

**Contracts**

(Law 402, Section 1003)

Professor Eric Goldman

Fall 2005

**1. SESSIONS.** The course meets 2:00-3:10 pm every Tuesday and Thursday and 1:00-2:10 pm every Friday from August 23 to December 1, except October 4 (Rosh Hashana), October 7 (travel), October 13 (Yom Kippur) and November 24-25 (Thanksgiving).

**2. CASEBOOK.** Our casebook is Blum and Bushaw, *Contracts: Cases, Discussions and Problems* (ISBN #0735526125). In addition, you may find it helpful to have a book that contains Restatements and UCC provisions in a single place. This semester, I will use *Selections for Contracts* from Foundation Press (ISBN #1-58778-587-0) as my resource. Copies of that book are available in the bookstore as an optional book.

**3. ATTENDANCE.** In-class material and discussions are crucial to this course, so I expect you to attend every class session. However, because our lives are unpredictable, you have six “free passes” for unexcused absences (you don’t need to notify me in advance). I will excuse absences for very good cause (my standard: would Dean Thomson reschedule your final exam based on the excuse?). Your seventh unexcused absence may trigger a significant penalty to your final course grade. At my option, I may drop you from the course or give you an F upon a eighth unexcused absence.

**4. PARTICIPATION.** I will divide the class into six groups. I will designate one group as being “on call” for each unit of material, and I expect the designated group to assist with class discussions. If you are in the designated group, you can anticipate that many of my questions related to particular cases will be variations of the following:

- why did the parties enter into the business arrangement? What were their goals?
- what were the terms of the deal?
- what mistakes did the parties make?
- what lessons do you derive from this case? What will you do differently in the future to avoid an unwanted outcome?

Class participation is not limited to the designated group. The floor will be open all of the time, but I expect to direct some questions (via cold-call in some cases) exclusively to the designated group.

**5. PAPERS.** You are required to do a series of three drafting and negotiation exercises during the semester. Attachment A describes them in more detail.

In addition, you are required to attend one law-related extracurricular educational program during the semester. I will occasionally call your attention to events that qualify, but any law-related conference, educational panel or non-class lecture can qualify. The event does not need to relate to contract law. If you would like clarification about whether an event will qualify, check with me in advance; permission will be given liberally. Please note that qualifying events will become scarce in November and December, so you may find yourself with limited options if you procrastinate. I WILL NOT BE SYMPATHETIC IF YOU TELL ME IN DECEMBER THAT YOU CAN NO LONGER FIND A QUALIFYING EVENT.

After you attend the event, you should write a short paper (500 words or less) discussing the event and what insights you gained from it. This paper is due no later than the beginning of the final exam (submit through the TWEN Assignment Drop Box). However, I strongly encourage you to submit the paper as soon as you can after the event.

## 6. GRADING.

**a. Final Exam.** Subject to downward adjustments, the final exam will represent 100% of your final course grade. The final exam is scheduled for December 13 starting at 1 pm. The course is governed by the standard law school curve.

In the past, I have given a 3½ hour “take-home” exam. However, I may use a different exam structure this year; I’ll provide more details during the semester.

I have posted the previous course’s [final exam](#), and a [sample answer](#), to my [personal website](#). *I strongly encourage you to review these documents during the semester*—most students find that my exam style differs from other professors’ styles.

**b. Paper Grading.** My goals for the papers are to get you thinking and give you a little feedback, not to create make-work or grading pressure. Therefore, I will grade all four assignments (the three drafting and negotiation exercises and the additional paper) P/F, and you will automatically earn a P if your paper is on-topic and on-time. I do not tolerate late papers—I MUST RECEIVE YOUR PAPER BEFORE THE DEADLINE OR YOU WILL AUTOMATICALLY GET AN “F.” THERE IS NO GRACE PERIOD—NO EXCUSES! For each F you get, I will adjust your final exam numerical score downward by 5%.

**7. ACADEMIC SUPPORT PROGRAM.** The Academic Support Program is intended to provide students with additional guidance on the course material and exam preparation. Consider it an informal tutoring session, meeting approximately once per week during the semester, with each meeting lasting roughly 30-45 minutes. Attendance is purely voluntary. Doug Raines (3L) is the course’s ASP leader, and he welcomes your questions or ideas ([douglas.raines@marquette.edu](mailto:douglas.raines@marquette.edu)).

**8. TWEN.** I have built a course page in TWEN which I use, among other things, to send you emails related to the course. YOU MUST REGISTER FOR THE TWEN COURSE NO LATER THAN SEPTEMBER 2 AT 5 PM OR I MAY DROP YOU FROM THE COURSE.

**9. OFFICE HOURS.** I can schedule a time to speak with you at your convenience. Please email me to make an appointment. I'm also happy to talk by email.

**10. ORDER OF TOPICS AND READING ASSIGNMENTS.**

<b>Topic</b>	<b>Pages</b>	<b>Designated Group</b>
Introduction to Contracts	1-33	Entire class
Assent and Offer	43-83	Group 1
Acceptance—Common Law	85-102, 105-108, 112-129	Group 2
Acceptance—UCC	131-144	Group 3
Preliminary/Incomplete Agreements	159-166	Group 4
Consideration	193-206, 212-223, 227-229, 232-238	Group 5
Promissory Estoppel, Options and Firm Offers	241-243, 248-249, 252-254, 258-266, 279-281, 283-295	Group 6
Unjust Enrichment	297-318	Group 1
Defenses I	175-179 (SOF), 323-330, 333-337 & 342-345 (misrepresentation), 513-524 (mistake)	Group 2
Defenses II	345-347 & 360-369 (duress/modification), 537-540 & 545-558 (changed circumstances)	Group 3
Defenses III	381-391 (unconscionability), 403-407 (illegality), 409-413 (public policy), 421-426 (incapacity)	Group 4
Interpretation	441-454, 460-464, 469-477	Group 5
Parol Evidence	479-498	Group 6
Conditions	559-566, 569-578	Group 1
Breach	601-604, 607-620	Group 2
Remedies I	637-651, 657-672 (skip Chromister and New England Dairies cases)	Group 3
Remedies II	672-702, 706-708	Group 4
Remedies III	708-716, 737-749, 763-772	Group 5
Nonparties	TBD	Group 6

