

General Important Introduction

Q-1 What is law?

- Body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behavior of its members. The nature and functions of law have varied throughout history. In modern societies, some authorized body such as a legislature or a court makes the law. It is backed by the coercive power of the state, which enforces the law by means of appropriate penalties or remedies

Q-2 Can tools of social control, like mores, morality...distinguished from formal legal rules?

- Formal legal rules and actions are usually distinguished from other means of social control and guides for behavior such as mores, morality, public opinion, and custom or tradition. Of course, a lawmaker may respond to public opinion or other pressures, and a formal law may prohibit what is morally unacceptable.

Q3-Give short description to the functions of law.

- Laws against crimes (help to maintain a peaceful, orderly, relatively stable society)
- Property and contract laws facilitate business activities and private planning
- Laws limiting the powers of government help to provide some degree of freedom that would not otherwise be possible.
- Law has also been used as a mechanism for social change; for instance, at various times laws have been passed to inhibit social discrimination and to improve the quality of individual life in matters of health, education, and welfare.

Q4- How the popular view of law is different form its formal coercive aspects?

- Some experts believe the popular view of law overemphasizes (much importance or attention) its formal, coercive aspects. They point out that if a custom or norm is assured of judicial backing, it is, for practical purposes, law. On the other hand, a statute that is neither obeyed nor enforced is empty law. The role of law in Arab nations, for example, is somewhat different from its role in Western. Respect for the processes of law is low, at least outside matters of business and industry. Tradition looms much larger in everyday life. Resort to legal resolution of a dispute is truly a last resort, with conciliation being the mechanism that is preferred for social control.

Q-5 What is Public Law?

- Public law concerns the relationships within government and those between governments and individuals. Public law is usually not codified. separate administrative courts adjudicate claims and disputes between the various branches of government and citizens, and many lawyers specialize in public law.

Public law is about the exercise of power by public authorities, such as local authorities or government departments. It is different from private law

If a decision made by a public body acting in a public capacity is unlawful, or if the decision making process is unfair, it can be challenged by using a complaints procedure, or by judicial review if there is no other way to challenge it.

Q6- What does Public Law cover

Public law deals with issues that affect the general public or state - society as a whole. Some of the laws that its wide scope covers are:

- Administrative law - laws that govern government agencies, like the Department of Education and the Equal Employment Opportunity Commission.

- Constitutional laws are laws that protect citizens' rights as afforded in the Constitution
- Criminal laws are laws that relate to crime
- Municipal laws are ordinances, regulations and by-laws that govern a city or town
- International laws are laws that oversee relations between nations

Q-7 What is a public body?

- Public law controls public bodies acting in a public capacity. Sometimes it is obvious what is a public body, for example a local authority or a government department. The following are all public bodies:
Government ministers, departments and agencies, local authorities (including social services, housing departments and local education authorities), health authorities, the police

Q-8 What is Private law?

Private law involves the various relationships that people have with one another and the rules that determine their legal rights and duties among themselves. The area is concerned with rules and principles pertaining to private ownership and use of property, contracts between individuals, family relationships, and redress by way of compensation for harm inflicted on one person by another.

Q-9 What does Private Law affect?

Private law affects the rights and obligations of individuals, families, businesses and small groups and exists to assist citizens in disputes that involve private matters. Its scope is more specific than public law and covers:

- **Contract law** - governs the rights and obligations of those entering into contracts
- **Tort law** - rights, obligations and remedies provided to someone who has been wronged by another individual
- **Property law** - governs forms of property ownership, transfer and tenant issues
- **Succession law** - governs the transfer of an estate between parties
- **Family law** - governs family-related and domestic-related issues

