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Appendix 2
The Yates Cases

These cases are not primarily business cases with a legal twist; rather, they are law cases with a focus on legal issues that can be approached from a business point of view. The focus is on the legal issues. One recommended methodology is to take a team of managers from the particular business involved (to be role played by selected students) and ask them to solve the problem or deal with the dispute from the business' point of view. An essential part of this process is for that management team to determine the nature and significance of the problem and in the process, to assess the legal issues involved. It is only with a good understanding of the legalities surrounding the problem that the team can recommend a business solution. In the examination of any of these cases a solution that ignores the legal issues will not be acceptable under any circumstances.

It is suggested that the team should first get a clear grasp of the facts, determining precisely what happened. In the process it may also be important to predict what is likely to happen. Next, based on that examination of the facts, and predictions as to the future, the team must determine the legal issues involved. Depending on the case, the law surrounding the facts may be clear or ambiguous (uncertain, one of those areas of the law where a court's decision could go either way). This should form part of the evaluation and be taken into consideration in assessing the risk.

The next stage is to assess the impact or likely impact on the firm. This means to look at what would likely to happen if the matter were to go to court; what decision is likely to take place and what the damages or other remedy might be. Risk must be assessed. For example, it is likely that when the Loewen Group entered into their agreement with the Mississippi funeral business, they never dreamed a court might award punitive damages of $500,000,000 for their dealings over an $8,000,000 dispute. Ford, on the other hand, likely did anticipate that even if the jury were to award a huge judgment in a Pinto disaster, it would be reduced on appeal to something they could manage, as it was. The team should consider the business risk involved, not just in terms of this one case, but also what the decision and attendant publicity would mean to the rest of the business. Ford failed to anticipate this in the Pinto case.

The following questions should be considered when approaching all of these cases. In addition there may be other specific questions that are attached to the individual case.

- What are the legal issues that arise in this problem?
- Why are they important?
- What are the applicable legal rules?
- Is there a clear answer as to the operation of the law?
- If not, what are the potential legal outcomes and which is most likely?
- What is the objective or purpose behind the rules being applied?
- Will the purpose or objective behind the rule being applied likely affect the outcome of a court action?
- What effect can these outcomes have on the business involved?
- What is the best course of action for the business? (Why?)
- Discuss the potential impact of the various possible courses of action that can be taken on the business.

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- What should have been done (if anything) to avoid this problem in the first place? (risk analysis)
- What steps (if any) should be taken to avoid similar problems in the future? (risk avoidance)

Organization

To conduct a case study in a class of 30 students I divide them into 6 or 7 groups of 3-5 students each. Each group chooses a different case to present to the class. Once one group has chosen a case, another group will be assigned the task of critiquing the presentation. The critiquing group will be expected to look at the content of the presentation, the thoroughness of its examination of the legal and management issues and recommendations, not the style or skill of the presenters. This ensures that two groups have prepared for the presentation of each case. All students are required to read the case in preparation for the class. Where several positions are present in a case (for example, a manager, the employee and the firm in a wrongful dismissal action), I recommend that each student in the presenting group look at the problem from the point of view of one of those positions, but that is only one approach and I leave the method used to the students. Assuming a 50 minute class, there would be one presentation per class. The presenters would have a maximum of 25 minutes and the other group a maximum of 10 minutes to critique. The rest of the time would be for class discussion and debate. I usually make the presentation worth about 25% of the course mark, thus placing a considerable amount of pressure on the students to take it seriously. The critique would be worth about 10%. Unfortunately, I usually only have time for one presentation and critique per group in my class. I would prefer to do more.

I may also direct some groups to give presentations on specific topics that relate to their area of specialization. They are assigned to teach the class about that topic or to develop some other way to present the concepts such as by role play or simulation. For example, instead of a case I might ask one group to give a presentation on harassment in the workplace. Instead of critiquing another group's case, this group would hand in a paper on their topic for the added 10%.

Note that this is just one of the methods of using cases or problems in a business law course. A more effective method requires all of the students in a class to examine a carefully selected case and participate in a discussion of that case usually over several class periods. This allows the instructor to guide the students to ever higher levels of analysis as shallow ideas and simplistic solutions are presented by the group and rejected. This provides opportunity for the development of critical thinking skills, but it is time consuming. Where the objectives of the course require conveying significant amounts of information and teaching numerous rules and concepts as is usually the case where there is only one business law course, this more intensive approach is not possible. The result is a trade off between developing analytical skills and learning about the law. The case presentation strategy described above is a compromise that does not usually generate this higher level of discussion. When there is enough time or where there is more than one course available, I suggest that the case method approach described and recommended in Selma Wasserman's *Introduction to Case Method Teaching: A Guide to the Galaxy* (Teachers College Press, New York, 1994) be adopted.

There are 8 case studies set out in Appendix below:

1. Adams v. The Royal Vancouver Hospital
2. Valley Homes v. Ace Minerals Corp.
3. Busy Bee v. Joe Student et al

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4. O. Mann v. The Builder's Friend et al (Torts)
5. Joe v. Everybody
6. I'm a Lumberjack and I'm O.K.
7. Something Fishy
8. Software the Hard Way

1. Adams v. The Royal Vancouver Hospital

The Royal Vancouver Hospital (RVH) needed a givings officer. This is a person who seeks donations on behalf of the hospital from private donors. Their old givings officer was retiring on June 1 and with government cutbacks private donations promised to be much more important in the future. A perfect candidate is brought to their attention, Mr. Adams. He has worked very successfully for a large American hospital for 10 years. This was a private institution largely dependent on donations from business and so the role of the givings officer was much more significant than was presently the case at RVH which relied largely on government funding and only to a very small extent on private donations. But times are changing. RVH like all such federal and provincial institutions are currently facing huge cutbacks in government funding and so they need people like Mr. Adams with his American experience.

Mr. Adams came to Canada 2 years previously at a time when the federal government was encouraging research and development projects by giving substantial tax credits for funds spent on those projects. Mr. Adams and several other people from the US came here to take advantage of this favorable research climate. Mr. Adams has been involved for the last two years in developing a successful containment system for fighting oil spills. That project came to an end because changes in the Canadian tax laws ended the tax credits for such projects and because there were no oil spills where the newly developed technology could be put into practice.

In February it came to the attention of one of the assistants in the personal office at RVH that at the end of March Mr. Adams' job would end and that he intended to return to the US to find employment. The assistant brought this to the attention of the personal manager who brought it to the attention of the president and those two, with the approval of the chairman of the Board of governors, decided to explore the possibility of hiring Mr. Adams. After several interviews it was decided that Mr. Adams should come to work for RVH on a contract basis for the months of April and May and that on June first he would take over the permanent position of givings officer for the hospital, which would then be vacant because of the former officer's retirement.

Mr. Adams agreed to this and had been working for the hospital quite competently in his position for a month and a half when in mid April an article appeared in the *Chronicle*, a very influential national paper directed primarily at the business community. The topic of the article was the shameful abuse by some parts of the business community of the special tax advantages given for research and development in Canada. The article not only pointed out that the reason the program was stopped was because of the abuses that had taken place but went on to outline some examples of not only abuses but of outright fraud. The article referred to several people by name who had come to Canada from the US and set up phony research projects but never did any research; however, on the basis of falsified claims they still obtained the tax credits. The article speculated on the likelihood that these people would be prosecuted. Unfortunately Mr. Adams was specifically named and described along with 5 others as one of these "carpetbaggers from the US, fraudulently taking advantage of the Canadian tax system." Because the article was published and distributed across Canada and was specifically directed at the business people that Mr. Adams would have to approach for donations in his new position of givings officer for the

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hospital, it was clearly very damaging to him. In a discussion with Mr. Adams shortly after the article appeared he made it clear to the Vice President of Finance of the hospital that the allegations referring to him in the article were false, that he had proof of that and that he intended to sue the *Chronicle* for defamation. The VP of Finance conveyed this to the President, Chairman and Board of Governors. The matter was then handed back to the personnel office to make recommendations. Under these circumstances what should the hospital do with Mr. Adams and the full-time position that he had been promised, which would start in 2 weeks?

