

Chapter1: Risk Management and Sources of Law

Risk management: process of identifying, evaluating, and responding to the possibility of harmful events

You need to identify, evaluate, and respond to the legal risks involved

Identify: Think about the liability, who is held responsible, possibility of being sued

Evaluation: What could happen from these situations

Response: options of what to do

Manage Risk

Risk avoidance: Do not deal with situation at all

Risk reduction: Still be in the situation, but make it less risky. Ex. Give mortgage instead of loan

Risk shifting: shift to another person through

Differences between making an employee do something or an indep contractor.

Company isn't vicariously liable for an independent contractor

Company is vicariously liable for an employee

Risk acceptance: Accept it and deal with it

Insurance: a contract in which one party agrees, in exchange for a price, to pay a certain amount of money if another party suffers a loss.

Liability insurance: benefit if the purchaser is held liable for doing something wrong. If not, it's risk shifting

Property insurance: benefit if the purchaser's property is damaged, lost, or destroyed. If not, its risk shifting.

Exclusion and limitation clauses: contractual terms change the usual rules of liability of the signer agreed to the contract

Incorporation: Some businesses are limited liability, meaning only the company can get sued.

But doesn't protect from all risks. You can be held personally liable for the torts

A Map of the Law

Law: a rule that can be enforced by the courts

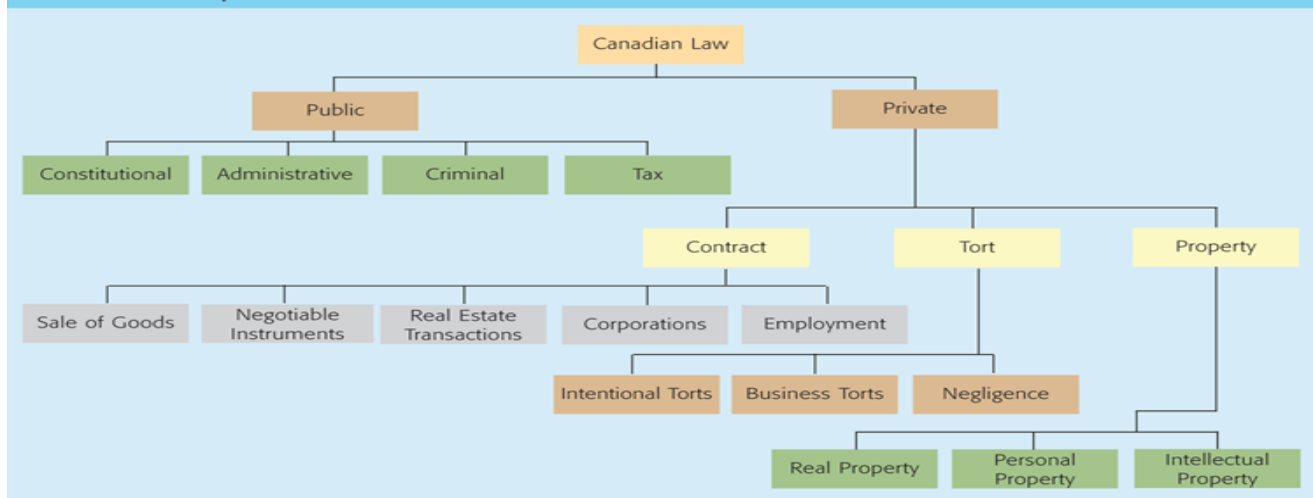
Civil vs. common law

Civil law: systems trace their history to ancient Rome. Only Quebec, only civil jurisdiction

Jurisdiction: geographical area that uses the same set of laws

Common law: systems trace their history back to England

FIGURE 1.1 A Map of the Law



Public Law

Public law: concerned with governments and the ways in which they deal with the citizens
constitutional law, administrative law, criminal law, tax law

Constitutional Law: provides the basic rules of our political and legal systems

Determines who is entitled to create and enforce laws, and establishes the fundamental rights and freedoms

Administrative law: concerned with the creation and operation of administrative agencies and tribunals

Example: Human rights tribunal decides that a company discriminates against woman in Wages. Therefore, compensation

Criminal Law: deals with offences against the state

White collar criminal: committed by people in suits

Corporate crime: company does crime

Tax law: concerned with the rules that are used to collect money for the purposes of public spending

Private Law

Private law: concerned with the rules that apply in private matters

Law of torts, contracts, and property

Tort: a private wrong, an offence against a particular person

Intentional torts, such as assault and false imprisonment

Business torts, such as deceit and conspiracy

Negligence: carelessly hurts another

Law of contracts: concerned with the creation and enforcement of agreements

- a) Sale of goods, such as cows and computers
- b) Negotiable instruments, such as cheques
- c) Real estate transactions, such as the purchase of land
- d) The operation of corporations
- e) The employment relationships that exist between business and workers

Law of property: concerned with the acquisition, use, and disposition of property

- a) Real property, land and things that are attached to land
 - b) Personal property, things that can be moved around
 - c) Intellectual property, original ideas, patents, copyright
- Law of succession: deals with the distribution of a person's property after death
- Law of trusts: situation in which one person holds a property on behalf of another

Sources of Law

- 1) **CONSTITUTION**: document that creates the basic rules for Canadian society, including its political and legal systems
Every law has to be compatible with it. Can only be changed through the amending formula.
Charter is in the Constitution

2 levels of government: federal, and provincial&territorial

A) Federal: Parliament of Canada, in Ottawa, governs country as a whole.

2 parts

-House of Commons: consists of members of Parliament (MPs), elected from each province.

-Senate: consist of senators, appointed to their jobs.

Queen runs state

Country is run by the political party with the most MPs. The leader of the party is the Prime Minister

B) Provincial and Territorial:

Not only are MPs represent you, but you can elect politicians from your province. The person you elect, or legislature, is called the Legislative Assembly. Each of the 13 legislatures is similar to Parliament.

Always face the 2 sets of laws

Divisions of power: states the areas in which each level of government can create laws

Residual power: gives the federal government authority over everything that is not specifically mentioned

Ultra vires: beyond the power. When a government tries to create a law. It's inadmissible
Sometimes problem when both levels of government conflict

Intra vires: act within your scope of power

Doctrine of federal paramountcy: how dispute is decided. Determines which law is pre-
eminent based on the Constitution's divisions of powers

Charter of Rights and Freedoms:

In the constitution. Page 15.

Doesn't contain

Property rights: rights to enjoy property

Economic rights: rights to carry on economic activities

Businesses not included for the charter

Unconstrained right to transact business whenever one wishes

Restrictions:

- a) Government action: only for individuals and if they're complaining about the government
The Charter does not directly apply to disputes involving private parties
- b) Corporations: The Charter generally does not apply against private corporations.
Corporation is a type of person, not an individual.
- c) Reasonable limits: Section 1 states that rights and freedoms are subject to such
reasonable limits prescribed by law as can be demonstrably justified in a free and
democratic society. It is acceptable to sometimes be violated
- d) Notwithstanding clause: Section 33 allows parliament or a legislature to create and
enforce a law notwithstanding the fact that it violates the Charter

Charter Remedies

What happens when Charter is violated?

