Historical Roots of Law:

Laws in the form of community-enforced rules have existed from the time people started to interact. Early communities created laws related to hunting, ownership of property, family relationships, and responsibilities. Most of these laws were based on common sense or practicality and were passed on by word of mouth to future generations. As populations grew and people began trading, not just within their own villages but also with other nations, laws became more complex. Eventually, it became necessary to put these laws in writing.

Laws were written in many languages. Between 128 and 880 BCE, lawmakers in India recorded the *Great Laws of Manu*. This document complied laws that had been passed from generation to generation in an oral tradition. China also had a set to written laws. The Chinese *Code of Li K’Vei*, written in around 350 BCE, included laws dealing with theft, robbery, prison, and arrest.

Written laws existed in early civilizations all over the world, and they had much in common. Laws concerning property rights, slavery, and the treatment of women and children were similar even in civilizations separated by great distances. Many of the early laws we shall see have, to some extent, influenced Canada’s present legal system.

The Code of Hammurabi:

The year was 1901, French archeologists working in Susa, Iran, made an amazing discovery – a copy of one of the earliest-known sets of written laws called the *Code of Hammurabi*. Hammurabi (1792-1750 BCE) was the king of Babylon, a city located in present day Iraq. During his reign, Hammurabi codified, or recorded, the rules and penalties for every aspect of Babylonian life, from the ownership of property to the rights of adopted children. The *Code* has almost 300 laws governing the daily lives of Babylonians. The king encouraged compliance by attributing his laws to the gods, whom the people feared and respected. Consider these excerpts from the *Code of Hammurabi*:

* If anyone is committing a robbery and is caught, then he shall be put to death
* If anyone opens his ditches to water his crops, but is careless, and the water floods the fields of his neighbor, then he shall pay for the loss
* If a man takes a wife and she is seized by disease, and if he then desires to take a second wife, he shall not put away is (first) wife. But, he shall keep her in the house and support her as long as she lives

The laws reflected a patriarchal (male-dominated) society in which the wealthy were given more protection in law than the poor. Slavery was legal, and women and children were considered the property of men. There also existed a clear hierarchy of power (order of dominance): gods at the top, followed by the king, then male nobles, and then their wives and children, with the poor and slaves at the bottom.

Many of Hammurabi’s laws were based on retribution, “an eye for an eye” type of justice, and distinction made between an accident and a deliberate action. For example, “if a physician operates and kills the patient, the physician’s hands shall be cut off.” A law like this might deter a physician from operating at all! Also, because of the hierarchy of power, those who committed crimes often went unpunished. Instead, female relatives or slaves were expected to receive retribution: “if a man strikes a woman and she dies, the man’s daughter shall be put to death.”

Some penalties may seem excessive and cruel. For instance, “if a slave says to his master, ‘You are not my master’, his master can cut off his ear”. However, many of Hammurabi’s laws were reasonable and just. Consider these examples: the concept of restitution, making payment to the victim of the crime, was common in the event of damage to property or theft. It was recognized that people should not lie, especially at trial. It was also expected that the strong should protect the weak. If we compare some of our laws with those of Hammurabi, we may find that we are not that different from people thousands of years ago.

Mosaic Law:

One of the greatest influences on our law is biblical law, also known as Hebrew law or Mosaic law. In the Bible, it states that Moses climbed Mount Sinai, where God gave him laws for the Hebrew people to follow. These laws, beginning with the Ten Commandments, can be found in the first five books of the Old Testament. In Judaism, these books are called the *Torah*, which means “the law”. Although the Ten Commandments and other Mosaic laws were written some 450 years after the death of Hammurabi, the basic principles are similar. Under Mosaic law, it was forbidden to commit murder, adultery, and theft, and to worship other gods.

Comparing the *Code of Hammurabi* with Mosaic law shows how laws evolved from the time of Hammurabi. Mosaic law was more concerned with punishing a deliberate action than an accident. Mosaic law was also more likely to punish the guilty party than permit a person of high status to shift punishment to a person of lesser status. Care for the poor was another concern expressed in Mosaic law. Landowners were commanded to leave a small portion of their crops in the field for the poor to harvest.

The *Code of Hammurabi* and the *Ten Commandments* both emphasized the importance of showing respect for parents. But they differed in how these laws were expressed. While *Hammurabi’s Code* spoke of punishing a son for striking his father, Mosaic law was less gender specific: “whosoever strikes his father or his mother shall be put to death. Perhaps his difference reflects a different attitude toward women with the two societies.

Greek Law:

The first form of democracy was born in Greece, although it was not democracy as we know if today. Only a small percentage of Athenian people, known as “citizens” actually had political rights. Athenian citizenship excluded women, children, aliens, and slaves.

One important principle of Greek democracy was citizen involvement. Athenian citizens were expected to participate in major decisions affecting the running of the country. For example, voting was a major responsibility. Another responsibility was jury duty.

The jury system can be traced to Athens, Greece, in approximately 400 BCE. Athenians employed enormous juries, with the largest recorded jury at over 6000 members. Later, the juries were limited to 101, 501, or 1001 citizens. Women who were on trial were not allowed to speak on their own behalf; citizens had to speak for them.

