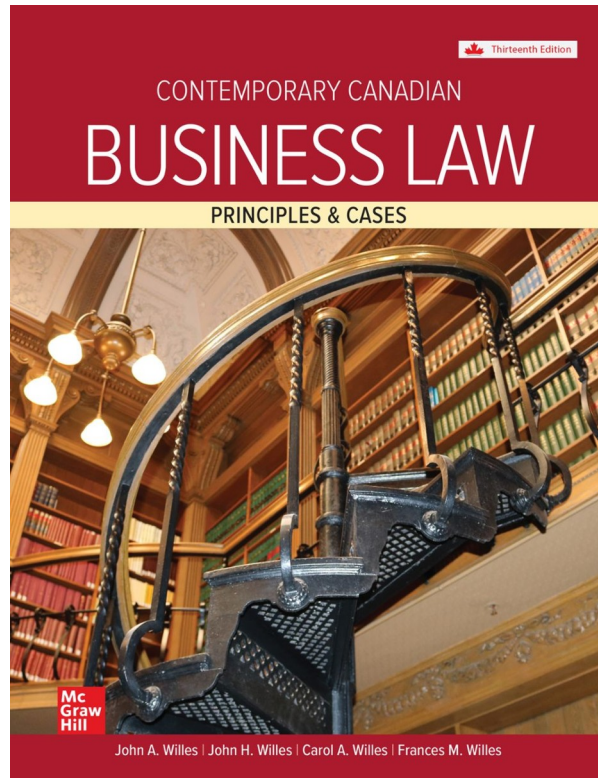


INSTRUCTOR'S MANUAL to accompany



CONTEMPORARY CANADIAN BUSINESS LAW

PRINCIPLES & CASES

THIRTEENTH EDITION

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PREFACE TO THE THIRTEENTH EDITION

This 13th Edition of *Contemporary Canadian Business Law* continues the tradition of more than 40 years of providing students with a clear understanding of the legal environment for business professionals, owners, and managers in Canada.

The purpose this Instructor's Manual is to assist Instructors in their lecture preparation and to provide source material for case problems and class case analysis. The comments on each chapter are not intended to be exhaustive, but rather, to highlight those areas of the law that are important, or that appear to cause students the most difficulty. The comments on the case problems represent suggested approaches to case analysis and the judicial decisions, which may be useful in dealing with the issues raised in the problems.

While we have attempted to present the text material as simply and accurately as possible, we would encourage the users of the text and this Instructor's Manual to bring to our attention any errors or suggestions for improvement of either or both of the publications.

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General Comments

The Thirteenth Edition of *Contemporary Canadian Business Law* may be used as a text in either full (two-term) or single semester courses in business law. The material contained in the text covers most areas of the law that affect business organizations, and the topics may be selected in a variety of different ways to fit the needs of instructors teaching a broad range of courses. The text material should prove adequate for a typical post-secondary course of 24 - 30 weeks duration. For a shorter, introductory course of 12 - 14 weeks, the first part of the text containing Chapters 1 - 14 would provide an introduction to the law and the legal system, and the constitution, together with an examination of tort law and the law of contracts, the two major areas of the Common Law. These chapters could be supplemented by Agency, Partnerships, Corporation law and Securities Legislation (Chapters 15 - 18) or by topics from the remainder of the text, as desired.

The manual includes chapter charts and answers to all questions raised in the end of chapter materials (Review Questions, Mini-Case Problems, and Case Problems for Discussion) and instructors may also obtain the following teaching materials:

- 1) A large **Test Bank** of true-false, multiple choice, and essay type questions. These may be used for tests or examinations as Instructors see fit. Suggested solutions are also provided.
- 2) **Multiple Choice Questions** for tests or examinations as Instructors see fit.
- 3) **Front Page Law** Feature (now assignable on Connect)
- 4) **PowerPoint** class presentation material.
- 5) **Application Based Activities** are highly interactive and automatically graded application- and analysis-based exercises wherein students immerse themselves in a business environment, analyze the situation, and apply their knowledge of business strategies. Students progress from understanding basic concepts to assessing and solving complex real-world scenarios.