- a) Declaration: Court declares it's been violated
- b) Injunction: court addresses problem. Decision lies with the judge, not legislature
- c) Striking down: Court may eliminate a statute that violates the Charter.
- d) Severance, reading down, and reading in: Severed or by being edited. If statute written
too broadly, may be read down so it's more specific. If too specific, read in so it's more
general
- e) Damages: plaintiff gets damages for suffering

Parliamentary Supremacy: means that while judges are required to interpret constitutional and
statutory documents, they must also obey them

2) **LEGISLATION:** law created by Parliament or a legislature
Most important kinds are statutes, or acts

Legislative Process:

Process at the federal level, bill to law:

Bill is introduced in the House of Commons by an MP. If the majority of MPs support it, it passes the first reading, then bill re-appears for second reading, then third reading, when the MPS take a final vote. If passes, sent to Senate, where the three-stage process is repeated. Then goes to Parliament. Then Queen approves.

You can lobby or encourage and MP to do a bill.

Subordinate Legislation and Municipalities:

Subordinate legislation: term given to rules that are created with the authority of Parliament or the legislature. For example, the Telecommunications Commission is given permission by the Parliament, instead of the Parliament, to decide which channels appear on your TV

Constitution gives provinces the power to create municipalities (town or city) gives the body the authority to pass by-laws (type of subordinate legislation that is created in municipality). By-laws are used to licence businesses, impose some sort of taxes, plan commercial developments, and regulate parking

3) THE COURTS

- a) Common law: judge-made rules are common law. 3 different meanings depending on whether it applies to a system of law, a source of law, or a type of court
 - systems: Derived from English Law. Used common law to refer to legal systems from England and France
 - sources: Judge-made laws. Made by judges rather than legislators. Most contract law is common law cause developed by the courts. Taxation is based on statutes. Judges apply the legislation
 - courts: Derived from common law courts. 2 sets of courts, courts of law, and courts of equity

- b) Law and Equity
 - Equity: based on fairness
 - In England, the king was too busy to deal with small petitions, so he asked the chancellor to act on his behalf. Now there`s a court of equity (or the court of chancery)

Chapter2: Litigation and Alternative Dispute Resolution

Litigation: system of resolving disputes in court

Who can sue and be sued (29)

Any person, even immigrants. Children must be represented by a parent or a litigation guardian.

Corporations, type of person, can sue and be sued

If not incorporated, like club or church group, can't

Exception: trade unions are unincorporated, but can still sue

Class Actions (30)

Class action: allows a single person, or a small group of people, to sue on behalf of a larger group of claimants

Product liability, mass torts, workplace discrimination, clubs and churches, banking law, business law, company law, securities law

Don't have to be identical claims

Certification: represents the court's decision to allow the various claims to be joined together into a class action

Legal Representation (32)

a) Self-representation: you can represent yourself

b) Lawyers

Lawyers need professional liability insurance: allows a client to receive compensation from the lawyer's insurance company if the lawyer acted carelessly

Assurance funds: provides compensation to people who are hurt by dishonest lawyers

c) Paralegals: not a lawyer, but provides legal advice and services

Pleadings (34)

Pleadings: documents that are used to identify the issues and clarify the nature of dispute. lawsuit

Limitation period: period of time within which an action can be started

Claims in contract within 6 years, claims in tort within 2 years, 20 years for someone improperly occupying your land

Statement of claim: document in which the plaintiff outlines the nature of the complaint. Shows what they want and the intended remedy they want.

Once it's made, defendant has a month within the relevant period. If no action done, the plaintiff may go to court alone and receive a default judgment. Defendant will lose by default.

Statement of defence: document in which the defendant sets out its version of the facts and indicates how it intends to deny the claim

Counterclaim: claim that the defendant makes against the plaintiff

Reply: document in which a party responds to the statement of defence. Plaintiff must respond. If plaintiff got a counterclaim, it may use a statement of defence to the counterclaim

Demand for particulars: requires the other side to provide additional information

Pre-trial Activity (36)

Examination for discovery: process in which the parties ask each other questions in order to obtain information about their case

Settlement: occurs when the parties agree to resolve their dispute out of court. Done through Discoveries. So it's cheaper

Pre-trial conference: meeting that occurs between the parties and a judge. Judge will say who is most likely to win.

Mediation: process in which a neutral person-called a mediator-helps the parties reach an agreement. Everyone has to go through the Mandatory mediation Program (MMP). You have to go or you'll get charged. Speeds up the litigation process.

The Trial (36)

Civil litigation is decided by a judge alone.

Court first hears from the plaintiff and then from the defendant. Each side present arguments and evidence

Evidence: consists of information that is provided in support of an argument

To get evidence, each side calls witnesses

Ordinary witnesses: testify about facts that they know first-hand. Describing what they saw

Expert witnesses: provide information and opinions based on the evidence. Physician shows how the defendant was affected by the alcohol

examination-in-chief: person who ask witness questions

cross-examine: then the other party can cross-examine them and ask for themselves

direct evidence only

hearsay evidence: information that a witness heard from another person, rather than directly from the source. Inadmissible

Prove yourself on a balance of probabilities.

Defendant liable if scales are tipped in the plaintiff's favour

Prove guilt beyond a reasonable doubt

The remedy (37)

Impose a fine or prison sentence. Conditional sentences: in house, rather than prison.

Enforcement (37)

Judgement debtor: defendant who has been found liable and ordered to pay money to the plaintiff

Sometimes they don't have money, so take their assets. But you can't,

"Judgement debtor can't be stripped bare or left without any way to earn an income"

Remedies in civil litigation

Name of Remedy	Purpose	Example
Compensatory damages	Financially compensate the plaintiff for a loss	Provide an injured person with the amount they spend on medical bills
Punitive damages	Punish the defendant for acting very badly	Punish an insurance company that fabricated an allegation of arson in an attempt to avoid paying a benefit under an insurance policy
Nominal damages	Symbolically recognize that the defendant acted wrongfully, even though the plaintiff did not suffer any loss	Recognize the right of a store that sued for trespass, even though the unwanted customer did no harm
Specific performance	Requires the defendant to fulfill a promise	Compel performance by a vendor who contractually agreed to sell a piece of land to a purchaser
Injunction	Requires the defendant to act in a particular way	Compel a construction company to remove its equipment from a neighbour's property
Rescission	Terminates a contract	Eliminate a contract that a con artist tricked an elderly couple into signing

Appeals (38)

You can still appeal if you lost

Appeal court: decides whether a mistake was made in the court below

Appellant: the party who attacks the decision of the lower court

Respondent: the party who defends the decision of the lower court

Normally within 30 days after the trial court has made its decision

Difference between appeals and trials (39)

At trial, only one judge. At appeals have three judges.

Appellate courts do not listen to witnesses or receive evidence. Instead, they simply hear and read arguments from the parties or their lawyers.

Appellate courts normally deal with law, not facts. They correct mistakes that the trial judge made regarding the law

Majority rules in an appellate court, odd number of judges

If they thought the lower court was right, they *affirm* the lower court's decision

If wrong, it may have a number of options depending upon the circumstances

If they thought the court was wrong, they reverse the lower court's decision, vary some of it (like the damages needed to be paid), or send back to re-trial if don't have enough information

An appellate judge who disagrees with the majority is entitled to write a separate judgment called a dissent

Costs (39)

Costs: the expenses that a party incurred during litigation

If you lose, you pay for both costs of lawyers, yours and the other party

If you pay more to your lawyer than you received in damages, your amount lost will be reduced to the amount you can get in the trial. So it never happened. You sue for 2000 but lawyer was 4000. Only pay 2000.

