

A Few Words about Legal System

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Abstract: Law is the totality of legal rules, principles and institutes which regulate relations in a certain social community. They regulate the relations between people, and the relations of people towards the social community in which they live and to whose rules they submit. The legal system is a set of legal norms that exist in a country, which is also called a positive legal system. The legal system is a systematized complex of all legal rules. The elements of the legal system are: the legal system as a whole, the legal group, the legal branch, the legal rule and the legal institutes.

Keywords: Law, Legal System, State, State Authority.

INTRODUCTION

As we approach the third decade of the twenty-first century, law increasingly permeates all forms of social behavior and affects society in many other ways [1]. In subtle and, at times, not so subtle ways, law governs our entire existence and our every action. Law determines registration at birth and the distribution of possessions at death; it regulates marriage, divorce, pet ownership, hanging laundry outdoors to dry, and the conduct of professors and students in the classroom; it governs family and workplace relationships; and it regulates such different things as motor vehicle's speed limits and the length of school attendance. Laws control what we eat and many aspects of the restaurants and fast-food places in which we eat and what we can see in movie theaters or on television. Laws dictate the manufacture of the clothing we wear and even where we are allowed to wear certain clothing. Laws protect ownership and define the boundaries of private and public property. Laws regulate business, raise revenue, and provide for redress when agreements are broken. Laws protect the prevailing legal and political systems by defining power relationships, thus establishing who is superordinate and who is subordinate in any given situation. Laws maintain the status quo and provide the impetus for change. Finally, laws, in particular criminal laws, not only protect private and public interests but also preserve order. There is no end to the ways in which the law has a momentous effect upon our lives.

The content of law may be categorized as substantive or procedural. Substantive law consists of rights, duties, and prohibitions administered by courts— which behaviors are to be allowed and which are

prohibited (such as prohibition against murder or the sale of narcotics). Procedural law refers to rules concerning just how substantive laws are to be administered, enforced, changed, and used by players in the legal system (such as filing charges, selecting a jury, presenting evidence in court, or drawing up a will).

A distinction is also made between public law and private law. Public law is concerned with the structure of government, the duties and powers of officials, and the relationship between the individual and the state. Administrative law, constitutional law, and criminal law are all examples of public law. Private law is concerned with both substantive and procedural rules governing relationships between individuals (the law of torts or private injuries, contract, property, will, inheritance, marriage, divorce, adoption, and the like).

Another familiar distinction is between civil law and criminal law. Civil law, as private law, refers to rules and procedures governing the conduct of individuals in their relationships to others. Violations of civil statutes, called torts, are private wrongs for which the injured individual may seek redress in the courts for the harm he or she experienced. In most cases, some form of payment is required from the offender to compensate for the injury he or she has caused. Similarly, one company may be required to pay another a sum of money for failing to fulfill the terms of a business contract. The complainant firm is thus compensated for the loss it may have suffered from the other company's neglect or incompetence. Criminal law is concerned with the definition of crime and the prosecution and penal treatment of offenders. Although a criminal act may cause harm to some individual,

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crimes are regarded as offenses against the state or “the people.” A crime is a public wrong rather than an individual or private wrong. It is the state, not the harmed individual, that takes action against the offender. Furthermore, the action taken by the state differs from that taken by the plaintiff in a civil case. For example, if the case involves a tort, or civil injury, compensation equivalent to the harm caused is levied. In the case of crime, some form of punishment is administered, including one or more of the following: a fine, probation, or incarceration. Occasionally, a criminal action may be followed up by a civil suit, such as in a sexual assault case in which the victim may seek financial compensation in addition to criminal sanctions.

A distinction is also made between civil law and common law. In this context, civil law refers to legal systems whose development was greatly influenced by Roman law, a collection of codes compiled in the *Corpus Juris Civilis* (Code Civil). Civil-law systems are codified systems, and the basic law is found in codes. These are statutes that are enacted by national parliaments. France is an example of a civil-law system. The civil code of France, which first appeared in 1804, is called the Code Napoleon and embodies the civil law of that country. By contrast, common law is based not on acts of parliament but rather on case law, which relies on precedents set by judges to decide a case. Thus, it is “judge-made” law as distinguished from legislation or “enacted law.”

