

LAW 515
CANADIAN PRIVATE LAW:
CONTRACTUAL OBLIGATIONS AND REMEDIES

Dr. Robert Russo
Peter A. Allard School of Law, UBC
May 2019

Required Materials:

Ben-Ishai & Percy, Contracts: Cases and Commentaries, 9th ed., (Toronto, 2014)

MacDougall, Introduction to Contracts, 3rd ed. (Toronto, 2016)

MacDougall, Supplementary Materials

MacDougall, Contracts Problems

Reference Books:

Anson's Law of Contract, 30th ed. (London, 2016)

Chitty on Contracts, 2 vols., 32nd ed. (London, 2015)

Ben-Ishai & Percy, Contracts: Cases and Commentaries, 10th ed., (Toronto, 2018)

Fridman, The Law of Contract in Canada, 6th ed. (Toronto, 2011)

McCamus, The Law of Contracts, 2nd ed. (Toronto, 2012)

Swan, Canadian Contract Law, 3rd ed. (Markham, Ont., 2012)

Waddams, The Law of Contracts, 7th ed. (Toronto, 2017)

Attendance and Readings for Class:

We will meet two days a week in the morning and the afternoon. You should read the cases and materials assigned ahead of class and you should bring the materials to class. You are expected to come to class prepared to discuss the materials.

Evaluation:

Your grade will be based on a final open-book examination and class participation.

Final exam = 95%

Class participation = 5%

Explanation of Page References in this Syllabus:

The page references in the right column in the following pages are to the Ben-Ishai & Percy book, unless the number is preceded by "Supp." in which case the reference is to the Supplementary Materials. The references in italics by the headings (e.g. *MacDougall, Ch. 8*) are to chapters or parts of chapters in the book Introduction to Contracts.

Materials:

The two books you will need for this course are available at the UBC bookstore. The other two sets of materials will be distributed to you as email attachments.

TUESDAY, MAY 7

BACKGROUND TO THE LAW OF CONTRACT - (*MacDougall, pp. 1-13*)

FORMATION OF THE CONTRACT - (*MacDougall, pp. 17-18*)

A. OFFER & ACCEPTANCE - (*MacDougall, ch. 1*)

1. Offer

a.	Offer and Invitation to Treat	
	* <i>Canadian Dyers Assn. Ltd. v Burton</i>	18
	* <i>Pharmaceutical Society v Boots</i>	20
	* <i>Carlill v Carbolic Smoke Ball Co.</i>	25
b.	Communication of Offer	
	* <i>Williams v Carwardine</i>	48
	* <i>R. v Clarke</i>	49
2.	<u>Termination of Offer</u>	
a.	Revocation	
	* <i>Byrne v Van Tienhoven</i>	99
	* <i>Dickinson v Dodds</i>	95
b.	Unilateral Contracts	
	* <i>Carlill v Carbolic Smoke Ball Co.</i>	25
	* <i>Errington v Errington and Woods</i>	100
c.	Rejection and Counter-Offer	
	* <i>Livingstone v Evans</i>	52
d.	Lapse of Time	
	* <i>Barrick v Clark</i>	102

THURSDAY, MAY 9

3. Acceptance

a.	Acceptance	
	* <i>Livingstone v Evans</i>	52
	* <i>Butler Machine Tool v Ex-cell-o Corp.</i>	54
b.	Communication of Acceptance	
	* <i>Felthouse v Bindley</i>	70
	* <i>Carlill v Carbolic Smoke Ball Co.</i>	25
	* <i>Brinkibon v Stahag Stahl</i>	87
	* <i>Household Fire v Grant</i>	79
	* <i>Holwell Securities v Hughes</i>	84
B.	CERTAINTY OF TERMS - (<i>MacDougall, ch. 4</i>)	
	* <i>May & Butcher v R</i>	117
	* <i>Hillas v Arcos (HL)</i>	120
	* <i>Foley v Classique Coaches Ltd.</i>	124
	* <i>Sale of Goods Act, ss. 12 & 13</i>	Supp. 10
	* <i>Empress v Bank of Nova Scotia</i>	130
	* <i>Mannpar Enterprises v Canada</i>	132
C.	INTENTION TO CREATE LEGAL RELATIONS - (<i>MacDougall, ch. 3</i>)	
	* <i>Balfour v Balfour</i>	250
	* <i>Rose and Frank v JR Crompton Bros.</i>	253

