

# COMM231 Final Exam Review

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## Latin Terms

- *ultra vires* - beyond the power and therefore void
- *stare decisis* - to stand by a previous decision
- *res judicata* - a case that has already been decided by a higher court
- *res ipsa loquitur* - the facts speak for themselves
- *quantum meruit* - the amount a person deserves to be paid for goods or services provided to the person requesting them
- *non est factum* - “it’s not my doing”
- *caveat emptor* - let the buyer beware
- *contra proferentem* - a rule of contract interpretation that prefers the interpretation of a clause that is least favourable to the party that drafted the clause

## Overview of Case Studies

**Rylands v. Fletcher** - R constructs a reservoir that bursts open in a nearby mine shaft. A charge of nuisance is filed and serves as an example of strict liability. Dangers within one's property must be kept within one's property.

**Wagon Mound I + II** - A ship began leaking oil near the docks of harbour. Welders ignited the oil and caused damages. The ship owner was sued but charges were dropped because the leaking was not a reasonably foreseeable event (remoteness).

**Donoghue v. Stevenson** - The consumer of a snail-contaminated bottle of ginger beer sued the producer in tort (negligence) and was successful. This helped establish product liability.

**Athey v. Leonati** - A got into two motor vehicle accidents and later had to undergo surgery after a workout session following the motor accidents which involved back damages. A sued for the entire amount of damages and won because his weak back contributed. A good example of how a plaintiff's personal situation can allow 100% compensation from third parties, even if <50% of third party events (motor accidents) attributed to the damages.

**Mustapha v. Culligan** - M found a fly in his drinking water under the care of C and suffered a severe psychological reaction. \$340,000 was originally awarded to M but was overturned by the Supreme Court because no reasonable person would foreseeable be expected to react this way (ordinary person test). A good example of the overruling of the “thin skull rule”.

**Hedley Byrne v. Heller and Partners** - Easipower (E) asked HB to handle its advertising account. HB asked H&P about E's creditworthiness to which H&P remarks that it is good with a disclaimer. E becomes insolvent and HB sues H&P. Court rules in favour of H&P due to the disclaimer. It is important to recall that this shows that a 3rd party without direct involvement may be liable without a direct line of fiduciary care.

**Hercules Mgt. v. Ernst & Young** - Shareholders in HM relied on auditing information from E&Y for investment decisions. The shareholders incurred losses and sued the auditors. The court was in favour of the auditors because they held no duty of care to the shareholders' personal investments.

**Haig v. Bamford** - H relied and requested financial information from B about a particular company for an investment decision. B negligently provided inaccurate information and the court ruled in favour of H for professional negligence.

**Carlill v. Carbolic Smoke Ball** - CSB offered a cure for the flu (heh) and a \$100 refund if it did not work. C bought the remedy but it did not work and demanded compensation. CSB contested that the refund was merely an advertising gimmick. Court ruled in favour of C because a contract with all the elements was made including offer and acceptance, consideration and an intention to create legal relations.

**Foakes v. Beer** - B owed F money but wanted a break from paying interest and F agreed. F sued for the outstanding interest and won because F made a gratuitous promise and not a contract (no consideration).

**Hughes v. Metropolitan Railway Co.** - MRC wanted to sell back its 99-year lease to its landlord, H. Negotiations were underway and MRC was allowed to cease its maintenance duties during the negotiation. The negotiations fell through and H sued for maintenance failure costs. The court ruled in favour of MRC by concept of promissory estoppel.

**Raffles v. Wichelhaus** - A buyer and seller of cotton from a ship called the *Peerless* are involved. Coincidentally, two ships called the *Peerless* were coming to port on different days. The buyer bought on the first one and refused the second (where

the seller was) and refused to abide by the purchasing contract. Court ruled in favour of the buyer by ambiguity of the contract, making it void.

**Courturier v. Hastie** - A buyer and seller exchange a contract for corn. The corn spoiled during the trip and the seller sued for breach of contract. This failed because the contract was deemed to be void. A good example of the Sales of Goods Act (perished goods at the time of contract void out a contract).

