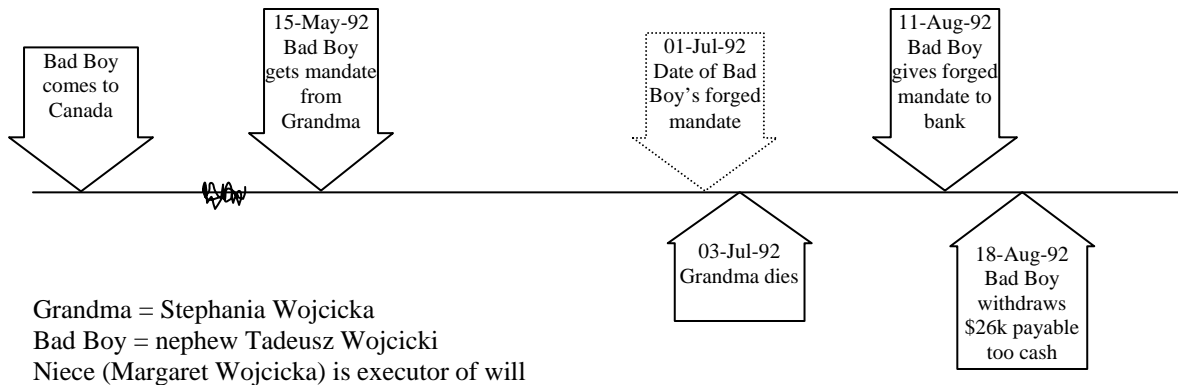


Piec vs. Caisse d'economie polonaise (p. 59)



Facts	<ul style="list-style-type: none"> • Three mandates: <ol style="list-style-type: none"> 1. Gma goes on extended trip, gives power of attorney for banking matters to Bad Boy 2. Niece has mandate as executor of the will (mandate only kicks in when Gma dies) 3. Bank has mandate for Gma's finances • Grandma's bank account summary: \$5 membership, \$1k term deposit, \$26k term deposit (can't take out until 26-Oct-92 or wil receive no interest) • Bank didn't k6now Gma was dead when Bad Boy removed funds
Question	1. Was bank guilty of not [2138] exercising prudence and diligence for its [2130] mandate?
Ratio	1. <i>Argument</i> : Bank is a special type of agent, v. strong fiduciary duties; if they've been defrauded they are 100% liable. <i>Answer</i> : Bank should have been more [2138] prudent and diligent; it wasn't prudent cash out the account, and the bank wasn't diligent in its duty as agent to let funds be taken out before interest accrued.
Decision	Bank guilty, has to pay missing funds to estate

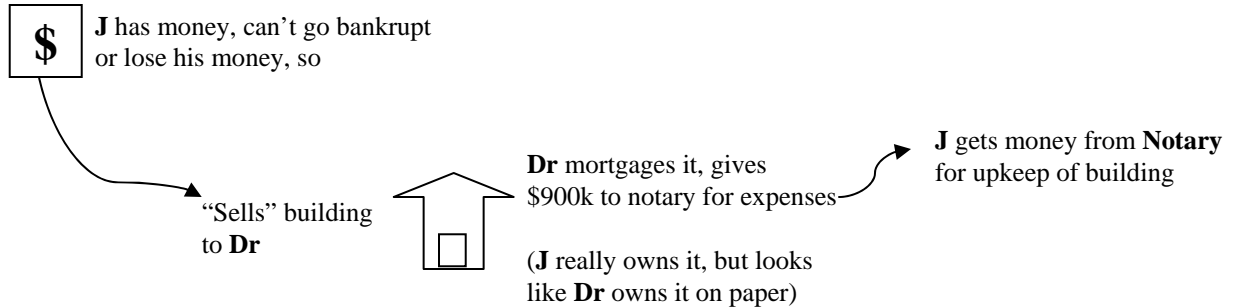
MANDATES

Dowell vs. Notary Hay-Ellis (p. 64)

Joseph: bad credit

Dr. Dowell: good credit, so owns building for Joseph

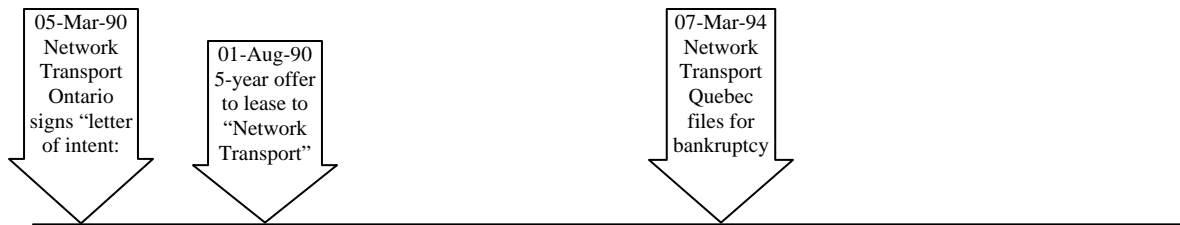
Notary Hay-Ellis: not paying attention to pay-outs for building maintenance



