

Chapters 15 and 16: Incorporating

Act of incorporating

- creates a new legal entity called a corporation
- same rights and obligations under Canadian law as a person

Pre-Incorporation Issues

- Incorporate federally or provincially
- What type of shares available to whom
- name of corporation

Limited liability

- limits liability of a corporations shareholders
- franchises make you override (annex obligation to personally recognize fees of an obligation what they make you sign takes away everything)
 - tims can send someone in to run the store of they feel you suck – and you have to pay bill

benefit - lower corporate tax rates

chip trucks in Rideau – 300-400 thousand a year in profit

stand at morisset tim hortons– ¾ million each year

coca-cola agreement with uottawa, write check for 100 thousand and get rest

greater access to capital

- easier for incorp. to ^ money than it is for other forms of business because they can issue bonds or share certificates to investors

family always sells you out – revoking citizenship , don't go looking for people, they get ratted out

articles of incorporation form 1

- name (corporate name(distinctive and proper in other places)
- provincial or federal incorporation
- classes and max shares

- to change this you need 2/3 voting rights

province or territory – cannot use postal box as an address in Canada

Winnipeg – geographical capital of Canada

classes of shares – right to vote, right to dividends, right to remaining of property on dissolution

right to vote – given up in preferred shares but given compensation instead

restrictions on shares – to make sure shares don't go to other people when you die and so on

no voting rights – you are no one, like no goalie in hockey

Vikings – 2 brothers fighting to become earls?

Mad men – someone suspended

Other provisions - expansion geographically or into another niche , limitations

Sign and declare

name of corporation

- has to have limited or corporation (include a legal element)
- nuans – reserve a name for 90 days, protects your reservation of name - negotiations can be long
 - NUANS report – document that shows the result of a search for business names
- distinctive
- no confusion with other names or trademarks
- no unacceptable terms

3 classes of shares

- 3 classes combined have to include these 3 rights:
 - right to vote for the election of directors
 - right to receive dividends
 - right to receive the proceeds of the corporation on dissolution, after creditors are paid
- company decides the structure

share redemption

- redeem share at a given price, the corporation can buy you out
- once it is done you cannot change it
- if there are 3 people other 2 could buy out third

restrictions on shares

- other people entering and taking over shares
- can put in no shares can be transferred, when someone dies you will buy back shares
- right of first refusal
 - shareholder wishing to sell must first offer her shares to the directors/shareholders at the same price she has negotiated with the outsider

widely held corporation

- issue shares to the general public on a stock exchange.

securities legislation

- laws regulating transactions involving shares and bonds of a corporation

Closely held corporation

- does not issue its shares to the general
 - exempt from most of the obligations of securities regulation so long as they meet the definition of a private corporation:
 - restriction on the transfer of shares
 - limit on the number of shareholders in the corporation to no more than 50
 - prohibition on any invitation to the public to subscribe for the corporation's shares

borrowing power

cumulative votes

Organizing the corporation

- Bylaws
- Share certificates and corporate records
- Authorize issue of shares and securities
- Appoint officers

- Appoint auditory
- Make banking arrangements
- Transact any other business

fractional shares

- specify voting rights on fractional shares

pre-emptive rights

- when new shares are offered you are the first on that gets offered over anyone else, give you the right to purchase shares so you never lose your percentage in the company

By-laws

- purpose? Internal functioning of the business , takes 50% voting rights
 - directors: calling or and notice of meeting, votes
 - where will you hold shareholders meetings – location and quorum – where will the AGM be in Ottawa or Bermuda?
 - indemnification or directors and officers
 - indemnity of others
 - right of indemnity not exclusive
 - banking arrangements
 - execution of instruments
 - invalidity of any provisions of this by-law
 - omissions and errors
- cover your ass if you screw up in other by laws
- interpretation

articles of incorporation and by-laws go together

How to finance a business?

- finance it by selling shares

ethical question – u are married and in love you believe you are invincible will you give a wife 50% of the voting rights?

- Bonds – document evidencing a debt is owed by the corporation but there is a security (lean on a house)
- Debentures – debt is owed, no securities (promissory note – I promise to pay uottawa 100000 when I graduate)
- Personal financing (take a loan)
- Securities – shares and bonds issued by a corporation

Directors liability

- corporations and directors have criminal and civil liabilities
- criminal involves a public sanction and a public sanction involves a criminal record, corporations and directors can commit criminal offence
- not criminal – it is civil sanction
- identification theory
 - a corporation is liable when the person committing the wrong is the corporations directing mind

criminal – criminal prosecution (mike duffey)

2 types of prosecutions

1. Inditable offence

- criminal prosecution where the intention is there
 - Mensrea – intention to commit the offence (fraud, insider trading)

2. Regulatory offence

- regulations where if you don't meet requirements you have committed the crime unless you have a reasonable defense
- have a criminal aspect because they involve some kind of punishable conduct contrary to public interest
 - (ex. placebo pills in place of contraceptive pills in birth control, do not designate size of condoms, could transfer liquid, process that fits the average size because of people's reactions, condoms just have to be filled with water and dropped 3 feet and not burst)

civil liabilities of directors and officers

- work in best interest of corporation (fiduciary duties) company is the first one served
 - not in conflict of interest
 - respecting corporate opportunity – not taking advantage of an opportunity before the business
- self-dealing contract
 - contract where a fiduciary duty has a conflict of interest
 - ex. selling your own furniture to a company where you are the buyer (want to sell at highest price but buy for company at lowest price)
 - permissible when contract is disclosed to corporation in writing, you don't participate in the vote or directors approving contract, contract is fair and reasonable
- corporate opportunity
 - business opportunity in which the corporation has an interest
 - choose to pursue or decline
- duty of competency – duty as directors to be able to fulfill the tasks required, must meet a general standard of competence
- liable in torts when we commit wrong-doings(either company or myself harm someone's vested interest)
- liability in contract
- liability by statute – penalties for failing to comply (fines, imprisonment)
- direct reprimand? principle – if I am director and make wrong decisions I am liable
- indemnification – corporation paying the litigation expenses of officers and directors for lawsuits related to corporate affairs

statutory obligations

– law requires this

- pay the wages of employees
- when filing for bankruptcy make sure all of statutory obligations are fulfilled, keep enough money to pay all people last paycheck and severance pay
- no insider trading – information that allows you to make choices (information about future of business)

