

Contract Law, Theory & Practice

What will we learn in this course?

Ask yourself what it means to become a lawyer. Are you simply jumping through one more set of arduous academic hoops so that you can earn a ridiculously large starting salary and avoid shark bites by relying on professional courtesies? Or do you perhaps aspire to learn what it means to “think like a lawyer,” to assume the role of counselor, advisor and confidant, to internalize the ethical norms that shape an admirable practicing attorney? My money is on the latter rather than the former goal.

If you share my conviction that law is a noble profession, then I invite you to embark today on a lifelong journey to develop the distinctive ways of thinking, acting and valuing that shape an attorney. In this course, you will develop new capacities for reading legal documents closely and analyzing legal arguments to identify vulnerabilities and opportunities for your client. You will experience the rich complexity of real world legal problems and cultivate your ability to design solutions that serve your client’s full range of interests. And you will analyze critically the legal rules we study and consider whether they truly promote social welfare.

In order to achieve these goals, we will strive to master contract doctrine and theory and use it to construct effective legal arguments with subtlety and creativity. You will learn to recognize recurring patterns in the theoretical and doctrinal arguments that we use and study. Together we will thoughtfully critique legal rules and policy and develop ideas for potential reforms. You will work to understand how contract law relates to the other legal subjects you study in the first semester and connect our study of contract law to situations in your own life. Throughout this course you will gain confidence in your ability to grasp complex legal concepts, construct effective arguments, and express yourself orally and in writing. And our approach to the subject will constantly bear in mind the ethical obligations of lawyers both to their clients and to the court. I invite each of you to join me for what will be a challenging, sometimes frustrating, but ultimately rewarding, intellectual journey.

What should I expect in and out of class?

[[[I’m using the “flipped classroom” model. Foundational knowledge will be delivered through readings, online screencasts, self-study exercises, low-stakes content quizzes, brief lectures and handouts. Students will apply knowledge and develop skills using active learning in-class activities and after-class reflective writing. Regular formative feedback and end of course summative assessment.]]]

What is your role (and the role of the instructor)?

For this first-semester first-year required course, there are no prerequisites. Nevertheless, you may find it helpful to consider how your own academic, work and personal experiences have prepared you to study contract law. By the time we have graduated from college, all of us have entered into countless contracts. I encourage you to reflect on those contracts and on the process that led to their formation. Beyond that, you may also wish to explore both online and printed resources that explain the essentials of various theoretical approaches to legal topics (e.g., economic analysis, feminist theory, legal realism, etc.).

Our class meets for three 80-minute sessions each week—a total of 4 hours—for 14 weeks. Your other classes in torts, civil procedure, criminal law, and legal writing add another 12 hours of class time to your schedule. You should expect to spend on average a minimum of 2 and a maximum of 4 additional hours outside of class for each classroom hour. At the high end of this range, the first semester of law school becomes rather overwhelming, requiring a total time commitment of 16 (in-class hours) + 64 (out-of-class hours) = 80 hours/week. Happily, there should be very few weeks in which your workload approaches 12 hours/day. In a more typical week, you should expect to work between 48 and 64 hours or roughly six 8-10 hour days. For those of you who plan to enter private practice with large firms, please note that a 60-hour workweek is considered quite humane.

I have designed the reading materials and learning experiences to encourage your active engagement with the subject of contract law, theory and practice. I will frequently offer short introductions or reviews of the foundational knowledge you need to participate actively in our classroom activities. During simulations or discussions, I will serve as a guide or a mentor as you work to solve your client's problem or unravel a challenging intellectual puzzle.

What will we be reading?

The required reading material for this course is an open-source casebook, J.H. VERKERKE, *COLLABORATIVE TEACHING MATERIALS FOR CONTRACTS* (CALI eLangdell edition 2012), that I have prepared myself. The book will be available in electronic form on our class collaboration site and in a printed edition that you may pick up at the Copy Center. I will also periodically distribute handouts, lecture notes, diagrams, and other materials in class and on our collaboration site.

In addition to the required readings, you may find it helpful to read MARVIN A. CHIRELSTEIN, *CONCEPTS AND CASE ANALYSIS IN THE LAW OF CONTRACTS* (any edition) as a complement to our class discussions. Chirelstein offers a concise, insightful, and occasionally witty take on many of the cases and topics that we will be studying. If you are fascinated by a particular topic and want to learn about it in much greater depth, then E. ALLAN FARNSWORTH, *CONTRACTS* (any edition) would be a useful resource.

Tip: I would strongly discourage you from using any of the commercial outlines or study aids. First, these materials tend to emphasize rote learning of specific doctrinal rules. Our approach will be to try constantly to integrate doctrine, theory and practice. Second, commercial outlines have sometimes been known to misstate the law or to neglect important qualifications or subtleties. Finally, outlines may include either more or less complete coverage of the legal rules we will study and it can be difficult to discern how exactly our topics map onto an outline's presentation of related issues. Your time will be better spent reviewing our readings, completing self-study exercises, asking and answering discussion forum questions, reflecting on in-class activities, and participating in a study group.

How will the course be organized?

We will meet Mondays, Tuesdays and Thursdays from 10:00 to 11:20am in room WB 104.

Interactive course schedule posted on our collaboration site.

Students will be assigned to a "law firm" group. Five students in each of six groups. These stable learning groups will participate in group discussion and simulations throughout the semester.

What are the course policies and procedures?

Preparation and participation – might be good to negotiate these expectations in our initial class session.

