

**Western University**

**Law and Economics**

**Lecture 2**



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**What is law?**

- a binding custom or practice of a community : a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority  
– Merriam-Webster Dictionary -



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**A thought experiment**

- Imagine in the Lockean state of nature, there was no state, no government, and no human society. Does this mean that there was no law in the state of nature?
- The answer is no. There were still laws in the state of nature: people still knew what was wrong and what was right. We can call these laws *natural laws* or *moral laws*.
- The problems were that, first, there was not an impartial tribunal to enforce the laws; second, different people might have different understanding of the laws (although after careful and rational public deliberation and discussion people could agree on the basic laws).



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## A thought experiment

- These two problems, in turn, created several more direct problems for human life.
  - First, there was no order but too much confusion.
  - Second, there was no justice because those physically strong and powerful oppressed those physically weak and powerless.
  - Third, there was no justice in another sense: like cases were not treated alike.
  - Finally, there was no economic efficiency because there was too much uncertainty for efficient economic activities.



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## What are functions of law?

- provide a way to resolve disputes peacefully
- help to ensure a safe and peaceful society
- carry out social policies
  - workers compensation,
  - unemployment act
- help to ensure fairness
  - ensure that stronger groups and individuals do not use their powerful positions to take unfair advantage of weaker groups or people.



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## Common law vs. Civil Law

- **Common-law tradition**
  - Great Britain
  - US (except Louisiana)
  - Canada (except Quebec)
  - Australia and New Zealand
- **Civil-law tradition**
  - Continental Europe
  - Asia
  - Africa
  - Central and Latin America



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## Sources of law

- **Common law**

- was based on the decisions of judges in the royal courts. It evolved into a system of rules based on “precedent.” Whenever a judge makes a decision that is to be legally enforced, this decision becomes a precedent: a rule that will guide judges in making subsequent decisions in similar cases.



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## Sources of law

- **Civil law**

- It is based on Roman law -- consolidate all the laws into a single book to avoid confusion. Civil codes, such as the Code Napoléon in France, contain a comprehensive statement of rules, many of which are framed as broad, general principles, to deal with any dispute that may arise. Unlike common-law courts, courts in a civil-law system first look to the Code, and then refer to previous decisions for consistency.



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## Organization of court proceedings

- **Common law**

- The **adversarial system** is the system of law that relies on the skill of each advocate representing his or her party's positions and involves a neutral person, usually the judge, trying to determine the truth of the case.

- **Civil law**

- An **inquisitorial system** is a legal system where the court or a part of the court (the judge) is actively involved in determining the facts of the case.



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## Court system

- Hierarchical structure
  - Trial court
  - Appellate court
  - Supreme court
- Federal vs. Provincial courts
- <http://www.scc-csc.gc.ca/home-accueil/index-eng.asp>
- <http://www.ontariocourts.ca/>
- <http://www.canlii.org/en/>
- [Canada's System of Justice](#)



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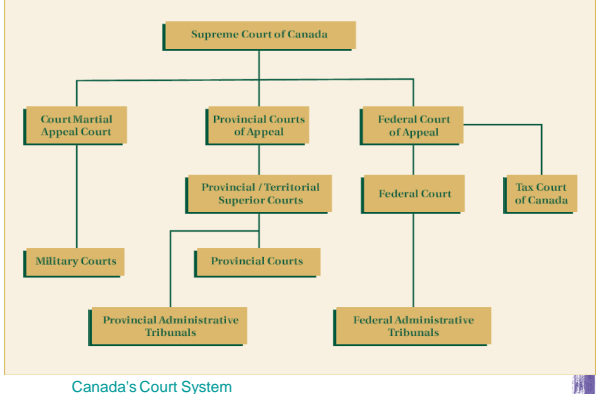
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## Outline of Canada's Court System



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## THE UNITED STATES FEDERAL COURTS

### SUPREME COURT

UNITED STATES SUPREME COURT

### APPELLATE COURTS

**U.S. Courts of Appeals**  
12 Regional Circuit Courts of Appeals  
1 U.S. Court of Appeals for the Federal Circuit

### TRIAL COURTS

**U.S. District Courts**  
94 judicial districts  
U.S. Bankruptcy Courts  
**U.S. Court of International Trade**  
**U.S. Court of Federal Claims**



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## Evolution of a legal dispute

- Dispute
- File a complaint (sue) – plaintiff
  - Statement of claim and remedy
- Defense – defendant
- Discovery
  - to clarify the claim against the defendant and to let each side examine the evidence that the other side intends to use in court.
- Settlement
- Trial
- Appeal



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## Trial

- Throughout the trial, the judge must make sure that all the evidence presented and all the questions asked are relevant to the case.
- The defendant may have a right to a trial by judge and jury. In such cases, the jury must decide which version of the facts it believes. The judge decides what law applies. At the end of the trial, the judge will explain the evidence and the relevant laws to the jury. The jury must then consider the matter and reach a verdict.



