BU 231

Business Law Notes

Section 4: The Law of Relationships

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Contents

These are my compiled notes for **BU 231 - Business Law, Spring 2024** with Keith Masterman. These notes represent mostly material from lecture slides and lectures themselves, and content from the textbook. Some internet sources were used to complement certain content.

To the above, the usefulness of each note may vary - I have tried my best to highlight important bits with bold or italic font, but ultimately please use your own discretion. Another important thing to note is that **no case-specific information** is included here unless the case is super important.

I absolve myself from being liable for any negligent misrepresentation or omissions that may occur from using these notes. If something is wrong, or if you feel something is missing, please tell me and I will update it whenever I get around to it.

These notes were written up in Typst.

1. The Law of Relationships

1.1. Agency

1.1.1. Definitions

Agency is a relationship between two parties - the **principal** and the **agent**. The agent acts on behalf of the principal to bring third parties into a contractual relationship with the principal.

Think of it as a system of 2 contracts - first, the contract between the principal and the agent detailing agency. The agency then aids the formation of a 2nd contract between the principal and third party. After this 2nd contract, the original agency contract ends (save for continuing agency ig) and the agent drops out of the equation, leaving only the principal-third party contract. This occurs 99% of the time.

There are a few types of agents - **dependent agents**, who act exclusively for 1 principal (ex. insurance agents for their company, employees in general), and **independent agents** who act as an independent business and work for multiple principals at once (ex. lawyers, stockbrokers). The textbook also mentions a **commission agent** who sells stuff on behalf of the principal, compensated through commissions.

1.1.2. Creating an Agency Agreement

1.1.2.1. Through an Agreement

The **Agency Agreement** is the contract between the principal and agent that outlines the relationship. As a contract, all the normal rules of contract formation apply, notably **capacity**. The Statue of Fraud also commonly applies, and performance over a year out requires it to **be in writing**. **Be sure to set out limits on your agent's authority** - if you can subcontract, timing, value of contracts you enter, restrictions on gifting assets, when to ask for permission, scope, etc.

Most commonly the agency is a **power of attorney**, authorizing the agent to sign documents on your behalf. These are important for you to be able to get financial and personal care in case you become incompetent, so you see them commonly as you get old.

1.1.2.2. Implied (Creation by Estoppel)

If the principal essentially allows the agent to behave like their agent, the courts can choose to imply an agency relationship if it is equitable to do so.

1.1.2.3. Ratification

If an agent without a principal or authority (where the principle of apparent authority does not apply), negotiates a contract on the proposed principal's behalf regardless, the principal can choose to later **ratify** the contract as their own, at which point the principal is bound to the contract and thus agency implied. If no ratification occurs, the agent is bound to the contract.

The ratification must be **timely**, of the **entire contract**, requires the principal to **be capable** of entering the contract at the time of formation, and the principal must be **ascertainable** at contract formation (the principal must exist, or be a company in the middle of being born). Conduct also works for ratification.

1.1.3. Duty of the Agent to their Principal

Basically, it's a fiduciary duty with extra caveats.

1.1.3.1. Duty of Compliance

Agency contracts are contracts and so are binding on both parties. Don't breach it. The Principal can sue if the agent acts outside their prescribed authorities

1.1.3.2. Duty to Inform

Agents need to keep their principal informed - the courts have deemed that anything the agent knows, the principal also knows, so you better keep it that way lest you become liable. This applies even if they become incompetent - just the content you would share would change.

1.1.3.3. Duty of Care

The agent must show the duty of care of a reasonable agent in similar circumstances, even without payment. Otherwise, that is negligence.

1.1.3.4. Duty of Personal Performance

The agent is expected to act **personally** - they cannot delegate their work without prior agreement. There are some exceptions though, when the nature of the relationship or trade use implies it is allowed.

For example, banks acting as agents to their customers may require a branch of a different bank to help service them in places they have no branches. If a corporation is an agent, it can only perform through its directors and employees - sub-agents.

As there is only privity between the agent and the principal, if the sub-agent breaches their contract, the principal will sue the agent, who in turn sues the sub-agent for recovery.

