**Banking Laws & Practices—An Overview**

**Significance/Importance of Law**

Law is to maintain rights, uphold justice

and redress wrongs. Law ensures public order, balance, harmony, peace and tranquility amongst the persons within the state and inter-states.

**Law---Defined**

Law signifies a rule of action and is applied to all kinds of action.

We are familiar with laws of nature, laws of mechanics. We are also conversant of laws of honor, laws of morality, law of God.

***We are also listen about:***

Criminal Procedure Code. (Cr PC)

Civil Procedure Code (CPC)

Contract Act.

Banking Companies Ordinance

Sales Tax Act

Companies Ordinance etc.

Above are statutory enactments enforced by Courts of law, in a system/society.

Hence law denotes entire body of legal principles prevailing in a particular system/society.

***Some Concepts of Law:***

“Law is not right alone or might alone, but a perfect combination between two.”

(Salmond)

“Law is the command of sovereign containing a common rules of life for his subject and obliging them to obedience”

**(John Erskin)**

“Coercion is a weapon of law which law has forged, but it is not the basis of law”

(De Motmorency)

Some Concepts of Law:

“ Law is the body of principles recognized or enforced by public or regular tribunals in the administration of justice”

(Pound)

“ Law is the system of rights and obligations which the state enforces”

(Green)

**Some Concepts of Law:**

“ You will not mistake my meaning or suppose that I depreciate one of the great human studies if I say that we cant learn law by learning law. If it is to be any thing more than just a technique it is to be so much more than itself, a part of history & sociology, a part of ethics and philosophy of life”

(Lord Radcaliff)

**Classification of Law:**

1) Imperative Law:

*Three Essentials*

General rules

Some authority behind this law.

It must be enforced by superior power.

*2) Physical or Scientific Law:*

Laws of motion, Gravity, Astrology

***3) Moral laws***

Law of morality, divine law.

***4) Conventional Law***

Based on agreements of interacting parties enforced at court of law e.g. Contract, Memorandum of Association.

***5) Customary Law.***

Rules, Customs followed for a long time.

***6) Practical or Technical Law.***

Law of engineering, architecture, photography.

***7) International law***

Rules, which govern sovereign States in their relations’ and conduct to one another.

Distinction Between Question of Law and Question of Fact

***Criminal offence Versus Civil Liability.***

Crime is an offence prohibited by law e-g; tress passing, theft, Murder etc.

Civil liability arises out of breach of obligations e-g; breach of contract.

***The Characteristics of State:***

1. Certain Territory
2. Certain Functions
3. Some Population
4. A Political Society (must have a constitution)
5. A Government

**Sourcs of Law in Sharia:**

Ijtehad---is the process for ascertaining the law. It is the use of intellectual exertion by an Islamic Jurist. (Mujtahid) to derive an answer to a legal question.

***Rules for Exercising Ijtehad:***

1. It must not be exercised on certain matters (for example, the existence of Allah)\
2. Mujtahid must be suitably qualified.
3. Recognized methods of Ijtehad to be followed by mujtahid.

**Recognized Methods for Exercising Ijtehad**

***Ijma***---is consensus of opinion based on consultation among Islamic Jurists (Imam, Faqeeh)

***Qiyas---***is analogical deduction. It is comparison of two situations with a view to evaluating one in the light of the other.