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Essential Elements of Legal System

1. Which of the following systems determines the way in which the society is governed?
(a) Economic (b) Political
(c) Legal
2. In a criminal case on whose behalf does the prosecution act?
(a) The state (b) The accused
(c) The defendant
3. Which of the following term is used to describe the standard of proof required in a criminal case?
(a) Balance of probabilities (b) Beyond reasonable doubt
(c) Satisfaction of the Jury
4. The Roman legal principle, that laws should be contained in codified, written collections of rules and regulations describe which legal system?
(a) Common law (b) Civil law
(c) Criminal law
5. Imran feels that a recent decision by his local government to refuse him a license to trade was not conducted in line with the national licensing laws.
Which of the following legal claims should Imran initiate?
(a) Criminal prosecution (b) Judicial review
(c) Civil claim (d) Human rights claim
6. Which TWO of the following are categories of International law?
(a) Public international law (b) Private international law
(c) Civil international law (d) Common international law
7. Which of the following is the core legal body of the United Nations system in the field of international trade law?
(a) UNCISG (b) UNCITRAL (c) WTO (d) OECD

8. CASE STUDY BASED QUESTIONS:

Bruno is a citizen of Watopia, where national law requires car drivers to obey speed limits and drive with due caution and respect for other road users.

On his way home from work Bruno was driving dangerously and above the speed limit when he crashed into Pip, who was riding her bicycle. CCTV footage clearly shows Bruno is entirely to blame for the incident.

Pip suffered severe injuries and was unable to work for six months, during which time her employer only paid 50% of her wages.

- (i) Which of the following statements about a criminal prosecution is correct?
 - (a) Pip will prosecute Bruno for dangerous driving
 - (b) Bruno will be sued by the state prosecutor for dangerous driving
 - (c) Pip will be the claimant in a criminal case against Bruno
 - (d) Bruno will be the defendant in a criminal case brought by the state prosecutor

- (ii) Which of the following statements about possible legal action against Bruno is correct?
- (a) Bruno faces possible criminal and civil action
 - (b) Bruno faces possible criminal but not civil action
 - (c) Bruno faces possible civil but not criminal action
 - (d) Bruno faces possible criminal or civil action, but not both
- (iii) Which TWO of the following statements about the standard of proof are correct?
- (a) The standard of proof in a criminal case is beyond reasonable doubt
 - (b) The standard of proof in a civil case is in the balance of probabilities
 - (c) The standard of proof in a criminal case is in the balance of probabilities
 - (d) The standard of proof in a civil case is beyond reasonable doubt
9. **Country A's economy operates on the basis that the Government control and regulates some areas of production; with the remainder being regulated by market forces.**
Which type of economic system is Country A operating?
- (a) Planned
 - (b) Capitalist
 - (c) Market
 - (d) Mixed
10. **In the context of separation of powers, which branch of a constitutional system has the function of deciding and passing new laws and of repealing and modifying old ones?**
- (a) The Executive
 - (b) The Legislature
 - (c) The Judiciary

SOLUTION

1. (b) Political system determine the way in which the society is governed.
2. (a) In criminal court proceedings, a person acting as prosecutor, usually representing the state, presents the evidence against the accused.
3. (b) In most system an accused person or defendant in a criminal case will be found guilty only if the case against them is proved beyond reasonable doubt.
4. (b) The civil law mechanism derives from the Roman legal principle that law should be contained in codified, written collections of rules and regulations, accessible and comprehensible to the populace and enforced and followed by judges.
5. (b) In most countries the judiciary is empowered to exercise judicial review over the actions of public individuals and bodies and to invalidate improper actions and decisions. Imran can argue that the law has not been properly applied by his local council.
6. (a) and (b)
7. (b) UNCITRAL is the UN's core legal body in the field of international trade law.
8. (i) (d) In a criminal case it is the state that will prosecute the accused.
 (ii) (a) Some forms of behaviour may raise both criminal and civil liability.
 (iii) (a) and (b)
9. (d) There is a mix of planned and market forces regulating Country A's economy.
10. (b) The legislature is the branch of government which carries out the function of deciding and passing new laws and of repealing and modifying old ones.