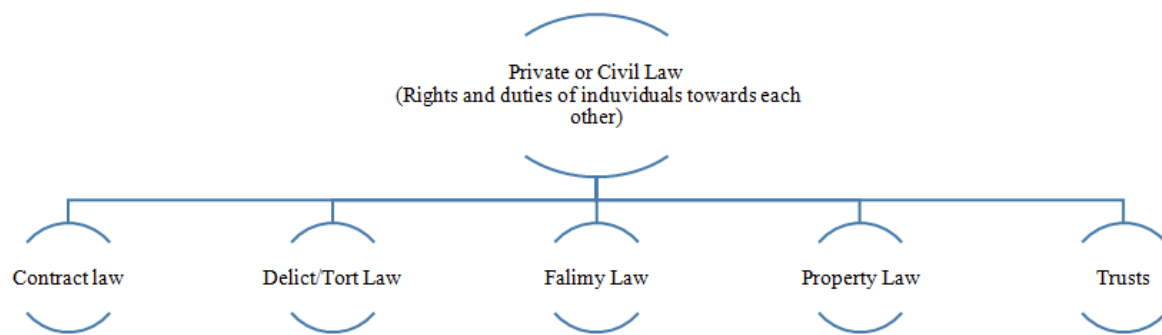


Figure 1 Classification of Private Law

Different definitions \ understandings to the administrative law

There is no universally accepted method of defining administrative law. Different authors have propounded different definitions to the term “administrative law.”

According to Osborn’s law Dictionary “administrative law is the law relating to the organization, powers and duties of administrative authorities.

Q 10-What is administrative law?

Generally, administrative law deals with complaints respecting government action that adversely affects an individual. Thus, administrative law involves determining the legality of government actions

Q-11 H. W. R. Wade in his book “Administrative Law,” eighth edition, argued that administrative law is concerned with the operation and control of the power of administrative authorities with emphasis on functions rather than structure. He

went further, stating that: “Administrative law is the law relating to the control of governmental powers.”

Q-12 In the words of Sir Ivor Jennings: “Administrative law is the law relating to administration. It determines the organization, powers and duties of administrative authorities on their own side.”

Q-13 Administrative law, according to B. O. Iluyomade and B. U. Eka in their book “Cases and Material on Administrative Law” is “that body of rules, which aim at reducing the areas of conflict between the administrative agencies of the State and the individual.”

Q-14 To P. A. Oluyede, administrative law means that branch of the law, which vests powers in administrative agencies, imposes certain requirement on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts.”

Q-15 According to Peter Leyland and Gordon Anthony: It is regarded as the area of governmental powers, which originate in primary legislation or in the prerogative .It embodies general principles which can be applied to the exercise of the powers

and duties of authorities in order to ensure that the myriad of rules and discretionary powers available to the executive conform to basic standards of legality and, fairness.

Q-16 what do you understand from these different definitions?

These definitions by different authors confirm the fact that there is no single definition of the subject; all definition depends on the semantic, background and personal idiosyncrasies of the writers. Generally, notwithstanding the problem associated with finding a single definition of the subject, it is a branch of law that aims at keeping the powers of government within the citizen against their abuse, and where abused, to provide remedy to the aggrieved citizen.

Q-17 what are the different perspectives to administrative and constitutional laws?

According to A. V. Dicey, constitutional law means all rules, which directly or indirectly affect the distribution or exercise of sovereign power. Ese Malemi defines a constitutional law as the law, which regulates the exercise of powers given by the constitution. This constitution is the supreme law of a country. The Osborn's concise Law Dictionary, ninth edition states that administrative law is a

subordinate branch of constitutional law consisting of the body of rules, which govern the detailed exercise of executive functions by the officers or public authorities to whom they are entrusted by the constitution. Administrative law determines the modes in which sovereign power is exercised, while constitutional law merely determines what persons or class of persons bore such as sovereign powers. According to Sir Ivor Jennings, administrative law is that law which is concerned with any aspect of the administration of a country, and in particular, the law governing the relationship between the state and the Individual.

Q 18-How the government can perform an act and through what?

Governments act through government officials who must act within certain limitations. A government's power to act comes from legislation or royal prerogative.

Q19-When the actions of the government become lawful?

The government actions become lawful when their officials act within the scope of legislation or royal prerogative which give their actions lawful authority.

Q20-How do the principles of administrative law provide individuals the ability to seek judicial review of the administrative action?

If government officials act outside the scope of their lawful authority and individuals are affected by these acts then the principles of administrative law provide individuals the ability to seek judicial review of the administrative action and possible remedies for the wrongful acts.

Q21-What is the relationship between constitutional and administrative law?

Constitutional law essentially deals with who has the ability to make laws.

Administrative law deals with the government officials who have been empowered by these laws to act.

Q 22-What does happen if the law that empowered the government official found to be unconstitutional?

If the law found to be unconstitutional then any actions by the government official under that law will also be invalid.

