

Contractual Obligations, Professor Rosalie Jukier
Fall 2012—Reading and Class Schedule

Date	Topic	Readings
1. Wednesday, September 5	Introduction	No Readings
2. Friday, September 7	Contract and Traditional Contract Theory	- LL Fuller, “Human Interaction and the Law” (1969) 14 Am J Juris 1. - Stephen A Smith, <i>Contract Theory</i> (Oxford: Oxford University Press, 2004) at 56-60; 78-85. - Pierre-Gabriel Jobin with the collaboration of Nathalie Vézina, <i>Baudouin et Jobin : Les obligations</i>, 6th ed (Cowansville, Que: Yvon Blais, 2005) at paras. 48, 71-79.
3. Wednesday, September 12	Contract Law and Contractual Behaviour	- S Macaulay, “An Empirical View of Contract” (1985) Wis L Rev 465.
4. Friday, September 14	Contracts Across Legal Traditions	- Joseph Dainow, “The Civil and the Common Law: Some Points of Comparison” (1966-67) 15 Am J Comp Law 419.
5. Wednesday, September 19	Transnational Law and Transsystemic Legal Education	- Rosalie Jukier, “Where Law and Pedagogy Meet in the Transsystemic Contracts Classroom” (2005) McGill LJ at 789-801. - KP Berger, ed, <i>The Practice of Transnational Law</i> (Cornwall: Kluwer Law International, 2001). - J Naslin, “A Completely New Legal Experience” (1996) 24 Int’l Bus Law 8. - P Nouel, “‘Cartesian Pragmatism’: Looking for Common Principles in French and English Law” (1996) 24 Int’l Bus Law 22.
6. Friday, September 21	Changing Conception of Contract Law	- Hugh Collins, <i>The Law of Contract</i> (London: LexisNexis UK, 2003) at 1-19. - D Kennedy, “Form and Substance in Private Law Adjudication” (1976) 89 Harv L Rev 1685, at 1728-37.

		- C Thibierge-Guelfucci, « Libres propos sur la transformation du droit des contrats » (1997) Rev trim dr civ 357. - Ian R Macneil, <i>The New Social Contract : An Inquiry into Modern Contractual Relations</i> (New Haven: Yale University Press, 1980) at 1-35. - John Borrows, “Negotiating Treaties and Land Claims: the Impact of Diversity within First Nations Property Interests” (1992) 12 Windsor YB Access Just 179. - JR Miller, <i>Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada</i> (Toronto: University of Toronto Press, 2009).
7. Monday, September 24 (Room 102) (Make-Up)	Standard Form and Adhesion Contracts as a Social Phenomenon	- L Niglia, <i>The Transformation of Contract in Europe</i> (The Hague: Kluwer Law International, 2002) at 24-35. - <i>Dell Computer Corporation c Union des consommateurs</i>, 2007 SCC 34. Articles 1379, 1435 – 1437 CCQ
8. Wednesday, October 3	Intent to Create Legal Relations	- <i>John DR Leonard v Pepsico, inc</i>, United States District Court, Southern District of New York 88 F Supp 2d 116 (SDNY 1999), aff’d 210 F 3d 88 (2d Cir 2000). - <i>Carlill v Carbolic Smoke Ball Co</i>, [1893] 1 QB 256 (CA). - <i>Kleinwort Benson Ltd v Malaysia Mining Corp BHD</i>, [1989] 1 All ER 785 (CA).
9. Friday, October 5	Exchange of Consents and Ambiguity	- Articles 1378 – 1381, 1385 – 1386, 1388 – 1395 CCQ - Marcel Fontaine, « Offre et acceptation, approche dépassée du processus de formation des contrats », dans <i>Mélanges offerts à Pierre Van Ommeslaghe</i>, Bruxelles, Bruylant, 2000, 115. - <i>Raffles v Wichelhaus</i>, (1864) 159 ER 375. - <i>Terrasse Holdings v Saunders</i>, [1989] RL 265 (CA). - <i>Academy Chicago Publishers v Cheever</i> (1991) 144 Ill 2d 24, 578 NE 2d 981, 161 Ill Dec 335.
10. Wednesday, October 10	Contradiction Between Offer and Acceptance	- Arthur Taylor von Mehren, “The ‘Battle of the Forms’: A Comparative View” (1990) 38 Am J of Comp Law 2 at 265-

