

CH1 - Charter + Litigation

February 3, 2019 2:42 PM

Cues	Notes
What are the 3 levels of CDN Law?	<p>Nature of law: Natural rights</p> <ul style="list-style-type: none">• Inalienable rights from state law <p>CDN Law:</p> <ul style="list-style-type: none">• Constitution<ul style="list-style-type: none">○ Supreme Law• Legislation<ul style="list-style-type: none">○ Enacted by Parliament, PROV.• Common<ul style="list-style-type: none">○ Municipal, judge law
What's the diff. between TORT and criminal law? • A: Criminal law is against the state, TORT is private wrongdoing	<p>Private Law:</p> <ul style="list-style-type: none">• Deals w/ppl in context of "private" matter<ul style="list-style-type: none">○ Ex) Gov't as party to contract <p>Types of Private Law:</p> <ul style="list-style-type: none">• Contract: The establishment of contracts<ul style="list-style-type: none">○ How business is conducted• Tort: Private wrongdoing<ul style="list-style-type: none">○ Negligence/Intent <p>Canadian Constitution</p> <ul style="list-style-type: none">• Source of CDN Law (Primary)• Establishes CDN govt sys• Makes/validates rights & freedoms of ppl
What are some examples of residual power?	<p>★ Sec. 91 and 92 of Consti. Is ESSENTIAL!</p> <ul style="list-style-type: none">• 91: constitutional granted federal power• 92 " " " " PROV power <p>Ultravires: When gov't tries to legislate in an area out of jurisdiction</p> <p>Residual Power (92A)</p> <ul style="list-style-type: none">• Authority over subjects not mentioned in constit. Resides w/ federal gov't<ul style="list-style-type: none">○ Ex) Telecomm, air travel
What is the FED Legis Process?	<p>Legislation:</p> <ul style="list-style-type: none">• 2nd source of law• Law passed by parliament/province• Parliament law = All of CDA• Prov. Law = Only prov <p>Fed. Legis. Process:</p> <ul style="list-style-type: none">• Bill intro to HoC<ul style="list-style-type: none">○ Approved by majority of MP• Presented 2 HoC again• Presented in HoC tree times<ul style="list-style-type: none">○ Appr. And sent to senate○ Goes through same process w/senate○ GOV General SIGNS on it
What does MP stand for?	<p>PROV Legis. Process:</p> <ul style="list-style-type: none">• Same as parli• After senate, Lieutenant General signs <p>Subordinate Legislation</p> <ul style="list-style-type: none">• Statutes allow for more specific rules <p>Common Law:</p> <ul style="list-style-type: none">• Has 2 meanings

- Legal sys - Taken from England
- Particular Source/Type of Law
 - Judge rulings
 - Traced to 13th century
 - Main feature is "Legal Precedence"
 - ◆ "Stare Decisis" - Let the decision stand.
- You cannot negate legislative stature or constitution.

	Summary

In Class Practice for Midterm

February 8, 2019 4:25 PM



In Class Audio recording started: 4:31 PM February 8, 2019

Practice f...

1. Some dude got permit to build a building from City of Toronto
 - a. Building went onto your land

★ A: Tort afflicted - Trespass to Land

2. Your neighbor cuts grass super early in the morning of Sunday. You like sleeping in on the weekend. Can you complain? By regulation, grass must be cut by 6AM. Do they have a defense?
 - ★ a. Nuisance - Affecting your enjoyment in your land
 - b. You can just wait to cut ur grass
3. Parents bring kid to hockey hall of fame, bumps into Stanley Cup thing and falls down the stairs
 - a. Vicarious Liability of parent
 - b. Occupiers liability of Hockey hall of fame
 - ★ c. Standard of care depends on category of invitee
 - i. Ex) A trespasser can't claim any contrib negligence, but the occupier can't set boobytraps either
4. You're an IT company, your big client is Home Depot.
 - a. They call on Sunday, it's ur day off
 - b. Subcontractor goes out
 - c. Hits lawyers while going out

Principle: Vicarious Liability - Not liable as subcontractor is not an employee

- a. 2nd scenario; subcontractor not available, daughter goes instead
 - i. She hits lawyers instead
- b. CH 20
- c. TORT: Vicarious Liability - liable cuz she's your daughter

5. Mitch and Blair:

Are they partners?

- Blair has no access to bank cheques
- They're sharing profits
- Slide 15 has the checklist

6. RSU protesting sports thing at TRSM. You're late to ur class. They deny your request to go in the door.
 - a. Later, you sue the RSU for FALSE IMPRISONMENT
 - b. You could have gotten up to back of building
 - c. Can you win a suit against RSU?
 - d. How about reverse? You're stuck in building and they won't let you out

A:

CH 21 - Basic forms of business organizations

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Cues

Notes

Sole Proprietorship - When you license your firm as your name

- Owner is personally liable for all debts of firm
- Adv) Least costly to make/operate
- Disadv.) Unrestricted & unlimited personal liability of owner
 - Extends to even the person assets of owner
 - A barrier to raising capital

PARTNERSHIPS

General Partnerships

- 2 or more ppl carry on business w/ view to profit
- ★ Partnership Act s. 2
- Doesn't require a formality
- Essential Characteristics:
 - A partnership isn't legally separate from the partners, so:
 - Partner can't be a employee in partnership

★ S.24 Partnership Act

- Joint and personal liability
- ★ All partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses,
 - "All for one and one for all"
 - Ex) If u have 1 mil and ur partner has 0, someone suing your partnership can get your money
 - Liable for the obligation of others downfall
 - Contrarily, if u profit u get equal share of everything
- The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him or her,
 - (a) in the ordinary and proper conduct of the business of the firm; or
 - (b) in or about anything necessarily done for the preservation of the business or property of the firm.

Indications of Partnerships

- Shared profit&loss
- Joint ownership of property
- J contrib of capital
- J involent in business
- J access to relevant busi info

Rules for determining existence of partnership

- S. 3 PARTNERSHIP ACT
 - Joint Tenancy
 - Specifics not tested
- They rep each other as partners to each other
- Use partnership name for business stuff
- Hire staff for partnership
- They make a business address for partnership

Relations of Parts to Persons Dealing w/ Them

S.6 Partnership Act

- Power of partn to bind firm
 - Whatever a partner does using the name of the partnership for business, it is tied and binded to everyone else in the firm
 - Unless they have no authority to do so

Partner Bound by acts on Behalf of Firm

S.7 Partnership Act

Partnership Property

- Includes all property bought w/ partnship funds and donated to partnship from partn
- Must be used for partnship purpose
- Not transferable to 1 of partners or another person without approval of all partn

Liability of Partners

S.10 P ACT

- Basically saying all partners are jointly liable for other partners debt/losses

Partnership Legislation

- All provs have partnership legislation
 - Ex) Ontario Part Act
- Useful, but not comprehensive
 - Provides:
 - General rules to see if partnship exist

- General rules to see if partnership exist
- Rules for when actions of partner bind/don't bind partnership
- Nature of limits of liability in partnerships
- Rules for breaking partnerships

★ Partnership Agreements (Slide 15)

- Not required, but recommended to supplement/modify statutory rules
- If there's a dispute to existence of P, court will consider
 - Is there profit sharing?
 - Do they share losses?
 - Are there debt guarantees?
 - Is there joint ownership of property?
 - Joint mgt of business?
 - Is there stated intent to operate as partnership?
 - Is there joint filling of gov't docs?
 - Do they make reps to 3rd parties as a partnership
 - Do they have a partnership address?

Managing Risk:

- Critical Issue:
 - Under concept of joint/several liability, all partners are responsible for actions of other partn
 - Should ensure their partns are reliable and trustworthy (through background checks)

★ • Written partnership agreement includes:

- Purpose of partnership and rights, duties & liabilities
- Criteria for admission and expulsion
- Capital contrib. requirements
- Profit & Loss sharing arrangement
- Decision making process
- Provisions for monitoring performance
- Provision for checks and balances
- Dispute resolution process
- Provisions for mutual indemnification
- Criteria and procedures for partnership dissolution
 - Distrib of assets/sharing of losses

Managing Risk after Partnership ENDS:

- 1) Still liable if you continue to hold out as a partner or let someone else do that
- 2) Not liable if u didn't know you continued to b associated w/partnerships
- 3) Make sure your 3rd parties (banks, other companies) know of your departure
- 4) Delete all public reference to partn. Status (letterhead, signage, registrations)
- 5) Obtain indemnity (insurance) from partns for any post departure liabilities

Internal Organi

- Partnership statutes give default rules for regulating partns's relationships
 - Ex) share profits equally, joint liability
- If u want diff. arrangement, set it out on partnership agreement
 - Financial arrangement
 - Mgt. Structure
 - Busi approval requirements
 - Monitoring mechanisms

Terminating Partnerships

- Can terminate:
 - By notice of 1 partner to others
 - Death/insolvency
 - Completion of any special purpose partnership
 - Expiration of time limited partnership
 - If u go bankrupt, partnership dies

Priority of Claims on Dissolution of Partnerships:

- 1) Debts and liabilities to non partners
- 2) Debts to partners
- 3) Return of invested capital to partns
- 4) Any residual paid out to partn in accordance w/ partnership interest

Limited Partnerships

- Liability of at least 1 partns is limited/restricted
- "passive investors"
 - ★ ○ Only liable up to what u invested and contributed to
 - Doesn't do much to aid, as soon as they do they aren't limited
- Contribution of Limited Partner:
 - S. 7 - Can contribute money and property, but not services

- ★ Not everyone can be a limited, one person has to be a general partner

? What is indemnity?
 • Security/protection against loss or financial burden

? How can u determine if there's a limited partnership?

- Gotta file a form

?★ What is the only liability that a limited partner must shoulder?