- breaching health and safety standards – ex. allowing employees to have open shoes except in certain areas
- have to maintain appropriate standards for transportation of dangerous good (ex. remembrance day gun salute blank guns and artillery weapons if they screw up it is a criminal charge – Jag lawyer applies disciplinary code-
- misrepresentation in the prospectives – financing a project and missing key elements
- antique competitive behaviour – using power to dominate system or playing on the value of good and the prices (ex. cant beat mcdonalds prices
- to release toxic substance (train accident leaves vapours can destroy people lives with permanent damage
- showcasing a profit , shares increase, dividends,

Shareholder liability

- Lifting the corporate veil – the corporation is not separate legal entity from its shareholders

Shareholder rights

Preferred share – preference in the distribution of dividends and the proceeds on dissolution

Common share – right to vote, share in dividends, share in proceeds on dissolution

- Right to vote
 - Shareholder general meeting each year
 - Notice of meeting
 - Attend the meeting
 - Ask questions
 - Introduce motions
 - Proxy – person authorized to exercise a shareholder’s voting rights
- Right to information
 - Annual financial statement
 - Apply to court to have inspector appointed to look into affairs of the corporation

Shareholder remedies

- Selling the shares – simplest and least costly
- Exercising dissent and appraisal rights – dissent from certain fundamental changes to the corporation to have their shares purchased by the corporation at a fair price
- derivative action – suit by a shareholder on behalf of the corporation to enforce a corporate cause of action
- oppression remedy – statutory remedy available to shareholders and stakeholders to protect their corporate interests
- Shareholders agreement – relationship among ppl who have an ownership interest in a corporation

Financing

- understand there is a lot of private money out there , what are conditions and interest rates they will charge you
- selling shares
- issuing bonds (blackberry announced today), put in securities (patents as security benchmarks
- debentures – financing without having to put any securities
- personal loan – take a loan to finance business

elements to tell u if u succeed in business

- making profits
- business runs by itself
- no personal legal obligations

Creditor Protection

- Responsible for its own liabilities including debt so shareholders may be tempted to strip away all assets in an attempt to defeat creditors
- This is illegal

Termination of the Corporation

- Winding up – process of dissolving a corporation
- Lengthy so people usually just let company lapse and don't file the annual report
- Court has authority to terminate when a shareholder has been wrongfully treated and this is the only way to do justice
- Bankruptcy

Chapter 5, 6, 7, 8, 9 - contracts

Chapter 5

Contract

- an agreement between two parties that is enforceable in a court of law

key issues with contracts:

- must be an enforceable agreement between two or more parties and subject to mutual consideration
 - ex. contract for craig Anderson? Whoever that is.. neck may be bruised? How do you know when he is fit to play

Must be:

- Complete
- Deliberate
- Voluntary
- 2 or more competent ppl
- mutual consideration
- not always in writing

legal factors affecting creation of a contract

1. communication – expressed expectations about the terms
2. objective standard test - refers to “what would a reasonable person do(act or say) in a given circumstances”
3. bargaining power – in business you need equal bargaining power
 - equal bargaining power – legal assumption that parties to a contract are able to look out for their own interests
 - if you have a weaker one because of your issues that is your issue
 - sens gave out big macs since they got a goal in the last period , no limit on big macs that you can get you so he collected tickets, free coffee at mcdonalds no limit on how many coffees you can get , how can you compete against this? Cant part of the business, have to take these losses
4. the business relationship – how do we build the relationship between the parties
 - step by step how things were done

- information, ppl to tell us, contracts, negotiation
5. economic reality
- interest rates, different measures
 - bank of Canada will not increase interest rates in the next year, unsure of growth
6. reputation management processes – how we actually execute and make the decisions

Chapter 6

element contract

- has to be an offer – promise to perform a specific act on given terms
- element of certainty, timing must be certain (buying a car now)
- standard form contract – no negotiation, all or nothing approach
- if not made aware of clauses they cannot be enforced
- ticket sales approach – buy tickets from leafs and they tell you they gave tickets to someone else and they will reimburse you – they cannot do this unless you sign for that, have to have same or better location in the same game, except on the internet – you click yes to many things they do not make you read over the counter

offer and acceptance

- considerations – price we are willing to pay for the promise
- promise we pay for is part of our mutual consideration
- there will be a time where we do a unilateral contract – invoke we are making a promise without receiving mutual consideration
 - ex. when we graduate we give 1 week of salary to uottawa because we want to – gratuitous promise means we expect to do a promise with no consideration (the university can force me to pay even if I back out – only if they have “committed on my promise”) – ex. if I want to paint the room pink and say I will pay and then they never do it I can say ok nevermind I’m not paying
- offer – promise to perform specified acts on certain terms

Invitation to treat – expression of willingness to do business

Standard Form Contract – “take it or leave it”, customer agrees to a standard set of terms that favours the other side

Termination of Offer

- Revocation – withdraw offer by notifying offeree
 - Option agreement – in exchange for payment, offeror is obligated to keep an offer open for a specified time
- Lapse – expiration of an offer after a specified or reasonable period
- Rejection – refusal to accept offer by offeree
- Counteroffer – rejection of one offer and proposal of a new one, offeree turns it down and proposes new agreement
- death/insanity

Formalization – written and signed to be enforceable in court

Gratuitous promise – promise where no consideration is given

Promises enforceable without consideration

- Promise under seal – old school, hot wax beside the signature on a document with imprint in wax, not red gummed circle or wafer attached, says promise is enforceable
- Promissory estoppel – doctrine whereby someone who relied on a gratuitous promise may be able to enforce it
- Partial payment of a debt – once lesser amount settled and agreed, cannot go back and sue for the rest

