

# CONTRACTS SYLLABUS – FALL/SPRING 2011 - 2012

PROFESSOR MARY ANNE WALDRON, Q.C.

## Introduction and Learning Objectives:

Welcome to Contracts, Law 108A. In this course, you will:

- A. Learn and understand the legal principles governing the law of contracts, including principles governing their formation and enforcement. You will become familiar with the factors that may vitiate a contract and will learn the principles of contract interpretation.
- B. Learn to apply the principles to a variety of situations through the use of hypothetical fact patterns and class discussion.
- C. Gain some understanding of the various policies served by the legal principles you have learned and the range of debate surrounding these policies.
- D. Gain some understanding of the historical development of modern contracts law and some insight into the probable trends in its future development in the courts.

## Materials

Our readings will be drawn from *Cases and Materials on Contracts*, 4<sup>th</sup> ed., by S.M. Waddams, J.D. McCamus, J.W. Neyers, M.A. Waldron and J. Girgis. This is a required text for the course. A variety of texts on the law of contracts are on reserve in the library. Most useful will likely be *The Law of Contracts*, by S.M. Waddams, 5<sup>th</sup> ed. It most closely reflects the approach to contracts law that you will find in this course.

## Evaluation

Evaluation will be by means of two examinations: one at Christmas, worth 30% of the course and a final examination in the Spring for the remaining 70%. If your Christmas examination mark is lower than your Spring mark, you will receive a grade based upon 100% of your Spring grade. However, you are required to write the Christmas examination to pass the course.

The examinations will be “open book” in that you may bring into the exam room and refer to your casebook (*Cases and Materials on Contracts*) and any notes that you have prepared for your own use. You may not bring or refer to any other materials whatsoever.

## Methodology

For each class, you will be assigned readings from the Contracts casebook. Primarily, these readings will consist of excerpts from cases. You will be expected to come to class prepared to participate in a discussion about the materials read and to consider

the principles, policy and context (commercial, social, historical, etc.) illustrated or established by the cases read. For the class to be a useful and enjoyable experience, you should be prepared to engage in open and civil discussion with me and with your colleagues. You will learn as much from your interactions with others as from your readings.

## **Pace**

Below, you will find a course outline that describes the topics we will cover and the major readings that will likely be assigned. I have not attempted to divide the outline into a class-by-class schedule. We will proceed at a reasonable pace through the material. If time permits, additional readings may be added; if we spend longer on one area than anticipated, readings may be deleted. You will need to note, at the end of each class, any deviation from the listed readings. Often the case excerpts are followed by notes and questions. I may not have specifically assigned these notes, but you should have a look at them to aid your thinking. I may take up some of them in class. I will seek feedback from the class from time to time as to whether you are finding the pace acceptable or whether it could be faster or slower. Obviously, not everyone will find the pace appropriate. If you find you are falling behind or consider that you have not understood the material, you should discuss this with me earlier rather than later.

## **Instructor and Contact Information**

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## COURSE OUTLINE

1. Introduction
  - a) “Housekeeping” – review of materials, evaluation, ground rules, etc.
  - b) A brief history of contracts law
  - c) Towards a working definition of a “contract”
  - d) What we will do in the course.
  
2. Remedies for breach of promise

What if: You have just moved to Victoria and you want to buy a small condominium. With interest rates so low, you figure it is a better deal than renting. You sign an agreement with Ms A to buy her one-bedroom condo for \$300,000. You pay a deposit of \$20,000. On the day before you complete the purchase, Ms A tells you that her plans have changed and she does not intend to sell to you or anyone else.

- a) The interests protected
  - Wertheim v. Chicoutimi Pulp* CB 27
  - Bollenback v. Continental Casualty* CB27
  - Anglia Television v. Reed* CB 32
  - A.I. Ogus excerpt CB 34
  - Hawkins v. McGee* CB 36
- b) Special problems in measurement
  - Carson v. Willitts* CB 38
  - Groves v. John Wonder* CB 39
  - Note on *Peevyhouse v. Garland*, CB 43.
  - Thompson v. Robinson* CB 45
  - Charter v. Sullivan* CB 46
  - Note on Loss of Chance CB 48
- c) Remoteness
  - Hadley v. Baxendale* CB 49
  - Fuller and Perdue excerpt CB 52
  - Horne v. Midland Rwy* CB 54
  - Victoria Laundry v. Newman* CB 55
  - Munroe Equipment v. CFP* CB 59
  - Scyrup v. Economy Tractor* CB 66
  - The Heron II* CB 66
  - Transfield Shipping Inc. V. Mercator* CB 68
- d) Intangible injuries and punitive damages
  - Addis v. Gramophone* CB 79

