

CASES ch4 & ch5

Case 4.1: Deals with general conditions of mandate → Giroux vs. Malik

Facts

- Giroux bought land from Malik (contract of sale), who sold it to them knowing they would not be able to build a home on it
- Malik states that he told his agent about the problem and it was agent's responsibility to inform buyers
- Malik tried to sell property → contributes to fact that he knew about situation
- Giroux realizes he cannot build on it → sues Malik → wants to annul contract (relative nullity), what he must do:
 1. Must ask for contract to be cancelled
 2. Must prove that fraud occurred to annul: Fraud/misrepresentation removes Giroux's consent → no contract → no obligations → must be placed in pre-contractual state

Was there misrepresentation?

- Malik never said they would be able to build on this land, he says nothing (is silent)
 - o He knew that you cannot build
- **Article 1401:** Fraud is both false statements and remaining silent when something should be said → Mr. Malik was silent (misrepresentation) → Fraud

Malik is pleading that he knew, and he told his agent that if anyone wants to buy land they cannot build
So: if agent did not tell them, they should sue agent

In mandates, principle is liable for all faulty acts of agent
So, if agent did not tell them, agent is liable and so is principle
Principle can go after agent

If he didn't tell his agent → liable

If he did tell agent and agent didn't tell them → he is still liable

Judgement:

- A case of misrepresentation → contract cancelled because consent was vitiated (relative nullity) → return to original state + damages
 - o Give back money and land
 - o Note: Giroux could have said he will keep it but lower the amount paid

Giroux v. Malik

Main Facts:

- 2 parties: Giroux plaintiff, Malik defendant.
- Malik has property in Laval sells it to Giroux.
- Giroux wants to build a house, but has limits on septic system.
- Malik sold for \$45,000, but when they went to city hall, they said you can't build a house there because you can't have sewage
- Giroux and husband sued Malik for the \$45,000 and for \$10,000 damages for having time to get money back and living temp in apartment.
- Malik lost because he said that he told their realtor about it, but they said they did not know and Malik was not clear.

CASES ch4 & ch5

- In a previous attempted sale, he made it clear and the sale did not go through, so this time he was not clear.

Decision:

- Malik has to pay \$55,000.

Legal Reasoning:

- Error by fraud: The consent saying that “if I knew I couldn’t build I would have never bought”.
- Pg. 294 they put the article about consent and error, also that fraud may result from silence and concealment (case here).
- In the case says that the court finds that there’s been “dol” on the part of the seller. Dol is when you hide to convince someone to do something.
- When its error that was resulting from fraud, it means that one party is in bad faith, so on top of annulment, you can request damages.
- Action was granted. The \$45,000 was given back to the buyer and he was also awarded \$10,000 for damages, and land went back to the seller.
- Contract was null – relative nullity: selling the land was not illegal, but was due to circumstances of the sale
-

Giroux v. Malik Case

- Giroux family wanted to buy land but then could not build anything on it.
- Malik sold them the land and knew that they couldn’t build on it but didn’t tell them
- Giroux asked Malik why he never built anything on the land and he said that it was because his **kids were leaving home there was no point to building a big house**
- Info real estate agent gets is from Malik (mandate)
- From the City’s perspective, everything was clear (when Giroux checked with them)
- Malik learned he could not build anything on the land when he bought it. Tried to sell the land by disclosing the issue but could not get the value he wanted so he tried to sell it without disclosing the issue and the Giroux family bought it.
- When Giroux found out they couldn’t build on the land, they had to rent another home, move children to another school = lots of stress & anxiety
- Provoked Error (by omission) → bought a land thinking you could build on it when you couldn’t
- **Result** → got contract cancelled & got damages for trouble they underwent during the whole process
- Even if Malik appeals, decision will stay
 - Malik was acting in bad faith and the judge wants to avoid he continues acting in bad faith
 - He can still appeal but in the meantime the transaction is cancelled

