

Jurisprudence: Compare our case to prior cases in order to convince judges they should rule in our favour.

Lower court judges are obligated to follow decisions of higher courts in similar cases (stare decisis).

We will do the same with our cases.

Case Summary

The facts: The evidence in the case allows us to compare to our case.

Legal Issues: What legal questions need to be determined?

Decision: What is the ruling?

Ratio decidendi: What are the reasons for the decision? What laws are applied? This can be applied to future cases (and exams).

Law vs. Ethics

- Ethics are voluntary rules of behaviour;
- Designed to create conditions allowing people to live a good life;
- Laws are coercive rules on conduct;
- Imposed on society through the social contract;

Origin of ethics

Jeremy Bentham (18th century). Utilitarianism – political and social institutions (law) should be used to maximum utility. Maximize pleasure and minimize pain.

John Stuart Mill (19th century). Actions are wrong if they produce unhappiness. Actions are right if they produce happiness. Contrast to Nicolo Macchiavelli; the end justify the means.

Illegal but Ethical

- Marijuana is an illegal narcotic;
- Marijuana is no longer frowned upon;

Legal but Unethical

- Abortion;

- Ban on abortion overturned by the Supreme Court;
- No law on the books today;
- Abortion is only regulated by ethical considerations;
- Doctors may refuse abortions for religious or conscientious reasons;
- British Columbia may pass a law to forbid it;

Article 6, CIVIL CODE

- A codification of the basic principle of ethics;
- We must act in good faith in our relationships: i.e. contracts;

Strategic Lawsuits Against Public Participation (SLAPP lawsuit)

Business Ethics

- How should managers and employees act in the business environment?
- Are ethics enough incentive?

Business Ethics: Pros

- Expectations of society create pressures;
- Social problems can be turned into profitable business opportunities;

Business Ethics: Cons

- Managers expected to earn the highest return for shareholders;
- Executives have little experience, training and incentive to solve social problems;
- This class aims to give you the training;
- Lawsuits give you the incentive;

Objections to Business Ethics

- Adam Smith (18th century) and John Stuart Mill – invisible hand;
- Individual self-interest will unintentionally benefit society;
- Will business and society act responsibly without coercive rules?

Imposing Ethics

- Government control of rent increases;
- Hydro-Quebec wants rate increases;
- Tobacco companies want to advertise;
- Universities need a hike in tuition fees;

Discrimination in Employment

- Decisions are made regarding an employee based on race, gender, religion or ethnicity;

Systematic Discrimination

- Remnants of historic prejudices;
- Women, aboriginals and visible minorities are traditional victims;
- Visible minorities who are in University graduates: 31%
- Visible minorities who hold jobs: 71%
- Whites who are University graduates: 27%
- Whites who hold jobs: 87%

Types of Affirmative Action

- Passive non-discrimination;
 - o Obligation to make employment decisions without discrimination
 - o Ending discrimination could take decades;
- Pure Affirmative Action;
 - o Expand the pool of applicants to minorities;
 - o Best candidate is selected regardless;
- Preferential Hiring;
 - o Soft Quotas
 - o Expanded pool of applicants. Equally qualified minorities systematically hired;
- Hard Quotas;
 - o Specific numbers or percentages of minorities are hired;

- Even over more qualified non-minorities;

Is this Reverse Discrimination?

- Quota's result in the hiring of minorities who may in fact be less qualified.
- Does systemic discrimination justify denial of jobs to qualified non-minority?

Weber Case Overview

- White employee was denied promotion opportunity because half the positions were reserved for blacks.
- Supreme Court ruled company could prefer blacks for jobs through quotas.
- Quotas can be used to correct manifest racial imbalances.
- Must be a temporary measure.

Bakke Case Overview

- Bakke was refused admission to medical school which had hard quotas for minorities.
- Supreme Court ruled Quotas based exclusively on race were illegal reverse discrimination where no history of discrimination existed.
- Admissions programs must be “narrowly tailored” to harm as few people as possible.
- A A quotas still accepted in Canada.

Michigan Law School Case Overview

- Law school changed hard quotas to a point system for law school admission.
- Points for:
 - o GPA;
 - o LSAT results;
 - o Community involvement;
 - o Minority Status;
- 2 white female students denied admission despite stronger results in objective/academic criteria.

Resume of Michigan Law School Case

- a) In the landmark Bakke case, Justice Powell expressed his view that attaining a diverse student body was legitimate and that the “ ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation.”

However, defining that “a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups,” cannot be justified.

- b) Race-based action further diversity does not violate the Equal Protection Clause so long as it is narrowly tailored to further that compelling interest.
- c) The Court endorses Justice Powell's view that diversity is a compelling interest that can justify using race in admissions. Enrolling a specified percentage of minority students merely because of race
- d) The school's admissions program beats the hallmarks of a narrowly tailored plan, a race-conscious admissions program that considers race or ethnicity only as a "plus" .
- e) The use of race in admissions is not prohibited by the Equal Protection Clause.

Individual Freedoms and "The Social Contract"

- Jean-Jacques Rousseau (18th cent.);
- "Man is born free but is everywhere in chains" (opening line);

"The Social Contract"

- We give up some individual rights to benefit from protections of living in society.
- Liberty, law, freedom and justice are interconnected.
- Laws should promote greater good over individual freedom;

Thomas Hobbes, "Leviathan"

- (6th cent.) Without the rule of law, life of man would be solitary, poor, nasty, brutish, and short.
- Social contract reigns in man's natural self-interest.

Thomas Paine (18th cent.)

- All men are born with equal rights.
- Proposed codification of civil rights to protect equality. Inspired US "Bill of Rights" 200 years before Canadian or Quebec Charters of Rights.
- Supported taxing property to establish "welfare system".

Warren Zevon

- "Send lawyers guns and money, the shit has hit the fan".
- Law and justice may be guaranteed in our laws, Constitution and Charter, but... it's not cheap.

Quebec Charter of Human Rights and Freedoms

- Adopted in 1975 (Quebec). Canadian charter adopted in 1982.
- Applies to and supercedes all other laws.
- Applies to both government and private citizens and businesses;
- Canadian Charter has the advantage of being part of the constitution.
- Canadian Charter applies only to citizens in their relationship with the government.

Conflict of rights

- Individual rights vs. Collective rights.
- Your rights vs. my rights.
- Individual rights are not absolute.
- How do we resolve the conflicts between different right?

