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ACCA

CORPORATE AND BUSINESS LAW (LW)

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(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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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:

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

2. International Custom:

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

3. General Principles of Law:

- **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.

5. Eiusdem Generis Rule

- **Definition:** General words in a statute are interpreted in line with the specific words preceding them.
- **Case Example:** *Powell v Kempton Park Racecourse Co* (1899)
 - **Facts:** The issue was whether a racecourse ring fell under "house, office, room, or other place."
 - **Held:** Applying this rule, the phrase referred only to indoor places, so the ring was excluded.

6. Expression Unius Exclusio Alterius

- **Definition:** If a statute provides a specific list, anything not included is excluded.
- **Example:** If a law lists "cars, bikes, and buses" as vehicles, trains would be excluded.

Presumptions in Statutory Interpretation

Presumptions are default rules applied unless expressly overridden by legislation:

1. A statute does not bind the Crown.
2. A statute does not have retrospective effect.
3. A statute cannot conflict with international law.
4. A statute does not alter common law unless explicitly stated.
5. Legislation does not extend beyond UK territorial jurisdiction.
6. A statute does not exclude the jurisdiction of courts.

Here's a short trick to help you remember the rules of statutory interpretation:

"Loud Giraffes Make Perfect Eggs Every Sunday."

Each letter stands for a rule or concept:

1. **L - Literal Rule** (Words taken at face value)
2. **G - Golden Rule** (Used to avoid absurdity in the literal rule)
3. **M - Mischief Rule** (Interprets statutes based on the issue the law addresses)
4. **P - Purposive Rule** (Considers Parliament's intent behind the law)
5. **E - Eiusdem Generis Rule** (General words follow specific ones)
6. **S - Expressio Unius Exclusio Alterius** (Specific lists exclude what's not listed)

CIVIL LAW SYSTEMS

Definition

- Civil law historically originates from **Roman law** and is based on **written legal codes**.

Principles of Civil Law

1. Comprehensibility:

- Laws are contained in **codes** drafted as general principles.
- These principles aim to provide solutions for all situations.
- **Example:** The French Civil Code covers contract, property, and family law comprehensively.

2. Certainty:

- Questions of law are decided predictably within the framework of written codes.
- Judges have **limited interpretative powers**, relying primarily on codified law.

Sources of Law in Civil Law Systems

1. **Constitutions:** Establish fundamental principles and legal frameworks.
2. **EU Law:** Applicable in EU member states.
 - **Example:** EU consumer protection laws.
3. **Statutes:** Codified laws forming the core of civil law systems.
 - **Example:** The German Civil Code (Bürgerliches Gesetzbuch, BGB).

4. **Administrative Regulations:** Rules issued by administrative authorities to implement statutes.

- **Example:** Tax regulations in France.

5. **Custom:** Historical customs that complement codified law.

Role of Judges in Civil Law Systems

1. Judges primarily **apply the law**, with limited powers to interpret it.

2. They do not draft laws but may create **precedents** through their decisions, which other judges must follow.

3. Judges ensure the **application of codified principles** in legal disputes.

Principles of Judicial Interpretation

1. Judges are not meant to **interpret** the law extensively but rather to apply it.

2. If interpretation is required, judges:

- Identify the **social purpose** of the law and ensure that its intent is enacted.

- Consider the **historic intention** of the law, adapting it to modern situations.

- **Example:** A civil code provision on contracts may be interpreted to address new digital transactions.

SHARIA LAW

Definition

□ Sharia law is a legal system based on the **religion of Islam**, viewed as the divine way ordained by Allah for humanity.

Principles of Sharia Law

1. Sharia is considered **divine law**, given by Allah to guide mankind.

2. It encompasses spiritual, moral, and legal principles.

Sources of Sharia Law

1. Quran:

- The primary source of Sharia law, containing Allah's divine revelations to Prophet Mohammed.

2. Sunnah:

- Records of the Prophet's sayings and practices (Ahadith), which clarify and explain the Quran.

- **Example:** A legal ruling on fasting may refer to the Prophet's practices during Ramadan.

