Contents

1 A Note on Contracts and Happiness	1
1.1 Contracts and Happiness	1
1.2 Louis and Ella. After reading listen to "Cheek to Cheek" as performed by Ella Fitzgerald and Louis Armstrong. The musical selections are advisory not mandatory. They reflect the sensibility and moods behind the ordering of the cases assigned.	2
1.3 Bella and Andrea. After reading listen to "Night and Day" as performed by Etta James.	3
1.4 Mary and Samuel Duke. After reading listen to "Our Love Is Here to Stay" as performed by Ella Fitzgerald and Louis Armstrong.	4
1.5 Rick James. After reading listen to "Don't You Worry 'Bout a Thing" as performed by Stevie Wonder.	5
2 Public Policy and Contracting	7
2.1 Restatement Second of Contracts §§ 1–2, 178	7
2.2 The Illegal Contract: His Excellency Abdulaziz Bin Ibrahim Al-Ibrahim v. Edde, 897 F. Supp. 620 (1995). After reading listen to "I Fought the Law (and the Law Won)" as performed by the Bobby Fuller Four. (The Clash produced a good version too!)	9
2.3 Note	12
2.4 The Non-competition Clause: Valley Medical Specialists v. Farber, 982 P. 2d 1277 (1999). After reading listen to "The Thrill Is Gone" as performed by B. B. King.	13
2.5 Note	24
2.6 Breach of Promise to Marry	25
2.6.1 Gilbert v. Barkes, 987 S.W. 2d 772 (1999). After reading listen to "I Will Survive" as performed by Gloria Gaynor.	25
2.6.2 Note	30

2.7 The Problem of Surrogacy	32
2.7.1 The Problem of Surrogacy: Matter of Baby M, 537 A. 2d 1227 (1988). After reading listen to "Be My Baby" as performed by The Ronettes.	32
2.7.2 Note	53
3 Contract Formation	55
3.1 Restatement Second of Contracts §§ 24, 50	55
3.2 Lucy v. Zehmer, 84 N.E. 2d 516 (1954) (Supreme Court of Virginia). After reading listen to "Don't Worry Baby" as performed by the Beach Boys.	56
3.3 Note	63
3.4 Leonard v. PepsiCo, Inc., 88 F.Supp.2d 116 (1999). After reading listen to "I'd Like to Teach the World to Sing" as performed in the Coca Cola commercial.	65
3.5 Normile v. Miller, 362 S.E. 11 (1985). After reading listen to "Ticket to Ride" as performed by The Beatles.	81
3.6 Walker v. Keith, 382 S.W. 2d 198 (1964). After reading listen to "Green Onions" as performed by Booker T. and the M.G.'s.	89
3.7 Note	97
3.8 The Problem of the Standardized Contract: Boilerplate "Agreement": Carnival Cruise Lines v. Shute, 499 U.S. 585 (1991). After reading listen to "Rave On" as performed by Buddy Holly.	98
3.9 Note	109
3.10 The Problem of Online "Click to Submit" Contracting: Specht v. Netscape Communications Corp., 306 F. 3d 17 (2002). After reading listen to "Soul Finger" as performed by the Bar-Kays.	110
3.11 Battle of the Forms: Brown Machine v. Hercules, 770 S. W. 2d 416 (1989). After reading listen to "Voodoo Child (Slight Return)" as performed by Jimi Hendrix.	126
3.12 Note: U.C.C. 2–207	133

