

CAF 03 Presentation

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Certificate in Accounting & Finance

CAF - 03

Business Law

Objective of Syllabus

To give students an understanding of the

- Legal system [1 chapters]

and laws relating to

- Contract Act, [7 chapters]
- Partnership Act, [1 chapters]
- Negotiable Instruments Act, [1 chapters]
- Companies Act and Securities Act. [6 chapters]

ICAP's Grids & Weightage for CAF - 03

SN	GRIDS	WEIGHTINGS
1	Introduction to Legal System	4-6
	Mercantile Law	
2	Contract Act	20-30
3	Partnership Act	10-15
4	Negotiable Instruments Act	5-10
	Company Law	
5	Preliminary and incorporation	5-10
6	Prospectus and share capital etc.	5-10
7	Management, administration and disclosure of interest	15-25
8	Investments, accounts and dividend etc.	10-20
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Chapter 1

Introduction to Legal System

Introduction to the legal system

INTRODUCTION TO THE LAW AND ITS TYPES

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 (fundamental) 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.

Please See The Example 01 & 02

DEFINITION AND EXPLANATION	
CIVIL LAW	CRIMINAL LAW
<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: Tanveer vs Basheer where a case is brought to the civil court by Tanveer (the ‘plaintiff’) who is making a claim against Basheer (the defendant).</p>	<p>Criminal law is concerned with conduct that is considered so undesirable that the State punishes persons who transgress (breaking the law).</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> <p>A criminal case might therefore be identified as: State vs Basheer where a case is brought to the criminal court by the State against Basheer (the “accused”).</p>

PURPOSE	
CIVIL LAW	CRIMINAL LAW
The purpose is to provide a means whereby an injured party can obtain compensation.	The purpose is to regulate the society by the threat of punishment.

HARM CAUSED	
CIVIL LAW	CRIMINAL LAW
The claimant sues the defendant for harm caused.	The State (Government) prosecutes the accused (the defendant) whether or not the harm was caused.

BURDEN OF PROOF	
CIVIL LAW	CRIMINAL LAW
If the claimant can prove the wrong on the balance of probabilities, his litigation is successful and the defendant is held liable.	If the state can prove the offence beyond all reasonable doubt, the prosecution is successful and the accused is found guilty and convicted.

REMEDY	
CIVIL LAW	CRIMINAL LAW
The civil court may order the defendant to pay damages or it might order some other remedy such as specific performance or injunction.	The criminal court may sentence the defendant to a fine or it might impose some other fine such as imprisonment or death sentence.

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.

Please See The Example 03 & 04

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, two hundred eighty articles 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 labour and all forms of forced labour; 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.

Schedules

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

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.

Please See The Example 05 to 07

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.

Please See The Example 08