

Canadian Law I: Course Study Guide

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Unit 1: Legal Principles

1.1 Role of Law

What is Law and Why is it Necessary?

- Laws are a system of rules created and enforced by the government.
- These laws govern the social, economic, and political aspect of people's lives, from birth to death.
- Laws can vary in different countries, and even in different areas within a country.
- Laws serve a purpose in society:
 - To preserve order and peace
 - Establish standards
 - Safeguard the rights and liberties of every citizen
 - Resolve disputes between government, businesses, and people
- **The Rule of Law:**
 - Citizens must recognize and accept the law.
 - The law applies equally to everyone, regardless of station or other differences.
 - No one has the right to take away one's rights, except in accordance with the law.
- Some laws are practical and some are moral: e.g. property law is an example of practical law because it governs who is entitled to what and what they can do with what they own. On the other hand, statutory rape laws are moral because majority of society believes it is wrong, but not everyone.
- Ultimate goal of law: ensure justice for all, which means equality does not apply in all situations.
- The law will "treat like cases alike, and different cases differently," so there is justice but not always equality.

1.2 Historical Influences on Canadian Law

Ancient Europe

- Oldest unwritten laws came from Ancient Europe
- Their first law system was known as *wergild*
 - Wergild: a human value system originating in Ancient Europe. The system placed a value (either a dollar amount, or the person's value in food, livelihood, etc.) and if the person was murdered, the debt must be paid for their life.

British Influences

- From the time period 1066-1500, the British came up with their own law system in order to keep civilians in check and punish those who did wrong. Their three forms of trial in deciding who was innocent or guilty were;
 - **Trial by ordeal:** the accused must go through significant torture to determine if they were guilty or innocent. The accused was put through a massive ordeal such as burning with a hot iron, drowning, or starvation. If they survived the ordeal, they were considered innocent because it was believed that God would only save an innocent person.
 - **Trial by oath:** friends of the accused must swear an oath of innocence on the Bible. This system of trial led to modern day witnesses in court, who swear an oath to tell the truth about the events they witnessed.
 - **Trial by combat:** two parties who were accusing each other of wrongdoing would battle it out to determine who was telling the truth. Back then, the two parties would duel with swords and weapons. This concept is what created today's adversarial system, where lawyers of two opposing parties present evidence and "battle it out" in the courtroom.
- Canada's use of the common law system also comes from Britain. This was a British system established by King Henry II, and adopted by Canada.

British Influences: Rule of Precedent

- King Henry II could not govern all of Britain himself, so he appointed *justiciars*.
- Justiciars: justice-seekers, where the word judge comes from.
- His justiciars would travel across Britain, solving disputes and jailing criminals. Because they did not want to apply different laws in different areas and they wanted the process to be fair, the justiciars agreed to decide similar cases with similar punishments.
- Stare decisis: a Latin term from this time period meaning to stand by one's decision.
- This is where the rule of precedent comes from.
 - Rule of precedent: The process of applying stare decisis in deciding the punishments of criminals.
 - Rule of precedent was necessary so that people who committed the same crimes would get the same punishment, and there was no injustice.
 - Justiciars would record what happened in each case to refer back to them later when deciding a similar case.
 - This practice is what ended up becoming common law.
 - Common law: law that is common to all.

