

ADVANCED PRIVATE LAW

Class activities*

CLASS 1 September 14: Introduction and Orientation



Discussion questions

- 1) Analyze the following cartoon. What do you know about divorce law?
- 2) Think of or search for a song dealing with private law issues. Describe the lyrics and analyze them.
- 3) Find a video (scenes from movies, TV shows, or music videos, not a documentary or a lecture) on YouTube that shows a private law issue. Describe the lyrics and analyze them.
- 4) Write a treatment (script outline) for a feature film on private law. Be creative. The film can be of any genre. Try to be specific. Include any aspect of private law or private law in general in the film. Think of a title. Think of the actors that may star in your film.

CLASS 2: September 21: PUBLIC vs. PRIVATE LAW

PUBLIC LAW VERSUS PRIVATE LAW	
Public Law aims to protect the public interest	Private Law seeks to protect private interests
Individuals and the state are the main parties involved	Private entities or organizations acting in the private capacity are the main parties involved
Ensure the public interest of the general population	Secure private interests/freedom of the individuals in the community
Responsible for regulating a harmonious relation between the citizens and the state	Responsible for regulating the activities between two or more private entities in a just and fair manner
Penal sanctions are more severe	Sanction usually include the payment of damages

Pedlica.com

1. Analyze the picture above. Do you agree with every entry? Why or why not? What else would you add? What, if any, would you delete?
2. The main outcome of a private law lawsuit is the payment of compensation (money). Similarly, settlements, i.e., out of court agreements also involve the payment of compensation. So, for example, if a driver runs over a pedestrian, the driver will have to pay money to the pedestrian to compensate for the injuries and other damages the pedestrian suffered. This is so whether they go to trial or whether they resolve the matter out of courts, if they do not want to go to trial. This applies to virtually all private law cases, including rape, wrongful deaths, child support, and contractual breaches, to name a

few. What do you think of this? What are the implications of solving problems through money? Can you think of other –realistic- alternatives to solve Private Law conflicts? Do an online search of societies and legal traditions to analyze whether they have other means to solve these conflicts.

3. Wikipedia defines private law as follows. Suppose you are a Wikipedia editor. Make the appropriate corrections. Add information that you think is relevant.

“Private law (Civil law) is that part of a legal system that involves relationships between individuals. This includes the law of contracts or torts and the law of obligations. It is distinguished from public law which deals with law involving the state including regulatory statutes penal law and other law of public order. In general terms public law involves interrelations between the state and the general population whereas private law involves interactions between private citizens.

The concept of private law in common law countries is a little more broad in that it also encompasses private relationships between governments and private individuals or other entities. That is relationships between governments and individuals based on the law of contract or torts are governed by private law and are not considered to be within the scope of public law.

4. Read the following passage. Explain it in your own words. You may want to consult the decisions cited in the text.

One of the most important ideological constructs is the division into public and private realms. This dichotomy is in part linked to the development of the modern nation state and a concern to limit the absolute law making authority of the state. By characterizing a sphere of activity as essentially private, it makes it possible to argue that there are legitimate limits on the authority of the state to interfere and regulate. The public/private distinction is a crucial component of theories of liberalism. It also is a major issue in modern constitutional law and theory, especially where there is a written constitution which purports to create rights for private actors and restrictions on governmental activity. The following court decisions examine the question of how to characterize certain activities. In *Shelley v. Kramer* the U.S. Supreme Court was forced to decide whether judicial enforcement of a restrictive covenant in

a property deed constituted state action. If it did, the enforcement of the restrictive covenant would constitute a denial of equal protection of the law, guaranteed by the Fourteenth Amendment of the U.S. Constitution. The Court's sweeping characterization of state action stands in stark contrast to the much more limited approach of the decision of the Canadian Supreme Court in *RWDSU, Local 580 v. Dolphin Delivery Ltd.*, in which the Court was interpreting Section 32 of the Charter of Rights and Freedoms. Note as well the very formalist approach adopted by the Canadian Supreme Court in *Noble & Wolf v. Alley* in which the Court refused to enforce a restrictive covenant, not because it was discriminatory, but because it did not "touch and concern the land" and because of its vagueness. The ideologic effect of the public/private dichotomy is also demonstrated in *Harrison v. Carswell*, dealing with the right of a private owner of a shopping mall to control the activity taking place on mall property. The clash between the rights of private property and the rights of workers, and the conflicting approaches of Justices Dickson and Laskin in defining the limits of private ownership in the face of emerging forms of quasi public spaces make this case a prime vehicle for raising questions about the value of "public" and "private" as legal and social constructs.