The text is designed to provide a student with a brief historical perspective of the law, and in this sense, a student should be in a position to understand *why* certain laws exist, and *how* they developed from a reading of the introductory part of each chapter.

“How laws develop” is an important linking concept and builds an increasing understanding of law as a reflection of a complex society. Starting from a social order concerned only with breaches of the King’s peace (and to the exclusion of concern over anyone else’s peace) we move from social obedience to a norm that extends protection to all from the intentional wrongs of others that may disturb us (intentional torts). Recognizing that once persons have made an agreement among themselves to govern their affairs (contracts), a breach of those terms becomes another form of social wrong requiring a means of redress. Thereafter, with a portfolio of intentional harms worthy of repair, the society is faced with settling the more complex circumstance where it would be either fair or unfair to make persons responsible for wrongs they did not intend to commit, meaning negligence. Through it all and evolving with it, to prevent a society from degenerating to “might makes right”, the highest force (the Crown itself) provides the means for redress in courts, as well as remedies and their enforcement. Lastly, in a proactive step such that not all affairs must be reduced to separate contracts, and so that social good can be advanced by the Crown (or latterly, government) substantive laws set out declarations of expected behavior and punishment for default. This arc of legal development flows through each Part of the text, and in the opening section of each chapter.

Following this in each chapter, the general legal principles related to the particular area of the law are set out, and an explanation of their application is provided. Selected comments of judges may be found in many chapters to acquaint the student with a judicial view of general principles, or their application. Recent real-world events are offered in the Front Page Law feature (here on Connect), as well

as in the “Case In Point” and “Management Alert: Best Practice” features in the text. Features such as “Your Business at Risk” and “Question of Ethics” boxes as well as Checklists highlight the chapter content and provide the instructor with quick examples and the basis for impromptu class discussion. Where the law appears to be moving in a particular direction, the text may so indicate, to provide the instructor with the opportunity to engage the class in a general discussion of both the reasons for the apparent change, and its possible effect in a social context. A brief Summary of the material will be found at the end of each chapter, highlighting some of the more important points or issues, but it should be emphasized that the Summary is by no means a complete outline of the chapter contents. It is, rather, in the nature of a broad overview of the topic.

The Review Questions that follow the Summary may be used in a number of ways:

- 1) By the student, as a self-testing device on chapter content.
- 2) By the instructor, as a means of reviewing the text material in class.
- 3) For written assignment purposes.
- 4) For student preparation and class discussion by the students themselves, or in conjunction with the instructor.

Brief answers or suggested solutions to the review/discussion questions may be found in this Instructor’s Manual.

Most chapters include a number of Court Decisions, which may be used to illustrate judicial thinking, the application of the law to particular fact situations, the formulation of specific legal principles or rules, or for general class discussion of the chapter topic. The legal principles or laws set out in these reported decisions frequently have application to the Case Problems for Discussion which appear at the end of each chapter.

The case problems provide students with the opportunity to analyze fact situations, determine applicable law, and render decisions, either as a part of a class discussion process, or as a class assignment. Most of the fact situations are based upon reported cases, and occasionally represent a composite of several different cases. Where a particular reported decision was the source of the facts, the case citation is included for reference purposes or examination by the instructor. The use that may be made of the cases, either as teaching or testing devices, is generally dictated by the individual instructor's own teaching method, and in view of the varied uses made of the case material, the discussion of each case, and the "answers" provided in this manual represent a guide only to the issues raised therein. They do not constitute the only answers, nor do they represent an exhaustive analysis of the problem.

In closing, it should be noted that the text and this Instructor’s Manual are not intended to be used as a source of legal opinion, but rather, as teaching tools to provide students with an understanding of the law and its application to business, and its role in society. The law is constantly changing, and while an effort has been made to provide accurate general statements of the law in the text and this Instructor’s Manual, precise statements of the law applicable in all instances and in all jurisdictions are obviously impossible, given the nature and scope of the text. For a precise statement of the law in any particular jurisdiction, reference should be made to the applicable statutes or judicial decisions applicable to that province. Case problem solutions should accordingly be modified to reflect these differences if jurisdictional accuracy is desired.

