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LECTURES

[Lecture 1 - Law and Justice]

- Law
 - Legal system → broad framework for detailed rules--for a stable society
 - Theory of Social Contract → laws are collective agreements
 - Give up some rights for the protection of others
- Law is **society-dependent**
 - Western society → a crime is an offense against the state; participants are often strangers
 - Smaller groups → crimes affect nearby acquaintances; negotiations are between the participants
- Law is **place and time dependent**
 - Different countries/places/states/provinces have different laws
 - Law changes as time passes → same-sex marriage
- Justice
 - Quality of being (morally) righteous or virtuous; conformity (of an action of thing) to moral right

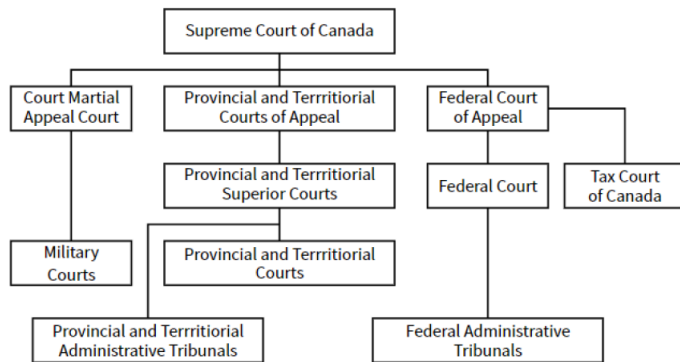
[Lecture 2 - Canadian Constitution and Charter]

- **Constitution Acts of 1867 and 1982** → documents providing the legal foundation for Canada as a country
 - Canada as a union of provinces
 - Executive power of the government
 - Legislative powers of the Senate and House of Commons
 - Executive and legislative powers of the provinces
 - Composition and running of the government and various legislative bodies
- **British North America Act 1867** → the original Act of the Parliament of the UK
- **Canada Act 1982** → passed by British parliament to give Canada its own constitution
 - Amendment: proclamation issued by Governor General under Great Seal of Canada
 - Needs resolutions of the Senate, House of Commons, legislative assemblies of at least $\frac{2}{3}$ of the provinces that have at least 50% of the population of all provinces
- Head of state is Queen Elizabeth II, represented by Governor General federally and Lieutenant Governor provincially
- Municipal/regional power is delegated by the province
- Federal public spending/taxes come from the House of Commons; provinces also have right to collect taxes
- **Federal powers:** national defense, foreign affairs, banking, criminal law, intellectual power
- **Provincial powers:** health care, prisons, education
- **Shared powers:** agriculture, immigration
- Limit the powers
 - Charter of Liberties was signed by Henry I to limit his power
 - **Magna Carta (Great Charter) 1215** signed by King John which guarantees everyone is subject to law
- **Canadian Bill of Rights 1960** → the federal government; Saskatchewan had a provincial bill of rights in 1947
 - Protects: freedom of speech and religion, equality rights, right to life, liberty and security, right to fundamental justice, right to enjoyment of property, right to counsel
- **Charter of Rights and Freedom (1982 Constitution Act)**
 - Fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights,

official languages, minority language education rights, enforcement

[Lecture 3 - Canadian Legal System]

- Rule of Law: doctrine that every person is subject to the ordinary law within the jurisdiction
- Code Civil (Quebec), English Common Law
- Canada and many former British colonies (not Quebec) uses common law
 - For consistency across similar legal cases
 - When a case is decided, the ruling forms a *precedent*
 - 3 sources of law: acts of the legislature (ex. PEA); regulations, codes, by-laws; precedents
 - Parliament has supremacy over precedents
- Laws passed by parliament are no subject to review (*parliament sovereignty*) with the exception where courts may rule on if it conforms to the constitution (highest law of the land)
- Lawsuits (or case)
 - Between a plaintiff and defendant(s); will be heard from the court in the form of a trial
 - Each side makes a case, introduces evidence, and has the opportunity to rebut the other side
 - At any time before ruling, parties can agree outside the courts and settle the matter without the court
 - Standard proof is *balance of probabilities*; criminal law uses more *beyond a reasonable doubt*
 - Judge/jury will deliver judgement/ruling; awarding of damages and official finding of facts



