



Bahar Academy[®]
Canadian Private school

REAL ESTATE LESSON 2

Chapter 1: Fundamentals of Law

COURSE OUTLINE

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- * Public Law
- * Private Law
- * The Sources of Canada's Law

2

- * Common Law
- * Equity Law
- * Statute Law
- * The Process of Trial Court

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- * CRT
- * RTD
- * Mediation
- * Arbitration

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- * Small Claim Court
- * BC Supreme Court
- * BC Court of Appeal
- * Supreme Court of Canada

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- * Enforcing a Judgment:
- * Examination
- * Garnishing an Order
- * Execution
- * Remedies Against Land

Categories Within Canada Legal System

1- Public Law: the law that regulates disputes between individuals and the public as a whole. Public law has three different categories: **1-1 general** (applying to all persons within the jurisdiction) **1-2- local** (applying to a geographical area) **1-3- special** (relating to an organization or authority charged with a public interest).

Examples of public law: Criminal law, Tax law, and Constitutional law.

2- Private Law: the law that deals with disputes between two or more individuals.

Examples of private law: Agency law, divorce, breach of contract, and tort.

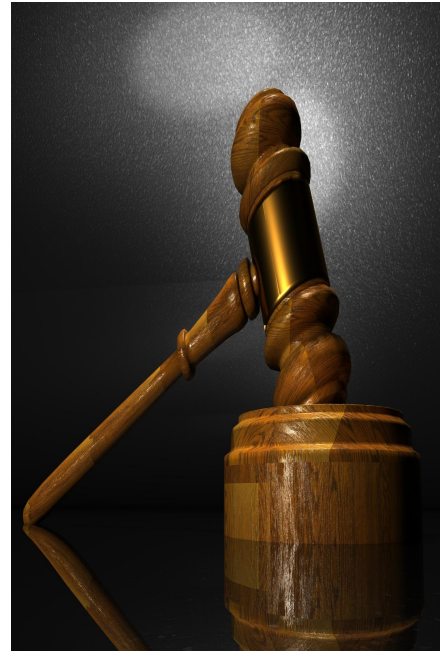
The Sources of Canada Laws:

1- Common Law 2- Equity Law 3- Statute Law

1- **Common Law**: based on the principle of following earlier decisions dealing with the same problems. The idea is to give the law **security**, **certainty** and **uniformity** based on **precedent** or Doctrine of “**Stare Decisis**” (let the former decision stand).

Doctrine of “**stare decisis**” is an important concept in our common law system. It literally means “**let the former decision stand**”. Under this doctrine, decisions made by the Supreme Court of Canada have the most weight of those provinces. A judge must review all of the facts of former decisions and distinguish the differences which are not binding with the new case then search in **three categories** in order of priority. Finding similar cases for binding first by searching Higher courts, then other provinces and at the end other countries.

Common law **remedy**: **Damages** only



2- Equity Law: Arising from the **rigidity of common law** when the only remedy awarded were Damages and were considered Unfair, and Not enough. It does not override the common law but makes it more fair. In law the term equity denotes the spirit and habit of **fairness**, **justness**, and **right** dealing which would regulate interaction of person with person. In Canada the two court systems are also combined, and judges in all the provinces can apply both common law and equitable principles in deciding a matter and if there is a conflict between these two, equitable principles take priority.

Equitable law has three **remedies**: **1- Specific performance**: the judge will order that the terms of the contract should be carried out (this remedy is usually ordered for unique properties) **2- Injunction**: the judge will order to restrict one party from doing something or for doing something. **3- Quantum Meruit**: means “deserves Quantity”: if you ask somebody to do a job for you, you have to pay them even if you didn’t tell them you will pay, or you don’t have any contract with them.

3- Statute Law: Body of law made by the government and used to change the common law or to create rules untouched by common law. Laws passed by Federal, Provincial and Municipal governments. (legislation refers to written laws and often referred to as ACTs or STATUTES)

3-1- Federal: banking, marriage and divorce, postal services, fisheries, bankruptcy, patents, copyrights, defense, criminal matters, shipping, currency.

3-2- Provincial: property, civil matters (personal matters), municipal institutions, and education. (e.g. Real Estate Services Act; Real Estate Development Marketing Act; Land Title Act).

3-3- Municipal: what the province decides to pass based on statutes or legislation (province to the municipality matters).