3. Madhab (Schools of Thought):

- Historical schools of Islamic jurisprudence.

• Broad divisions:

- **Sunni:** Includes the Hanafi, Maliki, Shafii, and Hanbali schools.

- **Shiite:** Another significant branch with its own interpretations.

4. Constitution of the Country:

- In some countries, the constitution incorporates Sharia principles.

- **Example:** Saudi Arabia recognizes Sharia as its primary legal framework.

Role of Judges

1. Judicial Authority:

- Judges, often clerics, interpret and apply Sharia law.

- In some nations, secular judges also play a role in administering the law.

2. Limited Interpretation:

- Judges rely on divine sources, with limited scope for reinterpretation.

Interpretation of Sharia Law

1. Guidance from Sources:

- If the **Quran** provides clear guidance, judges follow it directly.

- In the absence of Quranic guidance, judges refer to the **Sunnah** for clarification.

2. Classification of Ahadith:

- **Muwatatur:** Highly reliable.
- **Mashtur:** Moderately reliable.
- **Ahads:** Least reliable.

3. Debates on Interpretation:

- **Taqlid:** Argues that the law is complete and does not require further interpretation.
- **Ijtihad:** Advocates for continued interpretation to address new issues.

Ijtihad (Legal Interpretation)

1. Definition:

- The process of interpreting Sharia law for new or unresolved issues.

2. Qualified Interpreter (Muhtahid):

- Must be a learned scholar of the Quran and the Prophet's traditions.
- Must be a trustworthy, practicing Muslim.

3. Prohibited Areas:

- Certain matters, like the existence of Allah, cannot be subject to Ijtihad.

Methods of Ijtihad

1. Ijma':

- Consensus of opinion among jurists.
- **Example:** Agreement on dietary laws across Muslim scholars.

2. Qiyas:

- Analogical reasoning to evaluate one matter in light of another.
- **Example:** Prohibiting drugs by analogy to alcohol, as both intoxicate.

3. Istihan:

- The concept of equity or fairness, provided it aligns with Quranic principles.
- **Example:** Prioritizing public welfare in land disputes.

4. Maslahah Mursalah:

- Considering public interest in the absence of specific guidance.

5. 'Urf:

- Refers to local customs that are consistent with Islamic principles.

6. Istishab:

- Presumption of continuity unless proven otherwise.
- **Example:** Assuming a marriage remains valid unless evidence of divorce is presented.

Key Concepts

1. Riba:

- Prohibits unjustified increments in borrowing or lending (interest).
- **Example:** Charging interest on loans is considered unlawful in Sharia-compliant finance.

Judicial Review

1. Purpose:

- Ensures that statutes comply with Sharia principles.

2. Application:

- Found in some Muslim-majority countries where secular laws coexist with Sharia law.
- **Example:** Reviewing a statute on banking to ensure compliance with Riba prohibition.

To help you remember key aspects of Sharia Law, here's a simplified mnemonic:

"QSSM IJIUR"

- **Q - Quran** (Primary source of Sharia law, Allah's revelations to Prophet Muhammad)
- **S - Sunnah** (The Prophet's sayings and practices, clarifying the Quran)
- **S - Schools of Thought (Madhab)** (Sunni and Shiite branches)
- **M - Madhab (Schools)** (Including Hanafi, Maliki, Shafii, Hanbali for Sunni, and Shiite interpretations)
- **I - Ijtihad** (Interpretation of Sharia law for new issues)
- **J - Judicial Role** (Judges interpret Sharia, often clerics or secular judges)
- **I - Ijma'** (Consensus of scholars)
- **U - Urf** (Local customs consistent with Islamic principles)
- **R - Riba** (Prohibition of interest in finance)

International Trade, International Legal Regulation, and Conflict of Laws

Private and Public International Law

1. Private International Law:

- **Definition:** A set of **national/domestic** rules used to determine:
 - Jurisdiction in international contracts.
 - Applicable law in cross-border transactions.
 - Recognition and enforcement of foreign judgments.
- **Key Point:** Despite its name, private international law is not truly **international** but rather governed by domestic legal systems.
- **Example:** A UK court applying its rules to decide whether a French or German law governs an international contract.