TUESDAY, MAY 14

ENFORCEABILITY ISSUES- (*MacDougall, pp. 81-82*)

A.	MAKING PROMISES BIND - SEALS & CONSIDERATION - (<i>MacDougall, ch. 8</i>)	
1.	<u>Nature of Consideration and Seals</u>	
	* Royal Bank v Kiska.....	259
	* Thomas v Thomas	173
2.	<u>Forbearance</u>	
	* B (D.C.) v Arkin.....	175
3.	<u>Past Consideration</u>	
	* Eastwood v Kenyon.....	170
	* Lampleigh v Brathwait.....	172
4.	<u>Pre-existing Legal Duty</u>	
a.	Duty Owed to a Third Party	
	* Pao On v Lau Yiu Long	180
b.	Duty Owed to the Promisor	
	* Gilbert Steel v University Constr	184
	* Greater Fredericton Airport v NAV Canada	192
	* Foakes v Beer	198
	* Foot v Rawlings	203
	* Law and Equity Act, s. 43	Supp. 6
B.	MAKING PROMISES BIND - ESTOPPEL - (<i>MacDougall, ch. 9</i>)	
	* Central London Property v High Trees House	209
	* John Burrows v Subsurface Surveys	211
	* D & C Builders v Rees	214
	* Combe v Combe.....	231
	* Waltons Stores v Maher	237
	* M(N) v A(AT).....	246

THURSDAY, MAY 16

C.	ENFORCEMENT BY AND AGAINST WHOM - PRIVITY - (<i>MacDougall, ch. 7</i>)	
1.	<u>Third-Party Beneficiaries</u>	
	* Tweddle v Atkinson	288
	* Dunlop Pneumatic Tyre v Selfridge's.....	289
2.	<u>Circumventing Privity</u>	
a.	Specific Performance	
	* Beswick v Beswick (CA)	295
	* Beswick v Beswick (HL).....	296
b.	Trust	
c.	Agency	
3.	<u>Exception to Privity</u>	
	* London Drugs v Kuehne & Nagel.....	310
	* Fraser River Pile & Dredge v Can-Dive Services	322
D.	FORMAL PRE-REQUISITES FOR ENFORCEMENT - (<i>MacDougall, ch. 5</i>)	
1.	<u>Writing Requirements</u>	
	* Law and Equity Act, s. 59	Supp. 7
2.	<u>Parol Evidence Rule</u>	
	* Gallen v Allstate Grain Co.	428

TUESDAY, MAY 21

THE CONTENT OF THE CONTRACT

A. REPRESENTATIONS AND TERMS

- * Heilbut, Symons & Co. v Buckleton377
- * Leaf v International Galleries.....384

B. CLASSIFICATION OF TERMS - (*MacDougall, ch. 10 & 22*)

- * Hong Kong Fir v Kawasaki Kisen Kaisha.....442
- * Wickman v Schuler449
- * Fairbanks v Sheppard456
- * Sumpter v Hedges460
- * Machtinger v Hoj.....469

C. GOOD FAITH AND HONEST PERFORMANCE - (*MacDougall, ch. 11*)

- * Bhasin v Hrynew..... Supp. 15

EXAM PRACTICE – ESSAY

THURSDAY, MAY 23

D. EXCLUDING AND LIMITING LIABILITY - (*MacDougall, ch. 12*)

1. Notice Requirement - Unsigned Documents

- * Thornton v Shoe Lane Parking.....484
- * McCutcheon v David MacBrayne.....494

2. Notice Requirement - Signed Documents

- * Tilden Rent-a-Car v Clendenning498
- * Karroll v Silver Star Mountain Resorts502

3. Fundamental Breach & Its Aftermath

- * Karsales v Wallis.....512
- * Photo Production v Securicor.....514
- * Tercon Contractors v BC.....539

4. Legislative Treatment

EXAM PRACTICE – SHORT ANSWER QUESTIONS

TUESDAY, MAY 28

EXCUSES FOR NON-PERFORMANCE OF THE CONTRACT - (*MacDougall, pp. 177-182 & ch. 21*)

A. MISREPRESENTATION AND RESCISSION - (*MacDougall, ch. 15*)

- * Redgrave v Hurd361
- * Smith v Land and House Property Corp.....365
- * Kupchak v Dayson Holdings.....369

