

**Certificate in Accounting and Finance
Business Law**

CHAPTER

1

Introduction to the legal system

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- 1 Introduction to the law and its types
- 2 The process of legislation as per the Constitution

1 INTRODUCTION TO THE LAW AND ITS TYPES

Section overview

- Definition of Law
- Definition of Mercantile Law
- Why Chartered Accountants study law
- Where to apply law in practical life
- Sources of Law
- Civil law and criminal law
- Basic structure of the constitution of Pakistan

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 clearer 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, sale 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 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:

Legislation

It is the law created by the Parliament and other bodies to whom it has delegated authority. It includes the Act of Parliament, the Ordinance promulgated by the President of Pakistan and the delegated legislations.

Precedent (case law)

Precedents are judgments or decisions of a superior court which are binding on the subordinate courts.

Customs

Certain customs, practices and beliefs are so vital and intrinsic part of a social and economic system that they are treated as if they were laws e.g. Sharia laws.

Agreement

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

1.6 Civil law and criminal 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 civil law and criminal law.

S.no	Civil law	Criminal law
1	<p>Definition and explanation</p> <p>Civil law sets out the rights and duties of persons as between themselves. The person whose rights have been affected can claim a remedy from the wrongdoer.</p> <p>A violation of the civil law is a tort (a wrongdoing), but is not a crime.</p> <p>A civil case might therefore be identified as: <i>Tanveer v Khatri</i> where a case is brought to the civil court by Tanveer (the 'plaintiff') who is making a claim against Khatri (the defendant).</p>	<p>Criminal law is concerned with conduct that is considered so undesirable that the State punishes persons who transgress.</p> <p>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.</p>
2	<p>Purpose</p> <p>The purpose is to provide a means whereby an injured party can obtain compensation.</p>	<p>The purpose is to regulate the society by the threat of punishment.</p>
3	<p>Harm caused</p> <p>The claimant sues the defendant for harm caused.</p>	<p>The State (Government) prosecutes the accused (the defendant) whether or not the harm was caused.</p>
4	<p>Burden of proof</p> <p>If the claimant can prove the wrong on the balance of probabilities, his litigation is successful and the defendant is held liable.</p>	<p>If the state can prove the offence beyond all reasonable doubt, the prosecution is successful and the accused is found guilty and convicted.</p>
5	<p>Remedy</p> <p>The civil court may order the defendant to pay damages or it might order some other</p>	<p>The criminal court may sentence the defendant to a fine or it might impose</p>

S.no	Civil law	Criminal law
	remedy such as specific performance or injunction.	some other fine such as imprisonment or death sentence.

**Example 01: 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)

**Example 02: Criminal law**

- Pakistan Penal Code
- Anti-Money Laundering Act
- Prevention of Electronics Crimes Act

Application on business

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 03: 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.

**Example 04: Criminal law and Civil law**

Question: Distinguish between civil law and criminal law giving two examples of each.

Answer:

Civil law regulates the disputes in respect of rights and obligations between persons dealing with each other. The court does not punish the wrong doers but imposes a settlement, either by awarding damages or granting injunctions or other orders.

Examples of civil laws are company law, rent law, commercial law, family laws and employment law.

Criminal law is a body of law:

- defining conduct prohibited by law against the community at large;

- regulating how suspects are investigated, charged and tried and;
- establishing punishments for convicted offenders / accused.

Criminal law deals with crimes such as murder, violence, terrorism, theft, robbery etc.

1.7 Basic Structure of Constitution of Islamic Republic of Pakistan

Introduction

The Constitution of the Islamic Republic of Pakistan was approved by the Parliament on April 10, 1973 and ratified on August 14, 1973. The Constitution is the supreme law and sets the governing principles of the country and contains the articles covering fundamental rights, state's structure, political system, mandate of different levels of government, mandate and separate powers of cabinets, judiciary etc. The Parliament cannot make any laws which is against the Constitution.

The Constitution contains preamble, twelve parts and five schedules briefly introduced as follows:

Preamble

It defines the objectives of the provisions of the Constitution. It identifies that the Muslims will be enabled to live in accordance with the teachings of Quran and Sunnah while provisions be made for minorities to practice their religion and culture. It also entails guarantee for fundamental rights, safeguarding depressed classes, securing independence of judiciary, safeguarding sovereign rights.

Part I – Introductory [Articles 1–6]

It identifies the country as Islamic Republic of Pakistan divided into four territories and defined the religion of the state. It also includes provisions such as elimination of all sorts of exploitation, rights of individuals to be dealt in accordance with the law, loyalty to the state and abiding by the Constitution and the defining high treason along with its punishment.