Intention to Contract

- Business agreements- in marketplace, intention is presumed, rebuttable
- Family agreements – promises between them non-contractual, must demonstrate an intention to contract

Managing the risks of Contract Formation

- Misunderstanding when statements and conducts have legal consequence
- Failing to anticipate and plan for contingencies that may occur
- Customize contractual terms

kovalev and gomez? Bought out contracts because they were so bad at hockey and just needed them gone

payment of a debt

- if I request you pay your debt early and I reduce your amount I get nothing in return in term of consideration, the contract is not enforceable because there is no exchange of promises for a reduction
 - ex. agreed to pay \$1000 on Monday but he wants the money Friday will take \$800

general limitation period – usually 2 years

Chapter 7

terms of the contract

1. express terms

- the actual provisions that explicitly defines the promise
 - ex I will buy tickets to see Aerosmith tonight
- if terms are vague or ambiguous the courts will tell us that we have to look at a reasonable meaning and from that we want to make sure that the parties who drafted the ambiguous provisions while the language of the agreement will be extrude against them in favour of the other party

2. implied terms

- guiding principles to interpretate an agreement
- guiding principles to look at the intention of the parties, this will define what you are looking at
- implied terms – provision that is not specifically included in the contract but is necessary to give effect
- business efficacy – judge is entitled to imply terms necessary to make the contract workable
 - ex employment contract wont tell you step by step how to do job

- dealing with customer trades
- previous dealings between the parties – if we have them they will be our guiding force, we will apply that
- statutory requirements – if law provides for it we do not have to have the agreement to have all the details
-
- customs in the trade of the transaction – relying on trade customs to imply a term is rarely successful, custom is so notorious that contract must be presumed to have the implied term

specific contract laws we need to understand

1. entire contract laws – term in a contract that specifies that the contract is complete the way it is drafted
 - means that if it isn't in writing in the agreement, it isn't something we can discuss, put everything in the agreement
2. parole evidence rule – we cannot introduce new terms in a contract that were not previously negotiated
 - limit the party regarding the content of a contract
 - can change certain material and minor element (typing mistake or comma) but cannot change the essence(adding something not provided for)
3. contractual quantum meruit – reasonable sum that we will pay for goods and services on a given contract
 - pay for specific amount when terms are not spelled out, what is reasonable to expect?
 - Ex plumber cannot charge \$3000 but could charge you \$300

Conditional elements

1. Conditions of sequence - when an event occurs and will bring an obligation to complete it before the contract continues
 - a. Event that when it occurs, brings the existing contract to an end
 - Ex. getting financing to purchase a property
2. Condition Precedent – event that until it occurs, suspends obligations to perform contractual obligations
Situation where it is the reverse – condition has been breached

Limitation to liability clause

- Term of contract that limits liability for breach to something than would otherwise be recoverable

Exemption Clause

- Term of a contract that identifies events causing loss for which there is no liability

Liquidated damages clause

- Specifies how much one party must pay to the other in the event of a breach

Chapter 8

Notion of legal capacity

- capacity to bind oneself in order to have an enforceable contract
 - idea is to be bound by the signature we provide
 - ex. an individual has the authority to sign an agreement and be obliged by it
- minor
 - when a minor signs agreements, he is bound to pay if it is for necessities of life, if it is not a necessity of life the minor must claim hardship in the payments, and there will be rescission - (we will return the parties to their original position as if the event never occurred)
 - age of majority – person becomes an adult for legal purposes
- you cannot discriminate anyone over 16 to rent a property

Mental incapacity

- do not have the mental capacity to understand the consequences of your actions
 - do not understand outcome of what you are doing wrong
 - robberies in south keys, in escaping he steals a car then breaks into a house, happens so fast and he is just trying to

escape so he doesn't think about the consequences at that time

- Karla homolka - picture, abused by paul bernardo served 12 years, made a plea to get testimonial evidence on bernardo to get him in for life, videos in vents found later, karla was the one who drugged choked and had sex on her sister before killing her, should have been charged with 1st but the crown made a decision on good faith and it cannot be reversed, in Dominican now with 2 kids paid income housing and food under name Tremblay
- can allow you not to be committed

Duress

- economic threat or violent threat(action) that coerces the will of the other party and results in a contract
 - ex. grandma in the nursing home – many people don't get visits, on Christmas Eve many people want to see grandchildren, need to sign cheque to see grandchildren(parents wont send kids without money), he is asked to cosign every year , signs because he feels bad
- can be emotional and physical

undue influence

- unfair manipulation that takes away your free will
 - actual pressure - "do not do this because I am a police authority" an authority says no, I am obliged to do it
 - presumed pressure – could be relationships, or influence because of being under authority
 - ex. when women give birth, the sign to be admitted and with that they give away their placenta (for research, to be sold, or to be destroyed), used in shampoo
 - when you show up an hour before delivery in pain
 - they take it for their own purposed
 - can be used in food to being hormone levels back to normal

Unconscionable contract

- inequality between the parties or there is proof of exploitation
- unfair contract formed when one party takes advantage of the weakness of another
 - taking advantage because you don't know how it works
 - exploitation – university students and employment – hired to get professional training, legislation doesn't cover any form of job training program(not required to give minimum wage), people need the experience

misrepresentation

- a false statements that causes someone to enter into a contract
- false statement – an element that you know is untrue, is extremely ambiguous that is significant that if known you would not enter into a contract
 - right to do things they couldn't otherwise
 - ex. with a partner they have voting rights and you don't but they didn't tell you that
 - ex. I can paint the room in an hour perfectly, with a paint gun, when using a roller the paint sinks in, when it is with the gun it is only on top, nd it gets on your hand, you
- Rescission – remedy that results in the parties being returned to their pre-contractual positions
- Ingredients:
 - False, clear and unambiguous, material to the contract, induces aggrieved party to enter contract, concerned with fact