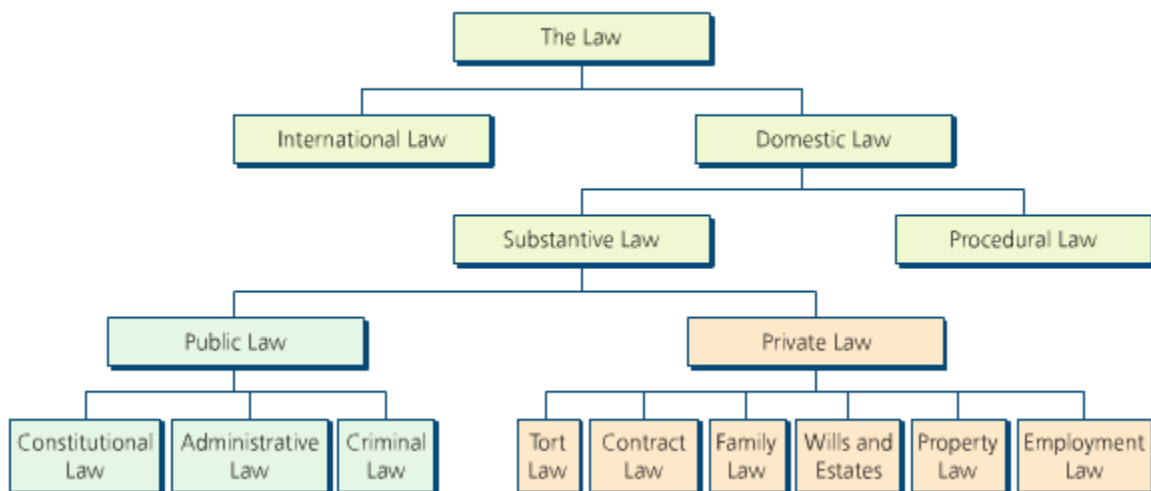
Magna Carta

- The Magna Carta is a charter of rights (civil and political) signed in 1215.
- The Magna Carta was drafted by nobles who wanted to reduce the amount of power of the current tyrannical monarch, King John.
- The document was one of the first to properly establish rights and liberties to people, even though it only applied to the elite in England.
- The main takeaways from the Magna Carta are:
 - Rule of Law: law must be applied equally
 - Habeas corpus: means "you must have the body." This means the accused must have the right to be present in court to defend themselves. This rule was the first of its kind and allowed the accused to have a chance to speak their truth.
 - The right to be tried within a reasonable amount of time: the Magna Carta outlined a very important part of law; for the accused to have a day in court within at least a year, or the case is no longer valid (for minor crimes).

Religious Influences

- The foundations of the Canadian law system come from Britain. In Britain, old laws were based on religion; particularly Christianity and the Bible.
- The Ten Commandments forbade acts like murder, theft, and adultery, which were made illegal in the British system.
- Canada adopted this a long time ago, and some of those laws are still existing today, even though now they are less about religion and more about what is morally right and wrong.

1.3 Categories of Law

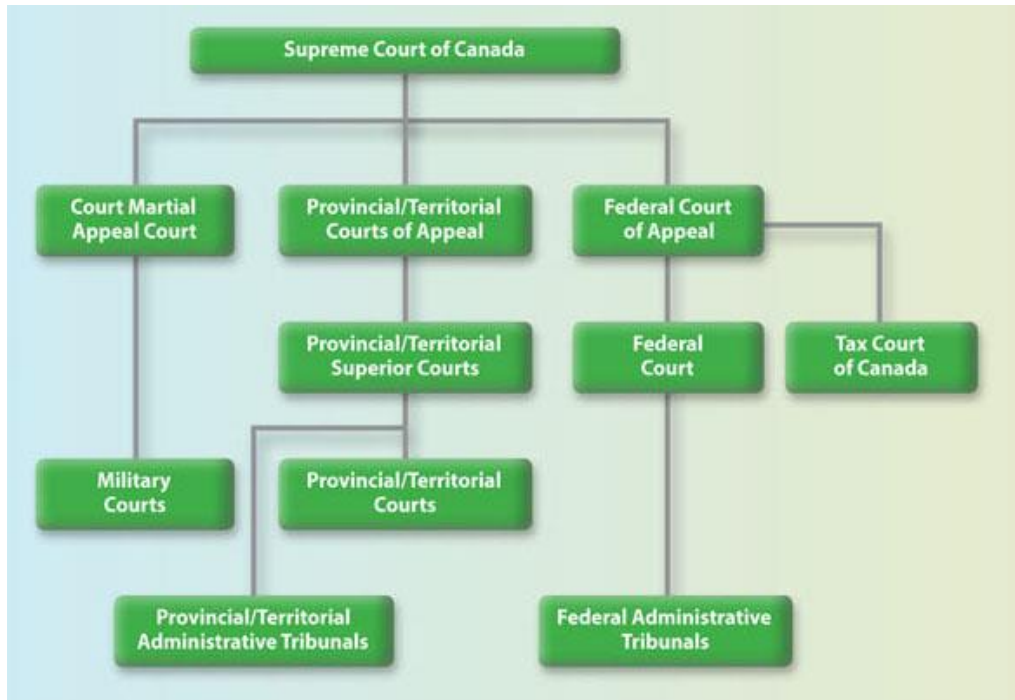


- There are three main types of law under Canadian law: international law and domestic law.
 - **Domestic law:** the laws made in and enforced within Canada's border, also known as legislature. Every other type of law comes under this heading.
 - **International law:** the law that governs the transactions and actions between independent nations (e.g treaties, agreements, borders, etc.). There is no one law making authority for the world as a whole so international laws are created using customs between nations.
 - Signed agreements between nations are considered as powerful and binding as laws.

- Under domestic law is substantive and procedural law:
 - **Substantive law:** law that defines the rights and responsibilities of citizens.
 - **Procedural law:** the law that defines how the law should be enforced legally (e.g lawful arrest).
- Under substantive law is public and private law:
 - **Public law:** governs the relationship between the government and the citizens of the country. The types of law under public law are:
 - Constitutional law: regulates the relationship between a person and the government, as well as the legality of government policies.
 - Administrative law: governs the behaviour of administrative agencies belonging to the government.
 - Criminal law: law that dictates the punishment of individuals who commit crimes.
 - **Private law/civil law:** the area of law that governs the relationship between individual and individual, and individual and businesses.
 - Tort law: one party takes action against a party that has harmed them.
 - Contract law: governs contracts and contract agreements.
 - Wills and estates law: law governing wills, assets, trusts, and inheritance.
 - Family law: law governing domestic relations.
 - Property law: regulates ownership (land, intellectual property, etc.)
 - Employment law: regulates the relationship between employers and employees.