Facts	<ul style="list-style-type: none"> • Dr worried about paying for his insurance, etc. so gives mandate to J to pay for mortgage (from Dr's money held with notary) • Dr says your mandate is to make sure only administration is done • But J spends money (released by Notary) without heeding his mandate • Notary releasing money to J because notary says it's really J's money • Dr says it doesn't matter, Notary's mandate was to give money to J to pay for administration
Question	1. Was notary guilty of not [2138] exercising prudence and diligence for his [2130] mandate from the Dr ?
Ratio	1. <i>Argument:</i> notary says it's really J 's money, so he could release the Dr 's funds to J whenever J wanted. [p. 68, last sentence] Notary must exercise his duties with "prudence and diligence." <i>Answer:</i> Notary 's mandate was to release Dr 's money only for building expenses, so notary was not diligent when releasing funds to J for amounts that clearly weren't for the building
Decision	Notary guilty, has to pay improperly paid out funds back to Dr

How the notary could have protected himself from liability in this situation (p.69):

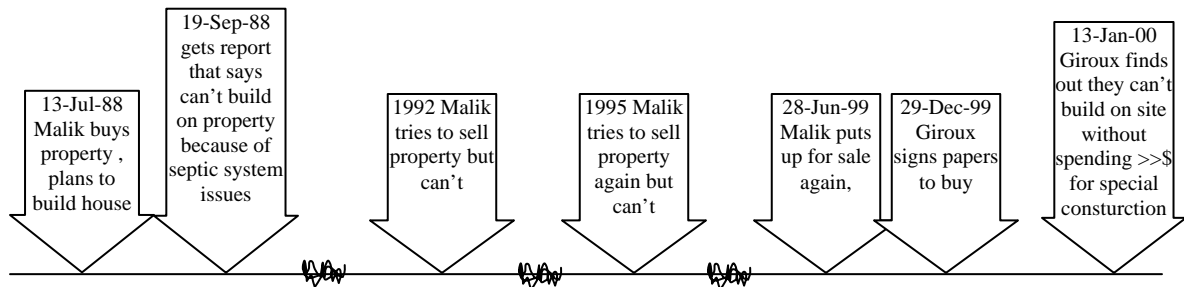
- Notary didn't make attempts to verify what Joseph was doing with the money, didn't request invoices for the cheques he gave to Joseph
- Thus notary fell "far short" of the standard of conduct required by law as an agent
- Had the notary required invoices, and checked them over even briefly, he would have noticed they were not for the building maintenance; then he would have not paid out the money/ stopped paying out the money, fulfilled the conditions of his mandate, and not been liable

146400 Canada Inc. vs. Network Transport Ltd. (p. 70)

Facts	<ul style="list-style-type: none"> • [2137] tacit acceptance of lease contract: offer to lease + move in = lease contract (even though nothing was signed) • Bates (president of Network Transit Limited) says lease contract between NT-QC and 146400 (bankruptcy of NT-QC means rent owing to 146400 will ~go unpaid) • 146400 says NT-QC was set up to defraud
Question	1. Did Bates set up company to defraud 146400 of rent money?
Ratio	1. <i>Argument</i> : Bates faked that company was profitable (fraud); Judge says that principle place for NT-Can in QC is at NT-QC address; companies guarantee each other's debts; annual reports are identical, both represented by Bates. A company is its own person, Bates didn't treat it as such. <i>Answer</i> : [317] says you can't set up a company to defraud a third party, Bates did, so as the shareholder he's personally liable for unpaid rents
Decision	Bates has to pay rent owing

CONTRACTS

Giroux vs. Malik (p. 86)



