

Liebmann v. Canada (Minister of National Defence) (2001)

Fact	Liebmann, the plaintiff, was a Lieutenant serving as a Naval Reserve Unit officer. He was nominated as Executive Assistant for the Kuwait invasion but later not hired on the basis, claimed by the defendant that he was Jewish and his religion would affect his ability to carry out the mission.
Issue	Are there limitations on Liebmann's rights to <u>equality</u> ?
Law	<i>Charter of Rights and Freedoms s.15 Discrimination</i> "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination, and in particular, without discrimination based on race, national or ethnic origin, colour, <u>religion</u> , sex, age or mental or physical disability."
Application	Liebmann proved that he was being discriminated since 1) he had the skills to perform the job, 2) he was denied the benefit of applying his skills, and 3) this discrimination had a profound impact on his dignity. The appeal court ruled for Liebmann that he is entitled to a declaration that the refusal of his employment was unconstitutional and contrary to his Charter right of equality.
Other Relevant Laws	<i>Charter of Rights and Freedoms s.1 Charter is not absolute</i> "Charter guarantees the rights and freedoms set out in its subject only to such <u>reasonable limits</u> prescribed by law as can be <u>demonstrably justified in a free and democratic society.</u> " <i>Charter of Rights and Freedoms s.33 Sunset Clause</i> If a statute meets s.1 requirement and shall operate overriding certain sections in the Charter, it expires 5 years after it comes into force unless re-enacted by the legislature.

R. v. 279707 Alberta Ltd. (Visions Electronic) (1991)

Fact	The defendant, Visions Electronic, had a model of TV sets advertised for sale at a bargain price but failed to provide reasonable quantities. Would-be customers were told that the advertised TV sets were sold out and directed to more expensive ones. The Crown brought two charges against the company for violating the federal <i>Competition Act</i> s.52 and s.57.
Issue	Is the Crown's charges subject to violation of <u>the Kianapple Principle</u> i.e. charged on two accounts arise out of the same facts?
Law	<p><u>Competition Act s.52 false / misleading representation</u> (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading <u>in a material respect</u>.</p> <p><u>Competition Act s.57 bait-and-switch selling (now s.74.04)</u> (2) No person shall advertise at a bargain price a product that he does not <u>supply in reasonable quantities</u> having regard to the nature of the market in which he carries on business, the nature and size of the business carried on by him and the nature of the advertisement.</p>
Application	The essence of s.52 is publishing an untrue ad; the essence of s.57 is failing to sell after the ad has come out. The convictions under both sections sound proper. There is no violation of the Kianapple Principle.

Rudder v. Microsoft Corp. (1999)

Fact	Rudder, representing the plaintiffs of the class action, claimed damages for breach of Membership Agreement by MSN through charging users' credit cards without providing reasonable information. The class action was brought in Ontario while the electronic agreement stated a <u>Forum Selection Clause</u> settling the exclusive jurisdiction in King County, Washington.
Issue	(1) What is considered as acceptance of electronic contract? (2) Can the plaintiff bring legal action against the defendant at an Ontario court?
Law	<i>Sarabia v. Oceanic Mindoro (1996)</i> The Forum Selection Clause stands unless there is <u>strong case</u> to override the agreement.
Application	(1) Scrolling down electronic contracts = flipping pages of written contracts; clicking "I Agree" on electronic contracts = signing written contracts → legally binding. (2) No strong case was established to override the Forum Selection Clause and the proceedings may be conducted in the State of Washington.

