

Law 618: Advanced Contracts
Spring 2024
Professor Felipe Jiménez

Schedule

Seminar meetings: Room 2
Seminar location: 9:00-10:50

Contact Details

Office: Room 423
Email: fjimenez@law.usc.edu
Office hours: By appointment
Assistant: LaKisha Coleman, lcoleman@law.usc.edu, Room 405

Course Description

The goal of this course is to study the law of contracts from a theoretical, normative, and policy perspective. We will cover questions like: What is the point of enforcing contracts? What is the optimal regime of contract interpretation? How should contracts be enforced as a matter of morality and economic policy? What explains the structure of contract law? How do sophisticated parties structure their contracts? How should the law of contracts deal with issues like contracts of adhesion, employment contracts, arbitration, and non-disclosure agreements? Since similar normative theories underlie policy considerations and normative debates in other spheres of private and commercial law, the course is expected to contribute to those spheres as well. The course assumes no prior knowledge of any non-legal discipline. It will, however, extensively integrate insights from disciplines like philosophy and economics, as well as empirical legal scholarship.

During each session, we will discuss a set of assigned readings. You will be expected to post short reaction notes before each session and to engage in substantive

discussion during the session. The main component of the evaluation is the final paper. All topics in contract law and theory and all perspectives (whether economic, doctrinal, philosophical, critical, comparative, historical, etc.) are acceptable. During the semester, you should email me to discuss your topic.

Prerequisite(s), co-requisite(s), or recommended preparation:

None.

Required Materials (e.g., textbooks or other)

None. All materials will be provided by me.

Learning Objectives

Students who attend the seminar throughout the semester and satisfactorily complete the assignments required in the section below, will be able to:

- Make theoretical arguments about private law generally, and contract law specifically.
- Analyze and evaluate theoretical claims about private law generally, and contract law specifically.
- Interpret and respond to academic work on contemporary contract law and theory.
- Elaborate their own views about the issues raised by normative debates on contract law and contract theory.

Description and Assessment of Assignments

Grading for this seminar will depend on three components:

- Reaction notes (15%).
- Seminar discussion (15%).
- Final paper (70%).

For every week, you will need to post a one- to two-paragraph reaction note about any specific issue(s) raised by, discussed in, or connected to that week's readings, no later than midnight of the day before our session. **Please post on the Discussion Board in Blackboard.** However, during the semester every student will get two "passes." All you need to do is let me know at least one day before our seminar meets.

You will also be expected to participate in seminar discussions every week.

The final paper should be at least 10 pages long (20 pages long for those who want to fulfil their writing requirement with the paper).

Participation

See above.

Grading Breakdown

See above.

Course-specific Policies

You are expected to engage in substantive discussion respectfully and as would be expected in a professional environment.

Regular and punctual attendance is expected.

Seminar Schedule (readings will be available [here](#)).

Please note that we will generally not be reading the entire papers. I will give you selections focusing on the arguments relevant for our discussion.

Week	Date	Topic	Readings
1		The Private Law / Public Law Distinction	<ol style="list-style-type: none"> 1. Robert Hale, Coercion and Distribution in a Supposedly Non-Coercive State 2. John H. Merryman, The Public-Private Law Distinction in European and American Law 3. Hanoch Dagan and Ben Zipursky, The Distinction between Private Law and Public Law
2		The Central Debate in Private Law Theory	<ol style="list-style-type: none"> 1. Louis Kaplow and Steve Shavell, Fairness versus Welfare 2. Ernest Weinrib, The Idea of Private Law 3. Rebecca Stone, Economic Analysis of Contract Law from the Internal Point of View
3		Law and Economics	<ol style="list-style-type: none"> 1. Ronald Coase, The Problem of Social Cost 2. Harold Demsetz, Towards a Theory of Property Rights 3. Richard Craswell, Two Economic Theories of Enforcing Promises
4		The Critique of Law and Economics	<ol style="list-style-type: none"> 1. Benjamin Zipursky, Pragmatic Conceptualism 2. Martha Nussbaum, Flawed Foundations 4. Liam Murphy, The Practice of Promise and Contract
5		The Structure of Contractual Obligation	<ol style="list-style-type: none"> 1. Steve Shavell, Why Breach of Contract May Not be Immoral

