

Assignment for First Class, Monday August 24
Contracts I, Evening (Online)
Professor Huhn

Watch the Recorded Lectures and Take the Quizzes: The links to the recorded lectures, the powerpoint presentations that track the lectures, and the online quizzes that accompany each lecture are in the “Weekly Assignments” folder in the course website on Blackboard. Just click on the folder for the assigned date. The numbered lectures and quizzes are on the law of Contracts; the lettered lectures and quizzes comprise a general introduction to law and legal reasoning. You may take the quizzes as many times as you like. They are for learning purposes only and are not graded competitively; you are simply required to complete each of the assigned quizzes before class.) Here is another link to each of the recorded lectures:

- A. The American and Pennsylvania Court Systems: <https://www.screencast.com/t/ESGpgBcBHB>
- B. Pretrial Practice: <https://www.screencast.com/t/3G6iVazhd>
- C. Civil Trials: <https://www.screencast.com/t/DwLWGFae5vwj>
- D. Appellate Practice: <https://www.screencast.com/t/bLCdrzAD>
- 1. Outline of the Law of Contracts: <https://www.screencast.com/t/8agBcSiHhLF>
- 2. The Purpose of the Law of Contracts: <https://www.screencast.com/t/mz8wP6Yr1Lr>
- 3. The Sources of the Law of Contracts: <https://www.screencast.com/t/lhgbrzDo>

Restatement (Second) of Contracts: The Restatement of the law is not law by itself; it is instead an attempt by legal experts to state and explain the law. Read Sections 1, 2, 3, 17, 18, and 33 of the Restatement which are provided in Appendix I. Once you have registered with the law school and you have received the Westlaw password you will be able to access the Restatement and conduct other legal research online. For example, Section 1 of the Restatement (Second) of Contracts on Westlaw is at <https://1.next.westlaw.com/Document/lb0b3a381da5e11e2aa340000837bc6dd/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Search%29>. For now, however, just read the provisions of the Restatement that are attached.

Textbook: The textbook for this course is Christina L. Kunz, Carol L. Chomsky, Jennifer S. Martin, and Elizabeth R. Schiltz, *Contracts: A Contemporary Approach* (3rd Edition 2018, West Academic Publishing), ISBN 978-1-68328-815-2. For our first class please study pages 1-37 of the textbook. As you read the textbook use the Outline of Lesson 1 which is also attached to this document as Appendix II. The Outline is intended to guide you in your study of the assigned cases and problems and to prepare you for class discussion of those cases and problems. The outline contains many of the questions I will ask during class. Be sure to:

- 1. Brief both cases (*Embry v. Hargadine, McKittrick Dry Goods Co.* and *Lucy v. Zehmer*).
- 2. Prepare answers to the problems (2-1 through 2-10) and be ready to defend your answers in class.

Additional Assignment: Please submit a reflection paper – as short or as long as you like – describing why you wish to become a lawyer. The assignment dropbox is in the Weekly Assignments folder on Blackboard. The paper is due by noon of the day of class.

Appendix I. Selected Provisions of the Restatement (Second) of Contracts

Restatement § 1. Contract Defined.

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

Restatement § 2. Promise; Promisor; Promisee; Beneficiary

- (1) A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.
- (2) The person manifesting the intention is the promisor.
- (3) The person to whom the manifestation is addressed is the promisee.
- (4) Where performance will benefit a person other than the promisee, that person is a beneficiary.

Restatement § 3. Agreement Defined; Bargain Defined.

An agreement is a manifestation of mutual assent on the part of two or more persons. A bargain is an agreement to exchange promises or to exchange a promise for a performance or to exchange performances.

Restatement § 17. Requirement of a Bargain.

- (1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.
- (2) Whether or not there is a bargain a contract may be formed under special rules applicable to formal contracts or under the rules stated in §§ 82-94.

Restatement § 18. Manifestation of Mutual Assent.

Manifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a performance.

Restatement § 24 – Offer Defined

An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

Restatement § 26 – Preliminary Negotiations

A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent.

Restatement § 33. Certainty.

- (1) Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain.
- (2) The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.
- (3) The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.

Appendix II

Outline of Lesson 1. Mutual Assent and Indefinite Agreements

These outlines are designed to assist you in studying the cases and problems in the textbook and in participating in class discussion.