Solicitor-and-client basis: loser pays for a much greater share of the winner's actual costs.

Happens when you sue just to harass the person, you didn't lose too much.

Vs

Party-and-party-costs: just paying regular amount

Contingency fees (40)

Contingency fee agreement: requires a client to pay its lawyer only if the lawsuit is successful

THE COURT SYSTEM

- 1) The supreme court of Canada
- 2) Court of appeal
- 3) Superior court
- 4) Federal court
- 5) Provincial court
- 6) Small claims courts
- 7) Court hierarchy
- 8) Administrative tribunals

1) The Supreme Court of Canada (42)

Highest court in the country

9 members: chief justice and 8 other puisne judges. Appointed by the federal government

Not a trial court

Chooses which appeals to hear

If you want to go to the Supreme Court, apply for *leave*, or permission to appeal

Appeals are heard by 5-7 judges

2) Court of Appeal (42)

Every province has one

Members are appointed by the deferral government

Heard by 3 judges

3) Superior Court (43)

Federal government also appoint judges

Hear trials, sometimes appeals from lower courts

4) Federal court (43)

Federal government appoints the members of 3 specialized courts that deal only with cases that affect the federal government

Tax court

Trial division of the deferral courts hears trails concerning issues that the constitution assigns to the federal governments, such as copyright, bills of exchange, and telecommunications

5) Provincial court (43)

Provincial governments appoint the members of the provincial courts; trial courts

4 cases

Small claims: dealing with small amounts of money

Family matters: support payments

Youth matters: young offenders and neglected children

Criminal cases

6) Small claims courts (44)

Small claims court: type of provincial court that deals with disputes involving limited amount of money

Disputes dealing with money owed (loans, goods, services, rent, and wages)

Disputes dealing with wrongful losses (breach of contract, poor workmanship, delivery, damaged goods, personal injuries)

Sue in the city where the injury happened or where the defendant lives

DON'T DEAL WITH taxes, copyright, tenants, divorces

Remedies: performance and injunctions

Just deal with money, not with contractual obligations

Up to \$25,000. You can stay in small claims courts if over \$25,000, but you can only settle for 25,000 max, and abandon the other money. Or go to the superior court

7) Court hierarchy (46)

Supreme Court on top, then provincial court of appeals and federal courts on the same level

Below the provincial courts, the superior courts come in, then the provincial courts (including small claims courts)

Under the federal court is the tax court and federal court trial division

Doctrine of precedent: requires a court to follow any other court that is above it in hierarchy

Rule of law: states that disputes should be settled on the basis of laws, rather than personal opinions

8) Administrative Tribunals (49)

Administrative tribunal: body, somewhere between a government and a court, that resolves issues and disputes that arise in administrative law

Criminal or human rights, labour relations, employment, commercial matters

Privative clause: statutory provision that attempts to prevent a court from exercising judicial review over a tribunal decision

Alternative Dispute Resolution (50)

Process that allows the parties to resolve their dispute without going to court

Negotiation: discussion aimed at settling a dispute

Most common. Quick, not expensive

Parties control the process and decide the outcome themselves

Good terms with each other

Parties select decision maker, control outcome, confidential

Mediation: process in which a neutral party, called a mediator, helps the parties reach an agreement

Quick, cheap, parties control outcome, likely to maintain relationship, confidential

Arbitration: process in which a neutral third person, called an arbitrator, imposes a decision on the parties

Parties don't control outcome

Chapter 3 Introduction to Torts

Tort: generally consists of failure to fulfill a private obligation that was imposed by law

Tortfeasor: person who has committed a tort

Private law, the defendant owes an obligation to the plaintiff; the plaintiff sues the defendant for compensatory damages

Tort of battery: don't touch anyone in offensive way

Intentional torts: person intentionally acts in a certain way

Assault, battery, false imprisonment, trespass to land, interference with chattels, conspiracy, intimidation, interference with contractual relations, unlawful interference with economic relations, deceit

Negligence torts: occur when a person acts carelessly

Occupiers' liability, nuisance, negligence, professional negligence, product liability

Strict liability torts: person does something wrong without intending to do so and without acting carelessly. It is enough that the defendant was responsible for the situation that resulted in the plaintiff's injury

Don't require proof of intentional or careless wrongdoing

Liability insurance (66)

Liability insurance: contract in which an insurance company agrees, in exchange for a price, to pay damages on behalf of a person who incurs liability

Duty to defend: requires the insurance company to pay the expenses that are associated with lawsuits brought against the insured party

Compensatory function: aims to fully compensate people who are wrongfully injured. Liability insurance does this

Deterrence function: discourages people from committing torts by threatening to hold them liable for the losses they cause. But people with insurance don't fear this.

Vicarious liability (67)

Vicarious liability: occurs when an employer is held liable for a tort that was committed by an employee

But had to be in the employee relationship

Independent contractor: worker who is not as closely connected to the employer's business as is an employee. Not held vicariously liable; company doesn't pay for them

If employee, plaintiff sues both the employer and employee, and to recover all or some of its damages from either defendant

If employer pays, he can be entitled to claim that amount from the employee

Vicariously liability: occurs if the employer is responsible for an employee's tort

Personal liability: occurs if the employer is responsible for its own tort

YOU CAN BE BOTH

Remedies (70)

- a) Compensatory damages
- b) Punitive damages
- c) Nominal damages
- d) Injunctions

- a) Compensatory damages

Pay for the loss that the plaintiff suffered

loss is remote: if it would be unfair to hold the defendant responsible for it

You're responsible for what you caused, but if it's too remote, you don't get damages

Doesn't apply to intention torts. If you intentionally do something wrong, you don't deserve any leniency in tort law

Mitigation: occurs when the plaintiff takes steps to minimize the losses that result from the defendant's tort

You don't have to mitigate.

But you will be denied compensation for losses that you could have reasonable avoided

You can be entitled to compensation for the paper you needed to cover your broken window

- b) Punitive damages

Punitive damages: intended to punish the defendant

- c) Nominal damages

Nominal damages: symbolically recognize that the defendant committed a tort even though the plaintiff did not suffer any loss

- d) Injunctions

Injunctions: court order that requires the defendant to do something

Example, take down the offensive billboard

Alternative compensation scheme (73)

Alternative compensation scheme: system that allows a person who has suffered an injury to receive compensation without bringing an action in tort

- a) Workers' compensation: workers lose the right to sue in tort for workplace injuries, but they gain the right to claim compensation from a fund without having to prove that anyone was at fault for their injuries
- b) No-fault insurance: caused by cars. You get compensation without having to prove that the defendant was guilty

Chapter 4: Intentional Torts

Invasion of Privacy (81)

Trespass to land: photographer on land picturing

Breach of confidence: publishing embarrassing details of private life

Private information: sue when publishing private info on news

Misappropriation of personality: using celeb in ad without permission

Tort of negligence: ignoring judge's instructions and publishes news

Criminal Code Section 162

Crime of voyeurism is committed by secretly observing or recording a person in circumstances that give rise to a reasonable expectation of privacy or prints, copies, publishes, distributes, circulates, sells, advertises or makes available a prohibited recording

Interference with chattels (89)

Tort laws also protect chattels (moveable forms of property) ex. Horse, book, and car

- 1) The tort of trespass to chattels: when defendant interferes with chattels in the plaintiff's possession. Defendant damages, destroys, takes, or uses plaintiff's goods and even touching

Compensation for loss

- 2) The tort of conversion: when defendant interferes with chattels enough to justify a forced sale

Defendant takes, detains, uses, buys, sells, damages, or destroys

Defendant pays for it and can keep it. Example, stealing and vandalism

Even if I didn't intend to do something wrong

Example, thief steals then sells to you for money. Not tort because it involves money

- 3) The tort of detinue: occurs when defendant fails to return a chattel that the plaintiff is entitled to possess

Compensation or return it

Right of replevin: allows person to take their own property back

Contributory Negligence (95)

Occurs when plaintiff is partially negligent for the injury that the defendant tortiously caused

Chapter 5 Miscellaneous Torts Affecting Business

Conspiracy (101)

Occurs when 2+ defendants agree to act together with the primary purpose of causing the plaintiff to suffer a financial loss.

