

Carleton University
Department of Law and Legal Studies
COURSE OUTLINE

Laws 2202B
PRIVATE LAW OBLIGATIONS

Term:	Fall 2013
Instructor	Dr. Jennifer Barrigar
Prerequisites:	LAWS 1000
Lecture	2:35pm – 5:25pm Thursdays
Contact:	jennifer_barrigar@carleton.ca
Office Hours:	virtually or by appointment
TAs:	Contact information will be provided early in the term.

Academic Accommodation

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

COURSE DESCRIPTION

This course examines the concepts employed by the law for creating and enforcing legal obligations between persons within society, including contract, tort, unjust enrichment and fiduciary obligation. Consideration is given to the role of persons and the role of the state in ordering private legal obligations.

These subjects can (and do) form the basis for entire courses, suggesting that our treatment of them this course is selective and driven by a particular and limited focus. As we discuss the law of torts, we focus on negligence causing personal injury rather than the many other dimensions of tort liability. Our focus is on how tort law protects bodily integrity and navigates policy questions between individual autonomy and social responsibility. Is tort law a sentinel of safety? Within the consideration of contract law, material is focused on doctrines of formation, terms, and consideration and how they have changed in response to changes in how markets function, the changing regulatory involvement of the state, and shifts in the role of the judiciary. The broadest contours of unjust enrichment (restitution) are addressed comparing the approach of the courts to defective transactions in the market on the one hand to resolving property disputes in the family in the absence of a formal legislative framework (such as that provided by marriage). A similar broad brush approach is taken to the law of fiduciary obligation, locating it within the thesis that the private law of obligations is concerned not only with markets but also with ensuring that we can rely on one another.

LEARNING OBJECTIVES

At the end of this course, students should be able to

- Summarize and analyze case law in the area of obligations and in particular,
 - Distil relevant facts and issues in cases discussed,
 - Provide a correct account of the judicial reasoning (both majority and dissenting opinions) and results in cases
 - Identify and assess the role of policy in judicial decision-making.
- Locate cases in their historical (economic, philosophical and social) contexts
- Apply theoretical positions and arguments to move from descriptive understanding towards critical engagement with and assessment of legal principles in the area of Obligations.

Note:

I am not seeking to 'teach you the law' of Obligations in any detail (although you will, of course, learn current legal principles in a number of areas). We will review selected areas in Torts, Contracts, Unjust Enrichment and Equity to understand some of the fundamental principles in this broad area of private law.

REQUIRED READING

The following casebook has been prepared for this section of the course and is required reading:

T. Brettel Dawson ed., *Obligations in Private Law (North York, Captus Press, 2012)*.

Available for purchase in the University Bookstore.

- Note: Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text was recently divided into two volumes). This course uses quite different material.

CLASS SLIDES

I will post slides for each lecture (before class so you can download and use to assist you in note-taking). Slide decks are named by class number. The presence of slides does not substitute for attendance -- you should always do the reading and attend the lectures.

EVALUATION

Components

There are 3 (take home) assignments in the course. Each assignment consists of short answers and short essays. In addition, 10% of course marks are allocated to class participation (see below).

All components must be completed to receive a passing grade in the course. For a note about the Take Home Format, see Appendix.

Component	Value	Posted Information	Due
Class Participation	10%	Students must complete at least 3 Lecture Material Exercises (LME) out of 10 available during the semester (6 marks) Students must create/post on e-Group discussion boards on substantive topics at least 2 times over the semester. (4 marks)	LME should be submitted 2 days prior to the relevant class (ie Monday by midnight for Thursday class) You will not receive 'marks' or feedback on the LMEs or posting. If your postings are serious and substantive that will suffice for the marks Class participation marks will be posted by the end of the Examination Period.
Assignment 1: Torts	25%	Covers: Classes 2,3,4 Available: cuLearn	Due: Oct 9

Assignment 2: Contracts	30%	Covers: Classes 5.6.7	Due: Nov 13	
Take Home Exam: Contracts, Unjust Enrichment, Conscience	35%	Covers: Classes, 8 – 12 and themes from Class 1 Available: culearn	Due: Dec 22	
Extensions:				
* Assignment 1: Extensions possible in restricted circumstances for Assignment 1 & Assignment 2 with supporting official documentation (see notes that follow).				
** Extensions Take Home Exam: NO EXTENSIONS. If you cannot submit before due date and time, you must seek a formal deferral from the Registrar's Office.				

Online Submission and Return

Assignments are handled electronically rather than in hard copy through cuLearn Assignments. You receive the assignment via cuLearn (download and read it on the date posted please). You attach your assignment as a file which you upload and submit for marking through cuLearn. They are marked online and feedback/your paper is returned to you online.