Douez v. Facebook Inc. (2017)

Fact	Ms. Douez, a resident of British Columbia, brought an action in British Columbia against Facebook, alleging that Facebook had breached s.3(2) of British Columbia's <i>Privacy Act</i> , R.S.B.C. 1996, c. 373, by <u>using her name and likeness without consent for the purposes of advertising</u> . She also sought certification of her action as a class proceeding (with an estimated class size of 1.8 million) (Snider, 2017).
Issue	Should the class action be stayed on the basis of the <u>Forum Selection Clause</u> found in the Terms of Use, to which Ms. Douez had agreed, which provided that disputes were to be resolved in California under California law (Snider, 2017)?
Law	<i>Z.I. Pompey Industrie v. ECU-Line N.V. (2003)</i> 2-step Pompey test to determine whether to enforce FSC (1) The party seeking a stay based on the FSC must establish that the clause is <u>valid, clear and enforceable</u> , and that it <u>applies to the relevant cause of action</u> . The court must consider principles like <u>unconscionability, undue influence and fraud</u> . (2) Once first stage is passed, the plaintiff must show <u>strong reasons</u> why the court should not enforce the forum selection clause. A court must consider all the circumstances, including <u>the convenience of the parties, fairness between the parties, the interests of justice and public policy</u> .
Application	The majority found FSC enforceable under first stage but not second stage for two reasons: (1) this was a contract of adhesion where an inequality of bargaining power existed; (2) there was a quasi-constitutional privacy right at stake.
Other Observation	A 4-3 decision entails the controversy of click-through agreements and the enforceability of Forum Selection Clause.

References

Snider, C. A. (2017, July 24). *The Supreme Court of Canada addresses the enforceability of forum selection clauses in consumer contracts – Douez v. Facebook*. Retrieved from Dentons:
<https://www.dentons.com/en/insights/articles/2017/july/24/douez-v-facebook>

Hood v. Enwin Utilities Ltd. (2011)

Fact	Enwin invited Hood, via mail, to participate in the “ <u>Landlord Vacancy Interim Payment (LVIP)</u> ” program which transfers electricity and water bills from tenants to landlords should the former vacate the latter’s rental property. Hood completed, signed, and mailed the form back to Enwin. After Hood’s tenant moved out, Enwin discontinued electricity, resulting in damages to the property. Hood sued Enwin for \$25,000 (small claim).
Issue	Was the property enrolled in LVIP, i.e. was there a contract between Hood and Enwin?
Law	<i>Postal Acceptance Rule</i>
Application	There was nothing on the form indicating some certain conditions need to be met before the enrolment could be completed but merely completing and returning the form. The contract was made when the LVIP form was posted in the mail by Hood.
Other Observations	The form states that the program has to be activated by the tenant, which is unreasonable because the tenant is not a participant of the program. In addition, the form does not state that activation by tenants is the only way to trigger the continuous service to the landlord.

Caligiuri v. Tumillo (2003)

Fact	Mrs. C gave \$50,000 to her son in exchange for a promissory note signed by all the shareholders of her son's company to pay back the money together. Tumillo signed the note and became one of six shareholders later. When the company failed, Mrs. C sued on the note but Tumillo argued there was no consideration flowed to him.
Issue	Was there valid consideration for Tumillo's promise, i.e. is he legally bound by the note?
Law	Chitty on Contracts, 27 th ed., vol.1 and other case laws: "When consideration must move from the promisee, it need not move to the promisor."
Application	Consideration exists in two acts: (1) Tumillo signed the note in exchange for becoming a shareholder; (2) Mrs. C's promise to forbear from demanding repayment of the debt in exchange for Tumillo's promise to pay debt. The promisee's forbearance benefits a third party who is closely related / sufficiently linked to the promise.

Tulsa Heaters Inc. v. Syncrude Canada Ltd. (2009)

Fact	Tulsa provided Syncrude with service of heater design and installation. Syncrude required the use of seamless pipe which was typically preferred as opposed to welded pipe. Syncrude also required Tulsa to obtain materials from a list of approved suppliers, but Tulsa could not find any listed supplier that could provide seamless pipe of certain size so proceeded with welded pipe. Syncrude later requested that Tulsa order seamless pipe from Kaiser without compensation for the additional expense.
Issue	Is Tulsa entitled to the additional expense compensated by Syncrude?
Law	Cf. equitable estoppel conditions
Application	(1) Pre-existing contract between Tulsa and Syncrude; (2) Syncrude made request not included in the contract: change from welded pipe to seamless pipe while no explicit clause in the contract specified prohibition of the use of welded pipe; (3) Tulsa followed Syncrude's request and proceeded with seamless pipe but Syncrude's refusal of compensating the additional expense resulted in Tulsa's detriment; (4) Tulsa sued Syncrude as defence and Tulsa had "clean hands" (cf. court of equity requirements on plaintiff).
Conclusion	Tulsa is entitled to <i>quantum meruit</i> - a reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated in a legally enforceable contract.