1.1.3.5. Duty of Good Faith

As part of the **fiduciary duty**, the agent must be loyal and act in the best interest of the principal, keeping their interests at the top of mind. No pocketing money or not taking better prices!

1.1.4. Duties of the Principal to the Agent

1.1.4.1. Pay them

Can be by commission, when the agent has introduced a prospective client who is "ready, willing and able to close the deal"; or upon closing of the sale.

Pay your workers for contracts to show consideration. If there is no express term, the agent is entitled to a reasonable fee as per the industry (quantum meruit in action!)

1.1.4.2. Cover expenses

There is an implied term that the principal will also reimburse all reasonable expenses when the agent **acts within the scope of their authority**.

There is no obligation to pay for unauthorized acts unless they are ratified.

1.1.5. Agent Authority

Authority is needed for the agent to be able to exit the picture when it comes to liability. So, what is it?

1.1.5.1. Actual Authority

Actual Authority is given **expressly** - orally or in writing in the agency agreement or subsequent documents/instructions; or is given impliedly - through implied terms, conduct, or commercial usage.

1.1.5.2. Apparent/Ostensible Authority

Apparent Authority is the authority a third party is entitled to assume the agent they are dealing with possesses. The authority is not real, but can be obtained through:

- Past manner of transacting business or trade custom: the third party maybe isn't aware the agent's agency no longer exists or does not apply here; or isn't aware they don't do things a specific way.
- **Holding out**: representing by words or conduct that a person is an agent of yours, or has particular authority. So the principal cannot deny liability in this case.

The test for Apparent Authority is "Should a reasonable third party have been aware of the agent's lack of authority, or at least been thought it was *sus*? Or, barring that, is it reasonable to assume the agency had the authority, given the business they are engaged in?".

If an agent has apparent authority, the principal is **still bound by the contract** even if they don't have actual authority. (In which the principal will sue the agent). Barring that, as a third party, make sure to do your due diligence on an agent's authority before doing business!

1.1.6. Rights and Liabilities of the Principal and Agent to the Third Part

1.1.6.1. When the Principal is Alone Liable

This happens when the relationship is functional. The agent acts with real or apparent authority, and the agent makes it clear they act for a principal (even if they did not disclose the exact identity of the principal!). If both of the above occur, the agent is no longer liable.

The principal becomes liable for payment and delivery **to the 3rd party** and not just their agent - if the agent, acting as deliverer, elopes with the money or goods, the principal remains liable to the 3rd party (and should sue the agent, presumably)

1.1.6.2. When the Agent is Alone Liable

If the agent represents themselves to be the principal (either failing to ratify or forgetting to mention they are an agent), they are fully liable and the principal has no rights or liabilities under the contract.

1.1.6.3. When either could be Liable

If the third party figures out that the principal-agent relationship exists, and the agent didn't make it apparent they were an agent, the third party can choose to sue either the agent or principal, but not both. If the principal is not known at that point only the agent can really be sued.

If the agent is successfully sued, the principal will have no liability. If the existence of a principal becomes clear during trial, the third party can choose to discontinue the action against the agent and instead go after the principal.

1.1.7. Rights of the Undisclosed Principal

An undisclosed principal has the right to enforce the contract when they can show the contract was made with their authority, and the authority was **real and not apparent** - if it was with apparent authority, they cannot ratify and enforce the contract at all.

There is also an exception that undisclosed principals cannot enforce contracts that are "essentially personal in nature".

1.1.8. Tort Liabilities

If an agent commits a tort, **both are jointly liable**. This is vicarious liability just like an employee or independent contractor.

For example, if an agent commits fraudulent misrepresentation (aka deceit), the 3rd party has the right to rescind the contract and sue both principal and agent. The principal has the right against the agent for the deceit, and the agent can also be held liable for the fraudulent misrepresentation.

1.1.9. Breach of Warranty of Authority

This is a **tort** - where a person falsely represents that they had the authority to contract on behalf of the principal. This can be innocent (when the principal went bankrupt, died, or lost capacity) or fradulent. The third party can bring an action against the agent for this tort to try to return all parties to the position they would be in if the misrepresentation did not occur.