4 Grounds for Enforcing Promises	135
4.1 Consideration	135
4.1.1 Restatement Second Contracts § 71 (Consideration). After reading listen to "Can't Buy Me Love" as performed by The Beatles.	135
4.1.2 Hamer v. Sidway, 124 N.Y. 538 (1891). After reading listen to "Go Where You Wanna Go" as performed by The Fifth Dimension.	135
4.1.3 Note	137
4.1.4 Dougherty v. Salt, 227 N.Y. 200 (1919). After reading listen to "God Bless the Child" as performed by Billie Holiday.	138
4.1.5 Note	139
4.1.6 Plowman v. Indian Refining Co., 20 F. Supp. 1 (1937). After reading listen to "Do It Again" as performed by The Beach Boys.	140
4.1.7 Note	145
4.1.8 Batsakis v. Demotsis, 226 S.W. 2d 673 (1949). After reading listen to "That's the Way of the World" as performed by Earth, Wind & Fire.	146
4.1.9 Allegheny College v. National Chautauqua County Bank of Jamestown, 246 N.Y. 369 (1927). After reading listen to "Eleanor Rigby" as performed by The Beatles.	148
4.1.10 Note	155
4.1.11 Dohrmann v. Swaney, 14 N.E. 3d 605 (2014). After reading listen to "Got to Be Real" as performed by Cheryl Lynn.	155
4.1.12 Note	164
4.1.13 Alaska Packer's Association v. Domenico, 117 F. 99 (1902). After reading listen to "Stand by Me" as performed by Ben E. King.	164
4.1.14 Note	170
4.1.15 Restatement Second Contracts § 89 (Modification of Contract)	170
4.2 Reliance as a Basis for Enforcing Promises: (Promissory Estoppel)	173
4.2.1 Restatement Second of Contracts § 90 (Promissory Estoppel)	173

	4.2.2 Kirksey v. Kirksey, 8 Ala 131 (1845). After reading listen to "Hip Hug-Her" as performed by Booker T. and the M.G.'s.	173
	4.2.3 Wright v. Newman, 266 Ga. 519 (1996). After reading listen to "Cool Jerk" as performed by The Capitols.	174
	4.2.4 Note. After reading listen to "The Thrill Is Gone" as performed by Tracy Chapman.	179
	4.2.5 Katz v. Danny Dare, 610 S. W. 2d 121 (1980). After reading listen to "April in Paris" as performed by Count Basie.	180
	4.2.6 Note	185
	4.2.7 Pop's Cones, Inc. v. Resorts International Hotel, Inc., 704 A. 2d 1321 (1998). After reading listen to "People Are Strange" as performed by The Doors.	185
	4.2.8 Note	193
	4.2.9 Berryman v. Kmoch, 559 P. 2d 790 (1977). After reading listen to "Moanin" as performed by Art Blakey.	194
	4.2.10 Note (Restatement Second Contracts § 87)	199
	4.2.11 James Baird Co. v. Gimbel Bros., 64 F. 2d 344 (1933). After reading listen to "The A Train" as performed by Duke Ellington.	199
	4.2.12 Note	201
	4.2.13 Drennan v. Star Paving Co., 51 Cal. 2d 409 (1958). After reading listen to "Body and Soul" as performed by Benny Goodman.	202
	4.2.14 Note	206
	4.2.15 Ypsilanti v. General Motors, 1993 WL 132385 (1993). After reading listen to "Little Deuce Coupe" as performed by The Beach Boys.	207
	4.2.16 Ypsilanti v. General Motors, 201 Mich. App. 128 (1993). After reading listen to "Pink Cadillac" as performed by Bruce Springsteen.	222
	4.2.17 Note	229
4.3	3 Promises Grounded in the Receipt of Past Benefits	231
	4.3.1 Mills v. Wyman, 3 Pick 207 (1825). After reading listen to "In the Mood" as performed by Glenn Miller.	231

4.3.2 Webb v. McGowin, 168 So. 196 (1935). After reading listen to "I Thank You" as performed by Sam & Dave.	233
4.3.3 Note	236
4.4 Restitution	
4.4.1 Credit Bureau Enterprises v. Pelo, 608 N.W. 2d 20 (2000). After reading listen to "A String of Pearls" as performed by Glenn Miller.	239
4.4.2 Watts v. Watts, 405 N.W. 2d 303 (1987). After reading listen to "Anyone Who Had a Heart" as performed by Dionne Warwick.	239
4.4.3 Note	245