CLASS 3: September 28: TORTS: Negligent torts and defences



Prepare a PowerPoint presentation analyzing the negligent tort in (common law) Canada and its elements. Address each of the following questions.

1. What is a tort?
2. What is a negligent tort?
3. What are the elements of the negligent tort?
4. What is negligence? What are the sources of the standard conduct? How can you determine what is standard and what is not?
5. What is the duty of care? How does it work?
6. What are the main defences to negligent torts?
7. What damages can be recovered in a negligent tort? What are the limitations of liability?

CLASS 4: October 5: INTENTIONAL TORTS AND STRICT LIABILITY TORTS

Prepare a PowerPoint presentation analyzing the intentional tort in (common law) Canada and its elements. Address each of the following questions.

1. What is an intentional tort?
2. What are the elements of the intentional tort?
3. What are the main intentional torts?
4. What are the main defences to intentional torts?
5. What damages can be recovered in an intentional tort? What are the limitations of liability?

Strict liability

Do an online search and discuss liability arising from space activities. Think of, at least, 5 hypothetical scenarios dealing with space liability. Write them down and analyze them.

CLASS 5: October 12 CONTRACTS



Contracts in common law jurisdictions

Prepare a PowerPoint presentation analyzing contracts in common law Canada and their elements. Address each of the following questions.

1. What is a contract?
2. What are the elements of a contract?
3. Discuss the defences to contract formation.
4. What is a breach of contract? What breaches can be compensated?
5. Discuss contractual damages.

Contracts in civil law jurisdictions

Prepare a PowerPoint presentation analyzing contracts in civil law jurisdictions and their elements. Address each of the following questions.

1. What is a contract?
2. What are the elements of a contract?
3. Compare civil law contracts and common law contracts.

Drafting activity

Write a comprehensive contract for the purchase of a good or group of goods of your choice governed by a common law jurisdiction. Include definitions, recitals, breach, and boiler plate provisions.

CLASS 6: OCTOBER 26 PRIVATE INTERNATIONAL LAW

Scenarios

Analyze the applicable law in each of the following scenarios.

1. Josh, a Canadian citizen who resides in Sault Ste. Marie, Ontario. He went to Bologna, Italy for the summer holidays. There he bought a meat sandwich from La Rosticceria, an Italian deli with no assets or branches outside Italy. He ate the sandwich. He was immediately hospitalized for a week as the meat was contaminated. He came back to Canada and wants to sue La Rosticceria in Canada. If he does, can the judicial decision be enforced in Canada? If so, what is the applicable law? Can the judicial decision be recognized in Italy? If Josh wanted to sue La Rosticceria in New York, will the New York courts accept the case?
2. Essar, a Canadian company in Sault Ste. Marie, requested the purchase of steel from a Pipeland, a UK company. The companies exchange emails and agree on the price of steel. They do not mention anything about the governing law of this contract. Pipeland does not deliver the steel as agreed. Essar wants to sue Pipeland. Where can Essar sue? What is the applicable law?
3. Julian wants to sell his stamp collection. He places an ad on his own website. Alex, a resident of Moscow, Russia, emails Julian saying he wants to buy it. Alex receives the stamp collection but never pays. Where can Julian sue Alex? What is the applicable law?
4. The Coca-Cola Company, a company with head offices in Atlanta, Georgia, US, hires Heliene, a solar power company from Sault Ste. Marie, to install solar panels on its new plant in Barcelona, Spain. Heliene sends three Canadian technicians to Barcelona and ships the panels from the Sault. The technicians install the panels. The Coca-Cola Co. refuses to pay Heliene because it argues that the panels were not correctly installed. Where can Heliene sue The Coca-Cola Company? The contract between Heliene and

Coca-Cola is silent as to the governing law. Suppose that one of the Heliene technicians is injured while installing the panels. Where can the technician sue? What is the applicable law?