1.4 Structure of the Canadian Court System

- The Canadian court system is made of multiple different branches of courts.
- Different levels of courts have different roles and deal with different cases.
- There are 11 main courts in Canada...



Federal Courts

- Supreme Court of Canada
 - The final appeal court.
 - Nine judges are appointed from major regions in the country.
 - Hears cases from all provinces in Canada.
 - Canadian government can refer to the Supreme Court for its opinion on legal issues.
- Federal Court
 - Intellectual property
 - Maritime law
 - Resolves disputes and cases between provinces and the government
 - Deals with major terrorism cases

- Tax Court of Canada
 - Deals with cases appealed from tax assessments
 - Tax evasion in major companies, businesses, etc.
- Federal Court of Appeal
 - This court hears and reviews the decisions made in the Federal Court and the Tax Court.
 - For most cases in Canada, this is the highest level of court their case will reach.

Provincial and Territorial Courts

- Provincial and territorial courts have three levels; lower courts, superior courts, and courts of appeal.
- These courts hear a whole spectrum of cases, including criminal, financial, and domestic cases and apply the law using common law (law common across Canada).
- Provincial and territorial courts can also be divided into more specific types of courts which deal with specific cases (e.g youth, small claims, and divorce/domestic courts).
- Superior Provincial Courts:
 - This is the highest provincial court in the province or territory.
 - They deal with the most serious of criminal and civil law cases.
 - These courts have the power to review and reverse the decisions made by lower provincial and territorial courts.

Administrative and Tribunal Courts

- Deal with disputes that do not necessarily need to be resolved in court.
- They resolve disputes over interpretation of the law, regulations, employee benefits, and human rights.
- Decisions made in these courts are reviewed by higher level courts.

Martial Appeal and Military Courts

- Formal courts that specifically deal with cases relating to the military.
- National security, army, and serious crimes committed by military professionals.

1.5 Why Laws Change

Religion

- Canadian laws are secular, meaning they do not have a religious basis, but some laws that have been created in the past have been influenced by religion.
- Some of these laws conflict with the religions of Canadian citizens, and therefore must be altered to be more inclusive.
 - Example: Motorcycle driving laws in Ontario used to make it mandatory for everyone to wear a helmet while riding a motorcycle. Sikh men must wear a turban on their heads so a helmet would not be possible. For this reason, the law was altered to make a helmet optional to Sikhs who must wear a turban.

Demographics

- There are constant changes to the demographics, like birth and death rate, education, employment, and immigration. Because of these changes, laws must also adapt as well.
 - Example: in the late 1900's people were moving away from rural areas and moving to more urban areas. More people, especially women, were joining the workforce and the government had to pass new laws to accommodate the new surge in working people. New sanitation, public health, employee rights laws were passed to ensure the workers had a safe and clean place to work.

Changes in Social Attitudes

- As time passes, society's values shift to become more inclusive and forward thinking.
- Issues in society are brought to the government's attention through protesting and lobby groups making them known. The government can change certain laws to tackle these issues.
 - Example: Gay marriage and abortion were once very illegal and there was considerable punishment for these acts. After long years of protest and cries for change, Canada legalized gay marriage and abortion because society's values had changed to now accept these acts.

Technology

- Changes in the digital world have made it easier for people to commit crimes, and have even introduced new wrongful acts that need to be criminalized.
 - Example: In the early 2000's, technology was emerging and becoming more and more advanced. Pedophiles were finding ways of contacting children online on messaging sites like MySpace.

Globalization

- As time goes on, nations become bigger players in the global market meaning Canada has to adjust their international laws (national defense, treaties, trading, etc.) to accommodate those changes.
 - Example: Canada has laws/agreements with the U.S that allows criminals who committed crimes in Canada to return home to their countries to be tried for their crimes in their own country.

National and International Emergencies

- Laws are passed in response to major crises and issues happening around the world.
 - Example: The Covid-19 pandemic has resulted in the border closure of Canada, and many people cannot travel from Canada to the United States and other countries.

Unit 2: Rights and Freedoms

2.1 Human Rights

- **Right:** a legal, moral, or social guarantee that people are granted primarily by the government.
- **Human rights:** a justifiable right every human is entitled to
- The human rights of every Canadian are protected by the law.
- The Canadian Charter of Rights and Freedoms is the document that has every right and freedom a Canadian citizen is guaranteed.
- The Canadian Human Rights Act applies to the federal government, businesses, and crown corporations and ensure that they uphold the rights of Canadians.
- Provinces also have their own human rights codes.
- These codes prohibit discrimination on the grounds of race, age, gender, ethnic origin, and other irrelevant characteristics.