257

5 | Remedies

5.1 Expectation Damages	257
5.1.1 Handicapped Children's v. Lukaszewski, 332 N. W. 2d 774 (Wisconsin 1983). After reading listen to "You've Got a Friend" as performed by Carole King.	257
5.1.2 American Standard v. Schectman, 427 N.E. 2d 512 (1981). After reading listen to "Grazing in the Grass" as performed by Hugh Masekela.	262
5.2 Specific Performance	267
5.2.1 American Broadcasting Companies, Inc. v. Warner Wolf et al., 52 N.Y. 2d 394 (1981). After reading listen to "Until You Come Back to Me" as performed by Aretha Franklin.	267
5.2.2 City Stores v. Ammerman, 394 F. 2d 950 (1968). After reading listen to "Outa-Space" as performed by Billy Preston.	274
5.2.3 Doreen Houseman v. Eric Dare, 405 N.J.Super. 538 (2009). After reading listen to "Atomic Dog" as performed by George Clinton.	278
5.3 The Foreseeability Limitation	284
5.3.1 Hadley v. Baxendale, 29 Exch. 341 (1854). After reading listen to "Take Five" as performed by The Brubeck Quartet.	284
5.3.2 Note	286

	5.3.3 Florafax International Inc. v. GTE Market Resources, 933 P.2d 282 (1997), Inc. After reading listen to "Sunny" as performed by Bobby Hebb.	286
5.4	The Uncertainty Limitation	302
	5.4.1 Fera v. Village Plaza, Inc., 396 Mich. 639 (1976). After reading listen to "Up on the Roof" as performed by The Drifters.	302
5.5	Injuries for Which Recovery Is Often Withheld	308
	5.5.1 Erlich v. Menezes, 981 P. 2d 978 (1999). After reading listen to "Shake Me, Wake Me (When It's Over)" as performed by The Four Tops.	308
	5.5.2 B & M Homes, Inc. v. Hogan, 376 So. 2d 667 (Ala. 1979). After reading listen to "Gimme Shelter" as performed by The Rolling Stones.	321
5.6	Mitigation of Damages	325
	5.6.1 Rockingham County v. Luten Bridge, Co., 35 F. 2d 301 (1929). After reading listen to "The Theme from Route 66" as performed by Nelson Riddle.	325
	5.6.2 Note	328
	5.6.3 Parker v. Twentieth Century Fox, 474 P. 2d 689 (1970). After reading listen to "When the Music's Over" as performed by The Doors.	328
	5.6.4 Note	333
5.7	Alternatives to Recovering Expectation Damages	334
	5.7.1 Reliance Damages	334
	5.7.1.1 Wartzman v. Hightower, 456 A. 2d 82 (1983). After reading listen to "The Entertainer" as performed by Scott Joplin.	334
	5.7.2 Restitutionary Recovery	342
	5.7.2.1 United States v. Algernon Blair, Incorporated, 479 F.2d 639 (1973). After reading listen to "Mighty Mighty" as performed by Earth, Wind & Fire.	342
	5.7.3 Agreed Damages/Liquidated Damages	344
	5.7.3.1 Restatement Second Contracts § 356	344
	5.7.3.2 Barrie School v. Patch, 933 A. 2d 382 (2006). After reading listen to "Shining Star" as performed by Earth, Wind & Fire.	344

5.7.3.3 Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC, 393 P.2d 449 (2017). After reading listen to "Sing a Song" as performed by Earth, Wind & Fire.	363
6 Statute of Frauds	379
6.1 Restatement Second of Contracts § 110	379
6.2 Crabtree v. Elizabeth Arden Sales Corp., 305 N.Y. 48 (1953). After reading listen to "You Make Me Feel (Mighty Real)" as performed by Sylvester.	381
6.3 Alaska Democratic Party v. Rice, 934 P. 2d 1313 (1997). After reading listen to "Can't We Be Friends" as performed by Ella Fitzgerald and Louis Armstrong.	386
7 Parol Evidence Rule	391
7.1 Restatement Second Contracts §§ 209–210	391
7.2 Thompson v. Libby, 34 Minn. 374 (1885). After reading listen to "Get Ready" as performed by The Temptations.	392
7.3 Rebecca D. Masterson et al. v. Lu E. Sine et al., 436 P.2d 561 (1968). After reading listen to "A Foggy Day" as performed by Louis Armstrong and Ella Fitzgerald.	395
8 Problems of Interpretation	409
8.1 Abraham Barkhordar, Sarah Zelasky, and Ella Wechsler-Matthaei v. President and Fellows of Harvard College, 544 F. Supp. 203 (2021). After reading listen to "How High the Moon" as performed by Ella Fitzgerald.	409
8.2 Wood v. Lucy, Lady Duff-Gordon, 222 N.Y. 88 (1917). After reading listen to "Will You Love Me Tomorrow" as performed by The Shirelles.	417
8.3 Note	419
8.4 Frigaliment Importing Co. Ltd. v. BNS International Sales Corp., 190 F. Supp. 116 (1960). After reading listen to "Get the Funk Out Ma Face" as performed by The Brothers Johnson.	420

