

## Name of the Course

### Common Law Contracts

**Common Law Contracts** - Raymond T. Nimmer (LEONARD CHILDS PROFESSOR OF LAW, *University of Houston Law Center*, Houston, Texas, CO-DIRECTOR, *Intellectual Property and Information Law Program*, University of Houston Law Center, –DISTINGUISHED CHAIR IN RESIDENCE, *Universidade Católica*, Lisbon Portugal, HONORABLE CHAIR PROFESSOR, IP Graduate Institute of National Taipei University of Technology, Taiwan, 2012 -

### Description

The course covers the main features of common law contracts. After a glimpse back in centuries, useful to understand the origin of the great divide between the continental and the Anglo-Saxon approach to the subject, and an overview over general definitions and applicable laws, we will first analyze the distinction between enforceable and unenforceable promises. Next, we will study the process of contract formation (agreement and consideration) and the reasons that may make the contract invalid (legal incapacity, duress and undue influence, mistake, misrepresentation, unconscionability, violation of Statute of Fraud). Moving from the physiology to the pathology of contractual relationships, we will focus on the justifications for non-performance (impossibility, impracticability, frustration, force majeure, modification, rescission, anticipatory breach) and the cases of breach of contract. Finally, we will analyze the choice of remedies and the peculiar construction of quasi-contracts.

This course provides a summary of modern American contract law. The emphasis is on how common law contract principles have been, and are constantly being, developed and refined by common law courts. The Restatement of Contracts and the Uniform Commercial Code will be discussed as part of the over-all survey of modern American contract law. An overview of such basic concepts as offer, acceptance, consideration, defenses to contract formation, and remedies will be presented as will practice based solutions to particular problems. The course assumes some familiarity with U.S. civil procedure (federal and state). It is designed to give lawyers familiar with Code contract principles an idea of how the American common law has shaped and developed similar commercial concepts and principles. The emphasis is on practice and theory and is geared to the practitioner and student.

Although civil law and common law are different legal systems, with different origins, history, methodology and rules, today's global market demands a global or transnational approach to contract law -- a core set of rules and principles to facilitate transactions and business. That core set of principles exists, which explains why common law and civil law oftentimes arrive at similar solutions to legal problems. The purpose of this course is to provide lawyers educated in the civil law tradition with an introduction to modern American contract law in order to assist them in arriving at that core set of principles through an understanding of both legal systems. Students will analyze and discuss certain basic core principles of the common law, and the fundamental elements

of American contract law: mutual assent, enforceability, performance and breach, remedies, and defenses. Although these general principles will be discussed in a traditional, Socratic format, students are encouraged to engage in discussion about the similarities and differences between the common law of contract and the different statutory frameworks that control in their respective civil law jurisdictions. The class will discuss, among others, similarities and differences between the civil code and the Restatement and UCC, code-defined formalities and the statute of frauds, and compare common law and equitable remedies to those available under the civil codes. The course will emphasize negotiating with lawyers from different legal traditions, as well as enforcement of contracts (created under both common law and civil law) by the courts of both legal systems. The purpose of engaging in comparative analyses is for students' questions and specific interests to be addressed by reference to concepts with which they are already familiar, transcending the realm of the theoretical. The course will focus on the practical points of contact and conflict between the different legal systems and their interactions.

Each topic will be linked with the correspondent civil law institution, in order to provide students with a structured comparative knowledge of the subject.

Assessment system within the class

- \* 30 points is envisaged for attendance
- \* 15 points for written exam and 15 points for active participation within the class
- \* 40 points for performance on an essay exam that allow students to use class PowerPoints and their notes.

**RAYMOND T. NIMMER**

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**PROFESSIONAL EXPERIENCE**

**CURRENT POSITIONS:**

LEONARD CHILDS PROFESSOR OF LAW, *University of Houston Law Center*, Houston, Texas,  
1990 -

CO-DIRECTOR, *Intellectual Property and Information Law Program*, University of Houston

Law Center, 1997 –

DISTINGUISHED CHAIR IN RESIDENCE, Universidad Catolica, Lisbon Portugal, 2008-

HONORABLE CHAIR PROFESSOR, IP Graduate Institute of National Taipei University of Technology, Taiwan, 2012 -

