

# Module 22: Implied Rights of Action

Torts II  
Prof. Eric E. Johnson

Universities shall provide an ice-free path from every parking lot and bus stop to classroom buildings.

- Baja Manitoba Century Code § 582-02

Baja Manitoba Century Code

Title V: Health and Safety

Baja Manitoba Century Code

Title V: Private Obligations

Baja Manitoba Century Code

**Title V: Education**

Baja Manitoba Century Code

**Title V: Education**

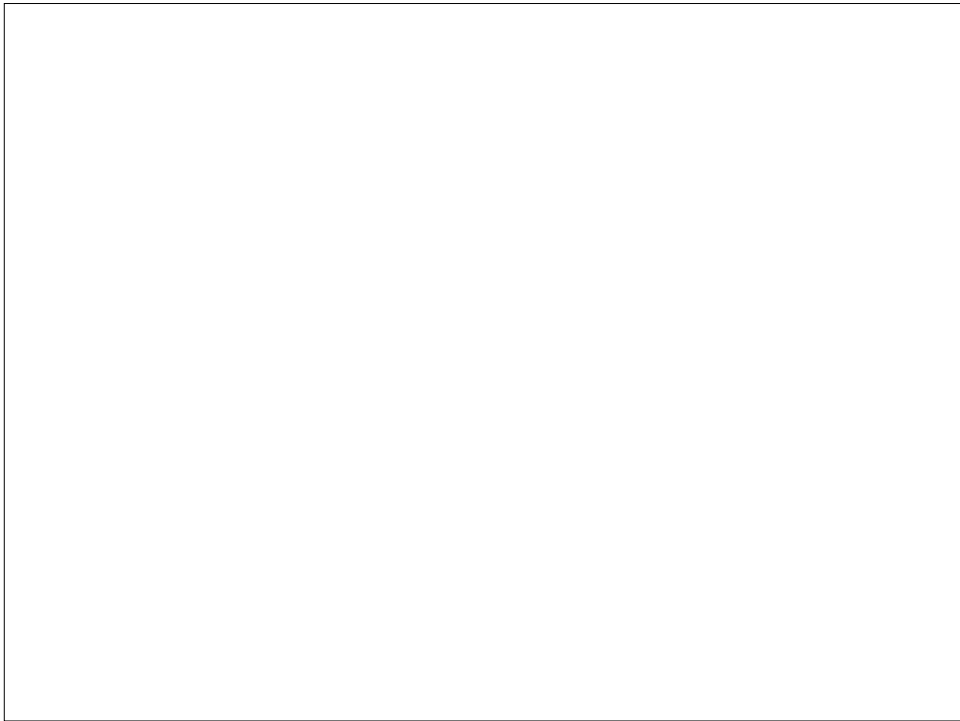
Section 24: Eligibility for Permanent Endowment Funding

For the safety of students,  
universities shall provide an ice-  
free path from every parking lot  
and bus stop to classroom  
buildings.

For the safety of students,  
universities shall undertake all  
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For the safety of students, universities shall undertake all reasonable efforts to provide an ice-free path from every parking lot and bus stop to classroom buildings. Nothing in this section shall be construed to create a private right of action at law.

For the safety of students, universities shall undertake all reasonable efforts to provide an ice-free path from every parking lot and bus stop to classroom buildings. Nothing in this section shall be construed to extend liability to discretionary or policymaking decisions of state agencies.



## Cort v. Ash, 422 U.S. 66 (1975)

- Is the plaintiff one of the class for whose especial benefit the statute was enacted?
- Is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?
- Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?
- Is the cause of action one traditionally relegated to state law, so that it would be inappropriate to infer a cause of action based solely on federal law?

Touche Ross & Co. v. Redington,  
442 U.S. 560 (1979)

- “our task is limited solely to determining whether Congress intended to create the private right of action”

Transamerica Mortg. Advisors, Inc. (TAMA) v.  
Lewis, 444 U.S. 11, 15-16 (1979)

- “The question whether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction.<sup>^</sup> While some opinions of the Court have placed considerable emphasis upon the desirability of implying private rights of action in order to provide remedies thought to effectuate the purposes of a given statute,<sup>^</sup> what must ultimately be determined is whether Congress intended to create the private remedy asserted, as our recent decisions have made clear.”

## General list of questions to ask:

- What was the legislature's intent?
  - Explicit?
  - Implicit?
- Is the plaintiff one of the class for whose especial benefit the statute was enacted?
- Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

## Famous examples of implied rights of action:

- Rule 10b-5
- Title IX

## 15 U.S.C. § 78j

### Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

- (a) (1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. ...
- (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement~, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

## Rule 10b-5

### Employment of Manipulative and Deceptive Practices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- (a) To employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

## 20 U.S.C. § 1681 ("Title IX")

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;