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1

Essential Elements of Legal System

INTER-RELATIONSHIP BETWEEN ECONOMIC, POLITICAL, AND LEGAL SYSTEMS

1. **Definition:** A country's **political economy** refers to the interconnected nature of its political, economic, and legal systems.
2. **Interaction:**
 - These systems are **interdependent** and influence each other.
 - A country's political and economic system is influenced by its legal system, impacting international business practices.
 - **Example:** A democratic country with a market economy and common law (e.g., the US) might encourage entrepreneurship, while an autocratic country with a planned economy may focus on centralized control of resources.

ECONOMIC SYSTEMS

1. **Definition:** Defines how a society produces, distributes, and consumes goods and services.
2. **Types of Economic Systems:**
 - **Planned Economy:**
 - Decisions are made by the government regarding resource allocation and pricing.
 - **Example:** North Korea, where the government controls industries and sets prices.
 - **Market Economy:**
 - Decisions are driven by market forces (supply and demand).
 - **Example:** The US, where competition decides pricing and availability.
 - **Mixed Economy:**
 - Combines government control with market forces.
 - **Example:** India, where sectors like defense are government-regulated, but others, like retail, operate under market forces.

POLITICAL SYSTEMS

1. **Definition:** Refers to how a country is governed, either through centralized or decentralized decision-making.
2. **Types:**
 - **Dictatorship:** Governance by a single leader or a small group with limited individual freedoms.
 - **Example:** North Korea, where political dissent is not tolerated.
 - **Democracy:** Governance by elected representatives, ensuring individual rights while adhering to legal frameworks.
 - **Example:** The UK, where the Parliament creates laws, and citizens have voting rights.
3. **Impact:**
 - Influences **how laws are made**.
 - Shapes **economic systems**, affecting domestic and international businesses.

LEGAL SYSTEMS

1. **Definition:** The set of rules and regulations governing behavior within a society, created by its ruling authority.

2. Characteristics:

- **Localized Nature:** Laws differ across countries, reflecting local customs and governance.
- **Historical Development:** Transitioned from tribal laws to codified national laws.
- **Constitutional Framework:** Many countries outline basic legal principles in their constitutions.
- **Example:** The US Constitution guarantees fundamental rights like free speech.

3. Types of Legal Systems:

- **Common Law:** Based on case law and judicial precedents.
 - **Example:** UK and US courts rely on earlier decisions to resolve disputes.
- **Civil Law:** Codified laws covering all aspects of governance and personal matters.
 - **Example:** France and Germany, where laws are derived from comprehensive legal codes.
- **Sharia Law:** Religious-based laws derived from Islamic teachings.
 - **Example:** Saudi Arabia and Pakistan follow Sharia for both civil and criminal matters.

4. International Law:

- Increasingly important due to globalization.
- Aims to harmonize trade and resolve disputes between countries with differing legal, economic, and political systems.
- **Example:** The World Trade Organization (WTO) facilitates trade agreements and resolves disputes.

SEPARATION OF POWERS

1. Concept:

- Ancient constitutional principle aimed at preventing tyranny by dividing governance into three powers: legislature, executive, and judiciary.
- Ensures no single body holds excessive power.

2. Application:

- **US Example:**
 - President heads the executive branch and is separate from Congress (legislature).
 - Supreme Court (judiciary) can declare laws invalid but is accountable to the Senate for appointments.
- **UK Example:**
 - Follows an unwritten constitution.
 - Operates under the "Westminster Model," where the executive is chosen from the legislature.
 - The Monarch (e.g., King Charles III) retains some powers like appointing ministers, but these are largely ceremonial.

LEGISLATURE, EXECUTIVE, AND JUDICIARY

1. Legislature:

- **Role:** Primary law-making body.
- **Democratic Indicator:** Membership is elected in democratic countries.
- **Sovereignty:** Some legislatures are supreme (e.g., UK Parliament), while others are subordinate (e.g., US Congress subject to constitutional limits).
- **Example:** UK courts cannot invalidate Parliament's laws, while US courts can strike down unconstitutional laws.