- A limited partner is not liable for the obligations of the limited partnership:
 - except in respect of the value of:
 - money and
 - other property the limited partner contributes

Stuff that GP's can't do to LPs

s. 8 Limited Partnership Act

- do any act in contravention of the partnership agreement;
- do any act which makes it impossible to carry on the ordinary business of the limited partnership;
- consent to a judgment against the limited partnership;
- possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;
- admit a person as a general partner;
- admit a person as a limited partner, unless the right to do so is given in the partnership agreement; or
- continue the business of the limited partnership if a general partner dies, retires or becomes incapable as defined in the Substitute Decisions Act, 1992 or a corporate general partner is dissolved,

Holding out

S.15 P Act

- If u do all actions to remove urself from partnership, partner can't hold u liable

Liability of partnership for wrongs

S.11

- Any wrongful act done by a partner using partnership is liable by the firm to the same extent as the partner who committed it

Missapp of Money

S.12

- Basically if you use the money inappropriately, firm is responsible

Joint and Several liability

S.13

- Everyone partner is responsible jointly and severally for actions of the other partners

CORPORATIONS

- Most common form of organi
- Incorporation (Fed or Prov)
 - CBCA or OBCA (Canada Business Corp Act vs Ont. Busi Corp Act)
 - Req:
 - Articles of incorporation
 - Name
 - Class and number of shares
 - Etc.
 - Name search report
 - Fee
- **First Meeting of Incorp. Directors**
 - To issue shares of shareholders
 - Pass general bylaw
 - Nuts and bolts of corp
 - Ex) # of directors
 - Notice req. for director and shareholder meetings
 - Quorum of direct and shareholder meetings
 - Officers of CORPS
 - Shareholder agreement
 - Optional

Characteristics of Corps

- Given all powers of a seperate "legal person"
 - Company makes all the money, gives dividend to shareholders

Implications of Legal Personhood

- Shareholder can be a employee/creditor
- Corp existence/status unaffected by change in shareholders/directors
- Corps have separate income&tax
- ★ • Beauty of a corp - No personal liability!
 - Exception: company insolvent and needs to pay debts
 - Ex) Paying employees wages, paying revenue taxes, etc.

Separation of Ownership and Mgt.

- Shareholder elect directors, directors appoint officers to mng firm
- ★ • Legal responsibility resides w/ directors, not officers.

Corp Financing

- Dent Financing
 - Debt holder can sue for payment
- Shares:
 - Must provide 3 basic rights:
 - Elect directors
 - Receive dividends

- Receive prop of corp after dissolution/payment of debts

	Adv.	Disadv.
Sole Prop.	<ul style="list-style-type: none"> • Least Costly to establish and operate • Least costly to dissolve 	<ul style="list-style-type: none"> • Unrestricted + unlimited personal liability of owner <ul style="list-style-type: none"> • Can extend into even personal assets • Big barrier to raising capital
GPartnership	<ul style="list-style-type: none"> • Easy 2 start • COB carrying on business <ul style="list-style-type: none"> • Control over business • Entitled to all equity, share equal profit • Structure and admin of partnership can easily be tailored to suit needs • Easy to dissolve • Relation to LP: • Full control of business • Can pledge assets 	<ul style="list-style-type: none"> • Joint several <ul style="list-style-type: none"> • All for one and one for all • Each have unlimited personal liability <ul style="list-style-type: none"> • Concerning for partner w/ huge assets • Only financing vehicle is to borrow money • Disagreements concerning management = bad • No legal • Any1 can bind whole partnership • Liable for all losses • Fiduciary duty to act in best interests of partnership may conflict w/ other business • Relation to LP: • Almost all liability • Can't ask for increased shares
Limited P	<ul style="list-style-type: none"> • Only liable for what u invest • Passive investment 	<ul style="list-style-type: none"> • Can't be active • Limited Decisions • Can only contribute money and property, no services
Corps	<ul style="list-style-type: none"> • Easy to raise capital • Separate legal entity • Run by MGT • Can exist forever as long as it is through regulation • Can raise capital through selling stocks <p>Shareholders:</p> <ul style="list-style-type: none"> • Limited liability, only lose your share at worst • Can vote directors in/out • Given liability protection 	<ul style="list-style-type: none"> • Double taxations <ul style="list-style-type: none"> ◦ Must pay tax on income, after which shareholders pay tax on dividends received • Excessive tax filings: Bare paperwork fam • Independent mgt: Mgt can operate without any clear majority interest <ul style="list-style-type: none"> ◦ No oversight from owners • Board can take over your business even though you own it • Really expensive to form • Hard to create <ul style="list-style-type: none"> ◦ Lots of forms • Extensive rules to follow <p>Shareholders:</p> <ul style="list-style-type: none"> • Must pay tax on dividends received

★ Shareholders only get income through dividends, since corps have their own separate income&tax

★ Adv of Corps
Easy to raise capital!

? What are the pluses and minuses of each business structure?

Bill Ackman

- Example of how shareholders can have lots of power
- Increased stock by double in less than 2 years
- CPP Rails

PA

- Contribution of Capital
- Joint liability and profits
- Admission/retirement of partnership

Fact Scenarios:

John and Rita Partnership Fact Scenario:

- John and Rita are partners in a marketing firm, and each has invested \$15,000 in the partnership and is entitled to 50% of the profits of the firm. The firm is experiencing financial problems, so they have decided to dissolve the partnership. As of the date of dissolution the partnership has \$30,000 in assets as well as the following liabilities;
 - The partnership is in arrears of rent to its landlord in the amount of \$5000.
 - The partnership has an outstanding bank loan of \$10,000.
 - John has an outstanding loan to the partnership \$7000.
- In what priority is the \$30,000 of partnership assets to be distributed on dissolution?
 - ANSW:
 - RENT = 5
 - Debt = 10
 - John = 7
 - Total = 22
 - Assets = 30

- Residual = 22
- Total left = 8

- $8/2 = 4$

- Therefore, John and Rita get 4k each

Asd

Summary

Ch 7 - Contract Law

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NATURE OF CONTRACTS (Ch.7)

- Contract is an express duty
 - Entered voluntarily by 2 or more parties
- Tort vs Contract:
 - Tort is general and not req to have special relationship betw/parties
 - Contract rise only from special relationships
 - AKA - "Privity"
 - Tort = Backwards assessment
 - Contract = Forward assessment
- Process goes like 'Offer, Acceptance, Consideration'

	Source of Obligation	Privity	Damages
Tort	Imposed by law	No privity required. Enforceable against strangers	Designed to return the victim to the position before the tort occurred
Contract	Voluntarily entered into by the parties to a contract	Enforceable only against the parties to the contract	Designed to provide the contracted-for benefit

Contract Dmgs: Amt of dmgs req to place Pipa in place expected if contract had been fulfilled

- Expected value - Present value
 - 7k - 2k
 - Dmgs = 5k
- Tort ver.
 - Amt paid = 5000 - present value = 2000
 - Tort dmgs = 3000

Mutual Intention to Create Contract

- Arises if reasonable person thinks that parties intended 2 create legally enforced agreement
 - Reasonable person standard is objective
 - Not concerned with original intent of parties
- Context:
 - Commercial - assumed that parties intended for agreement 2 exist
 - Family - assumed that no legally enforceable agreement was intended
 - When your parents don't fulfill your promise, can u sue them?
 - Both are rebuttable - can have legal agreement betw/ family

Offer

- Contextualized, factual determinization
 - Can be formal and self evident, or determined by review of all facts/circumstances
 - Distinguish between offer vs invitation to treat
- Communication of an Offer
 - An offer must be communicated and received as an offer.
 - No particular form of communication is indicated.
- Revocation of an Offer
 - An offer **may be withdrawn** at any time prior to acceptance (revocation must be communicated effectively to potential offerees).
- An offer is *not* revocable if it included a promise to remain open for a prescribed period of time, and either:
 - The promise was placed under seal (deemed consideration); or
 - The offeree(s) paid for a commitment that it would remain open (e.g., purchased an option).
- Lapse of Time

- An offer may be expressly limited in time; otherwise, it will lapse after a reasonable period.
- What is “reasonable” varies with the nature of the industry, the subject matter of the proposed contract, etc.
- Rejection of the Offer
- Counter-Offer
 - The offeree responds to the offer by offering to enter into a contract on different terms.
- "Battle of the Forms"
 - Each party claims 2 have contracted over their own terms and conditions
 - Legal problem arises when contract is already formed

Invitation 2 Treat:

- Not an offer, but an invitation to make an offer
 - Ex) Items in a store are IoT
 - Ads in media are IOT
 - The critical question:
 - From the perspective of an *objective, reasonable person*, was the statement an offer or was it an invitation to others to make an offer?
- Rebuttable Presumptions:
 - Items in a store with a price are characterized as invitations to treat.
 - Advertisements in the media are characterized as invitations to treat.
 - They could always offer discounts, etc.
- Tendering Process:

Stages	Contract for the Process	Contract To Provide the Product or Service or To Do the Work
Call for Tenders	Offer to hold a fair tendering process	Invitation to treat
Submission of Tenders	Acceptance of the offer to hold a fair tendering process	Offer to provide the product or service or to perform the work
Contract Award		Acceptance of the offer to provide the product or service or to perform the work

Acceptance:

- *By Promise:*
 - Bilateral contract: Promise traded for a promise
 - Must be unequivocal, on prescribe terms in response to offer
 - Acceptance can be by words or conduct, silence can't be used
- *By Conduct:*
 - Saint John Tug Boat v Irving Refining
 - Saint Tub boat won since there's a long standing relationship between each other
- *Communication:*
 - *General Rule:* Effective when and where it is received by party making the offer
 - *Postal rule:* For non-instantaneous communication, acceptance is effective when and from where the party accepting the offer sends it. (Note: you are not responsible for the Postal Rule)'
- *By Performance:*
 - Unilateral Contract: An act is exchanged for a promise
 - Act must be response 2 offer
 - Case Brief 7.1 - Pg. 170 [Carlii v Carboloc Smokeball]
 - Tina Marries Hussein Case

Cases:

You be the Judge 3.1 Pg. 72 (CONTRACT DMGS)

- Goldstar Mgt Ltd v Varvis 1995
- Pipa buys artifact
- Pipa pays 5000 to buy an artifact
- Art collector wanted 7000
- Turns out item is not worth what was stated, rather it was only worth 2000
- How much are they entitled to?