The third party can sue for breach of warranty of authority when the agent had no real or apparent authority, as well as no ratification. **No contracts are formed** between the third party and the principal (due to lack of capacity) nor the agent (as that's how agency works), which is why this tort exists. The third party will also have an action of deceit against a fraudulent agent; and an action in negligent misrepresentation where the agent negligently misrepresents their authority.

1.1.10. Termination of an Agency Relationship

Termination can occur in one of the following ways:

- An end time specified in the agency contract itself
- Completion of the project for which the agency was formed
- Either party can give notice that they wish to terminate it and it will
- Either the principal or agent goes insane or d i e s
- The principal goes bankrupt
- An event occurs that makes performance of the agency agreement impossible (frustration?)

If no fixed time is specified, it is implied the agency agreement is terminated with one side giving reasonable notice to the other. However, if a time is set, early withdrawal is a breach of contract.

If the relationship is terminated with the principal dying, going insane, or going bankrupt, they should bring the termination to the attention of all third parties who are likely affected, as a precaution.

1.2. Franchise

Franchising and Agency can appear to have commonalities, allowing business to grow faster, and having a principal delegate work to someone else to their partial benefit. However, in law, these two relationships are different - franchisees are not in an agency relationship with the franchisor.

1.2.1. Definitions

The franchise relationship is contractual in nature, with the **franchisor** (the big guy) granting a license to the **franchisee** (the little guy), who pays for the license and operates the business independently, using its name and trademark in return for franchise fees.

This is a very special business relationship, completely determined by contract. It is **not a fiduciary relationship**, but there is a duty of good faith between the parties - they must be open, honest, and not misleading when interacting with each other.

1.2.2. Pros and Cons to Franchising

Pros	**Cons**
Marketing is covered for you	Limits on your creativity and autonomy
Free Goodwill (reputation)	Expensive. Royalties and Entering is $$$$$$$$
Training Support for your employees (nice)	Contracts are time limited. They can not renew.
Opportunities to Expand	No control over important business decisions
Lower Business Risks	Forced Supplier Lock In
	No Exclusive Territory Rights in cases

1.2.3. What's in the Franchise Contract

The **franchise agreement** is an agreement where the franchisor grants the franchisee a right to market the franchisor's products. It usually includes:

- **Consideration of the Parties**: Opening fees and royalties; trademarks and business practices.
- **Conduct of the Business**: How the business must run and look, be located, and what is sold, etc.
- **Termination of the Agreement**: usually requires franchisor consent to protect the franchisor.
- **Restrictive Covenants**: Limits on either party - exclusive territories, non-competes, etc.
- **Intellectual Property Rights**: Trademarks & business processes cannot be copied or misused.

1.2.4. The Arthur Wishart Act

As the relationship is contractual and there is minimal bargaining power for the franchisee, there is some law governing franchise agreements/relationships, mainly/only the **Arthur Wishart Act**.

- **Right to Disclose**: Within 14 days of the agreement, the franchisor should give a full financial disclosure of the franchise's economics. If not, the franchisee has the right to rescind within 2 years and then can be entitled to compensation if there is misrepresentation.
- **Fair Dealing**: The two parties owe a duty of good faith to each other, in performance and enforcement. But this tends to be a fairly weak defense with big business…
- **Right to Associate**: Franchisees are allowed to "compare notes" with each other and join an association amongst other franchisees, kinda like a union. Franchisors cannot prevent this nor penalize franchisees for doing so.

1.3. Employment

An **employment contract** outlines a contractual relationship where one party (the employer) is authorized to direct and control the work of another party (the employee). These contracts can be for an indefinite period (terminating only via resignation or firing) or be for a fixed period. They are governed by Statute (notably the *Employment Standards Act*), Labour Unions, and Common Law.

1.3.1. Independent Contractors and Employees

Whether you are an employee or an independent contractor matters a lot with employment - notably not creating the employer-employee relationship (so no suing for wrongful dismissal).

