

Course Outline

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<b>COURSE:</b>	<b>LAWS 3003 A – Contracts</b>
<b>TERM:</b>	<b>FALL 2018</b>
<b>PREREQUISITES:</b>	<b>LAWS 2202 and 0.5 credit in LAWS at the 2000 level</b>
<b>CLASS:</b>	<b>Day &amp; Time: Mondays, 11:30 a.m. to 2:30 p.m.</b> <b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Stéphane Sérafin, B.Soc.Sc., J.D., LL.L., LL.M.</b>
<b>CONTACT:</b>	<b>Office: B442 Loeb Building (Contract Instructor's Office)</b> <b>Office Hrs: Mondays, 2:30 p.m. to 4:00 p.m.</b> <b>Telephone: 613-266-3239</b> <b>Email: StephaneSerafin@cunet.carleton.ca</b>

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**Academic Accommodations:**

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

**Pregnancy obligation:** Please contact 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: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**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: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**Academic Accommodations for Students with Disabilities:** If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto: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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) [www.carleton.ca/pmc](http://www.carleton.ca/pmc)

**Plagiarism:**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

**Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: [carleton.ca/sexual-violence-support](http://carleton.ca/sexual-violence-support)

**Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: [students.carleton.ca/course-outline](http://students.carleton.ca/course-outline)

**Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

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**CALENDAR COURSE DESCRIPTION**

The enforcement of promises and agreements; basic doctrines and underlying principles of the law of contract are studied from formation of the contract to remedies for breach of contract; role of contract for economic and social purposes is also considered.

**COURSE DESCRIPTION**

Although contracts appear almost everywhere, there is no clear scholarly consensus on how they should be understood, or even on the place, if any, that they should continue to occupy within modern legal systems.

This course aims to provide students with a general overview of the major issues relating to contracts and their legal enforcement. Particular emphasis will be placed on enduring controversies such as the nature of contract, theoretical justifications for the binding force of contractual arrangements, the relationship between contract, consent and formalities, and the impact of contracts on third parties. The objective in each case is to foster reflection, rather than to provide a comprehensive black letter treatment of the subject matter covered. Students will be expected to engage with the readings and other sources examined in class, challenge positions taken on particular issues, and ultimately develop a deeper and more critical understanding of what "contract" might actually entail.

**REQUIRED TEXTS****1) Case book, available at the Bookstore**

Stephanie Ben-Ishai and David R Percy, *Contracts: Cases and Commentaries*, 10th ed (Toronto: Carswell, 2018).

**2) Course pack, available at the Print Shop****3) Additional readings, available online (see hyperlinks included below)****EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

**1) Mid Term Examination – 50%**

To be held **in class** on **October 29, 2018** (Week 8)

**2) Final Examination – 50%**

To be held during the regularly scheduled examination period, **between December 9 and 21, 2018**

**SCHEDULE****SEPTEMBER 10 – Week 1: Introduction**

No readings are assigned for the first class.

**SEPTEMBER 17 – Week 2: What is Contract?**

- Excerpt from Stephen Smith, *Contract Theory* (Oxford: Oxford University Press, 2004)
- Case book, pages 399-413 (10<sup>th</sup> ed) or pages 396-410 (9<sup>th</sup> ed):
  - *Sodd Corp v N Tessis*
  - *BG Checo International Ltd v British Columbia Hydro & Power*
- *Civil Code of Québec*, articles 1378, 1457 and 1458 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>

**SEPTEMBER 24 – Week 3: Why Enforce Contracts?**

- Case book, pages 785-98 (10<sup>th</sup> ed) or pages 791-805 (9<sup>th</sup> ed)
  - Oliver Wendell Holmes, “The Path of the Law” (1897) 10 Harvard L Rev 457 at 458, 459, 462

- Richard A Posner, *Economic Analysis of Law*, 6<sup>th</sup> ed (Toronto: Little Brown, 2003) at 119-120
- LL Fuller & William R Perdue Jr, "The Reliance Interest in Contract Damages: 1" (1936-1937) 46 Yale LJ 52 at 52-63
- Excerpt from Ernest Weinrib, "Punishment and Disgorgement as Contract Remedies" (2003) 78 Chi-Kent L Rev 55

#### **OCTOBER 1 – Week 4: Contract and Consent**

- Case book, pages 17-33; 53-61 (10<sup>th</sup> ed) or pages 15-30; 52-59 (9<sup>th</sup> ed)
  - *Canadian Dyers Association Ltd v Burton*
  - *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd*
  - *Carlill v Carbolic Smoke Ball Co*
  - *Livingston v Evans*
  - *Butler Machine Tool Co v Ex-Cell-O-Corp*
  - *Tywood Industries Ltd v St Anne-Nackawic Pulp & Paper Co Ltd*
- Excerpt from AWB Simpson, "Innovation in Nineteenth Century Contract Law" (1975) 91 LQR 247