Collins (Re) (1991)

Fact	Philip, Andrea's ex-husband, created a "Collins Children's Trust" where two children as beneficiary and Canada Trust as Trustee for future education expense. Andrea was not happy that she is not entitled to the trust. Dr. Elterman, a psychologist testified her insecure state of mind, and Mr. Martin, a barrister helped her son Simon who was a minor transfer his beneficial interest in the trust to herself for her sense of security.
Issue	Does Simon have the capacity to make the decision?
Law	<u>The Infants Act</u> s.16.4 (1) (b) and (2) (now similar in s.21) To grant the infant capacity to contract it is mandatory that: (1) The contract be for his benefit, and (2) Considering the infant's circumstances does not need the protection accorded by the law to infants relating to contracts
Application	Even though Andrea agreed to provide financial support for her children until the age of 25 and return the property if she should remarry or die, the transfer agreement gave her absolute discretion which was not for the children's best interest.
Conclusion	The court did not justify Simon giving away his interest in the trust to purchase his mother Andrea's feeling of security.

Maksymetz v. Kostyk (1992)

Fact	Maksymetz partnered with Kostyk and Schur to co-manage a hotel (Mak's share was 41%). The hotel business commenced without a liquor licence from Manitoba Liquor Control Commission. Mak sued for his share of the partnership.
Issue	Is Mak entitled to his remedy given the partnership is illegal?
Law	Manitoba Liquor Control Commission Policy "Where a premises is managed by an individual or corporation other than the licensee, who is to receive a percentage of the profits from the sale of liquor, that percentage must not exceed 10 percent."
Application	The approval for the liquor licence was denied according to the partnership's share structure. Without the liquor licence, the partnership is illegal by statute, therefore unenforceable, rendering Mak with no common law remedy. Without "clean hands", Mak is not entitled to equitable remedy either.

Phoenix Restoration Ltd. v. Brownlee (2010)

Fact	Brownlee used to work for Phoenix as a project manager (promoted from flood technician). His employment contracts with Phoenix contained non-competition and non-solicitation provisions. After Brownlee resigned, he started working for Belfor, Phoenix's competitor and tried to solicit two of his previous clients. Phoenix sued Brownlee for breach of employment contract.
Issue	Can Phoenix successfully prove the reasonableness of the restrictive covenants i.e. pass the test of reasonableness?
Law	<p><i>Shafron v. K.R.G. Insurance Brokers (Western) Inc. (2009)</i> A restrictive covenant is unenforceable as a restraint of trade.</p> <p><i>Aurum Ceramic Dental Laboratories Ltd. v. Hwang (1998)</i> The test for reasonableness for a covenant imposing post-employment restraint on trade:</p> <ol style="list-style-type: none">(1) Reasonable with respect to PUBLIC INTEREST?<ol style="list-style-type: none">(a) Restraint on competition?(b) Deprive the public of some special service?(2) Reasonable to protect the PARTIES?<ol style="list-style-type: none">(a) Spatial area covered(b) Temporal length(c) Nature of activities prohibited
Application	<ol style="list-style-type: none">(1) Non-competition clause Restrain Brownlee from working for any competitor in the industry while Phoenix is only involved in a niche market.(2) Non-solicitation clause Restrain Brownlee from soliciting any of Phoenix's clients including the ones with whom he had no dealings. <p>➔ The restrictive covenants are too broad and Phoenix failed to establish a strong <i>prima facie</i> case that they will be enforced.</p>

Collins v. Dodge City East Ltd. (1999)

