

Course description

The Common Law of Contracts: The Great Cases

The law of contracts is one of the essential foundations of any market-based economy. This course will explore the law of contracts in the common law through the lens of its most important leading cases – cases that have shaped both the law and legal education. In each class, we will explore one aspect of the law of contracts, from the rules of formation of contract to the law of remedies, by focusing on a ‘leading case’: what does it teach us about this area of the law, which principles does it embody, and what is its lasting significance? But we will also dig deeper: how would a civil law system address the issues the case in question addresses? What are its theoretical implications, what is the historical context out of which it grew? Each case will be the subject of a student presentation. The cases we discuss will encompass true “classics” as well as cases that are just now emerging as leading authorities; the cases will lead us to “timeless” doctrinal and theoretical issues as well as to timely and pressing policy questions.

Format:

The course will be taught in a **one-week block**. It is open to **undergraduate students (BLaw)** and **graduate students (MLaw and MAS)** who have not received their primary legal training in a common law jurisdiction.

Assessment: Student Presentations

Students who take this course for credit (6 ECTS credits; this is possible only for MLaw students!) will be assessed on the basis of **a presentation in which students introduce and discuss one of the cases** (or more – students may wish to contrast two cases or introduce an entire line of authority, where appropriate and upon consultation with the instructor). **Presentations should be between 15 and 20 minutes long. For a list of cases from which to choose the subject of a presentation, please see below.**

Students who just wish to attend without a presentation will receive a certificate of attendance.

Language of instruction:

The class will be taught in **English**.

Two Goals: Introduction to contract law / Research seminar

The course aims to achieve **two goals**. **First**, this course will serve as an **intense introduction to the substantive law of contracts in the modern common law**. We will discuss cases primarily from England and Wales, but also from the Commonwealth and the US. Particularly for students without any prior exposure to the common law and the common law of contracts, this seminar will also provide valuable first insights into common law thinking and methodology. **Second**, the course also serves as a **research seminar**; students will have the **opportunity to study and discuss individual leading cases in depth from various methodological perspectives – comparative, theoretical, and historical**.

In modern common law jurisdictions, the law of contract is – despite many statutory additions – first and foremost case law. A body of law shaped through hundreds of years and thousands of judicial decisions, it underwent a comprehensive reformulation in the 19th century, coinciding with the economic and social change brought about by the industrial revolution. It was in the same period that the idea of “leading cases” was first formulated: cases that embody principles of the common law in exemplary fashion and thus help navigate the never-abating flood of new cases, and that are, therefore, particularly suitable for instruction – “lighthouses of the law, which never fail, are never dimmed, and are most visible in those times when the need for guide is most felt”. Since “Contracts” is one the most important courses of the core law school curriculum, the leading cases in the law of contracts shape the experience of every common lawyer and are part and parcel of modern common law culture.

Student Presentation Topics – selection of cases:

Please pick a topic and a case you think you would be interested in, and send your expressions of interest to marzia.gavillet@unil.ch or contact me directly at helge.dedek@mcgill.ca. If you want to address a specific topic/case that is not on the list, feel free to send me a proposal - I am open to additional suggestions.

Topic	Cases
Formation of Contract	<ul style="list-style-type: none"> ▪ <i>Carlill v. Carbolic Smoke Ball Co.</i>, [1893] 1 Q.B. 256 (C.A.). ▪ <i>John D.R. Leonard v. Pepsico, Inc.</i>, United States District Court, Southern District of New York 88 F.Supp.2d 116 (S.D.N.Y. 1999) ▪ <i>Jones v Padavatton</i>, [1969] 2 All ER 616. ▪ <i>Raffles v. Wichelhaus</i> (1864), 2 H. & C. 906 (Exch.).
Consideration	<ul style="list-style-type: none"> ▪ <i>Hamer v. Sidway</i>, 124 N.Y. 538 (C.A. 1891). ▪ <i>Wood v. Lucy, Lady Duff-Gordon</i>, 118 NE 214 (C.A. 1917).
Pre-existing Duty, promissory estoppel, subsequent reliance	<ul style="list-style-type: none"> ▪ <i>Stilk v. Myrick</i> (1809) 170 E.R. 1168. ▪ <i>Central London Property Trust v. High Trees House</i>, [1947] KB 130. ▪ <i>Williams v. Roffey Bros and Nicholas Ltd.</i>, [1991] 1 QB 1 (C.A.). ▪ <i>Walton Stores (Interstate) Ltd. v. Maher</i> [1988] C.L.R. 387 (H.C.A.). ▪ <i>Kirksey v. Kirksey</i>, 8 Ala. 131 (Ala. Sup. Ct. 1845).

