Lecture 1:

There are **2 Sources of LAW**:

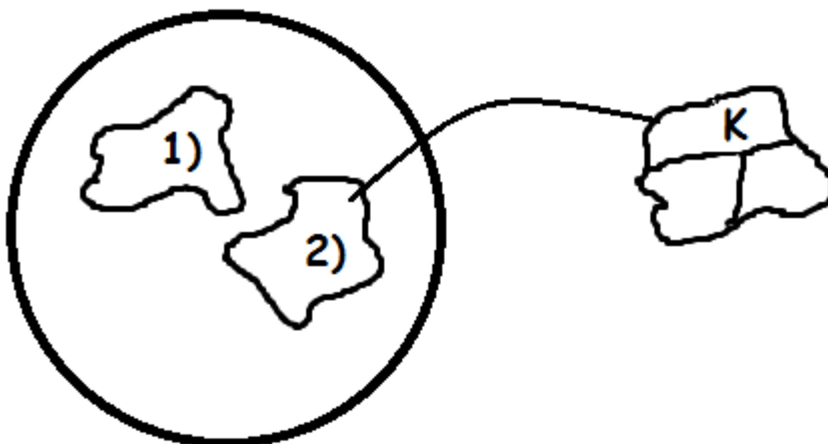
1) **Legislation**
   -rules written by our government (Acts, codes)
   -the specific laws written down are called legislation

   We also have **Division of powers:**
   -sections 91 + 92
   -it is what Canada is allowed can do, and what rules and stuff that the Provinces can do
   --it is all written under the constitution
   ex:
   for engineers in Ontario, you have to write the PEO exam, however there could be different requirements per province.
   -engineering is provincial legislation
   -criminal code is federal legislation

   SUMMARY: Canada is a confederation. All the power doesn't reside just in Canada, in all the province, hence, division of powers.

2) **Common Law**
   -means judge made law
   -decisions that happened before are relevant for cases today in court. For significant facts and consistency. Past decisions can be relied on for similar cases. "*Theory of Precedence"*- the strongest decisions are made by the supreme court of Canada.

"World" of Law.



K= stands for Contract law

1) Criminal Law

-first issue: it's the state who is bringing proceedings against the criminal.

ex: "R v Tiesma"

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          /   |       \
     state  vs   person
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- if the person is found responsible for the crime, they are guilty. We cannot write guilty in this course, it is wrong.

-if someone is found responsible for the crime, they are punished in some way. These are results of the proceedings.

Therefore:

1-state bringing the proceedings
2-if person is found wrong, they are guilty
3-there is no benefit found to the victim

2) Civil Law

-civil action

-the victim brings the proceedings to who is wronged. Not the state (like criminal law), the victim brings the proceedings

-if the wrong-doer is found wrong, they are "**liable**"

--if you're found guilty in a civil action, the term you use is liable.

-the victim is always seeking a **personal remedy**/ looking for something to be given to them if they are successful. Ex "suing for money" is a civil action

-we will be doing civil law in this course

-the victim is bringing private legal action against the wrong-doer. If the wrong-doer is liable, the victim gets the money

2.1) Contract law → "k" and it's broken up under a "Tort" law.

-examples of civil action

-about the court enforcing the agreement the parties made themselves.

-2 parties have come together and have created a law for themselves called a "contract"- bit of private law between the 2 parties

-Court law is about 1 party is going to the court and saying "we agreed to …. And xyz didn't hold up to their part of the agreement."

2.2) Tort Law

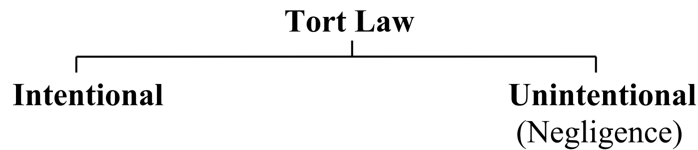
-not about a specific set of agreements that the parties have made between themselves but are <u>sets of standards of behaviour</u>

-we must live according to these standards of behaviour

-tort law is a bit like criminal law. If you cross the line or do something inappropriate, then it's a wrong.

Tort law divides into 2:

A) intentional torts
B) unintentional torts



A) Intentional Torts
-intended the action
ex. Hitting someone

B) Unintentional Torts
-accidentally "hurting" someone
-"negligence"

A) There are 3 we are going to talk about in class.
Defamation: an intentional tort where the reputation of the victim is damaged by untrue public statements made by the "tortfeasor" **** memorize, test type**
Defamation divides up into 2 areas:
1) **Libel**-form of communication is in <u>writing.</u> Ex newspaper
2) **Slander**- form of communication is <u>verbal.</u> Ex radio

Tort law's purpose:
-provided fault is found the main goal of tort law is to compensate the victim <u>**NOT**</u> punish the wrong-doer**** memorize, test type**

If hypothetical, then it's usually about an unintentional tort.

Concurrent tortfeasors
-concurrent means, "at the same time"

Vicarious Liability
-through someone else
-found being responsible
-an employer is liable for the torts committed by employees

Plaintiff (π)
-when someone sues another person/person who raises the complaint

Defendant (Δ)
-the party responding to the action

on tests:
Test for negligence
-The plaintiff must prove 3 things on a balance of probabilities:
1) Each of the defendants owed the plaintiff a duty of care
2) The defendants breached their respective of individuals duty of care
3) The plaintiffs injuries were direct result of breach/breaches

The plaintiff has the obligation of showing that these 3 things are true. Only "On a balance of probabilities" which means, "guilt must be proven beyond a reasonable doubt". If there is a reasonable doubt that a person is not guilty, then they are not guilty.

If you can prove what you are trying to prove is more likely true than not true (50.00001%), then you've met the burden in a civil action.

"Duty of care"
-you either owe one or you don't. A yes or no question.

**test question:
"Is it reasonably foreseeable that the plaintiff could be injured as a result of the defendants actions?"
-Yes therefore owe in negligence law, you owe a duty of care.
-you can only bring a civil action to a legal entity

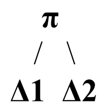
Is it reasonably foreseeable that a patient could be injured from a sergeant's work?
-yes, therefore in negligence law sergeants owe a duty of care..

Is it reasonably foreseeable pedestrians could be in
-yes, therefore in negligence law the driver owes a duty of care to other drivers and pedestrians.

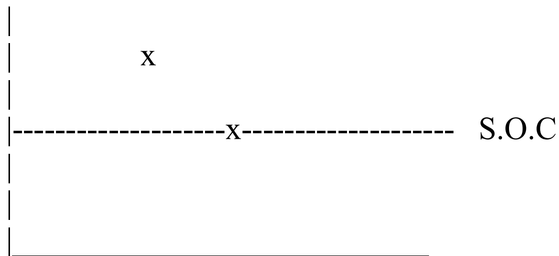
-When you are talking about the duty of care, you are only talking about the relationship to the plaintiff.
"A duty of care will be owed from ___ that defendant to the plaintiff."

RECALL:
on tests:
Test for negligence
-The plaintiff must prove 3 things on a balance of probabilities:
1) Each of the defendants owed the plaintiff a duty of care
2) The defendants breached their respective of individuals duty of care
3) The plaintiffs injuries were direct result of breach/breaches

You have to look at each defendant separately.



Can say "the defendant owed a duty of care to the plaintiff"
Negligence can held up to a standard level of care.
What a reasonable person would do is "Standard of Care"



If you have met the S.O.C or exceeded it, then you have **not** breached the duty of care.
If you have fallen below the S.O.C then, **yes** you have breached the duty of care.

If you have breached the duty of care, then the court would look into the standard of care to see if you did what a reasonable person would have done, under the same circumstances.

"…a reasonable firm would make sure they had updated files, here they fell below the standard of care, and therefore breached the duty of care"

In a washroom at a store has a timetable of what has been cleaned. Why?
-because a reasonable store would regularly clean the washrooms at reasonable times
-they are trying to act as a reasonable store for the customers
-not an "average" person would do, it's what a reasonable person would do under those circumstances.

At the end make a statement about liability. Therefore, ____ is liable because of negligence.
Also at the end, when they are liable, how much in damages.

-Damages are the amount of money you are paid to compensate you for your injuries.
-Injuries are bad things that happen to you.

-" π is entitled to reasonably foreseeable damages".
-if only 1 defendant identified as liable then π is entitled to damages.
-if 2 defendants liable then they have to split between the 2 people. → 2 degrees of fault.
-portions of 50%/50%, 60/40, 25/75…

Test for Negligence

Δ – Defendant **π** – Plaintiff

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

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

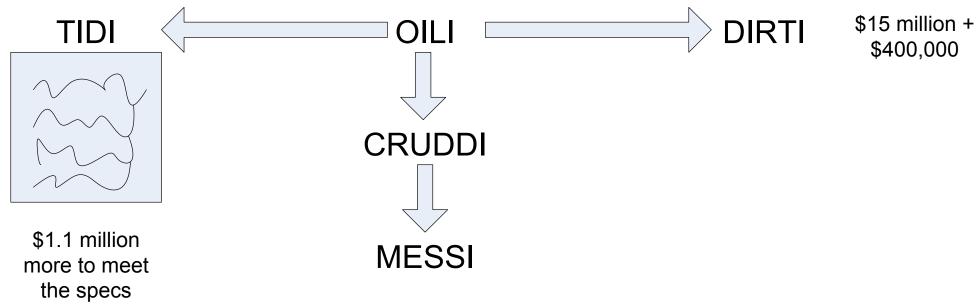
Either it was breached or not. First thing that needs to be established is a STANDARD OF CARE →What would a reasonable engineering firm have to do (Ex. making sure designs are up-to-date)
In a hypothetical you **must define the standard of care** → Identify all defendants and those that have breached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

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

Lecture 2:

4/5 questions on quiz

OILI NOTES



Question from reading: What potential liabilities in tort law arise in this case? In your answer, explain what principles of tort law are relevant, and how each applies to the case. Indicate a likely outcome to the matter.

You should draw a diagram when there are a lot of names, makes things more clearer.

We are dealing with a negligence case, unintentional tort, therefore dealing with negligence.
-first start with the purpose of the tort (compensate OILI…) provided fault is found.
plaintiff → OILI
defendants → CRUDDI, MESSI
since we're not talking about individual employees we are not going to be talking about vicarious liability. But we have noted a number of defendants.

Next talk about: CRUDDI and MESSI are potential concurrent tortfeasers, [EXPLAIN]meaning they are potentially liable to OILI at the same time.

Test for negligence of the case:
RECALL:

Test for Negligence

Δ – Defendant **π** – Plaintiff

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

4. **(Each) Δ owed the π a "Duty of Care"? (Yes/No question)**
   Is it reasonably foreseeable that the **plaintiff** could be injured as a result of the **defendant's** work?
5. **(Each) Δ breached that "DOC" ?**
   Either it was breached or not. First thing that needs to be established is a STANDARD OF CARE →What would a reasonable engineering firm have to do (Ex. making sure designs are up-to-date)

In a hypothetical you **must define the standard of care** → Identify all defendants and those that have breached (or fallen below the standard of care).