In general, it depends on how **integrated** you are into the workspace - more integrated = employee:

- An employee might be supervised and have control over workers, while contractors control their hours and own their tools to get the job done
- The duration, nature, and intention of contract formation can clue you in. Method of payment also matters - especially if it is a fixed wage or something.
- Employees could gain employment benefits, while contractors have exclusivity (?)
- Contractors bear the risk of loss when trying to profit, use their own time, and assume delivery of the result. Also, fewer/no taxes are levied against their paychecks and are not in pension plans.

1.3.2. Relevant Torts and Liability Stuff

1.3.2.1. Vicarious Performance

In contract law, although the employee may not be a signing party, their employer is. The employer (the company) is liable for breach of contract if their subcontractors (their employees) perform badly.

1.3.2.2. Vicarious Liability

The employer is jointly liable for any tort actions committed by employees. This also applies to independent contractors too! You cannot escape tort law it would seem.

1.3.2.3. Negligent Hiring

These are claims by customers or other employees against the employer for hiring someone else negligently. This tort is advantageous over vicarious liability as the “own frolick rule” doesn’t apply. Occurs when you hire someone without doing suitable tests for capability and damages occur.

1.3.2.4. Negligent Retention

This is a claim that the employer was negligent in retaining or supervising the employee. They later figured out you had issues yet kept you around. It differs from negligent hiring wrt when the issue was discovered - the issues were with the employee from the start for negligent hiring.

1.3.2.5. Wrongful Referral

Negligently referring someone to a professional who is not qualified. Usually, it is only a cause of concern if the employees refer **on behalf of the company** - personal referrals are fine, companies are just terrified of the potential legal consequence, enough to barely put anything down if they do write a referral. If they exaggerate, the other party finds out, and damages occur - the company could be liable!

1.3.3. Duties of the Parties to each other

The employee has a duty to obey (no insubordination), a duty to exercise skill and care in work, and a duty of good faith and fidelity (loyalty?) while employed. In turn, the employer has a duty to PAY.

1.3.4. *Wallace v. United Grain Growers*

This is a landmark case ruling underpinning Employment law. Wallace, a top salesperson at United Grain Growers, despite being assured job security till 65, was fired without explanation in 1986, and in a humiliating way apparently. Wallace sued for emotional distress and wrongful dismissal. The courts eventually ruled in favour of Wallace.

Before, the courts were pretty limited in when they said employers had a reason to fire. After *Wallace*, they were even more strict and read the reasons very narrowly. They recognized that employees needed protection in society due to the uneven bargaining power with employers and moved accordingly. Compensation needed for firing someone increased, and employers need to act in good faith when firing, lest they accrue extra ***Wallace* damages** in addition to wrongful dismissal damages.

The case also establishes a requirement of an independent actionable wrong (like a separate breach of duty of good faith in this situation?) for damages for mental distress to be awarded. Even if it falls short of this requirement, the notice period can be extended.

There are also now **punitive damages** if the firing was "sufficiently harsh, vindictive, reprehensible and malicious". One of the rare cases where punitive damages were given out over a contract.

1.3.5. Termination of Contracts (with Reasonable Notice)

Employment contracts are usually continuous in nature, so the usual method to discharge them is to provide some form of notice. Generally, the notice period required is governed by statutory and common law and is based on position and length of employment.

The rule is to be **reasonable** - how long will it take for the employee to find a new **suitable** job given their education, experience, and age; or how long it will take for the employer to find a new employee or fill the position internally (generally, 2 weeks notice).

Payment can also be given in lieu of notice - notice is either time or money. The money sum is the amount of compensation the employee would have earned during the reasonable notice period.

1.3.5.1. Amount of Notice Required

The ***Employment Standards Act*** often sets minimum requirements on notice. In addition, **trade practice** also often suggests longer minimums as the norm for each industry. Common law also dictates **reasonable notice** - time needed for the employee to find suitable alternative employment.

Trade Practice	Duration of Employment	Intention at Contract Formation
Frequency of Pay	Level of Position	

The above factors also determine the reasonable notice period. For instance, the contract could have clauses detailing compensation for termination for intention at contract formation; and high-level positions have fewer alternative openings, and so higher notice.

