

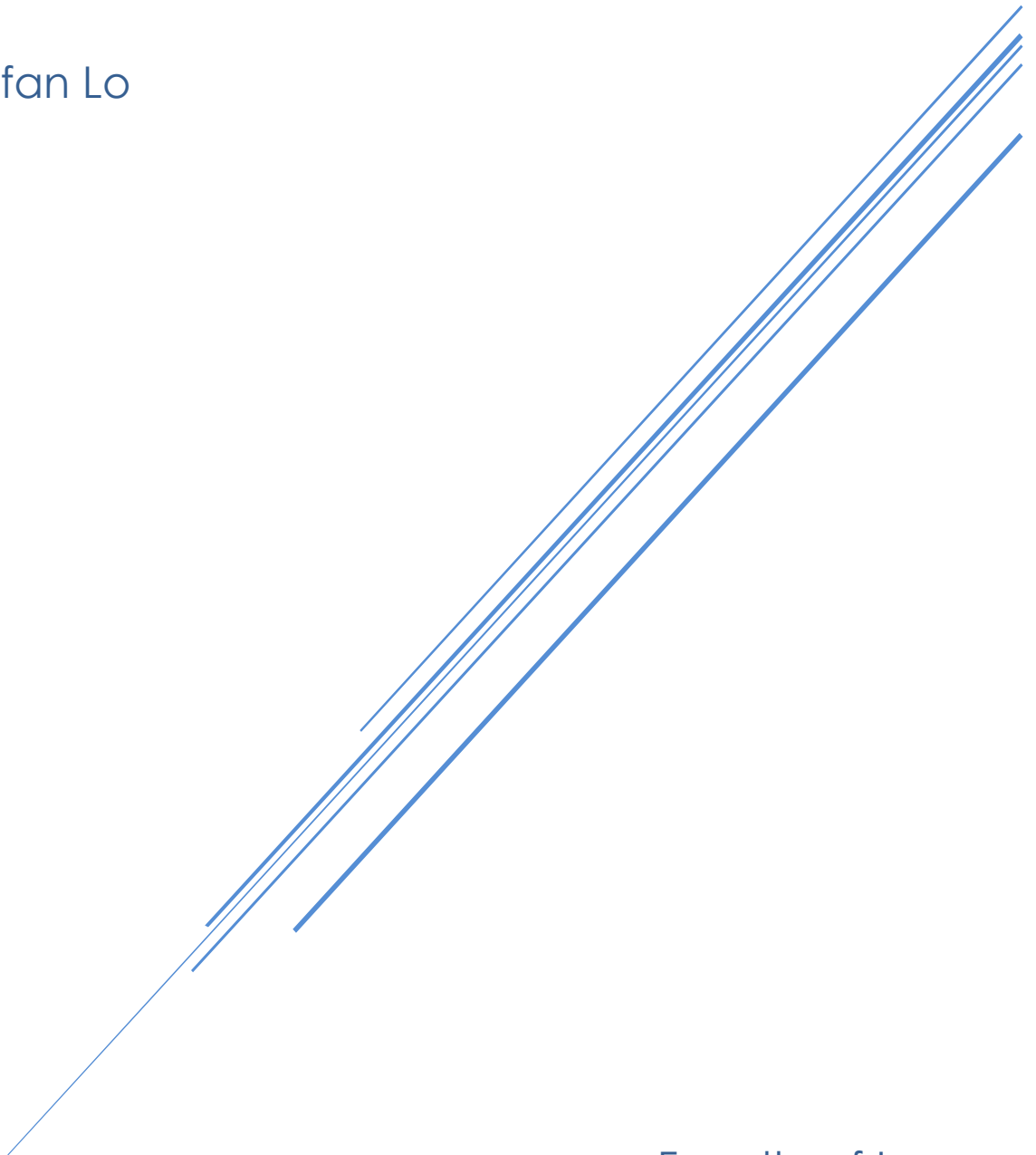
JDOC1002

LAW OF CONTRACT II

2024-2025 Semester 2

Teaching Schedule + Reading Guide

Dr Stefan Lo



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LAW OF CONTRACT II

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Course details:

For course details, including assessment, please refer to the Course Outline available on the JDOC1001 Law of Contract I Moodle page.

