

Module 1

Chapter 1

Knowledge of Law as a Business Asset

What is Law

- A set of rules established and enforced by the government
- Many different views on what the law is and what it should be
- To be considered a law:
 1. Laws have to be connected by the government
 2. needs to be enforced
 3. Have to have rules not guidelines or suggestions
- Sometimes there are grey areas with laws
 - ie. drive on the highway and many people drive above the speed limit regardless of the law (enforcement)
- The law can be very uncertain
- Business law in the environment
 - Law affects most business decisions— basic idea to implementing
 - Knowledge of the law is an asset that can assist owners in reaching their goals and objective
- **Business law**— a set of established rules governing commercial relationships, including enforcement of rights
 - Defines general rules of commerce
 - Protect business ideas and more tangible forms of property
 - Provides mechanisms that permit people to select degree of participation and exposure to risk in business ventures
 - Seeks to ensure losses are born by those responsible for them
 - Facilitates planning by ensuring compliance with commitments

RULES AND PRINCIPLES

- **Law** — a set of rules and principles intended to guide conduct in society
- Protecting persons and their property
 - Law is meant to provide protection
 - When criminal act of Canada is violated— leads to criminal sanctions

BUSINESS AND LEGISLATION

- Form of breach under PIPEDA— a persons ID, age, name, income
- Can vary from very offensive to a small offence

- Law provides protection by:
 2. Setting rules to safeguard interests
 3. Encouraging future compliance

- **Breach of contract**— failure to comply with a contractual promise

- Law functions to prevent disputes and to facilitate relationships
- Main role is to facilitate and not to constrain

How and why the law works

- Canadian Law passes essential improvements over its precedes because it determines liability in accordance w certain principles and processes regarded as just
 - Applied as impartial, fair, free from bias

- Impossible to fully achieve

Law and Business Ethics

- Business ethics looks at morals and values— more than just the law
- Skirting ethical norms can lead to lost revenue, bad publicity, condemnation

Chapter 2

The Canadian Legal System

- Government is divided into 3 branches
 - The legislative branch creates law in the form of statutes and regulations
 - Executive branch formulates and implements government policy and law
 - The judicial branch adjudicates on disputes
- **Constitutional law** — is the supreme court which are in charge of ascertaining and enforcing limits in the exercise of power by the branches
- **Liberalism** — emphasizes individual freedom as its key organizing value

The Canadian Constitution

- Able to grow to resolve questions/issues related to the government
- **Constitutional conventions** — important rules not enforceable by a court but practically determines how a given power is exercised by government
 - Politicians agreed to abide by them
- **Exclusive jurisdiction** — one level of government holds entirely on its own and not shared basis with another level
 - ie. Federal government with criminal law, the provincial government cant pass laws to do with criminal law
- **Concurrent jurisdiction** — shared between levels of government
 - ie. public health or the environment

ENVIRONMENTAL PERSPECTIVE

- All government (federal, provincial, municipal) share jurisdiction on the environment
- Federal controls
 - Protection of ocean and inland water
 - Fisheries protection
 - import/export of hazardous products
- Provincial controls
 - Extensive environmental protection legislative regimes
 - ie, environmental protection act
- In concurrent cases there is the doctrine of paramountcy if there is a conflict between federal and provincial laws
- **paramountcy** — provides federal laws to prevail when theres conflict between federal and provincial laws
 - Only happens if there is an expressed contradiction between the two

BUSINESS AND LEGISLATION

- Business are affected by all levels of government but mostly provincial and municipal
- Mostly provincial — provinces have jurisdiction over property and civil rights

- Municipalities deal w levying taxes, regulating local zoning, parking
- Banking in business and international interprovincial transport and communication are dealt with federally

The Executive Branch of the Government

- **Formal executive** — issues approval as the final step in creating statute law
- **Political executive**— responsible for day to day operation
 - ie. formulating/regulating government policy and administrating all departments of government
- Cabinet is made up of ministers of various government departments
 - They pass regulations providing detail to what the statute in question has enacted

The Judicial Branch of Government

- A branch of government — the be independent from legislative and executive branches of government
- Composed by judges appointed by federal and provincial governments

