

CH7: Employment Law

Employees Vs. Contractors

1. Employment law in Canada is complicated
2. 3 rules:
 - a. general rules on contracts
 - b. rules in civil code which are specific to employment contract
 - c. excerpts from specialized laws

Compare employment contract and service provider contract

Employment (2085)	Contractor/service provider (2098)
Subordination- has to do what employer tells him to	Autonomous- can do whatever they want
Employer is liable	Contractor/service provider is liable
Within the business	Outside the business
Remuneration (wages/ salary)	Paid a price (independent from the actual value of the act)- 2106, 2109
No profit	All the profit for the interaction
Works for employer	Works for client
Employee has to do his job personally	Can hire help→ liable for checking that the job is done

*exam

- If you set a price, you have to stick to it
- **Article 2085:** employee has to provide work; employer has to provide employee with remuneration (compensation in exchange of work); this contract happens when the employer controls (subordination)
- **Employee** can only be a **physical person**
- If you are in a company, you are not considered an employee.
 - **Exception:** if the employer bullies you into creating a company because it reduces his own charge and if the judge notices that the company has been imposed on you (still a subordination) the judge will say that even though the company exists, since you obey what the employer says, it can be re-qualified as a work contract.
- **An employer** can be a physical person or a legal person
- **Formalism:** you can conclude an employment contract with a handshake. You do not have to write down an employment contract. If there is a clause in your contract that prevents you from working for a competitor or starting your own business it has to be written down
- **An employment contract can be accepted tacitly.**
 - If you do not sign a contract but he starts giving you paystubs, you can tell you've been hired
- **Capacity:** categories → people who can sign employment contracts- people under productive custody (when they have the help of the people in charge of them) and regular people.
 - **Someone is handicap** and needs help to conclude the contract. If the handicap individual signs the contract on his own, it is void. If he signs it with the help of his curatorship, it is valid
 - **You can work when you are 14 or older.** If the employer takes advantage of the fact that you are underage, it is possible to renegotiate it to reach something normal- employer is trying to take advantage of a minor. Lesion can reduce contract
 - **Tutorship when you need assistance** for certain types of decisions. *If you cannot make any decisions by yourself, it is a curatorship *may be reversed- tutorship may be stronger—look up*
- **Contract is considered cancelled** if one of three conditions are met:
 - Lesion: one party is exploiting another
 - Fear (if you are frightened into a contract because you fear an injury) ex: blackmail
 - Error- you contract into something believing it's something else. Error is the one you see the most. Can be about: the object of the contract (condition of the contract), or on persons (ex: if the employer hires you because he thinks you have a diploma or quality but you do not have it)
- Whoever made the mistake can ask the contract to be cancelled
- De non vigilantibus non currant praetor- the law is not there to protect people who are negligent. You can ask for contracts to be void if you believe there is an error. If you failed to do reasonable background checks, etc. you cannot ask for it to be cancelled.
- **The employer is supposed to ask relevant questions-** questions cannot be asked about things protected in the charter.
- Since the employer has to ask questions that are relevant, the employee has to answer in good faith. The question has to be related to the job. The employee does not have to provide information that the employer did not request.
- If employee provides false information, it is in bad faith and the contract is void. Ex: pretending you have a diploma and you don't, lie on medical or criminal history. Sometimes, even being silent implies guilt (ex: truck driver who lost his license).

Content

- There are specific things related to duration of the contract
- If you show up to an employment place and there is no work to do, since you are there and available, you have to be paid.
- The object of the contract has to be legal. You cannot specify forbidden clauses in a contract (sell drugs, prostitution, to be a doctor when you're not a doctor).
- The employment contract has to be possible- it is not possible to sell beach holidays in Greenland (no beaches).
- Employer controls the work of an employee (this is how employment differs from a mandate). Must determine the work relationship. To check subordination link, you must check who determines the work hours, the work place, an obligation to report, whether there are procedures to follow, whether your work is assessed, if you need authorization to perform things.
- Usually the employer provides the materials and tools. Look at who maintains them, who pays for them.
- If the employee has no share in the profits, it is an employee contract. If they do benefit it is a contractor contract.

- The employer can impose sanction on employees who do not follow their orders/directives.
- Remuneration: any kind of compensation for the work. If your company provides you with a car, it is considered a compensation. The form of the compensation doesn't matter- as soon as there is a compensation it is considered remuneration.
- Duration: in principle, 2086 tells us that it can be a fixed term or it can be an indeterminate term. You can have a contract with no end, but you cannot have a contract forever. If you have a fixed term contract and it's over, 2090 tells you that the contract turns into an indeterminate contract if the employee continues to work for over 5 days and the employer says nothing about it being over.

Terminate an Employment Contract

- If your employer is a company and the company is purchased, your employee contract does not change. (Shareholders just change).
- Contracts can end because parties agree to an end.
- The first unforeseen end to a contract is death- the contract is over
- Employers can either be legal persons or physical persons. Depending on the contract, it is possible that the heirs of the employer will continue the contract.
- Article 2091: Discretionary termination- termination at will. The only condition is that the employer is given reasonable notice. You have a right to finish a contract but you should not abuse this right.
 - If there was some damage from the termination in bad faith, you can get compensation for the damages
 - Ex: C works for B. A contacts C saying he will get better pay, more interesting job, etc. C leaves B and goes to work at A. After a couple of weeks A dismisses C because he couldn't afford the promises he made. A is technically entitled to fire C but this dismissal causes damage to C because he lost a stable position at B. C can be compensated for what he lost at B.
 - A knew he could not afford the promises he made to C at the time he made them

Termination of employment

- When the structure of the company changes, there is no affect on the employment contracts.
- Contracts can end when it is consensual (both agree to the ending) or unilateral (one person decides it ends).
- **Consensual end:**
 - when there is a fixed contract (Article 2086)
 - indeterminate contract and the parties agreed that they were going to finish the contract (CCQ 1439)
- **Unilateral end:**
 - when your employee dies (Article 2093 para. 1)
 - the employer dies. It will depend what is in the contract, it can either continue or end (Article 2093 para 2)- Think Batman; Alfred worked for Bruce's parents, they died and he now works for Bruce.
 - Discretionary end (at will) (Article 2091 para 1)
 - The employee can leave for any reason, and the employer can dismiss for any reason. LIMIT: it must be in good faith (CCQ 7)
 - Need to give the person reasonable notice (Article 2091 para 2). It is based on the nature of the employment, the circumstances and the duration of the work.
 - Article 82 of the LSA says that it sets minimum standards. If you have been working for less than a year, you are entitled to a week of notice. 1-5 years, you're entitled to 2 weeks of notice, 5-10 years, 4 weeks of notice and 10+ years, 8 weeks of notice. The exception to this rule is 82.1- when you are not entitled to a notice.
 - The right to get your notice is a public order right. You cannot renounce any kind of notice (article 2092).
 - serious reason to dismiss employee- something grave and justifies the end of the contract. Ex: bringing drugs to the workplace, trying to get employees to participate in an illegal strike, etc. Usually is linked to the employee himself. *You do not need to give notice (article 2094)*
 - If you believe you've been dismissed for no serious reason, the LSA allows individuals to bring the case to commission de nom de travaille (work in French) (?). (124 of LSA) They must have worked for over 2 years. (124-128 LSA). If it was not for a serious reason, you can get compensation and be re-hired.
- Managers and government jobs are covered by the CCQ but not the LSA. Most employment in Quebec falls under the LSA.
- The employee can ask his now former employer for a certificate stating length of employment, position, etc. It cannot be used by provider to give feedback (article 2096).

No serious reason → Good faith → notice (ex: company in economic trouble)

No serious reason → Bad faith → notice and damages

Serious reason → no notice

Health, Safety & Dignity

- **Article 2087:** employer has to protect health and safety- anything that threatens the mental or physical well being. You must be able to work in a decent condition as an employee.
- Employers must eliminate any kind of danger (ex: if they see a floor is slippery, they must eliminate the risk). They have to provide safe tools and methods for maintaining the tools.
- You must make sure your employees actually follow the rules. The duty to provide a healthy and safe environment extends to the employees belongings.
 - Ex there is a man who has heavy tools which are inconvenient to bring back and forth from work everyday. The company agrees that they can leave their tools there. The building burns down and all the tools are destroyed. The employee goes to small claims and is awarded compensation for his tools.
- The employer has a duty to provide the employee with a decent work environment. If someone is harassing one of the employees, that means the employer is not providing a good environment. The employer should not try to infringe an employee's dignity.
 - A manager wasn't happy with a worker. He brought him outside of the premises and started insulting her. She brought the case to the commission- the judge decided that he failed to protect her dignity because he was insulting her.
 - The difficulty in these kinds of cases are proving what happened.
 - If another employee tries to fight another employee, the employer has to step in.
- There was a case where a man was harassing a bartender. The employer refused the man access since he was harassing his employee. The man went to the judge to try to re-gain access. The judge said no, the employer was protecting his employee's dignity and was allowed to do that.
- **Article 2088:** Even though the employer has the duty to provide the environment, the employee has to act prudently and respect and kind of safety rules the employer implements.
- The employee has the duty to do his work safely.

- The employee has a fiduciary duty to act in the employers best interest.
- There was an employee who was posting things about his company online. His boss found out and fired him. The judge said he should have been fired because he was saying bad things about his company.

Article 2088: confidential information (what exists by default).

- The employer has designed it to be confidential. (In employment contract, it says that you should not disclose specific information)
- Information to which access is restricted (info that not everyone in the company has access to)
- Information that is confidential by nature (trade secrets)
- When the employer decides information is confidential, he must explain why the information is confidential.
- If you have a senior position, your standard of loyalty may be higher than someone with less responsibilities.
- In the fiduciary (time)- idea is based on when you go to work for competitors.
 - Confidential- reputation and private life (ex: if you are secretary for a doctor, you can never disclose information on patients even if you no longer work for the doctor) OR other information
 - Loyalty- the duration is a reasonable time. It is usually from several months to a year. If you have an obligation to confidentiality or loyalty, the obligation starts when you get a new job.
- Information about private life is always confidential.

Trade secrets and Insider trading→

Fiduciary duty covers confidential information- trade secrets are an element of confidential information. All trade secrets are confidential information but not all confidential information are trade secrets.

Need to meet all 4:

1. **Information:**
 - a. Continuously used
 - b. Formula, process
2. Not easily accessible
 - a. Unknown in industry.
3. Should have commercial value
 - a. If it's disclosed, it causes a damage (information is valuable as long as it's secret)

Steps are taken to protect it→

1. Trade secrets can be an efficient way to protect secrets.
2. If a trade secret is breached, the judge will look at the cost to protect and create the trade secret
3. They compensate for loss of profit
4. The only time you wouldn't be liable when you disclose a trade secret is when it has potential hazards on the public. Ex: if you learned that there are dangerous drugs in coke, you can disclose the trade secret.

Insider Trading

- Someone from inside the company using information to gain a profit
- Rules are set at a provincial level. (not in CQC- in securities act, 187-188)
- The insider of a company (officer or director + outsiders under certain conditions)
- They cannot trade securities, recommend a trade or disclose information because they have access to privileged information that is not yet public.
- The people from outside the company- it depends how they get their hands on the information
 - The psychologist of the wife of a CEO got information and was considered an insider.
- Privileged information can be pretty much anything.
 - A kid choked to death on a Lego toy. Around this time, one of the officers sold his shares. They thought he knew of the impact this would have and that's why he sold. They realized that the fact that he had sold the shares was not related to the death of the kid.
- **Exceptions:**
 - If information is generally known- if it was on the news that the kid had choked, it is not insider information because it is publicly known.
 - Automatic investment plan- if you were supposed to get X amount of shares every year, you are not considered to have used insider information.
 - Contract

Non-Compete Clauses→

- **Article 2089:**
 - It has to be in writing
 - It has to be express
- If these 2 conditions are not respected, the clause is considered void.
- Since the clause has to be written in express terms, the judge cannot reduce it- he can only cancel it. It also has to be interpreted in favour of the employee.
 - If an employer writes something too big, it's going to be void not reduced.
- **There are 3 elements**
 - **Time-** the clause should have a reasonable duration. It should not be longer than the contract. If you are in an industrial setting, the clause shouldn't be longer than the cycle of the goods. There has to be a clear starting point to the clause. If the clause says it applies during the contract and one year after- 1 year after is not a clear starting point.
 - **Place-** specialized when there are few competitors. Can't have a broad and geographical scope. Clearly determined- a clause that says that a person can't work in the Vancouver area- it is not clear.
 - **Employment-** it should be reasonable and should not prevent the person from finding a job in the field. It should also be clearly defined.
- These only apply if the contract was terminated for serious reasons. If you were fired because the employer doesn't like you, the employee doesn't have to respect the clause. If employee just leaves the contract, he is bound by the clause.
- **2088** cannot have an effect stronger than a non competition clause.
- If nothing special is written in the contract, you have to be loyal and keep information confidential. However, the employee can do whatever he wants to prepare his future career as long as it doesn't hide information from the employer (?)
- A guy works for an employer and there is no clause about his work. Another guy contacts him and he changed companies. He still has access to his old clients. He can't act in bad faith and take all his clients.