1.3.6. Termination of Contracts (Dismissal with Cause)

An employer **does not need to give notice** if they choose to **dismiss with cause** - when the employee's conduct amounts to a breach of contract, the employer can dismiss without notice and has no further obligations. Common law has classified a few types of breaches that are sufficient for this:

1.3.6.1. Misconduct

This is any crime or bad behaviour the employee commits either in or outside their employment. If either the employer's **reputation is put into disrepute**, other employees are affected, or the act causes direct financial loss, the employee can be dismissed at once. This does mean the employee does not need to cause direct financial harm - it is enough for the employer to no longer be able to trust them. Code of Conduct violations also count provided the employee is aware of it.

For instance, serious theft (not pilfering though), misappropriation of funds, or breach of the sexual harassment policy are all grounds for dismissal.

1.3.6.2. Insubordination

Wilfully disobeying a **reasonable and lawful** request from your superiors, makes sense.

1.3.6.3. Incompetence

All contracts will have express or implicit terms about your competence. For example, express terms of skill can be items on your resume, application, or interview that you say you possess (these are part of the contract! You both agree that you have these skills). Implicit terms of skill can include how you applied for the job in the first place - implicitly saying you have those certain needed skills.

There is also the **doctrine of condonation** - condoning incompetence (not firing them early/giving positive ratings) makes claims for dismissal increasingly difficult. You can't go back on your word that you are ok with it! Employers must also make an effort to **remedy incompetence** before dismissal.

1.3.6.4. Illness

If a permanent disability or constantly recurring illness inhibits the employee's ability to perform their work, the employer can consider the contract discharged. However, it is discharged **by frustration**, not breach - so the employer cannot recover damages from the employee. The employment of a person with disabilities can only be discharged after all possible ways to accommodate the disability are exhausted. EI and disability insurance help cover these issues.

1.3.6.5. How to Dismiss for Cause

Post-Wallace, employers should be very careful in how employees are dismissed:

- There needs to be **clear warnings** to the employee - multiple heads up, maybe with increasing consequences, along with opportunities for the employee to improve their behaviour.
- While they are still employed, they need to provide adequate training and assistance to rectify any shortcomings. Things like internal courses and such - employers must provide support.
- They should document the activities of both the employer and the employee, as they bear the burden of proof in the Courts.

Thanks to Wallace, employers must assist struggling employees and dismiss them with respect.

1.3.7. Wrongful Dismissal

This is a cause of action where an employee claims to have been wrongfully dismissed.

The only way an employer can defend this action is to say that either:

- They did have a cause for dismissal (which works even if a cause was discovered afterward)
- They were dismissed with adequate notice or payment in lieu of notice.

Employers recently have been very good at not being sued for this - they don't ask you to agree to the termination immediately to prevent undue influence and/or duress, and provide just enough compensation to make suing less favourable compared to the instant and no-risk compensation.

1.3.7.1. Constructive Dismissal is Wrongful Dismissal

Constructive Dismissal occurs when there is a substantial change to an employee's job that amounts to termination of the existing employment. This could be a demotion, geographic transfer, change in pay structure, etc. If done without notice this can constitute a wrongful dismissal.

1.3.7.2. Measuring Damages from Wrongful Dismissal

Damages aim to return the injured party to the position they would have been if the contract was complete - in this case, they would return the employee to a position where they were dismissed with notice. The damages here come from 3 sources:

1. **Legislative Requirements** from the Employment Standards Act have bare minimum pay. This applies only if the employer has a total payroll of over $2.5 million (aka big shots)
2. **Common Law Damages** for Wrongful Dismissal are estimates from the Court - what is reasonable notice for you to find suitable alternative employment? This figure is multiplied by the value of your employer's pay and all their fringe benefits.
3. **Punitive Damages** - also known as Wallace damages until recently, they occur from breaches of the implied term of good faith from firing.

Damages can also be levied for mental anguish (see *Wallace*), pain and suffering.

1.3.7.3. Damage Mitigation

Remember, as in all Contract cases, the Plaintiff must mitigate damages. This means job hunting!