Preamble

- Serves to interpret the specific rights.
- It is a statement of intension and purpose.
- Generally, Charter does not establish a hierarchy of rights.
- List of rights is not in order of importance.
- Courts are asked to interpret and resolve conflicts between rights.
- Quebec Government amended 3rd “whereas” in preamble in June 2008 to enshrine equality of men and women;
 - o “Whereas respect for the dignity of human beings, equality of women and men, and recognition of their rights and freedoms constitute the foundation of justice, liberty and peace”.
 - o Gender equality is meant to take precedence over other rights such as religious rights in case of conflict.

Article 9.1 of Charter Resolving Conflicts of Rights

- Democratic values
- Public order and wellbeing of citizens

- Reasonable limits in a free and democratic society (same as article 1 in the Canadian Charter “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”).
- Government must prove that limits placed are reasonable.

What is public order?

- Rules (laws) that are so fundamental that individuals cannot opt out... even voluntarily.
- Can we give up our individual rights?
- Can a contract say the charter does not apply?

Article 1

- Human being
 - Does it include Fetus? Tremblay vs. Daigle, SCC 1989;
 - Fetus is not a human being until it is born, it does not have any rights.
- Life
 - Challoui: Private health care;
 - Should be allowed to private health care
- Personal security
 - Violent arrest
- Integrity and inviolability
 - Breathalyzer test; Employer drug test, DNA tests. Can you be forced to take these? Can you refuse medical treatment?
- Freedom
 - Right to be left alone. Seat belts;
 - Seat belts are a reasonable limit on your freedom; Supreme Court of Canada

Article 2: Good Samaritan law

- Must intervene to save someone's life;
- Not obligated to place yourself at risk;
- Higher obligation for a doctor or a firefighter;
- You are exempted from liability under Civil article 1471;

Article 3: Freedom of Religion

- Government and public institutions have no religious affiliation (freedom from religion);
- Reasonable accommodation by employer or educational institution;
- Multani Singh case: Is this special treatment?

Voltaire (18th cent.)

- Reason should take precedence over religious doctrine;

- Justice is the guiding principle that preceded all religious systems
- “Religion is irrational belief and groundless hope”: Dr. Gregory House;

Article 3: Freedom of conscience

- Muhammad Ali: Refusal to be inducted in U.S. Army;
- Not based on religion: Deeply held personal beliefs are equally protected;

Freedom of Opinion-Expression

- Right to advertise
- Right to artistic expression: Sharpe case: child pornography
- Right of newspapers to publish your photograph without consent
- Expressions of hate against minorities
- Libel (verbal), and defamation (written)

Section 4 – Dignity, Honor, & Reputation

- Politicians and celebrities
- Racist comments or insults
- Intimate videos of girlfriend on youtube
- Filmed with or without authorization

Article 5: Private Life

- Medical and government files
- Electronic eavesdropping and surveillance of e-mail by employers
- Collection of data through credit and debit card use
- Can this information be used against you? Yes!
- Examples: Costco; hydroponics equipment;

Article 6: Enjoyment of property

- Not absolute: can be taken away from you
- Expropriation: due to process
- Income taxes
- Good neighbourly relations
- Can lose 50% to your spouse in divorce
- Use property to earn a living; your name;
- Corporations gave same rights

Article 7: Evidence obtained illegally

- Were rights violated?
- Does the violation put the administration of justice into disrepute? If yes, exclude evidence.

Article 9: Professional secrecy

- Religious ministers
- Selected professionals if in their charter
- Information revealed by client is protected
- Only client can release the professional from the obligation to keep secret
- Exception: children at risk
- Confession of crime to lawyer

Section 10: Discrimination

- Three elements required to constitute discrimination
 - o A distinction, exclusion, or preference.
 - o Founded on one of the protected elements (I,e, race) (has to be on the list)
 - o Which has the effect of compromising one's right tot equality

Section 12: Discrimination in business transactions

- Businesses which offer goods or services to the public
- Services must be offered to the public without discrimination
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Section 12 Discrimination in business transactions

- Businesses which offer goods or services to the public
- Services must be offered to the public without discrimination
- Does not apply to people who rent rooms inside their houses to other, they CAN discriminate

Section 15 Access to Public Places

- Cannot discriminate in Public transportation or public places
- Can't refuse access to taxis, restaurants etc.

Section 16 Non-Discrimination in Employment

- Employer obligation
- Discriminatory acts by employees can result in dismissal
- Hiring, promotion etc. The entire employment process from the interview to retirement

Section 17

- See casebook
- Cannot discriminate with the criteria to enter an association of employers.

Section 18

- Same as Section 16 but towards employment bureaus.
- There is no systematic process that monitors this practice

Section 18.1 Job Applications

- Employer cannot require you to provide information based mentioned in Section 19 (race, color, sex, religion, pregnancy)
- Except:
 - o Affirmative action program; or
 - o If Section 20 applies;

Section 18.2 Disqualification Due to Criminal Record

- Criminal record cannot be used against you for purposes of employment if:
 - o Not connected to employment

- Based on nature of employment
 - Based on nature of infraction
 - Or
- Received pardon
- Must answer questions if asked
- Judges are a higher calling, and are not considered an employment opportunity

Section 19 Equal Salary for Equivalent Work

- Women must prove that their job is equivalent to that done by men
- Experience is not discrimination

Section 20 Legitimate Aptitudes/Qualifications

- Distinction/Discrimination is allowed if based on aptitudes required for employment
- Distinction/Discrimination ***justified*** by the charitable, religious, political or educational nature
- Of a non-profit institution
- Distinction/Discrimination ***justified*** by institution devoted exclusively to the well being of an ethnic group
- Of non-profit institution

Section 20.1

- Does allow an exception to discrimination
 - In an insurance or pension contract, an exclusion or preference based on age, sex, or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefore is a risk determination factor based on actuarial data.
 - In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

Section 49 Victim's Charter Recourses

- Obtain the cessation of the offending behaviours: i.e. an injunction
- Material damages to compensate losses

- Moral damages to compensate for: pain and suffering; psychological suffering; and loss of dignity
- Loss of enjoyment of life
- Punitive or exemplary damages
- Only in case of intentional and unlawful act

Section 49 Victim's Charter Recourses

- Obtain the cessation of the offending behaviour: i.e. an injunction;
- Material damages to compensate losses
- Moral damages to compensate for: pain and suffering; psychological suffering; and loss of dignity. (replace what you've lost)
- Punitive or exemplary damages;
- Only in case of intentional and unlawful act;
- Not compensatory but dissuasive;
- Not a fine but paid to the victim;
- 1621 C.C.Q. (p.24,25)
- Patrimonial situation (financial standing)

Midterm

- Michigan Law School
- North-crest
- Therrien
- Multani Singh
- BC Firefighter
 - o Premafacie discrimination
 - o Adverse-effect discrimination

17/02/10

Employer/Employee Relationship

- Employment at will (first 2 years, after 3 months u need a NOTICE), more than 2 years, 2 weeks notice required.
- Concept that states that “employers may dismiss their employees at will...”
 - o For good cause
 - o For no cause (not as productive or not needed anymore)
 - o And even for cause morally wrong
 - o Without thereby being guilty of any legal wrong.

