

Course Outline

COURSE: LAWS 3003 B

TERM: Winter 2012

PREREQUISITES: See Carleton Course Calendar

CLASS: **Day & Time:** Wednesday 11:35 am - 2:25 pm
 Room: Mackenzie Building 3235

INSTRUCTOR: Professor Adrian Smith

CONTACT: **Office:** C475
 Office Hrs: Wednesday 2:30pm - 3:30pm
 Telephone: ext. 3608
 Email: Contact me through WebCT only

"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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 11 November 2011 for December exams and 7 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

The course sets the underlying principles and relations of the law of contract within social, historical and economic contexts. Students will develop a critical understanding of how contractual principles inform a diverse range of everyday relations including online or virtual transactions, paid work, consumer and sovereign lending, and settler colonial in terms of land claims and impact benefit agreements. A point of departure is how contract normalizes the most acute or pronounced forms of these relations from precarious employment to predatory lending. Contractual relations, as an aspect of private law, are situated within the historical development of global capitalism (e.g. slavery, indentured servitude, temporary migration) and in the contemporary neoliberal moment (e.g. "Third-World" debt, the global financial meltdown). Special emphasis is placed on classism and its intersection with racism and sexism in the context of everyday legal relations.

Students will be exposed to a range of source materials from case law and statutes, to academic journal articles, policy reports and documentary movies. Classes will consist of interactive lectures and discussions, guest lectures and exercises. Students' views will be solicited and thoughtful interjections welcomed if not expected.

As should be evident, this section of Contracts differs from others on offer during the 2011-2012 school year, and likely in the Law Department's (recent) history. This is apparent in two respects. First, it is not solely about contractual rules and judge-made law. Extending beyond the common law and courts, we will take a contextualized approach that examines the work contracts do in the social world. In a nutshell, this is the study of contracts as if ordinary

people mattered! Second, student evaluations will consist of three group assignments (20% each) and a final examination (40%). This is based on the belief that group work is one of the most effective ways to learn the core elements of contract (promise, obligation, negotiation etc.). Students should take particular note of the dates on which Assignments will be distributed and due. I also would like to bring to your attention that all students must attend and participate in the mandatory Negotiation Exercise scheduled for March 14th. Failure to attend and participate in the Negotiation Exercise (from start to finish) will result in a student receiving a zero mark on Assignment #3. Documented absences related to medical or serious personal circumstances will result in pro-rated scores for Assignment # 1 and 2.

Office Hours & Communication

I encourage students to discuss questions and issues related to the course during our weekly in-class meetings, on WebCT or in my office during my regular office hour (on a first-come first-serve basis). If you cannot make the office hour please contact me to schedule an appointment. Unless a question can be answered as a 'yes' or 'no', I do not respond to WebCT email questions from students related to the content of the course.

Attendance & Participation

Weekly attendance is expected. Students will read assigned material before coming to class. Although this is a relatively large enrollment course, students are encouraged to participate. To facilitate "meaningful engagement", I will adopt an interactive approach to our weekly meetings. This is not an invitation for you to just talk aimlessly or for the sake of it. Strive for thoughtful and respectful interventions. Those students who do the readings and class preparation ought not to have any difficulty. Shyness is not an acceptable excuse for lack of participation, in-class or group work. Effective oral communication is a skill of high importance in university and in future endeavours. I encourage shy students to speak to me immediately about devising strategies for improving the quality of their participation.

I take seriously my responsibility to provide a supportive and equitable learning environment free from unhelpful distractions. As such, **students are not permitted to use cell phones or similar devices in the classroom.** The use of these devices will not be tolerated. They serve as a distraction to both the user and those in the surrounding vicinity. Anyone found texting, using laptops and the internet inappropriately or otherwise engaging in problematic behaviour, will be required to remove themselves from an in-class meeting. Repeat offenders will not be permitted to remain in the course.

REQUIRED TEXTS

There is no required text for this course. Students will be provided with electronic links to readings and, from time to time, will be expected to undertake independent research into topics.

SUPPLEMENTARY TEXTS

There are no supplementary texts. However, students should access the wealth of contract law materials in the library including texts by Stephen Smith, Attiyah, Ben-Ishai et al., Hugh Collins and Trebilcock.

