CONTRACT & CONSUMER LAW
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Lesson One</strong></td>
<td></td>
</tr>
<tr>
<td>WHAT IS A CONTRACT?</td>
<td>2</td>
</tr>
<tr>
<td>Handouts</td>
<td>3</td>
</tr>
<tr>
<td>Questions</td>
<td>5</td>
</tr>
<tr>
<td>Teacher Key</td>
<td>6</td>
</tr>
<tr>
<td><strong>Lesson Two</strong></td>
<td></td>
</tr>
<tr>
<td>CATEGORIES OF CONTRACTS AND THE STATUTE OF FRAUDS</td>
<td>8</td>
</tr>
<tr>
<td>Handouts</td>
<td>9</td>
</tr>
<tr>
<td>Questions</td>
<td>10</td>
</tr>
<tr>
<td>Teacher Key</td>
<td>12</td>
</tr>
<tr>
<td><strong>Lesson Three</strong></td>
<td></td>
</tr>
<tr>
<td>CAPACITY TO CONTRACT AND UNENFORCEABLE CONTRACTS</td>
<td>14</td>
</tr>
<tr>
<td>Handouts</td>
<td>15</td>
</tr>
<tr>
<td><strong>Lesson Four</strong></td>
<td></td>
</tr>
<tr>
<td>YOUNG PEOPLE AND CONTRACTS</td>
<td>17</td>
</tr>
<tr>
<td>Handouts</td>
<td>18</td>
</tr>
<tr>
<td>Case Studies</td>
<td>19</td>
</tr>
<tr>
<td>Teacher Key</td>
<td>22</td>
</tr>
<tr>
<td><strong>Lesson Five</strong></td>
<td></td>
</tr>
<tr>
<td>ENDING A CONTRACT AND BREACH OF CONTRACTS</td>
<td>25</td>
</tr>
<tr>
<td>Handouts</td>
<td>26</td>
</tr>
</tbody>
</table>
LESSON SIX:

**THE CONSUMER PROTECTION ACT**  
Handouts 28  
Consumer Cases 29  
Teacher Key 33

LESSON SEVEN:

**INTELLECTUAL PROPERTY: COPYRIGHT**  
Handouts 39  
Spot the Copyright Infringement 41  
Teacher Key 43

**INTELLECTUAL PROPERTY: PATENTS, TRADEMARKS, AND INDUSTRIAL DESIGNS**  
Handouts 47  
Assignment 49
While units of study in Law 30 such as Criminal Law tend to excite, Contract and Consumer Law can seem dry to the young law student. But it is important for students of Law 30 to realize that unlike Criminal Law, Contract and Consumer Law directly affects each and every one of us. So while the media glorifies Criminal Law, the reality remains that it likely will not have a direct application to the vast majority of students. Contracts, on the other hand, are entered into every day by almost every person. Therefore, the importance of teaching Contract and Consumer Law should be obvious.

.Contract and Consumer Law approaches issues surrounding Contract and Consumer Law, in both the context of how the law applies to adults and how the law applies to youth. And, this has guide been designed with Saskatchewan Learning’s Law 30 Curriculum Guide in mind. It takes many cues from the Contract and Consumer Law (Unit Six) “Instructional Notes”, and covers all boldfaced “Concepts and Knowledge Objectives” set out by Saskatchewan Learning. Each lesson plan is broken down into objectives, methods, materials, and procedures, and includes handouts, activities, links to outside resources, and appropriate background teacher information where necessary.

In keeping with Saskatchewan Learning’s Resource-based Learning objectives, this guide contains links to outside resources to help diversify perspectives on Contract and Consumer Law. As well, many of the optional areas of study in the Law 30 Contract and Consumer Law unit are not specifically dealt with in Contract and Consumer Law, so teachers are encouraged to pursue further avenues of study in the area of Contract and Consumer Law based on class interest and time availability.

Your feedback on this material would be appreciated. Please take the time to evaluate this resource online, at www.plea.org/feedback. Any insights that can be offered by teachers will help future resources developed by PLEA.
Objective: Students will learn the basic elements of a contract and understand when valid contracts do and do not exist.

Method: Reading, Discussion, Questions, Homework

Materials: “What is a Contract?” handout, questions, and examples of common contracts (video rentals, credit card offers, employment)

Procedure:

1. Have students make a list of contracts they have entered into. This could include any number of things from video rentals to car loans. Ask them identify what they believe to be important aspects of the contract. Have students share their list with the class.

2. Introduce students to the concept of contracts by reading “What is a Contract”. Link student examples to elements of contracts outlined in handout.

   KEY QUESTIONS
   Why are social invitations not considered an enforceable contract?
   Why does society need contracts?

3. Assign “What is a Contract?” questions.

4. For homework or an in-class activity, teachers may wish to have students examine common contracts and identify both the key elements (offer, acceptance, consideration) and other secondary elements of the contracts. Teachers can either bring examples of contracts to class, or have students bring their own to discuss and analyze. Sample contracts can be found through links from the Government of Canada’s “The Business Link – Legal Links” website at http://www.cbsc.org/servlet/ContentServer?pageName=CBSC_AB/AB_WebPage/AB_WebPage_Template&cid=1104766632008&c=CBS_C_WebPage.
WHAT IS A CONTRACT?

When did you last make a contract? Surprisingly, you do not have to look back too far – perhaps only yesterday, or even this morning. Did you buy a sandwich? Place a quarter in a video game machine? Get a haircut? These involve contracts. Of course there are more complicated contracts, like those signed when purchasing a house or borrowing money from a bank, but people sometimes do not realize that a contract is involved in many of their daily transactions.

A contract is a legally binding agreement between two or more persons, also called parties. One party promises to do something and the other party promises to do something in return.

Pat promises to cut Robin’s lawn once a week and Robin promises to pay Pat $10 per week. Pat and Robin have a contract.

To be an enforceable contract, there must be something of value (also called consideration) exchanged. Each party must receive a benefit. Generally, the courts do not care if the consideration is reasonable or not. Robin can agree to pay Pat five cents or fifty dollars; the important thing is that they have exchanged something of value: Pat’s labour of mowing lawns in exchange for a fixed sum of money from Robin.

Not all promises are legally binding. If Pat promises to take Robin to lunch tomorrow and then does not show up, neither Pat nor Robin expects any legal action as a result of the broken engagement. Neither of them intended to create a legally enforceable agreement when they agreed to the lunch date. A social engagement is not a legally enforceable agreement.

Also, a promise of a gift is not legally binding. Your uncle could promise you a trip to Europe for successful completion of high school, but would be under no legal obligation to do so when you graduate.

A contract should be clear about who the parties are, what the contract is about, and what is given in exchange.

ARE PRICE STICKERS AN OFFER?

Price stickers are in writing and placed on or beside merchandise. But does this make a price sticker an offer?

Say you went to an electronics store and found a big-screen television with a $75 price tag. While most likely an error, does this mean that you should be able to purchase the set for $75? Unfortunately for the consumer, price stickers are not considered an offer for sale. Instead, they are considered an “Invitation to Treat”. This means that it is your option, as a consumer, to make an offer that the retailer can either accept or reject. The retailer has no obligation to sell merchandise for the price on the tag.

In fact, the retailer does not necessarily have to accept any offer you make for merchandise, as long as the reasons they refuse it are not in violation of human rights legislation, such as refusing to sell to you based on gender, religion, race, or sexual orientation.
There must be:

- offer – a serious proposal which will lead to a contract being formed
- acceptance – an unconditional acceptance must be given that follows the terms of the offer. This acceptance can be either spoken or clearly indicated by actions.
- consideration – something of value exchanged to fulfill contract

Pat: I’ll give you $20 for those skates. (Offer)
Robin: It’s a deal. (Acceptance)
Pat gives Robin $20 (Consideration) in exchange for the skates.

If the offer, acceptance, or consideration is missing, there is no contract.

Pat: I’ll give you $20 for those skates. (Offer)
Robin: Well… I’m not sure. (No Acceptance)
Pat: On second thought, I think I’ll buy a new pair instead. (Offer withdrawn)
Robin: No, don’t. I’ll take the $20. (Acceptance too late – there is no contract)

Once you have entered into a contract, you cannot cancel or change it simply because you have changed your mind, unless the other party agrees to cancel or change it too. If you refuse to perform your part of the contract, the other party can sue you in a court of law. The court can enforce the contract - either by ordering you to perform your part of the contract or by ordering you to pay damages to the other person, for breach of contract. A breach of contract is the legal term used when one person fails to perform their part of a contract.