- Cases are normally heard in the lower courts
- Court must have jurisdiction to hear the case
- **Administrative Boards and Tribunals**: resolve disputes that doesn't involve time and expense of court proceedings
- **Provincial/Territorial Courts**: criminal offenses, money and family matters, specialized courts
- **Superior Courts**: most serious criminal and civil cases; power to review decisions of provincial/territorial court
- **Courts of Appeal**: hear civil and criminal appeals

from lower courts

- There must be legal basis (*grounds for appeal*)
- **Federal Court**: intellectual property, maritime law, federal-provincial dispute, terrorism
- **Tax Court**: specializes in hearing appeals from tax assessments
- **Federal Court of Appeal**: reviews decision from federal and tax court; often the highest court for most cases
- **Supreme Court**: the ultimate court for appeal; all judgements are final

[Lecture 4 - Contracts]

- Create and conform to voluntary obligations
- **Contract** is an agreement enforceable by law
 - An offer made and accepted
 - Mutual intent to enter the contract ("meeting of the minds")
 - Consideration (transfer of something of value)
 - Capacity (ability to carry out agreement)
 - Lawful purpose
- Can be written, verbal, or through conduct; does not have to be fair; courts will step in if terms aren't fulfilled

- Contract can be changed
 - By mutual agreement or if the changes are within the scope of the original contract
- Benefits of the contract can be sold, given, or licensed unilaterally by one party to an independent party unless the contract has a term forbidding it
- Breach of contract
 - Other parties are called the injured party and they may approach a judge to remedy the injury
- The law where the contract was *accepted* has jurisdiction over the contract unless otherwise state in contract
- *Offeror* communicates offer to *offeree* → offeree must be able to accept or reject the offer
 - Acceptance: doing nothing counts; it can be through written means, verbal means or conduct
 - Acceptance through mail is at time of mailing; otherwise, it's when received
 - Rejection: written, verbal, conduct, time lapse ("reasonable amount of time", time limit, incapacity)
 - **Counter-offer**: offeree modifies terms and sends back; effectively is a rejection of old offer and a new offer from original offeree to the original offeror
 - **Invitation to treat/do business**: not an offer to contract; a marketing tactic
 - Withdrawn: can be withdrawn by offeror before acceptance; must be communicated
 - Acceptance is nullified if after a withdrawal
 - Both parties must be aware of the offer

[Lecture 5 - Intent, Consideration, Capacity, Legality]

- Intent → both parties want to create a legally-enforceable arrangement
 - Presumption is strong between strangers or dealings of commerce; may not hold for friends and family
 - *Letter of Intent*: business document expressing interest or moral obligation to proceed with action
- Consideration → something of value that the parties promise each other
 - Does not have to be monetary; a seal is valid too
- Capacity → party is able to enter the contract
 - Contract with minor (less than age of majority) is enforceable by minor
 - Drunk/drugged/mentally disabled is treated like a minor
 - Repudiation must be prompt after sobering up/becoming sane
- Legality → contract has to have legal terms
 - **Doctrine of Evasion**: you cannot enter a contract simply to evade responsibility you have to the state

[Lecture 6 - Statute of Frauds and Written Contracts]

- **Statute of Frauds** → requires certain contracts to be in writing to be enforceable
 - Contracts about land (real property)
 - Contracts about taking responsibility for the debts of others
 - **Guarantee**: a promise to pay if the debtor defaults (must be in writing)
 - **Indemnity**: taking on primary responsibility for another's debt (need not be in writing)
- **Parol Evidence Rule** → if the written contract is the whole contract, any discussion prior to the contract may not be used to interpret the contract
 - Prevents modification of existing contract based on evidence from before signing the contract
 - A separate, parallel agreement (even oral) may be formed (*collateral agreement*)

[Lecture 7 - Contract Mistakes]

- Presence of *vitiating elements* (problems) within a contract may render it void or voidable

- *Void*: contract is one that never had effect
- *Voidable*: contract may be repudiated at the option of the aggrieved party
- Contract Mistakes
 - **Common Mistake**: parties understand each other but are both mistaken about certain facts
 - **Mutual Mistake**: one party is thinking one thing, the other is thinking another, and both are unaware that they misunderstand each other
 - **Unilateral Mistake**: one party is mistaken about an important fact and the other is aware the first is mistaken
- Rectification → remedy of equity (fairness); modifies written document to express real intention of parties
 - Completed unambiguous contract that clearly expressed intentions
 - No change in the agreement between completion and writing it down
 - Evidence to convince the court that it contains a mistake such that the contract does not reflect the terms of the agreement; onus on plaintiff to provide evidence
- Unilateral Mistake
 - About an essential term
 - About the identity of a party
 - About the nature of a signed document

[Lecture 8 - Contracts, Recission, Tendering]