Course Introduction by the Instructor:

At the beginning of the course an instructor might introduce the text and their teaching method by explaining how a student should use the text in conjunction with the instructor's approach to the topic and course material.

A useful approach in an introductory lecture might be to provide students with a basic approach to the law to enable them to use the text effectively, and in a fashion that the instructor may desire. By way of example, our introductory lecture usually includes a few brief comments, which might resemble the following:

The law is essentially a collection of rules that govern our behaviour, and determine our rights and duties. Due to the complexity of our society, there are now a great many of these rules, so many, in fact, that it is virtually impossible for even the most learned in the law to know all of them intimately. This does not mean, however, that one should avoid a study of the law simply because the body of law is so large. Rather, it points out the importance of law in our society, and underscores the need for everyone to be familiar with at least those basic principles of law most often encountered in the day-to-day business of living. The more specialized laws can be left to the legal practitioner, but the general principles of what is known as the Common Law can be readily understood by all.

*The fundamental step in any examination of the law is to determine **why** a law exists. Unless the purpose of the rule is understood, it is pointless to know what it says. Much of the business of the law is its application to fact situations, and if its purpose is known, the learning of the rules and their application becomes a much easier process.*

The second step in gaining a knowledge of the law is to learn the various rules or principles themselves. While this must be largely memory work, the process can be made easier by the classification of the laws, first, in terms of their type, and second, in terms of their application. This has been done in the text, but basically what a student should do is mentally classify each rule as being either a rule that establishes rights or duties, or a rule that is used to enforce a right or duty. The former rules, as will be explained in Chapter 1, are called substantive laws, while the latter are procedural laws. Most of the laws in the text are substantive in nature, but nevertheless, in the learning of each, the first step should be to quickly examine the law in terms of its broad classification, before going a step further in the examination. Once this has been done, the rule itself should be committed to memory, in order that it may later be used in the analysis of fact situations.

The third step in the learning process is to gain a facility in the analysis of Court Decisions. Examples of these situations are given in the body of the text as Court Decisions. These provide an insight into the analysis of fact situations, and the various methods used by the judges to reach a decision.

The Case Problems for Discussion at the end of each chapter provide fact situations where the law would come into play. These cases are available to provide experience in the identification of rights and duties, and the application of the appropriate rules of law. They are an important part of the learning process in that they require the reader to not only know the rules of law, but of equal importance, require the reader to select the appropriate rule or rules that would apply in the given fact situation. In effect, they reflect the level of understanding of the reader, and whether they have grasped the significance of the particular legal principles.

CHAPTER 1. THE LAW AND THE LEGAL SYSTEM

Chapter Topics

Learning the Law
The Legal Environment of Business
The Nature of Law
Rights versus Privileges
The Role of Law
The Early Development of Law
The Rise of the Courts and the Common Law
The Sources and Components of Modern Canadian Law
The Constitutional Foundations of Canadian Law
The Canadian Charter of Rights and Freedoms
Classification of Laws
Summary
Key Terms
Review Questions
Mini-Case Problems
Case Problems for Discussion

Chapter Objectives

The rights and obligations of businesses and business persons stem from the law and our legal system. After study of this chapter, students should be able to:

- Describe the sources, role and development of Canadian law.
- Distinguish between statute and Common Law, and describe the significance of *stare decisis*.
- Recognize matters of federal versus provincial jurisdiction.
- Describe the fundamental rights and freedoms set out in the *Charter of Rights and Freedoms*.

CHAPTER COMMENTARY

Chapter 1 is introductory in nature, and provides a general background concerning the nature of law, how laws developed, the general need for some rules to govern the behaviour of individuals, and the establishment of the various fundamental rights and duties of persons in society.

In class discussion, special emphasis should be placed upon both the sources of law and the classification of laws in order that students may have a clear idea of what they are and where they may be found. Many students fail to realize that the Common Law represents a large body of law, and the scope and application of this source of law should be emphasized in class discussion of the chapter. The text description of the development of the law and the rise of the courts is intended to be read as a historical introduction to give students an appreciation of where our laws came from, and how they were developed. In the context of the

courts and the law, the *doctrine of stare decisis* should be noted, and its purpose and application discussed with emphasis on the need for "predictability" in the application of the law to cases that come before the courts. It would be worthwhile to note as well that some judges of the Supreme Court of Canada have expressed the view that they, as judges of the highest court in the land, do not consider themselves bound by the doctrine, but would only change a common law rule where it had become inappropriate in a modern social setting.

