

1. WHAT IS LAW? To understand the need for law in society:

Law is a set of rules and guidelines by which a society has come to accept as a way of living and conducting itself. The governing body of a society then applies and enforces those rules and guidelines.

Law is a system of rules and regulations that govern a community and enforced by a political authority and its legal system.

Black’s Law Dictionary, pub. 1891:

“A system of principles and rules of human conducts, being the aggregate of those commandments and principles which are either prescribed or recognized by the governing power in an organized jural society as its will in relations to the conduct of the members of such a society, and which it undertakes to maintain and sanction and use as the criteria of the actions of such members”

2. THE LAW OF THE LAND. To become familiar with the process by which law developed:

Origins: It is in the nature of people to organize themselves into groups that live and work in secure communities.

Specialization of skills over time forced greater interaction and dependency between people. This greater interaction required rules and regulations to maintain order within community by providing: Security of each member and Certainty for future planning.

In some communities, these rules developed as customs or traditions. In others, they were written down (ex. Hammurabi Code engraved in a stone column).

Early homogenous communities needed simple laws.

Over time, laws needed to be more complex because: Population growth, Technological advancements and Immigration Patterns.

3. To identify the role of law in the community:

The role of law in society today:

- Ensure security: It has an important peace-keeping function through which it minimizes disruptions of the equilibrium in society. It does this by providing for punishment of those who seriously disturb our social order. Also, enables those who suffer loss or damage because of the conduct of others, to obtain compensation.
- Enforce standards of conduct: It tells people what kind of behaviour is not acceptable, thereby reducing friction between citizens.
- Maintain status quo: The standards of conduct stated in the law remain in force until changed by the lawmaking authority (population, religious leader, military, dictator).

Who decides the law: the community through custom and tradition, an Elder or the “wisest” man of the community, a Ruler and conqueror of lands or through democracy.

Law serves to regulate behaviour and to say what is right or wrong, the law is designed to allow maximum freedom to everyone, while still providing harmony in the community.

4. To distinguish the substantive law from the adjectival law:

Civil Code contains rules of law that explain the substantive law

- SUBSTANTIVE Law: The part of the law where we find the “substance” of our rights. What our rights and obligations are? But it does not say how to exercise them.

Once aware of rights, Quebec Code of Civil Procedure will say how to proceed (use rights) with the law.

- ADJECTIVAL Law: Contains the procedures enabling us to obtain what is rightfully ours. How do we exercise these rights and obligations?

THE 5 W’s:

- Why? Somebody (ind. or group) owes you money or an obligation and refuses to perform. So ENFORCE your RIGHT TO BE PAID or HAVE WORK DONE but this is done by bringing to court.
- What? Start legal proceedings with intention of having a judge listening to my reasons of why opposite party should perform and asking judge to order to fulfill it. (How to start it: Exchange of documents between parties that explains demand and

- denial of both parties. After having detailed arguments of each parties, both parties present themselves in court, to argue/plead cases before judge.)
- Who? Outside the court, parties are referred to as: CREDITORS and DEBTORS
 - Creditors: Files a claim against the debtor – the one who is owed something (i.e. claim can be monies, goods or services, a results of civil liability – damage from who’s fault due to actions/inactions)
 - * There can be multiple creditors and multiple debtors who are affected by the claim
 - Debtor: A person who owes money, services, or goods to someone – Creditor

When CREDITOR takes legal action against the DEBTOR, their names change...

→ Creditor – Plaintiff: A creditor who takes legal action against a debtor

→ Debtor – Defendant: A debtor who is sued by the plaintiff

* There can be multiple plaintiffs and defendants in a legal action. If multiple creditors want to take legal action against one debtor, they must request permission from the court to have a **CLASS ACTION SUIT**

- Where? When a civil action is put into motion, the plaintiff needs to select where it will be taken. (The province of Quebec is divided in many judicial districts - 48 districts to be specific).
 - Where defendant lives
 - Where defendant has property
 - Where parties come to an agreement
 - Where the contract was made
 - Where injury/accident took place
 - Where the immovable property in dispute is situated

*If one defendant is based in Quebec, you can SUE in QUEBEC

* If you’re suing an entity in Quebec, then yes it’s best if you sue in Quebec so you can seize their assets immediately

* Doesn’t always matter where you file lawsuit

- When? There is a period of time in which you can exercise your rights. If you fail to do so, then these rights expire.

Prescription: Legal Method established by the civil law for a person to acquire/lose rights by the lapse of time (how long you have to file the lawsuit)

- 1) You may acquire the right of ownership of a property because of prolonged continuous possession
- 2) You’ve lost the right to sue because of inaction for a specific period of time on the part of the creditor

❖ **In the common law jurisdiction, the prescription periods are dealt with in a *Statute of Limitations***

** *General Rule*: If you want to sue someone, you have 3 years since the incident to file the lawsuit (from the day it happened, not year) **

→ However, there can be shorter or longer period prescription, depending on the nature of your case.