Facts	<ul style="list-style-type: none"> • Malik informed agents in 1992 and 1995 sales attempts about issue with building on the land – the land never sold • Malik less forthcoming with issues in 1999 selling attempt • Giroux says didn't know he couldn't build, now he's out \$40.5k purchase price, had to buy another house (already sold old house), had problems getting kids in school
Question	<ol style="list-style-type: none"> 1. Did Giroux know ahead of time that the land was bad? 2. If not, was contract still formed? 3. Are damages allowed?
Ratio	<ol style="list-style-type: none"> 1. <i>Answer</i>: judge says no, Malik didn't tell Giroux (based on evidence presented) 2. <i>Argument</i>: Malik had the obligation to tell, [1375] conduct himself in good faith. Giroux's consent was [1401] vitiated by Malik's silence on the building issues. <i>Answer</i>: [1407] contract can be annulled or ratified with reduced obligations. Via [1419] relative nullity, contract was cancelled. 3. <i>Answer</i>: Contract vitiated by fraud so [1407] damages allowed
Decision	Malik and Giroux placed in their [1422] pre-contractual state (Malik gets land back, Giroux gets money back), damages awarded to Giroux for "great stress and inconvenience"

Red herring: agency issue

- If Malik told his agent, then agent and Malik are responsible.
- If Malik didn't tell his agent, then Malik is still responsible
- Either way, Malik is responsible

CONTRACTS

Peter vs. Fiasche (p. 93)

Mrs. Peter (AKA Mrs. Gucciardo) buys restaurant for herself and her husband

Facts	<ul style="list-style-type: none"> • Gucciardo and Fiasche are longtime acquaintances • Gucciardo's losing his job, hears that Fiasche is selling his restaurant • Gucciardo mortgages his house to buy into restaurant, Fiasche says his restaurant makes money with a special scheme, shows Gucciardo the scheme (faking receipts to show lower income and pay less taxes) once \$100k deposit received • Tax auditor visits restaurant while Gucciardo's taking over, Fiasche says don't worry she's just there to check cash register • Gucciardo's losing money from onset, Fiasche says don't worry, will pick up but business never does • Gucciardo sues
Question	<ol style="list-style-type: none"> 1. Should contract be annulled because consent vitiated by G's error? 2. Does contract exist? 3. Should G receive damages?
Ratio	<ol style="list-style-type: none"> 1. <i>Argument:</i> G's consent was [1400] vitiated by the error of believing F's claims about inflated income <i>Answer:</i> The error of G's believing F's claims was inexcusable because of conscious wrongful choice (there's no way he didn't know that tax evasion was the root cause of this special scheme for >> income than shown on the financial statements), and [1400] only excusable errors can result in vitiation of consent 2. <i>Argument:</i> The [1410] cause of the contract (reason why G's contracting) is to buy a restaurant and make money through illegal tax evasion <i>Answer:</i> [1411] an illegal contract is null, so it's as if [1418] there never was a contract in the first place (absolute nullity) 3. <i>Answer:</i> contract never existed, therefore no obligations were produced under the contract, therefore no damages
Decision	Judge says the contract never existed, but requires Fiasche to pay back the \$100k*

*A judge can do two things when a contract has been annulled:

- | | |
|--|--|
| <p>#1: Act in equity (in fairness): There's no contract, but it's not fair to leave Fiasche with the restaurant and Gucciardo's \$100k, so F must give the \$100k back</p> | <p>#2: Dismiss the plaintiff and defendant and let them do whatever they want to settle it</p> |
|--|--|

(p. 103: the trial judge has a wide discretion to grant or deny restitution as he or she sees fit)

Inexcusable error (p.100)

- "error was inexcusable since G's misperception of reality arose from closing his eyes to the risk he was running"
- "conscious wrongful choice"

Carrefour Langelier vs. Cineplex Odeon Corp. (p. 106)

About performance of contract, how do we enforce performance of contract?

