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 24th. Each student must submit a well thought out 2 page outline of proposed paper is due on February 13th. Students are encouraged to discuss or e-mail (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:

January 9: INTRODUCTION

Richness of Contract Law (Introduction & Conclusion)

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


January 30: Relational Contract Theory


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

Contract as Promise

Equitable Dimension of Contract


February 13: Consent Theory


Paper Outline and Description Due!

SCHOOLS OF LEGAL THOUGHT

February 20: Law & Economics


February 27: Behavioral Decision Theory


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


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


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

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


**SPECIAL TOPICS**

**April 17: Precontractual Liability**


**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
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.