Substantive criminal law is the part of the law that deals with behaviour which is defined as criminal, and results in punishment by the state when a person is found to be guilty of breaking the law [2]. Substantive criminal law is also separate from civil law, which deals with other forms of behaviour that result in some form of compensation (often payment of money) after a finding of guilt. A key difference between substantive criminal law and civil law lies in the standard of proof needed to find guilt in each case. For criminal law, guilt is proved by evidence of guilt beyond reasonable doubt. For civil law, guilt is proved by evidence of guilt on the balance of probabilities, which requires a lower standard of proof, and therefore less evidence indicating guilt, than proof beyond reasonable doubt. Linked to this is the idea of the burden of proof being on the prosecution. This means that the defendant in a criminal case is innocent until the police and prosecutors have enough evidence to prove beyond reasonable doubt in court that defendant is guilty of all the different elements of the criminal charge(s) brought against them. Traditionally, this means that they will have to prove the guilty conduct (*actus reus*) specified by the definition of the offence, and also the guilty state of mind (*mens rea*) which is specified. The principle is the foundation of the adversarial system of criminal justice that has been established in England and Wales, where

the prosecution and defence compete against each other to persuade the courts that their evidence is more convincing than the other side’s.

Related to the rule regarding the burden of proof is the principle of the rule of law, which is equally fundamental to understanding criminal law and criminal justice in England and Wales. Under the rule of law, no one can be punished unless they have breached the law as it is clearly and currently defined, and they have been warned that the conduct they have been accused of is criminal; the breach is proved in a court of law; and everyone (including those who make the law) is subject to the rule of law, unless special status is given by the law itself.

After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule [3]. One of the means they used to do this was the establishment of the king’s courts, or *curiae regis*. Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king’s courts sought to establish a uniform set of rules for the country as a whole. What evolved in these courts was the beginning of the common law—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

Courts developed the common law rules from the principles underlying judges’ decisions in actual legal controversies. Judges attempted to be consistent, and whenever possible, they based their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way and considered new cases with care, because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and served as a legal precedent—that is, a decision that furnished an example or authority for deciding subsequent cases involving similar legal principles or facts.

Courts of the various functions of courts, the most important is to process [1]. By definition, a dispute is a conflict of claims or rights—an assertion of right, claim, or demand on one side, met by contrary claims on the other. When courts hear disputes, they attempt to decide (adjudicate) between or among those who have some disagreement, misunderstanding, or competing claims. Such disputes may arise between individuals, between organizations (private or governmental), or between an individual and an organization. Jones may sue Smith to recover damages caused by a traffic accident; acting under the provisions of a civil rights statute, the federal government may sue a state to force its officials to stop discriminating

against blacks in the electoral process; and a state may charge Miller with burglary and bring him to court in a criminal proceeding to answer the charge. When a judge renders the official judgment of the trial court in a civil or a criminal case as to the defendant's guilt or innocence, the process is called adjudication.

Unlike legislative and administrative bodies, courts do not place issues on their own agendas. Judges generally do not decide proactively to make rulings about voting rights, racial discrimination, abortion, or any other issue. Rather, courts are passive; they must wait until matters are brought to them for resolution. The passivity of courts places the burden on citizens or organizations to recognize and define their own needs and problems and to determine which require legal judgments.

A high degree of discretion characterizes every phase of a criminal prosecution. The process begins with an alleged crime and the arrest of the suspect. At this point, the police may or may not exercise the option of arresting the lawbreaker. Once an arrest is made, however, the next step is to file charges against the prisoner and to set the amount of bail. Again, at this stage, judges can exercise a great deal of discretion in setting the amount of bail, which frequently results in many defendants having to wait in prison for trial.

In civil cases, a dispute reaches the court when the plaintiff's attorney files it. Just as plea bargaining is common in criminal cases, bargaining often leads to negotiated settlements in civil cases. Pretrial conferences provide a venue for this negotiation. At times, the judge may even suggest a particular amount that seems reasonable, based on the judge's experience with similar cases. If a satisfactory settlement cannot be reached, the case goes to trial, but relatively few cases end up in trial. In some types of cases, such as automobile accidents, the plaintiffs generally prefer a jury trial in anticipation of a larger settlement.