EVALUATION

Small Group Assignments	60%
Final Exam	40%

Small Group Assignments

#	ASSIGNMENT	DELIVERABLES	VALUE	DUE DATE
1	Contracting & the Internet	1. Group Submission 2. Assessment of Individual Contributions to Group	20%	February 8th
2	Contracting & Debt	1. Group Submission 2. Assessment of Individual Contributions to Group	20%	February 29th
3	Negotiation Exercise (In-Class) & Group Reflection	1. Group Negotiation Strategy 2. Settlement Agreement & Group Submission 3. Assessment of Individual Contributions to Group	20%	1. March 14th 2. March 28th 3. March 28th

NOTE: All group assignments must be submitted at the start of the class. Late group assignments will not be accepted. A zero grade will be assigned to all group members.

Small Group Procedure

Students will form groups of 5 to complete three small group assignments throughout the term. All three assignments will require group submissions. For each assignment, individual members also must submit an Assessment of Individual Contributions to Group (see below).

Each group must designate a spokesperson who will coordinate the small group process. The duties of the spokesperson include scheduling and re-scheduling meetings, ensuring the group

discusses whether the work has been equitably distributed, printing and submission of group work, and collection and submission of Assessments of Individual Contributions to Group. The spokesperson will take care of all group-specific correspondence with me. Thus, if your group has specific questions or issues related to an assignment, the spokesperson will take those up with me in a manner set out under Office Hours and Communication. In turn, if I have any need to contact a group, I will do so through the spokesperson. The spokesperson must be responsible, conscientious and authoritative -- but not authoritarian. The spokesperson will not be held solely responsible for any shortcomings in work product, unless there is a particular reason to do so. It is the collective responsibility of the group to fulfill all requirements of the assignments. Each group must equitably distribute the work required to complete each assignment.

In your first meeting, groups should spend a bit of time formulating basic procedures for working together, for equitable distribution of the work, for resolving disputes, and so on. It also would be a good idea to set out a tentative work and meeting schedule.

Students must form a small group before the third in-class meeting. You will have some opportunities during formal class time to meet other students and arrange your groups. Please also utilize WebCT to make connections. By January 18th, each group will provide a one-page, typewritten list of its members designating an 'SP' beside the name of the spokesperson. I will assign each group a number which they must use in all correspondence, including in assignment submissions. Once you have joined a group you are not permitted to change groups, although I do reserve the right to make such decisions where circumstances warrant.

The rules for undertaking group work should be self-evident. Students are expected to conduct themselves respectfully and professionally in all interactions. During group meetings, please keep socializing to a minimum. You should not be engaging in distracting behaviour such as texting, discussing extra-curricular activities or otherwise disrupting the group's aims and objectives. All group work is governed by the University's rules of conduct. Thus, you must conduct yourself accordingly. Harassment of any kind will not be tolerated. Students are encouraged to report immediately any harassment or inappropriate behaviour to me.

Assessment of Individual Contributions to Group

An Assessment of Individual Contributions to Group requires individual members to evaluate their own work and effort as well as that of other group members. It is an opportunity to make note of any disparities in workload or work product amongst group members. Students are expected to engage in critical and sober self-reflection. No marks are assigned for submitting the Assessment, however **submission is a prerequisite to obtaining group marks and will influence group marks assigned.** The Assessment is due at the beginning of class on the same due dates as the group assignment. Students may not show their Assessment to any other student. Assessments will be collected by the group spokesperson in class on the due date and attached to the group assignment. Students may not hand their Assessment to the spokesperson prior to the beginning of class. This rule is in place to ensure the integrity of Assessments and to satisfy the rule that, as noted above, each student is responsible for ensuring their group meet all of the requirements of a given Assignment.

Negotiation Exercise: Assignment #3

All students must participate in the Negotiation Exercise. Failure to attend the entire

Negotiation will result in a student receiving a zero mark on the Assignment. This is to ensure the integrity of not only the Negotiation Exercise but also the Settlement Agreement and Group Submission drafting processes.

Assignment Submission Format

Unless otherwise stated, group submissions must be double-spaced, in 12 pt. Times New Roman font, with proper margin, paragraph and page formatting and in full compliance of citation rules as set out in the Canadian Guide to Uniform Legal Citation or “McGill Guide”. These citation rules can be quite onerous and labour-intensive so leaving them to the last minute is not recommended.

Group submissions must include a cover page with the assignment number, group number and names of members; and a bibliography.

