INTRODUCTION TO LEGAL SYSTEM

INTRODUCTION TO LAW

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.

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.

Why CAs study law?
The objective of studying law in Accountancy is to be aware when legal problems arise, be able to judge when outside assistance is required, evaluate financial implications of law and communication with the lawyers.

Where to apply law in practical life?
A general knowledge of 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.

SOURCES OF LAW IN PAKISTAN
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 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 In Pakistan, the customary law has been replaced by the Sharia Law.

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

TYPES OF PRECEDENT

Original
Original precedent is one which creates and applies a new rule.

Declaratory
Declaratory precedent is the application of an already existing rule of law.

Binding
Binding precedent is one which is required to be followed.

Persuasive
Persuasive precedent is one which is not required to be followed e.g. a decision by lower court, decision by courts of other countries.

DOCTRINE OF BINDING PRECEDENT (VS PERSUASIVE PRECEDENT)

Pre-requisite for binding precedent
Characteristics of persuasive precedent

The judicial decision that creates a precedent must be based on a proposition of law or principle of law.
This is precedent based on question of fact (or point of fact).

This proposition or principle of law must have been used by the judge in reaching his decision in the particular case (called ‘ratio decidendi’).
Any other statement of the law is irrelevant to the decision and such statements are sometimes called ‘obiter dicta’, which means ‘said by the way’.

The facts in the case must be materially the same as in case that is used as precedent.
The facts in case are not same but similar.

The precedent must be established by higher (or sometimes) equal status court.
The precedents established by lower court.
PRECEDENT – FURTHER DISCUSSION

How a precedent may be altered or avoided?

Precedents can sometimes be altered or avoided by judges:
1. Overruled by higher court
2. Overruled by subsequent statute
3. The facts of case being distinguished by the judge.
4. Ratio decidendi is obscure (particularly, if different judges gave different reasons)

Advantages
1. It saves time and expense as same arguments need not be repeated.
2. Judicial decisions are consistent in all cases of similar nature.
3. It incorporates flexibility in legal system as law is created whenever the need arises.

Disadvantages
1. Large number of precedents makes it difficult to apply the rules in a case (esp. when reported cases are with different outcome).
2. A precedent may be unjust and unfair, and it will continue to be binding.
3. This is undemocratic. The judiciary is not supposed to make law.

CIVIL LAW vs CRIMINAL LAW

<table>
<thead>
<tr>
<th>Difference</th>
<th>Civil Law</th>
<th>Criminal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>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.</td>
<td>Criminal law is concerned with conduct that is considered so undesirable that the State punishes persons who transgress.</td>
</tr>
<tr>
<td>Purpose</td>
<td>The aim, therefore, of the civil law is to provide a means whereby an injured party can obtain compensation.</td>
<td>The aim, therefore, of the criminal law is to regulate society by the threat of punishment.</td>
</tr>
<tr>
<td>Harm caused</td>
<td>The claimant sues the defendant for harm caused.</td>
<td>The State(Government) prosecutes the accused / defendant whether or not harm results.</td>
</tr>
<tr>
<td>Burden of proof</td>
<td>If the claimant can prove the wrong on the balance of probabilities (i.e. his litigation is successful and the defendant is held liable)</td>
<td>If the State can prove the offence beyond reasonable doubt (i.e. the prosecution is successful and the defendant is found guilty and convicted)</td>
</tr>
<tr>
<td>Remedy</td>
<td>The civil court will order the defendant to pay damages or it might order some other remedy such as specific performance or injunction.</td>
<td>The criminal court will sentence the defendant to a fine or it might impose some other punishment such as imprisonment.</td>
</tr>
</tbody>
</table>

LEGISLATION

PARLIAMENT / MAJLI-E-SHOORA
The parliament of Pakistan consists of:
1. President
2. National Assembly
3. Senate

President (Head of State)

Functions:
- The President of Pakistan is Pakistan’s Head of State and is considered a symbol of unity.
- 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.
### Election process:
- 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.