The Greeks also used democratic means to decide on the sentence of an accused. If a person were found guilty, both the accused and the accuser would suggest a sentence. The jury then voted on the most appropriate sentence. One of the best-known examples of this process was the trial of Socrates, a Greek philosopher. Socrates was arrested in 399 BCE. His accusers claimed that his ideas misled Athenian youth and undermined Athenian democracy. After a lengthy trial, the 501 jurors found him guilty by a vote of 281 to 220. His accusers recommended the death penalty. Socrates argued that the law under which was charged was unfair but acknowledged that he had been treated fairly by his peers. As instructed by the court, he drank a cup of poisonous hemlock.

Roman Law:

There were two basic principles of Roman law. Firstly, the law must be recorded. Secondly, justice could not be left to judges alone. Roman laws were codified, which meant they were set out in an orderly written arrangement that could be revised as laws were needed. The *Twelve Tables*, among the earliest Roman codes, were written on wood and bronze in 450 BCE. Compiled by a committee of ten men, this code determined the law of England during the Roman occupation, and is now considered the foundation of modern law. The *Tables* promoted the public prosecution of crimes, enacted a system of victim compensation, and protected the lower class (known as plebeians). In spite of these advances, Roman law reflected a patriarchal society similar to that of Hammurabi. “Sons shall be under the jurisdiction (legal authority) of the father”. Women were not even mentioned since they had no legal status as “persons”.

As we know today, a person accused of a crime should seek legal advice. This practice of having an advisor who specializes in the law first became prevalent during Roman times. By 100 CE, the Romans had a sophisticated and complex society, and the Roman Empire had spread throughout most of Europe. Society became even more complex, and more laws were devised to decide such matters as what constituted criminal behavior, how contracts should be regulated, and how everyday disputes between citizens should be resolved. As the number of laws increased, it became necessary to ask people who had expertise in the law to advise those who did not. These legal advisors were the forerunners of present-day lawyers.

Justinian’s Code:

Over time Roman law became even more complex and Emperor Justinian I (527-565 CE) decided to reform and clarify the law. By 529 CE, his task was complete and a new body of law, known as Justinian’s Code, was developed. This code inspired the modern concept of justice and served as an important basis for law in contemporary society. In fact, the word “justice” is derived from this emperor’s name. *Justinian’s Code* formed the basis of civil law (laws governing personal relationships), which, along with criminal law, became one of the main legal systems to govern Western civilization. Elements of *Justinian’s Code* can be found in the laws of many European countries, especially those of France.

France and the *Napoleonic Code*:

The French Revolution took place about 1200 years after Justinian’s rule (1789-1799). Once the Revolution was over, Napoleon Bonaparte gained firm political control of the government of France. In order to unify French law, he commissioned a new code of laws called the *Napoleonic Code*, also known as the *French Civil Code*. It went into effect in 1804 and spread throughout much of Europe as Emperor Napoleon brought other countries under his domination. The *Napoleonic Code* became popular because its non-technical style made the law easier for people to understand. The *Code* regulated civil matters such as property, wills, contracts, and family law.

Fill-in-the-Blanks Comprehension Questions:

1. The Code of Hammurabi was discovered in the \_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_. Hammurabi was the king of Babylon, a city located in present -day \_\_\_\_\_\_\_\_\_\_\_\_\_. During his reign, Hammurabi \_\_\_\_\_\_\_\_\_\_\_\_ or recorded the rules and penalties for every aspect of Babylonian life. The code has nearly \_\_\_\_\_\_ laws. Many of the laws were based on the principle of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, “an eye for an eye”.
2. Mosaic Law is biblical law otherwise known as \_\_\_\_\_\_\_\_\_\_\_ law. In the Bible, it states that Moses climbed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, where God gave him laws for the Hebrew people to follow. The ten laws at the beginning of Mosaic law are known as the \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In Judaism, these books are called the \_\_\_\_\_\_\_\_\_\_\_, which means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Mosaic law differed from the Code of Hammurabi in the respect that it was more concerned with punishing a \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ than an accident. However, both showed emphasized the importance of showing \_\_\_\_\_\_\_\_\_\_\_\_\_ for parents.
3. The first form of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was born in Greece. Athenian citizens were involved in the running of their country and in doing so, they had two important responsibilities, \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_. The jury system can also be traced to Athens, Greece in approximately \_\_\_\_\_\_\_\_ BCE. Athenians had huge juries, with the largest recorded jury at over \_\_\_\_\_\_\_\_\_\_\_ members. If a person was found guilty in a trial, both the \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_ would suggest a sentence. The jury then voted on the most appropriate sentence.
4. Roman law had two basic principles: the law must be \_\_\_\_\_\_\_\_\_\_\_\_ and justice could not be left to \_\_\_\_\_\_\_\_\_\_\_\_ alone. The \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_, were among the earliest Roman codes and are considered the foundation of modern law. It promoted \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of crimes, created a system of victim compensation, and protected the \_\_\_\_\_\_\_\_\_\_\_\_\_ class. However, Roman law still reflected a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ society. Due to the complexity of their society, Romans would seek out legal advice from experts in law, who are commonly referred to today as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
5. Emperor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ decided to reform and codify laws in a new body of law known as Justinian’s Code. The word \_\_\_\_\_\_\_\_\_\_ is derived from this emperor’s name. The code formed the basis of \_\_\_\_\_\_\_\_\_\_ law, which governs personal relationships.
6. The French Revolution took place from \_\_\_\_\_\_\_\_\_ - \_\_\_\_\_\_\_\_\_\_\_. Once the revolution was over, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ gained political control of France. In order to unify French law, he commissioned a new code of laws called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_. It was very popular because it was easy for people to understand.