		78, 290-98. - <i>CUQ v Construction Simard Beaudry</i> , [1987] RJQ 2020 (CA). - UN Convention for the International Sale of Goods, Art. 19 - Uniform Commercial Code, Art. 2-207 (old) and Arts. 2-206 & 2-207 (new) - UNIDROIT Principles of International Commercial Contracts, Arts. 2.1.11 and 2.1.22 - Principles of European Contract Law, Arts. 2.208 and 2.209 - Article 1393 CCQ
11. Friday, October 12	Backing Out—Revocation and Protection of Reliance	- <i>Entores v Miles Far East Corporation</i> , [1955] 2 QB 327 (CA). - Article 1387 CCQ - <i>Errington v Errington and another</i> , [1952] 1 KB 290. - <i>Dawson v Helicopter Exploration Co</i> , [1955] SCR 868.
12. Monday, October 15 (Room 102) (Make-Up)	Agreements to Agree	- <i>Cere v Neely</i> , [1980] CS 1160. - <i>Walford v Miles</i> (1992) 2 AC 128. - <i>Empress Towers v Bank of Nova Scotia</i> , [1991] 73 DLR (4th) 400 (BCCA). - <i>Brewer v Chrysler Canada Ltd</i> , [1977] 3 WWR 69 (Alta SC). - Articles 1396 – 1397 CCQ
13. Wednesday, October 17	Offer and Acceptance as a Surrogate Debate	- <i>Pharmaceutical Society of Great Britain v Boots Cash Chemists, Ltd</i> , [1953] 1 QB 401 (CA). - <i>Thornton v Shoe Lane Parking Ltd</i> , [1971] 2 QB 163 (CA). - SAMPLE PROBLEM: <i>Ifergan v Québec (Société des loteries)</i> .
14. Friday, October 19	What Else Besides Consent?	- AWB Simpson, “The Doctrine of Consideration – Introduction”, in <i>A History of the Common Law of Contract: The Rise of the Action of Assumpsit</i> (1975), at 602-03.
15. Wednesday, October 24	The Concept and Purpose of Consideration	- <i>White (Executor) v William Bluett</i> (1853), 23 LJ Ex 36. - <i>Hamer v Sidway</i> (1891), 124 NY 538 (CA). - <i>Stott v Meritt Investment Corp</i> (1988), 63 OR (2d) 545 (CA).

		- LL Fuller, “Consideration and Form” (1941) 41 Colum L Rev 799.
16. Friday, October 26	Contract Modifications	- <i>Harris v Watson</i> (1791), 170 ER 94 (HL). - <i>Gilbert Steel Ltd v University Construction Ltd</i> (1976) 12 OR (2d) 19 (CA).
17. Wednesday, October 31	Consideration and Reliance	- <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 (CA). - <i>Greater Fredericton Airport Authority v NAV Canada</i>, 2008 NBCA 28. - <i>Waltons Stores (Interstate) Ltd v Maher</i> [1988] CLR 387 (HCA). - Restatement (Second) of Contracts § 89, 90
18. Friday, November 2	The Civil Law Perspective	- Articles 1371, 1385, 1410-1411, 1380-1381, 1824, 2630 CCQ - <i>In re Ross</i>, [1932] SCR 57.
19. Monday, November 5 (Room 102) (Make-Up)	Public Policy and Community Values	- Articles 9, 1411 CCQ - <i>Brasserie Labatt Ltd v Villa</i>, [1995] RJQ 73 (CA). - <i>Cameron v Canadian Factors Corp</i>, [1971] SCR 148. - <i>X v B</i>, [2009] RJQ 445. - SAMPLE PROBLEM: X v A, B, C
20. Wednesday, November 7	Intersection between Human Rights and Contract Law	- <i>Syndicat Northcrest v Amselem</i>, [2004] 2 SCR 551. - <i>Bruker v Marcovitz</i>, 2007 SCC 54. - Comité des droits de l’homme, <i>Constantations du Comité des droits de l’homme au titre du paragraphe 4, de l’article 5 du Protocole facultatif se rapportant au Pacte International relatif aux droits civils et politiques</i>, Doc. Off. CCPR, 75^e session, Communication NU 854/1999 (2002).
The Obligational Content of a Contract		
21. Friday, November 9	Interpretation of Contracts	- Patrick Ottinger, “Principles of Contractual Interpretation”, (2000) 60 La L Rev 765. - <i>Eli Lilly & Co v Novopharm Ltd</i>, [1998] 2 SCR 129.