Q-23What is meant by impugned act?

When there is a complaint regarding an act of a government official, the act is referred to as the "impugned act".

Q-24 What a government officials do if there is impugned act?

If there is a complaint against the act, the official will need to show that:

A- some legislation (also called a statutory provision) authorized him or her to do the act.

B- he or she acted precisely within the strict powers and duties set out in the statutory provision.

Q-25 What is meant by *ultra vires*?

If the official acted outside of or beyond the parameters set out by the statutory provision, then the act is considered as *ultra vires* . This means the act was outside his or her jurisdiction or without lawful authority.

Q- 26 What is meant by Discretionary Powers?

A decision according to the judgment of a person in authority about what is necessary in each particular situation; not decided by rules.

Q- 27 What is the Role of the Superior Courts?

The superior courts have the power of review of administrative actions. By applying the rules of statutory interpretation and construction, these courts determine which impugned acts are *ultra vires*.

Q-28 What are the cases that the courts intervene when there is a problem between an individual and official?

The court intervenes if officials conclude any of the following jurisdictional problems were involved in the impugned act:

A- Substantive (important) *ultra vires* (the act was not authorized by the legislation);

B-the official exercised discretion for an improper purpose, with malice or bad faith, or with reference to irrelevant considerations.

C-the delegate made serious procedural errors (that is, breached principles of natural justice or the duty to be fair.

Q- 29 What is Privative Clauses in law?

Clauses essentially state that the courts do not have the power to judicially review specific actions by officials.

Q-30 What is meant by ombudsman, and where and when it had been originated?

An ombudsman, or public advocate is an official who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights. The ombudsman is usually appointed by the government or by parliament, but with a significant degree of independence. The word 'ombudsman' comes from Sweden which in 1809 established the position of *Justieombudsman* to oversee government administration. The title loosely

translates as 'citizen's defender' or 'representative of the people'. Since 1809, it has been adopted in many parts of the world, in both government and private industry.

Q-31 Are there similarities between ombudsman and Citizen Advocate?

In some countries an [Inspector General](#), **Citizen Advocate** or other official may have duties similar to those of a national ombudsman, and may also be appointed by a legislature.

Q-32 What are the core duties of ombudsman

The typical duties of an ombudsman are:

- A- to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or [mediation](#).
- B- Ombudsmen sometimes also aim to identify systematic issues leading to poor service or breaches of people's rights.
- C- At the national level, most ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (for example, contracted service providers).

Q-33 Define Parliamentary Commissioner with examples.

Parliamentary Commissioner, in some jurisdictions, an ombudsman charged with handling concerns about national government as the (e.g. the United Kingdom

Parliamentary Commissioner for Administration, and the Western Australian state Ombudsman).

Q- 34 Please state powers, duties and functions of the ombudsman

The Office of the Ombudsman shall have the following powers, functions and duties

- 1- Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

- 2- Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

- 3- Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance.

- 4- Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents

- 5- Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency

- 6- Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein
- 7- Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law

Q-35 What are the features of Administrative Law?

- A) Administrative law regulates administration. It is concerned with the organization, power and conduct of government and administrative.
- B) It regulates the procedure of administrative authorities, bodies and agencies
- C) It regulates the organization, powers and duties of government and administrative authorities
- D) It provides remedies for aggrieved persons against any administrative acts exercised contrary to the enabling laws.

Q36-What are the features of Constitutional Law?

- A) It is the supreme law of the land, nation, country or state.
- B) Any law that is inconsistent with the provision of a nation's constitution shall be declared null and void and of no effect to the extent of its inconsistency.
- C) It may be flexible (capable of being altered by ordinary legislative act) or rigid (capable of being altered only by special procedure).
- D) It is a code of government deriving its authority from the people it shows the structure of the government of a country.
- E) It lays down the basic provisions which will govern the internal life of a country.
- F) It assigns and limits the functions of the different authorities and departments of government.
- G) It assigns and regulates the exercise of constitutional powers by government and administrative authorities.

Q-37What are the similarities between Constitutional and Administrative Laws?

- A) They both deal with the application of constitutional law and powers and their administration.
- B) They both provide remedies for breach of rights of an aggrieved person.
- C) They both make use of judicial precedents or case law.