In Canada judges practice a combination of laws. In a conflict between statute law and equitable principles, statute law will prevail (priority).

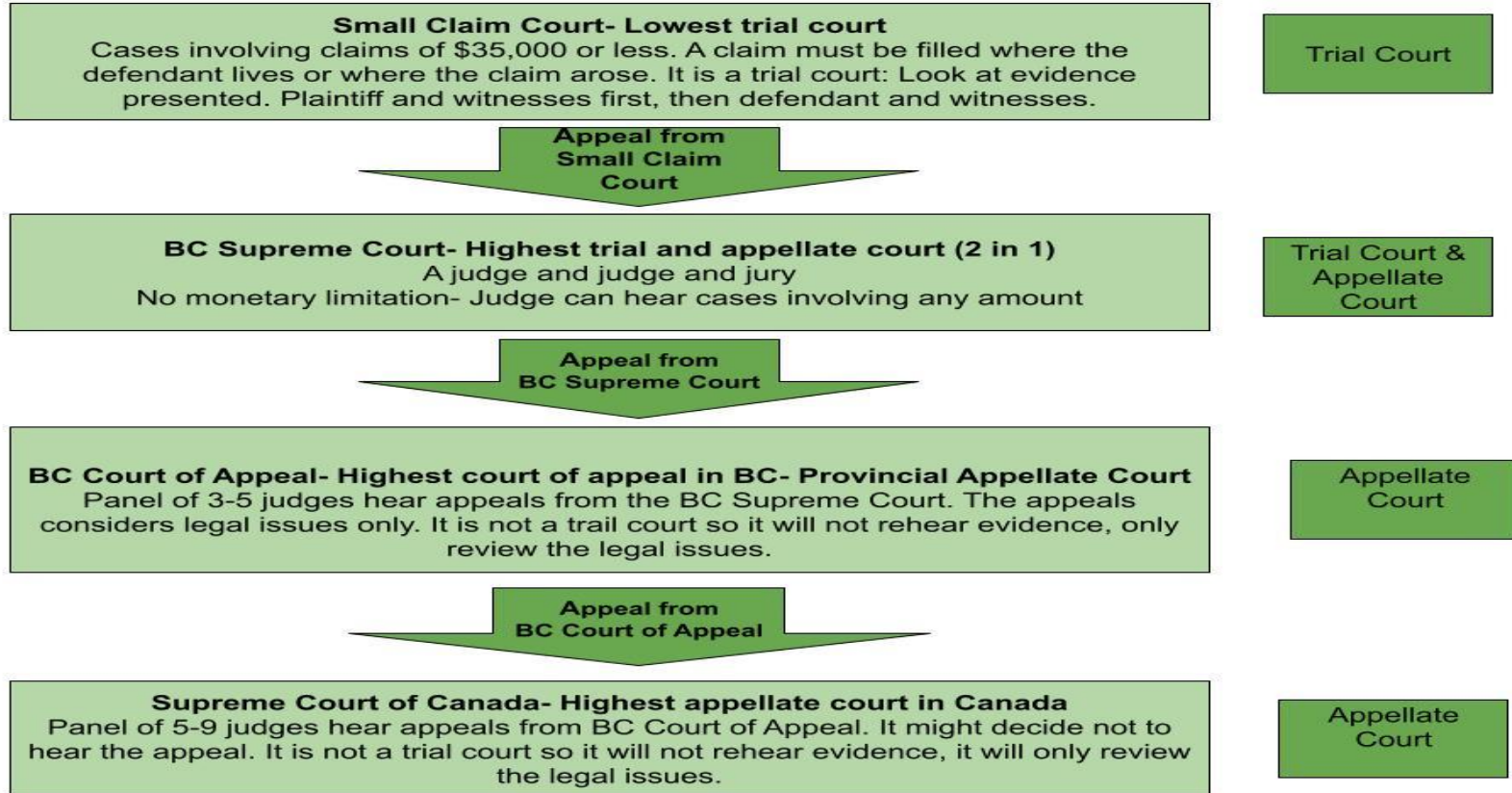
Plaintiff: a person who brings a case against another in a court of law.

Defendant: an individual, company or institution sued or accused in a court of law and should be respond to the claim.

