

# Contract Theory

LAW 6936

Professor Larry A. DiMatteo

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Wed. 10:00-11:50

Room 355A

## A Note on the Course

This seminar course will review a set of canonical and supplemental materials taken from contract scholarship and jurisprudence. We will explore some of the many dimensions of contract theory and also ask what makes the American way of thinking about contract law distinctive. We will borrow writings from the major schools of American legal thought, including classical contract theory (formalism), legal realism, relational theory, critical legal theory, law & society, feminism, law & economics, behavioral decision theory, and law as interpretation. Time permitting we will look at specific issues of contract law including, pre-contractual liability and the internationalization of contract law. It is the hope of the instructor that the student will leave the course with an appreciation of how contract theory informs contract practice.

## Course Materials

The course materials will be made up of law review articles easily accessible online and class handouts. Nothing to buy! The instructor reserves the right to change the reading assignments and to provide supplemental readings in class.

## Course Requirements

Research Paper (75%): Students will be asked to write a 20-25 page research paper on a topic to be mutually agreed to by the student and instructor. The paper (hard copy) is due in class on **April 24<sup>th</sup>**. Each student must submit a well thought out 2 page outline of proposed paper is due on **February 13<sup>th</sup>**. Students are encouraged to discuss or e-mail ([larry.dimatteo@cba.ufl.edu](mailto:larry.dimatteo@cba.ufl.edu)) possible topic before writing the required outline.

Classroom Participation (25%): Students are expected to read the assignments prior to class and participate in discussions of the given topic. In addition, students will also be asked to “present” one of the assigned readings to the class.

## A Note on the Instructor

Dr. DiMatteo is the Huber Hurst Professor of Contract Law at the Warrington College of Business and Affiliated Professor at the Levin College of Law. He is a graduate of the Cornell and Harvard Law Schools, and received a Ph.D. in Business and Commercial Law from Monash University (Australia) Professor DiMatteo is the author of three-dozen law review articles and ten books mostly in the area of contract law and theory. His books include CONTRACT THEORY:

THE EVOLUTION OF CONTRACTUAL INTENT (Michigan State University Press 1998) and THE LAW OF INTERNATIONAL CONTRACTING (Kluwer 3<sup>rd</sup> ed. 2013). Forthcoming books include: COMMERCIAL CONTRACT LAW: TRANSATLANTIC PERSPECTIVES (Larry DiMatteo, et al. eds. Cambridge University Press 2013) and GLOBAL CHALLENGE OF INTERNATIONAL SALES LAW Larry DiMatteo ed. Cambridge University Press 2013).

### **January 9: INTRODUCTION**

Richness of Contract Law (Introduction & Conclusion)

Roy Kreitner, *On the New Pluralism of Contract*, 45 SUFFOLK U. L. REV. 915 (2012).

## **THEORIES OF OBLIGATION**

### **January 16: Classical Contract Theory and the Beginning of Its Critique**

LANGDELL, CASEBOOK ON CONTRACTS (1887) (Instructor Presentation)

Oliver Wendell Holmes, *The Path of Law*, 10 HARV. L. REV. 457 (1897)

Lon Fuller, *Consideration and Form*, 41 COLUMBIA L. REV. 799 (1941)

### **January 23: Legal Realism, Karl Llewellyn, and the UCC**

Nathan Isaacs, *The Standardizing of Contracts*, 27 YALE L.J. 34 (1917)

Soia Mentschikoff, *Karl N. Llewellyn*, 9 INT'L ENCYCLOPEDIA OF THE SOCIAL SCIENCES 440 (1968) (Handout)

Karl Llewellyn, *Some Realism about Realism*, 44 HARV. L. REV. 1222 (1931)

### **September 15: Reliance Theory**

Lon Fuller & William Perdue, *The Reliance Interest in Contract Damages*, 46 YALE L. J. 52 (1936) & 46 Yale L. J. 373 (1937).

Edward Yorio & Steve Thel, *The Promissory Basis of Section 90*, 101 YALE L. J. 111 (1991).

