



Business-Law-Midterm-full-review

Business Law (Carleton University)

List of All Definitions:

Chapter 1

Business Law: The body of law that applies to the rights, relations, and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales.

As a business lawyer: things break and people are looking for the best solution, so they come to you.

§ To a business lawyer, the best way to prepare for marriage is being ready for divorce

§ Criminal Lawyer in US example: Allegedly had sexual relations with minor. Went on TV and told everyone he didn't do it and asked every lawyer who accused him to take him to court and told them what to sue him for. No one would take him to court because they would not want to risk not having enough evidence and getting put in jail for 12 years for slander and false acquisitions

Contract: A written or spoken agreement, especially one concerning employment, sales, tenancy, that is intended to be enforceable by law.

§Ex: Brock U has a contract that each time you participate in something against the school rules you are subject to an increase in tuition

§Ex 30 years ago the debates about smoking in classrooms were very serious. If it's not prohibited it is permitted

Clause: Separate article or stipulation in a treaty, bill, or contract. They often repeat similar objectives in different wording, and are there to protect companies from legal abuse.

§ex: Story of Winnipeg girl who was pregnant before she left for her trip, she delivered away from home. The bill was \$1M and Blue Cross wouldn't cover it because they didn't tell her that she was pregnant. There was a clause in the contract that clearly stated this and they did not know. The family might go bankrupt now if they can't pay the bill. Based on travel insurance clause with Blue Cross.

Common Law: Part of law that is derived from custom and judicial precedent. Common law is very complex and has many exceptions. Canada abides by this. There is no excuse not knowing the law.

§Ex: 10 year old kid gives you the finger, use corporal punishment? No, decide best course of action based on past.

Civil Law: System of law that governs actions between citizens, separate from military, religious, and political law. Rights are spelled out in legislation. Every case is decided individually, judicial precedent does not affect future cases. Mostly used in Europe.

Notion of Law: Rules established by an authority that are recognized by competent authorities that will define the rights and obligations of people.

Regulation or Conduct: Unless something is explicitly prohibited, it is permitted.

Person: Any form of entity or corporate body.

The strongest countries in the world have the best legal regimes.

§Ex: USA is the best country in the world in terms of this. Canada is top 5 in because of our banking stability and power.

§Ex: We were the third country in the world to legalize gay marriage. (Quebec)

§Ex: A few years ago Ottawa police arrested an individual who had a bomb in his trunk near Carleton. This has happened more than 30 times in the last five years – including two weeks ago. National security shuts down information about these news stories soon after they hit social media.

Chapter 2

The **Canadian legal system**

- governed by constitutional law
- the legislative branch of government passes laws that impact on business operations. For example, when government enacts a law, failure to comply can result in fines and other penalties, including closure of the business.
- the executive branch implements and generates policy that may be directed at business. For this reason, companies such as General Motors of Canada Ltd. have a corporate and environmental affairs department that is charged with monitoring government policy as well as tracking and contributing to debates over public policy that could affect GM operations. (Not a class example)
- the judicial branch provides rulings that not only resolve existing legal conflicts but also impact on future disputes.

The **legislative branch** of government creates a form of law known as **statute law** or legislation.

As already noted, the Constitution dictates whether each level of government can make a given law or not. Expressed in legal language, each level of government has the **jurisdiction** to pass laws within its proper authority. Jurisdiction is divided in this way because Canada is a federal state, which means that governmental power is split between the federal government, and the provincial governments.

In areas of concurrent jurisdiction, what the provincial government cannot do is enact legislation that would create a conflict with federal legislation. That is, in an area of concurrent jurisdiction—such as health or the environment—the doctrine of **paramountcy** applies. This doctrine makes the federal legislation paramount or supreme and the provincial law inoperative, but only to the extent of the

conflict. Though a significant doctrine, it is also a limited one. The judiciary has held that paramountcy generally applies only if there is an express contradiction between the two laws. If a person could simply obey the stricter law—and thereby comply with both pieces of legislation—then paramountcy would not apply. Both laws would operate fully.

The Judicial Branch: It may seem surprising that the *judiciary* is a branch of government, given that the judiciary is supposed to be independent of government. The judiciary is to be independent from the legislative and executive branches of government.

Canadian Constitution:

We share power with the other provinces. Ex. Education, National Security, Army, Foreign Affairs etc.. The Province has their own power.

Never included Quebec rights and separate in the constitution which caused the referendum.

The NEXT referendum will not only include Quebec but as well Aboriginals. They do not carry the Canadian flag. Because they feel mistreated about their land and do not get the same rights.

