GNG 4170 – Lec 1

January 14, 2008

Two Main Sources of Law

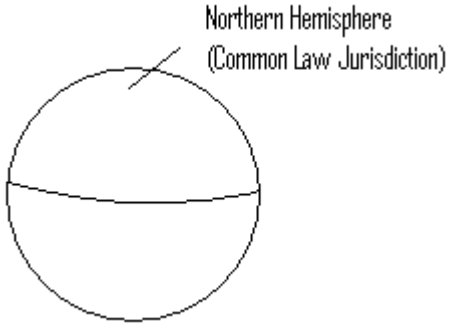
1 Legislation

Legislation is rules set down by the government (Acts, codes). At a **Provincial** level, new legislation or an amended legislation is created.

Division of powers: who writes the laws and what the laws are about? (Engineering is provincial legislation, Criminal code is federal legislation)

2 Common Law

Common law is **Judge made law:** past decisions are important to current cases. **–Theory of Precedence**
-The strongest decisions are made by the Supreme Court of Canada.



Criminal Case: R. V.s. _____
(King or Queen)

The state is initiating the action and bringing proceedings against the party. Sentence is imposed on the party (when guilty), nothing on the victim.

2.1 Civil Law

Victim V.s. _____
The victim in bringing private legal action against the wrong-doer. If the wrong-doer is liable, the victim gets the money.

2.1.1 Contract Law

The person has breached the contract – which is a private law between two people, they create the obligations themselves.

2.1.2 Tort Law

A set of standards of behavior imposed on all of us. Committing a tort is doing something against one of these standards.

Tort Law

Intentional | **Unintentional** (Negligence)

Intentional

Defamation: Reputation of the victim is damaged by the untrue public statements made by the tortfeasor. There are two kinds: -Slander (verbal)
-Libel (written)

Negligence

When we get a negligence hypothetical:

1. State that it is an unintentional tort (Negligence)
2. Describe Tort Law – provided that the fault is found; the main goal is to compensate the victim, NOT punish the wrong-doer.
3. Identify the parties:
   Plaintiff – person who raises the complaint.
   Defendant – person who defends their action. When we have 2 or more defendants they are **potentially concurrent tortfeasors**. (In this class → Employer will be defendant when an employee has done something wrong →Should state that the case is Vicarious Liability)

<u>Test for Negligence</u>

Δ – Defendant **π** – Plaintiff

π must prove 3 things on a "balance of probabilities" → showing that the 3 things are more likely than not (is a lower standard of proof than "prove beyond a reasonable doubt")

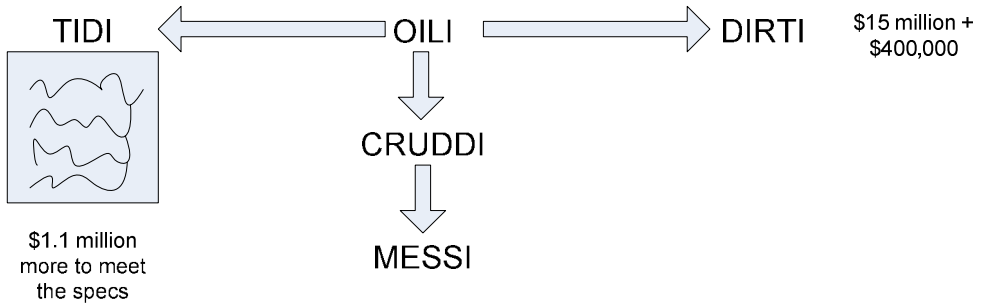
Asking if:

1. **(Each) Δ owed the π a "Duty of Care"? (Yes/No question)**
   Is it reasonably foreseeable that the **plaintiff** could be injured as a result of the **defendant's** work?

2. **(Each) Δ breached that "DOC" ?**
   Either it was breached or not. First thing that needs to be established is a STANDARD OF CARE →What would a reasonable engineering firm have to do (Ex. making sure designs are up-to-date)
   In a hypothetical you **must define the standard of care** → Identify all defendants and those that have breached (or fallen below the standard of care).

3. **π's injuries are a direct result of the breach(es) (causal connection) ?**
   State that it is clear that the plaintiff's injuries are directly caused by the defendant; therefore, the defendant is liable in negligence to the plaintiff.
   1. Plaintiff is entitled to "reasonably foreseeable damages" (but there is a limit to how much compensation in damages) Therefore, add that the plaintiff is entitled to reasonably foreseeable damages which include …..
   2. If defendants are **equally at fault** (or different degrees of fault) explain why and split the damages.

Pg. 321 of textbook Case #2 (Negligence)



1. This is a case of Unintentional Tort (Negligence); the main goal is to compensate the victim and NOT punish the wrong-doer, provided that fault is found.

2. Identify parties:
   - Plaintiff: OILI
   - Defendants: CRUDDI and MESSI

3. State the test for every Negligence case
   OILI must prove 3 things on a "balance of probabilities"
   i. **Did each of CRUDDI and MESSI owe a duty of care to OILI?**
   CRUDDI owes OILI a duty of care because it is reasonably foreseeable that OILI could be injured as a result of CRUDDI's work. (Same thing for MESSI)

   ii. **Did each of CRUDDI and MESSI breach their duty of care to OILI?**
   We must establish a standard of care:
   CRUDDI – A reasonable architect would hire an engineering firm that it believed could carry out the design.
   MESSI – A reasonable engineering firm would have ensured the proper size unit was used and that the vents were properly spaced apart.
   MESSI fell below the standard of care.

   iii. **Are OILI's injuries a direct result of each of the breaches?**
   It appears that OILI's injuries are directly caused by MESSI's breach of duty of care to OILI. Therefore OILI is entitled to reasonably foreseeable damages which include getting a larger unit and repairing damages.
   $1.1 M - $400,000 = $700,000

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Duty to Warn (Type of Negligence)

It is a law that simply indicates that you have a responsibility to warn. Make sure the consumer is aware of the warning on a product.

