



ACCA

Corporate and Business Law GLO (LW)

Pocket Notes

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chapter

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Essential elements of legal systems

In this chapter

- Economic, political and legal systems.
- Separation of powers.
- International trade, international legal regulation and conflict of laws.
- Arbitration.

Economic, political and legal systems

A country's political economy refers to its political, economic and legal systems.

These systems are interdependent, and interact and influence each other.

Economic system – The way in which society decides what to make, how to make it and who to make it for.

Economic systems

Planned – decisions made by government	Market – decision left to market forces	Mixed – mixture of the other types
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Political system – The way in which countries are managed eg dictatorship or democracy.

Legal system – The law is a body of rules designed to regulate the conduct of society.

Types of legal system

Common Law – applies in UK and USA	Civil Law – applies in France and Germany	Sharia Law – applies in Pakistan and Iran
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Separation of powers

Power is split in the following way so that no part of the political process has too much power.

- 1 Legislature – makes the law.
- 2 Executive – implements the law.
- 3 Judiciary – interprets the law in a dispute.

Different legal systems

A Common law

- Built up in England between 1066 and about 1400. Has been exported to other countries because of the British Empire, e.g. USA and Canada.
- Principles of law do not become inoperative because of passing of time.
- New laws passed by Parliament are presumed not to alter existing law.

- Judges apply law using judicial precedent.

Sources of law

- Common Law – built up through the application of judicial precedent.
- Equity – developed by Chancery to deal with the rigidity of common law.
- Statute – made by legislature.
- Custom.
- Constitution (where applicable).
- European Union law – where country is a member of EU.

Role of judges

- Apply the law consistently with previous decisions.
- Interpret statutes.
- The following presumptions apply when interpreting a statute:
 - it does not override existing law

- it does not alter common law
- it does not have retrospective effect
- it does not bind the Crown
- it does not repeal other statutes.
- The following rules should be used to interpret statutes:
 - words should be given their literal meaning
 - words should be interpreted within their context
 - words should be interpreted according to the purpose of the statute
 - the meaning of general words should be limited to the type or class of thing mentioned by specific words.

B Civil law

- Historically developed from Roman Law.
- Law is contained in codes which should answer any question.
- Questions of law should be decided within the context of the code.

Sources of law

- Countries' constitutions.
- EU law where the country is a member.
- Statute mostly codified.
- Administrative regulations.
- Custom.

Role of judges

- Apply the law but they do not create precedents.
- Not supposed to interpret the law but, where necessary, must identify the social

purpose of the law and apply it to achieve that purpose.

C Sharia law

- Based on the religion of Islam.
- It is given by Allah.

Sources of law

- Quran – Allah's divine revelation to the prophet Mohammed.
- Sunnah – sets out acceptable conduct derived from the prophet, known as Ahadith.
- Madhab – schools of thought based on writings of major jurists. Two schools which are the Sunni and Shiite.
- Constitution of the country.

Role of judges

- They are generally clerics.
- Required to apply the law.
- Have limited powers of interpretation.
 - If clear guidance not available in the Quran, reference can be made to Sunnah to confirm, explain or clarify the law.
 - Within the Sunnah, ahadith are classified according to reliability.
 - Ijtihad are the historic processes used for interpreting law.

International trade, international legal regulation and conflict of laws

Definition

Private international law is a set of national and domestic rules to determine the jurisdiction and applicable law in international contracts. It is purely domestic law.

Definition

Public international law is law which is recognised by a group of nations eg conventions and treaties, international custom and law recognised by civilised nations.

Definition

Conflict of law arises where the private laws of two different countries produce a different result in the same situation. It makes it harder for parties in those two countries to trade.



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