

Unit 01

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The Nature

of Law

Classification

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THE NATURE AND CLASSIFICATIONS OF LAWS

INTRODUCTION

In this chapter you will learn about:

- Different classifications of laws
- Distinctions between criminal cases and civil cases
- Various definitions of 'law'
- Differences between law and morality
- Relationship between law and morality
- The law in relation to the concept of justice



1.1 CLASSIFICATION OF LAWS

1. Laws can broadly be classified into international law and national law.
2. International Law is concerned with disputes between nations. Much of this law comes from treaties which may have been agreed by the governments of the countries.
3. National Law refers to laws which apply within a country. National law can be divided into public law and private law.
4. Public Law involves the state or government in some way and includes constitutional law, administrative law and criminal law.
5. Private law is concerned with disputes between private individuals and/or businesses. Private law is usually called civil law and includes areas such as contract law, family law, the law of succession, company law and employment law.



1.2 DISTINCTIONS BETWEEN CRIMINAL CASES AND CIVIL CASES

1. **Purpose of the law** – while civil law aims to uphold the rights of individuals, criminal law aims to maintain law and order to protect society.
2. **Person starting the case** – Civil cases are brought by the individual whose rights have been affected whereas criminal cases are brought by the State through the police and the Crown Prosecution Service.
3. **Legal name for the person who brings the case** – Civil cases are brought by the claimant whereas criminal cases are brought by the prosecutor.
4. **Courts hearing cases** – Civil cases are mainly heard in the County Court or High Court with some cases dealt with in tribunals whereas criminal cases are heard in the Magistrates' Courts or Crown Court.
5. **Standard of proof** – The claimant in a civil case only has to prove his case on the **balance of probabilities** whereas the prosecutor in a criminal case has to prove the defendant's guilt **beyond reasonable doubt**.

Persons making the decision - Civil cases is generally decided by a judge or panel of judges. Juries are used rarely in civil cases. Criminal cases are decided by magistrates or juries.

7. **Decision** - In civil cases the defendant may be **liable or not liable**, whereas in criminal cases, the defendant may be found **guilty or not guilty**.
8. **Remedy or sanction** - In civil cases, the judge may grant an award of damages or some other remedy such as specific performance, injunction, rescission or rectification. Whereas in criminal cases, the judge may impose a prison sentence, fine, community order or discharge.
9. The same incident may give rise to both civil and criminal liability. For example, where A drives dangerously and injures B. A may be prosecuted in the criminal courts for dangerous driving whereas B may sue A in negligence in the civil courts for compensation for the losses and injuries that he has suffered.



1.3 DEFINITION OF 'LAW'

1. **John Austin** defined law as being a command issued from a superior (the State) to an inferior (the individual) and enforced by sanctions. This is a very limited definition.
2. **Sir John Salmond** said that the law refers to the 'body of principles recognised and applied by the state in the administration of justice'.
3. Law could be described as a formal mechanism of social control as the rules set down in the law can be enforced through the courts and legal system.
4. **Distinction between laws and rules** - while law applies throughout the country to the people generally, other rules applies only to certain groups or in limited situations.



1.4 LAW AND MORALITY

1. The moral values of communities lay down a framework for how people should behave and differ from culture to culture.
2. Robbery and murder would be both immoral and illegal but some things which are immoral are not illegal.
3. The legalisation of abortion and a limited form of euthanasia (**Airedale NHS Trust v Bland (1993)**) shows a move from religious belief in the development of English law.
 - The case of **Re A (Conjoined Twins) (2000)** whether it is unethical to separate the Siamese twins as the separation would save one twin on the expense of the weaker twin.
4. **Differences between law and morality:**
 - Morality cannot be deliberately changed; it evolves slowly and changes according to the will of the people. Law on the other hand can be altered by legislation.
 - Morality is voluntary with consequences, but generally carrying no official sanction. Whereas law makes certain behaviour obligatory with legal sanctions to enforce it.
 - Note that in reality, there is an overlap between law and morality, law and justice and also morality and justice.
 - While breaches of morality are not usually subject to formal adjudication, breaches of law will be ruled on by a formal legal system.

1. The law aims to achieve justice but justice can be difficult to achieve.
2. While justice may come from treating like cases alike, a rigid application of the rules may actually cause injustice.
3. Lord Wright's definition of justice, 'I have not found any satisfactory definition of justice... what is just in a particular case is what appears to the just man, in the same way as what is reasonable appears to be reasonable to the reasonable man.'

LEARNING OUTCOME

By now you should know that:

- ✓ Laws can be broadly divided into international law and national law.
- ✓ International law is designed to regulate the relationship between countries and comes largely from treaties.
- ✓ National law can be broadly divided into public law and private law.
- ✓ Public law involves the government and includes constitutional and administrative law and criminal law.
- ✓ Private law is called civil law and deals with disputes between individuals and/or businesses e.g. the law of contract, the law of tort and family law.
- ✓ It is impossible to define law with one word as it is still a jurisprudential debate.

SELF-ASSESSMENT

1. Name three distinctions between criminal and civil cases?
2. How many types of laws do we have?
3. 'All laws are rules but not rules are laws.' Determine the accuracy of this statement.
4. Do the remedies and sanctions for civil and criminal cases differ?
5. State one attempt to define law by an academician.

FURTHER READING

Jacqueline Martin, *The English Legal System*, 6th Edition, pgs. 1-14

APPENDIX A – SAMPLE OF AN INTERNATIONAL LAW PROVISION

CHARTER OF THE UNITED NATIONS

CHAPTER VIII: REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.