Contract Dmgs: Amt of dmgs req to place Pipa in place expected if contract had been fulfilled

- Expected value - Present value
 - 7k - 2k
 - Dmgs = 5k
- Tort ver.
 - Amt paid = 5000 - present value = 2000
 - Tort dmgs = 3000

You be the judge 7.1 Pg 167 (Mutual Intention to Create Contract)

- Ticket fact scenario
- Eddie Kogen gives 8 tickets to buddy's business (Fobasco)
- Kogen takes tickets back
- Fobasco states its an annual basis contract, last for more than a year
- Been 10 years

Ans:

- No proof that Cogan intended to relinquish ownership of tickets by transferring to Fingolds name
- No clear statement of each party's right and obligations
- Lack of writing suggest arrangement wasn't contractual
 - Hard to tell even if it was contractual
- Difficult to conclude that it was intended to last forever, even tho arrangement was to last for more than a year

Hard 2 get blue jays tickets

Fact Scenario 1 (Invitation to Treat + Tendering Process)

- R v. Ron Engineering and Construction
- Authority for proposition that a call for tenders is both an offer and an invitation 2 treat
- Tender bid
- Is contract legally entitled to withdraw its tender and recover the deposit?

Answer - Can't withdraw it back cuz it would breach contract for tendering process

Fact Scenario #2 (Is there OAC?)

- 25 Hannah Avenue House Purchase
- Is there offer and acceptance, or invitation to treat?
- Plaintiff wants to buy a house
- On may 1918, P wrote: give me ur lowest price
- Defendant wrote: lowest price I would offer is 1650 (June)
- No further comm til Oct. 1919

Judge attached particular importance to words: "the price is the lowest I am prepared to accept. . . If it were any other party I would ask for more"

- Ruled that its set in stone

Fact Scenario # 3

Board of Directors and Ms Blair Fact Scenario

Blair v Western Mutual Assn.

- Court determined that miss blair was not legally entitled to retirement pay
- No evidence that intention of association to pay Miss Blair was communicated to her
- She wasn't a party to the contract
 - Was just there at the time

Cases and problems # 2 Pg. 184

- Tree removal
- IS there a mutual intention 2 create a contract +agreement on terms of contract by process of offer and acceptance ?

Regent Arms Case (Cases and Probs #6 pg 185) - (Acceptance: Communication)

- Ahmed faxes offer of 5 mil to Felicity ASAP on Thursday
- Felicity accepts offer in 4 days cuz she went to Medicine hat
- Since ahmed didn't hear it earlier, he sold it to another party on Saturday
 - Argument for F:
 - ◆ Was a firm offer to her which she accepted without qualification
 - ◆ Ahmed promise not to make similar offer to an1 else
 - ◆ At no time was offer revoked prior to her acceptance
 - Argument for A:
 - ◆ Promise not to offer the property 2 anyone else was gratuitous and without consideration, therefore not binding
 - ◆ Offer contained a req that she accept it ASAP, which she didn't
 - ◆ In view of volatile market, can be argued that time lapse went over

Cases and problems # 9 (Pg. 185) (ACCEPTANCE: By performance 'Unilateral')

- Tina marries Hussein
 - Could be rebuttable cuz its between family
 - Tinas dad says: u can live in the house as long as they keep the mortgage up
 - They do til mortgage is satisfied
 - Tinas dad gives full mortgage of house
 - Parents have a falling out
 - Dad revokes it back before 1 more payment req. to get mortgage
 - Too bad so sad
- Was there a mutal intention 2 create a binding agreement?
 - Obstacle 2 finding a binding agreement here is the presumption that agreements between family members are not intended 2 be legally enforceable
 - Can be interpreted as a unilateral contract
 - Acceptance requires completion of stipulated act
 - Technically mortgage is not paid off, edgar can withdraw offer
 - Can also be interpreted as a unilateral contract
 - In this instance there's no legal basis for it

Ch 8 - Considerations and Privity

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- Cues**
- ? Can consideration flow from existing contractual obligation owed 2 another party?
 - Yes, can constitute consideration for a new contract
 - Eg. Pg 192 - Quartet used same consideration (perform concert) for 2 separate contracts

 - ? Can consideration flow from existing contract obligation owed 2 SAME party?
 - No, cant make consideration for new contract between same parties

 - ★ Gilbert Steele v University

Notes

Consideration - Exchange of value by the parties to a contract

- Arises when party give/promises 2 give a benefit to other party
 - May also include incurring a loss or detriment
 - Or promising the other party(s) to incur a loss/detriment
- Must be sufficient (almost anything of value)
- Must be provided by all parties of a contract

Consideration Summary

Situation	Consideration?
Past Consideration	No
Pre-existing Public Duty	No
Pre-existing Contractual Obligation to a Third Party	Yes
Pre-existing Contractual Obligation to the Same Party	No

- Past Consideration
 - C already provided is NOT consideration
- Pre-existing Public Duty
 - Fulfilment of public duty can't be consideration for new contract
- Can consideration flow from an existing contractual obligation owed 2 **another** party?
 - Yep (Quartet used same consideration in 2 contracts)
- Can C flow from existing contract obligation owed to **same** party?
 - Nope

Enforceable Promises without Consideration

- **Seal**
 - Mark on contract confirming party's intention 2 be bound
 - Notwithstanding that other party may not have provided consideration
 - Ex) Guarantee of another party's debt under seal provides no benefit
- **Estoppel**
 - Rule preventing party from retracting/disputing statement previously made
 - Central London Property Trust Ltd v. High Trees House td (Pg. 198)
 - Owned lease from 1937 for 99 yrs
 - Rent out rooms for 2500
 - WW2 hit, promised to cut prices to 1250 (1939)
 - 1945, WW2 ends, landlord wants all rent back
 - Judge says he can bring rent back , but can't demand for all money back cuz of Estoppel

★ • **Promissory Estoppel req.**

- Promise by promisor
- Promisee reliance on promise
- Any inequitable behaviour by promisee
 - Didn't just run from deal
- Promise made within existing legal relationship

Enforcing a Promise to forgive a debt

- The promisor can retract the promise in regard to future events, provided it would not result in an unfair hardship to the promisee

Alternative Means	Grounds for Enforcement
Provide fresh consideration	<ul style="list-style-type: none"> • Promise to give something new • Promise to pay a lesser sum early • Promise to pay the same sum by cheque instead of cash
Legislation (in some jurisdictions)	<ul style="list-style-type: none"> • Actual receipt of a lesser sum with the intention of discharging the entire debt
Seal	Provides symbolic indication of the intention to create a gratuitous obligation.
Promissory Estoppel	<ul style="list-style-type: none"> • A representation that the right to collect the debt will not be enforced • The debtor reasonably relies on the representation.

- There has been no inequitable behaviour by the debtor.
- Undertaken in the context of an existing legal relationship between the parties.

Privity of Contract:

- Contract obligations can't be imposed on anyone who's not a party to a contract
- Contract benefits can't be received, with exception by anyone not a party to contract
- In general: only someone who has provided consideration can sue or be sued on a contract

1) Assignment:

- Modifications or exception to privity of contract rule
- Contract party (assignor) assigns its rights to another party
- Assignee steps into shoes of assignor and can enforce all contractual rights against other party
- Rule: If u transfer contract, still subject to equities
 - Ex) u owe TD 400. u pay 100, td transfers to scotia, scotia asks for 400
 - U only owe 300

2) Statutory Assignments

- Assignments that conform to a statutory requirement.
- Requirements for a Statutory Assignment
 - It must be in writing.
 - Written notice of the assignment must be given to the debtor.

3) Assignment by Operations of Law

Examples:

- Transfer of bankrupt assets to trustee in bankruptcy
- Transfer of administration of deceased estate to personal representative

4) Vicarious Performance

- A party may perform duties on behalf of another party.
- That is not a form of assignment, as the legal liability for the performance of the duties remains with the other party.
- E.g., employees, subcontracting

5) Trusts

- Refers to the administration of property by one party (trustee) on behalf of another party (beneficiary).
- Exception to the privity of contract requirement

6) Statute

- A number of statutory trusts have been created to permit beneficiaries to enforce contractual obligations (e.g., insurance policies).

7) Employment

- Ref. Case Brief 8.6, p. 206 London Drugs case.
- The Supreme Court of Canada established bases for employees' coverage by a limitation clause in a contract between the employer and a third party.
- Employees were expressly or implicitly included within the provision; and
- Employees were performing work required by the contract.