From the point of view of the *Chronicle*, after Mr. Adams complained and threatened to sue, the reporter who did the article was questioned about it. She made further inquires and concluded that the facts were all correct and there was no question about the accuracy of the allegations as far as the other 5 men specified in the article and that if they were prosecuted they would likely be convicted of fraud. It was also clear that Mr. Adams was associated with them in the US and came to Canada as part of that group intending to take advantage of the friendly Canadian tax environment for research and development, which explains why the mistake was made. However, Mr. Adams in fact did do the research and development claimed and obtained from the Canadian taxation department a letter stating that they are entirely satisfied with the validity of the project with which he was associated and that Mr. Adams was in no way in any difficulties with the department and that there were no outstanding complaints against him. The taxation department has only rarely supplied such a letter. In a meeting with the Editor of the paper the reporter submitted copies of this letter as well as documents detailing the nature of the oil containment system developed by Mr. Adams and acknowledged her mistake with respect to Mr. Adams. What should the *Chronicle* do in these circumstances?

From Mr. Adams' point of view, he has presented proof to RVH of the inaccuracy of the report and they still fired him. He has presented proof to the *Chronicle* of the falsehoods in the article, and the untold loss suffered (the loss of his job and ultimate damage to his career). He has requested a retraction and an apology and neither have come. What courses of action are available and what should be taken into consideration before choosing what course of action to take.

2. Valley Homes v. Ace Minerals Corp.

Jones is a young, recently hired salesperson working for Valley Homes, a small company manufacturing and selling prefabricated dwellings. They sell primarily to people wanting to build their own cabins and summer homes. Jones' job consists of working out the designs with the customers, pricing that design and then working out the specifics with the engineering section, which develops plans and sets out the exact specifications for the productions of the dwelling. She then follows up with the customer, even providing a contractor to build the dwelling if needed.

A large mining company, Ace Minerals Corp., as part of the development of a huge mineral deposit in northern Manitoba, had to build a townsite for the miners and their families consisting of some 50 dwellings as well as a sports and recreation complex. Under the supervision of the vice president of finance, Brown, Ace Minerals published a request for tenders for the supply and erection of these 50 homes and recreation centre. Upon request Ace provided the specifications and the other details of the tendering process including a statement that once submitted the bid could not be withdrawn before the formal opening of all the bids, and that the lowest bid would be accepted following the standard practice in the industry. Jones obtained these details and brought them to the attention of the Valley Homes executive arguing that the company had to change their method of doing business from just servicing the residential retail market and get more into the growing industrial sector. This was consistent with conversations that had recently

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taken place between the president of the company and major shareholders and so it was decided to submit a bid on the Ace Minerals project. Jones and Smith, the sales manager, were designated as the team to develop Valley Homes' bid. They worked for several days enlisting the help of the engineering department completing and submitting the bid on the day specified as the deadline for the submission of the bids by Ace.

That evening Jones was reviewing the bid and to her horror discovered a significant error in the calculations prepared by Smith. Jones quickly redid the calculations and found to her added horror that instead of making a 15% profit on the deal they would suffer a 20% loss. On such a huge order this could be enough to bankrupt the company. On further examination it became clear that Smith had intentionally structured the error and cleverly hid it in a way that made it very difficult to find. It was only by chance that Jones had discovered the error at all. It was later learned that Smith as sales manager felt threatened by this business brought in by the upstart Jones and set out to sabotage the project to make sure things stayed the way they were. He felt that when the deal lost money Jones would be blamed and he could then get rid of Jones with the blessing of the president.

Jones brought the miscalculations and conduct of Smith to the attention of the president of the company. The president called Smith into the office and confronted him with what he had done. It was at this point that Smith broke down, confessed his misconduct and explained that because of his age he felt threatened by Jones and worried that he would lose his position to her. The president fired Smith outright, and then went to the offices of the mining company. He met with Brown and presented him with a letter explaining the mistake and in a formal way revoking the bid that had been submitted the day before. Although the bids had not yet been opened, Brown declared that even though he was very sympathetic to the problems of Valley Homes, he could not interfere with the integrity of the bidding process once the bid had been accepted by the company for consideration. He said that they would simply have to wait until that afternoon when the bids would be opened to determine their fate. When the bids were opened not surprisingly, Valley Homes was the lowest bidder and their bid was then automatically accepted by Ace.

The next day the president of Valley Homes and Jones met an Ace management team headed Brown, where the problem was discussed. The Ace group confirmed their position but did indicate an understanding of the difficult position that Valley Homes found themselves in. They also pointed out that they realized that it was not in their interests to see Valley Homes fail and not be able to finish the job. They therefore agreed that if the project was satisfactorily completed on time, a bonus of would be paid to Valley Homes of 1/2 the difference between their price and the next lowest bid. This would allow Valley Homes to do just a little better than break even on the job, thus avoiding bankruptcy. It was also understood that there would likely be future dealings between these two companies and because of the good relations created in this meeting Valley Homes would give Ace Minerals an especially good deal on the next project.

As the project proceeded, a series of payments were made to Valley Homes all 59 days after the date specified in the contract. As is normally the case with these kinds of projects there was a clause in the contract whereby Ace would not have to pay interest on any late payments so long as payment was received by Valley within 60 days of the day payable.

Eventually the project was finished on time to the satisfaction of all parities but the bonus was not paid. Valley Homes waited the specified 60 days and when the bonus was still not paid, they went to Brown's office for an explanation. They learned at this time that Brown had been replaced and they were invited to meet with the new Vice President of Finance Mr. Grey. He explained that over the months Ace had carefully monitored the project and the health of Valley

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Homes and had decided that they were in better financial shape than either party had anticipated. Bankruptcy was not a threat and therefore the mining company had decided not to pay the bonus. Mr. Grey went on to explain that they were entirely satisfied with the work that had been done and that Valley Homes should in no way take this failure to pay the bonus as an indication of dissatisfaction on their part with the their company, the personal, or the quality or timeliness of the work performed. In fact Grey's final comment was that he hoped that the two companies would have many years of cooperative ventures in the future.

Discuss the options available to Valley homes in these circumstances.

3. **Busy Bee v. Joe Student et al** (Secured Transactions)

After graduation as a business student at SFU and taking a year off to travel, Joe Student decided that he wanted to go into business for himself. He was attracted to the franchise business and chose one that requires very little initial outlay. This involved the opening of a hot dog stand to be set up in front of a major sports retailing outlet recently opened in Burnaby. The franchising company, Ace, arranged for the site and supplied the cart itself, with a cooler, stove and storage area. It also supplied jumbo and regular wieners, buns, and condiments as well as soft drinks for a fee only slightly higher than would be available through normal wholesale outlets. Although Joe has no choice but to get his supplies from Ace, he considered this slightly higher cost was well compensated for by the convenience of getting them all from the same source of a consistent and known quality, and because of the other services supplied by Ace. Ace insisted on supplying the food inventory as a matter of quality control and to ensure product consistency between all of their franchised carts at various locations around the lower mainland. The franchise fee to be paid by Joe to start the business was $20,000 and for this in addition to the cart and an initial supply of buns and wieners, Ace would supply a limited amount of advertising and other services such as bookkeeping and tax preparation. Ace also was entitled to a set percentage of Joe's sales to pay for this service.

Joe's initial problem was to raise the $20,000. He had no money himself, having just finished his bushiness program and travels and in fact owed about $15,000 in government student loans. He did however have a relatively new sports car worth in his estimation about $13,000. He also had an older cabin cruiser given to him by his grandparents, which he estimated to be of about $10,000 value. His mother had recently passed away and his father was a successful teacher in the Vancouver area. Although his father was encouraging in the business venture, he was not in a position to lend Joe any money. He did suggest, however, that Joe use a sound business approach to the problem and arrange financing through a company recommended by a friend, the Busy Bee Trust Company.

Joe took this advice and made an appointment to see June, a recently hired loans officer working for Busy Bee. When Joe showed up for his appointment she recognized him as one of her fellow students in the business program at SFU. She remembered him as an adequate student if not particularly a bright light. Joe did think to prepare a business plan and after some pleasantries presented it to June with a request for the loan. June could see that the business plan was quite optimistic, but recognized that there was a clear potential for success and leaned towards making the loan if she could be satisfied that the risk to Busy Bee was minimized. It was clear that the assets of the hot dog stand itself including the cart was of little value and that the $20,000 being paid by Joe was for the franchising services provided by Ace. What steps should June take in these circumstances to make the loan and also minimize the risk of loss to Busy Bee?

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Part 2

June made the loan to Joe, taking a chattel mortgage against the car and boat and getting Joe's father to guaranty the $20,000 loan. Unfortunately when the chattel mortgage against the boat was registered (using the Finance statement under the PPSA) two numbers were inadvertently reversed and the security was registered under the wrong serial number.

Joe continued in the business for some six months and by that time it became clear that the business was not as profitable as he hoped it would be. He needed more money to operate and wanted to sell the boat to generate more working capital. He approached his friend June at Busy Bee to get permission to do so and after reviewing the file she determined that the guaranty and the remaining chattel mortgage against the car satisfied Busy Bee's minimum requirements for security, and gave permission for the boat to be sold and the funds to be used by Joe in his business.