Textbook Assignment: Pages 1-37

Introduction to Lesson 1

In this lesson we will begin studying how a valid contract is formed. Not all promises are contracts. Section 1 of the Restatement (Second) of Contracts states that a “contract” is a **promise or a set of promises for which the law gives a remedy**. Section 2 of the Restatement defines a “promise” as a **manifestation of intent to act in a specific way**. The first requirement in forming a contract that we shall study is that both parties must express a **definite willingness to be bound**. In our first lesson we shall study a number of aspects of this first principle.

(1) What if the parties disagree about what they said to each other? How is this dispute of fact resolved? In court who decides which party is telling the truth?

(2) After we have decided what the parties actually said to each other, what is the legal consequence of their words? In court, who decides the legal effect of those words?

(3) What if one of the parties made a statement that appears to be a binding promise but the person did not in fact intend to be bound to those words?

(4) What if both of the parties appeared to agree and thought they had agreed to the same terms but they were both mistaken and they were really speaking about two different things?

(5) **Inquiry** about a possible transaction and **negotiations** leading up to an agreement are not “**promises**” and therefore inquiry and negotiations are not enforceable as contracts. At what point during discussion does a party make a promise that constitutes an offer to enter into a contract and at what point does the other party make a promise that constitutes an acceptance of that offer? And

(6) What if one or both of the parties said or wrote a lot of words that at first blush appeared to be a promise to engage in certain conduct but on closer examination turned out to promise nothing?

The textbook contains cases and problems illustrating all of these points. For each case and problem that we study be ready to discuss whether the statements that are made are **promises** and whether those promises are **sufficiently definite expressions of a willingness to be bound** to form a contract.

Recorded Lectures and Quizzes:

Watch the lectures A-D and 1-3 and take the quizzes associated with each lecture. The lettered lectures contain general information about legal institutions and legal analysis; the numbered lectures concern the law of contracts. I provide you with powerpoint presentations of each lecture, but you will learn the material more thoroughly if you take the time to **watch and listen to the lectures**; you should use the powerpoints only for purposes of review. The quizzes are not graded competitively; I require only that you take the quizzes before the class for which they are assigned. After you finish each quiz be sure to read the feedback; the feedback includes explanations of the law for both right and wrong answers. You may take the quizzes as many times as you like. They are a learning tool. Later lessons will also include essay questions with sample answers.

Discussion of the Provisions of the Restatement:

Please read the following sections of the Restatement (Second) of Contracts and be ready to discuss the meaning of each provision: Sections 1, 2, 3, 17, 18, 24, 26, and 33. The Restatement is available on Westlaw; if you do not yet have a license to use Westlaw a summary version of the Restatement is available at <https://www.nylitigationfirm.com/files/restat.pdf>.

Cases for Lesson 1:

Embry v. Hargadine, McKittrick Dry Goods, p. 18, and Lucy v. Zehmer, p. 22

Brief these cases (facts, issue, holding, reasoning).

According to these cases, are contracts formed **subjectively** (a “meeting of the minds”) or **objectively** (based upon the words and conduct of the parties)?

Pick out one passage in each case that you believe is particularly important. What do these quotes mean? Why did you pick these two passages?

The Peerless Case, Raffles v. Wichelhaus, p. 30

In your opinion, did the parties enter into a binding contract to buy and sell cotton? Be ready to explain your answer.

Problems for Lesson 1:

Problems 2-1 to 2-8, pp. 32-33

In each of these problems are the expressions of the parties mere inquiries, negotiations, or solicitations of offers (like advertisements), or are their statements **offers** or **acceptances** – that is, do their statements express a definite willingness to be bound to certain terms?

The last two problems (2-7 and 2-8) raise a different issue; are these binding promises or are they illusory promises? This involves the same rule of law we have been studying – do the statements of the parties constitute a **definite expression of a willingness to be bound**?

Satisfaction Clauses and Termination Clauses, page 33

Sometimes contracts include language that seems to give a party a lot of leeway; for example a **“satisfaction clause”** gives a party to a contract the discretion to reject the other party’s performance if that party is not satisfied with the other party’s performance, and a **“termination clause”** gives a party discretion to terminate the contract. Are satisfaction clauses and termination clauses valid provisions of a contract or are they “illusory promises”? How should a court interpret a satisfaction clause or a termination clause in order to preserve the validity of a contract? Can a satisfaction clause or a termination clause be consistent with a **definite expression of a willingness to be bound?**

Problems 2-9 and 2-10, pp. 36-37

Are the promises that are contained in these two problems binding or are they “illusory promises”?