Chapter 1 also provides a general outline of the nature of a constitution and its function in a democratic society. Reference is made to the "constitution" of the United Kingdom and the constitution of the United States as a basis for discussion of, and comparison with, the Canadian Constitution. The role of the courts as the chief interpreter of the constitution is also noted and should be emphasized in any class discussion of the enforcement of rights under the Charter. On this point, the doctrine of judicial review should be explained to illustrate how the rights of both governments and individuals set out in the constitution may be enforced. As an approach to teaching this part of the chapter, a systematic examination of the fundamental rights and freedoms may be made with the class requested to provide a fact situation related to a freedom or right, and then have the class speculate as to how the Charter might be interpreted by the court as it relates to the matter. With each fundamental right or freedom it is important to emphasize that the freedom or right must be viewed in the light of s.1 which makes the right "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society," and not absolute. The "notwithstanding" clause (s. 33) which permits legislatures or parliament to override the Charter rights should be noted as well. On this point, reference may be made to the Court Decision in the Chapter (*Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC)) which held Quebec's Bill 101 unconstitutional with respect to public signs. Students should note that the province of Quebec used s. 33 to override this decision of the Supreme Court of Canada and passed Bill 178 to require "French only" signs on all Quebec businesses. Students should also examine *RJR-MacDonald Inc. and Imperial Tobacco Ltd. v. Canada*, 1995 CanLII 64 (SCC) in the Chapter for an additional example of the views of the Supreme Court on the Government of Canada's attempts to virtually ban advertising on tobacco products.

The organization of the Charter itself provides an orderly approach to discussion of the nature of the rights and freedoms granted under it, as well as the method of enforcement. With respect to the latter, it is readily apparent that most of the rights and freedoms are those which the framers of the constitution felt should be enshrined to protect them from encroachment or interference by governments. If government should do so, the individual has the right to bring the alleged infringement before the courts to have the interference ruled upon as to its validity.

A final point to note and to emphasize in class is that the constitution includes more than the *Charter of Rights and Freedoms*. It also includes the original *British North America Act* of 1867 (as amended over the years) which establishes the structure of our government, and the legislative powers and jurisdiction of the provincial governments and Parliament. Consequently, it is a lengthy and complex document which sets out not only the rights and freedoms of the individual, but how Canada as a democratic society governs itself. On this point it should be emphasized that legislative bodies may not exceed the powers granted to them under the constitution, as the exercise of jurisdiction when none exists renders such an act *ultra vires* and a nullity.

Aboriginal and indigenous law concepts are introduced, and statute law is defined in the text, and the process associated with this type of law-making is described very briefly. Students should be informed that this process is legislative as distinct from judicial. The recording and organization of these statutes in the form of revised statutes of a province (or federal government) should also be discussed in order that students are made aware

of where these laws may be found. Discussion may then lead into the topic of civil codes, and students may be asked to discuss the pros and cons of a Civil Code system vs. the Common Law/Equity system

From the point of view of learning about the law, the chapter contains a description of the various sources of the law, and the methods of classification. The importance of this part of the chapter should be underscored, as it provides the basis for an understanding of the particular rules and principles covered in the remainder of the text. It also represents an important first step in the examination of the law, in that it sets out the system for classification.

It is essential that the difference between substantive law and procedural law be understood. As well, students should learn the various sub-classes of substantive law. In this regard, the nature of public law as a type of substantive law should be clearly understood. Public laws are laws which relate to the relationship between the individual and the government (or its agencies), and as such, are usually laws which are enforced by the Crown. They are generally prohibitive or regulatory in nature (e.g.: the criminal law, or provincial liquor control laws), and are enforced by the Crown if they are violated by an individual. They are quite different from private laws which normally establish the rights and duties of individuals in their dealings with each other, and which must be enforced by the party whose rights have been violated.