		- <i>Riopel c Agence de revenu du Canada</i>, 2011 QCCA 954 (presently on appeal to SCC, to be heard November 2012).
22. Wednesday, November 21	Incorporation of Terms	- Articles 1425-1432, 2863-2864 CCQ - <i>McCutcheon v David MacBrayne, Ltd</i>, [1964] 1 All ER 430 (HL). - <i>British Crane Hire Corporation Ltd v Ipswich Plant Hire Ltd</i>, [1975] QB 303 (CA). - SAMPLE PROBLEM: <i>Thomas Witter Ltd v TBP Industries Ltd</i>
23. Friday, November 23	Implied Obligations Generally	- <i>Ouellet v 3092-3122 Québec Inc</i>, [2000] RJQ 1889 (CQ). - <i>A (M) v Stations de la Vallée de St-Sauveur Inc</i>, 2010 QCCA 1509.
24. Wednesday, November 28	Implied Obligations and the Obligation of Good Faith	- Articles 6, 7, 1375, 1434 CCQ - <i>BCN v Soucisse</i>, [1981] 2 SCR 339. - <i>Houle v CNB</i>, [1990] 3 RCS 122. - <i>Provigo distribution v Supermarché ARG</i>, [1998] RJQ 47 (CA).
25. Friday, November 30	Implied Obligations and the Obligation of Good Faith (cont'd)	- <i>McKinlay Motors Ltd v Honda Canada Inc</i>, [1989] 46 BLR 62 (Nfld SC). - <i>Gateway Realty v Arton Holdings</i> (1991), 106 NSR (2d) 180. - <i>RBC Dominion Securities v Merrill Lynch Canada</i>, 2008 SCC 54. - <i>Martel v Canada</i>, [2000] 2 SCR 860. - <i>Transamerica Life Canada Inc c ING Canada Inc</i>, [2004] 68 OR 457 (CA).
26. TBA (During Exam Period)	Review	

Contractual Obligations, Professor Rosalie Jukier
Winter 2013—Reading and Class Schedule

Date	Topic	Readings
A. Introduction		
1. Tuesday, January 8	Social Control of Contracts	- Jacques Ghestin, “L’utile et le juste dans les contrats”, Archives de philosophie du droit, t 26, Sirey, 1981. - PS Atiyah, “Contract and Fair Exchange” (1985) 35 UTLJ 1. - <i>Lloyds Bundy Bank Ltd v Bundy</i>, [1975] QB 326 (CA).
B. Traditional Tools		
<i>i. Procedural Fairness Tools</i>		
2. Thursday, January 10	Social Control of Contracts (cont’d) & Capacity	See previous readings - <i>CL c ML</i>, [2006] QCCS 2673. - <i>Fyckes v Chisholm</i>, [1911] 19 OWR 977, 3 OWN 21.
3. Monday, January 14* Make up class 12 – 1:30 Room 101	Fear & Duress	- <i>JJ Joubert Ltd v Lapierre</i>, [1972] CS 476. - <i>Atlas Express Ltd v Kafco Ltd</i>, [1989] QB 833. - <i>Greater Fredericton Airport Authority Inc v Nav Canada</i>, 2008 NBCA 28.
4. Tuesday, January 15	Undue Influence	- <i>Barclays Bank Plc v O’Brien</i>, [1994] 1 AC 180. - <i>Royal Bank of Scotland v Etridge</i> (No. 2), [2001] UKHL 44. - <i>Byrne c Trust Prêt et Revenu</i>, [1999] RRA 967.
5. Tuesday, January 22	Misrepresentation & Fraud	- <i>Tremblay v Les Pétroles Inc</i>, [1961] BR 856 (CA). - <i>Creighton v Gynspan</i>, [1987] RJQ 527 (CA). - <i>Esso Petroleum Co Ltd v Mardon</i>, [1976] QB 80 (CA). - <i>VK Mason Construction v Bank of NS</i>, [1985] 1 SCR 271.
6. Thursday, January 24	Duty to Disclose	- <i>Bail c Banque de Montreal</i>, [1992] 2 RCS 554. - AT Kronman, “Mistake, Disclosure, Information and the Law of Contracts” (1978) 7 JLS 1. - Muriel Fabre-Magnan, “Duties of Disclosure and French Contract Law: Contribution to an Economic Analysis” in Jack Beatson & Daniel