Doesn't have to be illegal.

Must be primary focus and foreseeable

Intimidation (102)

Occurs when plaintiff suffers a loss as a result of the defendant's threat to commit an unlawful act against the plaintiff or a third party.

Hurting doesn't have to be primary purpose

Unlawful act: crime, tort, breach of contract

The threatened party had to give into the intimidation

Tort even though defendant didn't intend to hurt

2 types

- 1) Two-party intimidation: defendant directly coerces plaintiff
- 2) Three-party intimidation: plaintiff coerces third party into hurting plaintiff

Interference with Contractual Relations (104)

Occurs when defendant breaches disrupts a contract that exists between plaintiff and a third party, break must happen

Hurting as purpose not mandatory

2 types

- 1) Direct inducement to breach of contract: occurs when defendant directly persuades a third party to break its contract with the plaintiff
Defendant must know about the contract, not details
Intend to cause the third party to breach the contract
Defendant doesn't have to intentionally hurt, maybe just benefit
Break must happen, must be a loss
Damages: punitive and compensatory damages
- 2) Indirect inducement to breach of contract: Occurs when defendant indirectly persuades a third party to break its contract with a plaintiff
Example, he stole the tools I needed for work, got fired for not saying anything
Action has to be illegal. Example, steal, detain someone
Not a strike where company breaks with customer

Unlawful Interference with Economic Relations (106)

Occurs when defendant commits an unlawful act for the purpose of causing the plaintiff to suffer an economic loss.

Messing with other company, lose revenue

Proof primary focus was to hurt plaintiff

What they did had to be unlawful or illegal, not true

Doesn't have to be primary purpose

Deceit (107)

Occurs if defendant makes a false statement, which defendant knows is false, with which it intends to mislead the plaintiff, plaintiff suffers loss. Wrong perception, lying.

All has to be true, not just part of it

Deceit is not updated info

Seller doesn't have to give buyer info, only if important, you need to

If you knew it was false and still did it, not deceit

Can't be on opinion, prediction (not reasonable to believe)

Has to be existing fact

Occupiers Liability (109)

Requires occupier of premises to protect visitors from harm

Occupier: control over premises

Visitor: enters into land ex. Even car

2 types:

1) Common law rules (judge)

Four kinds of visitors

a) Trespasser: no permission ex. Burglar

Don't intentionally injure them ex. Trap

b) Licensee: permission, occupier has no benefit from them ex. Social guest

Protect them from damages known by occupier

c) Invitee: permission, increased economic interest of occupier ex. Customer

Protect damages known or should have known by occupier

d) Contractual entrant: person enters into contract to use services

Ex. Hotel guest, not restaurant diner

Safe as reasonably possible

2) Statutory Rules (legislators)

Applies to activities that happened, not conditions

Exception: tenant not liable cause have ownership, not control

But if failed to repair something, liable

Nuisance (112)

Occurs when defendant unreasonable interferes with the plaintiff's use and enjoyment of its own land. Has to be reasonable

Physical damage ex. Chemical leak, vibration from construction which leads to cracks

Impairs enjoyment: smell bad, noise

Non-intrusive nuisance: nothing travels onto plaintiffs property. Ex. Chemical brings bugs around

Exceptions: building property blocking views or sunshine

The Rule in Rylands v Fletcher (115)

States defendant held liable for a non-natural use of land if something escapes from its property and injures plaintiff

Land creates and unusual danger

But burning scrubs is non-natural, but not unusual

Has to leave defendants premise

Intentional only, at least carelessly

Exception: if there was consent

Escape was third part or natural force (tornado) can't control inevitable injury if defendant authorized to do so

Defamation (116)

Occurs when defendant makes a false statement that could cause or lead a reasonable person to have a lower opinion on the plaintiff (company)

Even if no intention. Reasonable person would believe

Slander: defamatory statement that is spoken

Libel: defamatory statement that is written

Publication: occurs when statement is communicated to a third party defamed

Compensation

Defences to defamation

Justification: must be true

Privilege: immunity from liability

Absolute privilege: law wants them to be truthful ex. Government, judges, lawyers, spouses

Qualified privilege: defendant has legal, moral, social obligation, person needs info. Old employer telling candidate employer telling worker not to accept cheques from someone who doesn't pay

AND

Public interest responsible journalism: despite wrong, complied with standards which make

Fair comments: expression of an opinion regarding a matter of public importance

Injurious Falsehood (120)

Occurs when defendant makes a false statement about the plaintiff's business that causes plaintiff to suffer a loss. Like saying that a house on sale is haunted.

3 forms:

Slander of title: denying and hurting name so someone doesn't buy

Slander of quality: false words about products chase away customers. Not falsehood if saying 'mine was better'

Must have:

Malice: intending to hurt. Acting out of malice. Acted out of malicious intent
Knew it was false, reckless to tell truth

Loss: broken contract or customer took his business somewhere else, occurred after statement

Chapter 6 Negligence

Tort of negligence: determines whether the defendant can be held liable for carelessly causing injury to plaintiff

Prove

- duty of care
- breached the standard of care by acting carelessly
- Caused harm to plaintiff

But defences:

- guilty of contributory negligence
- voluntarily assumed risk of being injured
- injured while engaged in some form of illegal behaviour

Duty of Care (130)

Exists if defendant required to use reasonable care avoiding injury

No duty of care: no liability

Reasonable foreseeability: test, reasonable person understanding

Proximity: closeness between parties

Defendant possessed or claimed to possess special knowledge

Breach of the Standard of Care (137)

Standard of care: tells defendant how to act

Breached when defendant acts less carefully based on

Reasonable person test: requires defendant to act in the same way a reasonable person would act

Take precautions against reasonably foreseeable risks, not for unforeseeable

Influenced by likelihood of harm and potential severity of harm

Affordable precautions

Acts social utility

For Professional negligence

Must follow what learnt in training

Even if a beginner

Available info at time of accident

But if other would do it, it's fine

'Adopt obvious and reasonable precautions'

Breach of statutory duty

For Product Liability: manufactured products
Product liability: person injured by a product
Defective product caused injury
Design: everyone has that
Manufacture: only one has that
Or if not warned properly, signs, stickers
Even who sells and installs product should warn

Causation of Harm (143)

Carelessness caused harm

But-for-test: requires plaintiff to prove that it would not have suffered a loss but for the defendant's carelessness

Cause of carelessness, suffered same loss?

