

LAW 201 Final Exam Aid

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The Canadian Legal System

Structure (3 Branches)

1. Legislative (Pass Legislation)
2. Executive (Implement Legislation)
3. Judicial (Enforce Legislation)

Definition (Rule of Law). All citizens and institutions within a country, state, or community are accountable to the same laws.

Case Law

Definition (Precedent). A principle or rule established in a previous legal case that is either binding on or persuasive without going to courts for a court or other tribunal when deciding subsequent cases with similar issues or facts.

Definition (Stare decisis). A legal principle by which judges are obligated to respect the precedent established by prior decisions.

Public & Constitutional Law

Division of Powers

- Validity - Does the government have the constitutional authority to enact the law?
- Overlap/Conflict - Can comply with both? Is federal purpose frustrated? (Operational and or Frustration conflict)
- Supremacy - The constitution is the supreme law.
- Paramountcy - Federal law is paramount when there's a conflict.
- Pith and substance - What's category does the law fall under? Is it enacted with the right authority then?
- ultra vires - An act which requires legal authority but is done without it. e.g., a province not having authority.
- POGG power - Federal gap filling power in drafting oversights
- Double aspect

Federal jurisdiction:

- Health
- Criminal Code
- Trade and commerce (across borders)

Provincial Jurisdiction:

- Health

- Trade and commerce (within borders)

Charter of Rights and Freedoms

- Right to free expression (sec 2b)
 - Advertising (Commercial and political)
- Right to equality (sec 15)
- Justified limits

Oakes' Test

- Pressing and substantial objective
- Rational connection that limits will advance objective. Doesn't have to be conclusive.
- Minimal impairment - Least intrusive way to achieve objective.

Criminal Law

Types of offences:

- Summary - Least serious, within last 6 months
- Indictable - Most serious (e.g., aggravated assault), serious application of force
- Hybrid (can be either) - (e.g., assault)
- Regulatory - Disturbances, not true criminal offences

Elements of criminal offences to arrive at conviction:

- Act element in the absence of consent (actus reus)
- Mental element of intentionally doing so with knowledge of lack of consent (mens rea)
- Beyond a reasonable doubt

Criminal defences:

- Self-defence
- Duress - Compelled by threat
- Necessity
- Provocation (Partial excuse)
- Automatism (i.e., sleep walking)
- Mental disorder

Tort Law

Types of torts:

- Negligence (most common)
- Intentional
- Strict Liability (trucking dynamite through city)

Negligence:

- Duty of care - The defendant is responsible for the care of the plaintiff.
- Standard of care - That of a reasonable defendant (e.g., reasonable bank)
- Causation (Facts)

- Remoteness (Legal causation) - Reasonable foreseeability (e.g., plumbers and oil valve sealing leading to unfortunate delivery)
- Damages - Functional approach, put the person back in the position they were in before the tort, as best as money can do

Standard of care:

- Probability of loss
- Gravity of loss
- Burden of accident prevention
- General standard rather than specific defendant, who is measured under the standard, and why it was breached, regardless of the specific defendant's situation

Contract Law

Formation (e.g., Carbolic Smoke Ball prize):

- Offer - Definitive terms, communicated to people (not always necessary), advertiser has intent to enter assume legal responsibility
 - Is claim a mere puff?
 - Can not accept by putting forth a counter offer.
- Acceptance - Notice of acceptance not always necessary
- Consideration - Promise with an exchange of mutually valuable things, otherwise it's not legally binding

Breach:

- Enforceable agreement - the law affords a remedy for the breach

Remedies:

- Damages - Principle of Expectancy, that is enough \$ to put the complainer in the same position is the contract was performed (unless another opportunity comes up)
- Specific performance - Perform the promise

Property Law

Types of property:

- Real (land)
- Personal (Tangible vs Intangible)
- Intellectual (Copyrights, trademark, patent)
- e.g., Can't own a spectacle (Park racing with neighbour broadcasting results)