The employee must try to obtain **reasonably comparable** employment, or else the damages award can be reduced. If the employee successfully mitigates, they will receive the difference between the Notice requirement and actual income paid during the notice period as damages, as well as special damages associated with the job hunt.

1.3.7.4. Mental Anguish and Damages

Courts generally do not consider hurt feelings as it is hard to assess the intangible "pain and suffering" and "humiliation", although there is recognition that while employment contracts are economic in nature, there is a human element as well.

I'm not sure what this builds to… perhaps this is why we have Wallace damages, which provide damages for mental anguish?

1.3.8. Employee Welfare Legislation - Worker's Compensation (WSIB)

While the common law recognized employers can be liable for injuries sustained during employment, it was notoriously hard to recover damages, with the employers having many defenses and employee dependants having a hard time showing sufficient levels of proof.

Each of the provinces replaced the common-law action with a **no-fault compensation scheme**. This only applies to certain businesses where the risk of injury is higher. Employers are required to pay into the fund, and injured employees can apply to get compensation through the fund. Contributory negligence, negligence, and assumed risk do not apply - the only way the claim fails is if the accident was shown to be caused by the employee's willful misconduct. An exception to the exception is if the accident causes death or permanent disability, to which the employee and/or defendants will be able to recover.

1.4. Secured Transactions

1.4.1. Definitions

A **secured transaction** generally is a loan or creditor where the lender acquires a “security” interest in collateral owned by the borrower. The lender is entitled to foreclose on or repossess the collateral in the event of a borrower’s default. Think of a collateralized loan.

In general, there are 3 ways to create a secured transaction:

- Contractual: make a contract for it
- Statutory: for example, not paying your mechanic allows them to repossess your car
- Common Law: notably **bailment** - the rightful possession of someone else’s property with the understanding it will be returned to the rightful owner later; or that they will follow the instructions of the rightful owners when asked. Basically borrowing.

In these relationships, the **creditor** is the loaner, and the **debtor** is the borrower.

A **collateral security** is an interest in the property of a debtor that gives a creditor the right to seize and sell it in the event of non-payment of debt. It is this collateral security that is given to the creditor.

1.4.2. Creditor Statuses & Priority

1.4.2.1. Secured Creditors

Secured Creditors have top priority when it comes to collection. They have the right to take possession of and sell specific assets in satisfaction of a debt. They **do not need a court judgment to seize assets**. They arise through agreements, statutory or common law rights.

1.4.2.2. Judgement Creditors

Judgement Creditors have obtained a judgment through the courts. They can obtain an execution order or writ authorizing the seizure and sale of certain assets by the sheriff. They also get examinations to discover where assets are and can garnish wages and so on.

1.4.2.3. Unsecured/General Creditors

Unsecured Creditors are creditors who have no security interest in any of the debtor’s property. No security means no right to seize any of the assets. They are paid out last.

1.4.2.4. An Example

Say the debtor pays $200k to get a mortgage on a house worth $1m. The bank loans out $800k. Now, they are a secured creditor for the loan, interest, and costs. Their security interest is the house.

Say the debtor defaults with $700k in outstanding mortgage with interest and costs. They also owe judgment creditors $125k and unsecured creditors $60k. The house is seized and sold for $750k, after subtracting the **cost of collecting** from the sheriff.

Secured creditors get all $700k of their debt collected, plus interest and costs. Judgment creditors collect the remaining $50k, leaving a $75k deficit plus interest and costs. Unsecured creditors get nothing, and the debtor gets nothing.

1.4.2.5. Security in Bankruptcy

When you go bankrupt, the order of priority is slightly different:

1. Secured Creditors, but of course
2. Reasonable funeral and testamentary expenses, if you happened to die in bankruptcy
3. Administration costs, including the expenses and fees of the trustee-in-bankruptcy - they must be paid for their work, and it's not like it's coming out of their own pocket
4. **Preferred creditors** - unsecured creditors who are preferred by legislation, like employee claims, spouse claims, child support, municipal taxes, and landlord claims
5. All other unsecured creditors.

1.4.3. Real and Personal Property

Real Property is land and anything **permanently affixed** to it, called **fixtures**. Land stretches from the heavens to the core of the Earth, and fixtures are determined by how difficult it would be to move it. **Personal Property** is basically anything that isn't real property.