You should keep a copy of all assignments and examinations until your final grade is confirmed. We may contact you for an additional copy if something goes wrong in submission.

On Time Expectation

The due dates for all work are identified in this Outline. You have at least 10 days to complete all work assigned.

I expect you to make a note of these dates NOW and plan your semester around timely completion. Look at your schedule as a whole for the semester – if one week looks like it's particularly heavy – BOOK IT OFF NOW (BOOK OFF WORK, DON'T ACCEPT INVITATIONS THAT WEEK ETC).

I expect you to submit your work ON TIME. Subject to a very modest grace period for unforeseen, very short term situations at my discretion, I impose heavy penalties for work which is submitted late without an extension as set out below:

Late Penalties

- You will lose 5% off if you hand any work in on the due date after the deadline but before midnight.

- You will lose a further 5% if you hand it in the 'next day' any time before midnight
- You will lose additional marks at the rate of 10% per extra day (counted from stroke of midnight and including weekend days) if you hand the paper in then.
- You will receive ZERO if you hand in your work more than seven days late although I will accept it towards course completion.

Extensions:

ONLY the Professor can grant extensions and ONLY for Assignments 1 and 2. If you are unable to submit a Take Home Assignment during the Examination Period you MUST seek a formal deferral through the Office of the Registrar.

In term extensions should be requested in advance of the due date. They will only be approved after supporting documentation has been reviewed and accepted. Circumstances warranting a request for an extension include: serious illness requiring medical attention that requires you to be 'off school or emergency circumstances in your immediate family (such as a death of a close relative or medical care required for children or elderly dependents).

Extensions will not be granted for computer problems, work schedule conflicts or academic overloads (except in exceptional circumstances). Extensions will not be granted for mild illnesses (eg., a cold, a tummy bug). If you are too sick to complete your work, you need to see a doctor – and get a medical note!

Back Up Your Work!

It is your responsibility to create back-up copies of your work to prevent losing the work at the last minute due to computer problems on your own or university equipment.

I recommend the following back up strategies: upload drafts to the cloud, email a draft to yourself whenever you finish a segment of work on it or your work session, copy it to a USB thumb-drive or an external hard drive.

Doing Well

I will expect you to prepare answers in which you analyze materials covered in class and readings answering specific questions about cases (principles and reasoning) or literature (arguments and propositions).

To do well you will have to read the material in the casebook and watch the lectures in relation to concepts and themes discussed in class. The class slides provide an extensive backbone and guide to the lectures to assist you in note-taking.

Individual Work Only and Academic Integrity

You must follow the University's policies on academic integrity available at <http://www2.carleton.ca/studentaffairs/academic-integrity/>. You must complete all work

individually and it must be fully original. You must not rely excessively on quotations as this will not count as being your own work. Do not plagiarize (copy and paste without attribution) from published, unpublished or internet sources. Attribute all sources you have used directly or indirectly (paraphrased) and indicate this by using appropriate citation format. Do not share draft (or final) work with others in the class. Do not share your electronic files with other students as they may copy your work and you will be equally subject to academic investigation.

I reserve the right to compare all files with other submissions in this course and other offerings of the course. I rigorously pursue suspicion of plagiarism and, without exception, refer to the Office of the Dean. Further if 'off topic' work is submitted, I reserve the right to consult with your other instructors to confirm that you are not 're-using and re-cycling' which is strictly prohibited.

CLASS SCHEDULE

Learning Points

By the end of this course you should be able to:

- differentiate between the different kinds (or branches) of obligations in private law;
- identify the essential principles of obligation in each branch as derived from leading cases;
- explain how private law principles reflect social and economic objectives;
- link policy considerations and normative vision of judges to legal outcomes;
- contrast the approaches of the common law and equity particularly in relation to defective transactions and broken relationships; and
- trace the operation of residual, cross-cutting principles in private law (such as reliance, confidentiality and conscience) to the dominant principles of individualism, exchange and autonomy in the market

Weekly Schedule (Subject to revision)

Class	Date	Topic	Readings
1	Sept 5	Introduction <ul style="list-style-type: none"> • Scope of Obligations in Private Law • Opening Case Study: <i>Norberg</i> 	Chapter 1
2	Sept 12	Torts 1: Protecting Person and Property: Then and Now <ul style="list-style-type: none"> • Review of scope of tort law; interests protected; strengths and limitations of private law as response to harms; emerging torts 	Chapter 3 (b) (e) (f) and (g) Others may be assigned Hot Coffee Movie Ted Talk (Botsford)
3	Sept 19	Torts 2: The Glorious Principle and Contours of Negligence Obligation <ul style="list-style-type: none"> • <i>Donoghue v Stephenson</i> and more recent 	Chapter 2 Chapter 3 (a) (c) (g)