**Hadley v. Baxendale** - H owned and ran a foundry which required a crucial part which breaks down. H didn't have a spare but contacted B to deliver the broken part to a repair shop but does not specify the importance of the part. B takes its time but eventually gets it returned, fixed. H sues B for lost income by breach of contract. H lost because H had an obligation to tell B of the importance.

**Lloyds Bank v. Bundy** - B had a nephew that was a horrible business person and tried to borrow from LB; nephew tried to get B to vouch for him; B signs that he has to pay if nephew defaults; bank sues the uncle. Judge ruled it as unconscionable and contract was voided

## Select Topics and Random Snippets

- While driving, drivers owe a duty of care to pedestrians and can be sued for negligence
- High risk jobs such as piano moving or construction work require a duty of care to pedestrians as well
- Patients and persons entering contracts have a right to understand the consequences and full details of coverage in the contract; failure to do so can result in being sued for negligent omission
- The Constitution Act of 1867 gives federal and provincial governments Exclusive, Concurrent, and Residual powers
- Class action lawsuits allow liabilities and damages to be determined in one trial rather than multiple ones
- Car accidents are brought before the Superior Court of Justice
- A case of negligence may be brought up if a performer of a service was not supposed to be performing the service in the first place
- Quebec is the only province with civil law
- Sources of law include: prior judicial decisions, statutes, regulations, and administrative decisions
- The Ontario Court of Appeal is the next court above the Superior Court of Justice
- The 3 types of damages are: special, punitive/exemplary, aggravated (e.g. hurt feelings) and general
- "Fair Comment" can be used in the defense of a negative review of a work of literature (e.g. a movie or play)
- The government can infringe on the Charter via section 1, 33, have the work done by non-government persons, or have the activities completed before the Charter was put into force
- Loud activity late at night (that is detrimental to one's health) can be sued under private nuisance
- Canada's constitution lacks a residuary powers clause for provincial and federal governments
- Under the Worker's Compensation Act, employers must contribute towards a fund to compensate employees in case of injury if it was the worker's own carelessness
- Canada's age of majority at common law is 21
- The Superior Court of Justice is both a court of equity and common law
- Defamatory television shows are an example of libel
- In general, businesses prefer a country with regulated business laws than one without
- The Charter applies to activities that are public in nature only
- The defense of voluntary assumption of risk has been made significantly harder to be used as a defense
- The Occupier's Liability Act describes principles that relate responsibilities of occupiers to people on the occupiers' premises
- The Negligence Act of Ontario allows plaintiffs to recover partial damages in a negligence claim
- There are 9 judges on the Supreme Court: 3 from Ontario, 3 from Quebec and 3 from the rest of Canada

## Canada's Charter of Rights (Condensed)

- Section 1 - The Charter guarantees the following rights subject to reasonable limits prescribed by the law
- Section 2 - freedom of association, conscience, religion, thought, belief and peaceful assembly
- Section 3 - the right to vote in an election and participate (become a member)

- Section 6 - mobility right enter, remain, and leave Canada as well as take up residence and gain a livelihood if they are a Canadian citizen
- Section 7 - the right to life, liberty, and security of the person
- Section 8 - the right to be secure against unreasonable search or seizure
- Section 9 - the right not to be arbitrarily detained or imprisoned
- Section 10 - the right, on arrest, to be informed of the reasons, retain and instruct counsel, have the validity questioned by habeus corpus and released if under unlawful detention
- Section 15 - exclusion of discrimination based on physical appearance, race, gender, sex, age, ethnic group, mental or physical disability, and religion
- Section 33 - the government may temporarily override the rights in section 2, 7-15

**Elements of a Negligence Claim (based on a balance of probabilities):**

(1) the defendant owed the plaintiff a duty of care (2) the defendant breached such duty (3) the plaintiff incurred a loss as a result of the breach