**CURRENT ANCILLARY POSITIONS:**

*Board of Advisors*, Internet Law and Regulation Journal 1998-

MEMBER, *Board of Editors*, The Cyberspace Lawyer, 1995-

MEMBER, *Board of Editors*, Computer und Recht International, (Frankfurt, Germany) 1999-

MEMBER, *Board of Editors*, Contract Law Journal (Sydney, Australia), 2008-

Member, EDITORIAL BOARD, Selcuk Law Journal. Konya, Turkey, 2017 -

FELLOW, *American College of Commercial Finance Lawyers*, 1994-

FELLOW, *Texas Bar Foundation*, 1994-

**AWARDS/ LISTINGS**

**LAWYER OF THE YEAR**, TEXAS, 2018, INFORMATION LAW

**LAWYER OF THE YEAR**, HOUSTON (ONLY ONE AWARDED EACH YEAR IN AREA),

INFORMATION TECHNOLOGY LAW - 2018

COPYRIGHT LAW - 2017

Information Technology Law - 2015

Copyright law - 2011

**LISTED IN BEST LAWYERS IN AMERICA** IN MULTIPLE CATEGORIES

Copyright Law, Information Technology Law, Patent Law, Trademark Law, Litigation – Intellectual Property, Litigation – Patent)

**AV PREMINENT**, Martindale & Hubbard, 2003 –

**BEST LAWYERS IN TEXAS** IN MULTIPLE CATEGORIES FOR OVER 20 YEARS

**FULBRIGHT DISTINGUISHED CHAIR** in International Commercial Law, 2007-2008

RECIPIENT, Faculty Services Award, University of Houston, 2004

**Best New Book in Law**, Association of American Publishers, 1985 (Law of Computer Technology)

**FELLOW**, American College of Commercial Finance Lawyers, 1995

**THIRD NATIONAL PRIZE**, Nathan Burkhan Copyright competition, 1968

**LISTED**

*Who's Who in America, 2000 -*

*Who's Who in American Law 1995 -*

*International Who's Who of Internet and e-commerce Lawyers*

*International Who's who of Business Lawyers*

**MEMBERSHIPS**

ADMITTED, *Illinois State Bar*

ADMITTED, *Texas State Bar*

ADMITTED, *U.S. Supreme Court*

ADMITTED, *Fifth Circuit Court of Appeals*

ADMITTED, *Eleventh Circuit Court of Appeals*

ADMITTED, *Federal Circuit Court of Appeals***MEMBER**

MEMBER, *American Bar Association*

MEMBER, *American Intellectual Property Law Association*

MEMBER, *American Law Institute*

MEMBER, *Licensing Executives Society*

MEMBER, *Texas Bar Foundation*

## SELECTED PAST POSITIONS:

- DEAN, *UNIVERSITY OF HOUSTON LAW CENTER*, 2005– 2013
- FULBRIGHT DISTINGUISHED CHAIR IN INTERNATIONAL COMMERCIAL LAW, UNIVERSIDAD CATOLICA SCHOOL OF LAW, LISBON PORTUGAL, 2007-2008
- VISITING PROFESSOR OF LAW, SYDNEY UNIVERSITY, AUSTRALIA 2003, 2008
- VISITING PROFESSOR OF LAW, UNIVERSITY OF MAINE LAW SCHOOL, 2001, 2002
- VISITING PROFESSOR OF LAW, *UNIVERSITY OF MICHIGAN LAW SCHOOL*, 1987
- VISITING PROFESSOR OF LAW, *UNIVERSITY OF TEXAS AT AUSTIN*, 1985-86
- ACTING DEAN, *UNIVERSITY OF HOUSTON LAW CENTER*, 1993-95
- REPORTER, *UCC ARTICLE 2, ARTICLE 2B* AND *UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT*, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1994-2003
- CO-REPORTER, REVISIONS OF UCC ARTICLE 2, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1990-1994
- CO-CHAIR, ANNUAL CONFERENCE ON COMPUTERS, E-COMMERCE AND THE LAW, AN INTERNATIONAL PERSPECTIVE (FRANKFORT GERMANY) 1998 - 2002
- CO-CHAIR, *DIVISION ON INTERNATIONAL TECHNOLOGY COMPETITIVENESS*, 1990-93, ABA SECTION OF SCIENCE & TECHNOLOGY