2. Executive:

- **Role:** Implements laws.
- **Composition:** Includes government, civil service, police, armed forces, etc.
- **System Variations:**
 - **Independent Executive:** In countries like the US, the executive operates independently from the legislature.
 - **Westminster Model:** In the UK, executive members are accountable to the legislature.
- **Example:** The UK Prime Minister is both a legislator and head of the executive.

3. Judiciary:

- **Role:** Interprets laws and resolves disputes.
- **Judicial Review:**
 - Ensures actions by public bodies are within legal authority (ultra vires doctrine).
 - **Example:** The UK High Court can quash decisions of public bodies if they lack proper authority or procedural fairness.
- **Common Law Role:** Establishes binding precedents through judicial rulings.
- **Civil Law Role:** Applies codified statutes without interpreting them extensively.

Judicial Review Example

- **Case:** A public body imposes an illegal tax.
- **Action:** Courts review the decision for legality and ensure procedures were followed.
- **Outcome:** Decision quashed if found unlawful; the body must reconsider the issue.

DIFFERENT LEGAL SYSTEMS

Types of Law

1. National Law:

- Each country has its own set of laws that regulate relationships between individuals, entities, and the state.
- **Example:** UK Employment Law governs employer-employee relations within the UK.

2. International Law:

- Regulates relationships between states and resolves conflicts where national laws differ.
- **Example:** The United Nations Convention on Contracts for the International Sale of Goods (CISG) governs cross-border trade agreements.

DISTINCTION BETWEEN CIVIL AND CRIMINAL LAW

Each legal system differentiates between **criminal law** and **civil law**.

CRIMINAL LAW

1. Definition:

- Relates to conduct that the state disapproves of and seeks to control.
- A form of **public law**, where the state acts to enforce compliance.

2. Purpose:

- To regulate society through the enforcement of behavior deemed acceptable by the state.

3. Case Filing:

- Cases are brought by the state in the name of the Crown.
- **Example of case title:** R v Smith (R stands for Regina – queen, or Rex – king).

4. Burden of Proof:

- Lies on the **prosecution**.

5. Standard of Proof:

- **Guilt must be proven beyond reasonable doubt**, which is a high standard of proof.

6. Objective:

- To punish offenders and deter crime through sentences such as fines or imprisonment.

7. Outcome:

- **Guilty:** The accused is sentenced (e.g., imprisonment, fines).
- **Innocent:** The accused is acquitted.

8. Example:

A theft case is tried under criminal law to ensure justice and public order.

CIVIL LAW

1. Definition:

- A form of **private law** that governs relationships and disputes between individuals or entities.

2. Purpose:

- To resolve disputes and provide remedies to the aggrieved party.

3. Case Filing:

- Cases are brought by the **claimant** seeking a remedy.
- **Example of case title:** Brown v Smith (claimant v defendant).

4. Burden of Proof:

- Lies on the **claimant**.

5. Standard of Proof:

- Liability must be proven on the **balance of probabilities**, which is a lower standard of proof compared to criminal law.

6. Objective:

- To provide compensation or other remedies to restore the claimant to their original position before the wrong occurred.

7. Outcome:

- **Remedies:**
 - **Damages:** Financial compensation.
 - **Other Remedies:** Specific performance (ordering the defendant to fulfill a contract) or an injunction (preventing the defendant from taking certain actions).

8. Example:

A breach of contract case is tried under civil law to compensate the claimant.

