

Contracts and Judicial Rule-Making

Section B

Fall Term 2008

Contracts & Judicial Rule-Making / Law1000X/Y.06
Monday 3:00-4:30pm / Wednesday 11:00-12:30pm
Classroom: 406 (fall)

Professor: Meinhard Doelle

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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 fulfill the first objective, substantive rules of contract law are examined.

Required Texts

C. Boyle, D. Percy, *Contracts: Cases and Commentaries*, 7th ed. (2004)
R.F. Devlin et al, *Supplement* (2006-2007)
Occasionally other materials may be handed out 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)
G. Treitel, *The Law of Contract*, 10th ed. (1999)
I. Collins, *The Law of Contract*, 3rd ed. (1997)
P. Atiyah, *An Introduction to the Law of Contract*, 5th ed. (1995)

Evaluation by Term

Fall Term:

- An in class closed book *practice exam* will be held on Wednesday October 28th. Your work may be graded to give you some feedback but the grade will not count, although the seriousness of your effort will be considered in assigning the class participation mark for the year.
- The mid-year exam will be scheduled in the first weeks of December. This will be a **closed-book** examination. The mid-year examination result will only count (as 30% of the final exam component of your grade or 18% of the final grade) if this improves your final examination grade.

Winter Term:

- *The advocacy exercise* (**dates are tentative and may change: notice to be given in January of any changes to dates**) the problem to be argued will be distributed on Tuesday February 3rd and factums (written arguments) are due Tuesday February 10th, at the start of class. Please bring TWO copies of the factum, as the second one will be distributed to opposing counsel at the end of class. The oral arguments (moots) are scheduled for Wednesday February 11th between 1:00 pm and 3:30 pm in room 429 and Friday February 13th from 1:00 to 4:00 in room 308.
- *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.

Overall Course Grading

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

Participation Guidelines for Contract Law

Many students in the past have asked 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, your final grade for participation will primarily reflect 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 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.

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.

Special Needs

Professor Pothier is the faculty advisor to students with disabilities. Students with disabilities wishing to discuss in-class accommodation or study assistance needs should see Professor Pothier. Students wishing to request accommodation regarding exam writing or other aspects of evaluation must make the request in writing to the Studies Committee and should see Associate Dean Deturbide or Assistant Dean Hughes for more information. Material for the Studies Committee should be given to Tiffany Coolen-Jewers, administrative assistant to the Associate Dean.

Course Outline

Class 1	Introduction and Expectations Editor's Introduction Atiyah	B&P 1 Dev. 2
Class 2	Introduction to the Law of Contract & Historical Overview Exploring everyday contracts Come to Class with your list of 10 everyday contracts you have encountered Kessler Collins Leff	Dev. 6 Dev. 13 Dev. 17
Class 3	Contemporary Perspectives Kronman and Posner Feinman Wieggers Williams	Dev. 18 Dev. 21 Dev. 23 Dev. 26
Class 4	Legal Structures and Legal Reasoning I Paul English Court Structure Table of Nova Scotian Courts Gall	Dev. 28 Dev. 31 Dev. 32 Dev. 33
Class 5	Legal Structures and Legal Reasoning II Twining and Meirs <i>Friedland Equity v. Final Note</i> Structure of a Case Brief	Dev. 42 Dev. 49 Dev. 52
Class 6	Damages for Breach of Contract Waddams on Damages <i>Hamilton v. Open Window Bakery</i>	Dev 176 Dev 190
Class 7	Offer I <i>Canadian Dyers v. Burton</i> Boots <i>Carlill v. Carbolic</i> <i>Fred Christie v. York Corp.</i>	B&P 17 B&P 20 B&P 25 Dev. 53
Class 8	Offer II Carlill <i>Goldthorpe v. Logan</i> <i>R. v. Ron Engineering</i> M.J.B. Enterprises	B&P 25 B&P 30 B&P 35 B&P 39
Class 9	Communication of Offer <i>Williams v. Cawardine</i> <i>R. v. Clarke</i> <i>Carlill v. Carbolic</i> <i>Rudder v. Microsoft</i>	B&P 51 B&P 52 B&P 25 B&P 94
Class 10	Acceptance I <i>Livingstone v. Evans</i> Battle of Forms <i>Butler Machine Tool v. Exello</i> <i>Tywood Industries v. St. Anne</i> <i>Eliason v. Henshaw</i>	B&P 57 B&P 62 B&P 59 B&P 61 B&P 84
Class 11	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>	B&P 76 B&P 79 B&P 70 B&P 65

Class 12	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	B&P 98 B&P 103 B&P 89 Dev 55
Class 13	Termination of Offer I <i>Dickinson v. Dodds</i> <i>Byrne v. Van Tienhoven</i> <i>Errington v. Errington</i>	B&P 108 B&P 106 B&P 112
Class 14	Termination of Offer II <i>Barrick v. Clark</i> <i>Manchester D.C.E. v. Commercial</i>	B&P 114 B&P 118
Class 15	In-Class Practice Exam on Offer and Acceptance	
Class 16	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>	B&P 134 Dev 61 B&P 136 B&P 140
Class 17	Certainty II <i>Sudbrook Trading v. Eggleton</i> <i>Courtney & Fairbairn v. Tolaini</i> Note on <i>Walford v. Miles</i> Wellington City Council	Dev 61 Dev 63 Dev 66 B&P 154
Class 18	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>	B&P 127 B&P 147 B&P 149 B&P 162 Dev 67
Class 19	In-Class Exercise on Certainty	
Class 20	The Enforcement of Promises and Intention to Create Legal Relations <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>	B&P 48 B&P 263 B&P 182 B&P 258 B&P 176
Class 21	Consideration I - Nature <i>Eastwood v. Kenyon</i> <i>Thomas v. Thomas</i> <i>Scivoletto v. De Dona</i> <i>B. v. Arkin</i>	B&P 183 B&P 186 Dev. 72 B&P 189
Class 22	Consideration II - Past, Forbearance & Pre-existing Legal Duty <i>Lampleigh v. Brathwait</i> <i>Pao-On v. Lau Yiu Long</i> <i>Gilbert Steel v. University Const. Ltd.</i> <i>Williams v. Roffey</i>	B&P 185 B&P 193 B&P 197 B&P 202
Class 23	Consideration III <i>Foakes v. Beer</i> Selectmove <i>Foot v. Rawlings</i> Judicature Act	B&P 207 B&P 210 B&P 214 B&P 215
Class 24	Review Class	