		Friedmann, eds, <i>Good Faith and Fault in Contract Law</i> (Oxford: Clarendon Press; New York: Oxford University Press, 1995) at 99. - SAMPLE PROBLEM: Bob v Al
7. Tuesday, January 29	Mistake & Error	- <i>Sherwood v Walker</i> (1887), 33 NW 919 (Mich SC). - <i>Bell v Lever Brothers Ltd</i>, [1932] AC 161 (HL). - Peter MacFarlane, “Case Note: Great Peace Shipping Ltd v Tsavlis Salvage (International) Ltd; The Great Peace [2002] 4 All ER 689” (2003) 7 J South Pac Law. - <i>Huot v Ouellette</i>, [1981] CS 872. - <i>Lepage c Allard</i>, [2004] RDI 358.
8. Thursday, January 31	Mistake & Error (cont’d) & Interaction Between Error and Good Faith	See previous readings - <i>Confédération des Caisses Populaires et d’économie Desjardins du Québec c Services Informatiques Decisionone</i>, [2004] RJQ 69 (CA). - SAMPLE PROBLEM: Contant c Dubé
ii. Substantive Fairness Tools		
9. Tuesday, February 5	Unconscionability & Lesion	- <i>Toker v Westerman</i>, [1970], 274 A 2d 78 (NJDC). - <i>Harry v Kreutziger</i>, [1979], 9 BCLR 166 (CA). - Augusto C Lima, “When Harry Met Kreutziger: A Look Into Unconscionability Through the Lens of Culture” (April 19, 2008). CLEA 2008 Meetings Paper. (OPTIONAL—on webCT) - <i>Hunter Engineering Co v Syncrude Canada Ltd</i>, [1989] 1 SCR 426 (excerpt). - <i>Richard v Time</i>, 2012 SCC 8. - <i>Gareau Auto v BC Impériale de Commerce</i>, [1989] RJQ 1091 (CA). - <i>Yoskovitch v Tabor</i>, [1995] RJQ 1397.
10. Thursday, February 7	Abusive Clauses	- <i>Allendale Mutual Insurance v Hydro Québec</i>, [2002] RJQ 84. - <i>Québec (Procureur général) c Kechichian</i>, [2000] JQ no 2049 (CA). - SAMPLE PROBLEM: Parent-Constantin c 9013-1996 Québec inc (Voyages Symone Brouty)
iii. Particularly Problematic Clauses		
11. Tuesday, February 12	Exclusion Clauses	- <i>Tilden Rent-A-Car Co v Clendenning</i>, [1978] 18 OR (2d) 601 (CA). - <i>Hunter Engineering Co v Syncrude Canada</i> (supra). - Richard F Devlin, “Return of the Undead: Fundamental Breach Disinterred” (2007) 86:1 Can Bar Rev 1 (OPTIONAL—on webCT). - <i>Tercon Contractors Ltd v British Columbia (Transportation and</i>

		<i>Highways</i>), [2010] 1 SCR 69.
12. Thursday, February 14	Arbitration Clauses	- <i>Dell Computer Corp v Union des consommateurs</i>, [2007] 2 SCR 801 (supra volume 1). - Geneviève Saumier, “Consumer Arbitration in the Evolving Canadian Landscape” (2009) 113:4 Penn St L Rev 1203. - <i>Seidel v TELUS Communications Inc</i>, [2011] 1 SCR 531. - <i>Comb v PayPal, Inc</i> (2002) 218 F Supp 2d 1165.
C. Changed Circumstances (Frustration, Force Majeure, Imprévision)		
13. Tuesday, February 19	Futility	- <i>Krell v Henry</i>, [1903] KB 740 (CA). - <i>Amalgamated Investment and Property v John Walker & Sons Ltd</i>, [1976] 3 All ER 509 (CA).
14. Thursday, February 21	Impossibility/ Force Majeure & Impracticability/ Hardship	- <i>HR Sainsbury Ltd v Street</i>, [1970] 3 All ER 1126. - <i>Otis Elevator Co Ltd v A Viglione & Bros Inc, Mtl</i>, 500-09-000316-786 (CA). - <i>Canada Starch Company Ltd v Gill & Duffus (Canada) Ltd</i> 6 Dec 1983, 500-05-001746-823, CS-JE 84-88, aff’d CA-JE 90-1617. - SAMPLE PROBLEM: Newfoundland (Attorney General) v Churchill Falls (Labrador) Corp. - <i>Alcoa v Essex Group</i>, (1980) 499 F Supp 53 (Penn SC). - WF Ebke & BM Steinhauer, “Doctrine of Good Faith in German Contract Law” in Jack Beatson & Daniel Friedmann, eds, <i>Good Faith and Fault in Contract Law</i> (Oxford: Clarendon Press; New York: Oxford University Press, 1995) 171 at 171-72; 180-90.
D. Breach and Remedies		
15. Friday, February 22 Make up class 12:30 – 2:00 Moot Court	Breach: Intensity of Obligations/ Termination	- <i>Cehave NV v Bremeer Handelgesellschaft mbH</i>, [1975] 3 All ER 739. - Pierre-Gabriel Jobin with the collaboration of Nathalie Vézina, <i>Baudouin et Jobin : Les obligations</i>, 6th ed (Cowansville, Que: Yvon Blais, 2005) at paras. 33-39. - <i>A (M) v Stations de la Vallée de St-Sauveur Inc</i>, 2010 QCCA 1509.
16. Tuesday, February 26	Specific Performance	- <i>Warner Bros Pictures v Nelson</i>, [1937] 1 KB 209. - <i>Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd</i>, [1998] AC 1, [1997] 2 WLR 898 (HL). - <i>Construction Belcourt Ltée v Golden Griddle Pancake House Ltd</i>, [1988] RJQ 716 (CS).

