

# Contracts and Judicial Rule-Making: Section C

## **Fall Term 2009**

Tuesdays 1:30 – 3:00, room 305

Thursdays 1:30 – 3:00, room 305

Office Hours:

Mondays and Wednesdays: 12:30-1:00,

Tuesdays and Thursdays, 3:00-3:45 &

by appointment

**Professor: Constance MacIntosh**

Office: Room 317

Telephone: 494-3554

Email: [constance.macintosh@dal.ca](mailto:constance.macintosh@dal.ca)

## **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*, 8<sup>th</sup> ed. (2009)

R.F. Devlin et al, *Supplement* (2010-2011) [\*\*MacIntosh version]

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*, 4<sup>th</sup> ed. (1999)

S. Waddams, *The Law of Contract* 5<sup>th</sup> ed. (2005)

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

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

I. Collins, *The Law of Contract*, 3<sup>rd</sup> ed. (1997)

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

## **Evaluation:**

### **Fall Term:**

- *The mid-year exam* is scheduled for December. This will be a “**closed-book**” examination. You will be provided 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:**

- *Final exam* A final exam, on the full year's material (including lectures), will be scheduled for the Spring exam period in April. This is a “**closed book**” exam, although you will be provided with a copy of the course reading list in the exam room. If your performance is better on the final exam than on the mid-year exam, then the final exam will count for 100% of your grade. If, however, your performance on the mid-year exam is better than your performance on the final, the mid-year exam will count for 30% of your grade, and the final exam will count for 70%.

## **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](http://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](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.

## **ACCOMMODATION**

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](http://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.

## **Examination software**

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.

## Course Outline

Sept 14	<b>Introduction and Expectations</b> Editor's Introduction Goldthorpe v Logan	BIP 1 Supp. 3
Sept 16	<b>Historical Overview</b> Atiyah Kessler Collins	Supp. 4 Supp. 8 Supp. 14
Sept 21	<b>Contemporary Perspectives</b> Kronman and Posner Feinman Wiegiers Williams Ayres "Fair Driving" Ayres "Postscript: Further Evidence..." "A Common Law Remedy"	Supp. 18 Supp. 21 Supp. 23 Supp. 26 Supp. 109-119 Supp. 131 Supp. 133
Sept 23	<b>Legal Structures and Legal Reasoning I</b> Paul English Court Structure Table of Nova Scotian Courts Gall Twining and Meirs Friedland Equity Structure of a Case Brief	Supp. 28 Supp. 31 Supp. 32 Supp. 33 Supp. 42 Supp. 49 Supp. 52
Sept 28	<b>Remedies</b> Waddams <i>Hamilton v Open Window Bakery</i>	Supp. 143 Supp. 157
Sept 30	Class cancelled	
Oct 5	<b>Offer I</b> <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. 53
Oct 7	<b>Offer II</b> <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 12	<b>Communication of Offer</b> <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 14	<b>Acceptance I</b> <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
Oct 19	<b>Acceptance II</b> <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
Oct 21	<b>Communication of Acceptance</b> <i>Household Fire &amp; Accident v. Grant</i> <i>Holwell Securities v. Hughes</i> <i>Brinkibon Ltd. v. Stahag Stahl</i>	BIP 81 BIP 85 BIP 88

	Electronic Commerce Act	Supp. 55
Oct 26	<b>Termination of Offer I</b> <i>Dickinson v. Dodds</i> <i>Byrne v. Van Tienhoven</i> <i>Errington v. Errington</i>	BIP 97 BIP 100 BIP 102
Oct 28	<b>Termination of Offer II</b> <i>Errington v. Errington</i> <i>Barrick v. Clark</i>	BIP 102 BIP 103
Nov 2	<b>Certainty I</b> <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. 58 BIP 122 BIP 126
Nov 4	<b>Certainty II</b> <i>Sudbrook Trading v. Eggleton</i> <i>Courtney &amp; Fairbairn v. Tolaini</i> Note on <i>Walford v. Miles</i> <i>Wellington City Council</i>	Supp. 61 Supp. 62 Supp. 64 BIP 138
Nov 9	<b>Certainty III</b> <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. 65
Nov 11	No classes as university is closed	
Nov 16	<b>The Enforcement of Promises and Intention to Create Legal Relations I</b> <i>Blair v. Western Mutual Benefit</i> <i>Rose &amp; 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 246 BIP 164 BIP 243 BIP 156
Nov 18	<b>The Enforcement of Promises and Intention to Create Legal Relations II</b> <i>Braker v Markovitz</i> <i>Brantford Gen. Hospital v Marquis</i>	Supp. 67 BIP 161
Nov 23	<b>Consideration I</b> <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 Supp 75 BIP 168 BIP 173
Nov 25	<b>Consideration II</b> <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
Nov 30	<b>Make up class</b>	
Dec 2	Class cancelled as I am out of the province	
Dec 7	<b>Exam review class</b>	