CASES ch4 & ch5

CASE 4 – GIROUX VERSUS MALIK

Facts:

- Mr. Malik sold his land to the plaintiff, Mr. Giroux.
- Mr. Giroux purchased the land in the hopes of building a property.
- However, when attempting to obtain construction permits, Mr. Giroux realised that the soil on the land did not allow for a septic system and dwelling.
- Mr. Giroux now claims that Mr. Malik knew about this problem since 1988, but did not say anything when the transaction took place.
- The plaintiff is seeking his money back and \$10,000 in damages.
- According to Article 1401, error induced by fraud (i.e. misrepresentation of property) vitiates consent.
- Also, as stated in Article 1401, fraud may result from silence or concealment.
- In this case, Mr. Malik remained silent and did not inform the purchaser of this major problem.
- However, in his defence, Mr. Malik claimed having told his real estate agent to inform buyers of the problem. The agent did not say anything to Mr. Giroux. Mr. Malik claims not being responsible for this occurrence as he did inform his agent.
- According to Article 2160, a mandatary is also liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate.
- The Court maintains that, given the importance of the problem when purchasing land, Mr. Malik had the obligation to ensure that the message was sent across from the mandatary to the third party.
- He had the responsibility to ensure that the buyer was fully aware of the problem.
- Now, when the consent is vitiated through fraud resulting from silence, the plaintiff can use Article 1407 (the plaintiff can either cancel the overall contract or change it).
- In this case, the plaintiff cancelled the contract because he really needed a septic system to build a property.
- Malik got his land back, and the plaintiff got his money back plus damages.
- Article 1419 (relative nullity) also applied to this case. A contract is relatively null where the condition of formation sanctioned by its nullity is necessary for the protection of an individual interest, such as where the consent of the parties or of one of them is vitiated.

CASE 5 – PETER VERSUS FIASCHE

Facts:

- Mr. Fiasche is the owner of a restaurant called “Chez Gino”.
- Mr. Fiasche is a family friend of Mr. Gucciardo, husband of Mrs. Agnes Peter Gucciardo.
- Mr. Gucciardo had lost his employment, and was seeking a new job.
- Mr. Fiasche proposed to sell his restaurant, and assured Mr. Gucciardo that it would be a gold mine.
- Mr. Fiasche created false income statements depicting high net sales and profits.

CASES ch4 & ch5

- Mr. Fiasche also told Mr. Gucciardo that he had a “special way” of reporting income (i.e. tax evasion).
- However, at that time, Mr. Gucciardo did not understand what Mr. Fiasche meant by “special way of reporting income”.
- Mr. Fiasche did not want to explain any further until Mr. Gucciardo gave a \$100,000 deposit. Mr. Fiasche urged Mr. Gucciardo to re-mortgage his house because numerous buyers were interested in the restaurant.
- Mr. Fiasche told Mr. Gucciardo that if sales were low, he would reimburse him the total deposit.
- Once the deposit given, Mr. Gucciardo began running the business. However, sales were terrible and excessively low.
- There was also a frequent presence of a tax auditor, which Mr. Fiasche claimed to be simply verifying if the cash registers were working properly.
- Mr. Gucciardo began to understand what was going on. He had been tricked into purchasing the restaurant, and was running a business that was against public order (tax evasion).
- Mr. Gucciardo asked Mr. Fiasche to reimburse him the deposit. However, Mr. Fiasche refuses, and claims never to have said such a thing.
- Because the contract’s cause is fraud to government, the contract is deemed as null (Article 1411 – A contract whose cause is prohibited by law or contrary to public order is null).
- According to the Court, it has never existed and will not be recognized (Article 1422 – A contract that is null is deemed never to have existed).
- At this very point, the judge can either dismiss the case or judge in equity (this is to the judge’s discretion).
- This case is clearly unfair. While the seller now has \$100,000 in his pocket along with the restaurant, the buyer has re-mortgaged his house and has lost his money.
- When not taking into consideration the unlawful cause of the contract, Mr. Fiasche committed fraud by misrepresenting the value of the restaurant (i.e. false income statements). Under Article 1401, error induced by fraud vitiates consent.
- The judge ordered Mr. Fiasche to give back \$100,000 to Mr. Gucciardo. However, because of the contract’s unlawful cause, no damages were awarded.
- One must remember that when entering a contract with an unlawful cause, you are taking a great risk because the judge may not want to partake in the case.
- Article 1418 also applies to this case (absolute nullity).