Key Differences Between Criminal and Civil Law

Aspect	Criminal Law	Civil Law
Nature	Public law (state vs individual)	Private law (individual vs individual/entity)
Purpose	Enforcing compliance through punishment	Resolving disputes and providing remedies
Burden of Proof	On the prosecution	On the claimant
Standard of Proof	Beyond reasonable doubt (high standard)	Balance of probabilities (lower standard)
Case Title	R v Defendant	Claimant v Defendant
Outcome	Punishment (e.g., imprisonment, fines)	Remedy (e.g., damages, injunctions)

CONFLICTS OF LAWS

1. Definition:

A conflict of laws arises when parties from different legal jurisdictions engage in trade or interaction, and their respective legal rules are incompatible.

2. Role of International Law:

International law steps in to regulate the relationship, ensuring clarity on the parties' rights and duties.

- **Example:** A contract dispute between a UK company (common law jurisdiction) and a German company (civil law jurisdiction).

Sources of International Law

1. International Treaties and Conventions:

Agreements between nations that are legally binding.

- **Example:** United Nations Convention on the Law of the Sea (UNCLOS).

2. International Custom:

Practices consistently followed by states out of a sense of legal obligation.

- **Example:** Diplomatic immunity for ambassadors.

3. General Principles of Law:

Fundamental legal principles recognized by most legal systems.

- **Example:** Principles like equity and good faith.

COMMON LAW

1. Origin:

- Developed in England between 1066 AD and 1400 AD.
- Exported to countries such as the USA, Canada, and Australia.

2. Key Principles:

- Legal principles do not lose their validity over time.
 - **Example:** A legal precedent from 1066 AD may still apply today.
- New laws are presumed not to alter existing laws unless explicitly stated.
- Judges must apply the doctrine of **judicial precedent**: Past decisions guide rulings in similar cases, provided no material differences exist.

3. Sources of Law in Common Law Systems:

- **Common Law:** Body of law evolved through judicial precedent.
- **Equity:** Rules developed to address the rigidity of common law (e.g., trust law).
- **Statute:** Laws made by the legislature.
- **Delegated Legislation:** Secondary laws made on Parliament's behalf.
- **Custom:** Historical customs that still influence transactions.
- **Constitution:** Governing document in countries like the US.
- **European Union Law:** Applicable in EU member states.

Legislation and Delegated Legislation

1. Legislation:

- Laws enacted by the UK Parliament, consisting of the **House of Commons**, **House of Lords**, and **Royal Assent** by the Monarch.
- **Purposes of Acts:**
 - Create new laws.
 - Authorize taxation.
 - Codify existing laws.
 - Consolidate statutes.
 - Overrule existing precedents.

2. Challenges of Legislation:

- Enacting laws through Parliament is time-consuming and impractical for detailed regulation.

3. Delegated Legislation:

- Enables authorized bodies to make secondary laws on Parliament's behalf.
- **Types of Delegated Legislation:**
 - **Orders in Council:** Used during national emergencies by the Privy Council.
 - ◆ **Example:** Mobilizing armed forces during wartime.
 - **Statutory Instruments:** Regulations made by government ministers.
 - **By-laws:** Laws made by local authorities for specific areas.
 - ◆ **Example:** Parking regulations by city councils.
 - **Court Rules:** Rules for court procedures made under specific Acts.
 - ◆ **Example:** Supreme Court Act 1981.
 - **Professional Regulations:** Rules for specific professions.
 - ◆ **Example:** Law Society regulations under the Solicitors' Act 1974.

The Role of Judges in Common Law Systems

1. Application of Law:

- Judges apply the law consistently with past judicial decisions unless there is a valid reason to overrule them.
- **Example:** Applying the precedent from *Donoghue v. Stevenson* (1932) in negligence cases.

2. Interpretation of Statutes:

- Judges interpret laws passed by the legislature to ensure their application in various contexts.

3. Judicial Review:

- Judges assess whether laws conflict with overriding legal principles.
- **Example:** In the US, the judiciary can declare laws unconstitutional if they violate the Constitution.
- **Note:** Judicial review in the UK is limited to ensuring that public bodies act within their legal authority.

UK Courts and Their Hierarchy

The UK court system is divided into **civil law courts** and **criminal law courts**, each handling specific types of cases.