2. Public International Law:

- **Definition:** Law recognized and agreed upon by a group of nations, including:
 - Conventions and treaties.
 - International customs.
 - General principles of law recognized by civilized nations.
- **Example:** The Geneva Conventions regulating conduct in war.

Conflict of Laws and International Legal Regulation

1. Conflict of Laws:

- **Definition:** Occurs when the laws of two different countries produce conflicting outcomes, complicating international trade.
- **Illustration:**
 - Cultural and legal differences, like the interpretation of contracts, can create disputes.
 - **Example:**
 - ◆ In Country A, a contract becomes binding only after being signed.
 - ◆ In Country B, verbal agreements or negotiations are binding.
 - ◆ This can lead to disputes, as seen in the hypothetical case of Constance (Country A) and Dimitri (Country B):
 - ◆ Constance assumes no contract exists until signed.
 - ◆ Dimitri assumes their verbal agreement forms a contract and ships the goods.
 - ◆ Courts in Country A may decide no contract exists, while Country B courts may uphold the contract, leaving Dimitri unable to enforce the judgment in Constance's country.

2. Impact of Conflict of Laws:

- Parties from different legal systems may avoid trading due to the risk of inconsistent legal outcomes, leading to potential financial losses.

International Treaties, Conventions, and Model Codes

1. Purpose:

- Address the problem of conflicting national laws by establishing agreed-upon codes of conduct for international trade.

2. Mechanisms:

- Nations negotiate treaties, conventions, and model codes to provide **uniformity** in international trade laws.
- These agreements allow parties to refer to **internationally recognized rules** rather than their own domestic laws.

3. Role of International Bodies:

- International organizations help create, manage, and amend these agreements.
- **Examples:**

- **United Nations Commission on International Trade Law (UNCITRAL):** Developed the **United Nations Convention on Contracts for the International Sale of Goods (CISG)**.
- **World Trade Organization (WTO):** Facilitates trade agreements and resolves disputes.
- **International Chamber of Commerce (ICC):** Promotes standardized trade rules like **Incoterms**.

International Organisations

United Nations (UN)

1. Overview:

- A global organization with nearly every country as a member.
- **Objectives:**
 - Maintain **peace and security**.
 - Foster friendly relations among nations.
 - Address economic, social, cultural, and humanitarian issues.
 - Promote **human rights** and international freedoms.

2. Legal Departments:

- **UN Commission on International Trade Law (UNCITRAL):**
 - Harmonizes and unifies public international trade law.
 - Issues model laws and conventions related to trade.
- **International Court of Justice (ICJ):**
 - Settles disputes between states and gives advisory opinions on international legal issues.

UN Commission on International Trade Law (UNCITRAL)

1. Establishment:

- Formed in **1966** by the UN General Assembly.

2. Mandate:

- Harmonize and unify **international trade law**.

3. Composition:

- Comprises **60 member states** elected by the General Assembly.

4. Functioning:

- Holds **annual sessions** open to observers.
- Operates through **six working groups** conducting research on specific topics.

5. Output:

- Issues **model laws** and **conventions** to standardize international trade practices.
- **Example:** The **United Nations Convention on Contracts for the International Sale of Goods (CISG)**.

International Chamber of Commerce (ICC)

1. Overview:

- Formed by business leaders from various countries.
- **Mission:**
 - Promote **trade and investment**.
 - Facilitate open markets and the **free flow of capital**.

2. Structure:

- **Members:** Thousands of companies and associations from 130 countries.
- **World Council:**
 - Supreme authority of the ICC.
 - Composed of business executives nominated by national committees.
 - **Responsibilities:**
 - ◆ Elect the **Executive Board** (15–30 members, serving three years).
 - ◆ Elect the **Chairman and Vice-Chairman**.
- **National Committees:**
 - Represent the ICC in their respective nations.
 - Ensure national business concerns are reflected in ICC policies.
- **Secretariat:**
 - Works with national committees to implement the ICC's work.
 - Headed by a **General Secretary** (currently Guy Sebban from France).

