

LAW 122: Business Law

TRAIN TO LEARN EFFECTIVELY: TIP SHEETS

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NATURE AND SOURCES OF LAW

The Nature of Law

- How to Solve a Legal Question (**IRAC Method**):
Issue → Identify the issue of the case or fact scenario.
Rule → Identify a legal rule (or principle) that relates to the case or fact scenario.
Application → Apply the legal rule (or principle) to solve the case or fact scenario.
Conclusion → Summarize your reasoning.
- It is important to note that all laws are rules but not all rules are laws.
- A **law** is enforced by courts or other legally empowered tribunals.

Mapping Out the Law

- Canadian law can be organized and categorized in various ways:
 1. **Types of Law** → There are substantive differences between certain laws (e.g., criminal versus civil law).
 2. **Sources of Law** → There are different sources of law (e.g., statute versus common law, or federal versus provincial law).
- **Legislation** is enacted by Parliament and the provincial and territorial legislatures.
- **Common Law** is the body of legal rights and obligations arising from judges' rulings.
- Canada has two distinct legal traditions:
 1. The **civil law** tradition in Quebec is from the province's connection to France;
 2. The **common law** tradition in the rest of Canada is from its connection to England; concerning judge-made legal precedent.
- The **Constitution Act** (1867) describes Canada's government framework, the distribution of power among the federal government, provinces and territories, and how laws are enacted.
- Its revision in 1982 confirms and enshrines basic rights and freedoms of Canadians under the **Canadian Charter of Rights and Freedoms** (the "**Charter**").
- **Public Law** is the rights and obligations of Canadians to their governments.
- **Private Law** is the rights and obligations of Canadians in dealing with each other (governing private dealings and matters).
- Under private law, there is: Contract Law, Tort Law, and Property Law:
 1. **Contract Law** is the creation and enforcement of contracts and the means for the purchase and sale of products, services, employment, etc.

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2. **Property Law** is the acquisition, use, and disposition of property, including **real property** (land and buildings), **personal property** (moveable items), and **intellectual property** (inventions, creations, music, etc).
 3. **Tort Law** is meant to redress a wrong done to a person and provide relief from the wrongful acts of others.
- A tort is a private wrong (in contrast to criminal law, which is a wrong against the state).
 - A tort may be either **intentional** or **negligent** (i.e., a consequence of carelessness).

Canadian Constitution

- The **Constitution** establishes Canada's system of government.
- It includes the division of powers between the federal government and its provinces and territories, establishing the rights and freedoms of all citizens through the Charter.
- The Constitution Act began as the **British North America Act** (1867) or "BNA" Act.
 - This Act granted Canada its independence from the United Kingdom.
 - It determined Canada as a federal state and established the division of powers between the federal and provincial governments.
- The term "**ultra vires**" (beyond the power) refers to legislation in an area outside constitutional authority.
- The **Oakes Test** is an important outcome from the Supreme Court of Canada (SCC) in the case of **R. v. Oakes** (1986), establishing a three-part test for determining whether a violation was justifiable under Section 1 of the Charter:
 1. Does it enforce or reflect an important societal concern?
 2. Was the limitation on Charter rights minimal?
 3. Is the limitation precise as to the prohibited conduct?

Indigenous Rights

- **Treaty Rights** include those existing by way of land claim agreements or they may be acquired; referring to treaties between Indigenous peoples and the Crown.
- **Indigenous Rights** refer to the historical use and occupation of the land by Indigenous people; they vary, but generally deal with title, self-government, resource exploitation, culture, and customs.

Canada's Court System

- The highest level of the court system is the **Supreme Court of Canada (SCC)**.
 - It was established in 1875 by the Supreme Court Act.
 - The Chief of Justice of the SCC is the Chief Justice of Canada.
 - Judges are appointed by the federal government.
 - At least three judges must be appointed from Quebec.
- The second highest court is the **Court of Appeal**.
 - Each province, territory, and the federal court has a court of appeal.
 - Judges are appointed by the federal government.
- The third highest court is the **Superior Court**.
 - This is a trial court.
 - Judges are appointed by the federal government.
- The lowest court level are the **Provincial Courts**.
 - Judges are appointed by the provincial government:
 - (1) Small Claims (Small Claims Court);
 - (2) Family Matters (Except from Divorce);
 - (3) Most Criminal Cases.
 - The Ontario provincial court is the Ontario Court of Justice.
- The court system and the law generally are founded on precedence and the judicial doctrine of **stare decisis**: a lower court in the hierarchy must abide by the legal principles, doctrines, and interpretation of higher courts.