Supreme Court

- **Role:**
 - The **highest appellate court** in the UK for both civil and criminal cases.
 - Final authority on legal matters.
- **Example:** Hears cases involving complex constitutional issues or appeals from the Court of Appeal.

Court of Appeal

- **Hierarchy:**
 - The **second-highest court** in the UK.
- **Divisions:**
 - **Civil Division:**
 - Hears appeals from the **High Court of Justice and County Courts**.
 - **Example:** Appeals on contract disputes or family matters.
 - **Criminal Division:**
 - Hears appeals from the **Crown Court**.
 - **Example:** Reviewing sentences or convictions in serious criminal cases.

Civil Cases

1. High Court:

- Divided into three specialized divisions for jurisdiction purposes:
 - **King's Bench Division:**
 - ♦ Handles contract and tort disputes.
 - ♦ **Example:** A breach of contract case between two businesses.
 - **Chancery Division:**
 - ♦ Deals with land law, trusts, probate, copyright, company law, partnership law, revenue law, and insolvency.
 - ♦ **Example:** A copyright infringement case.
 - **Family Division:**
 - ♦ Handles matrimonial and family-related disputes.
 - ♦ **Example:** Divorce and custody cases.

2. County Courts:

- Courts of **first instance** for civil claims.
- **Types of Cases:** Contract, tort, landlord-tenant disputes, probate, and insolvency.
- **Example:** A landlord suing a tenant for unpaid rent.

Criminal Cases

1. Crown Courts:

- Handle **serious criminal offences**.
- Defendants are tried by a **judge and jury**.
- **Example:** Cases involving murder or armed robbery.

2. Magistrates' Courts:

- Deal with **less serious criminal offences** and some limited family matters.
- No jury; cases are heard by magistrates or district judges.
- **Example:** Minor assaults or traffic violations.

Doctrine of Judicial Precedent

1. **Definition:** The doctrine of judicial precedent refers to the practice by which judges follow decisions made in previous cases.
2. **Types of Precedent:**
 - **Binding Precedents:** Must be followed in later cases.
 - **Persuasive Precedents:** May be followed at the discretion of the judge but are not mandatory.
3. **Key Rules:**
 - A precedent must be based on a **proposition of law**, not fact.
 - The **facts of the case** must be materially the same as the precedent case.
 - The **previous court** must have the authority to bind the court deciding the current case (i.e., it must be a superior court).
 - Precedents may be overruled by higher courts, and the **Supreme Court can overrule itself**.
 - If facts differ significantly, the precedent is persuasive, not binding.

Rules of Statutory Interpretation

Statutory interpretation involves assigning meaning to ambiguous words or phrases in statutes. Judges use specific rules and principles to guide this process.

1. Literal Rule

- **Definition:** Words are given their ordinary dictionary meaning, even if it results in an undesirable outcome.
- **Case Example:** *Fisher v Bell (1961)*
 - **Facts:** A shopkeeper displayed flick-knives in his shop window, leading to a charge for "offering for sale" offensive weapons.
 - **Held:** Displaying the knives was considered an **invitation to treat**, not an offer for sale, so the shopkeeper was not guilty.
 - **Impact:** The literal rule upheld the wording of the law but failed to achieve its intended purpose.

2. Golden Rule

- **Definition:** Used when the literal rule produces multiple meanings or an absurd outcome, preferring a logical interpretation.
- **Case Example:** *Adler v George (1964)*
 - **Facts:** The defendant obstructed armed forces "in the vicinity of" a prohibited area but claimed being **inside** the area was not covered by the wording.
 - **Held:** The words "in the vicinity of" were interpreted to include "inside," and the conviction was upheld.

3. Mischief Rule

- **Definition:** Interprets statutes to address the specific problem or "mischief" the law intended to remedy.
- **Case Example:** *Gorris v Scott (1874)*
 - **Facts:** The defendant failed to pen sheep on a ship, leading to their loss overboard.
 - **Held:** Since the statute aimed to prevent the spread of contagious diseases, not property loss, the claim failed.