Privacy 5 charter, 3ccq

Employer has the control to control the work place

Employer should be able to search anything in the work place

Even if the employers have the right, in practice this is limited, risk of abuse on employer side

Employers limited right to search

- Usually when they make a search (should be restricted theoretically)
- → 1st not discriminatory (only the same employees, or ethnic background)
- → 2nd shouldn't search arbitrarily, **must have a legit reason to search, reasonable reason to start up a search ex: series of theft, that's a reason to proceed with a search

CAMERAS

Use of cameras in the work place, shouldn't be used to point directly at you. Employer cannot put cameras on premises for just prevention use. It can be a form of reaction but cannot just simply put them in without a series of elements to be justified (IE THEFT, vandalism)

The sole use cannot be to monitor employees

The employer needs **a limited use and a legitimate motive**

Example of a plant that justified camera use to protect trade secrets

- -Even though they wanted to legit keep their secrets private, by itself it does not justify
- -Employer undertook the stipulation that he cannot use what could be seen as a means to discipline employees, that's what essentially allowed him to continue with the use of the cameras
- (expectation of privacy)

Emails and the internet

- BALANCE the private life and the employer wanting work to be done
- Employees have the right to privacy rights
- The fact that the employer owns the device does not give him the right to take conversations

Ex: high school teacher was accused of having porn on his laptop, the material that belonged to the school they were allowed to search. The school had an annual maintenance, the people found juvenile porn . when they realized they took it to the police, the police accessed it and didn't get a warrant since the computer was owned by the school

SUPREME COURT SAYS

→ Does not deprive the employee the right for privacy

→ Accessing without warrant was a breach

→ whether or not you own it doesn't really matter, the employee had a reasonable expectation of privacy

→ employees were aloud to use for personal use

You cannot be expected to wave all your privacy rights

If there is a justifiable breach you need a warrant

Brassard vs Letuc

Ex: SIGNS the city policy to use the computer

Personal nature website browsing

Judge asked the employer policy for internet use

→ fired because he knew he shouldn't use it for personal use

Phone

Employers by default cannot record the conversation between employee and someone else

Unless→ you have a disclaimer, unless you are told that you are being record then you they are allowed

Sign a waver or told on the phone that it is being recorded

If you record your own conversation with someone else, it is not a breach of privacy

I can record my own convo, you can use the record for proof

You need to make sure that the tape

make it clear who is talking

the document is a real one, it cannot be tempered

Without the authorization of the other person you are having a conversation with. → still allowed

A and B have a Convo → C ANNOT LISTEN TO THE CONVO AND RECORD IT

A AND B HAVE A CONVO→ THE CRIMINAL CODE DOES NOT COVER THAT THEREFORE ALOUD BUT THE CIRCUMSTANCES INCLUDE CLARITY, and has to be proved that the tape has not been tempered with.

Not a breach and can be used a proof in a trial

→ What is required is that each time the problem revolves around determining when a convo is private or when its not private

→ Must look at the employee's expectation of privacy (first check who is talking and second what is the nature of the information)

→ It is important to investigate the employee's **subjective perception** of privacy (look at whether the employee has signed or had any way to know the conditions)

→ Whether the **perception** is reasonable or not. Once again if the employee signs the document that the phone line is only professional and can be monitored. And you still use it anyways, there was no reasonable reason to think that you had privacy.

→ The **nature** of the communication→ if your talking to your wife, your expecting high privacy, if it is linked to a competitor the expectation for privacy is LOW.

2 examples: no expectation of privacy

Ex1: Employer taped a convo with a competitor, since the taping was not linked to private matter , then the employer can use the elements. The tape was used to gain commercial behavior info not private.

Shouldn't have done it but it is a breach of privacy

Ex2:The priest, was supposed to be there for long periods, was reasonable to let him use the phone for personal use, since the convo was with his mistress, the tape was a breach to his privacy

Employers try to provide a code of conduct
Make you sign documents saying that you should not expect privacy

The code of conduct is one of many criteria to evaluate the employees perception of privacy
Even though there is no code of conduct limiting the communication device use, it is still possible to fire an employee over phone etc

A guy used 8 weeks of work out of a contract of 5 month, online instead of working
From what the employer gathered the sites were porn
The judge had a legit reason to fire him

Medical Evaluation

CHECK MENTAL AND PHYSICAL HEALTH

- Needs a reasonable motive ex fit for the job such as firefighters
- When a employee is on a sick leave, they are aloud to make him see the employers doctor to ensure and check
- If you get sick or injured the employer has the right to prove that you were not sick

STM→ a guy says he has a sick leave cause his back was in pain but on Facebook they saw that he was not sick and was aloud to be fired

→ **Construction dismissal** ...When a person's job disappears or changes so much its lo longer their job anymore. Ex: Hassanie case

→ What is a **interlocker injunction**? It is an order from the judge will either allow or forbid a behavior

When it is a order that sets something until the end of the trial

Ex the copy fax case, doesn't want him to able to work

PSYCHOLOGICAL HARASSMENT

Health and Safety 2087

The employer has to react when he realizes there is harassment.

81.18: Psychological harassment

- **Uexatious Behaviour** → ABUSIVE, humiliating or offensive behavior (from the person who suffers from this behavior) ex a team always opposes you If they don't like you, putting the employee in a isolating person that is a way to harass them, or any kind of harassment based on the charter
- **Hostile or unwanted** → can be small or obvious . the intention of the person does not matter what matters Is how the person subjectively feels. (ie a bad joke)
- **Affect dignity**
- **Harmful work environment**
- It can happen at the workplace or somewhere else.
- Can happen on Facebook or over the internet
- That person can print the comments and use as a proof
- Taking into consideration that all your colleagues may or may no have access to it. In which case the judge uses his judgment

→ When suffering from psychological harassment you file a complaint and has to be in writing or by yourself or union article 123.6 (you have 90 days after the last occurrence)

1621 CCQ: Punitive Damages

All the things that the commission can do for you from getting your job back all the way to affecting your compensation. The judge can award punitive damages

Makes sure the amount is preventive but not too extensive

- The severity of the fault
- Patrimonial situation (how rich the person is)
- Extent reparation (set amount to what the person has already refused, goes beyond compensation) if you already received 60k , its already heavy amount the punitive damages may be reduced
- Who pays (the complaint is against the employer not the other colleague) failed to control the work environment. If he fails to do something it is his responsibility

1463 CCQ: Vicarious Liability

Employer is liable for the actions of his employee, ie. objective liability

There is no way for the employer to avoid liability when employee does something

→ Must prove that employee is working outside his scope or functions

→ Not his employee

→ NO CAUSAL FAULT (employee not involved) in a museum, you're a cleaning person, at some point one of the guards opens a door and water leaks, someone then falls. Problem of causality, the roof and someone forgot to lock the doors, prove that your employee has nothing to do with the accident. Ie he washed the floor 2 hours ago.

In principle the employer is always liable.

Whistle Blowing

- Can be internal or external
- When the company makes a an error to the public and the public should know
- When someone from a company acts in a way that is a threat to public interest and that goes against its company's mission
-
- There is no obligation, not a law requirement it's a ethical decision
 - Disclosing true information (cannot be false to the media)
 - The employees intervention should be reasonable, should go to the company first before the press. Don't go for the immediate and most damage ex; company builds entertainment complex, games and stuff. One employee was worried about the quality of water to bathe in. brought the results to the clsc. The guy took a reasonable step, to ensure safety and not just jumping to conclusions
 - Should be done in the general public interest, not personal interest. Fraud, systemic abuse, polluting etc. not dealing with political matters
 - Ex: president of a union for drivers complained about the quality of the infrasture and the arbitrator complained that it was based on the bidding. Trying to prolong the bidding process and not the safety.
 -
 - Try internal procedures first, internal disclosing mechanisms. Only go outside If the internal mechanisms cant work. Only time you don't have to go internal first is when you think the company would destroy evidence. Ex Erin Brokovich.

Don't have the duty to make the ethical choice, but the law does protect you to a certain extent. The employee can be fired if these previous criteria are not met. (4 MUST BE MET)

The Individual Contract of Employment

Appendix 7-A Selected Articles from the Civil Code of Québec

Appendix 7-B Selected Sections from the Québec Labour Standards Act

Articles of the Civil Code to focus: All articles listed on pages 232 and 233

Section 7.2.3 (Labour Standards) and 7.2.4 (refers to charter articles from chapter 4) in the Book (p.226-231)

Articles of the Labour Standards Act: art. 81.18, 81.19, 81.20, 82, 82.1, 123.6, 123.7, 123.15, 124, 128

Case of King v. Biochem (dismissal without cause art. 2091, no disciplinary procedure, rules for bonus in damages). (main facts, legal reasoning and decision)

King Vs. Biochem

- Doctor was fired even though she was doing well
- Mrs. King was hired in Nov 1996. A couple of months after, she was doing so well that her employer nominated her for an award. They decided to end her probationary period earlier and make her contract finite.
- They offered her stock options (only offer to employees who do well)
- Suddenly, they decide to fire her with no notice
- She sues the company
- The company says she was not doing well, she was insubordinate, she was not working well and they had serious motive to dismiss her
- The judge looks at the facts and sees that they constantly give her marks for appreciation for her work; it is not consistent with the fact that they say she is not doing well.
- The judge decides that Mrs. King can be trusted on what she says and the company's testimony shouldn't be retained
- The judge rules that she was dismissed for no serious motive.
- Since she was fired for no reasonable reason, she is entitled to reasonable notice.
- It appears that she was never given reasonable notice considering the circumstances
- She was entitled to reasonable notice and the judge awards the notice. He awards her the salary and benefits that would come along with the notice period. He says she should have had a 1 year notice and awards her all the accompanies that.
- He also awards her all the holidays she had not been able to take up to that date.
- Revenue Quebec allows people to bring people to Quebec (if they require specialized people and you cannot find anyone with the specialization in Quebec). Companies get a tax break for this. She is one of these people
- The judge takes into consideration the tax break
- The judge gives her stock options because due to the way the stock options were organized, she was supposed to get an amount of shares from the company during the period of her 12 months notice. She would have been able to realize a profit on these shares.
- He also awards her for the damage it causes on her reputation. She did not commit any fault but was fired- it looks bad on her.
- He compensates her for stress injury- the employer was mean and made everything more complicated for her.
- The judge also awarded her relocation expenses

****When trying to figure out what an employee is entitled to, must first check if there is a serious motive for dismissal. If there is serious motive, you do not need to give notice.**

Fact:

Dr King is hired by Bio Chem. She signed a special contract that specifies a period of probation. During this period, she can be let go but you have to be known the wrong behavior in order to be able to rectify it. If the wrong behavior persists then your contract will be terminated. Issue: Is the termination of the contract of Dr King for fault justified? Ratio

Employer version of facts:

1st meeting: after 5 months and a half, during this meeting, the management team are saying that they told her that she was being unsubordinated 2nd meeting: after 10 months, the management team told her that her behavior was still being not acceptable and that constitutes a second warning Employee version of facts

1st meeting: probation period was over (5weeks and a half instead of 6months) and she was offered stock options 2nd meeting: she got more stock options

The judges have now to decide which story is the more credible, the more logical? Based on the fact that the employer version is contradictory, why would someone discuss the possibility of having additional stock option to an employee that is on the second step to dismissal? A Dr King version makes more sense.

We conclude that because the termination of the contract was unfair, she should have received reasonable notice she is entitled to damages.

Damages include: Damages due to stress, anxiety and inconvenience, Damages to reputation, Loss of salary, Vacation pay, Loss of stock options, Relocation expenses

Case of Dubé v. Volcano (dismissal without cause art. 2091, renunciation 2092): (main facts, legal reasoning, decision)

Dube Vs. Volcano Technologies.