Canada's court structure – 3 Main levels

- Supreme Court of Canada
- Federal Appeals Court
- Federal Court

This works from the bottom up in terms of appeals: Federal court->Appeal to Federal appeals court -> Appeal to Supreme Court of Canada.

Province of Ontario Structure:

- (Supreme Court of Canada)
- Court of Justice of Ontario
- Superior Court of Justice
- Civil Law Court

Filing a claim: occurs when one entity is looking for compensation due to another party's actions. Ex. Contract not respected, Stolen property, etc.

Judgement: A decision from the court that will define other parties. Notion of independent court, meaning judge must be unbiased.

Stare Decisis: "To stand by that which is decided". When a supreme court speaks, it goes from the top to the bottom. The court must uphold previous decisions. Supreme court's decisions will impact all aspects of court. Everybody, regardless of views, must adhere and agree to the same guidelines. If men can be topless why can't women? (As long as neither is being done for sexual gratification).

Note that agreements may override laws in some situations, for example, a shoe store may require you to wear socks before trying on shoes. Carleton University may state that neither men nor women may walk around without shirts on, as long as the terms are clearly stated and all parties agree.

Canada is the benchmark of the world for rights and freedoms

§Ex: in 1997, we developed how a province could separate from Canada, that decision became a part of international law immediately, and an EU province used it to separate effectively.

Charter: document or code, which outlines how one should act, supersedes everything else and developed by superiors, a document of superior authority and power.

Charter of rights and freedoms: document pertaining to individual behavior, what we have the right to do and what we do not, when do our actions infringe on the rights of others?

As Canadians we enjoy the most individual rights and freedoms

We define ourselves through our rights and freedoms, and the world follows decisions and cases, everything is based on norms and decisions

First area of charter of rights – Freedoms: Freedoms exist by themselves; they do not need to be laid out individually for each person to follow. They are part of being Canadian, they are not forced upon you, you automatically have them.

- 1) **Freedom of conscience** – what is right and wrong
- 2) **Freedom of the press** – We have the right to independent press, they have the right to criticize and analyze us as long as the allegations or analysis is not hateful propaganda or untrue.
- 3) **Freedom of expression** – you can express yourself in a reasonable way. You may express opinions as long as they are not hateful
- 4) **Freedom of associations** – You are allowed to gather and collectively express your opinions

Religion: Cannot have negative beliefs. They may have negative connotations based on interpretations, but cannot be inherently evil, otherwise they are a cult.

Second Area of the Charter - Rights: are laid out to the public. You have the right to go to school. You are allowed to do this.

- 1) **Democratic rights** – The right to vote and the right to hold parliament freely and regularly.
- 2) **Legal rights** – rights associated with the relationship between the crown and individuals when enforcing criminal justice

§John Howard society is challenging the fact that we can put people in isolation for a certain period of time.

§Cannot lay a hand on prisoners

§Ex: Karla Homolka: did a sentence for 12 years based on only one crime the authorities thought she committed, turned out afterwards police recovered tapes showing that she was an accomplice to all of her husband's (Paul Bernardo) crimes. They could not overturn their original decision, she did her time and is now free.

3) Equality rights – You cannot discriminate on race, colour, ethnicity, disability, and gender/sexual orientation. This is important for protecting minorities and maintaining equal rights.

§ Ex: It is unacceptable to study racial groups to prove which group is superior in Canada

§Ex: We are judged on how we treat minorities, not majorities.

§Ex: Anchorwoman in France fired because her smoking was affecting her looks, she died before her court claim was met.

§Ex: Official languages English and French, state required to provide bilingual services. If you can't speak both languages, those who can will pass you.

*Outside of this we have **aboriginal rights:***

in the next 40 years half of Canada will be under the rule of aboriginals.

Aboriginals are looking for self-government in the areas in which they control.

They believe that self-governance is essential for controlling actions on the reserve.

Aboriginal rights are evolving and are a key point of business, for example the

keystone pipeline. Aboriginal rights supersede any other rights when on or

impacting the reservation grounds.

§EX: Keystone Pipeline – Won't go through because of aboriginal rights unless they approve it

§EX: Aboriginals can issue a speeding ticket on reserves; you will be detained if you refuse to pay it after leaving the reserve.