6. **π's injuries are a direct result of the breach(es) (causal connection) ?**
   State that it is clear that the plaintiff's injuries are directly caused by the defendant; therefore, the defendant is liable in negligence to the plaintiff.
   3. Plaintiff is entitled to "reasonably foreseeable damages" (but there is a limit to how much compensation in damages) Therefore, add that the plaintiff is entitled to reasonably foreseeable damages which include …..

If defendants are **equally at fault** (or different degrees of fault) explain why and split the damages.
So intro language: **π** must prove 3 things on a "balance of probabilities"

First step: OILI must prove 3 things on a "balance of probabilities".
Next: Did each of CRUDDI and MESSI owe OILI a duty of care?
Next: Did each of CRUDDI and MESSI breach their duty of care to OILI?
Next: Are OILI's injuries a direct result of the breaches?

FINAL way to sum it up:

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

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

3. State the test for every Negligence case
   OILI must prove 3 things on a "balance of probabilities"
   i. **Did each of CRUDDI and MESSI owe a duty of care to OILI?**
      CRUDDI owes OILI a duty of care because it is reasonably foreseeable that OILI could be injured as a result of CRUDDI's work. (Same thing for MESSI:) For exactly the same reason, MESSI owes a duty of care.
   ii. **Did each of CRUDDI and MESSI breach their duty of care to OILI?**
      We must establish a standard of care:
      CRUDDI – A reasonable architectural firm would hire an engineering firm that it believed could carry out the design. Hence they have met that standard of care, and haven't breached the duty of care. Therefore CRUDDI can't be found liable in negligence.
      MESSI – A reasonable engineering firm would have ensured the proper size unit was used and that the vents were properly spaced apart.
      MESSI fell below the standard of care, therefore it breached their duty of care.
   iii. **Are OILI's injuries a direct result of each of the breaches?**
      It appears that OILI's injuries are directly caused by MESSI's breach of duty of care to OILI. The only reason those problems occurred were directly tied to the

breach discussed above. We can conclude MESSI is liable in negligence. Therefore OILI is entitled to reasonably foreseeable damages which include getting a larger unit and repairing damages.

$1.1 M - $400,000 = $700,000

Duty to Warn (dealing with negligence)

-providing goods or services to the public and aware to warn the public/consumers of risk

--expression of standard of care for product manufacturers, businesses…

--dairy queen store putting up a sign saying food may contain nuts, duty to warn, therefore met their standard of care

-therefore IMPORTANT because it's a specific kind of standard of care.

Another ex: the lady against the hot coffee.

http://en.wikipedia.org/wiki/Liebeck_v._McDonald's_Restaurants

-tend to have a dramatic effect on the marketplace ex: timmies cup says, "caution too hot"

HEDLEY BYRNE

http://en.wikipedia.org/wiki/Hedley_Byrne_%26_Co_Ltd_v_Heller_%26_Partners_Ltd

-never retell this story in the course for an answer, however we're allowed to refer to this case for its legal principles that came out of this case which is important.

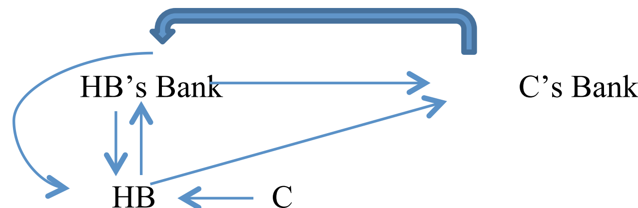
-an advertising agency

-approached by potential customers, which they had never worked with them

-their concern was that if we do this work, what if we're not paid? Since the customers wanted to put the work done on credit. So they were concerned they might not get paid.

-Hedley Byrne was concerned that the customers were "creditworthy"

-they didn't know what to do, so they approached their own bank to ask if they could get any info about the customer.



-HB asked their Bank if Customer (C) is credit worthy or not.

-HB's Bank asked C's bank if C is credit worthy.

-C's bank sent back a letter stating:

1. C is credit worthy.
2. You cannot rely on this information being true (Disclaimer).

   Disclaimer-to not claim something; purpose: to remove liability

-HB's bank sends HB the letter they received from C's bank.

-HB did the work but didn't receive a check from C.

-HB filed for negligence against C's bank: saying that C's bank owed valid information.

-The majority of the court decided that C's bank did owe a duty of care to the group of HB's bank.

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

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

***Disclaimer:** Takes away liability that would otherwise be there.

-doesn't work in contract laws
-disclaimers work because you were warned ahead of time, however you weren't allowed to rely on it. If you did, you can't complain.

-one of the issues for hiring an individual to do the work is for liability, also that we're not experts or have the experience in having been trained in that profession.

Wolverine Tube
-wants to sell some land, before doing the sale gets an environmental audit done
-sells the land but 5 years later finds out that the land is defective.
-however there was a third party disclaimer which got them out
-pg 43
3 Issues in Negligence sum up

1) **The thin skull plaintiff(egg shell plaintiff)**
   -lets say you're driving your car and you're not driving well and swerve to not hit a squirrel, you hit a teen. Young person, and it hits the hand that they don't use and its not sports season.
   -hypothetical scenario 2, you hit an older person and it affects their mobility to take care of themselves, and takes a longer time to heal
   -hypothetical case 3, you hit a famous pianist and they can't do work…
   -is there a standard amount given out of all of these cases? Is there a difference between the 3 examples?
   --yes there is a difference
   -if the type of damage is reasonably foreseeable you are liable to the extent of the injuries for that plaintiff, then you take the plaintiff however you got them.

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

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

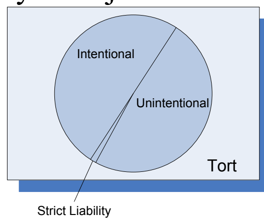
2) **Contributory Negligence**
   -to contribute to negligence
   -a plaintiff being liable to a greater or lesser extent for his or hers own injuries. Things you have done or haven't done as a plaintiff, contributing to your injuries.
   -can contribute to your own injuries (ex a guy falling down in the winter because it was too slippery but he had old sneakers, so his fault)
   --to a greater or lesser extent, he would be found contributory negligent to his own injuries.

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

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

*this would be on questions in m/c and t/f

3) **Strict Liability**
-type of tory
-everything is usually based on however this isn't
-not a function of fault at all
-your injuries were caused by this and they are liable



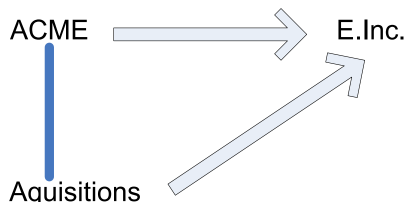
ex. you have something dangerous, it escaped. You're in trouble/fault for the injuries. It doesn't matter precautions you had to prevent its escape. There was no discussion of duty of care… because it escaped you breached the duty of care and are in trouble.

Therefore sum up:

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

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

Negligence Article #2
ACME



What potential liabilities in tort law arise in this case? In your answer, explain what principles of tort law are relevant and how each applies to the case. Indicate a likely outcome of the matter. In your answer, indicate if your conclusion would differ if the reports by E Inc. had not contained the qualifying statement identified above and, if your conclusion would differ, explain why.

-unintentional torts
--negligence, provided fault is found…
-defendant is E. Inc
-E. Inc must prove the 3 things: E. Inc owed the Acquisitions duty of care, E. Inc breached its duty of care, the direct cause of the breach. However the report claimed a disclaimer/third party

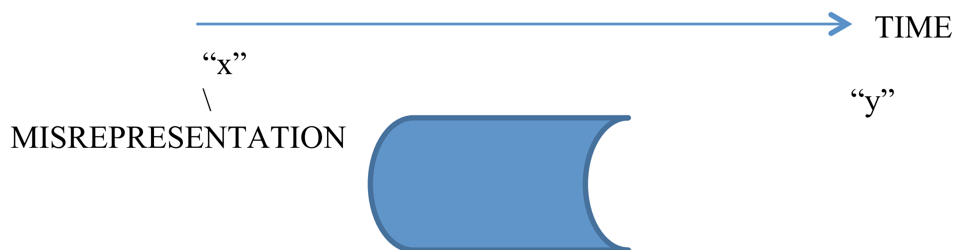
1. Identify: Unintentional Tort (Negligence) → Compensate victim and NOT punish wrong-doer.
2. E.Inc. – Defendant (Vicarious Liability)
   Acquisitions – Plaintiff
3. **If there was no disclaimer:** E.Inc. owes Acquisitions a duty of care because injuries could…. AND ultimately, Acquisitions is relying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

-therefore if there was no disclaimer here, E. Inc would be liable in negligence to Acquisitions for reasonable foreseeable damages.
-review that this happened with Hedley Brynes and the Wolverine Tube cases with disclaimers because, Acquisitions were warned ahead of time but there were no liabilities because of the disclaimer.

Lecture 3:

Contract Law

- [HISTORY BACKROUND; Not examinable]
  In England there were 2 different types of court if you had to bring a legal case. They were separate from one another.
  -Court of Common Law; if you picked the wrong document you lost, so very rigid; however very predictable results if you did it right
  -King or Queens Power; if the monarch(king or queen) said that certain things would happen to result a dispute in a certain way that was the final answer b/c of royal power; then it became "Court of Chancery" which became "the court of equity"; the downside was the less predictability
  -those 2 courts were there for a while to decide, then they merged together like the courts now.
  -If an equitable principle was there they would win over common (like a trump card)
  -court of equity also made common law remedies
  - Equitable Principle (if applicable) will rule over the common law issue



Misrepresentation: not terms of the contract

-things that may not be true/ example of projecting sales-gross revenue; and gross revenue after this year. What happens if it's not true?

-it has to be of significant to her/him for making that contract, if she cant show that then its

Misrepresentation – not terms of the contract, A piece of significant information that is material and untrue but not a term of the contract that has the effect f influencing the person hearing it to want to enter the contract.

There are 2 types of misrepresentation:

Innocent- Person making statements genuinely believes (in good faith) the statements they are making are true; The person genuinely believed what they said was true.

Remedy for this was - Rescission: puts the parties in the same position if there was no contract. Ex the person would get back their money, and other would get back their land; therefore they are out of the problem they are in; if that option is possible (can't give back services) then you get back nothing. If rescission isn't possible then that's where it ends since it

wasn't a term of the contract.
-in most 99.9% cases there are no rescission remedies for misrepresentation for house properties

Fraudulent- Person making statements knows they are lying or is careless as to whether the statements are true or not.

Victim has a choice of remedy:

1) Rescission if possible
2) Sue for the intentional tort of deceit

What is a contract?

-A set of promises the law will enforce.
-2 or more parties have made a formal agreement of terms and the court will enforce those terms.