Termination and Job Ownership

- Job Ownership: is a doctrine which states that a job is like property rather than a contract;
- It cannot be taken away without due process in exceptional circumstances;
- I.E. Judges, University Professors

Contract of Employment DEF: 2085 C.C.Q.

- A contract – written or not
- Of limited duration
 - o Subordination

Employee obligation

- Do work
- Accept employer’s instructions, direction and control
 - o Subordination/insubordination
- Employer’s obligation – pay the agreed remuneration

Contract – 2086

- Indeterminate term
- Fixed term

2087- Employer Obligations

- Allow performance of work
 - o Tools, manpower, funding
- Pay remuneration agreed
- Protect health, safety, dignity

01/03/10

2088 – Employee obligations

- Fiduciary duty
- Perform work prudently, diligently
- Act faithfully and honestly
- Not use confidential information obtained in job
- Bon Pere de famille
- Respect these obligations for reasonable time after leaving job
- Permanent obligation regarding reputation and privacy of others at work
- Violations of these obligations can result in disciplinary measures ranging from reprimands to firing

Insider Trading

- Buying or selling securities while in possession of non-public information (i.e. information about a merger or acquisition).
- The stock in the company will generally rise after the acquisition is announced.
- The Securities and Exchange Commission (SEC) is the body that regulates the securities industry.

Who is an insider?

- Someone working inside the company
- Someone working outside the company but holding sensitive information about it. i.e. accountant, lawyer, etc.
- Someone outside receiving information from the above mentioned persons.

Confidentiality and trade secrets

Includes:

- Product plans
- Financial data
- Plant construction
- Expansion plans

- Improvements
- Capital investments
- Dividend action
- Price lists

All employees are obliged to safeguard the company's C.I. & T.S. The company refuses to market an innovation can the employee do it on his own?

01/03/10

Proprietary rights vs. General Knowledge

- i) "C.I." is common knowledge to the public
- ii) "C.I." is common knowledge in the industry concerned
- iii) Was the C.I. protected by the company?
- iv) What is the value of the C.I.?
- v) Effort, time and money spent to develop C.I.
- vi) Difficulty to reproduce the C.I.

Conflict of Interest

The basis of employee TRUST therefore the term "Breach of Trust".

Two types:

- Actual conflict – personal interests are at odds with the interests of the company
- Potential conflict – appearance of conflict (buy supplies from brother even though he has the lowest price and no favors are involved)

Examples:

- Accepting gifts from suppliers
- Offering gifts to customers
- Consulting competitors
- Trading stock and equities of the company
- Discounts to vendors

Companies deal with Conflicts with codes of ethics that take into account:

- The value of the gift
- Purpose of the gift
- Circumstances in which the gift was given
- The position of the person receiving the gift

Whistle Blowing

- Disclosure of confidential information
- Examples: production of defective vehicle
- Government waste of money
- Dumping hazardous products (1472 p.122)
- Discrimination
- Misuse of pension funds
- Sale of unsafe food/products

Three types of Whistle Blower

- Internal: the employee attempts to disclose within in the Company hierarchy
- External: the employee attempts to disclose to an outside authority
- Alumnus/Alumni: the employee no longer works for the wrongdoer
- Protected by article 1472 CCQ: may disclose trade secret

2089 - Non-Competition Agreement

- Stipulation must be in writing
- Express terms – i.e. give specific details as to what it covers
- May be signed before, during or after expiration of employment contract

Nature of the Agreement

- Undertaking not to compete with the employer or to participate in any way in any business which does, i.e.:
 - o As an employee
 - o As an investor
 - o As a partner etc.
- Directly or indirectly

Limits to the Obligation

- Time
- Place

- Type of employment
- Cannot be more than what is necessary to protect the legitimate business interests of the employer
- Employee's right to earn a living; skills and abilities

Factors

- What are the employee's responsibilities?
- What is the territorial activity of the employer?
- What is the competitive level of that industry?
- Is this a key employee?
- Ability to harm your business due to intimate knowledge

The burden of proof

- Employer must prove that the clause is reasonable: in time, space and type of employment
- That he has a legitimate business interest
- Failing which, contrary to public order – invalid, not reduced

01/03/10 – 10/03/10

2095 – Effect of non-competition Agreement

- If dismissal is unjustified the clause is without effect
- If employee has for valid (serious) reasons resiliate contract
 - o i.e. safety; non-payment

2090 – Tacit Renewal of Fixed Term Contract

- Automatically when he continues to carry on work for:
 - o 5 days after expiration
 - o Without objection of employer

2091 – Termination of Indeterminate Contract

- Anytime by either party with notice
- Notice must be in reasonable time taking into consideration:
 - o Nature of the employment
 - o Duration of employment
 - o Level of responsibilities
 - o Special circumstances in which it is carried out

Special Circumstances

- i.e. long training
- left a previous job
- isolated area
- special duties or contract
- Duration of the employment: i.e. the longer the job the longer the notice

2091CCQ vs. L.S.A.

- Art. 82. Written notice before terminating contract of employment
- The notice shall be of one week if the employee is credited with less than one year of uninterrupted service

- Two weeks if he is credited with one year to five years of uninterrupted service
- Four weeks if he is credited with five years to ten years of uninterrupted service
- Eight weeks if he is credited with ten years or more of uninterrupted service

Advantages of L.S.A.

- Fast results
- No lawyer required
- Can obtain re-integration if dismissal unjust
- However:
 - o Very minimal compensation
 - o Not applicable during probationary period (3 months)
 - o Dismissal need not be justified for first 2 years (Art.124;Article 128 LSA)

No notice under L.S.A.