Chapter 3 – Legal Risks

Legal risks: There are always legal risks, things may not work out or things will break, but you must always have a solution and a protection, a safety net, in case things go wrong. As you make decisions remember there is legal risk:

- A) There is a consequence in law
- B) That results from the occurrence of an event
- C) Has a level of probability and certainty

§EX: ½ of our generation will live until 90. Low probability you die tomorrow but death is guaranteed

Legal risk management 4 step process:

1. *Summary of the Legal Risk Management Model Step One: Identify the legal risks.*

- Assess the organization's functional areas.
 §Ex: Jon Gohmeshi, who at CBC is responsible for determining what is considered rough sex vs rape? They must consult a lawyer.
 - Review the organization's business decisions.
 - Examine the organization's business relationships.
 - Analyze the organization's operations and transactions.
2. *Step Two: Evaluate the risks.*
 - Assess the probability of loss.
 - Assess the severity of loss.
 3. *Step Three: Devise a risk management plan.*
 - Avoid or eliminate the risk.
 Probability and security - §Ex Vancouver installing barbed, cement barricades for upcoming scale 9 earthquake.
 - Reduce the risk.
 - Transfer the risk.
 - Retain the risk.
 4. *Step Four: Implement the plan.*
 - Carry out the plan.
 - Monitor and revise the plan

§EX: Lady stealing identities and going into banks to take out money. She stole over \$175,000 and was released early from her sentence stating that she would never do it again.

Chapter 4 – Dispute Resolution

Settling disputes:

- 1) **Negotiation:** is a problem-solving process in which parties discuss their differences and attempt to reach a mutually agreeable resolution. Most common alternative, quick, preserves relationships. Victories not celebrated, never humiliate opponents. The more damage, the harder to negotiate.

Instruments of Obligation: There are things you cannot escape within legal obligations

§Example of lawyers at the bar, victories are never celebrated, case is closed.

§Example of Canada winning world juniors, other team was obviously sad, don't rub it in their faces, be gracious in victory.

§Ex: If your Girlfriend cheats on you with your best friend, how easy is it to negotiate?

- 2) **Mediation:** Bringing in a third, independent, unbiased party to make the two involved parties compromise. In business we often pay to settle problems. Less expensive than formal dispute resolution. Private and confidential. Helps preserve relationships
- 3) **Arbitration:** Imposes a decision when there is conflict. Arbitrator makes a decision that must be upheld. Can only be appealed if there is a breach of natural justice. Often a Quasi Judicial system is used. EX: NFL, NHL, use arbitrary bodies to get contracts dealt.
- 4) **Litigation:** One party will take the other to court to resolve the issue. This is to be avoided at all costs because it is lengthy, costly, publicized, and risky. Negotiation, Mediation, and Arbitration are often used as alternatives to litigation.

Is Law equivalent to ethics?:

§Ex You are both on a raft for a given time, can't drink the water, have to eat someone. You cannot rationalize one life over another!

§Ex Does Tom Brady deserve to win the SuperBowl? He would have known the ball was deflated.

§Ex: Dalhousie dentistry making sexist remarks – Do these guys deserve to practice dentistry within Canada?

§Ex: If we hear gunshots and prof hides, he is not doing something wrong because he's not paid to handle that situation

Laws cannot be objective:

§Ex, freshness is an objective criteria, example of the guy who sneezed on all of the olives and moved on.

Maple Leaf Example – Feud Resolution: Company had listeria contaminated products due to crevices in the slicers of the meat and buildup of rotting leftovers, they decided to do a recall and compensated approximately \$900 to anyone affected, based on the honour system, by filling out a form. They decided this was better than a long drawn out litigation or class action lawsuit. Why not ask for proof? You can't fight every case.

Class action – standard setting for future cases, all cases will follow the decision of the case in the future and will settle for the same amount or be compensated accordingly.

Negotiation:

- 1) Desire to compromise – Nobody wants to be humiliated or lose face; you must have some degree of compromise. There should be no gloating
- 2) Your techniques of negotiation – How do you negotiate the agreement?
- 3) What are the instruments of obligation?

Quazi-judicial system – §EX: all sports teams, NFL, NHL, NBA, MLB all go through arbitration to get contracts, deals, etc.

Main areas in dispute

- 1) Automobile vehicle, (car insurance) – government allowed to reduce premiums
 - 2) Labour relations disputes – conflict between employees and employers
- § Example of Prof interviewing for victoria's secret, he went in to the interview and people questioned him, but why is he not allowed to work there? He will not touch the girls, he could move boxes, stock, etc.

Chapter 28 – Insurance

Insurance: an agreement between persons that will compensate losses or damages resulting from an identified event. It must be a contract between the company and the consumer, and it must include a loss based upon probabilities and can be ascertained. Different causes of loss will be ranked and be included in the calculation and probability of the loss.

