

Environmental Law

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- Provincial Acts: Environmental Protection Act, Ontario Water Resources Act, Environmental Bill of Rights, Environmental Assessment Act, Clean Water Act, Endangered Species Act, Resource Recovery and Circular Economy Act
- Federal Acts: Canadian Environmental Protection Act 1999, Fisheries Act, Impact Assessment Act, Species at Risk Act, Migratory Birds Convention Act

Environmental Protection Act (ON)

- Prohibition against discharging a contaminant
- Approval for discharges
- Provisions over waste management
- Covers contaminated lands, motor vehicles, and spills

Purpose of the act is to protect and conserve *natural environment*

- *Natural environment*: includes air, land, and water in Ontario
- *Air*: open air not enclosed in a structure or chimney
- *Land*: surface land not in a structure, land covered by water, and subsoil
- *Water*: surface water and groundwater

Prohibition of discharge: a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the *natural environment* if the discharge causes or may cause an adverse effect

- Discharge: verb(add, deposit, leak or emit) or noun (addition, deposit, emission, leak)
- Contaminant: any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination resulting directly or indirectly from human activities that causes or may cause an adverse effect
- Adverse effect: could be
- Impairment of natural environment
- Injury or damage to property or plant/animal life

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- harm or material discomfort to person
- health of person
- safety of person
- rendering properly/life unfit for human use
- loss of enjoyment of normal property use
- interference with normal business conduct
- Each person who either discharges or permits the discharge of a contaminant into natural environment shall notify the Ministry if the discharge is out of the normal course of events, causes or is likely to cause an adverse effect, and the person is not otherwise required to notify the Ministry under Section 92.

No person shall do the following unless there is an Environmental Compliance Approvals (ECA):

1. Use, operate, construct, extend or replace anything that may discharge or could cause a contaminant discharge into any part of natural environment other than water
2. Alter a process/rate of production such that a contaminant may be discharged into natural environment other than water

Exceptions to ECAs include:

- routine maintenance
- road motor vehicles
- residential HVAC

If lower environmental risk, can be registered on the Environmental Activity Sector Registry (EASR) instead of ECA, such as:

- smaller air emission sources
- automotive refinishing
- commercial printing
- non-hazardous

If a contaminant is discharged in violation of EPA, a control order can be issued to the owner or previous owner of the contaminant source, person who is/was in occupation of the source of contaminant; person who has or had the charge, management, or control of the source of contaminant. Alternatively, if the Director believes that there is immediate danger to human life, health of persons, or to property, a stop order can be issued.

Responsibilities

- Corporations are responsible for acts done by employees who exercise their powers
- Every director or officer of a corporation has a **duty to take all reasonable care to prevent corporation from**
- Discharging or causing or permitting contaminant discharge in contravention of EPA w/o approval
- Failing to notify Ministry of discharge
- Penalties up to 10M for corporation, 6M+5yr prison for individual. Can also increase penalty if monetary benefit resulted from violation

Ontario Water Resources Act

Act covers discharges to water and requires sewage works approvals

- **Sewage works:** any works for the collection, transmission, treatment and disposal of sewage (not including plumbing)
- **Sewage:** drainage, stormwater, commercial wastes and industrial wastes

Fisheries Act

No person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water

Deleterious substance means:

- a. any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or
- b. any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state

that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,

and without limiting the generality of the foregoing includes

- c. any substance or class of substances prescribed pursuant to paragraph (2)(a),
- d. any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and
- e. any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c);

In the event of a spill, the MECP should be notified, there is a **duty to mitigate and restore**, and there is a statutory right to compensation. A **spill** in reference to a pollutant is discharge:

- into the natural environment
- from or out of a structure, vehicle or other container, and
- that is abnormal in quality or quantity in light of all the circumstances of the discharge

A **pollutant** means a contaminant other than heat, sound, vibration or radiation, and includes any substance from which a pollutant is derived, whereas a **substance** means any solid, liquid or gas

Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto:

- the Ministry;
- any municipality within the boundaries of which the spill occurred or, if the spill occurred within the boundaries of a regional municipality, the regional municipality;
- where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
- where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant.

- owner of the pollutant means the owner of the pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs
- person having control of a pollutant means the person and the person's employee or agent, if any, having the charge, management or control of a pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs

In the event of a spill there is:

- Duty to mitigate/restore: The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment
- Practicable means capable of being effected
- restore the natural environment, when used with reference to a spill of a pollutant, means restore all forms of life, physical conditions, the natural environment and things existing immediately before the spill of the pollutant that are affected or that may reasonably be expected to be affected by the pollutant, and "restoration of the natural environment", when used with reference to a spill of a pollutant, has a corresponding meaning
- Right to compensation: Her Majesty in right of Ontario or in right of Canada or any other person has the right to compensation, for loss or damage incurred as a direct result of, (i) the spill of a pollutant that causes or is likely to cause an adverse effect, ... or (ii) neglect or default in carrying out a duty imposed or an order or direction made under this Part; for all reasonable cost and expense incurred in respect of carrying out or attempting to carry out an order or direction under this Part, from the owner of the pollutant and the person having control of the pollutant
- Owner is not liable if they took all reasonable steps to prevent the spill or if they establish that the spill was an:
 - Act of war/terrorism or hostility by government of another country
 - Natural phenomenon
 - Act/omission with intent to cause harm by another party

Records of site condition

An RSC is typically filed so:

- The property owner would like to change the land use to be more sensitive (*industrial* to residential)
- Person filing the RSC can acquire certain limited protections against being issued *for* contamination

Completed as follows:

1. Compliant Phase 1 assessment is completed and there is no identified risk of environmental contamination
2. Compliant Phase 2 is completed and all contaminants of concern are found below the applicable Site Condition Standards, or a Risk Assessment is completed and accepted by MECP

Construction Law

Contracts

- Governed by common law
- Stipulated price or lump sum
- set price for project
- add ons/deductions can be included
- risk to contractor, less profit
- good specs required
- certainty over total cost for owner
- Unit price contract
- per unit price \$x per cubic meter of soil excavated
- used when lack of data
- risk shifted to owner (pay more than expected)
- Cost-plus contract
- cost to complete plus amount for overhead+profit
- percentage,lump sum, or bonus

Liens

- Statutory remedy that was created to ensure sub contractors, suppliers, and labourers are paid, despite no contractual relationship with the project owner.
- without a lien, an unpaid sub-contractor or supplier may only have a valid claim against the GC.
- governed by the construction act
- Once owner receives a notice of lien, payments to all other contractors and suppliers must stop.
- Constitutes a charge on the land (the project) impacts property rights
- Ultimate remedy is to force the sale of the land to satisfy debt

Either pay full thing, or set aside value + min(50000, 0.25*lien value)

Steps of Lien Action

1. Preservation

- register on title to the land/project
- electronic registry system
- within 45 days of event such as completion of work, termination of contract, etc.

