

CHAPTER ONE

INTRODUCTION TO LAW

1. INTRODUCTION

Dear students, welcome to the course business law. This is a common course for College of Business and Economics students in general and management students in particular. Hereafter you are going to study some basic concepts of law that may have business nature. It is meant that you will be acquainted with common legal issues which may be important for accounting students as you are expected to engage in private institutions which your common knowledge of law may be crucial in applying your profession.

Dear student, do you know the meaning of law? What about its importance for human being in their social interaction? These and other issues related to law will be discussed throughout this chapter.

This unit will begin by defining the law and basic features, functions, classifications, making laws and enforcements of laws, etc, step by step.

After completing this unit, students will be among others able to:

- Understand the meaning and function of laws
- Comprehend the basic characteristics of law
- Identify classifications of laws in Ethiopia
- Distinguish the difference between legal norms and other social norms.

2. Definition of Laws

It is too difficult to have a universally accepted definition of law because those who define it view from the different perspectives and purposes sought to be achieved. Accordingly, different legal philosophers define law in different ways. To improve our knowledge about law, it would be better to disclose some of the definitions below.

- Salmond.A defines law from the perspective of its purpose. In his definition, law is a body of principles recognized and applied by the state. According to him, the end goal of law is justice and where there is no justice there is no law. In his observation, it is hardly possible to find unjust law.

- John Austin also asserted that law is the command of the sovereign backed by the threat of punishment. Law according to him is a command which obliges a person to behave in a certain way. In his view, command refers to the command of the sovereign (i.e, the law making body (parliament or a monarch). This implies that there is superior that commands the inferior which obeys it.

Black's Law Dictionary in its part, provides vital points about law. By its concern, law consists of rules of action or conduct. These rules are issued by an authority. As a result, the rules have binding force and are obeyed by citizens the violation of which is subjected to sanction. In all the above definitions, you may recognize that scholars define law from the different perspectives in various ways.

Whatever they look from the different perspectives, it can be generalized that law is a collection of rules which regulates human behaviour. It is made by the law making body and must be observed by citizens. However, if it is disregarded by citizens, a certain sanction will be imposed up on the one who breaches it and enforced by the government.

Dear students, I hope that you might have got certain information how law is defined in a different perspective in a different approach. However, the fact that there is no universally accepted definition of law does not mean that it is impossible to define law. Even though there is no a universally accepted definition, it is possible to derive a workable definition of it. For that reason, law can be defined as a system of norms made by a competent authority with a view to regulate the social behaviour of man and certain social relation in a general and binding nature.

As any social rule, law has got its norms as requirements in doing something. It is a standard social behaviour because it is a rule for man living in a society in order to create social relation and there can be no law outside of social relations.

The other element of the definition is that law is made by a competent or public authority/ parliament in the Ethiopian case/ which can't in any way be formed by a private authority. In the above definition, you can also learn that law regulates social behaviour in a general and binding nature so that if the rule of the law is violated, a punishment will be imposed. The term general here is to mean that law does not expressly address any particular person and binding is to refer

to the person who violates the law is subjected to penalty and that it is not a mere recommendation.

3. Legal and Social Norms

Norms are accepted rules. Legal norm is a rule or standard accepted (voluntarily or involuntarily) by society or other large group. It is to mean that law sets standards of human behaviour and expects the social behaviour to be in line with the social standards set by law. It tells us what to do and not to do. This shows law is normative by its nature in that it specifies lists of behaviour that are acceptable and not acceptable. It is the mandatory character of the norm as well as the possibility of enforcing the norm where it is ignored.

Legal norm is distinguished from the social norm in that legal norm is enforced by state machinery (police force, public prosecutor, prison administration and court). It is also different in that they are formally structured or written.

A person may have ethical norms to say what is bad and what is good or cultural norms which require members of the society to behave in a certain way. However, this does not have an organized enforcement mechanism and thus less binding than legal norm. The maximum sanction may be an isolation of a person that departs from a certain social norm. Hence, the nature of the sanction applied when the law is disobeyed is the basic difference between legal norm and social norm.