3. Activities:

- Advises the **UN** on formulating international law.
- Provides practical services to businesses.
- Combats **commercial crimes**, including money laundering.

4. Website: www.iccwbo.org

International Organisations and Courts

World Trade Organisation (WTO)

1. Overview:

- Established in 1995, evolving from the General Agreement on Tariffs and Trade (GATT, 1948).
- Provides a framework for international trade, covering goods, services, intellectual property, and inventions.
- **Membership:** 149 countries, accounting for over 97% of global trade.

2. Purposes:

- Assist the free flow of trade by removing obstacles.
- Publicize global trade rules.
- Provide confidence to individuals, companies, and governments regarding stable trade policies.

3. Functions:

- Administers trade agreements.
- Acts as a forum for trade negotiations.
- Settles trade disputes.
- Reviews national trade policies.
- Assists developing countries in trade policy issues.
- Cooperates with other international organizations.
- **Website:** www.wto.org.

4. WTO Agreements:

- Lower customs tariffs and trade barriers.
- Provide procedures for settling disputes (Dispute Settlement Body).
- Offer special treatment for developing nations.
- Require transparency in trade policies through frequent reporting.

5. Structure:

- **Secretariat (Geneva):** Provides technical support.
- **Ministerial Conference:** Top decision-making body, meets biennially.
- **General Council:** Ambassadors or officials meet regularly, also functions as the Dispute Settlement Body.
- **Sub-Councils:** Goods Council, Services Council, etc.
- **Committees and Working Groups.**

6. Dispute Settlement:

- Panels of 3–5 experts from different countries are appointed to hear cases.
- Findings and appeals are reviewed by the General Council.
- **Appellate Body:** A permanent body of seven members that hears appeals, with no government affiliation.

Organisation for Economic Co-operation and Development (OECD)

1. Overview:

- A forum for discussing and refining economic and social policies.
- **Membership:** 38 member countries, relationships with 70 others.
- Initially established to administer post-WWII aid to Europe.

2. Functions:

- Creates legally binding agreements and non-binding guidelines.
- Provides guidance on issues like corporate governance.
- **Website:** www.oecd.org.

International Institute for the Unification of Private Law (UNIDROIT)

1. Overview:

- Independent inter-governmental organization focusing on harmonizing private commercial law.
- **Membership:** 61 states, financed by contributions from member states.
- **Website:** www.unidroit.org.

2. Functions:

- Drafts international conventions and model laws.
- Provides general principles for judges or arbitrators.
- Serves as the basis for conventions by other organizations, e.g., UN CCISG.

3. Structure:

- **Secretariat:** Oversees daily operations, led by a Secretary-General.
- **Governing Council:** 25 elected officials supervising the Secretariat.
- **General Assembly:** Decision-making body of one official per member state, approving the work program every three years.

International Courts

1. International Court of Justice (ICJ):

- Component of the UN.
- Settles disputes between states and provides legal advice to international organizations.
- **Composition:** 15 judges, elected by the UN General Assembly for nine-year terms. Judges from the same nationality are prohibited.

- **Procedures:**
 - Governed by the Statute and include written and public oral phases.
 - No appeal process exists.
- **Submission of Disputes:**
 - By agreement between states.
 - Through a treaty's jurisdictional clause.
 - By virtue of the UN Statute.

2. International Court of Arbitration (ICA):

- Established by the International Chamber of Commerce.
- Oversees arbitration proceedings for member disputes.
- **Functions:**
 - Maintains a list of arbitrators.
 - Decides challenges to arbitrators.
 - Approves arbitral awards.
 - Fixes arbitrators' fees.

Courts vs Arbitration

Operation of the Courts

1. Traditional Role:

- Courts are the historical venue for resolving legal disputes.
- Parties present their cases to a **judge** (and sometimes a jury), who evaluates the evidence and makes a decision.