- Recission (rescinding, cancelling, reversing)
 - Goal is unwinding of the contract → to return all parties to their original state
- **Misrepresentation**: false assertion of fact which induced another party to enter into a contract
 - If it is made with the knowledge that it is false or reckless, then it is a **fraudulent** misrepresentation
 - Otherwise, it's **innocent** representation
- The party that entered the contract with the misrepresentation is the *deceived party*
 - Options: voiding the contract, sue for additional damages under tort law
- **Duress**: intimidation of a person or close relative to force them to enter into a contract
 - **Economic Duress**: intimidation with regards to money
- **Undue influence**: when a party is in dire straits or relationship of trust due to a special skill allowing one party to coerce the other
- **Tendering**: in organizing a project, it is normal practice to request bids (*tenders*) for portions of the work
 - Owner requests tenders for specific work
 - The request specifies a period for which tenders will be accepted
 - Until given date and time, tenders may be modified or withdrawn
 - At the end of the period, tenders are “opened” and the “winner” is selected
 - The requester and bidder enter a contract
 - The requestor must oblige to the tendering process; cannot accept non-compliant bid nor negotiate
 - The tendering contract often includes a clause that allows the requestor to reject all bids
- **Bid shopping**: the unethical yet common practice (usually a violation of the tendering contract) where the bid of a contractor/subcontractor is divulged to other prospective contractors before awarding to secure lower bid
 - Occurs when price negotiation is after close of tenders; unless explicitly allowed, it's unethical

[Lecture 9 - Contracts, Interpretation]

- Most contract disputes are over the *meaning* rather than its *formation*
- To avoid ambiguity, such as which jurisdiction the contract falls under, contracts have terms to specify
- To examine express terms, the court may examine it in two ways: strict and liberal

- **Strict (dictionary) meaning** → however, words have multiple meanings and context
- **Liberal meaning/intent** → however, there could be endless speculation
- Grammar could also be a huge factor as it changes the interpretation of many sentences
- For any ambiguities, the courts could apply a *contra proferentem* rule; often to “take-it-or-leave-it” contracts (*contracts of adhesion*)
 - It is necessary to keep track of who made what changes, as a result
 - The clause must be found to be ambiguous
 - Neither interpretation is obviously more significantly more reasonable
 - No liberal interpretation resolves the ambiguity (parol evidence rule still applies)
- From the *nature* of the contract, there can be *implied terms* as well

[Lecture 10 - Discharge of Contracts]

- Contracts may be discharged in many ways
 - Performance
 - Agreement
 - Pursuant to express terms
 - Replacement (*novation*) by agreed new obligations or parties
 - Operation of law
 - Impossibility, impracticality, frustration
 - Breach of contract
- **Performance**: all parties have met their respective obligations satisfactorily
 - As long as any obligations remain unfulfilled, contract is still ongoing
 - *Warranties* go beyond the scope of performance → i.e. performance is services, warranty is repair
 - **Tender of performance** → ex. a seller tenders some goods but the buyer refuses; it's enough to try
- **Agreement**: parties are free to choose to terminate the contract
 - This in itself is an agreement--**agreement to discharge**
 - Consideration is the relief from the obligations or any other agreed consideration
 - If there is no agreement to discharge, this would be considered a breach of contract
- **Express terms**: a contract may contain *express terms* that allow the contract to be discharged
- **Novation**: a *material alteration of the terms* is the discharge of the old contract and its replacement with the new one (*novation*) due to a big modification to the original contract
 - ex. Promiser cannot perform an obligation so they offer a substitute
 - ex. The agreed exchange of 1+ parties to contract with another
- **Discharge by impossibility**: it is objectively and literally impossible to satisfy the obligations (ex. death)
- **Discharge by impracticality**: it is infeasibly difficult or expensive to perform this obligation
 - American test: must be an occurrence of a condition with the non-occurrence being a basic assumption
 - The occurrence must make performance extremely expensive or difficult
 - *Hell or High Water*: clauses that are added to prevent discharge by impossibility/impracticality
 - Still may not be upheld in court
- **Discharge by frustration**: invoked in exceptional circumstances
 - The purpose of one party entering the contract must be eliminated
 - All parties are left as is at *time of discharge*
 - Sometimes performance is still possible but circumstances have materially changed
 - *Self-induced frustration* is not valid → people cannot willfully disable themselves from performing

- Common law doesn't recognize *force majeure* on its own so it must be *explicitly* written

[Lecture 11 - Breach of Contract]

