**Law Exam Review Notes**

**Rules Vs. Laws**

<table>
<thead>
<tr>
<th>RULES</th>
<th>LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Promotes appropriate behaviour</td>
<td>- Rules that are institutionalized by the government</td>
</tr>
<tr>
<td>- Prohibits certain actions</td>
<td>- Specific punishment if they are not followed (fines, probation, jail sentence, community service)</td>
</tr>
<tr>
<td>- Can change depending where you are and who you’re with</td>
<td>- Must be followed by EVERYONE</td>
</tr>
<tr>
<td>- Set for a certain amount of people or place</td>
<td>- Different types of law (municipal, provincial, and federal)</td>
</tr>
<tr>
<td>- Examples. School rules, park rules, workplace rules</td>
<td>- Enforced by government officials (police officers, RCMP, OPP)</td>
</tr>
<tr>
<td>- Punishment for breaking rules varies</td>
<td></td>
</tr>
</tbody>
</table>

**ALL LAWS ARE RULES, BUT RULES ARE NOT LAWS**

**Introduction to Law**

*Why do we need laws?*

- Live in a community with many people
- Provides predictability and structure
- Laws against criminal conduct protect property and protect us from violence
- Disputes are settled in courts; not streets

*Rule of Law*

- The Rule of Law is a 3-part principle of justice which means:
  1. That individuals must recognize and accept that the law is necessary to regulate society.
  2. The law applies equally to everyone, including people in power (police, judge, politicians)
  3. No one in society has the authority to exercise unrestricted power to take away our right (accept in accordance with the law)

*Law and Morality*

- Some laws are practical and other reflect the moral values of the majority
- In a multicultural society, tension may exist between law and community standards of right and wrong
- Laws reflect our collective community (values, attitudes, and beliefs)
- Those who oppose the law are free to protest in hopes of change.
Introduction to Law (continued)

Law and Justice

- We expect that the law be applied equally to all, but sometimes that is unjust
- Concept of justice is open to debate (dependant on personal moral ideas)

Historical Roots of Law

Categories of Law (highest to lowest)

- The Law: outlines criminal and civil codes with appropriate penalties
  
  o International Law: includes that govern the conduct of independent nations in their relationships with one another
  o Domestic (Canadian) Law: law that is made and enforced with a nation’s borders

  - Procedural Law: the process of law; outlines the steps involved in protecting the right given under substantive law
  - Substantive Law: substance of law; lists the right and duties of each person in society

- Public Law: controls the relationships between government and people living in society; law that applies to EVERYONE!!!

  - Constitutional Law: constricts power of government. Distributes power of government fairly between federal and provincial. All laws must pass constitution
  - Administrative Law: controls the relationship between citizens and government agencies (LCBO – Liquor Control Board)
  - Criminal Law: rules, passed by Parliament that define acts that are considered offences to society; set penalties for breaking law

- Private Law (Civil Law): outlines legal relationships between private citizens or between citizens and organizations; resolve conflict, pay conflict

  - Tort Law: states that any person or organization must be held responsible for any damage they cause to a person
  - Contract Law: deals with everyday transactions in which people purchase or promote goods and services. If one party fails to uphold the terms of the contract the other may seek the court’s assistance
Categories of Law (continued)

- Family Law: covers matters such as marriage, property division upon divorce, children, and divorce
- Wills & Estate Law:aka succession law; deals with the distribution of property after death. Also deals with wills which are made clients of Estate lawyers. They deal with property division, among people listen in the will
- Property Law: regulates ownership rights of all property; also deals with real estate transfers.
- Employment Law: involves the relationship between employees and employers; protects against child labour, limits work hours, and includes minimum wage.

Government and Law Making

- Executive Branch: the administrative branch of government responsible for carrying out the government plants and polices
- Legislative Branch: the branch of government that has the power to make, change, and repeal laws

EXECUTIVE & LEGISLATIVE BRANCH

![Diagram of the Canadian Government](image)
Canada’s Constitution

What is the constitution?