8.5 C & J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W. 2d 169 (1975). After reading listen to "Up, Up and Away" as performed by the	
Fifth Dimension.	426
8.6 Morin Building Products Co. v. Baystone Construction, Inc., 717 F.	
2d 413 (1983). After reading listen to "(Can't Get No) Satisfaction"	
as performed by The Rolling Stones.	445
8.7 Locke v. Warner Bros., 66 Cal. Rptr. 2d 921 (1997). After reading listen to	
"Hang 'Em High" as performed by Booker T. and the M.G.'s.	449
8.8 Balla v. Gambro, Inc., 584 N.E. 2d 104 (1991). After reading listen to	
"I'm The Only One" as performed by Melissa Etheridge.	459
8.9 Cook v. Advertiser Co., 458 F. 2d 1119 (1972). After reading listen to	(= 0
"Rescue Me" as performed by Fontella Bass.	470

9 Defenses against Contractual Liability: The Problem of Over-Reaching	477
Over-Reaching	4//
9.1 Duress	477
9.1.1 Restatement Second Contracts §§ 175–176	477
9.1.2 Zuckerman v. Metropolitan Museum of Art, 307 F. Supp. 3d 304 (2018). After reading listen to "Kind of Blue" as performed by Miles Davis.	478
9.1.3 Austin Instrument v. Loral Corp., 29 N.Y. 2d 124 (1971). After reading listen to "The Untouchables" as performed by Nelson Riddle.	489
9.1.4 Biliouris v. Biliouris, 57 Mass. App. Ct. 149 (2006). After reading listen to "Breaking Up Is Hard to Do" as performed by Neil Sadaka. (A 1975 version is slower than the initial 1962 version. If you like the first iteration, listen to the later one as well.)	494
9.1.5 Brady v. United States, 397 US 742 (1970). After reading listen to "Folsom Prison Blues" as performed by Johnny Cash.	499
9.1.6 Bordenkircher v. Hayes, 434 U.S. 357 (1978). After reading listen to "The Theme from Route 66" as performed by Nelson Riddle.	504
9.2 Undue Influence	514
9.2.1 Odorizzi v. Bloomfield School District, 246 Cal. App. 123 (1966). After reading listen to "YMCA" as performed by The Village People.	514