Trial Court: a court of law where cases are tried in the first place as opposed to appeals court. The judge will look at the evidence, and Plaintiff and witnesses first, then defendant and witnesses (e.g. Small Claim Court or BC Supreme Court)

Appellate Court: (appeal courts) parties who file an appeal at the court called, **Appellate**, and parties who respond to the appeal called, **Respondent**. When the judgment was unfair or to stop the enforceable order, the judge may order new trial and ask for new evidence or rehear the current evidence. If the parties were not satisfied with the court's decision, they can file an appeal in a higher level of the jurisdiction depending on the current stage.

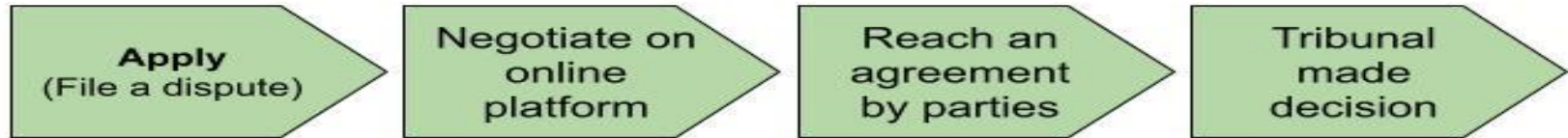
BC Civil Court System



Hierarchy of BC Civil Court System



Civil Resolution Tribunal



Civil Resolution Tribunal (CRT)

Canada's first online tribunal for resolving issues. Tribunals **are not courts** or part of the judiciary system. They are **administrative tribunals** (e.g. Residential Tenancy Branch; Workers' Compensation Board; BC Human Rights Tribunal). Tribunal is meant to be used without legal assistance. Person can ask for help for paperwork, but no one cannot speak on the person's behalf.

- Just claims related to events in **BC**
- Small claims disputes under \$5,000
- Strata claims (no monetary limitation)
- Motor Vehicle Accident and injury claims up to \$50,000
- Association and society dispute (no monetary limitation)
- **No claims** against government, no claims involving slander or defamation, and no claims involving BC Human Rights Code

Three Dispute Resolution Phases

Negotiation

-Negotiation: Two parties will try to reach a settlement on their own with no extra fees. It is the cheapest way to resolve the claim.

Facilitation

-Facilitation: CRT staff try to reach a settlement between parties. There is no additional fee on this phase. If the parties couldn't reach an agreement they move to the next phase which is adjudication.

Adjudication

-Adjudication: Tribunal members will make a decision for the parties and the decision will be enforceable by the court, binding to reach an agreement will be with an additional fee. If the parties didn't agree with the CRT decision, they can ask the BC Supreme Court for jurisdiction review, and the judge can only overturn the decision if the decision was unreasonable. A notice of objection should be filed within 28 days of the decision to proceed for a new claim, otherwise the decision is enforceable.

Alternative Dispute Resolution (ADR)

Mediation Arbitration

Two key types of ADR: Mediation and Arbitration. These are two alternative forms of dispute resolution instead of going to courts. Resolution rather than litigation (e.g. residential tenancy disputes)

Why do people prefer to go to ADR instead of courts?

-Courts are: risky; expensive; time consuming; stressful; adversarial and harm the relationship; make the case public, and damage a person's reputation.

-ADRs are: faster; flexible, confidential; and less adversarial.

Mediation Process

Mediation: it is a dispute resolution process whereby a mediator assists the parties to constructively resolve their dispute and avoid proceeding to a court hearing. Provided by the court for parties to reach an agreement to prevent them spending money and time at the court. When a court asks people to attend to mediation, attendance is mandatory.

How it works?

- Provide notice of claim to mediate
- Select a mediator
- Negotiate
- Reach consensual agreement (it is enforceable to keep it)

Pros of Mediation

- Preserve relationship between parties
- Solution is consensual not imposed
- Parties have control over the situation

Arbitration

It is more similar to judgment and different from mediation, because in mediation, parties make decisions on their own with consensual agreement. It is a form of dispute resolution whereby an arbitrator hears the evidence presented by both parties and issues a legally binding decision.

Governed by Arbitration Act. Decision of an Arbitrator is binding and final.

The process is confidential and private and will not be searchable in the public domain, and agreed as a dispute resolution mechanism.

Includes: Family Law Dispute; Residential and Commercial Tenancy Disputes; other Commercial or Private Disputes.