CASES ch4 & ch5

CASE 4.2: GIACCARDO (PETER) VS. FIASCHE 1401, 1402 and 1407

Facts

- Peter is in financial difficulty (lost his job)
- Knows Fiasche who has a business that appears to Peter to be successful
- Says he is interested in purchasing business, and Fiasche says he was interested in financing
- Peter starts questioning books, saying it does not look very profitable
- Fiasche says he has a special way of accounting for revenues
 - o Says, give me a deposit \$100,000 and then I will show you my secret recipe for making money
 - o Gets the money and gives it to fiasche
- Special way
 - o During the day Fiasche punches in everything to one counter
 - o When he goes home, he punches it into a new cash register
 - o He ends up pocketing money and avoiding paying taxes
 - o Peter says he is interested, hes in
- After trial period
 - o Even with speicla way, still not making \$
 - o Peter says still not making money, not interested anymore
 - o Fiasche says wait, sales will pick up after labor day, if not I will give you back your money
 - o Peter says give me back my money, Fiasche says no → they go to court

Court

- There is a contract, peter wants to cancel contract, by
 - o Initially, saying **I made a mistake** (an error) → no contract
 - Judge says: No error here, you knew exactly what you were getting into
 - o Next argument, Gino misrepresented the fact, sales weren't what he said they would be
 - Judge says: you got into this eyes open, you knew exactly what was going on and how you were going to make money when you got into it
 - o Judge says: What they agreed upon (nothing about consent or capacity)
 - Cause is illegal → defraud tax authorities to make money
 - Cause that is illegal or against public order → cause is **absolutely null**
- Contract that is absolutely null
 - o Judge can declare contract null by his own initiative
 - Judge says reason for contract is illegal → is no contract
 - Do not need to ask for contract to be cancelled like Malik case
 - No option to ratify → there was no contract ever
 - o Now, judge has a problem → there is no contract so how can he enforce anything
 - Judge could have said okay that it, there's nothing to enforce (too bad, you knew what you were getting into)
 - But: judge says it's unfair for Fiasche to profit from his wrongdoing
 - Tries to render a **just** judgement, based on equity not law
 - Says, give him back his money and you take back money
 - But: At end of judgement no damages awarded for anyone, everyone back how they were before

CASES ch4 & ch5

Peter vs. Fiasche

- Peter's restaurant was losing money so he tried to sell the restaurant to his friend
- The restaurant was not profitable. It was presented to the buyers as being profitable
- The only way the seller was making money on the restaurant was because he had 2 sets of financial statements. Tax evasion
- Friend trusted the seller that things were going well. Perceived the restaurant to be ordinary but it was the opposite
- Provoked error
- Based on the accounting → buyer should have known better
- BUT Contract eliminated due to illegal cause. Purpose of the transaction was to continue w/ tax evasion scheme = illegal cause so grounds for ending the contract (Absolutely null → judge can use it for grounds for elimination of the contract even though it wasn't written in the claim)
 - When filing for a lawsuit, judge will only use the info that is written down in a claim
- Illegal cause does not automatically entitle you to compensation. Judge said we'll allow the buyer to get his money back because it would be worse than tax evasion

When you get intervention from the judge, the outcome can be unpredictable.