- Jarvis v. Swan Tours* CB 82
- Vorvis v. ICBC* CB 86
- Fidler v. Sun Life* CB 88
- Whiten v. Pilot Insurance* CB 93
- e) Mitigation
  - Payzu v. Saunders* CB 106
  - White & Carter v. McGregor* CB 111
  - Finelli v. Dee* CB 118
  - Note on *Asamera Oil Ltd. v. Sea Oil*, CB 119
- f) Specific performance
  - Tanenbaum v. W.J. Bell Paper* CB 128
  - Co-operative Insurance Society v. Argyll* CB 133
  - Warner Bros. v. Nelson* CB 135
- g) Time
  - Wroth v. Tyler* CB 143
- h) Restitution
  - Introductory note CB 151
  - Attorney General v. Blake* CB 159

### 3. The kinds of promises legally enforced

What if: Your great-aunt has always told you that when she dies, you will inherit her valuable Crown Derby dinnerware. You have spent many hours with her over the years, repairing her house, taking her to medical appointments and tending to her garden. She loves to email and has sent you numerous notes confirming that the dinnerware will be yours because you have been such a good niece. You estimate the value of the dinnerware at \$20,000 and are counting on the sale of it to pay off debts you have incurred going to law school. Unfortunately, when Auntie dies, you find that her whole estate is left to your brother in trust for Squeegie, your aunt's cat.

- a) Bargains
  - i) Offer and acceptance
    - Denton v. Great Northern Railway* CB 174
    - Johnston Bros v. Rogers* CB 177
    - Lefkowitz v. Great Minneapolis Surplus Store* CB 181
    - Pharmaceutical Society v. Boots* CB 183
    - Manchester Diocesan Council* CB 189
    - Larkin v. Gardiner* CB 191
    - Dickinson v. Dodds* CB 192
    - Eliason v. Henshaw* CB 199

- Notes CB 200
- Butler Machine Tool Co. V. Ex-Cell-O Corp.* CB 201
- UCC and notes CB 204
- MJB Enterprises v. Defence Construction* CB 209
- Notes CB 214
- ii) Formalization and certainty
  - May and Butcher Limited v. The King* CB 219
  - Hillas v. Arcos* CB 222
  - Foley v. Classique Coaches* CB 223
  - Empress Towers v. Bank of Nova Scotia* CB 230
- iii) Correspondence
  - Henthorn v. Fraser* CB 240
  - Byrne v. Leon Van Tienhoven* CB 242
  - Note from Pollock and Restatement excerpt CB 244
  - Howell Securities v. Hughes* CB 244
  - Eastern Power v. Azienda* CB 248
  - Electronic Commerce Act* CB 251 (see also, *Electronic Transactions Act*, S.B.C. 2001, c. 10)
- iv) Consideration
  - White v. Bluett* CB 255
  - Hamer v. Sidway* CB 257
  - Thomas v. Thomas* CB 258
  - Tobias v. Dick* CB 263
  - Wood v. Lucy, Lady Duff-Gordon* CB 264
  - Harris v. Watson* CB 266
  - Stilk v. Myrick* CB 266
  - Gilbert Steel v. University Construction* CB 271
  - Williams v. Roffey* CB 274
  - Greater Fredericton Airport Authority v. NAV* CB 283
  - River Wind Ventures Ltd. v. British Columbia* CB 282
  - Foakes v. Beer* CB 283
  - Mercantile Law Amendment Act* CB 287 (see also, *Law and Equity Act*, RSBC 1996, c. 253, s. 46)
  - Fairgrief v. Ellis* CB 291
  - Dalhousie College v. Boutilier Estate* CB 292
- b) Intention
  - Jones v. Padavatton* CB 301
  - Rose v. J.R. Crompton* CB 304
- c) Non-bargain promises
  - i) Under seal

Excerpt from Fuller CB 309

Excerpt from Brudner CB 310

- ii) Past consideration
  - Lampleigh v. Brathwait* CB 313
  - Roscoria v. Thomas* CB 314
- iii) Reliance and estoppel
  - Hughes v. Metropolitan Railway Co.* CB 320
  - Central London Property Trust v. High Trees* CB 321
  - Combe v. Combe* CB 323
  - John Burrows Ltd. V. Subsurface Surveys* CB 327
  - Owen Sound Public Library* CB 330
  - D & C Builders v. Rees* CB 335
  - N.M. v. A.T.A.* CB 349
- d) Unilateral contracts
  - Williams v. Carwardine* CB 353
  - Carlill v. Carbolic Smoke Ball Company* CB 356
  - Dale v. Manitoba* CB 360
  - Grant v. New Brunswick* CB 362
  - Errington v. Errington* CB 365
  - Dawson v. Helicopter Exploration* CB 366

#### 4. Contracts and third parties

What if: You have been contacted by a local hotel that is demanding payment of \$10,000. The sum is owed under a contract signed by the president of an informal dog-walking club to which you belong. Apparently, she decided that the club would host a dog health conference and booked the venue as club president. You had no idea this had happened and the president has now resigned and gone to an ashram in a remote part of India.