Categories of misrepresentation

- Fraudulent, negligent, innocent

fraudulent

- I know it is reckless or actually wrong
 - ex. I will sell you tickets for Justin Beiber, not telling you he will only sing a couple song

negligent

- careless in how I say something

- ex. exam will probably be postponed

innocent

- not aware of statement so consequently not liable

mistakes made because of a **fundamental flaw**

- ex. think you are leading and you are buying vice versa

Illegal contract

- contract that cannot be enforced because it is contrary to legislation or public policy (against the law)
 - ex. trying to sell your kid

1. Illegal by statute

- a. By legislation, criminal code, competition act, real estate and brokers act

2. Contrary to public policy

- a. Community's common sense and common conscience

Writing as a requirement

- Contract of guarantee
 - Promise to pay the debt of someone else, should that person default on the obligation
- Contract not to be performed within a year
- Contracts dealing with land
 - Leases and sales
- Contracts for the sale of goods
 - Specified amount must be written

Managing the risks of unenforceability, consider:

- Are the parties to the contract under any legal incapacities?
- Has one party taken unfair advantage of the other?
- Has one party misled the other?
- Has a substantial mistake been made?
- Is the contract contrary to legislation or in violation of public policy?
- Is the contract required to be in writing?

agreement of performance by the

- agreement of the parties
- assignment – transfer of contractual rights by an assignor to an assignee
- frustration – termination by an unexpected event or change that makes performance functionally impossible or illegal
 - we cannot do it and accomplish it
 - ex. in Philippines only outsiders are helping they are not helping themselves enough
- breach of contract – people breach clauses in order to get things done
 - ex. violated non competition clause, cannot solicit another business, conditions in the execution of the contract (cant say you cannot work in all of Canada, has to be reasonable, if it is vague it is inadmissible)

Termination through performance

- Performance of others
 - Vicarious performance – performance of contractual obligations through others

Termination by agreement between parties

- Whole new contract
 - Novation – substitution of parties in a contract or the replacement of one contract with another
- Vary certain terms of the contract
- End the contract – both parties agree
- Substitute a party – transferred rights and obligations to someone else

Enforcement of Contracts

- One party fails to perform its contractual obligations, it is in breach of contract and subject to a lawsuit
- To succeed the plaintiff must demonstrate the balance of probabilities – proof 50% chance that the circumstances of the contract are as the plaintiff contends:

- Privity of contract – plaintiff has to establish there is a contract
- Breach of contract
 - Condition – important term, if breached, gives the innocent party the right to terminate the contract and claim damages
 - Warranty – minor term that, if breached, gives the innocent party the right to claim damages only
 - Innominate term – cannot easily be classified as either a condition or a warranty
- Entitlement to a remedy

Fundamental Breach

- breach of contract that affects the foundation of the contract

Anticipatory breach

- Breach that occurs before the date for performance

Entitlement to a remedy

Damages

- monetary compensation for breach of contract or other actionable wrong
- Expectation damaged
 - damaged which provide the plaintiff with the monetary equivalent of contractual performance
- Punitive damages
 - award to the plaintiff to punish the defendant for malicious oppressive and high-handed conduct

Test for remoteness

- Damages made are recoverable provided:
 - Damages could have been anticipated
 - Reasonably foreseeable damages

Recovery of pecuniary (monetary) damages

- Can get them back unless a clause is included that limits, excludes, or fixes liability at a set amount

Duty to mitigate

- Obligation to take reasonable steps to minimize the losses resulting from a breach of contract or other wrong

Equitable remedies

- Specific performance – court makes person who breached contract do exactly what the contract said they were to
- Injunction – disregarding promises in contract by engaging in prohibited acts, court order requiring offender to refrain from committing the act again, award of damages
 - Interlocutory injunction – order to refrain from doing something for a limited period of time
- Rescission – restore parties to situation before contract was made
- Restitutionary remedies – plaintiff cannot prove enforceable contract was in place
 - Unjust enrichment – one party has undeservedly or unjustly secured a benefit at the other party's expense
 - Restitutionary quantum meruit – amount that is reasonable given the benefit the plaintiff has conferred



Personal Property

- usually any form of chattel that is not land
- all property, other than land, and what is attached to it

tangible property

- where there is value associated to a physical element
 - (paper or pen, cellphone)

intangible

- no physical form but there are legal rights associated to it
 - moral rights – how far can I actually do a cartoon of Mayor Ford
 - copyrights - decide to write poems don't want to publish yet how do you secure copyrights, in prison people cannot write about their crimes and make money, should we prevent people in prison from getting glorified letters, double register it - seal a letter with your original in it hand written and then put it in another envelope and send that then keep it sealed to ever use before a judge

Ownership

- Purchase/lease
- Manufacturing
- Insurance coverage
- Accounts receivables
- copyrights
 -

Possession

- you have the right to use the goods that are in your hands
- when you have this right, it is given to you to use it temporarily until ownership is clarified

obligations of possession:

- take reasonable care of the good
 - (ex. smoking in classrooms and non smokers have to deal with it, kill butts on floor, table or chair there were no ash

trays, when they were removed it was a revolution, key thing for university was to preserve assets and cut on janitors not to preserve health)

- requirement to secure the good, make sure it isn't stolen or used by another source
 - (ex. going into a drill hall with army trucks, a lot of vehicles have no keys to start them because if people lose keys in battle they need to start, if guys don't lock doors at night, someone could steal the equipment, military justice in Edmonton is last prison you want to go – will be mentally broken)
- make sure that we also have appropriate insurance or coverage when the good are damages
 - (ex. customers are using it improperly, using a chainsaw cutting a tree and killing the neighbours tree at the same time)

ownership

- you have the legal title to the goods or rights
- you can do whatever you want with it – dispose it or secure it, gives you title to do things you cannot with possession
 - ex. when is the ownership effectively transferred, pronger stealing the game puck to annoy other team, technically puck is owned by sponsor team

rights of ownership/possession

- selling property and transferring ownership and possession to buyer
- leasing with intent of regaining possession when lease expires
- using the property as security for a loan
- transferring possession of chattel to other business for storage, repair, transport

bailment

- temporary transfer of possession of personal property
 - ex. renting a car, personal issues regarding transportation of vehicle from one hand to another
- many different ways or transferring