To summarize; it is promising to say that both legal norms and social norms are normative in that they need to create and develop human behaviours.

3.1. Structure of Legal Norms

We have said that legal norm is written and organized structurally. In its structural arrangement, we can find three formal structures of legal norm. These are:

1), Premise/Hypothesis- is a part of the norm which describes the social circumstances or the situations or events which are the background for the social behaviour that the norm has in mind .sets forth the conditions under which a person should be guided by the given legal norm.

2).Dispositive-is an essential part in that it describes the kind of human behaviours and envisaged and preferred by the norm. It is that part of the norm where the option of the law maker is stated. Indicates the rights and duties of the participants in relations arising under the circumstances in the hypothesis.

3). sanction- is that part of the norm which describes what will happen if the norm is disobeyed.Defines the consequences for persons who violate the prescriptions of a particular norm.

However; we may not find all the above formal structure in the formulation of a single legal norm

3.2 Types of Norms:

Law can create norms by allowing, ordering or prohibiting social behaviour.

Based on this normative feature, law can be classified as permissive, directive, prohibitive or rewarding.

1.Permissive norms; They are legal norms which may permit the described behaviour stating what the person may do, is allowed to do, is entitled to do or pass the right to do. That means they give right or option to their people to do or not to do. Example; constitutional provisions which states that every Ethiopian citizens have the right to move elsewhere (Art.32 (1) of the FDRE const.), every person is free to think and express his ideas (Art.14 FDRE cons., enter in to a binding contract, an economic activities, form association, etc.

2. Prohibitive norms: are legal norms which may prohibit the described behaviour stating what the person must not do; is not allowed to do, etc. Example, provisions of the criminal code,204.

“Whoever assaults suppresses or harms any person who gives information or evidence to justice authorities or is a witness in criminal cases, is punishable with simple imprisonment or fine. (Article 444 Cr. C)

3. Directive norms; Directive norms are legal norms which may command the described behaviour stating what one shall or must do it. It is a command/an order of citizens to do an

act provided by law so it is a mandatory provision of the law. For instance; Penal or civil sanction: juridical acts performed by a minor in excess of his power shall be of no effect (Art.313 C.C), every worker shall perform in person the work specified in the contract of employment (Art.13 (1) proc.No.377/2003)

4. Rewarding norms: are norms which may reward the described human behaviour by exempting persons acting accordingly from obligation, like for instance exemption of tax liability,

Dear students, as you have understood from the preceding discussion, we can generalize that law is obligatory social rules that is established by public authority and sanctioned by force. It is a set of rules in order to regulate human behaviour in the existed relationship among several human persons. For instance, the family law that governs the relationship between husband and wife; law of sales between seller and buyer, law of contract between creditor and the debtor, employment law between employers and employees, the same to in the case of criminal law, tort law, which governs the relationship between the offenders and the victims and the doers of the tortious act and the victims, etc.,.

From the above expression, you can imagine that man cannot exist in isolation from the other, that every human being is interdependent and nothing exists in isolation. Thus, human persons cannot exist without interaction among themselves. To maintain such social interaction/relationship in peace, it necessitates to have law to govern such social relationship so that people can live in harmony with others.

4. Function of Law

My student, do you imagine how important is the law in human life? Do you think that people can live in harmony without law? If your answer is to the negative, what may happen/result/, if law does not exist? These and other enquiries will be discussed in this section.

It is clear that the existence of law may not be clearly observed unless a practical legal problem is faced in social relation. That means, if the day to day activities of each and every individual go smoothly with no any problem, the society were not require law as it is today. You may expect that the rationale for the coming in to existence of law is not the reason that people love it rather it

is because people do not exist in harmony without it. As human being by himself/herself is selfish, life of man would inevitably be brutish, horrible, and even too short if law were not existed. Considering the importance of law in this world, some scholars gave their opinion in the following ways.