THE LETTERBOX RULE

While it is now commonplace to conduct business through e-mail and telephone, not long ago most business was done through the mail. From this, the “letterbox rule” came to be. While antiquated, it still is in force today. When an offer is sent through the mail, the letterbox rule will apply. It considers the post office “the long arm of the recipient”. Therefore, the moment that the acceptance is placed in the mail, it is considered to be in the hands of the recipient. The date it is received does not matter, and this rule even applies if the letter is lost in the mail or delayed due to a postal strike.
QUESTIONS

1. Examine the following scenarios and decide if a contract could exist in each scenario.
   a. You buy a bike for $25 at a yard sale.
   b. You invite your friend to come over to see your bike.
   c. Your aunt promises to pay you $50 if you quit riding your bike in traffic.
   d. You buy a bike helmet from the hardware store.
   e. You bring your bike in for a tune-up at the sporting goods store.

2. List and describe the three elements that must be in place for a contract to exist.

3. In 1996, Pepsi introduced their “Pepsi Points” promotion, which allowed people to collect points from pop bottles to earn merchandise. One television advertisement featuring items that could be purchased with Pepsi Points humorously ended with a student landing at school in a Harrier jet, with the line “7,000,000 Pepsi Points” appearing on the screen. Because additional Pepsi points could be purchased to make up for point shortfalls, one Pepsi customer presented Pepsi with 15 Pepsi Points and a cheque for $700,008.50 (to cover the excess points and shipping and handling) for the jet. Pepsi refused to present him with a Harrier jet, and he sued. Did the advertisement constitute an offer?

4. Brad sends a letter to Carol on September 1st offering to sell his car for $2500. Carol receives the letter on September 5th, and mails back an unconditional acceptance the same day. Brad receives the letter on September 10th. In the meantime, Rachel approaches Brad on September 7th, and offers him $3000 for the car. He accepts. Do all the elements of a contract exist in this scenario? If so, has Brad breached his contract with Carol? Explain.

5. Jim sends a letter to Dean on June 1st offering to sell an MP3 player for $50. Dean receives the letter on June 3rd, and writes a letter back accepting this offer, places a 50 dollar bill in the envelope, and plans on mailing it the next day. However, on June 3rd, Terry tells Jim that he will give him $50 for the MP3 player. Jim accepts this offer, immediately calls Dean and revokes the offer. Dean says he can’t revoke this offer because he has already written a letter of acceptance. Does Jim have a contract with Dean that must be honoured? Explain.
1. Examine the following scenarios and decide if a contract could exist in each scenario.
   a. You buy a bike for $25 at a yard sale. **YES**
   b. You invite your friend to come over to see your bike. **NO** – this is a social invitation
   c. Your aunt promises you $50 if you quit riding your bike in traffic. **NO** – this is a promise of a gift
   d. You buy a bike helmet from the hardware store. **YES**
   e. You bring your bike in for a tune-up at the sporting goods store. **YES**

2. List and describe the three elements that must be in place for a contract to exist.
   • **offer** – a serious proposal which will lead to a contract being formed
   • **acceptance** – an unconditional acceptance must be given that follows the terms of the offer
   • **consideration** – something of value exchanged to fulfill contract

3. In 1996, Pepsi introduced their “Pepsi Points” promotion, which allowed people to collect points from pop bottles to earn merchandise. One television advertisement featuring items that could be purchased with Pepsi Points humorously ended with a student landing at school in a Harrier jet, with the line “7,000,000 Pepsi Points” appearing on the screen. Because additional Pepsi points could be purchased to make up for point shortfalls, one Pepsi customer presented Pepsi with 15 Pepsi Points and a cheque for $700,008.50 (to cover the excess points and shipping and handling) for the jet. Pepsi refused to present him with a Harrier jet, and he sued. Did the advertisement constitute an offer?

   Amongst many reasons given by the courts (Leonard v. Pepsico, 1996), this contract was not valid because the advertisement was not deemed to be a serious offer, and therefore not valid.

4. Brad sends a letter to Carol on September 1st offering to sell his car for $2500. Carol receives the letter on September 5th, and mails back an unconditional acceptance the same day. Brad receives the letter on September 10th. In the meantime, Rachel approaches Brad on September 7th, and offers him $3000 for the car. He accepts. Do all the elements of a contract exist in this scenario? If so, has Brad breached his contract with Carol? Explain.
All the elements of a contract (offer, acceptance, and consideration) exist here, so the contract between Brad and Carol is valid. The fact that Brad mailed the offer, and Carol mailed the acceptance before Rachel entered into a contract to purchase the car means that the letterbox rule applies, and Brad has breached his contract with Carol.

Brad has also created a contract with Rachel that he cannot carry out. While Carol has rights to the vehicle, Rachel would have the right to sue Brad for any damages she may have incurred because of the void contract between her and Brad.

5. Jim sends a letter to Dean on June 1st offering to sell an MP3 player for $50. Dean receives the letter on June 3rd, and writes a letter back accepting this offer, places a 50 dollar bill in the envelope, and plans on mailing it the next day. However, on June 3rd, Terry tells Jim that he will give him $50 for the MP3 player. Jim accepts this offer, immediately calls Dean and revokes the offer. Dean says he can’t revoke this offer because he has already written a letter. Does Jim have a contract with Dean that must be honoured? Explain.

No, Jim and Dean do not have a contract. Because the acceptance was not yet placed in the mail, and an offer can be revoked any time before acceptance occurs, Jim can accept Terry’s offer and revoke his offer to Dean.
CATEGORIES OF CONTRACTS AND
THE STATUTE OF FRAUDS

Objective: Students will learn about written, oral, and implied contracts and understand how the Statute of Frauds affects contracts.

Method: Reading, Discussion, Questions

Materials: “Categories of Contracts” handout and questions

Procedure:

1. Review with students the three elements of a contract (Offer, Acceptance, Consideration) and discuss ways that this can be accomplished in both verbal and written terms.

2. As a class, read “Categories of Contracts”, having students give examples of implied, oral, and written contracts.

   KEY QUESTION
   If a contract is made both orally and written, which would take precedent? Why? (Written – terms in writing are easier for a court to decipher than determining what arrangements have been made verbally)

3. Assign “Categories of Contract” review questions.

4. For further review on concepts covered in Lessons One and Two, teachers may wish to have students read content and/or work through problems found on pages 300 – 306 in the “Forming a Contract” chapter of Learning About Law. McGraw-Hill Ryerson, 1997.
Not all contracts need to be in writing. In fact, it would be impractical for some contracts to be in writing. For example, getting a haircut or taking a taxi does not usually involve a written contract. There are three categories of contracts:

**Implied Contracts**

An implied contract is made when little or no discussion takes place regarding the content of the contract. The content is implied by the actions of the parties. Depositing a quarter into a video game machine is an implied contract. While no discussion between you and the arcade owner has taken place, it is apparent that you will get to play a round of the video game for that quarter. Getting onto a bus and depositing the fare is also an example of an implied contract. While no discussion has taken place, it is apparent that the bus will provide you with transportation service.

**Oral Contracts**

An oral contract is created when two parties engage in a discussion of terms and then come to a verbal agreement. Oral contracts are legally enforceable. Just as much as a written contract, you should be sure to understand all of the terms that are included in the agreement. If you have to take the other party to court, you still will have to prove the terms of the contract. This may be more difficult if the agreement is not in writing.

**Written Contracts**

Certain contracts, such as landlord and tenant agreements, and sale agreements of over 50 dollars need to be in writing. In addition to these, the *Statute of Frauds* requires five other types of contract to be in writing.

**Statute of Frauds**

The *Statute of Frauds* was enacted in 1677 by the English Parliament in response to an overwhelming number of false claims of fraud in contract. It required certain types of contracts to be in writing to be enforceable under law. These included:

1. Contracts that are not to be or cannot be completed in one year.
2. Contracts for the sale of land.
3. Contracts in promotion of marriage.
4. Contracts wherein an executor or administrator of an estate agrees to be personally liable for debts of estate.
5. Contracts wherein a person agrees to be responsible for the debt of another person.
While now antiquated, the *Statute of Frauds* is still in effect in all provinces in Canada with the exception of Manitoba and Quebec. However, most provinces, including Saskatchewan, have various other laws such as *The Consumer Protection Act* and *The Land Titles Act* that go even further than the requirements of the *Statute of Frauds* for requiring contracts in writing.