Grounds for Discrimination in Employment

- Every citizen has a right to be treated equally, especially in the workforce but sometimes, the requirements for employment seem harmless but indirectly exclude large groups of people.
 - Example: the police department used to have a height requirement for all of its officers. This seemed like a harmless rule, but that height requirement excluded many women from even being able to consider applying for police jobs (because most women are not very tall).
- This is a type of discrimination known as constructive discrimination and has long been struck down by Canadian courts.
- Some actions are not considered constructive discrimination if they are justified.
 - Examples; affirmative action, having a driver's license as a job requirement, etc

2.2 The Charter of Rights and Freedoms: Fundamental Freedoms

- Section 1-2 of the Charter guarantees the four fundamental freedoms. No fundamental freedoms are absolute, meaning there can and have been limitations placed on them to prevent one person's rights from infringing on another's.
 - Freedom of conscience and religion: you can believe and practice whichever religion you want.
 - Limitations: Some acts which are allowed in certain religions can still be prohibited by the law (e.g polygamy, human sacrifices, etc.).
 - Freedom of thought, belief and expression: everyone has the right to think and express whatever they want without the fear of being silenced.
 - Limitations: Promoting hate speech or threatening someone can result in a charge because under the law, you are inciting violence, hatred, or making a threat to someone's life.
 - Freedom of peaceful assembly: you can gather in groups whenever and with whomever.
 - Limitations: You can't assemble anywhere because of trespassing laws, for example. Another limitation is that if the police deem that assembly unpeaceful, your freedom to assemble is taken away.
 - Freedom of association: the right to associate with whomever without fear of violence or discrimination.
 - Limitations: An example of a limitation would be in the workforce. It is illegal to only hire employees based on certain characteristics because you only want your company to associate with certain types of individuals.

Examples of Fundamental Freedoms Violations

- An employer requesting their employee not come to work with a hijab on or they will be fired -- violating freedom of religion.
- A peaceful protest for climate change is shut down because the government does not want to change its current policies violating freedom of expression.
- Churchgoers assemble in a church every Sunday, but the police tell them one day they are not allowed to anymore -- violating freedom of peaceful assembly.
- The government passes a new law stating everyone must have at least one white friend - violating freedom of association.

2.3 The Charter of Rights and Freedoms: Democratic Rights

- Section 3-5 of the Charter guarantees democratic rights.
 - Every Canadian citizen has the right to vote in a Canadian election and the right to be a part of a legislative assembly, if elected.
 - In Canada, the right to vote is automatic, as soon as you are a citizen, which in most cases is when you are born. But, that right can only be exercised when the citizen becomes of age (18 years old).
 - No elected House of Commons assembly can be in office for more than five years without a re-election. Provincial and federal elections must be called a maximum of every five years.
 - House of Commons members (parliament) must sit a minimum of once every twelve months.
- Some limitations on these rights include...
 - Age: to run for an elected official position, the candidate must be at least 18 years of age.
 - Imprisonment: a person who is currently in jail can vote but cannot run for an elected official position.

2.4 The Charter of Rights and Freedoms: Mobility Rights

- In the past, mobility rights had been a topic of controversy because some provinces would try to limit local residents' ability to move from province to province so they would get available jobs first, and not newcomers. This was a concern because when people were moving away from their home provinces because those provinces had better access to social services, the tax burden on local residents would be increased.
- Section 6 of the Charter guarantees mobility rights, meaning the right to move around as one pleases.
 - Every citizen has the right to enter the country, leave the country, or remain in the country in whichever province they chose.
 - Every person with permanent residence status can move to and take up residence in any province.
- Some examples of limitations on these rights are.
 - A common case where mobility rights come into question is when a parent moves away from his/her family to avoid paying child support, or to pay a lesser amount because the child support amounts are lower in other provinces. This is a situation where a judge might say that the parent cannot move away unless they guarantee they will still pay the amount required in that province. This is because the cost of living is different throughout the country and the amount of money you can survive on in one province might differ from the amount you would need in another.

2.5 The Charter of Rights and Freedoms: Legal Rights

- Section 7-14 of the Charter covers every legal right Canadians are entitled to.
 - Everyone has the right to life, security, liberty, and the right to not be deprived of any of these.
 - Everyone has the right to not be searched or seized without reason.
 - Everyone has the right to not be imprisoned or detained by police on the basis of random choice.
 - When arrested, everyone has the right to
 - Told why they were detained
 - To be told their rights and offered the choice to retain counsel
 - If charged with a criminal offence, everyone has the right to
 - To be informed why without delay
 - To be tried in front of a judge within a reasonable amount of time
 - To not be compelled to be a witness against themselves
 - To be innocent until proven guilty
 - To not be denied bail without a good reason
 - To be free from double jeopardy (being tried for the same offense twice)
 - Everyone has the right to not be put under any cruel treatment.
 - Everyone has the right to have to have to prove anything or provide evidence.
 - If the accused does not understand the language, they have the right to using an interpreter.

2.6 The Charter of Rights and Freedoms: Equality Rights

- Section 15 of the Charter guarantees equality rights.
- This clause of the Charter was also more controversial and debated because many provinces did not agree with why it had to be added to the Charter because citizens were already protected from discrimination in the provincial human rights codes.
- In this section, the phrase “equality before and under the law” means people will have access to this protection in court (before the law) and discriminatory laws will be abolished (under the law).
 - Every Canadian citizen is equal under before and under the law and benefits equally from the law without discrimination based on
 - Mental or physical disability
 - Sex or gender
 - Race
 - National or ethnic origin
 - Age
 - Religion
- Limitations:
 - Age: age is a discriminatory factor that is not considered discrimination in every situation. For example, an 8 year old cannot go to university not because of discrimination, but because they would not have the academic requirements.

