Syllabus for *Contract Doctrine, Theory & Practice*

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**What will we learn in this course?**

Ask yourself what it means to become a lawyer. Do you think of law school as simply one more set of arduous academic hoops to be endured on the path to passing the bar exam and reaping the substantial economic rewards of a professional degree? Is legal education little more than a thinly disguised hazing ritual designed to produce compliant corporate tools who will do as they are told? Or do you perhaps aspire to “think like a lawyer,” to develop creative and effective legal arguments, to hone your analytic abilities and practical wisdom, to assume the role of counselor, adviser and confidante, and to internalize the ethical norms that guide an admirable practicing attorney? My sincere hope is that your experience at U.Va. Law—and our time together this semester studying Contracts—will persuade you that these latter goals are the proper object of a legal education.

In this course, you begin a lifelong process of cultivating the distinctive habits of thought, practical skills and ethical values that define the role of a practicing attorney. You will develop new capacities for reading legal materials closely and analyzing the strengths and weaknesses of arguments. You will experience the rich complexity of real world legal problems and learn to design solutions that serve your client’s full range of interests. And you will analyze critically the legal rules we study to determine whether they truly promote social welfare.

In order to achieve these goals, we will work to master contract doctrine and theory. We will use those principles to construct legal arguments with subtlety and creativity. Together we will thoughtfully critique doctrinal rules and legal policies and then develop ideas for potential reforms. You will consider how contract law relates to the other subjects you study in the first semester of law school and apply your new legal knowledge to situations in your own life. Throughout this course you will gain confidence in your ability to grasp complex legal concepts, to formulate effective arguments, and to express yourself orally.
and in writing. We will also 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?

My guiding instructional philosophy focuses on “the power of doing.” Our goal in every class session will be to give each of you an opportunity to practice the skills we aim to develop this semester. In order to assume the role of an attorney, it is necessary to master a body of legal doctrine and some basic theoretical principles. You will acquire this foundational knowledge through readings, online screencasts, self-study exercises, low-stakes content quizzes, brief in-class lectures, frequent opportunities to ask and answer questions, and explanatory handouts. Every student will need to prepare thoroughly for class and assume responsibility for asking questions when any of these basic principles is unclear.

Our class sessions will be devoted to applying what you have learned. We will answer questions and analyze factual scenarios. We will work to develop effective solutions to practical legal problems. Students will collaborate in small “law firm” groups on problem solving exercises, participate in simulations, debate legal policy, and brainstorm about how best to understand the law of contracts. You will apply your new legal knowledge and develop practical skills with the guidance of frequent feedback, both from your peers and from the instructor. Our focus will be on cultivating the habits of mind and the analytic tools that distinguish an accomplished practicing attorney.

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.). The cases and other reading materials are, however, the only required readings for the course.

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 most associates (and many partners) consider a 60-hour workweek to be reasonably humane.

I have designed the reading materials and learning experiences to encourage your active engagement with the subject of contract doctrine, 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 primarily as a guide or a mentor as you work to solve your client’s problem or unravel a challenging intellectual puzzle. I am also happy to meet with you to discuss your progress in the course, questions you may have about law school more generally, or any career planning issues for which I might be able to provide useful insight.

What will we be reading?
The required reading material for this course will be extracted from an open-source casebook, J.H. Verkerke, *Collaborative Teaching Materials for Contracts* (CALI eLangdell edition 2012), that I have prepared myself. You will receive printed packets of cases, statutory or other legal authorities, teaching notes, and problems. These materials will be printed on looseleaf paper to facilitate easy organization, and they will also be available on our class collaboration site for convenient reference. 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, some students have found 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 discourage you from purchasing 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 meet Mondays, Wednesdays and Thursdays from 10:00 to 11:20am in room WB 104. All assignments will be accessible from the interactive course schedule posted on the Modules page of this course site. I will be adding material and making adjustments to the timing of assignments throughout the semester. Please don’t hesitate to ask before or after class or by email if you ever have any doubt about what work is due for an upcoming class session.

Each of you will be assigned to a “law firm” group—with five students in each of six groups. These stable learning groups will participate in group discussions and simulation exercises throughout the semester. During our first class negotiation session, the question of whether to reshuffle the law firm groups at mid-semester will be one of the course policies open to negotiation.
Please note that this is the first year that any class at the Law School will be using the Canvas learning management system. The Darden Graduate School of Business has already adopted the Canvas platform, and the Law School is contemplating doing so for the 2013-14 academic year. We are serving as a pilot test to evaluate its potential. Gary Banks, the Law School's Chief Technology Officer, will be providing technical support, and both he and I would welcome any comments or suggestions you may have about the suitability of Canvas for use in legal education.