SEMESTER 2 SCHEDULE (Subject to revision)

SEMINAR	DATE	TOPIC
1	20 Jan	Mistake
2	27 Jan	Mistake
3	10 Feb	Frustration
4	17 Feb	Frustration
5	24 Feb	Duress, Undue Influence, Unconscionability
6	3 Mar	Duress, Undue Influence, Unconscionability
7	17 Mar	Termination
8	24 Mar	Termination
9	31 Mar	Remedies
10	7 Apr	Remedies
11	14 Apr	Remedies
12	28 Apr	Revision

READING GUIDE

For textbook references, see the Course Outline available on the JDOC1001 Law of Contract I Moodle page.

Required readings for Semester 2 are set out under each topic in the reading guide that follows.

Readings (textbook, cases, legislation) which are marked with an asterix (*) in the reading guide are compulsory reading. Most of the asterixed cases are contained in the textbook (McKendrick) and reading the extracts of the case judgment in the textbook is sufficient unless you are advised otherwise. For other cases listed in the reading guide (ie, cases which are not asterixed), you need to have some familiarity with those decisions (eg from the textbook, seminar, or reading the headnote), though you do not necessarily have to read the judgment. For asterixed legislation, see <https://www.elegislation.gov.hk/>.

Additional required readings may be prescribed for class discussions during the semester.

MISTAKE

*Ewan McKendrick, *Contract Law: Text Cases and Materials* (10th edn, Oxford University Press 2022) Ch 16

◆ General

- Types of mistake
 - Mutual mistake
 - Unilateral mistake
 - Common mistake
- Legal consequences of mistake

◆ Mutual mistake and absence of contract

Raffles v Wichelhaus (1864) 2 H & C 906
Scriven Bros & Co v Hindley & Co [1913] 3 KB 564
Goldsborough Mort & Co Ltd v Quinn (1910) 10 CLR 674

◆ Unilateral mistake

- Mistake as to terms of contract

Smith v Hughes (1871) LR 6 QB 597
Hartog v Colin & Shields [1939] 3 All ER 566
- Mistake as to identity of contracting party

Cundy v Lindsay (1878) 3 App Cas 459
King's Norton Metal Co v Edridge Merrett & Co Ltd (1897) 14 TLR 98
Phillips v Brooks Ltd [1919] 2 KB 243
Ingram v Little [1961] 1 QB 31
Lewis v Averay [1972] 1 QB 198
**Shogun Finance Ltd v Hudson* [2004] 1 AC 919

◆ Common mistake

**Bell v Lever Bros Ltd* [1932] AC 161
McRae v Commonwealth Disposals Commission (1951) 84 CLR 377
Solle v Butcher [1950] 1 KB 671
**Great Peace Shipping Ltd v Tsaviris Salvage (International) Ltd* [2003] QB 679
Tony Investments Ltd v Fung Sun Kwan [2006] 1 HKLRD 835

◆ Rectification of contracts

FSHC Group Holdings Ltd v Glas Trust Corporation Ltd [2020] Ch 365
Tyne and Wear Passenger Transport Executive (trading as Nexus) v National Union of Rail, Maritime and Transport Workers [2024] UKSC 37; [2024] 3 WLR 909
Kowloon Development Finance Ltd v Pendex Industries Ltd (2013) 16 HKCFAR 336
Tang Kwai Cheung v Yeung Sze Ting [2024] 2 HKLRD 1324

♦ Non est factum

**Saunders v Anglia Building Society* [1971] AC 1004
**Kincheng Banking Corp v Kao Yu Kuei* [1986] HKC 212

FRUSTRATION

*Ewan McKendrick, *Contract Law: Text Cases and Materials* (10th edn, Oxford University Press 2022) Ch 21

♦ General

**Taylor v Caldwell* (1863) 3 B & S 826
**Davis Contractors Ltd v Fareham Urban District Council* [1956] AC 696
**Ocean Tramp Tankers Corporation v V/O Sovfracht (The Eugenia)* [1964] 2 QB 226
**National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675