1.4.4. Motivation for Secured Transactions

Creditors want to take a security interest whenever it is practical to do so. Here are some factors:

- It provides incentives to the debtor to pay, to prevent their assets from being seized
- The reduced risk allows them to sell to high-risk creditors while balancing their risk (more profit)
- Goods that maintain their value over time are usually better as a security against a loan
- Security interests work better for long-term debts, reducing long-term risk

Also a Business Risk Management thing - if credit amounts are small, it might be better to simply "write-off" a small percent of the bad debt than enforce the security. What, too expensive to collect?

1.4.5. Types of Security Interest

1.4.5.1. Conditional Sales Contracts

These occur when a sale is agreed to, but the legal transfer of ownership is delayed until the buyer completes scheduled payments. Think of payment plans for a fridge. You get equitable title in possessing the good, but true ownership remains with the creditor.

The creditor has the **right to repossess** the goods if the debtor defaults, as well as sue for any balance outstanding after said goods are resold (ex. loss from depreciation). They are also a secured creditor and have priority. However, they are **not entitled to use force** - the conditional seller must deal with the debtor with **fair dealing**, like giving 2 weeks notice before seizure. These contracts are often sold/assigned to third parties who specifically collect installments and administer the contracts.

1.4.5.2. Chattel Mortgages

Chattel mortgages are mortgages on personal property, between the **mortgagor** (debtor) and the **mortgagee** (creditor). They arise in 1 of two ways:

- The Mortgagor purchases an article of property and the vendor "takes back" a mortgage on the article sold. Title is transferred to the buyer with possession, and they are immediately charged with a debt to the buyer, who is the mortgagee.
- The mortgagor already owns the article, giving the mortgagee a mortgage against it to secure a debt. For instance, mortgaging it to a bank to pay for the article being mortgaged or some other different purchase.

Chattel mortgages are also commonly seen when a building is sold with its equipment and furnishings. 2 different mortgages would be taken out in exchange for a loan - a real estate mortgage for the real property and land, and an additional Chattel mortgage on all the equipment.

1.4.5.2.1. After-Acquired Property

Chattel mortgages on **after-acquired property** also exist, which is property acquired by the debtor after the debt is incurred. This is property that is non-existent at mortgage creation, which may include inventory. This is obviously a problem - who will buy your stuff if the bank has a right to repossess it?

The solution is that the mortgage does not transfer title to specific goods to the creditor, allowing purchasers to obtain good title in ordinary business. The creditor holds **suspended priority** over other creditors - meaning the rights of the secured creditor only kick in when they default. TLDR: It's not actually a problem - the seizures only happen after you default on your mortgage.

1.4.5.3. Floating Charges

A **floating charge** is a form of mortgage on all assets of a corporation other than those already charged. You'd take out a normal mortgage, a Chattel mortgage, and then floating charges.

1.4.5.4. Pledges

These are transfers of an asset from a debtor to a creditor to secure repayment of a debt. Think of pawn shop loans - you pawn something for money, securing your eventual repayment of that money.

1.4.5.5. Assignment of Book Debts

Through contract assignment, you can turn your accounts receivable into security interests.

1.4.6. PPSAs

Personal Property Security Act(s) are **provincial level acts** that generally cover the creation, perfection, and registration of everything that creates security interests - anything mentioned above, leases, consignments intended as security, and other less common forms.

The fundamental goals of PPSA are to:

1. Define and Standardize remedies a secured party has against a defaulting debtor
2. Create a system of registration to record and give notice of all secured interests
3. Define and set priorities between secured creditors and general creditors

1.4.6.1. Creation, Attachment, Perfection

Under PPSA, a security interest is **created** when the creditor and debtor enter some form of agreement or contract, under the normal 7 elements of contract rules. It's a contract that does the thing, ok?

Attachment is the moment in time when a debtor's property becomes subject to a security interest. This occurs when the security agreement is performed by both parties - value for the secured interest is given, the debtor had acquired a right to the interest beforehand, and the 2 parties approve the contract.