- Dube was hired by Volcano as a manager- he was not covered by LSA (covered by CCQ)
- Company sent him a letter saying contract can end at any time under LSA 82.
- The company said they only need to give him 2 weeks notice and 3 weeks of untaken holidays.
- He is covered by CCQ and he asks for 9 months.
- The judge looks at what the party actually negotiated- there was no real official discussion.
- Because of the way the letter was written, it was not an actual renunciation to civil code rights. To be valid, it should be clear, not ambiguous.
- He uses 2091 to determine that a reasonable notice for this job would be 4 months.
- He gets the salary for 4 months; he does not get a bonus; he doesn't get the car loans. Since the contract is over, there is no need for him to receive the car loans
- He does not get awarded costs for moral damages because there is no proof

Fact:

Mr Dube was recruited in September 1997 as the production manager for one of the plants of the company Volcano. In his contract, it was indicated that "votre emploi pourra être terminé en tout temps par la Société pour cause ou motif sérieux, avec les préavis ou indemnités équivalents prévues sur la loi sur les normes du travail." He was laid off in December 1999 for financial reasons. He was given two weeks notice and plus 3 weeks of vacation. DURÉE DU SERVICE CONTINUE

Issues:

Can you waive your rights concerning employment by signing a contract?

Ratio:

According to article 2192: "the employee may not renounce his right to obtain compensation for any injury he suffers where insufficient notice of termination is given or where the manner of termination is abusive". In the case where an employee renounces one of his rights, it should be very precise and clear. Question: If it was explained more clearly, and was brought to the attention of the employee, could it have been considered as valid. Because the judges are not saying that it is impossible to waive employment rights relative to conditions of termination of contracts but rather that it should be clear and unambiguous. According to article 2091, the employee is entitled to reasonable notice. According to judges the minimum notice is only for very early departure.

Case of Hasanie v. Kaufel group (dismissal with cause art. 2094, obligation of loyalty, constructive dismissal): (main facts, legal reasoning, decision)

Hasanie Vs. Kaufel Group

- Hasanie was hired by Kaufel
- Kaufel was purchased by another company
- His title did not change, he kept receiving his pay etc.
- Hasanie realized that the organization was restructuring and his name wasn't on the structure.
- He got in touch with another company to potentially buy them
- The company offered Hasanie a severance package
- During Hasanie's holidays, the company realizes he's been negotiating with another company.
- They realize he is doing something that is a breach of his duty to act loyally.
- He makes things very unclear and complicated
- After a while, the company decides they have enough support to say he wasn't loyal and they fire him without a severance package.
- 2 points brought up:
 - whether there is a dismissal with a cause- it appears that Hasanie is not very credible. What he says is not very consistent. He pretends the company he is trying to buy is not a competitor but it is. Judge says that since he's in a senior position, he has a higher obligation to loyalty. The judge says there is a breach to act loyally so the company could fire him without severance. The dismissal had a serious reason → consequence was that the company could kick him out without a severance package.
 - whether or not there is a constructive dismissal- this is when the employer acts in a way that makes the job disappear (rearranging the company in a way that prevents you from having any work). He thinks they are trying to fire him through getting rid of his job. There is nothing that could lead Hasanie to believe his job was being destroyed. Hasanie could not anticipate constructive dismissal (because he was offered an alternative).
- Hasanie's claim is rejected.
- Hasanie has to support part of the legal costs of the employer

Facts:

Thomas & Bett Kaufel Group

H H

After the acquisition, Hasanie realized that the reorganization of the group will dismiss him, that there were too much people doing the same job. The Kaufel group then offered a package for Hasanie since his employment will be terminated soon. There were still in period of negotiation when Hasanie went into holidays. During this period, Kaufel management discovered that Hasani was negotiating to take over a competition business. The management team therefore decided to take the deal out of the table and to fire Hasanie for fault. Issue: Was this dismissal of Hasanie for serious fault was fair? Ratio:

According to article 2188, "the employee is bound not only to carry on his work with prudence and diligence but also to act faithfully and honestly and not to use any confidential information he may obtain in carrying on or in the course of his work" Kaufel's main argument is that Hasanie put himself in a position of conflict of interest and sought to advance his interests to the detriment of those of his employer, therefore breaching his duty of loyalty towards his employer. Hasanie is arguing that Dynergie is not a competitor of Kaufel. He is also arguing that he asked his direct superior if he could take this opportunity, and he agreed. However, the direct supervisor is denying. There is no written evidence of this authorization. The last argument of Hasanie is that he was a victim of constructive dismissal. Basically a constructive dismissal happens when an employer changes your working environment, inviting you to leave. However, Kaufel argues that they offered opportunities for growth within the group and that Hasanie was only waiting for his package. Finally they are arguing that they needed more time to reorganize the group and assign responsibilities. The judges conclude that Hasanie did not establish his case of having been dismissed without cause, or having been constructively dismissed.

Case of Copyfax v. Lambert (injunction, non-competition 2089): (main facts, legal reasoning, decision)

- Lambert employee, non completion clause
- Terminated employment
- Ligament non completion clause
- Lambert was a dispature, 5 years later, a new sales rep position
- 2nd contract is the same non completion clause
- Did not check if it made sense to the new contract
- The clause said that Lambert should not be able to work for a competitor 14 mile radius and 14months
- Lambert wants to be possible to quit as an employee and wants to be a service provider
- Wants to work as a contractor more independent
- The company refuses, Lambert decides to make one anyways
- 6 months later, →Jan 2000, Copyfax learns that he did it anyways and wants to terminate the contract
- Wants to sue Lambert and Panasonic (client of his)
- no discussion on fact, parties don't disagree about the clause
- should the judge grant Copyfax allowing him to fire him
- does not address details, just what appears to be the solution
- asks for injunction to make sure he can't work with competitors during the trial to protect the interest of Copyfax (forbids him to work with competitors)
- The judge notes that there is a problem about the 25 mile radius, from Montreal and Laval does not say from where to start → unclear
- The contract says it lasts 14 months, does not explain why no justification
- The judge notes that even though Copyfax expresses a worry about working with a competitor, if they had a problem with losing a sales rep, they should have hired a new one
- The initial dispature position does not require technical knowledge, does not make sense to have a clause that strong to the first contract
- Finally the judge notes that Lambert did not try and contact Copyfax's clients
- Judge says that the clause is unbalanced the employer does not show why the clause is necessary and poses a heavy burden
- considers the clause to be too vague- did not maintain the

RULING

→CANNOT CONTRACT WITH COPYFAXS CLIENTS

→Since Lambert used equipment from Copyfax he has to bring the equipment

→COSTS are split no bad faith

The different injunctions

Institution of Proceeding Final Judgement Provisional Injunction Interlocutory Injunction Permanent Injunction The provisional injunction is given based on emergency criterias. It is used to maintain the status quo. The provisional injunction is valid for 10 days. Within these 10 days, the individual has to institute the proceedings and asks for interlocutory injunction. The interlocutory injunction would be valid for the entire period of the trial. In order to get the interlocutory injunction, the judge would first look if you have: A clear right

Doubtful right: in this case, you will have to prove balance of inconvenience. They would basically see which of the parties will end up with the most inconvenience, with the irreparable harm. Non-existent right: you will not get the interlocutory injunction Facts: Claude Lambert, worked for Copyfax as a sales representative. However, he was also working for himself on the side, his employer did not allow that therefore Lambert decided to resign. The contract included a non-competitive clause : Lambert was not allowed to work within 25 miles of Laval and Montreal for a year for the competitors of Copyfax. However, Lambert starts competing in the zone. Copyfax is arguing that he is using the Copyfax customers, therefore also breaching the confidentiality clause. They also included a penal clause of \$6000 for breaching the contract. Issue: Should Copyfax be entitled an interlocutory injunction against the former employee Lambert that would limit him to make business in the region? Copyfax has a doubtful right in the case of the non-competition clause. The judges found out that the non-competiting clause was lacking of clarity. The prohibited area is of 25 miles of Mtl and Lassale. What is the central point from which the area is calculated. Conclusion: The employer did not establish that he will suffer irreparable harm or injury if the interlocutory injunction is refuse, and the application of the test of inconvenience favours the employee: There is no evidence that the Copyfax (Petitioner) clientele was solicited The prohibited area of 25 miles would have the effect of depriving the employee of any realistic possibility of earning a livelihood given his present circumstances The stipulated duration of 14 months is excessive

Injunction against his ability to work is denied. The non-competition clause denied 2nd Issue: Should Copyfax be entitled an interlocutory injunction against the use of the client list They get an interlocutory injunction concerning the use of material and confidential information more precisely the customers being owned by the company.

Case of Medicom v. Bergeron (injunction, non-competition 2089): (main facts, legal reasoning, decision)

2 EXAMPLES of clauses that are too broad

clause needs to be linked to the employer's interest

If the interest does not justify the clause it should be dismissed

- → First: Preventing someone to work worldwide
- → Second: It is outrageous, too much stipulation

No legit interest to clauses

Judge awards the cost to be by the employer

The employee has a duty to be loyal even if the clause is considered to be VOID

Medicom has bought a petition for an interlocutory, provisional and permanent injunction against Bergeron and Hubert concerning the application of the non-competition clauses signed by each of them. Issue: are the non-competition clauses valid?

Ratio: For the first non-competitive clause asks a restriction of work worldwide during two years with any company that has a similar commercial activity. For the second clause, the restriction is for a period of 3 years, for all Canada, for any firm with similar commercial activity. Medicom has a non-existent right for the two contracts. There were not able to prove that there has a legitimate interest to defend concerning the non-competition clause. Case 6: Giroux v. Malik

Chapter 8: Contract and Liabilities

1378 CCQ: DEFINITION OF CONTRACT “agreement of wills”

- Voluntary
- Binding effect (consequence of the fact you agreed)
- 1 or more persons
- Covers prestation → perform or you don't perform

1379 CCQ: CONTRACT OF ADHESION

-When a party sets up rules that are non negotiable and must be adhered to

-Has consequences on the way we interpret the rules

-**Ex:** a products rules and regulations and you click accept

Mutual Agreement → a contract that is based on negotiating power

1380 CCQ: Bilateral v Unilateral

- **Bilateral:** In a SYSTEM that is based on a reciprocal contract.
 - **EX:** I only pay for a car, if I receive the car (takes into consideration of the other person's performance)

Unilateral: Undertakes a contract and he performs those acts on his own.

- **EX:** Offer to buy a house, the offer is open for a limited amount of time. The other party does not have to accept the offer.

1381 CCQ: Onerous v Gratuitous

- Onerous: Employment contracts compensation.
- → Professionals
- Gratuitous : Contracts that are not completed for money.
- → A mandate entered into between two natural persons is presumed to be by gratuitous title.

1382 CCQ: Communitive vs Aleatory

- **Communitive:** Both parties expect to receive something and its known. The exchange is certain.
- **Aleatory :** Ex insurance , the outcome is random and it may not even happen. The exchange is unknown.

1383 CCQ: Instantaneous v Successive

- **Instantaneous:** Everything is done at once
- **Ex:** You pay for a car and get a car
- **EX:** Sell your pencil case. This is done right away.
- **Successive:** Depends on the performance, several steps and lasts over time. (These have ongoing responsibilities)
-
- **Ex:** A lease, you continuously pay rent/receive rent.
 - **EX:**Construction of a building, leases, renting a car for 12 months.

1384 CCQ: Consumer contract

- Involves people, qualifying as a consumer contract triggers other rules
- NATURAL PERSON: the consumer, acquires, leases, borrows or obtains in any other manner, for personal, family or domestic purposed, property or services from the other party, who offers such property and services as part of an enterprise which he carries on.
-
- This is a one-sided contract. It is like a contract of adhesion. Ex: You buy a computer for personal use (to study with).

1385 CCQ: Consensual v Solemn

- **Consensual** → you can just hand shake
- Most contracts can happen even without a signature
-
- **Solemn** → the law allows you to make specific rules for specificactions. Rule for cars: you have to get it approved and its used to protect. Specific contracts can have specific regulations
- **Ex:** Marriage contract, it must be written down
- → Special formalities need more important contracts
- **Ex:** If you buy a car, you have a consumer protection act
- → Law wants to protect certain contracts and protecting formalities

Vicarious liability

- → Employer is liable for what the employee does

Unless , the employee acts outside his employment contract and or you prove that the employee is not working for him or was not part of the cause

- Can employer sanction an employee for disclosing info to the press
- → yes, the employee must go through internal mechanisms and a appropriate course of action. He should act reasonably.

1st strive for internal mechanisms, n or go through government agency. Then the press .