Peter v. Fiasche

Main Facts:

- Biagio Fiasche was looking to sell his restaurant, called Gino's (a smoke meat place)
- Found out someone he knows, Gucciardo, was a potential buyer, offers to sell to him
- Gucciardo realized the reason this business makes money is because they use a double accounting system to scam the government.
- Gucciardo family proceed with buying the restaurant, they lose the restaurant, they put an action against the seller and want to annul the contract.
- Page 300 second to last paragraph: he soon learned the restaurant's special accounting system.
- Summary: it was not a profitable restaurant and the only way it could be interesting is that the buyer had to continue the tax scam that the seller was doing.
- Here, if you have a contract whose element of condition of formation of the contract is to continue a tax scam, the consequence is that the contract is null – absolute nullity, against public order.

Legal decision:

- The cause of the contract was the tax scam - no way it would have been made without it.
 - It makes the contract illegal.

CASES ch4 & ch5

- Then judge went further, said:
 - The buyer (Gucciardo) knew about the tax scam and still made the purchase of a business based on a scam, you failed miserably then come crying to the justice system to help you out. Bottom of p309.
- Reasoning is 3rd last paragraph on p310:
 - The primary objective is not to punish a transgressor, but to ensure between the transgressors themselves, or as between them and society at large, one should not profit unduly from the annulment of the illegal bargain.
 - “If I don’t help the buyer, then the seller wins”
 - When the business had failed, the seller had repossessed much equipment.
- Judge decided if he did not act, the seller would really unduly gain from the contract.
- So they had to reimburse the price of purchase, the seller got back the shares of the business, and all damages were rejected.

CASE 4.3: RICHARD VS. TIME. INC

Facts

- Gets ad in mail saying you won
- But in small print says if you get drawn you win
- Richard sues

Court

- Consumer contract → consumer protection act
- Superior court (first instance): Court judged in favor of Richard, awarding him \$100,000 in punitive damages and \$15,000 in compensatory damages
- False advertising
- Court of appeal (appealed by Time): Judges that Richard get \$0, by applying a test
 - In order for there to be false advertising, to reasonable consumer, after having read everything, must be false
 - The reasonable consumer would have known they did not win
- Supreme court: Says test court of appeal used is wrong, test that must be applied is the gullible consumer
 - Purpose of CPA: to protect the gullible consumer not the reasonable ones ONLY (he knows better)
 - When consumer looks at whole thing, he is under impression that he won \$\$\$
 - Test for false ads is for gullible person
 - If overall ad gives impression that you won → false advertising

Punitive Damages

Can only get punitive damages if the law provides for it
In this case, CPA does provide for punitive damages, that's why he got some C.C.Q

Must look at size of patrimony of wrongdoer, to determine size of fine
Used to get attention → \$100,000 = knocking them out
If they do it again, amount will increase

CASES ch4 & ch5

Case 4.4: Copioscope vs. TRM

- **Contract of adhesion:** TRM makes terms, other party cannot negotiate (adhered to terms)
 - o In terms of interpretation: If clause is ambiguous → will rule in favor of person who adhered to contract
 - o If there are abusive clauses in contract → there are of no effect (void)
- Abusive clause in this case: in non-compete clause
 - o Says when we put a photocopy machine in your business we are imparting onto you certain trade secrets
 - o But: there is actually no trade secrets → make clause abusive (its untrue) → it is **null** (secret is the basis for non compete) → cannot stop you from doing business

Copioscope Inc. V. TRM Copy Centres (Canada) Ltd.

Main Facts:

- Case at court of appeal.
- This was an appeal over a hearing for an interlocutory injunction.
- There are two companies who will install a photocopier in a store and share profits with store owner: Copioscope and TRM
- TRM is the one that was at first operating in Montreal.
 - o They come and they have these contracts and in it there is (p327) a noncompetition covenant.
 - o This says that TRM puts in machine and in the meantime store owner agrees that until 1 year after termination date, not to offer services within 25 miles of business location (Extreme).
- Copioscope comes in and decides to go after TRM customers, offers them a better deal, brings form to annul TRM contracts.
- TRM starts losing customers.
- They want their contracts with customers to be respected, and for Copioscope to stop inciting their clients to violate the contract.

