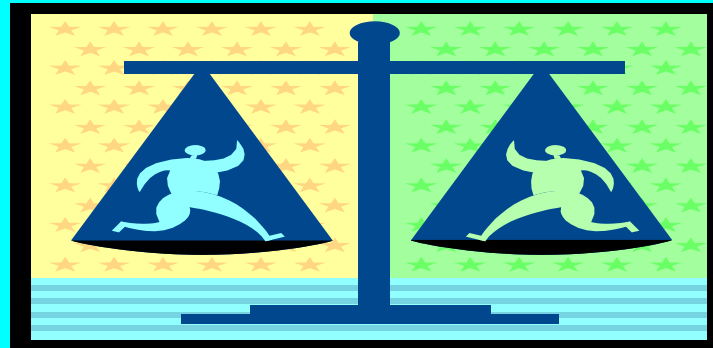




# Introduction to Canadian Law

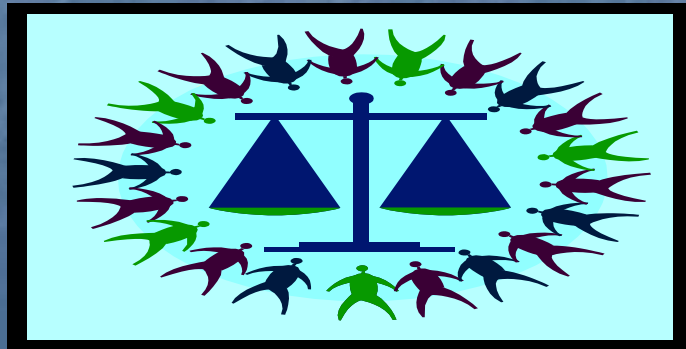
## Chapter 1

What is Law?



# Law is...

- ...a series of rules- rules that govern the relationships between individuals, rules that govern the state (country), and rules that govern the relationships of businesses and other associations that exist in society.



# Law is constantly changing...



- As societies and cultures change, their values and morals change.
- “Law should be looked upon as a running stream, carrying society’s hopes, and reflecting all its values.” Chief Justice Bora Laskin

# As Law Students

- You will learn that the study of law is complex.
- Students must learn not only about the law, but also about the society that binds all people together.



# ANTI-SOCIAL ACTS

- When you break the rules of society, such as by taking someone's property, swindling someone in business , obstructing a snowplow on city streets in winter , speeding, then various punishments are prescribed.
- These rules, applied in our society, form the law.

# HOW DOES THE LAW AFFECT YOU???

- As an individual, you are free to do as you want – except for those things which the law prohibits.
- Some people readily accept the rules while others have more difficulty.
- It is for this reason that enforcement of rules is often necessary.

# Laws are different in each country

- Every country has its own laws.
- However, in some countries, major disputes may be settled by military might.
- Canadians are governed by the “rule of law”.





# What is the Rule of Law?



- This means that every dispute will be settled by a peaceful means, namely by “due process” in the courts, before appointed judges.
- A principle of Justice stating that the law is necessary to regulate society, that it applies to everyone equally and that people are not governed by arbitrary power.



# LAWS FROM THE PAST

- The ancient laws of other cultures have influenced the development of Canadian Law.
- In early societies, local customs and beliefs were the law.
- Eventually, these laws had to be codified, or written down.



# Code of Hammurabi

- This is one of the earliest known collections of codified laws.
- Hammurabi was the King of Babylon around 1700 B.C.
- He had about 300 laws codified and inscribed on stone pillars
- Basic premise, “an eye for an eye, a tooth for a tooth”
- **Retribution** – justice based on vengeance and punishment.
- **Restitution** – payment made by the offender to the victim of a crime.



# Other Ancient Laws



- Another ancient law is the **Mosaic Law** which came about around 1400 B.C.
- These laws were the Ten Commandments introduced to the tribes of Israel by Moses.

# And then there were the Romans

- The earliest Roman code of law, **the Law of Twelve Tables**, was compiled around 450 B.C., and inscribed on a dozen bronze tablets set up in the Forum.
- This set of laws remained in use for over 1000 years.





# Other Law Codes

- The **Justinian Code** was a second set of Roman laws A.D. 565. The Emperor, Justinian made the justice system available to everyone in society- the rich and the poor. "You were innocent until proven guilty".
- Later in the 18<sup>th</sup> century, Napoleon revised the laws of France into the **Code Napoleon** which is the basis for today's Quebec laws.

# The Trials

- **Trial by ordeal** – used only when the sentence for guilt was the death penalty, it required a person to undergo torture to determine guilt or innocence. Survive = innocent, die = guilty.
- **Trial by oath helping** – friends of the accused would swear on the Bible that he or she was innocent. From this came the use of juries to decide cases.
- **Trial by combat** – determining guilt or innocence by having the parties fight a duel. From this came the **adversarial system**, the judicial process whereby evidence is presented by two opposing parties to an impartial judge or jury.



# Common Law

- In 1066, **William the Conqueror** defeated King Harold at the battle of Hastings, and was in control of England. His grandson, Henry II, tried to bring consistency and fairness to the law.
- Judges (called circuit judges) traveled to villages to hear cases and began to record the cases and their decisions. (these traveling courts were called **assizes**) This helped to establish a common method of dealing with similar legal cases, which became known as "**common law**", that is, that it was common to everyone. (aka. **Case law**)
- As these written reports became available, judges would follow the precedent or example in deciding a case before them. This practice led to a principle known as "**stare decisis**" which means to "stand by the decision."
- This led to the "**rule of precedent**", applying a previous decision to a case that has similar circumstances.



# The Magna Carta

- The son of Henry II, King John, was forced to sign a document called the "Magna Carta" in June of 1215.
- Also called the great charter, it established political and civil rights for the people of England, based on the rule of law. No one, not even the king, was above the law.
- Also from the Magna Carta came **Habeas Corpus**, from the Latin "you must have the body", a court order designed to prevent unlawful arrest by ensuring that anyone detained is charged before a court within a reasonable amount of time. This was to determine the validity of the arrest.
- The idea was to release people who were unlawfully placed in prison.
- Now a part of the Canadian Charter of Rights and Freedoms.

# Laws in Canada Today

- The English Law is the foundation of the Canadian legal system, with the exception of the law of Quebec.
- So, Canadian law is base on the laws of France and England.
- French law was codified in extensive legal texts and is referred to as "civil code".
- English law was not codified until much later in history and was known as "common law"

# Common Law and Statute law

- Common law was judged in the courts with judges trying cases. Common law is frequently referred to as “case law”.
- It was combined with the Law of Equity, where each case must be judged on its merits.
- Eventually, many of these decisions were codified and referred to as statute laws.
- Thus, the 2 main categories of law for all of Canada, except Quebec, are common law (law of equity) and statute law.