## QUESTIONS

**Does this contract need to be in writing?**

For each of the following scenarios, decide whether or not the contract in question needs to be in writing to be enforceable.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Oral</th>
<th>Written</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tara rents a video game machine for the weekend.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In April, Scott is offered a job for the summer mowing lawns.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncle Bernie offers $50,000 to anyone willing to marry his son Maurice.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia sells a barren plot of land to a neighbour.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colin rents an airplane for a two-year term.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bertha is buying a hot tub to be installed at her ski chalet.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kenny agrees to co-sign his sister’s car loan.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hazel sells an old swag lamp from her basement for $40.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marlin agrees to buy all his bread for the next two years from a neighbour.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joy joins a DVD club and agrees to buy five movies over the next three years.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Problems

1. You receive a phone call on February 1\textsuperscript{st} from Acme Corporation in Winnipeg. They guarantee you a job from May 1\textsuperscript{st} of this year until April 30\textsuperscript{th} the following year. You verbally accept that day, do not sign any agreement, and start work on May 1\textsuperscript{st} as agreed. On December 30\textsuperscript{th} you are fired. Can you demand that the contract be fulfilled and keep your job until April 30\textsuperscript{th}?

2. On March 1\textsuperscript{st} a husband and wife separate. The husband tells his wife that he will give her $1500 a month for as long as he lives if she agrees not to sue him. Does this contract have to be in writing?
For each of the following scenarios, decide whether or not the contract in question needs to be put in writing to be enforceable.

1. Tara rents a video game machine for the weekend.  
   Oral  Written

2. Scott is offered a job for the summer job mowing lawns.  
   Oral  Written

3. Uncle Bernie offers $50,000 to anyone willing to marry his son Maurice.  
   Oral  Written

4. Virginia sells a barren plot of land to a neighbour.  
   Oral  Written

5. Colin rents an airplane for a two-year term.  
   Oral  Written

6. Bertha is buying a hot tub to be installed at her ski chalet.  
   Oral  Written

7. Kenny agrees to co-sign his sister’s car loan.  
   Oral  Written

8. Hazel sells an old swag lamp from her basement for $40.  
   Oral  Written

9. Marlin agrees to buy all his bread for the next two years from a neighbour.  
   Oral  Written

10. Joy joins a DVD club and agrees to buy five movies over the next three years.  
    Oral  Written
Problems

1. You receive a phone call on February 1st from Acme Corporation in Winnipeg. They guarantee you a job from May 1st of this year until April 30th the following year. You verbally accept that day, do not sign any agreement, and start work on May 1st as agreed. On December 30th you are fired. Can you demand that the contract be fulfilled and keep your job until April 30th?

Although the employment term length is less than a year, because this contract could not be completed within a year (the acceptance date is February 1st), it needed to be in writing to be enforceable at law.

2. On March 1st a husband and wife separate. The husband tells his wife that he will give her $1500 a month for as long as he lives if she agrees not to sue him. Does this contract have to be in writing?

In this case, the contract falls outside the statute because there is no guarantee how long the husband will live. He may live for thirty years, or only six months. Because of this, the contract does not have to be in writing.
Objective: Students will learn when contracts are unenforceable.

Method: Reading, Discussion, Questions

Materials: “Capacity to Contract” and “Unenforceable Contracts” handout and questions

Teachers’ Background Information:

Undue influence, the improper and unconscientious use of influence or power possessed by one person over another because of their relationship or circumstances, is presumed to exist when alleged in the following relationships:

- Parent contracting with child
- Teacher with student
- Doctor with patient
- Lawyer with client
- Accountant with client
- Clergy person with parishioner

Because of the power imbalance and emotional influence in the above relationships, any contract made between the above people would be voidable at the option of the individual alleging undue influence. In all other relationships, the burden of proof rests upon the person who alleges it.

Procedure:

1. Discuss with students the rules and penalties for impaired driving. Link conversation to the idea that alcohol impairs a person’s ability to do many things, including enter into a contract. This is one of the scenarios where a contract could potentially be voided.

2. As a class, read “Capacity to Contract” and “Unenforceable Contracts”.

   KEY QUESTION

   Would it be fair to try to enforce a contract where an honest mistake exists? Why or why not?

3. Introduction to students to the concept of relationships with presumed undue influence. Discuss reasons why undue influence is presumed to exist between certain groups, such as teachers and students.

4. Either as individuals or in small groups, have students create four columns in their notebook: Misrepresentation, Mistake, Duress, and Undue Influence. In each column, students should create a scenario where a contract would not be enforceable. Discuss as a class.
Lesson Three: Capacity to Contract and Unenforceable Contracts

Capacity to Contract

To enter into a contract, an individual must have the capacity to do so. Generally speaking, everyone is capable of entering into a contract, although exceptions are made for minors, those with mental disabilities and intoxicated persons. This is because contracts must be performed “consensus ad diem”, meaning there must be mutual understanding of the terms of a contract. With the above exceptions, the individuals may be entering into a contract while not having the capacity to do so. Therefore, consensus ad diem may not exist.

Unenforceable Contracts

While there is no automatic right to cancel a contract, not every contract can be enforced by law. Contracts may be voided in the following situations:

Misrepresentation

Knowingly making misrepresentations or false statements to persuade a consumer to enter into a contract can make that contract voidable. This means that either party can cancel the contract if they want to. But the misrepresentation must be about a major part of the contract, not some minor detail, and the contract must be cancelled within a reasonable amount of time. For example:

Pat is thinking of buying a duplex from Dale and renting it out. Dale tells Pat that the rent is enough to cover the mortgage payments. In fact, Dale says, the rents last year totaled $24,000. (Dale’s representation to Pat)

Pat buys the duplex and then finds out that the suites were vacant most of last year because of the poor location of the building, and last year’s rents were only $10,000. (Dale’s representation to Pat was a misrepresentation)

Because the misrepresentation was a major part of the contract and because it convinced Pat to enter into the contract, Pat has the option to either continue the contract or cancel it.

Life Insurance – Everybody is Accepted but is Everybody Paid?

A frequent claim in life insurance advertisements is that no applicants will be turned down. However, this claim does not necessarily mean that benefits will be paid if that person should die.

For example, if a man knows that he is on his deathbed, says nothing, and enters into a life insurance contract, chances are the benefits will not be paid out if he dies shortly thereafter. This is because remaining silent about a terminal health condition is considered a misrepresentation on behalf of the individual. Had he revealed this information, the man on his deathbed may have only been eligible for a small insurance payout. Misrepresentation can work both ways, and as an individual entering into a contract, you have responsibilities to the person you are contracting with.
Lesson Three: Capacity to Contract and Unenforceable Contracts

Mistake
There are three types of mistakes that can void a contract:

Common Mistake – If both parties make the same mistake regarding the subject matter. For example, if you agree to buy a car from a dealer, but unbeknownst to you, the car burns down in the car lot while you are striking the deal. The court would see this contract as void because each person was mistaken about the condition of the car.

Mutual Mistake – If both parties have a different subject matter in mind, the contract will be void. For example, if you’re negotiating a car purchase, and you think it’s the red Ford on the lot but the seller thinks you are dealing on the blue Chevy. This contract will be void because both parties made a mistake as to the subject matter.

Unilateral Mistake – An error made by one party to a contract that is known to the other, and the knowing party makes no attempt to fix this error. For example, Tyler sells Jon a vase which Jon believes to be an ancient Roman artifact. In actuality, the vase is a reproduction. If Tyler is unaware of Jon’s erroneous belief, the case is one of mutual mistake. But if he knew that Jon thought it was an actual ancient artifact, it is a unilateral mistake.

Duress
Genuine consent does not exist if a person agrees to a contract under the threat or use of physical violence.

Undue Influence
Genuine consent does not exist if an improper use of power has been used to by a person to form a contract.

Contract Killings - A Killer Deal!!

A contract killing is when one person is hired to murder a third party. Since 1917, it is estimated that the Chicago Mob has ordered over 1100 contract killings. Among these murders, mob boss Sam Giancana was murdered while frying sausage in his home, FBI informant Richard Cain was shot in a sandwich shop, and Al Capone’s chief hit man Jack McGurn was gunned down in a bowling alley.

One commonality of all these crimes is that the elements of a contract exist (the offer of murdering somebody, the acceptance, and the consideration of payment for the killing). However, the contract is not actually enforceable at law if one side or another reneges on the deal. This is because any contract for an illegal activity is not a legally binding contract.
**YOUNG PEOPLE AND CONTRACTS**

**Objectives:** Students will understand their relationship to contract law and know the difference between necessaries and necessities.

**Methods:** Reading, Discussion, Questions.

**Materials:** “Young People and Contracts” handout and case studies

**Teachers’ Background Information:**

“Necessities" and “necessaries” are two different concepts, and contract law acknowledges this. Necessities constitute basic elements for living, such as food, clothing, and shelter. However, the term necessaries takes into account many circumstances in one’s life. The necessaries of life for many celebrities or people of privilege, for example, are different than the necessaries of life for average people.

**Procedure:**

1. Introduce students to the concept of necessities and necessaries. Teachers may wish to use the standard of living for North Americans compared to developing countries to help distinguish the two terms.