Legal Reasoning and Decision:

- The judges analyzed the validity of the noncompetition clause, and set out the principle in the juris prudence (p331) because they are going for the injunction, the person has not signed any contracts.
- When they analyzed the 25 miles, 1 year clause, they decided that it is unreasonable.
- Also, they looked at the contract and said that when TRM came to the owners with the agreement, it was already prepared, fell within contract of adhesion.
- Judges also have the power to remove abusive clauses in contracts of adhesion or reduce their effect.
- Was also an argument of jurisdiction. Said law of Oregon, and future in QC.
- Law decided decision of the court would be effective in all jurisdictions.

CASES ch4 & ch5

- Court of appeal overturned the decision of the superior court and cancelled the contract.

CASE 7 – COPISCOPE INC. AND TRM COPY CENTERS

Facts:

- TMR Copy (plaintiff) is in the business of offering photocopy services to the public by means of photocopy machines which are placed in stores carrying on business operations of another nature, such as convenience stores and pharmacies.
- TMR Copy installed its photocopy machines in approximately 700 business locations.
- Before installing its photocopy machine in a store, a contract was to be signed by the business operator. A non-competition covenant was present and stated that the business operator may not deal directly or indirectly with anyone or any company connected with the business of making photocopy equipment available for use by the public for a period of 1 year, within a 25-mile radius from the business location.
- Copiscope (defendant) is also in the photocopy business. In 1997, it embarked on a program aimed at persuading business operators to terminate their contract with TMR Copy and enter into an agreement with Copiscope.
- TMR Copy sues Copiscope for an interlocutory injunction in order to stop Copiscope from taking over its business.
- TMR Copy insisted that the non-competition covenant was used to protect the company's trade secrets.
- The Court concluded that the non-competition covenant was manifestly unreasonable and therefore invalid. It follows that the respondent has not established an apparent right (or clear right), which is necessary for the granting of an interlocutory injunction.
- There is also no evidence that the business operator has knowledge of any trade secrets. Its sole role is that of ascertaining that the machine has a supply of paper and ink and collecting the fee for its use.
- Also, the contract signed by business operators to TMR Copy was a contract of adhesion (Article 1379 – a fixed contract with no negotiation).

Copiscope v. TRM Case

- Non-competition clause b/w TRM and its clients (business operators). TRM asked non-competition to protect their activities
- No link between TRM & Copiscope -> nothing signed between Copiscope & clients
- Non-competition clause did not work very well because clients started working with Copiscope
- Interlocutory injunction = order or measure that the judge decides to impose during a trial (TRM obtained one to prevent Copiscope from working with their clients)
- Copiscope sues because interlocutory injunction should have not been granted
- in first place -> decision taken to apply during trial but not in trial yet
- Copiscope decided to sue because they don't think the injunction should have been granted in the first place. *Arguments:*

CASES ch4 & ch5

- The only reason they were granted the injunction was because of the non-compete
- **Complaints:** Non-compete was
 - 1) Excessive
 - 2) Was a contract of adhesion (1 party could not negotiate)
 - 3) Clause was not precise/justified
- During the trial, Copiscope was still allowed to work with the clients
- Copiscope points
 - Only reason why there is an injunction [Symbol] because of non-compete
 - If non-compete valid [Symbol] injunction valid
 - Look at contract [Symbol] what non-compete says at first sight
 - Non-compete is excessive
 - Not explained why only 1 year
 - Did not explain geographical scope
 - Clause not precise & not justified
 - Non-compete adhesion
 - Judge said [Symbol] non-compete was not valid
 - Therefore [Symbol] injunction not valid
 - Meant during trial [Symbol] copiscope still allowed to work with clients