2.7 The Charter of Rights and Freedoms: Language Rights

- Sections 16-22 of the Charter cover language rights of every Canadian citizen.
 - The two official languages of Canada are French and English, and both can be equally used in the Parliament and government of Canada.
 - All Parliament documents must be published in both of the official languages.
 - Everyone has the right to use English or French in public debates or Parliament meetings.
 - Any services provided by the Canadian government must be offered in both English and French.
 - Everyone has the right to use English or French in court.

2.8 The Charter of Rights and Freedoms: Minority Language and Education Rights

- Section 23 of the Charter deals with minority education and language rights.
 - Everyone whose first language is French has the right to have their children educated in French.
 - Everyone who has received their education in French has a right to have their children educated in French.
 - Everyone who has a child already receiving an education in French has a right to have their children educated in French.
- The best example of this section of the Charter is French schools in Canada and French immersion programs available to every student in Canada.

Unit 3: Civil Law

3.1 Civil Law Overview

- Civil law: the area of law that deals with relationships between individuals
- These individuals include...
 - Business vs government
 - Business vs business
 - Business vs person
 - Person vs government (**governments rarely ever sue individuals)
 - Person vs person
- The key players in a civil law case are
 - **Litigants**: the official name for the parties (plaintiffs, defendants)
 - **Plaintiff**: the party that is taking legal action
 - **Defendant**: party which legal action is taken against
 - **Next friend**: an adult who represents a minor in court that wants to sue
 - **Guardian ad litem**: the adult who represents a minor being sued

Balance of Probabilities

- A balance of probabilities is when evidence is weighed to see whether the plaintiff or the defendant's story is more probable
- By determining who the balance of probabilities is more in favor for, the courts can decide who is likely guilty

Stages of Civil Action

- Before a judge can make a final decision in a case, there are many long tedious stages that the parties must go through. Many people decide to settle their disputes outside of court because of how long and expensive the process is.
 - **Stage 1-writ of summons:** the first step is for the courts to issue a document called the writ of summons. This document informs the defendant that they have been summoned to court because the plaintiff is taking legal action against them.
 - **Stage 2-statement of claim:** after the defendant has been made aware of the claim, the courts issue a statement of claim which explains exactly what the plaintiff's claim is and what remedy they are seeking from the defendant.
 - **Stage 3-statement of defence:** this document comes from the defendant, which basically explains their side of the story.
 - **Stage 4-counterclaim:** this is an optional step that can be taken by the defendant. This counterclaim says that the defendant denies any responsibility for the plaintiff's loss or damages and the defendant believes the plaintiff is actually either partially or fully responsible.
 - **Stage 5-examination for discovery:** before the actual trial, both parties have the chance to take part in an examination for discovery. The purpose of this is so that they can ask each other questions and lawyers can question witnesses. This step is the last before the actual trial and it is necessary because it takes away the element of surprise before the real trial.
 - Almost all civil law claims end at this stage because they either find that there is no case or the parties decide to settle out of court.

3.2 Tort Law

- Tort: french word that means harm or wrong. In the legal system, a tort case is when a plaintiff has been injured or has experienced losses at the hands of the defendant and wants to seek a civil remedy.

Types of Torts

- **Unintentional torts:** a defendant's careless actions cause the plaintiff injuries/damages, but the defendant had no general intent to cause harm.
 - **Negligence** is a common type of unintentional tort. Someone accused of negligence did not mean to harm the plaintiff but knew their actions could cause harm. Negligence could also be the omission of an act that causes harm, when you should have known not doing this act would cause harm (e.g a mother lets her child go to the playground with no winter coat or gloves and the child freezes to death. That would be a case of negligence because she indirectly caused the child's death by not doing something.
- **Intentional torts:** a defendant's careless actions cause the plaintiff injuries/damages, and the defendant had the intent to cause harm.

Types of Damages/Compensation

- **Pecuniary damages:** damages that can be calculated in a dollar amount based on how much the plaintiff claims they lost
 - Examples: lost wages, the cost of car damages, etc.
 - No limit on the amount a plaintiff can receive
- **Non-pecuniary damages:** loss that does not involve money and is difficult to quantify in a dollar amount
 - Examples: pain, trauma, distress, emotional suffering, mental health, etc.
 - The dollar amount compensated to the plaintiff is decided by the judge based on precedent (past similar cases)
 - The maximum amount a plaintiff can get in non pecuniary damages is \$350,000, although that number slightly increases throughout the years.

- **Special damages:** compensation for damages that come directly out of the plaintiff's pocket.
 - Examples: medical bills, prescriptions, therapy, etc.
- **Punitive damages:** specific monetary compensation for malicious conduct on the defendant's part.
 - Examples: defamation, false imprisonment, assault, etc.
- **Nominals:** minimal to no monetary compensation
 - A nominal is when the plaintiff receives little or no monetary compensation for their loss, they simply took the defendant to court to prove they were right.