READING WEEK		
17. Tuesday, March 12	Specific Performance (cont'd)	See previous readings
18. Thursday, March 14	Remoteness of Damage	- <i>Hadley v Baxendale</i>, [1854] 9 Exch 341. - <i>Victoria Laundry v Newman Industries Ltd</i>, [1949] 2 KB 528. - <i>Koufos v C Czarnikow (The Heron II)</i>, [1969] 1 AC 350. - <i>Transfield Shipping v Mercator (The Achilleas)</i>, [2008] UKHL 48. - <i>Ciment Québec inc c Stellaire Construction</i>, [2002] JE 1106.
19. Tuesday, March 19	Mitigation & Cost of Cure vs. Diminution in Value	- <i>Payzu, Limited v Saunders</i>, [1919] 2 KB 581. - JL Maute, "Peevyhouse v Garland Coal & Mining Co Revisited: The Ballad of Willie and Lucille" (1995) 89 NW L Rev 1341. - <i>Ruxley Electronics v Forsyth</i>, [1995] 3 All ER 268.
20. Thursday, March 21	Cost of Cure vs. Diminution in Value (cont'd)	- SAMPLE PROBLEM: <i>Tabcorp Holdings Ltd v Bowen Investments Pty Ltd</i>
21. Tuesday, March 26	Non-Pecuniary Damages	- <i>Jarvis v Swan Tours</i>, [1973] QB 233. - <i>Fidler v Sun Life du Canada, compagnie d'assurance-vie</i>, [2006] CSC 30.
22. Thursday, March 28	Punitive Damages	- <i>Honda Canada Inc v Keays</i>, [2008] SCC 39. - <i>Brault & Martineau Inc c Riendeau</i>, [2010] QCCA 366. - <i>Richard v Time</i>, 2012 SCC 8.
23. Tuesday, April 2	Disgorgement & Penalty Clauses & Wrapping Up Remedies	- <i>Attorney-General v Blake</i>, [2000] UKHL 45. - <i>HF Clarke Ltd v Thermidaire Corporation Ltd</i>, [1976] 1 SCR 319. - CJ Goetz & RE Scott, "Liquidated Damages, Penalties, and the Just Compensation Principle: Some Notes on an Enforcement Model and a Theory of Efficient Breach" (1977) 77 Colum L Rev 554 at 554-58, 567-68, 572-76. - <i>151276 Canada inc c Verville</i>, [1994] RJQ 2950 (CS).
E. Privity/ Relativity of Contract		
24. Thursday, April 4	Contracts & Third Parties	- <i>Beswick v Beswick</i>, [1966] 3 All ER 1 (CA).

		- <i>Beswick v Beswick</i>, [1968] AC 58 (HL). - <i>New Zealand Shipping Co Ltd v AM Satterthwaite & Co Ltd</i>, [1975] AC 154. - <i>London Drugs Inc v Kuehne & Nagel International Ltd</i>, [1992] 3 SCR 299. - Contracts (Rights of Third Parties) Act 1999 Chapter c 31
F. Wrapping Up		
25. Tuesday, April 9	Concluding Thoughts	- IR McNeil, “Wither Contracts” (1969) 21 J Leg Ed 403. - Robert Lloyd, “Making Contracts Relevant: Thirteen Lessons for the First-Year Contracts Course” 36 Ariz St LJ 257.
26. Thursday, April 11 or TBD	Review	