

# Charles Mwewa Intro to Law Lecture Outlines

## THE LEGAL SYSTEM: CANADA

### Canada, a Bijural Nation

- Bijural Legal System – where there are two different legal systems operating side by side
  - Common Law v. Civil Law
- Two uses of phrase “Common Law”
  - English Common law as opposed to French Civil law
  - Rest of Canada (Common Law – *Case Law*) v. (Civil Law – *Civil Code*)
- Both the Common Law and the Civil Law came to Canada from Europe, and can be traced from the following eras:

### Pre-Renaissance Law in Europe

- Roman Era: Consolidation of all known laws by Emperor Justinian (483 – 565 C.E)
- *Corpus Juris Civilis* (the Body of Civil Law), a reference law
- Contained Classical Roman Civil Law; *Codex*; Digest; Institutes; novels or “books”

### Dark Ages (410 – 1095)

- France, Parliament comprised mediaeval French nobles; in England *Curia Regis* introduced to advise kings
- Customs: Written laws of tribal kingdoms in mediaeval France

### The Renaissance

- 12<sup>th</sup> and 13<sup>th</sup> Centuries: Consolidated laws based on Justinian tradition
- 1804: Napoleon Bonaparte established the Code Napoleon (a Civil Code)
- Code Napoleon was influenced more by university scholars than by judges

### 19<sup>th</sup> Century

- 1759: The French are defeated by the British under General James Wolf
- 1763: After the Treaty of Paris, decided to take Common Law to Quebec
- 1774: *Quebec Act*, Quebec could use Civil Law
- *Constitution Act*, 1791: Prior to this year, Ontario was a part of Quebec. This English Statute divided the region into Upper Canada (Ontario) and Lower Canada (Quebec)
- *Union Act* 1840: Ontario and Quebec join together again, and become known as the Province of Canada until 1867
- 1840 – 1867 Period of Legal Confusion: Sir George-Étienne Cartier (1814-1873), a prominent Montreal lawyer, and Sir John Alexander Macdonald, a lawyer from Kingston, became very good friends
- During this period, Cartier assembled the Codification Commission, a three-person commission to consolidate Quebec laws into a comprehensive Civil Code modified upon Code Napoleon of France

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- Loyalists from the United States established the Common Law in Ontario
- 1866: Code Civil of Lower Canada
- 1867: Under the *British North American Act, 1867*, modern Canada is established, Canada becomes a new federal state, a dominion

### JUDICIAL SYSTEM/ COURT HIEARARCHY

#### Federal Court System of Canada

- Supreme Court of Canada (Chief Justice of Canada and eight Puisne Judges)
- Specialized federal courts (e.g., Tax Court of Canada and Court Martial Appeal Court of Canada)
- Federal Court of Appeal
- Federal Court

#### Provincial Courts of Canada

- Provincial courts of appeal; Trial Division
- Provincial and territorial superior courts
- Provincial and territorial courts
- Federal and Provincial administrative tribunals

### PUBLIC AND PRIVATE LAW

*Def. of Public Law:* area of law in which the public interest is primarily involved. Public Law regulates our relationships with government. Four basic areas:

- *Constitutional Law*
- *Administrative Law*
- *Criminal Law*
- *Taxation Law*

*Def. of Private Law:* area of law in which the private interest is primarily involved. Private Law regulates personal, social and business relationships. Five basic areas:

- *Property Law:* deals with ownership, rights and interests in property
- *Consumer Law:* deals with goods and services
- *Business Law:* deals with formation and operations of businesses in Canada (Sole Proprietorship – an individual carrying on business alone; Partnership – ownership and responsibility of the business is shared by two or more persons; and Corporation – a business organization that is a separate legal entity from its shareholders)
- *Law of Contracts:* deals with voluntary and binding agreements that are enforceable at law
- *Law of Torts:* concerned with intentional violations of the private rights of others and the negligent obligation of legally recognized interests