If yes, not liable

If not, liable

All-or-nothing approach: if there is at least 51% chance that the defendant's carelessness caused plaintiff's loss, award damages for full loss

If less than 51%, no award damages for loss

'a cause not necessarily the only cause' =liable

Jointly and severally liable: 2 plus defendants, same injury. Get money from who you want

Remote: loss is remote if unfair to hold defendant responsible

Thin skull: case occurs if plaintiff unusably vulnerable to injury. Yes. Responsible for my losses

Intervening act: event occurs after the defendant's carelessness and causes plaintiff to suffer additional injury

Defences (147)

3 types:

- 1) Contributory negligence: loss partly caused by both carelessness
Unreasonably steps into dangerous situation (driving drunk)
Unreasonably contributes to the creation of an accident
Unreasonably contributes to damages (not wearing seatbelt)
Therefore, plaintiff gets not damages in money, unless
Apportionment: assign responsibility % and divide damages
- 2) Voluntary assumption of risk: defendant freely agreed to accept a risk of injury both physically and legally
Therefore, no money damages
- 3) Illegality: applies if plaintiff suffered loss while participating in an illegal act

Chapter 7 The nature of creation of contracts

Contract: agreement that creates rights and obligation

Meeting of the minds: shared decision to enter

Exchange of value: both give up something

- 1) Intention to create legal relations
- 2) Reach a mutual agreement through process of offer and acceptance
- 3) Must enter into a bargain by each giving consideration

1) **Intention to Create Legal Relations (156)**

Arises if a reasonable person would believe that the parties intended to create a legally enforceable agreement

Must have consideration

'have to work in exchange for your promise'

Offer: indication of a willingness to enter a contract on certain terms

Offeror: makes offer

Offeree: receives offer

When accepted, contract, neither can alter or end it

Invitation to treat: indication of a willingness to receive an offer

NOT OFFER, invitation for others to make offers

Prepared to enter vs. receiving and considering offers

Communication of an offer: statement not offer unless communicated and received as offer

Life of an offer:

5 ways end:

- 1) Revocation: offeror withdraws an offer, any time

Not effective unless reasonably communicated to offeree

Firm offer: offeror promises hold an offer for acceptances for a certain time

Still can revoke, firm offer not contract, can't be enforceable in law

Exception to ending whenever you want:

Can't be revoked if under seal or if paid for right

Option: contract in which the offeror is paid in exchange for a binding promise to hold an offer open for acceptance over a specific period

Tenders: offer to undertake a project on particular terms

When bidding, hopefully don't cut; invitation to treat

2 contracts

- a) Offer to be in tendering process; exchange of bid
- b) Invitation to treat to receive offers

Rejection: offeree refuses offer, terminated once rejected.

Can't accept later unless makes another offer

Counter offer: occurs when offeree responds to the offer by indicating a willingness to enter into a contract but on different terms

Battle of the forms: occurs when each party claims to have entered contract on the basis of its own standard form document. Both have conflicting terms

2) Acceptance (164)

a) Acceptance by promise

Bilateral contract: promise exchanged for a promise

General rule: states that acceptance by instantaneous communication is instantaneous

Communication is effective when and where it is received by the offerer ex. Face to face

Instantaneous communication: communication little or no delay in replies ex. Phone
must receive offer, hear it both

b) Acceptance by performance

Unilateral contract: occurs when an act exchanged for promise

Example: reward for act

Offeror: promises offer

Offeree: performs and acceptance

Chapter 8 Consideration and Privity

Contract must have a mutual exchange of value

Gratuitous promise: promise for which nothing in legal value is given in exchange
No bargain, no contract=entitled to change mind

CONTRACT NEEDS:

Consideration (177)

Exists when a party either gives, (or promises to give), a benefit to someone else or suffers, (or promises to suffer), a detriment to itself. Can be benefit for a third party

Sufficient and adequate consideration (177)

Must have it

Sufficient consideration: almost anything of value. Example, quit smoking

Adequate consideration: has essentially the same value as the consideration for which it is exchanged. Both same value

Forbearance to Sue (178)

Forbearance to sue: promise to not pursue a lawsuit

Past Consideration (not consideration) (180)

Mutuality of consideration: must be for contract requires that each party provides consideration in return for the other party's consideration

Past consideration: consists of something that a party did prior to the contemplation of a contract
No mutuality and exchange, not really consideration, no contract

Pre-existing Obligation (180)

Obligation that existed. But was not actually performed before the contract was contemplated

3 types of consideration, 1 works

1) Pre-existing obligation:

Whoever owes pre-existing public duty cannot rely upon that obligation as consideration for a new contract. Example, cops can't sell services under contract. They're public servants, against public policy to charge

- 2) Pre-existing contractual obligation owed to a third party:
 Promise to perform a pre-existing obligation that previously arose under a contract with a third party. Can be good consideration for a new contract. 1 action in 2 contracts.
- 3) Pre-existing contractual obligation owed to the same party:
Novation: end initial contract, enter new contract at higher price

Chapter 9 Representations and Terms

Contractual term (202)

Contractual term: provision in an agreement that creates a legally enforceable contract

Part of the contract has to be true; made by 2

Promissory statement: the person who makes it voluntarily agrees to do something in the future

Example, I promise to purchase the building

If false, don't do it. If you fail to perform, breach of contract

Pre-contractual representation (202)

Pre-contractual representation: a statement one party makes by words or conduct with the intention of inducing another party to enter into the contract; made by 1

Words used to persuade to enter contract

Part of negotiations

Doesn't impose a contractual obligation

Can induce (persuade) someone to enter

Statement of existing fact

Misrepresentation if false

Ex. Imp interested in purchasing the building

Misrepresentation (203)

Misrepresentation: false statement of fact that causes the recipient to enter into the contract
 incorrect statement of existing fact

Past or present

Claimed to state a fact

Present state of mind only

If false, fraudulent misrepresentation

Not misrepresentation: state laws incorrectly 'matter of law'

Misrepresentation: inaccurately describe consequences of the law 'matter of fact'

Example, zoning laws don't apply here

Misstatement of Fact (203)

Not every misstatement is a misrepresentation

Misrepresentation: speaker claimed to state a fact

Non-factual statements: not misrepresentation

Opinion: statement of belief or judgement. Example, estimate on value, even if false not mis

But

If your opinion had an IMPLIED STATEMENT OF PRESENT FACT=misrepresentation

If you have expertise=misrepresentation

If you talk about future=not misrepresentation

Statement of future conduct: not a statement of fact. Just indication of future intentions

Not misrepresentation unless:

-If future conduct is described in terms of present intention

Example, I don't plan on selling my land. Since present state=implied statement of present fact

Silence of Misrepresentation (205)

6 instances failure to speak=misrepresentation

- 1) When silence would distort a previous assertion. If there's a change in circumstance, must tell
- 2) When a statement is half-truth
Must say full truth. Even if half of it was true=misrepresentation
Example, 'windy weather'. But didn't mention rain
- 3) When a contract requires a duty of utmost good faith
Contracts of utmost good faith. Must tell partner all info or misrepresentation
Example, tell insurance company everything
- 4) When a special relationship exists between the parties: trust on basis of special relationship, must state to friend all material facts that wouldn't be stated to others
- 5) When a statutory provision requires disclosure
Statutory conditions must be printed out on contract
Must both give relevant information. Example, insurance
Financial officers have duty to disclose material facts, like if anyone wants to have contract with their company that party knows of
If you don't say assets or liabilities
- 6) When facts are actively concealed
Act of concealment. Try to hide truth
Example, try to cover up ants in the selling house