2. Perfection

- Issuing a statement of claim, registering a certificate of action on the title of land
- Must be served on defendant within 90 days of issuance

3. Discovery, Cross examination, Info requests

4. Setting down for trial and pre-trial

- must be ordered for trial by the day following the 2nd anniversary of when claim was issued
- detailed problem analysis

5. Lien Trial

- Civil trial

Lien can be removed off title, sometimes stayed on title depending if its vacated or discharged.

Code and Permits

Must obtain a Building Permit before:

- Constructing any new building over 10 m² in area (including seasonal buildings)
- Making significant renovations or repairs or adding to a building
- Excavating or constructing a foundation
- Undertaking work regarding the installation, alteration, extension, or repair of an on-site sewage system.
- Applications for permits are reviewed by municipal staff to confirm proposed work complies with the Building Code and other applicable laws (ex. Zoning, Record of Site Condition rules).
- Complex permit applications can take up to 30 days.
- Refusals can be appealed to the Building Code Commission if it relates to technical compliance with the Code. If it relates to compliance with other laws (ex. the EPA), must appeal to a Court

Building code sets out uniform and minimum standards for building safety, including Health & Safety, Fire Protection, Structural Sufficiency, Construction Materials, and mechanical

Regulated Materials, Health, and Safety

Regulatory Law

Originates from a source statute (an "Act") which has been passed by the federal or provincial legislature.

- Generally concerns some aspect of public welfare protection (e.g. regulation of financial markets, food & drugs, the environment, etc)
- The Act will usually include:
 - One or more prohibitions (things a person may not do)
 - One or more obligations (things a person must do)
 - A requirement and process to obtain a license/approval/permit/registration for certain activities
 - The delegation of certain authority to government administrators/officersinspectors

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- Offence and penalty provisions
- The delegation of authority to make regulations.
- As was mentioned in Topic 5, failure to comply with an Act may be an offence that can be prosecuted by the Crown in accordance with the outlined criminal procedure.

Regulations

- Unlike Acts, Regulations are not voted on by Legislatures.
- Regulations are "enacted" by the executive branch under the authority granted in the governing Act.
- Regulations set out more detailed rules designed to fulfil the aims and purposes of the governing Act.
- A Regulation may only include rules that are consistent with the governing Act.
- In most cases, failure to comply with the provisions of a regulation is an offence subject to prosecution and penalty.

Regulatory Orders

Authority to "issue" order must be granted by the governing Act

The governing Act will set out:

1. Who an order may be issued to (may include multiple classes of persons)
 2. When an order may be issued (i.e. the circumstances that must be met as a precondition)
 3. What the order may require the person to do or not do (the "scope")
- Obligation to satisfy an order is typically "joint and several"
 - Orders can often be appealed to an administrative tribunal and then to a Court
 - Non-compliance with an Order is an offence.

Approvals

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Where an activity involves a risk of harm to public or environment (P/E), approvals will be required (also called Licenses, Permits, Authorizations). They could involve conditions that must be complied with. An appeal can be made if one is denied.

The point is that a person should not be allowed to conduct the activity without the Approval. Doing so would be an offence, subject to prosecution and penalty.

Regulatory Law

Act includes regulations, orders and offences, as well as approvals/registrations (under regulations)

Regulations include guidelines/codes and approvals/registrations

Guidelines & Codes

Guidelines:

- Not legally enforceable
- Plain language guidance to help with compliance

Codes:

- Could be legally enforceable
- Some Regulations include Codes in the law
- Typically highly detailed and technical

Professional Engineers Act (PEA)

The PEA includes Regulations 941 (General) and 260/08 (Performance Standards)

Reg 941:

1. PEO Governance

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2. Licensing
3. Seals, Titles, Designations
4. Misconduct and Code of Ethics

Reg 260/08

1. Building Construction
2. Drinking Water Systems
3. Environmental Site Assessment
4. Tower Crane Inspections

34 Different PEO Guidelines are subjacent to the regulations.

Regulated Materials

Certain things are regulated under the law. For manufacturing, industrial, construction some regulated materials are of particular importance. Namely those that pose a risk to P/E at any stage in lifecycle.

Manufacture/Import of Chemical Substances

Governed under Canadian Environmental Protection Act (CEPA). Substances that pose a risk to P/E included in List of Toxic Substances, whose import/export and use/sale may be controlled.

Contrarily, substances on the Domestic Substance List can be imported with impunity. If it is not on DSL, there are limits.

Limits to substances not on DSL can be circumvented with a New Substance Notification, including studies on P/E impacts and safety info.

Failure to comply with the regulations/act is obviously an offence.

Hazardous Products

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Workplace substances are regulated under Hazardous Products Act. The regulatory system is WHMIS. It sets out requirements such as Labeling and SDS. Selling a product without SDS and labelling could be subject to prosecution and penalty. Employers must keep up to date SDS and labels and provide education.

Transportation of Dangerous Goods (TDG)

Regulated federally and provincially. Detailed requirements set out in regulations. Shippers must determine the class of the goods.

Dangerous goods can only be shipped if:

- Required container and packaging were used
- Required labels are used
- Required papers have been completed
- Emergency Response Assistance Plan prepared

Hazardous waste is provincially regulated; in Ontario, EPA and Reg. 347 cover waste management

- The establishment and operation of a waste management system or waste disposal site requires an approval or registration under the EPA.
- For hazardous wastes, the person who generates that waste is required to characterize the waste (ie. What "waste class" it is) and register as a generator with the Hazardous Waste Information Network ("HWIN").
- Hazardous waste may not be stored at a facility for longer than 90 days or more without provincial approval.
- The movement of waste is followed by documentation known as a "waste manifest". It is tracked from the point of generation to the point of disposal/treatment/recycling.
- Federal Permits are required under CEPA and its regulations where hazardous waste is to be imported or exported into or out of Canada.
- Failure to comply is an offence, subject to prosecution

Occupational health and safety

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- Workplace health and safety is regulated by the provinces, except where it concerns employees of the federal government and its undertakings.
- In Ontario, the Occupational Health and Safety Act ("OHSA") is the governing Act.
- There are 26 different Regulations enacted under OHSA covering a range of topics and specific workplaces and issues.
- OHSA and its Regulations are administered by the Ministry of Labour.
- OHSA is principally designed around a series of "duties" (i.e. obligations) that are applicable to various different classes of persons (constructor, employer, worker, owner, supervisor, etc.).
- OHSA grants inspectors a range of order making powers in cases of non-compliance and safety concerns.