Disclaimer: Takes away liability that would otherwise be there.

Hedley Byrne Case (Advertising Agency) → Disclaimer example

- HB asked their Bank if Customer (C) is credit worthy or not.
- HB's Bank asked C's bank if C is credit worthy.
- C's bank sent back a letter stating:
  1. C is credit worthy.
  2. You cannot rely on this information (Disclaimer).
- HB's bank sends HB the letter they received from C's bank.
- HB did the work but didn't receive a check from C.
- HB filed for negligence against C's bank: saying that C's bank owed valid information.
- The majority of the court decided that C's bank did owe a duty of care to the group of HB's bank.

Ultimately, the plaintiff is relying on the engineer's specialized skill, knowledge and experience. (Hedley Byrne)

- **At the end of the day, the court found that C's Bank was not liable because of the disclaimer.**

Questions with Disclaimers

1. Look at both possibilities: with and without disclaimer.
2. Identify the tort (Negligence), the plaintiff, and the defendant(s).
3. Identify the qualifying statement as the disclaimer.
4. Then push it aside and imagine the report did not have a disclaimer. (Continue with the negligence test…standard of care…breach…etc)
5. Conclude that if the report did not contain the disclaimer that the defendant would be found liable, (conclusion of negligence test).
6. **BUT** the report does contain a disclaimer, so the defendant is not liable to the plaintiff because they were warned ahead of time that they were not entitled to rely on the info.

Thin Skull (or Eggshell) Plaintiff

Take the plaintiff as you find him or her. If injury affects the plaintiff more than it simply would as defined. (Ex. Hand injury to a professional pianist) → The defendant will have to pay the plaintiff more.

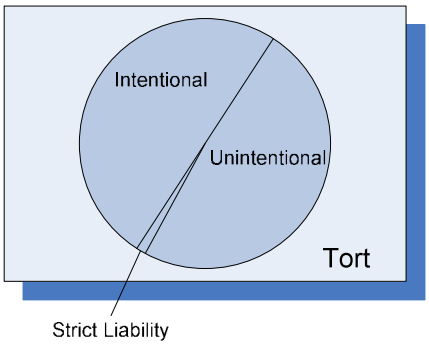
The type of injury is reasonably foreseeable but the type of plaintiff is not.

Contributory Negligence

When the plaintiff is found by the court to have contributed to his/her injuries.
There are two aspects to it:

1. Not taking enough care to prevent injury.
2. After injury you don't take steps to improve injury (that a reasonable person would take).

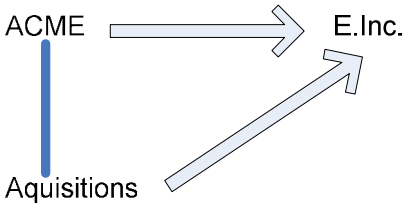
Strict Liability



1. The court does not ask if a duty of care was owed or if it was breached.
2. It is exclusively about whether injuries are a direct result of actions.
3. It is simply a causality question.

Ex. If you keep something dangerous on your property and it escapes and harms others: Strict Liability applies → you are on the hook, you are strictly liable.

Vicarious Liability and Disclaimer Hypothetical



1. Identify: Unintentional Tort (Negligence) → Compensate victim and NOT punish wrong-doer.
2. E.Inc. – Defendant (Vicarious Liability)
   Acquisitions – Plaintiff
3. **If there was no disclaimer:** E.Inc. owes Acquisitions a duty of care because injuries could…. AND ultimately, Acquisitions is relying on the engineer's specialized skill, knowledge and experience.
4. **Standard of care:** E.Inc. should have spent more time making sure… E.Inc. fell below the standard of care, therefore E.Inc. breached the duty of care.
5. **If there was no disclaimer:** E.Inc. is liable and Acquisitions is entitled to reasonably foreseeable damages that include: …
6. **BUT** the report does contain a third-party disclaimer so E.Inc **IS NOT LIABLE.**

7. Briefly explain a disclaimer: It warned Acquisitions in advance that it could not rely on the report.

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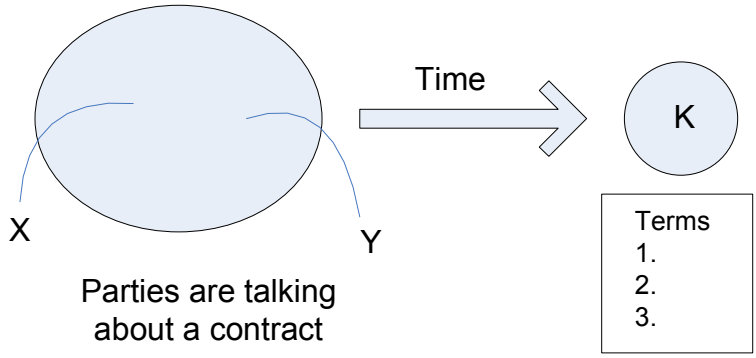
January 28, 2008

Looking back at Contract Law

4. The court enforces the contract when faced with a contract dispute.
5. Equitable Principle (if applicable) will rule over the common law issue.