5 elements of enforceable contract:

1) The intention to enter a formal binding relationship
2) Offer and acceptance
3) The exchange of consideration
4) Both parties have the relevant capacity
5) The nature of the contract is legal

If asked in a test situation identify the enforceable contract STATE THOSE ABOVE

1. The intention to enter a formal binding relationship

- Have to be formal binding relationships/cannot be a casual agreement

2. Offer and acceptance

- Based on a bargain theory. We offer something/set of terms to be considered, and at some point in the process we have an offer and an *acceptance of the offer*. ; Bargaining theory we bargain back and forth and then both parties agree on terms

3. The exchange of consideration

- Consideration, 1 obligation is bought with the other something of value, the exchange of consideration. Let's say we have 2 parties X and Y who have gotten into a contract [33mins 40 sec]
-we buy the other persons obligations in promising to do ourselves. The only reason we walk into the story and come out with chocolate is b/c we are paying for it and in return given something of value. Therefore it's the *exchange of consideration.* (American embassy was for consideration for $1)

4. Both parties have the relevant capacity

- This is a purely legal issue which is to see if the person is of a valid legal entity (minors), by capacity it means to make sure you are an adult.

5. The nature of the contract is legal

- Example assassination contracts are not legal, therefore court will not enforce the contract because the nature of contract is illegal.

Defence against enforceable contracts:

Duress: when you are going into a contract beyond your will; then if you have proof that it is a duress, yes you can do that (gun held to head example); forced into contract because of threats to you or people near you

Economic Duress: unreasonable economic pressure being applied forces person to bargain against their interests. Equitable reason why you should be excused from contract.; No actual gun to the head, but unreasonable economic pressure being applied forces the person to bargain against their interests. /amending a contract. Example of a contractor doing work and the person doesn't pay but says ill give you half now or good luck trying to get the rest. Takes the money then makes a case and wins under economic duress.

Undue Influence: based on the relationship between the parties; b/c of the nature of the relationship they can determine what the person will do, even though the person isn't aware what's going on. It's under the nature of the relationship where one party dominates over the other.
Ex: lawyer and client; doctor and patient

Those 3 are EXTREME defences. An uphill battle to prove; realistically not a lot of us will encounter those.

***************In PEO exam, the usually ask about DURESS; b/c more self relevant.

A written contract is effective for 2 related relations:

1. It's the best evidence
2. It's very exact; formalness

The problem with verbal contract is proving them

Normally if a verbal contract can be proven it is just as enforceable as written contracts.

- ➔ However 1 exception- "**The Statute of Frauds**"- provincial; lists the kind of contracts in writing that must be enforceable. As long as they can be proven verbal contract laws are enforceable as written contracts unless they are in the statute of frauds. Ex, emails..
- ➔ Contracts referring to real property must be in writing to be enforceable. If you're buying property then it must be in writing.

"**Gratuitous Promise**"
-extra or free
-a promise made without exchange of consideration being made in exchange for it
-not enforceable

-“ill bring it for you next week” ; he doesn’t bring it. ← a gratuitous promise
-promise made under seal
-if there is a deadline the guy says, ya ill look into it for you don’t worry. And he doesn’t then that was a gratuitous promise.
-to address this problem it’s called “equitable estoppel” – addresses the unfairness of gratuitous promise
-no need to talk about equitable estoppel if there is no gratuitous promise
-in order to know ES applies, they have to show that 3 things are true:
Equitable Estoppel addresses problem of a gratuitous promise is not useful and is useless to contract. A gratuitous promise must be made in order for equitable estoppels to apply in a hypothetical.

3 part test for gratuitous estoppel:

One would have to prove/show

1) pre-existing legal relationship-showing foundation of a legal relationship
2) Must show was promised or reasonably lead to believe that the strict terms of the contract would not be enforced
3) relied on that promise or understanding and it affected what was or wasn’t done

***********there were examples of questions of ES, always come to the conclusion that there was RELIANCE ON THAT PROBLEM, always CONCLUDE STEP 3 is true no matter what it says!*******PEO

Read note for next class about ES

Lecture 4

Equitable Estoppel -addresses problem of a gratuitous promise is not useful and is useless to contract. A gratuitous promise must be made in order for equitable estoppels to apply in a hypothetical.

1) pre-existing legal relationship-showing foundation of a legal relationship
2) Must show was promised or reasonably lead to believe that the strict terms of the contract would not be enforced
3) relied on that promise or understanding and it affected what was or wasn't done

We use EE to stop gratuitous promises

Owen Sound- not allowed to terminate
Conwest Exploration – deny the option/benefit

These are true for all contract terms.

For all hypotheticals: explain what type of problem it is.
-This question concurs GP and EE…
-GP is a promise for exchange…nothing given..
-normally just basing your argument on GP wouldn't work, but they would argue and say EE applies.

The contractor has to show 3 things to apply:

1) pre-existing legal relationship-showing foundation of a legal relationship
2) Must show was promised or reasonably lead to believe that the strict terms of the contract would not be enforced
3) relied on that promise or understanding and it affected what was or wasn't done

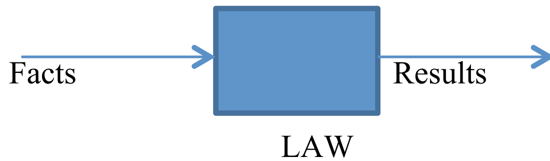
John Burrows
*rare occasion when referencing this case

-supply of equipment
-lent him $12000, and made a contract on how to pay back
- ➔ The contract is on the first day of every month has to pay $1000 and the interest
- ➔ If after the 12 payments, debt is paid off

-if he defaults in anyway, can make him pay all the debt at once
-always making excuses on paying then on month 7, demands that the entire debt has to be paid at once
-John Burrows makes an argument under EE that "he led him to believe his terms aren't strict"
-court called it "indulgence" for which he was being laid back and not complaining for the first few months
-in order for EE to be valid, #2
-active form of communication

-isn't considered reasonable

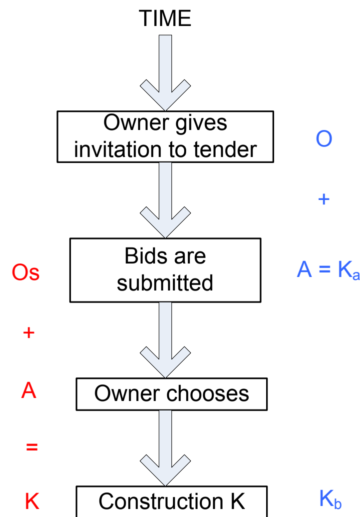
*POE→ lots of questions sound like John Burrows, easy to be fooled
→ there's a different term/communication
→ Ask what are the issues/significance of John Burrows



Facts + Law = Results

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

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



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

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

For Belle River, the bid didn't add up to the total amount and the court called it an "obvious case"

Obvious→ the owner can independently discover the mistake
Snapping up an offer→ contract law accepting an offer knowing it is incorrect while accepting the offer. You cannot form a contract based on this.

The outcome for an obvious mistake is no liability.

<u>1980's→ Ron Engineering</u>
-put in tender
-when the bid was put in required to put in a tender cheque. Shows you're committed for this tender (deposit)
-deadline passes, and realized there was a mistake after. They say we want out, and they say no
-wanted the deposit cheque back

-the law changed
-Belle River law doesn't apply, and makes 2 contracts
-contract "A"
-contract "B" (the contract worked on)
-recognition of the new contract (Ka)
-Ka is about the tendering and the selection process itself
-so tender is the offer, and when you submit a bid, it is acceptance. Means you have entered in a contract when you submit a bid
-"setting down all the rules"
-locked in the moment you submitted your bid
→ "unobvious" (facts) mistake
-said we get to keep the cheque if you don't sign the contract within 7 says
-therefore unsuccessful in getting the cheque back
-each contract entered is contract A

For obvious cases, we don't know what is going to happen, we DON'T KNOW the result.
-if we have an obvious mistake now, we don't know the result

Northern Construction
-same meaning facts of R.E.
-except "if I select you and don't sign papers we keep the deposit or sue you for half the difference between the next lowest bid"

Interpretation of Contracts
-normal dictionary/grammar rules (2 million dollar comma)
-trade usages/rules- like what a word means in the trade, even though it's different in the dictionary

Contra proferentem (a rule of interpretation of contracts)
-"to choose against"
-arises in situations where words in the contract is ambiguous
→ it could mean one thing to another and something else to someone else
-there's a generalized ambiguity
-the court will choose the interpretation, against you
-against people who wrote it
Ex: happens a lot with insurance
→the insurance would lose

Parole evidence rule
-"to the side"
-based upon the idea that the written contract. It's the best evidence of what your obligations are
If the contract has been reduced to writing, you're not allowed to introduce any evidence to court that suggest what you've agreed to is different in the contract
-if in writing always win
ex) have a contract that says 15days but they talked and agreed to 20 days, not in writing therefore wrong.

1) In the future if you write a contract, if theres a change or something make sure you resign the contracts.
2) Lying (difference between EE)
   -they never overlap overtime

Is used to reflect on the written document

Express terms of contract=terms that are specially communicated; terms that have been expressed in writing/verbal

In order to sue for breach of contract, they must have breached a term

Lecture 5

Chinook Aggregates

Doing work for tender; including the sentence "M may not select lowest bid & may not select any bidder"

Found liable and had to pay damages.

What that quote means:

- "M may not select lowest bid" = this bid won't be determined solely by price
- "may not select any bidder" = if none of the bidders qualify the criteria. So it says if none of the bidders qualified then they are not required to pick one.

If no one was qualified the municipality isn't forced to choose.

Contract A is binding on the owner as well.

Municipality was thinking they would prefer that a local would win. If a non-local winner wins according to the qualify bid, they'll give it to the local.

A non-local should have won, but a local fell in that range so they gave it to the local winner. The municipaity was sued by the non-local. They were suing for the loss of profits.

The court found that it was an implied term of contract A, if the owner had said otherwise, all of the bidders are to be treated equally and fairly.

In contract law it is fine if you say everything specific, however if you don't then all the bidders have to be treated equally and fairly.

Therefore the court found it was breach, so the non-local won the profits it would have won.

The end of a contract:

4 ways it can come to an end:

1. The job is done (Performance). When both parties have performed fully under the contract it disappears. Basically when it's done.
2. By agreement.
   a) When the parties are in an indeterminate contract- a contract that doesn't have a fixed ending, and the parties can agree to when the contract come to an end. A mutual promise that both agree nothing further to be done.
   b) The contract may provide for its own ending- Not implied for a fixed term. The contract can have a *"condition subsequent"*. Contract may contain a contract

subsequent. If a certain set of conditions are met the contract is done. Ex, you melt iron, and you have a supply of iron ore In your supplies, and you said in the contract if the price of iron ore raises to ___ level you can quit the contract/make a new one. Ex 2, you got a ticket to a game and you're loud and rowdy, so you get kicked out.

3. By operation of Law (talking about bankruptcy)- all ongoing debt contracts are ended and creditors can take assets.
4. Frustration of a contract. Through the fault of nether party, the contract comes impossible to be preform; therefore the court says that it is "frustrated" and that the contract ends. Piece of legislation called frustrated contract act gives rules for partially performed contracts. Force major clause deals with what would happen if contract is frustrated (ironically this makes the contract not frustrated because the contract can still be followed) Ex an opera place, a short time before the opera is going to happen there is a fire at the playdium. Place of legislation called frustrated contract act gives rules for partially performed contracts.