Fact	Mrs. Collins bought a used car from the defendant represented by a sales person Shawn Ryan. The air conditioning function was demonstrated as the light came on and cold air was generated (in January), but Mrs. Collins was shocked to find out the A/C has never been installed (in June). The plaintiff is suing the defendant company for negligent misrepresentation and damages.
Issue	Was there negligent misrepresentation by the sales person?
Law	The definition of misrepresentation: there is a false statement of a material fact that induces the representee to enter into the contract, and he/she suffers detriment in the sense damages results.
Application	The missing A/C was a careless mistake made by the sales rep. The negligent misrepresentation was made within the scope of his ordinary duties where he owed a duty of care to the plaintiff. The plaintiff is entitled to damages.

Weinman v. Brinkman (2007)

Fact	Mr. and Mrs. Weinman bought a house from Brinkman. A few days after the deal was closed, the plaintiffs noticed a water leak in the basement and sued the defendant for damages.
Issue	(1) Were the parties aware of the water problem at the time of the purchase agreement was signed? (2) Was the problem a patent or latent defect, if the latter, did the defendant conceal it from the plaintiffs? (3) Are the plaintiffs entitled to damages?
Law	Caveat emptor = "let the buyer beware" In the purchase of land, the buyer must fend himself by seeking protection from express warranty or independent inspection of the premises instead of relying upon the bare representation of the seller. Otherwise, the buyer has no remedy unless he/she can prove there was fraudulent misrepresentation.
Application	(1) Yes, the plaintiffs were aware that there was a water leak. There were plenty of opportunities for them to inquire based on the defendant's inspection report, Seller Property Information Statement, and Ontario Real Estate Association standard form listing agreement but they did not. (2) The water problem was a patent defect which was detectible on ordinary inspection, and the defendant made no effort to conceal. (3) The plaintiffs are not entitled to any remedy since there was no fraudulent misrepresentation.

Werle v. Sask Energy Inc. (1992)

Fact	Mr. Werle was hired by Sask Energy Inc. as a vice president of the sales and marketing department based on his sales experience and Bachelor of Commerce (Marketing) degree at University of Saskatchewan claimed in his resume. Later it was discovered that Mr. Werle has never earned the degree and Sask Energy Inc. dismissed him after he declined the company's offer for a lower position. Mr. Werle sued for wrongful dismissal.
Issue	Did Mr. Werle commit fraudulent misrepresentation?
Law	The definition of misrepresentation: there is a false statement of a material fact that induces the representee to enter into the contract, and he/she suffers detriment in the sense damages results.
Application	Mr. Werle claimed that the misstatement in his resume was inadvertent and he was not aware of the error. He did not correct the newsletter sent to all employees stating his Bachelor degree either, justifying it by his pressure under other matters. Mr. Werle's behaviour was clearly fraudulent misrepresentation and the dismissal was justified.

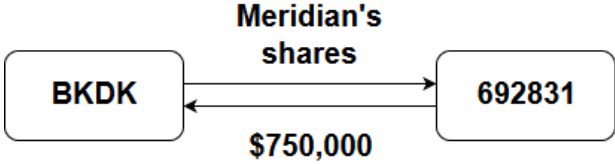
Buckwold Western Ltd. v. Sager (1997)

Fact	Mr. Sager asked Mrs. Sager to sign a personal guarantee of their family business's company debts owed to the plaintiff, their carpet supplier. Mrs. Sager testified that she did not understand the document but she signed it without consulting a lawyer. She then sought relief from the guarantee.
Issue	Was there duress imposed on Mrs. Sager when signing the guarantee resulting in the relief of her responsibility?
Law	When a person is forced or pressured to enter into a contract against his/her will by threats of violence or imprisonment, the contract may be <u>voidable for duress</u> . A contract formed as a result of <u>undue influence</u> is also voidable by the weaker party.
Application	Mrs. Sager understood that there was a risk that she might have to pay some money as a result of the guarantee. She was not prevented from freely exercising her own will and what Mr. Sager imposed on her was nothing more than " <u>standard commercial pressure</u> ". Therefore, there was no duress on her when signing the contract, rendering the contract enforceable.