- **What are the remedies available in case of psychological harassment?**

→ allows for job reinstatement

→ indemnity for compensation of damages

→ punitive damages if he failed to protect employees

→ pay for the loss of employment

→ can pay for medical bills

- **When can an employer citizen en employees work?**
- → When it's justified and he doesn't do in a reasonable way

1385 CCQ

Ppl = no writing

Exception= Law Requires

Case: COLOSCOPE VS TRN

TRN IS A COMPANY that works with several businesses

- **Copscope** starts a program to include companies to leave trn and deal with them
- **They ask for an interlocutory injunction to make sure copiscope cannot work until the trial**
- Since this is a decision that is taken before the trial and evaluation of the trial
- He believes that the interlocutory is invalid
- Judge looks if there is a apparent right "at first site", if the agreement justifies the injunction
- If it is valid then it should be maintained
- The non competition clause is between trn and the business
- The clause is somewhat ambiguous
- Broad because it prevents copiscope from even contacting other people
- All the restrictions in the agreement are excessive
- Contract of adhesion, the contract has been imposed by trm on their business people there was no negotiations
- The agreement contains trade secrets, in this case there is no trade secrets
- ADHESION 1379 CCQ

→ At first sight the non competition agreement is not valid therefore cannot be used as the basis for an injunction

1414 CCQ → Formalism to conclude = formalism to modify

- Formalism is used to protect the parties
- **Ex** when a grandma wants to give money to kids, the impact is great, taxes etc, therefore she needs a notary. Helps to provide her information and when there are contracts that are dangerous or when you add layers to the contract it helps to protect people
- When you have a contract that needs formalism, when you have a specific kind of formalism ex for cars, when you make any modifications they should still be as formal
- **Exception:** when there are promises, in which case you don't need the same level of formalism

Article 1386 → your contract can be implicit or tacit

- Ex a cab driver with a light on

1388 →

You have the intention to be bound by the person who accept the offer, and it needs to be complete and consider the person who makes the offer must be willing to be bound by the offer. As soon as someone accepts the offer it is bound and it exists. You can still negotiate the terms it is not an offer

- The contract is concluded when the offer is accepted

1389 → The offer or is not necessarily the first person who initiates the negation/transaction. He often is but not always

- Most of the time = person who initiates the negotiation
- Really → person who brings the last essential criteria/ element.
- Whoever brings the last element is the offer or BUT NOT ALWAYS, and who ever brings the last element to the contract concludes the contract
- **The contract needs the nature, the object and the price which allows you to complete the transaction**

1393 → If you send an application to a company then you are the offeror

- A makes an offer to B and then be refuses and makes a counter offer and then B becomes the offeror

1390 →

- Specific person or to the public, person needs to respect the charter and can choose whoever
- Fixed or indeterminate term

1391 → Fixed term contract

- You have to revoke before the person receives the offer, Ex If I send my offer by post and change my mind, and then the
- Once it is received, you cannot revoke the offer.

1394 → silence means you do not accept

- Exception:
- The will of the parties, the law, special circumstances (prior relationships)
- mandates , people with a prior business relationship and continues on the same basis

1387 → once the offeror receives the confirmation or the acceptance, then the contract is valid is formed

1392 → offer disappears, expiry, refusal death and bankruptcy and incapacity (must need a tutor or curator) then the offer becomes void

1395 → reward, even if the person is not aware of the reward he or she is still entitled. Ex lost cat and you bring the cat back and didn't know about the reward. You still deserve and are entitled to the reward

1396 → Promises v contract

Sometimes companies like to take extra time to check accounting etc before the contract is actually instated

-firm clear offer (1388)

-specific person

- the offeree says he will consider it seriously

- Gives a delay to consider the offer seriously
- What that creates is a sort of "option to contract" = promise
- It's a preferential option to conclude the contract
- It doesn't have the same effect of the contract
- Consequence: if someone breaches the promise, then you cannot obtain the same things you would have if it was a contract.

→ **Ex** A promises B to sell him a house. There's a promise/ firm offer, being is made to a specific person and B said that he would consider it seriously. In that time A sells the house to C. that promise does not give a sufficient enough of a reason to cancel the contract that A made with C.

- The only thing B can get is damages for the breach of the promise
 - Can act against the person who should have respected the promise (A) for damages
 - Right against to act against C if he knew about the promise (b had with A) c is in bad faith.
- → But cannot get the contract cancelled between A and C
- You must take good faith into consideration. If a company tries to use that strategy through negotiation.

Several criteria that needs to be filled to get a valid contract

- Sometimes **formalism**(depends on the nature of the contract)
- **Capacity** (of age and sane, not under tutorship or curatorship)
- **Cause**(1410-1411ccq) the reason why the people enter the contract. Its about **WHY** people sign the contract
- -Can be considered as void if the reason is against public order
- Ex anyone can buy a piano, for a **brothel**, the cause of the contact is against public order
- The object is ok (piano is ok) but the brothel is(not okay)
- **Object** (1412,1413ccq)what the contract is about ? ex surrogate mother, you cannot make a contract based on babies. Ex 2: cannot sell electricity selling kidneys.
- Object→ NOT ALLOWED SELLING BODY PARTS (not okay)
- Cause →(you need the money OKAY)

Can you cancel a contract just because you were promised to a contract?

- →You can obtain damages but you cannot cancel a contract

The difference between an offer and a invitation to make an offer?

- →An offer is binding and an invitation is up for negotiation
- The offer:
- →Offer must indicate a willingness to be bound
- →An offer needs to encompass all the necessary elements of the contract
- If one of those things are missing, then you have an invitation to make an offer

When can you revoke a fix term offer?

- you cannot revoke a fixed term contract before the end of the contract (as stipulated)
- →You can only revoke affixed term contract before the other person actually receives the offer

Capable person free and enlightened consent

1398 1399 CCQ: you shouldn't be drunk or in shock or depressed

Honest Error → can only get the contract cancelled cannot get damages

1400 CCQ :Honest Error

- You thought the situation was actually different then what it was
- Nature, object or anything essential to determine the contract
- **Nature:** if they think they are signing something different,
- ex→ warranties , confused between insurance and RRSSP
- **Object:** you buy something that was not what you thought it was
- ex→ someone buys pesticides thinking it was fertilizer.
- **Essential Element:** the reason or the cause of the contract
- Ex→ celine dion fan that wants a old dress of hers, considering that she wore the dress. If you only bought it because of that essential element you can ask the contract to be void
- **In order to get it canceled (3 elements)**
- **Decisive:** The criteria your wrong about is determinate, it has to be on the main element
- **Proved:** must be able to prove, the person that suffered from the error has to prove the error. You have to use something other than your testimony. Other justifiable elements
- **Excusable:** has to be something that other people probably would have done also.

1401 CCQ→ Fraud Error

You can ask for **damages** and the contract to be revoked.

Intention: to provoke an error, if it's in good faith then it's not fraud, it has to be intentional.

Fraudulent Action: Lying ex creating false financial statements, false leads. Actions that provoke an error on person. Omissions are considered to be a fraudulent action.

When someone has the intention of provoking an error

Ex: selling a car that has had an accident and you refuse to disclose the accident Information that should be disclosed but you do not reveal it.

Ex: not disclosing an asset during a marriage

Ex: selling a painting with false information about it

→Must be decisive, proved and provoked (Must prove the intention and the error)

The error does not have to be excusable

1402 CCQ: Violence threats (objective) and Fear (subjective)

→Violence

Coerced into signing the contract (exterior to the person) imposed from the outside

Something real and that actually exists. Has to be exerted by the contracting party, if its by someone else then you can't use it to cancel a contract

Can be moral and physical (beating or blackmail)

EX: Threatening to sue something , to go to court in order not to ask for insurance

→Fear

Threatening , feeling pressure to contract is not considered a fear

It has to be a balance between the circumstances and the person

1403 CCQ: Abuse of a right

It is possible to threaten with an abuse of a right

Ex an employer using its subordination on a employee to do something

Ex: state of necessity + good faith

To pay a ransom if your husband is being held hostage

If you sell your house to pay the ransom then the contact cannot be cancelled

Ex2: if you are on the side of the road with your car on fire, if someone offers a fire extinguisher for 5000\$ then the contact can be cancelled because it is in bad faith and it is an abuse or extortion

1406 CCQ: Exploitation

Excessive imbalance between 2 parties, presumption of disproportion

The person who invokes a right must prove

The stronger party must prove that they are not exploiting (the burden of proof is shited to the stronger ones)

1405 CCQ: Persons Protected

People who are minors or people under supervision can use a lesion

Exception is when the law says so.

Ex: If a minor buys a car for 5000\$ that's actually worth 1000\$. If the garage tries to take advantage of the young minor.

An adult can ask for a lesion only when the law says so.

Lesion: when one party is exploiting another person. Between parties leading to a disproportion.

When a lesion is proved: the plaintiff can ask for damages and the contract to be cancelled

Ex1: if a car that is defective and the car is worth less than the repairs. Creates a presumption that the mechanics are trying to exploit the young kid.

EX2 : If you buy a house that has an annuity, under a contract that payments will stop when seller dies, because contract is aleatory you are less likely to claim lesion

1407: sanction of violated consent

Honest → only cancel contract NO DAMAGES

Lesion, or fraud → can ask for damages and cancellation

1416: People contract is annulled ie FORMS OF NULLITY

Absolutely null

When you protect public order, general interest, can be invoked by anyone.

1417 general interest

1418 invoked by any person

Ex: Surrogate mother, protecting the societies interest. Cannot be legitimate in any way.

Relatively Null

1419: only the person that is protected can ask for annulity.

Ex: kid buying the car, his interests are being protected. That is, only he is protected and only this guy can act. The judge cannot bring that ground for claim if the person does not bring it to court. Since it is only relatively null it is possible to be confirmed.

1422 CCQ: NULLITY means that it is deemed never to have existed

Instantaneous : When it is canceled, or nulled, you put the parties back to where they were before the contract.

Ex a sale of something

Successive: When there is a lease, the nature of the contract lasts over time

Ex: When the contract is cancelled, you can only cancel it for the future. You wouldn't get your money back for past months . you cannot replace the fact that you have been living in that apartment. You've been occupying the premise. (since you've benefited already you cannot give it back)

1438: Clause only = void except when the contract is invisible

When you have a contract and you can isolate the clause then just that clause can be void.

1423, 1424 CCQ: CONFIRMATION (??)

When you have a nullity that is relative it is possible to confirm the contract

Doing nothing is considered to be accepted.

Tacit or Express

Personal → only applies to the person who has confirmed.

Q: Difference between honest error and a fraud?

→ **Fraud:** DOING SOMETHING OR BEING SILENT. And those actions have to be done intentionally

→ **Honest error:** an error that was not provoked

Q: Effect of the nullity of a contract?

→ When a contract is null, the parties go back into the situation before they entered

Instantaneous: goes before

Successive: only canceled for the future

Q: Who can invoke lesion?

→ Minors

→ Protective supervision (insane etc)

→ When the law specifically says so: consumers (people from which the law says can ask for a lesion)

When the judge interprets the contract he looks at the intent and the circumstances under which the moment the contract was concluded.

Since the CCQ is based on the parties' will

1425 :Rules of Interpretation:

→ what do the parties want?

→ what's within the contract?

→ circumstances to explain confusion

→ In a way that makes sense of everything in the contract, and coherent

To NOTE:

In general the judge will try and interpret in favor of the person that does not have control (in cases of adhesion ie consumers etc)

1435 CCQ: External Clause

This clause is valid for companies

A contract that refers to another contract that is somewhere else.

One of the clauses refers to something else, for example a manual, website (link does not count, since it is easily accessible) or general sales commissions etc

That means that the person that is presented the contract is only seeing part of the contract.

Has to be on 2 different physical documents

For example consensual, when someone negotiates, this contract allows people to have time to check the clause.

Exception: Consumer or adhesion (no way to negotiate) these kinds of clauses are not valid

Exception to the exception: unless the other party proves that an adequate explanation of the nature and scope of the clause was given to the consumer or adhering party. Ex cell phone

1436 CCQ: Illegal Clause

A clause that does not make sense, fine print, very technical, or the content is ambiguous

Not what the content is, look at a normal person can read this and make sense of this

Consumer contract, it is even lower, it is not a reasonable person, it's a person with average abilities, low average. (no way to negotiated, therefore it is easier to use this clause)

Should be valid for consensual contract, you read it and you accepted it, you were part of the negotiations

Exception: Consumer or adhesion (no way to negotiate) these kinds of clauses are not valid

Exception to the exception: unless the other party proves that an adequate explanation of the nature and scope of the clause was given to the consumer or adhering party. Ex cell phone

1437 CCQ: Abusive Clause

Excessive and so detrimental that it is not signed in good faith

Check both content and the circumstances (subjective)

Evaluate whether it was abusive or not at the time it was concluded

Cannot use this if it was later abusive it has to be at the time of the signing

Not just because it is a standard in an industry that it is valid

Example of abusive clauses: insurance company that obliges the person to report a pollution of underground pollution, its possible that you don't realize until its too late

Ex: A PERSON treats the people who make submissions unfairly, having a clause stating that he is no longer liable to anyone. That's abusive

Abusive clause:

→Not in good faith

→Out of the ordinary or extremely harsh

→Departs from reasonably fair

1622 1623 CCQ: Penalty Clause

If there is a breach there must be damages paid

A penal clause is one by which the parties assess the anticipated damages by stipulating that the debtor will suffer a penalty if he fails to perform his obligation.