#### Prime minister (Head of Government)
- 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.

#### 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.

<table>
<thead>
<tr>
<th>Composition</th>
<th>Punjab</th>
<th>Sindh</th>
<th>KPK</th>
<th>Baluchistan</th>
<th>FATA</th>
<th>Federal Capital</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>148</td>
<td>61</td>
<td>35</td>
<td>14</td>
<td>12</td>
<td>2</td>
<td>272</td>
</tr>
<tr>
<td>Women</td>
<td>35</td>
<td>14</td>
<td>8</td>
<td>3</td>
<td></td>
<td></td>
<td>60</td>
</tr>
<tr>
<td>Minority</td>
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<td>10</td>
<td>10</td>
</tr>
<tr>
<td>TOTAL</td>
<td>183</td>
<td>75</td>
<td>43</td>
<td>17</td>
<td>12</td>
<td>2</td>
<td>342</td>
</tr>
</tbody>
</table>

#### Senate
- The Senate is a permanent legislative body with equal representation from each of the four 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.
- 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.
- The members elect from themselves a chairman and a Deputy Chairman.
- The Chairman of the Senate under the constitution is next in line to act as President if the office becomes vacant.
- All statutes passed by the National Assembly are also approved by the Senate with the exception of money bills.

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<td>17</td>
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<tr>
<td>Technocrats</td>
<td>4</td>
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<td>17</td>
</tr>
<tr>
<td>Minority</td>
<td>1</td>
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<td>1</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>23</td>
<td>23</td>
<td>23</td>
<td>23</td>
<td>8</td>
<td>4</td>
<td>104</td>
</tr>
</tbody>
</table>
THE PROCESS OF LEGISLATION

<table>
<thead>
<tr>
<th>Scenario (1)</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario (2)</td>
<td>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.</td>
</tr>
<tr>
<td>Scenario (3)</td>
<td>If a bill transmitted to a House is rejected or not passed within 90 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.</td>
</tr>
<tr>
<td>Scenario (4)</td>
<td>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.</td>
</tr>
</tbody>
</table>

The President shall within 10 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. If the bill is pending in the Senate not passed by the National Assembly shall not lapse on dissolution of the National Assembly.

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 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.

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

Advantages
- Time saving for Parliament and it can focus on broad issues.
- Expert knowledge of public or professional body is utilized.
- Simpler to make, simpler to amend.

Disadvantages
- Undemocratic, as law being made by non-elected persons.
- Questions of accountability over so much power given to individuals.
- Large volume makes it difficult to manage and keep these up to date.
## COURTS’ STRUCTURE IN PAKISTAN

### JUDICIAL SYSTEM HIERARCHY

<table>
<thead>
<tr>
<th>Civil Courts</th>
<th>Criminal Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court of Pakistan</td>
<td>Session Court (Session Judges, Additional Session Judges &amp; Assistant Session Judges)</td>
</tr>
<tr>
<td>High Courts (Lahore, Sindh, Peshawar, Baluchistan, Islamabad)</td>
<td>Magistrate Courts (Magistrate of 1st, 2nd, and 3rd Class)</td>
</tr>
<tr>
<td>District Court (District Judges &amp; Additional District Judges)</td>
<td></td>
</tr>
<tr>
<td>Civil Court / Family Court (Civil Judges of 1st, 2nd and 3rd Class)</td>
<td></td>
</tr>
<tr>
<td>Criminal Courts</td>
<td></td>
</tr>
</tbody>
</table>