In the understanding of Pluto, as human being is selfish, he would do everything possible to him including killing so long as it satisfies his/her interest. That is to mean those who have power/strong/ can dominate against the other who may be weak. With this understanding, it could not be wrong to say that law is significant to restrict a man from doing anything he would like. Hobbes also explains the importance of law in a way that it is an instrument created to limit the natural liberty of men so that instead of harming one another, they live in harmony in fear of the law. If one commits crime by rejecting what the law says, he would fall under jail. What if there were no law? There would not have remedy because the criminal would live without difficulty under the mercy of the victim of the crime.

Functions of law may be manifold but for the purpose of this module, we will limit in to the following class;

(a) to maintain peace, order and security

As members of the society may have different social values, behaviours and interests, it is state's responsibility to control such values and behaviours so that peace and order may be guaranteed by the rules of the law. Consequently, the society can engage in any economic activities that they seem more profitable with a full confidence and hope that their wealth/property are legally protected from being taken away by somebody else, including the government.

If one violates the rules specified to be applied, he/she shall be penalized by the enforcement agents of the government, for instance, Police arrest burglars, prosecutors accuse them, courts sentence them, and prison administration guards them. Scholars forward their opinion as to the function of laws.

As mentioned above, life of man without law would be as if life of the wildest of the wild beasts since he would do anything possible even including killing so as to satisfy his selfish desires. To

affirm this and to condemn human behaviour some say that all men are evil and bad and ever ready to display their vicious nature whenever they get the chance.

All the above justifications are a clear testimony for men to do anything possible to them, including killing, to get what they need unless there is a law to restrict them. That is why Hobbes states that laws were created to limit the natural liberty of men not to harm but to live with one another. It serves us to create and maintain order in the society to enable individuals to live in peace and security. Therefore; it may not be mistaken to say that the first and foremost purpose of law is to maintain order within a given society so that it has to be done at whatever cost it may incur.

(b) Protections of right, liberty and freedom

One of the reflections of civilization is acceptance and respect of rights and duties of others. This is because rights and duties require the support of law and obedience to the law. Therefore, law is an institution for protection of human rights such as the right to life, liberty, property, reputation, etc. These rights have no existence unless there is law to support them and become meaningless unless there is obedience to law. Thus, it is required to be slaves of the law if we need freedom as Cicero noted about. One may derive the conclusion that the protection of the right of one may require the limitation of the right of another.

For instance, avoidance of accidents through smooth flow of road traffic is, due to obedience to rules of traffic regulations. Smooth relations in trade are the result of acceptance and obedience to law of contract. Enjoying and using our own property is the result of acceptance and obedience to law of property

The notion is true in that protecting ones' rights cannot be implemented without limiting rights of others: example freedom to live in one's home is impossible unless to limit the right of movement, freedom to enjoy one's reputation is protected by limiting the freedom to speech. Hence; we have to be slaves of the law if we need freedom.

(c) Administration of Justice

Administrative justice is also the other basic function of law. Law, in the modern sense, is considered not as an end in itself, but is a means to an end. The end is securing of social justice.

Unlike the primitive society where disputes were settled by self remedy through using force, in the modern society disputes are settled by adjudication according to the law. Therefore law is important to administer justice to settle dispute. Though justice is highly affected by subjectivity, it is the correct and uniform application of law as opposed to arbitrariness.

Administrative of justice may be reflected in either distributive or corrective form. Distributive justice seeks to ensure fair distribution of social benefits and burden among the members of the community. Corrective justice, on the other hand, seeks to remedy the wrong. Thus, in a corrective justice if a person wrongfully takes possession of another's property, the court shall direct the former to restore it to the latter.

That means as disputes are unavoidable in the life of society, it is the role of the law to settle disputes.

To recapitulate this section, functions of law can be summarized in to three important functions: social control, social change, and dispute settlement.

To build up our understanding about law, will be discussing about the feature of law below.

5. Feature of the Law

Law has its own distinctive features that may distinguish it from other

A. Generality;

Law sets standards of behaviour for all persons because it is a general rule of human conduct. The individual or group of individuals and the conducts are given in general terms. That is to mean, law does not specify the names of specific persons or behaviours. However, in exceptional situations some laws may apply to a certain group of persons, for instance, family law governs only for married persons.

In the law which provides; “whosoever, by criminal negligence, causes death of another is punishable with simple imprisonment or fine” (Art.526 (1) which adjective indicates the generality of the law?

B. Public authority

Student! Do you remember that law must be made by public authority or the body that has power to make it? In the Ethiopian case, law making power is vested in the House of People's Representatives (parliament). Art.55 of the FDRE constitution stated as; "The House of People's Representatives shall have the power of legislation in all matters assigned by this constitution." Accordingly, making of the federal laws is vested in the parliament and the laws of the region shall be made by the Council of States of the respective region.

The law that is made by the law making body is expected to serve for a relatively an indefinite period of time. If the law is made for a short period of time or to be changed from time to time, it will be risky in that the society will not develop confidence on protection of their right by law. As a result, the whole future will be uncertain in that nobody will engage in a huge economic activities including building residential houses so that the ultimate effect of the economy of the country will be curtailed.

C. Obligatory;

The obligatory nature of the law refers that law is mandatory so that citizens have the duty to obey it. For instance, 'theft' is a crime which is prohibited by the criminal code. Hence, it is a legal duty to respect it so that everyone shall not commit theft in violation of the law. If he violates the law, he shall be penalized. From this statement, you can derive a conclusion that law is not something you can easily avoid its effect. You only avoid its effect by doing it or refrain from doing it, as the order may be. Therefore; Law is not only general but also binding which is the normative character of it.

D. Sanction

The law does not only set rules/standards/ but also maintain them by inflicting those who violate the rules. Therefore; law is backed by sanction which is the basic attributes of it. Sanction is an enforcement mechanism through which the state guarantees obedience to law. So sanction is a simple expression of punishment. You remember that customary or moral rules lack enforcement mechanism.

A person who violates customary rules or acts contrary to morality may be put to shame or isolated from the society. Hence, it is less binding or weak when compared to such an organized machinery of enforcement and the definite punishments associated with violation of laws. The punishment for the violation of the law may be imprisonment (simple or rigorous) or fine.

6. Sources of the Law

Sources of law may refer to either the authority from which the laws derive their force/validity/ or the material source of law which is indicating to the content or the matter of law. In short, the sources of law may be categorized as formal sources and material sources of laws

A formal source of law is referring to the source from which the rule of law derives its force and validity. It is expressing the will of the state as manifested in statute or decision of the court. The power of making all laws is the people or their representatives, and none can have any force which is derived from any other source.

The material source of law supplies the matter and the content of law such as custom, religion, opinion of text writers, agreement, etc.

The material sources of law again divided in to authoritative material source and persuasive material source.

Authoritative material sources also called legal material sources are sources which are binding in the judicial decision in that the judges are bound to follow them for a decision they apply to a dispute before them.

The Constitution is an act of the people themselves, made by their representatives elected for that purpose. It is the supreme law of the land, and is binding on all future legislative bodies.

Treaties made under the authority of the Constitution are declared to be the supreme law of the land, and therefore obligatory on courts, proclamations and regulations enacted as per the constitution of a given country are also binding as laws and require no other explanation.

Persuasive material sources also called historical material sources are sources not binding in a judicial decision. They influence the course of legal development but they are not speaking with the authority. They are purely persuasive they include opinion of text writers, foreign laws, reports, etc.

7. Classification of Laws

A. 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. It governs the relation of the government with the people. Constitutional, criminal and administrative law are among the examples of public 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. Constitutional law deals with the ultimate questions of the distribution of legal power and of the functions of the organs of the State. **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. **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.

Private law regulates the acts, which individuals do in their own names for their own individual interest. Law of contracts, succession, family, and extra-contractual liability are among the instances of private law.

B. International And National Law

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**.

National Law is a law that pertains to a particular nation (as opposed to international law). 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.

C. 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. It is used to enforce rights and obligations stated under the substantive laws. 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. 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.

D. Civil and Criminal 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. Criminal law deals with Prosecutions for acts categorized as crimes. The application of penalties is a part of the administration of a state.