Individual submissions of Assessments must include a cover page with the assignment number, name of the student, and group number.

Final Exam

A three-hour final examination will be administered during the formally scheduled final examination period at semester’s end. Students can expect the exam to contain a variety of short answer and essay questions covering all of the assigned materials and class discussions. More details will follow closer to the time.

SCHEDULE

PART I: INTRODUCTION TO CONTRACTS

JANUARY 4th

WEEK 1: STUDYING CONTRACTS AS IF ORDINARY PEOPLE MATTERED

1. Introduction to the course, expectations & basic themes of contracts

JANUARY 11th

WEEK 2: CONTRACTS IN MR ROGERS' NEIGHBOURHOOD

1. The expectation of 'getting screwed' by your cell phone service provider
2. Basic elements of a contract

Assigned Readings:

"How a terror group cloned Ted Rogers' cellphone" Globe and Mail (December 2005)

<http://www.theglobeandmail.com/news/technology/article925403.ece>

Stewart Macaulay, Jean Braucher, John Kidwell & William Whitford. Contracts: Law in Action, Volume I: The Introductory Course – Introduction (Chapter 1)(pages 1-19; skim the remainder)

<http://ssrn.com/abstract=1776456>

Christie vs. The York Corporation, [1940] S.C.R. 139, [1940] 1 D.L.R. 81 (Westlaw Canada)

Bell Canada pays \$10M over misleading ads

<http://www.cbc.ca/news/business/story/2011/06/28/competition-bureau-bell-advertising.html>

Ottawa to crack down on misleading airline ads

<http://www.thestar.com/travel/northamerica/article/1103144--ottawa-to-crack-down-on-misleading-airline-ads>

JANUARY 18th

WEEK 3: BASIC ELEMENTS CONTINUED & CONTRACTUAL REMEDIES

GROUP ASSIGNMENT #1 (Due: February 8th)

Assigned Readings:

Holmes, The Path of the Law (1897) 10:8 Harvard L. Rev. 457

<http://www.jstor.org/stable/1322028>

Fuller and Perdue, The Reliance Interest in Contract Damages (1936) 46 Yale L J 52.

<http://www.jstor.org/stable/791632>

JANUARY 25th**WEEK 4: LEGISLATING AGAINST UNFAIRNESS**

1. Contractual Unfairness: (a) unconscionability (b) duress (c) undue influence (d) good faith (e) exclusion clauses (f) misrepresentation

Assigned Readings:

British Columbia Law Institute, Unfair Contracts Relief

<http://www.bcli.org/bclrg/projects/unfair-contracts-relief>

1. Consultation Paper on Proposals for Unfair Contracts Relief (December 2010)
2. Report on Proposals for Unfair Contracts Relief (September 2011)
3. Related Documents (including media releases and backgrounders)

FEBRUARY 1st**WEEK 5: FREEDOM OF CONTRACT & OTHER ELEGANT MYTHS**

1. Exclusion clauses and unconscionability
2. Critical approaches to contracts law

Assigned Readings:

Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4, [2010] 1 SCR 69

<http://canlii.ca/t/27zz2>

Betty Mensch, "Freedom of Contract as Ideology" (1981) 33:4 Stanford Law Review 753.

<http://www.jstor.org/pss/1228540>

PART II: CONTRACTS IN ACTION**FEBRUARY 8th****WEEK 6: PREDATORY LENDING: PAYDAY LOANS****GROUP ASSIGNMENT #2 (Due: February 29th)**

1. Student loans, payday loans and other subprime, high-interest lending practices

Assigned Readings:

Money Mart's rates 'criminal,' borrowers' lawyer tells court Toronto Star (28 April 2009)

<http://www.thestar.com/news/ontario/article/625398>

The tangled web of payday loans Toronto Star, (19 June 2004)

<http://www.thestar.com/News/article/279328>

Kitching and Starkey, Payday Loan Companies in Canada: Determining the Public Interest, Library of Parliament (2006)

<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0581-e.pdf>

Esteban Uribe, “Not Ready for Prime Time: Canadians In the Sub-Prime, and High-interest Lending”(Ottawa: Public Interest Advocacy Centre, 2008)
<http://catalogue.library.carleton.ca/record=b2940726~S1>