Part II – Fundamental Rights and Principles of Policy [Articles 7–40]

It begins with the definition of the State and continues with detailing of the laws regarding fundamental right and principles of policy. Fundamental rights include laws that deem void which are inconsistent with fundamental rights, safeguards regarding arrest and detention; prohibition of slavery; child labor and all forms of forced labor; right to enter lawful profession and trade; right to education and safeguard against discrimination etc.

The second part contains policies such as discouraging prejudices and discrimination, providing free and compulsory education and fostering goodwill and friendly relations among all nations etc.

Part III – The Federation of Pakistan [Articles 41–100]

It includes the eligibility of President of Pakistan, term of office, powers vested in the position, removal of the President, job responsibilities and limitations such as exercising functions in accordance with the advice of the Cabinet or Prime Minister.

This part also includes information about the composition, duration and meetings of the Parliament and senate, qualifications and disqualifications for membership of the Parliament, introduction and passing of bills etc.

Part IV – Provinces [Articles 101-140A]

It includes entails composition and function of the provincial governments and governor.

It also includes the financial procedure such as Provincial Consolidated Fund and public account and procedure relating to annual budget statement and ordinances etc.

Part V – Relations between Federation and Provinces [Articles 141–159]

It includes distribution of legislative powers, administrative relations between Federation and Provinces such as obligation of Federation and Provinces and inter-provincial trade etc. It also entails special provisions relating to Council of common interests, National Economic Council, broadcasting and telecasting etc.

Part VI – Finance, Property, Contracts and Suits [Articles 160–174]

It includes distribution of revenues between the federation and the provinces and other financial provisions such as exemption and imposition of certain taxes. It also entails borrowing by Federal and Provincial government; appointment, powers and functions of Auditor General of Pakistan. This part also includes provisions regarding property, contracts, liabilities and suits.

Part VII – The Judiciary [Articles 175–212]

It encompasses establishments, jurisdictions and functions of courts (Supreme Court, High Courts and Federal Shariat Court), appointment of judges and general provisions such as contempt of court, remuneration of judges, Supreme Judicial Council etc.

Part VIII – Elections [Articles 213–226]

It includes the formation and duties of Chief Election Commissioner and Election Commissions along with electoral laws and conduct of elections.

Part IX – Islamic Provisions [Articles 227–231]

It includes provisions relating to the Holy Quran and Sunnah along with composition and functions of the Islamic Council.

Part X – Emergency Provisions [Articles 232–237]

It includes proclamation of emergency on account of war or internal disturbance etc., power to suspend fundamental rights during emergency period, revocation of proclamation etc.

Part XI – Amendment of Constitution [Articles 238–239]

It includes amendment of Constitution by Parliament through Constitution Amendment Bill.

Part XII – Miscellaneous [Articles 240–280]

It includes establishment and constitution of Public Service Commission, command and functions of Armed Forces etc. Moreover, it comprises definition and administration of tribal areas; protection to President, Governor, Minister; national language etc.

First Schedule	Laws exempted from the operation of Article 8(1), 8(2), 8(3b), and 8(4)
Second Schedule	Election of President
Third Schedule	Oaths of Office
Fourth Schedule	Legislative Lists
Fifth Schedule	Remuneration and Terms and Conditions of Service of Judges

2 THE PROCESS OF LEGISLATION AS PER THE CONSTITUTION

Section overview

- Governing Structure
- Process of Legislation
- Delegated Legislation

2.1 Governing Structure

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).

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.

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.

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 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.

National Assembly

- ❑ The seats for the national assembly are determined on the basis of population of provinces.
- ❑ The members on general seats are elected for a period of five years on the basis of direct votes by the voters registered. There are also reserved seats for women and non-Muslims.
- ❑ 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.

2.2 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.