2. Lead class reading of “Young People and Contracts”
   
   **KEY QUESTION**
   
   Are the provisions for young people entering into contracts fair, or are those signing contracts with young people put at a disadvantage?

3. Assign “Young People and Contracts” case studies.
Lesson Four: Young People and Contracts

Young people have a unique place in law. They are not yet adults, but they are developing many of the skills and abilities of adulthood. They are entitled to many of the same rights as adults, and can be held to many of the same responsibilities. They will not, however, always be treated in the same way as adults. This unique belief in law is generally founded on two beliefs:

- that children do not have the ability to properly evaluate their options and make sound decisions
- that it is the parent’s role to guide and make decisions for their children

In Saskatchewan, “the age of majority” (the age at which people become adults in the eyes of the law) is 18. Each province determines its own age of majority, and can restrict the rights and responsibilities that go along with it. In Saskatchewan, upon reaching the age of majority, a person generally has the right to vote, get married, enter into contracts, and otherwise fully participate in society.

Contract law provides special protection to minors. Generally, individuals under the age of 18 cannot be held liable for contracts that they enter into, unless the contract is for the “necessaries of life” or the minor has derived a real advantage from it. Contracts that take unfair advantage of minors, or are not in their best interests, have no legal effect.

Necessaries usually include things such as food, shelter, education and medical services, but can include a host of other things, depending on the minor’s circumstances. Saskatchewan law defines necessaries as goods suitable to the condition of life of the minor and the minor’s actual requirements at time of sale and delivery.

Minors have the option of cancelling contracts for non-necessaries. This affords minors some protection against reckless or imprudent acts, but the law balances this special protection for minors against legitimate business interests.

For example, a minor may be tempted by a rent-to-own offer for a CD or video game player. The minor may come up with the required down payment and take the equipment home after entering into a contract that requires payments, plus interest, over time. After using the equipment for a week, the minor might regret the purchase for any number of reasons. While the minor cannot be held to the contract, he or she must return the merchandise if they want to cancel the contract. And, the seller may have a right to keep some or all of the down payment to compensate for the benefit the minor obtained during the time he or she had possession of the merchandise.

Generally, when young people are considered mature enough (by law) to engage in “adult” activities, they will be subject to the same rights and responsibilities as adults. However, these rights and responsibilities may be modified by the underlying principle of the law that states that young people require special guidance and protection. The special protection that contract law provides to minors is just one such example.
CASE STUDIES

Skating on Thin Ice

Gerry, who is 17 years old, bought a pair of skates for $160 at the local sporting goods store. He paid $100 cash and agreed to pay the balance at the end of the month. He took the skates home and then went skating. Later Gerry realized that he would not have enough money to pay back a loan from his friend if he paid the $60 owing on the skates. He took the skates back, with the sales slip, and asked for a refund of $100 dollars in exchange for the skates.

1. Did Gerry make a deal, or enter into a contract, with the sports store?

2. Would skates be considered a “necessary?”

3. Can the sports store make Gerry pay the $60 and insist that he keep the skates?

4. If Gerry can’t pay the $60, can he be made to return the skates? Would he get his $100 back if he had to return the skates?

5. If Gerry had not used the skates could he get his $100 back?
Charge it!

Jo spends the summer working at a resort where the General Store allows people to charge groceries and other goods if they agree to pay their account every 30 days. Jo, aged 17, is staying in a cabin with her cat. One weekend Jo went into the city to go to the exhibition. The trip cost more than expected and she is unable to pay the General Store account. The manager now wants to collect the money owing.

1. Is there a contract between Jo and the General Store? Explain.

2. If Jo bought cosmetics, cat food, and lace curtains for her cabin on credit can the General Store collect for these items?

3. Is it likely that the General Store could collect for items such as milk, cheese, shoes, and gloves?

4. How might the General Store proceed to collect the money that Jo owed?
Lesson Four: Young People and Contracts

A Friend in Need

Marina, who is 17 years old, borrowed five hundred dollars from J.J. Struthers, an adult friend of Marina's boyfriend. Marina needed the money for car trips and repairs, school supplies, clothes, and an insurance premium for her car. J.J. Struthers wanted Marina to repay the money, but she refused to do so.

1. Was the money used to provide Marina with the necessaries of life? Explain.

2. Is Marina legally responsible for repaying the loan?

3. If Marina drove her car for pleasure only, would she be required to repay the portion of the loan used for operating her car?

4. If you were J.J. Struthers, what would you do to collect the money Marina had borrowed?
CASE STUDIES

Skating on Thin Ice - Answers

Gerry, who is 17 years old, bought a pair of skates for $160 at the local sporting goods store. He paid $100 cash and agreed to pay the balance at the end of the month. He took the skates home and then went skating. Later Gerry realized that he would not have enough money to pay back a loan from his friend if he paid the $60 owing on the skates. He took the skates back, with the sales slip, and asked for a refund of $100 dollars in exchange for the skates.

1. Did Gerry make a deal, or enter into a contract, with the sports store? **Yes**, Gerry did make a “deal” or a “contract” with the sports store. Gerry agreed to buy the skates and the store agreed to sell the skates to him. Something of value is being exchanged—Gerry gets the skates and the store gets (or will get) the money.

2. Would skates be considered a “necessary?” **No.** The skates are not likely to be considered a necessary. They are used for recreation and cannot be described as essentials.

3. Can the sports store make Gerry pay the $60 and insist that he keep the skates? **No**, the sports store cannot make Gerry pay the $60 and make him keep the skates. Gerry is under the age of 18. The law says that any contract he makes (except certain types of cases, such as employment contracts and necessaries) is voidable; that is, he can choose whether he wants to be bound by it or not. Gerry may choose to go through with the contract or not. The sports store has no say in the matter—it is Gerry’s choice.

4. If Gerry can’t pay the $60, can he be made to return the skates? **No**, Gerry cannot keep the skates if he chooses to void the contract, he no longer has any right to them. Gerry must return the skates to the store. Would he get his $100 back if he had to return the skates? **He may not get his $100 back because he has had some benefit from the contract:** his use of the skates to go skating.

5. If Gerry had not used the skates could he get his $100 back? **Yes**, Gerry could likely get his $100 back if he had not used the skates.
Charge it! - Answers

Jo spends the summer working at a resort where the General Store allows people to charge groceries and other goods if they agree to pay their account every 30 days. Jo, aged 17, is staying in a cabin with her cat. One weekend Jo went into the city to go to the exhibition. The trip cost more than expected and she is unable to pay the General Store account. The manager now wants to collect the money owing.

1. Is there a contract between Jo and the General Store? Explain. **Yes.** Jo and the General Store have a contract. She buys groceries and other things at the store and they allow her to buy on credit providing that she pays her account every 30 days.

2. If Jo bought cosmetics, cat food, and lace curtains for her cabin on credit can the General Store collect for these items? **Items such as cosmetics, lace curtains, and cat food may not be considered necessaries. The scope of the term “necessary” will vary from person to person, depending on their social and economic circumstances. It is equally possible that cosmetics and lace curtains could be accepted as necessaries given that Jo is living on her own. It is less likely that cat food would qualify as a necessary. The store cannot collect for money owing for items that are not necessaries, but if Jo voids this part of the contract she cannot keep the items that she still has in her possession, like the lace curtains.**

3. Is it likely that the General Store could collect for items such as milk, cheese, shoes, and gloves? **Food is a necessary and clothing is generally considered to be a necessary as well. While it seems clear that Jo will have to pay for the milk and cheese it could be argued that the shoes and gloves were not necessaries. This would depend on the situation. Clearly some clothing is necessary but clothing is often purchased for other reasons. For example, if Jo already had ten pairs of shoes another pair would likely not be considered a necessary.**

4. How might the General Store proceed to collect the money that Jo owed? **If the contract is not voidable or is not voided by Jo, the General Store might collect the money that Jo owes them by suing her in Small Claims Court. A more neighbourly solution might be to arrange for Jo to pay her bill over the next few months.**
A Friend in Need - Answers

Marina, who is 17 years old, borrowed five hundred dollars from J.J. Struthers, an adult friend of Marina’s boyfriend. Marina needed the money for car trips and repairs, school supplies, clothes, and an insurance premium for her car. J.J. Struthers wanted Marina to repay the money, but she refused to do so.

1. Was the money used to provide Marina with the necessaries of life? Explain. Yes and No. Marina used the money for some items that were necessaries and for some items that weren’t necessaries. The car trips probably were not a necessary nor were the car repairs. Some cases have held that a car is not a necessary. If a car is not a necessary it seems unlikely that a judge would find the car insurance to be a necessary. On the other hand, school supplies and clothes are necessaries, unless it could be shown that Marina had enough school supplies or clothes already.

