

**CONTRACTS II
LAW 103/001
SPRING 2024**

PROFESSOR SEAN O'CONNOR

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Room 418 Hazel Hall

COURSE SCHEDULE/MEETING TIMES/TYPE: This is an in-person course that meets on Tuesdays and Thursdays from 13:50 – 15:15.

OFFICE HOURS: Tuesdays 15:30 – 17:00, Wednesdays 12:00 – 13:30, and by appointment.

REQUIRED TEXTS:

- Problems in Contract Law: Cases and Materials, Knapp et al. (10th ed., Aspen 2023)
- Occasional handouts distributed in hard copy, by email, or through Blackboard course site

COURSE OVERVIEW/DESCRIPTION: The concept of what constitutes a contract is followed by detailed study of the various principles that govern the enforcement of contracts. Common law rules are emphasized, but attention is also given to the statutory changes imposed by the Uniform Commercial Code. Befitting the subject matter, we will consider not only the case law, but also how lawyers negotiate and draft contracts. By the end of the 2-semester course you will understand the concepts and theory of contracts as well as be able to negotiate and draft a basic agreement.

Prerequisites: None

LEARNING OUTCOMES: By the end of this 2-semester course students should be able to:

- Understand and apply the major common law doctrines in modern American contracts, as well as alternative theories of obligation, and all as modulated by some of the statutory provisions of Article 2, Sales, of the Uniform Commercial Code
- Reference as persuasive, but not binding, the Restatement (Second) of Contracts
- Argue policy considerations in the tension between economic and social justice issues as contracts become part of everyday life for virtually all Americans
- Show basic proficiency in developing transactional strategies and contract management for clients
- Negotiate and draft a basic nondisclosure agreement (NDA or confidentiality agreement)

BASIS OF EVALUATION & ASSESSMENTS

You are expected to participate regularly in class. A panel system of pre-assigned “on call” students will be used.

Grading Policy: Grading is based on the following for a total possible raw course score of eighty-five (85) points:

- **Class participation:** ten (10) points
- **Drafting exercise:** fifteen (15) points
- **Final Exam:** sixty (60) points; seven (7) hour internet-blocked open exam including a combination of short answer and essay questions.

EMAIL COMMUNICATION: Students must use their Mason email account to receive important University information, including communications related to this class. This is especially important for security and confidentiality of client information. I will not respond to messages sent from or send messages to a non-Mason email address.

ATTENDANCE: Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g., a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs. I will take attendance at each session by visually checking for you. **N.B.** Per Academic Regulation 4-1.1, "A student who is not present for at least seventy-five percent (75%) of a session of the course is absent from that session."

CLASS RECORDINGS PROHIBITED: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. However, I have authorized the Law School's official recording of all sessions solely for purposes of accommodating excused absences, e.g., for COVID-19 related issues.

COVID-19 INSTRUCTIONAL CONTINGENCY PLAN: This course is currently scheduled to be taught in person. It would only move to a virtual online format at the mandatory direction of the University or Law School. If I become incapacitated, the Dean's Office will determine a suitable replacement instructor.

COVID-19 HEALTH & SAFETY REQUIREMENTS: Please note that under current University health and safety protocols, face coverings and social distancing are required for all persons on campus. Please refer to the most up-to-date University policies [here](#).

ACADEMIC INTEGRITY: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

CLASSROOM ACCOMMODATIONS: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are

implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

ADDITIONAL SCHOOL POLICIES AND RESOURCES:

STUDENT HONOR CODE - [Click Here](#)

ACADEMIC REGULATIONS - [Click Here](#)

UNIVERSITY LIFE: University Life provides student support resources such as **Counseling and Psychological Services (<https://caps.gmu.edu/>)**, **Student Health Services (<https://shs.gmu.edu/>)**, and the **Student Support and Advocacy Center (<https://ssac.gmu.edu/>)**. For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

SCHEDULE of class meetings

Tu 1/16: Recap of fall semester; review fall final exam; overview of spring semester
P9 Readings: none

Th 1/18: Ch 4: *Statute of Frauds*
P9 Readings: CB Ch 4, pp 335-46, 356-58 (Comment: The Historical Development of Law and Equity), 372-82