We talk about breach of contract if someone hasn't met one of the terms, either expressed or implied and then you sue them for breach of contract.

[41:54]:

Fundamental Breach- A major or significant breach; saying you're going to deliver 100 crates of bananas but you deliver 3. A breach that goes to the root of the contract.

Exemption Clauses- A term of the contract that limits liability in someway. Usually 1 or 2 things:
a) Type(s) of damages; and/or
b) cap on liability
ex. Say max damages are $100,000. Something happens and reasonable and foreseeable damages are $200,000. Then only $100,000 are paid. Similar to disclaimer; like cousins. Only use disclaimer when talking about TORT LAW. Use exemption when under CONTRACT LAW.

A disclaimer removes liability in the first place; An exemption clause limits the amount you'll pay out.

Actual difference- if you want to win a court case 2 things must happen find liability and assign damages.

Difference:

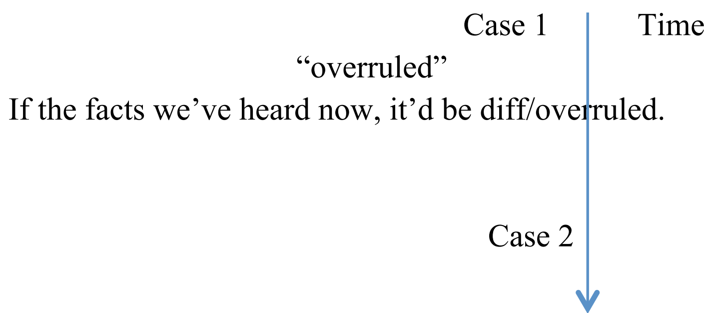
- **Disclaimer:** means **NOT ON HOOK AT ALL** (Tort or Negligence Law); prevents you from being found liable
- **Exemption:** means **IF ON HOOK**, remedies are limited (Contract Law); limits the damages

If fundamental breach and exemption clause (only time asked to explain history) 3 cases

accurately and completely describe historic change in law. These three cases explain the various changes in the law.

1. Harbult's Plasticine (UK)
   - Canada only became fully independent in the 80's, therefore we look at England cases for guidance
   -the fundamental breach doctrine= the court agreed with if a party has committed a fundamental breach then they are not able to rely on exemption clause. We followed that decision for some time in Canada. In the UK HP was overruled in the Photo Production Case.

2. Photo Production
   -there have been a change of law, or change of approach for the law and if the facts of the case were heard now, the result would be different. (overruled). So the photo production case over-ruled HP and if HP was during that time then there would have been a different approach.



http://en.wikipedia.org/wiki/Photo_Production_Ltd_v_Securicor_Transport_Ltd

3. There's a Canadian case, "**Hunter v. Syncrude**"

   Malfunctioning gear components in mining equipment, the Supreme Court took the **true construction approach:**
   The majority of the supreme court said you don't need the fundamental breach doctrine, the only thing you should focus on is the exemption clause itself; it doesn't matter if a breach is a fundamental breach or not if the exemption clause is clearly worded and relevant to the dispute the exemption clause stands and operates.
   - If the exemption clause is clearly worded and relevant to the dispute between the parties, then the exemption clause stands and operates.

The practical point for us is to look into exemption clauses and worst case scenarios in the future; have to be aware to see if the exemption clause is clearly worded.

Contract law and negligence laws are "languages" vitamin bottle example. Describing things in a legal way (in law)

Approaching a Breach of Contract with an Exemption Clause

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

Entitled to enforceable damages in breach of a contract; reasonably foreseeable damages on breach of a contract

Tort Law	Relationship	Tort committed *
Contract law	Relationship contract formed*	Breach of contract

*reasonably foreseeable at
Tort Law is when the tort if committed.
Contract Law is when the reasonably foreseeable when the contract was formed, not when the breach occurred.

Start with "$ how much out of pocket" (the innocent party; the party who hasn't breached the contract) – "$ should have paid under the k"

Remedies for Breach of Contract

Direct damages- ask yourself "what was I specially promised under the contract? What was I going to get from the contract?"
-what was I specifically promised under the contract the injuries incurred. My injuries that result and the damages I am claiming for not getting for what I was specifically promised under the contract, are the direct damages; Damages that compensate for what was directly promised in contract.

Indirect damages (consequential damages)- damages that weren't specially noted in the contract but were reasonable foreseeable damages.

Ex: purchase air filters that state they will remove 99% of particles in air, they only remove 55% and then are fined for bad air quality for $25000. Had to find another supplier/spent extra money to get it running perfectly. Therefore more money spent; direct damages? Indirect damages?

Liquidated Damages- fixed or certain
-the parties can agree in advance that a certain kind of breach, THIS is what the reasonable foreseeable damages will be. Parties agreeing in advance what the damages will be in specific situations. It gives certainty to the contract and the relationship. Ex someone runs a courier company and for every hour late he pays $25 and he is 2 hours late, liquidated damages are $50 no arguments it was agreed on ahead of time as part of the contract.

Example. Deliverying flowers, if you're late you owe me $17000. The guy is late. Does he owe him $17000? – NO **"Penalty Clause"-** you should only be damaged to reasonably foreseeable damages.

If PC you have to show that all the damages are out of proportion, and then the court will determine that it is a PC. If it is all out of proportion it is a penalty clause. Contract law based on certain fundamentals only entitled to reasonably foreseeable damages. Contract should not entitle you to a windfall. Therefore you do not need to justify liquidated damages. To prove something is a penalty clause must prove that it is unproportional to reasonably foreseeable damages and therefore won't be enforced.

Can have a contract with an exemption clause but no liquidated damages

Can have a contract with no exemption clause but has liquidated damages

Exemption clause limits to what you'll pay (damages). Liquidated damages puts a specific amount on a specific breach.

What if you have both and somehow all liquidated damages exceed Exemption clause?
-pay to amount of exemption clause

Tendering-implied term of contract A; if selected, will do the work.

Stating if you don't send back signed contract in 1 week or w.e clause is then keeping the tender deposit is liquidated damages

What happens if there is no clause? If the owner doesn't say anything about what if, then the owner has to sue for reasonable foreseeable damages. (for tendering)

If owner says nothing about liquidated damages in tendering contract A then they go ahead seeking reasonable and foreseeable damages.

Article hypothetical: POE question. Like ron engineering.

An Ontario municipality (the "Owner") decided to update and expand its water treatment facilities. To do so, the Owner invited competitive tenders from contractors for the construction of a new water treatment facility.

The Owner's consultant on the project designated a facility and prepared the Tender Documents to be given to potential contractors interested in bidding on the project. The Tender documents included the Plans and Specifications, and the Tendering Instructions which described the tendering procedure and other requirements to be followed by the bidders, the Tender Form to be completed by the bidders, the form of written Contract that the successful contractor would be required to sign after being awarded the contract, and a number of other documents.

According to the Tender Instructions, each tender bid was to remain "firm and irrevocable and open for acceptance by the Owner for a period of 60 days following the last day for submitting tenders." The Tendering Instructions also provided that each bidder was to include with its tender a certified cheque for $200,000 payable to the Owner as a tender deposit. In addition, the Tendering instructions contained the following provision describing the circumstances in which the Owner would be entitled to retain the tender deposit:

> "The bidder guarantees that if its tender is accepted by the Owner and the Owner does not, for any reason whatsoever, receive the Contract signed by the successful bidder within 7 days after the successful bidder has been presented with the Contract for signature, the Owner may retain the tender deposit for its own use and may accept any other tender."

XYZ Constructors Inc. ("XYZ") submitted its tender in accordance with the Tender Documents. Approximately ten minutes after the official time for submitting bids had expired, XYZ

discovered that it had made a clerical mistake in preparing its tender: XYZ had mistakenly copied a figure from a calculation sheet. Due to the clerical error, XYZ had omitted an amount of $800,000 from its tender price of $3,300,000. Immediately upon its discovery of the error, XYZ notified the Owner of the mistake and indicated that XYZ wished to withdraw its tender. XYZ and the Owner agreed that the clerical mistake was genuine; however, the Owner refused to permit XYZ to withdraw its tender.

Within 2 weeks, the Owner announced that it had awarded the contract to XYZ, who was the lowest bidder, and presented XYZ with the Contract for execution. XYZ refused to sign the Contract. As a result of XYZ's refusal, the Owner awarded the contract to the next lowest bidder for a price of $3,600,000.

What potential liabilities in contract law arise in this case? What would the Owner be entitled to claim from XYZ? Would the Owner be entitled to keep the tender deposit? Please provide your reasons and analysis. In doing so, explain the contractual relationships and indicate a likely outcome to this matter.

Solution

We are dealing with the mistake in the tendering on xyz's part.

Make a description of bell river.

At one time belle river the court on saw 1 contract being formed in the tendering process the actual work contract. The bids were seen as offers and the acceptance was the one the owner selected leading to a contract. In belle river an obvious mistake was made meaning the owner can independently discover the mistake. Owner not allowed to "snap up contract" no liability for the tenderer so they got their deposit back

Now due to ron engineering 2 contracts are made contract A and contract B. Contract B is the work contract. The new type of contract being formed was contract A which is about the tendering and selection process itself this is a separately enforceable contract. The offer is seen as the rules and guidelines about submitting a tender. The acceptance is the tenderer submitting a tender. In Ron engineering an unobvious mistake was made, when the owner selected Ron engineering and ron engineering refused to go through they were breaching an implied term of contract A that if selected you will do the work. However in Contract A there was a liquidated damages clause stating that if selected the owner gets to keep the tender deposit. Since it was an unobvious mistake the owner kept the tender deposit.

In this case contract A states your bid is firm and irrevocable, you must give a $200 000 tender deposit, and like ron engineering there is a liquidated damages clause stating that the owner can keep the tender deposit. Since in this case the mistake was unobvious the owner is entitled to keep ron engineering's tender deposit. Since liquidated damages clause states that the tender deposit is the damages the owner cannot sue for the difference between the next lowest bid and the bid.

MIDTERM**

Stuff before last lecture, and today and on for exam.
Will post last years midterm on virtual campus. Hypotheticals, T/F.
Next Tuesday, probably the day when he'll be at school. Around 10-230 ish.
2-2.5 hrs.

Lecture 6

In contract there is an obligation enclosed on the party that hasn't breached a contract (innocent party). That obligation is called "mitigation" which states that the innocent party has to take reasonable steps to minimize damages on a breach of contract. Ex, at home and hired a plumber and they didn't do a good job, and water leaks on a comic collection. You have to take reasonable step to minimize mitigation (your loss), like you should have moved the comics away. Ex. If you lose your job, you have to take obligation mitigation to take reasonable steps in finding a new job.

