

GENERAL PRINCIPLES OF LAW

Law is a body of rules which are binding on every person in each country and which are enforced by the state.

Law is a set of rules or principles that govern the conduct of affairs in a given community at a given time with the provision for an aggrieved party to enforce his rights in case a wrong has been committed against him.

The following points arise from the above definition.

i) Set of rules

These rules originate from customs, Acts of parliament, court cases and other acceptable sources.

ii) Guidance of human conduct

iii) Applicable to a community - Apply to a specific community e.g. a sovereign state, business community or workers.

iv) Change of rules. Laws keep on changing with time –amendment.

v) Enforcement

Laws are enforced by the police and courts of law in order to maintain law and order.

Purpose of law

- a) To regulate the conduct or behaviour of persons.
- b) To provide justice to the members of the society.
- c) To maintain the political and economic stability.
- d) Protect the fundamental rights and freedoms of individuals.
- e) Establish the procedures and regulations regarding the dealings among the individuals.
- f) To maintain the peace and security in the country.

Classification of law (different kinds of law)

a) Public Law

Public law is that part of the law in which the state has an interest.

Public law may be described as the branch of the law which:-

- Regulates the operations of the various organs of the state (i.e. legislative, judiciary and executive); and
- Regulates the relations between citizens and the state.
- Public law consists of constitutional law, administrative law and criminal law as it's major components.

Note:- Constitution law consists of those rules which regulate the relationship between different organs of state.

- Administrative law is the law which relates to the actual functioning of the executive instruments of the Government.
- Criminal law consists of wrongs committed against the state and therefore the state has:-
 - duty to protect citizens.
 - and the state therefore must seek redress for any wrong committed against any citizen.

b) Private Law

State has no interest so long as law and order are maintained.

It may be described as the branch of the law which is primarily concerned with the rights and duties of individual citizens. It includes the law of contract, the law of Torts, the law of succession, the law of Agency, the law of insurance etc.

c) Criminal law and civil law

This classification of the law is by reference to the subject matter of a dispute namely criminal or civil. Criminal law may be described as the branch of the law which defines the things which every citizen must do or must not do, and prescribes the punishment for non-compliance. The bulk of criminal law in Kenya is contained in the penal code.

The primary objective of criminal law is the protection of the Kenya society by punishing those whose conduct threaten the legal objective e.g. refusal to pay tax, murder, theft, rape etc.

Civil law may be described as the branch of the law which regulates the relations between private individuals by enforcing obligations and compensating injured parties. Its main branches are the law of contract, marriage, succession, buying and selling of goods, employment, the law of Torts (e.g. negligence, defamation, nuisance, trespass), etc.

There are occasions where an act complained of may give rise to both criminal and civil liability e.g. if Mwangi drives carelessly and injures Kimathi, he Mwangi may be sued for careless driving and then by Kimathi for the injuries sustained. Also

in the case of theft, one may be sued for the theft and then by the property owner for the recovery of the property itself or for the value of the property.

Therefore the aim or objective of the civil law is to compensate a citizen for the financial loss he has suffered as a consequence of the act of the other citizen.

The distinguishing features between a public wrong and a civil wrong.

(i) Public wrong

- Is a wrong against the state – and in most cases a victim of criminal act does not have any direct interest in the case.
- The parties to the case are the prosecution and the accused
- The action cannot be compromised by the parties (exemption-the public prosecutor or A.G. may decide to withdraw).
- The prosecution must prove its case against the accused beyond reasonable doubt.
- The punishment is imprisonment, fine or death penalty in case of capital offences.

(ii) Civil wrong

- This is a private wrong against an individual and the state does not have any direct interest.
- The parties are the (aggrieved) plaintiff and the defendant
- Parties are free to compromise on any action brought by one of them and the plaintiff may withdraw the case.
- The plaintiff needs only to prove that his case merits success compared to that of the defendant (not beyond reasonable doubt).
- The defendant pays damages (monetary compensation) or some other civil remedy to the plaintiff.

d) Procedural law and substantive law

Procedural law consists of the rules which determine the manner in which the court proceedings are required to be conducted in civil and criminal cases. This law guides how a right is enforced under civil law or a crime is prosecuted under the criminal law.

Substantive law is the body of legal rules which define or specify what is lawful or unlawful to do and provides remedies for each type of offence or civil wrong.

e) International Law

(i) Public international law

This is the branch of international law which regulates the relations between the various nations of the world and is based on treaties, contentious, or customs which have been adopted bilaterally or collectively under the auspices of the United Nations Organization. Disputes between states can be settled by the international Court of justice. However, this court does not have authority to enforce its judgments.

(ii) Private International law

This is mainly concerned with determining which national law governs a case in which there is a foreign element. Example, if a Kenyan in Nairobi by fax, makes an offer to a Ugandan in Kampala which is accepted but the Ugandan fails to perform the contract. The question arises as to whether the Kenyan will institute proceedings in the high court of Kenya or the high court of Uganda?