- A constitution:
  - Provides a guideline that establishes how power and authority within a country is exercised
  - Assigns the limits of power
  - It is the supreme law of the land, and needs to reflect the views and values of the people
Canada’s Constitution (continued)

- Two Types of Systems
  - Unitary
    - One level of government
    - Power is centralized in one parliament led by a Prime Minister
    - Works for smaller land masses (Great Britain)
    - Canada was too large to have one government
  - Federal (Canada)
    - Divided between two levels: federal and provincial government
    - Each would have different responsibilities but the federal government could trump the provincial
    - The two levels should not have the same responsibilities

- Residual Powers
  - Not specifically assigned to any authority; therefore, the federal government has control
    - Ex. Airports and telecommunications
  - Ultra Vires
    - When one level of government passes a law that infringes on the jurisdiction of another level of government
  - Intra Vires
    - Passing a law within a government’s jurisdiction; Latin for “within the power”

Ex. If a province passes a law saying it’s okay to publish the names of youth offenders (which contradicts the federal Youth Criminal Justice System)

Division of Power

<table>
<thead>
<tr>
<th>FEDERAL RESPONSIBILITIES</th>
<th>PROVINCIAL RESPONSIBLITES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>Education</td>
</tr>
<tr>
<td>Taxation</td>
<td>Compensation to Injured Workers</td>
</tr>
<tr>
<td>Currency</td>
<td>Municipal institutions</td>
</tr>
<tr>
<td>Defence</td>
<td>Labour and trade unions</td>
</tr>
<tr>
<td>Bills of exchange</td>
<td>Provincial courts and law</td>
</tr>
<tr>
<td>Census</td>
<td>Natural resources</td>
</tr>
<tr>
<td>Citizenship</td>
<td>Property and civil laws of the province</td>
</tr>
<tr>
<td>Criminal law</td>
<td>Maintenance of hospitals</td>
</tr>
<tr>
<td>Employment insurance</td>
<td>Taxation within the province</td>
</tr>
<tr>
<td>Foreign affairs</td>
<td>Solemnization of marriage</td>
</tr>
</tbody>
</table>
Criminal Law

- Crime: any act or omission of an act that is prohibited and punishable by federal statute
- Omission: means that a person failed to act in certain situations
  o Leaving a car accident which you were involved

Act of Omission as a Crime

- The Law Reform Commission of Canada says that 4 conditions are necessary for an act/omission to be considered a crime:
  1. Act is considered wrong by society
  2. Act causes harm to society in general or to those that need protection (minors)
  3. The harm is serious
  4. The remedy is handled by the criminal justice system

What is Criminal Law?

- Laws that prohibit and punish acts that injure individual people, property, or the entire community.
  o Protect, people and property
  o Maintain order
  o Preserve standards of public decency

What is the Criminal Code?

- Federal statute that contains the majority of criminal laws passed by parliament
- Contains offences and sentences
- Reflects values of the majority of Canadians
  o Ex. Bill C-7 criminal records of pardoned sex offenders available for background checks.

**Federal Government has the power to make criminal law**

Provincial Power

- Each province appoints its own judges and pays for/administers its own provincial court system
- Provinces have the power to pass laws on matter that fall under their jurisdiction
  o LCBO – Liquor Control Board of Ontario
- There laws are NOT criminal laws, but are quasi-criminal laws (less serious – most crimes are punishable by fines)
The Elements of a Crime

**ACTUS REUS**

“The Guilty Act” – the voluntary action, omission, or state of being that is forbidden by the Criminal Code

**MENS REA**

“The Guilty Mind” – a deliberate intention to commit a wrongful act, with reckless disregard for the consequences

**CRIME!**

- Intent:
  - A state of mind in which someone desires to carry out a wrongful action, knows what the results will be, and is reckless regarding the consequences
  - Two types of intent:
    - **General Intent:**
      - The desire to commit a wrongful act, with no motive* of purpose
    - **Specific Intent:**
      - The desire to commit one wrongful act, for the sake of accomplishing another