5. Pierre, a French citizen, went to Disneyworld in Florida, US. There he injured his head in Splash Mountain because the ride malfunctioned. Where can Pierre sue Disneyworld? What is the applicable law?
6. 25 de mayo, a theater company located in Buenos Aires, Argentina makes a request for the purchase of a rotating stage from a Theatre Props, a company in Madrid, Spain. The request is accepted but there is no mention of the governing law. 25 de Mayo receives the rotating stage. When its technicians try to install it, they realize that it does not work. One of the technicians is injured while trying to install the stage. Where can 25 de Mayo sue Theatre Props for the contracts and the torts case? What is the applicable law in each lawsuit?
7. Because there is no same sex marriage law in Texas, Paul and John came to Sault Ste. Marie, Ontario to get married. After the marriage, they return to Texas. Is the marriage valid in Canada? Is the marriage valid in Texas? Suppose that Paul and John intend to live in the Sault after they get married. Is the marriage valid in Canada?
8. Marie and Jean are French citizens. They have been married for 10 years. They have always lived in France. Marie had an affair with George, an American businessperson while he worked in France. When George returns to the States, he asks Marie to join him, which she does. Jean wants to file for divorce. Where can he file for divorce? What is the applicable law?
9. Sony Pictures, a corporation incorporated in the State of Delaware, US, decided not to distribute dividends. A Canadian minority shareholder, who lives in Toronto, Ontario, disagrees with this decision and wants to sue Sony Pictures. Where can the minority shareholder sue? What is the applicable law?
10. CineVideo, a corporation incorporated in the state of Luxembourg, with principal offices in Paris, France decided not to distribute dividends. A Canadian minority shareholder, who lives in Montreal, Quebec, disagrees with this decision and wants to sue CineVideo. Where can the minority shareholder sue? What is the applicable law?

CLASSES 7: NOV. 2 TEST



CLASS 8: NOV. 9 SUCCESSIONS

Scenarios

1. Fred and Wilma were married. They had \$ 1M in a joint banking account. Fred also had a “girlfriend”, Betty, who he named his sole heir in his will.
2. Fred and Wilma were married. They had \$ 1M in a joint banking account. Fred had \$500K in another bank account. Fred also had a long-time mistress, Betty, who was financially dependent on Fred. Fred named Wilma as sole heir in his will.
3. Fred died and his surviving spouse, Wilma and his daughter Pebble, aged 30, are his only heirs in Fred’s will. Fred had \$8K (his only asset) and a debt of \$20K. He left \$8K to his wife and assigned all debts to Pebbles, who has a six-figure salary.
4. Fred and Wilma were married. They had \$ 1M in a joint banking account. They had a daughter, Pebbles, aged 46. Fred named Wilma as his sole heir in his will.
5. Fred and Wilma were married. They had \$ 1M in a joint banking account. They had a daughter, Pebbles, aged 46. Fred named Pebbles as his sole heir in his will.
6. Fred wrote a will when he was single naming his friend, Barney, as his sole heir. Then Fred and Wilma got married. Fred died without a new will.
7. Fred died. He had no surviving spouse. He willed 80% of his house to Pebbles and 20% of the house to Bamm-Bamm. The house is worth \$1M and has a mortgage of

\$100K. Fred included a provision in his will ordering Bamm-Bamm to pay off the mortgage.

