

All About Law Text – Chapter 1 Notes Organizer
 Law – Its Purpose and History

Term / Key Point	Definition and/or Description
Democracy	Sec. 1.1, pg. 3, ¶13 "...democracy which means that its citizens elect law makers who make laws that suit the majority of [citizens]"
Lobby	Sec. 1.2, pg. 4, ¶13 A special interest group that works to pressure/influence the government to change or enact particular laws which are to the advantage of the interests they represent.
What IS a Law (3 characteristics that distinguish it from a rule)	Sec 1.2, pg. 4, ¶11 - 3 Laws: <ol style="list-style-type: none"> i. Applies to all members of society at all times ii. Is a rule created and enacted by a government iii. The freedoms and rights of citizens are limited by the requirement to not engage in behaviours prohibited/forbidden by established laws. Violation of laws incur consequences administered by government authorities. vs. Rules – <ul style="list-style-type: none"> • Only apply to the organization which created them and their members under given circumstances • May or may not involve various levels of punishment • May occur in addition to laws (i.e. an assault within the context of a professional/amateur sports event could incur both legal and organizational consequences. Also of note: <ul style="list-style-type: none"> • Laws reflect the values and priorities of a society, therefore they are often specific to a country, province/territory/region or municipality. • Laws change over time to reflect social dynamics, economic realities and technological advances • Laws are not absolute – they are established by law makers who represent voters, and they are interpreted by representatives of the justice system • Knowledge of the law is incumbent on the citizen, ignorance of the law is not a defence.
Five Functions of Law	Sec 1.2, pg.5 ¶12 – pg. 6 ¶1 <ol style="list-style-type: none"> 1. <u>Establishing Rules of Conduct</u> – reducing or eliminating conflicts that arise in a society, 2. <u>Protecting Rights and Freedoms</u> – Enforcement of consequences 3. <u>Protecting Rights and Freedoms</u> – Ensuring people are not forced to do things that may be against their best interests 4. <u>Settle disputes and disagreements</u> - Peacefully and fairly 5. <u>Protecting People</u> – from harm and dangerous situations

*Procedural
Law*

Sec 1.3, pg. 7, ¶12

“The process of law”

- ❑ Outlines the steps involved in protecting the rights provides/established under substantive law.
- ❑ It’s basically a checklist of how to ensure you are both following the law and accessing your rights as a citizen or resident.

*Substantive
Law*

Sec 1.3, pg. 7 ¶12 – pg. 8 ¶12

“The substance of the law”

- ❑ All laws that list the rights/freedoms and responsibilities (duties and obligations) of each citizen/resident.
- ❑ There are no rights and freedoms that do not also entail responsibilities to society as a whole and/or specific other members of society.
- ❑ Is divided into **public** and **private** law.

*Private / Civil
Law (List and
explain the 5 parts)*

Sec 1.3, pg. 8 ¶13 – pg.9 ¶16

“Outlines the legal relationships between private citizens and between private citizens and organizations like corporations”

- Is also sometimes referred to as “civil law”.
- In Private/Civil law cases, there is no Crown attorney. Each person is represented by a lawyer (although in some circumstances, individuals can choose to attempt to represent themselves)
- The person who brings the action/lawsuit (aka is making the accusation) is referred to as the **plaintiff** (or complainant, but that term is more commonly used in the USA. The root work for both is the same as for the word “complain”).
- The person accused, or against whom the lawsuit/action is filed is referred to as the **defendant**.
- Unlike in criminal law, where the Crown attorney must prove guilt beyond reasonable doubt, in civil law, the plaintiff has to prove that:
 - The defendant is at fault for the basis for the action/lawsuit
 - The defendant has caused damage or some sort of harm to the plaintiff
 - The defendant must provide evidence to dispute the claims of the plaintiff
 - The judge decides which perspective offers the most accurate and believable interpretation of events (the balance of possibilities).
- It IS possible for a single action to result in BOTH criminal AND civil charges.
 - Whichever case is ready first is usually heard first.

Subsets of Private / Civil Law:

1. Family Law

- a. Deals with relationships between people living as spouses/partners and/or between parents and their offspring.
- b. May include issues of common law relationships, marriage, separation and divorce, support payments, custody of dependants and division of shared property.

