



# CHAPTER 1

# FUNDAMENTALS OF LAW

## Sources of Our Laws

Understanding the sources of law is foundational for anyone entering the real estate profession. In British Columbia and across Canada, our legal system is built on three primary sources of law: **common law**, **equity**, and **statute law**. Each of these contributes uniquely to the legal framework that governs real estate practices.

### Common Law: The Backbone of the Legal System

**Definition and Origin:** Common law, often referred to as "judge-made law," is developed through court decisions over time. This system originated in England and was brought to Canada by British settlers. It evolves through the principle of **precedent**, where decisions made in earlier cases guide judges in future similar cases. This ensures consistency and predictability in legal rulings.

#### Key Concepts in Common Law:

- **Precedent:** Previous decisions act as a "recipe" for judges to follow in similar cases. For instance, if a court rules that a real estate contract is invalid due to improperly authenticated electronic signatures, that decision sets a precedent for future cases involving electronic signatures.
- **Stare Decisis:** Latin for "let the former decision stand," this principle requires judges to follow established precedents unless a case is distinctly different. It acts like a legal GPS, guiding courts along proven routes.

**Practical Application in Real Estate:** Judges sometimes "distinguish" cases when facts differ significantly from the precedent. For example:

- If a precedent ruled that verbal agreements to sell a house are not binding, but a new case includes emails confirming the agreement, a judge might distinguish the case based on the written evidence.
- For property disputes, differences in land use (e.g., residential vs. commercial) might also lead to distinctions.

**Remedies in Common Law:** Common law remedies primarily involve **monetary compensation (damages)** to restore the injured party to their original position. Examples include:

- A contractor abandoning a renovation project midway may result in damages covering the cost of hiring another contractor.
- A tenant breaking a lease early could lead to the landlord suing for lost rental income.
- Trespassing and damaging property may result in the owner suing for repair costs.

## Equity: Ensuring Fairness

**Definition and Development:** Equity arose as a response to the rigidity of common law. While common law focuses on rules and monetary compensation, equity introduces flexibility and fairness by providing remedies tailored to unique circumstances.

### **Key Equitable Remedies in Real Estate:**

- **Specific Performance:** Compels a party to fulfill their contractual obligations. For instance, if a seller backs out of a deal for a unique property, the court can order them to complete the sale.
- **Injunctions:** Court orders to either stop (prohibitory injunction) or enforce (mandatory injunction) certain actions. For example:
  - Stopping illegal construction that blocks a view.
  - Forcing someone to remove a fallen tree from a property.
- **Constructive Trusts:** Declares a person as a trustee of property for another's benefit. For example, if someone buys property using your funds but registers it in their name, equity might recognize your ownership.
- **Quantum Meruit:** Ensures fair compensation for work done when no formal contract exists. For example:
  - A contractor begins work based on a verbal agreement but is halted midway.
  - An interior designer performs services without an agreed fee, claiming fair compensation based on industry standards.

**Integration of Common Law and Equity:** Since the 1870s, the **Judicature Acts** merged common law and equity, creating a more flexible legal system. Today, both are applied in BC courts, with equity prevailing in cases of conflict.

Think of common law as a strict recipe and equity as the skilled chef adjusting it to ensure fairness.

## Statute Law: Government-Made Rules

**Definition:** Statute law is created by government bodies, such as the federal parliament, provincial legislatures, or municipal councils. Unlike common law, which evolves through court decisions, statute law is explicitly designed to address specific issues.

### **Structure of Statute Law in Canada:**

1. **Federal Government:** Handles national matters, including banking, bankruptcy, and criminal law.
2. **Provincial Government:** Oversees areas such as property rights, education, and professional licensing.
3. **Municipal Government:** Manages local issues like zoning bylaws, building permits, and property taxes.

### **Examples in Real Estate:**

- **Land Title Act:** Ensures clarity and security in property ownership and transactions.
- **Real Estate Services Act:** Regulates professional conduct, with remedies for breaches including fines, license suspension, and mandatory education.

