

Exam Review

Chapter 1

Business Law – a set of established rules governing commercial relationships, including the enforcement rights.

Law – set of rules and principles guiding conduct in society

Breach of contract – failure to comply with a contractual promise

Contract Law – rules that make agreements binding and therefore facilitate planning and the enforcement of expectations

Litigation – the process involve when one person sues another

Mediation – a process through which the parties to a dispute

Civil vs. common law

- Civil law is based on a comprehensive code
 - (e.g. Quebec, parts of Europe)
- Common law is based on previously decided cases
 - (e.g. Canada, U.K., U.S., Australia)

Chapter 2

Government of Canada Branches:

- Legislative
 - Creates law in form of statutes and regulation
- Executive
 - Formulates and implements law
- Judicial
 - Adjudicates on disputes

Sources of Law

- Constitution
 - The Supreme of Canada that constrains and controls how the branches of government exercise power
- Statutes/Legislation
- Common Law/Case Law
 - Rules that are formulated in judgements
 - End product of disputes that come before the judiciary
 - **Precedent** – using a previous case to resolve a current case based on similarity
- Royal prerogative

- o Historical rights and privileges of the Crown, including the right to conduct foreign affairs and to declare war

Constitutional Conventions - important rules that are not enforceable by a court of law but practically determine how government exercises a given power

Statute Law - formal, written laws created or enacted by the legislative branch of government

Jurisdiction - the power that a given level of government has to enact laws

- **Exclusive** - one level of government hold entirely on its own and not a shared basis with another level
- **Concurrent** - shared jurisdiction between levels of government

Paramountcy - a doctrine that provides that federal laws prevail when there are conflicting or inconsistent federal and provincial laws

Classification of Law

- **Domestic Law** - internal law of a given country, includes both statute and case law
- **International Law** - law that governs relations between states and other entities with international legal status
- **Substantive Law** - laws that defines rights, duties, and liabilities
- **Procedural Law** - the law governing the procedure to enforce rights, duties, and liabilities

Public Law vs. Private law

- Public Law - areas of the law that relate to or regulate the relationship between persons and government at all levels.
- Private Law - areas of law that concern dealings between persons

Common Law vs. Civil Law

- Common law refers to judge-made laws
 - o Bases private law on judicial decisions
- In civil law, judges use the civil code for general principles to be applied to the case

Constitution Law

- s. 91 - Federal Jurisdiction
- s. 92 - Provincial Jurisdiction

- Customs and Conventions
- International Treaties
- Charter of Rights and Freedoms

Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

- (a) Freedom of conscience and religion;
- (b) Freedom of thought, belief, opinion and expression;
- (c) Freedom of peaceful assembly; and
- (d) Freedom of association.

Other rights and freedoms include:

- Democratic rights
- Language rights
- Mobility rights
- Legal rights
- Equality rights

Limitations on the Charter rights and freedoms:

- Only applies to government (s. 32)
- The “notwithstanding clause” (s. 33)
- Reasonable limits (s. 1)

Legislation

- Federal or Provincial
 - (Not municipal)
- Takes precedence over case law
- Subordinate to the Constitution

Civil Litigation

1. Jurisdiction
2. Pleadings
3. Discovery
4. Trial
5. Judgment
6. Enforcement

Alternative Dispute Resolution

- Negotiation
- Mediation
- Arbitration
- Private Court

Chapter 4

Negotiation - both parties discuss their difference and attempt to reach a mutually agreeable resolution

Mediation - a third party assist the parties in reaching a settlement

Arbitration - a third person appointed by the parties makes the decision.

Plaintiff - the party that initiates lawsuit

Defendant - the party being sued

Four Stages of Litigation

1. **Pleadings** - *plaintiff files a claim about the dispute*
2. **Discovery** - *plaintiff must provide proof of the injustice and defendant must find evidence to defend its case*
3. **Trial** - *formal hearing before a judge the will give a binding decision*
4. **Decision** - *the resolution of the case*

Chapter 5

Contract - an agreement between two parties that is enforceable in a court of law

Agreement - an offer to enter into a contract and acceptance of the offer

- Complete
 - Deliberate - *both parties must want to enter into contract*
 - Voluntary
 - Between two or more competent persons
 - Supported by mutual consideration - *each party must give and receive something with value*
 - Not necessarily in writing
- ❖ Contract law is facilitative - *allows participants to create their own rights and duties within a framework of rules that a judge will later enforce*

Chapter 6

Contact comprises four essential elements:

1. An offer
2. An acceptance
3. Consideration
4. Intent to contract

Offer - a promise to perform specified acts on certain terms

Invitation to treat - an expression of willingness to do business

Standard for contract - "take it or leave it" contract where customer agrees to a standard set of terms that favours the other side

Termination of Offer

- ❖ Revocation - *withdrawal of an offer*
- ❖ Lapse - *the expiration of an offer after a specified or reasonable period*
- ❖ Rejection - *refusal to accept an offer*
- ❖ Counteroffer - *the rejection of one offer and proposal of a new one*
 - o *Any change to a term of an offer such as price, quantity, time of delivery, or method of payment*
- ❖ Death or insanity

Acceptance - an unqualified willingness to enter into a contract on the terms in the offer

Consideration - the price paid for a promise

Gratuitous promise - a promise for which no consideration is given

Pre-existing legal duty - a legal obligation that a person already owes

Promises Enforceable without Consideration

- ❖ Seal
- ❖ Promissory estoppel - *a doctrine whereby someone who relies on a gratuitous promise may be able to enforce it*
 - o Party A promised not to rely on Party B
 - o Party B relied on the promise and changed its position
 - o Party B own conduct have been above reproach (no threats)
- ❖ Partial payment of a debt
 - o *If the creditor agreed to receive a lesser amount for the debt and debtor pays, then the creditor cannot go back on his/her word and ask for full payment*

Rebuttable Presumption - one party displace the presumption by proving the lack of intent to contract

Chapter 7

Express term - a provision of a contract that states a promise explicitly

Judicial Interpretation of Express Terms

- ❖ Vague or Ambiguous Language - *If the terms are not clear or the words used are hard to understand*
 - o *It is not enforceable*
- ❖ Implied Terms - *a provision that is not included in the contract but it necessary to give effect to the parties' intention*
 - o Business Efficacy
 - o Customs in the Trade of the Transaction
 - o Previous Dealings between the Parties
 - o Statutory Requirements

Entire Contract Clause - term in contract where parties agree that their contract is complete as written

The Parol Evidence Rule

- ❖ Entirely oral
- ❖ Entirely written
- ❖ Both oral and written
- ❖ *A rule that limits the evidence a party can introduce concerning the contents of the contract*

Conditional Agreements - used when one party wants to incur contractual obligations but only under certain circumstances

- ❖ Conditions subsequent - *an event or circumstances that, when it occurs, brings an existing contract to an end*
- ❖ Conditions precedent - *an event or circumstances that, until it occurs, suspends the parties' obligation to perform their contractual obligations*

Chapter 8

Voidable Contract - in certain circumstances, an aggrieved party can choose to keep in force or bring to an end

Void Contract - a contract involving a defect so substantial that it is of no force or effect

Legal capacity - the ability to make binding contracts

- ❖ Duress - *threats that are made that forces a party in a contract*
- ❖ Undue Influence - *unfair manipulation that compromises someone's free will*
- ❖ Unconscionability - *when one party takes advantage of the weaker party to form a contract*