Privity of a Contract
A Contract is a private legal relationship; only parties under the contract can be sewed or can sew.

Pre-contract Stage



A breach of the Contract results from breaching one or more of the terms.

Misrepresentation (Will only need to know definitions for EXAM)

To make an argument we must show:

1. It was a significant part of the decision you made (untrue statement of fact that made you enter into the contract)
2. Need to identify the type of misrepresentation:
   Innocent – The person genuinely believed what they said was true.
   Fraudulent – When the person knew they were lying or they were not certain of the truth.

Innocent

Only possible remedy is **RECISSION (Equitable remedy)** → the **"turning back time"** remedy which puts parties in a position as if they had never entered into a contract (ONLY IF POSSIBLE).

PIGGY BACK Remedy – (Related to RECISSION) is essentially **compensation;** financial adjustment between parties (you do not get completely all money back: ex. A car).

Fraudulent

RECISSION remedy or **Sew** for damages for the intentional tort of deceit.

Elements of Enforceable Contract (Will only need to know list and explanations for EXAM)

1. **Intention to create a legal relationship** – needs to have legal relationship in mind.
2. **Offer and acceptance** – Contracts are based on "bargaining", at some point an offer has to be made (verbal or on paper) and then it has to be accepted.
3. **Exchange of something (of consideration)** – technically the court does not look at the value of consideration (could be exchanging gum for a motorcycle, doesn't matter).
4. **Parties are adults (of legal age)**
5. **Nature of contract must be legal –** Unlike hiring someone to kill, but he doesn't do it.

Contract does not have to be in writing to be enforceable → can be verbal.

Equitable Defenses to Capacity→Are of Age of Majority

1- Duress

Actual or threatened violence to you or someone close to you (entering in contract against will).

2- Economic Duress

Economic violence, inappropriate economic pressure is brought (forced to enter contract).

3- Undue Influence

Improper influence; certain types of relationships where there is a dominating party.

Gratuitous Promise and Promissory Estoppel

A **gratuitous promise** is normally **unenforceable** → no consideration was given in exchange

2 exceptions:

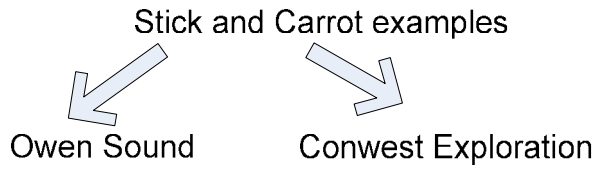
1- A promise made under seal (the seal is sufficiently significant)

2- **Promissory Estoppel** – someone is legally prevented from doing something. → Will be a contract based on a deadline.

If **promissory estoppel** applies, the other party will be **stopped** from using the contract as an explanation for action.

3-part Test for Promissory Estoppel

1. There must be a pre-existing legal relationship.
2. The person was promised or reasonably led to believe that the strict terms of the contract would not be enforced.
3. The person has to show that they relied on the promise → it affected them in some way. **Therefore it would be unfair for the other party to rely on the contract; the party is stopped from terminating the contract.**



******* Should refer to the examples in hypotheticals *******

Case: John Burrows Decision

Specific facts for this case that are to apply (or that are relevant):

Acceleration Clause – Anytime a person defaults the terms, they have to pay **all** owed amount (could be debt)

John Burrows' lawyers used equitable estoppel on the plaintiff to prevent them from using the acceleration clause.

Indulgence – Sitting back passively and not complaining when debtor was late (John Burrow's).
→ Cannot be used successfully to make an argument of equitable estoppels because:

1. John Burrow's was not promised anything
2. John Burrow's was not lead to believe that the strict terms were not to be enforced.

Hypothetical 3 – Gratuitous Promise and Equitable Estoppel

-Mining Contractor
-Land Owner

The question raises the issue of gratuitous promise and equitable estoppels (need to explain each).

Gratuitous promise → the land owner said there will be an extension.
Equitable Estoppel → the **mining contractor** has to show 3 things:

- ✓ A pre-existing legal relationship (including the option)
- ✓ They were promised or reasonably lead to believe that the strict terms were not to be enforced. THEY GOT AN EXTENSION
- ✓ They relied on the promise → It affected their behavior; would have hired extra staff.

It would be unfair for the owner to rely on the strict terms; therefore, the owner is prevented (stopped) from denying the exercise of the option. This is similar to <u>Conwest Exploration</u>.

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February 4, 2008

Interpreting a Contract

Rules of interpreting (Contract Law) 2 rules:

1. **Rule of contra proferentum** – to chose/select against
    6. The court will rule against the party that wrote (or verbal) the contract, when ambiguity arises in the wording of the contract.
    7. The party who wrote the contract had the opportunity to be clearer.
2. **Porol (means 'to the side') Evidence Rule –** prevents introducing any evidence that would suggest the obligations under the contract are different from what is indicated in the written contract.
    8. It only comes into play if the parties have reduced their contract to writing
    9. The best evidence is the written contract **(No verbal agreement)** Otherwise we are lost in he said/she said.

Boilerplate Contracts – Advice: Write in the extra agreement as a term in the contract and both should initial and then sign the contract.