2. Contract Law
 - a. Dealing with the requirements for legally binding agreements and the rights and responsibilities involved for the contracting parties.
 - b. If someone does not fulfill the terms of the contract, they are “in breach of contract” and the legal agreement is broken.
 - c. Even something as simple as purchasing something in a store is a form of contract.
3. Tort Law
 - a. Deals with the wrongs (other than those based on breach of contract) that one citizen perpetrates on another citizen.
 - b. Negligence is often the basis for actions under Tort Law
4. Property Law
 - a. Property law controls the use, enjoyment of, dissemination/disbursement of, purchase and rental of property.
 - b. Property is anything that has cash value, including intellectual property (ideas, art etc.)
5. Labour Law
 - a. Governs the relationships between employers and employees
 - b. Governs such issues as minimum wage, pay equity, safe working conditions, worker’s compensation, and legal dismissals.

Public Law

(List and explain the 3 parts)

Sec 1.3, pg. 7 ¶4 – pg.8 ¶2

“Controls the relationships between governments and the people who live in a society.”

1. Criminal Law

- Crimes as established by Parliament
- In Canada, many crimes and their legal punishments are described in the *Criminal Code*
 - i. Subsets include things like the *Young Offender’s Act* and/or the *Controlled Drugs & Substances Act*
- Intended to deter potential offenders, punish those who have committed an offence and to protect society at large.
- As a citizen or resident you may come into contact with the justice system in one of several roles:
 - i. You might be victimized in a crime
 - ii. You might be accused of a crime (called the **defendant**)
 - iii. You might be called to serve as a member of a jury during a trial
 - iv. You may be called upon to testify if you are a witness of a crime and/or you have expertise that may be relevant during the investigation/trial of a crime.
 - v. You may be a professional in the justice system (including but not limited to being a law enforcement officer, lawyer, law clerk/paralegal,, judge, justice of the peace)
 - vi. It is the obligation of the attorney representing the government, who is Canada is referred to as the Crown attorney, to prove the guilt of the accused (defendant) beyond reasonable doubt.

2. Constitutional Law

- ❑ Limits the powers of the government at the federal (across the country), provincial (or territorial) and municipal (city) levels.
 - i. The laws that cover these aspects of society are found in the *Constitution Act of 1982* (the year that Pierre Elliott Trudeau repatriated the constitution from the monarchy of Great Britain)
 - i. The head of the Canadian government is still the Monarch of Britain (currently Queen Elizabeth (Windsor) II of England, and we remain a member of the British Commonwealth.

3. Administrative Law

- ❑ Controls the relationships between citizens and government agencies
 - i. Gov't agencies include but are not limited to:
 - a. Liquor control boards that manage the sale and retail rights for alcoholic beverages
 - b. The CRTC (Canadian Radio-Television & Telecommunications Commission which regulates broadcast licences, cell phone, telephone and cable service rates and laws.

History of Law

Sec 1.4, pg.10 ¶1

- Customs and traditions (often religious) were often the basis for early systems of law
- Many early legal systems were quite complex
- Many early legal systems were developed in societies where the primary form of record keeping was oral (memorization was key, and knowledge keepers were highly respected and valued)
- As social groups increased in size, and rulers had to govern more and more people and centralized power, they also wanted to centralize a consistent and permanent structure for laws to be used throughout governed areas.

The Code of Hammurabi (including the 4 elements present in current Canadian Law)

Sec 1.4, pg.10, ¶1 – pg.11 ¶2

- ❑ First known system of law that was recorded in writing.
- ❑ Done under the rule and at the behest of King Hammurabi of Babylonia (modern day Iraq) approx. 3800 yrs ago
- ❑ A set of approx. 300 rules encoded so that all citizens could access and understand them
- ❑ Written on columns of stone (one of which, unearthed in Susa, Iran in 1901 is currently part of the collection at the Louvre Museum in Paris, France)
- ❑ “Codification” – the process of preparing and recording a society’s laws
- ❑ Basis for punishment was the belief in the importance of retribution (“An eye for an eye, a tooth for a tooth.”)