Types of Liability

- **Product liability:** manufacturers owe a certain standard of care to their customers and they have to make sure their products meet that standard. If they don't, consumers can sue the manufacturer for products that were faulty and caused them injuries (e.g chemicals, breaking apart and causing injury, etc.)
- **Occupier's liability:** people who own or occupy property must maintain that property. If they don't and someone hurts themselves because of that property being under maintained, the injured party can sue and the occupier will be held responsible.
 - **Allurement:** anything on someone's property that attracts children and can become a hazard. The most common example is swimming pools in backyards. A homeowner with a swimming pool in their backyard must make sure it is either covered or gated when not in use so people do not accidentally drown.
 - **Hosts:** people who host guests and serve them alcohol. Once you serve alcohol to people in your home, you owe them a responsibility to make sure they don't get into accidents/injure themselves because of their intoxication because you, as the host, will be held responsible.
 - **Commercial hosts:** businesses that serve alcohol to customers. To do this, a business must have a license or they could be in serious legal trouble.
- **Vicarious liability:** employers can be held responsible for the actions of their employees.

- **Strict liability:** in a case of strict liability, an act or activity is so dangerous, that there is no defence possible for it in court and the defendant will always be held 100% responsible, and their only chance to avoid jail time is to try and mitigate the damages.
 - An example of a strict liability offence is statutory rape. It does not matter if the accused had the intent or not, they cannot defend themselves with common defenses like intoxication or duress.

Defenses to Tort Cases

Even if a defendant is found to be liable, they can still use a defence in court to try and lower the amount of money they have to pay. There are four common defenses in tort cases...

- **Contributory negligence:** the defendant can either prove they fulfilled their responsibility or they had no responsibility in the first place. In some cases, the defendant can try to prove that the plaintiff caused their own injuries and there is no case.
- **Voluntary assumption of risk:** the defendant can prove the plaintiff voluntarily participated in the activity causing their injuries, knowing full well they could possibly get hurt.
 - Example: signing up for high contact sports is a voluntary assumption of risk.
- **Inevitable accident/act of God:** the defendant can prove the accident was not their fault and they could not have prevented it or it was an act of God meaning they could not do anything about it (e.g bad weather causing a car crash).
- **Valid explanation:** the defendant can try and argue that there is a valid explanation for the accident.

3.3 Contract Law

Types of Contracts

A contract is a legally binding agreement made between two or more parties. Here are some specific types of contracts:

- **Bilateral contract:** an exchange contract where the two parties agree to give or do something for each other.
 - Most contracts are bilateral.
- **Oral contract:** a spoken contract where the parties agree verbally.
 - Must be a witness present to validate this kind of contract.
- **Written contract:** a contract where the terms are written down and the two parties sign their agreement.
- **Implied contracts:** a contract between two parties where the agreement is indicated through both parties conduct.
 - Example: a shake of the hand indicates the agreement has been made.
- **Express contracts:** a contract where the terms have not been fully agreed upon by both parties.

Elements of a Contract

- The offer:
 - The offeror in the contract is giving and the offeree is receiving
 - The offer must be made with intention, both parties must be aware of the agreement.
 - Offer must be communicated in some way.
 - Statute of limitations: the offer expired when a certain amount of time lapses, and a counteroffer can then be made.
- Acceptance:
 - For an offeree to accept the contract, the offer must still be active.
 - Acceptance has to be communicated to the offeror.
 - Acceptance must be made with intention.

- **Consideration:**
 - Consideration is the value exchanged between the two parties.
 - Past consideration: value exchanged after one party has held up their side of the contract.
 - Present consideration: value exchanged at the time the contract is made.
 - Future consideration: value exchanged after the contract is formed.

Invalidating Factors

There are many factors that can make a contract invalid and therefore useless.

- **Capacity:**
 - In order to agree to a contract, all parties must have the capacity to understand the terms of the agreement and the ability to perform the contract. Minors and people with a mental disability cannot sign into contractual agreements.
- **Legal purpose:**
 - A contract must have legal purpose and cannot contradict any public policies (e.g. you cannot make a contract with someone promising to pay them a thousand dollars if they commit murder).
- **Mistake:**
 - If a mistake is made in the wording of the agreement, the contract is invalid. There are a few kinds of mistakes parties could make...
 - **Common mistake:** both parties made the same mistake.
 - **Mutual mistake:** both parties are mistaken but made different mistakes.
 - **Unilateral mistake:** one party is mistaken and the other does not know.
- **Misrepresentation:**
 - When one party makes an untrue statement that causes the other party to want to enter into the agreement in the first place.
- **Duress:**
 - Unlawful pressure to enter into the contract.
- **Undue influence:**
 - If there is a special relationship between the parties where one party has more power over the other, a contract cannot happen between them.

- **Unconscionability:**
 - A contract between a weaker party and a stronger one where the contract agreements are weighted in favor of the stronger party is an invalid contract.

