INTRODUCTION TO LEGAL STUDIES

CLASS NOTES

CANCEL CULTURE

"Cancel culture" came into the collective consciousness around 2017, after the idea of "canceling" celebrities for problematic actions or statements became popular.

Lisa Nakamura, a professor at the University of Michigan who studies digital media's connections to race, gender, and sexuality, told The New York Times in 2018 that cancellation was a "cultural boycott" of a certain celebrity, brand, company, or concept.

Merriam-Webster, the American publisher of dictionaries and thesauruses, connected cancel culture with the #MeToo movement, which coincided with the rise of the term's popularity online. New allegations seemed to come out daily, and attitudes quickly shifted against the accused.

The trend of calling someone out laid the groundwork for full-on cancellations. It has roots in early-2010s Tumblr blogs, notably Your Fave Is Problematic, where fandoms would discuss why their favorite stars were imperfect, Aja Romano reported for Vox in 2019.

On one end of the spectrum are people like Bill Cosby, Harvey Weinstein, and R. Kelly who were canceled by the public before their sex-crimes trials. On the other end are everyday people like David Shor, who faced criticism on Twitter after he tweeted a study from an academic journal questioning the political consequences of violent and peaceful protests. Shor, who tweeted the link during the George Floyd protests, was fired, though the company has said it wasn't over the tweet.

Despite the seemingly positive intentions of many cancellations — to "demand greater accountability from public figures," as Merriam-Webster's evaluation of the phrase notes — people tend to call out cancel culture itself as a negative movement, suggesting that the consequences of cancellation are too harsh in minor instances or represent rushed judgment in complicated situations.

Others have criticized that criticism, saying cancel culture doesn't exist.

With the varied usage and wide debate around the term, it's reasonable to ask where it came from and how it became a part of everyday speech (Rachel Greenspan, The Insider, 2020).

CRIMINAL LAW: THEORY OF OFFENSE

It is the lens through which we can analyze whether a particular conduct is a crime or not.

- **Observation and analysis of facts (conduct).**
    - Isolate the relevant conduct, i.e., the conduct that may potentially be criminal, from other conduct.
    - Analyze the conduct (break it down in relevant parts)
- **Definitional terms**
    - Find the definition of the offence most likely to coincide with the conduct.
    - Break down the elements of the offence.
- **Concurrence between conduct and definitional terms**
    - Determination if there is a match between facts (conduct) and legal requirements of the crime in question.
    - Theory of offence permits to do the analysis of whether there is a match or not.

A crime is an actus reus performed with the required mens rea, provided that there are no defenses.

ACTUS REUS

It is the physical act specified in the crime.

The actus reus consists of a voluntary act that causes social harm.

- **Voluntary act:**
    - Voluntary: The threshold is very low. It simply requires a willed contraction of a muscle or a movement of the body which follows our volition. So, for example, epileptic seizures are not voluntary.
    - Act: it is simply a bodily movement, a muscular contraction. Examples would be to pull the trigger of a gun, to blink an eye or simply put one leg in front of the other to walk.
- Causation
- But-for test: but-for the criminal conduct, the harm would not have resulted. Criminal conduct does not have to be the sole cause.

- Social harm
    - Social harm is the negation, endangering or destruction of an individual, group or state interest which was deemed socially valuable. It may be explicitly stated in the rule (definitional) or it may be inferred from the rule (underlying).
- It may be expressed as (i) a wrongful conduct, e.g., driving under the influence of alcohol; (ii) wrongful result, e.g., the death of another human being; (iii) attendant circumstances, e.g., something that is neither a result nor a conduct, e.g., lack of consent. The expression of social harm in the rule may also include any combination of the above.

MENS REA

The particular state of mind provided for in the rule.