*Motive - the reason a person commits a crime

- Knowledge:
  - An awareness of certain facts that can be used to establish Mens Rea
The Elements of a Crime (continued)

- Criminal Negligence
  o Reckless disregard for the lives and safety of others, sometimes causing serious injury or death

- Recklessness
  o Consciously taking an unjustifiable risk that a reasonable person would not take

- Wilful Blindness
  o A deliberate closing of one’s mind to the possible consequences of one’s actions

- Liability
  o A legal responsibility for a wrongful action
  o There are two types of liability:
    - Strict Liability Offences:
      ▪ Offences that do not require Mens Rea but to which the accused can offer the defence of due diligence*
    - Absolute Liability Offences:
      ▪ Offences that do not require Mens Rea and to which the accused can offer no defence

*Due Diligence – the defence that the accused took every reasonable precaution to avoid commenting a particular offence

Involvement in a Crime

- The Perpetrator:
  o The person who actually commits the criminal offence
  o When more than one person is directly involved, they are called co-perpetrators
  o Person has to be there during crime to be named perp or co-perp

- Aiding:
  o When people are not directly involved they are, parties to an offence
  o Aiding means helping the perp commit a crime
Involvement in a Crime (continued)

- **Abetting:**
  - Encouraging the perp of a crime without actually providing physical assistance
  - Person is not guilty of aiding or abetting just because he or she has the knowledge of a crime or is present at the scene

- **Counselling:**
  - Involves advising, recommending, or persuading another person to commit an offence
  - Same as aiding, the person does not need to be present at the crime scene

- **Accessory After the Fact:**
  - A person who knew someone was involved in an offence and received, confronted, or assisted that person in escaping from the police

- **Party to Common Intention:**
  - A shared responsibility, where participants in the original crime can be charged with an additional crime, even though they were not directly involved with them

- **Incomplete Crime:**
  - Criminal offence has not been completed
  - Two types:
    - **Criminal Attempt:**
      - When a person is unsuccessful in committing a crime
      - He/she had the intention to commit crime, but failed to carry through
      - To prove attempt, the Crown has to show that the accused has the intent and took some obvious steps towards committing the crime
    - **Conspiracy:**
      - An agreement between two or more people to perform an illegal act
      - It does not matter if act is actually carried out
**The Role of the Jury**

*Requirements for Jurors*

- 18 years of age or older
- Resident of the province for at least one year
- People who cannot be Jurors
  - Politicians
  - Probation Officer
  - Police Officers
  - Prison Guards
  - Lawyers

**EXEMPTIONS FROM JURY DUTY:** health concerns, religious reasons, served in last two years, have a criminal record**

*Jury Selection*

- Jury Panels
  - Random selection of voters in Canada
- Arraignment:
  - Accused brought in front of the judge and jury to enter a plea (guilty or not guilty)
  - If not guilty, juror selection process begins

*Steps for Selection*

1. Name of Jurors are written on cards, put into a box, and selected at random. They are read to the court
2. The person whose name is called faces the accused
3. The Crown and Defense challenges the individual
4. Either counsel can make a challenge for cause:
   - Already formed an opinion of the case
   - Physically unable to perform duties
   - Has been convicted of a serious offence
5. Peremptory Challenge (reject a certain number of potential jurors):
   - Serious Cases (First-Degree Murder) – 20 each
   - Less Serious (More than 5 years) – 12 each
   - Minor Cases (Less than 5 years) – 4 each
6. Twelve jurors take the oath
Levels of Police in Canada

**RCMP**

- Work focuses on 8 areas:
  1. Customs and Excise
  2. Drug Enforcement
  3. Economic Crime
  4. Federal Policing
  5. Immigration
  6. Proceeds of Crime
  7. Criminal Intelligence
  8. International Liaison and Protected Services

