

Contracts and Judicial Rule-Making: Section B

Fall Term 2009

Tuesdays 9:00 – 10:30, Room 309

Thursdays 9:00 – 10:30, Room 309

Office Hours: drop by after class or email for appointment

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Course Description:

This class has two primary objectives: the first is to provide a basic knowledge of the doctrines and precepts of the law governing, the making and performance of contracts; the second is to provide an understanding of the process of development of the common law through judicial decisions. As a means of attaining the latter objective, the “case method” of teaching is used and adapted to enable students to acquire a lawyer-like understanding of such concepts as “stare decisis”, the use of precedent, and the technique of distinguishing. A **critical** evaluation of judicial law-making is undertaken through an examination of the developing phenomenon of legislative intervention in the field of contract law. In order to fulfil the first objective, substantive rules of contract law are examined.

Required Texts

S Ben Ishai & D. Percy, *Contracts: Cases and Commentaries*, 8th ed. (2009)

R.F. Devlin et al, *Supplement* (2009-2010)

Supplementary materials will be handed out in class. Any cases, or materials to be added or omitted, will be announced in class.

Other Resources (These and others are on reserve in the Law Library)

G. Fridman, *The Law of Contract in Canada*, 4th ed. (1999)

S. Waddams, *The Law of Contract* 5th ed. (2005)

J. Beatson, *Anson's Law of Contracts*, 28th ed. (2002)

G. Cheshire, G. Fifoot and M. Furmiston, *The Law of Contract*, 14th ed. (2001)

I. Collins, *The Law of Contract*, 3rd ed. (1997)

P. Atiyah, *An Introduction to the Law of Contract*, 5th ed. (1995)

Evaluation:

Fall Term:

- A *practice assignment* will be made available Monday October 19th at noon. It is due Thursday, October 22nd, at 4pm, and is to be handed in to reception and date and time stamped. Your work will not be graded, and does not count for your evaluation. If you chose to do the practice assignment, I will give you written feed-back on your work.
- *The mid-year exam* will be scheduled in early December. This will be a “**closed-book**” examination. I will provide you with a copy of the course reading list in the exam room. The mid-year examination result will only count, as 30% of the final exam component of your grade, if this improves your final examination grade.

Winter term:

- *The advocacy exercise* Notice of specific dates will be given in January. The problem to be argued will likely be made available during the third week of January, and will be due approximately two weeks later. Oral moots will be scheduled to occur around your classes shortly thereafter. They may take place during the evening hours or into the week-end. Please inform me in early January of any commitments, such as child care, that restrict your availability.
- *Final (April) exam* A final exam, on the full year’s material (including lectures), will be scheduled for the Spring exam period. This is a “**closed book**” exam, although you will be provided with a copy of the course reading list in the exam room.

Course Evaluation:

Advocacy exercise	20%	
Factum		10%
Oral Presentation		10%
Class Participation	20%	
Final Examination	60%	(*subject to improvement by mid-term exam result)
Total	100%	

Participation Guidelines for Contract Law Many students have asked me what a participation grade represents, or how they can improve their participation grade. Participation grades do not reflect how much a person speaks in class, so you cannot fluff up a grade merely by talking a lot.

Rather, in my class, your final grade for participation will primarily reflect how consistently you demonstrate the five factors listed below. My expectations of students evolve and progress during the course of the year, as students become familiar with the ‘basics’ of contract law, legal reasoning, and legal theory. For example, I would not expect a student to be able to participate regularly as per guideline (3) the first week of September, but would expect a student to strive to effectively participate as per guidelines (1) and (2) from the very start. Consistency is also relevant – so an excellent show of class participation in September and October will be countered by poor participation later in the year.

1. *Content Mastery*: The student must evidence an understanding of the facts, concepts, and theories presented in the assigned readings. This ability is the basis for all higher level skills and must be made evident by classroom comments and/or responses to questions.
2. *Communication Skills*: The student must be able to inform others in an intelligent manner. Ideas must be communicated clearly and persuasively. Communication skills include listening to others and understanding what they have said, responding appropriately, asking questions in a clear manner, avoiding rambling discourses or class domination, using proper vocabulary pertinent to the discussion, building on the ideas of others, etc.
3. *Synthesis/Integration*: Students must illuminate the connections between the material under consideration and other bodies of knowledge. For example, one could take several ideas from the readings or class discussions and combine them to produce a new perspective on an issue, or one could take outside materials (other classes, personal experiences, etc.) and combine them to create novel insights. Students demonstrate this skill when they probe the interdisciplinary roots of the theories presented or are able to view the author or the material from several viewpoints.
4. *Creativity*: Students must demonstrate that they have mastered the basic material and have gone on to produce their *own* insights. A simple repetition of ideas from the text will not suffice, nor will simply commenting on what others have said. Students must go beyond the obvious, by bringing their own beliefs and imagination to bear. Creativity may be displayed by showing further implications of the material, by applying it to a new field, by finding new ways of articulating or setting the materials which produce significant insights, etc.
5. *Valuing*: The student should be able to identify the values inherent in the material studied. The underlying assumptions of the author should be identified. Furthermore, students should be able to articulate their own positions by reference to basic underlying values. The student must not simply feel something is wrong or incorrect; he or she must be able to state why, based on some hierarchy of values. In either accepting or rejecting a position, the operative values must become explicit.

This approach to evaluating participation is largely drawn from Neff & Weimer, *Classroom Communication* (Madison, WI: Magna Publications, Inc., 1989) pps. 45-46.