The chapter outlines the sources of law, and provides a general explanation of the common law (including equity) as a source. The nature of this body of law should also be carefully examined, as the law described in a large part of the text is of this type. In particular, the Law of Tort in Chapters 4 - 6, the Law of Contract in Chapters 7 - 14, the Law of Agency in Chapter 15, the Law of Bailment in Chapter 20, and a number of other areas of the law are essentially part of the "Common Law".

Chapter 1 also introduces the first of many legal terms and definitions which must not only be memorized, but understood. The various definitions of the term "law" along with definitions of "rights" and "privileges", "Common Law", "equity", the doctrine of *stare decisis*, "statute", and "civil code" are explained, and the material concerning these terms should be carefully reviewed, as the terms are frequently used throughout the balance of the text. The various terms used to describe the different classifications of the law should also be noted.

The Review Questions at the end of the chapter should provide a sufficient test of student knowledge of the essential material and are reproduced with comments.

Review Questions

1. What impact does the *Canadian Charter of Rights and Freedoms* have on rights and freedoms not mentioned specifically in the Charter? Could these "other rights and freedoms" be curtailed or extinguished by governments?

Answer: The Charter recognizes the existence of other rights and permits them to continue except where they conflict with Charter rights and freedoms. Rights outside the Charter do not have Charter protection, and may be abolished or encroached upon by governments.

2. What is the difference between a "right" and a "privilege"?

Answer: A right is an act that may be done with impunity and with the support and recognition of the state. The state recognizes a right as something which neither it nor others may deny. A privilege is something which the state allows or permits under specific circumstances at the pleasure of the state.

3. Why are "rights" and "duties" often considered together when one thinks of laws?

Answer: Because "rights" often permit a person to do something that interferes with others, laws generally include obligations or duties on the person possessing a right to exercise the right in a particular way to minimize interference with others. Laws may also include duties on those affected by the exercise of a right to permit the right to be exercised.

4. Could a society exist without laws? If not, why not?

Answer: A complex society certainly could not exist without laws, as some means of regulating the activities of people would be necessary to maintain order. Even in a primitive society, rules regulating fairness in vengeance matters were necessary.

5. "Advanced civilizations are generally characterized by having a great many laws or statutes to control the activities of the citizenry." Comment on the validity of this statement.

Answer: What constitutes "advanced" can be a subject of debate, but if it is equated to "modern", the observation is valid. Modern civilizations are characterized by persons engaged in activities which involve a great deal of diversified social contact and interaction. They have also involved many people living in close proximity to each other (in cities). Each type of social interaction usually requires some legislative control, hence, the more interaction, the more laws that are required.

6. On what basis are Charter fundamental rights and freedoms open to restriction by Parliament or the provincial legislatures?

Answer: Fundamental rights and freedoms may be restricted under s. 1 if the restriction can be shown to "be demonstrably justified in a free and democratic society." Rights and freedoms may be "temporarily" overridden by the "notwithstanding" clause (s. 33) as well.

7. Why is the doctrine of *stare decisis* an important part of the Common Law system?

Answer: The doctrine of *stare decisis* is the theory of precedent. Judges are expected to apply previous decisions to similar cases which come before them in order to maintain a degree of consistency in the law. By following this doctrine, the law is not only consistent, but others can predict how the law may be applied in similar.

8. How does the Common Law differ from the principles of equity? From statute law?

Answer: Common Law and equity have different roots. The Common Law was the product of the Common Law courts. The principles of equity were originally principles or rules which the King applied in settling disputes which did not fall within the jurisdiction of the common law courts. Later, the King's Court (Chancery) used the same and other principles in order to provide fair and just results. At present, the courts may apply both common law and equity, but where conflict exists, equity prevails. Equity differs from statute law in the sense that statute laws are written or codified laws, whereas the principles of equity are found in the recorded judgments of the courts.