What are the course policies and procedures?

**Honor policy** – The honor policy guidelines for this course are posted on our class wiki. Please review them and contact me if you have any questions.

**Preparation and participation** – You are responsible for completing the assigned reading along with any applicable content quiz or pre-class written assignment before each class session. During class, you should answer questions thoughtfully, seek guidance from fellow students and the instructor when you are confused, participate actively in your law firm group, contribute to class discussions and show respect for everyone in the classroom. After class, I encourage you to reflect about what you have learned. Use the discussion forum to post comments and questions. Respond to questions from your classmates and continue to debate issues that we discussed in class.

**Attendance** – The ABA requires "regular attendance" in class as a condition of accreditation. The Law School interprets this standard to require students to attend at least 80% of the class sessions in each course. The sanction for non-compliance is rather draconian—an "F" for the course. In my experience, regular attendance is never a problem for first-year students. If you ever need to miss class, please contact me with an explanation as far in advance as possible. We can work out an arrangement for you to complete any in-class assignments or receive material distributed that day.

**Use of computers and technology** – In addition to this Canvas course collaboration site, we will also be using Learning Catalytics to capture student responses to questions posed during class and a Piazza online forum to facilitate discussion outside of class time. We will create accounts for you on each of these services using your official UVa email address. If you have any difficulty with your accounts, please contact Gary Banks (with a CC to me). All students will need access to each of these services prior to our first class meeting on Wednesday morning.

You will need to bring to every class a device that allows you to respond to questions posed using the Learning Catalytics platform. Any web-enabled device will do. During our first class negotiation session, we will determine the policy for the classroom use of computers and other electronic devices (iPads, smartphones, etc.).

**How will I be assessed and graded in this class?**

**Content Quizzes** – You will complete frequent short, low-stakes, multiple-choice content quizzes. The sole purpose of these assignments is to confirm that you have grasped the basic legal rules and simple applications of those rules. They will typically include a question asking you what topic or concept you
found most difficult or confusing. I will use your responses to help decide what information to cover in my introductory mini-lecture on each topic.

**Written Preparation for Class** – For some classes, you will have a very short written assignment to complete before our class session together. The purpose of these assignments will be to jump start our in-class discussions. By providing a thoughtful starting point for analysis, what you write will improve the depth and quality of our collaborative problem solving in the classroom.

**In-Class Exercises** – Frequently throughout the semester, I will give you a short challenge or puzzle to consider both individually and in your law firm groups. The goal of these exercises is to give you considerable practice with the sort of analysis and reasoning that is required for more substantial essays, memos and exams.

**Midterm Essay Exams** – Roughly one-third and two-thirds of the way through the semester, you will complete midterm take-home essay exams. These exams will present you with a fact pattern and ask you to assume the role of attorney for one of the parties. Your essay response will offer concise legal analysis and advice. A comparatively short word limit will require you to identify and present the strongest arguments about the most difficult issues the fact pattern presents. It will also place a premium on clear and precise written expression of your thoughts.

**Simulations** – Several times during the semester, we will engage in more extended simulations of a real world legal problem. These fact patterns will be more complex than the typical in-class exercise, and students will assume a variety of roles as we discuss and analyze these situations. Each simulation will give students an opportunity to engage in oral advocacy in the form of presentation, negotiation, argument or debate.

**Final Learning Portfolio** – In lieu of a final exam, you will prepare a cumulative learning portfolio. This portfolio will collect examples of your work throughout the semester (including any written assignments, discussion forum postings, descriptions of classroom activities, or important interactions outside of the classroom). You will then write an essay reflecting on your most significant learning experiences in this class. You will use the work you have selected as evidence to support the arguments you make in your reflective essay. Your essay will document the content, scope, and quality of your work along with your substantive reflections on your learning process. The goal of this assignment is to anchor your learning in specific experiences and to demonstrate its relevance to your intellectual, social, personal, and ethical development.

**Grading procedures** – More detailed descriptions of each of these assignments will be posted to our course modules page well in advance of the due date. Those descriptions will include either a grading rubric or additional information about the criteria for grading each assignment. I will compute final grades by averaging grades within each assignment group, multiplying by the grading weight for that assignment group, summing these weighted averages to produce a final raw score, and then applying the law school's required mean (B+) and recommended letter grade distribution to those raw scores.
During our first class negotiation session, the grading weights applied to each assignment group will be one of the course policies open to negotiation. The weights currently posted on the home page of our Canvas course collaboration site will be the starting point for those negotiations.

Who’s teaching this class?
I sign formal contracts with my legal name, “J. Hoult Verkerke,” or more commonly “J.H. Verkerke,” but my colleagues and friends use my 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) or on my cellphone (434-218-0353).

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.