### RELEVANT TERMINOLOGY

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction</td>
<td>The area of authority for a court giving it power to hear and decide cases. This is determined according to constitution, court rules and legislation.</td>
</tr>
<tr>
<td>1st Instance</td>
<td>The court where a particular case shall be heard for the first time. This is also called court of original jurisdiction.</td>
</tr>
<tr>
<td>Appeal</td>
<td>The right to request the higher court to reconsider the decision made by lower court.</td>
</tr>
<tr>
<td>Point of fact</td>
<td>The facts of the case established by the parties contesting the case before the court.</td>
</tr>
<tr>
<td>Point of law</td>
<td>The law applicable to the case pending adjudication in the court. These are applied once the facts of the case are established by the court.</td>
</tr>
<tr>
<td>Overruling</td>
<td>The procedure whereby a court higher up in the hierarchy sets aside a legal ruling established in a previous case. Overruling operates retrospectively with the effect that the principle of law overruled is held never to have been law.</td>
</tr>
<tr>
<td>Reversing</td>
<td>The procedure whereby as the result of an appeal, a superior court in the hierarchy reverses the decision of a lower court in the same case.</td>
</tr>
<tr>
<td>Distinguishing</td>
<td>The main device used by the judiciary where they want to avoid following an otherwise apparently binding precedent. This is done because material facts of the case differ significantly from the case cited.</td>
</tr>
<tr>
<td>Juveniles</td>
<td>Any offence, other than one punishable with death or transportation for life, committed by any person under the age of fifteen years. The age is calculated at the date when he appears or brought before the court, may be tried by a District Magistrate working under the Reformatory Schools Act, 1897.</td>
</tr>
</tbody>
</table>

### SUPREME COURT OF PAKISTAN

**Introduction**
Supreme Court is the apex court in judicial hierarchy and all executive and judicial authorities are bound to act in aid of the Supreme Court. The Constitution assigns the Supreme Court a unique responsibility of maintaining harmony and balance between the three pillars of the State, namely, the Legislature, the Executive and the Judiciary.

**Structure**
Chief Justice of Pakistan and such number of other judges as may be determined by the Act of Parliament.

**Appointment**
Chief Justice is appointed by President and other Judges are appointed by President after consultation with the Chief Justice.

**Criteria to be Judge**
- A person with 5 years’ experience as a Judge of High Court, or
- 15 years standing as an advocate of High Court

**Jurisdiction**
- **Original**: disputes between and among Provincial/Federal governments. It may also exercise *suo-moto* power on human rights matter.
- **Appellate**: appeals from decisions by High Court and Federal Shariat Court.
- **Advisory**: on questions of public importance, if President considers it necessary.
### HIGH COURT

| **Introduction** | A High Court is the principal court of its province. |
| **Structure** | A Chief Justice and other Judges as may be determined by law. |
| **Criteria to be Judge** | - A person with 10 years’ experience as an advocate of High Court; or  
- 10 years’ service as civil servant including 3 years’ experience as a District Judge; or  
- 10 years’ experience in judicial office. |
| **Jurisdiction** | - **Original**: in civil cases including as Company Courts  
- **Appellate**: in civil and criminal cases, both.  
- **Supervisory**: habeas corpus and prerogative orders (see below)  
- **Constitutional**: on matters relating to Constitution |
| **Supervisory Role** | - **Habeas Corpus**: order for the release of a person wrongfully detained.  
- **Prerogative**: authority over inferior courts, tribunals and other bodies;  
  - **Mandamus**: requires the lower court or other body to carry out a public duty.  
  - **Prohibition**: prevents the lower court or tribunal from exceeding its jurisdiction.  
  - **Certiorari**: ordering to send record relating to specific case for review. |

### Federal Shariat Court

| **Composition** | It consists of not more than 8 Muslim Judges, including:  
- A Chief Justice (to be appointed by President);  
- Not more than 3 Judges having at least 15 years’ experience in Islamic law and research;  
- Not more than 4 judges who are qualified to be judge of High Court |
| **Term** | The judges hold office for a period of 3 years. However, the President may extend such period. |
| **Original Jurisdiction** | The Court may, either of its own motion or on the petition of citizen of Pakistan or the Federal / Provincial Government, examine and decide the question whether or not any law or provision of the law is repugnant to the Injunctions of Islam. |
| **Appellate Jurisdiction** | The Court also has jurisdiction to hear appeals from the decision of criminal courts under any law relating to enforcement of Hudood laws. |
| **Process** | If court decides that a law or the provision of any law is repugnant to the Injunctions of Islam, it shall set out in its decision:  
  - reasons for its holding that opinion and  
  - extent to which such law or provision is so repugnant  
  - specify the day on which decision shall take effect (unless appeal is filed) |
| **Appeal** | A party aggrieved by the final decision of the court within **60 days** of such decision may prefer an appeal to the Supreme Court. An appeal on behalf of the Federation or a Province may be preferred within **6 months** of such decision. |