Elements in common with modern Canadian Law:

- i. Codified (written down) for consistency
- ii. Organized into subsets (i.e. property law, criminal law, trade law)
 - a. Laws served to protect citizens, particularly those who might be victimized
- iii. Detailed the specific consequences of violating laws
- iv. Serious offences which might result in drastic punishments had to be ruled on by more than one individual

- a. in Canada, although we have not had the death penalty since July 14, 1976 – Bill C-84 (with some crimes against national safety still being eligible for the death penalty up until 1997) serious crimes must be heard before a jury of the accused’s peers, and/or cases may go to levels of court (the Supreme Courts) where multiple judges preside over hearing the case and ruling on the outcome.

Mosaic Law

Sec 1.4, pg. 11 ¶3 – pg.12

- ❑ Similar to the Code of Hammurabi in tone and content
- ❑ Several centuries later, in what is now Israel
- ❑ Moses, who was the individual who, according to the Judeo-Christian Bible, introduced monotheism to the previously polytheistic tribal Judeans (for whom Yahweh was only one of several gods), agreed to a covenant (a holy agreement) on behalf of the people who would follow him and learn from him.
 - The Mosaic Laws are based on the Ten Commandments, which, according to the Biblical telling, Moses heard from Yahweh when the man journeyed to the top of Mt. Sinai to ask for guidance
 - It is a very strict code of law that calls for harsh corporeal and even capital punishments

Justinian Code

Sec 1.4, pg.12, ¶1 – 3

- ❑ Established in Ancient Rome under the rule of Byzantine Emperor Justinian (527-564 CE)
- ❑ Encoded 1000 years of Roman law
- ❑ Rome had the first ‘lawyers’ as we think of professionals whose purpose it was to interpret and argue the law, rather than simply being judges
- ❑ The Justinian Code included both ancient and new (at the time) laws and opinions (interpretations)
- ❑ Focused on the idea of “fairness” – that all people be treated equally under the law regardless of their wealth and economic or political influence. This was a ideal that was not often functionally achieved.
- ❑ Centuries later, Napoleon Bonaparte of France revised the Justinian Code upon which French law had been based and established the Napoleonic Code (1804)
 - Known as French Civil Law
 - Due to the fact that Napoleon’s Empire conquered much of Europe in the early 1800s, this legal structure became the template for many legal systems in modern Europe.
 - Law in the province of Québec is still based upon the Napoleonic Code, which was brought to North America by French settlers.

Rule of Law

Sec 1.4, pg. 17, ¶2-4

- ❑ Canadians are governed by “the Rule of Law”
 - Every dispute must be settled by peaceful means, either by discussion, negotiation, or by due process.
- ❑ Establishment of “Rule of Law” was part of the signing of Magna Carta which was drafted in response to the power abuses, particularly by King John of England (1199 – 1216)
 - The key point of Rule of Law in that document was that no one, regardless of their position in society, up to and including the monarch

(at that point, the highest level of power in England) was above the law or exempt from the consequences of breaking the law.

- This included the fact that a ruler (or in modern times, government) could not restrict the freedoms of their people without legal basis and they could not change those rights/freedoms or the laws without the consent of the people.
 - In modern Canadian government, the “consent of the people” is achieved by having elected representatives speak on behalf of their constituents when laws are up for consideration in legislatures/parliament.

Precedent

Sec 1.4, pg. 14, ¶3 – 6

“...something that has been done before that can later serve as an example or rule”

- By treating similar cases alike, judges set a standard
- Introduces a degree of stability and predictability into the interpretation of law by judges, particularly if/when a case is appealed.
- It is important that using precedent accurately reflects current realities

Common Law / Case Law

Sec 1.4, pg. 15, ¶1 – 2

The process of recording and publishing legal decisions for public access

- Each recorded case is assigned a title (citation) which includes the following:
 - Names of plaintiff(s), accused (defendant)
 - Year of the judge’s decision
 - Volume number, name of reporter where case is recorded, series, and page number
 - Jurisdiction and court in which the case was heard
- Citation elements are similar in type for both criminal and civil citations but the details will differ

Habeas corpus

Sec 1.4, pg. 17, ¶3

The right of any person arrested for imprisoned for a crime to appear before the court in a reasonable amount of time.