### **January 30: Relational Contract Theory**

Macneil, Ian R., *Contracts: Adjustment of Long-Term Economic Relations under Classical, Neoclassical, and Relational Contract Law*, 72 NORTHWESTERN U. L. REV. 854 (1978)

Jay Feinman, *Relational Contract Theory in Context*, 94 NORTHWESTERN U. LAW REV. 737 (2000)

### **February 6: Contract as Promise and the Equitable Dimension of Contract**

Contract as Promise

Charles Fried, *Contract as Promise Thirty Years On*, 45 SUFFOLK U. L. REV. 961 (2012).

### Equitable Dimension of Contract

Henry E. Smith, *The Equitable Dimension of Contract*, 45 SUFFOLK U. L. REV. 897 (2012).

Larry A. DiMatteo, *The History of Natural Law Theory: Transforming Embedded Influences into a Fuller Understanding of Modern Contract Law*, 60 U. PITTSBURGH L. REV. 839 (1999) (901-921)

### **February 13: Consent Theory**

Randy Barnett, *A Consent Theory of Contract*, 86 COLUMBIA L. REV. 269 (1986).

Jean Braucher, *Contract versus Contractarianism: The Regulatory Role of Contract Law*, 47 WASHINGTON & LEE L. REV. 697 (1990)

### **Paper Outline and Description Due!**

## **SCHOOLS OF LEGAL THOUGHT**

### **February 20: Law & Economics**

Richard Posner & Andrew Rosenfield, *Impossibility and Related Doctrines in Contract Law: An Economic Analysis*, 6 J. LEGAL STUDIES 83 (1977).

Eric Posner, *Economic Analysis of Contract Law After Three Decades: Success or Failure?*, 112 YALE L. J. 829 (2003)

### **February 27: Behavioral Decision Theory**

Christine Jolls, et al., *A Behavioral Approach to Law and Economics*, 50 STANFORD L. REV. 1471 (1998)

Larry A. DiMatteo, *Penalties as Rational Response to Bargaining Irrationality*, 2006 *Mich. St. L. Rev.* 883. (904-920).

### **March 13: Contract in Action (Law & Society) & Death of Contract**

Stuart Macaulay, *Non-Contractual Relations in Business*, 28 AM. SOCIOLOGICAL REV. 45 (1963).

Robert Hillman, *The Triumph of Gilmore's The Death of Contract*, 90 NORTHWESTERN L. REV. 32 (1995)

### **March 20: Critical Legal Studies, Feminist Jurisprudence & Critical Race Theory**

Claire Dalton, *Claire, An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L. J. 997 (1985)

Blake Morant, *The Teachings of Dr. Martin Luther King, Jr. and Contract Theory: An Intriguing Comparison*, 50 ALABAMA L. REV. 63 (1999)

Debora L. Threedy, *Dancing Around Gender: Lessons from the Arthur Murray on Gender and Contracts*, 45 WAKE FOREST L. REV. 749 (2010)

**March 27 & April 3: Classes Canceled**

**April 10: Contract as Interpretation and Contextualism**

Ronald Dworkin, *Hard Cases*, 88 HARVARD L. REV. 1057 (1975).

Larry A. DiMatteo & Blake D. Morant, *Contract in Context and Contract as Context*, 45 WAKE FOREST L. REV. 549 (2010)

**SPECIAL TOPICS**

**April 17: Precontractual Liability**

E. Allan Farnsworth, *Precontractual Liability and Preliminary Obligations: Fair Dealing and Failed Negotiations*, 87 COLUMBIA L. REV. 217 (1987).

Civil Law Comparison: Lecture

**April 24: Internationalization of Contract Law**

Lecture & Discussion: Unidroit Principles of International Commercial Contracts (UPICC); Convention on Contracts for the International Sale of Goods (CISG); Common European Sales Law (CESL); and Contract Law of the People's Republic of China

Contract Theory. Chapter 9. February 2008 with 84 Reads. DOI: 10.1002/9780470690116.ch9. In book: The Blackwell Guide to the Philosophy of Law and Legal Theory, pp.138 - 147. Cite this publication. Our theory of costly contracts emphasizes that contractual rights can be of two types: specific rights and residual rights. When it is costly to list all specific rights over assets in the contract, it may be optimal to let one party purchase all residual rights. Ownership is the purchase of these residual rights.