### OTHER CIVIL COURTS

| **District Court** | In each district of a province, Provincial Government appoints a District Judge and Additional District Judges as necessary.  
**Jurisdiction**: Appeal from civil courts for suits valuing below Rs. 200,000 (Above Rs. 200,000 appeals are made to High Court). |
| **Civil Courts** | Civil Judges function under the superintendence and control of District Judge and all matters of civil nature originate in the courts of Judges. The District Judge may, however, withdraw any case from any Civil Judge and try it himself.  
**Jurisdiction**:  
  - **1st Class** (unlimited value);  
  - **2nd Class** (up to Rs. 50,000);  
  - **3rd Class** (up to Rs. 5,000) |
## Comprehensive Approach

<table>
<thead>
<tr>
<th>Family Courts</th>
<th>These courts deal with matrimonial cases. Most divorce cases are heard in the family court, family property cases and proceedings relating to children etc.</th>
</tr>
</thead>
</table>
| Company Courts | - The court having jurisdiction under the Companies Act, 2017 is the High court having jurisdiction in the place at which the registered office of the company is situated.  
- The Federal Government may empower any civil court to exercise all or any of the jurisdictions.  
- In each High Court one or more benches known as the company bench are constituted by the chief justice of High Court.  
- All the matters coming before these courts are disposed of within 90 days from the date of presentation. |
| Industrial Tribunal | Industrial Tribunals were established by the Industrial Relation Act, 2008. They have a wide jurisdiction over most disputes between employee and employer.  
- Redress of individual grievances  
- Complaints of unfair dismissal  
- Pay claims  
- Questions as to the terms of employment  
- Appeals against health and safety notices. |

### OTHER CRIMINAL COURTS

| Sessions Court | Appointed by Provincial Governments in each division of the province.  
**Jurisdiction:**  
**Sessions Judge & Additional Sessions Judge:** All other offences not covered in Judicial Magistrate Jurisdiction, but sentence of death is passed subject to the confirmation of High Court. Cases of enforcement of law relating to Hudood are also tried by sessions judges.  
**Assistant Sessions Judge:** Offences with punishment not exceeding seven years. |
| Magistrate Courts | Magistrates’ Courts are the subordinate criminal courts. In addition, they also exercise certain family law, administrative law and minor civil functions.  
**Jurisdiction (Offences with punishment of)**  
**1st Class:** imprisonment up to 3 years, fine up to Rs. 15,000 and whipping.  
**2nd Class:** imprisonment up to 1 year, fine up to Rs. 5,000.  
**3rd Class:** imprisonment up to 1 month, fine up to Rs. 100.  
**Special Judicial:** Provincial Government on recommendation of High Court confer upon any person, powers of Judicial Magistrate. |

### ALTERNATE DISPUTE RESOLUTION

Alternate Dispute Resolution (ADR) is any type of procedure or combination of procedures voluntarily used to resolve issues in controversy, other than court based adjudication.

**Types**
- **Negotiation:** Participation is voluntary, no third party involved.  
- **Mediation:** Third party facilitates but does not impose decision.  
- **Arbitration:** Third party facilitates and imposes the decision.  
- **Conciliation:** Third party meets the parties separately to resolve grievances.  

**For**
- **Speedy:** faster than litigation in courts.  
- **Cheaper and flexible:** Timing and procedures are simpler.  
- **Privacy:** public and press have no right of hearing.  
- **Appeal:** limited avenues of appeals lead to final conclusion.  
- **Service of expert:** parties may choose expert of the relevant field.  

**Against**
- **Appeal:** limited appeal means erroneous decision cannot be easily overturned.  
- **Expensive:** in some cases, the court proceedings may be cheaper.  
- **Applicability of law:** law may not be applied by arbitrators as it is applied by courts.  
- **Delay:** Difficult to manage schedules when there are multiple arbitrators.
<table>
<thead>
<tr>
<th><strong>Takhim</strong></th>
<th>Islamic arbitration is known as Takhim.</th>
</tr>
</thead>
</table>
| **Qualification to be an arbitrator** | - Must be a Muslim  
- Male  
- Knowledge in Sharia and  
- Free from any defects that could affect his ability to arbitrate. |