Case 5.1: Wong VS Leung

Facts

- Wong sisters mandate Mr. Leung to act as their agent with respect to taking rents, making and terminating leases for this apartment building
- 2138: Agent has to act honestly and faithfully → Mr. Leung was not honest (lied, cheated, stole), he was not faithful
-
- He acted in his own best interest → direct conflict of interest
- Diligence
- Breach of trust

CASES ch4 & ch5

Case 5.2: Dowell VS Hay Ellis

- Joseph is about to claim bankruptcy, wants to get rid of the money he has
- So: he gets Dr. Dau to purchase property
- Dr. Dau is owner of the property, Joseph is actual owner
- Dr. Dau goes to the bank and mortgages the property → bank is on the guarantee of the house and has lent you money, money is technically Josephs, but Dr. Dau has gotten the mortgage
- Problem with money: Dr. is in debt, he owes on the building, without the money he has to pay building with his own money
- Joseph is saying, it is his money and that he can use it how he wants to use it
 - o Dr. says no, its my money, I need it to pay for the house
- They take the money and give it to a notary
 - o Dr. mandates the notary to give to Joseph the money necessary to pay for the mortgage, upkeep and maintenance of the building → specific mandate
 - o But: notary does not do this, notary just gives Joseph money for whatever he asks for
 - o Dr. finds out notary giving Joseph money for things other than those specified in mandate → Dr. sues him
 - o Notary says: I know it's really Josephs money, so I gave it to him

Court

- Court says, Dr. incurring liability with regards to mortgage on building, so you need to follow his mandate
- You gave Joseph more, so you need to pay it back
- This case has apparent mandates, double mandates, verbal and written mandate, mandates not spoken
 - o Can place them all as agents, third parties and principals, depending on how you view it
 - o The most important one is the one Dr. gave you because he's liable if there's no money to pay for mortgage

CASE 2 – DR. ANTHONY DOWELL AND NOTARY EDGAR HAY-ELLIS

Facts:

- Joseph had money, but a lot of debt.
- Joseph wishes to go bankrupt, but cannot do so because he has money to his name.
- Joseph decides to purchase an apartment building under the name of Dr. Anthony Dowell, a person with whom he had previously undertaken transactions such as this one.
- By purchasing the apartment building, Joseph no longer has money.
- Joseph decides to mortgage the building under Dr. Anthony Dowell's name, but takes the cash proceeds from the mortgage of the building.
- Dr. Anthony Dowell is increasingly concerned by his participation in the scheme.
- Dr. Anthony Dowell became suspicious when he found that an amount held in trust for the maintenance of the property was taken by Joseph.
- After the papers signed, Dr. Dowell became the owner of the property incurred, and had substantially large obligations toward innumerable third parties, such as the mortgage creditor, tenants, and municipal/school authorities.
- During the initial period, Joseph became the mandatary, and was in charge of all day-to-day administration of the property.

CASES ch4 & ch5

- Dr. Dowell hired a notary (the defendant) to manage the property's trust account, and make sure that all cheques were properly justified. The defendant was in charge of ensuring that all amounts taken by Joseph were put towards the maintenance of the property.
- In other words, Dr. Dowell (the mandator) hired Notary Edgar Hay-Ellis (mandatary) to take care of the property's trust account.
- In this case, there are 2 mandates; one between Dr. Dowell and Joseph (administration of the property), and one between Dr. Dowell and the notary (administration of the trust account aimed at covering expenses associated with the maintenance of the property).
- The mandate of interest in this case is the one between Dr. Dowell and the notary.
- Many cheques were used for purposes in no way related to the property. Some cheques had even disappeared.
- Article 1458 (from the Civil Code of Quebec, Civil Liability) – Every person has a duty to honour his contractual undertakings. Where he fails in his duty, he is liable for any bodily, moral, or material injury he causes to the other contracting party and is liable for reparation of the injury.
- Article 2130 (from the Civil Code of Quebec, Mandates) – A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it. He shall also act honestly and faithfully in the best interests of the mandator.

As a result, Dr. Dowell won the case