2. Is Marina legally responsible for repaying the loan? Yes, Marina is legally responsible for repaying the loan for items that are necessaries. See the answer to question 1 above.

3. If Marina drove her car for pleasure only, would she be required to repay the portion of the loan used for operating her car? No, Marina is not obliged by law to pay back the portion of the loan used for operating her car if she used it for pleasure only. She may have the moral responsibility to repay the loan. The courts have refused to find that a car is a necessary, whether she used it for work, to get her to school, or for pleasure. J.J. Struthers was taking a risk when he loaned the money to Marina.

4. If you were J.J. Struthers, what would you do to collect the money Marina had borrowed? J.J. Struthers should try to discuss this case with Marina. J.J. could sue Marina in Small Claims Court for money he loaned for necessaries.
Objectives: Students will understand the conditions for the ending of a contract.

Methods: Discussion, Reading, Questions

Materials: “Ending a Contract” handout

Procedure:

1. Discuss with students that contracts do not go on forever, and most have a set end.

2. Read “Ending a contract” as a group.

   KEY QUESTIONS
   What ways could a contract end because of impossibility of performance?
   Is it fair to all parties that bankruptcy ends a contract?

3. Discuss the costs involved (time and money) in going to court. Have students debate whether or not this cost is a barrier in allowing individuals to achieve justice when a contract is breached. Does this cost allow people to breach contracts with no fear of facing consequences?

4. As a review for many of the concepts learned about contracts, the Street Law program at the University of Washington has an interesting classroom activity, “Who Wants to be a Millionaire”, available online at http://www.law.washington.edu/streetlaw/lessons/ContractsGameMillionaire.doc. It should be noted that some of the questions deal with topics that are not covered in the Saskatchewan Curriculum or in this guide. Questions 3, 5, 6, 7, 8, 9, 10, and 12 can be used for review. Other questions may be used depending on time available and breadth of outside resources used in teaching this unit. Also, note that the law in Saskatchewan requires contracts for sale of goods to be in writing if the value is over 50 dollars, thus changing the answer for question 6 from “c” to “b”.


ENDING A CONTRACT

In general, all contracts have an ending point. This will occur when both parties complete or “discharge” their obligations under the terms of the contract. It is otherwise known as “performance of contract”. However, this is not the only way contracts can end. Other ways of terminating contracts include:

1. Agreement. When contracts are discharged through agreement, it simply means that all parties came to an agreement as to the terms of ending a contract.
2. Impossibility of Performance. If events occur beyond a party’s control, such as a tornado destroying the workplace and equipment of one of the parties, then the contractual relationship can be ended.
3. Bankruptcy. If one of the parties declares bankruptcy, then generally speaking the contract will end.

BREACH OF CONTRACT

Contractual relationships can also be terminated through a breach of contract. A breach of contract occurs if one party fails to perform their part of the agreement. In this case, the other party is no longer obliged to perform their obligations under the contract. However, unlike the above ways of ending a contract, in a breach of contract situation the innocent party to the contract may be entitled to compensation. Options for the court could include:

• payment of damages for losses realized from not fulfilling the contract; or
• an order of specific performance, requiring the offending party to fulfill the original contract.
Objectives: Students will learn about the *The Consumer Protection Act* and Warranties.

Methods: Discussion, Reading, Legal Case Studies

Materials: *The Consumer Protection Act* handout and questions

Procedure:

1. Ask students to think of times they were dissatisfied with merchandise they purchased. Have them briefly describe the process they took to have the problem remedied.

2. Read “*The Consumer Protection Act*” as a group and link student experiences to reading.

   KEY QUESTION
   Is the absence of privity fair for retailers? (The restaurant/muffin scenario from the “Privity of Contract” box makes a good context for this question.)

3. Assign consumer case study questions.

4. Teachers wishing to further pursue warranties may want to use the “Warranties: A Closer Look at ‘Satisfaction Guaranteed’” activity on page 135 of *Just Law: Teaching Youth About the Law in Their Lives*, available online at [http://www.plea.org/yas](http://www.plea.org/yas)
Lesson Six: The Consumer Protection Act

Under the basic premise of common law, “caveat emptor”, or “buyer beware” is the rule that applies to all purchases and contracts. This means that the responsibility for knowing all that should be known about a product lies with the consumer. Because of this, most jurisdictions in Canada, including Saskatchewan, have passed special statutes to mitigate caveat emptor.

In Saskatchewan, The Consumer Protection Act is the legislation which outlines sellers’ and manufacturers’ responsibilities for all consumer products sold in the province. The Act gives consumers certain warranties that the seller or manufacturer cannot legally limit or avoid. However, these warranties do not apply to private sales. Some of those warranties are as follows:

- The seller has a right to sell the goods.
- The goods will not have any liens against them, unless the buyer has been told about them.
- Goods purchased by description (such as from a catalogue) must match their description.
- The goods must be of acceptable quality, except for defects that the consumer was told about, or that the consumer had an opportunity to discover.
- The product must be durable for a reasonable period of time.
- Spare parts and repair facilities must be available for a reasonable time after the date of purchase.

The acceptable quality of second-hand goods is determined by what you reasonably would expect of goods of that description, age, and price. Guarantees by second-hand dealers are best made in writing.

If the product is repairable, the consumer must give the seller reasonable time to repair it, at no cost to the consumer. If a product cannot be repaired, the consumer can reject the item and get a refund.

“Sales Puffs” are not considered warranties. For example, if you purchase a neon pink sweater because the salesperson says “It is the best-looking sweater on the market” you would not have recourse if you later disagreed. It is merely an opinion which is not part of the bargain.

Privity of Contract

In Saskatchewan, privity of contract – the legal rule that only those who are party to a contract can sue if problems arise – does not apply under The Consumer Protection Act. If someone is injured while properly using a product, that person can sue the manufacturer or seller for any personal injury that occurred as a result of the defective product.

Say you went to your favorite restaurant and purchased a muffin, only to break your tooth because there was a stone inside the muffin. Even if the restaurant purchased the muffin from a bakery for resale, you would still have the option of suing the restaurant for any costs associated with fixing your tooth. This is because The Consumer Protection Act allows for individuals to sue retailers because of the products they sell, even if the problem was caused by the manufacturer.
Because the law in Saskatchewan applies the “Right of First Remedy”, one cannot directly take a supplier of a good or service to court if they are dissatisfied. Instead, the person or group that sold you the good must be first given a change to rectify the situation. If the seller does not meet your satisfaction, then you as a consumer have the option of taking further actions.

CONSUMER CASES

Ryder v. Mountain Ed’s Bike Shop

Jason Ryder bought a brand new mountain bike and was planning to ride on some rugged trails, and maybe enter some races. The salesperson at Mountain Ed’s Bike Shop told him it was a solid, well-made bike that would be good for trail riding. On Jason’s first major trek of the spring, one of the pedals on his new bike flew off. Then the front wheel came loose, causing Jason to wipe out and suffer some pretty bad bruises and scrapes. Jason took Mountain Ed to Small Claims Court to get a new bike and damages for his injuries.

Questions for Thought

1. Should Jason get a new bike from the dealer?

2. Would it have made a difference if the salesperson had not said what he did about the bike?

3. Is Mountain Ed responsible for Jason’s injuries? What about the manufacturer?
B. v. Leather Ranch

Mr. B. bought a leather coat at The Leather Ranch for his wife. He told the sales clerk that the coat was a gift. The clerk told him that if the coat didn’t fit, or if his wife didn’t like it, it could be exchanged for anything in the store. Mrs. B. later came to the store and chose a different coat, which cost $600 less. When she learned that she would receive a credit note for the difference in price, not cash, she refused to purchase the coat. She returned the original coat and received a credit note. Mr. B. sued. He claimed that the store breached warranties that entitled him to reject the coat and receive a refund of the purchase price.

Questions for Thought

1. Is Mr. B. entitled to a refund?

2. Would the result be different if Mrs. B. was unable to find a coat that fit?

3. Concerning the question of whether there was a warranty, would there have been a warranty if Mr. B. had been shopping for a coat of a certain style for Mrs. B.’s role in a play?...a leather jacket suitable for riding a motorcycle?
Carol bought a used Pontiac Sunbird from Jane for $1,700. Soon she began to have trouble with the vehicle. The car was old, with high mileage. Some defects were apparent even when she first inspected it. Carol expected that she was buying a car that was in drivable condition and that would perform satisfactorily for a period of time, but not long after buying the car a mechanic told her that it was not in drivable condition. The brakes were in a dangerous state, and the car had other significant problems. Later still, a complete engine rebuild was required. In this Small Claims Court action Carol sued Jane for a portion of the cost of repairs to the brakes and the timing belt. Carol alleged that Jane assured her that these parts were in good working order. Jane had written “as is” on the bill of sale.