- If found to have been held unlawfully, the accused could be released
- If there is in fact a basis for the accusation, the accused should expect a timely trial in front of a jury of their peers (equals)

Statute Law

Sec 1.5, pg.18, ¶3 – 4

Statutes are laws established and codified by Parliament

- Could be codified from decisions made in common law
- Allows the government to adapt laws or add laws to deal with new circumstances in society (i.e. new laws became necessary once the internet was widely accessible)
- Ensures that codified laws are widely known and make available for the public to access

*British North
American
Act (BNA),
1867*

Sec 1.6, pg.19, ¶1

The first constitution passed by British Parliament, for what was at the time the British Colony that was established after the British fought the French for control of land they had taken (by force and broken treaty) from First Peoples in what we now call Ontario, Québec, Nova Scotia (New Scotland) and New Brunswick.

- ❑ Passed on July 1, 1867 which is why there is a national observation of Canada Day on July 1st
- ❑ This version of the constitution offered limited freedom for what was still a British colony:
 - Canada could not make treaties with any other countries – that happened as part of British foreign affairs.
 - If / when Britain declared war, Canada was also automatically at war (as was the case with WWI in 1914)
 - The highest court of law remained in Britain – so if someone wanted to appeal a decision of a Canadian court, they might have to travel across the Atlantic to do so – a boat voyage of several weeks.

*The Statute
of
Westminster
1931*

Sec 1.6, pg. 19, ¶2

A law (statute) passed by the British Parliament in 1931 that allowed Canada to have control over foreign affairs.

Further changes:

- ❑ 1949 – saw the establishment of a Supreme Court in Canada, the highest court in the land.
- ❑ The Constitution Act 1982 – repatriated the ability to amend the constitution to the Canadian government rather than leaving it with the British Parliament where it had rested for over a century. Signed on April 17, 1982 in Ottawa, Canada, Pierre Elliott Trudeau representing Canada as the Prime Minister of the time, and Queen Elizabeth (Windsor) II of England representing Great Britain.
 - This version of the Act included not only the new amending formula but also the Canadian Charter of Rights and Freedoms
- ❑ NOTE: The Canadian Head of State is **STILL** the Monarch of Great Britain.
 - The Monarch is represented in Canada in the person of the Governor General. GG is proposed by the PM and approved by the Monarch.
 - The GG must be consulted by the Parliament for the following:
 - Confirmation of elected Party Leaders to the position of Prime Minister
 - Before Parliament can be prorogued
 - To obtain Royal Assent to bills passed in Parliament and the Senate (a bill is not a law until this Royal Assent has been granted)
 - To dissolve Parliament prior to an election
 - Open and close Parliamentary sessions (fall and early summer) At the opening the GG reads the Speech from the Throne as prepared and provide by the Prime Minister
 - To make certain judicial and diplomatic appointments
 - To go to war, because the GG is the Commander in Chief of the Canadian Armed Forces (all branches)

*Constitution
Amending
Formula*

Sec 1.6, pg. 19, ¶14

Agreement finally reached between the federal and provincial/territorial governments establishing the requirements for amending the Constitution Act

- Was reached in 1981
- Was ratified when Pierre Elliott Trudeau and Queen Elizabeth (Windsor) II of Great Britain signed the Constitution Act of 1982 (still in effect)
- In order for changes to be made to the constitution act, any amendment needs the following:
 - The agreement of the Canadian Parliament (Members of Parliament representing 338 electoral districts which are determined based on population density)
 - The agreement of two thirds of the provincial/territorial governments whose provinces/territories collectively represent at least 50% of the Canadian population

*Federal
Powers under
the Constitution*

Sec 1.6, pg.20, ¶13 and chart

Jurisdiction (authority to make and enforce laws in particular arenas) of federal gov't: (Section 91 of the Constitution Act)

- Peace, order and good government (of the country as a whole)
- Criminal law
- Unemployment insurance
- Banking, currency and coinage
- Federal penitentiaries (prisons)
- Marriage and divorce
- Postal services
- Aboriginal peoples and their lands *

*Provincial
Powers under
the Constitution*

Sec 1.6, pg.20, ¶13 and chart

Jurisdiction (authority to make and enforce laws in particular arenas) of provincial/territorial gov'ts: (Section 92 of the Constitution Act)

- Properties and civil rights
- Marriage ceremonies
- Police forces and provincial courts
- Highways and roads
- Provincial prisons
- Hospitals

*Municipal
Powers*

Sec 1.6, pg.20, ¶13

Municipalities are cities, villages, towns, townships, counties etc.