Interpretation, implication of terms	<ul style="list-style-type: none"> ▪ <i>British Crane Hire Corporation Ltd. v. Ipswich Plant Hire Ltd.</i>, [1975] QB 303 (C.A.). ▪ <i>The Moorcock</i> (1889) 14 P.D. 64 ▪ <i>Bhasin v. Hrynew</i>, 2014 SCC 71
Public policy	<ul style="list-style-type: none"> ▪ <i>In the Matter of Baby M.</i>, 109 N.J. 396 (1988)
Undue Influence	<ul style="list-style-type: none"> ▪ <i>Lloyds Bank Ltd. v. Bundy</i>, [1975] Q.B. 326 (C.A.). ▪ <i>Barclays Bank plc v. O'Brien</i>, [1994] 1 AC 180
Misrepresentation	<ul style="list-style-type: none"> ▪ <i>Esso Petroleum Co. Ltd. v. Mardon</i>, [1976] QB 80 (C.A.).
Mistake	<ul style="list-style-type: none"> ▪ <i>Sherwood v. Walker</i> (1887), 33 NW 919 (Mich. S.C.). ▪ <i>Bell v. Lever Brothers Ltd.</i>, [1932] A.C. 161 (H.L.). ▪ <i>Solle v. Butcher</i>, [1950] 1 K.B. 671 (C.A.)
Duress	<ul style="list-style-type: none"> ▪ <i>Pao On v LauYiu Long</i>, [1980] A.C. 614 (P.C.)
Frustration	<ul style="list-style-type: none"> ▪ <i>Paradine v Jane Aley</i> 26, 82 E.R. 897 ▪ <i>Taylor v Caldwell</i> (1863) 122 E.R. 309. ▪ <i>Krell v Henry</i> [1903] 2. K.B. 740 (C.A.) ▪ <i>Davis Contractors Ltd v Fareham Urban District Council</i> [1956] A.C. 696 (H.L.)
Breach	<ul style="list-style-type: none"> ▪ <i>Hong Kong Fir v. Kawasaki Kisen Kaisha</i>, [1962] 2 Q.B. 26
Damages	<ul style="list-style-type: none"> ▪ <i>Hawkins v. McGee</i>, 84 N.H. 114 (1929) ▪ <i>Hadley v. Baxendale</i> (1854), 9 Exch. 341. ▪ <i>Victoria Laundry v. Newman Industries Ltd.</i>, [1949] 2 K.B. 528. ▪ <i>Koufos v. C. Czarnikow (The Heron II)</i>, [1969] 1 A.C. 350. ▪ <i>Jarvis v. Swan Tours</i> [1973] Q.B. 233.
Specific performance	<ul style="list-style-type: none"> ▪ <i>Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd.</i>, (1997), [1998] A.C. 1, [1997] 2W.L.R. 898 (H.L.) ▪ <i>Lumley v. Wagner</i> (1852) 42 E.R. 687 (Ch.). ▪ <i>Warner Bros. Pictures v. Nelson</i>, [1937] 1 K.B. 209.
Privity of Contract	<ul style="list-style-type: none"> ▪ <i>Beswick v. Beswick</i>, [1968] A.C. 58 (H.L.). ▪ <i>London Drugs Inc. v. Kuehne & Nagel International Ltd.</i>, [1992] 3 S.C.R. 299.