There are 2 equitable remedies for breach of contract:

1. Specific performance-order of the court that compels someone to do some act usually complete the contract. Rarely granted because when equitable and common law principles merged. If damages are considered a sufficient remedy equitable remedy is not possible. Fungible items, one thing is a complete and perfect replacement for another. Ex an ipod is damaged another identical ipod can be purchased. One place where specific performance applies is land. Land with these buildings, this land does not exist anywhere else therefore damages may not be sufficient remedy. Therefore court order to transfer land is issued specific performance
   Takes the form → you must do _______. Courts will rarely grant order. Example: Selling/buying land (considered 'unique' historically)→Order for specific performance.

2. Injunction- "you must not do x" it is a prohibition, kind of the opposite of specific performance. Injunctions are much more common than specific performance as an equitable remedy. If someone is continually breaching contract, and you get damages you have not stopped bleeding, more damages next day, an injunction stops the injuries from occurring from that point on.
   Takes the form → you must NOT do _______. Easily given orders.

Quantum Meruit- not traditionally common law or equitable remedy, from latin meaning an "amount deserved" if goods or services are requested to be provided and there is no agreement on price, the law implies the obligation of quantum meruit. The usual amount charged by the contractor for the good or service. That is the amount legally owed.

Ex go on a dinner on valentines day and there are no prices on the menu, you never agreed on a price, but there is still "quantum meruit" which is an amount deserved. An amount normally deserved for that amount, and that amount is legally what is owing which is "quantum meruit".

Ex doing work for someone they say oh btw can you also do this with no agreement on price. You do work then attach the invoice of what you would usually charge. Quantum meruit.

Hypnotically from online:

-30million $ contract of turbines; the contract said it can't be less than 25MWatt… it received less than 25MW and poor performance on everything else. The overall liquidated liability was $4million, and an additional of $15million. (but the contract said they would only pay for 5 if they ever made any mistakes.)

Less than 25% of electricity generated, late, less heat exchange. Over 15million extra to complete.

Solution

The type of problem we are dealing with is a fundamental breach of contract, and exception clauses. A fundamental breach of contract is a significant breach which goes to the root of the contract. It's a major/significant breach bc less than 25% is major. An exemption clause is a term of the contract which limits liability in a way, of kind of damages and an maximum cap on liability. Usually reasonable foreseeable damages, but that is limited. We have a exception clause of 5milllion. The exemption clause here says you can only sue for "liquidated damages, to a mx of 5million".

Refer to Harbult's Plasticine (UK). If a party has a fundamental breach, you cannot use the exemption clause. We had this relationship with England but the law changed. It was overturned in the English case "photo production" a lot of the ideas are based on the decisions here. Hunter vs sincrude; the highest supreme court, majority took the "true construction approach". Doesn't matter whether breach is fundamental or not if exemption clause is clearly worded it stands and applies under those terms. In this case the exemption clause is clearly worded and it is relevant with respect to the kinds of damages because they haven't reached the maximum cap is $4million.

(diagram of time)

In case there is liquidated damages and exemption clause on the clause,

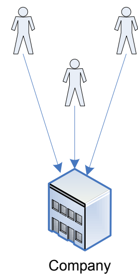
The maximum they can sue for is 4million$ applying those provisions. ; if it was 7million$ of ld, then they would only have to owe 5, but in this case they have to owe 4.

Steps

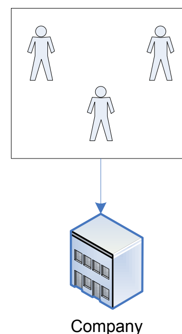
1. Fundamental breach → breach that goes to the root of the contract

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

Employment Law- employer has individual contract with individual employees. The contract is specific to each individual.



Labour Law- employer has 1 contract with all employees (standardized and applies to a large group of people and Is negotiated as a group) union. The agreement applies equally to all involved



Definite term - In terms of employment, if you have a fixed term of employment for a year, and the employer lets you go, you are entitled to the remainder of the time left at the company. (for a definite term of a contract)

Indefinite term (no fixed ending) – there are 2 distinctions:

1. Statutory- you are entitled to **minimum notice**, indicated that if you have been at your place of work for X times, you are entitled to that bit of time. The longer you work, the more time noticed you deserve, pay instead of notice. If you don`t pay the minimum notice, then trouble with the government; minimum statutory requirements.

BUT UNDER COMMON LAW:

2. Common Law- reasonable notice or pay instead of notice. Might not be the same as statutory minimum notice. B v globe and mail. No one is entitled to their job no right to keep your job, you have right to minimum notice to find other employment. Factors include age of employee, number of years worked/time, degree of responsibility, availability of other similar employment. Wrongful dismissal usually ends in settlement. " i was given minimum notice but not reasonable notice."

If was given minimum notice, but I wasn`t given reasonable notice.

Statutory – minimum notice
Common Law- "reasonable notice"

Usually

http://www.e-laws.gov.on.ca/navigation?file=home&lang=en

if ever need more info

we can be demised "For cause"-entitled to no notice, or ….

4 ways people are dismissed.

1. Incompetence-if you're not able to do the job you were required to do, you may be let off; cant do job
2. Misbehaviour/embezzlement – ex beating up the person beside you
3. Disobedience- "the law of master and servant" (employment), you're working for what people are telling you to do. For that reason you can be let go. ; not listening to boss
4. Prolonged (extended) Illness – contract is essentially frustrated

One more thing to note about employment law:

Restrictive Covenants- term of the contract where you are agreeing that upon ending work in that location, that you are agreeing on the outset that you will not do a specific work for that time the period has come to an end. Example Have a very successful restaurant, and there is only one if it. So you sell it to someone, and under restrictive covenant, you cannot make another store, b/c you got be fair.

-A promise restricting you in some respect. Person who is selling promises that he won't do (xyz).
-Provides a period of time that you are out of the employer's field of work (after dismissal).
-Legal reaction to restrictive covenant → **area of law is restraint of trade.** Competition is encouraged but this **limits competition** and **limits opportunities as an employee.**

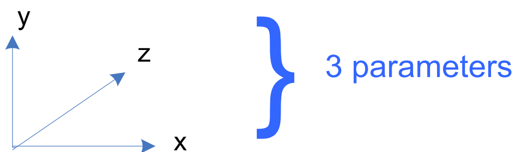
Limits of freedom of contracts:

The idea of freedom of contract law, make any contract and the law enforces it. In some cases limited ex penalty clauses in liquidated damages. Rc are presumed to be unenforceable. The starting point is that restrictive covenants is presumed void. Usually in contract law if a party has agreed to a term it is presumed enforceable. Restrictive covenants have the obligation on the employer having to show that it is justified. It is reasonable and does not adversely affect the public's access. RC are presumed to be void/unenforceable. RC is not a good thing, b/c you're limiting employment and… presumed not enforceable. The starting point for RC is that they are **presumed** void.

RC usually has 3 parameters to them

1. Type of activity prevented
2. Time factor
3. Geographic scope.- ex city of Ottawa, 100km from parliament, in Ontario, in Canada etc

The court will not modify RC. –means that the RC has to be judged as a whole, you take what you find as a whole, and is It justified in a terms of circumstances?



If you come to the conclusion that you think it is not justification the employer is not going to get an injunction, so if it isn't up held, you have to do the same work then very next day. It's in your best interest as an employer to have RC that are as minimally restrictive as possible while still protecting your interests.

The employer is usually looking to get an **injunction** (states: you the employee shall not….). It is already in the contract, but now the state is backing it up.

- If the employer **does not succeed,** there are no restrictions on the employee at all.
- It is therefore in the Employer's best interest to make the RC as minimally restrictive but still can protect his interest; will have a high chance of justifying the RC.

Steps in Analyzing an RC Hypothetical

1. State that we are dealing with an RC term → and area of Law is Restrictive Trade. State that the RC they are promised is presumed void because… Therefore the burden is on the employer to generally justify that it is specifically reasonable and does not affect public interest. → Speak of the 3 parameters.

2. At the end of the day, the court can enforce or reject to enforce, they cannot modify it; therefore, it must be judged as a whole.

3. Lead into your own discussion and what you believe and explain why it is justified or not under the circumstances.

4. Conclude that it is: –**justified** (employer will get the injunction→same as the term but has the power of the state now) OR –**rejected** (no restrictions at all on the employee)

Two kinds of hypotheticals types that he will give us:

Hypotheticals either restrictive covenant is black and white (super reasonable or super unreasonable) or grey (both sides can answer question reasonably). Both sides can point out dealing with restrictive covenant. Both sides can point out it is presumed void for public policy reasons. Both sides can point out therefore initial obligation/burden is on the employer to show restrictive covenant is justified. Both sides can show that these types of terms can have 3 types of terms with them. Both sides can point out only options for court are to uphold RC or reject it as written, the court wont modify it. Both sides can point out that therefore court must judge contract as a whole. Therefore either get the injunction or don't. **Therefore** it doesn't really matter which side of debate you are on both talk about the same set of issues legally.

1st issue is what court?

If your claim is for damages alone, money, and if your claim is $10,000 or less you can bring your claim to a small claim's court (court of the people). Designed for the average citizen to bring their own action and go through the process themselves without legal representation. Therefore if $10,000 or less you can bring your claim to a small claim's court.

Many other actions are brought up in the Superior court of justice.

How does a claim start- issuing a statement of claim.

A statement of claim- is a document which lists who the plaintiff(s) and defendant(s) are. The very first paragraph is what relief the plaintiff is claiming. If $10,000 in damages, or $15,000…

then someone in the statement of claim is simply stating the law and the basic facts showing the law on why you owe that remedy(s). Therefore this is a statement of claim.

The statement of claim is issued and served, and then person responding to that makes a statement of defence.

A statement of defence- issued in response states what paragraph in statement of claim they:
1. Agree with
2. Disagree with
3. Have no knowledge of

If you who got a claim, and you also want to create a claim, then you have to first write the statement of defence, and then a counter claim where you would be the plaintiff by counter claim. So all the parties are being brought together. All together called the pleadings. So all of these statements are called the pleadings (statement of claim, statement of defence, counter claim…).

The pleadings define what the claim is. All relevant points, and facts supporting the claim. Once all the pleadings are closed, in Ontario there is a 3 hour mandatory mediation session. Mediation is a type of ADR (alternative dispute resolution), and it simply happens in a superior court of justice. You have to attend. Ottawa was the trail area, and was found to be so successful it became used everywhere in Ontario. ADR are the different ways in which parties may try to resolve disputes. One type of ADR has become intersected with proceedings in Ontario. Mediator (the neutral party) uses their professional knowledge/skills to foster positive communication between the parties. The two parties don't even need to be in the same room together. Mediation is successful because it forces two parties to talk together and express thoughts/feelings. Mediation can make parties settle on several issues maybe not all but then it has at least narrowed what is moving forward in court.

Another type of ADR is arbitration. In arbitration, an arbiter (neutral party) is essentially a private judge, since coming to a decision, doesn't have to be a judge. Typically used when judge or jury likely wouldn't understand the dealing with a very specifics of a certain field. With arbitration parties get to pick someone who they think will understand the case better. The decision of an arbitration might be much more efficient and trusted, since the parties can pick someone who could be appropriate in making a decision. Ex, you're having an engineering dispute, a regular person would be lost in terms of engineering, so you can pick someone who knows engineering and is neutral to both parties. Arbitration can also be a private subject to non-disclosure agreements. Arbitration with no appeal clause is not able to be appealed or redone it is law.