2. Representation:

- Parties are typically represented by legal professionals (e.g., solicitors or barristers).

3. Right of Appeal:

- Parties dissatisfied with the decision have the right to appeal to a superior court.

Advantages and Disadvantages of Court-Based Adjudication

1. Advantages:

- **Legal Solution:** Courts provide authoritative and binding legal remedies.
- **Expert Judges:** Judges are legal experts, ensuring a high standard of legal evaluation.
- **Precedent:** Decisions are based on established precedents, offering predictability in outcomes.
- **Appeals:** The court system provides robust opportunities for appeal.

2. Disadvantages:

- **Cost:** Legal representation and court fees can be prohibitively expensive.
- **Time:** Court proceedings, especially appeals, are often lengthy.
- **Publicity:** Court hearings are public, which may expose sensitive information.
- **Formality:** The rigid formalities of court proceedings can be daunting and cumbersome.

Arbitration

1. Definition:

- A form of **Alternative Dispute Resolution (ADR)** where disputes are settled by a third party (arbitrator) without going to court.

2. Legal Framework:

- Governed by the **Arbitration Act 1996** in the UK, which promotes:
 - **Flexibility:** Parties have significant control over the arbitration process.
 - **Efficiency:** Minimizing delay and expense.
 - **Judicial Restraint:** Courts intervene only when necessary for legal safeguards.

3. International Regulation:

- The **UN Model Law on International Commercial Arbitration** provides a standardized framework for arbitration globally.

Advantages and Disadvantages of Arbitration

1. Advantages:

- **Privacy:** Hearings are private, protecting sensitive information from public exposure.
- **Informality:** Arbitration can be less formal and more flexible than court proceedings (though this advantage is diminishing).
- **Speed:** Arbitration is generally faster than court processes.
- **Cost:** Reduced duration often leads to lower costs, though expert arbitrators can be expensive.
- **Expertise:** Arbitrators can be chosen based on specific expertise relevant to the dispute (e.g., technical experts or legal specialists).
- **Neutral Forum:** Particularly valuable in international disputes, arbitration can occur in a neutral location, avoiding perceived bias in a foreign court.
- **Finality:** Limited scope for appeals provides quicker resolution and enforcement of decisions.

2. Disadvantages:

- **Cost of Experts:** Arbitrator fees can still be significant, offsetting savings in other areas.
- **Lack of Precedent:** Decisions are made on a case-by-case basis, reducing predictability.
- **Limited Appeals:** Fewer opportunities for appeal may disadvantage a party unhappy with the outcome.

Comparison of Courts and Arbitration

| Aspect | Courts | Arbitration |
|------------|--|--|
| Privacy | Public hearings | Private proceedings |
| Cost | Expensive due to legal fees and lengthy process | Generally cheaper but depends on arbitrator fees |
| Speed | Slow, especially with appeals | Faster resolution |
| Formality | Highly formal | Less formal, though arbitration is becoming formal |
| Expertise | Judges may not be industry experts | Arbitrators can be chosen for specific expertise |
| Appeals | Robust scope for appeals | Limited grounds for appeal |
| Precedent | Decisions based on established legal precedents | Case-by-case decisions without binding precedent |
| Neutrality | Foreign courts may show bias in international disputes | Neutral venue can be chosen |

ACTIVITY FOR STUDENTS

Matching (Connect the concepts with the correct explanation)

| Concept | Explanation |
|------------------|--|
| (A) Literal Rule | (1) Prevents unjustified interest in transactions like loans |
| (B) Qiyas | (2) Religious-based law originating from the Quran and Sunnah |
| (C) Riba | (3) Applying analogical reasoning to interpret law |
| (D) Sharia Law | (4) Interpreting a statute based on its ordinary meaning |
| (E) Ijtihad | (5) Process of interpreting laws to address new or unresolved issues |

Short Answer (Reflection)

Answer the following questions based on the content.