8. Fred made a will in Bedrock, where he lived. According to the law in Bedrock a holograph will does not need to be signed. He named Wilma as his sole heir. Fred then moved to Ontario where he died. Holograph wills need to be signed according to Ontario law. Is Fred's will valid or invalid in Ontario?
9. Fred made a will in Bedrock, where he lived. According to the law in Bedrock a holograph will does not need to be signed. He named Wilma as his sole heir. Fred then moved to Ontario where he died. He had a car and \$1 M in a bank account in Ontario. Holograph wills need to be signed according to Ontario law. Is Fred's will valid or invalid in Ontario?
10. Fred made a will in Bedrock, where he lived. According to the law in Bedrock a holograph will does not need to be signed. He named Wilma as his sole heir. Fred then moved to Ontario where he died. He had a house in Sault Ste Marie, ON. Holograph wills need to be signed according to Ontario law. Is Fred's will valid or invalid in Ontario?
11. Fred did not have a valid will. He was survived by his spouse, Wilma. They had no children. Fred had \$1 M.
12. Fred did not have a valid will. He was survived by his spouse, Wilma. They had no children. Fred had \$1 M. Fred also had a joint banking account (\$3 M) with his friend, Barney.
13. Fred did not have a valid will. He was survived by his spouse, Wilma and his daughter Pebbles. Fred had \$100K.
14. Fred did not have a valid will. He was survived by his spouse, Wilma and his daughter Pebbles. Fred had \$320K.
15. Fred did not have a valid will. He was survived by his spouse, Wilma and his daughter Pebbles and his son Dino. Fred had \$320K.
16. Fred did not have a valid will. He was survived by his spouse, Wilma and his daughter Pebbles and his sons Dino and Fred Jr. Fred had \$320K.
17. Fred did not have a valid will. He was single and had no children. He was survived by his parents. Fred had \$320K.

18. Fred did not have a valid will. He was single and had no children. He was survived by his brother only. Fred had \$320K.
19. Fred did not have a valid will. He was survived by his spouse, Wilma. They had no children. Fred had \$1 M. Fred also had a joint banking account (\$3 M) with his long-time mistress, Betty.
20. Fred did not have a valid will. He was single and had no children. He was survived by his brother only, who died a few days after Fred. His brother had one child. Fred had \$320K.

CLASS 9: NOVEMBER 16: INTERNATIONAL CONTRACTS

United Nations Convention on Contracts for the International Sale of Good

Research goal

- To identify which clauses come from civil law, which clauses originate in common law, and which clauses show a compromise between these two legal traditions.

Tasks

- Briefly describe the background and purpose of the Convention.
- Briefly summarize the Convention.
- Analyze each substantive section and identify whether it comes from civil law, common law, or whether it is a compromise between these two legal traditions.

Structure of the article

Write a short article to show your research findings. The article should have the following structure:

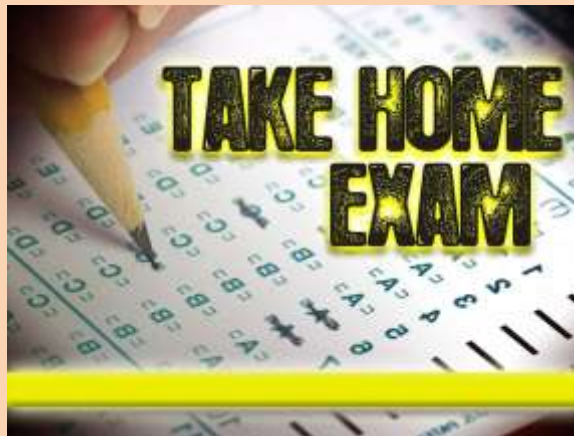
- Introduction
- Background and purpose of the Convention

- The Convention (summary)
- Common law vs. civil law (identification of the origin of the main sections of the Convention).
- Conclusions
- References

CLASS 10: NOV 23 THE LAW OF OBLIGATIONS

Do an online search of the law of obligations in the state of Louisiana, which is a civil law jurisdiction. Give examples of the main principles of the law of obligations. Prepare a short PowerPoint presentation about the main aspects of the law of obligations in Louisiana, including the different types of obligations. Where possible, make a brief comparison with Canadian common law.

CLASS 11: NOV. 30 DISTRIBUTION OF FINAL TAKE-HOME



Class 12: Dec. 7

Submission of final take-home



* TRIGGER WARNINGS

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.