♦ Foresight and terms dealing with frustration

Metropolitan Water Board v Dick Kerr & Co Ltd [1918] AC 119

♦ Self-induced frustration

**J Lauritzen AS v Wijsmuller BV (The Super Servant Two)* [1990] 1 Lloyd's Rep 1

♦ Operation of the doctrine

○ Impossibility of performance

Taylor v Caldwell (above)

○ Supervening illegality

Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32

○ Frustration of purpose

**Krell v Henry* [1903] 2 KB 740
**Herne Bay Steam Boat Co v Hutton* [1903] 2 KB 683

○ Other circumstances: whether contract radically different

Codelfa Construction Pty Ltd v State Rail Authority of New South Wales (1982) 149 CLR 337
Wong Lai-ying v Chinachem Investment Co Ltd [1980] HKLR 1
Davis Contractors Ltd v Fareham Urban District Council (above)
Jackson v Union Marine Insurance Co Ltd (1874) LR 10 CP 125
Cheung Kit Lai v Rich Prosper Ltd (unreported, CFI, HCA 973/2011, 10 April 2014)
Wilmington Trust SP Services (Dublin) Ltd v Spicejet Ltd [2021] EWHC 1117 (Comm)
Bank of New York Mellon (International) Ltd v Cine-UK Ltd [2021] EWHC 1013 (QB)

The One Property Ltd v Swatch Group (Hong Kong) Ltd [2022] 1 HKLRD 975

◆ Effects of frustration

*Law Amendment and Reform (Consolidation) Ordinance (Cap 23) s 16

**BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1979] 1 WLR 783

DURESS, UNDUE INFLUENCE, UNCONSCIONABILITY

*Ewan McKendrick, *Contract Law: Text Cases and Materials* (10th edn, Oxford University Press 2022) Chs 18, 19, 20

◆ Duress

○ General

Pakistan International Airline Corp v Times Travel (UK) Ltd [2021] UKSC 40; [2021] 3 WLR 727

Zebra Industries (Orogenesis Nova) Ltd v Wah Tong Paper Products Group Ltd [2016] 1 HKC 213

Re Li Xiaoming [2019] HKCFI 2782; appeal dismissed [2021] HKCA 779

The Law Debenture Trust Corp plc v Ukraine [2023] UKSC 11; [2023] 2 WLR 699

○ Duress to the person

**Barton v Armstrong* [1976] AC 104

Mir v Mir [2013] 4 HKC 213

○ Duress to goods

Dimskal Shipping Co SA v International Transport Workers' Federation (The Evia Luck) [1992] 2 AC 152

○ Economic duress

**Pakistan International Airline Corp v Times Travel (UK) Ltd* (above)

North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (The Atlantic Baron) [1979] QB 705

Progress Bulk Carriers Ltd v Tube City IMS LLC [2012] EWHC 273 (Comm)

Pao On v Lau Yiu Long [1980] AC 614; [1979] HKLR 225

Fine Vision Opportunity III Ltd v Xinyuan Real Estate Co Ltd [2024] 5 HKLRD 300

◆ Undue influence

○ Categories of undue influence

- Actual undue influence
- Presumed undue influence

**Allcard v Skinner* (1887) 36 Ch D 145

**Royal Bank of Scotland plc v Etridge (No 2)* [2002] 2 AC 773

Li Sau Ying v Bank of China (Hong Kong) Ltd (2004) 7 HKCFAR 579

Nature Resorts Ltd v First Citizens Bank Ltd [2022] UKPC 10, [2022] 1 WLR 2788

○ Third parties exercising undue influence

Royal Bank of Scotland plc v Etridge (No 2) (above)

Li Sau Ying v Bank of China (Hong Kong) Ltd (above)

Nature Resorts Ltd v First Citizens Bank Ltd (above)

