

Introduction to the legal system

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INTRODUCTION

Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

Introduction to the legal system

LO **On the successful completion of this paper, candidates will be able to demonstrate a basic knowledge of the legal environment**

LO 1.1.1 List various laws applicable in Pakistan

LO 1.1.2 Describe and differentiate between Civil and Criminal Law

LO 1.1.3 Describe the basic structure of the constitution of the Islamic Republic of Pakistan

LO 1.2.1 Define legislation

LO 1.2.2 Briefly describe the process of legislation as per the constitution

References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

1 INTRODUCTION TO THE LEGAL SYSTEM

Section overview

- Definition of Law
- Definition of Mercantile Law
- Why Chartered Accountants study law
- Where to apply law in practical life
- Sources of law in Pakistan
- Doctrine of Binding Precedent
- Criminal law and civil law

1.1 Definition of Law

Law means a set of rules or a system of rules of conduct designed and enforced by the state to control and regulate the conduct of people.

Law is not stagnant. As circumstances and conditions in a society change, laws are also changed as per the requirements of the society.

The word law may have different meaning for different situations. It is often preceded by an adjective to give it a more clear meaning e.g. Civil Law, Criminal Law, Business Law etc.

1.2 Definition of Mercantile Law

Business Law is the part of civil law which deals with the rights and obligations of persons dealing with each other. It includes laws relating to contracts, partnership, sales of goods, negotiable instruments etc.

1.3 Why Chartered Accountants study law

The intention of studying law in Chartered Accountancy is not to become an expert lawyer dealing with complex legal issues.

The objective of studying law in Chartered Accountancy is to be aware when legal problems arise, be able to judge when outside assistance is required, evaluate the financial implications of law and also communicate with the lawyers.

1.4 Where to apply law in practical life

A general knowledge of some of the more important legal principles and how they apply to certain problems will help in avoiding conflict with the people around us. Civil law involves the problems that impact on people's everyday life like debts, tenancy issues, sale of goods etc. One should know the law to which he is subject because generally ignorance of law is neither excuse nor defence.

1.5 Sources of law in Pakistan

The law consists of rules that regulate the conduct of individuals, businesses, and other organizations within society.

The legal system is derived from English common law (Equity) and is based on the constitution of Pakistan 1973 as well as Islamic law (sharia). Thus we can say that in Pakistan the main sources of law are following:

1. Legislation
2. Precedent
3. Custom
4. Agreement

Legislation

It is the law created by the Parliament of a country and other bodies to whom it has delegated authority.

Precedent

Precedent is a judgment or decision of a court which are binding on the subordinate courts.

Customs

With the passage of time as the society develops this source of law diminished its tendency as a source of law. In Pakistan, the customary law has been replaced by the Shariat Law.

Agreement

Parties in their agreement stipulate terms for themselves which constitute law for the contracting parties.

1.6 Criminal law and civil law

There are several branches of the law. Each deals with a different area of law and legal relationships. Two major branches of the law are:

- criminal law
- civil law

Criminal law

Criminal law establishes conduct that the State considers unacceptable, and which it wishes to prevent. Individuals or organisations that act contrary to the criminal law are threatened with punishment by the State, in the form of imprisonment and/or fines.

With criminal law, the State establishes acceptable standards of behaviour, and represents the interests of society as a whole in doing so.

Legal action may be brought by the State against individuals who are accused of being in breach of the criminal law. It is the responsibility of the State (and not private individuals) to bring these legal actions, in criminal trials.

Civil law

The civil law is a branch of the law that primarily deals with disputes between individuals and organisations (such as companies), and it regulates relationships between them regarding their rights and obligations. A violation of the civil law is a **tort** (a wrongdoing), but is not a crime. The civil law provides for remedies for civil wrongs (torts), but these do not include imprisonment.

Civil law may be established by statute or by case law (common law), codification, interpretation of the law, consideration, and so on.