Facts	<ul style="list-style-type: none"> • Langelier (lessor) contracts with Cineplex (lessee) (first contract: lease) • Cineplex contracts with Guzzo (second contract: sub-lease) • Before sub-lease can occur, have to tell the landlord, but the landlord wanted Cineplex • Guzzo offered to run it as Cineplex, with obligation to continuously operate as a Cineplex Odeon • One year later, Guzzo takes down Cineplex signs and puts up Guzzo signs • Landlord says no, must remain Cineplex Odeon • Guzzo says no damages by operating as Guzzo instead of Cineplex, so landlord shouldn't worry • Landlord says "specific performance," Guzzo said it would specifically perform as Cineplex so now must do it • Guzzo says no, landlord goes for an injunction
Question	<ol style="list-style-type: none"> 1. Should the contract be annulled? 2. Guzzo says not a case [1601] which admits of specific performance (because no damage)
Ratio	<ol style="list-style-type: none"> 1. <i>Argument:</i> Guzzo says it was under duress when signed, was "fearful," and consent was [1403] vitiated by fear, so contract should be [1418] annulled. <i>Answer:</i> Judge says no more fear experienced than any other business (subjective not objective fear) so [1403] can't be used to vitiate consent 2. <i>Argument:</i> Specific performance is not allowed when: <ol style="list-style-type: none"> i. Obligation has become impossible to perform (e.g. snow shoveller has a stroke, so can't continue) ii. The time in which to perform the obligation has elapsed (e.g. a Celine Dion concert, if she refuses to perform for some reason, once the concert date/time has passed it's too late) iii. The property has perished (e.g. ship sunk at sea) iv. The property has left the patrimony (e.g. no longer own the Lada) <p><i>Answer:</i></p> <ol style="list-style-type: none"> i. Impossible means absolutely impossible, therefore not applicable here ii. Time elapsed? No, because lease = successive performance iii. Property perished? No iv. Property left patrimony? No <p>Therefore case does admit specific performance of the obligation. "Specific performance is a remedy separate from that of reparation" – therefore do not need to prove damages to get a permanent injunction, only need to prove only need to prove the obligation promised must be performed & specific performance is "admit"able</p>
Decision	Injunction granted, Guzzo must operate as Cineplex Odeon

Copiescope vs. TRM Copy Centers (p. 115)

Facts	<ul style="list-style-type: none"> • TRM got an interlocutory injunction against Copiescope to prevent Copiescope from encroaching on TRM's business (placing photocopiers in convenience stores, etc.) because of a non-competition clause TRM made the business owners sign; TRM said stop bothering my clients • Copiescope appeals the injunction
Question	1. Is a clause of the contract [1437] abusive and therefore to be annulled? (for consumer and adhesion contracts)
Ratio	1. <i>Argument:</i> contract is one of [1379] adhesion (business owners couldn't negotiate terms), and non-comp clause is [1437] abusive because likely no real "trade secrets" and conditions for business-owners too strict. <i>Answer:</i> excessive non-comp clause means [1437] the clause is annulled, so the non-comp clause falls too because it hinged on this abusive portion; and since the injunction was based on the non-comp clause there are no longer grounds for injunction without the clause
Decision	No apparent right for injunction and appeal is successful (Copiescope can sell again)

Note: not the same type of non-competition clause we saw in employment law

- Business non-comp clauses also have regional, type, time, business restrictions, but are generally for longer periods of time

CIVIL LIABILITY (AKA PERSONAL INJURY)

Harris vs. Ostromogilski (p. 124)

Facts	<ul style="list-style-type: none"> • H rents a cab from O • There was an altercation when H went to O's house to pay the rent for the cab • H says O beat the crap out of him • O says that H slipped and fell • H is suing for damages
Question	<ol style="list-style-type: none"> 1. Is there fault? 2. Is the cause immediate and direct? 3. Is there damage? 4. Are there compensatory damages paid? 5. Are there punitive damages paid?
Ratio	<p><i>Argument:</i></p> <ol style="list-style-type: none"> 1. Judge believes that O did beat up H (significant injuries indicate more than a slip and fall), and it's a fault (breach of law) to beat someone up 2. Injuries are immediate and direct cause of beating 3. Yes = damage <p><i>Answer:</i> [1457] All three therefore there is civil liability</p> <ol style="list-style-type: none"> 4. [1457] H received compensation for bodily, moral, and material damages 5. [49] (p.6) says potential for punitive damages when illegal and intention action, so punitive damages warranted in this case – but O already punished in criminal trial, so [1621] no need for punitive¹ damages
Decision	O pays H compensatory damages (not punitive)

Note:

Criminal trial has two stages:

1. verdict (guilty or not guilty)
2. sentencing (from \$0 to \$X fine, and/or jail time)
 - O was sentenced to jail time, his punishment that prevented H from receiving punitive damages

¹ *Punitive* AKA exemplary damages

CIVIL LIABILITY (AKA PERSONAL INJURY)

Walker vs. Singer (p. 128)