- A breach of contract is a failure to perform → not guaranteed to result in a discharge
 - Party that breaches the contract is the *defaulting party*
 - Any other parties are the *innocent* or *injured parties*
 - **Minor breach**: a breach of a non-essential term; contract is still binding on both parties
 - **Major breach**: a breach of an essential term
- **Non-material breach**: breach of a warranty (obligations non-essential to the contract); no discharge
- **Material breach**: breach of a fundamental/essential term; defaulting party is still bound but the injured party could either discharge or affirm the contract
- In both breaches, the injured party could sue for damages
- Three ways to breach a contract
 - Failing to perform or tendering a performance that does not satisfy an obligation
 - Not evident until performance time and nature will determine the remedy
 - Express repudiation (stated refusal to perform)
 - Promisee is entitled to treat the contract as immediately ended, find another party to perform, give notice of lawsuit and sue for damages
 - Party can insist up until the original date agreed for the performance
 - Acting in a way that renders performance impossible
 - Actions can be a form of repudiation; possibility of *anticipatory breach*
- Compensation (including being free from their obligations)
 - **Damages (monetary)**: purpose is to restore injured party, not punish the defaulting
 - Immediate costs (cost to replace), speculative damages (profits), nominal damages (validity)
 - **Quantum Meruit**: if there's not agreed price state in the contract, services are paid accordingly
 - If one party breaches with a fixed price and discharges, the injured party could act as if the contract didn't exist
 - **Specific performance**: court may order the defaulting party to fulfill the terms rather than pay
 - Common for sale of land or other items
 - **Injunctions**: a court order to *enjoin* (forbid) a party from acting in a certain manner
 - The contract must first contain a promise *not* to do something
- The injured party has the *duty to mitigate* damages--they can sue for damages afterwards
- Should a contract have a *penalty clause* indicating damages to be paid in a case of a breach, the penalty must be commensurate with actual damage--it can't be purely punitive

[Lecture 12 - Tort]

- Criminal Code → lists offenses of which breaches are *crimes* (offense against the state)
- Conviction of a crime typically results in a sentence and a criminal record
- *Tort* (civil) offenses are typically against other persons and *do not* result in a criminal record
- The *primary purpose* of tort law is to **compensate** (restorative damages) those who are wronged; not punitive
- Harm to a person/corporation may not be the result of breaching the law
- Parties are the *tortfeasor* (wrongdoer) and *victim*
- Insurance contracts are intended to avoid the need for such lawsuits
- Rarely will the court award punitive damages; only when tortfeasor's behaviour was especially malicious

- **Fault** → to remove liability from people for events out of their control
- **Causation** → developed to hold people responsible for actions that affect others in the future
 - May be traced back to careless acts but no further; voluntary acts in between “decouple” events
 - General rule: the closer a person’s conduct to the event is, the less chance of intervening event
- Right to compensation
 - Defendant owed the plaintiff a *duty of care*
 - Duty that a person has to ensure that others do not suffer harm or loss
 - Defendant breached that duty by their conduct
 - Defendant’s conduct caused the injury to the plaintiff
- Burden of proof
 - Injured need only prove the defendant’s product caused the injury, not how
 - Defendant then must prove they are not responsible (*burden of proof* has shifted)
- **Intentional Torts**: tortfeasor deliberately harms another person
 - **Trespassing**: entering property of another without permission/refusing to leave
 - Owner may use only reasonable force to evict person off the property
 - Owner is only likely to receive nominal damages unless harm to property
 - **Nuisance**: interference with someone’s enjoyment of their real property
 - Noise, smells, actual damages (fires)
 - **Defamation**: untrue statements damage someone’s reputation--conveyed by 3rd party
 - Direct insults, factually correct statements don’t count
 - **Slander** (spoken form), **libel** (written form)
 - **Fraud**: intentional deception to secure unlawful gain/deprive another’s right
 - Victim may recover damages; this is mainly prosecuted as a criminal act
 - **Assault**: threat or attempt to commit *unwanted physical contact* in which capability is present
 - Reasonable belief of immediate threat or harm; may be a criminal offense
 - **Battery**: unwanted direct or indirect *intentional* harmful conduct
 - “Trespass to the person”
 - **Invasion of privacy**: unlawful intrusion into victim’s private affairs, discloses information
 - **Intentional infliction of emotional distress**: tortfeasor causes serious distress
 - Must be flagrant or outrageous conduct, calculated to produce harm, resulting in visible illness
 - **False arrest**: victim is deprived of liberty due to insufficient reason to arrest or excessive force
 - **False imprisonment**: victim is wrongfully deprived of liberty due to a lack of lawful authority
 - **Conversion**: making use of another’s property without the *consent* of the owner
 - Effect or intention of *interfering* with or *denying* the victim’s rights to the property

[Lecture 13 - Negligence, the Tort of Inaction]

