**UNIT THREE: CLASSIFICATION OF LAWS UNIT**

**INTRODUCTION**

* **Classification is a shaping and developing of traditional systematic conceptions and traditional systematic categories in order to organize the body of legal precepts, so that they may be:**
* **1. stated effectively with a minimum of repetition, over lapping and potential conflict;**
1. **administered effectively;**
2. **taught effectively, and developed effectively for new situations.**

We get **three views** as to the nature and end of classification. **One is that the exhaustion**. Another is that **classification is a means of revealing natural law that it may be made to reveal the real order of interdependence in the things classified**. A third is that **it is simply a means of organizing knowledge and thus of making it more effective for some purpose**. It is difficult to establish a sharp division between the different branches of the law.

Under this unit, classification of laws into public and private will be dealt. Next, the classification of law into international and national, substantive and procedural, civil and criminal will be considered respectively.

**3.1) PUBLIC AND PRIVATE LAW**

**Public law regulates the acts of persons who act in the general interest, in virtue of a direct or mediate delegation emanating from the sovereign** [What is Law? Pp, 8-9]. As Salmond propounded ‘public law’ is not the whole of the law that is applicable to the state in its relations with its subjects, **but only those parts of it which are different from the private law concerning the subjects of the state and their relations to each other**.

**Private law is thus the residue of the law after we subtract public law** [Paton, 1967, Pp. 291-92]. **Private law regulates the acts, which individuals do in their own names for their own individual interest.**

**Public law is sub divided into constitutional and administrative law**

**Constitutional law defines the organization of the state, its fundamental rules, mode of government, and the attributions of its political organs, their limits and their relations** [What is Law? Pp, 8-9]. Constitutional law deals with the ultimate questions of the distribution of **legal power and of the functions of the organs of the State** [Paton, 1967, P. 292].

**Administrative law regulates the operation of the executive power in all its degrees, beginning with cabinet ministers and descending to its most humble representatives**. It also regulates such **local, departmental and communal administrations**. Very wide in its application administrative law comprises many matters, which impinge upon private law. This is because the administration often takes individuals under its tutelage. **It is thus that the operation of mines, of waterfalls, and of railways is governed by provisions of administrative law**. In addition, the creation and functioning of certain groups of persons, such as **labour unions, associations, and mutual aid societies are governed by administrative law**, even though private persons may be acting in their own private interest [What is Law? Pp, 8-9].

Criminal law, **the infliction of punishment directly by the organs of the state, is also usually regarded as falling under the head of public law**. Some would say that civil procedure should also be placed in this section, since these rules regulate the activities of courts, which are mere agencies of the State; **but civil procedure is so linked with the enforcement of private rights that it is more convenient to regard it as belonging to both public and private law**.

Private law governs in principle **all the acts of individuals in their private capacity**. However, in France and in most civilized states, it is at present divided into three sections. They are civil law, procedure, and commercial law.

**3.2) INTERNATIONAL AND NATIONAL LAW**

**Law may be classified into international and local law. [Paranjape; 2001: 150-52]**

A) International law – **The law of nations of the 18th century was named as international law by Bentham in 1780.** **It consists of rules which regulate relations between State inter se.** Oppenheim has defined international law as “the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other.” [Paranjape; 2001: 150-52]

Starke defines International law as “**rules of conduct which states feel themselves bound to observe and therefore do commonly observe in their relations with each other and which includes also** (a) **the rules of law relating to functioning of international institutions and organisations, their relations with each othe**r **and their relations with States and individuals**; and (b) **certain rules of law relating to individuals so far as the rights and duties of such individuals are the concern of the international community**.”

Salmond, however, believes that international law is essentially a species of conventional law and has **its source in international agreements.** These international agreements may be of two kinds, namely – (1) **express agreements as contained in treaties and conventions;** and (2) **implied agreements as found in customary practices of the States**.

John Austin, Willouthby and Holland consider international law as positive morality and do not agree that it is law properly so-called. Austin defines law as a body of rules for human conduct set and enforced by a sovereign political authority. Since international law is not set or enforced by a political sovereign authority, it is not law. Also, there is no common superior over sovereign states. In the absence of any binding force, the validity of international law is solely dependent on the voluntary acceptance of the States and, therefore, it cannot be called as “law” in true sense of the term. [Paranjape; 2001: 150-52]

Dr. Holland subscribes to this view of John Austin. He observed, “**the rules of international law are voluntary, though habitually observed by every state in its dealings with the rest, can be called “law” only by courtesy**”. According to him, international law is a vanishing point of jurisprudence since it lacks any arbiter of disputed questions save public opinion, beyond and above the disputant parties themselves. [Paranjape; 2001: 150-52]

Professor Dias suggests that **there is no doubt that the respect which States pay to International Law is less than what individuals pay to municipal law, but still it is called “law” to inspire a sense of obligation among States to follow it**. Therefore, it is a weak law. Although there is International Court of justice functioning at Hague, it does not have any universal compulsory jurisdiction for settling legal disputes between States. Again, international law having not yet been codified, suffers from uncertainty. However, Dr. Oppenheim defends international law as “Law” and says, “a weak law nevertheless is still a law”.