Examples:

- If Montréal police did something bad to you (aka the city) – 6 months
- If you were physical assault – 10 years
- If you were sexually assaulted – 30 years

Other prescription examples (& More on Page 11 from the book):

- A Ten-Year delay to: Acquire ownership of immovable property after continuous possession, a creditor in a judgement of the court in a civil matter may still execute the judgement against the debtor
- A One-Year delay to: disavow a child, claim damages from defamation
- A Three-Year delay to: claim damages resulting from personal injury or damage to property, Acquire ownership of movable property
- A Ten-DAY delay to: Appear/plead to a Civil Action
- A Thirty-Year delay for: a person to establish his/her filiation

5. To clarify the distinction between “law” and “justice”:

Why doesn't Law ALWAYS EQUAL Justice?

- The Law is Written: Difficult to deter from and rigid (objective).
- Enforced by Judges/Legal System: Judges has direction in how a law is applied (subjective) and doesn't always overlap with justice that we seek (ex. Apartheid: legal system but not justice).
- Laws are decided upon by a majority: Can't always answer the needs of all, especially the minority.

6. To introduce the distinction between “law” and “ethics”:

Ethics: A set of principles or moral values of a society, distinguishing right from wrong.

Both can reflect each other and can conflict too.

Ethics play a balancing role to law:

- Law is founded in moral values, so need ethics to apply
- Law is not always clear, so use ethics to develop
- Law may not exist to address new issues, so ethics must mold

An Ethical Value becomes Law when:

- It gains Large Consensus amongst the population
- It addresses an issue considered a serious threat to the well-being of the community.

7. To be able to separate private law from public law:

“What acts does the law cover?”

PRIVATE Laws: Rules that regulate the legal relationship between individual citizens or groups

- Contract Laws: deals with legal relationships in matters such as leases and employment.
- Commercial Laws: explains how to set up an enterprise and to provide goods and services.
- Civil Liability: determines the consequences of an individual’s negligence or compensation of one for having damages/neg. effects.
- Property Laws: helps us to settle boundary differences with your neighbour.

PUBLIC Laws: Rules that govern the relationships between citizens and their state

- Criminal Laws
- Highway Laws
- Tax Laws
- Bankruptcy Laws

Generally, public laws try to regulate behaviour that affects the entire community and impose strict punishment on those breaking these laws. It’s the state taking the aggressor to court – criminal sanction to be imposed on you.

In private (which is the focus of this book) – a person is sued (not charged) for not having paid a debt or fulfilled an obligation. The verdict at the end of their trial is not guilty or innocent, BUT responsible or not responsible for paying the money.

8. To understand the difference between civil law and common law:

Generally, a country follows either a civil, common law or both.

CIVIL law society: Fundamental basis for law resides in legislation.

- The law is decided upon by governing officials who then
- codify them into a systematic organization of statutes within their respective subject.
- The court applies these private or public codes. Each decision rendered by a court must be based on the letter of the law without taking into account any previous judgments; must emphasize a legislative supremacy.
- Civil law comes from the French and the Romans. Systems that are defined as written law - ink on paper.

COMMON law society: Basis for law society is grounded in the principles of precedence and case law or jurisprudence.

- Every court decision has to take into account past judgments of similar nature to apply a similar judgment. Came from the British.
- Most common law societies don't use legislative powers to adopt new laws, but these laws tend to deal with very specific subjects.
- Emphasizes judge made laws.

The Canadian Legal system is a combo of both civil and common law. However, Common Law is largely dominant across the state. In Private Law, two separate systems exist: the civil law system of Quebec and the common law of other provinces. This is the result of two different legal systems being introduced historically. PRIVATE LAW HOWEVER HAS THE SAME FUNCTION: HELPS CITIZENS REGULATE THEIR PERSONAL AND BUSINESS MATTERS (and provide a background of rules that everyone understands).

A Legal System: consists of 3 elements (Although Canadian standards and other legal systems may differ a little bit, all legal systems are comprised of three essential elements)

1. The Legislative Mechanism (**Structure**): How Laws are adopted; A method, frame, or system by which laws come into existence
2. **Laws** (sources of law): The rules of behavior or accepted by society
3. **Administration and Enforcement of laws:** A system to impose punishment for breaking a law; The body that makes sure the laws are followed by those who are subject to them

Definitions to know:

- System of Law:
- Ethics:
- Criminal Law:
- Injury:
- Private Law:
- Civil Law:
- Prescription:
- Justice:
- Damage:
- Status Quo:
- Custom:

- Government:

- Adjectival Law:

- Plaintiff:

- Law:

- Substantive Law:

- Codification:

- Democracy:

- Public Law:

- Common Law: