

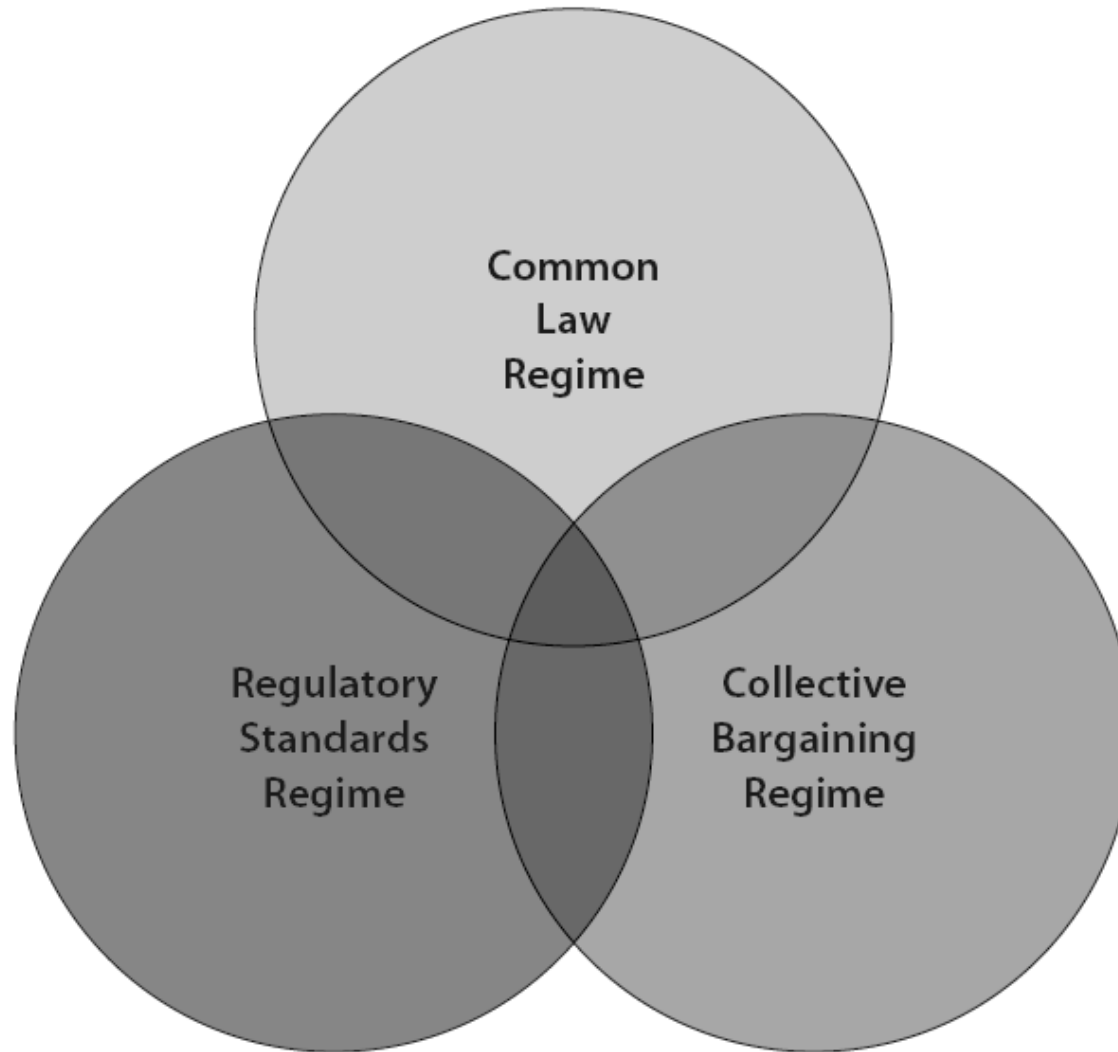
Lecture One Overview

Introduction to Employment Law

The Three Regimes of Law

- The system of laws that governs employment consists of three distinct, yet overlapping, regimes:
 - (1) The common law regime
 - (2) The regulatory standards regime
 - (3) The collective bargaining regime
- The common law and regulatory standards regimes together are usually labelled '**Employment Law**'. We are concerned with these regimes in this class.
- The collective bargaining regime deals with the laws governing unions, collective bargaining, and unionized workplaces (usually known as **Labour Law**). Those laws are dealt with in Industrial Relations courses.

FIGURE 1.1 Mapping the Three Regimes of Work Law



I. The Common Law Regime

- The **common law regime** comprises both the law of employment contracts and the law of torts and includes the following rules:
 - ***Judge-made legal rules called Torts*** including defamation, trespass, nuisance, negligence, etc.
 - ***Legal rules found in employment contracts*** between employees and employers
 - ***Rules that judges have developed over the years when interpreting those contracts***

The Common Law Regime (contd.)