Perfection is the moment in time when a creditor's security interest becomes protected by law. This occurs when the secured party **takes possession**, OR once the interest is **registered with PPSA**.

1.4.6.2. Priority and Competing Interests

If 2 people have security over the same assets, the **first to register/perfect** their interest gets priority. The other person can still become a judgment creditor and sue - they just lose their right to the secured property. There is also special priority for **purchase-money security interests (PMSI)** - interests from when goods purchased by the debtor are charged as security as a loan to enable those goods to be bought. This is in place to get around floating charge security interests that may otherwise stall a business from being able to obtain new credit to finance purchases and unstuck itself. (Lest everything they buy becomes part of the floating charge and gets immediately taken lol)

1.4.6.3. Effects on Purchasers

1. **Possession and Ownership are separated**, which can mislead third parties and subsequent purchasers. Thus PPSA requires all goods that are security interests but in possession of the debtor to be registered, so go check.
2. After registration, a properly registered security interest **gives priority against innocent third parties** - as they are now deemed to have notice of the charge.
3. There is an exception for **good faith purchasers** - some provinces exempt good faith purchases of small value goods under $1000, as well as goods sold/leased in the ordinary course of business.

1.4.6.4. In Practice, Who Registers?

Low-valued retailers are unlikely to register, as it may not be worth the effort to register, sue and recover. However, manufacturers and wholesalers in B2B may register since businesses have higher risk and they want to maintain their priority. **Remember to maintain perfection if there are any changes to terms, or if it expires**.

1.4.6.5. Other Conflicting Priorities

Conflicts can still arise from interprovincial disputes, security interests outside of PPSA, and federal legislation outside of PPSA, like the Bank Act. Just be aware of these, I guess.

1.4.7. Intangible Property

Intangible Property are personal items of value that cannot be touched or physically held, like book debt, copyrights, patents, digital assets, etc. Can be owned by either individuals or corporations.

These can work as secured interests - assigning book debt creates a security interest in the debtor's accounts receivable, although, unlike true assignment of contractual rights, the assignment only occurs on default; Investment property (like stocks and futures contracts) gets special treatment under PPSA - they can be perfected by the creditor simply having "control" of the investment property, rather than physical ownership, as usually these are held in banks or other intermediaries. Priority goes to the creditor who first obtains control. Interests perfected by control get priority over registration.

1.5. Bonus Facts

1.5.1. Agent Criminal Liability

Agents can be criminally liable! There is this one harrowing case where the principal was an elderly widowed man and the agent (the next door neighbour's kid) gave himself the man's savings and put him in a nursing home where he was badly treated since he couldn't afford services at all. He got charged with fraud through an agency contract.

1.5.2. Why is Undisclosed Principal Allowed

Why do we let agents say, "I'm working for someone, but who it is is secret :3". This is allowed since disclosing the principal's identity might lead to higher prices, such as in the case of developers trying to accrue neighbouring plots of land to build a large thing on it.

1.5.3. Tim Hortons

Apparently, Tim Hortons always seems to have various lawsuits related to franchise lawsuits. Franchisees sue them a lot of the time and then due to the contractual nature of franchising and Tim Horton's coffers, they probably win. nice

1.5.4. Union Shops

A union shop is somewhere where all employees must be in a labour union to be hired. This means that their contracts may not be governed by common law? Since they bargained those rights away, ig.

1.5.5. Being Laid Off

Employers cannot fire someone during adverse economic conditions - even an express agreement in the contract to forfeit this protection is ineffective as it is in statute. Instead, some statutes allow for **lay-offs** - temporary dismissals with intent to rehire in the future, up to 3 months.

1.5.6. Powerful Bailments

Bailments changed a lot from what it was before - the burden of proof was much lower (just show you're in a bailment relationship and the defendant breached their standard of care), the duty of care was a lot higher (basically strict liability), and there was even a right to leave - after some time you could just sell the property? Or something? It seems to have tamed now.

1.5.7. Agreement to Award Priority

It is possible to agree to award priority over a secured interest to another party. This usually happens when a group of creditors decide internally their priority and lend as a group and they goofed up the priority order in some way.