Laws for municipalities are referred to as "by-laws".

- Garbage collection / waste management
- Emergency services
- Water Services
- Night-time noise
- Parking
- Building permits and land use
- Animal regulation (i.e. pets, livestock in town etc.)

*Federal
Branches of
Government*

Note: Canada is a Constitutional Monarchy – the Head of State (the Monarch – King or Queen – of Great Britain has powers that are guided and limited by the elected Members of Parliament.

Executive

- a.k.a. What most people are referring to when they say: "Government"
- The decision making branch of government
- Made up of:
 - The Monarch (currently Queen Elizabeth (Windsor) II of Great Britain – this individual, King or Queen, is the Head of State of Canada.
 - The Governor General (currently Julie Payette, astronaut. Formerly David Johnston, Michaëlle Jean, Adrienne Clarkson, et. al.)
 - The Prime Minister (currently Justin Trudeau, formerly Stephen Harper, Pierre Martin, Jean Chretien, et. al.)
 - The Cabinet (Ministers of specific areas of governmental oversight/concern, assigned to their portfolio – i.e. education, environment, veterans affairs, Aboriginal affairs, etc. – by the Prime Minister whose job it is to advice the Prime Minister and the Governor General on issues related to those areas of politics).

Legislative

- The Law-making branch
- Made up of:
 - The Senate
 - Upper level of Parliament
 - Members are appointed by the Governor General on the advice of the Prime Minister
 - Intended to be the "body of sober second thought" to review the laws passed by the House of Commons (the Lower level of Parliament) and to ensure that there is regional representation in both levels of Parliament.
 - Seats are assigned on a regional basis
 - Senators may serve until they are 75 years of age
 - Senators may be affiliated with a political party (i.e. the Liberal or Progressive Conservative parties) or they may be non-affiliated (of no particular party) or Independent (in the Senate to provide a non-partisan perspective).
 - The House of Commons
 - The Lower level of Parliament
 - Currently –
 - 338 seats
 - Liberal Party of Canada Majority (170 seats needed for a majority, LPC currently holds 179)
 - Official Opposition = Progressive Conservative Party of Canada with 96 seats
 - Parties with official status – Liberal Party of Canada, Progressive Conservative Party of Canada, New Democratic Party of Canada

- Parties without official status (not enough seats) – Green Party of Canada, Bloc Québécois, Cooperative Commonwealth Federation, People’s Party

☐ Process of passing a law:

- **House of Commons:**
- First Reading:
 - A Cabinet Minister or Private Member introduces a bill to the House of Commons
 - There is a first vote among the MPs (Members of Parliament)
- Second Reading
 - Bill is re-introduced, any edits are pointed out
 - Bill is debated among MPs
 - Second vote
- Committee Stage:
 - Bill may be sent to either a:
 - Select Committee (selected MPs with expertise in the area related to the Bill)
 - Standing Committee (a group of MPs who regularly meet on a particular arena of politics)
 - House Committee (the entire House of Commons)
 - The Bill is studied in detail, amendments are made as necessary
 - Each section of the bill may be voted on separately
- Report Stage:
 - The Committee reports back to the House/Chamber on the results of their examination process.
- Third Reading
 - Bill is briefly debated once again.
 - Third vote taken
- **The Senate:**
 - Repeats the Three Readings and Committee stages of the House of Commons among member of the Senate.
 - A “second, sober look”
 - Can send a Bill back to the House of Commons for amendments but can also “kill” a Bill (it will not become law).
- **The Governor General:**
 - After the final copy of the Bill (with the exact same wording) passes both the House of Commons AND the Senate, it goes to the Governor General (or their chosen representative).
 - Once the GG signs the Bill, giving it Royal Assent (agreement) it becomes binding law in Canada.

Judicial

- ☐ Series of independent courts that interpret the laws as passed by the other two branches of the Federal Government.
- ☐ The highest court in Canada is the Supreme Court of Canada but the judicial branch also includes military courts, provincial and territorial court systems, tax courts, and administrative tribunals.

