



# BU231 EXAM AID

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**'RAISING MARKS, RAISING MONEY, RAISING ROOFS'**

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# Agenda

Chapters:

3,4,5,6,7,8,9 and 10.

Review of concepts, translation from legal terms and examples.

# Types of Law

- Public Law
  - Regulatory Liability (Fines & tickets)
  - Criminal Liability (Prosecution & Prison)
- Private/ Civil Law
  - Civil Liability (Being sued for money)

# Legal Definitions

- Plaintiff - The person who sues.
- Defendant - The person being sued.

# Torts

- Definition: A loss as a result of someone else's action or failure to act when they should.
  - Split into intentional and unintentional
  - Goal is to compensate for loss
  - Will not compensate more than injury

- Definition: Being responsible for damages
  - **Fault vs No-Fault**
    - **Fault**: Blameworthy conduct as, in the eyes of the law, it is unjustifiable to carelessly disregard the interests of others.
    - **No Fault**: Gives no blame to the defendant as they engaged in an action that people cannot be accountable for.



# Liability

- **Strict Liability:**

- Liable for damages even without fault.

- **Vicarious Liability:**

- Liability for what someone under your care/control does (fault) during the course of their employment.

# Negligence

- An UNINTENTIONAL tort.
- Has three main elements:
  - 1) Owed a duty of care
  - 2) Breached standard of care
  - 3) Caused damages



# Owing a Duty of Care

- Childs v. Desmoreaux
- Based on proximity and foreseeability
  - **Proximity**: How physically close you are to the injured party
  - **Foreseeability**: How likely it was that you knew about the danger
- Duty of care can be overruled if:
  - 1) The case provides precedent (has a previous case)
  - 2) Will interfere with overall functioning of society.

- Contains two parts:
  - 1) Establish a standard of care:
    - Best way to do this is to compare the case to situations at the time
    - Standard can be drawn from previous cases or proved individually within the case
  - 2) See if conduct breaches this standard
    - Compare to the previous case/ standard and find evidence of breach

# Causation of Damages

- Based on remoteness:
  - **Remoteness**: How close of a link between a breach of care and damages
  - Car crash example.

# Contributory Negligence

- Partial negligence on the part of the plaintiff that leads to a partial reduction in the damages rewarded.
- Translation: If the problem was partially (ex. 30%) your fault, you will lose out on a part (30%) of the damages



# Specialized Forms of Negligence

- 1) Manufacturer's Negligence
- 2) Occupier's Liability
- 3) Negligent Misrepresentation

# Manufacturer's Negligence

- Product Liability: If a product is claimed to be defective, causing damages.
  - Plaintiff Must Prove:
    - Duty of Care (that they owed you a certain level of care)
    - Causation of Damages
  - Defendant Must Prove:
    - Res Ipsa Loquitor (Reverse Onus)
    - Translation: Prove that you met the standard of care
    - Must prove that the product met certain production standards.
    - Warranties are useful because they provide a time frame where, after the warranty expires, the product is expected to fail.



# Manufacturer's Negligence

- **Inherently Dangerous Products:** Product producer has a duty to warn. (I.E. Smoking kills signs on cigarettes)
  - Sometimes, the duty to warn can be pushed off onto an intermediary. I.E. Roller coaster producers do not warn the riders, the amusement park does.
  - Plaintiff must prove the three elements of negligence. However, the court will take into account the failure of the plaintiff to mitigate damages.
  - Translation: If the product user does not make an attempt to help solve the problem, the outcome will be:
    - Contributory Negligence
    - Assumption of risk by the plaintiff
    - Consensually lowering the standard of care

# Occupier's Liability

- Different standard of care owed to:
  - Covered in Occupiers Liability Act
  - Invitees
    - Guests have high standard of care (must prove full three negligence points)
  - Licensee
    - Someone that enters the property with good reason. Eg. Mailman. They are owed same duty as an invitee.
  - Trespassers
    - A trespasser is still a foreseeable victim
    - However, they are owed a lower standard of care due to the fact that they should not be there
    - Only standard of care owed to them is to not intentionally put out traps to deliberately injure, and NOT TELL THEM. (IE Can still put "Beware of Dog")

# Intentional Torts

- Nuisance
- Trespass
- False Imprisonment/ False Arrest
- Malicious Prosecution
- Inducing Breach of Contract
- Defamation
- Assault & Battery
- Unlawful Interference with Economic Relations
- Product Defamation
- Passing Off (knock offs)

# Nuisance

- Definition: Unreasonable interfering with someone else's use and enjoyment of land
- Comes in two forms:
  - **Public:** When you interfere with enjoyment of public space (parks, streets)
  - **Private:** When you interfere with an occupiers use and enjoyment of their own land.
    - Differs from occupiers liability as the problem is on the plaintiff's land/ public land (not the defendant/occupiers)
- The law balances the interest of the public and the land.
  - Means that they will not charge every minor annoyance with a nuisance suit.