Inducement (207)

Inducement: prove that false statement induced, misled, the contract

Mislead recipient to enter contract

BUT if didn't succeed=not misrepresentation

Remedies to Misrepresentation (207)

- 1) **Rescission:** cancellation of a contract, by the parties or the court, with the aim of restoring the parties, to the greatest extent possible, to the pre-contractual state
Discretionary remedy: not a right. Make them to how they were before, return everything.
Can't if third parties are involved

Restitution: involved giving back and taking back on both sides

Example, paid for something you don't like. Send it back for money so both benefit

Affirmation: occurs when the misled party declares an intention to carry out the contract or otherwise act as though it is bound by it

Affirm: still hold on, even though things going wrong and continue with contract

RESCISSION IS NOT AVAILABLE IF MISLED PARTY AFFIRMED THE CONTRACT

- 2) **Damages:** intended to provide monetary compensation for the losses that a person suffered as a result of relying upon a misrepresentation. Get money. No damages if innocent misrepresentation

TERM: INTENDED BY BOTH PARTIES TO FORM CONTRACT

MISREPRESENTATION: MADE BY 1 PARTY TO INDUCE OTHER TO ENTER AGREEMENT

Types of Misrepresentation (209)

- 1) Innocent misrepresentation: statement a person makes carefully and without knowledge that it is false, inducing a contract
No damages
Yes rescission only if big difference what the deceived party bargained for and what was actually obtained
- 2) Negligent Misrepresentation: false, inducing statement made in an unreasonable (careless) matter
You don't have to know its false to be liable
Rescission, inducing contract. Rescission of contract, damages in tort

- 3) Fraudulent Misrepresentation: occurs when a person makes a statement that they no is false or have no reason to believe its true, or misleading silence.
Tort of deceit, damages, inducing contract
Rescission of contract, damages in tort

Contractual Terms (211)

Arise from statements that impose obligations under contract

2 types

- 1) Express terms
- 2) Implied terms

1) Express terms

Express term: statement made by one of the parties that a reasonable person would believe was intended to create an enforceable obligation

a) Proof of express terms:

Parol evidence: evidence that is not contained within the written contract

Example: oral

Used to:

- fix a mistake in a contractual document
- prove contract never formed or somehow defective
- prove document doesn't show full agreement

b) Interpretation of express terms:

Literal approach: take it literally. Example, change in fees without notice

Contextual approach: look at parties presumed intention and their circumstances

Golden rule: words will be given their plain, ordinary meaning

Contra proferentem rule: ensures that the meaning is favorable to the author will prevail what the author didn't intend will win

Example, student wins because that's what they thought

2) Implied terms

implied term: arises from (by) the operation of law, either through the common law or under a statute

a) Term implied by a court

Implied terms necessary if

- obvious consequence
- required for the purpose of business efficiency. Must be reasonable, capable of exact information

b) terms implied by statute: unless otherwise specified

Standard form agreements: mass-produced documents usually drafted by a party who is in an economic position to offer certain terms on a 'take it or leave it' bias

Transactions often occur. Example, bank doesn't always make new contract (page 215)

Exclusion clause: contractual term that seeks to protect one party from various sorts of legal liability term customers are required to accept

Example, ski company uses EC to not be able to get sued must be clear, must be reasonable notice, parties must have agreed through a signature

Ticket contracts (215)

Standard form agreements sometimes take the form of a ticket or receipt

Show them before or during contract formation

Didn't have to read it, but had reasonable notice

Signed forms (216)

If you signed, you're bound by all the terms even if you didn't read it

Exception: if not reasonable time to read it

Boilerplate clause: clause used repeatedly without any variation

Using plain language in contracts (218)

Legalease: slang expression designating the formal and technical language of traditional legal documents

Chapter10 Contractual Defects

6 CONTRACTUAL DEFECTS

- 1) INCAPACITY TO CONTRACT
- 2) ABSENCE OF WRITING
- 3) MISTAKE
- 4) UNFAIRNESS DURING BARGAINING
- 5) ILLEGALITY

1) Incapacity to Contract (226)

Capacity: legal power to give consent. Understand nature and consequences of acts

Limited capacity

- a) minors
 - b) Mentally disabled people
 - c) Intoxicated persons
 - d) Corporations
 - e) Associations
 - f) Indian bands and aboriginal persons
 - g) Public authorities
-
- a) Minors: people who have not reached the age of maturity. Lack capacity. Not every contract is voidable, but can avoid liability. If voidable, return what received
 - b) Mentally disabled people: cannot be enforced at all
 - c) Intoxicated/intoxication
Must be so drunk don't know what they're doing
But if sober and knows, can't be voidable=affirmation of agreement
If darken his ability to reason without actually depriving him of the ability to reason altogether, NO VOID
 - d) Corporations
Legal persons
Chartered corporations: are treated the same as individuals who have reached the age of maturity
Statutory corporations: have limited contractual capacity
"Ultra vires" means beyond author. Therefore, lacks ability to contract. Not enforceable
 - e) Associations: unincorporated business organizations that lack contractual capacity
No independent legal existence, therefore, incapable of contracting
 - f) Indian bands and aboriginal persons
Indian band: body of aboriginal people whose land and money are held by the crown
have capacity, but can't use their own land

g) Public authorities: public authority acting on behalf of a governmental body has capacity to contract

2) Absence of writing

Some need writing required

a) Statute of frauds

b) Consumer protection and writing requirements

a) Statute of frauds

Statute of frauds: requires some contracts to be evidenced in writing. Must be in writing.

I. Guarantee: contractual promise by a third party, called a guarantor, to satisfy a debtor's obligation. If that debtor fails to do so.

Example: at bank, want take more than max amount, get guarantor like a friend to witness

Vs.

Indemnity: unconditional promise to assume another's debt completely

Example: pays for you, not you paying

b) Contract for the sale of an interest in land

Contract for sale of land has to be in writing.

Unenforceable since it's not evidenced in writing

Anything from land. Example: hay, crop

c) Contract not to be performed within a year: enforceable unless evidenced in writing

Even though doesn't follow statute of frauds, the doctrine of quantum meruit may require the party who accepted the goods to pay for the benefit it received.

Enforceable, not doesn't mean it's void

3) Mistake

2 mistakes prevent the creation of a contract

-Mistake identity

Bad if mistake was known to the other contractual company and if mistake was material

Material mistake: one that matters to the mistaken party in an important way

-Mistake about subject matter

Parties mutually mistaken about the subject matter in an agreement

Mutual mistake=no agreement/creation of contract

Mistakes rendering impossible the purpose of contract

a) Mistake about existence of the subject

b) Frustration

a) Mistake about existence of the subject

If you made the same mistake. For example, thinking house is still up.

Common/mutual mistake=can't sue to enforce the deal

Tips:

A business should insert into the contract:

“force majeure” or “irresistible force” clause which states which party bears the hardship if the subject matter of the contract is destroyed or if some other unexpected event occurs

The affected party should then arrange insurance against the potential loss

b) The doctrine of frustration

Contractual mistake: mistakes take place at or during contract formation

Vs.