- **Ex:** A creditor has the right to avail himself of a penal clause instead of enforcing, in cases which admit of it, the specific performance of the obligation' but in no case may he exact both the performance and the penalty, unless the penalty has been stipulated for mere delay in the performance of the obligation.

Can ask for either damages or to get the contract preformed.

As soon as somebody is in default, you can ask for damages.

You can ask for more money then the damages you would have incurred, it's a way to make sure people comply (preventative) .

Unless its considered to be abusive or it won't apply if the person already started to perform the contract. If its been partially executed then

1433 CCQ: Contracts Creates Obligations

What ever the contract says, its binding

If you have a problem, the judge cannot modify it

True even if the circumstances change

Put the obligation of people to think of future problems

Include mechanisms (like re negotiations) so that you don't end up in a contract that doesnt make sense. It's the parties responsibility to do this

1434 CCQ: Contracts are Binding

Implicit content: something that is determined by the nature of the contract (usage equity or law)

Ex: obligations for ski schools to provide safety. The kids are there to be trained to ski, the school has to be able to provide safety

Ex2: charter requirements, if you hire someone, even if the contract doesnt include discrimination the charter does

Ex3: equity, if the contract doesn't include the good faith

Ex4: Usage: what's valid in terms of the industry (wine importation)

Binds you, you are not free to get out whenever you want

1439 CCQ: Limited to get out

You can leave when the contract tells you

Or when the law allows you

Ex: the mandate, if the mandatory has any right to leave cause of the trust problem

Since you signed, your bound, you have the duty to undertake the contract

1458: Duty to honour the contract

When you fail to honour the contract you are in default

Can leave the contract when:

-The law allows you to leave, or both parties agree the contract is over

Can be Automatically or you need a letter

- the contract tells you a time frame and you don't, you are automatically in default.

-Sometimes there is no clear statement, the other contracting party has to send a latter of default. Recognizing that one person failed to undertake the obligations

1590: General Contractual Remedies

- General rules of contracts
- When you are in a contract the person that wants something has the right to get it preformed
- If the person fails that person is given remedies
- You only will be able to get remedies is when the person didn't perform the obligation in bad faith
- Exception: if there is unexpected or un-foreseen events

1591 CCQ: REFUSAL

Bilateral contract, you can refuse if the other person refuses to perform his obligations

→**Correlative transactions** (Ex: I want to buy a car; the person never gives me the car I refuse to pay for it)

→**Exigible:** you should be allowed to ask the person to finish to performance like if you give a time frame for the person to complete it, you cant ask them to finish it earlier

→**Important part of the contract:** you cannot refuse to perform an obligation , if the other person to perform a small part of the contract

Ex: buying a car with snow tires, if the person gives me the car, and not the tires its only an accessory therefore cannot refuse to pay for the car

→**GOOD FAITH**

1592 Detention

- If the contract bears on some sort of property, you can detain the property until it is paid.
- If there is something broken on the boat, and the repair man fixes t and the boat and doesnt get paid, he's allowed to keep it until the owner pays.
- The debtor must own the object (if a brother brought the boat in then this is not valid)

- Obligation has to be exigible (if the person had a delay to pay)
- The initial detention should be accepted (the person has to voluntarily give it to you, you cant just go and seize it)
- The debt must be linked to the property (if you and the guy that owns the boat, play pocker and you owe him money he cant just come and take the boat)
-
- The right to detain the boat or the good is extinguished only when the person benefited from the this right (like the boat repair man owner) gives it back to the owner voluntary

1601-1603 CCQ: Specific Performance

- If you want something specific the person needs to do so accordingly
- If its not about money, the person does not have to settle for compensation
- If I hire someone to paint the wall, I can go to court and ask for a court order to get the person to do it, or get someone else to do it and send the bill to the person.
- **Ex→** I am a theatre and I hire cirque de soleil to perform a show, if he fails to do it. What makes me interested is specific to who they are.
- **EX→** if you had agreement with your neighbor to not build a garage in front of your window, you have the right to get the garage destroyed

1604-1606 CCQ: Resolution

Happens when the person doesn't want the contract anymore

In the case of instantaneous(goes back to what it was before)

Successive(stops for the future like an annulment)

For this to work, the person needs to be serious and important not secondary

The effects are in 1606 CCQ

Remember that resolution is retroactive and that resiliation is for the future

If its an automatic default, like a delay, you can ask for the resiliation

If you have to send a letter you have to wait.

Reduction

If the party only partially executes the task, then you have the right to partially complete your end of the contract. Your obligation is reduced in return ex: pay a partial amount

1458 CCQ: People and contractual liability

You are liable if you do not fulfill your contract

Contractual fault (didn't do it or its wrong)

Injury/damage (if a damage occurs physically or moral) must be legit AND if its in the future it must be absolutely certain)

Causal link: must be sure, link between the fault and the injury

Compensation on what you suffered and if you lost a potential gain its included

1613 CCQ: Foreseeable

When the person is liable, the person is only liable for damages that were foreseeable at the time of the contract.

What is a penalty clause? It prevents people from not fulfilling their contracts

What are the elements implicitly contained in a contract?

obligations that are linked to the nature of the obligations of the contract (ski school, implicit to warranty safety) , stuff which is linked to the law ex employment contract, even though you don't say anything about discrimination, but the law says that it has to respect non discrimination, usage ex people in the industry tend to do, if you buy wine internationally it is known that you receive payment when you sell, and good faith

What conditions can your refuse a contract? 1591

1-Obligations are not correlated to the contract

2- If the contract is not exisgssasible if you give a delay you have to respect the delay, you cannot ask the person to do it earlier then sated

3- tl has to be important, main element not something secondary. (if the other person does not preform a vital part of the contract then you don't have to also)

4-You cannot refuse if you do that in bad faith

What kind of injunction did Carrefour obtain against Guzzo?

Permanent inunction, it was not just during the duration of the trial it was permanent after the court

Contractual v extra contractual

1457 → 4 criteria to see if you are liable

the judge consideres liability at the circumstances

1-Endowned with reason

At the moment of default understood what he was doing and understood the consequences. A child can be considered liable because they could understand the full consequence of his action. Ex a kid throwing a stone at a woman at the age of 6. Not realted to age, its related to the ability to understand the consequences

- an adult on drugs is considered endowed with reason (they are liable)
- (not able to understand the consequences) but if you cause yourself a damage and the drunk person would be liable

2-Fault , if you don't act reasonable given the circumstances, you have to act properly. You have to be prudent and diligent. If the person doesn't explain how to use machinery they are acting neglecitly.

A lack of diligence→ a city doesn't put a sign in front of the pothole for months

If its someone with specific duties, the standard wont be the reasonable person it will be other similar individuals in your profession

→ To have a fault you don't have to have intention, you can accidently cause a fault. It does'nt have to be serious, if it causes a damage you are liable. And you can only be liable if its predictable

→not intentional

→not serious

→predictable

exception: if your working near a cliff then you know its a risk

3-injury→1606

→ **Bodily** (material and or moral) if you get a scar from a car crash their liable
there are 2 elements
subjective basically how people feel
objective (other people can witness it, a coma)

→ **Moral**

→ **Material**

-it could be just one

the injury has to be certain, it has to happen for sure.

Certain either in the past and the future, the bones could be broken and its sure that in the future that you cannot work . ex of the horse getting hit on the way to the race, you can get partial compensation but not full compensation because you cant tell for sure that you would have won.

It has to be greater then 51% chance

Ex: you had a 60% chance then you should get 60% of the compensation

4-Causal Link, injury has to have a direct link between fault and damage **1607** (the person who suffers has to show that link)

immediate and direct consequence

→ **physical causality** (material factors) the warehouse burning down, if you have 2 experts saying different things then you cant prove whose at fault

→ **juridical causality** (link material factors with the person)

if its impossible to understand the circumstances you cannot link the cause of the accident to somebody (ex: you cant sue for liability if the kid falls , but you cant determine how he fell)

The compensation is to make up for whatever you suffered not to make you a richer person

1608 1609: Protection of the creditor of the compensation

you are entitled to get payed by both parties for the same occurrences

- If a person is abroad and she gets sick and needs to go to a doc, she needs to pay for medical costs, when shes away, the insurance company will have to pay. But if she is also covered by the quebec medicare.
- (default rule is that she is allowed to collect from both parties)
- Subrogation (1608) the travel insurance company will step into your shoes and in that case, they are entitled to get the 400\$. By default they can get money from both, ie double compensation) however when subrogation the insurance company gets the money from the government.
- People who are compensated from work related injury or a car accident. You don't double dip, most governmental contracts stipulate a subornation
- Within 30 days you cannot sign anything to reduce your claim, making sure that you are not taken advantage of (only for bodily)

1611 1620: Assesment:

The loss

And the opportunities you lot

Good Destroyed → Replacement (ex a boat, you are awarded the price of the new boat, but only in terms of how much it was worth at the time of the damage (ie depreciation is taken into account)

if it appreciates over time it will give you the full amount of what it is worth

Damaged → repairs, you are allowed to get compensation for reparation. However if it is more expensive then a new one, then they will just give you the amount of the new one

loss of profit → you can have 2 situations, if your object generates income like a condo owner, you can get compensated from the loss of rent income. Judge considers other factors that involve loss of income

if you bought something that you intended to resale, you can get compensated for the capital gain. Ex a couple had fish, and the company shipping them forgot to have a regerated the truck the couple was first awarded the cost of the fish and then was awarded the extra amount that it would have sold for at retail price.

Moral damages→ usually the amount of money is modest.

Bodily injury→ **1614-1615** in this case, the judge will compensate you according to the cost of medical expenses, how much income you will loose. (takes into consideration your age, if your old the amount is lower). It provides them money to get back into their feet, and can be medical, drugs, taxis etc all of which that fall outside the normal medicare compensation.

Ex piano player may have to be retrained and therefore compensated if his fingers break

(1615) Since it is difficult to figure out the actual amount, it may take time

(1612)Trade secret → usually one sum in cash by default. Sometimes its annuity (bodily injuries or minors)

when you default occurs because you fail to pay something, the compensation is interest. (1618) The legal interest is 5%.

(1619 enhanced interest) 7-9%. people had the incentive to pay as soon as possible.

Interest is only based on the principle

1621→ **Punitive Damages**

- must be specified by the law (charter rights), psychological harassment
- -The gravity of default
- preventative (sanction) take into account when setting the amount is
- patrimonial situation (make sure it works well with the persons unique situation)

- the extent of the compensation, if its already a high amount then the punitive damages are less. It makes sense if the compensation is small you want the punitive damages to be higher (sometimes its not the person who did something wrong for example an employer who does not provide a environment free of psychological harassment)

Obligations

Contracts

Appendix 8-A Selected Articles from the Civil Code of Québec

Contract Law Definition of contract 1378

Classification of contracts 1379 to 1384

Formation of contract 1385 Consent 1386-1387

Offer and acceptance 1388-1390-1392-1393

Defect of consent 1398 to 1408

Nullity (absolute and relative) 1414 to 1424

Interpretation 1425 to 1432

Default of contract and damages (present, future and punitive) (pp. 278-279) (articles are listed in book and class notes)

Penal clauses 1622-1623

Injunctions (see p. 277 and class notes)

Giroux v. Malik (error, dol, omission by silence 1400-1401): (main facts, legal reasoning, and decision)

1998 Malik buys land and wants to make a house

It's a residential area, and realizes it's a landfill and it is impossible to build a home

He tries to sell the house

Changes strategy and does not tell real estate agent. He doesn't explain how he received land that doesn't have sewers

1999 the Giroux family signs a contract and wants to buy the land for the house

Giroux makes an offer and malik accepts

He does not disclose the information

Giroux asked why he never built a house, agent lied

When asked if there was a problem with the land and malik said no everything's fine

The transaction goes on, Giroux realizes that they can't build on the land

They call the city and learn about the report

Now they have to move to a smaller house, school probs etc

Sue malik to get the contract cancelled

Judge checks that malik actually knew about the report, he claims that he wasn't sure if it was going to last 10 years

Once the judge realizes he knew all along, he checks if malik disclosed it to the real estate agent, he just said a sewer problem and was not legit disclosure

The judge checks if malik discloses it to the buyers and the judge realizes that at the notary, malik did not reveal any information.