- CONSULTANT, U.S. STATE DEPARTMENT LEGAL ADVISORS OFFICE, 1990-2001
- COUNSEL, *WEIL, GOTSHAL & MANGES*, HOUSTON, TEXAS, 1992 – 1999
- COUNSEL, *SHEINFELD, MALEY & KAY*, 1985-91, HOUSTON, TEXAS
- CHAIR, *ANNUAL COMPUTER AND INFORMATION LAW INSTITUTE*, 1986-2007
- REGENT, *BOARD OF REGENTS* NATIONAL COLLEGE OF DISTRICT ATTORNEYS, 1994-1999
- MEMBER, PANEL OF EXAMINERS, *BANKRUPTCY SPECIALIZATION*, STATE BAR OF TEXAS, 1988-1996
- DIRECTOR, *BOARD OF DIRECTORS*, COMPUTER LAW ASSOCIATION 1994-1999
- DIRECTOR, *INTERNATIONAL LAW PROGRAM*, UNIVERSITY OF HOUSTON, 1997-1999
- CONSULTANT, *LAW AND SOCIAL SCIENCES PROGRAM*, NATIONAL SCIENCE FOUNDATION, 1979-1992
- CHAIR, *STATE BAR OF TEXAS, COMPUTER SECTION*, 1991-1993
- CHAIR, *SUBCOMMITTEE ON THE SCOPE OF THE UCC*, ABA BUSINESS LAW SECTION, 1986-1992
- CONSULTANT, *U.S. OFFICE OF TECHNOLOGY ASSESSMENT*, 1991-1995
- ASSOCIATE DEAN, *UNIVERSITY OF HOUSTON LAW CENTER*, 1978-85
- RESEARCH ATTORNEY, *AMERICAN BAR FOUNDATION*, 1968-75

## PRESENTATIONS

Fifteen or more presentations *annually* on copyright, licensing, electronic commerce, DMCA, and other issues

## **PUBLICATIONS**

### **BOOKS**

- DATA PRIVACY, PROTECTION AND SECURITY LAW (2012, 2016 WITH HOLLY K. TOWLE) (updated twice annually)
- MODERN LICENSING LAW (2017, West) (with Jeff Dodd) (Seventh edition)
- HAWKLAND, UNIFORM COMMERCIAL CODE Series [UCITA volume] (2006, 2017), updated annually
- LICENSING OF INFORMATION ASSETS: CASES AND MATERIALS, 2<sup>ND</sup> EDITION (Lexis 2010)
- LICENSING OF INFORMATION ASSETS: CASES AND MATERIALS, 1ST EDITION (Lexis 2007)
- THE LAW OF ELECTRONIC COMMERCIAL TRANSACTIONS (2003 - 2017) (REVISED three times annually, A.S.Pratt) (with Holly K Towle)
- THE LAW OF COMPUTER TECHNOLOGY, 4TH EDITION, (2009, 2017 THOMPSON- West) (updated twice annually)
- INFORMATION LAW (1996, 2017 updated twice a year, West)
- COMMERCIAL TRANSACTIONS: SECURED FINANCING, CASES, MATERIALS, PROBLEMS (3d edition, 2003) (with I. Hillinger and M. Hillinger)
- COMMERCIAL TRANSACTIONS: SECURED FINANCING, CASES, MATERIALS, PROBLEMS (2nd edition, 1999) (with I. Hillinger and M. Hillinger)
- DRAFTING EFFECTIVE CONTRACTS, SECOND EDITION (1999, 2017 Aspen) (annual updates)
- BANKRUPTCY AND CREDITORS RIGHTS, 3D EDITION (1996, West) (with J.J. White)
- THE LAW OF COMPUTER TECHNOLOGY, 2ND EDITION (1992) (Warren, Gorham & Lamont)
- SECURED FINANCING IN PERSONAL PROPERTY (Michie Co.) (1992) (with I. Hillinger)
- BANKRUPTCY AND CREDITORS RIGHTS (1992, West) (with J.J. White)
- COMMERCIAL ASSET-BASED FINANCING, (4 Volumes) (1989) (Callaghan)
- THE LAW OF COMPUTER TECHNOLOGY, (Warren, Gorham & Lamont) (1985) (recipient of Association of American Publishers award as "Best New Book in law published in 1985")
- CONTRIBUTING EDITOR, NORTON, BANKRUPTCY LAW AND PRACTICE (Callaghan, 1981-1993)
- COMMERCIAL TRANSACTIONS: SALES, PAYMENT SYSTEMS, SECURED FINANCING (3 Volumes) (1982) (Michie Co.: Bobbs Merrill) (with J. McDonnell and L. Frankel)
- THE NATURE OF SYSTEM CHANGE: THE PROCESS OF REFORM IN THE COURTS (1978, ABF Press)  
Four other books relating to judicial process (1971-1980)