- (ex. storage goods are claimed when people pass away, don't pay, or forget)

2 types of bailment

bailment in value

- there is a payment for the usage of the asset
 - (ex. renting a tool at home depot, pay to use)
- money involved, higher standard of commitment

bailment that is gratuitous

- there is no fees for what you are getting
- (ex. library book, benefit for those who have the bailment in order)

obligations for a bailment :

- secure and reasonable usage
 - (ex. access to a PC, you cannot just throw it on the ground and leave it)
- liability when you carry the goods
 - (in transportation of the good, you are responsible for it, ex. when you bring your luggage to airport you are responsible for everything in it, always put locks on it they are required to tell you why they cut them)
- respect regulations pertaining to bailment
 - (ex. carrying dangerous goods, transportation of goods)
- remedies – need to correct for damages
 - (ex. breach of standard of care , cannot do anything that intervenes, ex. cannot use a tool outside working hours)
- dealing with concept of bailment as a whole – always have to secure against wrong doings
 - (ex. someone cannot use the keys to steal a car and rob a bank, cannot leave the keys lying around)

chattle lease

- lessee pays for the use of a lessor's tangible personal property
- ex. leasing to use the soccer field

Conditions of a chattle lease:

- respect the operation requirements – respect obligations that come with it
 - ex. timing, fees, handling of vehicles, insurance, cannot change price of alcohol more than once a day (cannot have happy hour)
- financing - respect financial requirements, pay in due time
 - ex. don't pay fees at uottawa you cannot get your diploma
- storage – keep the goods as a skilled store keeper, obligation to take necessary precautions so the goods are not used in the wrong way
 - ex. when parking car – bailment when you give the keys to the employee
- repairs – required to make any necessary repairs
 - creates a lien so the it must be paid
- transportation – always required to work inside the transportation rules – as a carrier you pay for all the services
 - ex. quality of the trailer with airride so the trailer doesn't jump anywhere and break (ex. with beer)
- storage, repairs, transportation

Operating lease

- The property is returned to the lessor when the term is up

Financing lease

- Enables the lessee to finance the acquisition of tangible personal property

Chapter 19:

Real Property

- Land or real estate and the associated legal rights

Fixtures

- Personal property that is attached to land, buildings, or other fixtures

Types of ownership:

Fee Simple

- Legal interest in real property that is closest to full ownership

Tenancy in common

- Co-ownership whereby each owner of an undivided interest can dispose of that interest

Joint tenancy

- Co-ownership whereby the survivor inherits the undivided interest of the deceased

Limits on Ownership:

Easements

- Right to use the land for a particular use only

Restrictive covenant

- Restriction on use of land as specified in the title document

Registration of ownership

Registry system

- System of land registration whereby the records are available to be examined and evaluated by interested parties

Paralegal

- One who performs legal work under the supervision of a practicing lawyer

Land Titles System

- System of land registration whereby the administration guarantee the title to land

Acquisition of Ownership

- Purchasing transaction
- Participants in a transaction (buyer and seller, 2 corporations, professionals)
- Stages in a transaction – agreement of purchase and sale, investigation, title to the property, legal claims against the seller, verification of boundaries, physical examination, environmental audit, taxes, local bylaws, the closing

Mortgage

- Credit arrangement where title to land is security for the loan
 - Equity of redemption
 - Right to regain legal title to mortgaged land upon repayment of debt

Terms:

- amount of the loan (known as the principal)
- interest rate
- date of renegotiation of the interest rate
- period of repayment over which the loan is amortized
- schedule of payments
- provision for payment of property taxes
- provision for full insurance coverage on the property, with the proceeds to be paid directly to the lender
- borrower's obligation to keep the property in a good state of repair and refrain from any activity that would decrease its value
- complete legal description of the land
- provision for early repayment (possible penalty)
- acceleration clause, which provides that on default of payment by the borrower, the whole amount of the loan becomes due
- remedies of the lender on default
- discharge of the mortgage at the end of the term when the full loan is repaid

Life of a mortgage:

- Can pay off mortgage before it is due
- Renegotiate for further financing
- Assign outstanding mortgages to another financial entity
- Sells all the land (transfer mortgage or pay it off)

Remedies when someone cannot pay a mortgage:

- Foreclosure
 - Mortgagee's remedy to terminate mortgagors interest in the land
- Deficiency
 - Shortfall between the outstanding mortgage balance and the proceeds from the sale of the land

The Real Estate Lease

- Transfer possession of land in return for payment of rent

Exclusive possession

- Tenants right to control land during the term of a lease

Terms of the lease:

- identification of the parties
- description of the premises

- permitted alteration of the space by the tenant and what happens to the alteration when the lease ends
- ownership of improvements to the space
- calculation of rent
- responsibility for repairs and maintenance to the leased space a
- security and damage deposits
- permitted uses of the space by the tenant
- tenant's hours of operation
- limits on the landlord's ability to lease other space to the tenant's competitors
- time period of the lease
- provisions for assignment and subletting
- remedies for either party if the other fails to comply with the lease
- what happens in case of events such as fire or flood
- protection of the landlord in the event of the tenant's bankruptcy
- dispute resolution process

Rights and obligations:

- responsible for repairs unless the lease imposes some obligation on the landlord.
- entitled to exclusive and quiet possession of the premises for the full term. In return, the tenant must pay rent and observe the terms of the lease.
- cannot withhold rent, even if the landlord fails to meet a requirement in the lease
- cannot terminate the lease and move out unless the landlord's breach of the lease has made the premises uninhabitable
- assign the lease or sublet the property to another tenant.
 - Assigning the lease transfers full rights (and the related obligations) for the remainder of the term.
 - A sublease is where the tenant permits someone else to occupy the leased premises for part of the time remaining in the lease. The original tenant remains fully liable under the lease but has rights against the subtenant—should the subtenant fail to pay the sub-rent, for example.