- a) Third-party beneficiaries
  - Tweddle v. Atkinson* CB 371
  - Beswick v. Beswick* CB 372
  - Dunlop v. Selfridge* CB 380
  - The Eurymedon* CB 393
  - London Drugs v. Kuehne & Nagel* CB 398
  - Fraser River Pile v. Can-Dive* CB 406
- b) Assignment and agency
- c) Mistaken identity – of void and voidable contracts
  - Phillips v. Brooks* CB 432
  - Ingram v. Little* CB 433

*Lewis v. Averay* CB 438

d) *Non est factum*

*Saunders v. Anglia* CB 445

*Marvco Color Research Ltd. V. Harris* CB 457

## 5. Contract interpretation

What if: When your law firm upgraded its computer system, you gave the contract to Wizard Computers. The salesman assured you that the new computers were “state of the art” with “plenty of power for any mid-sized firm” and had “excellent” file-management software available. The brochure for the computers put out by the manufacturer also claimed “file-management programs trusted by law firms throughout North America”. Unfortunately, the file-management program proved to be deficient and the computers are not able to run it. When you examine the contract, you see a clause that states: “Wizard Computers does not warrant any standard of performance or operation of software. Damages for any problem whatsoever are limited to \$100.”

a) The parol evidence rule

*Prenn v. Simmonds* CB 486

*Hawrish v. Bank of Montreal* CB 495

*Tilden rent-A-Car v. Clendenning* CB 503

*Gallen v. Allstate Grain* CB 511

b) Clauses excluding liability

*Photo Production v. Securicor* CB 553

*Hunter Engineering v. Syncrude* CB 556

*Tercon Contractors v. B.C.* CB 569

c) Misrepresentations and the relationship between contract and tort

*Heilbut, Symons v. Buckleton* CB 737

*Bentley Productions v. Smith Ltd.* CB 741

*Redgrave v. Hurd* CB 743

*Leaf v. International Galleries* CB 751

*Murray v. Sperry Rand Corp* CB 755

*Hedley Byrne v. Heller* CB 760

*Esso Petroleum v. Mardon* CB 763

Note on *Central Trust v. Rafuse* CB 770

d) Drafting contracts – a short consideration of practical issues

## 6. The residual power of the court in contract enforcement

What if: Your dog Maz is ill and desperately needs an operation. The cost will be \$4,000 which you do not have. Your alternative is to have Maz “put to sleep”. You have heard that one of your classmates has a business on the side making emergency loans. You ask her for help and she agrees to lend you \$4,000 for two months, provided that you repay \$4,800 at the end of the period. You agree. You sign a contract pledging your deceased mother’s engagement ring as forfeit if you fail to repay the loan before the day exactly sixty days from the date of the loan.

a) Unconscionability, undue influence and duress

Trebilcock excerpt CB 581

Leff excerpt CB 585

*Marshall v. Canada Permanent Trust Co* CB 595

*Mundlinger v. Mundlinger* CB 599

*Lloyd’s Bank v. Bundy* CB 603

*Royal Bank of Scotland v. Etridge* CB 611

Notes CB 625

*Pridmore v. Calvert* CB 631

b) Penalties and forfeitures

*H.F. Clarke v. Thermidaire Corp.* CB 545

*Stockloser v. Johnson* CB 545

c) Common law illegality

*Holman v. Johnson* CB 656

*Shafron v. KRG Insurance Brokers* CB 660

*Brisette Estate v. Westbury* CB 669

*Oldfield v. Transamerica Life Insurance* 671

d) Statutory illegality

*Kingshot v. Brunskill* CB 674

*Doherty v. Southgate* CB 676

e) Mitigating the consequences of illegality

*Outson v. Zurowski* CB 687

*New Solutions Financial Corp v Transport NA Express* CB 694

*Still v. MNR* CB 697

7. Mistakes about – what it says, what it means or what will happen in the future.

What if: You have always wanted to own a painting by Sylvia Brownwell, a local artist. You visit her gallery and see the very painting you want; and the price seems incredibly reasonable. You speak to the salesperson and express your long-term interest in collecting local original art. You agree to buy the painting to be delivered to your apartment. When it arrives, you notice that it comes with a

card that says “No. 1243 out of a limited edition of 2000.” You call the gallery and are told that the price displayed was for high-quality glycee prints; the original is 10 times the price you paid.

a) Mistake about contractual terms

*Hobbs v. E & N Railway* CB 770

*Raffles v. Wichelhaus* CB 773

*Staiman Steel v. Commercial* CB 774

*Smith v. Hughes* CB 779

b) Mistake in assumptions

*Bell v. Lever Bros.* CB 793

*Solle v. Butcher* CB 796

*Great Peace Shipping v. Tsavlis Salvage* CB 803

*Miller Paving v. Gottardo Construction* CB 810

*R. v. Ron Engineering* CB 824

c) Rectification of documents

*Bercovici v. Palmer* CB 523

*Sylvan Lake Golf & Tennis Club v. Performance Industries* CB 527

d) Frustration

*Triantis* excerpt CB 838

*Paradine v. Jane* CB 843

*Taylor v. Caldwell* CB 844

*Capital Quality Homes v. Colwyn* CB 850

*The Sea Angel* CB 872

*Frustrated Contracts Act* CB 895 (see also *Frustrated Contract Act*, RSBC 1996, c. 166.)