Example: Civil law

- property disputes (Transfer of property act)
- work-related disputes (employment law)
- accusations of negligence (negligent behaviour) (Tort)
- claims by consumers against manufacturers or service providers
- commercial disputes between business entities (commercial law)
- copyright disputes
- claims of defamation of character (Tort)
- disputes about an alleged breach of contract (Contract Act)

Legal proceedings in the civil law are initiated by an individual or private person against another. (In contrast, a criminal prosecution is brought to court by the State.) For example, an individual may bring a civil action against another person, claiming a wrongdoing by that person and seeking a settlement (for example, seeking money compensation in the form of 'damages'.)

A civil case might therefore be identified as: Tanveer v Khatri where a case is brought to the civil court by Tanveer (the 'plaintiff') who is making a claim against Khatri (the defendant).

Criminal law or civil law?

Many of the legal aspects of commercial and business law are aspects of the civil law, but the criminal law may also apply. For example fraud and money laundering are criminal activities that may occur in business.

It is also important to remember that the same action may be in breach of the criminal law and also a tort in civil law. In such a situation, the action may give rise to:

- criminal prosecution by the State and
- civil action by a private person, claiming a remedy such as damages.

Example: Criminal law and Civil law

Suppose that a train company operates a train service, and there is a major accident involving loss of life and injury to passengers. The State may claim that the train company or its senior managers are guilty of a breach of the criminal law and bring a case in the criminal court. Individuals who have been injured in the crash and individuals who have lost a relative killed in the crash may bring civil actions against the train company, demanding compensation.

Business managers must therefore be aware of both the criminal law and civil law implications of their activities.

The burden of proof

Another important difference between criminal law and civil law is the burden of proof that is required by a court.

- In criminal cases, the burden of proof is much greater than in civil law cases. The guilt of an accused person needs to be proved 'beyond all reasonable doubts.'
- In contrast, in civil cases the court needs to be satisfied 'on the balance of probabilities' that a person is liable.

This means that an individual accused of a crime might be found not guilty in a criminal court, but the same individual may be sued in a civil court for the same and may be found liable.

2 LEGISLATION

Section overview

- President
- Prime Minister
- Senate
- National Assembly
- Process of Legislation
- Delegated Legislation

Pakistan has a Federal Parliamentary System of government, with the President as the Head of State and popularly elected Prime Minister as Head of Government. The Federal Legislature is a bicameral Majlis-e-Shoora (Parliament), composed of the President, National Assembly (Lower House) and Senate (Upper House).

2.1 President

- The President of Pakistan is Pakistan's Head of State and is considered a symbol of unity.
- President must be a Muslim.
- President is elected for a five year term by Senate, National Assembly and members of Provincial Assemblies.
- President is eligible for re-election, but no individual may hold the office for more than two consecutive terms.
- The majority party in the National Assembly usually nominates and elects a person as the President.
- The President approves the statutes passed by the National Assembly and thereafter by the Senate.
- He guides the Prime Minister in the matters of national importance.

2.2 Prime Minister

- The Prime Minister must be nominated and elected by a majority of members in the National Assembly. That individual is then appointed as Prime Minister by the President.
- The Prime Minister is assisted by the Federal Cabinet. A council of ministers whose members are appointed by the President on the advice of the Prime Minister.
- Federal Ministers are supported by secretaries and other government officers appointed in each department for ensuring that policies formulated by the government are acted upon.

2.3 Senate

- The Senate is a permanent legislative body with equal representation from each of the four Provinces with representatives elected by the members of their respective Provincial Assemblies.
- The role of the Senate is to promote national cohesion and harmony and to alleviate fears of the smaller provinces regarding domination by any one province because of its majority, in the National Assembly.
- There are also representatives from the Federally Administered Tribal Areas and Islamabad Capital Territory.

- Members are elected for a period of six years. Half the members retire after three years and are replaced by the equal number of newly elected senators.
- Senate is a permanent institution. The election of all members is not held at the same time and so it continues to be present on a permanent basis.
- The Chairman of the Senate under the constitution is next in line to act as President if the office becomes vacant and until such time a new President can be formally elected.
- The members elect from themselves a chairman and a Deputy Chairman.
- All statutes passed by the National Assembly are also approved by the Senate with the exception of money bills.