Essential Difference between Porol Evidence and Equitable Estoppel

THEY NEVER OVERLAP IN TIME

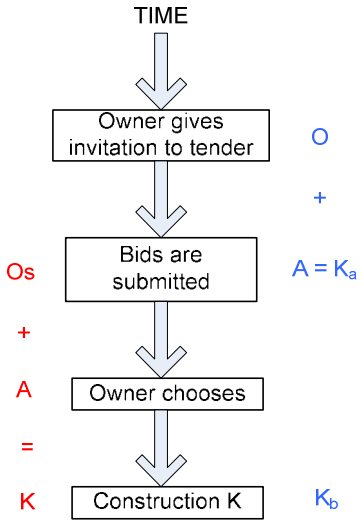
Porol Evidence Rule: deals with evidence BEFORE the contract
Equitable Estoppel: concerned with statements made AFTER the contract has been entered into.

Mistaken Tendering

Someone wants a job to be done, tenders are submitted and there is a mistake in the tender of the person that was selected.

Belle River (BR)
- Case: Example of how courts used to look at the tendering process. → They only saw that when a tender is submitted, an offer is made, the acceptance is when the owner selects the tender, leading to a construction contract.

-Mistake: On the tender cover there was a mistake in the bis, the amounts in the subpages were added incorrectly. → **'Obvious' mistake:** the owner could have found the mistake on his own; therefore, tender had no liability.



RON Engineering
-Case: Supreme Court saw two contracts formed (before only one was seen). The new contract involves the tendering and selection process itself. The Court said that when the owner puts out info/rules for submitting the tenders, as soon as the tender is submitted, the rules are accepted. The Court simply called it **contract A.**

-Mistake: Fundamentally different. → **'Unobvious' mistake:** the numbers added up, but wrong numbers were used; therefore, the Court applied the rules of contract A.

Belle River Community Arena Inc. v. W.J.C. Kaufmann Co. et al. , 1977, Ontario High Court of Justice

In this case, the defendant submitted a bid of $641,603 which was $70,000 lower than intended. The defendant realized the error and attempted to withdraw the bid; however, the plaintiff accepted the bid and when the defendant did not accept the offer of the contract, the plaintiff went with the next lowest bidder and attempted to sue the contractor for the difference.

The court held that no contract existed between the plaintiff and the defendant and therefore there was no legally enforceable agreement.

References: Marston, pp.116-118.

Ron Engineering et al. v. The Queen in right of Ontario et al., 1981, Supreme Court of Canada

This is a case where the submission of a bid was combined with all the elements of a contract including consideration. The bid was submitted with a $150,000 deposit cheque. The bid of $2,748,000, however, was determined to be $750,058 lower than intended as the result of a unilateral mistake on the part of the plaintiff who was attempting to withdraw from the bidding process. The tender documents included a term that if a tender was withdrawn, the defendant could retain the deposit. The plaintiff attempted to argue that this case was similar to the previous Belle River case, but in that case, no contract existed. In this case, the court determined that the tendering process was itself a separate contract from the resulting construction contract.

It is an interesting quirk of history that the court appears to have referred to the tender contract as "Contract A" and the resulting construction contract as "Contract B" to distinguish the two (no different than a report using the terms Figure 1 and Figure 2). The consequence, however, has been that in much of the literature since, rather than referring to the tender contract by an appropriate name, it is referred to as "Contract A".

References: Marston, p.119-120 and 121-122, wikipedia, LexUM.

RON Engineering did not overrule Belle River: Nobody can argue that the law changed, in BR we had an 'Obvious' mistake, in RON Engineering, and we had an 'Unobvious' mistake.

******* ONLY an 'Unobvious' mistakes will be on the EXAM *******

Approaching a 'Mistake in Tendering' Hypothetical

1. Identify the problem (Mistake in Tendering Process)
2. Briefly talk about BR because it introduces the idea of obvious mistake and how they saw only ONE contract was formed. (How the law was looked at_, no liability on the tender's behalf. →Then briefly talk about RON Engineering and that NOW 2 contracts are seen. New contract is about the Tendering/Selecting process itself (as soon as a tender is submitted, a contract is entered into). In the case of RON E. there was an 'unobvious' mistake; therefore, the rules of contract A applied → Owner got to keep the tender deposit since the bidder did not sign into the construction contract.
3. Point out what significant terms are in contract A in the given hypothetical.
4. Then characterize the mistake as obvious or unobvious. →Will always get an unobvious mistake, therefore we go by **contract A.**

Case: Northern Construction

In the rules for Tenders, it said that the owner had a choice of remedy (in contract A):

- To keep the deposit OR
- Sew for the difference between the bid and the next lowest bid.

→The only difference between RON and NC is that **RON had only one remedy**: they keep the deposit.

Example

→The moment XYZ submitted the bid, they entered into contract A.

→The only thing to take into account now is if the mistake is obvious and unobvious. **It is unobvious** since the owner could not have figured out the mistake on his own.

→Then go through the STEPS to approach the hypothetical. Looking at our case: unobvious mistake, therefore we apply contract A; the owner is entitled to the tendering deposit.

GNG 4170 – Lec 5

February 11, 2008

Ways in Which a Contract Can Come to an End (4 Ways)

1- Performance

Parties performed their obligations under the contract

2- Agreement between the Parties

a. Parties can be in a contract for a certain amount of time and they both agree to end it sooner.

b. Condition subsequent (term of contract): the contract itself provides a term that defines a set of circumstances where the contract can be brought to an end.

3- Frustration of a Contract 挫折

When the contract can no longer be performed as originally thought, and an event that occurred was not reasonably foreseen by either party, the law says the contract has been **frustrated**; parties are not obligated to follow the contract terms.