Cases:

You be the judge 8.1 (pg 190) - Consideration

- Igor is stock advisor
 - Client buys 100 grand of shares
 - Stock drops to 60 k
 - Broker firm has to sell out client for 40
 - Firm Threatens to sue Igor for 60k, but agrees to drop claim for 50k
 - Igor confirms deal (Offer, acceptance, consideration)
 - Igor couldn't find doc at first, but found it after
 - Said willing to drop if he gives 50k first, but he found the doc after confirming deal
- Answer:
 - Broker - U agreed to a deal before finding the doc
 - Company's promise not to sue for 60k was sufficient consideration
 - Igor - But with the policy, there was no claim at the start, therefore not liable
 - Consideration may not have been provided if firm didn't believe it had sustainable claim against Igor

Gilbert Steele v. University (Consideration)

- Gilbert sold steel to a university (100)
- Right after deal was made, supplier raised prices to same amt (80 -> 100)
- Gilbert asks if they can raise prices

- Univ promised that they would pay 120
- After delivered, Univ only paid 100
- Is new price enforced legit?
 - No cuz a promise means nothing
 - No consideration for a new contract between same parties
- Gilbert can put extra stuff (galvanize steel, etc) and can be considered as consideration
 - Sufficient value

Class 8 Fact Scenarios:

1) Dalhousie Campaign Fund v. Arthur Boutiller (Consideration + PE)

- a. Court concluded that promised donations didn't create enforceable contract
 - i. Cuz of lack of consideration provided by recipients
 - ii. Promissory Estoppel
 - 1) No PE, go through requirements

jhbvbjkhh

Cases and problems:

1) Goldberg Conservatory

- a. Announced making of a conservatory, accepting donations
- b. Sebastian promised donation to making conservatory 100,000
- c. Send cheque in a couple months
- d. Sebastian got financial reverses so he couldn't commit
- e. Goldberg conservatory sued
- f. Same as Dalhousie case, no consideration and promissory estoppel

Answer:

- i. For Seb -
 - 1) No consideration provided by conservatory. Didn't provide or promise anything in return for his promise
 - 2) They indicated they would build it before his donation
- ii. For Conservatory:
 - 1) Promissory Estoppel - Seb gave promise and would be unfair for him to go back on it

2) Hardy Construction (Pg. 208)

- H makes office for Schtick
- H uses Laurel Elec. for wiring (50 bucks)
 - Want another 20 cuz its 2 expensive
- H realizes that costs 2 much to make
 - Penalty if theres any further delay
- H promises LE the price change, but later refuses to pay LE extra 20

★ **Similar to Steel v University case**

- **LE could ensure** consideration by giving them alternative/extra stuff
 - Fiber optic vs copper

Answer:

- i. For Hardy:
 - 1) No consideration provided by Laurel electric for receipt of additional 20
 - 2) Neither provided nor promised anything in return
- ii. For Laurel:
 - 1) Promissory Estoppel

3) Blacksox Baseball (Pg. 209)

- i. Bs promises RD 100 worth of plans for new stadium
- ii. Government says NOPE, already got one

★ **Fact Scenario 2: Dunlop Tire Company - Privity**

- Dunlop sold tires to Dew and Company
- Dew and Company agreed to not sell below dunlop's list prices
 - Unless customers are legit engaged in motor trade, can give them 10%
- Dew and Company sold to Selfridge who after sold 2 tires below price
- Dunlop got mad

Answer: Can't cuz theres no privity

- Selfridge not a party of initial contract

Business Decision 8.1 and 8.2 (Pg. 202) - **ASSIGNMENT**

- Stetson Construction
- Stetson contracts to build cottage for Ahmed for 60k

- Stetson assigns it to Ne, gives them 55k
- Stetson broke contract w/ahmed using inadequate materials
 - Result: Ahmed had to spend 40k to find a new contractor
 - Therefore, Ahmed owes 60-40 = 20 k to Ne cuz of subject 2 equity

Central London Property Trust Ltd v. High Trees House td (Pg. 198) - Promissory Estoppel

- Central London Property Trust Ltd v. High Trees House td (Pg. 198)
 - Owned lease from 1937 for 99 yrs
 - Rent out rooms for 2500
 - WW2 hit, promised to cut prices to 1250 (1939)
 - 1945, WW2 ends, landlord wants all rent back
 - Judge says he can bring rent back , but can't demand for all money back cuz of Estoppel

ANSW: The dispute was decided by Lord Denning MR. He held that while original rent could be reinstated in future years, the plaintiff was estopped from retracting its promise to charge only half rent during the war. In other words, for the past years, the plaintiff's promise was enforceable even though it was not supported by consideration

Summary

CH 9 - Representation and Terms

February 3, 2019 2:42 PM

Cues	Notes								
<p>? P vs C?</p> <ul style="list-style-type: none"> Getting jordans and the sales person says it will look good when it doesn't (Precontract) Buying waterproof shoes and they aren't (Contractual) 	<p>Precontractual Rep - Statement by 1 party to other intended to induce that party to contracts</p> <ul style="list-style-type: none"> Not apart of contract False? <i>Misrepresentation</i> <i>Liar Liar Pants on Fire</i> <p>Contractual Term - Provision considered part of contract reppin legally enforceable obligation of 1 party 2 another</p> <ul style="list-style-type: none"> Part of contract False? <i>Breach of contract</i> <i>Statement that promises future performance</i> <p>Misrepresentation - Incorrect statement of fact when made</p> <ul style="list-style-type: none"> Possible legal Consequence: Tort, not BoC Precontractual Incorrect statement not always misrep <ul style="list-style-type: none"> Ex) Incorrect statement of belief/opinion Incorrect statement made w/out any contractual intent MISREP is an incorrect statement of an EXISTING fact. False when MADE. 								
<p>? When are some instances where an incorrect statement ISN'T a misrep?</p>	<p>For a precontractual statement to be considered misrep:</p> <ul style="list-style-type: none"> Innocent party must b induced 2 enter contract cuz of false statement Look at slides summary table 								
<p>? What makes a P statement considered a misrep?</p>	<h2 style="text-align: center;">MISREPRESENTATION</h2> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #0056b3; color: white;">Non-Factual Statements: Not Actionable as Misrepresentation</th> <th style="background-color: #0056b3; color: white;">Factual Statements: Actionable as Misrepresentation</th> </tr> </thead> <tbody> <tr> <td>Opinion based on speculation</td> <td>Expert opinion</td> </tr> <tr> <td>Description of a party's future intent</td> <td>Description of a party's present intent</td> </tr> <tr> <td>Statement of law</td> <td>Statement of legal consequences that have occurred</td> </tr> </tbody> </table>	Non-Factual Statements: Not Actionable as Misrepresentation	Factual Statements: Actionable as Misrepresentation	Opinion based on speculation	Expert opinion	Description of a party's future intent	Description of a party's present intent	Statement of law	Statement of legal consequences that have occurred
Non-Factual Statements: Not Actionable as Misrepresentation	Factual Statements: Actionable as Misrepresentation								
Opinion based on speculation	Expert opinion								
Description of a party's future intent	Description of a party's present intent								
Statement of law	Statement of legal consequences that have occurred								
	<p>Business Decision 9.1 (Pg. 214)</p> <ul style="list-style-type: none"> Answer: No cuz the architect just "gustedimated" <ul style="list-style-type: none"> Didn't measure, put a lot of effort into it 								
	<p>Nature of Misrep</p> <ul style="list-style-type: none"> <i>Silence as MISREP</i> <ul style="list-style-type: none"> General rule is that parties aren't obliged 2 disclose material facts can be excepted when it results in misrepresentation Distorts a previous assertion: Party must disclose any change in facts that would affect accuracy of previous assertion Statement is partially true <ul style="list-style-type: none"> Can't provide only a partial fact account if it alters accuracy of the circumstances Ex) It floods sometimes, but not that much Contractual Duty of utmost good faith <ul style="list-style-type: none"> Full disclose of all material facts is required having duty of utmost good faith 								

- Ex) Insurance contracts
- Special relationship exists between party
- A statutory provision requires disclosure
 - Ex) Insurance contracts
 - Domestic contracts (Separation Agreement)
- Facts are actively concealed
 - Can be considered as MISREP

Ethical Perspective 9.1 (Pg. 215)

- [Johnny Grievor]
- Wanted 2 be a firefighter but he was blind
- Hid that he was blind (Got someone to pass his eye test)
- Responding w/ a firealarm, he hit 2 ppl driving a firetruck
- His superior found out that he was blind in left eye
- He resigns, sued by deceased families
- He asks fire dept. to hire a lawyer, they say no

Types of Misrep - Look at slides

- *Innocent* - Made carefully w/out knowledge its false
- *Negligent* - Statement made carelessly/unreasonably that its false
- *Fraudulent* - Person knows statement given is false or has no reason 2 believe that its true/reckless

TYPES OF MISREPRESENTATION

Types of Misrepresentations	Elements of Proof	Remedies
Innocent Misrepresentation	<ul style="list-style-type: none"> • False statement of fact, or misleading silence • Inducing contract 	<ul style="list-style-type: none"> • Rescission
Negligent Misrepresentation	<ul style="list-style-type: none"> • False statement • Made in unreasonable or careless manner • Inducing contract • Causing loss not sufficiently remedied by rescission 	<ul style="list-style-type: none"> • Rescission • Damages in tort

TYPES OF MISREPRESENTATION

Types of Misrepresentations	Elements of Proof	Remedies
Fraudulent Misrepresentation	<ul style="list-style-type: none"> • False statement or misleading silence • Made without belief in its truthfulness • Made with intent to induce contract • Contract induced • Causing loss not sufficiently remedied by rescission 	<ul style="list-style-type: none"> • Rescission • Damages in tort

Legal consequences of misrep

- *Action for BoC* - Subs money for enforcement of contract
- *Act for Rescission* - Voids contract ab initio;
 - Returns party to before contract was made
- *Rescission* - Returns party to before contract was made
 - Usually an order or money
- *Barriers to Rescission*
 - Contract affirmed by misled party after discovery of misrep
 - Can't actually be brought back to pre contract position, always lose something
 - Affects a 3rd party
- *Dmgs* - Arises in TORT, not BoC
 - Calc on "Looking backward" basis
- *Expectation Dmgs* - Maya and the artifact

Contractual Terms - Statements that impose obligations of 1 or more parties under a contract

- *Express Terms* - Statement made by 1 of the parties that creates an enforceable obligation
 - Assuming that a reasonable person would believe it was intended
 - ET in writing cant be added or modified through oral (Parol Rules)
 - Exception to Parol - Oral evidence to fix a mistake
- Oral evidence is admissible (accepted):
 - To prove a contract was not formed/defective
 - Resolve ambiguities
 - To show document doesn't describe complete agreements between parties
- WHAT DO YOU THINK?
- Is parol evidence admissible in regard to the following express term and, if so, why?
 - "The Purchaser shall pay the vendor the sum of \$1,000 within a reasonable period of time after receipt of the goods from the vendor."
 - ★ Answer: Parol evidence may be admissible to determine what is meant by a "reasonable time period" if there is no other statement in the contract to indicate what it would be.