### **BOOK CHAPTERS AND SELECTED ARTICLES:**

- The Interesting Case of Licensing: First Sals and Exhaustion – Worlds Where the UCC does not apply to goods, --- Commercial Law Jnl – (2018)
- The Law Relating to Product Design: How Design Patents, Trade Dress and Copyright Interact, in PLI, Intellectual Property Law Institute (2013)
- Fair Use: Transformation, Usurping Markets and Shrinking Owners' Rights, in PLI Intellectual Property Institute (2014) (PLI publisher)
- Modern Fair use: A Burning Cauldron that Threatens to Devour Copyright (2015)

- Information Wars and the Challenges of Content Protection in Digital Contexts, 13 Vanderbilt J. Entertainment Law 825 (2011) (reprinted in "Critical Concepts in Intellectual Property Law (R. Merges ed.) (2013))
- Copyright First Sale and the Over-Riding role of Contract, 51 Santa Clara L. Rev. 101 (2011)
- Issues in Modern Licensing of Factual Information and Databases, in Research Handbook on Intellectual Property Licensing, (J. De Werra ed. 2011)
- Licensing Information Assets in the New Economy: A Pro-rights Perspective, The Indian Journal of Law & Technology (Bangalore, India, 2008)
- An Essay on Article Two's Irrelevance to Licensing Agreements, Loyola L. Review (2007)
- Legal Landscape of Electronic Commerce: Redefining Contract in an Information Era, -- Contract Law Jnl -- (Sydney, Australia, 2007)
- Modernizing Secured Financing Law For International Information Financing: A Conceptual Framework, 2006 Houston Business and Tax Law Journal (with Lorin Brennan).
- Google Print Library Project – Unfair Use of Copyright, 2006 Computer Law International (Issue 1, 2006, Munich)
- "Contracts, Markets and Data Control," BNA International Intellectual Property Reports (2005)
- Shrinkwrap Licenses are not Preempted by Fair Use Doctrine, 2005 Computer Law Review International --- (2005, Munich).
- First Amendment Speech and the DMCA: A Proper Marriage, in FREE SPEECH AND COPYRIGHT (Suthersanen, ed., Oxford University Press, 2004), reprinted in *The ICFAI Journal of Intellectual Property Rights* (India, 2005)
- Licensing of Information: The Emerging Commercial Law, DEPAUL BUSINESS & COMMERCIAL LAW J. (2004)
- UCITA and the Continuing Evolution of Digital Licensing Law, THE COMPUTER & INTERNET LAWYER (2004) (Reprinted in the *Licensing Law Journal* (2004)
- Antitrust Online, in INTERNET LAW AND REGULATION (2002, West).
- Licensing in the Contemporary Information Economy, 8 WASHINGTON UNIV. JNL OF LAW & POLICY. 99 (2002)
- Revised Article 9 and Intellectual Property Asset Financing, 53 MAINE L. REV. 287 (2001) (reprinted in *Intellectual Property Law Review*, 2003).
- Principles of Contract Law in Electronic Commerce, in FOUNDATIONS AND PERSPECTIVES OF INTERNATIONAL TRADE LAW (Fletcher, Mistells & Cremona, eds; Street & Maxwell, 2001)
- Through the Looking Glass: What Courts and UCITA have to say About the Scope of Contract Law in the Information Age, 38 DUSQUENE L. REV. 255 (2000)
- International information Transactions: An Essay in Law in an Information Society, 26 Brooklyn J. Int'l Law 5 (2000).
- Electronic Signatures and Records: The New US Perspective, 17 COMPUTER & INTERNET LAWYER 8 (December, 2000)
- Images and Contract Law - What Law Applies to Transactions in Information, 36 HOUSTON L. REV. 1 (1999)
- Breaking Barriers: The Relationship Between Contract and Intellectual Property Law, 13 BERKELEY TECHNOLOGY LAW JOURNAL 827 (1998)
- Licensing on the Global Information Infrastructure: Disharmony in Cyberspace, 16 NORTHWESTERN JOURNAL OF INTERNATIONAL LAW AND BUSINESS, 224 (1996)
- Software Copyright: Sliding Scales and Abstracted Expression, 32 HOUSTON LAW REVIEW 317-362,