→ In Ontario there is the **Frustrated Contract Act:** provides guidance as to what is the legal answer to some work done under a frustrated contract

① Force majeure clause. "freedom of contract"

②

4- Operation of Law (Example: Bankruptcy)

Secured Creditor: Debt that is owing is tied to a specific asset. The creditor can go after the assets right away.

Breach of Contract

obligations in a contract:

- Essential or vital → condition → Fundamental breach of k
- Not essential or vital → Wairanty

Major Breach: Fundamental breach of contract.

毁约·违约: any breach to a contract that is so fundamental.

Exemption Clause: Term of contract that limits liability in some way. Could be a cap (Ex. We will not pay more than 1 M for the breach) and/or types of damages (Ex. Only responsible for certain types of damages).

contract would be any thing the court would only enforced what in the k

Difference:

- **Disclaimer:** means **NOT ON HOOK AT ALL** (Tort or Negligence Law)
- **Exemption:** means **IF ON HOOK**, remedies are limited (Contract Law)

Case 1: Harbutt's Plasticine

The court developed the **"Fundamental Breach Doctrine":** If a breach was fundamental, the breaching party is not allowed to rely on the exemption clause (was followed in Canada for a while).

随着时间的变化.

Court 对待这 exemption clause

Case 2: Photo Production

Overruled the Doctrine in England and then reflected in a case in Canada.

Case 3: Hunter V. Syncrude

There are 9 justices in the Supreme Court. 9-0 is the strongest decision.

→In this case: it was 5-4. The majority of the court said that we don't need the doctrine. If the exemption clause is clearly worded and relevant to the dispute between the parties, then the exemption clause stands and operates.

Approaching a Breach of Contract with an Exemption Clause

1. Identify that we are dealing with a breach of contract and exemption clause.
2. Can you characterize the breach as fundamental? Explain what a fundamental breach is.
3. Explain generally what an exemption clause is.
4. Identify what kind (cap or damages or both).
5. Describe history: Case 1-3
6. Then apply Law to the problem (Exemption clause clearly worded? And relevant to the dispute?)

Remedies for Breach of Contract

Damages for the Breach of Contract (Classic)

(Amount of money to compensate for the breach) What is the distinction between direct and indirect (consequential) damages? What is reasonably foreseeable? Ask yourself: What am I specifically promised under the contract?

- **Direct damages:** specifically promised under the contract.
- **Consequential damages:** reasonably foreseeable but not specifically promised under the contract.

Liquidated Damages

The contract itself provides for the damages in the event of certain types of breaches.
STEPS→ Basic evidence of what contract says and that it is legally binding.

Penalty Clause

When damages noted in a contract are all out of proportion to what is reasonably foreseeable; courts will not enforce them.

Obligation in Contract Law

Mitigation

When a party breaches a contract, the innocent party has the obligation to mitigate or lessen its damages. Example: You were fired; you have an obligation to find another job (you need to take reasonable steps to mitigate).

受害者有义务使自己的情况更好

Equitable Remedies to a Breach of Contract

- **Specific Performance:** Takes the form → you must do _____. Courts will rarely grant order.
  Example: Selling/buying land (considered 'unique' historically)→Order for specific performance.
  强制预卖私有财产，卖家违约 breach. court 会要求卖家将财产转让给买家(照着 contract). P152. 服务类 Covenant 不会使用 specific performance.
- **Injunction:** Takes the form → you must NOT do _____. Easily given orders.
  禁令：Court 会禁止 a party 的行为. 例如 breach. 条件：negative covenant：promise not to do sth
- **Quantum Meruit (own special remedy):** Latin phrase for "amount deserved". When you request goods or services and they are provided, if there is no agreement about prices, the law implies a promise to pay "quantum meruit" → what is normally charged for the goods and services.
  按劳计酬.
  商品或服务；没有说明价格. court 会默示按劳计酬

Hypothetical 5

- Liquidated damages
- Max of $5 M for damages (limiting liability)

Steps

1. Fundamental breach → breach that goes to the root of the contract
2. We CAN characterize the breach as a fundamental one because what was provided was for less than what was promised (only 25%).
3. Exemption Clause → Explain is cap or limited damages. In this case: **it is a combination.** Liquidated damages only and the max claim is $5 M.
4. History: Courts have struggled with these cases. **Case 1:** H. Plasticine in England where Doctrine was followed and Canada followed it for a while. Then it was overruled in England by **Case 2:** Photo Production, which was then reflected in Canada in **Case 3: Hunter V. Syncrude.**
   Now, the type of breach does not matter (fundamental or not), exemption clauses matter.
5. Is the exemption clause clearly worded? **Yes.** Is it relevant? **Part of it is, but part of it is not. ONLY liquidated damages up to a max of $5 M.** In this case, liquidated damages only amounted to $4 M.
6. Therefore PulpCo only gets to claim $4 M.

Civil Procedure 民事诉讼程序.

Steps involved in determining a legal issue → very structured process leading to the decision.
In Ontario now, there is a mandatory mediation.

强制调解.

ADR: Alternative Dispute Resolution (alternative to traditional court process)

Two types: 非诉讼解决机制.

1. **Mediation** – A neutral figure (mediator) who does not make the decision, they use their experience and training to facilitate communication between parties, 3 hour mandatory mediation. 促进.

   调解.

   3 options result from mediation session:
   - 1- Nothing happens after mediation
   - 2- Everything is resolved
   - 3- Issues are focused down (lessened) 问题得以缩小

2. **Arbitration** – A neutral arbiter makes a decision (like a private judge). The arbiter can be experienced and time can be saved by not having to explain concepts to the judge.