Mackay v. Cesar (2013)

Fact	Nelda Mackay and Cesar entered into a tenancy contract, and later on a “rent to own contract” when Nelda was allegedly lacking the mental capacity to manage her own affairs. Nelda’s son Ronald and wife Sharon, as her personal and property guardians, brought a lawsuit against Cesar.
Issue	Did Cesar exercise undue influence over Nelda to achieve an unfair advantage for himself under one or both of the contracts?
Law	<p><i>Geffen v. Goodman Estate (1991)</i> (1) nature of relationship and (2) the transaction itself must be examined to determine if there is a potential for domination.</p> <p><i>Lydian Properties Inc. v. Chambers (2007)</i> 4 elements of an unconscionable transactions: (1) a grossly unfair and improvident transaction; (2) the victim’s lack of independent legal advice; (3) an overwhelming imbalance in the bargaining power caused by the victim’s ... disability; and (4) the other party knowingly taking advantage of this disability.</p>
Application	<p>No one involved in Nelda’s purchase of the property expressed concerns about her mental status. The purchase was profitable and the rent of \$900 was not unconscionably lower than fair rates. Therefore, Nelda was capable when entering into the rental agreement and no undue influence was present.</p> <p>The last paragraph in the rental agreement which was requested by Cesar states that he would have the option to purchase the property should Nelda no longer be capable of making decisions. The judge found Cesar’s conduct was planned and implemented over a period of months. With all four elements present, the “rent to own contract” is void and/or unenforceable.</p>

BKDK Holdings Ltd. v. 692831 B.C. Ltd. (2010)

Fact	<div style="text-align: center;">  <p>The diagram shows two rounded rectangular boxes. The left box is labeled 'BKDK' and the right box is labeled '692831'. Above the boxes, the text 'Meridian's shares' is centered. A double-headed arrow connects the two boxes, with '\$750,000' written below it.</p> </div> <p>BKDK sold Meridian’s share to 69 in exchange for a \$750k payment. Clause 2 of their agreement reads: if Meridian <u>failed to win the RFP (Request for Proposal) and retain its client</u> – Teck Cominco’s corporate travel business, the purchase price will be reduced by \$70k. However, Teck moved to Meridian’s competitor Amex without conducting an RFP.</p>
Issue	<p>How should Clause 2 be interpreted as a whole, i.e. what was the true intent of the parties when entering into the contract?</p>
Law	<p><i>Scanlon v. Castlepoint Development Corp. (1992)</i> The proper principles to be applied in interpretation: (1) From <u>the whole of the contract</u> that promote the <u>true intent</u>; (2) In accordance with <u>sound commercial principles and good business sense</u>; (3) <u>Contra proferentem rule</u>.</p>
Application	<p>The parties could not have intended that an actual bid in the RFP process would be a necessary condition to the price deduction. The existence of Teck as a client was a significant factor in the determination of the purchase price. Losing Teck would affect Meridian’s performance and it is reasonable for the price reduction. BKDK’s interpretation is inconsistent with sound commercial principles and good business sense.</p>

Black Swan Gold Mines Ltd. v. Goldbelt Resources Ltd. (1996)

Fact	BS signed an agreement with Comptoir to acquire a copper-silver deposit and a gold tailings project. GB offered to assist BS in financing the feasibility studies but then robbed the client by directly dealing with Comptoir. As compensation, GB offered BS \$308k and 1.2m GB shares with a “top-up formula” that prevents the shares from being diluted under 5% of the capital. GB later obtained a loan from Pegasus and the loan is convertible to shares.
Issue	Can BS exercise its right according to the “top-up formula”?
Law	(1) <u>The words of the contract must not be overwhelmed by a contextual analysis</u> , o/w there’s no point in writing them down. (2) The court can only interpret express terms (<u>parol evidence rule</u>). (3) One party cannot foist an interpretation on another by the expedient of expressing its view of the contract and later arguing that the other party accepted that view by silence.
Application	(1) GB argued that the “top-up formula” only applies to the feasibility phase of the project but not the development phase and the loan it entered with Pegasus was not applicable. (2) GB provided 3 pieces of “parol” evidence trying to prove that “BS’s top-up right would arise only if Comptoir’s top-up arose” but the contract, “standing alone, is capable of carrying a meaning and the sense does not depend on the surrounding circumstances.”