**11. CONTACT INFORMATION.**

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In all emails to me related to this course, please put the words “Contracts” in the subject line so that I can keep my courses straight (and to avoid unintentional deletion as spam).

More course-related materials, including an electronic copy of this syllabus, are available at [www.ericgoldman.org](http://www.ericgoldman.org).

**Attachment A**  
**Drafting and Negotiation Exercise**

**1. BACKGROUND.**

Cheetah Goldman (no relation) has emerged as a bona fide sports star, but in the most unlikely of sports—table tennis. Only 21 years old, Cheetah has won 8 of the last 11 major table-tennis tournaments over the past 3 years, breaking virtually every table-tennis record in the process. Cheetah is poised, articulate, good-looking and has a radiant smile, which (combined with his seeming invincibility) have prompted the inevitable comparisons to Tiger Woods. Cheetah even has a signature move like Tiger’s fist-pump—when Cheetah serves an ace, he spins and balances his paddle on his nose like a circus seal with a ball. With his good looks, new-found wealth, instant success and youthful indiscretions, almost every week the tabloid magazines (like *Us* and *People*) dish up stories about Cheetah’s fast cars, hard partying and revolving door of young starlet girlfriends.

Cheetah’s meteoric rise to the top of the table-tennis world, and the resulting media frenzy, has made Cheetah a household name. This has caught the attention of Acme Sports, Inc. Acme is a leading manufacturer of indoor sports equipment (billiards, darts, foosball, table tennis, etc.). Acme would like to launch a new line of table-tennis paddles endorsed by Cheetah and branded with Cheetah’s name and likeness. In exchange, Acme would pay Cheetah 5% of the product line’s sales.

**2. EXERCISE #1.**

Assume you are Cheetah’s lawyer. Please draft a list of the most important provisions you would advise him to include in a contract with Acme. Think of this as a checklist of the critical business issues from Cheetah’s perspectives—what are the things Cheetah cares most about? There’s no right or wrong way to write up this list. Just write in plain English so that your peers and I can understand your thinking.

Now, assume you are Acme’s lawyer. Draft a list of their most important deal terms.

In total, please do not spend more than 2 hours on this exercise. Your paper, containing both lists, should not exceed 500 words. Clearly, I expect both lists to be short, so don’t be surprised if you come up with only a few critical items for each list.

I would strongly prefer if you do not use the Internet or other outside resources for this project. The experience will be a lot richer for you if your thinking isn’t distorted by precedents.

DUE DATE: September 16 at 12:30 pm.

**3. EXERCISE #2.**

I will divide the class into two groups designated as Cheetah’s lawyers and Acme’s lawyers, respectively. For Exercise #2, I will ask you to draft a particular contract provision from the

perspective of your designated client (to avoid spoiling Exercise #1, I will tell you the provision after Exercise #1 is complete). I will give you some sample clauses that you can use as models/starting points. Exercise #2 cannot exceed 500 words, but I expect that many of you will need less than 200 words. Please put the number of words for your clause in your paper.

DUE DATE: October 11 at 1:30 pm.

#### **4. EXERCISE #3.**

I will pair you up with a student from the alternative perspective (i.e., if you are a lawyer for Cheetah, I will pair you up with a student who acted as Acme's lawyer). I will give you a version of the provision you drafted in Exercise #2, and I'll ask you to negotiate a mutually-acceptable provision. You can conduct this negotiation face-to-face or by phone, but **YOU MAY NOT "NEGOTIATE" BY EMAIL OR BY SWAPPING DRAFTS. I WILL GIVE BOTH STUDENTS AN "F" ON THIS PAPER FOR ANY ASYNCHRONOUS "NEGOTIATIONS."** This means that you must coordinate your schedules with one of your peer's schedules to find a workable time for both of you. I expect all students to be flexible with their schedules and courteous to their peers. Please let me know if you're having a problem getting your peer's cooperation.

Total negotiation time may not exceed one hour. If you have not resolved everything in an hour, acknowledge your differences and stop.

After the negotiation, please write me a memo debriefing me on your negotiation experiences (and, if you want, your experiences with Exercises #1 and #2). What results did you obtain, and how do you feel about those results? What did you learn (substantively or procedurally) in this process? What worked (for you, or for your peer) and what didn't? What would you do differently next time? Your memo should be at least 500 words, but please do not exceed 1,000 words. Also, please attach a "redline" (I'll explain in class) showing the agreed-upon changes.

DUE DATE: November 17 at 1:30 pm.

#### **5. ADMINISTRATIVE DETAILS.**

You should turn in all papers through the TWEN Assignment Drop Box. The drop box's timestamp will determine if your paper is timely. Please don't wait until the last minute, and there won't be a problem. Please use a file format that I can read using Microsoft Word for Windows (*not* WordPerfect). *Remember to include your name in the document itself.*

I plan to post to TWEN some or all of the exercises I receive so that you can see what some of your peers came up with. I expect to anonymize TWEN postings as appropriate.