#### **OCTOBER 8 – Week 5: No Class; Statutory Holiday**

#### **OCTOBER 15 – Week 6: Consideration and Formality**

- Case book, 157-70; 214-18; 254-57 (10<sup>th</sup> ed) or pages 157-70; 207-11; 258-60 (9<sup>th</sup> ed)
  - *The Governors of Dalhousie College at Halifax v the Estate of Arthur Boutilier, Deceased*
  - *Brantford General Hospital Foundation v Marquis Estate*
  - *Wood v Lucy, Lady Duff-Gordon*
  - *Hughes v Metropolitan Railway Company*
  - *Central London Property Trust Ltd v High Trees House Ltd*
  - *Royal Bank v Kiska*
- *Civil Code of Québec*, articles 1385, 1806, 1812, 1824 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>
- Excerpt from Lon Fuller, "Consideration and Form" (1941) 41 Colum L Rev 799
- Excerpt from Peter Benson, "The Idea of Consideration" (2011) 61 U of T LJ 241

#### **OCTOBER 22 – Week 7: No Class; Fall Reading Week**

#### **OCTOBER 29 – Week 8: Mid Term Examination**

#### **NOVEMBER 5 – Week 9: Breach of Contract**

- Case book, pages 942-56 (10<sup>th</sup> ed) or pages 937-50 (9<sup>th</sup> ed)
  - *John E Dodge Holdings Ltd v 805062 Ontario Ltd*
  - *Warner Bros Pictures Inc v Nelson*

- *Civil Code of Québec*, articles 1590, 1601, 1607, 1611 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>
- Excerpt from Charlie Webb, “Performance and Compensation” (2006) 26 Oxford J L Stud 41

### November 12 – Week 10: Good Faith

- *Bhasin v Hrynew*, [2014] 3 SCR 494, 2014 SCC 71, paras 72-112 – available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/14438/1/document.do>
- *Civil Code of Québec*, articles 6, 7, 1375 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>
- *National Bank of Canada v Houle*, [1990] 3 SCR 122, pages 136-39; 167-87 – available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/685/1/document.do>

### November 19 – Week 11: Contracts and Third Parties

- Case book, pages 285-327 (10<sup>th</sup> ed) or pages 287-320; 322-27 (9<sup>th</sup> ed)
  - *Beswick v Beswick* (CA)
  - *Beswick v Beswick* (HL)
  - *Vandepitte v Preferred Accident Insurance Co*
  - *McCannell v Mabee McLaren Motors Ltd*
  - *New Zealand Shipping Co Ltd v Am Satterthwaite & Co Ltd (The Eurymedon)*
  - *London Drugs Ltd v Kuehne & Nagel International Ltd*
  - *Fraser River Pile & Dredge Ltd v Can-Dive Services Ltd*
- *Civil Code of Québec*, articles 1140, 1444, 1445, 1446 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>
- Excerpt from David J Ibbetson and Eltjo JH Schrage, “*Ius quaesitum tertio*: A Comparative and Historical Introduction to the Concept of Third Party Contracts” in Eltjo JH Schrage, ed, *Ius quaesitum tertio* (Berlin: Duncker & Humblot, 2008) 1
- Excerpt from Stephen A Smith, “Contracts for the Benefit of Third Parties: in Defence of the Third-Party Rule” (1997) 17 Oxford J L Stud 643

### November 26 – Week 12: Mistake, Duress and Unconscionability

- Case book, pages 549-59; 685-92; 718-42 (10<sup>th</sup> ed) or pages 549-59; 687-94; 719-41 (9<sup>th</sup> ed)
  - *Smith v Hughes*
  - *Greater Fredericton Airport Authority Inc v NaC Canada*
  - *Morrison v Boast Finance Ltd*
  - *Marshall v Can Permanent Trust Co*
  - *Lloyds Bank v Bundy*
  - *Harry v Kreutziger*
  - David Tiplady, “The Judicial Control of Contractual Unfairness” (1983) 46 Mod LR 601 at 601-8
  - *Unconscionable Transactions Relief Act*, RSN 1989, c 481, ss 3, 4.
- *Civil Code of Québec*, articles 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>

- Excerpt from Catherine Valcke, "The Unhappy Marriage of Corrective and Distributive Justice in the New Civil Code of Quebec" (1996) 46 U of T LJ 539

### **December 3 – Week 13, Part 1: Standard Form Contracts**

- Case book, pages 487-528; 533-35 (10<sup>th</sup> ed) or pages 467-512 (9<sup>th</sup> ed)
  - Michael Trebilcock, *The Common Law of Restraint of Trade: A Legal and Economic Analysis* (Carswell: Toronto, 1986) at 165-71
  - *Machtinger v Hoj Industries Ltd*
  - *Scott v Wawanesa Mutual Insurance Co*
  - *Thornton v Shoe Lane Parking Ltd*
  - *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd*
  - *McCutcheon v David MacBrayne Ltd*
- *Civil Code of Québec*, articles 1432, 1435, 1436, 1437 – available at <https://www.canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html>

### **December 7 – Week 13, Part 2: Review**

No further readings are assigned for the last class.