9	.3 Non-disclosure and Misrepresentation	521
	9.3.1 Laidlaw v. Organ, 15 U.S. 178 (1817). After reading listen to "Loveless Love" as performed by Louis Armstrong.	521
	9.3.2 Mallen v. Mallen, 622 S.E. 2d 812 (2005). After reading listen to "Will Your Lawyer Talk to God?" as performed by Kitty Wells.	522
	9.3.3 Patel v Navitlal, 627 A. 2d 683 (1992). After reading listen to "Whatcha See Is What You Get" as performed by The Dramatics.	528
	9.3.4 Note	534
	9.3.5 Stambovsky v. Ackley, 572 N.Y.S. 2d 672 (1991). After reading listen to "Ghostbusters" as performed by Ray Parker Jr.	534
	9.3.6 Vokes v. Arthur Murray, 212 So. 2d 906 (1968). After reading listen to "Night Fever" as performed by the Bee Gees.	539
	9.3.7 Note	543
9	.4 Unconscionability	544
	9.4.1 Williams v. Walker-Thomas Furniture Company, 350 F. 2d 445 (1965). After reading listen to "Symphony no. 3 (Opening Movement)" by Johannes Brahms.	544
	9.4.2 Note	548
	9.4.3 Robert W. Ryan v. Norman D. Weiner, 610 A.2d 1377 (1992). After reading listen to "You Get What You Give" as performed by The New Radicals.	548
	9.4.4 Mitchell v. HCL America, Inc., 190 F. Supp. 3d 477 (2016). After reading listen to "America" as performed by Simon and Garfunkel.	559
1	0 Excuses for Nonperformance	575
1	0.1 Minority	575
	10.1.1 Dodson v. Shrader, 824 S.W. 2d 545 (1992). After reading listen to "I'm Eighteen" as performed by Alice Cooper.	575
1	0.2 Mental Incapacity	582

10.2.1 Ortelere v. Teachers' Retirement Board, 250 N.E. 2d 460 (1969). After reading listen to "Bridge Over Troubled Water" as performed by Simon & Garfunkel.	582
10.2.2 Note	591
10.3 Mistake	592
10.3.1 Lenawee County Board of Health v. Messerly, 417 Mich. 17 (1982). After reading listen to "Right Place Wrong Time" as performed by Dr. John.	592
10.3.2 Nelson Estate v. Rice, 12 P.3d 238 (2000). After reading listen to "Everybody Is a Star" as performed by Sly & The Family Stone.	598
10.4 Changed Circumstances: Impossibility/Impracticability/Frustration	600
10.4.1 Opera Co. of Boston, Inc. v. Wolf Trap Foundation for the Performing Arts, 817 F. 2d 1094 (1987). After reading listen to the opening movement of "Symphony no. 9 from the New World" by Antonin Dvořák.	600
10.4.2 Lloyd v. Murphy, 25 Cal. 2d 48 (1944). After reading listen to "Get Up Offa That Thing" as performed by James Brown.	612
Get op ona mat ming as perionned by James Brown.	012
11 Issues Regarding the Performance of Terms in the Agreement	619
	_
11 Issues Regarding the Performance of Terms in the Agreement	619
 11 Issues Regarding the Performance of Terms in the Agreement 11.1 Express Conditions 11.1.1 Lionel Luttinger et al. v. Charles E. Rosen et al., 164 Conn. 45 (1972). After reading listen to "I Got You (I Feel Good)" as performed by James Brown. 11.1.2 J. N. A. Realty Corp. v. Cross Bay Chelsea, Inc., 366 N.E. 2d 1313 (1977) 	619 619
 11 Issues Regarding the Performance of Terms in the Agreement 11.1 Express Conditions 11.1.1 Lionel Luttinger et al. v. Charles E. Rosen et al., 164 Conn. 45 (1972). After reading listen to "I Got You (I Feel Good)" as performed by James Brown. 	619 619
 11 Issues Regarding the Performance of Terms in the Agreement 11.1 Express Conditions 11.1.1 Lionel Luttinger et al. v. Charles E. Rosen et al., 164 Conn. 45 (1972). After reading listen to "I Got You (I Feel Good)" as performed by James Brown. 11.1.2 J. N. A. Realty Corp. v. Cross Bay Chelsea, Inc., 366 N.E. 2d 1313 (1977) (New York Court of Appeals). After reading listen to "Fun" as performed 	619 619 619
 11 Issues Regarding the Performance of Terms in the Agreement 11.1 Express Conditions 11.1.1 Lionel Luttinger et al. v. Charles E. Rosen et al., 164 Conn. 45 (1972). After reading listen to "I Got You (I Feel Good)" as performed by James Brown. 11.1.2 J. N. A. Realty Corp. v. Cross Bay Chelsea, Inc., 366 N.E. 2d 1313 (1977) (New York Court of Appeals). After reading listen to "Fun" as performed by Sly & The Family Stone. 	619619619620

Acknowledgments

Index of Cases

637