The Law of Contracts

- The cornerstone of the common law regime is the employment contract, and the beacon of 'freedom of contract'.
- Disputes between employers and employees in which one accuses the other of violating an employment contract can lead to a trial before a judge
- Those judgments are recorded in legal decisions, which become part of the common law.
- Prior decisions influence subsequent decisions through a process called *stare decisis (to stand by a prior decision)*

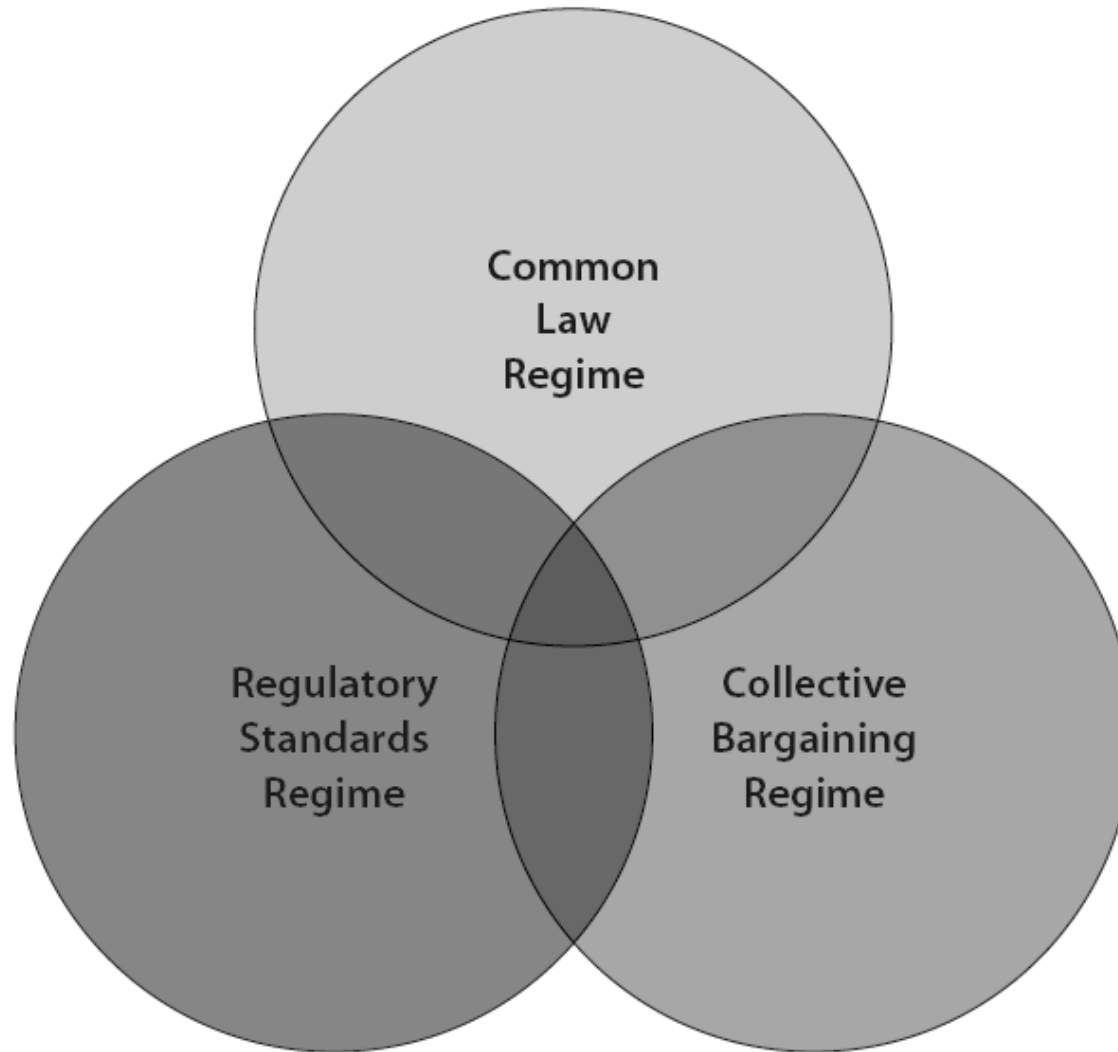
COMMON LAW REGIME, CONTINUED

- Beacon on Common Law Regime is “freedom of contract”
- Supporters argue that negotiated conditions of employment offers the fairest and most efficient outcome and promote personal freedom and responsibility.
- Therefore, judges (historically at least) did not usually concern themselves with ‘fairness’ of employment contract. Assumption is that contract represents a voluntary agreement of consenting parties

II. The Regulatory Standards Regime

- 'Freedom of Contract' and Common Law Regime based on it resulted in outcomes deemed unacceptable to governments
- Because Employers enjoy far superior bargaining power than do employees, Employers can often unilaterally fix the terms of the contract in their own favour.
- While courts usually accept that outcome, governments frequently interened to enact laws intended to protect employees who they perceived to be vulnerable.
- The Regulatory Standards Regime includes rules governing the work relationship — and employment contracts in particular — created by governments and codified in legislation.
- Statutes are enforced primarily by expert tribunals, and not courts [i.e. Human Rights Tribunals, Ontario Labour Relations Board]