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Generally, however, all the laws in Canada can be divided into:

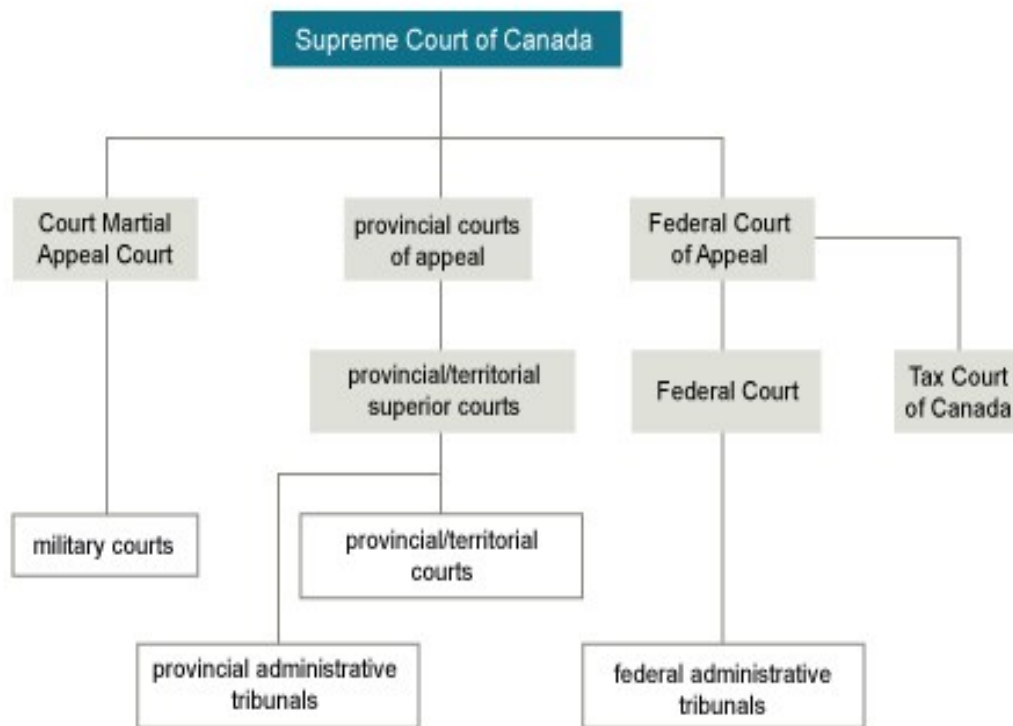
***Substantive Law***: the rules that govern behavior and set limits on conduct

***Procedural Law***: the rules that denotes how rights and obligations are enforced; it dictates procedure

### **Doctrine of Parliamentary Sovereignty**

- Statute Law viewed as being superior to Case Law
- Judges – do they view Parliament as superior to court systems
- Administrative Law and Enabling Statutes
- INTRA VIRES – or within their power
- ULTRA VIRES – outside their power
- *Charter of Rights and Freedoms* v. Parliamentary Sovereignty

## OVERVIEW CANADA'S COURT SYSTEM



(Source: Canadian Judicial Council, [http://www.cjc-ccm.gc.ca/english/resource\\_en.asp?selMenu=resource\\_courtsystem\\_en.asp](http://www.cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_courtsystem_en.asp))

### *When a Judicial Precedent is Binding*

- From a higher court
- From the same area of law
- Has the same ratio, *Ratio Decidendi* or judge's reasons for the decision as opposed to *Obiter Dicta* or remarks made by a judge that are not crucial to the decision
- From the Supreme Court of Canada
- Has not been distinguished

### *Distinguishing a Judicial Precedent*

- Material facts are different
- Obiter Dicta

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- Case wrongly decided or *Per incuriam* ("through lack of care"). A court decision which ignores a contradictory statute or binding authority, and is therefore wrongly decided and of no force
- From a lower court
- From different province/jurisdiction