*Questions for Thought*

1. Who is ordinarily responsible for checking the condition of a car that is being sold privately (i.e. not by a car dealer)?

2. Does *The Consumer Protection Act* apply to a private sale?

3. Does the fact that Jane wrote “as is” on the bill of sale mean that Carol is out of luck?
T. v. V.

Mr. and Ms. T. bought a vacuum cleaner from a door-to-door salesperson. It cost $2,434.33. Ms. T. testified that the salesperson was extremely persistent and would not take no for an answer. He refused to leave their home. Finally, they decided they would buy the vacuum cleaner to get rid of the salesperson and then cancel the sale. Over the next few days they said they had phoned the Winnipeg telephone number shown on the contract several times, but got no answer. After using the vacuum cleaner a few times it began to malfunction and they packed it away. About a year later Ms. T. sent the powerhead to Mr. V. (whose company sold the vacuums) for repairs; he put a new belt on it and returned it. Soon after, Ms. T. sent the entire unit to Mr. V. who refused to accept it. Then Ms. T. started this lawsuit.

The contract contained a notice under The Direct Sellers Act informing the buyer that the buyer has a right to cancel the contract within 10 days, and that no reason is necessary to cancel. The notice also gave details of how to cancel the contract, saying that it must be by a method that will allow you to prove that you gave notice. The Direct Sellers Act only applies to door-to-door salespersons and telephone solicitors.

Questions for Thought

1. Did Ms. T. take the necessary steps to cancel the contract?

2. Are Mr. and Ms. T. entitled to compensation because the expensive vacuum broke down after being used just a few times? How soon after it broke down would they have to complain to be compensated?

3. Should the owner of the company and/or the salesperson be penalized for using forceful sales tactics that resulted in Mr. and Mrs. T. buying a vacuum just to get rid of the salesperson?
Ryder v. Mountain Ed’s Bike Shop

Jason Ryder bought a brand new mountain bike and was planning to ride on some rugged trails, and maybe enter some races. The salesperson at Mountain Ed’s Bike Shop told him it was a solid, well-made bike that would be good for trail riding. On Jason’s first major trek of the spring, one of the pedals on his new bike flew off. Then the front wheel came loose, causing Jason to wipe out and suffer some pretty bad bruises and scrapes. Jason took Mountain Ed to Small Claims Court to get a new bike and damages for his injuries.

Questions for Thought

1. Should Jason get a new bike from the dealer?
2. Would it have made a difference if the salesperson had not said what he did about the bike?
3. Is Mountain Ed responsible for Jason’s injuries? What about the manufacturer?

Judge’s Decision

The judge ordered that Mountain Ed replace Jason’s bike free of charge. She found that the bike was defective and not suitable for its purpose — that is, off-road and trail riding. Saskatchewan law says that if a consumer product is not of reasonable quality, the buyer is entitled to have it replaced or repaired by the manufacturer or dealer in a reasonable period of time. The law also says that a consumer product must be fit for the purpose for which it was intended. The judge said that Jason was using the bike as it was intended to be used and the bike did not function properly. Because the bike was so badly damaged, Jason was entitled to a new bike.

The judge also ordered the manufacturer of the bike to pay Jason $200 for the damages he suffered. She said the manufacturer has a duty to make sure its bikes do not fall apart when people are riding them and to realize that if they do, the riders will get hurt.
B. v. Leather Ranch

Mr. B. bought a leather coat at The Leather Ranch for his wife. He told the sales clerk that the coat was a gift. The clerk told him that if the coat didn’t fit, or if his wife didn’t like it, it could be exchanged for anything in the store. Mrs. B. later came to the store and chose a different coat, which cost $600 less. When she learned that she would receive a credit note for the difference in price, not cash, she refused to purchase the coat. She returned the original coat and received a credit note. Mr. B. sued. He claimed that the store breached warranties that entitled him to reject the coat and receive a refund of the purchase price.

Questions for Thought

1. Is Mr. B. entitled to a refund?
2. Would the result be different if Mrs. B. was unable to find a coat that fit?
3. Concerning the question of whether there was a warranty, would there have been a warranty if Mr. B. had been shopping for a coat of a certain style for Mrs. B.’s role in a play?...a leather jacket suitable for riding a motorcycle?

Judge’s Decision

The judge found that a term of the contract was that there would be no cash refund. The judge found that Mr. B. had not asked whether he could return the coat and receive a cash refund, nor had the store said that they would refund his money. At the front counter a large sign stated “no money refunded” and this was also printed on the invoice.

Concerning the question of warranties, there was no express warranty as to quality. Simply displaying the coat in the store window does not trigger a warranty under The Consumer Protection Act. Nor was there an implied warranty that the coat was fit for a “particular purpose.” That phrase contemplates an article which will be put to a specific use. Here, Mr. B. was looking for a gift for his wife, not for a specific article. The judge stated that anything could constitute a gift. Even if there was a breach, it was not of a substantial character, which would have entitled Mr. B. to receive his money back. Mr. B.’s claim was dismissed.
S. v. G.

Carol bought a used Pontiac Sunbird from Jane for $1,700. Soon she began to have trouble with the vehicle. The car was old, with high mileage. Some defects were apparent even when she first inspected it. Carol expected that she was buying a car that was in drivable condition and that would perform satisfactorily for a period of time, but not long after buying the car a mechanic told her that it was not in drivable condition. The brakes were in a dangerous state, and the car had other significant problems. Later still, a complete engine rebuild was required. In this Small Claims Court action Carol sued Jane for a portion of the cost of repairs to the brakes and the timing belt. Carol alleged that Jane assured her that these parts were in good working order. Jane had written “as is” on the bill of sale.

Questions for Thought

1. Who is ordinarily responsible for checking the condition of a car that is being sold privately (i.e. not by a car dealer)?
2. Does The Consumer Protection Act apply to a private sale?
3. Does the fact that Jane wrote “as is” on the bill of sale mean that Carol is out of luck?

Judge’s Decision

The judge decided that Jane had stated that the brakes and the timing belt were in good condition. The sale was a private sale and The Consumer Protection Act did not apply, so Carol could not take advantage of the warranties available under that legislation. A buyer is responsible for checking the state of a used car. The phrase that’s used to describe the buyer’s position is “let the buyer beware” (or in Latin ‘caveat emptor’). Here, Jane made an oral representation that the brakes were in good condition. That representation overrode the words “as is” that were written on the bill of sale, and Jane was therefore responsible for part of the cost of repairing the brakes and the timing belt.

Note that Carol paid considerably more than what Jane was ordered to pay her to repair the car. She sued only for the items that had been represented as being in good condition. Note also that when a car dealer sells a used car, The Consumer Protection Act applies.
T. v. V.

Mr. and Ms. T. bought a vacuum cleaner from a door-to-door salesperson. It cost $2,434.33. Ms. T. testified that the salesperson was extremely persistent and would not take no for an answer. He refused to leave their home. Finally, they decided they would buy the vacuum cleaner to get rid of the salesperson and then cancel the sale. Over the next few days they said they had phoned the Winnipeg telephone number shown on the contract several times, but got no answer. After using the vacuum cleaner a few times it began to malfunction and they packed it away. About a year later Ms. T. sent the powerhead to Mr. V. (whose company sold the vacuums) for repairs; he put a new belt on it and returned it. Soon after, Ms. T. sent the entire unit to Mr. V. who refused to accept it. Then Ms. T. started this lawsuit.

The contract contained a notice under The Direct Sellers Act informing the buyer that the buyer has a right to cancel the contract within 10 days, and that no reason is necessary to cancel. The notice also gave details of how to cancel the contract, saying that it must be by a method that will allow you to prove that you gave notice. The Direct Sellers Act only applies to door-to-door salespersons and telephone solicitors.

Questions for Thought

1. Did Ms. T. take the necessary steps to cancel the contract?
2. Are Mr. and Ms. T. entitled to compensation because the expensive vacuum broke down after being used just a few times? How soon after it broke down would they have to complain to be compensated?
3. Should the owner of the company and/or the salesperson be penalized for using forceful sales tactics that resulted in Mr. and Mrs. T. buying a vacuum just to get rid of the salesperson?

Judge’s Decision

Mr. and Ms. T.’s claim under The Direct Sellers Act failed. They did not send a registered letter or use another method of delivery that would allow them to prove that they gave notice of cancelling the contract. The judge wrote: “The provisions of the Act regarding notice of cancellation were enacted to provide a simple, low-cost method for a buyer to cancel a direct sale, no questions asked. Ms. T. did not take the simple steps open to her in the days immediately after the sale, nor did she take timely or reasonable steps thereafter to deal with the matter.” This part of their claim was dismissed.
Mr. and Ms. T. also had a claim under s. 48 of The Consumer Protection Act, which provides a warranty that products are to be durable for a reasonable period. The judge noted that a machine costing $2,400 should be “of great durability and outstanding performance.” It was not. However, a buyer must act within a reasonable period of time. The judge considered that a reasonable time, in the circumstances, would be three months. Because Mr. and Ms. T. did not take any steps to have the vacuum cleaner repaired within three months, this claim also failed.