Art.82.1 No notice to an employee:

- 1) Who has less than three months of uninterrupted service
- 2) Whose contract for a fixed term expires
- 3) Who has committed a serious fault
- 4) For whom the end of the contract of employment or the layoff is a result of superior force

2092 – Renunciation - Public Order

- Constructive dismissal (the employer constructs the employees dismissal – creates a reason to be dismissed)
- Employee can't renounce to compensation if:
 - o He suffers an injury (damages) AND

- There is insufficient notice
- OR IF:
 - Employment contract is resiliated in an abusive fashion, i.e. unjustified

2093 – Termination

- In all cases upon death of employee
- Therefore – no subsequent obligations
- In certain circumstances upon death of employer
- i.e. employment is dependant on the personality of employer
- Ex: lawyer’s secretary – without lawyer there are no clients
- If employee dies, then the contract is over
- The org. Can still survive with the death of the owner

10/03/10

2094 – Unilateral Resiliation

- By either part for just cause (justified dismissal like stealing petty cash)
- Without prior notice
- For a serious reason

What is with cause? (Dismissal with cause)

- Insubordination
- Theft
- Prolonged absence
- Incompetence (if can't do job one was hired to do)
- Violation of policy
- Disloyalty
- Violating confidentiality
- Escalation of sanctions is the rule (i.e. being late, it escalates) → most likely type

By employee: I quit!

- Non-payment
- Safety put at risk
- Unlawful activity by employer (i.e. fraudulent telemarketers)
- You could claim under 2091 compensation for termination

2096 – Certificate of Employment

- EMPLOYER OBLIGATIONS ON TERMINATION
 - o Provide certificate of employment if requested
- Content:
 - o Nature of employment
 - o Duration of employment

- Identities of parties
- (May not include negative remarks)

2097 – Sale of business effect on employees

- Alienation: Sale, restructuring, merger, etc.
- Does not terminate employment (i.e.)
 - Jobs are protected
 - New owner/employer must respect employment contracts (can only terminate by giving notice in accordance with art. 2091 – reasonable)

Contract for services (sub-contractor)

- Difference between employment contract (a contract of service) and a contract for services
- Contract for services: Independent contractor
- Contract for services is hiring of an independent contractor for an agreed upon price;
- Criteria to identify:
 - No subordination
 - Risk of profit/loss
 - Supplies own tools/employees for contract
 - Exclusivity
- Subordination is the biggest hint btw employee and contractor (you listen to the employer, whereas, the contractor does his/her own thing based on the things that they produce)

Cancellation of the contract for services

- 2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress

15/03/10

1458 – General Contractual Liability (King case)

- Every person must honour contract obligations
- Failing which, must repair damages;
 - o Bodily
 - o Moral*
 - o Material*
- *most common
- These rules are of public order therefore cannot be contractually limited
- This section has specific application to employment contracts

1463 – Employer’s Liability for Employee Actions

- Principal = Employer
- Agent = Employee
- Liability for injury caused by employees while in performance of their duties (see Trans-Quebec Helicopter, Sutton Realty)
- He may have recourse against them to recover what he pays to third parties
- I.e. illegal act; deliberate act or exceeding mandate

Sexual Harassment

- Unwelcome verbal or physical sexual advances
- Submission to the behaviour is an explicit or implicit condition of employment
- Behaviour is a basis for decisions affecting employee
- Behaviour affects or interferes with employee’s work performance or creates a hostile work environment;

Quid pro quo sexual harassment

- Advancement in return for sexual favours; no advancement without sexual favours;
- Submission to the behaviour is an explicit or implicit condition of employment

- Rejection of behaviour results in negative decisions affecting the employee
- In this type of situation the harassment case can be based on a single incident
- This is usually about power; committed by a superior toward a subordinate employee

Work environment sexual harassment

- Environment is openly abusive, hostile, and intimidating towards women;
- Persistent and calculated pattern of behaviour hostile to women
- Behaviour interferes with work performance or creates a hostile work environment
- Often committed by employees of equal standing

Reasonable Woman criteria

- Would a reasonable woman have found the behaviour offensive?
- Not from the point of view of the most sensitive woman
- Nor from that of the least sensitive woman or man

15/03/10

Employer Liability under Labour Standards Act (missing info)

- Psychological harassment
- LSA Uses the work

Employer's liability

- Liable for Psychological and sexual harassment by his employees or management staff if he fails to prevent it;
- Liable if employer knew or should have known of the harassment

Employer's strict liability

- Employers fully liable for actions of employees, even when the offending employee violates policy, procedure, instructions or the law;
- 2087 C.C.Q. protect the health, safety and dignity of employee;
- 1463 C.C.Q. liable for employees in the performance of their duties

What is Psychological harassment?

- Vexatious behaviours, i.e. conduct, verbal comments, actions or gestures
- Humiliating or abusive behaviour that lowers a person's self-esteem or causes him torment
- Exceeds what a reasonable person would consider to be appropriate and acceptable

Conditions required

- It must be repetitive behaviour
- It must be hostile or unwanted
- It must affect the employee's dignity or psychological integrity
- It must be result in a harmful work environment for the victim

The harasser

- Perpetrated by a superior, a colleague or a group of colleagues
 - o Hierarchy is irrelevant
- May even be a customer or a supplier

- Little control by employer
- Victim is always an employee

Single serious incident

- In some extreme cases
- Such vexatious behaviour may be considered psychological harassment
- Lasting harmful effect

Examples of harassment

- Sexual harassment at work is included in these definitions
- Making rude, degrading or offensive remarks to an employee
- Making gestures that seek to intimidate and employee
- Engaging in reprisals against an employee
- Isolating or marginalizing an employee: i.e. not talking to him, denying his presence, distancing him from others
- Destabilizing an employee: i.e. making fun of his personal, religious or political convictions, personal tastes and lifestyle choices
- Discrimination against an employee
- Sexism towards an employee

King vs. Biochem

- Judge was upset that she was fired for an unjust reason
- Employers lied
- She had no recourse, did not apply for the 2 yr service
- Could only have 1 weeks pay
- She sewed under 2091, 1458
- She was never told she was doing a bad job (which she wasn't)
- Judge concluded that employer fabricated bad job performance
- Judge gives employee pretty much everything

Dubé vs. Volcano Technologies Inc.

- Employer has an employee that's been there for 26 months (more than 2 yrs)
- Employer eliminated his position
- Offered employee 2 weeks' notice
- Employee sewed under civil code
- In contract not binding
- High ranked job, therefore could ask for longer notice
- Fired for economic reasons
- Won 16 weeks' salary instead of 2 weeks

Lamberg

Definition of a business: 1525 C.C.Q. (“enterprise”)

- The carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature consisting of producing, administering or alienating property or providing a service, constitutes the carrying on of an enterprise.