3.4 Family Law

- Family law: the area of law that deals with all domestic relations.
- Family law is mostly dealing with marriage, children, and issues that come between a family.

Custody of Children and Child Support

- When a couple decide they do not want to be in a relationship anymore, a number of important issues arise, such as child custody (if they have children).
- When they cannot decide who gets responsibility over their children, they take it to court for a judge to decide.
- **Custodial parent:** the parent given custody of the child(ren)
- When one parent has custody of a child, the other parent is usually still allowed to spend time with their child.
- **Sole custody:** a judge decides that only one parent should have custody of the child the whole time.
- **Shared custody:** both parents essentially take turns
- All parents legally have to provide for their children until they reach a certain age.
- When two parents separate, they decide themselves or with a judge how much money the non custodial parent pays to support the child (child support).

Family Assets

- Family assets: property and items that a couple acquire during their marriage. When the relationship is over, these assets must be divided.
- Homes are usually the largest asset. A house cannot be divided between two people so one spouse keeps the home while the other pays an equivalent to make the payments equal.

Marriage

- In order to marry the legal way, both parties must have the mental capacity to understand what they are doing.
- People getting married must also do it of their own free will or else it is not legal.
- **Mistake of identity:** if there's a mistake of identity about who the person is marrying, the marriage is not valid.
- Age is also a big factor in marriage because people under the age of 18 cannot get married. The age of marriage with parental consent goes down to 16.
- **Consanguinity:** you cannot get married to certain people who are related to you such as your sibling, cousins, parents, or close extended family.
- Bigamy and polygamy is when the one person is married to two or more people at the same time, which is illegal in Canada.
- **Consummation:** a marriage is completed as soon as the couple have sexual intercourse after the marriage.
- **Annulment:** when a court declares a marriage was invalid and never existed.
- When a marriage is coming to an end, one spouse can file a petition for divorce, meaning they want to divorce the other.
- The Divorce Act of Canada encourages mediation between divorced couples so they can reduce the amount of time and money they spend in court.

Unit 4: Criminal Law

4.1 Foundations of Criminal Law

- Crime: an act that is illegal and punishable under law.
- There are three conditions that must be present for an act to be considered a crime:
 - The action is considered felonious by society as a whole.
 - The action can or has caused harm to society.
 - The action has caused serious harm and a remedy must be sought.
- The area of law that prohibits certain acts that cause harm to society is called criminal law.
- Criminal law protects people, their property, and ensures there is a standard of public decency amongst citizens.
- The body of laws that observe criminal law is called the Criminal Code of Canada.

Elements of Crime

- To convict the accused of a crime, it must be proven that the accused had two elements, actus reus and mens rea.
 - Actus reus: “guilty action”, the physical act of committing a criminal offence.
 - Mens rea: “guilty mind”, the intent to commit a criminal offence.
- Intent and motive also contribute to the accused’s mens rea.
 - Intent: the state of mind in which the person wants to commit a crime.
 - Motive: the reason why someone might be motivated to commit a crime.
- To prove the accused had the intention (mens rea), the Crown can prove the criminal shows willful blindness, negligence, or recklessness.
 - Willful blindness: choosing to overlook the obvious and commit a crime anyway.
 - In court, the accused cannot say they did not know the law as a defence.
 - Negligence: not doing something that harms another
 - Recklessness: reckless actions that cause harm

Involvement in Crime

- **Perpetrator:** the person who commits the crime.
- **Parties to an offence:** anyone who helps the perpetrator commit the crime.
- **Abetter:** anyone who encourages the perpetrator to commit the crime.
- **Aider:** anyone who physically aids the perpetrator (best example: getaway driver).
- **Counselling:** anyone who provides advice or counselling to the perpetrator.
- **Accessory after the fact:** anyone who assists the accused in escaping from the police.
- **Party to a common intention:** when multiple come together to commit a crime and end up committing another, they are held responsible for all crimes, together.
- **Conspiracy:** when two or more people come to an agreement to commit a crime.

4.2 Criminal Offences

Levels of Offences

In the Criminal Code of Canada, there are three levels of criminal offences:

- **Summary conviction:** small offences with minor penalties
 - A fine of up to \$2000
 - Maximum 6 months imprisonment
- **Indictable offence:** more serious crimes
 - Maximum penalties (from a minimum of 5 years (tax, fraud) to a maximum of life)
 - Charged individuals can post bail before a trial
- **Hybrid/dual offence:** an offence that can be either indictable or summary, the Crown decides per case and somewhat based on precedent

Types of Offenses - Offenses Against a Person

Offences against a person are crimes where a person is threatened, killed, or injured.

