



HUK 203E 1. and 2. Week

What is law?

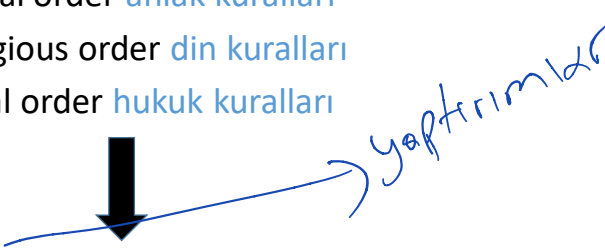
open

- System of rules and lays down standards to which we ought to conform
- Law is never static it is always changing.



Rules of social conduct (Sosyal düzen kuralları)

- Moral order *ahlak kuralları*
- Religious order *din kuralları*
- Legal order *hukuk kuralları*



Sanctions supported by **superior public power (state)**!

Yaptırımın devlet eliyle uygulanması, hukuk kurallarını diğer sosyal düzen kurallarından ayıran unsurdur.

- ❑ The law lays down binding, general, objective, abstract and continuous rules.

The distinction between public and private law

Public Law (*Kamu Hukuku*)

- Relationship between the states and its citizens
- ✓ Constitutional law (*Anayasa Hukuku*)
- ✓ Administrative law (*İdare Hukuku*)
- ✓ Criminal law (*Ceza Hukuku*)
- ✓ Fiscal Law/Tax law (*Vergi Hukuku*)

Private Law (*Özel Hukuk*)

- Rights and duties of individuals towards each other
- ✓ Civil Law (*Medeni Hukuk*)
 - ✓ Law of Obligations (*Borçlar Hukuku*)
 - ✓ Law of Persons (*Kişiler Hukuku*)
 - ✓ Property law (*Eşya Hukuku*)
 - ✓ Family law (*Aile Hukuku*)
 - ✓ Inheritance law (*Miras Hukuku*)
- ✓ Trade (commercial) law (*Ticaret Hukuku*)

Public Law

- Sets the duties of **government to its citizens**
 - There is **no equality between parties** (state and the individuals). Public law creates a relationship between superior (state) and subordinate (citizen). In public law state compel the individual to enter into a legal relationship with it and dictate the terms. For example, when A has to pay taxes to the tax authority, he can not say "no, I don't want to pay taxes, i.e. I do not want to enter into a tax paying relationship with you".
 - **Public interest**
 - Areas of law that involves matters related to the state:
 - **Constitutional law:** e.g. role and power of the institutions within the state
 - **Administrative law:** e.g. regulates public authorities, accountability of public authorities
 - **Criminal law:** is the law which relates to crime and prosecution
- Examples from public law area:
- Government decision on the expansion of a motorway.
 - Local authority planning permission powers
 - Council of ministers powers
 - Expropriation

Private law

- Private law regulates **relationships (rights, duties and liabilities) between individuals**
- Private Law affects matters between individuals (whether people, groups of people or companies)
- **Private interest not public !**
- In private law, the parties **act freely** in the legal relationship. They act in their own private interests as private individuals. They are free to enter into the relationship or not.

Eg. contract law where equals are making deals between themselves; family law, where private individuals get together for the purposes of establishing a family through marriage, having children and taking care of and raising their children; copyright law, where one individual creates a piece in the literary, artistic or scientific domain for the use and enjoyment of all others in society, etc.

contract law
family law
marriage
copyright (create a
piece of literature → artistic, music, scientific
enjoyment of

State as an Actor in Private Law vs Public Law

- ☐ In some cases the state may become a part of a private law relationship through its organs.

CASE: the ministry of education may purchase software and makes a contract with the company X. In this case the state and the Company X are in a private law relationship as there is no superior/subordinate bond between the parties. In this case the state acts in a capacity not different from that of any private individual (real person, private company)

- ☐ Only the fact that the state is a part of a legal relationship is not enough to define the relationship under public law !

Private law

- **Civil law:** In Turkey Turkish Civil Code (TCC) and Turkish Code of Obligations (TCO) are applicable.
 - ✓ Law of Obligations (**Borçlar Hukuku**) (TCO applicable)
 - ✓ Law of Persons (**Kişiler Hukuku**) (TCC applicable)
 - ✓ Property law (**Eşya Hukuku**) (TCC applicable)
 - ✓ Family law (**Aile Hukuku**) (TCC applicable)
 - ✓ Succession or Inheritance law (**Miras Hukuku**) (TCC applicable)

- Commercial (trade) law: Turkish Commercial Code is applicable. (**Ticaret Hukuku**)

- ☐ The **law of persons** focuses on the general recognition of persons. Persons are divided into two: Real (natural) persons (human beings) (**gerçek kişiler**) and legal persons (**tüzel kişiler**)

Legal persons are artificial creations by real persons for the purpose of pursuing specific activity, such as different company forms for pursuing profitable relationships, foundations and societies.