It is difficult to grasp the full value of the praxeological approach without keeping in mind as background and counterpart the traditional treatment of relations between law and morality [4]. Legal philosophy gradually established the positive status of norms by disengaging them from their metaphysical anchors. From that point on, moral and legal norms were distinguished from each other. This is, no doubt, one of the fundamental principles on which modern law was built. The positivist distinction, however, was recused, and many attempts were made to reintroduce morality as a major component of the legal phenomenon. This substantialist perspective, however, does not answer the question of how law's moral dimension might be constituted, mobilized, and characterized. In a sense, the substantialist approach, which claimed to reintroduce morality in law, managed

to leave in shadow the very phenomenon it sought to study: the modalities of law's moral dimension.

The court ruling follows a classical organization: (1) introduction; (2) enunciation of the accusation as formulated by the Public Prosecution; (3) facts and Public Prosecution's investigation; (4) hearing of the pleas; (5) grounds of defence of the accused; (6) examination of the grounds; (7) examination of the constitutive elements of the crime; (8) motivation; (9) enunciation of the ruling.

Civil law provides injured individuals with a cause of action by which they may be compensated or "made whole" through the recovery of damages [5]. This cause of action comes under the general heading of torts. A tort is a private (or civil) wrong or injury, suffered by an individual as the result of another person's conduct. Tort law deals with the allocation of losses via monetary compensation of the individual for injuries sustained as a result of another's conduct.

Civil law and criminal law share the common end of inducing people to act for the benefit of society by preventing behavior that negatively affects society and by encouraging behavior that has a positive effect. Civil law and criminal law differ, however, in their means of achieving this common end. Criminal law seeks to protect the public from harm through the punishment of conduct likely to cause harm. Civil law, on the other hand, aims to compensate an injured party for the harm suffered as a result of another person's conduct.

Criminal actions emphasize the immorality or bad intentions of the defendants. Tort actions, on the other hand, seek to achieve desirable social results by resolving the conflicting interests of individuals. Society tends to distinguish criminal wrongs by condemning or judging the morality of the criminal more severely than that of the tortious wrongdoer. Once a crime has been discovered, the state or a subdivision of the state (e.g., county), in its capacity as protector of the public interest, brings an action against the accused. In a tort action, however, the injured party institutes the action as an individual in an effort to recover damages to compensate for the injury.

Civil law refers to the large body of cases brought by individuals against other individuals [6]. When a person sues someone for defamation or a corporation seeks to enforce an employment contract against an employee, these are both civil cases. What makes civil litigation so interesting is that there are an almost infinite variety of cases that fall under the general heading of civil law. Unlike criminal law or other specialized areas, legal professionals who work in civil litigation must be prepared for a wide assortment of cases. Fortunately, the rules that govern civil cases

are uniform and relatively straightforward, even if they do apply to a myriad of case types.

There are dozens of other branches of law. Administrative law deals with the rules and regulations that govern governmental agencies. Admiralty law governs the law of the sea. Bankruptcy law is concerned with discharging debts through court proceedings. Criminal law focuses on punishing lawbreakers. Domestic law involves divorces, alimony, and child custody issues. Civil law is different than these other areas of law in several important respects. For instance, civil cases differ from the previously mentioned types of cases in all of the following ways:

- Parties
- Pleadings
- Rules
- Burden of proof
- Outcome

Judicial review aims to check that the executive has the power to act [7]. This is the rule of law in operation, in that the state and its departments and authorities must act within the law. Judicial review also checks that the legal power is being used in a responsible way, or more specifically that the state is using its legal power rationally, reasonably, and proportionately. The courts imply that Parliament (legislation) or the monarch (royal prerogative) would permit the legal power that they have conferred on the executive to be used only rationally and reasonably. The court also examines the way in which power is used to make sure that the rules of natural justice (that is, the common law rules that have been developed by the courts over the centuries) have been adhered to, because these are the minimum guarantees put in place to ensure that the rule of law is applied fairly and free from bias. The court also reviews the exercise of power to ensure that the requirements of procedural propriety have been met, which once more are largely court-developed (although some are on a statutory footing), to ensure the fairness and integrity of the process. Finally, judicial review now looks at the exercise of power and the respect for minimum standards of human rights protection. In the absence of primary legislation passed by Parliament that states to the contrary, the courts will require that executive power is exercised in conformity with the rights and freedoms enshrined by the European Convention on Human Rights (ECHR). Taken together, the purpose of judicial review is to protect the individual against the excessive use of power by the state, and to ensure that the state and its organs adhere to the rule of law. It is also important to note the need for certainty and speed: if the executive is acting outside of its powers, then this needs to be addressed quickly, because the situation may be affecting hundreds or thousands of people—hence the need for an application to be brought swiftly.

