> <p><i>New England Patriots v. StubHub</i>, 2009 WL 995483 (Mass. Super. Jan 26, 2009)</p> <p><b>Restatement 2d of Contracts, § 224-230, 302-315</b></p> <p><b>UCC §§ 2-301, 2-321, 2-507, 2-615,</b></p> <p><b>WAMU, Articles V, IX and X</b></p>
November 10 & 17	Deutsche Bank, Winstar and Breaches,	<p><b><i>DEUTSCHE BANK NATIONAL TRUSTCOMPANY v. FDIC</i></b>, Civil Action No. 09-1656 (RMC) 6-17-20</p> <p><a href="https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_09-cv-01656/pdf/USCOURTS-dcd-1_09-cv-01656-1.pdf">https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_09-cv-01656/pdf/USCOURTS-dcd-1_09-cv-01656-1.pdf</a></p>

	Relief & Remedies	<p data-bbox="1060 235 1499 267" style="text-align: center;"><b>WAMU, Articles II, IV and XII</b></p> <p data-bbox="1075 311 1482 381" style="text-align: center;"><i>United States v. Winstar Corp.</i>, 518 U.S. 839 (1996)</p> <p data-bbox="758 423 1797 456" style="text-align: center;"><i>Lessons from the Damages Decisions Following United States v. Winstar Corp.</i></p> <p data-bbox="1167 461 1392 493" style="text-align: center;">Rodger D. Citron</p> <p data-bbox="779 498 1780 531" style="text-align: center;"><a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347076&amp;download=yes">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2347076&amp;download=yes</a></p> <p data-bbox="1266 542 1293 565" style="text-align: center;">or</p> <p data-bbox="661 574 1898 607" style="text-align: center;"><a href="https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1167&amp;context=scholarlyworks">https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1167&amp;context=scholarlyworks</a></p>
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