Constructor: person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer. The constructor shall ensure that:

1. The measures and procedures prescribed by this Act and the regulations are carried out on the project
2. every employer and every worker performing work on the project complies with this Act and the regulations; and
3. the health and safety of workers on the project is protected.

In addition, the constructor shall give the Director notice in writing of prescribed project info prior to work

Employer: person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services. Dues of employer shall ensure that:

- the equipment, materials and protective devices as prescribed are provided;
- the equipment, materials and protective devices provided by the employer are maintained in good condition;
- the measures and procedures prescribed are carried out in the workplace;
- the equipment, materials and protective devices provided by the employer are used as prescribed; and

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- a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,
- as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,
- in accordance with such other requirements as may be prescribed, or
- in accordance with good engineering practice, if subclauses (i) and (ii) do not apply
- without limiting the strict duty imposed by subsection (1), an employer shall take **every precaution reasonable** in the circumstances for the protection of a worker

Supervisor: person who has charge of a workplace or authority over a worker

Worker: person who performs work for monetary compensation (typical) or a student/individual performing work for no compensation as part of a program (not including inmates)

Ministry of Labour must be notified

- Immediately by the constructor and employer where a person is "killed or critically injured" (s. 51)
- Within 4 days by the employer where a person (including a former worker) is disabled due to injury or has an occupational illness (other than a critical injury) (s. 52)
- Within 2 days by the constructor/employer where an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other prescribed incident occurs (s. 53)

In a Regulatory law context, the Crown doesn't need to prove fault. However, once it is proved that it happened, the accused person has the opportunity to show that they were diligent. This is known as **DUE DILIGENCE DEFENSE**. Critical that engineers have good documentation, as risk=hazard x vulnerability.

Topic 10 - Prof Eng Regulation

What is a Profession?

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Occupation with specific skills used to benefit society. Social importance requires trust and therefore a high standard of training and experience. *With great power comes great responsibility (and accountability)*

PEO Reg

- Ensures Eng.s are duly qualified, maintain standards of practice and ethics
- Defines enforcement processes
- Also gives guidelines (which are not rules)

Primary mechanism = Prohibition of non-license holders (provisional, temporary or limited included) from practicing or purporting to practice professional engineering. Breaching results in penalty and prosecution.

Exemptions

- "Small buildings" (Part 9?)
- <=3 stories, <600m²
 - Used for residential, business, personal services, mercantile, industrial
- Not designed for industrial stuff that needs professional engineering practice
- If a professional engineer holding a license takes responsibility for it (stamping)
- If its non-structural equipment for use in your facility for your own purposes

Professional Engineering

Any act of:

- Planning, designing, composing
- Evaluating, advising
- Reporting, directing, supervising

That requires application of engineering principles to safeguard life, health, property & economics, welfare of ppl & environment. Or the managing of such an act

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Licenses Designation Titles

Temporary, provisional and limited licenses have restricted scopes of practice. Engineer title restricted to license holders.

Businesses that provide Professional Engineer Services (PES) also require a Certificate of Authorization.

Seal

License holders must apply seal when providing PES to the public. Final drawings, plans, specs, reports after checked by PEng.

License holders must NOT apply seal to non-eng. documents or documents not prepared or checked by that PEng.

Professional Misconduct

Includes:

- Negligence
- Failure to make provision guarding life/health/property (LHP)
- Failure to correct/report situation believed to endanger LH - Duty to Report
- Sealing a document that you didnt prepare or thoroughly review
- Undertaking work you are not competent to perform based on your training and experience (T&E)
- Failure to disclose conflict of interest

Duty to Report

Duty is owed to the public as an engineer (in addition to other reporting requirements from OSHA, EPA, etc. and duty to warn (Rivtow)

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Report situations that endanger LH by

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1. Confirming problem is real and gather evidence
2. Figure out who should get the evidence
3. Advise stakeholder and suggest action
4. Check-in to confirm action was taken otherwise report to authorities
5. Consider consulting w/ an independent PEng for second opinion
6. Escalate if not resolved

Conflicts of Interest

"A situation where an engineer has an interest that might be prejudicial to their eng. judgement in giving services to public, employer, client"

List of examples:

1. Accepting compensation from more than one party for a particular service
2. Submitting a tender for work upon which the practitioner also is acting as PEng
3. Participating in supply of material or equipment used by employer or client
4. Contracting to perform professional engineering services for people other than employer
5. Expressing opinions or making statements concerning matters of public interest that you've been paid to make

Code of Ethics

Compliance is NOT optional but also NOT directly enforceable. Failure to comply often overlaps with one or more forms of misconduct.

Code is not just philosophy. It holds engineers to a higher and more specific standard of ethics

Key aspects:

1. Regards engineer's duty to public welfare as paramount

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2. Act at all times to stakeholders with:
 - fairness and loyalty
 - fidelity to public needs
 - devotion to ideals of integrity and honour
 - knowledge of developments in the field
 - competence in performance
3. Keep confidential information confidential
4. Avoid/disclose conflict of interest
5. Don't attempt to gain advantage over other engineers with bribery

Agreements

Agreements should be written and should:

1. Identify client organization and key contact
2. Specify fees and expenses to be charged
3. Declare guarantees
4. Include limitations to liability (RED HAND RULE!)
5. Describe information the client will provide
6. Include detailed scope of work
7. List items to be delivered to engineer
8. Include completion sched
9. Identify remedies for breach by non-payment
10. Termination Clause

Disciplinary Proceedings

Run by Discipline Committee (comprised of PEng.s), that renders a decision after a public hearing of allegations of misconduct or incompetence.

If found guilty of misconduct or incompetence, the Committe may order revocation or suspension of the license, imposing restrictions or a fine.

Incompetence

A license holder can be found incompetent if:

1. The member or holder has displayed in his or her professional responsibility a lack of knowledge, skill, judgement, or disregard for stakeholders to an extent that demonstrates they are unfit to perform PES.
2. The member or holder has displayed a physical or mental condition/disorder making it in the interest of stakeholders that they cannot perform PES.

Decision Making Process:

1. Consider hard legal rules and duties (is one option illegal, or breach of a duty?)
2. Consider professional code of ethics (is one of the choices contrary to the professional code of ethics?)
3. Consider ethical theories
 - What would a virtuous person do? What is most virtuous course of action?
 - What choice maximizes human well-being and/or positive outcomes?
 - Are there any fundamental rules or duties being breached?
4. In light of all this, which is the most ethical?