- **Intention**: "I want to". (subjective test)
    - The perpetrator's purpose, desire, intention or conscious objective to cause social harm.
    - Transfer intent (bad aim cases): the law transfers the perpetrator's state of mind regarding the intended victim to the unintended one.
- **Knowledge**: "OK, I know but I don't mind. So be it". "I don't want to know." [Also: "I don't want to know."] (subjective test)
    - Our courts have equated willful blindness with actual knowledge. The idea behind this is that an accused cannot deliberately remain ignorant and escape criminal liability as a result. Deliberately choosing not to know something when given reason to believe further inquiry is necessary can satisfy the mental element of an offence requiring knowledge.
- **Recklessness**: "No, it won't happen". (subjective test)
    - The perpetrator disregarded a substantial and unjustifiable risk of which he was aware (subjective test).
- **Negligence**: "I didn't even think of it". (objective test)
    - A person's conduct is negligent if it constitutes a deviation from the standard of care that a reasonable person would have observed in the perpetrator's situation.

DEFENSES

- Insanity
- Intoxication
- Duress
- Necessity
- Entrapment
- Self defense

TORTS

1) Observation and analysis of facts (conduct).
2) Legal definition of torts.
3) Determination if there is a match between facts (conduct) and legal requirements of the tort in question.
    a. If so, determination of compensation.

Tort constitutes a breach a legal duty, other than under contract, with liability for damages.

The elements of Canadian Tort: (i) conduct: intentional, negligent, strict liability; and (ii) damage.

THE NEGLIGENT TORTS

- The negligent act
    - Defendant creates a reasonably foreseeable and substantial risk of its consequences.
    - The negligent act is determined by identifying the appropriate standard of care and applying it to the facts of the case. The standard of care is that of a reasonable –careful- person. It is an objective standard focused on the defendant's conduct with reference to that of a reasonable person.
    - The central element in applying the standard of reasonable care is the concept of a reasonably foreseeable risk.
    - The deviation from the standard of care creates a reasonably foreseeable risk.

    - Special standards of care: mental disability
        - Children (mixed objective/subjective test of liability, that of a child of a similar age, intelligence, and experience), except when children are carrying out activities normally undertaken by adults.
        - No fixed age below which a finding of negligence cannot be made, but children under 5 have little capacity to appreciate danger.
        - Parents are not vicariously liable, but they are under a personal duty to take reasonable care to supervise and control their minor children and they may be liable for loss caused by a failure to discharge that obligation.
- Causation: a link between the defendant's negligent act and the plaintiff's damage.
    - Cause-in-fact: the plaintiff must prove that the defendant's negligence caused her loss.
        - Determined by the but-for-test.
    - Joint tortfeasors: when defendants have a special relationship or participate in a common venture or joint enterprise. In this case, proof of a single tort suffices to establish liability against them all.
- Damage: no liability can arise in negligence unless the plaintiff suffers damages as a result of defendant's wrongful act, but not all losses may be compensated. Remote damages are NOT compensated.
    - Defendant is liable only for the **REASONABLY FORESEEABLE CONSEQUENCES OF ITS NEGLIGENCE.**
    - **Defendant is liable only to plaintiffs who are within the proximate zone of danger.**
    - Special remoteness issues: **The Thin-Skull rule**: as long as some physical injury to the plaintiff was foreseeable, the defendant is liable for all the consequences of the injury arising from the plaintiff's unique physical or psychological make-up whether or not those consequences were foreseeable.

Defences:

- Contributory negligence: partial defence leading to a reduction in the quantity of damages.

- Voluntary assumption of risk: complete defence where the plaintiff consents to the defendant's negligence and its consequences.
- Illegality: it denies the claim.
- Inevitable accident: a complete defence.

THE INTENTIONAL TORTS

Intentional torts tend to be static, and are characterized by orthodoxy, convention, and conservatism. The courts have been slow to discard historical technicalities, and there has been a reluctance to recognize new interests deserving protection from intentional interference. As a rule, liability insurance does not cover intentional torts. So, victims of intentional wrongdoings are forced to place much more reliance on their own first-party insurance.

