

Chapter Three

Classifications of law

3.1. Introduction

Classification of law refers to the systematization of the law based on subject matter. One of the major tasks of legal learning in schools of law since early times was the systematization of law.

The purpose for doing this, as you shall study it in the later part of this chapter, was not only to find the law more easily, but also to determine whether different legal rules were required depending on their area of application.

Roman law has distinguished between those legal institutions which were orientated to matters of public interest and those which were of private interest. This distinction between private law and public law assimilated in to civil law system of modern times. The civil law system, relying on the distinction made by Montesquieu - who differentiated between *droit politique* and *droit civil* - recognizes the distinction between public law, which is that pertaining to the relationships between the government and the governed and private law, which pertains to those matters arising among private individuals.

This classification of law is still maintained today. Our legal system is also based on such classification.

The classification of law in to public and private is not the only way of classifying law.

There are also other ways of classifying law. Law can be classified into civil law and criminal; domestic and international; substantive and procedural law. These ways of classifying law have their own incompleteness and we will not consider them here. Relatively the best and widely accepted way of classifying law is in to public and private. In this section you will study the grounds for classifying law in to public and private and their sub-classifications. To better understand the classification look at the diagrammatic representation of the classification of law at the end of this chapter.

1. Public Law

Public law involves government directly. It determines the organization and scope of public powers and their exercise in relation to those who are governed (citizens). It defines a person's rights and obligations in relation to government. Public law also describes the various divisions of government and their powers.

While the power of the state was weak under the *laissez faire* philosophy the role of public law was relatively minimal compared to private law. The *laissez faire*

philosophy of Adam Smith was propagating the reduction of the power of the state and enhancement of that of the power of the individual.

This meant that for a long time private law has pre-eminence. However, the growth of the state and its institutions during the 20th century following the fall of the *laissez faire* philosophy and the adoption of the welfare state doctrine, has seen a corresponding increase in the importance of public law. The number of public agencies has multiplied and expanded into a range of sectors which were previously the preserve of private law bodies, for example the commercial, industrial, economic and social sectors, and the provisions of services such as gas, electricity, communications, health etc. This has necessitated the expansion and consolidation of that body of law referred to as public law. Public law is further classified into domestic public law and public international law.

I- Domestic public law is that which made at the national level and govern the formation, operation, powers, duties and responsibilities of the government and its organs and the rights of citizens in their relation towards the government. Domestic public law includes the following main areas of law.

A. Criminal law: deals with crimes, i.e. actions considered harmful to society. Crimes range in seriousness from disorderly conduct to murder. Criminal law defines these offences and sets the rules for the arrest, the possible trial, and the punishments of offenders.

In the majority of countries, the central government makes the majority of the criminal laws.

In some countries such as Australia and United States, each state as well as the federal government, has its own set of criminal laws. When we come to our country the power to enact a criminal code is given to the federal government under Art. 55(5) of the FDRE constitution. Regional states have also the power to issue criminal law on matters that are not covered by the federal criminal code.

B. Constitutional law - A constitution is set of rules and principles that define the powers of government and the rights of the people. The principles outlined in a constitution form the basis of constitutional law. The law also includes official rulings given by organs that are empowered to interpret the constitution (such as Supreme Court in US, constitutional council in France and House of Federation in Ethiopia) on how a constitution's principles are interpreted and applied.

Major exception is Britain. The British constitution is unwritten. It consists of all the documents and traditions that have contributed to Britain's form of government. In most democratic nations the national constitutions take first place over all other laws.

C. Administrative Law - centers on the operations of government departments.

Governments setup many administrative departments (administrative agencies as they are commonly called) to do the works of government. They deal with such matters as education, public health and taxation. Other departments administer social welfare provisions, such as pensions, and social security. In most cases the

departments are established in the executive branch of government under powers granted by the legislature.

Administrative law comprises the body of laws which determine the organization of administrative agencies, the administrative structure of the state itself including local governments; the exercise of delegated power, and the operation and control of public services and the relationship of administrative agencies with individual.

D. Law of Public Finance:- Deals with public expenditure and revenue. It governs matters such as public expenditure, debt, and source of revenue of the state.

II. Public International Law:- Governs the relationship of states both in peace and war times. It regulates the international relationship of sovereign states. Public international law regulates the behavior of states in their relations with one another. It concerns trade, communications, boundary disputes, methods of warfare, the use of the ocean, and many other matters. Laws to regulate international relations have been developed over the centuries by customs and treaties. But international law, unlike domestic law is difficult to enforce.

2. Private Law

Private law regulates the relationship between two or more private individuals. It deals with the rights and obligation of individual persons in their relationship with one another. In their daily life individuals enter in to different types of social and economic transactions. The respective rights and obligations of the individuals that are engaged in different types of private transactions are determined by private law.

Private law is further divided in to domestic private law and private international law.

I. Domestic (National) private law.

This branch of private law governs the relationship of individuals within a nation which does not contain foreign element. It is further classified in to the following main areas.

A. **Contract Law:** - deals with the rights and obligations of people who make contracts. A contract is an agreement between two or more persons that can be enforced by law. People enter into a variety of contracts ranging from taking a taxi or a cup of coffee in a cafeteria to buying a home or a business enterprise. Contract is an indispensable part of life of modern society. The varieties of contracts that individuals conclude are subject to regulation by the contract law.

B. Extra- Contractual Liability (Tort) Law: - This branch of private law deals with the manner of compensating a person who has sustained damage by the person or property of another individual. An individual may, by his action or property he own, cause damage to the life, body, property, reputation or business or may make unauthorized use of another person's property. The victim may sue the person responsible for the damage. The law of extra-contractual liability deals with the rights and obligations of the persons involved in such cases.

Although it has a punitive effect the main purpose of extra contractual liability law is to compensate the victim and reinstate him, to the extent possible, to the position he was before the materialization of the risk.

If the act that caused the damage is deliberate and causes serious harm it may also be treated as a crime.

C. Property law: - governs the manner of acquiring ownership and use of property. Property may be tangible, such as land car and building or intangible such as patent and copyrights. The law ensures a person's right to own property. However, the owner must use the property properly. People also have the right to sell or lease their property and to buy or rent the property of others. Property law determines the rights and obligations involved in such dealings.

D. Succession (inheritance law):-Concerns the transfer of property upon the death of the owner. Nearly every country has succession law which lists the relatives or other persons who have first right of inheritance. People may also will their property to persons other than those specified by law. In such case the inheritance law also sets rules for the making of wills.

E. Family Law: - Governs the formation, effect and dissolution of marriage. It determines also the legal rights and obligations of husbands and wives and of parents and children. It covers such matters as marriage, divorce, adoption, and child support.

F. Commercial Law: - Governs the formation and operation of commercial undertakings.

1.3 The Importance of Classification of Law

Classification of law by the subject matters it regulates has its own advantages. The following are the main advantages of classifying law by subject matter.

1. It simplifies the law making process for the legislature by helping it to conduct its deliberations in specific areas of law.

2. It also makes the work of the executive and the judiciary efficient because the executive and judiciary will easily pick up the provision of the law they want when discharging their duties.

It also simplifies the study of law at law-schools as well as for conducting research in to legal problems.