SYSTEM OF COURTS

- Provincial system of courts has:
 - Trial
 - Intermediate appeal
 - Final appeal
- Trial courts are made up of inferior and superior
 - Inferior is presided by a judge appointed by provincial government
 - Superior has judges appointed by federal— happens for more serious cases

Classification of Law

- **Domestic law** — internal law of a given country, includes statute and common law
 - Deals mostly with individuals and corporations
- **International law** — governs relations between states and other entities w international legal statutes
 - Focuses mainly on states and international organizations
- **Substantive law** — defines rights, duties liabilities
- **Procedural law** — governing procedure to enforce rights, duties, and liabilities
- **Public law** — all areas of law related to or regulate the relationship between persons and government at all levels
 - Able to constrain government power according to rules of fairness
 - ie. criminal law, constitutional law, administration law
- **Private law** — deals between persons
 - ie. contract, tort, property, company law

Admin Law and Business

- **Administrative law** — rules created and applied by those having governmental laws
 - Establish on needs basis
 - Impact on business is significant because so much commercial activity is regulated by these bodies

Indigenous Peoples and Constitutional Law

- Their rights include:

- Existing aboriginal treaties are recognized and affirmed
- Aboriginals include the Indian, Inuit, Metis people
- The crown owes legally binding obligations to them

Civil law vs common law

- Civil law is a legal system based on a comprehensive code
 - Used in Quebec, parts of Europe, Louisiana
 - Civil law also means not criminal law
- Common law is a legal system based on previously decided cases
 - (used in Canada except for Quebec, Australia, US)
- Criminal law vs civil
 - Criminal law is concerned with punishing people who commit crimes (“retributive justice”)
 - Civil law deals with disputes between private parties, or behaviour that causes harm to other (“distributive justice”)

Sources of Law

- Constitution
- statutes/legislation
- Common law/case law

- In Canada the government is not above the law
 - The government has to obey the law

- The Canadian constitution
 - s.91 — federal jurisdiction
 - s.92 — provincial jurisdiction
 - If the federal government were to try to pass a law meant for provincial, then the provinces can sue the federal government
 - If federal and provincial overlap then both governments have law making authority
 - Customs and conventions
 - Don't have the status of law
 - Not written down in constitutional law but they are followed
 - International treaties
 - If government of Canada enters a treaty with a foreign country then that becomes part of our constitution
 - Charter of rights and freedoms
 - Statement of shared values and principles and is enshrined in our constitution
 - If any government law or action violates this then that action, law is illegal and is void
 - includes:
 - A. Freedom of conscience and religion
 - B. Freedom of thought, belief, opinion and expression
 - C. Freedom of peaceful assembly
 - D. Freedom of association

- 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)— the provinces create municipalities (called bylaws)
 - Takes precedence over case law

- If there is a case that interprets a law a certain way then legislation is passed to change that law then the legislation will take precedence
- Subordinate to the constitution

Chapter 3 Managing Legal Risks

Assessing the legal environment

- By dealing with legal environment a business will reduce likelihood and impact of mistake that are
 - Costly in terms of the expense of legal service and damage claims
 - Distracting in terms of time and effort
 - Harmful with relationships and reputation in the industry

LEGAL RISK MANAGEMENT PLAN

- **Enterprise risk management** — process of identifying and managing all business risks
- Risk management involves the co operation of managers and employees at every level
- Have to identify players inside and outside the business who can help in the development of a useful plan
- There is a 4 step process:
 1. Identify legal risk
 - Assess the organizations functional areas
 - Review the business decisions
 - examine relationships
 - Analyze the organizations operations and transactions
 2. Evaluate the risks
 - Assess the probability of loss
 - Assess the severity of loss
 - Not all risks are alike and should be treated alike
 3. Devise a risk assessment plan
 - Avoid/ eliminate the risk
 - Reduce the risk
 - Transfer the risk
 - Retain the risk
 - **Risk avoidance** — ceasing business activity because the legal risk is too great
 - **Risk reduction** — implementing practises in a business to lower the probability of loss and its severity
 - **Risk transference** — shifting the risk to someone else through a contract ie. insurance
 - **Risk retention** — absorbing the loss of a legal risk materializes within the organization (self insurance, insurance policy deductibles, noninsurance)
 4. Implement the plan
 - Carry out the plan
 - Monitor and revise the plan