Interpretation of Express Terms

- Primary subject of contract obligation
- What do the words mean

Implied Terms - Terms in contract included by implication under common law/statute

- *Under common Law* - Implies a term into a contract if:
 - Obvious consequence of parties agreement
 - Required for business efficiency
 - Ex) Reasonable notice
- *By Statute*: - Various statutes are implied in a contract
 - Examples:
 - Implied warranties of merchantability and fitness for purpose
 - Incorporated into Sale of Goods Act in contracts
 - Minimum standards of employment
 - Incorporated by Employee Standards Act
 - *Standard-form agreements* - Mass produced standard form contracts
 - adopted for reasons of commercial efficiency and to provide for the essential terms under which the organization will offer its products and services to the market.
 - E.g) insurance contracts, mortgages, credit agreements, software licenses, electronic agreements
 - By definition: One sided. Party making SFA ensures that it's rights and desired limitations on its liability are included +properly described
 - Enforceable: AS long as provisions limiting/excluding liability has been brought 2 other party's attention

Cases:

[Hedley Byrne and Co v Heller] - MISREPRESENTATION

- Foundation for negligent misrep
- Req:
 - A person seeks advice or information from another in the ordinary course of business or professional affairs.
 - A fiduciary or contractual obligation to give such advice or information does not exist.
 - A reasonable person would assume that the party being asked for the advice or assistance was trusted for its skill, and its judgment was relied upon
 - he party providing the advice or information gave it without indicating that it accepted no responsibility for the advice or information.
 - As a consequence of the advice or information, the recipient suffered a pecuniary loss or damage

Business Decision 9.2 (P. 225 5th ed)

- Vancouver Business School
- Answer: In favour of the school
 - Term in contract allowed uni to change fees without any notice

Fact Scenario 1 - [RedGrave v Hurd]

Answer: negligent or fraudulent

Just look at FS online

Fact Scenario 2 - [Kupchak v Dayson Holdings]

Answer: Misrep to hotels earnings = Fraudulent

Rescission wasn't an option alone cuz responded couldn't return both properties displayed to them by appellants

Rescission ordered for uncompromised prop, compensation for compromised

Fact Scenario 3 [Leaf v. International Galleries]

- Rep of painting was a Constable was term of a contract, entitling the innocent party 2 dmgs/rescission

CH 10 -Contractual Defects

March 22, 2019 2:12 PM

Defective Contracts - A flawed contract (Something is wrong/incorrect)

- Not a breach of contract

Incapacity - Person lacks legal ability to go into a contract

- Age - Minors lack legal capacity
 - 18 in Ontario
- Not auto void if they're a minor
 - Rather, they're **avoidable** if you are a minor

Courts aren't always consistent in their judgements

- Can be valid or voidable
 - Req. ratification (legal consent) on minor attaining majority

Types of Incapacities:

Minor Incapacity

- Can be valid or void
 - **Valid** if: Necessities (Food, shelter, education), Employment
 - **Voidable** if: Not necessities (Luxuries), not employment
 - Employment: **VOID** if:
 - Elected
 - ASAP
 - Respond time after 18
 - If you don't do the three above, can be affirmed as **VALID**
- Not Minor? Immediately valid regardless of necessity

Mental Incapacity

- Might be void if they have legally declare they don't have mental capacity
- Can also be avoidable if they lack mental capacity at the time of contract, even without legally declaring so

If MI

- Either Declared vs Undeclared MI
 - Declared MI = VOID
 - Undeclared:
 - Either Other party should know they're MI = VOID
 - Other Party does not know MI = VALID
 - Must be voided within reasonable time
 - As late as you GAIN competency
- ★ • Would be declared **ONLY** if the question says they're legally DECLARED

Intoxication

Voidable if:

- 1) So intox you didn't know what you were doing AND;
- 2) The other party knew u were that intox
- 3) Elected ASAP

If Missing 1 or 2, then contract is valid

Valid if:

- Not Intox
- If Missing 1 or 2, then contract is valid
- If they affirm it (They delay saying so at the point of sobering up)

Entities (Not looked much in this course):

- 1) Corporations - Can be binding as they are a identity
- 2) Association - Not binding as they are not a legal identity
- 3) Indian Groups -Also not binding cuz they are not a legal identity

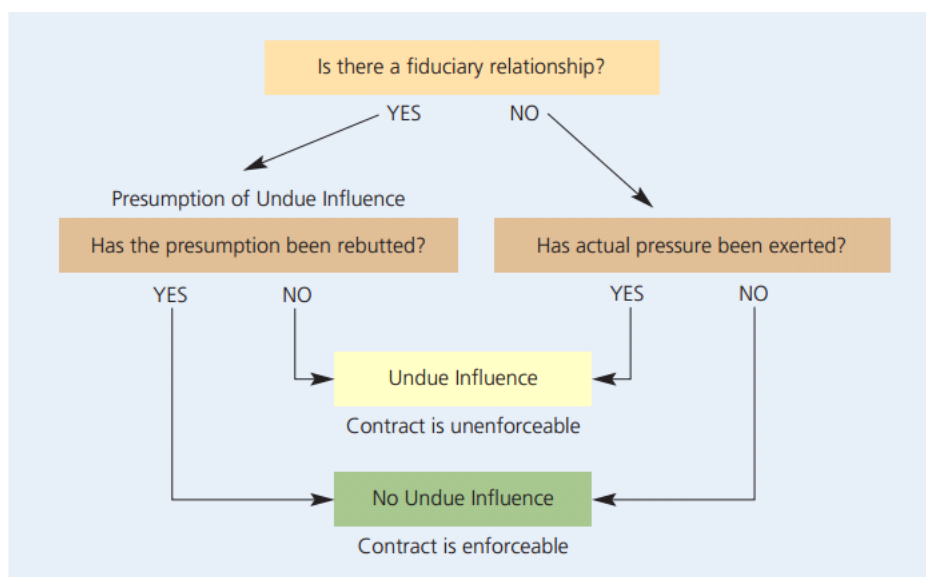
Absence of Writing:

- Contracts must be written, unless exceptions
- Exceptions:
 - Contracts that fall within Statute of Frauds
 - Certain consumer agreements
 - Hiring contractors, Door 2 Door Sales, fitness subscriptions

Protection of Weaker Parties:

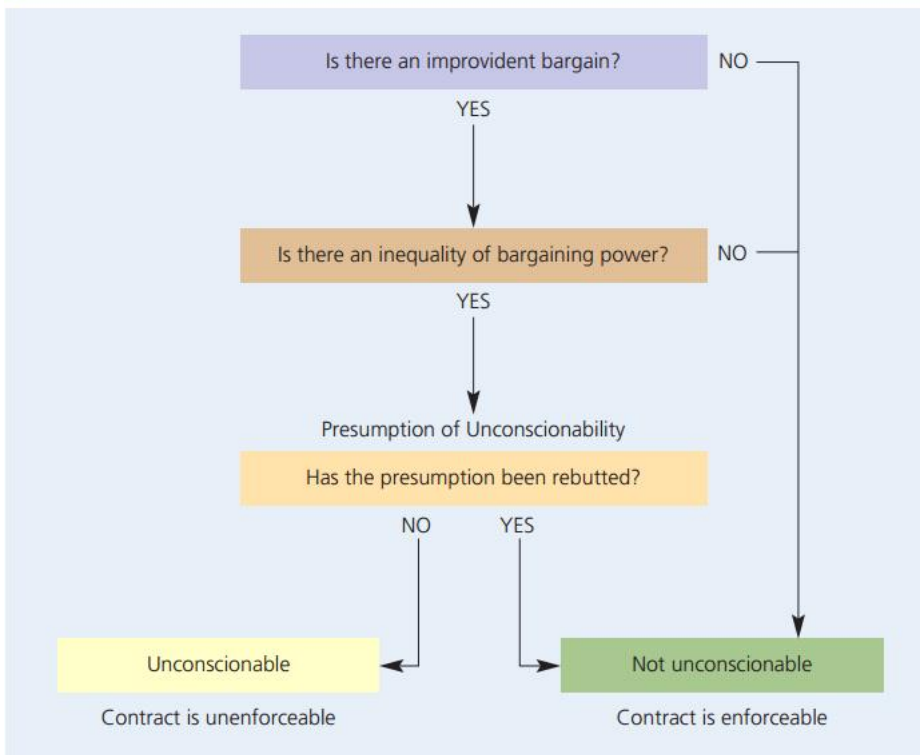
- *Duress*
 - Of a Person: Violence/threat of person
 - Sign contract cuz of gun at head
 - Of Goods: Seizure/threat of seizure of another party's goods 2 force a contract
 - "Sign or I break ur car/burn your house"
 - Economic: Entered into consequence of threatened financial harm
 - Factors:
 - Bad faith: only pressured cuz victim is economically vulnerable
 - Victim can't reasonably resist
 - Victim undertook remedial legal action
 - ★ □ Victim agreed 2 contract w/out legal advice
- *Undue Influence*
 - Abuse of Relationship in order to influence/induce into contract