- Negligence can be intentional and unintentional
- **Foreseeability** → Would a normal person have foreseen that their conduct would cause harm?
- Defendant has failed to meet a reasonable *standard of care* → tort action success
- **Liability insurance** helps protect engineers as they are liable for any loss to their employer from their skill
- Tort action may take place years into the future → sufficient to show that work was performed as best as possible with the tools available at the time (climate change might be an exception)
- **Expert professional engineers** might be called to testify on whether a duty of care was breached
- **Engineering reports** may also be used as evidence

[Lecture 14 - Product Liability]

- Manufacturer has a duty to make sure its products are not harmful/injurious to purchaser, user, or consumer
- **Strict liability** → idea of fault is unnecessary
- **Sales of Goods Act**: impose warranties and conditions to any purchase
 - ex. seller has right to sell goods, goods are reasonably fit for their purpose
- Product liability has elements of both contract and tort law
- **Duty to Warn**: manufacturers, sellers, distributors and others have to warn consumers of any potential dangers

[Lecture 15 - Tort and Economic Loss]

- **Occupier's Liability**: occupier (owner/tenant) of land or buildings are not liable for injuries, although they must ensure the safety of individuals coming into the property (including trespassers)
 - There is also a *duty to warn*

[Lecture 16 - Tort, Negligent Misstatement]

- Engineer states something incorrect and someone acts upon that incorrect statement
 - Engineer might be liable unless there's a *disclaimer*
 - Deliberate intent might be fraud
 - Engineer has the *duty of care* when making such statements
- **Limitation of liability clauses**: courts may allow people to limit/exclude the scope/extent of their liability
- Liability may arise even without a contract between two parties
- A loss may be recoverable
- Disclaimers are generally upheld but must be comprehensive and explicit

[Lecture 17 - Tort, Vicarious Liability]

- Employment situations → if an employee commits a tort during employment, employer is liable vicariously
- Plaintiffs must show
 - Relationship between tortfeasor and person against whom liability is sought (employer) must be close
 - The wrongful act must be sufficiently connected to conduct authorized by employer
- Summary of Employer Liability
 - For its own negligence in hiring, training, or supervising employees, an employer is always directly liable
 - For the wrongful acts of an employee within the scope of employment, an employer is always vicariously liable
 - For the wrongful acts of an employee outside of the scope of employment, an employer may be vicariously liable
 - For the wrongful acts of an independent contractor, a party hiring the independent contractor is generally not vicariously liable
 - For an employee's breach of fiduciary duty owed to a previous employer, an employer may be vicariously liable, even if unaware of the breach

[Lecture 18 - Tort, Concurrent Tortfeasors]

- **Divisibility**: each tortfeasor is responsible only for the injury they caused

- Plaintiff can recover damages from either or all defendants
- *Apportionment of fault*: judge will assess the degree to which each part is at fault
- Between concurrent tortfeasors, the test is *moral blameworthiness* rather than damage contribution
 - Duty of care, timing (first tort is usually most important), nature of conduct
- **Contributory Negligence**: plaintiff may be *totally* or *partially* at fault → apportionment of fault

[Lecture 19 - Tort, Time Limitation]

- Limits the duration of civil liability → after a passage of sufficient time, a person can no longer be held responsible for actions in the past and litigation cannot proceed (as it's prohibited by statute, it's **statute barred**)

- **Ontario Limitations Act 2002**

- **15-year limitation** for the commencement of any action after the act/omission
 - Exception: timer starts running once minor is age of majority, no limit for environmental claims
- No action may commence more than **two years** after claim is *discovered*
- Discovery is the earliest of:
 - The day on which the person with the claim first knew that:
 - The injury, loss, or damage had occurred
 - The injury, loss, or damage was caused by or contributed to by an act or omission
 - The act or omission was that of the person against whom the claim is made
 - That, having regard to the nature of the injury, loss, or damage, a proceeding would be an appropriate means to seek to remedy it
 - The day on which a reasonable person with the abilities and in the circumstances of person with the claim first ought to have known of the matters referred to in clause (a)
- **Amended in 2006**, for business agreements
 - Shorten or extend the two-year limitation period
 - Shorten the 15-year ultimate limitation period
 - Extend or suspend the 15-year ultimate limitation period if the relevant claim was discovered prior to 15 years
- Exceptions given:
 - A reasonable explanation for the delay
 - Potential defendants were aware of the claim before the expiration date

[Lecture 21 - Introduction to Ethics]