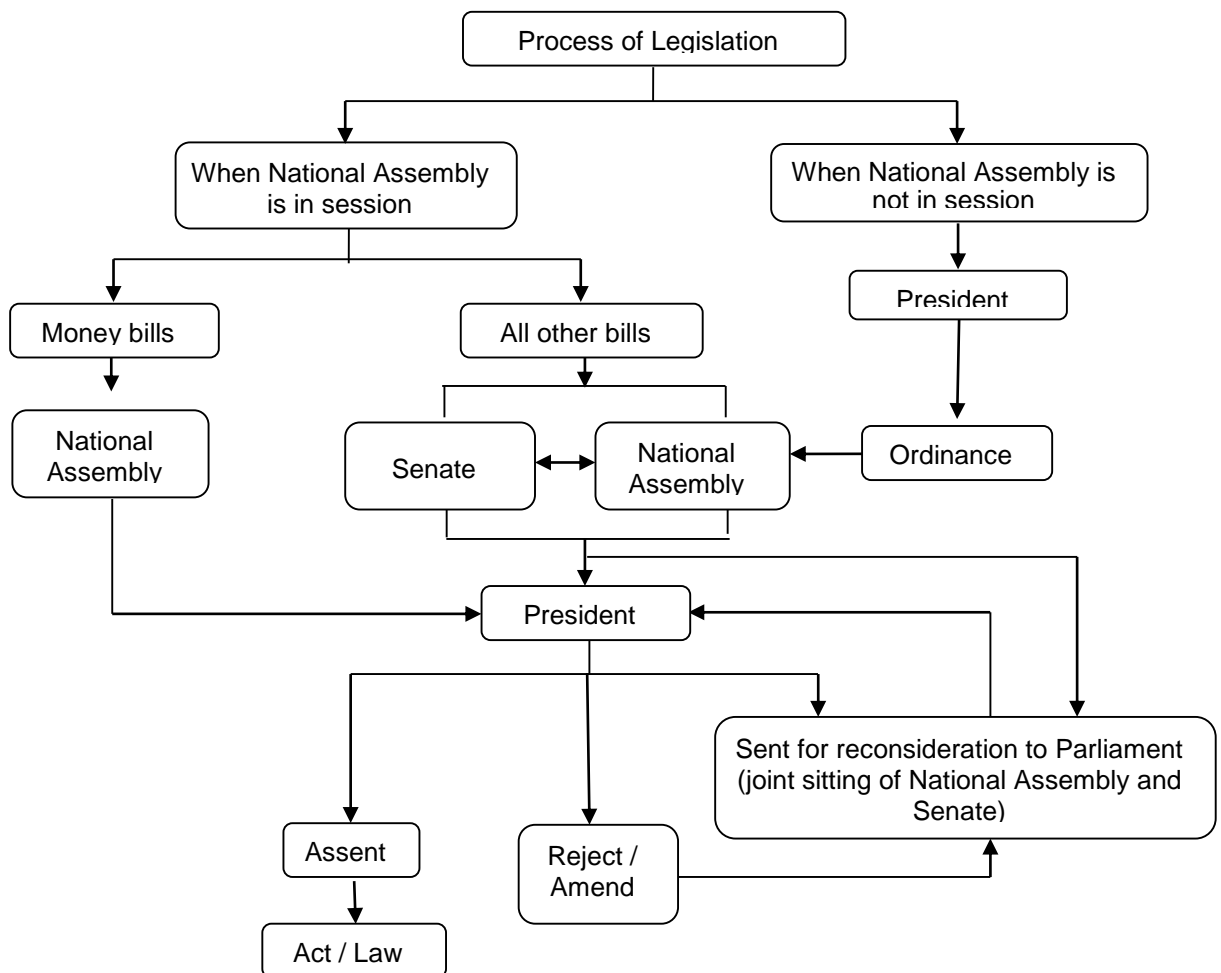
Money bills

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.

The 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





Example 05: Money bill

Question: Briefly describe the process of legislation in case of a money bill when:

- National assembly is in session
- National assembly is not in session

Answer:

Legislation in case of a money bill when National assembly is in session:

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.

Legislation in case of a money bill when National assembly is not in session:

When National assembly is not in session and President deems necessary to take immediate action, he has the power to issue an Ordinance.

Such Ordinance promulgated thus, shall have the same force and effect as an Act of the parliament.

However, the Ordinance shall stand repealed after 120 days if it is not presented or passed by the National assembly.



Example 06: The Ordinance

Question: How is a law promulgated when national assembly is not in session? Is such law in any way different from an Act of parliament? What is its tenure?

Answer:

If the President deems necessary to take an immediate action, he has the power to promulgate an Ordinance if the Senate or National Assembly is not in session. Such Ordinances have the same force and effect as an Act of the Parliament. The Ordinance stands repealed after one hundred twenty days if it is not passed by the National Assembly or by National Assembly and Senate both as the case may be. However, National Assembly may extend it for another period of one hundred twenty days. Thereafter it will stand repealed.



Example 07: System of government and role of Senate in process of legislation

Question: Specify Pakistan's system of government and identify Senate's role in the legislation process.

Answer:

System of government:

Pakistan has a Federal Parliamentary System of government, with the President as the Head of State and 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).

Role of Senate:

The role of the Senate is to approve all statutes passed by the National Assembly with the exception of money bills.

2.3 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 make 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.



Example 08: Delegated legislation

Question: Briefly describe how delegated legislation takes place and also describe how control is exercised over delegated legislation.

Answer:

In delegated legislation power is given to an executive (a minister or public body to make subordinate or delegated legislation) for specified purpose only. For example, local authorities are given statutory powers to make bye-laws which apply within a specific locality.

Control over delegated legislation is exercised in following ways:

- (i) Parliament exercises control over delegated legislation by restricting or defining power to make rules
- (ii) Rules made under delegated power to make legislation may be challenged in the courts on the grounds of being ultra vires (exceeding the authority).