- Formed in 1873 as the North-West Mounted Police

**OPP**

- Provincial police force, jurisdiction in rural areas and unincorporated regions around cities
- In some parts of Canada, the RCMP operates as the provincial police
- Responsibilities of the OPP:
  - Policing municipalities that are not required by law to maintain their own police force
  - Responding to municipal police requests for special assistance in emergencies
  - Providing traffic control on all 400-series highways and major highways
Levels of Police in Canada (continued)

ROPP

- Jurisdiction over policing in town and cities throughout Canada
- Each municipality has its own force
- Responsibilities of the ROPP:
  - Preserving the peace
  - Preventing crimes from occurring
  - Assisting victims of crime
  - Executing warrants
  - Apprehending criminals
  - Laying charges and participating in prosecutions
  - Enforcing municipal by-laws

Levels of Offences

Summary Conviction Offences

- Minor offence (light penalty)
- Max penalty of $2000 and/or 6 months in prison
- Cases proceed through court quickly
- Tried in provincial court before a judge (no jury)
- Accused does not have to be present in court (can be represented by a lawyer)

Indictable Offences

- Serious Offence (heavier penalty)
- Criminal code establishes more penalties for crimes
- Sometimes Criminal Code sets a minimum penalty for an indictable offence
  - Ex. 4 years for robbery where a firearm is used
- Method for trying an indictable offence differs according to the severity of the sentence

Indictable Offences Penalties

- Less than 5 years = Provincial or Superior Court of the province before a judge
- More than 5 years = Accused can opt for a trial in Superior Court, either with a judge alone or a jury
- Most serious indictable offences (murder or treason) must be tried in a Superior Court
Levels of Offences (continued)

Hybrid Offences

- Hybrid or dual procedure offences (summary conviction or indictable offence)
- Crown gets to decide if it is a summary conviction or an indictable offence
- Criminal code makes it explicit which crimes are summary or indictable crimes
- Hybrid offences are always treated as an indictable offence until charges are laid in court (at this point the Crown decides)
- Depends on circumstances of the case

Comparison Chart

<table>
<thead>
<tr>
<th></th>
<th>SUMMARY CONVICTION</th>
<th>INDICTABLE OFFENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation Period</td>
<td>Prosecuted within 6 months</td>
<td>No limitation on prosecution</td>
</tr>
<tr>
<td>Prosecution</td>
<td>Private person can prosecute if Crown doesn’t</td>
<td>With permission private person can, but likely the Crown</td>
</tr>
<tr>
<td>Pre-trial Procedures</td>
<td>No preliminary hearings</td>
<td>Preliminary hearing held</td>
</tr>
<tr>
<td>Type of Court</td>
<td>Provincial Court</td>
<td>Provincial or Superior Court</td>
</tr>
<tr>
<td>Method of Trial</td>
<td>No jury trials</td>
<td>Judge or Jury</td>
</tr>
<tr>
<td>Presence of Accused</td>
<td>Not required</td>
<td>Required</td>
</tr>
<tr>
<td>Penalties</td>
<td>Up to $2000 and/or 6 months in prison</td>
<td>Heavier penalties, up to life imprisonment</td>
</tr>
<tr>
<td>Criminal Record</td>
<td>No criminal record</td>
<td>Criminal record</td>
</tr>
</tbody>
</table>

Identifying and Collecting Physical Evidence

- Physical Evidence:
  - Any object, impression, or body element that can be used to prove or disprove facts to an offence

- Forensic Science:
  - The use of biochemical and other scientific techniques to analyze evidence in a criminal investigation
Identifying and Collecting Physical Evidence (continued)

Types of Evidence

- Tools:
  - Most frequent used are hammers, screwdrivers and crowbars
  - Often these tools have unique characteristics

