

Carleton University Department of Law and Legal Studies
COURSE OUTLINE
Laws 2202V OBLIGATIONS

Updated and Final as of July 3rd, 2012

Term: Late Summer 2012

Instructor: Professor T. Brettel Dawson

Prerequisites: Laws 1000

Broadcast (Rogers, Channel 243)
Tuesday 2.00pm – 5.00pm; AND Friday: 11.00am – 2.00pm

First lecture: July 03, 2012

Last lecture: August 10, 2012

Note: Lectures are also viewable via: CUTV Webcast; [Video-On-Demand \(VOD\) online streaming](#)- (fee applies) and at the [CUTV Student Centre](#). See the CUTV website for more information.

Moodle **cuLearn**, the new Carleton Learning Management System is essential for this course. It replaces WebCT. Readings, email to Professor, lectures slides, and assignments are available only through this modality. Because cuLearn is new to most of us (although Laws 2201T Summer I veterans are well familiar) I will post an optional test assignment (no marks) so you can practice this way to submit your work online.

Instructor: Professor T. Brettel Dawson

Contact: Office: Loeb D497

Email: Please email me through **MyCarleton Portal** (Connect) – the link is available inside cuLearn for this course.

Discussion Groups We will have discussion groups and FAQ through cuLearn – I will ask you to introduce yourself, post up on topics you find interesting (or where current examples relate to course material. There will also be an FAQ for Assignments. We try to monitor the discussion boards as a way of 'keeping in touch' even though this is a distance course in the Summer

Office Hours/TA We will have an excellent TA in this class: Ilya Medovikov. He will be your first point of contact. Email is also a good way to be in touch with both the TA and Professor – generally, we aim to respond within 48 hours (2 days) – don't expect instant replies; do think through your inquiry before you email! In-person meetings can be arranged by appointment.

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first

assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . There are no formally scheduled exam(s) in this course. However, if you require other consideration please submit your request for accommodation to PMC immediately. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.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. The broader role of Equity in private law is also considered.

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 and individual self-interest but broader concerns of equity (fairness and good faith) and social and economic well-being.

We will also examine the role of '**conscience** or good faith' in the law of obligations. We will examine how the law protects reliance where the promises or conduct has created vulnerability if they are reneged upon and determines whether to intervene where there is inequality of bargaining power. We will use theory to gain critical insight into how we shape our assessments of the role and nature of legal principles and judicial intervention in private law.

Learning Objectives

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

I will expect you to be able to give an accurate account of cases, be able compare and contrast cases at the level of sometimes competing principles, accurately outline arguments made in scholarly literature and use theory to generate and explore alternate perspectives on possible legal outcomes.

REQUIRED READING

T. Brettel Dawson, *Obligations in Private Law* (Concord: North York, 2011). This text will be available new (only) in the University Bookstore. Second hand copies may be available at Haven.

Notes:

- Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text was recently divided into two volumes). Laws 2202A/V uses quite different material.

CLASS SLIDES

Slides will be posted for each lecture. They are named by class number and general topic. They provide extensive content.

Note: The course rebroadcasts the classes from the Winter Semester. Some comments in the lectures will seem ‘out of context’ but roll with it! The introduction to the class is taped for the summer. Some of the slides will vary from the material shown in the lectures. I have adjusted them in light of how class unfolded. When they are out of sync, don’t worry – listen the lecture on its own terms and then review the slides on their own terms.

SCHEDULE AND READINGS

Class	Topic	Readings
1	Introduction	Chapter 1
Part I: TORT LAW (NEGLIGENCE)		
2	Torts 1: The Glorious Principle <ul style="list-style-type: none"> • Duty of care (foreseeability, proximity, scope of legal duty). 	Chapter 2
3	Torts 2: Contours of Negligence Obligation <ul style="list-style-type: none"> • Elements of a negligence claim; goals of tort law; critique 	Chapter 3
4	Torts 3: Case Studies: application in novel situations involving <ul style="list-style-type: none"> • Social host liability • Police investigations 	Chapter 4A and 4B
PART II: CONTRACT LAW		
5	Contracts 1: Exchange and the Market <ul style="list-style-type: none"> • Emergence of contract law 	Chapter 5