Plagerism

All students in this course must read

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/Plagiarism_Policy/index.php)

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from

which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;
- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

Course Outline

Sept 15	Introduction and Expectations Editor's Introduction Goldthorpe v Logan	BIP 1 Supp. 5
Sept 17	Historical Overview Atiyah Kessler Collins	Supp. 6 Supp. 11 Supp. 18
Sept 22	Contemporary Perspectives Kronman and Posner Feinman Wiegiers Williams Ayres "Fair Driving" Ayres "Tipping" "A Common Law Remedy"	Supp. 23 Supp. 26 Supp. 28 Supp. 31 Supp. 231-240 Supp. 254 Supp. 257
Sept 24	Legal Structures and Legal Reasoning I Paul English Court Structure Table of Nova Scotian Courts Gall Twining and Meirs Friedland Equity Structure of a Case Brief	Supp. 33 Supp. 36 Supp. 37 Supp. 38 Supp. 47 Supp. 54 Supp. 57
Sept 29	Remedies Waddams <i>Hamilton v Open Window Bakery</i>	Supp. 291 Supp. 305
Oct 1	class cancelled	
Oct 6	Offer I <i>Canadian Dyers v. Burton</i> <i>Boots</i> <i>Carlill v. Carbolic</i> <i>Fred Christie v. York Corp.</i>	BIP 18 BIP 20 BIP 25 Supp. 56
Oct 8	Offer II <i>Carlill v Carbolic</i> <i>Goldthorpe v. Logan</i> <i>R. v. Ron Engineering</i> <i>M.J.B. Enterprises</i>	BIP 25 BIP 30 BIP 35 BIP 38
Oct 13	Communication of Offer <i>Williams v. Cawardine</i> <i>R. v. Clarke</i> <i>Carlill v. Carbolic</i> <i>Rudder v. Microsoft</i>	BIP 50 BIP 51 BIP 25 BIP 93
Oct 15	Acceptance I <i>Livingstone v. Evans</i> <i>Butler Machine Tool v. Excello</i> <i>Tywood Industries v. St. Anne</i> <i>Eliason v. Henshaw</i>	BIP 54 BIP 56 BIP 58 BIP 79
<i>Oct 19 – Practice problem made available (noon)</i>		
Oct 20	Acceptance II <i>Felthouse v. Bindley</i> <i>St. John Tugboat v. Irving</i> <i>Dawson v. Helicopter Explorations</i> <i>ProCD v. Zeidenberg</i>	BIP 72 BIP 75 BIP 66 BIP 61
<i>Oct 22 Practice problem due</i>		

Oct 22	Communication of Acceptance <i>Household Fire & Accident v. Grant</i> <i>Holwell Securities v. Hughes</i> <i>Brinkibon Ltd. v. Stahag Stahl</i> Electronic Commerce Act	BIP 98 BIP 103 BIP 89 Supp. 58
Oct 27	Termination of Offer I <i>Dickinson v. Dodds</i> <i>Byrne v. Van Tienhoven</i> <i>Errington v. Errington</i>	BIP 108 BIP 106 BIP 112
Oct 29	Termination of Offer II <i>Errington v. Errington</i> <i>Barrick v. Clark</i>	BIP 112 BIP 114
Nov 3	class cancelled	
Nov 5	Certainty I <i>May v. Butcher</i> <i>Hillas v. Arcos (C.A.)</i> <i>Hillas v. Arcos (H.L.)</i> <i>Foley v. Classique Coaches</i>	BIP 119 Supp. 69 BIP 122 BIP 127
Nov 10	Certainty II <i>Sudbrook Trading v. Eggleton</i> <i>Courtney & Fairbairn v. Tolaini</i> Note on <i>Walford v. Miles</i> <i>Wellington City Council</i>	Supp. 72 Supp. 74 Supp. 77 BIP 138
Nov 12	Certainty III <i>R. v. CAE Industries</i> <i>Empress Towers v. Bank of NS</i> <i>Mannpar Enterprises v. Canada</i> <i>Bawitko Investments v. Kernels Popcorn</i> <i>Knowlton Realty v. Wyder</i>	BIP 114 BIP 131 BIP 134 BIP 145 Supp. 78
Nov 17	The Enforcement of Promises and Intention to Create Legal Relations I <i>Blair v. Western Mutual Benefit</i> <i>Rose & Frank v. Crompton</i> <i>Wood v. Lucy, Lady Duff Gordon</i> <i>Balfour v. Balfour</i> <i>Dalhousie v. Boutilier</i>	BIP 47 BIP 264 BIP 164 BIP 243 BIP 176
Nov 19	The Enforcement of Promises and Intention to Create Legal Relations II <i>Bruker v Markovitz</i> <i>Brantford Gen. Hospital v Marquis</i>	Supp. 81 BIP 161
Nov 24	Consideration I <i>Eastwood v. Kenyon</i> <i>Thomas v. Thomas</i> <i>B. v. Arkin</i> <i>Lampleigh v. Brathwait</i> <i>Pao-On v. Lau Yiu Long</i>	BIP 166 BIP 169 BIP 127 BIP 168 BIP 173
Nov 26	Consideration II <i>Gilbert Steel v. University Const. Ltd.</i> <i>Williams v. Roffey</i> <i>Foakes v. Beer</i> Selectmove <i>Foot v. Rawlings</i> Judicature Act	BIP 178 BIP 182 BIP 192 BIP 195 BIP 197 BIP 200
Dec 1	Make up class	
Dec 3	Exam review class	