# Inducing Breach of Contract

- Translation: Getting someone to break their contract with another person by talking them out of it.
- I.E. Talking you into quitting your job to come work for me.
- Both the person who induced the contract breach and the person who broke the contract become liable.



# Defamation

- Outlined in the Libel and Slander Act
- Translation: Saying things about a person that hurts their reputation and causes damages.
  - **Libel** = Written defamation
  - **Slander** = Spoken defamation
- Need to prove genuine and significant injury
- Three defences:
  - **Absolute Privilege**: Certain places allow a person to make a defamatory statement, even with malice
  - **Qualified Privilege**: Allowed to make a defamatory statement, but only to warn, not to insult (malice)
  - **Fair Comment**: An honest belief (with supporting evidence) that the statement is true, even if it is defamatory.



# Assault & Battery

- **Assault** = The threat of violence
- **Battery** = The act of physical harm (unlawful touching)
  - Covers any type of violence, ranged violence (guns) and doctors practicing without consent

# How to Sue Your Professional

- A professional is someone who is paid for their advice and is an expert on the topic in question.
- Can sue professional in:
  - Tort (negligent misrepresentation)
  - Contract (breach of contract)
  - Fiduciary duty
- Choose which form to sue under based on
  - Components of cause of action (were they acting in your best interests)
  - Limitation period (time frame to sue in)
  - Amount of damages

# Misrepresentation

## Comprised of:

- Statement (giving false information, expert opinion is treated as a fact)
- Negligent Omission (Silence when there is a duty to speak)
  - Exculpatory Clause will usually state a limit to the amount of liability the professional has

## Types of Misrepresentation:

**Innocent** (no one was right)

**Negligent** (professional was wrong when other competent experts would have been right)

**Fraudulent** (expert intentionally tried to deceive you)

Hedley Byrne v. Heller

- Contains similar process as negligence:

## 1) Owed a Duty of Care

- Mistake must be foreseeable and foreseen by the misrepresenter

## 2) Standard of Care

- Standard is one set by a competent professional in the field

## 3) Reliance (NOT CAUSATION OF DAMAGES) - Must prove that you relied on the information, and that it caused damages

- Hercules Management v. Ernst & Young

- Two part test for duty of care:
  - Must look at the proximity of the individual injured to the given information. Was it given objectively (non-opinionated) or subjectively (opinionated)
  - Must look at public policy considerations (does it create infinite liability to infinite professionals)
    - To decide whether it meets policy considerations:
    - Check if defendant knows the identity of the plaintiff
    - Was the statement used for the intended purpose?

# Other Lawsuit Definitions

- **Class Actions:** A collection of people coming together with a similar case for a lawsuit
- **Contingency Fees:** Legal fees collected by the firm ONLY upon gaining compensation out of the case (these enable class action lawsuits)
  - Translation: You don't pay unless we win!





# Fiduciary Duty

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# Fiduciary Duty

- Definition: A duty imposed on a person in a special relation of trust to another (I.E. A professional service)
- Fiduciary duty exists if:
  - Fiduciary (info giver) has scope (ability) to exercise power
  - Fiduciary exercises power and affects beneficiary (info receiver)
  - Beneficiary is vulnerable to (at the mercy of) the fiduciary (relies on/ believes information)
    - Once imposed, the fiduciary has to act in the best interests of the beneficiary (even though it conflicts with their self interest)



# Contracts

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# Contract

- Definition: A legally enforceable promise.
- A voluntary set of rules that parties promise to follow, where:
  - Each component is a term in the contract
  - The combinations of terms make up a contract
- If either party does not follow these terms, they may be forced to follow them by the courts or pay for a contract *breach*
- Contracts are established to legally enforce the terms in an agreement, and so that you can sue if they are not met.

# Getting Let Out of a Contract

- Cannot end a contract unless there is a problem with one of these conditions:
- A,C,D,E are all under *breach of contract*
- If B, then contract can be *rescinded*

## a) Is there a legal contract?

- a) If No, then no contract, only a promise

## b) Is there a reason for the contract to be void?

- a) Can I back out of the contract in any way?