4. Purposive Rule

- **Definition:** Judges consider Parliament's intended purpose for the statute to decide its application.
- **Case Example:** *Gardiner v Sevenoaks RDC (1950)*
 - **Facts:** A law for film storage on "premises" was disputed to exclude caves.
 - **Held:** The term "premises" was interpreted to include caves to fulfill the purpose of safety.

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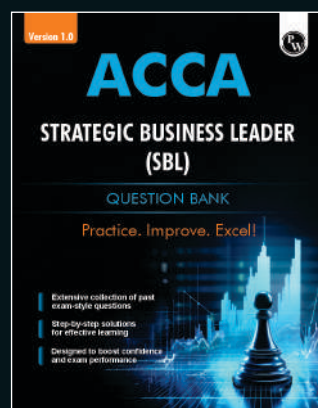
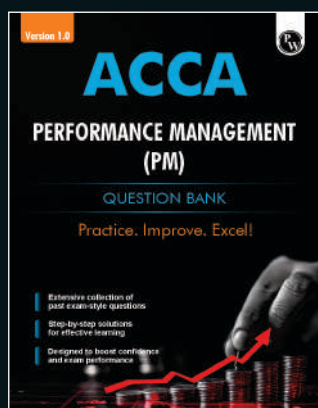
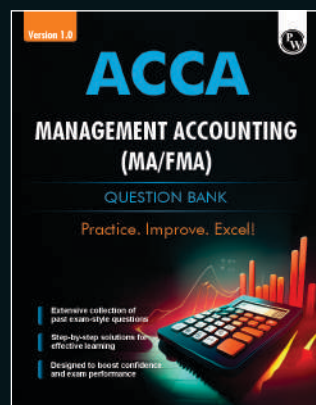
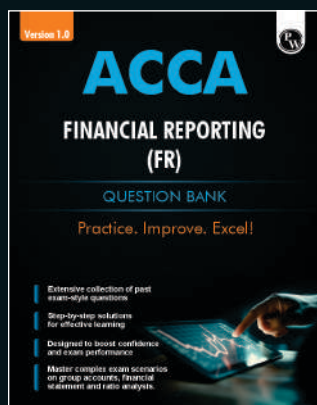
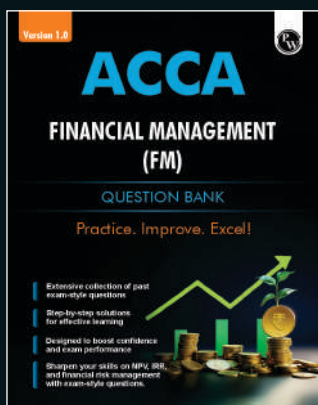
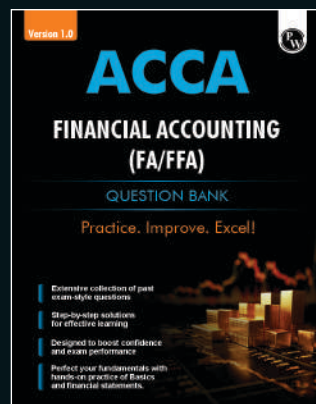
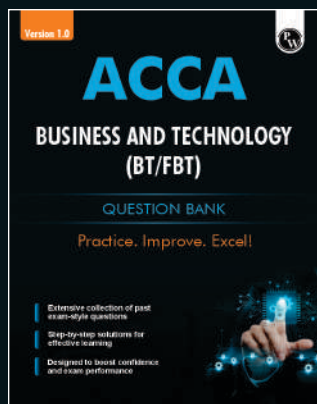
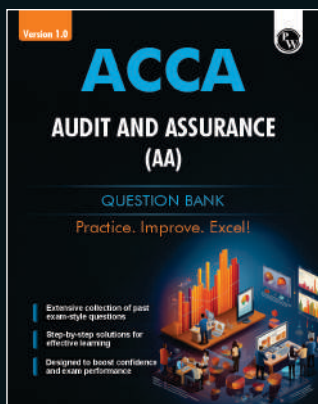
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