About four months later, with the business still not doing as well as he hoped, Joe got bored and decided to go back to school and get a masters degree. He had also heard a rumor that the health departments in the various municipalities were planning a coordinated crack down on these road side food vendors. Without informing Busy Bee he sold the car to Mary for $10,000, abandoned the cart in front of the sports complex and caught a plane for Ireland where he has been admitted to pursue his further education. Mary quickly resold the car to her friend George for $10,500 who used it for the 3 summer months and resold it to Sam for $9,500. By this time June at Busy Bee found Joe in arrears, checked and upon some investigation found that he had abandoned his business and left the country. When they took steps to repossess the car, they discovered their error, corrected it and reregistered the Loan. This re-registration took place while the car was in the hands of George. After the correction and changes to the registration were made, George resold the car to Sam for $9,500. Neither George nor Sam knew of the claim against the car by Busy Bee at the time of the sale, but had Sam checked with the registry, the corrected information would have made it clear that busy Bee claimed a charge or lien against the car. Busy Bee repossessed the car from Sam and demanded payment of the remainder of the $20,000 loan from Joe's father on the guaranty. Discuss the legal position of the various parties.

4. O. Mann v. The Builder's Friend et al (Torts)

Joe had been recently promoted to the position of manager at one of the Lower Mainland outlets of a retail sales business selling home and garden supplies called The Builder's Friend. This business had 20 retails outlets in western Canada concentrating on supplying the needs of the home owner and amateur builder. There had always been a considerable problem with shoplifting and this was particularly true at Joe's location. Maters had been made worse in recent months with a serious downturn in the economy which showed a related increase in theft from the store. All normal steps had been taken to reduce this problem including hiring floorwalkers, inspecting packages of customers as well as requiring all vehicles that came onto the premises to submit to a vehicle inspection as they left. When Joe became manager he was told that one of the major problems he had to deal with was the excessive shoplifting taking place at his store. Joe was also told that the old manager lost his job because of an inability to reduce such thefts and so he knew that his success in his new job depended to a large on the way he dealt with this problem.

Joe decided to enlist all of his staff into this struggle and as a part of his regular weekly sales meetings devoted a significant part to a program encouraging all the employees to get involved in the theft prevention business. "To have a go," as he put it. He also made sure that any new person

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hired not only looked like, but could "take care of himself" He encouraged everyone working at the store to be watchful for any sign of shoplifting and a significant portion of the weekly training sessions were spent on how to spot such thefts. Within 6 months of taking over as manager Joe was satisfied that all of the employees were excited about the program. They seemed not only vigilant but eager to catch shoplifters and indeed in that time several shoplifters had been apprehended. Joe took a zero tolerance tough approach and made sure that all were prosecuted to the full extent possible, even kids. He further rewarded the employees involved in the apprehensions by recognizing their contributions on the staff bulletin boards and also in a more tangible way by giving them a day off with pay. He noticed that the other employees appreciated this and were further encouraged to participate in the program.

One Saturday afternoon Joe was walking around the floor of the store when he saw a well dressed customer (Oliver Mann) carrying an obviously full large brown paper bag in both hands, looking at merchandise in the store. Joe had noticed him because on another occasion one of the employees had pointed him out as a person who had been acting suspiciously but they had never caught him taking anything in the past. This time Joe saw him pick up a small but expensive power tool and put it into the bag he was carrying. Joe called over two of his new employees, both young vigorous athletic looking young men. He gave Sam the keys to his car and his cellular phone, telling him to drive around the block and call into the customer service desk to coordinate so that he could cut the customer off if he tried to get away. He and Harry the other young man, looked around and found the customer in another section looking at building supplies. This was near the supply entrance where there was no cashier located and sure enough the customer left the store through that open side door. Joe sent Harry off to follow and as he went out the front way to intercept the fleeing customer he told the customer service clerk to alert Sam in the car that the customer was fleeing and was heading across the intersection at the front of the store.

When Mr. Mann, the customer saw that he was being followed he started to run. Harry ran after him. Joe also ran after him cutting across at an angle from the front door. Harry caught up to him first in the intersection garbing him, but the Mann dropped his package shrugged off Harry and leaping away made a run for it. Just at this time Sam in the car drove into the intersection, jumped out of the car and made a flying tackle sending himself and Mr. Mann in a heap onto the street. Sam sat on Mann, and proceeded to hit him several times in the head. Harry joined the action at this time and added several of his own blows, all before Joe the manager caught up and arrived at the scene. All three then picked up Mr. Mann who was severely dazed by this time and half dragged and half carried him back into the store. When Joe returned to the store he immediately called the police. About the same time the police arrived at the store, Richard also presented himself at the store identified himself to the police and explained that he had been stopped at the intersection waiting for a red light immediately beside where Sam had parked his vehicle when these events took place. Richard had witnessed the whole thing from when the customer had left the store. His attention was first drawn to a well dressed man carrying a large parcel as he left the store hurrying across a right turn segment of the intersection just ahead of a right turning car. He had witnessed one person come after the man from around the side of the store and another come after him out of the front door. He had witnessed Harry's initial attempt to subdue the customer and said he had had a "grandstand seat" for what he had described as a perfect "flying tackle" coming from the driver beside him who had jumped out of his car and brought the man with the package down. He had also described the blows that Harry and Sam had administered to subdue the customer on the ground and had seen the man being dragged back to the store. Richard left his name and address with the police and they said he would likely be called on later.

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Mr. Mann at this time wasn't making much sense and so the police arrested him and called an ambulance. The next day at the hospital Mr. Mann who had suffered a concussion in the fray, explained to the police that he had simply been looking at what was in the store, and although he had at first intended to buy a small tool he had decided it was too expensive and had changed his mind. Because he was not purchasing anything, he had left by the most convenient exit. When asked why he ran, Mann replied "wouldn't you run if you saw several big men chasing you?" The police went back to the store and asked to look in the bag that Mann had been carrying. Joe realized that in the excitement they had not brought it back to the store with them. They went out into the street looking for it but by that time of course it was gone.

5. Joe v. Everybody

Joe, a recently graduated business student decided to start his own business. After attending a franchising and small business opportunity conference he was particularly persuaded by a franchising opportunity involving a pot and pan repair and refurbishing business. After the conference he researched out the business getting all of the information he could from the people selling the franchising opportunity "Tinker's Damn" Inc. He talked to Ted, the salesman trainer and area representative for "Tinker's Damn" and found that the services offered involved the company providing training in the repair of pots pans and other such utensils as well as training in a new technique of refurbishing such items to almost new condition. The company would also provide the specialized equipment necessary, a designated area in which Joe was entitled to carry on the business involving both residential and commercial premises and a commitment to provide a certain amount of advertising in the local paper, on billboards and the like. Ted also promised that they would solicit sufficient appointments in the first two months so that the business would not only break even (including a salary for Joe) but would generate a modest profit as well. After these first 3 months the "Tinker's Damn" would provide a list of 500 potential clients but other than that and some advertising, Joe would be on his own other than use an ongoing bookkeeping service that would be supplied by the head office. Part of Joe's training involved where to look for customers and how to solicit business. The fee to be paid to "Tinker's Damn" was $20,000 and 15% of all revenue earned by Joe. These provisions were clearly stated in a written contract between Joe and "Tinker's Damn" Inc., which Ted signed on behalf of the company.

In addition Joe had to purchase a truck in which to house the equipment and from which he would do his business. This was a further $25,000 investment. He borrowed enough money from his father to pay the franchise fee and to make a $3,000 downpayment on the truck. They agreed that this should be done in a business like way and so Joe incorporated a company and on behalf of the company agreed to repay the loan at a rate of $500 per month until repaid with 9% annual interest. Joe gave his father a promissory note on behalf of the company to that effect. Without consulting Joe's his father gave the note to Joe's recently married sister to use as a downpayment on a house.