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## Trial - continued

- If the defendant is found to be not legally responsible or liable on a balance of probabilities, the judge will dismiss the case. If the defendant is found liable, the judge or jury must consider the remedy that the plaintiff asked for in the pleadings, the facts, and the authority to grant specific relief before deciding how to compensate the plaintiff.



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## Standard of proof

- Preponderance of evidence
- Clear and convincing evidence
- Beyond a reasonable doubt



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## Remedies

- Monetary remedies, called "**damages**," are the most common.
  - Compensatory vs. punitive damages
- **Declaratory remedies** state the rights of the parties.
  - The court's decision on the ownership of personal property or land is declaratory.
- Some remedies require a person to do or not do something.
  - An **injunction** can prohibit someone from doing something, such as annoying his or her neighbors by burning garbage.
  - Another remedy that requires a person to do something is known as "**specific performance**." This is most commonly applied when the defendant has breached a contract with the plaintiff.



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## Roy Pearson v. Custom Cleaners

- Roy Pearson is the former D.C. administrative judge who sued the Chungs, his drycleaners, demanding \$54 million because of the troubles he supposedly suffered after his suit pants were misplaced.



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## Roy Pearson v. Custom Cleaners

- DC Superior Court Judge Judith Bartnoff ruled that Roy "Pant-less" Pearson is entitled to nothing. "Based on the foregoing, the Court finds that the plaintiff is not entitled to any relief whatsoever on his claims under the CPPA, Counts One and Four of his Amended Complaint.
- The Court's analysis of the plaintiff's CPPA claims applies as well to his claims of common law fraud in Count Two of the Amended Complaint. The plaintiff acknowledges that he is required to prove those claims by clear, convincing and unequivocal evidence. He has not proven those claims by a preponderance of the evidence, let alone by that higher standard. Judgment therefore will be awarded to the defendants, as well as their costs."



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## After the judgement

- Although the Korean immigrant couple who owned the dry cleaners prevailed in court, the financial toll taken by the two-year legal battle forced Soo Chung and Jin Nam Chung to sell their business in September.
- After incurring public ridicule and the scorn of the legal community, Pearson lost something else besides his dignity: his job. In October, the D.C. Commission on Selection and Tenure of Administrative Law Judges decided not to reappoint Pearson (his term had already expired), concluding that he "did not demonstrate appropriate judgment and judicial temperament."



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## How legal rules evolve

- *Bufferfield v. Forrester*
- *Davies v. Mann*
- *British Columbia Electric Railway Co. v. Loach*



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## Basic assumptions of economic analysis of law

- 1) Rational agents  
cf. A reasonable person
- 2) Pursuing self-interest
- 3) Social welfare – efficiency



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## For the most part, we'll be judging laws and legal systems on basis of **efficiency**

- Not Pareto-efficiency, but a more intuitive notion
- Efficiency – the total value of what society creates and consumes
- Posner: "wealth-maximizing"
- Simplest way to think of it: efficiency is maximizing the overall size of the pie, without regard for how it is divided up



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## Pareto Efficiency

- A situation is Pareto efficient if resources are allocated in such a way that it is impossible to make anyone better off without making someone else worse off.
- A Pareto improvement takes place if some people can be made better off and no one is made worse off.



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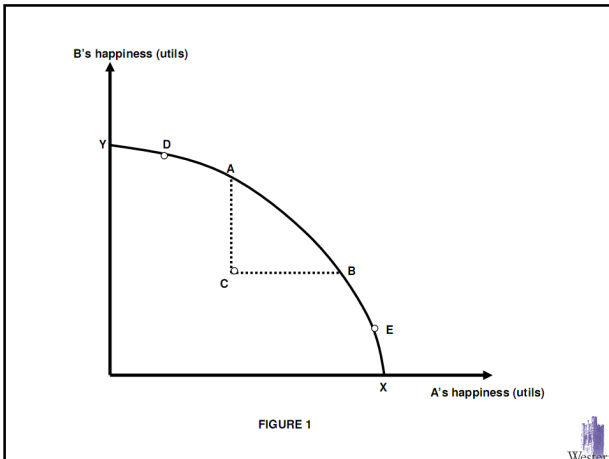
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**Potential Pareto improvement  
(Kaldor-Hicks Efficiency)**

- A potential Pareto improvement takes place if the gainers have gained enough to be able to fully compensate the losers and still be better off.

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**Efficiency may conflict with other notions of “good” outcomes**

- A law can be efficient but very unequal
  - Laws favoring businesses over consumers, or rich over poor, may turn out to be efficient, but may not be morally desirable

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