FIGURE 10.1 Undue Influence



- *Unconscionability*
 - Agreement that is manifestly unfair and onesided
 - Improvident bargain (ex One lacking foresight, not looking ahead)
 - Inequality in bargaining positions
 - If above elements are present, there can be a rebuttal presumption

FIGURE 10.2 Unconscionability



- ★ • Big way to rebut a lot of defects = If the person tells victim to get legal advice from independent parties

Illegality

- Any contracts that are prohibited by statute = void
 - Can also be illegal by COMMON LAW
 - Ex)
 - Promote corruption, immoral sexuality
 - ★ □ Covenants in Restraint of Trade
 - ◆ Contract provisions that restrict party's ability 2 work/conduct business
 - ◆ Ex) You buy a firm from someone, they can't just use the money to create a similar business to steal clients/steal employees
 - Presumed Rebuttable if:
 - ◆ Restriction is acceptably limited in time&geography
 - ◆ Restriction protects a bona fide interest of employer
 - ◆ Restriction is not contrary to public interest

Contract Frustration:

- ★ • Tested on STATUTORY RULES ON FRUSTATED CONTRACTS
- Something happens after contract that makes it hard/impossible 2 perform
 - Contract comes to end automatically if frustration is proven
 - ★ ○ LOOK AT STATUTORY RULES IN TEXTBOOK
 - Ex) Ur paying a landlord to use their cottage on June 1
 - Thunderstorm hits the cottage and destroys it BEFORE contract is made = No frustration

Cases and Problems:

1) Pg. 262 - [Erin] - Minor Incapacity

- 17 Year old Erin buys a delivery truck for her small business
- Bearings for the truck burnt out in 3 months
- She tried giving it back but the dealership stated it was binding as it was a necessity

- d. What can Erin do?
 - i. Her delivery truck that she bought was used for her business, however the contract was not made specifically for the business
 - 1) Therefore not an necessity
 - ii. She tried give it back in 3 months, which is a good period of time
 - iii. She could be liable for the bearings, however it depends on if she did it herself or if the bearing was an pre-existing condition
- 2) (Case 4) [Michael] - Mental Incapacity**
- a. Michael has long psychiatric history
 - b. He applies for a credit card, doesn't understand whats going on
 - c. Racks up bare money in debt
 - d. Court makes him pay for it
 - e. Lawyer argues its voidable cuz its MI
 - i. Provided medical evidence to show Michael was incompetent before going into contract
 - f. Can the bank sue?
 - g. Answer: Michael is legally undeclared as the question does not state it. We cannot be certain unless we know that the party giving him the contract KNOWS he's MI or not.
 - i. Could have just signed up online without talking to anyone
 - ii. Therefore, the bank CAN sue but it's 50/50
- 3) Case 3 [Elwood] - Intoxication**
- a. Read it
 - b. Can't be voidable as he agreed to the deal after he was sobered up
 - c. Possible that he wasn't SO drunk that he didn't know what he was doing
 - i. Given a good deal, not taken advantage of
- 4) Case 11 [Mind Games Inc] - Economic Duress**
- a. There was bad faith: CompuNerd's threatened they would cut their staff if they didn't pay up
 - i. Also knew that Mind Games Inc. was economically vulnerable
 - b. Marinka couldn't reasonably resist as cutting the staff in half would make it so the project would not be finished by the deadline
 - c. Marinka didn't take immediate legal action
 - d. Marinka agreed without legal advice
 - e. Would have been binding if the Nerds offered extra materials for the increase in payment [Gilbert Steel Case]
- 5) Case 13 [Turner v. Bonli] - Unconscionability**
- a. Is there a improvident bargain?
 - i. Yes, Mr Bonli was very old and did not have the foresight (stated he was old and confused)
 - ii. In the 5 year lease, there's no interest meaning Turner can buy for 100,000
 - iii. Doesn't have 2 pay 100,000 right away, but can after 20 years
 - 1) Means Oli will be 113 years old
 - iv. Strong evidence that there is no foresight shown by Oli
 - b. Is there inequality of bargaining power?
 - i. Yes. Mr Turner was much younger than Bonli and also knew the amount the land was actually worth for
 - ii. Told bonli to come in at 7am because nobody was around to see their deal
 - 1) Easier to trick him
 - c. Can it be rebutted?
 - i. Can't be rebutted. Clear case
 - 1) Didn't give oli opportunity for legal advice
 - 2) Made sure ppl didn't know about it
 - 3) Knew about the value of the land without telling anyone
 - 4) Clear that there is improvident bargain + inequality of bargain power
- 6) Case 14 [Maya v. Coby] -Fiduciary + Intoxication**

- a. Doctor Patient relationship, not just a couple
 - i. Makes it an FR
 - ii. Also cuz she doesn't speak the language so she relies on him heavily
 - iii. Hard to rebut by Coby as he did not tell her to get legal advice beforehand
 - iv. Also on the argument on Intoxication, as she was "sedated"

CH 11 - Contract Discharge

April 15, 2019 11:25 PM

Discharge by Performance: Parties have fulfilled or completed their contractual obligations.

- *Time of Performance*
 - Party can perform obligation later if time isn't an essence
 - But can be liable for any loss incurred by the other party as a result of late performance
- *Tender of Payment*
 - Debtor is obligated to tender payment, not the creditor
 - Tender only needs to be made 1 time, then creditor has to seek payment
 - Interest doesn't accrue once reasonable tender is made
 - Payment by:
 - Debit Card: Direct transfer of funds. Can't be reversed once done
 - Credit Card: Loan to credit card holder 2 pay for goods/services
- *Substantial Performance:*
 - Party discharged once provided performance that is only SLIGHTLY defective (Rare)
- What if the performance is not substantial?
 - The consequences depend on the characterization of the contract.
 - Pay after each task completed vs. pay after entire contract finished

Discharge by Agreement

- *Option to Terminate*
 - Contract right of either parties to discharge w/out agreement of other
- *Condition Subsequent*
 - Provision stating that a certain event will end the contract
- *Condition Precedent*
 - Provision stating that the contract will only start after a certain event
- *Rescission*
 - If the contract is "executory" on both sides (the obligations are not fully performed)
 - it can be discharged by rescission; i.e., the parties agree to bring it to an end.
 - Can be expressed or implied
 - Cannot be unilaterally terminated once discharged
- *Accord and Satisfaction:* Occurs when 1 of the parties give up their rights for a new benefit (consideration).
 - If contract only executed on one side, then rescission isn't possible
 - Discharge of the contract may be affected by an "**accord and satisfaction.**"
- *Release*
 - Agreement under seal to enforce a discharge
 - Release is enforceable as the seal acts as a symbol for consideration
- *Variation*
 - Continuation/retention of contract but with varied terms
 - Needs new consideration from both parties
- *Novation*
 - Process for discharge of a contract and replacing it with another
 - Usually involves substitution of parties, not obligations
 - Req. the consent of all parties.
 - Req. consideration of discharge from previous agreement
 - Can be implied, but better in writing
- *Waiver*
 - One party gives up right to insist on contractual performance
 - Doesn't req. consideration
 - Can be written/oral, expressed/implied

- Courts req. clear evidence
- Can retract a waiver as long as:
 - Within good time-frame
 - Isn't unfair to other party

Discharge by Agreement Types

	Consideration	Usual Effect on Contract
Rescission	Each party gives up contractual rights	Termination
Accord and Satisfaction	One party gives up old rights – the other party provides fresh consideration	Variation
Release	Seal	Termination
Variation	Each party gives up old rights or provides fresh consideration	Variation
Novation	Each party gives up rights under old contract	Variation or replacement
Waiver	None	Variation

Type of Condition	Time of Creation of Contract	Effect of Condition
Condition Subsequent	Immediate	Discharge of existing contract
“True” Condition Precedent	If and when the condition precedent is satisfied	Creation of contract
Condition Precedent	Immediate	Suspension of primary contractual obligations until the condition precedent is satisfied

Discharge by Operation of Law

- *Frustration*
 - A contract becomes “frustrated” when events or circumstances make it impossible to perform, or the performance is profoundly different than originally contracted for.
 - As a consequence, the contract may be terminated.
- The contract automatically terminates as of the moment of frustration.
 - Frustration is not retrospective; i.e., it does not void the contract *ab initio*.
 - The rights and obligations accrued *prior to* the frustration remain enforceable.
 - It does *not* allow for choice; i.e., the parties cannot elect to continue the contract.
- *Lapse of Limitation Period*
 - Statutory limitations require any legal action for breach of contract to commence within a prescribed period of time.
 - The general limitation period in Ontario is two years from the date when the cause of action was discovered.
 - The right to maintain the action may be revived if the party in breach acknowledges its liability.
- *Bankruptcy*
 - A bankrupt is discharged from outstanding contractual obligations.

Discharge by Breach of Condition or Warranty

Type of Term	Effect on Innocent Party	Right of Innocent Party
--------------	--------------------------	-------------------------

Condition	Substantially deprived of contractual benefit	To discharge the contract for breach and claim damages, or to continue the contract and claim damages
Warranty	Not substantially deprived of contractual benefit	To continue the contract and claim damages
Intermediate	Circumstances determine whether it is substantially deprived of contractual benefit.	Circumstances determine whether or not it can discharge for breach of contract and claim damages, or is obliged to continue the contract and claim damages.

Discharge by Breach of Condition or Warranty

Types of Breach:

- *Defective Performance*: Failure to perform a prescribed contractual obligation.
 - Includes complete or partial failure to perform.
 - Performance failures which are minimal or trivial are not actionable for damages. (*De minimis non curat lex* – “The law does not concern itself with trifles.”)
- *Deviation*: Failure to act precisely as required by the contract.
- *Anticipatory Breach*: Indication by a party that it does not intend to fulfill a contractual obligation.
 - The innocent party may seek immediate relief.
 - If the breach is sufficiently serious, the innocent party may discharge the contract and take legal action for damages.
 - DiNardo Example (GOOD EXAMPLE OF HOW TO ANSWER FOR EXAM)
 - DiNardo – committed anticipatory breach
 - Refusal to honour price of \$14,000 is key
 - DiNardo could still have been performed at the price quoted
 - Couple would have had to waive strict performance
 - Couple mitigated damages by booking second venue
 - DiNardo could not revive terminated contract
- *Self-Induced Impossibility*: Performance of the contract is rendered impossible (frustrated) by the actions of one of the parties.
 - The innocent party may claim damages for breach.