Ethics

Virtue Ethics: Suggests people possess virtues (and vices) that orient them toward (or away from) ethical conduct. Virtues include honesty, loyalty, care, compassion, justice, integrity, respect, dignity, fairness

A virtue ethics decision approach asks which course of action best conforms with each relevant virtue. The most virtuous course of action is the ethical decision

Utilitarianism: Describes ethical behavior through the maximization of human "well-being". Not a matter of right and wrong

A utilitarian decision approach asks which course will maximize human well-being/positive outcomes

Deontology: Completely rejects notion that outcomes/consequences matter (from an ethical perspective). Rules are formulated around duties or obligations (like duty of care, duty of loyalty)

Eg deontology decision approach: if never torturing a person is a universal rule, it doesn't matter how many lives could be saved by engaging in the conduct

Considering the hard legal rules, TLDR should stop work to limit further health effects to the public and its workers. In addition, it is also advisable to follow possible stop orders from Ministry of Environment. The reasonable legal decision would be to stop operations and avoid the offense.

According to Professional Code of Ethics, engineer's duty to the public is paramount. It also states that engineers should act with fairness and loyalty to associates, employers, clients, subordinates, and employees. When considering fairness to employees and potential health impacts of continue working in a dangerous environment, it would be advisable to stop operations to ensure employee safety.

However, when considering the lives of hundred and thousand of people that rely on the critical supply of ventilators, the different ethical approaches in Lecture 9 Ethics and Professional Engineering offer another perspective of the problem. The virtue ethics approach suggests that the decision which best conforms to the virtues is the most ethical decision. Virtues include honesty, loyalty, care, compassion, justice, integrity, respect, dignity, and fairness. With this approach, one could argue to halt work or to continue. The most ethical decision is vague. One could argue that for the care and compassion of the strip mall occupants and production line workers work should be halted to avoid health hazards. However, the opposite argument could also be valid. For the care and compassion of those who need ventilators, work should continue. The virtue ethics approach does not give a clear decision.

Another ethical approach, utilitarianism, defines the most ethical decision as the one that maximizes human well-being and positive outcome. This approach is not concerned with the ethics of one's intention, and actions, but is rather focused on the positive impact and the results. When compared to the life of thousands who need ventilators, the health impacts of the benzene contamination to workers and occupants are less threatening. In other words, continuing production of ventilators is the decision of that can maximize utility and serve a greater good. Therefore, the most ethical decision is to continue production.

Deontology is another ethical approach that rejects the idea that consequences matter. Contrary to utilitarianism, it is focused on assessing an action or conduct rather than the result. This approach suggests that there are a set of objective and universal rules of conduct which one should follow. In the case of the deciding between whether to continue work there is no absolute rule such as "thou shall not kill" to define the most ethical course of action. Rules are often formulated around duty and obligations. Legal rules are also formulated around the same concept. Therefore, the results of the deontology approach to ethics may be quite close to the legal decision discuss at the start of this section. By implementing some of those rules it could be shown that TLDR has a duty of care and standard of care to those who are in its immediate proximity such as the production line workers. However, legally, no duty of care exists between TLDR and those patients needing ventilators. The most ethical decision in a deontology approach that conforms to the rules is to care for those in proximity.

In extreme situations where thousand of lives are on the line, it is difficult to provide a hard and fast answer of what the most ethical decision is. Legal rules and deontology suggest that halting work is the best option. Whereas, utilitarianism ensures that the greater good is served by continuing production but ignoring the worker's and occupant's health threats. Alternatively, there could be a solution that satisfies both deontology and utilitarianism. Temporarily containing the benzene leak can eliminate this dilemma. TLDR can work out an action plan with Environmental Ministries to contain the toxic leak and allow production to continue in difficult times. Workers safety could be ensured, and thousands of lives could be saved.

Appendix 1. Extracts from Regulation 941/90

1. Professional Misconduct

Section 27 of the *Professional Engineers Act* gives the Discipline Committee the authority to hear and determine allegations of professional misconduct or incompetence against a practitioner. The following section of O. Reg. 941/90 identifies those actions or omissions by a practitioner that can be used as the grounds for a discipline case by the association.

72. (1) In this section,

"harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known as unwelcome and that might reasonably be regarded as interfering in a professional engineering relationship;

"negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances. R.R.O. 1990, Reg. 941, s. 72(1); O. Reg. 657/00, s. 1(1).

(2) For the purposes of the Act and this Regulation, "professional misconduct" means,

- (a) negligence;
- (b) failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public;
- (d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (e) signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (f) failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional engineering judgment of the practitioner is overruled by

non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional engineering work,

- (g) breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (h) undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience;
- (i) failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client, and in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:

 - 1. Accepting compensation in any form for a particular service from more than one party;
 - 2. Submitting a tender or acting as a contractor in respect of work upon which the practitioner may be performing as a professional engineer;
 - 3. Participating in the supply of material or equipment to be used by the employer or client of the practitioner;
 - 4. Contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer;
 - 5. Expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests;
 - (j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering

profession as disgraceful, dishonourable or unprofessional;

- (k) failure by a practitioner to abide by the terms, conditions or limitations of the practitioner's licence, provisional licence, limited licence, temporary licence or certificate;
- (l) failure to supply documents or information requested by an investigator acting under section 33 of the Act;
- (m) permitting, counselling or assisting a person who is not a practitioner to engage in the practice of professional engineering except as provided for in the Act or the regulations;
- (n) harassment. R.R.O. 1990, Reg. 941, s. 72(2); O. Reg. 657/00, s. 1(2); O. Reg. 13/03, s. 19.

2. The Code of Ethics

Practitioners are bound as an obligation of their licence to practise professional engineering to comply with the code of ethics given in section 77, O. Reg. 941/90. The code of ethics is a set of principles and rules that describe the kinds of professional conduct that are considered appropriate or inappropriate by the profession. Practitioners must apply these rules in governing all their professional assignments. Decisions and choices made by practitioners must reflect the values and principles set out in the code.

77. The following is the Code of Ethics of the Association:

- 1. It is the duty of a practitioner to the public, to the practitioner's employer, to the practitioner's clients, to other members of the practitioner's profession, and to the practitioner to act at all times with:
 - i. fairness and loyalty to the practitioner's associates, employers, clients, subordinates and employees;
 - ii. fidelity to public needs;
 - iii. devotion to high ideals of personal honour and professional integrity;
 - iv. knowledge of developments in the area of professional engineering relevant to any services that are undertaken, and
 - v. competence in the performance of any professional engineering services that are undertaken.
- 2. A practitioner shall,

 - i. regard the practitioner's duty to public welfare as paramount;
 - ii. endeavour at all times to enhance the public regard for the practitioner's profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering;
 - iii. not express publicly, or while the practitioner is serving as a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction;
 - iv. endeavour to keep the practitioner's licence, temporary licence, provisional licence, limited licence or certificate of authorization, as the case may be, permanently displayed in the practitioner's place of business.