Discovery Phase-in a civil action you have the opportunity to find out about the strength of other parties case, and in return they can find out the strength of your case as well.

Documentary discovery- must prepare affidavit of documents, which is a list of documents in your possessions (phone messages, papers…), identifying all the documents relevant to the dispute (document – reproducible material. Like video tape…)

Examination for discovery- you can compel one person from the party to come in front of court reporter and be asked questions under oath.

When all of this is done, there is a settlement meeting.

Pre trial conferences(settlement meeting) –both parties prepare a settlement brief. Both prepare a summary of their case and present it to a judge or master (that person cannot sit at the trail). Who having heard summaries senses and gives views about the case. If not settles then a date is set for the trial.

5-15% of cases go to trial.

Appeal to the court of appeal (can always appeal). Maybe apply to supreme court (must request leave to appeal to supreme court) and they have to grant you an audience. Won't get audience unless national interest or conflict of legal principles.

Lecture 7

Back to ADR (alternative dispute resolution)

2 parts Mediation and arbitration.

Must attend a 3 hour mediation in civil court

Dispute resolution board. If parties involved in a long standing relationship, one option for parties is even before there are any problems that have arisen, the party's can include in contract terms about a dispute resolution board, agree neutral parties to sit on board. Sets up and adr system in contract before problems arise. They can put as much or as little power in that dispute resolution board as they like. Ex act as a mediator, act as an arbiter offer advice etc. This way if problems come up a system is in place without needing to use civil action

Partnering construction – philosophy / attitude not legal rule. Not uncommon in contracts involving a lot of other parties ex construction contracts for each party inside of contract to view itself as an island and become demanding legalistic. The idea of partnering construction is to view yourself as partners and trying to work together to achieve a common goal. Ex have meetings to update everyone on progress of project. View as a group to complete project as easily and efficiently and quickly to complete contracts as opposed to fighting in small disputes.

Civil process limitation periods – a limitation period is the amount of time you have to bring a legal action. This is a formal issue not a substantive issue, has nothing to do with strength of case, there is a deadline to issue a statement of claim. If you bring your claim outside of limitation period, your claim is statute barred. There is a relatively recent (2002) specific piece of legislation dealing with period of time to issue a claim. Used to be the limitations act that applied and parts from case law. Now limitations act 2002 (2002 is important it differentiates between the old and new limitations act). 4 important differences.

1. It used to be the law that different legal actions had very specific different limitations periods. Promise made under seal negligence etc all had different limitation periods. Potential to be thrown out if "statute barred" and outside limitation period. Now there is a 2 year limitation period to place a claim. Breach of tort, negligence etc 2 years. There are some exceptions identified but generally 2 years.
2. Imagine surgery 4 years ago and wasn't aware of it at time but doctors left an instrument inside and sewed you up. Over time scar tissue pain... go to doctor get x ray and doctor says heres the problem ... weird medical instrument... "the aha" moment first period in time that you are aware that the wrong had occurred. 99% of time party is aware that a legal wrong has occurred, usually issue of discovering something has occurred isn't true. In instances where person isn't aware that there was a legal claim to be made. Used to be

in common law the **discoverability principle** the limitations clock doesn't start ticking until the earlier of you are aware of the legal wrong or a reasonable person would have been. That is when the 2 year clock starts ticking. Since you found the instrument late, you have 2 years to make your claim. The discovery principle is in the legislation.

3. Controversial to some extent. There is an ultimate objective 15 year limitation to bring your claim and discoverability cannot get you passed the 15 year maximum. You just have a total of 15 years. Discoverability doesn't help you if its over 15 years. Like you had the surgery 16 years ago, then it's too late when you discovered it. If you had the surgery 14.5 years ago and found out then you have 6 months to make your claim
4. It used to be that under freedom of contract parties could agree on specific limitations periods, this was viewed as part of the contracts power. The limitations act 2002 no contract can change the limitations of the limitations act 2002. Later on a piece of legislation called **the access to justice act 2006** among other things it noted was that parties under business contracts they can set limitations. Does not apply to contracts which are covered by consumer protection limitations. If consumer protection legislation exists then the access to justice act applies no changes to limitations periods. If it is a business contract then limitations can be changed.

Time

1--------------------2--------------------------------3-------------------------4

1. Breach of contract "wrong"
2. Trial
3. Judgement

1 Someone was sued for $20000 1st part of judgement is $20 000 according to what is owed.

2 legal fees (costs (lawyers bill and disbursements (copies phone calls)*not examinable sub divisions *)

Often judge will give time to submit legal fees to include in judgement. will get partial indemnity (60-70%) if won

3 pre judgement interest between 1 and 3 published every quarter by justice act

4 post judgement interest (posted in the courts of justice act as well)

If bringing claim in statement of claim, claim legal fees post and pre judgement interest and the dispute

You get a judgement against someone that individual who owes you pays you the next day, rarely happens. Businesses will often pay however many cases where parties aren't business appeal. Number of ways to enforce that judgement.

1. Writ of seizure and sale – file a paper (writ of seizure and sale) that says you have write to seizure and sale, you must file in each judicial county where they have property. If you have a writ to seizure and sale you can have the sheriff in the cunty seize the property and sell it to pay for writ, sale costs come off and pay sheriff rest is give. If multiple people have writ of seizure and sale then it is given proportionally to how much they owe to each party. (can you go after something worth more than you are owed)
2. Garnishment – means by which if you have a judgement issued you can fill out forms about garnishment and serve them to employer. A portion of their salary is then given directly to you. Max 20% of gross salary.
3. Judgement +Debtor Examination (JD exam) – if you have a final judgement issued against someone you are entitled under law to force the person to attend a court reporters office and under oath answer questions about assets and ability to settle debt. Can be done once a year. Can be very informant as to what steps to take.

   Judgement is valid for 20 years after 20 years no longer enforceable.

1 other remedy that is in a very specific area of life.

Owner hires a general contractor who in turn hires sub contractors who hire sub-sub contractors......etc

privacy of contract, the idea that contracts are the private relationships of 2 parties, can only sue someone who you have a direct contract with. The only person who has any direct rights towards the owner is the general contractor, not others have contracts with owner.

Imagine at the end of every month all parties must prepare invoice for work and/or materials at job site... stack accumulates up chain and goes to owner. In law there is a remedy called **statutory hold back** – something is being held back because a statute says it is being held back in Ontario the construction lean act states that the owner must hold back 10% of the materials and or work owed ex if $1 million is owed $900 000 is paid out. $100 000 is kept by owner. The main reason this is significant is that this provides a direct legal link between owner and sub contractors. Therefore owner is legally responsible for 10% between them and all parties. If something goes wrong have a right to the remedy to go after 10% hold back. As contract goes on the hold back is growing when can you go after it

----1-------------------------------xxxxxxxxxxxxxxx---3—yyy2-------

1 1st shovel hits ground (starts)

2 ribbon cutting (done)

3 “substantial completion “ there is an equation to calculate when a project is “substantially complete”

Statutory hold back is very small piece of construction lean act

When gov created it had the view that most sub contractors done by the time of substantial completion. In Ontario 2 stages of statutory hold back

X general

Y finishing

45 days after substantial completion if no one has made a claim for lien. The general hold back can be released.

Work done during finishing owner is holding back a similar 10% 45 days after job done if there are no lien claims finishing holdback is paid out.

If sue work before and after turnover date between general (up to substantial completion) and finishing completion. Portion of work done before general holdback paid 45 days after substantial completion. Then 45 days after completion the finishing hold back is paid out.

Under the construction lien act an owner is required to holdback 10% of the amount owed. This is significant because it creates a legal relationship between owner and all contractors. With out this the subcontractors and owner would have no legal relationship. If no liens are made 45 days after substantial completion the general hold back can be paid out. then finishing hold back can be paid out 45 days after completion date if no liens made.

Hypothetical on restrictive covenants.

Steps in Analyzing an RC Hypothetical

5. State that we are dealing with an RC term → and area of Law is Restrictive Trade. State that the RC they are promised is presumed void because… Therefore the burden is on the employer to generally justify that it is specifically reasonable and does not affect public interest. → Speak of the 3 parameters.

6. At the end of the day, the court can enforce or reject to enforce, they cannot modify it; therefore, it must be judged as a whole.

7. Lead into your own discussion and what you believe and explain why it is justified or not under the circumstances.

8. Conclude that it is: –**justified** (employer will get the injunction→same as the term but has the power of the state now) OR –**rejected** (no restrictions at all on the employee)

RC Hypothetical

- Engineer working for a firm and in the contract there is a term that says **(if he leaves the company) he cannot practice engineering or hold shares in the city of Toronto.**
- After 3 years he decides to leave the company and sets up an engineering business in Toronto.
- The Engineer's former employer raises a case against him.

That type of clause in contract is called a restrictive covenant. An employee is promising to restrict their abilities upon finishing with contract. Presumed void bc of public interest which limit competition and restrict employee opportunities. Therefore the obligation is on the employer to prove that the restrictive covenant does not harm public interest. 3 things

RCs have 3 parameters:

1- Type of activity
2- Geographic scope
3- Time component

Court will not modify the restrictive covenant and must judge it on a whole. Court will not rewrite it.

Is it void or valid, must explain personally

Not justified in circumstances because

the geographic scope is understandable due to links between employer and clients

the length of time is 5 years which is a very long time to employee

also the type of restriction no engineering is very broad

therefore since it must be judged as a whole it is void because 21 and 3 are excessive.

Steps:

1. State that we are dealing with an RC and the area of law is 'restrictive trade'.

2. State that RCs are presumed void because they go against the public interest by limiting competition. Therefore **the owner must show that it is generally justified; it is reasonable in the circumstances, and it doesn't adversely affect the public interest.**

3. RCs have 3 aspects (parameters) → list them

4. At the end of the day, the court can only enforce or reject. Therefore the RC must be **judged as a whole.**

5. Give your own reasoning behind it → whether it is justified (the employer gets the injunction) or not justified (no restrictions on the employee) under the circumstances. Explain your reasoning:
   In this case, the space (city of Toronto) seems reasonable, but the type of activity (engineering in general is not specific) and 5 years is a very long time in someone's career. As a whole, for those reasons, it is **not completely justified.**

6. Conclusion

Lecture 8

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

List of inappropriate conduct consist of sex, sexual orientation, marital status, age, citizenship, place of origin, creed (religion beliefs) in the workplace. Meant to address several aspects of our life not just work.

We want to operate a business of some kind, never use the word company or corporation in the exam for running a business. Just say running a business.