Academic engagement with human rights has expanded dramatically, moving from law to nearly every other field: the social sciences, humanities, arts and the increasingly interdisciplinary arenas of health and climate change [8]. Academic understandings of human rights have also multiplied: as a discourse; as moral claims; as legal rights; as sources of authority and conflict; and as a universalizing political phenomenon, and as a cultural system rooted in processes of translation and vernacularization. These different approaches and understandings have been shaped by the perspectives and stances of the different disciplines, including the multidisciplinary world of law and society. If law and society is concerned less with legal rules and more with “institutional structures, processes, behavior, personnel, and culture”, the realm of human rights has provided a space in which these traditional themes have been supplemented with more recent concerns, including globalization, the shaping and translation of norms, the power of alternative discourses, and the integration of the social, economic and political dimensions of law.

The concept of human rights is that people have inherent rights simply because they are human [9]. The ideas that developed during the Renaissance were that all men (but not generally at that stage, women or children) were equal. This was either for religious reasons, such as the Protestant view that as all men were created in God’s image they must be equal, or because it was a fundamental principle in their secular humanist philosophy. They should therefore, be treated equally by the law. They, or according to many political philosophers, those with some degree of social standing, have the right to try to influence political decisions that affect them. Their personal lives and possessions should not be interfered with arbitrarily. These formulations are equivalent to the biomedical ethics, principles of justice, autonomy and nonmaleficence respectively.

Human rights appertain to the individual and put limits on what a state can do to that person. They are independent of the state, so even in a democratic state; there cannot be a vote to take away anyone’s human rights. Some rights are absolute, such as the right not to be held in slavery. Some are qualified, such as the right to liberty, which permits detention following certain legitimate procedures. Others, mostly social, economic and cultural rights, require a state to strive to achieve them. As a consequence of a person having a right, there will be a duty on another person or institution (an agent). A right can entail a ‘negative’ duty, such as not torturing the person, or a ‘positive’ duty such as providing basic education. Only states are subject to international human rights law. They bind a state, and as a part of that positive obligation the right entails to protect the rights listed, so there are obligations on states for both ‘negative’ and ‘positive’

rights. In the case of the right to life, for example, this will mean that the state has a positive duty to criminalize murder. The state must pass appropriate legislation, inform people of their duties, investigate alleged breaches of human rights, and prosecute perpetrators.

A court is a governmental body that is empowered to resolve disputes according to law [10]. Courts are reactive institutions. They do not undertake to adjudicate disputes by themselves, and can only act when someone files suit.

Courts are created in accordance with constitutional provisions and legislative acts. The legislative branch of the government usually has the right to establish and change courts, to regulate many of their procedures, and to limit their jurisdiction.

Courts are classified by function: There are trial courts and appellate courts. A trial court hears and decides controversies by determining facts and applying appropriate rules. The opposing parties to a dispute establish their positions by introducing evidence of the facts and by presenting arguments on the law.

The right of a trial by jury provides litigants with a choice of trying the case to a single judge or to a jury of peers. When a case is litigated before a judge instead of a jury, it is called a bench trial. The judge controls the entire trial and determines the outcome. In a jury trial, the decision-making functions are divided between the judge and the jury, which provides a safeguard of checks and balances. The judge rules on the admissibility of evidence, decides questions of law, and instructs the jury. The jury listens to the testimony, evaluates the evidence, and decides what facts have been proven. In many instances, the testimony of witnesses is contradictory. In such cases, the jury can determine the facts only after deciding which witnesses should be believed. It then applies the law to those facts in accordance with the judge's instructions. The judge supervises the entire process.