**Practical Application:** Statute law provides clear rules and remedies. For example:

- If a developer violates zoning bylaws, municipal statutes can enforce fines or stop-work orders.
- Licensing requirements under provincial law ensure real estate professionals meet ethical and professional standards.

## **Hierarchy of Laws**

When conflicts arise among the three sources of law, a clear hierarchy determines precedence:

1. **Statute Law:** Takes precedence over both common law and equity. Judges must follow statutes when applicable.
2. **Equity:** Prevails over common law when the two conflict.
3. **Common Law:** Forms the foundation but is subordinate to statute law and equity.

This system ensures that legal decisions are fair, consistent, and reflective of societal values.

### **Section 2: The Legal Hierarchy**

Understanding the hierarchy of laws and the structure of the court system is critical for real estate professionals. It ensures clarity when advising clients or resolving disputes.

## **The Legal Hierarchy**

The legal hierarchy dictates how laws interact when conflicts arise. Here's how it works:

1. **Statute Law:**

- Statutes crafted by government legislatures hold the highest authority in the legal system. Judges must prioritize statutory provisions, even if they conflict with common law or equity.
  - Example: If a statute explicitly governs property transactions, such as the Land Title Act, its provisions override common law or equitable principles.
2. **Equity:**
- Equitable principles provide fairness and prevail over common law when the two conflict. For example, specific performance (an equitable remedy) may be granted even if common law would only award monetary damages.
3. **Common Law:**
- While foundational, common law is subordinate to both statute law and equity. It provides stability through precedent unless overridden by higher-ranking sources.

## Real-Life Application of the Legal Hierarchy

### Example 1: Real Estate Contract Dispute

- **Scenario:** George agrees to sell his house to Kevin but backs out, seeking a higher price.
- **Analysis:**
  1. **Statute Law:** Check for statutes like the Real Estate Services Act or Land Title Act that govern such disputes.
  2. **Equity:** If no statute applies, equity may provide remedies like specific performance.
  3. **Common Law:** If neither statute law nor equity applies, common law offers monetary compensation for breach of contract.

### Example 2: Property Boundary Dispute

- **Scenario:** Neighbors dispute a property boundary.
- **Analysis:**
  1. **Statute Law:** Apply any relevant municipal bylaws.
  2. **Equity:** Consider long-term usage or improvements that affect fairness.
  3. **Common Law:** Default to precedent-based rulings if higher sources don't apply.

This hierarchy ensures a structured and fair resolution process.

## Public Law vs. Private Law

Understanding the distinction between public and private law is essential for real estate professionals, as it determines the nature of legal disputes and the parties involved.

### Public Law: Governing Society at Large

Public law regulates relationships between individuals and the state, addressing matters that affect society as a whole. It includes several branches:

- **Constitutional Law:** Defines the division of powers between federal and provincial governments and protects individual rights under the Charter.
  - Example: A dispute over whether property regulation falls under federal or provincial jurisdiction.
- **Criminal Law:** Addresses offenses against society, such as theft, fraud, or forgery in real estate transactions.
  - Example: Forging documents to fraudulently transfer property ownership is a criminal offense.
- **Tax Law:** Governs property tax regulations and related issues like capital gains tax on property sales.
  - Example: A homeowner failing to pay property taxes faces enforcement actions by the municipality.

## Private Law: Resolving Disputes Between Individuals

Private law, also known as civil law, deals with disputes between private parties where the state has no direct interest. Common areas of private law include:

- **Contract Law:** Governs agreements, such as real estate purchase contracts.
- **Tort Law:** Addresses wrongful acts causing harm, such as negligence by a real estate agent.
- **Property Law:** Regulates ownership and use of property, including boundary disputes and tenancy issues.

## Overlap Between Public and Private Law

Real estate disputes often involve both public and private law. For example:

- A buyer suing a seller for undisclosed property defects is a private law matter.
- If the seller's actions involve fraud, it may also become a public law issue prosecuted by the state.

## Practical Implications for Real Estate Professionals

Understanding the distinction helps professionals:

- Navigate private disputes, such as contract breaches or property boundary disagreements.
- Comply with public law requirements, including licensing standards and tax obligations.