Since he experienced the same difficulties he should have known better

Judge says he acted in bad faith and provoked the buyers error

Judge checked if the agent disclosed enough information, the real estate agent lied also. Since he was acting within the limits of the mandate, malik is liable

Since the judge agrees it was bad faith, Giroux gives back land and malik gives back money

Judge awards compensation to the Giroux fam

Provisional execution occurs: when one party decides to appeal then the judgment will not be instated right away. In this case since the judge notices that malik will probably appeal cause he think he didn't do anything wrong

The judge thinks that he will appeal just to create a damage, the judge grants immediate execution.. the Giroux family gets the money back

Facts: Malik owns a piece of land, you cannot build on it, and he wants to sell it. Giroux decides to buy the piece of land from Malik. He goes to City Hal to get a constructive licence but they tell him that nothing can be built on this land. Issue: Giroux is asking for the cancellation of the sale and some damages. Ratio:

Malik misrepresented the facts. According to article 1400, "error vitiates consent of the parties or of one of them where it relates to the nature of the contract, the object of the prostrations or anything that was essential in determining that consent". Malik is arguing that he did not say anything, that he did not reveal tell Giroux the fact that you could not build on the land, but neither lied to him. However, according to article 1402, fraud can occur through silence. Malik is also arguing that his agent, the real estate agent was aware of this fact and hid By misrepresenting the fact, the consent of Giroux concerning the sale is vitiated. According to article 1419, the contract is considered relatively null. Giroux can get the annulation of the contract, leading to the parties going back to pre-contractual state and he also get damages

Peter v. Fiasche (contract for fraudulent purpose, tax evasion, nullity): (main facts, legal reasoning, decision)

- Error that the person was saying was not a real ground for cancelling the contract
- The cause of the contract was illegal (not pay taxes)
- Since the cause was illegal the contract was null, the judge had the decision to either grant and the right to go back before the contract
- They get contract annulled under 1411; since 1407 does not apply
- It would make more sense to have the money switch back to the buyers or else the money would go back to the guy who did something wrong.

Facts: Peter (Mrs Guicciardo) and her husband are looking for a safe investment that will assure a steady flow of revenue for the family as the husband is retiring soon. They both know Fiasche that held a smoked meat business. The two families come from the same region in Italy. The couple Guiccardo is very interest in buying Fiasche as it seems very profitable based on the patrimony acquired by Fiasche over the years. Looking at the financial statements, it seems a bit disappointing however Fiasche is telling Guiccardo not to worry that he has a special method to make this business profitable. He will show him the trick but he needs 100 thousand of dollars as a deposit to be sure that the couple is a serious buyer. In order to get the sum of money, Mr Guiccardo is putting a mortgage on his house. Fiasche explained him how to falsify the financial statements in order to minimize the income tax to be paid. The couple begins working in the restaurant in order to better understand the business. However, as the weeks pass, they realized that Fiasche over evaluated the business value. Issue: The couple Guicciardo is arguing that Fiasche

misinterpreted the value of the business, vitiating their consent. They are asking for the annulment of the contract and the restitution to status quo. Ratio:

Concerning the misrepresentation of Fiasche, the judges argue that that is not a fraud of misrepresentation but an inexcusable error. It was conscious wrongful choice from Guicciardo, they could not avoid being aware that tax evasion was the root of the restaurant supposed profitability. Inexcusable misinterpretation does not vitiate the consent of the party. In addition the court is arguing that the cause of the contract was illicit and against public order as Fiasche desired to enrich himself by selling a fraudulent system and the Guicciardos by continuing it. According to article 1411, "a contract whose cause is prohibited by law or contrary to public order is null" And according to article 1422, "a contract that is null is deemed never to have existed. In such a case, each party is bound to restore to the other the prestations he has received." However the crucial question is whether parties to an illicit should have the benefit of restitution. In this case, the judges ordered for the restitution of the 130 thousand dollars to the Guicciardos and the restitution of the restaurant to Fiasche.

Carrefour Langelier v. Cineplex Odeon (execution of contract, injunction): (main facts, legal reasoning, and decision)

Highlights:

- Lease, Carrefour will build and cineplex will function for 20 years
- Cineplex: does not want to operate the theatre themselves, they want guzzo to work as a franchisee and they will function for Cineplex so that it looks like they are cinplex
- Carrefour asks, guzzo needs to continue to use cineplex;s name and if guzzo stops, then Carrefour can send a one dollar cheque and gets all the equipment
- Carrefour can get the movie theatre if anything ever happens
- Guzzo gets an amazing rep, it takes down cinneplex signs and then there are difficulties
- When Carrefour learns about this, they are unhappy cause the name is not being upheld
- They send a letter to put the sign back and guzzo does not
- Carrefour send a 1 dolalr check and then they take over the cinema
- They want a interlocutory injunction and a permanent one
- The default is triggered by the letter
- Carrefour says that since the contract says they are entitles to have guzzo work under the cinneplex name, they don't have to incur damages simply the contract needs to be upheld
- Both guzzo and cinneplex, sine there are no damages the Carrefour should be able to do nothing
- Not a provoked error → no fraud
- Carrefour never suffered gamages cant use 1458
- 1590 (aloud remedies) applies even if there is no damage
- Carrefour is entitles to a specific performance
- The 1 dollar sales clause, guzzo says its a penalty clause but no there is not damage
- It is just a preventative measure, therefore the 1 dollar was a legit right and it was not in bad faith. Guzzo received a permanent injunction must put the sign back and that cinneplex must show movies. Cineplex and guzzo have to bear the cost for the proceedings
- Deals with an injunction
- There was another defendant: Guzzo
- Involved landlord and cinema
- Lease agreements
- Cineplex wants to transfer to Guzzo
- Name must say Cineplex
- 6 years later, name says Guzzo
- Breached contract 1458, 1590
- 1458: Ask for damages
- Resolution/resiliation = annul/cancel
- Landlord asks for injunction for tenant and subtenant to respect lease obligation
- Alternate to injunction is cancellation with damages
- Landlord prefers injunction
- Injunctions are very discretionary and are judged case by case

Arguments against Injunction (from Guzzo)

Duress (forced) 1403: fear (Guzzo was forced through fear)

No proof of duress

History of doing business together works against duress argument

Didn't want owner (Harry) to look bad

This is a pathetic argument

No prejudice

Not a question of damages

Guzzo is not a Cineplex

Damages are found on p. 110

P. 111

Injunctions are impossible to enforce by judges

Judges cannot force payment, can only render 'contempt of court' → thrown in jail

Argue that this injunction will be impossible to enforce

Judge says 'that is the court's decision, not yours'

Cannot operate because our equipment is seized

Easy, court says you get your equipment back

Bad faith argument

Guzzo: say they are making us pay higher rent, acting in bad faith

Judge says 'Prove it. Show proof in writing how this extortion is happening'

Imbalance of hardship (p. 113)

Who suffers more from the injunction?

Gross disproportion of suffering = injunction will not be granted since one party will suffer much more.

No proof of this prejudice, therefore no imbalance of hardship

Overall:

injunction was granted

look at 1590 to determine relevant facts with 1601

received damages and costs

Facts: Carrefour and Cineplex signed a lease. After the lease was signed and before Cineplex even occupied the premises, it approached Carrefour together with representatives of Guzzo to ask its permission to assign the lease to Guzzo but it was specified in the contract that Guzzo was suppose to operate under Cineplex banner and follow its criterias for operating theatres. However after a while, Guzzo decided to operate under its own name. Issue: Carrefour wants to enforce the obligation contracted by Guzzo in the initial contract to operate under Cineplex name. They apply to the court for specific performance order Ratio

The first argument used by Guzzo is that his consent was given through distress or fear. If this argument was accepted by the judges then the consent of Guzzo was

vitiated, leading to the annulment of the contract and therefore the cancellation of the obligation. However this argument is rejected, the judges argue that this fear is part of the business environment especially within a competitive environment. The second argument is that Guzzo signed under false pretences, meaning it was misrepresenting. Again if the argument was accepted by the court, the consent would be vitiated and the obligation cancelled. The court rejects this argument. In any case, guzzo has experiences in the industry and therefore the misrepresentation should have large enough to cancel the contract. The last argument brought up by Guzzo is that this is not a situation that allow for specific performance order. There are four different cases where specific performance cannot be obtained: When the obligation has got impossible to perform (this occurs when the person responsible for doing the obligation had an accident and is unable to fulfill his obligation) Time has elapsed (for instance, if you are orgnaizing a concert at 7pm on the 3rd of April, after 7pm if the singer did not show up you can require a specific performance) When the property vanished

When the property has left the patrimony

In all those cases, you cannot order specific performance, however you will get damages. Let s see if Cineplex corresponds to any of these four cases: For Guzzo, it is possible to operate under Cineplex name as they did during a while The lease is successfully being performed, time has not elapsed The property is still working

The landlord still owns the property

Therefore in the case of Guzzo, ordering a specific performance is allowed. The final argument of Guzzo is that Carrefour did not face any damages and therefore they should not be able to order specific performance. The judges argue that to enforce specific performance order, you don't need to have faced any damages. You only need three conditions for:

Valid contracted obligation

Person not fulfilling their obligation

You need not to be in a case where specific performance is not allowed Conclusion: the court ordered a permanent injunction order enjoining Guzzo to act under Cineplex name

Copiscope v. TRM Copy Centers (contract of adhesion 1379, abusive clause): (main facts, legal reasoning, decision)

Facts: TRM puts photocopy in other business in return for some royalties. They signed contract of adhesion with those businesses, that include a non-compete clause. This clause is saying that the parties signing those contracts cannot contract with competitors for a period of 1 years in order to protect the trade secrets shared with those clients. Recently, Copiscope has been soliciting business operators who had previously contracted with TRM to terminate their contract and has begun to place photocopies in those businesses. Issue: TRM is asking for interlocutory injunction for the respect of its non-compete clause. Ratio

The trial judge concluded that TRM had a doubtful right. The judge in appeal is looking at the non-competitive covenant to judge whether TRM has a clear, doubtful or non existent right. To do that they are looking at the validity of the noncompetition covenant: The judge is arguing that TRM has no legitimate interest to defend as they do not share any trade secret with the business they are contracting with. They are concluding that the restrictions set out in the covenant are exorbitant and are grossly excessive for the reasonable protection of TRM. The judges are concluding that this clause is abusing. According to article 1437, "an abusive clause in a consumer or contract of adhesion is null" As it is a nonexistent right, they don't get an injunction

Chapter 9: Civil responsibilities

Can a minor be considered liable?

→ when he understands the consequences

Can you get compensated for future?

→ must be definite → not compensated for the result if its not certain but you do get compensated for the loss of an opportunity (like the horse, 60% chance)

When you can you get punitive damages?

Psychological harassment

Bodily injuries

Charter

A kid gets a hold of alcohol from the school bus driver.

What is the material cause? → the alcohol

What is the juridical cause? →

1. Bus Driver (Negligence)
2. Kid who took the bottle (endowed with reason)
3. Kid who drank

All three are the juridical link

All of them would have to pay one third

The parents would have to pay

Harris v Ostromogilski

- Owner of the cab disagrees
- Testimonies do not match
- There was a criminal action
- There was a fight, and there were chargers against orstromgilski
- Criminal vs civil suites, criminal first got him punished, now civil to get some compensation
- The judge determined , he talks to savage the police officer, and he looked at the damages for each person
- He noticed that mr ostorgilski was in shape, and young. He had an injury on his fist. And the other guy had stiches and broken ribs and injurys
- Helooked at medical reports and all the injury
- Balance of probabilities waits in favor of plaintiff
- Plaintiff is entitle for damages

What was awarded?

→ the lost wages, average of salary of previous years

→set aside the amount for punitive damages

→ 1621 punitive damages is to deter people, but he already got preventive effects. Awarding punitive damages was not necessary

Compensation?