Not everyone tells the truth – § Example, asked about smoking, consuming controlled substance, some people may lie to reduce their personal risk.

Specific Clauses:

Subrogation: You transfer your rights to the part who will pay the claim, the company can sue on your behalf, you wave any future rights.

Deductible: Is legally a loss, if you pay no deductible, you will pay a higher premium. A deductible is the money you pay out of pocket before the insurance company will cover any of your expenses. You may pay a deductible to reduce your premium.

Re-insurance: Often insurance does not include all of the elements, so you may get a second insurance company to cover all of the other possible losses which aren't covered by the first company.

Duty to Disclose: The duty to act in good faith. You must disclose all necessary information so that the insurance companies can take appropriate risks to cover your losses.

§EX: Woman was pregnant, went on vacation and had her baby, her medical bill was \$1,000,000 but because she did not disclose to the blue cross she was pregnant, she had to pay the bill herself.

Principles for insurance: In Canada, honesty in insurance is a fundamental part of how the system works

Insurance Indemnification: We deal with the fact that we cannot have more insurance to cover for the material loss.

§ You cannot have for example 3 different companies covering the full amount of one car, so that if you were to crash you would gain 3 cars. For life insurance, you may take as many claims as you want at 100% medical insurance with a maximum

Forfeiture rule: you cannot take advantage of a crime in order to gain financial benefit.

§ex: A wife cannot kill her husband and claim his estate.

§Ex: Shawshank Redemption – You will most likely not be released from jail.

§Ex: Stephan Harper proposing bill that states people who commit homicide will not be eligible for parole

§Ex: Canada has one of the highest prisoner per penitentiary rates.

Notion of admission and level of risk – this deals with co-insurance: Insurance companies may choose to pay accordingly if you do not accept the risks

§ for example your property may be required to be insured for 90% co insurance, this means your premium must be at least 90% of the house. If the insurance finds out that the insurance rate is lower than the co-insurance rate, if you make a claim of \$100,000 they may decide to only pay 50% of your claim

Chapter 13 - Agency

Agency involves a relationship where a principle is represented by an agent in specific matters pending the authority granted.

- An Agreement (Contract) whether verbal or written
- Someone is representing you in a certain situation, § for example, Dad, can you go pick up my textbook for me from my friend.
- Agreement where the employer is the principal,
- Specific matters – employee has a narrow authority, can only complete the specific duties.
- Pending the authority – I'm giving you this specific power but in a certain framework.

§ Ex teachers may control the students using laptops, as long as they are in the classroom; a teacher may not tell the student to stop using his/her laptop in other classes.

Actual authority: § ex: Go get my textbook, that is what I am telling you to do. The agent has the power to complete the task when given the authority.

Apparent: As the principle, creating a relationship where the agent in fact does not hold the authority. Creating the authority because of the circumstance,

§ ex your agent can borrow 3,000 for a loan, but it is not enough, so you say to him to pretend he can sign for 5,000 to accept the deal. In business, your competition does not need to know that you do not have the authority to complete a task. It is not their responsibility to ensure that you can make it work without a 5,000 loan, it is yours.

§ ex: You expect the security guard to have keys to the building but he does not.

§ *ex*: If you have a regular order at a restaurant and you walk in, they ask if it's the usual, this is apparent authority as you seem to have an advantage/authority over a regular customer/the cashier. Apparent authority is necessary to complete the task.

The 3 types of agency:

1) Formal agency: Specifically spelling out the elements of agency. Formally appointing power.

2) Agency by necessity: there is a crisis and nobody can respond except you. After law class, you cross the street and you get struck by a vehicle, you are in a coma, who will take care of you, make decisions for you?

3) Agency by ratification: there is an excess of authority and the principle will ratify the excess.

§ *Ex* you only have \$5,000 but you write a check for \$10,000, it is ratified to you giving a check for \$5,000

Duties as an agent:

1) Fiduciary Duty: You must work in the best interest of your principal/client

2) Disclose all information: Inform of all information

3) You are not in competition with your principle

4) You are not in conflict of interest: You cannot serve 2 different interests at a time

5) Maintain your training abilities

6) Accept only where you are confident

7) Provide accurate responses: You are in finance, you give the data the way it is laid out to be.

Obligations of the principal:

- 1) Pay your employees, you have an obligation to ensure they are paid for their work.
- 2) Provide the tools.
- 3) Training.
- 4) Indemnify the employee, if the employee is going to be sued he needs to be protected, so they will cover all the legal costs.
- 5) Provide protection and security, secure the well being of the employee.