- Ethics is divided into several categories:
 - **Meta-ethics**: theoretical inquiry of moral principles and how their truth values may be determined
 - “What is goodness?”
 - **Normative ethics**: concerning the practical and theoretical determination of moral courses of action
 - “What should I do?”
 - Tends to be prescriptive--prescribes how to deal with particular ethical situations
 - **Applied ethics**: situation-based moral outcomes
 - **Descriptive (comparative) ethics**: the study of extant ethical behaviour
 - “What do people think is right?”
 - Tends to be empirical; investigates a society's response in dealing with ethical situations

- **Moral psychology**: the psychological study of ethical behaviour
- **Virtue ethics**: asks how a response to a situation will affect the perceived character of a person
 - First discussed in western philosophy by Plato and Aristotle
 - Plato lists four cardinal moral virtues: Courage, Temperance, Justice, Prudence
- **Role ethics**: morality is derived from people's relationship with their community; not individualistic
 - Engineers are expected to conform to their engineering code of ethics
 - Filial piety according to Confucianism is a desire and not only an action

[Lecture 22 - Ethical Theories]

- Several theories can be applied in ethical decision-making including:
 - **Utilitarianism**: attempt to find the best balance between good and bad consequences, taking fair account of everyone affected
 - Principles (outcome-based): acts are good if they produce good results, bad for bad results
 - **Duty ethics (deontology)**: the duty to act fairly regardless of whether the most good is done or not
 - People have duties (honesty, fairness, etc.); important one is to protect the rights of others
 - **Rights ethics**: all persons have rights and violating them is ethically unacceptable
 - People have rights that others have a duty to protect
 - **Virtue ethics**: good actions come from good character traits (virtues) and bad actions from bad traits (vices), so that the goodness of decisions results from the character of the person making them

[Lecture 23 - Professional Engineering]

- Purpose of the regulation of professions is to protect public health and safety
- The five requirements that must be met before the PEO will grant an engineering license is:
 - Be at least 18 years of age
 - Be of good character
 - Meet PEO-established education standards
 - Pass the professional practice exam on engineering law and ethics
 - Meet engineering experience requirements

[Lecture 24 - PEO Code of Ethics]

- The Code of Ethics gives a hierarchy of duties to:
 1. Public welfare
 2. Employers
 3. Clients
 4. Other professionals
 5. The Profession
 6. Themselves

[Lecture 25: Ethics Cases]

- An organized approach:
 1. Recognize ethical issues when they arise
 2. Collect and record the facts; often they appear different to different people
 3. Evaluate alternative actions; employee lists or flow diagrams as appropriate
 4. Make a decision and test it by consulting others; scrutiny of others is often a good test of valid action
 5. Act and reflect on the outcome: what have you learned?
- Case Analysis: PRISM

- The **Players**: Who are the main players involved? List them.
- Their **Relationships**: What are their relationships?
- **Identify actions**: Identify and list relevant actions
- **Statutes**: What are the relevant statutes, codes, regulations?
- Determine professional **Misconduct** and ethical responses

[Lecture 26: Professional Misconduct]

- Behaviours listed as misconduct by the PEO include:
 - Negligence (of duties in the Code of Ethics)
 - Failure to safeguard life or property
 - Failure to correct or report unsafe situations
 - Failure to comply with applicable codes
 - Sealing a drawing not prepared or checked by the engineer
 - Failure to explain consequences of deviations to the employer
 - Breach of the Act or non-code of ethics regulations
 - Working in an area where the engineer is not competent
 - Conflicts of interest including bribes, fraud and personal financial gain
 - Conduct regarded by the engineering professional as disgraceful, dishonourable, or unprofessional
 - Failure to abide by license or certificate limitations
 - Failure to assist PEO investigation
 - Counselling non-engineers to engage in professional engineering
 - Harassment: vexatious words/conduct that is unwelcome and interferes with professional relationships

[Lecture 27: Discipline and Enforcement]

- All complaints are reviewed by a ***Complaints Committee***
- Those found to have merit are forwarded to the ***Discipline Committee***

[Lecture 32: Intellectual Property]

- The owner can control and potentially profit from others' use of the work
 - This ensures that producers are rewarded for creation
- Patents
 - The right to exclude others from using, making, or selling the invention
 - Must be new/novel, useful, and ingenious
 - Lasts for 20 years from filing date
- Copyright
 - The right to copy, produce, reproduce, perform, publish, adapt, communicate, and otherwise use literary, dramatic, musical, or artistic work (including computer programs)
 - Must be original
 - Lasts for the life of the creator + 50 years to the end of the year, excepting photographs, films and recordings (which last 50 years total)
 - America is life of creator + 70 years
 - In Canada, a copyright is automatically possessed by an author or creator regardless of whether the material is marked © or registered
 - It is permitted to copy a small amount of a copyrighted material under fair use, including short extracts for review, criticism, or research