Interacting with the Legal Environment

- Value of risk management plan is already having an effective way of solving it when the problem rises

Managing Legal Service

- Deciding when to seek legal advice — having an internal law department
 - Don't want to go too early (expensive) or too late
- Lawyers can provide:
 - An understanding of the company from providing advice
 - An expertise in law and legal analysis
 - An independence that comes from membership in a professional body

Chapter 4 Dispute Resolution

- **Negotiation** — problem solving process where both parties mutually agrees
 - Can be solved for almost any dispute but can not do it when:
 - Insurance covers the risk that is the subject of dispute
 - Should investigate situation first to see extent of dispute
 - Saying sorry can help but is not:
 - An admission of liability
 - Relevant when a judge make a determination of liability
 - Used as evidence establishing liability
 - Used to void an insurance policy
- Negotiations succeed depends on:
 - The willingness of the parties
 - The nature and significant of dispute
 - Priority the parties give to its resolution
 - The effectiveness of those involved
- **Release** — an agreement where a party agrees to relinquish past, present, and future claims arising from a certain event
- A settlement after negotiation may not always occur:
 1. Mediator
 - A person who helped resolve the dispute
 - Less expensive, confidential, preserve relationship
 - They do not make/ impose a solution — parties have to
 2. Arbitration
 - Person listens to parties to a dispute and makes a ruling that is usually binding on the parties
 - Cheaper and faster than litigation
 - Both sides appear before arbitrator and present arguments and the arbitrator a decision which is called an award
 - Decision is final and can not be appealed and awards costs to successful parties

The Litigation Process

- When no compromises a legal action against parties occur
- Litigation is slow, expensive, unpredictable
- Limitation period for each province for commencing legal action
 - For Ontario its 2 years and ultimate limitation of 15 years
- **Class action** — proceeding brought by plaintiff on behalf of a class of persons having similar claims against the same defendant

Stages of a Lawsuit

1. Pleading

- Exchange of formal documents outlining the basis of the suit
- The plaintiff initiates w preparing document that contains allegations supporting claim
 - Deliver to defendant — called service
- Defendant needs to respond to allegations (20 days) otherwise they are admitting to claim
 - If no evidence then plaintiff wins case
 - They can prepare formal response — defence
 - They can counter claim

2. Discovery

- Process Where each side gets access to all other documents and facts that the other side has
- Do that because there are usually tons of facts that are not in dispute —so we focus on matters that are in dispute and is done by conducting discovery
- Discussing evidence to support claims
 - Undefined time frame
 - Tests strength of opposing positions — be encouraged to reach a compromise

3. Trial and decision

- If no settlement then they proceed to trial
 - Formal hearing results in binding decision
- Plaintiff must introduce evidence — burden of proof
- Very rigid and formalized, no surprise witnesses bc of discovery
- Most cases settle before trial
- Judge makes a decision based on both parties
 - Judge will give a decision of both facts and law
- The appeal is given on only matters of law

4. Enforcement

- Enforcing a judgment is difficult and costly on the winning party
- Cost of litigation is ridiculous —not worth litigating for anything less then \$150 000
- If you win you do not get your money back — only a third of the legal cost in Canada normally
- Also non monetary costs — s lot of time being spent, relationship between parties are destroyed
- Winner must enforce judgement w assistance of court
- **Judgment debtor** — party orders by court to pay specified amount to winner of lawsuit

APPEALS

- Process of arguing to a. Higher court that court decision is wrong
- Doesn't rehear case but is to argue that decisions had significant errors to how the law was applied
- **Appellant** — party who begins/ files an appeal
- **Respondent** — party against whom an appeal has been filed

Common law/ case law

- The wrong decision — appeal courts
 - Parties have the right to appeal within 30 days no permission necessary
 - Only matter of law or mix matter of law can appeal— u can not appeal matter of pure fact
- If party appealing is right and decision was bad — court of appeal will reverse decision and substitute the correct decision (precedent has been fixed)
- Courts are not bound by previous decisions — possibly follow because of precedent
 - If court feels its time to deviant from previous precedent then they will — based on changing societal norms and values
 - Trial court precedents are weak and dont need to be followed