## c) Who should give me what I bargained for?

- a) Who can you sue under contract and how?

## d) Did I get what I bargained for?

- a) Do the promises made match the performance?

## e) Do the words mean the same to both parties?

- a) Conflicting opinions on terms and delivery of contract



# Contract Breaches and Rescission

- **Contract Breach:** If the contract is breached, you are entitled to get what the contract stated.
- **Contract Rescission:** If the contract is rescinded, each party is put back to a pre-contract position. (Before the contract was made)



# Question 1: Is There a Legal Contract?

- Question of whether the contract even exists (legally).
- If not set up properly, contract doesn't technically exist.
- Made up of four parts:
  - Offer
  - Acceptance
  - Consideration
  - Intention

# Offer & Acceptance

- **Offer:** The source/ most important part of the contract. The offer can be written or oral and must be capable of unqualified acceptance (without conditions to acceptance).
  - The offer must contain particulars that form the basis of the contract (It is where you find the terms)
  - If not returned in a certain time, the offer can lapse (not available anymore). Offer can be revoked at any time.
- **Acceptance:** A complete and unconditional agreement to an offer. Must be communicated to offeror.
  - A counter offer is a rejection of the original offer and a new offer sent
  - Must be done in a timely manner.
  - Acceptance takes place when the offeror receives acceptance letter

# Consideration & Intention

- **Consideration:** The price you pay for the promise to the other. Gratuitous (Free) promises are only enforceable once the gift has been made.
  - *Past consideration can not be used as future/present consideration*
  - Courts do not act if consideration is a bargain or one side gets fooled
- **Intention:** Intention to form a contract is presumed, unless proved otherwise. Burden of proof is on the side seeking legal action to rebut the contract.
  - Becomes intention once contract is signed and sealed.
  - Intention states that goods/services can be received in the future

# Types of Contracts

- **Bilateral Contract:** A promise to pay right now and perform a service later.
- **Unilateral Contract:** A contract usually given to many people, where acceptance is communicated by performance of the contract (Taking someone up on an offer)
  - Carlill v. Carbolic Smoke

# Types of Contracts

- **Standard Form Contract:** A standard contract document used for many contracts by one party. Used because:
    - It is cheaper and efficient
    - Prevents loopholes in individual contracts
  - **Exemption Clause:** A clause that prevents a person from seeking remedy.
    - Exempts a certain party from liability
- OR**
- Limits liability to a certain dollar amount.



# Exceptions to a Legal Contract

- Gratuitous Reduction of Debt (& Part Performance)
- Equitable Estoppel



# Gratuitous Reduction of Debt

- Foakes v. Beer
- When you voluntarily reduce a debt so that the person pays you faster.
  - If you do not receive payment of the reduced amount, you may sue for the full amount (even if you promised that you wouldn't)
  - This is because past consideration is still the full amount, you have not created a new contract for a smaller amount since you haven't been paid the new amount.
  - The exception to this is part performance.

# Part Performance

- Mercantile Law Amendment Act, S.16
- Part performance of an obligation either before or after a breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration shall be held to extinguish the obligation
- Translation: If you agree to a gratuitous reduction of debt **AND YOU TAKE PAYMENT OF THIS REDUCED AMOUNT**, then you cannot sue for the full amount after.

# Equitable Estoppel

- Remedy to the promisee who relied on information from the promisor.
- If a gratuitously reduced debt has been overruled due to a lack of consideration from one party to another, then equity demands that the promisee get relief (money or discount)
- Three criteria for equitable estoppel:
  - Existing legal relationship between parties
  - Release/waiver of obligation
  - Reliance to a detriment for the promisee

## Question 2: Is There a Reason for the Contract to be Void?

- Getting out of a contract that has all of offer, acceptance, consideration, intention depends on the court declaring the contract void or voidable
  - **Void:** Contract never existed and parties are put back to pre-contract state (rescission of contract)
  - **Voidable:** Contract can be rescinded (cancelled) at the worse off party's choice



# Ways to Get Out of a Contract

- Diminished Capacity
- Legality of Contract
- Mistake or Misrepresentation

# Capacity

- The ability to think clearly and logically to make a contract.
- It is presumed that both parties have capacity to contract
  - The burden of proof is on the party alleging the lack of capacity
    - Minors
    - Corporations
    - Labour Unions
    - Enemy Aliens
    - Aboriginals
    - Bankrupt Individuals
    - Insane/Drugs/Alcohol
  - The ability to form requisite intent (the want to) contract decides diminished capacity.



