

CONTRACTS AND JUDICIAL RULE-MAKING
LAWS 1000X/Y.06 (2008/2009 Fall/Winter)

Section: A

Instructor: Professor Aldo Chircop, JSD

Dates & Times:
Tuesdays & Thursdays, 09.00—10.30

Venue: Room 406, Weldon Law Building

INTRODUCTION

“Contracts” is a foundation course in the study of law. Aspects of contract law are to be found in virtually all areas of a legal system. Together with the foundational aspects of judicial reasoning, the course will cover the philosophical basis, principles and rules concerning the various stages and issues of contract formation and related consequences. As set out in the Calendar 2006/2007, the two primary objectives are:

To provide an understanding of the process of development of the common law through judicial decisions, and

To provide a basic knowledge of the doctrines and precepts of the law governing the making and performance of contracts.

Taught through a series of seminars in a small size class over the fall and winter terms, this course will provide students with a highly interactive learning environment. Small group assignments/discussions, leading to plenary sessions, will be periodically conducted to further enhance focussed discussion and class participation. Students will have an opportunity to participate in a moot.

By the end of the course students will be familiar with the core of the substantive common law of contracts, will have developed analytical skills in dealing with legal issues stemming from various sources (case law, statutory law) and will have acquired an ability to apply these to concrete situations.

EVALUATION

Advocacy exercise	20%
(Oral	10%)
(Factum	10%)
Class participation	20%
Final examination	60%

A practice assignment will be available for pick-up from the Law School Reception Office at noon, on Monday, 19 October at noon, and must be returned to the Reception by 16.30 on Thursday, 22 October. The instructor will give you feedback on your completed assignment, but no mark will be applied to the final course grade. However, your level of effort will be taken into account in determining your mark for class participation at the end of the course.

There will be a mid-year exam at the end of the fall term. This exam will be “closed book”. Your result in this examination will only count if it improves your final examination grade. In this case, it will only apply as 30% of the final examination grade.

A mooting problem (advocacy exercise) will be distributed in the third week of January 2010 and facta will be due in the first week of February. Oral mooting will take place during the second week of February. As this event is coordinated among all sections, further details will be announced in class in due course.

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 MATERIALS

Required reading texts

Stephanie Ben-Ishai & David R. Percy, *Contracts: Cases and Commentaries*, 8th ed. (Toronto: Thomsen/Carswell, 2004). (Textbook).

Richard F. Devlin et al., *Contract Law and Judicial Decision Making: 2009—2010* (Dalhousie Law School, 2009). (Casebook).

Additional class handouts will be distributed for some seminars.

Recommended reference works (on reserve at the Library)

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

J. Beatson, *Anson's Law of Contract*, 28th ed. (Oxford: Oxford University Press, 2002).

Chitty on Contracts, 2 vols., 29th ed. (London: Sweet & Maxwell, 2004).

G.H.L. Fridman, *The Law of Contract in Canada*, 4th ed. (Scarborough, Ont.: Carswell, 1999).

J. D. McCamus, *The Law of Contracts* (Toronto: Irwin Law, 2005).

J. Swan, B.J. Reiter & C. Bala, *Contracts: Cases, Notes & Materials*, 7th ed. (Markham, Ont.: Butterworths, 2006).

M.J. Trebilcock, *The Limits of Freedom of Contract* (Cambridge, Mass.: Harvard University Press, 1993).

G.H. Treitel, *The Law of Contract*, 11th ed. (London: Sweet & Maxwell, 2003)

S. M. Waddams, *The Law of Contracts*, 5th ed. (Toronto: Canada Law Book, 2005).

FALL TERM PROGRAM

The winter term program will be distributed towards the end of the fall term.

Tuesday, 15 September

1. Introduction to the Course.

Readings:

An Introduction to the Study of the Law of Contracts, Textbook, 1—
14

Goldthorpe v. Logan, Casebook, 5

Thursday, 17 September

2. Issues arising out of the law of contract: small group simulation exercise

No readings

Tuesday, 22 September

3. Historical overview

Readings:

P. Atiyah, excerpt from *An Introduction to the Law of Contract*, Casebook, 6-9

F. Kessler, G. Gilmour & A. Kronman, "Contract as a Principle of Order", Casebook, 11-17

H. Collins, "Two Ideals of Justice", Casebook, 18—21

Thursday, 24 September

4. Contemporary perspectives on contract law (small group work)

Readings:

A. Kronman & R. Posner, "The Economics of Contract Law", Casebook, 23-25

J. Feinman, "Critical Approaches to Contract Law", Casebook, 26-27

W. A. Wieggers, "Economic Analysis of Law and 'Private Ordering': A Feminist Critique", Casebook, 28-30

N. G. Williams, "Offer, Acceptance and Improper Considerations", Casebook, 31-32

Tuesday, 29 September

5. Legal Structures and Legal Reasoning

Readings:

J. Paul, "A Bedtime Story", Casebook, 33—35

The Court Structure in England and Wales, Casebook, 36

Table of Nova Scotia Courts (A Provincial Model), Casebook, 37

G. Gall, "The Doctrines of Precedent and Stare Decisis," Casebook, 38—46

W. Twining & D. Meirs, "Interpreting Cases," Casebook, 47—53

Friedmann Equity Developments Inc. v. Final Note Ltd., Casebook, 54—56

Structure of a Case Brief, Casebook, 57

Thursday, 1 October

6. Offer I

Readings:

Canadian Dyers Association Ltd. V. Burton, Textbook, 18—20
Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd., Textbook, 20—25

Tuesday, 6 October (class to be re-scheduled)

7. Offer II

Readings:

Carlill v. Carbolic Smoke Ball Co., Textbook, 25—30
Goldthorpe v. Logan, Textbook, 30—33

Thursday, 8 October (class to be re-scheduled)

8. Offer III

Readings:

R. Ron Engineering & Construction (Eastern) Ltd., Textbook, 35—38
M.J.B. Enterprises Ltd. V. Defence Construction (1951) Ltd., Textbook, 38—46

Tuesday, 13 October

9. Communication of Offer

Readings:

Williams v. Cawardine, Textbook, 50—51
R. v. Clarke, Textbook, 51-54
Rudder v. Microsoft Corp., Textbook, 93—97

Thursday, 15 October

10. Acceptance I

Readings:

Livingstone v. Evans, Textbook, 54—56
Butler Machine Tool Co. v. Ex-Cell-O Corp., Textbook, 56—58
Tywood Industries Ltd. V. St. Anne-Nackawic Pulp & Paper Co. Ltd., 58—61
Eliason v. Henshaw, Textbook, 79—81

Tuesday, 20 October

11. Acceptance II

Readings:

Felthouse v. Bindley, Textbook, 72—75

Saint John Tug Boat Co. v. Irving Refinery, Textbook, 75—79

Dawson v. Helicopter Exploration Co., Textbook, 66—72

ProCD v. Matthew Zeidenberg and Silken Mountain Web Services, Inc., Textbook, 61—66

Thursday, 22 October

12. Communication of Acceptance

Readings:

Household Fire & Carriage Accident Insurance Co. v. Grant,
Textbook, 81—85

Holwell Securities v. Hughes, Textbook, 85—88

*Brinkiborn Ltd. V. Stahag Stahl und Stahlwarenhandels-gesellschaft
MbH*, Textbook, 88—92

Electronic Commerce Act, Casebook, 61—63

Tuesday, 27 October

13. Discussion of practice assignment in class

No readings.

Thursday, 29 October

14. Termination of Offer I

Readings:

Byrne v. Tienhoven, Textbook, 100—102

Errington v. Errington, Textbook, 102—103

Dickinson v. Dodds, Textbook, 97—100

Tuesday, 3 November

15. Termination of Offer II

Readings:

Barrick v. Clark, Textbook, 103—109

Manchester D.C.E. v. Commercial, Casebook, 64—67

Thursday, 5 November

16. Certainty I

Readings:

May & Butcher Ltd. v. R., Textbook, 119—122

Hillas & Co. Ltd. v. Arcos Ltd. (C.A.), Casebook, 69—71

Hillas & Co. v. Arcos Ltd. (H.L.), Textbook, 122—126

Foley v. Classique Coaches Ltd., Textbook, 126—130

Tuesday, 10 November

17. Certainty II

Readings:

Sudbrook Trading Estate v. Eggleton, Casebook, 72—73

Courtney and Fairbairn Ltd. v. Tolaini Brothers (Hotels) Ltd.,
Casebook, 74—76

C. Boyle & D. Percy, “Note on *Walford v. Miles*”, Casebook, 77—79

Wellington City Council v. Body Corporate 51702 (Wellington),
Textbook, 138—144.

Thursday, 12 November

18. Certainty III

Readings:

R. v. CAE Industries Ltd., Textbook, 114—118

Empress Towers Ltd. v. Bank of Nova Scotia, Textbook, 131—134

Mannpar Enterprises Ltd. v. Canada, Textbook, 134—138

Bawitko Investments Ltd. v. Kernels Popcorn Ltd., Textbook, 145—
152

Knowlton realty Ltd. v. Wyder, Casebook, 78—79

Tuesday, 17 November

19. The Enforcement of Promises and Intention to Create Legal Relations

Readings:

Blair v. Western Mutual Benefit Assn., Textbook, 47—5

Rose & Frank Co. v. J.R. Crompton & Bros. Ltd., Textbook, 246—247

Wood v. Lucy, Lady Duff-Gordon, Textbook, 164—166

Balfour v. Balfour, Textbook, 243—246

The Governors of Dalhousie College at Halifax v. The Estate of Arthur Boutilier, Deceased, Textbook, 156—161

Thursday, 19 November

20. Consideration I: Nature

Readings:

Eastwood v. Kenyon, Textbook, 166—167

Thomas v. Thomas, Textbook, 169—170

Scivoletto v. De Dona, Casebook, 124—125

B. (D.C.) v. Arkin, Casebook, 127—129

Tuesday, 24 November

21. Consideration II: Past, Forbearance and Pre-existing Legal Duty

Readings:

Lampleigh v. Brathwait, Textbook, 168

Pao On v. Lau Yiu Long, Textbook, 173—176

Stilk v. Myrick, Textbook, 177—178

Gilbert Steele Ltd. v. University Const. Ltd., 178—182

Williams v. Roffey Bros. & Nicholls (Contractors) Ltd., Textbook, 182—186

Thursday, 26 November

22. Consideration III

Readings:

Foakes v. Beer, Textbook, 192—195

Re Selectmove Ltd., Textbook, 195—197

Foot v. Rawlings, Textbook, 197—200

Judicature Act, Textbook, 200-201

Tuesday, 1 December

23. Discussion of a hypo in class

No readings.

Thursday, 3 December

24. End-of-term review class

Monday, 14 December

Exam