Walker = man

Singer = woman

Facts	<ul style="list-style-type: none">• Walker meets Singer , moves in with Singer• Singer destroys Walker's clothes, steals some ties and socks• Walker sues Singer (criminal complaint)<ul style="list-style-type: none">• Singer found guilty but receives no fine/sentence<ul style="list-style-type: none">• Singer makes up story that Walker sexually assaulted her,• Walker gets charged with sexual assault• Judge doesn't believe Singer• Walker found not guilty<ul style="list-style-type: none">• Walker sues Singer in Civil Liability court for:<ul style="list-style-type: none">i. Material damages (clothes)ii. Moral damages (reputation)
Question	<ol style="list-style-type: none">1. Is there fault?2. Is there damage?3. Is the cause immediate and direct?4. Are there compensatory damages paid?5. Are there punitive damages paid?
Ratio	<p><i>Argument:</i></p> <ol style="list-style-type: none">1. Fault = false accusation2. Damage = every time Walker starts dating he must reveal sexual assault charge to woman, ends relationship3. Cause = her lie, it's the immediate and direct cause of the damage <p>Answer: All three therefore [1457] civil liability</p> <ol style="list-style-type: none">4. [1435] Compensation for moral damages5. Punitive damages warranted per [49] and awarded because no punishment in criminal case (no sentence/fine)
Decision	Singer pays Walker compensatory and punitive damages

CIVIL LIABILITY (AKA PERSONAL INJURY)

Farmakis vs. Canadian Tire (p. 134)

Facts	<ul style="list-style-type: none"> • Farmakis retires in Greece • He's renovating his home, and after ~1.5 hours of renovations he falls and cracks his heel • Comes back to Canada for medical treatment • 1.5 years later, ships ladder back to Canada <ul style="list-style-type: none"> • Expert examines ladder, says there's a pre-purchase defect • Farmakis sues
Question	<ol style="list-style-type: none"> 1. Was there a defect in the product? 2. Was there sufficient indication of attendant dangers of using ladder?
Ratio	<ol style="list-style-type: none"> 1. <i>Argument</i>: expert says ladder was defective when it was purchased. <i>Answer</i>: no way to prove the defect was pre-purchase after years of ownership and globe-trotting undergone by ladder 2. <i>Argument</i>: Farmakis says there weren't [1469] sufficient warning labels on ladder, claimed there originally were three stickers, but only kept two of them. Ladder displays evidence of there being four labels originally (four areas where there was adhesive – looked like there were four stickers) <i>Answer</i>: four labels indicates it appears there [1473] was sufficient indication of dangers and Farmakis known or could have known about these dangers
Decision	Farmakis loses suit – no damages awarded

CIVIL LIABILITY (AKA PERSONAL INJURY)

Walford vs. Jacuzzi (p. 138)

Facts	<ul style="list-style-type: none"> • Family buys a 4-foot deep above-ground pool and then a 10-foot slide • Mom warned her daughter not to go down the slide face-first • Girl slides down head-first and breaks her neck, became a quadriplegic • Girl sues Jacuzzi because didn't warn you couldn't put a 10-foot slide in a 4-foot pool, sues Pioneer because didn't advise not to put the slide and pool together
Question	<ol style="list-style-type: none"> 1. Is there a fault? 2. Is the fault direct and immediate cause of the damage?
Ratio	<ol style="list-style-type: none"> 1. <i>Answer:</i> Fault = daughter's, sliding down head-first (she's [1473] endowed with reason, so she should know better and heed her mother's warnings) 2. <i>Answer:</i> Daughter's fault was the immediate and direct cause of the damage (There was also fault on the part of Jacuzzi because there didn't warn, but this was not the direct and immediate cause of the injury – the girl's fault was the direct and immediate cause) All under [1457]
Decision	"not guilty" – no damages awarded

CIVIL LIABILITY (AKA PERSONAL INJURY)

Morse vs. Cott Beverages (p. 139)

Facts	<ul style="list-style-type: none"> • Girl can't twist cap off of 2-litre pop bottle, so • She uses a nutcracker to open it • Cap hits her in the eye, she loses consciousness • Experiences significant damage to eye, lasts for a prolonged period of time • She hires a lawyer, lawyer takes a look at Cott's capping process, finds that: <ul style="list-style-type: none"> • Cott has a manual on appropriate capping regulations (says don't cap at >15 lbs of torque) • Cott changed from recommended 13lbs to 20lbs to avoid spoilage (at 13lbs, caps were popping off in storage, raised the torque to prevent this spoilage) • Girl sues
Question	<ol style="list-style-type: none"> 1. Was there fault 2. Was there damage 3. Was the fault the direct and immediate cause of the damage? 4. Should there be compensatory damages? 5. Should there be punitive damages?
Ratio	<p><i>Answer:</i> 1. fault = not following recommended way to use machine, 2. yes damages, 3. yes the fault was the direct and immediate cause of the eye injuries. All under [1457]</p> <ol style="list-style-type: none"> 4. [1457] Compensatory damages for bodily injury 5. Section 28(1) of Consumer Products and Warranties act says can collect punitive damages if willful and knowing violation of act, this is the case for Cott's so damages awarded
Decision	Compensatory and punitive damages to Morse