Joe also felt that he needed to establish a small office in his home. For this he needed a computer, printer, fax machine, a telephone answering machine and photocopier. He felt that he would like a scanner as well. Based on the projected sales and income figures supplied by the franchise company and his own needs he calculated that he had enough income to be able to carry the extra debt and went to "Tomorrow Town" a retail electronics store to see what kind of deal he could get on these items. When he entered the store he was approached by the salesman Sam who after listening to him for a few minutes told him "he had just what he needed". Sam showed Joe a computer, monitor hard drive etc. which was on sale with a printer for $2,500. The salesman explained that this was the most up to date technology available anywhere. He said that the

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computer was not only the leading edge of computer development and would be current for years to come but that it was upgradeable when advances beyond its capabilities finally were developed, "not that Joe would ever need anything better" Sam also pointed out that the computer would run all current software that was available even the most advanced, and would run any software that might be developed in the foreseeable future. Sam also pointed out that the printer supplied with it was the most recent high impact 24 pin design and that nothing was better. For the other equipment, Sam showed Joe a Concord 100, which was a special combination fax, scanner, and photocopier that was available for only a further $1,700. Sam said that this was what everyone was using nowadays and that they were extremely fortunate to find one in the store that had not yet been sold. Joe was told that he had better decide to take it right away as it would not likely be available later in the day they were going so fast. Sam said that if he bought the package he would throw in one of the new "brother" answering machines they had on sale that day for no extra charge. Joe was impressed with what Sam had to say and agreed to buy the computer printer and combination fax/scanner/photocopier. He also agreed to purchase an extended warranty as well as a management contract for a further $500 which provided that any repairs and servicing necessary would be done by the provider of the service for only a "small fee" at Joe's office. He also agreed to purchase a packaged "office" software bundle. The price came altogether to $5,800 including PST and GST. Joe paid his last $500 as a down payment and agreed to repay the loan at a rate of $150 per month for 5 years. He had no worry about being able to afford this as the sales projections and costings that he and the advertising company had done had assured him of a monthly income high enough to not only pay a substantial salary to him but also cover the franchise payments, the payments of the truck and this further debt to Tomorrow town electronics. Because Joe had incorporated his business, and wanted to put the purchase in the company name for tax purposes, Joe had to sign a promissory note in his own name for the money owed as well as a conditional sale agreement in the name of the company secured against the computer equipment purchased

Joe took the computer home hooked it up and found when he tried to run the standard software he had purchased the hard drive was not big enough to load it all. He also found out that while the computer was able to run some of the software supplied it did so very slowly. He further discovered that some of the software purchased that he didn't really need for the business (a presentation program) would not run on the computer at all. He asked a friend knowledgeable in computers to come over and have a look. The friend pointed out that the computer that he had been sold was an older model (a "386") which had been sold as a special package (CPU, monitor, hard drive etc.) and while it could be upgraded to run some of this newer software it would require a complete removal and replacement of the motherboard, in effect a replacement of the whole heart of the computer. Even then the monitor (and video card) and other internal components which was packaged with it were really designed for this outdated technology and would not operate with the new CPU that efficiently. Joe was further disappointed that some video games that he had hoped to use on the computer were incompatible with such an obsolete system. He was also disappointed to find out from his friend that although the combination fax/scanner/photocopier worked it required special paper and special ink that made any kind of volume work prohibitively expensive compared to the alternative. For this reason the Concord 100 was no longer being sold in other stores and was being sold off at "Tomorrow Town Electronics" at a sales price in order to get rid of them. The main difficulty wit this is that the special paper and ink were used only with this unit and it would be extremely difficult to get them in the future. The printer itself was completely compatible with the computer because it too was an old obsolete system. He found that he should have purchased a laser or inkjet printer which would have provided better resolution, much greater speed with modern software, and less noisy operation. His friend also noticed that the telephone answering machine he had been "given" was used not new.

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Joe went back to "Tomorrow Town Electronics" in an irate mood to demand the return of his money. He looked for the salesman but Sam was not there. He demanded to talk to the manager. The manager, Ruth, was sympathetic upon hearing Joe's story. She explained that Sam was not a salesman but only a sales trainee who was on the floor that day only to get exposure to the "real world" of sales. Sam had not been authorized to make any sales without the direct involvement of one of the regular sales staff. Despite that when the sales manager had realized what Sam had done he had decided to honour the sale even though they didn't have to, and Ruth had supported that decision and so would not demand the return of the computer. Ruth explained that she could not help Joe because earlier that day they had assigned the conditional sales agreement along with the promissory note to Ace Finance Ltd. "Tomorrow Town Electronics" was no longer involved, Ruth explained, and so any problems Joe had ("except warranty problems of course"), would have to be taken up with Ace. Ace was a special independent finance company that "Tomorrow Town Electronics" had set up to handle all of their installment sales. The manager also pointed out the small print in the contract which stated that "all sales were final," that "unless the product was actually defective in which case it would be repaired or replaced, there was no other warranty express or implied with respect to the product, its performance or its quality". The contract also stated "That any statements made by salesperson or otherwise that were not specifically included within the written contract were void and of no effect." The manager expressed sympathy for Joe's position and stated that for another $1,000 they would upgrade the mother board of the computer which would solve "many" of Joe's problems but otherwise since there was nothing actually wrong or defective with the computer he was "out of luck".

Joe was extremely angry by this time and feeling cheated said that he would not make any further payments and that he wanted his downpayment back. The manger Ruth feeling that she had been more than generous and feeling that Joe was not only ungrateful but insulting, managed to hold her temper and simply told him he would have to take that up with Ace as she ushered Joe out of her office. Later that Week Joe received a letter from Ace, informing him of the assignment of the conditional sale agreement along with the promissory note and requesting him to make any further payments to Ace at a specified address. Joe wrote a letter back stating what had happened, demanding hat the computer be replaced or that his downpayment be returned. He also clearly stated that he would be making no further payments until the mater was rectified to his satisfaction.

Part 2

Joe makes no payments. Ace does not return any money paid by Joe. "Tomorrow Town Electronics" refuses to have anything more to do with the mater or with Joe. A bailiff attends at Joe's house to repossess the computer but Joe refuses to let him take it until he "at least gets his down payment back".

Ace sues Joe and "Tomorrow Town Electronics", Joe sues "Tomorrow Town Electronics" and Ace.

How would the situation be different if Joe had signed a personal guarantee instead of a promissory note?

To make matters worse for Joe, he was in no financial position for carry on these court actions. It turned out that the business he had started was not anywhere near as profitable as he had anticipated and been lead to believe by "Tinker's Damn" Inc. If it weren't for the help of his father he would have lost the truck say nothing of the electronic equipment he had purchased from "Tomorrow Town Electronics". He had considered just not making any further payments on

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the Promissory note he had given to his father but when he learned that it had been used as part payment on a house for his sister, he was unsure what effect not paying would have on his sister and father.

Upon further investigation he discovered that Ted, the salesman and trainer for "Tinker's Damn" had misled him. Joe went to the appointments made by Ted, he found that half of them had never been contacted and about half of those that had, said no to the appointment. Only about 25% of the appointments he had been given by Ted were in fact valid and he was now scrambling to drum up enough business to keep afloat. As a result he had to immediately turn to the list provided of potential customers and to his dismay he discovered this list was simply the restaurant section extracted from the of the yellow pages and consisting of only 200 names listed twice. Joe has discovered that with a lot of hard work over several months he could build up a sufficient client base to "do OK" in this business but that it would be "touch and go for quite awhile." It was clear that he had not received anywhere near the value he had expected from "Tinker's Damn" Inc. What should Joe do in these circumstances?

6. I'm a Lumberjack and I'm O.K.

Jack owned and operated one of a multitude of small logging operations in western Canada called Lumberjack Inc. A few of these small operators had their own allocations of timber (as licensed by the provincial government) but most including Jack, were "contractors" working for larger companies (the Majors). This meant that for a negotiated contract price they would go onto the areas licensed to the major company and harvest that timber for them. They also occasionally harvested timber for private landowners who had stands of timber on their own land. They would contract to purchase the standing timber, cut these logs and sell them to one of the major companies to be made into pulp or sawed and sorted for lumber depending on the type of timber and the quality and size of log. There were only a few of these major companies and the small loggers usually had no choice but to sell their logs to the one operating nearest to them because of the prohibitive cost of transporting the Logs.

The value of working together was clear very early and years ago a small loggers associations (SLA) was formed to handle the problems of Jack and other small loggers like himself. A great problem that Jack and the other small loggers had was that they could usually only sell their logs to one buyer, the one nearest their operation. Because of this and the fact that there are only one or two major companies interested in purchasing their logs the market is very restricted and the Majors can dictate the price. Jack and the other small loggers don't really have much choice. As a result one of the major concerned of the SLA was to ensure that they get the best price for their timber. One of the main purposes of the SLA was to provide a monthly forum for Jack and his friends to get together and discuss the prices they should get for their logs. They invited representatives from the major logging companies (the purchasers) and together they would discuss and set prices for the timber to be sold in the following month. The members of the Small Loggers Association agreed that they would sell exclusively to the Majors and the representatives of the Majors in turn agreed on behalf of their companies to purchase a set amount of timber from those small loggers at a specified price. The major companies agreed to this because they were not happy about the control they had over the pricing in the past, feeling that they had too much power to control the market and as a result were vulnerable to prosecution. Also this kind of arrangement created a certain security of supply that they had never had before.