   仲裁

   → Can be a **binding** arbitration: whatever decision is made is final.
   → Can be **nonbinding** arbitration: parties can still go to court after, but it gives them an idea of how a neutral party went about the analysis and decision process.

Statutory Holdback (DEFINITION WILL BE ON EXAM)

Remedy under the Construction Lien Act.
Government rule comes from the construction lien act, which has many remedies but we will only focus on the **statutory holdback.**

owner = payer

Construction Lien: says that the owner must holdback 10% of the total project cost. The owner is personally liable for only 10% of the value of materials or services on the job site.
→Ideally the owner puts the 10% in a bank account (aside to pay any claims that will be made), even though no contract exists between the owner and the person making the claim.

Construction Lien Act: Occurs when both parties are dealing with land.

(1) Class action: # of different plaintiffs recognized as a group, and such group bring the legal action toward the defendent.

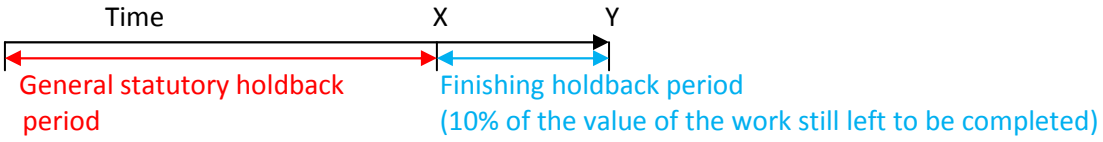
(2) Trust remedy: property of an item is given to another party named "administrator".
eg. An owner hires general contractor (承包人), then the general contractor hires sub-contractor. When the money paid to the general contractor, the money is now the general contractor's property.

(3) Lien: If granted a lien, you are granted a legal interest in a property.

eg. not paying your car dealer, the dealer can register a lien (gain interest on your property until you pay them.

(4) Statutory holdback: the owner must holdback 10% of the material or things together to the job.

eg. $10m of thing to pay G.G., the owner holdback $1m.



X = 'Substantial Completion' of the project → The holdback (10% of the entire project cost) can be paid 45 days after this time stamp, provided no claim is made for a lien.

基本完成. 完全完成.

Y = 'Job Complete' → The finishing holdback can be paid 45 days later the completion of the project, provided no claim is made for a lien.

项目完成前，付款人可以持有项目款中的一定百分比的金额不去付直到项目建成.

Limitations Act, 2002

Limitation Period: Amount of time you have to bring a claim.

4 main points:

1. There is a general 2 year limitation period to bring a claim (there are some exceptions).

2. **Discoverability principle:** the limitations clock doesn't start ticking until a reasonable person knows about the injury.

3. There is an ultimate objective of 15 year limitation period, discoverability principle does not help; it only helps up to 15 years.

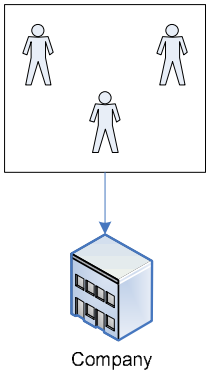
4. a) You cannot contract out of the Limitations Act 2002
   b) Access to the Justice Act was put into play 1 year ago: parties can now state limitation periods in the contract.

GNG 4170 – Lec 6

February 25, 2008

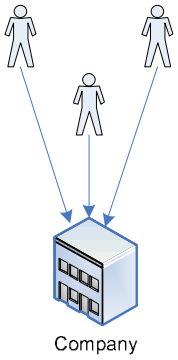
Labour Law

Law related to unions (idea of collective agreement; a group of people who have set agreements).



Employment Law

Each individual has a contract with the employer. The contract is specific to each individual.



Dismissal 免职.

It is **for cause** or **without cause.**

For Cause: not entitled to any notice (your job has ended)

1. **Incompetence** – do not have the skill set to do the work effectively.
2. **Bad faith** – extremely improper behavior.
3. **Disobedience**
4. **Prolonged illness** – frustration of contract.

没有声明. 直接免职.

违反条例.

<u>Without Cause:</u> you have the following rights (meant to represent amount of time to find alternative employment) 没有违反条例

1. Notice
2. Pay in lieu of notice

Employment Standards Act (in Ontario)

Sets minimum standards, developed in **Common Law → "Reasonable Notice…" (RN)**

Human Rights Code

The idea is to **prevent discrimination** INCLUDING the workplace. The government has identified **12 characteristics** and if discrimination is based on one of them, a case can be brought up under the human rights code.

5 characteristics are:

Sex
Sexual orientation
Marital status
Age
Citizenship

GNG 4170 – Lec 8

March 10, 2008

Practice and Ethics Issues

→We are dealing with engineering act in regulations

Practice: day-to-day administration of work that engineers do.

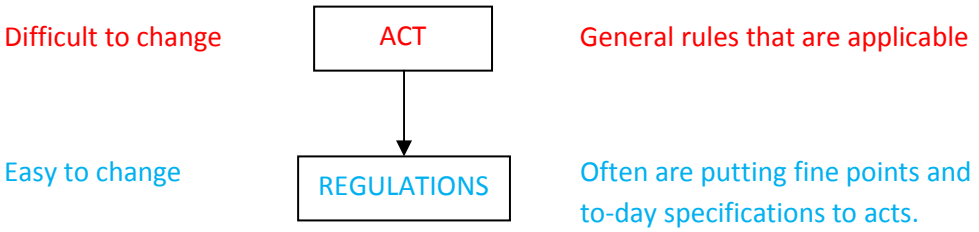
PEO

Act: the holder of full or temporary licenses.