Objective of business ownership: Earning a profit -> organized and continuing activity for the purpose of earning a profit.

Therefore, selling your house for a profit is not a business.

Business Ownership through Sole Proprietorship

- Simplest form of business ownership
- Single person: Personal ownership
- No legal detachment of the owner from the business
- There is a mingling of the two patrimonies (business and personal)
 - o Marriage contract recommended/house in spouse’s name to avoid seizure of personal assets
 - o But banks will require guarantees
- Registration requirements if operating under a name other than your own
 - o To inform 1/3 parties (act respecting legal publicity)

Business Ownership through Partnership

Personal form of business ownership involving 2 or more people

- Partnership agreements are useful in determining rights and obligations of the partners.

Exceptions to the rule of liability for directors

Directors of the company can be held personally liable for the following debts of the company.

- Six months wages owing to employees of the company
- Payment of dividends which render the company insolvent
- For loans made to shareholders, directors, officers or employees of the company
- GST, PST and D.A.S.

Mandate

- Mandate = Representation
- Many types of mandate; lawyer; corporate directors
- Mandate = Agency
- Mandator = Principal
- Mandatary = Agent

2130 C.C.Q. Definition

- Mandator: Grants powers to represent him
- Mandatary
 - o Receives power to represent
 - o Must accept the powers and then must exercise the functions of duties
- Power of attorney
 - o Refers to the document or the power itself

2131 C.C.Q. May have different objectives

- Accomplishment of an act: i.e. sign a document or transaction on behalf of mandatory
- Administer all or part of the patrimony of mandatory: i.e. administer a building or business or even all his assets while away
- Assure physical or moral well being in the event of incapacity
- Administer patrimony in the event of incapacity

2133 C.C.Q.

- Gratuitous: for free
- Onerous: for a fee

2134 C.C.Q.

- The contract may state remuneration. Failing which, by usage or law (Court may set)

2136 C.C.Q.

- Mandate includes all powers necessary to fulfill duties
- Powers are inferred by the nature of the mandate even if not expressly mentioned
 - o All acts incidental to powers granted and necessary for performance
 - o Ex: Administration of building: Major repairs which occur may require getting a loan to pay for them

2137 C.C.Q.

- Professionals
 - o In their case, all powers which are ordinary part of that profession need not be expressly mentioned- included
 - o I.E. Lawyer, accountant
 - o Need not be specified

2138 C.C.Q. Mandatary's obligations

- Fulfill mandate; act as quickly as possible
- Act prudently and diligently (take no unnecessary risks – like stock market)
- “Bon pere de famille”
- Fiduciary duty
- Honestly and faithfully: best interests of mandator
- Avoid conflict of interest (even potential)

2139 C.C.Q. Keep mandatory informed

2140 C.C.Q.

- Mandatary must perform mandate personally unless specifically authorized

- Unforeseen circumstances:
 - o Mandatary may appoint substitute if he can't fulfill mandate and can't inform mandatary in time

2141 C.C.Q.

- Accountable to mandatary for acts of those he appoints without authorization
- If authorized, accountable for errors he made in selection or instructions given to substitute (i.e. chose someone unqualified)

2142 C.C.Q.

- Mandatary may delegate some powers unless prohibited by mandate
- Mandatary is liable

2143 C.C.Q.

- Mandatary may represent conflicting interests in the same act if:
 - o He informs each
 - o Usage allows (notary – sale)
 - o Mandators are aware
 - o He must act impartially
- Mandator may request nullity if he suffers damages and was unaware

2144 C.C.Q.

- Several mandataries appointed together;
 - o All must accept
 - o Must act jointly unless otherwise stipulated
 - o Solidarily responsible for errors (only one may pay the full amount)

2145 C.C.Q.

- If one of several mandataries acts alone, he exceeds his powers, invalid
- Unless this is favourable to the mandatary

2146 C.C.Q. Duties

- Mandatory may not use any information or property resulting from his mandate
- Without mandator's consent
- Failure:
 - o Compensate mandatory for loss
 - o Remit any benefit to mandatory
 - o Pay appropriate rent or interest

10/02/10

2147 C.C.Q.

- Cannot become a party to transaction mandatory is performing for mandatory
- Without consent (tacit – aware)
- Relative nullity – only mandatory may cancel
- Real estate agent, attorneys

2152 C.C.Q.

- Mandator must:
 - o Discharge mandatory from obligations toward third parties if mandatory acted within mandate
 - o Not liable if mandatory has exceeded mandate unless mandatory ratifies acts
 - o If mandate expires or is withdrawn – mandator not liable unless ratifies or mandatory is unaware of expiration

2155 C.C.Q.

- If no fault – sums owed to mandatory must be paid even if mandate was not successfully completed
- Lawyer gets paid if he loses

2159 C.C.Q. – Identity of mandator

- Mandatory must disclose to third person if he has agreed to do so to the third parties
- Must not disclose if he was ordered to conceal by mandator
- Must disclose if mandator is insolvent or a minor or person under protective supervision
- Personal liability of mandatory

2175 C.C.Q. - Termination of mandate

- Revocation by mandator
- Renunciation by mandatory
- Extinction of power conferred
- Death of a party

- Bankruptcy or protective supervision also end the mandate

2184 C.C.Q.

- Upon termination mandatory must:
- Render account
 - o Return all property received
 - o Even if not due to mandator
 - o Pay interest on any balance owed to mandator from date he is in default

2185 C.C.Q.

- Mandatory may deduct what he is owed:
 - o Remuneration
 - o Expenses
- Mandatory may retain any property until he is paid

Art. 298: Legal persons or corporations

- Possess juridical personality – exist
- Public purpose or private purpose
- We will discuss primarily private corporations

Art. 299 C.C.Q

- Constituted in various forms in either federal or provincial law
- Date of certificate of incorporation = birth
- Non-profit or for profit

Art. 305 C.C.Q. – NAME

- Name/number which certificate of “incorporation grants them: i.e. 1783453 Canada Inc.
- Uses this name to exercise civil rights/ i.e. contracts;
- Name must conform to law:
 - o French language charter

- Trade marks
- Loi sur la publicité des noms: i.e. publish name/I.G.I.F
- Must identify itself in its name as a corporation or other type of legal person, i.e., partnership (L.P.): Ltd., Corp., Inc.