Distress

- Right of a commercial landlord to seize the tenants personal property for non-payment of rent

Termination

- Exact
- Periodic tenancy
 - Automatically renewed unless one party gives proper notice to terminate

Disposition of Property

- Security for a loan
- Lease
- Transfer land
- Sell all or part

no correct answer,

- take the concepts and apply them correctly, use the legal processes
- cases we covered in the chapters it will be exactly related to the readings

follow a process

- read the case
- facts
 - recopy what is in the case, do not go outside of it, stick to what is in front of you don't reinvent it
 - 5-7 facts or points break it down one line one fact
- legal issues – normally two
- ask yourself 2 questions, Johnny is drunk, tries to open car with keys, gets charged with drinking and driving,
 - has John been in violation of drinking and driving
 - was John in control of the vehicle when he was trying to open the door?
- Legal principles
 - What does this case tell you about them, what are they?
- Definitions of concepts
- Principles associated to case,
 - 4 or 5 principles needed
- judgement
 - answer questions by using facts and principles stick to facts inform
 - rewrite facts and principles to come up with a conclusion
 - restate facts and create a conclusion
 - don't go outside the box or speculate
 - make a call
 - questions and legal principles guide to judgement

if you see a question

- first think definition and quote it
- then give the points

- then go into class examples
- then apply class example to the concept

can go it point form do not make it an essay

unless it is the judgment

the rest can be done – point one – sjdfsjd , point 2- jsfh

if you have time write it

Tort

- any harm or injury caused by one person to another—other than through breach of contract—and for which the law provides a remedy

Categories of torts:

1. Trespass to land - involves wrongful interference with someone's possession of land

- ex. parking garage operators might use this when drivers leave cars but fail to purchase a ticket

2. Deceit or fraud - this tort is based on a false representation intentionally or recklessly made by one person to another that causes damage.

- Ex. a customer purchases a vehicle based on the vendor's intentional representation that the vehicle has a new engine when, in fact, it does not

3. Negligence - The tort compensates someone who has suffered loss or injury due to the unreasonable conduct of another. It is one of the most common torts to arise in a business context.

- For example, when a taxi driver is injured due to an unsafe lane change by another driver, he is the victim of the tort of negligence. The driver causing the injury is responsible for the tort of negligence because she has made the unsafe lane change and failed to show the care and attention that the circumstances required.
- Ex. lawyers give professional advice that causes loss (professional negligence)
- Ex. consumer purchases a defective product that was improperly designed/produced
- Ex. bar over-serves

Tortfeasor

- person who commits a tort

- tort law has evolving rules to determine if responsibility should be shifted from the victim to the one considered responsible for the loss

impose liability based on fault

- ex. driver falls asleep and crashes, he is liable
- ex. driver has a heart attack and crashes, no tort has been committed by the driver
- liabilities varies by province

How torts are categorized

- International tort – a harmful act that is committed on purpose
 - Assault – the threat of imminent physical harm, no actual physical contact
 - Battery – the intentional infliction of harmful or offensive physical contact
- torts committed through negligence
 - liable even though it was not intentional

Tort Law and Criminal Law

- Same event can have 2 legal consequences: one in tort, one in criminal law
- Important differences between tort claims and criminal prosecutions

1. Purposes of the actions

- criminal prosecution – to censure behaviour, secure punishment of a fine or imprisonment
- tort law – objective to compensate the victim for harm suffered due to another's actions, private right to extract compensation

2. Commencing the Actions

- criminal law – called a prosecution, rarely do injured bring the prosecution
- tort law – injured party brings the legal action

3. Proving the Actions

- criminal – prove force was applied, it was intentional, actions were so serious to “wound, maim, disfigure, endanger”, crown has the burden of proof

- tort – injured must prove the accused is responsible

Liability in a tort

1. Primary liability - arises due to one's own personal wrongdoing.
2. Vicarious liability – the liability that an employer has for the tortious acts of an employee committed in the ordinary course or scope of employment
 - within the ordinary scope if authorized by the employer, in an unauthorized mode of doing something that is authorized
 - doctrine of vicarious liability has been justified on the following basis:
 - employers have the ability to control employees and therefore should be liable for the employee's conduct
 - the person who benefits from a business enterprise (the employer) should bear the associated costs
 - innocent plaintiffs have a better chance of being compensated
 - the employer should be given an incentive to try to prevent torts from occurring in the first place

Liability and joint tort-feasors

- Joint tort-feasors – two or more persons whom a court has held to be jointly responsible for the plaintiff's loss or injuries

Liability and Contributory negligence

- contributory negligence - defendant successfully argues that the plaintiff was responsible for at least a part of the loss
- ex car accidents – if the plaintiff was not wearing a seatbelt the defendant could establish the injuries were worse than they would have been

Damages in Tort

1. Purpose of damages
 - compensated for physical injury and loss from mental pain and suffering or emotional distress
2. Pecuniary(monetary) and non-pecuniary damages

- non-pecuniary - sometimes called general damages—are damages that are awarded to compensate the plaintiff for pain and suffering, loss of enjoyment of life, or loss of life expectancy
- pecuniary - cost of future care(\$ to provide all care and assistance injury will necessitate), loss of future income (diminishing earning capacity resulting from injury), special damages (out-of-pocket expenses resulting from injury-causing event)

3. Punitive Damages (exemplary damages)

- are awarded to punish the defendant for malicious, oppressive, and high-handed conduct or where the defendant might otherwise profit from the behaviour
- ex. bouncer refuses to call an ambulance

4. Aggravated Damages

- compensate the plaintiff for intangible injuries such as distress and humiliation caused by the defendant's reprehensible conduct
- ex. store clerks unlawfully restrain a customer

Workers Compensation Legislation

- provides monetary compensation to employees for work-related injuries and illnesses. Prohibits the employee from suing the employer for any negligence that might have caused the problem.

