Contracts (Supplementary Cases)
Fall 2018
Course Director(s): Robert E. Forbes
CONTRACTS

SUPPLEMENTARY CASES

FALL 2018

Osgoode Hall Law School

Professor Robert E. Forbes
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The cases set out under each heading will form the basis of class discussion. They are in the order that the class topics will follow. You will be expected to have read the assigned cases in advance of each class. Most of the cases are to be found in the obligatory text, Waddams, McCamus, Girgis, etc., Cases and Materials on Contracts (5th Edition) (identified as “Waddams”, followed by the page number at which the relevant case is located). You will also need the photocopied supplemental materials (identified as “Supplement”).

The one-hour Tuesday classes are to be held in “small group” settings. We will use these classes to explore the following topics, or will simply continue with normal course content. You will be informed the week before if one of the special topics will be engaged in the Tuesday classes the following week.

2. Collateral Contracts.
3. Promissory Estoppel (where are we with this concept).
4. Is a Letter of Intent or a Memorandum of Understanding a contract?
5. Duty to Perform in Good Faith.
6. Exclusion of Liability Clauses – Where did we come from and where are we now?
7. Identifying Misrepresentations and Mistakes in Contracts.

A. GENERAL INTRODUCTION TO CONTRACTUAL REMEDIES

1. Damages
   
   Hadley v. Baxendale
   
   Victoria Laundry Ltd. v. Newman Industries

2. Specific Performance and Injunction
   
B. FORMATION OF THE CONTRACT

1. Intention to Create Legal Relationships
   - Balfour v. Balfour
   - Merritt v. Merritt
   - Family Law Act
   - Jones v. Paddavattan
   - Carllil v. Carbolic Smoke Ball Co.
   - Rose and Frank Co. v. Crompton

2. Offers
   (a) Offer Mechanics
      - Pharmaceutical Society v. Boots
      - Boyer and Co. v. Duke
      - Harvey v. Facey
      - Johnston Bros. v. Rogers Bros.
      - Carllil v. Carbolic Smoke Ball Co.
      - The Satanita
      - MJB Enterprises v. Defence Construction
   (b) Duration of the Offer
      - Dickinson v. Dodds
      - Petterson v. Pattberg
      - Errington v. Errington
      - Shuey v. U.S.A.
      - Livingstone v. Evans
      - Barrick v. Clark
      - Manchester D.C. v. Commercial & General Investments

3. Acceptance
   (a) Communication of Acceptance
      - Felthouse v. Bindley
      - Cole McIntyre-Norfolk v. Holloway
      - Household Insurance v. Grant
      - Entores v. Miles
      - Eastern Power v. Azienda
      - Electronic Commerce Act
   (b) Time and Place
      - Eliason v. Henshaw
      - Manchester D.C. v. Commercial & General Investments
      - Holwell Securities Ltd. v. Hughes
      - Henthorn v. Fraser
   (c) Acceptance of Unilateral Offers
      - Carllil v. Carbolic Smoke Ball Co.
      - R v. Clark

4. Consideration
   (a) General
   (b) Sufficiency of Consideration
      - Thomas v. Thomas
      - Stilk v. Myrick
      - Homer v. Sidney
      - White v. Bluett
      - Dalhousie v. Boutilier Estate
      - The Seal
Linton v Royal Bank of Canada
(c) Past Consideration
Roscorla v. Thomas
Lamplugh v. Bradworthy
(d) Performance of Existing Duty
Stilk v. Myrick
Hartley v. Ponsonby
New Zealand Shipping v. Satterthwaite
Williams v. Roffey Bros. & Nicholls
Greater Fredericton Airport Authority v. NAV Canada
Wind River Ventures v. British Columbia
Foakes v. Beer
Mercantile Law Amendment Act
(e) Promissory Estoppel
Central London Property Trust v. High Trees House
John Burrows Ltd. v. Subsurface Surveys
D&C Builders v. Rees
Coombe v. Coombe
Crabb v. Arm D.C.
Walton Stores v. Maher
5. Capacity to Contract
Section 3 of Sale of Goods Act
Nash v. Inman
Toronto Marlboroughs Hockey Club v. Tonelli

6. Certainty or Ascertainability of Terms
Scammell & Nephew v. Ouston
Hillas v. Arcos
Walford v. Miles
Empress Towers v. Bank of Nova Scotia
Edper Brascan Corporation v. 117373 Canada Inc.
Calvin Consolidated v. Manning
British American Timber Co. v. Elk River Timber Co.
Green v. Ainsmore Consolidated

C. TERMS OF CONTRACT
1. Interpreting Written Contracts
Pym v. Campbell
Morgan v. Griffith
Hawish v. Bank of Montreal
Southern Resources Ltd. v. Techomin Australia
Sativa Capital v. Creston Moly Corp.
2. Implied Terms of Contract
Codelfa Construction v. State Rail Authority
Liverpool City Council v. Irwin
3. Duty to Perform in Good Faith
Bhasin v. Hrynew
4. Exclusion Clauses
McCUTCHEON v. MacBrayne Ltd.
Parker v. South Eastern R.Y.
George Mitchell Ltd. v. Finney Lock Seeds Ltd.
Tercon Contractors v. British Columbia
D. DEFECTS IN CONTRACTUAL RELATIONS