(1995) (with P.A. Krauthaus)

- Intangibles Contracts: Thoughts of Hubs, Spokes and Reinvigorating Article 2, 35 WILLIAM AND MARY LAW REVIEW, 1337-1404 (1994)
- Copyright on the Information Superhighway: Requiem for a Middleweight, 6 STANFORD LAW & POLICY REVIEW, Issue 1 (1994), 25-42. (with P. A. Krauthaus)
- Information as Property: Databases and Commercial Property, 1 OXFORD J. INFORMATION LAW & COMP. TECHN. 2 (1993) (Oxford University Press, London) (with P. Krauthaus)
- Adequate Protection, in J. QUEENAN, P. HANDEL, I HILLINGER, BANKRUPTCY REORGANIZATION LAW ch. 16 (1993)
- Confirming Bankruptcy Reorganization Plans Through Cramdown, in J. QUEENAN, P. HANDEL, I. HILLINGER, BANKRUPTCY REORGANIZATION LAW ch. 31 (1993)
- Effects of Bankruptcy on Foreclosure, in D. DUNAWAY. LEGAL ISSUES IN DISTRESSED REAL ESTATE (1993)
- Information as a Commodity: New Issues in Commercial Law, 55 JOURNAL OF LAW & CONTEMPORARY PROBLEMS 103 (1992) (with P. Krauthaus)
- Uniform Codification of Commercial Contract Law, 18 RUTGERS COMP. & TECHN. L.JNL. 465 (1992)
- Globalization of Law in Intellectual Property and Related Commercial 10 LAW & CONTEXT 80 (1992) (Sidney, Australia)
- United States Copyright and Software Interface and Compatibility, COMPUTER AND RECHT, (1992) (Munich)
- Chapter 11 Business Governance: Fiduciary Duties and Business Judgment, 6 BANKRUPTCY DEVELOPMENTS JOURNAL 1 (1989)
- Negotiated Bankruptcy Reorganization Plans: Absolute Priority and New Capital Contributions, 36 EMORY LJ 1010 (1988)
- Secured Financing and Information Property Rights (with P.A. Krauthaus) 2 BERKELEY HIGH TECHNOLOGY L.J. 195 (1988)
- Consumer Bankruptcy: The Law of Consumer Abuse, Planning and Misuse, 50 JOURNAL OF LAW & CONTEMPORARY PROBLEMS 89, (1987)
- Classification of Computer Software: International Perspectives, 20 INTERNATIONAL LAWYER (1987)
- Software Copyright Infringement: Protecting Third Party Developers (with P.A. Krauthaus), 62 INDIANA LAW JOURNAL 13 (1986)
- Secured Creditors and the Automatic Stay: Variable Bargain Models of Fairness, 68 MINNESOTA LAW REVIEW, 1, 1983
- Executory Contracts in Bankruptcy: Protecting the Fundamental Terms of the Bargain, 54 UNIVERSITY OF COLORADO LAW REVIEW, 507, Summer 1983
- Real Estate Creditors and the Automatic Stay: A Study in Behavioral Economics, 1983, ARIZONA STATE LAW REVIEW, 281

Eight articles prior to 1980

## **COURSES TAUGHT:**

Contracts



Internet Law

Electronic Commerce

Bankruptcy

Secured Financing Law

Copyright Law

Information Law

Sales

Contract Drafting

Licensing Law

Criminal Law

Constitutional Law

## **EDUCATION**

VALPARAISO UNIVERSITY SCHOOL OF LAW

*J.D. awarded with distinction, graduated first in class, 1968*

VALPARAISO UNIVERSITY

*B.A., Mathematics, 1966*