- **Homicide:** indirect or direct murder of a human being.
 - Culpable homicide: a murder where the accused is held criminally responsible
 - Non culpable homicide: death caused by accident, the accused cannot be held criminally responsible
- **Murder:** the killing of another human being with intention
 - First degree murder: pre mediated, deliberate murder
 - Second degree murder: murder with intention, but not pre mediated
- **Infanticide:** the murder of a newborn by his or her mother
- **Manslaughter:** unintentional murder
- **Assault:** threatening or injuring another human being
 - Level one assault: intentional application of force against a person
 - Assault with a weapon: threatening or injuring someone with a weapon.
 - Aggravated assault: endangering the life of another person
 - Sexual assault: non consensual sexual touching
 - Three levels of sexual assault, sexual harassment is the lowest level, rape being the highest level

Offenses Against Property

- **Theft:** taking property without the owner's permission
 - Theft over \$5000-indictable offence
 - Theft under \$5000-hybrid offence
- **Robbery:** theft involving violence or the threat of violence
- **Breaking and entering:** breaking into property and committing an indictable offence once inside

Drug/Laundering Offences

- **Possession:** having narcotics and other substances on you with the knowledge of having it
- **Trafficking:** selling or administering narcotics and other substances
- **Money laundering:** transferring money to conceal the illegal source it came from

Other Offences

- **Mischief:** destroying property or data
- **Fraud:** intentional deceit in order to lose the other money, property, or services
- **Prostitution:** soliciting sexual acts for money
- Disorderly house: keeping a home for prostitution where the keeper of the home gets a cut of the prostitutes pay

4.2 Legal Defences

Rights of the Accused

- The Crown has to prove beyond a reasonable doubt that the person had both the actus reus and mens rea to commit the crime.
- The accused has the legal right to defend themselves or have a lawyer defend on their behalf.
- They are three main arguments the accused may employ:
 - Completely deny committing the crime (no actus reus)
 - Argue they had no intent to commit a crime (no mens rea)
 - Try and give reasons why they committed the crime to mitigate the damage

Defence #1: Alibi

- Argument that the accused was never even at the crime scene when the crime happened, therefore they cannot even have committed the crime
- This is the strongest legal defense the accused can use because if there was no actus reus (physical action of committing a crime), there is no case.

Defence #2: Automatism

- Automatism is an action that is done involuntarily, meaning the person doing the action does not have control over what they are doing because they are in a state of impaired consciousness.
 - **Insane automatism:** when someone with certain, specific mental health issues commits a crime unknowingly in a state of impaired unconsciousness (example: someone in a state of psychosis commits murder, they are not responsible)
 - **Non insane automatism:** regular body actions that we have no control over (example: sneezing, sleepwalking, etc.)
- If the accused claims automatism as their defense, it eliminates the mens rea (intent) of the crime.
- Therefore, the accused can be declared not criminally responsible (NCR).

Defense #3: Intoxication

- The accused claims they did not have the intent to commit a crime because they were intoxicated and could not control their own actions
- Eliminates the intent so the accused will not get a maximum penalty but can still be found guilty.

Defence #4: Self Defence

- Argument that the accused had to use force to defend themselves
- If the force is found to be excessive, this defence cannot be used

Defence #5: Battered Woman Syndrome

- Battered woman syndrome is a mental condition caused by continuous and daily domestic violence.
- After being abused by a spouse for so long, a woman can develop this syndrome and might suddenly lash out and injure or kill her spouse. She can then use this as defense in court.

Defence #6: Necessity

- Accused argues that they had to commit a crime because they were in a dire situation
- This defence can only be used in a situation where the danger is imminent.
- Example: man speeding on the highway trying to get his wife to the hospital before she gives birth.

Defence #7: Duress

- The accused claims they were threatened to commit a crime against their will

Defence #8: Mistake of Fact

- An honest mistake, the accused did not know they were committing a crime (example: someone takes a bike which is not theirs, but looks exactly like their own)

Defence #9: Entrapment

- The accused claims a police officer tried to induce them to commit a crime
- Coercing by a police officer

4.4 Sentencing

- Sentencing in Canada is the responsibility of the CSC (Corrections Services Canada)
- Each criminal is treated individually in the sentencing process
- Judges are responsible for the amount of years each person gets, and they must provide a written and oral statement explaining why the person has that many years.

Sentencing in The Criminal Code

- Minimum and maximum sentences can range for each crime
- The judge has to consider past cases and factors that aggravate or mitigate
 - Aggravating factors: factors that increase the severity of a crime
 - Mitigating factors: factors that lessen the severity of a crime

- The purpose of sentencing:
 - Deterrence: deter others from committing crimes
 - Separation: separate the criminals from society
 - Rehabilitation/reparation: compensation for crimes for the victims and rehab for criminals
 - Promotes responsibility: society : can change future actions

Types of Sentencing

- **Absolute discharge:** no terms to discharge
- **Conditional discharge:** terms for discharge
- **Suspended sentence:** probation and discharge might be revoked if the criminal has bad behaviour
- **Fines:** maximum of \$2,000 for summary offences and no limit for indictable offences
- **Life imprisonment:** criminal would be able to apply for parole after serving 7 years
- **Imprisonment under 2 years:** criminal can apply for their sentence to be decreased
- **Imprisonment under 10 years:** criminal can apply for parole after serving $\frac{1}{3}$ of their sentence
- **Imprisonment over 10 years:** criminal can apply for parole after serving $\frac{2}{3}$ of their sentence

Image Sources

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