- Impressions:
  - Patterns of marks found on various surfaces
    - Fingers, gloves, shoes, tires or tools
  - Impression is photographed, scanned or moulded
  - Try to match with prints of suspects
  - Two types of characteristics to help identify impressions:
    - Class Characteristics:
      - The general attributes of an object
    - Individual Characteristics
      - The specific and unique features of an object

- Fingerprints:
  - Pattern left on surface by fingertip
  - Can be from person’s feet, hands, or toes
  - Easier to work with and classify
  - Unique to each individual
  - Even identical twins have different patterns
  - Two types of fingerprints:
    - Visible fingerprints:
      - The print is formed when a fingertip it coated in a blood, grease, or some other substance
      - These are visible to the naked eye
    - Latent fingerprints:
      - The print is formed by natural oils and perspiration on the fingertip
      - These are invisible to the naked eye
      - They have to be developed it can be photographed
Three methods used to develop Latent prints:

1. Print Lifting:
   - Prints on non-absorbent surfaces such as plastic or metal. Dust the print in graphite powder and then lift using tape

2. Iodine Fuming:
   - Lift prints from absorbent surfaces such as paper and cloth.
   - Expose iodine fumes to crime scene; and any existing fingerprints absorb iodine and become visible

3. Laser
   - Used to illuminate the print
   - Sweat compounds deposited on the surface absorb laser, and the print turns yellow and can be photographed

- Gloves
  - Can be identifiable using almost the same method as identifying fingerprints

- Shoe Prints and Tire Tracks:
  - Matched to the suspect, to help place the suspect at the scene of the crime
  - Identify amount of suspects
  - Identify that suspect’s approximate height, weight, and any injuries he/she might have sustained while committing the crime

- Body Elements and DNA:
  - Blood, semen, mucus, spit, hair, and skin
  - Police can use any of these substances for DNA testing and other lab tests
  - Blood is the most common
  - Hair and clothing can be easily transferrable from the offender. Also the easiest to match and place the suspect at the crime scene
Starting a Police Investigation

- Crime Scene:
  - The site where the offence took place

- Centre:
  - The area in which the offence was actually committed

- Perimeter:
  - The areas surrounding the centre, where the offender may have been present or may have left evidence

- Contamination:
  - The loss, destruction, or alteration of physical evidence

- Police Log:
  - A written record of what an officer has witnessed

- Crime Scenes are preserved for three reasons:
  1. Through search of the scene
  2. To seize and collect physical evidence
  3. To ensure that physical evidence seized is admissible in court

Types of Police Officers

4. Patrol Officer
   - Patrols a regular area
   - First to arrive at crime scene

5. Scenes of Crime Officer
   - Trained in evidence collection and preservation techniques
   - Skilled photographers, trained to lift fingerprints, foot and tire marks

6. Criminal Identification Officer
   - Responsible for the crime scene, examining the scene for physical evidence, gathering and analyzing evidence

7. Criminal Investigations Bureau Officer
   - A plainclothes detective with experience in a particular area of a crime, such as homicide, robbery or sexual offences
Jurisdiction, Enforcement and Guarantee

Jurisdiction

- Area of authority set out in s.32, includes legislative, executive, and administrative governments
- The Charter DOES NOT have jurisdiction to protect your right if discrimination from a none-governmental source occurs (government or it’s agencies)
- Ex. Landlord – Renter

Enforcement

- Supreme Court is the “Guardian of the Constitution”
- Nine justices are responsible to interpret and enforce
- Supreme Court of Canada allows people who believe their Charter Right have been infringed by the government or its agencies to challenge the government in court

Questions to Consider

- Was the right infringed or violated by the government or it’s agencies?
- Is the right in question covered under the constitution?
- If the violation or infringement with a reasonable limit?

Infringement Occurred

- Legislation can be changed or amended
- In criminal cases, the courts can:
  - Exclude certain evidence
  - Order a new trial
  - Or, dismiss the case completely

Interveners

- “Friends of the Court” : individuals or organizations that have special interest in the proceedings are permitted to promote their own views