		cases; basis of negligence liability in Canada (duty of care, standard of care, causation and compensation).	Paisley Snail Movie
4	Sept 26	Torts 3: Case Studies <ul style="list-style-type: none"> • Social Host Liability (allowing guests to drive away from home parties when drunk) • Police Liability (negligent investigation) 	Chapter 4A and 4B We may include some consideration of the recent Oppal Report, <i>Forsaken</i> (Pickton murders (2012)).
5	Oct 3	Contracts 1: Exchange and the Market <ul style="list-style-type: none"> • Philosophy and values in classical model of contract law; dissonance and changes between law and contractual behavior 	Chapter 5 Peevyhouse Movie
DUE	Oct 9	Assignment 1 Due	
6	Oct 10	Contracts 2: Formation and Terms <ul style="list-style-type: none"> • When is a contract formed? Does the context matter? 	Chapter 6A and 6B
7	Oct 17	Contracts 3: Consideration and Variation <ul style="list-style-type: none"> • What if a contract contains a clause excluding liability (or coverage)? What makes that reasonable or not? 	Chapter 7
8	Oct 24	Unjust Enrichment 1: Defective Transactions <ul style="list-style-type: none"> • What happens if something 'goes wrong' and an intended agreement is reneged upon or not completed? 	Chapter 8
9	Nov 7	Unjust Enrichment 2: Broken Relationships <ul style="list-style-type: none"> • What happens when a common law couple breaks up – who has rights to property accumulated during the relationship and on what basis? 	Chapter 9
DUE	Nov 13	Assignment #2	
10	Nov 14	Fiduciary Obligations: (Social) Trust <ul style="list-style-type: none"> • Contract law seems to encourage self-interested behavior and making a profit. It assumes people can take care of themselves in bargains. Why (and when) does the law draw a line and prohibit someone taking advantage of another person? 	Chapter 11
11	Nov 21	Reliance: (Individual) Trust <ul style="list-style-type: none"> • When will judges set aside 'strict legal rights' which a person may have under contract law or property law and require them to act 'in good conscience'? 	Chapter 10
12	Nov 28	Inequality of Bargaining Power <ul style="list-style-type: none"> • In our final case study (of bank guarantees) 	Chapter 12

		we will pull together a number of themes about contractual obligation and equity to analyze and assess the overall goals of the law of Obligations. We will frame this review using three different theoretical approaches.	
13	Dec 5	REVIEW CLASS	
DUE	Dec 22	Take Home Exam Due	

MORE INFORMATION ON HOW THE COURSE WILL RUN

cuLearn **cuLearn**, the new Carleton Learning Management System is essential for this course. Lecture slides, course information, lecture slides, discussion boards are available only through this modality.

Please post an introduction to yourself in the first two weeks of class and post on topics you find interesting (or where current examples relate to course material). There will also be an FAQ for Assignments.

e-engagement I want you to stay in the course and succeed in this course. I welcome you to office hours and I will be 'online' on chat during my scheduled Office Hours if you want to 'pop-in' virtually to ask a question.

Your TA will also be available to answer your emails each week.

Please post an introduction on the cuLearn page: say where they are studying from and maybe plan to link up for a coffee once or twice a term through social media.

Expect to hear from us during the term if you have been keeping a low profile!

Email and Etiquette Email is a great way to be in touch with me and your TA. However, don't expect us to reply instantly. We aim to respond within 48 hours. We hover during assignment crunch times and try to problem solve quickly – but we aren't on the boards in the middle of the night.

When you get a mark back, wait 48 hours (and read over the feedback a couple of times) before emailing about it. Always think through your inquiry before emailing.

For all activities, individual work is required so while study groups are a good idea, sharing ideas on assignments is not. Vigorous debate and inquiry is encouraged but not personal criticism.

Take Home Format **What are They? Why do I Use Them?**

A Take Home Assignment requires you to think about the material we have covered and prepare short essays which analyze and discuss

course material. It is open book and you have quite a long period of time to prepare your answers. It is certainly not a 3-hour examination that you cram for and regurgitate! I am not looking for yes/no/descriptive answers but analysis and assessment. I hope (and organize) that Assignments will allow you to showcase how well you have understood and engaged with course material and course themes and concepts in the course.

- There is a practical reason too: many students take this class as a distance course; take homes avoid having to get people in an examination room!

Managing take homes: You should download the assignments as soon as they are posted and review them. Then create a plan so that you can do a good job on the Assignment: read the questions and figure out which ones interest you the most where you have a choice. Set aside blocks of time to review your notes, the slides and readings related to the questions (think of this as focused study time when you know what's 'on the exam'); then draft your answers. Be sure to read them over (and revise) before submitting to make sure you have said what you think you've said and that you've answered the questions asked and referred to course material specifically.