Hussain v. Ghag (2018)

Fact	Hussain contracted to sell a property to Ghag and both signed the agreement requiring a deposit of \$50,000 to be paid by Ghag. Ghag did not pay the deposit before the deadline and asserted both parties agreed that the deposit would not be due until Ghag had conducted an inspection of the property.
Issue	Is the assertion that there was additional oral agreement credible and admissible?
Law	<i>Hassel v. Khoshgoo (2010)</i>
Application	The parol evidence rule states that given the terms of the contract clear and unambiguous, any additional evidence adds to vary, subtract from, contradict, or qualify the written contract is neither credible or admissible. The court will not take Ghag's assertion into consideration. It was concluded that Ghag has breached the contract and owed the plaintiff the deposit of \$50,000.

Jedfro Investments (U.S.A.) Ltd. v. Jacyk (1993)

Fact	Iwasykiw, Jacyk, and Matukas formed a joint venture agreement to purchase, develop, and sell a property in Denver, Colorado. By the time the three partners had to make payments, only J was prepared to meet his proportionate share. J purchased the entire note with his other company Prombank Investments Ltd. M sold his shares to J but I refused to forego his profits and made a personal guarantee to pay the money required. Later I failed to pay and J foreclosed I's interest in the property.
Issue	(1) Was the joint venture agreement discharged? (2) If not, did Jacyk breach the agreement by his foreclosure?
Law	<p>4 ways to discharge a contract:</p> <ul style="list-style-type: none"> (1) Performance; (2) Frustration; (3) <u>Agreement</u> (all parties' abandonment of the contract is considered termination, but a new contract must be created); (4) <u>Repudiatory/fundamental breach</u> (when one party acts in a way that shows intent to be no longer bound by the contract, the other party can elect to terminate the contract). <p>Definition of "unjust enrichment":</p> <ul style="list-style-type: none"> (1) One party is benefited from the other party's money; (2) While the other party suffers loss; (3) Lack of juristic reason for the enrichment.
Application	<ul style="list-style-type: none"> (1) Not applicable; (2) Not applicable; (3) Although all parties abandoned the joint venture agreement, no new agreement was reached, therefore not discharged; (4) Failure to pay the note is not considered as repudiation of the joint venture agreement, therefore not discharged. <p>➔ Issue1: the joint venture agreement was not discharged.</p> <p>Jacyk did not breach the agreement because he was not unjustly enriched – all parties voluntarily signed the joint venture agreement where they invest money into the project and were not entitled to any right of being repaid.</p>

Saturley v. Lund (2005)

Fact	Mr. and Mrs. Saturley planned to sell one of their houses to buy Lunds' property. Later an oil leakage was discovered in Saturley's house and the Saturleys could not gather enough money on time to buy Lund's.
Issue	Is the oil leakage of Saturley's house considered as "frustration" which discharges the contract?
Law	<u>Impecuniosity is not a frustration event.</u> Doctrine of frustration: (1) An <u>unforeseeable</u> event <u>beyond control</u> of parties and <u>without fault</u> of either party; (2) The event must happen <u>after K is made & prior to maturity</u> (3) that makes K <u>impossible to perform</u> or <u>radically different from intended</u> ; (4) <u>The event must be directly related to the K & must not be an extraneous event.</u>
Application	The property under the contract is Lund's but not Saturley's. According to doctrine (4), the oil leakage of Saturley's house is not "directly related" to the contract therefore not considered as frustration. Furthermore, Saturley's impecuniosity, i.e. not having enough money, is not a frustration event. Therefore, the contract is not discharged.