- 3. A practitioner shall act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential information obtained by the practitioner as to the business affairs, technical methods or processes of an employer and avoid or disclose a conflict of interest that might influence the practitioner's actions or judgment.
- 4. A practitioner must disclose immediately to the practitioner's client any interest, direct or indirect, that might be construed as prejudicial in any way to the professional judgment of the practitioner in rendering service to the client.
- 5. A practitioner who is an employee-engineer and is contracting in the practitioner's own name to perform professional engineering work for other than the practitioner's employer, must provide the practitioner's client with a written statement of the nature of the practitioner's status as an employee and the attendant limitations on the practitioner's services to the client, must satisfy the practitioner that the work will not conflict with the practitioner's duty to the practitioner's employer, and must inform the practitioner's employer of the work.

6. A practitioner must co-operate in working with other professionals engaged on a project.
7. A practitioner shall,
 - i. act towards other practitioners with courtesy and good faith,
 - ii. not accept an engagement to review the work of another practitioner for the same employer except with the knowledge of the other practitioner or except where the connection of the other practitioner with the work has been terminated,
 - iii. not maliciously injure the reputation or business of another practitioner,
 - iv. not attempt to gain an advantage over other practitioners by paying or accepting a commission in securing professional engineering work, and
 - v. give proper credit for engineering work, uphold the principle of adequate compensation for engineering work, provide opportunity for professional development and advancement of the practitioner's associates and subordinates, and extend the effectiveness of the profession through the interchange of engineering information and experience.
8. A practitioner shall maintain the honour and integrity of the practitioner's profession and without fear or favour expose before the proper tribunals unprofessional, dishonest or unethical conduct by any other practitioner. R.R.O. 1990, Reg. 941, s. 77; O. Reg. 48/92, s. 1; O. Reg. 13/03, s. 21.

Law and ethics

Introduction

Law is a *federalist system*: 3 branches, with federal and provincial courts. It is a *common law system* (*except for Quebec, which is civil law system*). Common law countries have case law as primary importance, whereas in civil law systems, statutes predominate. *Adversarial system*: people have advocates on their behalf

In Canada, the British North America Act, or *Constitution Act, 1867*, placed Canada under its own control. It established federal government (House of Commons, Senate), Provincial governments, and supreme court of Canada.

Federal	Provincial
Public Debt and Property	Direct Taxation within Province
Regulation of Trade/Commerce	Management/Sale of Public Lands belonging to Province
Unemployment insurance	Prisons
Direct/Indirect Taxation	Hospitals
Postal Service	Municipalities
Census/Statistics	Formalization of Marriage
Defence	Property and Civil Rights
Navigation/Shipping	Administration of Civil/Criminal Justice
Quarantine	Education
Sea Coast and Inland Fisheries	Incorporation of Companies
Ferries (interprovincial/ international)	Natural Resources
Currency/Coinage	Matters of a merely local or private nature
Banking /Incorporation of Banks/Paper Money	
Weights and Measures	
Bankruptcy	
Patents	
Copyrights	
Indians/Indian reserves	
Citizenship	
Marriage/Divorce	
Criminal law, including Criminal Procedure	
Penitentiaries	
Works connecting provinces; beyond boundaries of one province; within a province but to the advantage of Canada/or more than one province	

Figure 1: Federal vs provincial

Further to this, the *1982 Constitution Act or Charter*, established individual rights and fundamental freedoms, such as:

- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- Freedom of peaceful assembly
- Freedom of association

There's also democratic rights (right to vote), mobility rights (right to move), and legal rights

Public law: criminal offences; licences, approvals, taxation, immigration; multi-levels of government like GHG regulation; legal rules from legislation and some

case law

Private law: concerns obligations and dealings between non-government parties; transfer of property, sales; legal rules derived from case law and some legislation

Legislation: federal and provincial acts and regulations, bylaws

Ancillary Sources of law: orders, codes, guidelines

Common Law: case law

Persons, Property, and Business Entities

Person: entity recognized by the law as separate and independent, with legal rights and existence. A person can have property in things, enter into contracts, sue others who harm them, be sued, use courts to enforce rights

Property: the combination of the legal rights of persons with respect to objects, and the obligations owed them by others and guaranteed and protected by government. It is a bundle of rights for possession/exclusion, mortgage/use as security, lease/license, sell/dispossess, encumber.

Property rights are limited by:

- *Tort Law* non-voluntary obligations, such as nuisance
- *Contract* voluntary obligation, such as lease
- *Criminal/regulatory law*, such as planning/zoning and by-laws

Real property includes freehold, leasehold, and license. Personal property includes chattels and equity. Intellectual property includes patent, trademark, copyright, and trade secret.

- **Freehold property:** highest form of property ownership, or “biggest bundle of sticks”. Owning the land and the building. Contract must be in real writing
- **Leasehold property:** right to occupy/exclude transferred from owner to tenant. No ownership interest. Contract must be in real writing
- **License:** contractual permission to do something
- **Equity/equitable interest:** a beneficial interest in the thing
- **Chattel:** an item of tangible movable or immovable property except real estate
- **Patents:** are created for the purpose of innovation. No patents in the absence of patent law. Patents last 20 years from date of application. Criteria includes patentable subject matter, something novel, something with utility, and something inventive (non-obvious)
- **Trademark:** sign or combination of signs used or proposed to be used by a person to distinguish their goods or services from those of another
- **Copyright:** having sole right to produce or reproduce a work
- **Trade secret:** valuable information including recipes

In Canada, corporations are required to follow the following:

- Canada Business Corporations Act (CBCA) for federal corporations
- Ontario Business Corporation Act (BCA) for provincial corporations

These set-out how corporations are established, how they are governed, and liabilities. Shareholders appoint corporate directors, who control the corporation. The corporation then contracts corporate officers and employees. In partnerships, two or more persons carry on business in common with intent to profit. Governed by a contract, not a separate person, and each partner is liable for partnership debts. LP or LLPs are special partnerships. A sole proprietorship has no separate personality, the individual assumes all risk of liability.

Asset Purchase	Share Purchase
Contract	Contract
Property ownership is transferred	Equitable ownership is transferred
Indemnity	Indemnity
Liability of previous owner does not transfer with property	Liability of purchased corporation follows shares

Tort Law

A *tort* is a civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages. If a tort has occurred, or is committed, someone is tortured against. A tortfeasor is someone who commits a tort. It enforces negative rights - specifically, right to exclusion. For example, the right to be left alone. In contract, positive rights are the right to do something. Tort law comes from common law.