			<ol style="list-style-type: none"> 2. Daniel Markovits and Alan Schwartz, The Myth of Efficient Breach 3. Seana Shiffrin, Must I Mean What You Think I Should Have Said
6		Contract Interpretation	<ol style="list-style-type: none"> 1. Mark Gergen, A Defense of Judicial Reconstruction of Contracts 2. Robert Scott and Allan Schwartz, Contract Interpretation Redux.
7		Contract Remedies	<ol style="list-style-type: none"> 1. Seana Shiffrin, The Divergence of Contract and Promise 2. Theresa Arnold et al, Lipstick on a Pig: Specific Performance Clauses in Action
8		The Adjudication of Contractual Disputes	<ol style="list-style-type: none"> 1. Richard Posner, Pragmatic Adjudication 2. Aditi Bagchi, Contract as Procedural Justice 3. Felipe Jiménez, A Formalist Theory of Contract Law Adjudication
9		Third Parties in Contract Law	<ol style="list-style-type: none"> 1. Nico Cornell, Wrongs, Rights, and Third Parties 2. Kish Parella, Protecting Third Parties in Contracts
10		Contemporary Issues: The Structure of Commercial Contracts	<ol style="list-style-type: none"> 1. Ronald Gilson et al, Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration. 2. Cathy Hwang and Matthew Jennejohn, Deal Structure.

11		Contemporary Issues: Contracts of Adhesion	<ol style="list-style-type: none"> 1. Meirav Furth-Matzkin and Roseanna Sommers, Consumer psychology and the problem of fine-print fraud. 2. David Hoffman, Defeating the Empire of Forms
12		Contemporary Issues: Domestic Arbitration	<ol style="list-style-type: none"> 1. Myriam Gilles, The Day Doctrine Died 2. J. Maria Glover, Beyond Unconscionability 3. John Gardner, The Twilight of Legality
13		Contemporary Issues: The Law of Work	<ol style="list-style-type: none"> 1. Elizabeth Anderson, Private Government 2. Aditi Bagchi, The Myth of Equality in the Employment Relation
14		Contemporary Issues: Non-Disclosure Agreements	<ol style="list-style-type: none"> 1. Jeffrey Gordon, Silence for Sale 2. Scott Altman, Selling Silence

Statement on Academic Conduct and Support Systems

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:*Student Support Generally*

JD students may contact the law school’s Student Support Office in Room 104 or studentsupport@law.usc.edu regarding any academic or personal issues; other law students should contact the Graduate and International Programs Office in Room 105 or llm@law.usc.edu. All USC students and families may obtain assistance from USC’s office of Student Support and Advocacy, studentaffairs.usc.edu/ssa or (213) 821-4710, in resolving a range of complex personal, financial, and academic complex issues.

Student Counseling Services (SCS) – (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. engemannshc.usc.edu/counseling

National Suicide Prevention Lifeline – 1 (800) 273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. www.suicidepreventionlifeline.org

Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. engemannshc.usc.edu/rsvp

Sexual Assault Resource Center

For more information about how to get help or to help a survivor, as well as rights, reporting options, and additional resources, visit the website: sarc.usc.edu

Office of Equity and Diversity (OED)/Title IX Compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. equity.usc.edu

Bias Assessment Response and Support

Incidents of bias, hate crimes, and microaggressions need to be reported, to allow for appropriate investigation and response. studentaffairs.usc.edu/bias-assessment-response-support

Diversity at USC

Information on events, programs and training, USC's Diversity Task Force (which has representatives from each school), opportunities for participation, and various resources for students. diversity.usc.edu

Safety and Emergencies:

USC Department of Public Safety – UPC: (213) 740-4321 – HSC: (323) 442-1000 – available 24/7

In charge of the overall safety of the USC community; contact to report a crime or situation of danger. Also, the website emergency.usc.edu provides safety information and other updates, including explaining how academic instruction will be continued if an officially declared emergency makes travel to campus infeasible.

Disability Services and Programs:

The process for requesting and using an accommodation is fully described in a letter distributed at the beginning of each year by the law school's Student Support Office. The process of obtaining an accommodation can take several weeks, so it is advisable to begin as early in the semester as possible. Requests should be made to USC's Office of Disability Services and Programs (DSP) at dsp.usc.edu. Once an approval letter has been obtained from DSP, the student should fill out the law school's Disability Accommodations Request (DAR) form, available in Room 104, and should submit that form and the DSP approval letter to the Student Support Office. Students should not discuss their accommodations with faculty or submit the DSP approval letter to faculty. The law school maintains a policy of anonymity

regarding students receiving disability accommodations. No one handling accommodations reveals, either to faculty or to other students, which students have a documented disability.