3 main types of businesses we'll talk about

1. Sole proprietorship- one person who owns the business. They are the sole proprietor. It's the default for it if you start a business (lemonade stand…). It lasts as long as you stop running that business. There are no difference in law between YOU and SOLE P. For liability purposes you are personally fully liable for the torts committed in SP. The assets, obligations… are yours. If you have breached the contract and stuff like that, you are sued. It's very easy to start up, because it's starting a business. Downside is liability, and tax issues. The tax is coexisting with your own personal taxes. You will be claiming the profits from SP as your income, and paying taxes on it.
2. Partnership- this is 2 or more people engaged in business with the intent to profit. In terms of liability, a partnership requires an immense amount of trust in that partnership. In a partnership are you **jointly + severable liable** (you are equally liable for what they do). For tax purposes, just like a SP, and paid out to equal shares to the partnership so no different tax forms. For starting up there is a contract between the partnerships detailing liabilities, rules for what is governed of the contract. The 2 are in an agreement of their rights. You are fully liable for your partner. In drafting a partnership agreement, it's about 2.5-4 thousand $, and really in-depth (start up costs). Lasts as long as the partners are engaged in business (one leaves, or dies…).
3. Corporation- a hallmark of a corporation, it is a separate legal entity. In law is a fictional entity, can sue or be sued… a separate LEGAL entity. ex, a corporation is a ship, have officers of a corporations, like CEOs… directors of a corporations are like captains on a ship, making the main decisions on the path it is going to take. Made by the board of governors. If you're a director there are a lot of important duties:
   1. You have to act honestly in good faith, with the best interests of the corporation in mind; which can be described as a "fiduciary duty" (comes from latin…) ex, being a parent is a fiduciary duty.

2. In the legislation in writing a corporation, there is a standard of care for the directors of a corporation. The second duty is to exercise reasonable kill care and diligence in their work (statutory standard of care)
3. conflicts of interests- ex. Daughter is a student in class, so for marking. The idea of a conflict of interest, when You the decision maker has an interest directly, or indirectly that could be seen infecting your neutrality. You're supposed to be neutral and When someone has a conflict of interest there are external reasons (relationships..) that help change what is being done. Ex a corporation needs more widgets so gives it to an employee to find some. But doesn't know that his family makes widgets so there's a conflict of interest in him choosing his families widgets. ; in a corporation you have to tell them about any possibly cases of conflicts of interests. Can't vote in favour of that contract.

Liability is a significant advantage, separate entity which has its on assets… so you as a shareholder are okay, only the corporations assets are affected. Another advantage : taxation- you do not have to have the tax year as the calendar year unlike SP or P. depending on the type of business, starting.. can be an advantage. A corporation makes a certain amount of money in a fiscal year, there is tax on those amounts, corporate tax. So you then have after tax profits, and the way it can leave is to pay a dividend on share holdings. There's a lot of control in dividends. Is it possible to have a corporation as 1 director, 1 shareholder, and 1 officer who is the same person? – Yes – yes if the legation is set up correctly. It is affected to the phrase called "piercing the corporate veil".- in examples like fraud, where they lift the corporate veil and find individual liability past the corporation, VERY RARE, for 1 person all. A corporation, has perpetual existence (potentially forever existence)

Intellectual property- property is a bundle of legal rights which allow you to do things or prevent other people from doing things; land is "real property" in law; chattel are the real, tangible things you own, part of personal property. Intellectual property is an abstract concept. Ministered at a federal level. Where each country have their own laws on how to protect property in their country. IP is about creativity, ingenuity. What Is being protected is different.

1. Copyright- protects the expressions of creative work/product of your work… copyright Is automatic. Our notes are copyright to our creative ideas on how we write notes. ; prevents someone from copying; gave us a limited copyright of recording till class is done. Only type of IP which is internationally recognized by signing a treaty, respecting the copyright of everyone. Copyright lasts the life time of the author + 50 years and is then in the public domain, ex cheapest types of books are the classics. In Canada there may be changes in the future, software (under patent but right now copyright). Ownership is different than copyright. Usually tied to individual peoples. Software is protected by copyright currently in copyright (the source code)
2. Industrial Design- protects an appearance of something, shape, pattern… invisible to the naked eye, in normal use. Protects the uniqueness of like say your design of a cool chair.

Lifetime is 10 years. You must register for it and valid for 10 years and have to pay a repay a renewal fee after 5, but then after public domain.

3. Patent- like an industrial design, you must apply for it. It protects the functionality of a protect. Protecting how an end result is achieved, functionality of something; what is being achieved; how it does what it does. The idea is that you're applying to the government a full and detailed description to what it is. If your claims are found to be patentable, you are exchanged an monopoly to it. There are 3 things for it to be patentable:
    1. It must be new anywhere in the world. Ex. Keep things secret since then it's in the public, there's a 1 year grace period in Canada in the US or keep quiet. If you have to tell someone, you should make a confidentially agreement.
    2. It must be useful, in the sense that it serves a purpose; the functionality that is being protected.
    3. "Inventiveness" or "not obvious"- imagine someone skilled in the art that is being dealt with in the patent and that the person is aware of prior art. Like someone invented a pencil, then someone was like lets put an eraser on the pencil. No it shows no inventive step or creativity, so it is obvious. Lifetime 20 years from the date of registration then in the public domain.

4. Trade-marks- is a word or a phrase or a graphic or a combination of those things are that are meant to distinguish your goods and services from someone else's. The idea is source. Like watch companies which distinguishes watches between other watches. There is a trademarks data base: www.cipo.ic.gc.ca . only type of IP that are potentially infinitely valid. Valid from 15 years of registration, renewable definitely in 15 year increments. Don't have to register a common law rights- [like lets say only on Ottawa] in trademark. If you register a trademark it is national wide protection.

5. Trade-Secrets- no legislation dealing with trade secrets because the subject matter is a secret not like other forms where it is n the public. Some businesses must make the decision between trade-secret and patent. If you apply for patent protection you have your 20 year monopoly, but you can make the decision of making a trade-secret with how you trust with for that secret. Ex. Kfc's secret, pepsi's secret… the top 4 are the main for this course, trade secrets is more tied with patents ***

Example a blackberry smartphone, so we can have an individual object that has IP's.

Practise/ethics issues-

practise- refers to day to day administration of the profession. How it operates during the province.
ethics- revering two sections, 72 and 77 come from the professional engineers act in Ontario.

The act/piece of main legislation usually sets out the main general points having to do with a particular topic and the regulations are a type of sub legislation under a particular act which provides details.

Our governing body is the PEO. In the legislation it tells us the purpose and goals and functions in the legislation. It is to regulate the practise of professional engineering in order to serve and protect the public's interests.

The peo's main work can be divided into 3 main areas.

1. Licensing
2. Discipline
3. Enforcement

Fees mediation committee; who's main work is acting as a mediator and act as a catalyst as a positive between a dispute. Disputes would be about fees charged by engineers/engineering firms. Parties can appear in the fees mediation committee. Only added thing is: if the parties agree that committee will act as arbiter and render a decision.

FMC- deals with mediating work and fees between parties and disputes between fees. Added in legislation that if the parties agree that committee will act as an arbiter and render a decision.

"practise of professional engineering" – carrying out any act involving the application of any engineering principles where the safety and welfare of the public is involved. Excludes the work of a natural scientist; an exception.

In the beginning of legislation section 1 or 2 is usually a definition section.

Although some exceptions in the legislation only allowed to do that if you're licensed by the PEO.

In order to be allowed to practise engineering in the province you need a license.

A phrases used with engineering is "self-regulation" profession, PEO is composed of licensed engineers.

The PEO has 4 kinds of licenses it can grant.

1. **Types of Licenses (PEO given)**
   1- **General License →** the main general license to practice engineering in the province.
   There are 5 requirements to get a general license.
   There are no limits; it does not indicate what type of engineering.
   Five requirements (from the act) to obtain the license:
   1) Age of majority (18)
   2) Citizen/permanent resident of Canada

3) Have to have completed a recognized engineering program and have to pass the professional practice exam.
4) Four years of directed engineering experience →1 of the years has to be a "Canadian" year, and under the supervision of a PEng
5) Establishing good character through references.

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

3- **Temporary License:** Working in another province temporarily. Limited to a specific employer and specific project. →Must work under a PEng. Who will sign and seal your work. **Maximum of 12 months.** If project is yr and a half, you would have to reapply for the 6 months.

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

Section 72 – definition of professional misconduct

Section 77 – code of ethics

Will be given the copies of 77 and 72 on the exam

77- COE

72.(2).(g) – professional misconduct.

Lecture 9

Final exam: out of 70 marks, 2.25 -2.50 hours, 6 questions.

1st ques: practise issues
-select the set of questions that are A, or B. 8 marks
ex: who is a limited license intended for…

2- t/f- 2 marks

3- definitions: 5, define 4. 20 marks

4-lengthy explanations questions, 2 – 10 marks each

5- law hypothetical worth 10

6- ethical hypothetical worth 10

For practise issues, there is a seal. A seal shows that someone authorized by PEO either did or oversaw the work and is responsible for it. With seal comes signature and date. It is what you are granted in being allowed doing in engineering, like a business licence. To drive a care you need a licence, certificate of authorization (COA) for engineers. IT is necessary when someone wants to offer engineering serveries to the public. So if you're working full time as an engineer, then you do not require a certificate of authorization, just means its something that you can be hired out for. Larger engineering firms owns the certificate of authorization and people who are authorized to do so are under the certificate. You need a total of 5 years of experience to have a COA, if you are fulfill the requirements under the 4 years, then you can't get it unless you have 5 years.

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

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

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

Why have the seal?

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

Certificate of Authorization

It is like a **business license.** You need it to offer services; to do engineering work for the public.

Only PEngs are listed on it → Before being listed on a COA, you need **5 years of experience.**

2 exceptions of insurance:

Issues is always insurance. Normally require professional insurance. Normally when firms apply for COA, they say they have the right insurance. If you are dealing with highly dangerous authorities.. (nuclear…) so no insurances is not required. An exception.

Another exception: if you get written authority saying that you do not have insurance, and they sign it, then that is also okay.

Professional Indemnity Insurance

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

2 exceptions:

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

"consulting engineer"- you can only call yourself this if the PEO has given you that title, and has nothing to do with the work you do on a day-to-day basis. There are 4 requirements:

1. The full P. eng licence
2. Have to have 9 years of experience (includes the 4 you needed to get the PEO)
3. When you apply you have to be listed under the COA, and have to be active for 2 years prior to applying
4. Finally have to pass the test by the PEO

Means that on your business cards, yellow pages… you can use the name "consulting engineer". Has nothing to do with the work being done. You are not required to get it. Just a titled to be used, nothing about the functional amount of work you are doing.

Advertising

-there are restrictions about advertising engineering services, there are 4 of them:

1. Has to be accurate without exaggeration
2. Can't criticize directly or indirectly of another COA or employer
3. Can use NO image or partial image of your engineering seal
4. Can only be in a professional and dignified manner

Discipline and enforcement

Discipline-The discipline committee has at least 5 members (like a judge). Action the PEO takes against one of the 4 licence holders or CEO holders , the community is a trial for misconduct. All based on section 72, has the person committed professional misconduct. At the initial stage

it’s a self regulatory trial. if someone is found guilty for Personal Misconduct (there are 8 memorized for Pexam)

-suspended licence
-revoke take it away (licence)
-fine of $5000 per misconduct
-order you to provide an undertaking → legal document promising limiting work
-compel you to attend counselling.
- Impose terms or conditions on the license
- Order an admonishment or reprimand

-people only tend to discipline their own children… in engineering… only under the direct supervision of the engineers, only the CEO holders or licence holders [section 72]

enforcement- can be taken against anyone, it applies to everyone in the province, licence holders, COA or anyone else. A broader remedy. Proceedings are only brought into the **provincial court** (provincial offenses). Provincial offense brought against someone. 3 basis to bring enforcement against someone:

1. Practising Professional engineering without a license
2. Offering engineering services without a COA
3. Using the term engineering, professional engineer, seal, document… something that would lead the public into believing they are a professional engineer. Action can be brought up.