Torts are claims by a plaintiff against a defendant, and are decided by a trial conducted by a court unless settled. For claim to be successful, plaintiff must prove each element of the tort to establish liability, including elements of fault. Once liability established, remedy is damages. There are several forms of fault:

1. *Specific Intent*: intentional series of steps leading up to it
2. *General Intent*: intended to do it, but not the result
3. *Recklessness*: not considering consequences
4. *Wilful blindness*: turning blind eye
5. *Pure Causation (strict liability)*: caused something w/o being at fault
6. *Lack of diligence (negligence)*: not doing what a reasonable person would do

Negligence

The element test for negligence is:

1. *Duty of Care*
2. *Breach of Standard of Care*
3. *Causation*

4. Damages

The test for duty of care is as follows (Ann's test):

1. Forseeability: could this cause harm? If so, *prima facie* duty of care. Are there considerations to negate or limit this duty of care?
 1. Was the defendant's action the result of a policy decision of a public body?
 2. Is the defendant protected by statute or the common law?
 3. Is the defendant exempted from liability by a 'good faith' clause in the statute
 4. Is the relationship between the parties so distant and tenuous, that liability isn't justified?
2. Is duty of care already recognized, or is it a new duty. If new, how close is the plaintiff to the defendant

The test for standard of care, for engineers, includes:

1. Forseeability: was this foreseeable
2. Expectations: were the client expectations or promises from the engineer reasonable
3. Alternatives: were proper alternatives explored
4. Knowledge and Control: was the engineer competent

There are two tests that can be used for causation:

1. "But for" test. For example, *but for the road not being closed, would the crime have happened?*
2. Material contribution test (rarely used). *Did the defendant contribute materially to the risk of injury?*

Damages may be the difference in profit lost in the slow-season and busy season, as in Rivet Lost profit is a pure economic loss and is generally not recoverable in tort; it is recoverable when caused by a failure to warn

Private Nuisance

The test for private nuisance is as follows:

1. Unreasonable interference with land. Biggest key here
2. Is it an amenity nuisance or a physical harm
3. If amenity, does it impact use/enjoyment of property? If physical harm, how substantial?
4. Damages are then determined

Strict Liability

For strict liability tort to be committed, the following must all be satisfied:

1. Made a non-natural use of land
2. Brought something dangerous onto the land

3. That dangerous thing escaped
4. The dangerous thing caused harm

For strict liability, there is no mention of fault anywhere!

Trespass

For trespass, physical interference with another person's land or chattel must have occurred. It must be:

- Direct
- Intentional

Consent is an absolute defence, either express or implied. It is "actionable per se", such that proof of suffered damage is not required and nominal damages are awarded.

Contract Law

Contract: agreement between 2 or more parties creating mutually enforceable promises/obligations. These obligations, in contrast to tort law, are voluntary. Persons participate in a relationship such that everyone plays by the rules, with comfort coming from the contract

Contracts are a private law construct. They must be:

- Voluntarily entered into
- Written or oral
- Express or implied
- Unilateral, bilateral (between two parties), or multilateral (between multiple parties)
- Legally enforceable obligations
- Enforceable by a court through a claim

Failure to complete an obligation is a *breach of contract*. As in tort when a *duty of care* isn't fulfilled during negligence, here a *privity of contract* is unfulfilled when a breach of contract happens

The only person who can sue for *breach of contract* is the client. 3rd parties aren't able to sue as they can for torts. In major events such as a war, a *Force Majeure* (Act of God) can allow both parties to escape the contract without consequences.

The elements of a contract include:

1. Intention to contract
2. Offer to purchase or offer to sell
3. Acceptance
4. Consideration: some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other

Offers must be expressed clearly and cannot be accepted if offer has expired. A counter offer is not acceptance, but a new offer. Acceptance can only be given by the person to whom the offer is made. Offers can specify the form of acceptance

Promissory Estoppel: equitable principle, requiring that:

1. Legal relationship between parties, such as a contract, exists
2. Promise not to enforce legal right made by one party
3. Other party must have relied on it to their detriment

It can only be used as defense (shield), not as a basis for claim (sword). An example of promissory estoppel might be applied in a case where an employer makes an oral promise to an employee to pay the employee a specified monthly or annual amount of money throughout the full duration of the employee's retirement. If the employee then subsequently retires based on a reliance on the employer's promise, the employer could be legally estopped from not delivering on his promise to make the specified retirement payments.

What is tendering?

1. Owner puts out a request for proposal
2. Bidders submit proposal and enter "Contract A" with the owner
3. The successful bidder automatically enters "Contract B" with the owner

Red Hand Rule: clauses need "red ink" with "hand" point to it before the notice would be held to be sufficient

Civil Liability and Legal Proceedings

Civil liability: being liable to another person. Distinct from criminal liability (being liable to the government)

- Civil liability is not in favour of person accused of breaking the rules. There is an equal playing field. In criminal liability, it is beyond reasonable doubt

Blackstone's Ratio: better that 10 guilty persons escape than that 1 innocent suffer. This is why criminal liability is until no reasonable doubt

Criminal examples include controlled drugs and substance act (possession of substance) and environmental protection act (prohibition and discharge of contaminant). Criminal procedure:

1. Commenced by an information setting-out
2. Judges issue summons, or warrant
3. Accused attends court
4. Crown provides disclosure
5. Settlement discussions
6. Judicial Pre-trial
7. Trial

Civil Liability	Criminal Responsibility
<ul style="list-style-type: none"> • Civil obligations (tort, contract) • Resolved through an Action • Plaintiff v. Defendant • Both parties must produce relevant documents • Plaintiff must prove case on a "balance of probabilities" • Court must determine if defendant liable or not • Result is remedy: injunction, payment of damages, specific performance, etc • May be settled out of court • Culminates in trial (judge or jury) 	<ul style="list-style-type: none"> • Criminal/Regulatory Prohibitions • Resolved through a Prosecution • Crown ("R") v. Accused • Crown must provide disclosure • Crown must prove case "beyond a reasonable doubt" • Court must determine if guilty or not (Acquittal) • Result is sentence: discharge, fine, imprisonment • May be settled out of court • Culminates in trial (judge or jury)

Figure 2: Civil vs Criminal

In Ontario, regulations under Courts of Justice Act, with 77 rules total. These originate with statement of claim, which if not filed on time, the default defence wins! Notice of Action can give one more time to prepare. These are followed by statement of defence; a notice of intent to defend is filed for more time. Statement of defence must address each allegation with material facts, but not evidence.