Rights & limits attached to property ownership:

- Use & enjoyment
- Exploitation
- Alienation

- e.g., owning a car

Division of property rights:

- Doctrine of estates
- Co-ownership (suvivorship)
 - Join tenancy
 - Tenancy in common
- Legal & equitable interests (trusts)
- Bailment (borrowing), bailor owns property, bailee is liable for damages, exercising reasonable care
- Lease - Right to exclusive ownership
- Licence - Purchase to lawfully occupy
- Easements - Right to use property owned by someone else for a specific purpose
- Covenants - Agreement between landowners

Posession:

- First possession (e.g., capturing/wounding)
- Finders rights
 - Takes property into possession
 - Finder scan't be trespassing
 - Owners of property that demonstrate manifest intent to control access to property can assert a prior right (e.g., owning a private car vs a public parking lot)

Corporate Law

Business structures:

- Sole proprietorship
- Partnership
 - Limited
 - General - Every partner has all personal liability
- Joint venture
- Trusts
- Corporation (need to determine a name first)
 - Limits liability owners (i.e., shareholders), only corporation is responsible.

6 questions:

1. Profit of not for profit?
2. Partners?
3. High probability of liability (risky)?
4. Decision-making power and operational control?
5. Main revenue src?
6. Short-term vs long-term?

Shares:

- Rights to vote, dividends, assets, and info about corporation
- Types of shares

- Common (voting, may have other rights at lower priority)
- Preferred (Dividend * asset)

Corporation structure:

- Directors
 - Have duties to act competently and fiduciary to the corporation (act in their best interest)

- Officers
- Employees

Consumer protection:

- Competition act - Can lead to criminal sanctions
- False advertising

Workplace Law

3 regimes:

- Common law
- Regulatory regime (e.g., OHSA)
- Collective bargaining regime

Employment relationships:

- Written
- Oral
- Member of a collective bargaining unit
- Independent contractor who is self-employed

OHSA

- Protected social areas:
 - Employment
- Genuine and deeply held religious beliefs in order to protect the individual
- Employers are required to accommodate employee's religious beliefs, but only up to the point of undue hardship.
- Bona fide occupational requirement(s) (BFOR)
- Accomodations
- Experience Undue Hardship (i.e., an employee quitting)
- Need to balance competing rights (expression religion vs right to work in an environment safe from discrimination)
- Poisoned environment: degrading comments made based on code grounds that influence others/their treatment. Can't be based solely on personal views, need to be objective reason for unequal terms/conditions.
- Can make claims against employer & higher ups that don't try to remedy the situation before a complaint happens.

Intellectual Property Law

Types of IP:

- Patent (registered, 20 yrs)
- Copyright (unregistered, 50 yrs after death)
- Trademark (optional, renewable)

Patents:

- The exclusivity right over an invention
- An invention is a new, useful, and unobvious creation, or an improvement
- Test for inventiveness: Would an expert in the field consider it obvious at the time of creation?
- Can't patent: Scientific stuff, a mere idea, surgical treatments, higher lifeforms, business concept, etc.

Copyright:

- Infringement based on amount and essential part of work
- Fair dealings exemption: research, private study, education, parody, satire, criticism, & news reporting.

Trademarks:

- Common law trademark rights - Difficult to prove
- Can't trademark someone's name, needs to be unique. e.g, "Jen's Soccer Academy" is mostly descriptive/a name
- Passing-off - Infringement of common law trademarks

Trade secrets:

- e.g., Coca-Cola recipe
- Competitive advantage
- NDAs
- No act

International Law

4 core international crimes:

- Prohibition on genocide
- Crimes against humanity
- War crimes
- Aggression

Criteria for statehood:

- Permanant population
- Defined territory
- Government
- Capacity to enter relations w/ other states

Crime of Aggression

Definition (de minumus).

- Self-defence
- Security Council authorization