# Capacity - Minors

- Anyone under 18 years old.
- Have limited capacity to contract. Can only contract to necessary (food, etc) contracts.
- All others are voidable at the minors option
- Ongoing contracts maintain once the minor turns 18, unless the minor cancels it. One off contracts need to be ratified (re-upped) to continue.
- Silence = over.

# Capacity - Corporations

- Corporations are separate entities, and therefore do not bind any individual. Agents contract for the company.
- Contracts that pre-date the birth of the corporation are not the corporation's problem since they had no capacity to contract.
- ULTRA VIRES contracts (IE pre-dated contracts) are out of the jurisdiction of the corporation and are VOID

# Capacity - Labour Unions

- Separate from corporations.
- Bargain for employees within the union, therefore have very little power to contract.
- Contract has to be ratified by an employee vote

# Capacity - Enemy Aliens

- A Non-Canadian resident who is a citizen of a country you are at war with.
  - Legal Aliens: Have the correct paperwork to be here
  - Illegal Aliens: Here without the government's consent

**Contracts by illegal and enemy aliens are VOID**

# Capacity - Aboriginals

- Inuit, Metis and First Nations
- Issue surrounds where they live
  - If they live on Native land, they have limited ability to contract (IE Can't own land)
  - If they live on Canadian soil, they have full contractual rights

# Capacity - Bankruptcy

- During bankruptcy, individual loses all power to contract.
- Gained back after discharged.
- Contracts void when in bankruptcy





# Capacity - Insane / Drugs / Alcohol

- Parallel to a minor
- Once capacity is regained, can back out of non-necessary contracts (voidable)

# Legality of a Contract

- 2<sup>nd</sup> way to back out of a contract
- Legality is presumed so up to party alleging illegality to prove it.
- If the contract substance offends the court, then the contract is unenforceable, and loss falls where it lies
  - Translation: If you sue over a contract about something illegal (IE Won't pay me when I sold him drugs) then the court will not enforce the contract, and whoever has lost out cannot reclaim any damages
- Statutes will say if a contract is prohibited, and whether it is void, voidable or unenforceable.
- Some statutes allow illegal practices to be allowed in contracts (Agreement in the Restraint of Trade)



# Agreements in the Restraint of Trade

- Signing a contract to not compete with your former employer (work for a competitor) after leaving your job.
  - Only possible in Vendor/Vendee and Employer/Employee contracts
- Although the practice may seem illegal, the good for society supersedes the tort committed in the contract.
- Court will assess each case to see what is reasonable to restrict (which jobs/businesses). They look at:
  - Time
  - Activity (how closely related to old job/business)
  - Geography (how close to old job/business)

# Mistake & Misrepresentation

- Third way to back out of a contract.
- Says that the court will not force a contract to be honoured if a side was tricked into it.
- Includes
  - Mistake about terms
  - Mistake in assumption
  - Non Est Factum
  - Unjust enrichment
  - Misrepresentation
  - Undue influence
  - Duress
- Cannot back out if you make a mistake in the contracts value (a bad bargain)

# Mistake About Terms

- Three possible mistakes
  - Inadvertence
  - Meaning of the words
  - Error in transcription
- Inadvertence: Words used/not used unintentionally.
  - Court examines reliance on the information and whether words should have been understood better.
  - Should be more careful! Therefore **VOIDABLE**
  - Webster v. Cecil

# Mistake About Terms

- Meaning of the Words: Contractual wording of the words is clear but 2 different interpretation. Court uses reason to decide.
  - Lyndsey v. Heron
  - **VOID:** IF:
    - Two valid interpretations
    - Wording is ambiguous
- Error in Transcription: Court will rectify provided
  - Complete agreement on term
  - No new negotiations



# Mistake in Assumptions

- Made up of:
  - Existence
  - Value
  - Identity
- Existence: A mistake in the existence of the subject matter.
  - VOID

# Mistake in Assumptions II

- Value: Not enforceable unless court decides that risk of change was not foreseeable.
  - **VOIDABLE** if unforeseeable
- Identity: (of a person) Broken down into three parts.
  - Face-to-Face: **VOIDABLE**, should have checked more thoroughly to check identity
  - Distance - Real Person: **VOID**, as you can check if they exist, but not check if they are who they say they are
  - Distance - Fake Person: **VOIDABLE**, you could check and see that they don't exist.