Salmond, however, agrees that Private law branch of International Law be regarded as law in strict sense of the word. In the ultimate analysis, it may be suggested that despite criticism against international law being treated as law proper, it has assumed great importance in modern world. A large part of this law is based on natural justice and principles of right reason which the States are expected to follow in their dealings with one another. Although this law does not have any binding force behind it but the positive morality, underlying it does inspire States to feel obliged to follow it [Paranjape; 2001: 152]

As one can observe from the above discussion, **international law is classified into public international law and private international law**. **Public international law regulates the relation between states.** For example the relations **between Ethiopia and Sudan are governed by public international law**. **Private international law, on the other hand, governs the relations between individuals of different nationals**. Different nationals involve in commercial and other civil transactions beyond their countries. Since the laws of different countries are not the same, **the problem arises as to which law should be applied to the relations of different nationals.** For example, let us assume that **Ethiopian national and Chinese are married in Addis, and they live in Beijing**. Let us further assume that a dispute arises between them with regard to the administration of their household. **Whose law is to apply to solve their dispute: the Ethiopian or Chinese law?** **Private international law solves this problem**. Private international law is known by different names. For instance it is called conflict of laws [See Alpha University College; 2006: 36- 7]

B) **National law- law that pertains to a particular nation** (as opposed to international law) [Roger and Frank; 2002: 17]. **It is a law of a nation, for example the law of the United States of America, France, or Ethiopia**. Such law is applicable all over a country in question. It is also known as **law of the land**. It is in effect in a country and applicable to its members. The law may be statutory, i.e. enacted law, administrative or case law [Garner; 2004: 904].

Local Law [Paranjape; 2001: 157] - **Local law is the law of a particular locality and not the general law of the whole country**. They may be of two kinds – local customary law and local enacted law.

Local customary law has its roots in those immemorial customs, which prevail in a particular part of the State and therefore, have the force of law. The local enacted law, on the other hand, has its source in the local legislative authority of municipalities of other corporate bodies empowered to govern their spheres by by-laws, supplementary to general law.

**3.3) SUBSTANTIVE AND PROCEDURAL LAW**

**Civil procedure is nothing but a detached part of the civil law governing the manner of asserting and defending rights before courts**. Neither the Romans nor the Old French jurists segregated actions from the body of the law... [What is Law? P. 10]

According to Salmond, **substantive law is that which defines a right while procedural law determined the remedies.** Procedural law is also called ‘law in action’ as **it governs the process of litigation.** **Substantive law is concerned with the administration of justice seeks to achieve while procedural law deals with the means by which those ends can be achieved.** For example, **law of contract, transfer of property, negotiable instruments, crimes etc are substantive laws** whereas the **laws of civil procedure or criminal procedure are procedural laws** [Paranjape; 2001: 157]. The rules that are provided under procedural law are inseparable from the substantive law. For example, civil procedure law is inseparable from the civil; code that deals about contract, filiations, adoption, and the like [What is Law? p. 10].

**EVIDENCE LAW**

**Law of Evidence is the law that consists of the rules and principles, which govern the relevancy, admissibility, weight and competency of evidence**. It compress the legal rules regulating those means by which any alleged matter of fast, the truth of which is submitted to investigation is established or disproved [Carter; 1990: 3].

Law of evidence is an adjectival as opposed to substantive law. Rules of substantive law are characterized by given fact situation. Rules of substantive law govern the legal significance of a set of facts, which either are admitted or have been established. **A party to the dispute may admit facts and adduce arguments as to the substantive law. Alternatively or additionally, the party may dispute some or all of the facts. Such disputed facts are said to be facts in issue and are open to proof or disproof.** Adjectival law is concerning with the regulation of this process. Adjectival law includes the law of procedure and the law of evidence. Perhaps no clear-cut distinction can be drawn between law of evidence and other adjectival law. However, **evidence law focuses on the trial process, particularly on the fact-finding element in the trial.** It is concerned with such maters as the role of judges, the rights and duties of the parties, the nature of proof, the availability of witnesses, documents and other means of proof, the admissibility of evidence and other similar matters. **Eg. Inadmissibility of evidence acquired through force.**

**3.4) CIVIL AND CRIMINAL LAW [What is Law?]**

**Civil law is that branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters** [Roger and Frank; 2002: 15].The law enforced by the State is called civil law. In Ethiopia, we have a civil law codified in 1960, which is known as **Civil Code**. The force of State is the sanction behind this law. Civil law is essentially territorial in nature as it applies within the territory of the State concerned. The term civil law is derived from the Roman word jus civile. Austin and Holland prefer to call civil law as ‘positive law’ because it is enforced by the sovereign political authority. However, Salmond justifies the term ‘civil law’ as the law of the land. He argues that positive law is not necessarily confined to the law of the land. For example, international law is a kind of jus positivism but it is not a civil law.

On the other hand, **Penal law unquestionably forms part of public law. The state alone, representing the nation, has the right to punish**. Prosecutions and condemnations are carried out in its name. **The application of penalties is a part of the administration of a state**. Today we have a criminal law enacted in 2004 which is a revision of the 1957 Penal; Code of Ethiopia. The designation is changed to criminal law because penal law has negative connotation which carries penalty only.

**CONCLUSION**

We have seen that law can be grouped in different categories. **Classification of law is a systematic grouping of law so as to understand easily.**

Law can be classified into public and private law. We have seen that **public law is that regulates public interest. Constitutional law and administrative law are the two main sub divisions of public law. On the other hand, we have seen that private law is one that consists of rules that regulate relations between individuals.** It is divided into **substantive and procedural law**. Further, we have seen that **substantive law defines rights of persons**. We have discussed that **procedural law governs the process of litigation**.

Furthermore, we have observed that law may be divided into international and local law. **International law includes rules that govern the States and other international subjects like multinational corporations. Local law, as we have seen, encompasses rules that are applicable to a locality.**

What is more, we have discussed that law may be classified into civil and criminal law. **Civil law is that which is enforced by the state. It is also called as ‘positive law’ since it is enforced by a state as sovereign. Criminal law, called as penal law, on the other hand, is intended to keep the peace of the people and order of the State.** We have seen that criminal law is one type of public law.