

LL4276/LL5276/LLJ5276/LL6276 Advanced Contract Law

Advanced Contract Law invites students to examine some interesting and controversial topics from this foundational subject. Some topics will build on what students already know in their first-year/basic contract law course (e.g. how does contract law deal with change of circumstances?), some will cover new ground (e.g. the role of good faith in contract law). You will be able to write a paper on a topic of particular interest to you. The course also complements the module Advanced Tort Law and Philosophical Foundations of Contract Law.

- Have advanced knowledge of selected contract law topics building on the understanding achieved from the basic contract law course;
- Have knowledge of the major themes and policies underlying contract law rules;
- Be able to think critically about any issue in contract law having engaged in in-depth analysis of a sample of issues;
- Be able to engage in argument about the normative analysis of the law with a view to desirable law reform or judicial outcome;
- Be able to make sophisticated arguments in writing.

Seminar 1: Introduction: Policies underlying contract law

The first seminar introduces students to the principal policies underlying contract law rules (e.g. freedom of contract, inequality of bargaining power, standard form contracts, procedural and substantive unfairness, the role of the state, rules and discretionary standards). This provides the basis for normative assessments of the law that we will study.

Seminar 2: Change of circumstances

In this seminar, we will examine how contract law responds to change of circumstances (e.g. pandemic). Here, we will look at the interaction between the law on (1) consideration, (ii) economic duress, and (iii) frustration. We will also consider whether the law is adequate to the task and what reforms may be proposed.

Seminar 3: The contents of contract

In this seminar, we look at the difficult but important topics of (i) interpretation of contract: what does all the caselaw and different formulations of the law amount to? (ii) when and why are terms be added to contracts?

Seminar 4: Are expectation damages really expectation?

Calculation of damages is an important topic for the practice of contract law. Here we take an overview of the limits on the expectation measure, but also zoom in on some difficult issues, e.g. (i) the problems with loss for non-pecuniary loss; (ii) some controversial aspects of the mitigation requirement, an (iii) the differences of approach to remoteness of loss.

Seminar 5: When are non-expectation damages available for breach of contract?

This seminar considers when and why damages for breach of contract may be measured by other than the innocent party's expectation; namely (i) reliance; (ii) restitution; (iii) negotiating damages; (iv) account of profits.

Seminar 6: Control of substantive unfairness

This seminar explores the legal mechanisms available in contract law to control the substantive unfairness of contracts. Contrary to the theory that contract law does not control such unfairness (in contrast to procedural unfairness), we will see that numerous techniques exist to do just that, e.g.: (i) rules on standard for contracts; (ii) statutory controls, (iii) the penalty rule; (iv) some vitiating factors including the controversial doctrine on unconscionable bargains

Seminar 7: What, if any, is the role of good faith in contract law?

The starting point is that the common law of contract does not recognise any general doctrine of good faith. Good faith is increasingly spoken of in and out of courts. What does it mean? Is it true that the common law has no good faith in its substantive sense? Why is it such a controversial notion? How would the law change if we were to recognise good faith?

Seminar 8: Friends and family

Contract law can be seen to have evolved particular doctrines that treat transactions in the private domain of friends and family in a different way from that in the market domain. For example: (i) intention to create legal relations, (ii) undue influence; (iii) the law on non-commercial guarantees; (iv) the consideration requirement, and others.

Seminar 9: Developing your research topic

In this seminar, you will present your 2-page outline for your research topic to the class and the class will ask questions, make suggestions, and help to develop your paper. You will also watch others since the process will enhance your understanding of how to construct a research question and

The list below is an illustration of *some* of the materials which students will study on the course. My intention is to keep the reading lean so that students will really have time to read and think about it.

- Burton Ong and Benjamin Wong, *Contract Law in Singapore: Cases, Materials and Commentary* (SAL publishing) 2019
- Andrew Phang (gen ed), *The Law of Contract in Singapore* (2012)
- Mindy Chen-Wishart, *Contract Law* 6th edn (2018)
- *Anson's Law of Contract* 31st edn (2020, eds. Beatson, Burrows, Cartwright)
- *Chitty on Contracts* (33rd ed)
- Jonathan Morgan, *Great Debates in Law: Contract* 2nd ed (2015)

- *BOM v BOK* [2018] SGCA 83
- *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304
- *Denka Advantech Pte Ltd and another v Seraya Energy Pte Ltd and another and other appeals* [2020] SGCA
- *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896
- *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029
- *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] SGCA 43
- *Wood v Capita Insurance Services* [2017] UKSC 24
- *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd and HSBC Trustee* [2015] 5 SLR 1187
- *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd* [2016] SGHC 194

- Mindy Chen-Wishart, “Reform of Consideration: No Greener Grass” in S Degeling, J Edelman and J Goudkamp (eds), *Contract in Commercial Law* (Sydney, Thomson, 2016) 77
- Lord Hoffmann “The Achilleas: custom and practice or foreseeability?” (2010) Edin LR 47
- Andrew Robertson “The Basis of the Remoteness Rule in Contract” (2008) 28 *Legal Studies* 172.
- Solene Rowan, “The legitimate interest in performance in the law on penalties” [2018] CLJ 148
- Nelson Enonchong, “Contract Damages for Injury to Reputation” (1996) 59 *Modern Law Review* 592
- Catherine Mitchell, ‘Behavioural Standards in Contracts and English Contract Law’ (2016) 33 *Journal of Contract Law* 234-253
- Hugh Collins, “Implied Terms: The Foundation in Good Faith and Fair Dealing” (2014) 67 *Current Legal Problems* 297
- Lord Sumption, “A Question of Taste: The Supreme Court and the Interpretation of Contracts”: (2016-2017) 8 *UK Supreme Court Yearbook* 74
- Lord Hoffmann, “Language and lawyers” (2018) 134 *LQR* 553
- Wee, P C K (2010), ‘Contractual Interpretation and Remoteness’, *LMCLQ* 150.
- Chen-Wishart, “Undue Influence: Vindicating Relationships of influence” [2006] *Current Legal Problems* 231.
- Chen-Wishart “Humble Good Faith: 3 by 4”, with Victoria Dixon, in *Oxford Studies in Private Law Theory*, eds Paul Miller and John Oberdiek, OUP, 2020