- The author and the source of the quoted material must be completely identified
- If copying replaces sales, it is not fair
- The original author still has moral rights to the work – to require the integrity of the work and with what the work is associated
- Industrial design
 - Prevent competitors from imitating the shape, pattern, or ornamentation applied to a mass-produced article
 - The design must be original and the article must be useful
 - Lasts for up to 10 years from registration date
- Trademark
 - Ownership of a word, symbol, or design used to identify the wares/services of a person/company in the marketplace
 - Must be used in business in Canada and must not use prohibited words (profanity, geographic names)
 - Lasts for 15-year periods but infinitely renewable
- Integrated circuit topography
 - Ownership of the 3D configuration of layers of semiconductors, metals, insulators, and other materials on a substrate
 - Must be original
 - Lasts for 10 years from application date
 - Protected separately because it cannot be clearly protected under patent law nor can it be effectively protected under copyright law due to the functional nature of its geometry
- Trade secret
 - Possession of a secret process or product
 - Employees must sign nondisclosure contracts, agreeing to maintain the secret
 - Potentially unlimited – but disclosure or theft must be prosecuted under tort or criminal law

[Lecture 33: Business and Employment Equity]

- Unincorporated sole proprietorship
 - The simplest form--the business is an extension of the person
 - All assets and liabilities (income and losses) are personal and unlimited
 - No shares can be sold
 - Easy to register and report for taxes
 - Often financed personally or by family
- Partnership
 - 2+ sole proprietorships conducting a business
 - Does not require governmental approval, easy to register by paying a fee
 - Any single partner is responsible for liabilities, losses, and consequences of decisions
 - For taxes, financial info from partnership is combined with other personal income
 - Partnerships with >5 partners have specific tax reporting requirements
 - Partner rights, responsibilities, and obligations (including the ability to dissolve the partnership) should always be detailed in an internal partnership agreement
- Incorporated business
 - A separate legal entity registered provincially or federally
 - Has the rights of a person--responsible for its own income, debts, and taxes
 - Has shares (even if owned by one person)

- Incorporating may save individual taxes but entails initial and on-going costs
 - Principal owners of small companies must give personal guarantee of payment of bank debt
- Types of small companies:
 - Lifestyle business
 - Consultants, individual engineers, dentists, lawyers, tradespeople
 - Approximately 30% of Canadian businesses
 - Paid by the hour, limited by rate and time available
 - Generic small business
 - Growth limited by market it serves
 - May provide steady, limited income--chosen by people who like stability
 - Threshold business
 - Unlimited growth potential to world scale
 - Must be run by a team
 - Organizers must delegate authority
 - Private incorporation: not required to publish financial statements but cannot offer shares to the public
 - Provincial vs. federal register--federal incorporation implies country-wide business
- Steps to incorporation:
 - Determine company type and structure
 - Determine an operating name
 - Determine a legal name (numbered company in Ontario)
 - Complete and file Articles of Incorporation
- Internal structure of a corporation:
 1. Shareholders
 - The company is not owned, only shares are owned; shareholders vote by number of shares held
 - An annual meeting must be held
 - Shareholders elect the board of directors, who theoretically represent the shareholders
 - Min board size in Ontario is 1 person
 2. Board
 - Elects a chair
 - Appoints company officers
 - May be personally responsible for unpaid taxes and employee salaries
 3. Officers
 - Legally able to bind the corporation
 - Need not be company employees
- Characteristics of jobs (creativity spectrum):
 - **Inventor**: takes unrelated elements to solve new problems (wants better results)
 - **Innovator**: Implements new concepts/improve existing designs (makes things work)
 - **Entrepreneur**: Organizes company elements to fill a business void (creates organizations)
 - **Manager**: Directs, creates policy and strategy (develops and grows organizations)
 - **Administrator**: Implements strategies (improves efficiency)
- Motivational characteristics (people's needs)
 - **Affiliation**: people who are happy in groups (ex. engineers, doctors)
 - **Power**: People who want power, ex. having a large office
 - **Achievement**: The driving force for entrepreneurs, who are satisfied by achieving goals but may be

unsuccessful at running a company

▸ ***Problem solving (flow)***: The classic computer programmer (nerd)

• Companies are not allowed to ask certain questions:

- Personal questions regarding weight, height, eye colour, etc. excepting positions that require these specific capabilities
- Questions regarding physical abilities excepting positions that require them
- National origin or citizenship excepting jobs that require Canadian citizenship
- Criminal record excepting crimes related to the type of employment
- Social or political affiliations excepting professional organizations or job-related clubs or hobbies
- Requesting photographs excepting modelling and entertainment
- Marital or family status excepting questions relating to travel and relocation

