Types and Classifications of Law

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There are different meanings of the word law. Perhaps this is best conveyed by the view of Baron De Montesquieu in his book, **Spirit of the Law,** where he wrote:

> â€œLaws in the wider possible connotations are any necessary relation arising from a thing in nature. In this sense, all beings have their laws; the Deity his laws, the material world it laws, the intelligence superior to man its laws, the beasts their laws, man his lawâ€¦â€

From the above, it can be seen that law is used in multiple senses. Thus it is imperative for the different types of laws to be considered. They are:

1. Eternal Law
2. Divine Law
3. Natural Law
4. Human or Positive Law

1. Eternal Law: The word eternal means something that would last forever. Eternal laws are laws that have applied since the beginning of time and would exist till the end of time. These laws cannot be changed. A very good example of eternal law is the law of gravity. From the inception of time, it has been understood that what goes up must come down. This law would not be changed and is thus right to be regarded as eternal.

2. Divine Law: DivineÂ Law is referred to as laws made by a deity to govern the affairs of man. A good example of divine law can be found in Islamic law as postulated in the Qâ€™uran. These laws are said to be given by God to the Prophet Muhammed in order to guide the affairs of man.

The logic behind the use of divine law stems from the fact that God, accepted as all knowing and all wise, is in the best position to make laws for the use of mankind.

3. Natural Law: In the legal sense, natural law can be said to be law as espoused by the natural law theorists. This law is said to be the law that is innate in all mankind and can be deduced through the use of reason. For example, it is accepted in all cultures that murder is wrong and should be punished.

Natural law is said to be the guide which positive law must follow in order for it to be valid. If Positive Law is at variance with natural law, it could lead to injustice in the society.

4. Positive or Human Law: Positive Law can also be regarded as human law. These are laws made by man in order to guide the conduct of members of the society. They are laws made by persons given the authority to do so either directly or indirectly by the society. Legal positivism doesnâ€™t concern itself with morals. Once a law has been enacted by persons in authority, it is valid.

According to Professor HLA Hart, a positivist,

> **â€** Law is a command and there is no necessary connection between law and morals or law as it is (*lex lata*) and law as it ought to be (*de lege ferenda*).â€

Examples of positivist law include the **1999 Constitution, Company and Allied Matters Act, Banks and Other Financial Institutions Act** and a host of others enacted by man.

CLASSIFICATIONS OF LAW

The classifications of law are the different categories into which all areas of law can be collated. A particular classification of law encompasses all types of law but it distributes them according to a particular unique characteristic.

The following are the major classifications of law:

1. Public and Private Law
2. Civil Law and Criminal Law
3. Substantive and Procedural Law
4. Municipal and International Law
5. Written and Unwritten Law
6. Common Law and Equity

1. Public and Private Law: PublicÂ Law can be defined as that aspect of Law that deals with the relationship between the state, its citizens, and other states. It is one that governs the relationship between a higher party â€” the state â€” and a lower one, the citizens. Examples of public law include Constitutional Law, Administrative Law, Criminal Law, International Law and so on.

Private law, on the other hand, is that category of the law that concerns itself with the relationship amongst private citizens. Examples include the Law of Torts, the Law of Contract, the Law of Trust and so on.

2. Civil Law and Criminal Law: Civil law in this regard can be defined as the aspect of Law that deals with the relationship between citizens and provides means for remedies if the right of a citizen is breached. Examples of civil law

include the Law of Contract, the Law of Torts, Family Law etc.

Criminal Law, on the other hand, can be referred to as that aspect of Law that regulates crime in the society. It punishes acts which are considered harmful to the society at large. An example of criminal law is the **Criminal Code Act** which is applicable in the Southern part of Nigeria.

When treating a criminal case, the standard of proof to be used is proof beyond reasonable doubt; **S.135 Evidence Act 2011**. Also, the burden of proof does not shift from the prosecution. What this means is that before a conviction can be gotten, the state has to prove the commission of the crime to be beyond reasonable doubt.

On the other hand, in civil cases, the standard of proof is on the balance of probabilities; **S.134 Evidence Act 2011**. Also, the burden of proof shifts between both parties when they need to establish their case. Judgement normally goes in favour of the particular party that has been able to prove its case more successfully.

3. Substantive and Procedural Law: SubstantiveÂ Law is the main body of the law dealing with a particular area of law. For example, the substantive law in relation to CriminalÂ Law includes the **Criminal Code Ac**t and the **Penal Code Act**.