# Non Est Factum

- Relied on if contract is apparently valid but for the fact that the person was tricked into signing it.
  - I.E. Tricking someone into thinking they're signing a marriage contract to Katy Perry when really they are giving you their house.
  - Court will hold plaintiff responsible if “relatively sophisticated”

# Unjust Enrichment

- A receiving party claims a benefit that they are not entitled to. Elements are:
  - Conferral of benefit
  - Knowledge of benefit by recipient
  - Acceptance of benefit
  - Fixed by *restitution*
  - Restitution: Injured party put back in position before benefit was conferred.

# Types of Misrepresentation

- Fraudulent
  - Negligent
  - Innocent
- 
- All three make a contract **voidable** and can be rescinded, if misrepresentation induced you to contract.
  - Fraudulent & Innocent can also be pursued in tort.

# More on Misrepresentation

- Misrepresentation does not equal a problem with terms, it means that you relied upon information given by the other party to make a contract.
  - I.E. I tell you that the car I am selling has never been in an accident and is safe. This is not a *term* in the contract, but it influenced your decision
- **Innocent misrepresentation** = rescission of contract
- **Negligent misrepresentation** = sue expert who gave expert opinion for negligence (not rescission) or breach of contract
- **Fraudulent misrepresentation** = sue in tort for fraud or breach of contract



# Undue Influence

- Depriving someone of independent will by coercing them to sign a contract through a means other than force.
  - Dire Circumstances
  - Threat of Prosecution
  - Unconscionable Contracts
  - Special Relationships
- Burden shifts for special relationships (I.E. Husband & wife)
- Independent legal advice safeguards against undue influence.
  - Independent of the person exerting influence
- Makes contract **VOIDABLE**

# Duress

- Coercing someone to form a contract through a means of force.
- **VOIDABLE**



# Is Writing Necessary?

- Yes, in some cases.
- Another way to get out of a contract.
- Government has decided that some contracts need to be written.
  - Statute of Frauds
  - Consumer Protection Act
  - If not in writing, contract is unenforceable.

# Statute of Frauds

- The types of contracts that need to be in writing:
  - Executor's Promise (will)
  - Guarantee (guarantor of contract)
  - Consideration in Marriage (pre-nuptial)
  - Interest in Land (Deed of land - land outlives you)
  - Contracts >1 year
  - If there is no writing, then contracts are **UNENFORCEABLE**



# How Much Writing Is Needed?

- All of these are needed:
  - Some note
  - Defendants signing
  - Most essential terms
- However, you must declare which statute you use.

# Consumer Protection Act

- Contracts between businesses and consumers require writing. Covers:
  - Future performance
  - Time Shares
  - Remote contracts
  - Personal development
  - Internet
  - Credit & Direct Sales
  - Leasing



# CPA Requirements

- Things that you need in a contract from the CPA:
  - Threshold amount
  - Both parties sign contract
  - Writing
  - Copy given
  - Disclosure of any extension of credit
  - Cooling off period (right to cancel)
  - Rescission right to customer (voidable)



# Question 3: Do the Words Mean the Same to Both Parties

- Ways to discern the meaning of a contract:
  - Plain Meaning
  - Liberal Approach
  - Trade Usage
  - Can combine more than one to discern a meaning.

# Ways to Discern a Contract

- Plain Meaning: Look up the meaning in a dictionary.
- Liberal Approach: Look at the whole contract/ previous contracts to see if there is a hint in meaning.
- Trade Usage: If there are particular industry terms that represent the wording (I.E. Scuff sanding is a light sanding)
- Contra Preferentum: Means that preference is given to the non contract writer in a standard form contracts as the writer could have made the contract “as they wanted”

# Implied Terms

- If a contract is continually renewed, only terms which are new to the contract are put in, other terms are simply “implied terms”
- Set out by the Sale of Goods Act

# Sale of Goods Act

- Used for the sale of movable, tangible goods.
- Implied conditions and warranties:
  - Title (Ownership) s.13
    - Implied term: vendor is the owner and has the right to sell
  - Description s.14
    - Caveat Emptor (Buyer beware)
    - Implied term: the goods will match description under which they are sold
  - Quality s.15
    - The good is brand new
    - Implied: it is of merchantable quality, fit for the purpose for which it is sold
  - Sample s.16
    - Separate from description; actually showing you the good
    - Implied term: getting what you sample
  - Role of Exemption Clause s.53
    - Limits the liability
    - “I am not liable- you are responsible for your own actions”
- Must be brought to the attention of the party relying on them

