

CLASSIFICATION OF LAW

Law is classified into the following classes:

1. Public and private law
2. Civil and Criminal law
3. Natural or Moral law
4. Imperative law
5. Physical or Scientific law
6. Customary law
7. International law

1. Public and private law

Public law is the one which regulates the relationship between the Government and its citizens (individuals). Public law is concerned with the legal relationship between persons natural or legal in the society in their dealings with the Governmental Institutions.

It largely constitute of constitutional and administrative law which founds governmental institutions and the way they are run and their relationship with the citizens and one another.

Example

- Criminal law
- Law of evidence
- The constitution

Private law is concerned with the legal relationship between persons natural or legal in society in their dealings with one another.

Example

- law of succession
- law of property
- the law of contract
- commercial law
- law of tort
- Family law.

2. Civil and Criminal law

Civil law is the law of the state as applied in the state's courts of justice.

Oxford Advanced Learners' dictionary defines Civil law as the law that deals with the rights of private citizens rather than with crime.

Civil law is primarily concerned with the violation of private rights belonging to an individual in his capacity as an individual.

Example

- Breach of contract between individuals
- Refusing / failure to pay back money lent by a friend or private institution.
- Defaming someone.

Unlike in **Criminal Cases**, in Civil, the suit is filed by an individual or the private company and proceeding conducted in a civil court.

In Civil law, the burden of prove rest with the plaintiff. A plaintiff is an individual person or legal person who prefers a case in a civil suit.

Example

James Oduor Oliech

Or

Sitaki Investment (K) Ltd

The individual person or legal person in a civil case is called the Defendant
The remedies available in a civil (Case) action are as hereunder:

- i) Damages
- ii) Specific performance
- iii) Injunction

i) Damages

Damages are the pecuniary (monetary) compensation obtainable by success in an action for a wrong which is either a tort or breach of contract. Damage is therefore a remedy designed to compensate the innocent party.

Before damage can be recovered in an action there must be a wrong committed
No damage can be awarded in the absence of a wrong (it is *damnum sine injuria*).

ii) Specific performance

Where damages are not an adequate remedy, the court may order the defendant to specifically perform his/its obligation. Specific performance usually apply in cases where the parties had entered into a contract. In a contract parties are guided by the terms and conditions therein. Failure by a party to specifically carry out his obligations will attract a remedy in the form of specific performance.

iii) Injunction

An injunction is an official order given by a court which demands that something must or must not be done. Its therefore a court order telling a person either to do a thing or refrain from doing a particular act.

On the other had, Criminal law, is the law which deals with wrongs committed against the community. Whereas Civil law deals with wrongs committed against individuals or legal persons, Criminal law deals with wrongs committed against the community as a whole.

E.g

- Theft
- Robbery with violence
- Rape
- Assault
- Murder
- Indecent behaviour
- Traffic offences
- Kidnapping

Criminal wrongs are prosecuted by the state or government. A criminal case is filed in a criminal Court and the Advocate for the government is the Public prosecutor. The suit is framed as follows:

- Republic - Versus - James Oduor Oliech

A person found guilty of an offence in a Criminal Case is punished by either imprisonment or fine or both. The burden of proof in Criminal Cases is in the prosecution.

3. **Natural or Moral law**

These are rules formulating the principles of natural justice. It overlaps to some extent with physical or scientific law.

4. **Imperative law**

These are rules of action imposed on men by authority
e.g by the state.

5. **Physical or Scientific law**

These are rules which formulate uniformities of nature.
e.g. The law of gravitation.

They are distinguishable from man made laws in the sense that they merely state observation on a state of affairs that already exists.

6. **Customary law**

These are rules of action embodied in custom. They consist of standard of moral and way of life of a given Community.

7. **Conventional law**

These are rules agreed upon by persons for the regulation of their conduct towards each other.

Example

- Contract between two (2) or more parties
- Company rules and regulation.
- Rules of a football club
- An article of Association of a company is building upon the Directors of a company.

8. **International law**

These are rules which govern sovereign states in their relations with each other.

CHARACTERISTICS OF LAW

There are several factors that distinguish the Kenyan legal system as a common law system from other kinds of jurisdictions.

1. **Continuity**

Since Kenya became a protectorate in 1898, and subsequently a colony in 1920 and attainment of independence in 1963, there has not been major changes in our legal system. Most of the existing Acts of parliament are those inherited from the colonial administration;

E.g.

- Bill of exchange of 1882
- The partnership Act of 1891

2. **Application of Common law**

Whereas other jurisdictions have reduced a large part of their law into codes, Kenyan legal system recognizes and applies the principles of common law which have not been encapsulated in codes. A good example is the law of contract which is largely case law and not codified in terms of sections.

3. **The Judiciary**

Based on the doctrine of separation of powers, the Kenyan judiciary is ideally independent from other organs of Government. The Judiciary is a very important institution in the development of the Kenyan legal system. This is because judges of the superior courts of records have a significant effect in the development of the law in terms of interpretation of the law and the formulation of case laws which subsequently bind Subordinate Courts with persuasive guidance to Courts in the same footing.

4. **The System of Judicial precedent**

In our System, judges apply early decided Cases in their decisions. The doctrine of Judicial precedent thus apply in our legal system.

5. **An adversarial System**

Kenyan legal system allows adversarial system both in Civil and Criminal Cases. Each party to the suit presents his case and strives to have the court's decision made in his favour. The court remains as a neutral party and makes its independent decision upon hearing both parties.

6. **Common Law and Equity**

Kenyan law is based on a complementary system of both common law and equity. Common law was the common custom in England. The rules of common law were rigid and harsh.

Equity evolved to supplement the rigid rules of common law with more flexible rules based on principles of good conscience and equality.

Distinction between Law and Morality

1. **Laws** are rules made and enforced by government for justice enforcement WHEREAS **Morality** consists of rules made and enforced by man concerning upright human behaviour.
2. Law concerns the outward action of man and rarely touches on his internal motive WHEREAS Morality concerns with both outward action of man and his internal motive.
3. Law is definite and precise and will in most cases appear in written form WHEREAS Morality is vague and indefinite (unwritten).
4. Force and fear of punishment are the reasons behind obedience of the law WHEREAS Moral conscience is the main reason behind being morally upright.
5. Law changes faster than morality because it must consistently adopt to the changes in society WHEREAS changes in Morality are not frequent and many moral rules date back to many years.
6. Laws are uniform and apply to a larger area within the state WHEREAS Morality is irregular and it differs from one community to another.

IV) COMMON LAW

Common law refers to the body of legal decisions made by English Court judges over a period of many years. In its early stages, Common Law was oral. Common Law was developed by the English system of law. It developed in England following the Norman conquest in 1066A.D.

Judges, traveled to various communities to hold court and try cases. They made legally binding decisions based on local customs but did not write those decisions down. As a result common law is often referred to as the unwritten law.

Each case under common law produced new oral law which served as a precedent. This practice of judges following the precedent established by past decisions is called **Stare decisis**

- Standing by a decision.

With time it became necessary to put the already decided cases down (in writing) so that anyone could refer easily. The English common law system became the model for the American, Indian and Kenyan legal system.