FEBRUARY 15th

WEEK 7: PREDATORY LENDING: DEBT & GLOBAL CRISIS

In-Class Film: Debtocracy / Inside Job

Assigned Readings:

David Harvey, A Brief History of Neoliberalism (Oxford; New York: Oxford University, 2007), Intro (pages 1-4) & chapter: “The Construction of Consent” (pages 39-42); “The Neoliberal State” (pages 64-80); “Uneven Geographical Developments: (pages 87-119).
<http://catalogue.library.carleton.ca/record=b2973959~S1>

FEBRUARY 22nd: WINTER BREAK WEEK (NO CLASS)

FEBRUARY 29th

WEEK 8: LAND CLAIM AGREEMENTS & RESOURCE EXTRACTION DEALS

ASSIGNMENT #3: NEGOTIATION STRATEGY MEETINGS (Due: March 14th)

1. Land claims
2. Impact benefit agreements between First Nations Governments and mining companies

Assigned Readings:

Nunavut Land Claims Agreement

<http://www.gov.nu.ca/hr/site/doc/nlca.pdf>

Thomas Berger, Conciliator’s Report, Implementation Contract Negotiations (2005)

<http://www.tunnigavik.com/wp-content/uploads/2011/01/2005-08-31-thomas-berger-interim-report-eng.pdf>

IBA COMMUNITY TOOLKIT, Negotiation and Implementation of Impact and Benefit Agreements, Walter and Duncan Gordon Foundation, March 2010

1. [http:// www.ibacommunitytoolkit.ca/pdf/IBA toolkit March 2010 Section 1.pdf](http://www.ibacommunitytoolkit.ca/pdf/IBA_toolkit_March_2010_Section_1.pdf)
2. <http://www.ibacommunitytoolkit.ca/>

MARCH 7th**WEEK 9: SLAVERY, INDENTURED SERVITUDE & CONTEMPORARY MIGRATION
GUEST SPEAKER: CHRIS RAMSAROOP, JUSTICE FOR MIGRANT WORKERS**

In-Class Film: El Contrato (Min Sook Lee, National Film Board, 2003) 51mins.

1. Seasonal agricultural workers, indentured servitude and slavery
2. Self-employment: “entrepreneurialism” versus own-account self-employment

Assigned Readings:

Temporary Foreign Worker Program Contracts

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/fwp_forms.shtml

Judy Fudge, “The Spectre of Addis in Contracts of Employment in Canada and the UK” (2007) 36:1 Industrial Law J 51.

<http://ilj.oxfordjournals.org.proxy.library.carleton.ca/content/36/1/51.abstract>

Judy Fudge, “Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation” (2006) 44 Osgoode Hall L.J. 609.

http://heinonline.org/HOL/Page?handle=hein.journals/ohlj44&q_sent=1&collection=journals&id=629

MARCH 14th**WEEK 10: ASSIGNMENT #3: NEGOTIATION EXERCISE
(Mandatory Attendance)**

Assigned Readings:

Kitselas First Nation signs impact benefit agreement in support of BC Hydro's Northwest Transmission Line, November 29, 2010

http://www.bchydro.com/news/articles/press_releases/2010/kitselas_first_nation_impact_benefit_agreement.html

IBA COMMUNITY TOOLKIT, Negotiation and Implementation of Impact and Benefit Agreements, Walter and Duncan Gordon Foundation, March 2010

1. http://www.ibacommunitytoolkit.ca/pdf/IBA_toolkit_March_2010_Section_1.pdf
2. <http://www.ibacommunitytoolkit.ca/>

MARCH 21st**WEEK 11: NEOLIBERALISM & COMMODIFICATION**

Assigned Readings:

David Harvey, A Brief History of Neoliberalism (Oxford; New York: Oxford University, 2007) “Neoliberalism on Trial” (pages 165-182)

<http://catalogue.library.carleton.ca/record=b2973959~S1>

David McNally, “The Commodity Status of Labour: The Secret of Commodified Life” in Gordon Laxer & Dennis Soron eds., Not For Sale: Decommodifying Public Life (Toronto:

Broadview, 2006) 36.

<http://catalogue.library.carleton.ca/record=b2592089~S1>

MARCH 28th

WEEK 12: CONTRACT & ITS MYTHS

Summation of the course

APRIL 4th

WEEK 13: REVIEW

Review.

TO BE SCHEDULED: FINAL EXAM