○ Basis of doctrine

R v Attorney-General for England and Wales [2003] UKPC 22

National Commercial Bank (Jamaica) Ltd v Hew [2003] UKPC 51

Pesticcio v Huet [2004] EWCA Civ 372

Commonwealth Bank of Australia Ltd v Amadio (1983) 151 CLR 447

◆ Unconscionability

○ General

**Boustany v Pigott* (1995) 69 P & CR 298

**Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447

**Lo Wo v Cheung Chan Ka Joseph* [2001] 3 HKC 70

○ Statute

*Unconscionable Contracts Ordinance (Cap 458)

**Chang Pui Yin v Bank of Singapore Ltd* [2017] 4 HKLRD 458

TERMINATION

*Ewan McKendrick, *Contract Law: Text Cases and Materials* (10th edn, Oxford University Press 2022) Ch 22

◆ Breach of contract

◆ Whether exists right to terminate for breach: conditions, warranties and intermediate terms

Bettini v Gye (1876) 1 QBD 183
 **L Schuler AG v Wickman Machine Tool Sales Ltd* [1974] AC 235
 **Lombard North Central plc v Butterworth* [1987] QB 527
Union Eagle Ltd v Golden Achievement Ltd [1997] AC 514; [1997] 1 HKC 173
 **Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26
Grand China Logistics Holdings (Group) Co Ltd v Spar Shipping AS [2016] 2 Lloyd's Rep 447
Bunge Corporation New York v Tradax Export SA [1981] 1 WLR 711

◆ Express termination clauses

**Rice t/a Garden Guardian v Great Yarmouth Borough Council* [2003] TCLR 1

◆ Election to terminate or affirm contract

Cheung Ching Ping Stephen v Allcom Ltd [2010] 2 HKLRD 324

◆ Termination where anticipatory breach or repudiation

Hochster v De La Tour (1853) 2 E & B 678; 118 ER 922
Creaitles Building Materials Ltd v To's Universe Construction Co Ltd [2003] 2 HKLRD 309
Kensland Realty Ltd v Whale View Investment Ltd (2001) 4 HKCFAR 381
Chao Keh Lung v Don Xia [2004] 2 HKLRD 11
 **White and Carter (Councils) Ltd v McGregor* [1962] AC 413

REMEDIES

*Ewan McKendrick, *Contract Law: Text Cases and Materials* (10th edn, Oxford University Press 2022) Chs 23, 24

◆ Damages

- General
- Performance/expectation interest – expectation damages

**Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344
Alfred McAlpine Construction Ltd v Panatown Ltd [2001] 1 AC 518
Howe v Teefy (1927) 27 SR(NSW) 301

- Reliance interest – reliance damages

McRae v Commonwealth Disposals Commission (1951) 84 CLR 377
 **Anglia Television Ltd v Reed* [1972] 1 QB 60
 **C & P Haulage v Middleton* [1983] 1 WLR 1461

- Restitution interest – restitution damages
- Non-pecuniary losses

**Farley v Skinner* [2002] 2 AC 732

- Date for assessment of damages
- Causation
- Remoteness of loss

**Hadley v Baxendale* (1854) 9 Exch 341

**Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528

**Koufos v C Czarnikow Ltd (The Heron II)* [1969] 1 AC 350

**Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd* [1978] QB 791

**Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2009] 1 AC 61

Richly Bright International Ltd v De Monsa Investments Ltd (2015) 18 HKCFAR 232

- Mitigation

◆ Recovery of sums fixed by the contract

- Agreed damages clauses

Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd [1915] AC 79

Philips Hong Kong Ltd v Attorney-General of Hong Kong [1993] 1 HKLR 269

**Cavendish Square Holding BV v Makdeshi* [2016] AC 1172

Law Ting Pong Secondary School v Chen Wai Wah [2021] 3 HKLRD 185

- Deposits and part payments

**Workers Trust and Merchant Bank Ltd v Dojap Investments Ltd* [1993] AC 573

Polyset Ltd v Panhandat Ltd (2002) 5 HKCFAR 234

◆ Specific performance and injunctions

Beswick v Beswick [1968] AC 58

**Co-Operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1

Lumley v Wagner (1842) De GM & G 604