Art. 309 C.C.Q. – Distinct Personality

- The corporation is distinct from its members, i.e. shareholders, directors
- Their acts are not binding on members but only on the legal person
- Except – exceptions in laws (taxes)

Art. 310 C.C.Q. – Managing a legal person

- *Art. 311. C.C.Q.*: Broad management by the board of directors: mandataries/representatives
- General meetings of shareholders elect directors and make certain decisions
- *Art. 312. C.C.Q.*: Senior officers represent the legal person in daily management employees
- President, V.P., C.E.O., C.F.O., Etc.
- Actions are binding on corporation to the extent of powers granted by the constituting act/by-laws

Art. 316. C.C.Q. - Fraudulent acts

- Directors, senior officers, founders, or participating shareholders are liable for damages suffered by the corporation;
- Non-participating members may also be liable if they profited from the act
- Any interested person (shareholder) may file an application to court

Art. 317 C.C.Q. - Corporate Veil

- Corporation cannot use its distinct personality fraudulently as a defense to a claim by a person in good faith
- The distinct personality is being used to dissemble (mask) a fraud, abuse of rights or contravention of rules of public order
- Directors or shareholders may be personally liable in such cases

- The court in these cases “lifts the corporate veil” which separates the corporation from its members.

Art. 319 C.C.Q.

- Corporation may ratify acts by another person prior to incorporation (.i.e. contracts)
- **ART. 320 C.C.Q.:** Person “acting on behalf of a corporation to be constituted” must stipulate it in the contract and that the corporation may not assume the obligations;
- Failing such a stipulation, he is solely liable.

Art. 322 C.C.Q. – obligation of prudence/diligence

Art. 323 C.C.Q.

- Directors cannot mingle company property with their own (i.e. bank accounts, checks);
- Cannot use corporation property for his profit or for profit of third persons.
- Cannot use any information obtained in exercise of his duties without authorization of corporation (i.e. shareholders – it is their interests which are ultimately protected);

Art. 324 C.C.Q.

- Must be recorded in minutes of board of directors
- Must declare all potential conflicts of interest (i.e. other corporations or institutions he may have invested in)
 - o Including the value of such interest
- Must avoid conflict between personal interests and duties as director

17/03/10

1375 – good faith

- Applies to contracts, civil rights, litigation;
- At the time the obligation is created, performed or extinguished
- Without: abuse; intent to injure;
 - o In excessive/unreasonable manner

1378 A contract

- Agreement of wills by which one or several persons obligate themselves to one or several other persons
- One or several persons obligate themselves to one or several other persons
- An undertaking to do something (prestation) → the performance of the obligation such as payment
- A contract is the law between the contracting parties
- Meeting of the minds
 - o Btw two or more individuals
- Occurs when a party issues an offer
- And the offer is accepted

Types of “prestation”

- To give something:
 - o Ex: payment
- To do something:
 - o Ex: to sell
- Not to do something:
 - o Ex: not to build

1379 C.C.Q.

- Contract of adhesion vs mutual agreement– one of adhesion no negotiation precedes the signature (i.e. an airline ticket)

- Adhesion: no negotiation of the content of contract
- Mutual agreement: mutually negotiated clauses

1380 C.C.Q

- Synallagmatic vs unilateral
- Synallagmatic; both parties agree to perform an obligation (payment and delivery)
- Unilateral: only one party receives something (i.e. babysitting for free; a donation)

1382 C.C.Q

- Commutative vs aleatory
- Commutative: the details of contract are immediately known by both parties
- Aleatory: the extent of the obligation is not yet known (i.e. future orders of produce)

1383 C.C.Q

- Instantaneous vs successive
- Instantaneous performance: one time performance extinguishes obligation
- Successive: contract requires repeated performance (i.e lease)

1384 C.C.Q

- Consumer contracts: defined by CPA
- Contract btw:
 - o A merchant
 - o And a consumer
- Consumer contracts: conditions:
- A merchant: person selling in normal course of business
- A consumer:
 - o A natural person not a corporation
 - o Purchases for personal needs

- Excludes business purchases

1385: conditions of formation of contracts

1. Freely exchanged consent to contract
2. Btw persons having the legal capacity to contract
3. The contract must have a valid cause
4. The contract must have a legal object
5. No special form of contracts

2) The legal capacity to contract

- Minors and persons under protective supervision cannot enter into contracts
 - Minors/emancipation
 - Adult/protective supervision
- Married persons may need consent; of spouse

5) The form of contracts

- no special form required to be valid
- most contracts don't even require written form;
 - proof of contracts > \$1500
- certain contracts must have a special form to be valid
- a declaration of co-ownership
- a marriage contract
- hypothecs or mortgage contracts
- consumer contracts

1436 C.C.Q. Illegible or incomprehensible clause

- Null in a consumer contract or a contract of adhesion if the consumer or the adhering party suffers injury
- Would a reasonable person find it incomprehensible?
- Unless the other party proves that an adequate explanation of the nature and scope of the clause was given

1437 C.C.Q. An abusive clause

- Null in a consumer contract or contract of adhesion, or the obligation arising from it may be reduced
- Abusive if excessively and unreasonably detrimental to the consumer or the adhering party
- I.e. a clause which departs from the fundamental obligations of the contract that it changes the nature of the contract
- I.e. unreasonable interest and penalties

3) Cause of Contracts

- **1410** The cause is the reason why the parties enter into the contract
- The cause need not be specified
- **1411** A contract whose cause s prohibited by law or contrary to public order is null
- I.e. Printer: if for counterfitting

Object of contracts

- **1412** The object of a contract is the juridical operation envisaged by the parties, I.e. the type of transaction
- **1413** A contract whose object is prohibited by law or contrary to public order is null
- I.e. selling your kidney or narcotics

1386 C.C.Q. Freely Exchanged Consent

- Consent must be freely given
- EXCHANGE OF CONSENT may be express: i.e. a written acceptance
- Or tacit (example Barber)

- Shrink wrap; Click wrap; Browse wrap;
- That is, it cannot have been given in error, by way of fraud, out of fear or in conditions of lesion.

24/03/10

Qualities and defect of consent

- 1398. Consent may be given only by a person who, at the time of manifesting such consent, either expressly or tacitly, is capable of binding himself
- 1399. Consent may be given only in a free and enlightened manner.
- It may be vitiated by error. Fear, or lesion.

1400 C.C.Q. Error

- Vitiates consent where it relates to:
 - o The nature of the contract
 - o The object of the prestation
 - o Or anything that was essential in determining that consent
 - o An inexcusable error does not constitute a defect of consent
 - o Ex: Marriage: you're a dude? Woah!

1400: Error examples (object)

- Violin case
- Stratocaster
- Is the buyer in bad faith?