Procedural law, on the other hand, is law in that deals with the process which the courts must follow in order to enforce the substantive law. Examples include the rules of the various courts and the **Administration of Criminal Justice Act 2015**, which is the procedural law in relation to the **Criminal Code Act** and the **Penal Code Act**.

4. Municipal/Domestic and International Law: Municipal/Domestic law is the aspect of law which emanates from and has effect on members of a specific state. An example of a municipal Nigerian law is the **Constitution of the Federal Republic of Nigeria 1999(as amended)** which applies in only Nigeria.

International law, on the other hand, is the law between countries. It regulates the relationship between different independent countries and is usually in the form of treaties, international customs etc. Examples of International law include the **Universal Declaration of Human Rights** and the **African Charter on Human and Peopleâ€™s Rights**.

It should be noted that according to the provision of **S.12** of the **1999 Constitution (as amended)** International treaties cannot have the force of law in Nigeria except they are enacted by the Nigerian National Assembly.

5. Written and Unwritten Law: A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country.

Unwritten laws, on the other hand, are those laws that are not enacted by the legislature. They include both customary and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature.

An example of this is the good neighbour principle established in the case of ***Donoghue vs. Stevenson***. The principle posits that manufacturers of products should take utmost care in their manufacturing activities to ensure that the consumption of their product doesnâ€™t result in harm to the consumer. This principle is not enacted in a statute but is a case law which is applicable in Nigerian Courts.

6. Common Law and Equity: In the legal sense, the term common law means the law developed by the old common law courts of the Kingâ€™s Bench, the Courts of Common Pleas and the Courts of Exchequer.

The English common law is regarded as such because it is law common to all parts of England. It grew over time from the practices, customs and way of life of the people. It is largely unwritten. The first common law judge was the King himself. People who had disputes usually brought them to the King to settle them.

However, due to matters of state, the king didnâ€™t have time to settle all cases. As a result of this, the king appointed members of his court who were to settle disputes in his stead. These judges had the authority of the king and any disobedience to them was treated as disobedience to the king and punishment was swift.

These different judges travelled the length and breadth of the realm to settle disputes. When they got to a particular location, they applied the customary law in that location in order to settle disputes. Regularly, these different itinerant judges would come together to compare the different customary laws they encountered on their travels.

They discarded customs that were thought to be insensible and accepted those which were sensible. This led to the conglomeration of different customs which were then applied all through the realm. This then metamorphosed into the common law of England.

However, the common law was strict, formal and full of legalism. One example of this was in its system of writs. If an action did not fit into a writ, there was no remedy for such action. Also, the only remedy available in common law was that of damages.

Due to the harshness of common law, the people petitioned the King directly for judgement. The Lord Chancellor, as the Kingâ€™s Prime Minister, was the one that dealt with most of these petitions. His court was called the Court of Chancery/Equity. The Lord Chancellor, was usually a bishop and thus, he applied the principle of fairness and natural law in making his decisions.

Subsequently, there was conflict between the common law court and the court of chancery. This conflict came to head in the ***Earl of Oxfordâ€™s*** case. In this case, the plaintiff was the assignee of a lease and he built a house and planted a garden on the land. Subsequently, the defendant/owner of the land sought to evict him from the land. The assignee thus sued and lost at common law, and he appealed to the court of chancery.

The court of equity accepted his petition and allowed him to stay on the land. The reasoning of the Lord Chancellor, Lord Ellesmere, was that by natural law, it was only fair and just for a person who builds a house to be able to live in that house.

This judgement prompted Lord Coke, the Chief Justice of the Kingâ€™s Bench to accuse the Lord Chancellor of frustrating the rules of common law. The matter was brought to the King who referred it to Lord Francis Bacon. Francis Bacon supported the court of equity and ruled that whenever there was a clash between common law and equity, equity would prevail.

This ruling however, did not help to completely solve the problem between the two courts. This was due to the fact that the common law courts could only grant the remedy of damages and thus, anyone seeking a different remedy would first pass through the common law courts before going to equity.

Over the years, the two systems were merged till finally, in 1875, the Judicature Act fused the two systems into one court. However, although they are applied in one court, the rules of common law and equity can be distinguished from each other. This is what prompts the statement â€œAlthough the two streams now flow into one, their waters do not mix.â€

SOURCES

1. A.O Sanni: Introduction To Nigerian Legal Method
2. Evidence Act 2011
3. Constitution of the Federal Republic of Nigeria 1999 (as amended)