Q-38 What are the dissimilarities between Constitutional Law and Administrative Law?

- A) Constitutional law is wider in scope than administrative law. The former covers such matters as citizenship, distribution of powers among the organs of government that is, the executive, the judiciary and the legislature, which administrative law is not so much concerned with.
- B) The sources of constitutional law are to be found in the constitution and conventions while the sources of administrative laws include delegated legislation, letters of instructions, treasury circulars, decisions of administrative bodies, and so on.

C) Constitutional law deals with the structure of the government while administrative law is concerned with the functions and exercise of powers by administrative authorities.

Q-39 What are the functions of administrative law?

A-Administrative law acts as a check in respect of the unlawful exercise or abuse of governmental administrative power.

B-It embodies principles that facilitate good administrative practice.

C-It provides remedy for grievances occasioned at the hand of public authorities.

D- It commands public bodies to perform their statutory duties under the statute.

E-It aids accountability and transparency, including participation by interested individuals and parties in the process of governance. For instance, through membership of a pressure group.

Q40- What are the Powers of Administrative Authorities?

A-The power to hear and determine disputes, investigate objections and to examine issues on practical, economic and social aspects of life and submit report and probably make recommendation to government.

B- The powers to investigate and make enquiry, gather information and facts from people, organization or society.

C-The administrative authority has the power to direct a body or individual or community to do or refrain from doing an act.

Administrative law plays a vital role in confining the administration within their legal framework and ensuring that the principles of natural justice are conformed with. On their own side, the administrative authorities are given various tasks to execute in accordance the primary duty of each establishment, organization or body. In discharging their duties, they are vested with wide powers some of which are discretionary but must be exercised within the purview of the statute, by law or any legislation conferring such powers on them.

Q41-Sources of Administrative Powers:

Administrative powers may be express power, implied or incidental powers.

I- Express powers

These are powers that are expressly provided for by the statutory provisions.

Examples are

A-The constitution: This is the supreme law of the land and any provision of any other law.

B- By an act of parliament, state laws or charter establishing such public authority, body agency or corporation.

C- A subsidiary legislation or delegated legislation made pursuant to the act of parliament, thus conferring the said power

II- Incidental power: this is a power is not expressly granted, but necessary for the accomplishment of the express powers. It is the power to do things which are auxiliary, related, subordinate, incidental to or providing support to express duties and functions, and are necessary to achieve the purpose of the express power, even though such incidental power is not expressly granted by statute.

III- Implied powers

These powers are not expressly provided for by any of the aforementioned and are not incidental to the performance of their functions but are based on the assumption of the body or authority exercising it that the powers are right or wrong thus making majority of the powers exercised to be declared ultra vires.

Q- 42 Classification of Governmental Powers

Governmental powers may be classified as follows:

i) Legislative powers

This refers to powers by the legislature, which is the body responsible for law making.

ii) Executive powers

These powers exercisable by the executive organ of government in performing particular act or giving particular order or making decisions generally in relation to particular statutory duties within their competence.

II) Judicial powers

These are exercised when there is an existing dispute (conflict among people) between two or more parties.

Q-43-Characteristics of administrative law

Administrative law characterized by that is rapidly evolving, it is not a static, and it is the product of judiciary

First: Rapidly evolving:

Administrative law characterized that is rapidly evolving more than the normal development of other laws. Perhaps it is due to the nature of the topics being addressed. Administrative Law addresses topics of a special nature attached to the public interest and good conduct and management of public utilities and part of its provisions is not derived from the legislative provision , but from the provisions of the judiciary especially the administrative judiciary , which is characterized by inventing solutions to the administrative disputes and do not comply with the provisions of the specific law but seeks to create what fits with the circumstances of each dispute separately in line with the rapid development

of the administrative work and the requirements of the functions of public utilities.

Second, the law-is product of judiciary.

Administrative Law also characterized as a judicial law raised by the principles and administrative rules created by the judiciary, has been helped by the lack of legalization of most of the rules of administrative law was necessary to promote this mission through the development of its foundations and theories.

Third: it is none Codified-law

Codification is that the legislator issues a package of legislations includes the general and detailed principles which are related to the branch of law as in the case with civil law or penal code. But the administrative law is not codified because its rapid develop and its provisions are mostly of a judicial nature making it difficult to collect provisions in the Code.