INTENTION:

- The defendant desires the consequences of her actions.
- If the consequences, while not desired, are substantially certain to result from the defendant's conduct, e.g., bomb in an airplane.
- Transferred intent

DAMAGES

- Compensatory (broader than negligent torts and generally uninsurable)
    - Physical harm: foreseeable and unforeseeable damages
    - Trespass: liability for all direct results and liability for removing property.
- Nominal
    - The defendant was wrong even if no concrete harm was done.
- Punitive
    - To punish defendant for outrageous conduct.

TYPES OF INTENTIONAL TORTS

A. Intentional interference with the person (protects the plaintiff from the intentional interference of a personal interest)

- Battery (bodily security)
- Assault (threats of violence)
    - The threat of an immediate battery

- Wrongful death
- False imprisonment (liberty)
- Intentional infliction of nervous shock (psychological security)
- Invasion of privacy (privacy)

Defences:

- Consent
- Self-defence
- Defence of a third party
- Defence of property
- Necessity
- Legal authority

B. Intentional interference with land

Trespass to land

It provides a remedy for the direct, intentional (or negligent), and physical interference with land in the possession of the plaintiff. It is actionable without proof of damage.

Three ways to commit it:

- To enter personally onto land without permission
- To place objects on the plaintiff's property (effective possession doctrine for aircrafts)
- When the possessor revokes a visitor's permission or licence to be on the property (must leave within a reasonable time).

Defences:

- Consent
- Necessity
- Legal authority

C. Intentional interference with chattel

- Trespass to chattels:
    - The intentional damage to a chattel in plaintiff's physical control.

- Detinue
    - Defendant refuses to return the plaintiff's chattel
- Conversion
    - Defendant has taken plaintiff's chattel, eg. theft, shoplifting, etc.
- Protection of owner's reversionary interest
    - Permanent damage to the plaintiff's chattel which occurred in the possession of someone else, eg., unexpired bailment for a fixed term.

D. Intentional interference with economic interests

STRICT LIABILITY

No need to prove that defendant was guilty of any wrongful (intentional or negligent) conduct. In the absence of defences, proof that the defendant caused the plaintiff's loss is sufficient to impose liability. Strict liability does not play a significant formal role in modern Canadian tort law. But this has been matched by a rise in a de facto strict liability under the guise of strict standards of care within the tort negligence. This is particularly evident in the fields of motor-vehicle accidents, product accidents, and accidents arising from dangerous activities.

CRIMES VS. TORTS

	Crimes	**Torts**
Objective	punishment of criminal	compensation of victim
balance of defendant's wrong and victim's injury	emphasis on df's moral wrong, not victim's injury	emphasis on victim's injury, not df's moral wrong
theory of offense	offense to all society; public interest	only victim injured; private interest only
initiating party	the state, "the people", represented by prosecutor	the victim, plaintiff
defendant's right to a jury trial	yes only if the penalty maybe 5 years or more	Very limited

category of responsibility	Guilt	Liability
standard of proof	"beyond a reasonable doubt"	"by a preponderance of the evidence"
fate of convicted defendant	suffers punishment (fine, imprisonment, death)	pays compensatory damages, sometimes punitive damages; sometimes is enjoined
fate of victim	Ignored	compensated
Canadian Legal tradition	Common law across Canada	Common law in English provinces and Civil Law in Quebec
Charter protections, e.g., defendant's testimony or defendant's right to counsel	APPLY, eg. may not be compelled (privilege against self-incrimination) YES defendant's right to counsel	NOT APPLICABLE may be compelled No defendant's right to counsel
Branch of law	PUBLIC	PRIVATE
Source of law	statute (mostly)	case law, common law (mostly)
primary lawmaker	Legislature	Court
role of precedent	only for interpreting statute	for substance
availability, prior notice, promulgation of law	always written; clarity and prior notice important	unwritten except as cases after the fact

retroactivity of law	no *ex post facto*; usually no "common law crimes"	may be *ex post facto*

This list of differences should not obscure the similarities between criminal law and tort law. For example, both kinds of law:

- may apply to the very same act (both kinds of legal action may proceed simultaneously)
- may use the same legal concepts (battery is both a crime and tort; punitive damages resemble criminal fines; contempt of court can be criminal or civil).
- must be consistent with the state and federal constitutions
- are applied and interpreted by courts
- have procedural and substantive dimensions

CONTRACTS

A contract is a legally enforceable agreement between two or more parties that creates an obligation to do or not do particular things.