Small Claims Court

Small Claim Court is one of the divisions of **BC Provincial Court:**
(Small Claim Division; Family Division; Criminal Division; Traffic Division)

Before going to Small Claim Court, two parties should attend a **settlement conference** and the judge will try to make an agreement between parties. The judge will ask evidence from the parties to bring to trial, and will try to make a binding decision. After trial if disagreement continues, and the parties disagree with the judge's decision, they would be able to file an appeal to the BC Supreme Court within 28 days to stop the enforceable judgment).

- No claim above \$35,000
- No claim in certain areas of the law including: Wills and Estates; Bankruptcy;
- Residential Tenancies; Interests in land.

BC Supreme Court

It is a general and inherent jurisdiction and has several locations across BC. No limitations on claims hearing. **Trials and appeals** heard by judge, or judge and jury. If the parties find the decision unfair, they can file an appeal to the BC Court of Appeal.

- Jurisdiction
- Civil cases of claims above \$35,000 but it hasn't any monetary limitations.
- Family law cases involving divorce
- Serious criminal trials
- Libel, slander, malicious prosecution claims
- Appeals from Small Claim Court, and CRT

BC Court of Appeal

- It is the highest Appellate Court in BC
- It is only an appellate court (not a trial court), so it will only review the legal principles, and won't rehear the evidence
- Panel of 3-5 judges to hear appeals from the BC Supreme Court
- It is not a trial court so it will not rehear evidence, only review the legal issues.

Supreme Court of Canada

- Highest court in Canada
- Decisions are final
- It should be a civil matters (should be important to public)
- Decisions made by majority
- A panel of 5-9 judges to hear appeals from BC Court of Appeal.
- It might decide not to hear the appeal
- It is not a trial court so it will not rehear evidence, it will only review the legal issues

BC Civil Trial Process

- **Stage 1: Cause of Action Arises:** A civil wrong is committed (e.g. breach of contract)
- **Stage 2: Action and Pleadings:** The lawyer of an injured party prepares and files a notice of civil claim. The defendant then filed a response to the court. The injured party as a plaintiff, and the wrongdoer as a defendant.
- **Stage 3: Discovery:** Each party is examined **under oath** by the other party's lawyer (examination for discovery). All relevant documents are examined (discovery of documents).
Most actions are settled after discoveries have taken place.
- **Stage 4: Trial:** A judge alone or a judge and jury, hear all of the evidence, and give the decision at a later date.
- **Stage 5: Judgment:** The defendant will either be found liable or not liable to the plaintiff. The successful party, at the discretion of the court, might be awarded costs, payable by the losing party, which will partially cover the legal expenses of bringing the action.

Enforcing a Judgment

When the defendant has lost the case, and did not appeal, and has not made any payment, the judgment creditor can enforce the judgment from one of these followings:

1- Examination of judgment debtor 2- Garnishing order 3- Execution 4- Remedies Against Land

Defendant: **judgment debtor** (losing party who has not yet paid the judgment)

Plaintiff: **judgment creditor** (winning party who is owed money under the judgment)

1- Examination of judgment debtor: Examining the debtor under oath for the assets and sources of income.

1- Request judgment debtor to reveal assets under oath. 2- Ascertain information on the judgment debtor's financial situation by land title search, ICBC search, and personal property registry.

2- Garnishing order: A means for judgment creditors to get debtor's **money**. Garnish wages or amounts from bank accounts to pay the debt. Order served on third parties by directing them to pay money they owed to debtor into court rather than to debtor, then judgment creditor can apply for that money.

Judgment creditor can get order for:

-Wages (cannot obtain all the employee's wages, maximum 70%)

-Assets in bank

-Money owed to debtor by third party

3- Execution: the process of commencing proceedings to collect an amount owing by reason of a judgment. Seizing and selling of judgment debtor's assets by a **court** appointed sheriff. Court can issue writ of execution to the sheriff for certain assets that are exempt under “Court Order Enforcement Act” to seize the assets and sell them to pay the debt.

Process:

- Take possession of assets (seized)
- Sell at auction (sell)

4- Remedies Against Land: Judgment can be registered by a court as a charge against land of judgment debtor by applying to the court not registrar at Land Title Office. First apply by placing a lien, then eventually apply for a judicial sale to recover debt. It should renew every two years.



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THANK YOU!