Discharge by Breach of Condition

- The Effect of Discharge
 - The contract is neither voided nor rescinded.
 - The parties are relieved of the responsibility for future performance.
 - The contract survives for the performance of assessing and imposing liability.

Cases:

DiNardo Example (GOOD EXAMPLE OF HOW TO ANSWER FOR EXAM)

- DiNardo – committed anticipatory breach
- Refusal to honour price of \$14,000 is key
- DiNardo could still have been performed at the price quoted
- Couple would have had to waive strict performance
- Couple mitigated damages by booking second venue
- DiNardo could not revive terminated contract

Ch 12 - Contract Remedies

April 5, 2019 2:13 PM

General principles

Expectation Dmg: Money plaintiff expected to get under contract

- Forward looking
- ED = Expected benefits - costs under contract
- You be the Judge 12.1 p.297
 - Jose and Maria
 - Expected value of car 2 Maria = 7500
 - Cost remaining 2 be incurred to obtain benefit = 1000
 - Expectation Dmg = 6500

Intangible Loss

- No apparent economic value
- Case Brief 12.1 P 298 (Ed groves v. John)
Correct measure of dmg was 60000

Mitigation: Only recover unavoidable losses

- Must take reasonable steps 2 minimize losses done as a result of BoC
 - Failure 2 do so = denial of dmgs
 - Fact Scenario 1 (Donald Evans):
 - Evans req. to return 2 work for balance of his notice period in keeping with his duty 2 mitigate the dmgs arising from the wrong termination of his employment contract

Remoteness

- Innocent party cant claim dmgs if its too remote
- Dmgs remote if breaching party didn't know or wouldn't have reasonably known that may arise from BoC
- Victoria Laundry v Newman (Important case)
 - Defendants liable in dmgs for loss of new customers caused by delay in delivering the boiler
 - Not liable for loss of particular contracts w/ Ministry of Supply
 - They should have told them in the contract that they NEED the boiler on the due date cuz of a HUGE CONTRACT
- Cases and Problems No. 3 Pg. 315 (Classique Cars)
 - Too remote:
 - Classique Cars didn't know about the filming until after Adam told them
 - Would not have known reasonably
 - Mitigation: Did he attempt to hire another limo from another company?
- Other Cases: Potato Chip Case

Reliance Dmgs

- These damages restore the non-breaching party to its pre-contractual position.
- They comprise the monetary value of the expenses and opportunities wasted by the innocent party under the contract.
- This is conceptually comparable to the assessment of damages in tort ("look-backward" assessment).
- Typically, the non-breaching party either has not suffered any loss measurable by expectation damages or cannot prove such loss
- The innocent party generally is entitled to either expectation or reliance damages – not both.

- Fact Scenario 3: Bowlay Logging and Ursula case

Account of Profits

- The party in breach of contract is required to disgorge the benefit it obtained.
- The defendant has been enriched at the expense of the now-impooverished plaintiff, and justice demands a return to the previous state of equilibrium between them.
- Fact scenario 4 - George Blake

Nominal Dmgs

- Nominal damages are awarded when a breach of contract does not cause any provable loss to the innocent party.
- It is a symbolic award.

Liquidation Dmgs: Genuine estimate of the loss to the parties if the contract goes through

- Liquidated damages are contracted-for damages.
- Parties to the contract include provisions stipulating the damages to be awarded to the innocent party in the event of a breach of contract.
- To be enforceable, they must reflect a genuine attempt to estimate the value of the loss.
- Liquidated damages may be contrasted to contracted penalties, which are exorbitant amounts not representative of the value of the loss, and therefore not enforceable.
- Fact Scenario 5 (Bertram Bros) and 6 (Western Canada)

Punitive Dmgs: (VERY RARE)

- Punitive damages are awarded by the court to punish the breaching party for acting in a “harsh, vindictive, reprehensible and malicious” manner, and where the action of the breaching party constitutes a separate, independent actionable wrong (e.g., tort).
- They are not awarded to compensate the innocent party for a loss.
- They are in addition to any other damages awarded to the innocent party.
- Ref. Whiten v. Pilot Insurance Co., (2002) SCC; footnote 28, p. 306 (5th ed.)
- Class 10 Fact Scenario 7

Damages Summary:

Type	Purpose
Expectation Damages	To place the innocent party in the position it would have been if the contract had been performed
Reliance Damages	To compensate the innocent party for its costs under the contract
Account of Profits	To deny the breaching party the benefits of its breaching the contract
Type	Purpose
Nominal Damages	Symbolic acknowledgement of the breach of contract
Liquidated Damages	Enforcement of the parties’ estimate of the loss in the event of a breach of contract
Punitive Damages	Punishment of the breaching party by the court for <i>harsh, vindictive, reprehensible and malicious</i> conduct

Specific Performance:

- Rather than awarding damages, the court orders the breaching party to fulfill its contractual obligations.
- It is a discretionary, rarely invoked, remedy of the court where the court determines it is appropriate.
- Relevant factors
 - The conduct of the innocent party (it must have “clean hands”)

- Fulfilling the contract must not cause unfair hardship to the breaching party.
- Damages would not provide an adequate remedy.
 - E.g., a breaching party refuses to surrender to you the early 20th century heritage cottage in the Muskoka's that you purchased from him.
- Specific performance can be awarded only where it could also have been awarded against the innocent party.
- Specific performance will not be awarded where it requires ongoing judicial supervision.
- Specific performance will generally not be awarded to enforce personal service.
 - E.g., Taylor Swift would not be required to perform a concert at which she failed to appear in breach of her contract to do so.

Injunction

- An injunction is an order by the court that a party not do something that is prohibited by a contract.
- As with specific performance, it is typically not available where damages will suffice.
- E.g., Warner Bros. v. Nelson
- Page One Records v. Britten
- (Case Briefs 12.6 and 12.7 p. 310)

Exclusion Clauses:

- Commercial agreements typically include exclusion clauses.
- These provisions exclude or limit liability for one or both parties for breach of contract.
- They may apply generally to all possible breaches or be restricted to certain types of breaches.
- They are a vital part of commercial activity.

Unjust Enrichment:

- Unjust enrichment is a cause of action outside of a contract that requires the following:
 - Proof that the offending party was "enriched";
 - Proof that the innocent party suffered a corresponding deprivation; and
 - The absence of any legally acceptable reason for the offending party's enrichment.
 - Ref. Case Brief 12.8,p.313

Cases:

- You be the Judge 12.1 p.297 - **Expectation Damages**
 - Jose and Maria
 - Expected value of car 2 Maria = 7500
 - Cost remaining 2 be incurred to obtain benefit = 1000
 - Expectation Dmg = 6500
- Case Brief 12.1 P 298 (Ed groves v. John) - **Intangible Loss**
 - Correct measure of dmg was 60000
- Fact Scenario 1 (Donald Evans):
 - Evans req. to return 2 work for balance of his notice period in keeping with his duty 2 mitigate the dmgs arising from the wrong termination of his employment contract
- Victoria Laundry v Newman (Important case) - **Remoteness**
 - Defendants liable in dmgs for loss of new customers caused by delay in delivering the boiler
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- Cases and Problems No. 3 Pg. 315 (Classique Cars) - **Remoteness**
 - Too remote:
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- Would not have known reasonably
 - Mitigation: Did he attempt to hire another limo from another company?
- Other Cases: Potato Chip Case
- Fact Scenario 3: Bowlay Logging and Ursula case - **Reliance Dmgs**
- Fact scenario 4 - George Blake - **Account of Profits**
- Fact Scenario 5 (Bertram Bros) and 6 (Western Canada) - **Liquidation Dmgs**
- Ref. Whiten v. Pilot Insurance Co., (2002) SCC; footnote 28, p. 306 (5th ed.) - **Punitive Dmgs**
 - Class 10 Fact Scenario 7
- Warner Bros. v. Nelson - **Injunction**
- Page One Records v. Britten
- (Case Briefs 12.6 and 12.7 p. 310)

Best Cases!

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CH 7: Contract Law:

Cases and problems # 9 (Pg. 185) (ACCEPTANCE: By performance 'Unilateral')

- Tina marries Hussein
 - Could be rebuttable cuz its between family
 - Tinas dad says: u can live in the house as long as they keep the mortgage up
 - They do til mortgage is satisfied
 - Tinas dad gives full mortgage of house
 - Parents have a falling out
 - Dad revokes it back before 1 more payment req. to get mortgage
 - Too bad so sad
- Was there a mutual intention 2 create a binding agreement?
 - Obstacle 2 finding a binding agreement here is the presumption that agreements between family members are not intended 2 be legally enforceable
 - Can be interpreted as a unilateral contract
 - Acceptance requires completion of stipulated act
 - Technically mortgage is not paid off, edgar can withdraw offer
 - Can also be interpreted as a unilateral contract
 - In this instance there's no legal basis for it

Regent Arms Case (Cases and Probs #6 pg 185) - (Acceptance: Communication)

- Ahmed faxes offer of 5 mil to Felicity ASAP on Thursday
- Felicity accepts offer in 4 days cuz she went to Medicine hat
- Since ahmed didn't hear it earlier, he sold it to another party on Saturday
 - Argument for F:
 - ◆ Was a firm offer to her which she accepted without qualification
 - ◆ Ahmed promise not to make similar offer to an1 else
 - ◆ At no time was offer revoked prior to her acceptance
 - Argument for A:
 - ◆ Promise not to offer the property 2 anyone else was gratuitous and without consideration, therefore not binding
 - ◆ Offer contained a req that she accept it ASAP, which she didn't
 - ◆ In view of volatile market, can be argued that time lapse went over

Board of Directors and Ms Blair Fact Scenario (Intention to Contract?)