Attendance – part not negotiable and part to be negotiated in the initial class session

Honor – not negotiable

Use of computers and technology – basic needs plus part to be negotiated in initial class session

How will I be assessed and graded in this class?

Periodic Content Quizzes

Administer low-stakes multiple-choice quizzes designed to confirm that students have grasped the basic legal rules and simple applications. These quizzes could be administered in class just before we do exercises on a particular topic, or they could be self-administered online before coming to the relevant class. Include a question about what was the most difficult or confusing concept to understand. I'll use that information to decide what to cover in my introductory lecture.

Professional Journal and Time Record

Students will record their “billable hours” devoted to the course. Options for this task include using a free iPhone app called OfficeTime that makes timekeeping comparatively easy, using any other electronic tool, or maintaining a written work log. In conjunction with their time record, students will keep a professional journal that records their (very brief) reflections about their own learning, obstacles they have encountered, steps they’ve take to overcome those obstacles, and a self-assessment of the productivity of their time spent during each period. Other members of their “law firm” group may (or may not) be asked to review the time record and journal. I will review and assess whether or not each student has made a conscientious effort to complete the task.

Performance Task with Reflection

Create a scenario that challenges students to play the role of a lawyer. (My current essay exams all include something of this sort, but they’ll need considerable elaboration and further development to address some of the goals in the next two sentences and in the following paragraphs.) The problem should require close reading, applying doctrine, considering broader business/personal/social context, an ethical challenge, and an opportunity to create/design a solution to a real client problem. It also should include some chance to sort relevant from irrelevant facts, to interview/negotiate/argue/present orally, and to write a persuasive argument. Finally, I should ask students to reflect on when and how they have thought, acted and displayed the values of a lawyer in completing this assignment.

I now envision this assessment as one that would develop over the course of the semester. It will need scaffolding in the form of practice performed early and often. I would expect to use small group work and class discussion to give students practice and to model best practices in performing the analytical and practice-oriented tasks. I’m not sure, even for my 30-student class, whether it will be possible to include sufficient oral presentation practice for everyone and still allow the summative assessment to include an oral component.

Maybe the culminating performance task would span the final few weeks of the course. It could be a single contracts case simulation involving multiple issues in which we trace the development of the record through client interviews, formal discovery, and investigation. Then attempt to negotiate a resolution to the conflict. Then present arguments in a litigation context. Next deliberate among judges about the proper outcome. And finally, debate in the state legislature whether or not to enact or amend a statute in order to overturn the judicial decision.

Students could be assigned to specific writing assignments and be allowed to sign up for their preferred oral presentation exercise.

Reflective Essay

One of our objectives this semester is for each of you to gain confidence in your ability to grasp complex legal concepts, construct effective arguments, and express yourself in writing. This assignment requires you to prepare a reflective essay discussing the process by which you came to understand and learn to apply a difficult legal rule or concept. In writing this essay, you should be yourself—a reflective learner in your own situation at this point in the first year of law school. You should write for a lay person of the sort that you might encounter as a client in private or government practice. Your essay must include the following components (in whatever order allows the most effective presentation of your ideas):

- Identify the legal rule or concept that you found most difficult to understand.
- Explain exactly why this rule or topic was difficult to grasp.
- Describe what you did to overcome your initial confusion.
- State the rule or concept clearly and precisely.
- Apply it in one of the following ways: (1) relate it to a contractual situation in your own life or in the life of a family member or acquaintance, (2) explain how it applies to one of the cases we studied this semester, or (3) develop a critique of the rule that argues why the rule should be changed.

Grading procedures –

Assignments are specified.

Offer students some choice among possible assignments.

Grading weights could be subject to negotiation.

Who's teaching this class?

I sign formal contracts with my legal name, “J.H. Verkerke,” but my colleagues and friends use the nickname “Rip,” and I invite you to call me by that name both in and out of the classroom. If you're uncomfortable with such a familiar form of address until we get to know each other better, then please feel free to call me “Professor Rip” or the generic “Professor” if you must. In that case, however, I reserve the right to call you “Student.”

I earned my J.D. at Yale in 1990, clerked for Judge Ralph Winter on the U.S. Court of Appeals for the Second Circuit, and then started teaching at Virginia in 1991. Since then I've focused my teaching and scholarship on employment law, employment discrimination, economic analysis of law, and contract theory. Although I have less practical experience than some of my colleagues, I've made a special effort to engage with experienced practitioners, to seek consulting opportunities that expose me to the concerns of lawyers practicing in my areas of expertise, and to read widely about the issues that shape modern legal practice. I have also solicited

comments and suggestions from practicing lawyers—including many former students—about course coverage and classroom activities.

In addition to my law degree, I have also done graduate work in economics, earning an M.Phil., also from Yale, in 1988. A loosely “economic” perspective informs most of my scholarship. Our approach to contract law will similarly draw on economic theories at several points. However, I always strive to present these ideas in non-technical terms that anyone can understand—even a state court trial judge. I encourage you to ask questions and seek clarification if you find any of these economic ideas elusive or unintuitive.

My law school office is room WB 313, which is located in the corner of the building to the right of the entrance to the Dean’s office suite. The fastest and easiest way to contact me is ordinarily by email (ripv@virginia.edu) or by speaking to me before or after class. My office phone number is 434-924-3463. In case of a weekend or after-hours emergency, you may also reach me at home (434-977-0565).

Although I don’t hold formal office hours, I will be happy to make an appointment to meet with you at any time that is convenient for you. Also feel free to drop by during the afternoon on days when we have class or anytime during the other days of the week. Finally, I plan to schedule a meeting at least once during the semester with each “law firm” group in the class.