- a. Awarded medical costs (expenses incurred because of fight)
- b. 5k\$ because harris went to the dotor and the doc said that it was preseted on the basis of medical evaluation

Damages? →

- 1) lost of wages (income lost)
- 2) 2nd medical costs incurred such as ambulance broken glasses and
- 3) 3rd is the damage assessed my doctor psychological damages. And based on the doctor

In civil law → you don't need the intention, you just need to cause a damage

Walker v Singer

- sexual relationship
 - walker is a jewler and singer is a lawyer
 - singer rents a room and walker moves in
 - singer gets pregnant and she gets an abortion
- the day before she takes clothes and destroys things
- walker files a charge saying that she entered his room without his consent
- police charges singer for breaking and entering and stealing
- 6 months after, singer suddenly decides that she wants to file sexual assaults (a way of getting back)
 - april 1990 → not enough grounds and it was fabricated and they decide not to sue
 - 1991 → breaking and entering goes to court, and singer was guilty. For mischief (minor version of guilt)

- Started in 1991 and only tried in 1997 (for the sexual predaotr case)
- Judge only gives him 760 for the wardrobe cause it was alittle unclear about the circumstances
- Judge says that that the link between the abortion and the sexual assault was not strong enough
- Also notes that singer was also seeing someone else, and therefore not sure if walker was the father
- Also considering the she never said anything and that she waited for too long
- Claims it was fabricated, and entitles walker to get compensation
- The accusations causes an injury to his reputation, however it was not widespread (they all have professional obligations)
- Judge considers that in the 90's there was a trace, in the system it says he's been charged but does not say outcome
- That means each time his name pops up sexual assault is popped up
- Walker must reveal his accusations to potential relationships
- He awards 5000\$ to the damage of his reputation
- Judge also awards psychological and inconvenience damages, stressed and must seek legal (anxiety) →awards 2000\$
- Charter has the reputation in it, in this case singer was a lawyer and lied under oath and she had been interfering with the charter which aloud punitive damages, wrong behavior and good income which led to the 3000\$ for punitive damages

Specific rules for specific situations

1459 → presumption that the parent is liable

When kids do something wrong, then the parents must pay
Presumptions that they are liable, they did not supervise
ONLY WAY TO AVOID: is if the parents prove that they did not commit a fault in supervision and education
Judge will look at:

- a. The age of the kid
- b. Parents policy (what they allow or what they don't allow)
- c. Degree of communication (notions of good and evil)

1462 → no one should be liable if the person who is endowed with reason

Kid endowed with reason

Parents committed a fault, then the parents are personally liable (1459) parents should pay

1457: kid is liable

Ex: father has a cottage, and sons friend. They destroyed property . parents did not supervise, therefore they are personally liable

Parents did not commit a fault

1457: Kid liable

Parents are not liable but they pay as tutors

Since they are representing the kid in court they have to pay on behalf of the kid

EX: 14 yr old Kid is endowed with reason but the father is not liable .

If the parents re serious in education

The kid said that the mom tried

Then the kid is liable, mother proved that she gave all the necessary education but she still has to pay on behalf of him

She is not liable though

In the case of a insurance contract, if a kid does something intentional then there is no compensation. Insurance does not have to compensate

2nd Case THE KID IS NOT ENDOWED WITH REASON

1459 → PARENTS are personally liable.

There is compensation and the parents are paying

1462 → KID NOT LIABLE

In a situation when the kid did not know what he is doing, and caused a damage

Its an act not a fault.

PARENTS ARE NOT liable

→ the kid and the parents are both not at fault

exterior force, un preventable → no compensation

3rd CASE

Parents are personally liable

1462 → fault and liable. An act that is wrongful

parents are at fault

Parents are not at fault

Parents are not liable

Pay as tutors insurance

Fault = direct

Act= indirect (would be considered wrongful if he knew what he was doing 1462)

INSURANCE should pay when it is not done intentionally

1460: Guardians

Daycare, teachers babysitters etc

A kid threw a stone and hurt someone

Parents sued the school board

School board is held liable because they did not prove that they did not make a mistake, no valid reason. They said they didn't have enough people supervising at the time

Presumptions that there was a mistake

1st part → imposes presumption that they are at fault

2nd paragraph deals with babysitting

→ there is no presumption , they must prove that there was a fault

→ since there is no professional criteria, then its harder to prove that they are at fault

→ the standard to prove they did something wrong is lower

1461 Tutor/ Curator

- Incapacitated adult
- No presumption that there is a fault
- You have to prove a careless and reckless fault
- Something so wrong that when you make that fault you cause a tragedy
- Action itself is wrongful

- Hard to trigger the liability
- You can be a legal guardian or a physical guardian (like psychiatric institutions)
- No presumption of liability
- Judge cannot retain liability for the
- The presumption that guardian is liable is not the case for incapacitated adult

1463 Agents (mandates and employment)

- principle and the agent can be tacit or verbal
- can work when the relationship is both onerous and for gratuitous
- objective liability, the principle is always liable
- employee does something, employer is liable
- applies to state employees as well

city which employs a police officers that do things that are abusive
the plaintiff can be awarded on the basis of the charter and damage compensation
the city will

1465 Things

1. → what is the thing?

- you are liable for the things you control
- can be anything a good, building, electricity animal etc
- to trigger liable, the thing has to act autonomously
- tree that goes really deep, and affects the foundations of the house (autonomous act)

2. Who is in charge of the thing?

- the person that could prevent the action
(user, owner)
- only way you are not liable, is when you did everything you did to make sure that the use was safe

ex Walmart

When there's a windy day, the woman decides to sue walmart when the wind pushed
Walmart committed a fault because they did not do everything they could

1466 Animal

must be domesticated
owner is liable → if the thing causes the damage the owner failed to exert control
if escapes → owner is also liable
it can also be the person who uses the thing
like a person riding a horse

you need to prove that there is a damage from the animal itself!
Ex small dog who ripped this guys hugo boss suite
And the judge says that you can get compensated

1467 Ruins

When there is a ruined building the owner is liable, the owner has a duty to make sure its safe
Even if he proves that he did not cause a fault, he is still liable
He has to pay
(in the case of repairs, he first pays then the repair man gets sued)

Punitive damages awarded to walker and singer?

A: she had to pay punitive damages to walker

When are parents liable for their children's fault?

A: When they are not endowed with reason and resulted in a fault, or when they made a mistake in education and supervising kid

Who is liable to the damage caused by an animal?

A: Owner and the person who is controlling the animal like a dog walker

How do you avoid liability for the act of thing?

Does vicarious liability apply to state employees

A: Yes

Product Safety

Beyond 1458/1457 CCQ

- Allows people in a contract allows compensation within the contract
- Ex: toys are us, toxic toy, seller must compensate the customer
- Problem arises when you give the toy to the nephew, he has no contractual link. He cannot use 1458 to get the compensation.
-

1458: when there is a contractual link

1457: Need to prove fault, causal link and damages, very difficult to prove a defect (usually no technical knowledge) and if the good is manufactured wrong, who knows who made the mistake
that would lead to people with no contractual grounds and cant prove the damage
that's why there is 1468.

1468 (when there is no contract) : if you suffer from a damage that is from a movable property (any type of good that is not a building)

- Ex: Elevator and you have a good you can use product safety if you want to prove liability you need to prove defect (it can be difficult to prove)

In that case, you can go directly to the retailer or the intermediary between the manufacturer and the retailer making it easier for the person so get compensation

- Ex: lets say toys are us is saying its not our fault, there still liable. They must compensate and then go after the manufacturer

Defect → Dangerous when there is a normal use

1. **Defect in design** ex: if there is a sign that falls on the car. The guys who built the sign, when you have something broken that is linked to a building it is the owner to the building that is liable. If the woman that got a car broken, she can turn the owner of the building. Then the owner of the building can go after the sign company. Things that fixed to the building ie. You cant move them like signs etc

1468 is an exception because here the range is bigger, includes stuff that is fixed to the building. Very specific.

2. **Defect in Preservation** (in food): Something wrong when you package stuff, even in the case of blood. When there is a defect in conception antibacterial etc.

3. Defect in Presentation

4. **Lack of indications** (warnings) if there is a rug that can catch on fire, the owner sues the rug company, it should have said that you should place it near a electrical appliance.

1469: Nature Defects

1473 CCQ Limitations for the liability of product safety

→1) **Improper use**

Ex: A family buys a cake on a plastic plate and decides to buy sparklers. It caught fire and there were damages in the house.

People decided to sue the cake company saying that their not safe, you shouldn't use the candles on paper etc. using it improperly makes no sense→ no compensation.

→2) **Development Risks**

EX: Asbestos, its been known that its toxic... the problem is that companies continue to use it. People are entitled to compensation. From the moment they new about the health problems the company should stop using the asbestos. As soon as you know you are liable.

Idea is that you need to find a balance between new products and public safety.

Someone who is liable to reduce to expenses or you don't want to be liable

1470 CCQ: Unforeseeable, irresistible, external

Discretionary decision

The judge will figure out the circumstances

Exterior force only applies when you did what you had to do

Cannot be used as a cover up for negligence

It has 3 main characteristics

- UNFORSEEABLE
- Something that you couldn't do anything about
- External

MUST BE ALL THREE

You started compensating you have to finish

Ex: Storm, a legal strike (supplier should send goods by jan 1st, if there's a strike he cant supply you with goods, he was unable to complete the contract because he could not see the strike and the employees have that right. He has no power)

Ex: If you are robbed by someone

If you can plan ahead its not external fault

1478 CCQ: if the person also made a mistake, contributed to the injury means shared liability

Person endowed with reason (a kid who knows what he's doing or a person that is not insane)

If she is not endowed with reason then this CCQ does not apply

Ex: if a dog bites a kid but the kid kicked the animal, then the kid is partly to blame. He was 9 he knew better, he committed a fault and since the kid triggered the reaction. The judge said he is partly liable

Which means that the kid and the dog owner should share the liability for medical costs

Ex: Big dog and small dog.

Since the owner of the small one did not do anything about trying to stop her dog, she only got 75% she was liable for 25%

Whatever the person does, it should be a contribution to the injury

They share the liability in regard to the seriousness of the situation

1477: Limits

→Inherit Risks

The person acting should accept that there is risk in a activity

Even though that person is entitled to compensation, She may not have taken the precautions.

It's a way to reduce the amount of money you have to pay

You don't have to accept someone else's fault, like a skydiving. If the guy made a mistake with the rope you still do get compensation.

Ex: a person who knew about the risk and the person who committed the fault there is a balance

1479: victims should not increase the injury

it's your duty to make sure you do not increase your injury

any reasonable person should take measures that a normal person would take

if someone says something nasty in public, if you don't act and ask the newspapers to remove, you're increasing your own damage and then the judge may not compensate you

→ the limit should be that you should not do something dangerous to avoid the damage.

If you do increase your injury then you are considered to be at fault

Whatever they suffered up until that point.

Ex up to 8 weeks its average for your handicap

1474C CQ : Wavers

No limitation for bodily and moral injury

Ok for material injury except for intentional fault

The person in strong position in bargaining cannot use wavers to avoid liability

1) You can get a waiver for material damages = ok

Only if that waiver does not deal with gross negligence and intentional fault

Ex a valet, parks the car in a good way and it's all done properly. If someone else comes and scratches. If there was a waiver signed then they are not liable for the damages caused by someone else.

However: if the valet was negligent and made a mistake and left the key then he is liable and the waiver does not hold.

2) Waiver for bodily or moral injury = NOT OKAY

The only thing that the contract can do, it cannot be used to deprive damages.

That aspect of the waiver is void.

However it can be used to decrease compensation because you kind of knew about the risk

Ex: if you break your arm while skiing at a school and you sign a waiver, you are liable... NO. its bodily injury and you can get compensation

Wavers must be included in the contract

1476 CCQ NOTICE

→ A lease, if there no hydro, water, heating, snow water etc hit the roof, plumbing, the owner is not liable.

A clause like that is invalid because it went against the nature of the lease and it allowed the owner to not maintain the building (negligence) hence the waiver was invalid.

The notices on the walls are not considered wavers, you cannot limit liability by notice.

The only thing that it can do, it acts as warning, as a proof that the person accepted the risk

If there is a notice on a building of the city saying do not enter and people enter anyways, the city can reduce their liability but they are still liable.

They can say that they committed a fault.

Sometimes you can have several people causing a damage.

1478 CCQ

ppl = joint + solidary

if there is a damage caused to A but B AND C were working together they are solidary liable.

several + not solitarily

if you can prove that there were 2 damages

A received D1 and D2 separately from B and C then there is no solidary

Ex: the key board broke and the screen broke. Me and julien caused different damages then we are not solidary liable for the complete cost

Ex: BILL was a victim got shot → Silvia shot him → Albert didn't do anything → Bill tried to sue Silvia and Albert → Albert was found not liable

And Silvia was found that liability should be shared between bill and Silvia → Since bill took off his bulletproof vest BILL loses 15% of the compensation.

Silvia got 85% → But then awarded an extra 5% because she knew her friend was out there without a vest.

1480 and 1481 CCQ : Situation when someone is injured by other people and you can't tell which one is liable. Then they are all liable

A → B, C and D

There is a fight and they are all involved.