Tort Law and Contract

- Same facts give liability in tort and contract
- Ex. person kicked out of bar and beaten by bouncer, implied term breached of its contract with Sam in the contract for the purchase of beverages that Bar-Fly would provide a reasonably safe environment for their consumption

Managing Tort Risk

- Variety of risks in tort actions (especially in negligence), and vulnerable because of the doctrine of vicarious liability
- Must assume active measures to minimize risk because ignoring can result in:
 - incurring the costs of a tort that could have been avoided, including lawyers' fees, management time devoted to

defending the claim, and the amount of the actual judgment awarded to the successful plaintiff

- losing insurance coverage because of a poor claims history
- losing a hard-earned business reputation

What is Negligence?

Tort of Negligence

- A careless act that causes harm to another
- Carelessness is a failure to show reasonable care
 - Ex. person injured by the dangerous driving of a delivery truck driver

Reasonable care

- the care that a reasonable person would have shown in a similar situation

Plaintiff

- needs to show defendant intended to causes damager and there were deliberate acts that caused the damage

Negligence law – seeks to compensate victims for loss or injury

Courts

- Must compensate victims of negligence without discouraging legitimate activity and making the legal standards businesses must meet unreasonable

Steps to a negligence action

1. Does the defendant owe the plaintiff a duty of care?

- duty of care – owed to anyone who might reasonably be affected by the defendants conduct
- if it is comparable to an already-decided case in which duty of care was recognized, skip the first stage and go to the second
- stage 1 – prima facie duty of care (at first sight or on first appearances), to answer consider:
 - Is the harm that occurred a reasonably foreseeable consequence of the defendant's act?
 - Reasonable foreseeability considers whether the defendant should objectively have anticipated that his or her act or omission would cause harm to the plaintiff.
 - If yes, proceed to the next question.

- Is there a relationship of sufficient proximity between the parties such that it would not be unjust or unfair to impose a duty of care on the defendant?
 - Proximity considers whether the specific circumstances of the parties' relationship are such that the defendant is under an obligation to be mindful of the plaintiff's "legitimate interest" in conducting his or her affairs.
 - If yes, proceed to Stage 2.
 - Stage 2 - Are there residual policy considerations outside the relationship of the parties that may negate the imposition of a duty of care?
 - determine whether imposing a duty in these kinds of circumstances would be unwise.
 - Example. business like Meat owes a duty of care to the consumer. Under Stage 1, it is reasonably foreseeable that careless acts or omissions by a manufacturer of food products could cause harm to the consumer due to food contamination, including contamination by Listeria. It is also clear that the relationship between the manufacturer and the end user is a relationship of sufficient proximity to establish a duty of care. There is nothing in the specific relationship between Meat and the plaintiff-consumers to negate or reduce that duty. On this basis, a prima facie duty of care is established. Under Stage 2, it is necessary to determine whether there are any more general considerations that ought to eliminate or reduce that duty. The objective of this is to ensure that businesses and other defendants are not made liable to an unreasonably broad, unknowable, and indeterminate extent.
2. Did the Defendant Breach the Standard of Care?
- Conduct is judged based on standards of behaviour that would be observed by the reasonable person in society
 - Reasonable person - ordinary person of normal intelligence who uses ordinary prudence to guide his conduct
3. Did the Defendant's Careless Act (or Omission) Cause the Plaintiff's Injury?
- Would the harm not have occurred but for the defendant's actions
4. Was the Injury Suffered by the Plaintiff Too Remote?

- Even if there is an obligation to take reasonable care and it was breached, how far will the legal liability of the defendant stretch?
- remoteness of damage - the absence of a sufficiently close relationship between the defendant's action and the plaintiff's loss
- thin skull rule - protects the plaintiff who has an inherent weakness or "thin skull" that makes a given injury more serious than one might otherwise reasonably anticipate and states that such a plaintiff is still entitled to recovery for the full extent of the injury
- pure economic loss – financial loss that results from a negligent act where there has been no accompanying property or personal injury damage to the person claiming the loss
 - tort law traditionally reluctant to permit recovery for this
 - only financial and involves no personal injury or property damage to the plaintiff

Plaintiff must explain and prove each step in the process.

Defences to a negligence action

1. Contributory Negligence

- Unreasonable conduct by the plaintiff that contributed–or partially caused–the injuries that were suffered.
- If the plaintiff is found to have been part author of his own misfortune, provincial legislation provides that responsibility for the tortious event must be apportioned between or among the respective parties.

2. Voluntary Assumption of Risk

- no liability exist as the plaintiff consented to accept the risk inherent in the event that gave rise to the loss.
- Volenti non fit injuria
- plaintiff will be awarded nothing by a judge even though the defendant had been negligent.
- parties must understand that the defendant has assumed no legal responsibility to take care of the plaintiff and that the plaintiff does not expect him to. Since this test is not easy to meet it is a very rare defence.

negligent misstatement or negligent misrepresentation

- an incorrect statement made carelessly
- plaintiff must show that the defendant owed a duty of care based on there being a special relationship between the parties:
 - Professional – someone engaged in an occupation requiring exercise of special knowledge, education, and skill
 - Ex. giving bad advice or providing the client with an incompetent report.
 - Third Party – one who is not a party to an agreement
 - Given info by a third party should they be responsibly too?
 - Monetary losses – less solicitous of the victim

Negligence and Product Liability

- Liability in relation to the design, manufacture, or sale of their products
 - Often involve contract law too
 - With 2 defendants to sue they should go after both to increases chances of getting something

Negligence and the Service of Alcohol

- owe a duty of care to impaired patrons to assist them or prevent them from being injured
- liable to members of the public who are injured by the conduct of one of their drunken customers
- commercial establishments should also have some positive obligation to the inebriated patron and to others put at risk by that patron

The Negligence Standard versus Strict Liability

Strict liability

- principle that liability will be imposed irrespective of proof of negligence
 - scope is limited (to fires, dangerous animals, escape of dangerous substances) rare appearances

Areas of strict liability

- Liability in contract - contractual promise that it breaches or fails to perform, absence of negligence is no defence.
- Vicarious liability - employer is automatically responsible for the torts of his employee when, for example, there is a significant connection between what the employer was asking the employee to do and the employee's tort.