4 Issues concerning the PEO:

1. **Primary Goal of PEO**: Section 2.2 of the Act → Serve and protect the public interest. (To regulate the holders of any of the licenses the holders of certificates of authorization in accordance with the act, the regulations, or the bylaws, to serve and protect the public interest). **ONLY NEED THE PRIMARY GOAL FOR THIS CLASS.**

2. **Self Regulation:** The PEO is itself composed of engineers. The PEO has the responsibility to administer (on the government's behalf).



   PEO has the power to draft and place regulations. The Government has given the PEO a bit of its legislation.

3. **Fees Mediation Committee:** Doesn't make a decision; it is there to mediate disputes about fees. If both parties agree, the committee will act as an **arbiter** and render a decision relating to the issue.

4. **Types of Licenses (PEO given)**
   1- **License** → "FULL" license (for engineers who want to work)
   There are no limits; it does not indicate what type of engineering.
   Five requirements (from the act) to obtain the license:
   1) Age of majority
   2) Citizen/permanent resident of Canada
   3) Have to have completed a recognized engineering program and have to pass the professional practice exam.

4) Four years of directed engineering experience → (2 sub-rules that come from the regulations) 1 of the years has to be under a PEng. 1 of the years has to be a "Canadian" year.
5) Establishing good character through references.

2- **Temporary License:** Working in another province temporarily. Limited to a specific employer and specific project. →Must work under a PEng. and signed and seal the work. **Maximum of 12 months.**

Provisional

3- ~~**Provincial**~~ **License:** Intended for people who meet the requirements of the "FULL" license except for the 1 year of "Canadian" experience. Can work under a provincial license for a year and then apply for a "FULL" license. →Have to work under supervision of a PEng. The PEng. must additionally sign, seal and date all the work that is done (other than the engineer's own seal). 2 years.

4- **Limited License:** Not for engineers. Designed for people who have engineering-related experience (technology). →Limited to specific services that are written on the license. If the services are stopped, the license must be returned to the PEO IMMEDIATELY.

Use of the Engineer's Seal (Each license holder has a seal)

PEng: only full and temporary license holders can be called PEng (the definition is in the ACT itself).

Applying the seal is not voluntary; the ACT says that you SHALL apply your seal → has to be signed and dated.

Why have the seal?

1- Showing that a person has experience and the license to provide.
2- Shows responsibility for the work.

Certificate of Authorization : in order to offer services to the public as an engineer.

It is like a **business license.** You need it to offer services to do engineering work for the public.
If you work for a firm, the firm has to have the COA. not the engineer-self. But founding a firm. should have the COA
Only PEngs are listed on it → Before being listed on a COA, you need **5 years of experience.**

Professional Indemnity Insurance

Usually if you or the firm has COA, you have to have the insurance.

2 exceptions:

1- When we are dealing with a dangerous field (ex. nuclear, aviation).
2- If you tell the potential client in writing that you don't have the insurance and they authorize you in writing.

Consulting Engineer

Has nothing to do with the work you do on a day-to-day basis. Can have the title of Consulting Engineer.

4 requirements to be designated as a consulting engineer:

1- Full license holder.
2- When you apply, you have to be listed on a COA and have to have been on a COA for the past 2 years.
3- At least 9 years of engineering experience (including 4 to have gotten the license).
4- Pass or be exempted from the exams the PEO might set for you.

Complaints Committee

Composed of at least 3 members of the PEO. Its role is to receive and evaluate complaints about engineers.

They either decide:

-The complaint has no merit (they have to explain why not) OR
-They pass the matter to the discipline committee.

Discipline

The discipline committee has at least 5 members (like a judge). A member of the PEO is bringing an action and the engineer is defending himself.

The discipline committee only has power over FULL and Temporary license holders or those that have a COA.

Proceedings are held in Toronto at the PEO head office.

Sanctions of the Discipline Committee (general options they can take)

1- Revoke the license or COA
2- Suspend the license or COA for up to 2 years
3- Impose a fine of up to $5000
4- Order you to provide an undertaking → legal document promising limiting work
5- Impose terms or conditions on the license
6- Take away any special designation or title used (ex. Consulting Eng.)
7- Order an admonishment or reprimand

Enforcement

Enforcement → A broader remedy. Proceedings are only brought into the **provincial court** (provincial offenses). It applies to **everybody** in Ontario (enforcement proceedings are initiated by the PEO).

Enforcement will occur if you are:

1- Practicing Professional Engineering without a license
2- Offering Professional Services to the public without holding a COA
3- Using the term Engineer or Professional Engineer that fools people into thinking that they are dealing with a licensed individual.

POSSIBLE QUESTION ON EXAM: Does the PEng. Act apply to anybody other than engineers? **YES IT DOES**

Consequences of Enforcement: generally a fine, if offense is done again the fine will increase.