B. MISTAKE - (*MacDougall, ch. 16*)

1. Introduction

- * Smith v Hughes554

2.	<u>Mistaken Assumption</u>	
	* Bell v Lever Bros.	567
	* Solle v Butcher	578
	* McRae v CDC	572
	* Great Peace Shipping v Tsavlis Salvage	582
	* Miller Paving v B Gottardo Constr.....	587
3.	<u>Mistake as to Terms</u>	
	* Smith v Hughes	554
4.	<u>Mistake and Third-Party Interests</u>	
a.	Mistaken Identity	
	* Shogun Finance v Hudson.....	600
b.	Non Est Factum	
	* Saunders v Anglia Bldg. Socy.....	608
	* Marvco Color v Harris	610
5.	<u>Rectification</u>	
	* Sylvan Lake Golf v Performance Industries	622
	* Canada v Fairmont Hotels.....	Supp. 34

THURSDAY, MAY 30

C.	PROTECTION OF WEAKER PARTIES - (<i>MacDougall, ch. 17</i>)	
1.	<u>Duress</u>	
	* Greater Fredericton Airport v NAV Canada	688
2.	<u>Undue Influence</u>	
	* Geffen v Goodman Estate	702
3.	<u>Unconscionability</u>	
	* Morrison v Coast Finance	719
	* Harry v Kreutziger.....	732
D.	ILLEGALITY - (<i>MacDougall, ch. 18</i>)	
1.	<u>Contracts Contrary to Public Policy</u>	
	* KRG Insurance Brokers v Shafron.....	752
2.	<u>Effects of Illegality</u>	
	* Still v Minister of National Revenue.....	775
E.	FRUSTRATION - (<i>MacDougall, ch. 19</i>)	
1.	<u>Development of the Doctrine</u>	
	* Paradine v Jane.....	640
	* Taylor v Caldwell.....	641
	* Davis Contractors v Fareham UDC.....	648
2.	<u>The Application of the Doctrine</u>	
	* Can. Gov't Merchant Marine v Can. Trading Co.	643
	* Capital Quality Homes v Colwyn Const. Ltd.....	652
	* Victoria Wood v Ondrey	655
	* Maritime National Fish v Ocean Trawlers	668
3.	<u>Effects of Frustration</u>	
	* Frustrated Contract Act	Supp. 2

TUESDAY, JUNE 4

REMEDIES - (*MacDougall*, pp. 327-330)

A.	DAMAGES - RATIONALE - (<i>MacDougall</i> , ch. 23)	
1.	<u>The Interests Protected</u>	
	* Fuller and Purdue	795
2.	<u>The Expectation Interest</u>	
3.	<u>The Reliance Interest</u>	
	* McRae v CDC	805
	* Sunshine Vacation Villas v The Bay	813
4.	<u>Restitution</u>	
	* Attorney-General v Blake	818
B.	DAMAGES - QUANTIFICATION PROBLEMS	
	* Chaplin v Hicks	826
	* Groves v John Wunder	829
	* Jarvis v Swans Tours	838
C.	DAMAGES - REMOTENESS	
	* Hadley v Baxendale	881
	* Victoria Laundry v Newman	883
	* Koufos v Czarnikow (The Heron II)	890
D.	DAMAGES - MITIGATION	
	* Southcott Estates v Toronto Catholic School Board.	907
E.	TIME OF MEASUREMENT OF DAMAGES	
	* Semelhago v Paramadevan	902
F.	LIQUIDATED DAMAGES, DEPOSITS AND FORFEITURES	
	* Shatilla v Feinstein	917
	* H.F. Clarke Ltd. v Thermidaire	921
	* J.G. Collins Insurance v Elsley	928
	* Stockloser v Johnson	930
	* Law and Equity, s. 24	Supp. 6

THURSDAY, JUNE 6

G.	EQUITABLE REMEDIES - (<i>MacDougall</i> , ch. 24)	
	* John Dodge Holdings v 805062 Ontario	939
	* Warner Bros. v Nelson	945

Date	Topic(s)	Case Law	Chapter/Page #
Tuesday May 7	<u>BACKGROUND TO THE LAW OF CONTRACT</u> <u>FORMATION OF THE CONTRACT</u>		<i>(MacDougall, pp. 1-13)</i> <i>(MacDougall, pp. 17-18)</i>
Thursday May 9			
Tuesday May 14			
Thursday May 16			
Tuesday May 21			
Thursday May 23			
Tuesday May 28			
Thursday May 30			
Tuesday June 4			
Thursday June 6			
Thursday, June 13	FINAL EXAM		