Concerning a third issue, Mr. V. was found to have permitted “unfair practices” under The Consumer Protection Act because his salesperson refused to leave without making a sale. The judge noted that Mr. V. demonstrated that he attempts to operate ethically, but held him responsible nevertheless for the undue pressure exerted by his salesperson. The judge ordered Mr. V. to pay the T.’s $300 punitive damages. The judge noted that if the claim had been brought when the problem first arose the contract might have been cancelled or greater punitive damages ordered.


**Objectives:** Students will understand copyright and be able to make personal judgments about the application of copyright law.

**Methods:** Discussion, Reading, Legal Case Scenarios

**Materials:**
- “What is Copyright” handout
- “Spot the Copyright” questions
- multiple editions of a Shakespearean play

**Procedure:**

1. Write a “Copyright” symbol on the board and ask students to identify it. Have class brainstorm a list of places it is found to demonstrate the scope of copyright.

2. Read “Copyright” as a group.
   
   **KEY QUESTION**
   
   Why are TV shows or movies with similar storylines not considered as infringing on copyright?

3. Using different editions of a Shakespearean play, ask students why are there different editions of Shakespeare's works, and what could teachers or students copy out of these works?

4. Assign “Spot the Copyright” scenarios.
Lesson Seven: Intellectual Property: Copyright

What Is Copyright

Copyright law touches people’s lives in many ways, be it through downloading music, movies you rent, or writing you create. Copyright law makes it illegal to copy someone else’s work without their permission. Copyright law protects all original works regardless of whether these works are published or have commercial value.

Copyright applies to:
- Songs
- Novels
- Plays
- Magazine articles
- Computer programs

Copyright does not apply to:
- Song titles
- Ideas for plots
- Methods of staging a play
- Works such as Shakespearean plays because they are in the public domain
- Facts in an article
- The name of a program (although it may be protected through trademark registration)


When a work is protected under copyright laws it can generally only be used with the owner’s permission and the user will be required to pay a fee, called a royalty. Canadian copyright law does create certain exceptions…

Public Domain

If a work is in the public domain it can be used by anyone. In this case the owners’ permission is not required and no fees have to be paid. There are a number of reasons why a work can be considered in the public domain. Copyright generally only exists for the life of the creator plus 50 years. After this period, the work is in the public domain, meaning that people are free to use and reproduce the work. As well, sometimes the owner of a copyright will give permission to the public to use the work for certain purposes.
Fair Dealing
When doing research for a school assignment, you learn about the topic by reading what other people have written. When writing the report you may decide that you want to quote something word for word. When a critic is reviewing a book he or she may want to reproduce a few passages from the book. Sometimes part of an original work may be included in a news broadcast. The law allows people to use copyrighted works in this way. This is called fair dealing. There is no rule about how much of a work can be copied without permission. This is something that could be decided by a court if a creator thinks someone has unlawfully copied his or her work.

Educational Institutions
Educational institutions can use copyrighted material in ways that would be considered infringement if they were done by the general public. All publicly funded elementary and high schools in Canada, except in Quebec, are covered by a general licence with CANCOPY.

CANCOPY is a non-profit organization established by artists, writers, and publishers to simplify the process of getting permission and paying royalties. A CANCOPY licence gives teachers and students limited rights to copy published print works without getting permission directly from authors. In most cases, teachers and students can only copy up to 10% of the work. Schools are also allowed to perform plays and music as well as play sound recordings, televisions, and radios in schools for educational purposes. They are also allowed to copy news programs and show them for up to one year.

What if I Want to Use Copyrighted Material and None of The Exceptions Apply?
The Copyright Office is a federal agency responsible for registering copyrights in Canada. Copyright owners do not have to register with the office but many choose to do so. The records of the Copyright Office are open to the public. A person who wants to use copyrighted material can search the records to find out how to contact the copyright holder for permission and payment. As well, information about how to contact the author or publisher is often included in the work itself.

Using copyrighted material can be expensive. For example, a video purchased for personal viewing in your home might cost you $20. To purchase the right to show this same video in public could cost $250 or more. The costs are usually calculated per use of the material. This means that fees must be paid for any additional uses even if fees have already been paid for one use.
1. All the students in Mr. D’s high school English have to make a presentation to the class on a book or play of their choosing. John, a student in the class, decides he wants to ace this project. He chooses a play and decides he will direct a performance of it for the class. He also goes to great lengths to have the right sound effects. As well as taping some sounds that he makes himself, he decides to play several popular songs, on his guitar, as background for some of the scenes. The presentation goes very well. In fact John plays so well that he is asked to play the songs at the next school dance.

   a) Is it against copyright law for John to perform a play for his class?
   b) What if the teacher wants John to put on the play in the school auditorium and sell tickets to parents and others, to raise money for new gym equipment?
   c) Is it against copyright law for him to perform songs for the class during the play?
   d) Is it different when he performs the songs at the school dance?

2. Mrs. E’s grade five art class is learning about famous artists. They learn about the impressionist style of painting and each student tries their hand at creating a picture using techniques of impressionist painters. Some of the paintings are very good. Mrs. E sends them to the local art gallery. The gallery decides to include them in a display. Mrs. E is going to surprise the class by taking them to the gallery when their paintings are on display.

   a) Are the students’ pictures copyrighted?
   b) What do you need to do to have copyright in a work?
   c) Is the display a violation of copyright?
   d) Who would Mrs. E need permission from, according to copyright law?

3. The students in Miss F’s English class are doing a novel study. The book that they are reading is being featured on a radio program. The author is being interviewed and she is going to read from her book. Miss F decides to bring a radio into the classroom and tune in for the program.

   a) Does this infringe copyright law?
   b) What if the program is airing earlier in the day and Miss F tapes it for her class?
4. It is the last week before Christmas holidays. The students in Mr. B's class are finding it very hard to concentrate. Mr. B has taught for many years and he knows that by the last day of school it will be next to impossible to teach the students anything. He makes a deal with students. If they work hard for the first part of the week they will have a party on the last day. They will be allowed to bring treats and games from home. In the afternoon Mr. B will show a video that he has rented from the local video store.

   a) Is it against copyright law for Mr. B. to show a rented video to his class?
   b) What if he showed it to friends in his home?
   c) What if he bought the video instead of renting it, could he show it then?
   d) Why should the law limit where you can show a video you own or rent?

5. Ms. A is teaching a unit on conflict resolution to the three different classes she teaches. There has been a lot of news coverage of increasing violence in schools and bullying. Ms. A shows her class a tape she has made of a news broadcast and an in-depth coverage news program on this topic. She decides to also show a tape of a popular sitcom because the characters in this episode are dealing with bullying.

   a) Can Ms. A show tapes of the news or news programs?
   b) Is it different when she shows the class a program that is not news?
SPOT THE COPYRIGHT INFRINGEMENT

1. All the students in Mr. D’s high school English have to make a presentation to the class on a book or play of their choosing. John, a student in the class, decides he wants to ace this project. He chooses a play and decides he will direct a performance of it for the class. He also goes to great lengths to have the right sound effects. As well as taping some sounds that he makes himself, he decides to play several popular songs, on his guitar, as background for some of the scenes. The presentation goes very well. In fact John plays so well that he is asked to play the songs at the next school dance.

   a) Is it against copyright law for John to perform a play for his class? **No.** CanCopy rules allow students to perform copyrighted work, like a play, for educational purposes.

   b) What if the teacher wants John to put the play on in the school auditorium and sell tickets to parents and others, to raise money for new gym equipment? **John cannot perform the play in this context for the school.** The audience must be primarily students and the performance cannot be for profit.

   c) Is it against copyright law for him to perform songs for the class during the play? **No.** CanCopy rules allow students can perform music without infringing copyright if the music is performed for educational purposes.

   d) Is it different when he performs the songs at the school dance? **Yes.** Music that is performed for social occasions, such as a dance, is not covered by the exception. For a dance the school must have permission for and pay for the public performance of copyrighted music.