# Parole Evidence Rule

- States that no outside information may be used to add or prove a term in an existing contract.
- Stops plaintiffs from claiming that “the contract that I signed is not fully what we agreed upon/what I meant”
- If the contract is not what was meant, they should not have signed it.
- 3 exceptions to parole evidence rule:
  - Outside term has its own consideration
  - Subsequent Oral Agreement
  - Condition precedent to the contract





# Exceptions to Parol Evidence Rule

- Outside term has its own consideration - Outside term that is a pay for product/service swap. I.E. Contract to buy a house, outside term to buy appliances.
- Subsequent Oral (Amending) Agreement - An agreement reached after the contract has been written, which amends the original contract. Agreement needs its own consideration.
- Condition precedent to the contract - Outside condition that must be met, before there is any contract. (This is not included in the contract itself)
  - Property with Rabbits

# Exemption Clauses

- Being exempted from terms or the entire contract, as stated as a term
  - Just because it says you cannot be sued, doesn't mean that you cant.
- Notes about exemption clauses:
  - Must be brought to attention of other party
  - Likely upheld, if industry practise
  - Sufficient notice is needed
  - Contra Preferentum applies

# Chapter 12

# Who Can I Sue?

- People you can sue for breach of contract are:
  - The people who made the promise
    - I.E. Who you made the deal with
  - The parties in the contract
    - I.E. People who were supposed to deliver the service.
- Relationship between the two parties is called
  - *Privity of Contract*

# Privity of Contract

- Privity -
  - Contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it.
  - Cooking example.
- Translation -
  - You cannot collect recourse from a contract if you are not named in it.
- Exceptions to the Privity Rule:
  - Vicarious Performance (under tort)
  - Novation
  - Exemption Clauses
  - Trusts
  - Insurance
  - Land

# Exceptions to the Privity Rule

- Vicarious Performance:
  - One party pays another to fulfill the first obligation.
    - I.E. Subcontracting
- Novation:
  - The decided upon ending of a contract
    - Contract obligation is fulfilled
    - Can happen by changing parties or key term in contract
    - I.E. Subletting.



- **Exemption Clauses:**
  - A term saying “I am exempt from liability if I do not keep my promise”
- **Trusts:**
  - Trustees carry out the contract for the beneficiary.
  - Beneficiary may sue the trustee to fulfill the contract
  - I.E. Child’s Trust fund

# Exceptions to the Privity Rule III

- Insurance:
  - Third party beneficiaries may claim from insurance company even though they do not have a contract
    - I.E. Car crash
- Land:
  - Land outlives owners. Public record can overrule and bind prior owners even though they have not signed any documents.
  - Once you buy land, all previous contracts affect you.

# The Unperformed Contract

- Benefit of the contract -
  - What the other party still must do for you (if that term is unperformed)
- Burden of the contract -
  - What you must still do for the other party
- Choses in Action -
  - Rights to intangible property.
  - Which party retains them if contract is not performed
- Choses in Possession -
  - Rights to tangible property that may be possessed physically.

# Assignment

- Transferring the right to collect a benefit onto a third party.
- Third party can then enforce a contract they were not a party to.
  - First contract creates the choses in action
  - Second contract transfers it.
- Should allow for direct recourse between secondary purchaser and vender of goods, assuming done properly.
- Two types:
  - Equitable Assignment
  - Statutory Assignment

# Equitable Assignment

- Transfer part of the benefit only.
- Assignor (person who transfers the benefit) must be a party to the lawsuit.
- Essentially must sue the party who still owes through the assignor.

# Statutory Assignment

- Under Conveyance Law and Property Act
- Do not need to be involved with the assignor to sue the vendor.
- 3 conditions need to be met:
  - Have absolute and unconditional assigning
  - Laid out in writing
  - Vendor has notice of term



# Defences to Assignment

- Subject to the Equities (all things need to be equal for assignee (3<sup>rd</sup> party)/promisor)
- Qualifications are:
  - Assignee can be in no stronger position in the lawsuit with the promisor
  - Any defence that would have worked against the assignor works against the assignee.

# Negotiable Instruments

- Bills of Exchange Act
- Special category of assignments
- Includes:
  - Cheques, promissory notes, etc
- NOT subject to the equities, are subject to the **RULES OF PRESENTMENT**.
  - Means no need for notice of assignment.

# Credit Cards

- Fall under assignment
- When you buy something:
  - You are the **promisor**
  - Store is the **assignor**
  - Credit card company is the **assignee**



- **That is the END!**
- **Thank you so much for your support!**
- In the words of Thomas Jefferson:
- “I find that the harder I work, the more luck I seem to have.”
- **So study hard and good luck!**