These major companies had another problem that this arrangement solved. The Majors were all divided into different divisions and the divisions that purchased logs and chips from the small logger often found themselves selling those same logs and chips or logs and chips they had

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produced themselves to other divisions of their own company or they were purchasing from those other divisions, and it was required that this be done at fair market price or they would again be vulnerable to prosecution. Because of this arrangement with the SLA they had a price they could use in their internal dealings. Thus the representatives who attended these monthly meeting of the SLA were both the customers and the competitors of Jack and the other small loggers.

The Chips purchased are either used locally in the pulp and paper division of the Major, or are if there is an excess, they are sold offshore. The logs also may be sawn up by the timber division of the Major for export or be exported offshore in their raw state. But often these logs are also sold to private specialized sawmills for use in the local building industry. One of these private specialized sawmills Busy Bee enterprises, learned of this arrangement and was irate at what they saw as price fixing. Busy Bee approached three of the smaller loggers including Jack and demanded that they sell logs directly to Busy Bee for the same price they sold logs to the Majors. Jack didn't know what to do and took the matter to the next SLA meeting.

Jack has another significant problem that he has to deal with as well. In one of his deals he agreed to log a stand of timber covering 1/3 of Sam's ranch. This was a nice property located on the wall of a small valley near a lake which Sam intended to convert into a guest ranch in the near future although he never told this to Joe. The ranch covered 150 acres and was worth on the open market about $200,000. This was a little higher than normal because of the nice location of the ranch. In fact this is what Sam had paid for the property 6 months earlier. One of the reason's Sam bought the ranch was because he knew he could sell the timber. Sam's deal with Jack required Jack to pay Sam $100,000 for the standing timber. Jack then would come onto the property with his men and equipment and remove the trees "with as little disruption to the rest of the property as possible." In addition to this provision included in the contract the agreement also required that after the trees were harvested the property be "restored" within 2 years of the harvest.

Jack's worker's cut down the trees in June 1993 using clear cut methods and Jack resold the timber for $200,000 which after considering his costs left a profit to the company of $25,000. Unfortunately the property was left in a very disreputable condition. Roads had been made crossing other parts of the ranch, stream beds were destroyed in the process and the clear cutting itself left that part of the property in a miserable mess with the land not only dug up by the equipment used but covered with all sorts of unsightly debris. No attempt was made by Jack's company to "restore" the property after the removal of the trees. Jack explained to Sam that there was "just not enough money in it." Sam had expected this part of the ranch to be cleared and then to be landscaped giving a dramatic view of the valley and lake making it ideal for use as a guest ranch. Instead he was left with a blasted landscape looking as bad as any clear cut extending beyond the original tree stand and making it impossible to develop the property as he intended. When Sam inquired he discovered that it would cost him $150,000 to clean up the property and put it into the shape that he had envisioned when he started the project.

Sam complained to Jack and threatened to sue. He demanded that the property be restored as agreed or that he receive compensation so that he could have the work done by someone else. Jack was surprised when Sam told him he intended to develop the property as a guest ranch. Jack had assumed he would be using it as a cattle ranch like all of the others in the areas and that the esthetics were "no big deal." He investigated and found that if the property were used as a cattle ranch as he thought it would be, the increased market value had it been landscaped as Sam wanted would only go from $200,000 to $215,000. One the other hand if the property were developed as a guest ranch the restoration and landscaping would be a vital part of the project and would have increased the value dramatically. Explain the legal position of the parties in these situations and explain what should be done by them.

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7. Something Fishy

Joe had operated a very successful chandelling business supplying the needs of the fishing industry on the west coast of British Columbia for 20 years. Unfortunately because of over fishing drastic cutbacks had to be made to the west coast fishing fleet and to the overall fishing industry on the west Coast and his business suffered as a consequence. In an effort to save his business, Joe set his mind to other related fields but realized he knew very little about other types of businesses. Joe's operation consisted of about 20 employees. Joe was the "boss." Five employees worked in the store ordering supplies, doing the paperwork and servicing the customers. The rest manned the dock and the fueling facilities, or worked in the machine shop.

Joe's particular talents were in obtaining supplies at reasonable rates and in operating the machine shop. When Joe understood that the impending cutbacks in the west coast fishing industry would severely affect his business he realized he needed expert help in order to survive. He decided to hire a sales and marketing manager who would run the sales and generally market the business finding them something else to do. He interviewed Pat, a recent graduate of Simon Fraser University. Pat had graduated top of the class and had concentrated in Small business Entrepreneurship with a specialty in sales and marketing and was just what Joe needed. Pat had also worked on fishing boats before going to university and during summers and knew the industry. He offered Pat a Job and this offer was accepted. The terms of the employment were that Pat would agree to work for 4 years in this position at a generous and increasing yearly salary. At the end of that period both parties would review the situation and if they agreed would negotiate a new and continuing contract. As is the case with most contracts of this type there was included a 3 month probation period where Pat could be let go if Joe was not satisfied with the level of performance. Pat had a similar right to leave during this period.

Pat knew the business and after a few weeks working with Joe and getting to know what they had to offer Pat suggested that they turn to the offshore fleet taking great amounts of fish off the west coast of B.C. "We might as well try to get something back from them since they likely caused this problem in the first place." Pat explained that when fishing they often would see many ships of other nations working the fishing grounds and that these ships would have to go home or to long distant ports for supplies or to make repairs. "Why not offer the service of supplying and making minor repairs to those ships right here. We have the equipment, the talent and the facilities. It would not be much different from what you have been doing all along with our own boats." Joe liked the idea but had no idea of how to go about starting the business. Pat did and under Joe's signature sent a series of letters to Companies operating these offshore fleets offering their services. They received several serious replies and after some further negotiating by mail 3 viable potential agreements looked certain. Of these one of the companies was Japanese and another was from Algeria owned and operated by Arab, Muslim interests. The next stage was to do in person negotiations to clinch the contracts.

Pat was eager to go but Joe had a conversation with several friends in the lumber industry who had done business with the Japanese and they explained that the Japanese were extremely conscious of the status of the people they dealt with and might consider dealing with Pat an affront. Pat was female and of black African American heritage. Joe made some inquires and discovered that the problem might be even more serious in dealing with the Algerian company. Because of the size of Joe's operation he couldn't afford to hire another person to do the negotiations especially since he realized that an on going relationship would result and the person he originally sent would have to be kept on to service the contract. After serious soul-searching Joe called Pat into his office and explained to her that because she couldn't do this part of her job he would have to let her go. He explained that even though he was not required to because her

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probation period wasn't up he would pay her 3 months wages if she would stay and help her replacement get started. Joe then hired Sam, another Simon Fraser graduate, second in the class and of a white, European background. But Sam did not have the same specialization in small business and sales that made Pat so attractive to the business, but Joe felt that with Pat's help, these limitations could be overcome. Pat reluctantly agreed to help and while angry, said she understood Joe's dilemma.

Sam did successfully carry on the negotiations with the Japanese and Algerian companies and agreements were signed giving Joe's business exclusive rights to do minor repairs and supply these ships. The only difficulty that Sam had was when dealing with the Algerian Company. He was in fact dealing with an agent of that company and that agent insisted on a payment of 15% of the value of the contract to cover "advanced promotional expenses." Joe and Sam did some further investigation and found that this was nothing more than a kickback or bribe. They also found out that it was a common and expected aspect of doing business in that part of the world. If they wanted the business Joe felt that he had no choice and so reluctantly made the payment.

Joe's only potential rival in this new business was another person in the same town who had also supplied the west coast fishing fleet. This business was run by George, who was in fact an old friend of Joe's and had struck up a great friendship with Pat as well. He had faced similar problems when the west coast fishing industry went down the tubes, but had taken another way out. Instead of looking to the offshore fleet, George turned his interest to the still viable recreational fishery. George went into the business of providing supplies for the recreational fishermen as well as the many resorts and boat rental facilities catering to these sports fishers. George and Joe had been rivals in the past and both feared that the other would go after their new business. After some conversation both agreed that there was only enough business in both areas for one. They prepared and signed an agreement to the affect that George would not carry on the business of supplying or offering services to any foreign commercial fish boats and Joe agreed to stay out of the recreational fishery business in any form. Both retained the right to continue to supply and service any B.C. fishboats as they had in the past. They agreed that if either violated this agreement the victim would be entitled to damages in the amount of $500 per day for each day the breach continued.

