Lecture 8, Mar 2, 2026

Contracts (Continued)

- Changes to contracts creates a new contract or contractual obligations, so the same principles regarding contract formation applies
  - Amendments still need fresh (not in the original contract) and mutual consideration; if one party requests more money to be offered, they must offer something additional in return
  - The original contract can set out terms on how the contract can be changed, and must be followed
- Change can include estoppel of further performance of all or part of the contract, wavier of some or all rights pursuant to the contract, or change of the terms of the contract
- When there is a disagreement over the change of the contract terms, one can perform the contract "under protest" and reserve the right to claim damages later
- Types of damages:
  - *Compensatory* damages arise as a consequence of the breach
    - This can be future/expectation damages (the amount expected to have been gained from the contract) or past/consequential damages (the losses resulting from the contract not being fulfilled)
    - A consequential damages clause an restrict the ability to claim for lots profits or other indirect damages
  - *Liquidated* damages are payments of a stipulated (in the original contract) sum on breach, regardless of the damage sustained
    - Note that this has to be "reasonable"
  - *Specific performance* is usually seen in property cases
- The scope and purpose of a contract defines its nature and is vital for setting duty of care
- Important to note when the contract starts and ends
- *Quantum merit* ("the amount it is worth") is used to award compensation for work already done, but there is no contract or the contract has been terminated
- *Indemnities* are promises to pay, i.e. opposite of exclusion clauses
  - Insurance policies are fundamentally contracts of indemnity
  - Insurance responds when events trigger the indemnity provisions, e.g. liability (responds when claims are made against the insured), property, life and disability, business loss
- Insurance can be occurrence based (covers losses that happened during the policy, regardless of when the claim was made), or requires claims to be made and reported during the duration of the policy (e.g. errors and omissions insurance)
  - Most personal liabilities policies are occurrence-based, while most professional ones are not
  - Occurrence-based contracts:
    - *Commercial General Liability* (CGL) protects businesses from a loss from bodily injury or property damage to a third party, caused by a product or service that the business sells
    - *Wrap ups* are project-specific contracts, usually for large construction projects, and usually covers all of those working on a project
      - This avoids delays from having to find out who is responsible for a fault, which would result from a CGL
    - *Course of Construction* protects projects under construction from physical damage, typically covering costs and labour to rebuild
- A *surety* is formed between 3 parties, where the guarantor pays the obligee a certain amount of money if a second party does not fulfill the terms of a contract
  - While insurance protects against unforeseen events, surety guarantees performance of a contract