Torts and Property Use

- Occupier (someone who has some degree of control over land or buildings on that land) property harms others

Occupiers Liability

- liability that occupiers have to anyone who enters onto their land or property

Liability at Common Law

- Determined by classification of trespasser, licensee, invitee, or contractual entrant
- contractual entrant - someone who has contracted and paid for the right to enter the premises.
 - Ex. Visitors to the premises who have bought tickets to see a pottery exhibit
- invitee - someone whose presence on the property is of benefit to the occupier
 - ex. store customers and delivery or service personnel
 - lower duty to the invitee than to the contractual entrant
 - warn the invitee of any “unusual danger, [of] which he knows or ought to know.”
- licensee - someone who has been permitted by the occupier to enter for the benefit of the licensee.
 - Ex. allowed people accessing an adjacent business to take a shortcut through his building, those users would be licensees.
 - Ex. guests invited to someone's property for a social occasion.
- trespasser - is someone who “goes on the land without invitation of any sort and whose presence is either unknown to the occupier, or if known, is practically objected to.”
 - Ex. burglar
 - liable for any act done with the deliberate intention of doing harm to the trespasser, or an act done with reckless disregard for the presence of the trespasser.
 - occupier does owe him “at least the duty of acting with common humanity towards him.”

Liability under Occupiers' Liability Legislation

- Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Prince Edward Island
- provides for a high duty of care—equivalent to the negligence standard—to be owed to entrants who are on the property with express or implied permission (at common law, contractual entrants, invitees, and licensees).
- Responsibility to trespassers differs among the various statutes, occupier must not create deliberate harm or danger

The Tort of Nuisance

Nuisance

- any activity on an occupier's property that unreasonably and substantially interferes with the neighbours rights to employment of the neighbours own property
 - ex. noise from construction interrupts neighbours sleep
 - ex. ashes from rendering company carried into neighbouring property
- test whether the activity has resulted in “an unreasonable and substantial interference with the use and enjoyment of land.”

Guidelines:

- Intrusions significant and unreasonable
- Will not arise if it is temporary (construction)
- Not protected to right to sunlight
- Consider tradeoffs in interest

Trespass

Tort of trespass to land

- protects a person's possession of land from “wrongful interference”

How to trespass:

- Come onto property without occupiers express or implied permission
- Come onto property with express or implied consent but is subsequently asked to leave and refuses to
- Leaves an object on the property without the occupiers express or implied permission

Why it is important

- resolving boundary/title disputes and, more generally, for protecting property rights, protects privacy rights and the right to “peaceful use of land.”
- trespass is actionable without proof of harm or damage.
- plaintiff will seek an injunction requiring the trespasser to stop trespassing
- fines against the trespasser

Torts from Business Operations

Torts Involving Customers

1. Assault and Battery

- not common
 - ex. security personnel may commit the torts of assault and battery when seeking to apprehend a suspected shoplifter or eject a patron.
- assault is the threat of imminent physical harm by disturbing someone's sense of security
- battery is the actual physical contact or violation of that bodily security.
 - most common remedy is damages.

2. False Imprisonment

- Unlawful detention or physical restraint or coercion by psychological means
 - often in retail
- to defend company must show legal authority to detain (Legal Authority- citizens arrest)
 - reasonable grounds to detain the person
 - proof that a crime such as theft or fraud was committed
 - suspicion is not a justification
 - must immediately call police

3. Deceit

- a false representation intentionally or recklessly made by one person to another that causes damage

Business-to-Business Torts

1. Passing off

- presenting another's goods or services as one's own
 - ex. using a very similar business name
- to prove:
 - Goodwill or a reputation is attached to his product
 - Misrepresentation – express or implied – by the maker of the replica has led to or is likely to lead to members of the public believing that it is that product or a product licensed by that company
 - Have or will likely suffer damages (lost sales)
- Remedy – award of damages, injunction forbidding defendant from continuing deceptive copying

2. Interference with Contractual Relations

- incitement to break the contractual obligations of another

3. Defamation

- the public utterance of a false statement of fact or opinion that harms another's reputation
 - protect individuals against unfounded and unjustified attacks
 - slander (oral form) , libel (print form)
- to be defamation:
 - lower plaintiff's reputation in the eyes of a reasonable person
 - statement refers to plaintiff
 - word communicated to at least one other person beyond plaintiff
- defence to defamation:
 - justification – defence to defamation based on the defamatory statement being true
 - qualified privilege – defence to defamation based on the defamatory statement being relevant, without malice, communicated onto to a party with legitimate interest in receiving it
 - fair comment – established when the plaintiff cannot show malice and the defendant can show that the comment concerned a matter of public interest, was factually based, and expressed a view that could honestly be held by anyone
 - Responsible communication on matters of public interest - I apply to members of the traditional media where (1) the

publication is on a matter of “public interest” and (2) the publisher was diligent in trying to verify the allegation

- Absolute privilege – applied to very limited context of parliamentary or judicial proceedings – freedom of expression is so vital no defamation action can be brought

4. Injurious Falsehood or Product Defamation

- Injurious or malicious falsehood - false statements made not about a person but about the goods or services provided by that person.
- for example, if the statement is made that a particular company routinely provides shoddy maintenance, is this a negative reflection on the quality of the people doing the work or on the company's services? In such a situation, the complainant would sue for both defamation and injurious falsehood.
- requires the plaintiff to establish that the statement about the goods or services was false and was published or said with malice or improper motive
- not necessary to prove that the defendant intended to injure the plaintiff. A reckless disregard for the truth or falsity of the statement is sufficient.

Managing the Risk of Diverse Commercial Torts

- risk management analysis
- risk management plan would ask:
 - Are there dangers on the property?
 - Are adequate warnings and protections given to visitors?
 - Are there known trespassers, in particular children, who come onto the property
 - What could be done to eliminate or reduce the risk flowing from the dangers?
 - Has the occupier complied with all legislative obligations?
 - Ex. provincial legislation concerning workers' health and safety, as well as municipal bylaws providing for snow and ice removal.
 - Is adequate insurance in place?

- Maintaining safe premises as a preventative measure is better than debating the class of entrant after the fact and what standard is owed