Pleadings: claim and statement of defence

Counterclaim: defendant sues plaintiff in response to claim

3rd party claim: bring someone into claim

Cross claim: someone sues 2+ defendants, who then sue each other

Mediation may be mandatory depending on the location of trial. Parties appoint mediator and prepare mediation brief, which includes key facts, evidence, and legal basis in support of claim/defence. Offers to settle may then come from either party.

Trials then may proceed before judge or jury, with opening statements, cross-examinations with witnesses, and closing arguments. Engineers are allowed to enter opinion evidence if they are an expert, while others can only state the facts

Arbitration: different than a trial - an alternative

The limitations act means that there is a 2 year standing limitation period, starting from when claim is discovered or discoverable. Discoverable is based on when a reasonable person ought to have known based on diligence. Ultimate limitation period is 15 years, except for environmental claims. Discovery is the earlier of the day the person with the claim first know:

1. Injury/loss/damage occurred
2. That the damage was caused by act or omission
 1. Act or omission was done by the defendant
 2. Day on which reasonable person first ought to have known

Solicitor-client privilege is communications to or from client to lawyer, can include intermediary party like translator, and is waived if disclosed to third party. Lasts forever, unless client waives. Communications won't be disclosed

Litigation privilege: for the dominant purpose of litigation, extends to third-parts communications/work product, and ends when litigation ends. Documents won't be disclosed

Cases

Introduction - **Donoghue v Stevenson**

Facts

- Mrs. Donoghue was drinking ginger beer with a snail, got sick, and sued Stevenson (manufacturer)
- Donoghue sued Stevenson

Issues Was the manufacturer responsible for ensuring the safety of the customer?

Holding Stevenson owed Donoghue a "duty of care"

Rationale

- There was sufficiently proximate relationship between consumers and manufacturers
- It was foreseeable that failure to ensure the product's safety would lead to customer harm

Property - **Popov v Hayashi**

Facts

- Popov received Barry Bond's ball into his glove
- A mob attacked him; Hayashi was able to take full possession

Issues Did Popov have full possession? Who is entitled to the ball?

Holding Popov and Hayashi have an equal and undivided interest in the ball

Rationale Popov had a pre-possessory interest (significant, but incomplete steps to obtain full possession) in the ball, and Hayashi had full, complete possession of the ball.

Key Takeaways

- Abandonment requires intention to abandon and no owner
- There is a right to exclude others from your property, as Popov tried to exclude Hayashi
- Property without possession is pre-possessory interest
- There is an equitable ownership/interest at the end

Person - Saloman v Saloman

Facts

- 20000+7 shares
- Saloman sold business to company that he owned
- To pay for business, company sent debentures
- When assets liquidated, Salomon paid first. Lenders not paid.

Issues Why was Saloman entitled to the money? Shouldn't it be the lenders?

Holding Saloman was allowed to keep the money, due to the debacheries

Rationale Mr. Saloman was a different person than the company Saloman Ltd. He was just a shareholder

Key Takeaway

- Corporations are creations of statutes
- Corporations are separate legal persons
- Courts may disregard legal personality in cases of fraud
- Liability of Corporation is not the liability of its shareholders (owners)

Duty of Care - Cooper v Hobart

Facts

- Mortgage broker Eron misused investment funds. Was ordered to lose license after some time
- Eron then went out of business
- Private investors lost money. Cooper sued Hobart, insurance regulator who took away Eron's license, to see if he owed a private law duty of care to investors from liability in negligence

Issues Does regulator owe private law duty of care for alleged negligence in failing to oversee conduct of licensed company?

Holding The regulator did not owe a private law duty of care

Rationale By the Anns test, the regulator did not have a proximate relationship enough with the mortgage broker

Key Takeaway

- Duty of care when there is foreseeability of harm and sufficiently close relationship
- Duties of care can be established in courts
- Policy factors may override a duty of care

Negligence Standard of Care - Ontario v CH2M

Facts

- MTO hired CH2M to do an environmental assessment on a lot for hydrocarbons to determine if remediation was required
- CH2M did an environmental assessment, and found the site to be OK - no remediation required
- MTO found contaminated soil - one firm recommended they remediate

Issues 3 issues:

1. Was CH2M's work below the standard of care and a breach of contract
2. Was the MTO remedial process reasonable?
3. Did the Ministry fail to mitigate damages?

Holding

1. Yes
2. Yes
3. Yes, except for not consulting CH2M

Rationale

1. Did not look at all documents. Less than the standard of care
2. Yes - consulted another engineering firm

Key Takeaway

- Engineers must complete work with reasonable diligence
 - Evidenced by expert evidence
 - Failure to do so is negligence and breach of contract
- Plaintiff has duty to mitigate damages

Negligence Causation - Rivotow v Washington

Facts

- Washington designed a crane with a defect, nad distributed it through Walkem
- Both Ws knew about the defect but did not inform the buyers
- Someone died from a crane failure. Washington withdrew cranes during Rivotow's busy season

Issue Was Washington responsible for the economic losses to Rivotow?

Holding Yes, Washington is responsible for losses

Rationale Although physical harm is normally required for economic loss recovery in negligence, here liability here is founded on knowledge of the danger which gave rise to a potential failure. Here, there was a duty fo warn: damages coming from trying to avoid a failure are foreseeable.

Key Takeaways

- Duty of care can extend to duty to warn in a known risk
- Pure economic losses generally not recoverable in tort
- Economic losses may be recoverable when they are caused by a failure to warn or negligent advice
- There are proximal and remote damages that

Strict liability and private nuisance - Smith v Inco

Facts

- Inco used nickel on their property, and released nickel oxide into the air
- This precipitated into people's property. Over time, very high levels
- Nickel wasn't necessary harmful, but it gave a stigma and thus, property value decreased
- Ellen Smith represented class action suing for property value based on trespass, private nuisance, and strict liability

Issue Was Inco responsible for property decrease in value?

Holding No, strict liability and nuisance not applicable

Rationale

- Strict liability not applicable to contaminants that are the intended consequence of an approved activity and carried out in accordance with all rules and regulations. Thus, strict liability doesn't apply unless a non-natural use of land is carried out

- Nuisance requires more than a mere chemical alteration in the content of the soil, such as physical harm. Not perceived issue

Key Takeaways

- How do we evaluate what constitutes a “non-natural use* and an “escape”? Or when is something more than a “mere chemical alteration”
- In Canadian Tire v Huron Concrete, the concrete supplier had a gas tank that leaked gas onto Canadian Tire’s property. Following Inco:
 - Failure of Huron to comply with laws and regulations rendered it’s land use non-natural
 - Contamination exceeded health protection standards, and was thus more than a mere chemical alteration
 - Presence triggered provincial standards, and thus had a detrimental effect on land use rights
 - Based on expert witness, contamination was a human health risk
 - While initial migration of gasoline wasn’t necessarily trespass, the free phase gasoline continued to be the personal property of the defendant after it had moved properties. The plaintiff had requested the defendant to remove the gasoline, which they failed to do. Thus, trespass

Contract - Carbolic Smoke Ball

Facts

- Carbolic promised 100 euros if someone caught flu within 3 weeks of smoke ball purchase
- A woman caught the flu and sued

Issue Was Carbolic responsible

Holding Yes

Rationale

- The ad indicated intention to contract
- A reasonable person would see the ad as an offer
- Acceptance happened on the woman’s side
- For consideration, it doesn’t always need to be equitable. For example, Chappell v Nestle showed that giving something up

Contract - Canadian Dyers Assn v Burton

Facts

- 25 Hanna Ave. was put on the market

- Someone offered a sum of money at the lowest price the seller was willing to go, sent the money and the seller went to create a deed
- Seller cancelled because "no contract"

Issue Was there a contract?