At its most basic level, a contract is:

- An agreement
- That is legally enforceable

Laws that Govern Contracts

Provincial

Creation of a Contract

- An offer:
- An acceptance: must be unqualified (must match the offer, in all of its terms). Otherwise: counteroffer.
- Consideration: mutual benefit and detriment.

Means and moment of acceptance: The general rule is that an acceptance must be communicated to the offeror according to the terms of the offer or other reasonable terms

(The offeror cannot impose a contract on the offeree against his wishes by deeming that his silence should amount to an acceptance).

Moment: Where an instantaneous method of communication is used, e.g. email, it will take effect when and where it is received.

Exceptions

- In unilateral contracts the normal rule for communication of acceptance to the offeror does not apply. Carrying out the stipulated task is enough to constitute acceptance of the offer.
- The Mailbox Rule - Where acceptance by mail has been requested, or where it is an appropriate and reasonable means of communication between the parties, then acceptance is complete as soon as the letter of acceptance is mailed out, even if the letter is delayed, destroyed, or lost in the post so that it never reaches the offeror.

  Can an offeree withdraw his acceptance, after it has been posted, by a later communication, which reaches the offeror before the acceptance? A strict application of the postal rule would not permit such withdrawal.

Revocation of offer:

- A revocation is valid at any time until the offeree has made an effective acceptance
- By a mutually known third party (it doesn't need to be personal).
- Unilateral offers may not be revoked if the offeree began performing.

Interpretation of the contract

Implied terms should be found in the course of performance, in the course of dealing, i.e., prior performance of similar transactions between the parties, and in trade usages.

In case of ambiguity a provision is interpreted against the drafter (contracts of adhesion).

Defences to contract formation

- **Duress**: when consent is induced by physical force, threats of force, or even wrongful acts.
- **Undue Influence**:
    - The promisor must be vulnerable to the influence and the promisee must use excessive pressure (Hidden clauses; Fine print; Adhesion contract; intimidation; take it or leave it). Undue influence may also exist when the promisor dominates the promisee or is in a fiduciary or confidential relationship with him.
- **Misrepresentation of fact**: fraudulent (knowingly or recklessly made with the intent to deceive) or material (likely to induce reliance). In some cases silence may be equivalent to misrepresentation, such as in case of fiduciary relationships.
- **Illegality**:
- **Incapacity**:
    - Voidable at the minor's option but are enforced against adults. Affirmation occurs upon majority by express or implied terms.
- **Statute of Frauds/Statute of limitations**: marriage, one-year, land, estates, goods over $ 5000, surety (guarantor).

Breach

A party's failure to fulfill any term of the contract.

Only material breaches give rise to contractual remedies.

Remedies for a breach of contract

- **Damages: Compensation**

INTELLECTUAL PROPERTY LAW

Categories of IP protections

- Patents
  - Inventions
  - Strongest protection: 20 years of exclusive rights.
  - In exchange of protection, the patent is published so that the ideas in the invention go into the public domain and can be used to create other innovations.
- Trademarks
  - Protection of the goodwill that merchants invest in their products.
  - Exclusive rights in the markings that identify goods.
  - No two trademarks can be so similar that members of the public can be confused.
  - Standard to determine infringement is consumer confusion.
- Copyright

Protected Works

- Original
  - Some spark of creativity or individuality.
- Literary, dramatic, musical and artistic works or compilations.
  - Literary: anything that is written, such speeches, essays and books and may be in any form.
  - Dramatic: the characters, scenes, choreography, cinematography, relationship between characters, dialogue and dramatic expression.
  - Artistic: sculptures, paintings, photographs, charts, and engravings.
  - Musical: any musical compositions with or without words.

