

CONTRACTS AND JUDICIAL RULE-MAKING
LAWS 1000X/Y.06 (2010/2011 Fall)

Section: A

Instructor: Professor Aldo Chircop, JSD

Dates & Times:

Mondays, 10.30—12.00, Rm 429

Thursdays, 10.30-12.00, Rm L406

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 2009/2010, 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, 18 October at noon, and must be returned to the Reception by 16.30 on Friday, 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.

Examinations will be administered using Exam4 software. Instructions for downloading the software to your laptop computers will be provided by the Associate Dean’s office in due course. The law school has a limited number of laptops that will be made available for exam purposes to students who do not have a laptop computer. Students who wish to handwrite their exams must notify the Associate Dean’s office in accordance with instructions that will be sent to all students.

A mooted 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 mooted 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.

ASSISTANCE WITH WRITING

Transitions are challenging. Students moving from high school to university experience high levels of stress especially in terms of their studies. The same thing can be said for the transition from undergraduate programs to graduate studies. Dalhousie offers a number of support services that assist students in their development of academic competencies. The Writing Centre, for instance, works to develop writing skills that meet university expectations in one-on-one

sessions, in small groups, and in classes.

Contact information:

Dalhousie Writing Centre

Monday, Tuesday, and Thursday 10:00-6:00

Wednesday 10-7

Friday 10:00-4:00 and

Sunday 1:00-5:00

Website: www.writingcentre.dal.ca

(for appointments write to writingcentre@dal.ca or call 494-1963)

Also, writing Tutors are at the Sexton Library Friday 9-12 and at the Kellogg Library Wednesday 1:30-4:30.

UNIVERSITY POLICY ON INTELLECTUAL INTEGRITY

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

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

COURSE MATERIALS

Required reading texts

Stephanie Ben-Ishai & David R. Percy, *Contracts: Cases and Commentaries*, 8th ed. (Toronto: Thomsen/Carswell, 2009). (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, C. Bala & B.J. Reiter, *Contracts: Cases, Notes & Materials*, 8th ed. (Markham, Ont.: LexisNexis, 2010).
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).
S.M. Waddams et al., *Cases and Materials on Contracts*, 4th ed. (Toronto: Emond, 2010).

FALL TERM PROGRAM

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

Monday, 13 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, 16 September

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

No readings

Monday, 20 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, 23 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

Monday, 27 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, 30 September

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

Monday, 4 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, 7 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

Thursday, 14 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

Monday, 18 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

Thursday, 21 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

Monday, 25 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 Stahlwarenhandelsgesellschaft MbH, Textbook, 88—92

Electronic Commerce Act, Casebook, 61—63

Thursday, 28 October

13. Discussion of practice assignment in class

No readings.

Monday, 1 November

14. Termination of Offer

Readings:

Byrne v. Tienhoven, Textbook, 100—102

Errington v. Errington, Textbook, 102—103

Dickinson v. Dodds, Textbook, 97—100

Barrick v. Clark, Textbook, 103—109

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

Thursday, 4 November

15. 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

Monday, 8 November

16. 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.

Monday, 15 November

17. 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

Thursday, 18 November

18. 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

Monday, 22 November

19. 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

Thursday, 25 November

20. 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., Textbook, 178—182

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

Monday, 29 December

21. 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

Thursday, 2 December

22. Discussion of a hypo in class

No readings.

Monday, 6 December

23. End-of-term review class

Monday, 20 December

Exam