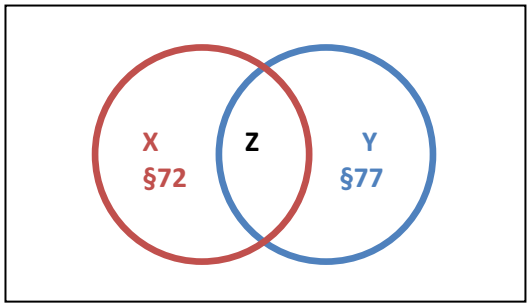
Advertising

→Restrictions on advertising engineering work

4 restrictions:

1- Can only be in a factual manner without exaggeration
2- In a manner that doesn't directly or indirectly criticize another license holder (any of the 4 licenses) or a COA holder
3- Can only be in a professional and dignified manner
4- DO NOT give any representation of the seal in advertising

Ethics (Handouts PEng Act §72 and §77)



72(2)(g): If you are offering services to the public and have a provisional license and do not have a PEng seal (or supervised by a PEng.), then by definition **you have breached the act or regulations.**

According to 72(2)(g): The code of ethics (77) is DEPENDABLY ENFORCEABLE.

X (Unique to §72) → Negligence

72(2)(f): Says that if you propose something to a non-technical client and they want a change applied to it, you have the obligation to inform them of the technical consequences.

Y (Unique to §77)

77(2)(iv): (The ONLY part that is unique to 77) Therefore it is **NOT professional misconduct if breached.**

Parts of 77 that are in Y and Z at the same time: <u>(they depend on the degree of the breach → which will trigger 72(2)(j)</u>

- 77(1)(i)
- 77(1)(iii)
- 77(3)
- 77(6)
- 77(7)(i)
- 77(7)(v)

Z (Overlap between 72 and 77)

- **Incompetence:** 72(2)(h) and 77(1)(v)

  ↙ Set of standards you are judged by

  ↓ Always stated as a positive obligation

77(1)(iv) can also be tied with the previous issue of incompetence.

- **Conflict of Interest:** 72(2)(i) and 77(3) & 77(4)
  - 77(3) → **Relationship with employer**
  - 77(4) → **Relationship with clients**

- **Moonlighting (doing work for someone else in your own time while employed):**
  72(2)(i) paragraph 4 and 77(5)

  77(1)(ii) and 77(2)(i) are often references together.

GNG 4170 – Lec 9

April 7, 2008

Definition of Professional Misconduct

72(2)(2) b,c,d are linked: the public is negatively affected in some way.

Distinctions Between b,c,d

b: Health is affected by the work done by the engineer.
c: Obligated to correct or report something that will affect the safety of others.
d: Some law or official standard being broken. A bit more limited than c.

77(2)(ii) , (iii) Both address the idea of communications:
ii- Discourages untrue, unfair, or exaggerated statements.
iii- Statements have to have: -sufficient knowledge
-honest conviction

72(2)(i) paragraph 5: Saying the statements because you were inspired by other interests (or paid for it).

Triggering 72(2)(j)

- 77(3): (put a comma after 'confidential')
- 77(7)(ii) Reviewing a co-worker's work → it cannot be a secret review; but you do not need their permission (just need to inform them)
  (iii) Malicious → with evil intent
  (iv) We are in a competitive society, you should not be paying or accepting something to secure work.
  (viii) Tattle-tail → you have an obligation to report to the PEO if someone is defrauding clients

On Exam

- Have to integrate the relevant sections of 72 and 77
- Don't start off your answer by giving a list of relevant sections → must give your justification first.
- Don't use pinpoint references as an answer → always give the reference as an afterthought, they are like footnotes that must be included.

Important Types of Questions for PEO Exam

1. **Whistle Blowing:** public maybe negatively affected by engineer's work or what they have found.
   →Obligation to public welfare is paramount; rules over confidentiality (consider **72(2) b,c,or d**)
   →**Plan of action:**
   -Must have meaningful communication with employer and/or client to fully articulate what is going on. (Showing fairness to employer and/or client **77(1)(i)**)
   -If there is an illegal action, mention that you will contact the respective authorities as part of your action plan.

2. **Conflict of Interest:** can be faced with it easily in your career (unlike whistle-blowing). Approach it thinking how it would affect your judgment in a situation or how it can be seen (by others) to affect your judgment.
   →77(2)(i) : When you have an interest directly or indirectly that could be seen as affecting your neutral judgment. (Ex. If someone that sells Ford cars is giving someone else advice on which car to buy)
   →Define that it is a conflict of interest and how it applies (if employer then 77(3), if client then 77(4)).
   →77(2)(i) : Also says that you cannot keep it a secret (does not say that it is bad if you have a conflict of interest). (Ex. You could say 'I am in fact not the right person to advise you on this because I sell Ford cars'.) The person hearing this can then make an informed decision.
   →There are 5 paragraphs about specific types of conflict of interest

   Having one of those conflicts is NOT BAD
   BUT having them without prompt, voluntary, and complete disclosure is BAD
   (not informing others of conflict of interest).

3. **Moonlighting:** Obligations (listed in 77(5))
   2 obligations to main employer:
   (Failure to do so will result in breaking 72(2)(i) Professional Misconduct)
   - Satisfy that the additional work will not conflict with your obligations to main employer's work
   - Inform employer of the work (do not need permission though)

   1 obligation to client:
   (Failure to do so will result in breaking 72(2)(i) Professional Misconduct)
   - Provide the client with written notification of your work and the limit of devoted time for them (77(5)).

   →Always keep in mind the Certificate of Authorization (COA) in your own name and the insurance (practice issues)

Hypothetical Question 4

- Involves D.U.Plicitous' employer → comment on conflict of interest (77(3))
- Professional Misconduct because D.U.Plicitous did not provide prompt, voluntary, disclosure prior to doing the evaluation.
- Also changing the bidding structure triggers j (77(1)(iii) integrity).
- Also D.U.Plicitous' comments about XYZ (if untrue) are trying to maliciously injure the company (triggering j).