FIGURE 1.1 Mapping the Three Regimes of Work Law

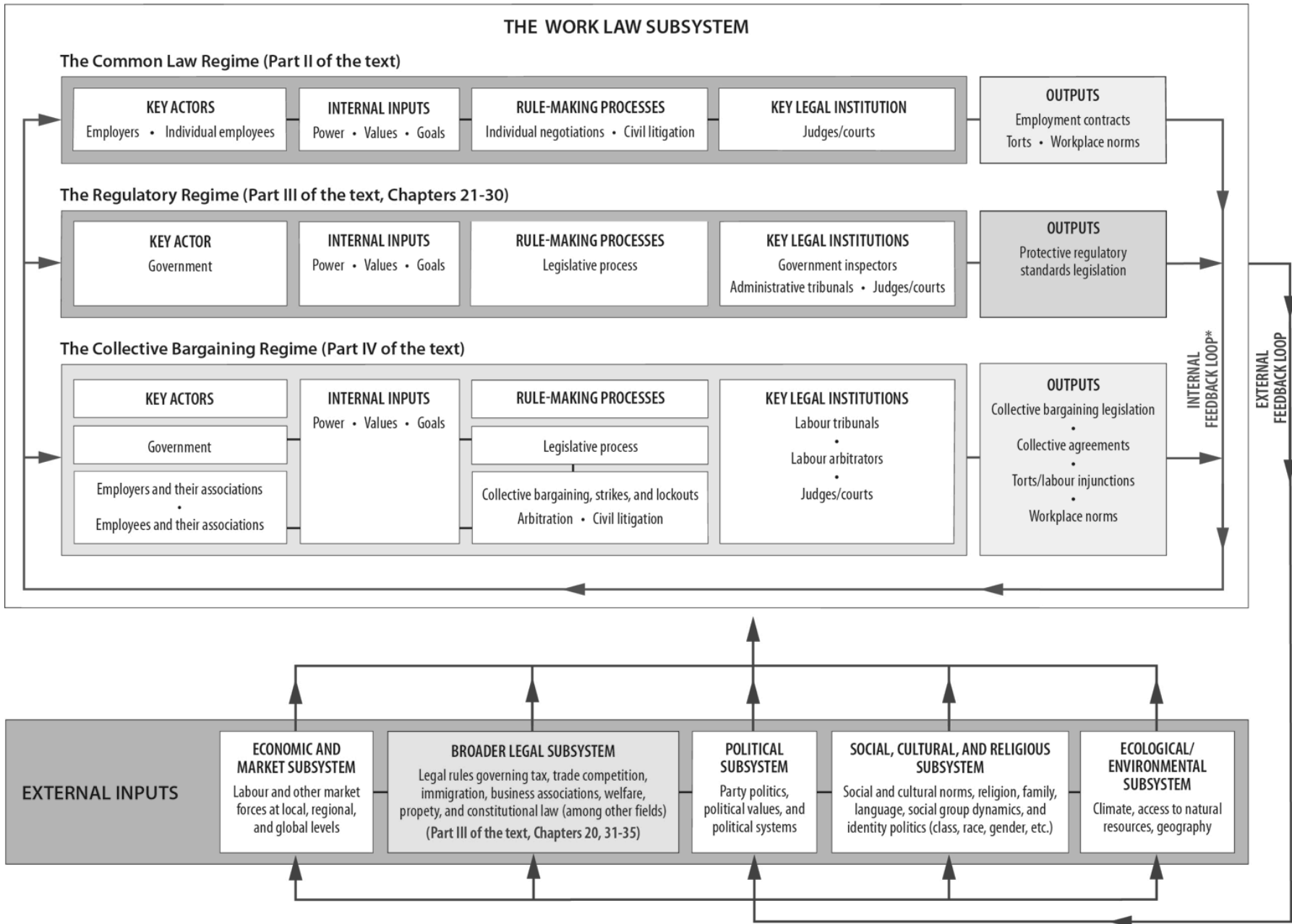


Questions and Issues for Discussion

1. What two branches of law comprise the common law regime?
2. Briefly explain the two regimes that comprise Employment Law. Who (or what) is responsible for resolving disputes that arise under each of the two regimes?
3. What are three levels of courts in Canada?
4. Explain the concept of *stare decisis*.
5. What are some strengths and weaknesses of “freedom of contract” in the context of work law?
6. Why do governments enact employment legislation and not leave employees and employers to work out working conditions on their own?

Work Law in Broader Context

- are influenced by broader forces in society.
- We demonstrated these interactions in an introductory manner by considering the Exercise on page 43 in Chapter 3.
- Read Chapter 3 and then try filling in your chart distributed in class. We will take up next class.



* Legal rules produced by each of the three regimes of work law feed back into the subsystem as information and experience and can provoke changes and adaptations by the actors in all three regimes, which can produce new outputs.