Frustrating event: takes place sometime after the contract is already in place

A contract is frustrated when some event makes performance impossible or radically undermines its very purpose

Doctrine of frustration applies only if neither party is responsible for the relevant event

If only party responsible, they bear the loss

All or nothing rule: get all money back if you haven't received anything. But if you have, no payments

Documents mistakenly signed (238)

Exception to signature

Non est factum: “this is not my deed”

Allows mistaken party to avoid any obligations under the contract

Plea is available only if there is a fundamental, total, or radical difference between what the person signed and what the person thought they were signing

Not if matter of degree, or amount of goods or failed to understand it, or if can't understand the language, or broken glasses

4) Unfairness during bargaining (240)

3 types of unfair bargaining:

- a) duress
- b) undue influence
- c) unconscionable transactions

a) Duress

Duress of person: physical violence or the threat of violence

Contract voidable if product of duress

Duress of goods: occurs when one person seizes or threatens to seize another person's goods to

Force that person to create a contract

Economic duress: arises when a person enters into a contractual arrangement after being

Threatened with financial harm

Example, company says it can't complete work because cost higher than expected. Therefore, demands more money

You can tell him, just don't pressure

Must show that couldn't of reasonably resisted

b) Undue influence

Undue influence: abuse of a relationship in order to influence someone and induce and agreement

2 types

-fiduciary relationship

-no special relationship

-Fiduciary relationship: a relationship in which one person is in a position of dominance

Over the other

But if fair, unavoidable, make sure other gets legal advice

-No special relationship: no presumption of undue influence

Was undue influence applied? Bullying

Rebut: prove false

Fiduciary relation: if presumption rebutted, contract still enforceable, if

true=unenforceable

If you knew it was false=enforceable

But if there was pressure=unenforceable

No pressure=enforceable

c) Unconscionable transaction

Unconscionable transaction: agreement that no right-minded person would ever make and no fair-minded person would ever accept

Improvident bargain: bargain made without regard to the future

Weaker party must prove:

-improvident bargain

-inequality in the bargaining position of the 2 parties

If no improvident bargain=enforceable

If no inequality of bargaining power=enforceable

If no it's false=enforceable

If true=unenforceable

5) Illegality

Illegal agreements: expressly or implicitly prohibited by statute

The purpose of regulatory statute: is not to punish individuals for wrong doing, but rather to regulate their conduct through an administrative regime

If illegal=unenforceable and can't sue

If unenforceable it has:

A covenant in restraint of trade: contractual term that unreasonably restricts one party's liberty to carry on a trade, business, or profession in a particular way

Not trade or work with someone else

Chapter 11 Discharge and Breach

Discharge: contract is discharged when the parties are relieved of their need to do anything more

Discharge through

1) **Performance**

- a) Tender of payment
- b) Tender of performance

2) **agreement or intention**

- a) option to terminate
- b) condition subsequent and condition precedent
- c) rescission
- d) accord and satisfaction
- e) release
- f) variation
- g) novation
- h) waiver

3) **operation of law**

- a) frustration
- b) limitation period
- c) bankruptcy

4) **breach**

1) **Discharge by Performance (251)**

Performance: occurs when the parties fulfill all the obligations contained in the contract

Even if a little part is not done, breach of contract

Time of performance

Time is not of the essence

You can perform later, but you can be held liable for losses that the other party suffers as a result of that day

But sometimes, "time IS of the essence"

Late performance can be refused; the contract will not be discharged by performance

Reasonable time

a) **Tender of payment**

Debtor has the primary obligation of locating the creditor and tendering (offering) payment, even if the creditor has not asked for it.

Must be at reasonable time

But has to be made only once. If tender is rejected, the debtor still has to pay the debt, but it can wait for the creditor to come by. No interest.

Legal tender: payment of notes (bills) and coins to a certain value

Provide exact change

If the creditor says they're going to reject the payment, you don't have to waste your time

If money was stolen, not debtor's fault

- I) Payment by debit card
Debit card: plastic card that allows a person to debit or withdraw funds from a bank account
Bear loss if you unreasonably let it be stolen. But banks fault if not your fault
- II) Payment by credit card
Credit card: operates by allowing the cardholder to obtain credit, or a loan, for the purpose of paying for goods or services
Card issuer: pays for the goods on the cardholder's behalf
- III) Payment by cheque

b) Tender by Performance

you have to properly tender performance

Damages: amount of money that the court may order the defendant to pay to the plaintiff

Substantial performance: generally satisfies the contract but is defective or incomplete in some minor way. A party may be discharged from further obligations if it provides substantial performance

If discharged, the innocent party is not required to pay for work that was not done

Entire document: says that no part of the price is payable unless all the work is done

2) Discharge by Agreement (258)

a) Option to terminate

Option to terminate: contractual provision that allows one or both parties to discharge a contract without the agreement of the other

Has to be in the contract. Reasonable notice

b) Condition subsequent and condition precedent

Condition subsequent: contractual term that states that the agreement will be terminated if a certain event occurs

Doesn't have to be exercised by either party to be effective, unlike a)

A true condition precedent: a contractual term that states that an agreement will come into existence only if and when a certain event occurs

Condition precedent: a contractual term that states that while a contract is formed immediately; it does not have to be performed unless and until a certain event occurs.

Suspension of primary objectives

c) Rescission

A contract is executory: if party has not fully performed its obligations

A contract is executed: if a party has fully performed its obligations

Rescission: occurs when the parties agree to bring their contract to an end

Second contract implies the rescission of the first

Must have consideration, both benefit or both suffer

Each party gives up rights under contract. Contract terminated

d) Accord and Satisfaction

You can terminate your contract if you have
Accord and satisfaction: occurs when a party gives up its right to demand contractual performance in return for some new benefit

Accord=parties' new agreement

Satisfaction=new consideration provided by the party

NEEDS CONSIDERATION

One party gives up old right-other party provides new consideration

Contract terminated

e) Release

Release: agreement under seal to discharge a contract

Seal serves as a substitute for consideration

Agreement enforceable even if not supported by an exchange of value

Consideration is seal. Contract terminated

f) Variation

Variation: involves an agreement to vary the terms of an existing contract

Needs fresh consideration.