1401 C.C.Q. error from fraud

- Induced by fraud committed by one party vitiates consent
- Fraud = misrepresentation
 - o Misrepresenting sales
- Whenever, if not for that error, the party would not have contracted, or would have contracted on different terms
 - o Would not have contracted
 - o Would have contracted on different terms
- Fraud may result from silence or concealment: of relevant information.

- An inexcusable error does not constitute a defect of consent
- Obvious exaggerations are not fraud
 - o Bell: internet at speed of light

Inexcusable error

- Anything avoidable through a minimum of precautions;
- Own negligence/ personal fault;
 - o Signing contract without reading

1402 C.C.Q. Fear of serious injury

- To the person or property of one of the parties
- Induced by violence or threats exerted or made by or known to the other party
- Apprehended injury: to another person or his property
- Threat must be unlawful

1404 C.C.Q.

- Consent to a contract the object of which is to deliver the person making it from fear of serious injury is not vitiated where the other contracting party. Although aware of the state of necessity, is acting in good faith.

1403 C.C.Q. Fear

- Induced by the abusive exercise of a right or by the threat of such exercise vitiates consent
- I.e. threat of lawsuit

1405 Lesion

- Lesion applies to:
 - Minors
 - Persons under protective supervision
 - The consumer protection act

1406 Lesion

- Exploitation of one party which creates a serious disproportion in the contract (value for ones dollar)
- Or an obligation that is excessive in view of the patrimonial situation of the person (what one could afford)

1408

- In the case of a demand for the annulment of a contract on the ground of lesion, the court may maintain the contract where the defendant offers a reduction of his claim or an equitable pecuniary supplement.

1407 C.C.Q. annulment

- In the case of error occasioned by fraud, of fear or of lesion, apply for annulment of the contract;
- He may also claim damages or apply for a reduction of his obligation equivalent to the damages if he prefers that the contract be maintained.
- Claim a reduction of one's corresponding obligation;
 - o Choice of victim
 - o Annulment within 3 years (2925 CCQ)

Presumption of validity

- **1439:** cancellation
- On grounds recognized by law
- By agreement

Effect of contract

- Binding on parties
- 1441: binding on heirs
- Heirs are a continuation of deceased
- Except "**intuitu personae**";
 - o Highly personal obligation
 - o Employment contracts

- Not binding on third parties
- Publication: opposable to third parties
 - o Land registry
 - o RDPRM

1416

- Any contract which does not meet the necessary conditions of its formation may be annulled

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
i.e. the buyer returns product and seller refunds price.

29/03/10

Relative vs. Absolute Nullity

1419. relatively nullity: reason for its nullity is for the protection of an individual interest, such as error

1417. absolutely nullity: the reason for its nullity is for the protection of the general/public interest. I.e. rules of public order

1421. Unless indicated in the law, the nullity of a contract is presumed to be relative nullity.

1590 C.C.Q. (refer to 1601, 1602, 1604) Creditor's rights – Right to enforce performance

- Performance of the obligation;
 - o In full
 - o Properly
 - o Without delay
- **1601.** A creditor may, in cases which admit of it, demand that the debtor be forced to make specific performance of the obligation
 1. only in cases which admit of it
 2. cancellation of the contract;
 - or the reduction of his own correlative obligation
 3. any other measure provided by law to enforce the performance
 - i.e. an injunction;
 - no damages required, only breach of contract;
 - guzzo case; golden griddle;
 - or claim damages (1458 CCQ)

Penalty clauses

- Anticipated assessment of damages
- **1622.** A penal clause stipulates that the debtor will suffer a penalty if he fails to perform his obligation
- A creditor may enforce a penal clause instead of the specific performance of the obligation;
- But in no case may he exact both unless the penalty has been stipulated for mere delay in the performance of the obligation.

- **1623.** A creditor is entitled to the amount of the penalty without having to prove damages.
- However, the penalty may be reduced if the creditor has benefited from partial performance or if the clause is abusive.

29/03/10 & 31/03/10

1457 CCQ - general liability

- Every person has general obligation not to cause harm;
- Failing which, must repair injury – damages;
 - o Bodily
 - o Moral
 - o Material
- The person must be endowed with reason
- Fault causing damages=liability
- Intention not required;
 - o Violation not required
- Includes liability for actions of others (vicarious)

1458 CCQ - Contract liability

- Every person must honour contract obligations
- Failing which, must repair injury – damages
 - o Bodily
 - o Moral
 - o Material
- These rules are of public order therefore cannot be contractually limited
- This section has specific application to employment contracts

1459 CCQ: Vicarious liability of parents

- Parent is liable to reparation for injury caused by children; unless:
 - o Deprived of parental authority (not custody);

- Prove that parent committed no fault regarding custody, supervision or education (unbringing)
- Extremely difficult

1460 CCQ: Vicarious liability: Educators

- Educators, schools, day-care centers who are entrusted with custody, supervision or education
- Liable for period they have custody
- A person acting gratuitously or for reward is not liable unless they committed a fault

1461 CCQ: Vicarious liability: tutor and curators

- Adults under protective supervision
- Tutors and curators not liable unless:
 - Gross negligence
 - Deliberate act
- We don't want to discourage them from acting in this capacity
- 1462 CCQ: the act of the person under protective supervision must be a wrongful act, not an accident

1464 CCQ

- Liability of government and municipalities for their employees and police officers

1465 CCQ: Vicarious liability: movable property

- Anyone having custody of movable property is liable to repair injury it has caused; unless:
 - Proves he is not at fault
 - i.e. prove someone else (owner) is at fault
- custody is used because ownership is not always easy to prove for movable property

1466 CCQ: Vicarious liability: animals

- owner of an animal is liable to reparation for injury it has caused, whether;

- it was under his custody
- in custody of third person
- had strayed or escaped
- a person making use of the animal is, also liable

1467 CCQ: immovables

- owner is liable for damages caused by its ruin (i.e. Deterioration) resulting from:
 - lack of repair; or
 - from a defect of construction

1468 C.C.Q. Manufacturer's Liability

- Liability for damages caused by safety defects
- Applies to moveable objects and movables incorporated into immovables (buildings)
- Liability applies to manufacturer
- Also applies to: distributor, supplier, wholesaler, retailer, importer

1469 C.C.Q. : Definition of Defect

- Product does not afford the safety which a person is normally entitled to expect;
- Examples of such defects:
 - Defect in design or manufacture
 - Poor presentation of the thing
 - Lack of sufficient indications regarding risks of use
 - Lack of sufficient indications regarding dangers it involves
 - Lack of sufficient indications regarding as to safety precautions to use