- 6) You need to make sure that employees have sufficient resources to execute in the timings, so you cannot ask a prof to cover 15 chapters in 2 classes.

Liabilities:

- 1) The liability of the principle: When the agent is inside the authority, the principal is liable.
§Ex: Painter commissioned by Carleton accidentally gets paint on a student's clothes, Carleton is responsible.
- 2) When the agent exceeds the authority, the principle may ratify the authority, he does not have to, but he may choose to.
§Ex: Commissioned to paint the walls, employee paints the ceiling, employer may ratify by promising to paint the ceiling.
- 3) The agent exceeds the authority because of the apparent authority created by the principle, because the apparent authority gives the power, he is liable.
§Ex: Boss says go ahead and paint the walls white, even though Carleton wanted them to match the decorations on the wall. Boss is liable, not employee.
- 4) The agent exceeds the actual and apparent authority, then the agent is solely liable. The agent is in breach of warranty of authority.
§Ex: Commissioned to paint ceilings by Carleton, employee tries to install sprinklers.

Chapter 14 – Partnership

A partnership is an agreement between persons, putting together different needs in order to create or exercise a business or profession or trade with a view to profit. A partnership is a firm, everything that is put in by individuals becomes part of the firm. It has to have the intention to make profit, even if it doesn't succeed.

Relationships between the partner and 3rd parties:

- 1) – The word firm means partnership in law.
- 2) - When dealing with the outside parties, every agent is a partner. So one individual can speak on behalf of the other partners
§Ex: Law School w Gill, 9 colleagues had a line of cocaine before the class. You have to pass all 6 exams to get asked to the bar. Were all called back for a meeting, some group of students broke into the vault and stole the exam. They all had to retake it the week after.
- 3) – Every partner is liable for all of the losses of the firm. That liability is jointly and severally. §Ex: They can sue the wealthiest partner, and then the wealthier person is responsible for getting the money from other partners. Should you ask your partner for their credit rating? Yes.
- 4) - The assets of the firm can be used in order to pay the debt.

5) – We can restrict the obligations a partner may contract, but we are always liable if a third party is not aware.

6) – You need to give notice if you leave the firm, the reason, you are still an apparent partner. When a principal creates an assumption of authority that the agent does not possess.

7) – Partnerships can be dissolved in a number of ways: By law, or the partnership is complete, you wish to retire, there is a common approach to dissolve the business

Relationships in partnerships

Between partner A and B

1)- if there is no covenant or agreement, then the law will decide by agreeing to a partnership, you agree to let the law govern affairs, unless otherwise stated.

2) - All partners are equal in the gains and in the losses

3) - Partners cannot escape fraud or criminal actions from their colleagues. Even when they are a limited liability partnership

4) – Any interest in land is owned by the partnership. Any land bought is property of the firm, unless a covenant is made to allocate it to a specific person(s)

5) – The firm exercises its activities under a partnership name

6) – Partners cannot expel another partner unless there is unanimity.

7) – You can make any administration rule that you want. Every partner can participate in the administration

8) – The majority will make the decision. If there is a tie, there's nothing that can be done. 3 is the worst crowd for a decision, partners will always be fighting over whose side they should take.

9) – You cannot retrieve your investment unless the other partners consent.

Joint Ventures are a partnership:

o Whatever we put together becomes a partnership. There is a structure in place but no legal contract. Make separate entity for the legal side.

§Ex: TARGET CANADA

§Ex: Target losing 1.5B on closing Canada they have all the leases in Canada that are still viable. Can be expensive!

§Ex: MBNA used to be owned by Bank of America, used to be the biggest credit card in Canada. TD bought it for 10B, played on the currency. When it was good currency Canadian business bought American businesses and vice versa.

In a partnership we may have employees: Employees are called servants in law.

Partnerships may include different forms of association:

- You may have a union in a partnership with a business.
- There are no specifics that do not work out.

What is not a partnership:

- You buy a property with another person. You buy a house with your wife, not a partnership unless you buy multiple properties.
- If you join together and you share the gross revenues, you are not creating a partnership because you are not deducting the expense.

§Ex: Individuals were owners of chalets, weren't going to use canoes in the summer. They were going to lease their canoes to the people of the lake. Girl got injured in one of the canoes and sued the heck out of them.

List of All Examples:

Define business Law: Example - The best way to get married is to prepare for divorce

*Define Common Law: Example - Getting consent in Ontario for sexual relations they
Have to say "Yes" but they can't be influenced by drugs / alcohol. In Ontario age of
consent is 16, in Quebec, it is 14.*