

Nature, Purpose, Sources, and Classification

Topic 1: Nature, Purpose, Sources, and Classification of Law

1. Introduction & Learning Outcomes

Law provides the formal normative framework within which society, commerce, and governance operate. For professional accountants and corporate secretaries, legal knowledge is essential for ensuring statutory compliance, drafting binding agreements, safeguarding shareholder assets, and minimizing corporate liabilities.

Learning Outcomes

By the end of this study session, candidates should be able to:

1. Define law and examine its core functions in a civilized society.
 2. Evaluate the hierarchy of sources of Kenyan law under Section 3 of the Judicature Act (Cap 8) and the Constitution of Kenya (2010).
 3. Distinguish Common Law from the Doctrines of Equity and explain the rules of precedence.
 4. Classify law into civil vs. criminal, public vs. private, substantive vs. procedural, and municipal vs. international law.
 5. Analyze the application and limits of African Customary Law in Kenya.
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2. The Nature and Purpose of Law

2.1 Defining Law

While jurisprudence offers diverse definitions (Natural Law, Positivism, Historical School, Realism), in functional terms:

Law is a formal system of rules, standards, and principles recognized and enforced by the state through institutions of justice to regulate human conduct and order commercial relations.

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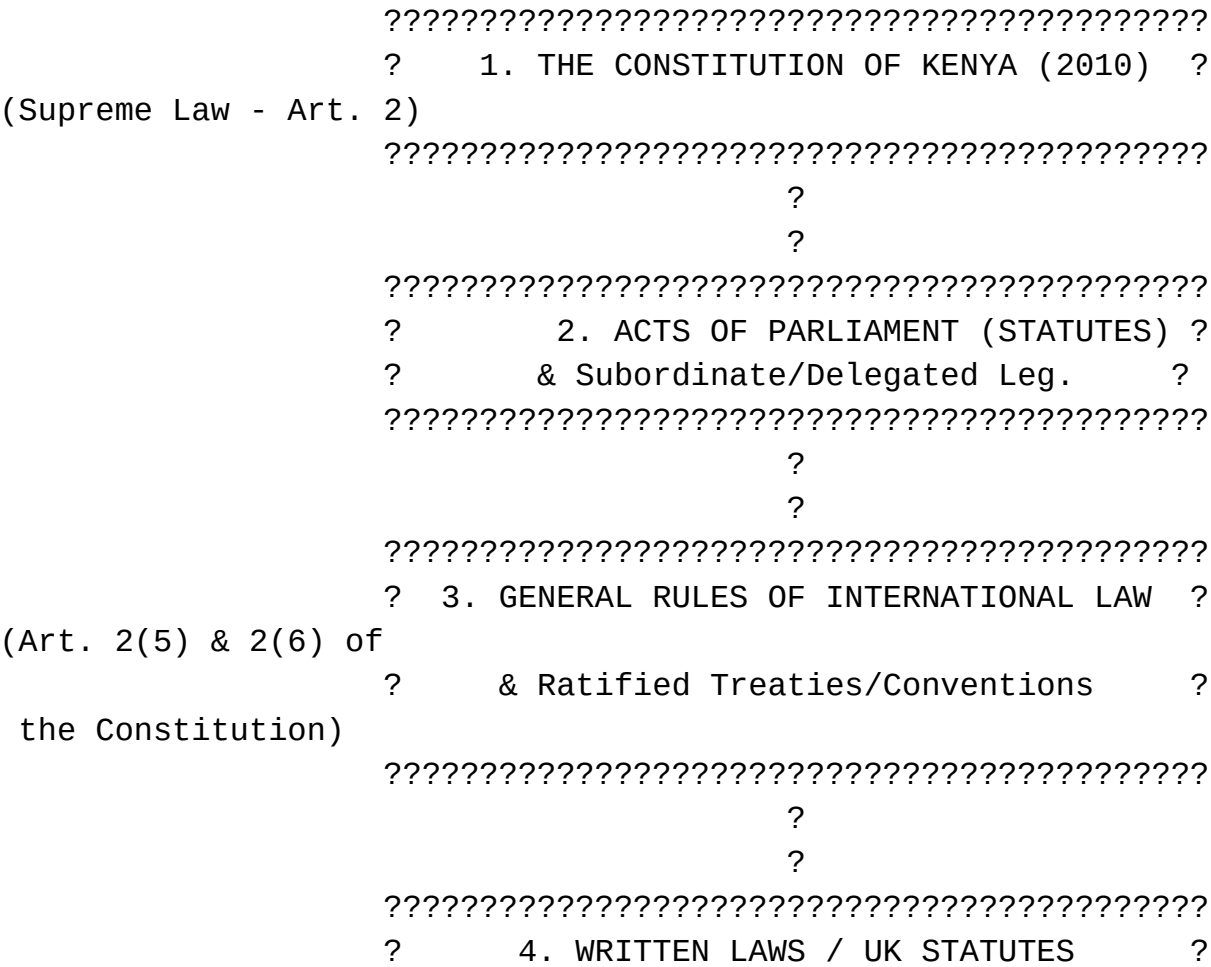
2.2 Core Functions of Law in Business and Society

of Law

1. **Preserving Public Order and Social Peace:** Prevents anarchy and provides formal dispute-resolution forums.
2. **Facilitating Commercial Expectations:** Enforces contracts, establishes corporate identities, and defines property rights.
3. **Protecting Fundamental Rights and Freedoms:** Constrains state power through constitutional bills of rights.
4. **Distributing Resources and Promoting Social Justice:** Regulates labor standards, environmental protection, and fair taxation.

3. Sources of Law in Kenya: The Hierarchy

The formal sources of law in Kenya are anchored by the Constitution of Kenya (2010) and codified under Section 3(1) of the Judicature Act (Cap 8):



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(In force in England

? of General Application (1897) ?

on 12 August 1897)

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?

?

??

? 5. COMMON LAW & DOCTRINES OF EQUITY ?

(Subject to local

? (Judicial Precedent / Case Law) ?

circumstances)

??

?

?

??

? 6. AFRICAN CUSTOMARY LAW ?

(Civil cases only; not

? ?

repugnant to justice)

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3.1 The Constitution of Kenya (2010)

Under Article 2, the Constitution is the supreme law of the Republic and binds all persons and state organs. Any law inconsistent with the Constitution is void to the extent of the inconsistency.

3.2 Common Law vs. Equity

- **Common Law:** Developed in England after 1066 by itinerant royal judges. Characterized by strict formalism, limited writ systems, and damages as the sole remedy.
- **Doctrines of Equity:** Developed by the Court of Chancery to mitigate the harshness and rigidity of common law based on fairness and conscience.
 - *Conflict Rule:* Under Section 3 of the Judicature Act, where common law and equity conflict regarding the same subject matter, **equity shall prevail**.

4. Classifications of Law

Classification	Meaning	Key Distinction
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Civil Law vs. Criminal Law	Civil regulates private disputes between legal persons; Criminal deals with offenses against the state/public peace.	Parties: Plaintiff vs Defendant (Civil); State vs Accused (Criminal). Standard of proof: Balance of probabilities vs Beyond reasonable doubt.
Public Law vs. Private Law	Public law governs relations between citizens and state institutions (Constitutional, Administrative, Criminal); Private law regulates rights among private actors (Contract, Tort, Property).	Presence of state exercise of sovereign authority in Public Law.
Substantive Law vs. Procedural Law	Substantive defines legal rights and duties; Procedural governs the enforcement rules (Civil Procedure Act Cap 21, Criminal Procedure Code Cap 75).	"What the law is" vs "How the law is enforced."
Municipal Law vs. International Law	Municipal is domestic law within Kenyan territory; International governs sovereign state interactions and multilateral treaties.	International treaties ratified by Kenya become part of Kenyan law under Article 2(6).

5. Key Takeaways & Exam Summary

1. **Supreme Law:** The Constitution of Kenya (2010) supersedes all other legal sources.
2. **Reception Date:** 12 August 1897 marks the cutoff date for English statutes of general application in Kenya.
3. **Standard of Proof Distinction:** Civil suits require a *balance of probabilities*; criminal convictions demand proof *beyond reasonable doubt*.
4. **Equity Precedence:** Where common law and equity conflict, equitable doctrines and remedies (injunction, specific performance, rescission) override common law.