Composition of Senate

	Punjab	Sindh	Khyber Pakhtokhwa	Baluchistan	Fata	Federal Capital	Total
General	14	14	14	14	8	2	66
Women	4	4	4	4		1	17
Technocrats	4	4	4	4		1	17
Minority	1	1	1	1			4
							104

- Fourteen shall be elected by members each Provincial Assembly
- Four women shall be elected by members of each Provincial Assembly
- Four technocrats including Ulema shall be elected by the members of each Provincial Assembly.
- Eight shall be elected from the Federally Administered Tribal Areas in such manner as the President may by order prescribe.
- Two on general seats and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may by order prescribe.
- Four non-Muslims, one from each Province, shall be elected by the members of each Provincial Assembly.

2.4 National Assembly

- The seats for the national assembly are determined on the basis of population of provinces.
- The members are elected for a period of five years on the basis of direct votes by the voters registered.
- The members elect from themselves Speaker, Deputy Speaker and Prime Minister.
- The most important function of the National Assembly is law making and formulation of policies.

Composition of National Assembly

	Punjab	Sindh	Khyber Pakhtokhwa	Baluchistan	Fata	Federal Capital	Total
General	148	61	35	14	12	2	272
Women	35	14	8	3			60
Minority							10
							342

2.5 Process of Legislation

- When National Assembly is in session a bill in respect of any matter may originate in either house.

Scenario 1:

- If it is passed by the house in which it is originated then it is transmitted to the other house and
- If the bill is also passed by the other house (without any amendment) then it is presented to the President for assent.

Scenario 2:

- If the bill is transmitted to a House and is passed with amendments it shall be sent back to the House in which it originated and
- if that House passes the Bill with those amendments it shall be presented to the President for assent.

Scenario 3:

- If a bill transmitted to a House is rejected or not passed within ninety days or a Bill sent to a House with amendments is not passed by that House with such amendments
- The bill at the request of the house in which it originated shall be considered in the joint sitting of both the house i.e. National Assembly and the Senate and
- If it is passed by the votes of the majority of the members present and voting in the joint sitting it shall be presented to the President for assent.

Scenario 4:

- When the President has returned a Bill to the Parliament it shall be reconsidered by the Parliament in Joint Sitting and
- If it is again passed with or without amendment by the Parliament by the votes of the majority of the members of both Houses present and voting.
- It shall be presented to the President for assent.

- The President shall within **ten days** assent to the bill or return it to the Parliament for reconsideration (in case of a bill other than money bill) of any provision or any amendment therein.

- In case a bill is pending in the National Assembly or passed by it, is pending in the Senate. The bill shall lapse on the dissolution of National Assembly. But if the bill is pending in the Senate not passed by the National Assembly shall not lapse on dissolution of the National Assembly.