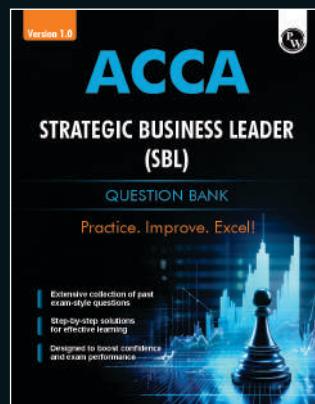
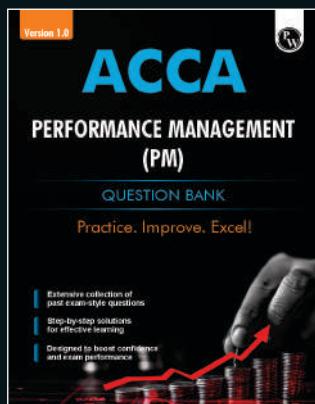
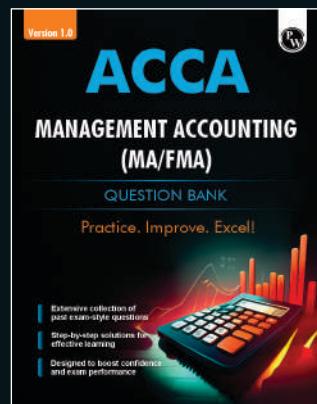
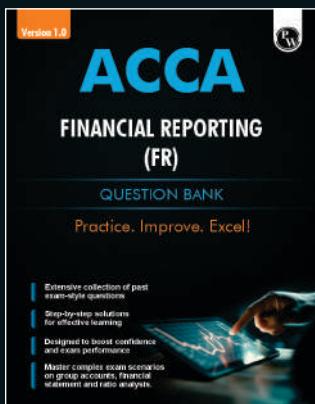
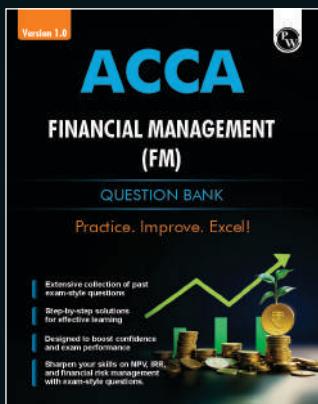
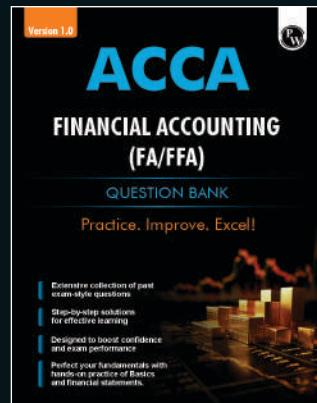
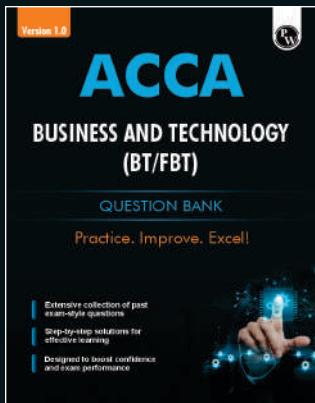
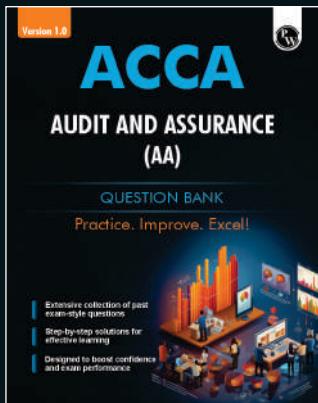
1. Explain the difference between "common law" and "civil law" systems.
2. What is the role of judges under Sharia law, and how does it differ from the role of judges in other legal systems?

Application Task (Scenario)

Scenario: A new law is passed that regulates the sale of certain items in public markets. The law specifies that "dangerous goods" must not be sold in markets. However, the term "dangerous goods" is not clearly defined.

Task: Using the **Mischief Rule**, how might a judge interpret this law? What could be the potential problem with using the **Literal Rule** in this case? (Provide your reasoning.)

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