Punishments is fines; practise w/o licence or COA $25000 fine- subsequent offences are doubled.

If a subsequent offences force of action against someone, fines can be doubled. Example number 1 could be up to $25000 fine, then that could be doubled.

Sections 72 and 77:
72…

Section 72 and 77 overlap

A guidebook when faced with real problems in real life. A

72- judgement section, if you do this.. if you do that… then its …

If you look at 72,2,h – means undertaking work the person is incompetent to do

77.1.v – obligation to act at all times with competence

But 72 says if you talk about this.. then its misconduct.

If all you have done that falls under s. 77, then it's not professional misconduct.
72)2)a- negligence. Has a very particular meaning. Not supposed to talk about standard of care…

It's things that you are failing to do for what a reasonable prudent practitioner would have done in the circumstances. Explain how what person did fits under negligence then conduct that it is a misconduct 72.2a

72.2e

→f) using very precise extensive language to mean a straight forward idea "you as the engineer in the future, we have the technical know how on the work we are doing, and have knowledge that customers wont know. What f is getting at is that, if a client is proposing a change, they are the non-technical individual. You are allowed to say why if they are wrong. You're allowed to say.

g) is unique to 72-

k) a very specific form of g

k-presumes you have the licence or COL and you're just not following the rules.

l) has to deal with insurances and that you have to provide them with documents.

m) –idea that you have an obligation to ensure that only people doing work falls under work of engineering. –like helping a neighbour and say ya don't worry you got it don't waste money. Then the engineer could get in trouble for professional misconduct.

n) harassment-

very specific:

only 1 subsection that he a- make sure your license

77.6- have to be professional when engaged with others on a project

Ex for an ethical hypothetical will say under 77.6

77.7I) good faith

ii)

when all else fails, use 72.2.j) powerful section

77-is proactive; 72- standards people are judged by

Clear links of 77 and 72:

There will be at least 2 sub subjects, one in the code of ethics and one under code of misconduct -77.1.5)

Competence- very specific meaning " you don't have the education or experience to do that work " not a bad thing. They have had to have a lack of experiences, not that they did a bad thing. -77.1.4) on going obligation to keep up. Means that you have this on going obligation to keep up to date on the particular field. 4 and 5 related in that way together.

72.2.i) about conflict of interest [end of 77.3 up to 77.4] the diff is that 77.3 is specially about the obligations to your employer, and .4 is obligation to your clients. If its between a client and an engineer, then 77.4 and 72.2.i; if between employer…

77.5) about moonlighting, working for someone other than your main employer won your own time.; all comes from 77.5. it's about types of conflicts of interests. ; 72.2.i paragraph 4 relate.

In the code of ethics; 77.2.ii and iii)→ inappropriate communications; whenever you have an hypothetical talking with a client… think about what extents they apply. The differences between the two:

77.2.ii) about the content of statements themselves. Discourage untrue unfair or exaggerated statements.

77.2.iii) about the mind of the person making the statements; based on what you genially believe is true. But anything that is about communications and stuff is about these 2.

77.2.i.5)

77.1.i) paid to say something/in your own interest. "is it appropriate for engineers to donate their time on a charitable basis?" – well it says under _____

77.2.i) ranking; above all obligations; health…; welfare is paramount.
What is public welfare point out and state how it is affected. This is linked to : 77(1)(ii) with 77(2)(i)
72.2.b) under work which the practitioner is responsible, so in management position or unless was responsible for work don't talk about b.

c) isn't limited in anyway. We have an obligation, it is a professional misconduct if you believe that there may be endanger to public well being. Like you're driving and you see something that might be wrong on a bridge, you have to act and report the situation. ~very important for exam situation. We have to report that situation because of C, since we don't know what will ever happen when going to work, school…

d) when a law or official standard is being broken. Either work you are responsible for or in connection with work you are doing.

We have to be thinking of these three fact situations and how they apply.

What we're left with:

We have an obligation… don't talk about your employer, under 72.2.j)

77.7.ii) reviewing another engineers work for the same employer; it doesn't say that it can not give their permission. If connected to the same work, have to tell the colleague that their work is being reviewed. Cant just review it under their back.

77.7.iii) mal-evil intent your goal cant be to ruin the rep of a business or …. Also links to j.

77.7.iV) should be based on merit

77.8) if you believe that another practitioner is acting unprofessionally we have to report to an PEO, since ever profession is self regulating. Have an obligation to report it, if you FAIL to do that and stay quiet, and facts come out, but OUR failure to provide to that information, it is professional misconduct.

Next week: whistleblowing, moonlighting…

Read over the two sections this week, and try to familiar ourselves. Section is 10 marks out of 70 on exam.

-types of questions on vcamp we will discuss next week.

Lecture 10

First type of ethical hypothetical:

1. Whistleblowing
   -engineers duty to report; when an engineer is considered to contact for …. Bringing attention to something which people don't realize is happening. When an engineer discovers a problem which affects others eg pollution, causing cancer in the product line… what does one do. Have an obligation of fidelity to public needs. Ensuring that people are aware of the ingredients in what they are using. (77.1.ii) our duty to the public is a misuse and to ensure that …..
   -on the other hand, working in the business, you have an obligation of confidentiality working for your employer (77.3?)
   -public maybe negatively affected by engineer's work or what they have found.
   → obligation to public welfare is paramount; rules over confidentiality (consider **72(2)b,c or d**)
   →**Plan of action:**
   -must have meaningful communication with employer and/or client to fully articulate what is going on. (showing fairness to employer and/or client **77(1)(i)**)
   -if there is an illegal action, mention that you will contact the respective authorities as part of your action plan.

   -personal misconduct-if you know something bad is happening to the public and you do not act, you must act to stop the problem. If you are not, you're doing personal misconduct. (72.2.bcd)
   -the first thing you'll want to do is have meaning full communications with your employer for your concerns. Shows faithfulness and loyalty according to that section f act, and willing to take all the steps necessary you have met all of your obligations and confidentiality, without having to say something elsewhere. You can point out that if there is a standoff, and your employer wont do those things, you have the obligation to let the body at PEO since they have experience in dealing with these things. Using the PEO's assistance/experience. If illegal things, final thing to add is to let the authorities know. This type of problem is significant to the public if you have to do it.

2. Conflict of Interest
   -when we have a problem dealing with it, state it out right. This problem deals with conflict of interest and then provide a brief def. this is when someone has an interest directly or indirectly or obligation that could influence their decision. Then indicate "what is the conflict in this problem?"
   -if there is a conflict of interest between you and primary employer you must disclose 77.3 code of ethics, in definition of…

-conflict of interest 77.2.i, nowhere in there does it say that conflict of interests are bad; very important meaning we live in an interconnected world, the evil is not the conflict of interest itself, it is staying quiet in it. You have to ensure there is prompt voluntary complete disclosure. Keeping with this look at 5 specific types of coi(5 sentenses) is 72.2.i

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

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

3. Moonlighting
-doing work other than your employer on your free time. 77.5, shows how you should deal with moonlighting. 3 specific obligations talked in there:
1. have to satisfy yourself that your additional work wont conflict with your main obligations with your employer. (like competing work, or time consuming of your day to day job. Tired, unfocused…)
2. Says have to inform your main employer of your other (additional) work is taking place, to the extent the engineer is being honest to the first questions to the same extent the main employer wont have a problem with it.
3. Last section says that you have to give written notification to your employer of the work you are doing and any limitations to the work you are providing them. I am able to provide services a-d for you, but I cannot perform services d-n b/c of the work I have with my main employer. Prompt voluntary complete disclosure between employer and client, it is not personal misconduct.
-final thing of moonlight- always remember practice issue if you are working full time with an engineering firm and plan on working on your own you must obtain a certificate of authorization in their own name. and therefore professionally indemnity insurance.

Moonlighting: Obligations (listed in 77(5))
2 obligations to main employer:
(Failure to do so will result in breaking 72(2)(i) Professional Misconduct)

- Satisfy that the additional work will not conflict with your obligations to main employer's work
- Inform employer of the work (do not need permission though)

1 obligation to client:
(Failure to do so will result in breaking 72(2)(i) Professional Misconduct)

- Provide the client with written notification of your work and the limit of devoted time for them (77(5)).

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

Those 3 types of problems touch's on one of these things on the final ethical problem on the exam; also on the PEO exam. Where there are 3 on it.

Answering Ethical Hypotheticals in general:

When something doesn't fall into something clearly set out (those 3)
-start the discussion on the code of ethics:

→looking at what has happened in the question b/c we'll be asked if the person has a decision to make, or here are things what the person did and what should he do?
→ therefore start with the ethical questions on what we believe are relevant in the case
→ then if its on something that has happened, talk about professional misconduct.

-when making a reference to a section of code of ethics or professional misconduct, this is not an answer: "77(1)(iii)"

first- good idea to paraphrase of what is written in the section; put it in your own words for the meaning full things about what is happening. … the engineer has to go under 77…. Therefore meaning…. Using the relevant portions of the section, without listing all the things it falls under to. The (77(1)(ii)) should be a reference, put it at the end like a footnote. It's a final little asterix or where you're talking about. It is always an after thought.
ex: …. Paraphrase(77(1)(iii))… talk about all of them individually, not all together and the stuff at the end.

Talk about the answer in a meaningful way and that what you are saying is stated in the sections.

Think to yourself, if 77 and 72 didn't exist, now talk about it and then think to the stuff in 77.. which support to what you're saying.

Problems people get into:

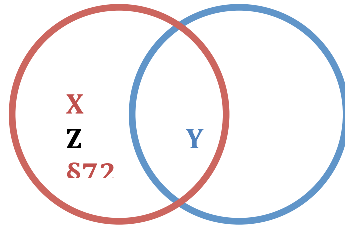
1. Next to no references of 72 and 77.

2. Not integrating stuff from 72 or 77 into the answer
3. Incorrectly using the stuff from sections of 72 and 77

Tomorrow will be posting answers to the ethical problems on vcamp.

Ethics (Handouts PEng Act §72 and §77)

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



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

X (Unique to §72) → Negligence

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

Y (Unique to §77)

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

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

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

Z (Overlap between 72 and 77)

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

  72(2)(h) ↙ Set of standards you are judged by

  77(1)(v) ↓ Always stated as a positive obligation

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

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

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

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

Definition of Professional Misconduct

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

Distinctions Between b,c,d

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

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

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

Triggering 72(2)(j)

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