Objects Covered by Copyrights

• Books • poetry	• phonograph records • paintings	• photographs • tables

• plays • software • motion pictures • songs	• drawings • computer programs • sculptures • choreography	• compilations • translations as literary works

No protection

- No protection for an idea or for some fact.
  - Stock literary figures (butler, dumb cheerleader)
  - Standard plotlines (boy loves girl, butler kills homeowner).
  - Stock literary devices (using a calendar to mean passage of time).
  - Ideas, principles, concepts, procedures, and processes not copyrightable.
- Only the expression of an idea is protected.

Criteria for Copyright Protection

- **Originality**
- **Fixation**: The original work must be expressed in some material form, capable of identification, and having a more or less permanent endurance.
- **Nationality**: Canadian citizen, permanent resident or from a foreign country that is a member of an agreement to which Canada is also a member.

Beginning of protection

- Automatic: copyright is granted the moment the work is created.
  - Voluntary registration of copyrights. Helpful for lawsuits.

Duration of a Copyright

- 50 years following the end of the calendar year in which the creator dies. Then public domain.
  - US: Life + 70 years
  - Saudi: Life + 50 years

Rights Conferred

- Copyright
    - Publish, reproduce, perform, transmit and show in public.
    - Subsidiary rights: abridgment and translation.
- Moral Rights:
    - The author retains their moral rights, a form of personal attachment to the works: to determine how the work is being used and what the work is being associated to. Moral rights can only be waived.
- Neighbouring Rights
    - The performance, transmission and reproduction.
    - They were created for three categories of people who are not technically authors: performing artists, producers of phonogrammes, and those involved in radio and television broadcasting.

Fair Dealing

- Private use
    - A back-up is permitted, provided you keep both copies and there is no circumvention of digital lock.
- Research
- Study
- Review or criticism
- News gathering

Substantial Similarity

- Plaintiff owns valid copyright in a work and
- The defendant copied original elements of that work.
- The defendant had access.
    - “Reasonable opportunity to view” the work in question.

- The defendant produced something “substantially similar,” to the copyrighted work.
    - Substantial similarity “exists where an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.”
    - It does not mean identical, somewhere between no similarity and identicalness.
    - It arises out of the recognition that the exclusive right to make copies of a work would be meaningless if infringement were limited to making only exact and complete reproductions of a work.
    - These may rely on one or both of expert or lay observation and may subjectively judge the feel of a work or critically analyze its elements.

Tests

- Fragmented literal similarity:
    - When fragmented copyrightable elements are copied from a protected work in a manner not allowed by fair use.
- Comprehensive non-literal similarity: In the absence of verbatim duplication of copyrighted elements when one work appropriates "the fundamental structure or pattern" of another.
- Standard: whether the lay audience, thinking that the works are the same, will purchase from the infringer rather than the copyright holder.

Right of Privacy

- It gives an individual the exclusive right to profit commercially from the use of their name, image, photograph, likeness, or persona.
- A common law cause of action for appropriation of name or likeness may be pleaded by alleging:
    - the defendant’s use of plaintiff’s identity;
    - the appropriation of plaintiff’s name or likeness to defendant’s advantage, commercially or otherwise;
    - lack of consent; and
    - resulting injury.

- It also protects an individual from the emotional anguish resulting from the publication or dissemination of private facts that are of no concern to the public at large, facts that are embarrassing, intimate, or those facts that portray them in a false light that is highly offensive.

Common Law

Historical background

Common law as we know it today has evolved since 1066.
Islamic law as in the teaching of law in the Inns.
Common law received a lot of:

- Islamic Law: court of Inns
- Roman Law (primitive): contracts. Oxford and Cambridge taught Roman Law.
- Talmudic Law: commercial law.
- Aboriginal law: land property system

Law was administered by local people, who served in juries and applied their local laws. They were monitored and supervised by professional judges who had the confidence of the King, the French King. So, they traveled around the British Isles in circuits.