Limitations on Liability

- 1470: superior force/act of God;

- Unforeseeable and irresistible event
- 1471: Good Samaritan not liable if in good faith and absent gross negligence or intentional fault;
- 1472: disclosure of trade secrets for reasons of general interest such as public health or safety;

1473 C.C.Q.: Victim's assumption of risk

- Defendant can prove that:
 - The victim knew or could have known of the defect;
 - That the victim could have foreseen the injury;
 - I.e. even though the product is defective, the victim took an unnecessary risk knowingly;
- Defendant can also prove that according to the state of knowledge at time of manufacture
- The existence of the defect could not have been known; and
- He was not neglectful of his duty to provide information when he became aware of the defect;

1474 C.C.Q.: Exclusions of liability

- Cannot exclude or limit liability for bodily or moral injury;
 - PTI; PPI
- Cannot exclude or limit liability for material injury caused through an intentional or gross fault;
 - i.e. gross recklessness or carelessness;
- Therefore, Limitations of liability clauses are only valid for material damages;

1475 C.C.Q: Warning signs/notices

- Valid part of contracts if the party using it proves the victim was aware of its existence at the time the contract was formed
 - I.e.: "Stickers glued to lawnmower"
- 1476: notices invalid in respect of third persons, except as a warning of danger;
 - Third parties did not sign the contract;
 - No different than: "Beware of dog" on certain signs;

1478 C.C.Q: Sharing of Liability

- More than one person having caused damages
- Includes the victim if committed fault such as assumption of risk
- Liability is shared by all in proportion to the seriousness of their faults;

1479 C.C.Q.: Aggravation of injury by the victim

- Defendant is not liable for any aggravation of the injury
- Defendant is not liable for any damages that the victim could have avoided
 - o I.e. mitigation of damages

1481: One person exempted from liability

- Refers to legal exemptions:
 - o I.e. governments in some cases
 - o Diplomatic immunity in some cases
- In such cases, liability is assumed equally by any other persons liable for the injury

CASE REVIEWS

Giroux (plaintiff) vs. Malik (defendant)

- Court agrees with Giroux on almost all claims (was successful)
- Misrepresentation 1400 – 1401 C.C.Q. (withheld information about the fact that a house can't be built on the land)
- Judge cancels contract
- Septic tank can't be built
- Judge grants Giroux \$10,000 for legal fees, stress, inconvenience and costs + the original \$45,000 that Giroux had paid for the land.

Peter (plaintiff) vs. Fiasche (defendant)

- Contract to buy restaurant
- Paid 200,000 for a restaurant who had a deficit of 6,235
- Contract has illegal purpose, it is not valid anymore (invalid) since it included a bargain whereby they would be defrauding the government of the taxes that they owed.
- Court shouldn't allow such a contract to be enforced.
- Court decides not fair for one party to benefit from another in a case like this.
- One of them should not profit unduly from an illegal contract.
- Court determines that Fiasche reimburse 133,501 with interest and the additional indemnity under article 1619 C.C.Q.

Carrefour Langelier (plaintiff) vs. Cineplex Odeon Corp. (defendant)

- Cineplex wants Guzzo to operate the theatre.
- Landlord agrees, as long as everything is advertised as Cineplex
- Guzzo starts advertising as Guzzo
- 1590 C.C.Q. applies, performance and application of contract duty, specific performance clause (has to be possible)
- Judge overturns the \$1.00 buyout of all equipment
- Even with no financial detriment to the Carrefour, Cineplex must abide by the terms of the contract (have to be legal)

- Judge issues an injunction ordering to replace the signs and to commence the programming/advertising under Cineplex Odeon, therefore Guzzo is out of the picture

Copiscope Inc. (defendant), TRM Copy Centers (plaintiff)

- Invalid non-competition clause
- P. 119
- No proof why a business operator should be deprived during one year to provide service to its customers
- Judge dismisses the non-competition clause

Harris (plaintiff) vs. Ostromogilski (defendant)

- Whether or not Harris is entitled to claim punitive damages following an argument which ended up in OStromogilski punching him and damaging him physically.
- Claims:
 - o Loss of income (2 weeks)
 - o Perm. Partial disability, including pain, suffering, loss and enjoyment of life
 - o Broke eye glasses
 - o Ambulance cost
 - o Slacks and shirt torn and bloodied
- TOTAL: 5880 (granted in full by judge)
- Plaintiff seeks additional 25,000 in punitive damages (dismissed by judge)
- 1457 C.C.Q. does not include punitive damages
- Inviolability – yes
- 1621 – “may not exceed what is sufficient to fulfil their preventive purpose”

Walker (plaintiff) vs. Singer (defendant)

- Brief romantic relationship, she got pregnant, told him, didn't like his reaction. Trashed his room. He complained, and also charges him for sexual assault
- Court finds that Walker has done nothing wrong, no crime
- Walker charges for false complaint
- She gets absolute discharge (slap on the wrist, no criminal record)

- Court awards Walker claims for damages, clothing, and punitive damages
- Punitive damages of \$3000 awarded to Walker

Farmakis vs. Canadian Tire Corp.

- Fell off a ladder that “buckled”
- No evidence of ladder being dysfunctional or broken.
- The duty to warn is determined by the character and complexity of the product concerned.
- No duty to warn, since it’s a familiar product, simple product.
- IN the hands of an adult of AVERAGE intelligence, no duty to warn
- Farmakis gets nothing

Walford vs. Jacuzzi Canada Inc. vs. manufacturer

- Slide did not have appropriate warning labels to inform of proper and safe use
- Slide installed and bought by Walford
- There was a defect, however not at fault for the damages (because Walford didn’t listen to her mother not to slide)
- No connection between damages and the defect
- No claims awarded

Moors vs. Cott Beverages West Ltd.

- Have to recalibrate after X amount of bottles otherwise the pressure is too high (too hard to remove cap)
- Girl pops cap off with a nutcracker and suffers eye damage, she sues for defective bottle
- Cap that is too tight is defective
- In manual for machine (bottle) were many warning signs to recalibrate machine because would be too tight and could lead to damages.
- Cott beverage was found liable
- She also gets punitive damages

1378. A contract

- Agreement of wills by which one or several persons obligate themselves to one or several other persons
- An undertaking to do something (prestation) → the performance of the obligation such as payment
- A contract is the law between the contracting parties

1379. C.C.Q.

- Contract of adhesion vs mutual agreement contracts – one of adhesion no negotiation precedes the signature (i.e. an airline ticket)