Varying the amount of times you do something or money received

Each party either gives up old rights or provides new consideration

Contract varied

g) Novation

Novation: process in which one contract is discharged and replaced with another

Different obligations

New person in contract

“A trilateral agreement by which an existing contract is extinguished and a new contract is brought into being in its place” (Supreme Court of Canada)

All parties must have consent on the new deal

Original parties agree to give up their rights

Has to be written

Each party gives up rights under old contract. Contract varied or replaced

h) Waiver

Waiver: occurs when a party abandons a right to insist on a contractual performance

Doesn't require consideration or seal

Express or implied, no particular form needed

Must be clear evidence that the other party intended to waive its rights

You can retract your own waiver if you gave reasonable notice of its intention to do so and if retraction is fair to the other party

Contract varied

Look at case 11.1 on page 263

3) Discharge by Operation of Law

- a) Frustration
- b) Lapse of limitation period
- c) Bankruptcy

a) Frustration

Contract is frustrated when it becomes impossible to perform or when the circumstances change so much that performance would be something much different from what the parties initially expected

Parties discharged from performing any remaining obligations

b) Lapse of Limitation Period

Statutes of limitation: require a party who has suffered a breach of contract to sue within a certain period. 2 or 6 years

c) Bankruptcy

Bankrupt debtor is discharged from outstanding contractual obligations if the bankruptcy was caused by misfortune rather than by misconduct

4) Discharge by Breach of Contract

Breach: occurs whenever a party does not perform precisely as promised

2 types of contractual terms

Condition: a term is a condition if the innocent party would be substantially deprived of the expected benefit of the contract if a breach occurred

For example, instead of the truck you were expecting, you got a minivan. You have 2 options. First is to continue with the contract and claim damages for the losses that it suffered from not getting a truck. Second is to discharge the contract and claim damages for the losses that it suffered as a result of the breach

Warranty: a term is a warranty if the innocent party would not be substantially deprived of the expected benefit of the contract if a breach occurred

For example, the truck wasn't completely cleaned but it was delivered and everything. If there's a breach of warranty, doesn't mean you have the option to discharge the contract. You can claim losses, but you're still in the contract.

Term is intermediate: if, depending upon the circumstances, the innocent party may or may not be substantially deprived of the expected benefit of the contract in the event of breach

Did the breach deprive the party of the expected benefit of the agreement?

Depending upon seriousness of breach-discharge contract and claim damages or continue with contract and claim damages

Types of Breach (267)

- 1) Defective performance
- 2) Deviation
- 3) Anticipatory breach
- 4) Self-induced impossibility

Defective performance: occurs when a party fails to properly perform an obligation due under a contract. If you don't do it exactly as should

Deviation: occurs when a ship, train, or truck departs from the route agreed between the parties
Example, if you didn't follow the exact route of how the goods were to be shipped, and you took an alternative route, contract is broken

Anticipatory breach: occurs when a party indicates in advance, by word or conduct that it does not intend to fulfill an obligation when it falls due under a contract

Speak relief immediately

If the impossibility is caused by one of the parties, then that party will be held liable for the breach.

Chapter 12 Contractual Remedies

Three remedies for breach of contract

- 1) **Discharge**
- 2) **Damages**
 - a) Expectation damages
 - b) Reliance damages
 - c) Account of profits
 - d) Nominal damages
 - e) Liquidated damages
 - f) Punitive damages
- 3) **Equitable Relief**
 - a) Specific Performance
 - b) Injunctions

Damages

Damages: an award of money that is intended to cure a wrongful event, such as a breach of contract

a) Expectation damages

Expectation damages: represent the monetary value of the benefit that the plaintiff expected to receive under the contract

Expectation damages = expected benefit under the contract – costs under the contract

You agree to pay a \$500 computer that is really worth \$7000. You profit \$2000

If he breaches the contract by not giving me the computer, and if I haven't paid the price, I will get \$2000. If I paid the amount before the breach occurs, I will get \$7000

Either way, you enjoy profit of \$2000

6 issues

- I) Difficulty of calculation
- II) Cost of cure or loss of value
- III) Alternative performance
- IV) Intangible losses
- V) Remoteness
- VI) Mitigation of damages

i) Difficulty of calculation

They try their best to get calculations

ii) Cost of cure or loss of value

Difficult to decide exactly what the plaintiff expected to receive from the defendant

Some guy was supposed to your land, which costs \$60000 to do. He didn't do it. You get \$60000 in cost of cure.

Cost of cure: difference between the cost of cure and the benefits of that cure is unreasonably large

Read case 12.1 on page 2784

iii) Alternative Performance

Expectation damages allow the plaintiff to fully recover the anticipated benefits of the contract

Case 12.2 page 279

vi) Intangible loss

Intangible loss: loss that does not have any apparent economic value

Anger, sadness, frustration that may occur when a promise is broken

Can be given a monetary value

v) Remoteness

Loss is remote: if it would be unfair to hold the defendant legally responsible for it

It's not remote if the defendant either should have known or actually did know that it was the sort of loss that might occur if the contract was breached

vi) Mitigation of damages

mitigation: occurs when the plaintiff takes steps to minimize the losses flowing from the defendant's breach

Reasonable steps only

a) Reliance damages

reliance damages: represent the monetary value of the expenses and opportunities that the plaintiff wasted under a contract

reliance: `give me what I lost`

expectation: `give me what I expected to get`

Expectation damages: represent the benefit the plaintiff expected to receive under the contract. Place the plaintiff in the position that it would have enjoyed if the contract had been performed

Reliance damages: represent the cost that it incurred from my loss. Compensate the plaintiff for the costs that it incurred in reliance upon the contract

Reliance damages can only be awarded to the extent that a contract is not unprofitable

Plaintiff cannot use reliance damages to void a loss that would have suffered if the contract had been performed. You have to bear responsibility for your loss.

b) Account of profits

Plaintiff complains about the defendant's gain since he broke the promise, he received a substantial benefit.

Entitled to the profits that the defendant received as a result of breaching contract

Strip the defendant of a benefit that it received as a result of breaching a contract

c) Nominal damages

Nominal damages: symbolize the fact that the plaintiff suffered a wrong when the defendant broke a promise

Symbolically demonstrate that the defendant reached its promise to the plaintiff

\$10. Very trivial, not important

d) Liquidated damages

Liquidated damages: represent a genuine attempt to estimate the value of the loss that may occur as a result of a breach. Get liquidation amount, even if it's more than the loss you suffered.

Enforced the parties' estimate of the loss that the plaintiff would suffer if the defendant breached the contract

Penalties: requires a party to pay an exorbitant amount if it breaches the contract. Bully a person into performing stated on the contract.

e) Punitive damages

Punitive damages: are intended to punish the defendant and discourage other people from behaving badly

You can get compensatory damages (either expectation damages or reliance damages) and punitive damages

Defendant must have acted in a 'harsh, vindictive, reprehensible and malicious' manner

Punish the defendant for breaching the contract in an outrageous way

Equitable Relief (287)

a) Specific performance

Specific performance: occurs when the court orders the defendant to fulfill a contractual obligation to do something

Depends on

-adequacy of damages: specific performance will not be ordered if monetary damages will adequately protect the plaintiff's expectations

-mutuality: means that specific performance can be awarded to a party only if it could also be awarded against that same party

-judicial supervision: specific performance must not require ongoing judicial supervision to ensure compliance

-personal services: specific performance must not require the provision of services of a personal nature ex. Do a movie

Injunctions (289)

Injunctions: occurs when the court orders the defendant to not do something that is prohibited by the contract

For example, you're in an agreement with a manufacturer that allows you to sell its product in only one province. If you try to sell in another province, the manufacturer *may obtain an injunction* to prevent you from doing so

Exclusion clause (290)

Exclusion clause: excludes or limits liability for breach of contract

Added into the contract

Fundamental breach: consists of a breach that goes to the very core of the contract

Unjust enrichment: is a cause of action that requires proof of an enrichment to the defendant, a corresponding deprivation to the plaintiff, and the absence of any juristic reason for the defendant's enrichment. Instead of complaining for damages.

Requires:

An enrichment to the defendant

A corresponding deprivation to the plaintiff

The absence of any juristic reason for the defendant's enrichment

REMEDY IS

Restitution: requires the defendant to give back the enrichment that it received from the plaintiff

Must be written