9. How does a legislature establish a new law? Explain the procedure.

Answer: The usual process is as follows:

- a. A bill (essentially a proposed law) is presented to a legislative body (Parliament or provincial legislature).
- b. A motion is made (and passed) to have the bill 'read' a first time.
- c. The bill is then printed and circulated to the members to study.
- d. The bill is later brought forward for debate (second reading) in principle.
- e. If the bill passes the second reading stage, it is sent to a Committee for study and amendment on a clause by clause basis.
- f. Once passed by the Committee, the bill is reported in final form by the Chair of the Committee for a third reading.
- g. The bill is then debated for a final time by way of a motion to have the bill read a third time.
- h. If passed by a majority vote, the bill at the federal level goes to the Senate where a similar process is followed.

- i. Once a bill has been passed by the House of Commons and Senate (or a provincial legislature) it goes to the Governor-General (or Lieutenant-Governor, if provincial) for royal assent.
 - j. The bill becomes a law on receipt of royal assent, and effective as a law when proclaimed in force.
10. Define substantive law, and explain how it differs from procedural law.

Answer: Substantive law - law which sets out the rights and duties of individuals and corporations.
Procedural law - law which set out the procedure whereby substantive laws are enforced.

11. Describe the difference between the Common Law and the Civil Code of the Province of Quebec. What are the relative merits of each system?

Answer: Common Law consists of the recorded judgment of the courts. The civil code is a written body of law. Merits of civil code: laws are written down and may be consulted to determine what the law is. The law can be changed by statute amendment and kept up to date by the legislature if change is warranted. Merits of Common Law: flexible, as judges may change it through interpretation, or by distinguishing the case at hand from the precedent. Adaptable to changing social attitudes.

12. "The supremacy of the state was reached when it managed to exercise a sufficient degree of control over the individual to compel the individual to use the state judicial system rather than vengeance to settle differences with others." Why was it necessary for the state to require this of the individual?

Answer: When the state lacked the power to control its citizens, individuals used their own means to resolve disputes, as it was the only method whereby a person could obtain redress. Vengeance, however, often disrupted the entire community, and affected others not involved in the dispute. Once the state had the power to compel citizens to obey its decrees, it could substitute orderly procedures for settlement which caused less disruption to the community than vengeance.

13. How does a "regulation" made under a statute differ from other "laws"?

Answer: A regulation under a statute is a rule that is made to enable an administrative tribunal to carry out duties assigned to it under a statute. Regulations govern the activities of administrative agencies or boards, and are often administered by them. Regulations are subordinate to statutes, but in application, have much the same effect on persons who engage in activities subject to the regulations.

14. Explain how the enforcement of a public law differs from the enforcement of rights under private law.

Answer: Public laws are enforced by the Crown against the individual. Private law rights are enforced by individuals against other individuals.

15. The Canadian Charter of Rights and Freedoms has been described as being "supreme" law, or law which is "entrenched." Why, or in what sense is this the case?

Answer: The Charter is "supreme law" in the sense that it overrides all other federal and provincial laws, and all such laws must not conflict with it, except as permitted. It is "entrenched" in the sense that it is difficult to change.

16. Explain the Common Law system, and how it relates to the function of the courts.

Answer: The Common Law system is a system where the laws are not codified, but may be found in the recorded judgments of the courts. Courts maintain a degree of consistency in the law by following the doctrine of *stare decisis* (precedent).

17. Does the Canadian Charter of Rights and Freedoms permit the Supreme Court of Canada to override the will of Parliament or a provincial legislature? If so, in what way?

Answer: The Supreme Court of Canada, as chief interpreter of the legislation, may override the will of Parliament or a provincial legislature where the law violates the Charter. It may not override if the law is passed pursuant to the s. 33 "notwithstanding" clause.

18. If changing social attitudes or values dictate a change in the *Canadian Charter of Rights and Freedoms*, how would this be accomplished?

Answer: The *Charter of Rights and Freedoms* may only be changed by agreement of Parliament and 2/3rds of the provinces, provided that the provinces represent at least 50% of the population of all of the provinces.

19. Why is the word "law" so difficult to define in a precise manner?

Answer: Law is difficult to define because in practice it is applied indiscriminately to rights, privileges, rules, principles, and statements.

20. In what way does the *Constitution Act, 1982* affect the legislative jurisdiction of the Parliament of Canada and the provincial legislatures? How are questions of jurisdiction decided?