Personal law also covers those rights of a private/civil law nature that stem from simply existing as a human being (without additional qualifying factors): these are called personality rights.

bir şirketin
yasa dışı değil
yasa dışı değil
yasa dışı değil

bir kişi

rights and obligations
marital property
divorce

Private law

- ❑ **Family law** deals with questions relating to the private law dimension of family. In particular, specific issues of marriage (marriage conditions, rights and obligations within marriage, marital property rights, maintenance, termination of marriage (divorce) are considered.
- ❑ **Inheritance law or the law of succession** deals with the question of passing of property and other related rights due to the death of the original owner.
- ❑ **Property law** is the area of law that regulates issues in connection with ownership of things. It includes such issues as the categorization of "things" as objects in law (e.g. Movable/immovable, tangible or intangible, etc.) Please remember the difference between property law and IP (intellectual) law!!!

moddi
manavi

yaptırım

Sanctions in public and private law

Sanction: Response to behaviours contrary to commands and prohibitions set up by any legal rule. There are **three types** of sanctions:

I) Criminal sanctions (**Cezai Yaptırımlar**)

A) Punishment (**Cezalar**)

There are two kinds of punishments: a) Imprisonment (incarceration) **hapis cezası** and b) judicial fines **adli para cezası**.

- a) Imprisonment (Prison sentences) are aggravated life imprisonment, life sentence, periodical prison sentence **ağırlaştırılmış müebbet hapis, müebbet hapis ve süreli hapis**
- b) Judicial Fines **adli para cezaları**

B) Security measures **güvenlik tedbirleri**

II) Civil sanctions (**Hukuki Yaptırımlar**)

A) Compensation **tazminat**

B) Invalidity **geçersizlik**

III) Administrative sanctions **idari yaptırımlar** (eg. revocation of licence)

geri
alınma

CASE STUDY

The Son of A Turkish Famous Director Had An Accident: A Police Died

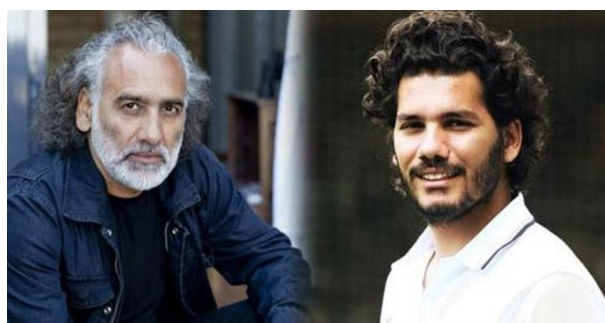
Famous director Sinan Çetin's son, Rüzgar Çetin had an accident at midnight in Beşiktaş, he crushed a police car. A police passed away and a police got injured in the accident.

The court arrested Rüzgar Çetin on the grounds of causing the death of someone and causing injury with deliberate negligence.

Rüzgar Çetin went through medical examination after the arrestment. He was taken to Metris Penitentiary afterwards.

The police could breathalyze Rüzgar Çetin 1h 20 min after the accident. Çetin had 0.90 promile alcohol. According to his lawyer's defense, the police who had died in the accident was not wearing a seat belt. Çetin's lawyer argued if the police had been wearing a seat belt, he would not have passed away.

QUESTION: What are the legal consequences for Rüzgar Çetin?



Sanctions in public and private law

- Sanctions in public and private law serve different purposes in the same case but they can be applied **cumulatively**.

Eg. If driver D drives when drunk and causes an accident in which a pedestrian is injured.

- 1) **Criminal consequences (sanctions)**: under criminal law the state will punish the driver: he may have to go to prison. The primary objectives of the driver's imprisonment are punishment and prevention (specific prevention of the driver: while he is in prison he cannot commit the same crime again and his imprisonment make him think twice if he wants to drink before driving in the future. General protection of the society: others may learn from the example of the driver and may think twice before drinking and driving.

IMPORTANT NOTICE: object of criminal law is to punish the wrongdoer; to give him and others a strong inducement not to commit same or similar crimes, to reform him if possible and perhaps to satisfy the public sense that wrongdoing ought to meet with retribution.

(Lecture notes on the introduction to private/civil law, Gabor Peter Palasti, 2011)

hak eden
ceza

ikna

Sanctions in public and private law

2) Administrative consequences (sanctions): Another public law sanction may be that in administrative law his driving license may be temporarily withdrawn. This sanction serves the same purposes as above.

3) Civil consequences (sanctions): The situation of the injured party is little affected by these remedies. At best he may feel emotionally relieved that the driver had to go to the prison, but it doesn't mend his personal position. He may still have to pay for the medical treatment, he may suffer physical and emotional stress, he may have to cancel commitments he had made earlier, etc. All these interests will be protected by and the loss compensated by private/civil law remedies. Damages will be paid to the injured pedestrian and not to the state and he will have the chance to add all the loss and negative consequences suffered as a result of the accident when calculating his damages claim.

IMPORTANT NOTICE: object of civil law is to repair the wrongs by compelling compensation or restitution! The wrongdoer is not punished; he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss.

(Lecture notes on the introduction to private/civil law, Gabor Peter Palasti, 2011)

Crime versus Tort (Suç vs. Haksız Fiil)

- ✓ A **crime** is a violation of the **penal/criminal code**. Crimes are wrongs for which the government prescribes a legal punishment (Eg. Murder, robbery, burglary, assault etc). A crime is an offence against the public, although it might affect only one person.
- ✓ A **tort** is a violation of the **civil law**, not criminal law! In case of a tort, the tortfeasor (the one who gives damage to another) has to pay compensation.

	Crimes (Criminal Sanction)	Torts (Civil Sanction)
immediate purpose ✓	punishment of criminal	compensation of victim
balance of defendant's wrong and victim's injury	emphasis on defendant's moral wrong, not victim's injury (public interest!) ✓	emphasis on victim's injury, not defendant's moral wrong (private interest!) ✓
theory of offense	offense to all society; public interest ✓	only victim injured; private interest only ✓
initiating party	the state, <u>"the people"</u> , represented by prosecutor	the victim, who is damaged

public

victim's
interests