All went well for another season and then the recreational fishing business also began to go sour. About this time several other companies operating offshore fleets who now saw the advantage of the arrangement their rivals had with Joe came to town and approached George eager to obtain access to the same kind of services. George could not pass up the opportunity and made arrangements to provide similar services for them. Although this did not directly hurt Joe's business since he had all he could handle just servicing the needs of the three companies that he had contracted with, he still felt that was in breach of this agreement even though and George had not solicited the business.

Joe had a falling out with George and threatened to sue. When Pat discovered how well Joe's business was going and how he was treating George she also decided to sue.

8. Software the Hard Way

Joe is a software developer working for Ace Development Company for the last 10 years. He has no management position with the company other than being a software developer, however because he is key to its operation and one of the original founders, he is one of the 5 directors of the company. He and 2 other friends (Sam and Harry) had originally set up Ace to develop some software they had created at the beginning of the personal computer boom. They had all been

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employed by a major computer company but they had found the atmosphere, the suits, and the eight-to-five schedule stifling and decided to take the ideas they were working on and set up their own company. Originally 1,000,000 shares were issued in Ace Development Corp. Joe retained 30 % of the shares (300,000) and is a director of the company. Sam and Harry also have 30% each of the shares and are also directors. The remaining 10% are divided equally between Tom, the President/production manager and a Dick, the Marketing Manager who also hold director positions. Joe Sam and Harry all knew that their skills were in the software development aspect of the business, not the management and so from the beginning they planned to hire the management skills the company needed so that they could get on with their research and development.

This worked out to be a very successful strategy and over the years Ace developed into one of the most successful and influential companies in their field with 30 employees and annual sales in the millions. The next part of the strategic plan developed for Ace by Tom and Dick was to go public and sell shares on the stock market. This would require a further expansion of the business with an infusion of borrowed funds of about $1.5 M. from the bank. It is important to note that although Sam and Harry made important contributions, it was Joe that was considered the software genius. He was key to the whole Ace operation and had a great reputation in the industry. There is no question that the success and reputation of Ace was largely dependent on Joe's role in the company. It is clear that the Bank's willingness to provide the additional capital needed was on the assumption that Joe would continue with the company. Over the years the Ace had specialized in the development of communications software, particularly networking and more recently the company had directed its attention towards exploiting the exploding interest in the interment.

Joe was disinterested in the business aspects of Ace. He had a lab at home and a couch at work and he would wander in and out whenever he felt like it often not distinguishing between his personal and his work life. Certainly he was just as likely to be working or sleeping at his home as at the office. Everyone was tolerant of his eccentric lifestyle because of what he produced. But Joe was finding Ace in its new successful corporate status as stifling and as restrictive as the company he had left. He was not a happy camper especially when he felt the resentment of the other employees towards his "privileged position". He couldn't deny how successful the company had become however and so he just kept plodding along in what he considered his rut of a life.

On the Morning of June 18 Joe and his assistant George were summoned along with the other employees to a general meeting where it was announced that everything was now in place. The funding had been obtained and the public share offering was to go ahead over the summer. Every Employee of the company was to have the right of first refusal of the additional 1,000,000 shares to be offered to the public. Tom, the president, explained that they had borrowed $1.5 M from the bank and they intended to use this money to diversify. Joe knew vaguely about the intention to go public but he now realized that they had borrowed a considerable amount of money effecting the value of his shares, and that his percentage of Ace would also be severely diluted as well as any say he had in its operation with the sale of the new shares. He also realized that Ace was being diverted from its original purpose and now would be just another business, which completed his disillusionment. Of course he would have known all of this had he bothered to attend the directors meeting as he should have. The champagne was broken out and all began to celebrate. Everyone congratulated Joe and the role he had played in developing the successful company. All recognized the role that Joe's expertise skill and genius had played. Tom Toasted Joe and his great accomplishments. Left unsaid was the fact that the reason the management of Ace wanted to diversify was to make the company fortunes less dependent on such an unstable character as Joe.

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Joe's son, Little Joe, had a lot of his father's characteristics. There was that same flash of genius, and also much of the same instability. He had followed in his father's footsteps and taken computer programming at university. But he became bored and found the regime required by university study stifling and dropped out after his third year. He said that THEY weren't teaching him anything he couldn't learn on his own anyway. He and two friends who had graduated decided to up their own development company just like Joe and his friends had done 20 years before. One of the projects that Little Joe had been working on at university was a new interface for working with the internet. This was cutting edge and promised to revolutionize the use of the internet and ease the connection with individual users. This new interface promised to speed up the process and the convenience of using the internet.

The idea had come from his father. Little Joe had been out with Joe on his boat one day and had complained to about needing a major project to work on as part of his studies. Joe remembered a conversation he had with one of his clients who had expressed a need for a faster and better internet interface and had also given some basic ideas as to how it could be accomplished. Joe had been too busy to follow up on it and had never told anyone else at Ace about the idea. Little Joe took the idea back to the university and got the permission and support of his supervisors to proceed with the project. In fact the university thought so highly about the idea that they provided a Lab and several other personal to work with Little Joe. They told Little Joe that if things worked out this could be the basis for a major part of the new product development and marketing strategy of the university. The two other students (graduate students) were the friends that Joe was working with and at the university they proved the workability of this new software. Those three were the only ones who had any detailed knowledge of the project.

When they decided to leave the university their main problem was how to take their equipment with them. They didn't want to leave anything behinds so that their ideas and work could be stolen. They came to Joe. Joe advised them that even though they had assembled the equipment it was with university grant money and they couldn't get away with taking the equipment with them. That belonged to the university. But they should erase all extra copies of their data that remain in those computers before they go. It was clear to Joe that a new business should be set up and that capital would have to be raised to recreate the lab that the boys had left behind. Other funds would be needed to market the new product. Joe even mentioned to the boys that they could go to Ace and enter into an arrangement with that company to co-develop the software. They had the market developed, the marketing expertise, and the production facilities and there was no question that they could successfully market the new product.

Although Joe was enthusiastic about the new enterprise his years of experience in the computer industry had taught him to be cautious. Many of these new ideas run into snags and never get anywhere. He understood that it was risky but that the potential rewards were great. He told this to Little Joe and his friends but they didn't care about the risk. They knew it would work and anyway, they didn't have anything to lose. They were just concerned about how to best complete the development of the product and how to best exploit it and get it out on the market. Joe said that he would help as much as he could. After a considerable amount of thinking and after checking his finances,

Joe decided that he could take some personal risk and told the boys to count him in. It was clear that they would need at least $900,000 to set up the lab and get the business going. He decided that he could risk $300,000. Since little Joe and his friends had no money the rest would have to be borrowed from other sources. Joe wanted to make sure that the rest of his fortune was protected and not at risk. He couldn't start all over again. He also didn't want to do anything to put Ace in danger as most of his wealth was tied up with his shares in that company. He had to

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consider whether he would stay working for Ace and remain as a director or sell his shares, quit and go into business with Little Joe and his friends even with all of the negative impact that would have on Ace. One thing was sure and that is that if he left Ace he would take his sidekick George with him who was a technician and an absolute miracle worker with software and this would further damage Ace.

Remembering his own experience with his own friends and Ace that they had started, he wanted to not only limit his liability to the $300,000 but also make sure that the had more control in what would happen with the new business. He wanted to have some say in management and he wanted to be assured of a share of the profits. He didn't want to discourage or control the enthusiasm of the young people he was helping out but with his experience and age he knew that there had to be some guiding hand and that that guiding hand was going to be his.

A major difficulty was just what kind of business arrangement would be appropriate for him and the boys. Joe decided that he needed advice and although it was against everything he stood for he decided he had to talk to his lawyer. All of these were on his mind when he called on his lawyer to discuss his options. The lawyer talked about Companies, limited liability, limited and general partnerships, shareholder agreements, share structures, security arrangements, collateral, directors' duties, personal liability, fiduciary duties and by the time that Joe left his head was reeling.

Examine this situation and discuss it from the point of view of Ace, the university, Joe, the bankers, and little Joe and his friends. In your answer look at the different methods of carrying on business that Joe, Little Joe, Tom and Dick might consider.

9. To Be or Not To Be

Anthony was an officer, director and shareholder of ACI Inc. The company took a loan from the Bank of Nova Scotia and Anthony guaranteed repayment of the debt. His guarantee was limited to $350,000, although the amount owed to the Bank by the company was much greater. The company default on its payments to the Bank and in October 2004, the Bank wrote a letter to Anthony advising him they had demanded payment from the company and stated that "[w]e have today demanded payment of the Borrower's obligations to us…. If payment of our demand is not made as required, we will take steps to recover payment from you."

