

# Canadian Systems of Law

## Contract and Tort Law for Professionals

There are two systems of law that operate in Canada: **Common Law** and **Civil Law**. **Common Law** operates in all Canadian Provinces and territories other than Quebec and is based on the British approach to law. **Civil Law** operates in Quebec and is based on the European continental approach to law.



# Definitions

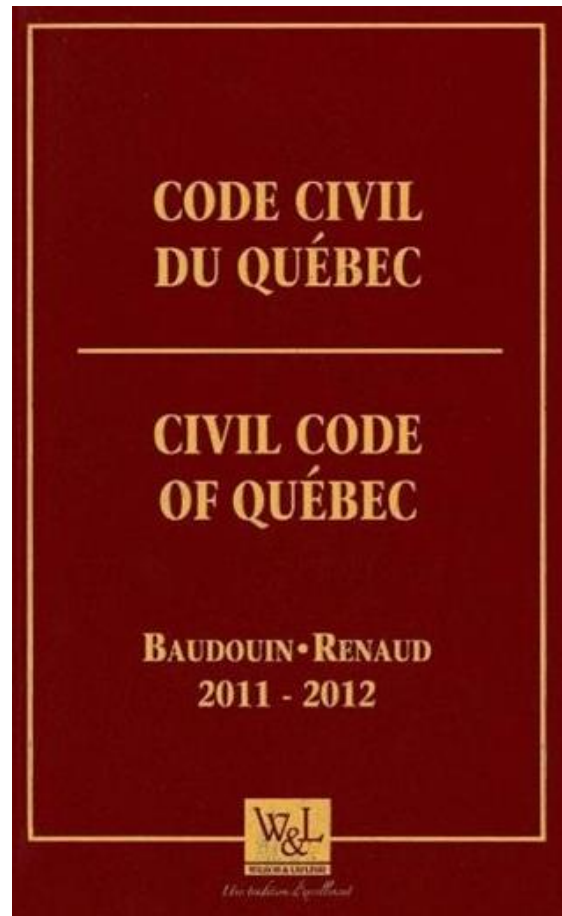
- **Litigation:** lawsuit
- **Plaintiff:** The party bringing the litigation to court.
- **Defendant:** The party who is brought before the court in litigation.
- **Appellant:** A party who appeals a decision
- **Respondent:** A party who defends a previous decision that is under appeal.

# Common Law

- Judge made law where legal principles develop incrementally through successive cases.
- Many areas of the law are codified into statute, rather than just being left to develop purely through case law, but even the interpretation of those statutes develops incrementally based on the case law.
- Statutes are also used to alter the common law where it is found not to meet current social norms.

# Civil Law

The Quebec Civil Law system is based on the French legal tradition. The main source of the law is the *Quebec Civil Code* and takes precedence over interpretations arising out of individual cases.



# Contracts, Torts, and Negligence

All provinces and territories employ common law which is based on English law except for Quebec-Civil Law based on Napoleonic Code

**Theory of precedent:** Legal principles applied in a previous decision also apply to future situations with similar facts

**Legislation:** Laws created by government

# Contracts

- A contract is an exchange of promises between two or more parties to do, or refrain from doing, an act which is enforceable in a court of law. It is a legally binding agreement formed by the mutual consent of the parties and the obligation is determined by the terms of the contract.
- The law provides remedies for breaches of contracts.
- For a contract to be binding and enforceable, it requires:
  - An offer made and accepted
  - Mutual intent to enter into the contract
  - **Consideration:** bring something to the bargain
  - **Legal Capacity:** minors or disables
  - **Lawful Purpose:** illegal or against public policy

# Written Contracts

- Several contracts can be formed orally, but others could not, for example:
  - Marriage
  - Transfer of an interest in land
  - Will to pay a debt of the estate with their own money
  - Sale of goods above a certain value
  - One party becomes a surety (acts as guarantor) for another party's debt or other obligation

# Offer of Acceptance

- An offer is a promise made by the offer provider to the offeree. It may be communicated orally.
- For purpose of evidence, it is advisable to maintain a proper “paper trail”
- An offer can be revoked by the offer provider before its acceptance Unless it is irrevocable by its definition.
- If the offeree does not accept all terms of the contract, no contract is formed.
- If contract is accepted, it may be subject to variations:
  - Counter-offer
  - Offeree becomes offer provider and vice versa
  - Acceptance must be clearly communicated..



# Tort Law

The word “tort” comes from the Latin “tortum,” meaning “wrong, injustice.”

- A tort is a civil wrong or negligence other than a breach of contract. It defines what constitutes a legal injury and establishes the circumstances under which one person may be held responsible (liable) for another’s injury.
- Tort law provides compensation for people who have been injured, or whose property has been damaged by the wrongdoing of others. It is not intended to punish those responsible.
- If the circumstances of the tort constitute criminal actions, punishment of the criminal aspect would be governed by the Criminal Code of Canada.

# Principles of Tort Law

Three elements must be present to assign responsibility in a tort action:

- The defendant owed the plaintiff a “duty of care”.
- The defendant breached that duty by his or her conduct.
- The defendant’s conduct caused injury to the plaintiff: financial, physical, loss of property etc.

# Categories of Torts

- **Intentional torts:** torts against the person (assault, battery, false imprisonment, intentional infliction of mental suffering, malicious prosecution, libel and slander, and fraud) and property torts (trespass to property, trespass to chattels and conversion).
- **Negligence:** covers the full scope of human activity (e.g., product liability, “slip and fall”, negligent misrepresentation, professional negligence, etc.).
- Strict liability torts.

# Elements of a Negligence Claim

Negligence cases are based on a non-contractual relationship between the parties. The parties may be known to each other or may be strangers.

- Duty of care owed by defendant to the plaintiff according to the proximity principle.
- Breach of the duty of care by a failure to meet the required standard of care, which is that of the reasonable person in the circumstances.
- Causal link between the defendant's act or omission and the plaintiff's loss (damages).
- Damages were reasonably foreseeable at the time of the breach.

# Damage Awards for Breach of Contract

- **General damages:** Compensation for actual losses suffered that flow from the breach and were in the contemplation of the parties when the contract was formed.
- **Consequential damages:** Compensation for damages that although not naturally flowing from a breach, were within the contemplation of the parties when the contract is formed (economic harm).
- **Aggravated damages:** Awarded for the manner in which the contract was breached causing additional harm (contract breach occurs in manner that causes mental distress).
- **Punitive damages:** Awarded to punish certain types of behavior (fraud or bad faith).
- Plaintiffs have a duty to mitigate their damages.

# The Role of Insurance

- Professional liability insurance policies are available for professionals.
- Occurrence policies cover incidents that take place during the policy term, whereas claims made policies cover claims made during the policy term.
- Such policies are subject to specified deductibles and exclusions.