1. Misrepresentation
   (a) Varieties of Misrepresentation
   - Redgrave v. Hurd
   - Esso Petroleum Co. v. Mardon
   (b) Remedies
      (i) Rescission
         - O’Flaherty v. McKinley
         - Redican v. Nesbitt
         - Leaf v. International Galleries
      (ii) Damages
         - Heilbut Symons & Co. v. Buckleton
         - Shanklin Pier Ltd. v. Detel Products Ltd.
         - Esso Petroleum Co. v. Mardon

2. Mistake
   (a) Common Mistake
   - Bell v. Lever Bros. Ltd.
   - Solle v. Butcher
   - Great Peace Shipping v. Tsavliris Salvage
   (b) Mutual Mistake
   - Raffles v. Wichelhaus
   - Smith v. Hughes
   (c) Unilateral Mistake
   - Hartag v. Collins & Shields
   - Ron Engineering v. R.

3. Illegality
   - Public Policy Introduction
   - Oldfield v. Transamerica Life
   - In the Matter of Baby "M"
   - Gordon v. Ferguson
   - Shaftron v. KRG Insurance Brokers
   - Yango Pastoral Co. v. First Chicago Australia Ltd.
   - St. John Shipping Corp. v. Joseph Rank Ltd.
   - Ashmore, Benson, Pease & Co. v. Dawson Ltd.

4. Unconscionability and Undue Influence
   - Macanlay v. Schroeder Music
   - Lloyds Bank v. Bundy
   - Royal Bank of Scotland v. Etridge

E. ENFORCEMENT, BREACH AND REMEDY

1. Privity
   - Tweedle v. Atkinson
   - New Zealand Shipping Co. v. Satterthwaite & Co.
   - London Drugs v. Kuehne & Nagel Ltd.
2. Frustration

Taylor v. Caldwell
Davis Contractors v. Fareham U.D.C.
Frustrated Contracts Act

3. Remedy

(a) Damages

(i) Interests Protected
(ii) Measurement
Sale of Goods Act
Thompson Ltd. v. Robinson Ltd.
Ruxley Electronics Ltd. v. Forsyth
Groves v. John Wunder Co.
Howe v. Teefy
Supplement 76
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(iii) Mitigation
Payzi v. Saunders

(iv) Remoteness
Hadley v. Baxendale
Victoria Laundry v. Newman
Waddams 107
Waddams 50
Waddams 56
Waddams 89
Waddams 392
Waddams 94

(b) Specific Performance
Falkie v. Gray
Co-operative Insurance Society v. Argyll Stores
Waddams 858
Waddams 98
Waddams 910

(c) Injunction

Warner Brothers v. Nelson
Waddams 137

LEARNING OBJECTIVES

The major learning objective of this course is to impart to students a good understanding of the basic principles of Contract Law. This will be done in a way that leads to an understanding of the law as a means of obtaining a solution to a contract problem, as well as understanding how to avoid problems in the negotiation and drafting of a commercial or private contract.

Students will be expected, by the end of the course, to be able to (i) identify the “building blocks” necessary for the creation of a valid contract, (ii) understand how to interpret the terms of a written contract and the processes by which a court attempts to determine contract terms, (iii) identify circumstances through which an otherwise properly constructed contract may fail to be enforceable, or become voidable or void, and (iv) understand the basic rules of enforcement of a contract and remedies for breach of contract.

OSGOODE AND YORK ACADEMIC POLICIES

a. Evaluation

There will be a mid-term exam for 20% of the final grade in the course, with no downside (if a student does worse on the mid-term than on the final, the mid-term doesn’t count, and the final exam will count for 100%). There will also be a final exam for 80% of the grade in the course (subject to the above). All exams will be open book.

b. Academic Honesty and Integrity

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules. The Senate Policy can be found at http://www.yorku.ca/secretariat/policies/document.php?document=69. The York University academic integrity website can be found at http://www.yorku.ca/academicintegrity. The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available on the MyOsgoode website, under the “Documents and Publications” tab.

c. Religious Observance

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let Assistant Dean, Students, Mya Rimon, know within the first three weeks of class.
d. Students with Disabilities

York University has a range of resources to assist students with physical, mental, psychiatric and learning disabilities in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to York’s Counselling & Disability Services office (N110, Bennett Centre for Student Services or 416-736-5297) or Osgoode’s Office of Student Services as soon as possible. All requests for accommodation will be kept confidential. Requests for examination accommodation must be approved by the Assistant Dean, Students, Mya Rimon.

e. Other York University Policies

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available on the Senate Committee on Academic Standards, Curriculum and Pedagogy webpage (see Reports, Initiatives, Documents) – http://www.yorku.ca/secretariat/senate/committees/ascp/index-ascp.html.