The company went bankrupt in December 2004, and the Bank appointed a Receiver to sell the company's assets. The sale was finalized in February 2007, but the Bank was not paid out in full. The company still owed over $1 million and as a result, the Bank's lawyer sent a second letter to Anthony and demanded payment from him of the full amount of his guarantee. Anthony did not make payment and the Bank sued him for the amount owing.

When the matter came before the Court, Anthony defended and argued that he was not obliged to pay the amount of the guarantee because the Bank had not sued him within the 2 year period prescribed by the *Limitation Act*. Anthony argued that the limitation period started either when ACI Inc. defaulted on the loan or when the Bank sent him the first demand letter in October 2004. On that basis, he argued that the limitation period expired at latest in October 2006, and the Bank had not sued him until July 2007. Anthony's position was that the Bank's claim was statute barred.

Not surprisingly, the Bank argued that the limitation period did not start in 2004, but that it started on June 12, 2007 when the Bank's lawyer sent the second demand letter to Anthony. This argument was based on the premise that the guarantee was a "demand guarantee" and as a result the limitation period did not start until demand was issued. The Bank then argue that the first

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letter sent in October 2004, was not a demand but merely a notice sent out of courtesy to inform Anthony that the Bank would look to him if the company did not pay the debt in full.

Both Anthony and the Bank conceded that the limitation period expired after 2 years and the only question was when did that period commence. For Anthony, the answer would determine whether or not he had to pay the Bank $350,000.

10. Fraud and the Mortgage Lender

Mr. Gill owned a residential property in British Columbia. In November 2005, an unknown fraudster forged Mr. Gill's signature and transferred the property to Gurjeet who was a participant in the fraud. Gurjeet then borrowed $40,000 from Mr. and Mrs. Bucholtz who registered a mortgage against the property to secure the repayment of their loan. The Bucholtz mortgage was registered against the property on November 10, 2005.

On December 8, 2005, Gurjeet mortgaged the property to 4337 Investments Ltd. ("4337") to secure a second loan for $55,000. That mortgage was submitted for registration in the Land Title Office but before it was registered Mr. Gill discovered that the property had been transferred and he filed a caveat against the land and started legal proceedings to recover the property. Although the registrar at the Land Title Office refused to register 4337's mortgage as a result of the caveat having been filed, the parties proceeded as if both mortgages were properly registered.

Neither the Bucholtz nor 4337 were aware that the property had been fraudulently transferred and they had both sought and obtained confirmation of Gurjeet's identity before they advanced funds. As a result, both lenders argued that their mortgages should be recognized as valid charges against the property. Mr. Gill obviously argued that the mortgages were invalid and he sought an Order from the court that the mortgages be discharged and the property be returned to him. The problem for the Court was that a basic tenant of the Torrens Land Registry System is that parties are entitled to rely on the state of the registry when purchasing property and acquiring other interests in land such as a mortgage. Those who suffer a loss as a result of an error in the registry are entitled to make a claim against the Registry Assurance Fund, but that does not invalidate the transaction.

How should the Court resolve this case given that both Mr. Gill and the two lenders were innocent victims of a fraud? Should Mr. Gill get the property back? Should the mortgages be discharged? Should either Mr. Gill or the lenders have a claim against the Registry Assurance Fund? Is there any other way that Mr. Gill or the lenders could protect themselves?

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Yates, Bereznicki-Korol, Clarke
Business Law in Canada, Eleventh Edition

Chapter 2:

Introduction to the Legal System

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Learning Objectives

- When you complete Chapter 2, you should be able to:
  1. Define “law” and identify the types of law that exist in Canada
  2. Distinguish between the civil law and common law legal systems found in Canada
  3. Identify the sources of Canadian law
  4. Isolate the three elements of Canada’s Constitution

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Learning Objectives (cont.)

5. Explain how legislative power is divided in the Constitution
6. Detail how legislation is created in the parliamentary system
7. Describe the rights and freedoms protected by the *Charter of Rights and Freedoms*
8. List the areas and grounds upon which human rights legislation prohibits discrimination

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What Is Law?

- Difficult to come up with a satisfactory, all-inclusive definition for law
- Law has been defined:
  - In moral terms (natural law)
  - By source (legal positivists)
  - In practical terms (legal realists)
- In Canada, parliamentary supremacy requires that enactments of federal and provincial legislatures are primary source of law

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What is Law? (cont.)

- Definition for purposes of class:
  - "Law is the body of rules that can be enforced by the courts or other government agencies"
  - In this context, law is distinct from other kinds of rules and conventions as they are not enforced by a judge
- Government agencies also enforce laws
- Law and morality are not synonymous

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Categories of Law

- Substantive Law
  - The rights and rules that govern behaviour and set limits on conduct
- Procedural Law
  - determines how substantive laws will be enforced

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Categories of Law (cont.)

- Public Law
  - Includes Constitutional Law and determines how the country is governed and regulates our relationship with government
- Private Law
  - Regulates personal, social and business relationships

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Civil Law Legal System

- Emperor Justinian
  - Codified Roman law
  - Modified by Napoleon
  - Used in Europe and many countries originally colonized by France
  - Quebec's noncriminal legal system is based on the French Civil Code

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Common Law Legal System

- Common law system emerges in England
  - Feudal system centralized power in hands of king
  - During reigns of weak kings, power was decentralized
  - Royal judges became fairer to attract more litigants and broadened the authority of the state
- Function of the royal court was to be impartial and enforce customs and traditions already in place

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Stare Decisis

- A system of justice where judges were required to follow precedent
- Most significant feature of the common law system is that the decision of a judge is binding on all judges in lower courts
- Allows the parties to predict the outcome of the litigation and thus avoid going to court
- Following precedent can be inflexible and does not acknowledge changing social attitudes

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Common Law

- The precedent-making decisions of the courts of Great Britain
- Judges “discovered” law in custom and traditions of “common people”
- Borrowed legal principles from:
  - Roman civil law
  - Canon or church law
  - Law merchant

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Equity

- Common law courts had limitations due to the restrictions of stare decisis
- Court of Chancery (Equity) provided relief
- Resulting principles known as the Law of Equity
  - Did not hear appeals
  - Allowed flexibility in decisions but also appeared arbitrary

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Statutes

- Parliamentary enactments
  – take precedence over judge-made law
- Legislation (Statutes and Regulations) overrides common law (judge-made law)
- Statutes and legislation determine what we must do to carry on business in Canada

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Sources of Law

Table 2.1 Sources of Law in Canada

Branch of Government	Legislative	Executive	Judicial
Who fills these positions?	Federally: Parliament	Prime minister and cabinet ministers together with each department's civil servants/bureaucrats	Judges appointed by the various provinces and federally appointed justices
	Provincially: Legislative Assemblies	Premier and the cabinet together with each department's civil servants/bureaucrats	
Type of law made	Statute law (legislation)	Subordinate legislation • regulations made by order-in-council or as authorized by legislation • bylaws made by municipal governments	Case law
Examples	(**Federal**) • *Income Tax Act* • *Immigration and Refugee Protection Act* • *Criminal Code*	(**Federal**) • *Income Tax Regulations* • *Immigration and Refugee Protection Regulations* • *Criminal Appeal Rules*	(**Federal**) The decision of the Supreme Court of Canada in *R. v. Keegstra*
	(**Provincial**) • *Workers' Compensation Act* • *Traffic Safety Act* • *Business Corporations Act*	(**Provincial**) • *Workers' Compensation Regulations* • *Traffic Control Device Regulation* • *Business Corporations Regulation*	(**Provincial**) The decision of the Ontario Court of Appeal in *Halpern v. Canada (Attorney General)*

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Confederation

- *British North America Act*
  - Now *Constitution Act*, 1867
- Constitution similar in principle to that of the United Kingdom
  - *Magna Carta*
  - *Bill of Rights*
  - Rule of law: citizens are protected from the arbitrary actions of the government
- *Statute of Westminster* (1931)

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Confederation (cont.)

- *Constitution Act*, 1982
  - Charter of Rights and Freedoms
- Canada's Constitution has three elements:
  - Statutes
  - Case law (i.e. jurisdiction to create statutes)
  - Conventions: unwritten rules dictating how the government is to operate and include the rule of law

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Constitution and Division of Powers

- Formerly known as the *British North America Act*
  - An Act of the U.K. Parliament
- Sections 91 and 92 divide powers between federal and provincial governments

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Constitution and Division of Powers (cont.)