Then it was no longer possible to apply local law, so they decided to apply a general more common law to all towns, i.e., the same everywhere, in every county. But, **since there was not much in common the only way was to create new law; and soon these judges started to make law, which was commonly applied.** This is the origin of common law and one of its main characteristics.

So common law is born –and exists today- as a law created by judges and closely connected to trials, i.e., **procedure**. Adversarial process of adjudication: the judge is simply an arbiter. The

parties through their lawyers move forward the case. Jury decides the facts and the judge the law. Case and controversy: standing, ripe (not moot) and jurisdiction no political questions.

Right to appeal: 1700's?
Publication of appellate decisions.

Stare decisis: precedent: of a higher court must be followed, unless considered no longer good law.

So, at the beginning of its history and for the most part of it, common law was mainly procedural.

Importance of adversarial procedure.
Evidence rules: distrust of the jury.

There was just that at the beginning in the 11, 12, 13 and 14 centuries.
An essential feature of common law at this time was the **writs**, i.e., a permission to appear before the courts. You had to ask the King to give you permission to appear before the courts. If you didn't have a writ you couldn't do anything. And, there were very few and limited writs at the beginning. So, the real task was to argue to expand the writs to get permission to appear before the courts. For example, a writ said that you could sue if someone owed you money for a good you gave him. But, if, for example, they had promised to give you something in exchange of your money, if they didn't give it to you –and you didn't give them the money- then there was nothing you could do. So what you had to do was argue that a writ should be expanded to include this situation. But, this legal battle took centuries, before the courts could recognize, for example, the writ to demand the performance of a promise before consideration –money- was given.

Now the writs have been abolished, but they still rule us from their graves.

Common law grew during the feudal society, so there were no RIGHTS. For example, in property the highest degree of ownership was to hold title fee simple absolute over a property.

Civil Law

Roman Law: Modern continental law: beginning with the rediscovery of Roman Law in the 11th century.

Roman Empire

Advice given by juriconsults with respect to particular cases or disputes.

Ownership of things: patrimonial things vs. extrapatrimonial, common things vs. sacred things, principal vs. accessory things. Ownership was essentially private.

Contracts: no general consensual concept.

Classification

Real: verbal (solemn words), literal contracts, consensual contracts.

Liability was only objective.

Commentators: list of authorities.

Justinian's Digest.

Modern continental law

Roman law rediscovered in the 11th century in Europe.

Glosses on Roman Law texts.

1804 Napoleonic Civil Code.

Resident judges.

Investigative procedure.

No judge-law making.

Historical prestige of law professors.

Decline in other forms of social cohesion or glue: aboriginal traditions, religion, and religious morality.

Other codes.

Law relational and obligational.

Rights: unilateral entitlement

Law becomes subjective, and in becoming subjective, it generates rights.

Contract: meeting of autonomous wills. Consensual.

Delictual obligation becomes subjective, i.e., fault based.

Law has a human goal.

Greek tradition of rational enquiry.

Human construction is possible, from no thing can be developed something.

The means of creation is through logical thought –Aristotle's law of non contradiction or the law of the excluded middle. Deductive thought follows from this form of logic.

Construction of modern state.

Interpretation of laws –rather than creation- is at the heart of the civil law tradition. Legal nature and positivism.

The history of civil law is the history of two periods: (i) Roman Law and (ii) Modern continental law, beginning with the rediscovery of Roman Law in the 11th century.

Roman law emerged from the advice given by juriconsults with respect to particular cases or disputes.

In Roman law, things could be owned and we see now a multiplication of criteria for organizing the world of things. They could be patrimonial things or extrapatrimonial, common things or sacred things, principal or accessory things.

Ownership was essentially private.

Contracts were contracts in the plural and there was no general consensual concept.

So there are real contracts, requiring the transfer of the thing, verbal contracts (solemn words), literal contracts (in writing), and –in certain cases- consensual contracts, e.g., sale, lease, partnership, mandate.