Tu 1/23: Ch 5: *Express Terms of the Agreement*
P10 Readings: CB Ch 5(A)(1)-(2) (principles of interpretation)

Th 1/25: Ch 5: *Express Terms of the Agreement*
P12 Readings: CB Ch 5(B), pp 429-459 only (the parol evidence rule)

Tu 1/30: Ch 6: *Supplementing the Agreement: Implied Terms, the Obligation of Good Faith, and Warranties: A: The Rational for Implied Terms; B. The Implied Obligation of Good Faith*
P11 Readings: CB Ch 6(A) pp. 485-98 (not *Seidenberg*), 509-11, 518-29

Th 2/1: Ch 6: *Supplementing the Agreement: Implied Terms, the Obligation of Good Faith, and Warranties*
P13 Readings: CB Ch 6(C)

Tu 2/6: Ch 7: *Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy*
P14 Readings: CB Ch 7(A) (minority and mental incapacity)

Th 2/8: Ch 7: *Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy*
P15 Readings: CB Ch 7(B) (duress and undue influence)

Tu 2/13: Ch 7: *Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy*
P1 Readings: CB Ch 7(C) (misrepresentation and nondisclosure)

- Th 2/15: *Practical contract drafting*
 Readings: NDA Precedent Form; Form of Miscellaneous Provisions
NDA DRAFTING EXERCISE ASSIGNED
- Tu 2/20: Ch 7: *Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy*
P2 Readings: CB Ch 7(D)(unconscionability)
- Th 2/22: Ch 7: *Avoiding Enforcement: Incapacity, Bargaining Misconduct, Unconscionability, and Public Policy*
P3 Readings: CB Ch 7(E)(public policy)
- Tu 2/27: Ch. 8: *Justification for Nonperformance: Mistake, Changed Circumstances, and Contractual Modifications*
P4 Readings: CB Ch 8(A) pp.743-54, 761-66 (mistake), (B) pp. 768-81 (changed circumstances: impossibility, impracticability, and frustration)
- Th 2/29: Ch. 8: *Justification for Nonperformance: Mistake, Changed Circumstances, and Contractual Modifications*
P5 Readings: CB Ch CB Ch 8(C) pp. 793-812, 819-24 (modification)
NDA DRAFTING EXERCISE DUE
- Tu 3/5: **No Class (Spring Break)**
- Th 3/7: **No Class (Spring Break)**
- Tu 3/12: Ch 9: *Consequences of Nonperformance: Express Conditions, Material Breach, and Anticipatory Repudiation*
P6 Readings: CB Ch Ch 9(A) pp. 825-40 (express conditions), (B) pp. 850-62, 867-70 (material breach)
- Th 3/14: Ch 9: *Consequences of Nonperformance: Express Conditions, Material Breach, and Anticipatory Repudiation*
P7 Readings: CB Ch 9(C)
- Tu 3/19: Ch 10: *Expectation Damages: Principles and Limitations*
P8 Readings: CB Ch 10(A)
NDA EXERCISES RETURNED
- Th 3/21: **Class discussion of NDA exercises**
 Readings: review your graded and marked-up NDA
- Tu 3/26: Ch 10: *Expectation Damages: Principles and Limitations*
P9 Readings: CB Ch 10(B)
- Th 3/28: Ch 10: *Expectation Damages: Principles and Limitations*
P10 Readings: CB Ch 10(C)
- Tu 4/2: Ch 10: *Expectation Damages: Principles and Limitations*

P11 Readings: CB Ch 10(E)-(F)(buyers and sellers remedies under the UCC; justification for the expectation damage rule)

Th 4/4: Ch 11 *Alternatives to Expectation Damages*

P12 Readings: CB Ch 11(A), (B) pp. 1040-50, 1065

Tu 4/9: Ch 11 *Alternatives to Expectation Damages*

P13 Readings: CB Ch 11(C) pp. 1065-76, (D) pp. 1089-1104

Th 4/11: Ch 12 *Rights and Duties of Third Parties*

P14 Readings: CB Ch 12(A)

Tu 4/16: Ch 12 *Rights and Duties of Third Parties*

P15 Readings: CB Ch 12(B)

Th 4/18: *Course Review*

Readings: none