2. Mrs. E’s grade five art class is learning about famous artists. They learn about the impressionist style of painting and each student tries their hand at creating a picture using techniques of impressionist painters. Some of the paintings are very good. Mrs. E sends them to the local art gallery. The gallery decides to include them in a display. Mrs. E is going to surprise the class by taking them to the gallery when their paintings are on display.

   a) Are the students’ pictures copyrighted? **Yes.** The students are the original creators of the work.
b) What do you need to do to have copyright in a work? Anyone who creates an original work has copyright in that work. They do not need to register the copyright for it to be valid, although the Copyright Act does create a scheme for registering copyrights.

c) Is the display a violation of copyright? Yes. Public display of a copyrighted work requires the consent of the creator of the work.

d) Who would Mrs. E need permission from, according to copyright law? In the case of school work permission from the student, their parent or guardian and the principal are required.

3. The students in Miss F’s English class are doing a novel study. The book that they are reading is being featured on a radio program. The author is being interviewed and she is going to read from her book. Miss F decides to bring a radio into the classroom and tune in for the program.

   a) Does this infringe copyright law? No. CanCopy rules allow for schools to play music recording, radios and televisions in the classroom. However, it must be done within the school, to an audience of mainly students. The radio, television or sound recording must be for educational purposes and not be for profit or motive of gain.

   b) What if the program is airing earlier in the day and Miss F tapes it for her class? If Miss F was going to tape the program and then play it later she would have to get permission and pay royalties.

4. It is the last week before Christmas holidays. The students in Mr. B’s class are finding it very hard to concentrate. Mr. B has taught for many years and he knows that by the last day of school it will be next to impossible to teach the students anything. He makes a deal with students. If they work hard for the first part of the week they will have a party on the last day. They will be allowed to bring treats and games from home. In the afternoon Mr. B will show a video that he has rented from the local video store.

   a) Is it against copyright law for Mr. B. to show a rented video to his class? Yes. A copyright owner has the right to grant permission for and be paid for any public performance of their work. A school is considered a public place under copyright law.
b) What if he showed it to friends in his home? No. Videos that are rented or purchased from most stores are only licensed for home use, that is for showing in a private residence.

c) What if he bought the video instead of renting it, could he show it then? No. When you purchase a video you are not purchasing its copyright or a license to show it in public.

d) Why should the law limit where you can show a video you own or rent? The purpose of copyright law is to give those who create original works the right to benefit from that work. If anyone could use an original work for any reason without permission or payment there would be little incentive to invest time and energy into creating original works. Copyright law supports the creation of original works by making sure that the creator is rewarded for his/her work.

5. Ms. A is teaching a unit on conflict resolution to the three different classes she teaches. There has been a lot of news coverage of increasing violence in schools and bullying. Ms. A shows her class a tape she has made of a news broadcast and an in-depth coverage news program on this topic. She decides to also show a tape of a popular sitcom because the characters in this episode are dealing with bullying.

a) Can Ms. A show tapes of the news or news programs? Yes. Under CanCopy rules, educational institutions can make a single copy of a news program or a news commentary program. The copy must be made at the time the program is broadcast and can be shown an unlimited number of times for one year. The tape must be made when the program is aired and after one year the tape must be erased or paid for.

b) Is it different when she shows the class a program that is not news? Yes. A single copy of any other television or radio program can made at the time the program is aired. Teachers can take up to 30 days to decide whether they want to use the tape in classroom. If they decide to use it they must have permission and pay for each use. If they decide not to show the program the tape must be erased within 30 days or payment will be required, even if it is not shown.
Objectives: Students will learn about other forms of intellectual property and understand how they can be owned under the law.

Methods: Group Discussion, Reading, Independent research

Materials: “Other Intellectual Property” handout, classic Coke bottle

Procedure:

1. Break class into groups of three to read “Other Intellectual Property”. One student in each group should take responsibility for thinking of at least one example each of Patent, Trademark, and Industrial Design to share with class. As Industrial Design and Patent are more difficult than Trademark, teachers may need to circulate amongst groups to aid students in brainstorming.

2. Discuss “Other Intellectual Property”.

KEY QUESTIONS

Is it ethical to allow patent ownership of forms of life such as genetically modified organisms (GMOs)?

Is it fair that drugs that can save people’s lives are subject to patents, thus reducing their availability?

Identify popular trademarks.

4. To illustrate the concept of industrial design, teachers may wish to bring a glass Coke bottle to show how industrial designs are not meant to affect functionality, but instead to have unique visual properties.

5. Assign “Intellectual Property” research assignment. Teachers may wish to make this a written report, PowerPoint presentation, display, or web page project. Websites of interest for this project include:

   a. The intellectual property law firm of Furman and Kallio’s website: [www.furman-kallio.com](http://www.furman-kallio.com)


   d. The United States government’s Trademark Database: [http://tess2.uspto.gov/bin/gate.exe?f=tess&state=t7qqli.1.1](http://tess2.uspto.gov/bin/gate.exe?f=tess&state=t7qqli.1.1)
OTHER INTELLECTUAL PROPERTY

Copyrights are not the only form of “intellectual property” that can have legal ownership. Trademarks, Patents, and Industrial Designs are all other forms of property that can be given ownership.

PATENTS

Patents, in their most basic form, are the granting an exclusive right to produce or make use of a unique invention. Generally speaking, new products, processes, and chemicals can be patented. This includes genetically modified organisms, or so-called “Frankenfoods”. The patent lasts for twenty years before any other person can duplicate or produce their own version of the invention. There is a trade-off, however. If an inventor patents his or her idea, he or she must submit full details on how this invention is created. The objective is to allow all of society to ultimately benefit from the patent.

Patents take a considerable amount of time to process, as the patent office must carefully research to see if the new invention is...

- a truly new product
- a new use of an existing product
- a better design of an existing product.

Because of this, it is not uncommon to see the phrase “Patent Pending” on products. Patent pending is merely a warning to would-be copycats that while this product is not yet patented, a patent has been applied for.

TRADEMARKS

Trademarks are word, symbols, or designs that are used to signify products in the marketplace. Trademarks have a special significance to certain people and companies because the trademarks are meant to be synonymous with the company it represents. Trademarks can include things such as company names (Nike), corporate logos (the Nike swoosh), and corporate slogans (Nike’s “Just Do It”).

URBAN MYTHS AND THE PATENT PROCESS

A patent will be granted to the first person who files for a patent, not the first person to invent the product. This is part of the basis for the urban myth at the University of Saskatchewan regarding the Thorvaldson Building. According to this myth, Thorbergur Thorvaldson, a chemist at the university, invented a new type of long-lasting cement, but failed to have it patented. When another chemist patented it and made a substantial amount of money, Thorvaldson became a very bitter man. Thus, as the myth says, at his death he was not buried, but instead encased inside the block of his cement placed at the entrance of the Thorvaldson Building on the U of S campus.
While trademarks do not have to be registered to be considered valid, most companies do register them to ensure their ownership, and most companies will go to great lengths to preserve them. Registered trademarks must be renewed every 15 years, and a trademark can be lost if it is not used. As well, trademarks do not necessarily span different product lines. For example, in the 1990s, Atari trademarked a video game machine called “Jaguar” despite the fact there was an automobile company with the same name.

INDUSTRIAL DESIGN

Sometimes confused with a trademark or patent, an industrial design is a unique shape, appearance, or other type of design which is unique to a product. The industrial design must be applied to a finished product, and the only concern is with appearance – functionality would make it a patent. Industrial Designs are valid for ten years, and after this period anybody is free to copy the design, unless it has also been trademarked.

McDonald’s is not the only corporation which works hard to protect its trademarks on food products. In 2001, lawyers from A & W asked Jerry’s Food Emporium in Saskatoon to rename their Bacon Mozza Burger because A & W had trademarked the word “Mozza”. To solve this problem – and gain publicity – Jerry’s Food Emporium declared a “Rename the Bacon Mozza Burger Month”, inviting customers to suggest a new name for their burger. The winning entry was Bacon Mozzatrocity.

The unique shape of the classic Coke bottle was originally filed as an industrial design. However, because the look of the bottle became so well known, it also became a trademark due to its logo-type properties. The bottle’s design has become an icon of the 20th century, and Coca-Cola has designated a webpage to the Coke bottle, that discusses its history and contribution to popular culture, found at http://www.thecoca-colacompany.com/presscenter/presskit_contour_bottle_fun_facts.html.
ASSIGNMENT:

Research a patent, trademark, or industrial design

The purpose of this assignment is to examine in more detail one of the above intellectual properties. You will:

1. Outline the process that must be taken to have the intellectual property registered.
2. Examine the benefits and drawbacks for registering the intellectual property.
3. Explain the renewal process, or expiration dates for rights for the property.
4. Find no less than five examples, preferably recognizable to most people, that exhibit this type of intellectual property.
5. Profile a court case that has taken place over the infringement of these intellectual property rights. The profile should include the plaintiff, defendant, the facts surrounding the case, and the decision reached by the judge.