This knowledge ensures real estate professionals can effectively advise clients and recognize when to involve legal experts.

## Historical Basis of Real Property Law

To understand modern real estate practices, it is essential to explore the historical foundations of property law. These origins shape current concepts of ownership and land use.

## The Feudal System

The roots of property law trace back to the **feudal system** introduced in England in 1066. After conquering England, William the Conqueror declared himself the owner of all land, distributing it among his loyal followers in exchange for services. This system established the concept of holding land as an "estate" rather than outright ownership.

## Evolution of Land Ownership

Over time, services required under the feudal system were replaced by monetary payments, leading to modern property tax systems. While outright ownership of land became more common, the Crown retains "ultimate ownership" in British Columbia. When individuals purchase property, they acquire an **estate or interest in land** rather than absolute ownership.

## Key Implications for Real Estate

- **Unique Properties:** Concepts like "estates in land" explain why property interests can vary, such as leaseholds versus freeholds.
- **Crown Land:** Much of the land in British Columbia remains owned by the Crown, leased or licensed for use by individuals or organizations.

This historical context underscores the importance of understanding different property interests and their implications in modern transactions.

## The Structure of the BC Court System

The court system in British Columbia plays a crucial role in resolving disputes and upholding the law. Understanding its structure helps real estate professionals navigate legal processes effectively.

### Trial Courts: The Foundation

Trial courts are where cases are first heard, and facts are established. These courts determine liability and award remedies based on evidence presented. In BC, trial courts include:

- **Small Claims Court:** Handles disputes involving amounts up to \$35,000. Common in real estate for resolving tenancy disputes or minor contractual disagreements.
  - Example: A landlord seeking \$20,000 in damages from a tenant for property damage would file in Small Claims Court.
- **BC Supreme Court:** Deals with more complex cases or disputes exceeding \$35,000. It has jurisdiction over significant real estate matters, including breaches of contract or disputes involving substantial monetary claims.

- Example: A developer suing for \$100,000 due to a breach of a construction contract.

## Appellate Courts: Reviewing Decisions

Appellate courts do not retry cases but review decisions made by trial courts to ensure the law was correctly applied. In BC, these include:

- **BC Court of Appeal:** The highest provincial court, where three or more judges review cases from the Supreme Court or Small Claims Court appeals.
  - Example: Appealing a ruling on a boundary dispute involving survey errors.
- **Supreme Court of Canada:** The highest court in the country, which hears cases of national significance. Permission (leave to appeal) is required to bring a case before this court.
  - Example: A case setting a precedent for property rights interpretation across Canada.

## Specialized Tribunals

In addition to courts, specialized tribunals handle specific disputes efficiently. For real estate professionals, the **Civil Resolution Tribunal (CRT)** is particularly relevant:

- **CRT Jurisdiction:** Handles strata disputes, small claims up to \$5,000, and some tenancy matters.
  - Example: Resolving a strata bylaw violation online without needing a court appearance.

This multi-tiered system ensures access to justice at various levels, tailored to the complexity and value of disputes.

## Steps in a Typical Court Case

Understanding the steps in a court case helps real estate professionals anticipate the legal process and prepare effectively when disputes arise. Here is an overview of the key stages:

### 1. Pleadings Stage

The pleadings stage involves formal documents filed by both parties to outline their positions:

- **Notice of Civil Claim:** Filed by the plaintiff (person starting the lawsuit), stating the facts of the case and the remedies sought.
- **Response to Civil Claim:** Filed by the defendant, presenting their version of events and defenses against the claim.

### 2. Discovery Stage

Discovery is the process where both parties exchange information and evidence:

- **Document Exchange:** Both sides must share all relevant documents.
- **Examination for Discovery:** A pre-trial process where each party questions the other under oath to clarify facts and evaluate the strength of the case.

### 3. Trial Stage

If the case is not settled, it proceeds to trial:

- **Presentation of Evidence:** Both parties present their evidence, call witnesses, and make arguments.
- **Judge or Jury Decision:** The case is decided based on the facts and applicable law.