Liability was only objective.

So Roman law became an object of admiration, because juriconsults were able to convincingly state conditions for governance of complex personal relationships.

Gaius wrote his famous Institutes by the end of the 3rd century. From then on there were lots of commentators and in the 5th century a law about the order of citations was passed. There was a list of authorities, authors which you could cite. In case of conflict the majority prevailed. After the fall of the Roman empire (in the 5th century) Justinian ordered a compilation of laws, called the Digest. It consisted only of the opinions of jurists, gathered together with no systematic design. It

obviously left out a lot. But when it was finished Justinian prohibited the inclusion of further comments.

Roman law was rediscovered in the 11th century in Europe. During the 11th and 13th century a lot of things happened in Europe. Church was separated from the state, universities began, legal professions were created, Roman law was revitalized and Greek philosophy was also rediscovered. **So the new universities with law and theology as their primary disciplines took on the tasks of adapting Roman law to the new ways. They did so by writing glosses on Roman Law texts.**

1804 Napoleonic Civil Code.

Codes of law are the depository of substantive law. The judge –resident because the law is written and there is no need to travel on circuit- knows the law, and so he applies it in an **investigative (inquisitorial) procedure (so there is a denial of judge law making), there is a historical prestige of law professors.**

In the absence of institutional barriers law grew exponentially. There are not only civil codes, but criminal, tax, commercial, procedural, etc. **They all have their implementing regulation, spiraling deductively down, down, and down. The law becomes specialized.**

If you were born into the 14th or 15th century in Europe the mathematical chances were very good that you would be a kind of slave. You probably wouldn't be called a slave, but your life would be one of obligation, not to a cosmos you loved but to a lord that you might not. So the existing law was relational and obligational. People were stuck in their existing relations to one another, often hierarchical, and that's where the law said they had to stay. So not only the law had to change, but there had to be overpowering reasons to change it. These reasons were found in the Judaeo Christian tradition. As delegated of God on earth, people may exercise dominion over things as does God over the world. So, Roman law now becomes formulated in unilateral entitlement, and law becomes earthly sanction to ensure that such entitlements are respected. Law becomes subjective and in becoming subjective it generates rights. The law gives rise to rights. In property law, this means that the individual ownership of Roman law had to become an exclusive form of

ownership, so communal forms of ownership were prohibited. Contract becomes the result of the meeting of the autonomous wills. Most are consensual in nature now.

Delictual obligation becomes subjective, i.e., fault based.

Once rights exist and everyone has them without regard to birth or race, there is a notion of social equality which is afoot. And since people have the power, in rights, to resist oppression, there is also a guarantee of human liberty. So all the great concepts of western civilization come together in a kind of package, and at that base is the centrality of the person.

So law comes to be recognized as having a human goal, a human instrumentality. There had to be rights and there had to be codes to ensure their respect. The change in the expression of law follows from the necessity to place explicit human rationality above the interstitial rationality of the chtnonic (or Talmudic) traditions.

So what does it mean to be rational in law? The lawyers of the Enlightenment did not simply invent contemporary legal rationality. They went a long way back to the Greek tradition of rational enquiry. This means two things: (i) human construction is possible, from no thing can be developed something. So, if religion authorized human creation, Greek thought said it was also possible, and (ii) the means of creation is through logical thought, and logic is embodied in that which, since Aristotle, is known as the law of non-contradiction or the law of the excluded middle. Aristotle said that what you really can't do is affirming at the same time two things which contradict themselves. Put differently, between two contradictory things, there is no middle (it's excluded). You can't have your cake and eat it too. In a formula, it would be A or not A. A and not A would be having your cake and eat it too.

Sources of Law

Civil Law

1) Constitution
2) Codes
3) Statutes
4) Precedents or court decisions
5) Regulations

6) Contracts

Scholarly publications (books and articles by legal scholars)

Common Law

1) Constitution
2) Precedents
3) Statutes/Codes
4) Regulations
5) Contracts
6) Publications