A gets a broken jaw

You don't know who is responsible for the jaw

All 3 of them are in for 1/3 and they are all SOLIDARLY LIABLE

If one of these people are exempted for some reason (ex he's a undercover cop) that he is not liable and → the remainder is shared amongst the rest. Meaning the 2 remaining guys have to take a half each.

What is the difference between 1457 and 1458?

1457 outside contracts
1458 contract

Who can you sue for a product safety?

Manu
Supplier
Retailer

Can you waive a liability with a notice?

How do you share liability?
Depends on the seriousness of the fault and how it is shared?

What is exterior force?

Something you could not foresee, or resist and its exterior to you

→ 3 cases

Farmakis v Canadian Tire

Farmakis had to ship a ladder in Greece, he fell off the latter and he thought it was because of a defect

- 1- Defect in latter
- 2- Did not receive a warning

Farmakis's expert, said that their had to be a defect before he used the later

The other expert could not find anything for the pre purchase problem

2 opinions

no clear evidence that there was a default before the purchase

no evidence of negligence on manufacturing side

There are other potential reasons for the latter to be defected

No evidence and potential for other reasons of him falling

He claims that there was alack of warning

However the company did fulfill their obligations but he just removed the labels.

Therefore whatever he says about the labels is not something that is considered to be evidence

Using the latter is not that difficult, therefore the need for a warning is not exactly very strong. Any reasonable person should know about the dangers of using a later

The company did not fail to warn the consumer

Final outcome: Farmakis's case is dismissed

Walford v Jacuzzi Canada

- The parents bought a pool, and there was a picture with the pool and a slide.
- They buy a slide from someone else not a retailer
- They went back to the swimming pool store and they asked if it was safe
- The pool shop said it was okay, they sold a missing part and installed the slide
- The parent was very diligent
- The girl decided to use a head first approach, and she ended up paralyzed
- The parents sued the pool retailer the slide manufacturer and the pool importer

She sued the pool shop because they told her that it was okay to use the slide

→The judge looks at the negligence of the pool retailer?

If someone asks you if its ok to attach a slide to a pool, the questions that the mother asked were not enough to trigger a store liability

She did not specifically ask there was a safety concern

(not precise) therefore the shop is not negligent

The judge dismissed the pool retailer case

→The judge looked at the slide and whether not it was defected

It was not defected but there was warning signs missing

Therefore the manufacturer was negligent

But the reason why she went down the wrong way was against the instructions

Their negligence was not the reason why she got hurt

Therefore he dismisses the case, the girl went on the slide contrary to the mothers instructions

Morse v Cott Beverages

Morse wants to drink a soda, tried to use a nutcracker to turn the cap open

And the cork hits her in the face

She cant work, lots of pain and the doc said she might me blind

She's not blind but still suffers from eye injuries

She may end up with eye surgery in the future

When things get back to normal her eyes are still sensitive

Prevented from playing baseball and basketball

First she's injured, and it prevents her from playing things

Parents decide to sue the manufacture the cola bottles
Include in the suit the person who sells the cola

The judge looks at what is the device that closes the bottles and what are the safety rules applying to this device
The company that built the corking mechanisms, it should be in a specific range of pressure
Checking the safety standards and checks the day it was manufactured, more than half were above the required standard for the pressure aka they were too dangerous

The judge considers that there is more than 50% , that there was a defect in the manufacturing which proves the bottle was defected
The accident would not have happened if moris used the bottle properly, should not have used a nutcracker

She was old enough to know without supervision
Using a nutcracker is not something that the bottle company could not foresee
They know that consumers tend to use other devices
Therefore the behavior was not UNEXPECTED or unreasonable
Which is not a way of proving improper use

The last point is that there was no proof to show a defect in the bottle
The family kept the bottle and not the cork
The bottle companies fault for not going back and examining the bottle of the course of several years , they cannot use this as an excuse to say they don't have enough proof to asses it .
Argument → you never wanted to asses it until it went missing

Moris claim was accepted and got awarded damages
Got compensated for equipment and she was not compensated for the Potential for eye surgery (not enough certainty) therefore no compensation.
According to the doctors there is no need to award her with eye surgery compensation

REVIEW ON CONTRACTS

→Offer (1388 130)

→Acceptance

- 1393: Counter Offer
- 1394: Silence
- 1396: Promise

→Reception of acceptance check the following

= contract=conclude

Check the ability to conclude based on

1. **Capacity:** 1409 (adult or minor/incapacitated)
2. **Consent=** ok? : 1398-1399
 - Fear 1402-1404 (threatened, can obtain cancelled and damages)
 - Check for error (Honest 1400 or Fraud 1401)
 - Lesion 1405-1406 (minors, protective supervision)
3. **Cause:** 1410,1411 (check public order etc.)
4. **Object:** 1412,1413 (is it legal)
5. **Formalism:** 1412,1413 (written, specific, is it valid)

Check Content of the contract:

1. Explicit/implicit content 1434: (nature, usage etc)
2. Coherence: 1432 (does not need interpretation)
3. External Clauses: 1435 (Referred to in another document)
4. Illegible Clauses: 1436
5. Abusive Clauses: 1437
6. Penalty Clauses:

The outcome of the above depends on the type of contract → Consumer → Adhesion v consensual

→Contract Creates Obligation 1433,1439

If the person does not fulfill his share of the contract you are entitled to compensation

- Lack of Performance Remedies
 - – **Refuse to preform your share** 1591 (same contract not other)
 - – **Detention of the good** 1592 1593 (contract has to be about that good) only with owner and willingly
 - –**Specific Performance** 1590, 1601, 1603 (that person can be forced, or you get someone else and send bill)
 - – **Resolution/ Resiliation** 1590, 1604, 1606
 - Resolution never happened
 - Recisliation is the future (success contracts)
 - -**Reduction** 1604

→ Injuries Caused within the contract 1458, 1613

Cases and articles

Giroux Vs Malek

- Fraud: 1401

Peter v Fiasche

Object 1412,1413

The reason why they cancelled contract it was not about the bad info the reason why is because the contract was signed for tax evasion which is an illegal cause.

Mall v Cineplex → Specific Performance: 1590, 1601, 1603

1458: (requires damages)
1590: (no need for damages)

Copyscope v TRM

Noncompetition clause
The specific of this contract, trade secrets not relevant and it was too broad
Abusive clauses 1437
Check the content of the contract
Contract of adhesion, without regard.

Liability

Who is liable?

Endowed with Reason → children? → no incapacitated adults

Liabile for?

Fault →

- **Your fault** → Contract: 1458 → Civil liability non contractual: 1457
- **Someone Else's fault**
 - **Children**
 - Parents are presumed liable: 1459
 - Guardian Presumed: 1460
 - Guardian for free *fault proven: 1460
 - **Incapacitated Adult**
 - Guardian (gross fault) 1461
 - **Employer**
 - Employer is objectively liable: 1463
 - State employees :1464
 - **Thing**
 - Autonomous Act of a thing: 1455
 - Animal: 1466
 - Immovable thing ie. Ruin of a building: 1467 owner always pays
 - Safety Defects: 1468 1469 (as a retailer manufacturer etc)

Introduction

Personal Responsibility

Indirect Responsibility

Limiting Civil Responsibility

Appendix 9-A Selected Articles from the Civil Code of Québec

Contractual and Extra-Contractual 1457-1458
Personal liability (section 9.2) (pp.337 to 341)
Indirect liability: employees and agents and manufacturer, distributor and seller
Legal limitations (no fault SAAQ and CSST for workplace injury) (p. 344)
Articles of the civil code to focus: 1457-1458-1462-1463-1468 to 1481-1611-1613-1614-1615

Case of Harris v. Ostromogilski (extra contractual liability, punitive damages and criminal proceedings): (main facts, legal reasoning, decision)

Facts: Harris is leasing a cab from O., and every week, he comes to his place to pay for the lease. One night, there was a dispute. Harris got injured. Issue: each party version differs greatly, the judges have to assess the credibility of each version of acts and determine who was responsible. O. argues that Harris fell while trying to run out the house, and hurt himself. Harris version is that O. beat him with his fists. Harris injuries are uncontested facts.

Considering all Harris injuries from the laceration of the left eye, to the laceration behind the right ear, to a hematoma on the right buttock and a fractured rib, the version of Harris is more credible. The court concludes that Harris version is more credible. Therefore O. will have to pay compensatory damages that include bodily, moral and material damages.

The damages include the cost of the shirt ripped during the altercation, the loss of income during two weeks, the pain and the suffering and the broken glasses. Concerning punitive damages, they will not be award because O. has already been condemned for this fault in criminal court. You can't have a double jeopardy, be condemned twice for the same offense.

Case of Walker v. Singer (extra contractual liability, damage to reputation, punitive damages and criminal proceedings): (main facts, legal reasoning, decision)

Facts: Walker and Singer were having a love affair. While Walker was outside the city, Singer destroyed Walker clothes. Police investigated the missing clothes and charged her for mischief, meaning an offence against property. She goes to criminal court, she pleaded guilty and she got absolute discharge. Then Singer attacked Walker in criminal court for sexual assault. Walker went to court and won his case. Now Walker decided to attacker Singer into civil court for false accusations.

Issue: Walker is seeking compensations.

Ratio: He is arguing that these false accusations had a direct effect of his impossibility to be in a relationship. He also caused him stress and anxiety and damaged his reputation. Walker is also asking for punitive damages. Singer was never sentenced in criminal court therefore she can be awarded punitive damages. She will be responsible for compensatory moral & material damages (compensatory damages) and punitive damages.

Case of Farmakis v. Canadian Tire (obligation of seller for a ladder, duty to warn): (main facts, legal reasoning, decision)

Facts: He bought a step ladder at Canadian tyre. He shipped it from Canada to Greece to renovate his house. He fell from the ladder and broke his heel.

Issue: Farmakis is arguing that Canadian Tyre is liable for his accident and is asking for damages. Ratio:

The wife sent back the ladder from Greece to Canada. The lawyer got the ladder inspected from an expert in metal. In the expert report, he argues that the step ladder had a pre-purchase default. However, the two travels of the ladder leave ample opportunity for damage to the ladder caused by sources other than the defendant. The second argument used by Farmakis is that the manufacturer did not tell the victim that he should not climb if he was more than 200 pounds. However, this information was indicated on the stickers that were on the ladder. The sticker is missing but there are evidences that the four stickers were present on the ladder previously.

Conclusion: Farmakis action is dismissed.

Case of Walford v. Jacuzzi (extra contractual liability, obligation of a seller, slide in a 4 foot pool, responsibility of victim): (main facts, legal reasoning, decision)

Fact: The family had a four-foot deep pool and a slide. The mum told the teenage girl not to slide the head first. However, the teenage girl did not listen. She broke her neck and end up in quadriplegia. Issue: The family is suing Jacuzzi for failure to warn of danger . Pioneer employees were not asked whether or not a four foot pool and a ten foot slide could be used together

However the court found negligence on the part of Jacuzzi for failing to give adequate warnings to users of the slide of the extreme dangers of serious injury from improper use. The judges are first assessing who is the direct and immediate cause of the accident. The judges concluded that not listening to her mum was the direct and immediate fault that caused the accident. **The case went in appeal.**

The court decided to split the fault between the mum and the pool company for contributory negligence: their lack of warnings. 75% of damages are claimed against the pool company and 25% against the mum.

Case of Morse v. Cott Beverages West (extra contractual liability, defective product, obligation of manufacturer): (main facts, legal reasoning, decision)

Fact: The girl tried to twist the cap of a bottle of Cott beverage. She could not, therefore she took a nutcracker. The cap blew in her eye and caused serious damages to her eye. Issue: Is Cott beverage liable for the injury and the resulting pain?

Ratio: The manufacturer of the cap process gave a manual to Cott beverage concerning the capping process: the Alcoa system. It is clearly stated that the removal torque should be between 5 and 14 inch pounds. However, the day of the injury, the records from the manufacturing process of Cott shows that for 16 out of 24 bottles testes was above the recommended interval. The record further indicated that no adjustment was taken to ensure the production was within the specified tolerances. Within the manual, it is also indicated that :”bottles may not be openable by hand. This may result in injury if the closure is improperly removed using a tool or some other devices. “ The judge concludes that Cott has breached the statutory warranties of acceptable quality and fitness. She also concludes that Cott committed a gross negligence. Therefore according to article 1469, the manufacturer is responsible for bodily, moral and material damages (compensatory damages): Loss of income

Prescription

General damages

In addition, the judges award the manufacturer punitive damages or exemplary damages because they released inherently dangerous products and therefore jeopardizing the safety of the public. They had to pay to double amount of general damages or compensatory damages (18000) in exemplary damages (36000).