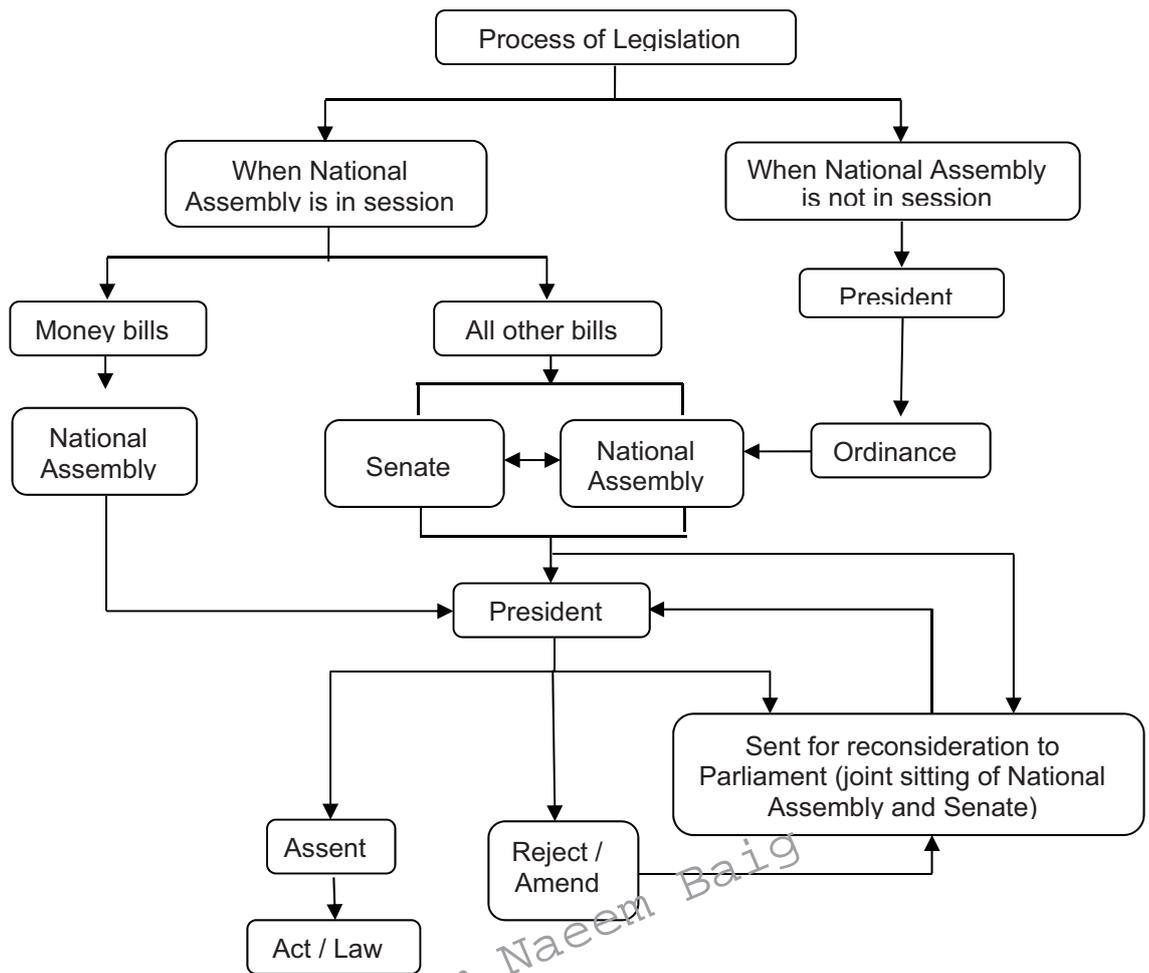
Money bills

A money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall (without being transmitted to the Senate) be presented to the President for assent.

Ordinance

- The President if deems necessary to take immediate action, he has power to make an Ordinance when the National Assembly is not in session.
- Such Ordinance promulgated thus, shall have the same force and effect as an Act of the Parliament.
- The Ordinance shall stand repealed after one hundred and twenty days if it is not presented or passed
 - by the National Assembly in case of Money Bill and
 - by both houses if it is other than Money Bill.

The chart below shows the process of legislation



2.6 Delegated Legislation

In Delegated Legislation power is given to an Executive (a minister or public body to make subordinate or delegated legislation for specified purposes only). E.g. Local authorities are given statutory powers to make bye-laws which apply within a specific locality.

Control over delegated legislation

- Parliament has some control over delegated legislation by restriction and defining the power to make rules.
- Rules made under delegated power to move legislation may be challenged in the courts on the grounds that it is ultra vires. In other words that it exceeds the prescribed limits or has been made without due compliance.
- If the objection is valid the court declares it void.

Advantages of delegated legislation

- Time**
Parliament does not have time to examine matters in detail
- Expert opinion**
Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial or industrial groups outside Parliament.

Flexible

Delegated legislation is more flexible than an Act of Parliament. It is far simpler to amend a piece of delegated legislation than to amend an Act of Parliament.

Disadvantages of delegated legislation

- The main criticism of delegated legislation is that it takes law making away from the democratically elected members. Power to make law is given to unelected civil servants and experts working under the supervision of a government minister.
- Because delegated legislation can be produced in large amounts the volume of such law making becomes **unmanageable** and it is impossible to keep up-to-date.

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4 CHAPTER REVIEW

Chapter review

Before moving on to the next chapter check that you now know how to:

- Briefly describe the sources of law in Pakistan
- Understand the civil and criminal law
- Explain the purpose and constituents of Parliament
- Explain the procedure followed for enactment of any law in Pakistan

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