### 4. Settlement Opportunities

Many cases settle before reaching trial to avoid the costs and risks associated with litigation:

- **Mediation or Negotiation:** Parties often resolve disputes through alternative dispute resolution methods during the discovery stage.
- **Court Costs:** The losing party may be ordered to pay part of the winning party's legal costs, which can encourage settlement.

### 5. Enforcement of Judgments

If the plaintiff wins but the defendant does not voluntarily comply, the judgment can be enforced:

- **Garnishment:** Seizing the defendant's wages or bank account funds.
- **Writ of Execution:** Authorizing the seizure and sale of the defendant's assets.
- **Property Liens:** Registering the judgment against the defendant's property, preventing its sale until the debt is paid.

Understanding these steps allows real estate professionals to guide clients through legal disputes and recognize when legal advice or intervention is necessary.

## Enforcing a Judgment

Winning a lawsuit is only part of the battle; ensuring the judgment is satisfied requires enforcement mechanisms. Here's how judgments are enforced in British Columbia:

### 1. Examination of the Judgment Debtor

The debtor must disclose their financial situation under oath. The court can then determine their ability to pay and may establish a payment plan.

### 2. Writ of Execution

This permits the sheriff to seize and sell the debtor's assets to satisfy the judgment. For instance, vehicles or valuable equipment might be sold.



### 3. Garnishing Order

Allows creditors to intercept money owed to the debtor, such as wages or funds in a bank account. However, limits apply to ensure the debtor retains enough income to meet basic needs.

### 4. Registering a Judgment Against Property

This acts as a lien on real estate, preventing its sale or refinancing until the debt is resolved. It's a particularly useful tool in real estate-related disputes.

These mechanisms provide flexibility, enabling courts to tailor enforcement to the debtor's circumstances.

## Civil Resolution Tribunal (CRT)

The Civil Resolution Tribunal (CRT) offers a modern, accessible approach to resolving disputes in British Columbia. This online platform is designed to handle specific types of disputes efficiently and cost-effectively.

### 1. Jurisdiction

The CRT has authority over:

- **Strata Property Disputes:** Including bylaw enforcement and council decisions, with no monetary limit.
- **Small Claims up to \$5,000:** Covering consumer contracts, personal property, and debt issues.
- **Motor Vehicle Accidents:** Handling claims up to \$50,000 for personal injuries and accident benefits.
- **Societies and Cooperative Associations:** Internal disputes within these organizations.

### 2. Resolution Process

The CRT uses a three-step approach:

1. **Negotiation:** Parties communicate online to attempt a resolution themselves.
2. **Facilitation:** CRT staff mediate discussions to guide parties toward a settlement.
3. **Adjudication:** If the first two steps fail, an adjudicator issues a binding decision enforceable by the courts.

### 3. Benefits for Real Estate Professionals

The CRT's jurisdiction over strata disputes is particularly relevant. By resolving issues online, it reduces the need for lengthy and expensive court proceedings. Examples include:

- Resolving disagreements about strata fees.

- Addressing breaches of bylaws.

## Section 9: Limitation Periods

Limitation periods are deadlines for initiating legal actions, ensuring disputes are resolved in a timely manner. The **Limitation Act** in BC governs these timeframes.

### 1. Basic and Ultimate Limitation Periods

- **Basic Limitation Period:** Two years from the date a claim is discovered. A claim is considered "discovered" when the claimant knows:
  1. They have suffered a loss.
  2. The loss was caused by another party.
  3. Legal action is an appropriate remedy.
- **Ultimate Limitation Period:** 15 years from the act or omission, regardless of discovery.

### 2. Special Circumstances

- **Acknowledgment:** If a debtor admits liability or makes a partial payment, the limitation period resets.
- **Minors or Persons with Disabilities:** Limitation periods are paused until the individual's circumstances change.

### 3. Real Estate Examples

- A buyer discovering structural defects two years after purchasing a property must act promptly to file a claim.
- A contractor admitting fault for poor workmanship resets the limitation period, giving the client more time to sue.