Globalization

(define and list 3 causes)

Sec 1.8, pg.22, ¶4

- ❑ Transformation of the world from largely independent nations to an international community of autonomous nations connected by trade agreements, military and political alliances, communication and economic structures like mega corporations.
- ❑ The process of globalization can be traced to three key roots:
 - The end of the Cold War between the East and the West and the increasing power of organizations like the United Nations
 - Increasing trading alliances
 - The electronic and information revolutions
- ❑ Has social, economic, political and legal implications for all countries

International Law

Sec.1.8, pg.23, ¶1

Governs the relationships between states

- ❑ In international law a “state” is defined as:
 - An independent country
 - A sovereign (independent) government, that can enter into treaties and agreements with other states
- ❑ Has three types of law:
 - Customary law (non-encoded laws based on historical practice) and based on the concept that states have certain basic rights and obligations:
 - Sovereignty: authority of a state over its own territory without interference/to the exclusion of other states.
 - Recognition: acknowledgement by other sovereign states of the autonomy of the nation in question
 - Consent: States are governed by international law after they have given consent to observe international laws and participate in the international community under shared expectations of rights and responsibility. This cannot be a result of coercion.
 - Good Faith: States are expected to conduct their affairs with reasonableness and common sense.
 - Freedom of the Seas: No state can claim ownership of the high seas (areas beyond the coastline of their territory). This applies to the high seas themselves, the air space above the high seas and the seabed under the high seas with due respect for the interests of all nations.
 - International Responsibility: a state that does not meet an agreed upon obligation has committed a wrongful act and may face penalties (including but not limited to compensation) under international law.
 - Self-Defense: states do not have the right to threaten or use force against other states but they do have the right to defend themselves against the hostile actions of other states.
 - Humanitarianism: Respect for the interests of all humankind. This may include providing relief in the event of disasters, or support to developing countries.
- ❑ In Canada these are often matters of Foreign Policy and funding.

Sec. 1.8, pg.24, ¶15 – pg.26, ¶12

Treaties are binding written agreements entered into freely by states; treaties spell out the rights AND obligations of these states in relation to each other.

- Bilateral – two states in a treaty (i.e. Canada has Investment Protection agreements with Cameroon, Hong Kong and Mali – each of which is specific to the needs and connections between Canada and the other state that is party to the Treaty. So the Investment Protection Treaty with Hong Kong may be similar to but not precisely like the one with Mali, and neither treaty impacts the other).
- Multilateral – more than two states entering into treaty with each other (i.e. the Paris Accord)
- Charters – establish international organizations like the United Nations
- Conventions – treaties established among multiple states and to which all countries can become partners
- Protocols – treaties that add to earlier treaties on the same topic

Five Steps of Treaty Making

1. Negotiate precise content and wording of the treaty
2. Formally sign the treaty – this is done by state leaders/heads of state
3. Ratify – this commits all signatory states to follow the treaty and comply with consequences
4. The treaty comes “into force” – when a specified number of states ratify the treaty (how many that is depends on the treaty, the number of states involved, the terms etc.)
5. Implement and enforce the treaty, including implementing consequences for non-compliant signatories (i.e. brings suits one state against the other, establishing embargos, sanctions, tariffs etc., removal of support)

What areas of international interaction do treaties address?

- Territory
- Diplomatic law and diplomatic immunity
- Protections of Nationals Abroad
- Extradition and Asylum
- International trade
- Arms control

“Resolutions” are not as legally binding as treaties but may serve as a building foundation for later treaties and/or help establish common cause among nations.

*Alternative
Dispute
Resolution
(ADR) (3 types
and describe)*

Section: Issue “Mediation: Can It Replace the Courts?”, pg.32-33

Alternative Dispute Resolution (ADR) offers supplementary or alternative options to the regular court system or in relation to it in order to:

- better meet a variety of community needs,
- to mitigate backlog in the justice system
- and to reduce the costs of courts and incarceration

3 Types:

- Negotiation: two parties communicate to build consensus
- Mediation: a third party helps two parties in dispute reach a consensus
- Arbitration: a third party (an expert) listens to both parties and makes a decision