Blair v Western Mutual Assn.

- Court determined that miss blair was not legally entitled to retirement pay
- No evidence that intention of association to pay Miss Blair was communicated to her
- She wasn't a party to the contract
 - Was just there at the time

CH 8) Consideration + Privity

Gilbert Steele v. University (Consideration)

- Gilbert sold steel to a university (100)
- Right after deal was made, supplier raised prices to same amt (80 -> 100)
- Gilbert asks if they can raise prices
 - Univ promised that they would pay 120
- After delivered, Univ only paid 100
- Is new price enforced legit?
 - No cuz a promise means nothing
 - No consideration for a new contract between same parties

- Gilbert can put extra stuff (galvanize steel, etc) and can be considered as consideration
 - Sufficient value

Dalhousie Campaign Fund v. Arthur Boutiller (Consideration + PE)

- a. Court concluded that promised donations didn't create enforceable contract
 - i. Cuz of lack of consideration provided by recipients
 - ii. Promissory Estoppel
 - 1) No PE, go through requirements

Fact Scenario 2: Dunlop Tire Company - Privity

- Dunlop sold tires to Dew and Company
 - Dew and Company agreed to not sell below dunlop's list prices
 - Unless customers are legit engaged in motor trade, can give them 10%
 - Dew and Company sold to Selfridge who after sold 2 tires below price
 - Dunlop got mad
- Answer: Can't cuz theres no privity
- Selfridge not a party of initial contract

Central London Property Trust Ltd v. High Trees House td (Pg. 198) - Promissory Estoppel

- Owned lease from 1937 for 99 yrs
- Rent out rooms for 2500
- WW2 hit, promised to cut prices to 1250 (1939)
- 1945, WW2 ends, landlord wants all rent back
- Judge says he can bring rent back , but can't demand for all money back cuz of Estoppel

CH 9) Representation + Terms

[Hedley Byrne & Co v Heller] - MISREPRESENTATION

- Foundation for negligent misrep
- Hedley Byrne were advertising agents placing contracts on behalf of a client on credit terms.
- Hedley Byrne would be personally liable should the client default.
- To protect themselves, Hedley Byrne asked their bankers to obtain a credit reference from Heller & Partners ('H&P'), the client's bankers.
- The reference (given both orally and then in writing) was given gratis and was favourable, but also contained an exclusion clause to the effect that the information was given 'without responsibility on the part of this Bank or its officials'.
- Hedley Byrne relied upon this reference and subsequently suffered financial loss when the client went into liquidation.
- The court found that H&P's disclaimer was sufficient to protect them from liability and Hedley Byrne's claim failed. However, the House of Lords ruled that damage for pure economic loss could arise in situations where the following four conditions were met:
- Req:
 - (a) a fiduciary relationship of trust & confidence arises/exists between the parties;
 - (b) the party preparing the advice/information has voluntarily assumed the risk;
 - (c) there has been reliance on the advice/info by the other party, and
 - (d) such reliance was reasonable in the circumstances.

Seymour Cleaning - (Precontract, Collateral, Contractual, etc.)

Seymour is a supplier of custodial cleaning products. While negotiating a contract to sell a crate of floor wax, Seymour makes the statements below. Categorize each statement as (i) a pre-contractual representation, (ii) a mere opinion, (iii) a contractual term, or (iv) a collateral contract. Give reasons for your answers and describe the legal effect of each statement.

- a. "This floor wax is the best made anywhere in the world."
 - Precontractual
- b. "I personally truly believe this floor wax is the best made anywhere in the world."
 - A Mere opinion
- c. "Studies have shown that this floor wax is the best made anywhere in the world."

- Contractual Term
- d. "If, after trying this floor wax, you don't agree that it is unquestionably the best made anywhere in the world, I'll come and polish your floors myself for a month."
 - Collateral
- e. "If, after trying this floor wax, you don't agree that it is unquestionably the best made anywhere in the world, I'll eat my hat."
 - Lol

CH 12) Contract Remedies:

Victoria Laundry v Newman (Important case) - Remoteness

- Facts:
 - Victoria Laundry Ltd (VLL) ordered a large boiler from Newman Industries Ltd (NIL) in contemplation of some lucrative dyeing contracts.
 - NIL were aware of the nature of VLL's business, and that it was intended for the boiler to be put to use as soon as possible.
 - The delivery of the boiler was delayed by five months and VLL claimed for breach of contract.
- Answer:
 - Defendants liable in dmgs for loss of new customers caused by delay in delivering the boiler
 - Not liable for loss of particular contracts w/ Ministry of Supply
 - They should have told them in the contract that they NEED the boiler on the due date cuz of a HUGE CONTRACT

Final Exam Study Tips

April 15, 2019 11:27 PM

FINAL EXAM STUDY GUIDE

AREAS TO COVER:

- **Intention to Enter into a Contract:** Arises if reasonable person thinks that parties intended to create a legally enforceable agreement
 - Reasonable person standard is objective
 - Not concerned with original intent of parties
 - *Context:*
 - Commercial - assumed that parties intended for agreement to exist
 - Family - assumed that no legally enforceable agreement was intended
 - When your parents don't fulfill your promise, can you sue them?
 - Both are rebuttable - can have legal agreement between family
- **Invitation to Treat:** Not an offer, but an invitation to make an offer
 - Ex) Items in a store are IOT
 - Ads in media are IOT
 - The critical question:
 - From the perspective of an objective, reasonable person, was the statement an offer or was it an invitation to others to make an offer?
- **Unilateral Contract:** An act is exchanged for a promise
 - Act must be response to offer
 - Case Brief 7.1 - Pg. 170 [Carl v Carbolic Smokeball]
 - Tina Marries Hussein Case
- **Sufficient/insufficient Consideration** - Just read CH 8 notes
- **Express/Implied Terms**
 - **Expressed:** Statement made by 1 of the parties that creates an enforceable obligation
 - Assuming that a reasonable person would believe it was intended
 - ET in writing cannot be added or modified through oral (**Parol Rules**)
 - Exception to Parol - Oral evidence to fix a mistake
 - Oral evidence is admissible (accepted):
 - To prove a contract was not formed/defective
 - Resolve ambiguities
 - To show document doesn't describe complete agreements between parties
 - WHAT DO YOU THINK?
 - Is parol evidence admissible in regard to the following express term and, if so, why?
 - "The Purchaser shall pay the vendor the sum of \$1,000 within a reasonable period of time after receipt of the goods from the vendor."
 - Answer: Parol evidence may be admissible to determine what is meant by a "reasonable time period" if there is no other statement in the contract to indicate what it would be.
 - **Implied:** Terms in contract included by implication under common law/statute
 - Under common Law - Implies a term into a contract if:
 - Obvious consequence of parties agreement
 - Required for business efficiency
 - Ex) Reasonable notice
 - By Statute: - Various statutes are implied in a contract
 - Examples:
 - Implied warranties of merchantability and fitness for purpose
 - Incorporated into Sale of Goods Act in contracts
 - Minimum standards of employment
 - Incorporated by Employee Standards Act
 - Standard-form agreements - Mass produced standard form contracts
 - adopted for reasons of commercial efficiency and to provide for the essential

terms under which the organization will offer its products and services to the market.

- E.g) insurance contracts, mortgages, credit agreements, software licenses, electronic agreements
 - By definition: One sided. Party making SFA ensures that its rights and desired limitations on its liability are included +properly described
 - Enforceable: AS long as provisions limiting/excluding liability has been brought 2 other party's attention
- Interpretation of Terms
 - Look at Seymour Cleaning Case
 - Undue Influence
 - Abuse of Relationship in order to influence/induce into contract
 - Look at CH 10 for picture
 - Partnership ← general, limited, corporations (Ch. 21)
 - Look at Ch 21 Notes

QUESTIONS TO PRACTICE:

- Chapter 7: Q6
- Chapter 8: Q1, Q2, Q3, baseball stadium case
- Chapter 9: Pre-contractual representation Pg. 235 old textbook bottom of the page questions, Misrepresentation, Rescission, Q2, Q3 (Marina and Joe), Pg. 239 (boat renovation question)
- Chapter 10: Q8 (Fisherman), Q9, Q10, Q11, Q12
- Chapter 11: Q12 (Pool case)
- Chapter 12:

IN-CLASS EXAMPLE CASE 1

- The Toronto Maple Leafs and People's Jewellers sponsor each other and draft a contract
- The contract then goes under review by the legal team first
- Then during the season, People's Jewellers decides to switch to sponsor the Bruins
- No formal contract was ever signed but emails were exchanged, and they ran the People's ads during the season opener

IN-CLASS EXAMPLE CASE 2

- Five Guy's has a truck and they drive around Toronto selling fries and advertise it as organic grown in Ontario fries
- Potatoes must arrive by a certain date
- The farm that supplies the potatoes then says the crop hasn't been good and jacks up the price by \$2

Practice Questions

April 17, 2019 1:05 AM

CH 7: Q6

You are negotiating to rent an apartment from Island Property Management Inc. The person you are dealing with is

Arif. Arif says that he can offer you a discount of 50 percent off the advertised rent of \$1000. If you were concerned that

Arif did not have the authority to give you this discount, what would you do about it?

- Try to talk to someone that is higher authority
- Ensure that their offer is written, ensure there is proper consideration and acceptance
- Outside Legal advice?