Appellate courts review the decisions of trial courts. Usually, an appeal can only be taken from a lower court's judgment. In a civil action, any dissatisfied party generally may appeal to a higher court. In criminal cases, the defendant usually may appeal, but the prosecution generally may not.

The appellate court reviews the proceedings of the trial court to determine whether the trial court acted in accordance with the law, and whether the appellant properly preserved the error. This means that an attorney cannot observe error occurring in a trial court and do nothing. The attorney must inform the judge of the error and request specific relief. Failure to object

results in a waiver of the right to raise the matter subsequently on appeal.

An appellate court bases its decision solely on the theories argued and evidence presented in the lower court. There are no witnesses or jury at the appellate level. The appellate court does not retry the facts of the case, and no new arguments or proof are permitted. The appellate court reaches its decision by using only the record of the proceedings in the lower court, the written briefs filed by both parties to the appeal, and the parties' oral arguments given before the appellate judges. The record of the proceedings in the lower court includes the pleadings, pre-trial papers, depositions, and a transcript of the trial proceedings and testimony.

What are the facts? The first step in preparing a case brief is to identify the key facts [11]. In many situations, such identification will control whether the legal principles of a previous case would be applicable to another situation.

A case brief contains two types of facts: occurrence facts and legal (sometimes called procedural) facts. Both are important to the brief for different reasons, generally present in the opinion in full detail, and should be edited in the case brief to include only those facts, either occurrence or legal, that directly affected the result in the case. Facts to be excluded from the case brief include those that provide a backdrop for the case and help to fill in details of the occurrence and legal proceedings but do not directly impact the outcome.

Occurrence facts are the details of the circumstances that initially gave rise to the lawsuit. The amount of such information that is included in the opinion depends largely on the particular writing style of the judge, who is the author. However, most opinions contain a substantial amount of factual information based on what has been disclosed by the parties, which creates a clear representation of the setting of the case, development of legal issues, and circumstances of the various parties to the suit.

The legal facts consist of what took place once litigation began and then a chronicle of the progression of the law suit. A number of these facts may be recited in the opinion to show case development, but the only real legal facts usually necessary in a case brief are those that tie directly in to the basis for the appeal, which ultimately prompted the ruling and consequent judicial opinion. When one first learns to read and analyze judicial opinions, there is a temptation to assume that the appeal is based on an allegedly improper finding of liability or innocence. Appeals are almost never so simply stated, however. Rather, there must be a legally objectionable basis for how the improper result originated. Examples include exclusion

or inclusion of evidence objected to by one of the parties, improper jury instructions, and so forth. When preparing a case brief, the important legal facts to include are those surrounding the alleged error that created the basis for the appeal.

The fundamental rule is that witnesses testify about facts and not about the opinions they have formed from facts [12]. The reason for this is that it is the job of the 'tribunal of fact' (a judge or, very occasionally, a jury in a civil case, and magistrates or a jury in a criminal case) to hear the evidence, find facts, and make inferences from them. It is thought that the tribunal may be misled and hindered in its work if opinion evidence is too freely received. The pervasiveness of the rule can sometimes be forgotten in cross-examination. A witness should not generally be asked to give his opinion about what another witness has said.

A distinction between fact and opinion lies at the heart of the rule and its rationale. Arguably, the distinction cannot be sustained. Believing that something is the case involves making a judgment – an assent to a proposition. Sense awareness involves us in being receptive to objects and events in our surroundings, but belief that something is, or was, the case involves more than just receptivity: it involves acts of mind, in which the material provided by sense awareness is interpreted. If an opinion is an inference from facts, there may be difficulty in finding a fact that is untainted by any element of opinion.

CONCLUSION

Legal systems in today's world are based on civil law, customary law, and religious law. Each state has its own legal system which has its own specifics, or combines one or all of these systems together. Law enforcement is handled by the judiciary. In addition to the judiciary, laws are also enforced by state administration bodies, which are regulated by regulations on the state administration system. State administration bodies deal with the adoption of first-instance acts in the field of economy, tourism, trade, mining, agriculture, crafts, construction, social welfare

and other areas. These are just some of the elements that make any legal system recognizable.

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