	<p>(philosophy and values</p> <ul style="list-style-type: none"> • Shifts in the market and judicial roles • Empirical evidence on contracting behaviour 	
6	<p>Contracts 2: Formation and Terms</p> <ul style="list-style-type: none"> • When is a contract 'formed'? Role (and evidence) of intention • When can a party evade liability for breaching the contract? (exclusion clauses and fundamental breach) 	Chapter 6A and 6B
7	<p>Contracts 3: Consideration</p> <ul style="list-style-type: none"> • Can a contractual obligation be modified or adjusted after the contract has begun? Must there be 'fresh consideration' for the modified bargain and if so, what counts? 	Chapter 7
PART III: UNJUST ENRICHMENT		
8	<p>Unjust Enrichment 1: Defective Transactions</p> <ul style="list-style-type: none"> • Purpose and nature of unjust enrichment as a third branch of private law • Mistaken payments or failures to complete (contractual) agreements 	Chapter 8
9	<p>Unjust Enrichment 2: Broken Relationships</p> <ul style="list-style-type: none"> • Legal requirement to share in surplus value of assets accumulated in a 'joint family venture' between common law spouses where title to assets is not shared. 	Chapter 9
PART IV: CONSCIENCE IN PRIVATE LAW		
11	<p>Fiduciary Obligations</p> <ul style="list-style-type: none"> • When does self-interest end? Examination of the duty to take care of the interests of another. 	Chapter 11
10	<p>Reliance: Proprietary Estoppel</p> <ul style="list-style-type: none"> • When will the law prevent a person from changing their mind and impose the agreed obligation in the absence of a contract? 	Chapter 10
12	<p>Inequality of Bargaining Power</p> <ul style="list-style-type: none"> • Examination of debts incurred on behalf of a family member (guarantee contracts): does inequality of bargaining power vitiate a contract? • The role of judges to 'unify' threads in a body of law; the role of theory as a basis for assessment of legal decisions. 	Chapter 12

EVALUATION

Components

There are two take-home assignments in the class: one at 'mid-term' and one as a 'final' using the rubric (and timing) of a Take Home Examination. Each assignment is worth 50%.

PUT THE DUE DATES IN YOUR DAYTIMER OR PLANNER!

Assignment 1: Torts and Contract Law (Take Home Assignment)

- *Available* after Class 7 (likely posted on July 24, 2012)
- *Due:* by 4.00pm on – August 04, 2012.
- *Extensions:* You can request an extension on the Quizzes for serious illness or family and personal emergencies with supporting documentation. A cold or the flu is not enough for an extension. Computer problems and work/family schedule conflicts are not enough for an extension to be granted.
- *Return of Marks:* about 12 days after submission and we will aim for it to be before August 15 (drop date).

Assignment 2: Unjust Enrichment and Conscience (TAKE HOME EXAMINATION)

- *Available:* After Class 12 (likely posted on August 12th, 2012)
- *Due:* last day of the examination period, August 23, 2012 by 4.00pm
- *Extensions:* NONE. This assignment is treated as an Examination. If you cannot submit on time, you should contact the Registrar's Office for a formal deferral and provide documentation in support.
- *Return of Marks:* with Final Grade Reports (likely will be after September 4, 2012).

Online Modality

Assignments are handled electronically rather than in hard copy through cuLearn Assignments. You will attach a file to your submission containing your answers. You can submit **ONLY ONCE** (that is, you can't take back and edit later).

Notes on Assignments

- Both assignments will consist of short answer and short essay questions.
- You will be required to 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 watched the lectures. The slides provide an extensive backbone of the lectures in terms of your own note-taking.

What is a 'take home' and why do I assign 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 spit out! 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.

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.

Assignment "Rules"

- All components of evaluation must be completed to receive a passing grade in the course.
- 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. In the essay in particular, 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.
- You must submit your work on time or you will be subject to heavy late penalties.
- 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 and (Draconian) Late Penalties for Mid-Term Assignment

I have noticed a worrying trend to late assignments. It is almost NEVER worth taking the little bit of extra time to work on the finer touches of an assignment. Time management is an essential skill that we are asking you to develop as part of your university studies! So: Get it IN! On Time!

More practically speaking, late assignments create a significant administrative burden across the team of people who work with me on the course. There is a significantly higher risk of assignments going astray in the pile as well. This is accentuated in the compressed time frame of summer courses.

Accordingly, I expect you to submit your work ON TIME and, subject to a very modest grace period for unforeseen, very short term situations, I will impose heavy penalties for work which is submitted late without an extension.

Late work will be penalized as follows: You will lose 5% marks if you hand any work in on the due date after the deadline but before midnight. If you hand it in the 'next day' anytime before midnight you will lose a further 5% marks. Any further days late (counted from stroke of midnight) including weekend days, you lose a further 10% per day. If you hand in your work more than seven days late, I will accept it towards course completion but it will receive zero marks.

Remember:

- Summer goes by in a flash.
- KEEP up with the lecture broadcasts and readings – set aside times each week to make this easier even if the weather is nice!
- I've tried to make the class topics engaging and current – I hope you enjoy the learning experience!