Holding Yes. *Specific performance* issued (alternative from breach of contract, mandating that one must do something. Here, the house must be sold)

Rationale Intent to contract, offer, acceptance, and consideration were all present

Key Takeaways

- Mere quotation of price is not an offer
- Determining whether an offer/acceptance has been made is objective
- Offers and acceptance must be direct and purposeful
- Post contract formation conduct may inform objective assessment

Consideration - Garden v McGregor

Facts

- Plaintiff struck defendant's cow
- Defendant promised to pay repair fees, then changed mind
- Defendant sued

Issue Was defendant liable for fees?

Holding No

Rationale The defendant would receive no benefit from the payment; thus, there was no consideration

Key Takeaway

- No contract can be formed absent from consideration
- Forbearance (intentionally abstaining) of a legal right is good consideration
 - promise by a debtor to pay an added amount
- Consideration must be provided by both parties. Thus, gratuitous promises are not enforceable
- In other words, you can't get something in exchange for nothing

Consideration - Gilbert Steel v University

Facts

- Gilbert and University had a contract for steel
- New contract was written up for price increase, and signed by both parties
- A 3rd contract was proposed for more price increases, but no written contract was signed.

Issue Was the university liable for cost increase after the 2nd contract

Holding No

Rationale No good consideration - the contract must be express, not implied, and the university must receive some benefit for the increase in cost

Key takeaway

- Past/existing consideration isn't good consideration
- Increased credit not good consideration
- Contract variations require consideration to be enforceable
- Rescission of existing contract needs to be express
- Promissory Estoppel cannot be used as a sword, but only as a shield

Tendering - MJB v Defence Construction

Facts

- Defence Construction chose lowest bidder, who had a non-compliant bid
- Appellant, MJB, who had the second lowest bid, felt entitled to receiving the contract

Issue Was Defence required to hire appellant?

Holding No, but is entitled to damages in the amount of the profit they would have received

Rationale

- Defence did not breach Contract A by not hiring appellant, but by hiring a non-compliant tender.
- From testimony, it was apparent that Defence likely would have hired the appellant
- "But for" breach of contract, appellant would have been awarded Contract B

Contract - Simons v Diagnostic Engineering

Facts

- Oral contract to determine if house had mold problem
- Engineer requested client to sign "service agreement" prior to testing
- Engineer erroneously told client that there was a mold problem
- Actual results showed no problem
- Client spent large sum of money needlessly

Issue Was engineer liable?

Holding Yes

Rationale

- Consultant fell below standards required under contract and was therefore in breach of the contract
- Note: consultant had limitation of liability that was very broad. Client wasn't given enough notice. This was taken as void (Red Hand Rule)

Limitation Period - Crombie v McColl-Frontenac

Facts

- Crombie purchased many properties, including one that was potentially contaminated
- Stantec was hired to do environmental assessment. Phase 1 indicated likely no problem, but a Phase 2 was recommended to be sure
- Crombie waived all conditions for the purchase prior to finishing environmental assessment
- Crombie sued for environmental damage after Phase 2 report came out

Issue Was Crombie eligible for damages, since claim filed since Limitations Act finished?

Holding Yes

Rationale Crombie was unaware of the damage. It was newly discovered

Negligence

1. Duty of care - Cooper v Hobart, Donoghue v Stevenson

a) Forseeability = could actually cause harm
↳ 95% relationship disrupts

b) Already recognized, or new duty
↳ proximity of defendant

2. Standard of care - Ontario v CH2M

- a) Forseeable damage
- b) Client expectation or expert's promise reasonable
- c) Were standards explored
- d) Work engaged completed

3. ^{Inspection} BUT for Riston v Washington

- a) Material manufacturer did default candidate reasonably
- b) Plaintiff's goods not recoverable in tort, unless proximate
except for failure to warn (Riston)

Private Nuisance - Smith, Inc. & Canadian Tire v Huron

1. Unreasonable interference w/ land - more than mere physical alteration

2. Amenity nuisance or physical harm

3. If amity, does impact victimization of property. If physical,
If physical, how substantial?

Strict Liability - no mention of fault - Smith v Inc. & Canadian Tire v Huron

1. Made a non-natural use of land = failing to comply w/ land regulations

2. Brought something dangerous onto the land

3. That dangerous thing escaped

4. Dangerous thing caused harm

• More than mere physical alteration

• Land rights impaired

• Health impaired

Trespass - Canadian Tire v Huron

Physical interference that's direct & intentional

Conceal, implied or express is absolute defense

Contract - Carbolic Smoke Ball and Cardin Dykes Assn v Burton

1. Intention to contract

2. Offer to purchase or sell

3. Acceptance

• Consideration: each must benefit from some detriment to the other

↳ Gordon v McGregor, grantor's promise not good consideration

↳ Revocation of previous contract express req'd, promising estoppel only is shield (Gibson v United)

4. If party of contract dies, breach of contract requires payment

specific performance requires fulfillment

• Red hand rule: if s. thing most substantial (Simons v Diagnostic)

Indirect - MJB v Defence Contracts

1. Owner puts out RFP

2. Bidders enter Contract A w/ proposal

3. Successful bidder automatically enters
Contract B

Civil Liability

↳ Back store is only brether to guilty than 1 innocent

• Criminal = environmental protection act

Limits Act. - one can only sue

2 years after claim discovered/discovered.

When reasonable person ought to know
Unknown, based on diligence:

1. Injury or damage occurred
2. Damage caused by actor/cause
3. Day on which reasonable person
ought to have known

Property

• Pre-existing what (Papov v H)

Ar. 1 sis

1. Write down facts and legal rule

2. Justify whether legal rule v/s
met not fails

3. State conclusion

Dangerous = warrant to put plaintiff
position had the wrong (but not
breach of contract) not occurred