Answer: The *Constitution Act, 1982* includes the *British North America Act, 1867*, as amended, which sets out the legislative powers of the provinces and the Parliament of Canada. If legislation passed by either a province or the federal government is alleged to have exceeded the legislative authority granted to it under the Constitution, the Supreme Court of Canada has the power to decide if the body has the authority to pass such legislation, and would decide if the law was *ultra vires*.

Mini-Case Problems

1. A freight train derailed, dumping dangerous chemicals into a small stream in British Columbia, causing significant environmental damage. What jurisdictional issues are raised by this scenario?

Answer:

The jurisdiction of the province to regulate environmental matters may collide with the jurisdiction of the federal government in regulation of railways (transportation).

2. A coastal province passed a law prohibiting boats and ships from dumping waste along its shoreline. A ship's captain was later charged with commission of such an offence. What defence may exist to such a charge?

Answer:

The defence may be that the provincial law is *ultra vires* (beyond its jurisdiction), as regulation of shipping is a matter of federal jurisdiction.

3. Simone believes that genetically-modified foods are extremely dangerous for people to consume. What paths can Simone take in fighting (legally) to advance this belief? Which one would be the most efficient? Why?

Answer:

While it may be possible for Simone to sue manufacturers of genetically-modified foods for producing "something dangerous" or seek injunctions against the sale of these goods (details in later chapters), it would be far more efficient for Simone to champion a legislative response, to see genetically modified foods regulated by government.

Case Problems for Discussion

Case 1

Mary applied for a job at the Millstone Restaurant. They were told their uniform would be a white blouse and black skirt, with a hem three centimetres above the knee. Mary agreed, but when they started work, they realized that the female staff was dressed accordingly, but the males wore white shirts and black pants. At a later date, Mary appeared at work also dressed in a white shirt and black pants. The manager of the restaurant told Mary they were "out of uniform," words were exchanged, and Mary was fired. Is there a Charter issue here?

Discuss.

Answer:

While a differential in dress requirements may or may not be an example of unreasonableness, unequal treatment, discrimination, or harassment, the Charter addresses the individual and their treatment at the hands of government, not matters between private individuals. Mary will have to look toward aspects of common law

(later chapters) or provincial labour or human rights legislation.

Case 2

FM 96 Tiger Radio wanted to set up a three-day live remote event in a provincial park for the Labour Day weekend. The provincial parks commission approved the plan, subject to a payment of \$4,100, comprised of a park event permit (\$1,000), a sanitation charge (\$1,000), a broadcasting permit (\$500), a beer/wine premises special occasion permit (\$1,500), and a fire inspection fee for the beer/wine consumption premises (\$100). How should FM 96 respond to the provincial commission?

Answer:

By requiring an application fee or fee for service, and issuing a permit to allow a particular activity, the provincial authority is setting conditions or “regulating” that behavior. All of the activities in the park that are listed are matters that a province can regulate, except broadcasting. The regulation of broadcasting is a federal matter, and *ultra vires* of provincial jurisdiction. The province has no right to demand this payment, and its “permit” is meaningless.

Case 3

In the year 1619, Maxwell was drunk, lost control while driving a horse and killed a child. No legal action was taken by the Crown. In the year 1859, Edward purposely drove a carriage wagon over a man in the street. He was executed for his crime. In the year 1959, Sharon was sober, lost control while driving a car and killed a child. Sharon was given a suspended sentence and ordered to pay a \$100 fine, and was sued by the child’s parents for damages of \$1000 in funeral costs. In the year 2019, Karl was drunk, lost control of a car and killed a child. Karl was given one year imprisonment, a \$1000 fine, a lifetime driver’s licence suspension and was sued for \$2.5 million for emotional distress by the parents of the child.

In what way is the principle of *stare decisis* at work here, if at all?

Answer:

The principle of *stare decisis* is at work, despite the fact that the penalty has evolved over time. Recalling that one of the strengths of the principle is that it can respond to the norms of a changing society, the fact remains that causing death is wrong, and will attract a socially appropriate penalty. Each epoch of our society has had different conceptions of capacity, incapacity, and degrees of responsibility and liability in the operation of a mode of transport.