DEFINITIONS

Law: the rules (*normative*: may be broken at the risk of consequences; *physical*: cannot be broken)

Justice: quality of being morally righteous or virtuous

Retributive Justice/Criminal Law/Justice: to deter or mitigate crime, penalize and rehabilitate offenders; seeks to maintain society as a whole

Restorative Justice/Civil Justice: regulates actions between individuals; restores injured party to original state

Distributive Justice: just allocation of goods or benefits in society (i.e. tax law)

Ultra vires: “beyond the powers”; acting beyond one’s legal power/authority

Vis et voluntas: “force and will”; principle which allowed old monarchs to be above the law

Notwithstanding Clause: allows legislature to ignore certain provisions of the charter, provided the Act expresses it is (to prevent legalizing of hate speech under freedom of expression)

Civil Code: comprehensive statements of rules and general principals to deal with disputes

Civil Law: judge considers only the application of the code to the case at hand

Common Law: cases are ruled based on precedents (similar previous legal cases)

Stare decisis: “stand by decisions”; courts generally stand by decisions already made

Lawsuit: method to bring the court system into play in a civil law case; *cause of action* is the reason for lawsuit

Plaintiff: initiator of the legal action; plaintiff must specify a cause of action

Defendant: party who had allegedly wronged the plaintiff

Breach of contract: party not fulfilling the obligations of the contract

Ex post facto: a later agreement may modify, change, or rescind the original agreement if both parties agree

Common Mistake: parties understand each other but are both mistaken about certain facts

Mutual Mistake: one party is thinking one thing, the other is thinking another, and both are unaware that they misunderstand each other

Unilateral Mistake: one party is mistaken about an important fact and the other is aware the first is mistaken

Misrepresentation: false assertion of fact which induced another party to enter into a contract

Duress: intimidation of a person or close relative to force them to enter into a contract

Undue influence: when a party is in dire straits or relationship of trust due to a special skill allowing one party to coerce the other

Contract A: the tendering agreement; a contract formed between the owner and all the bidders to ensure fairness amongst all the bids--”duty of fairness” from owner to bidder

Contract B: the construction contract; the contract between the “winner” of the bids and the owner

Express terms: terms written in the contract

Contra proferentem: “against the one bringing forth”; when there’s ambiguity in contracts, it is interpreted against the party that authored the term

Contracts of Adhesion: one party sets the terms and conditions of the contract while the other party has little to no control over those terms; a “take-it-or-leave-it” contract

Implied terms: items that have not been included in an agreement but that would have been agreed by reasonable persons; because parties cannot foresee all things so some things might be forgotten/overlooked

Discharge: to cancel or unloose the obligation of a contract; to make agreement/contract null/inoperative

Warranties: additional terms in a contract that go beyond the scope of performance

Tender of performance: an attempt/offer to perform, whether there was an agreement or not

Agreement to Discharge: a mutual agreement to terminate a contract

Obligations: terms of contract that require performance

Force majeure: “superior force”, “Act of God”; refers to extraordinary events or circumstances beyond anyone’s control

Essential term: an important term in a contract that is required for the contract to exist and to be legally binding

Anticipatory breach: declaration by promising party that they don't intend to live up to their obligations

Quantum Meruit: "what one has earned"; implies a promise of reasonable pay for performed services

Injunction: court order to forbid a party from acting in a certain manner

Tort: a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the perpetrator

Offense: a breach of statute (an act or parliament)

Negligence: failure to take action that a reasonable/prudent person would take to protect another

Disclaimer: statement that denies something such as responsibility

Vicarious: something performed, exercised, received, or suffered in place of another

Vicarious Liability: responsibility of a subordinate is placed onto the superior

Concurrent Tortfeasors: acting together tortfeasors

Consecutive Tortfeasors: culminating in separate events tortfeasors

Contributory Negligence: plaintiff may be totally or partially at fault

Business Agreement: agreement made by parties, none of whom are consumers; defined in the Consumer Protection Act, 2002

Consumer: individual acting for personal, family, or household purposes; not including those acting for business purposes

Morals: relating to principles of right and wrong in behaviour

Ethics: the discipline or study of morals; ethics is the science of morals and morals are the practice of ethics

Religion: beliefs and practices concerning the nature of existence and the supernatural

Philosophy: the rational study of principles governing logic, knowledge (epistemology), conduct (ethics), and the nature of existence (metaphysics)

Occupation: application of skill and knowledge

Profession: occupation with a code of ethics

Maxim: short, pithy statement expressing a general truth or rule of conduct