- "Peace, Order and Good Government"
  - Residual power for Federal government to make law on things not included in *Constitution Act*
- Pith and Substance
  - intra vires

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Constitution and Division of Powers (cont.)

Table 2.2 Division of Powers

Federal—Section 91	Provincial—Section 92
Trade and commerce	Municipal institutions
Employment insurance	Hospitals (and health care)
Raising monies by any mode of taxation	Direct taxation within the province
Criminal law (although not its enforcement)	Administration of justice within the province
Banking, currency, postal service	Property and civil rights
Residual power under the "POGG" clause	Generally, matters of a local or private nature

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Conflicting Powers

- Sometimes, one level of government passes legislation that may infringe on the powers of another
  - ultra vires: beyond one's jurisdiction or power
  - "colourable legislation:" trying to make an area of legislation look like it is of a different kind
  - double aspect doctrine: uphold laws where provincial and federal aspects are equal
  - paramountcy: in event of conflict, federal legislation is operative

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Delegation of Powers

- Direct delegation of power is prohibited
  - To move power between federal and provincial jurisdictions requires constitutional amendment
- Indirect delegation of power is permitted
  - Federal and provincial government can delegate powers to inferior bodies

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Agreement to Share Powers

- Shared powers between federal and provincial governments circumvents constitutional rigidity
  - Transfer-payment schemes
  - Conditional grants
- Federal government may set national standards to which funding is tied and ensure equal access to services

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Legislative Power

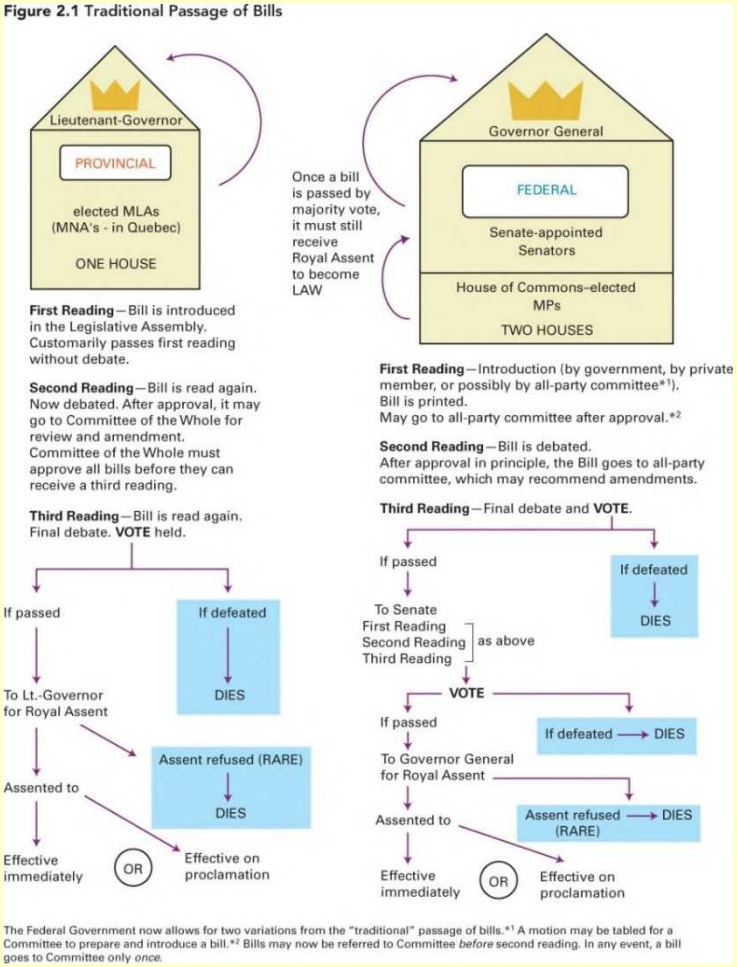
- Canada's Constitution requires legislation to proceed through first (introduction), second (debate), and third (modifications) readings and has status of statute
- Gains status of law after royal assent
- Federal and provincial statutes are compiled and published
- Judges interpret and apply statutes

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Legislative Power (cont.)

Figure 2.1 Traditional Passage of Bills



The Federal Government now allows for two variations from the "traditional" passage of bills.*1 A motion may be tabled for a Committee to prepare and introduce a bill.*2 Bills may now be referred to Committee *before* second reading. In any event, a bill goes to Committee only *once*.

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Question for Discussion

- Canada's constitutional structure is essentially different from Britain's because it consists of the federal government and ten provincial governments, each with power to act in their own jurisdiction. What impact does this have on businesses operating within, and among, provinces?

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Protection of Rights and Freedoms

- Human rights and individual freedoms protected through unwritten conventions as supported by common law
- Concerns about entrusting the protection of personal rights and freedoms to common law led to development of two streams of legislation:
  - dealing with protecting human rights against abuses by the government
  - second aimed at protecting individuals against discrimination and intolerance by society at large

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Canadian Bill of Rights

- Provincial and federal governments were free to interfere with civil rights through legislation (i.e. Japanese internment)
- *Canadian Bill of Rights*, 1960 attempted to limit authority of federal government to violate human rights
- Not entrenched in Constitution
- Effectiveness is limited

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Charter of Rights and Freedoms

- *Charter* was added as constitutional guarantee of basic rights and freedoms in 1982
  - Eliminates power to interfere with human rights except by Constitutional amendment
  - Rights are protected by judges rather than governments

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Charter of Rights and Freedoms (cont.)

- Limitations on *Charter* rights
  - Section 1: allows interference with rights and freedoms as may be justifiable in a free and democratic society
  - Section 33: legislatures can pass acts that infringe on rights "notwithstanding" the Charter, but legislation must be reviewed every 5 years (sunset clause)
  - Section 32(1): restricts operation of the *Charter* to government and government-related activities

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Fundamental Freedoms

- Everyone has the following fundamental freedoms as a result of the *Charter*:
  - freedom of conscience and religion
  - freedom of thought, belief, opinion and
  - freedom of expression, including freedom of the press
  - freedom of peaceful assembly and association

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Democratic Rights

- Include right to vote and to qualify to be elected
- Reasonable limitations include restrictions to those who are underage or mentally incompetent
- Section 4 ensures there will be an election at least every five years

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Mobility Rights

- Section 6 of the *Charter* ensures that Canadians can travel and live anywhere within the geographic limitations of Canada as well as enter and leave the country at will
- Canadians have the right to earn a livelihood in any part of Canada
  - provincial licensing and educational requirements may create exceptions

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Legal Rights

- Section 7 states that we have the right to life, liberty, and the security of person
- These rights must not be taken away except in accordance with “principles of fundamental justice”
- Everyone is entitled to procedural fairness
- Sections 8 and 9 prohibit such activities as unreasonable search and seizure and arbitrary imprisonment

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Equality Rights

- Section 15 prohibits discrimination in the application of the law and a general prohibition against discrimination
- Federal and provincial laws must be applied equally to all
- Provides for affirmative action programs
- Equality provisions are important for business people
  - Human rights legislation
  - Government-funded projects

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Language Rights

- French and English have equal status
- All federal government activities must be available in both official languages
- Minority-language educational rights
- Language rights and minority-language educational rights cannot be overridden by section 33 of the *Charter*

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Question for Discussion

- Do you believe there should be limits on rights and freedoms or should rights and freedoms be inalienable and guaranteed?

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The Importance of the Changes to the Constitution

- *Charter* provisions are generalizations, and courts interpret broad statements and create new law
- *Canada Act* and repatriation
- Quebec dissent and Referendum
  - Meech Lake Accord
  - Charlottetown Accord
  - Reference re: unilateral secession of Quebec

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Human Rights Legislation

- Broad federal and provincial legislation protect individuals against human rights violations by the public at large in a variety of settings
- The *Canadian Human Rights Act (CHRA)* applies to abuses in sectors regulated by federal legislation
  - Ensure individuals have access to employment without barriers
  - Access to facilities, services, and accommodations also addressed

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Human Rights Legislation (cont.)

- Human rights acts prohibit discrimination based on various protected grounds, including gender, religion, ethnic origin, race, age, and disabilities
- Evolution of human rights protection
  - Three decades ago discrimination based on sexual orientation was not specifically prohibited
  - *Reference re Same-Sex Marriage* case

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Human Rights Legislation (cont.)

- Tribunal hearings
  - After complaint and investigation
  - Can impose significant sanctions and remedies
- For businesspeople, knowledge of the human rights codes applicable to their industry is essential
- Duty to accommodate unless causing undue hardship

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Question for Discussion

- There are only certain protected areas and certain prohibited grounds in human rights legislation. Can you think of reasons for an area or ground to be considered for addition to the legislation?

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