

## Private Law:

Generally speaking, **private law** is the area of law in a society that affects the relationships **between individuals or groups** without the intervention of the state or government. In many cases the public/private law distinction is confounded by laws that regulate private relations while having been passed by legislative enactment. In some cases these public statutes are known as laws of public order, as private individuals do not have the right to break them and any attempt to circumvent such laws is void as against public policy.

### Public law and Private Law:

Laws can be divided into public and private. **Public law** is concerned with matters that affect society as a whole. It includes criminal, constitutional and administrative law. Public laws set the rules for the relationship between the individual and society or for the roles of different governments. For example, if someone breaks a criminal law, it is regarded as a wrong against society as a whole.

**Private law**, also called "civil law," deals with the **relationships between individuals**. Civil laws set the **rules for contracts, property ownership, the rights and obligations** of family members, damage to someone or to their property caused by others and so on. A civil case is an action between private parties, primarily to settle private disputes.

### The two meanings of the Civil Law:

The term "civil law" is used to mean two quite different things, which can be a little confusing at first for people trying to understand the justice system. Sometimes the term is used in contrast to "common law" to refer to the legal system that is based on a civil code, such as the Justinian Code or the Civil Code of Quebec.

In its other sense, civil law refers to matters of private law as opposed to public law, and particularly criminal law, which is concerned with harm to society at large. It is usually clear from the context which type of civil law is intended.

### Private International Law:

A branch of Jurisprudence arising from the diverse laws of various nations that applies when private citizens of different countries interact or transact business with one another.

**Private international law** refers to that part of the law that is administered between private citizens of different countries or is concerned with the definition, regulation, and **enforcement of rights** in situations where both the person in whom the right inheres and the person upon whom the obligation rests are private citizens of different nations.

It is a set of rules and regulations that are established or agreed upon by citizens of different nations who privately enter into a transaction and that will govern in the event of a dispute. In this respect, private International Law differs from public international law, which is the set of rules entered into by the governments of various countries that determine the rights and regulate the intercourse of independent nations.

### **Private Law:**

Is that part of a civil law legal system which is part of the *jus commune* that **involves relationships between individuals**, such as the law of contracts or torts (*as it is called in the common law*), and the law of obligations (*as it is called in civil legal systems*).

It is to be distinguished from **public law**, which deals with relationships **between both natural and artificial persons** (*i.e., organizations*) and the state, including regulatory statutes, penal law and other law that effects the public order.

In general terms, private law involves interactions between private (*parties*) citizens, whereas public law involves interrelations between the state and the general population.

**Private law** is that portion of the law that defines, regulates, enforces, and **administers relationships among individuals**, associations, and corporations. As used in distinction to public law, the term means that part of the law that is administered between citizen and citizen, or that is concerned with the definition, regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person upon whom the obligation rests are **private individuals**.

### **Contract Law Definition:**

That body of law which regulates the formation and enforcement of contracts.

That body of law which regulates the enforcement of contracts. Contract law is the basis of all commercial dealings from buying a bus ticket to trading on the stock market. **Contract law is a species of private law.**

Contract law has its origins as the early civilizations began to trade with each other, a legal system was created to support and to facilitate that trade.

Public international law should not be confused with "*private international law*", which is concerned with the resolution of conflict of laws. In its most general sense, **private international law** "consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations *inter se*, as well as with some of their **relations with persons, whether natural or juridical.**"

### **Natural Law:**

The **natural law** approach argues that international norms should be based on axiomatic truths. In 1625 Hugo Grotius argued that nations as well as persons ought to be governed by universal principle **based on morality and divine justice** while the relations among polities ought to be governed by the law of peoples, the *jus gentium*, established by the consent of the community of nations on the basis of the principle of *pacta sunt servanda*, that is, on the basis of the observance of commitments.

### **Legal Positivism:**

The early positivist school emphasized the importance of custom and treaties as sources of international law and emphasized the importance of state practice in international law. The positivism school narrowed the range of international practice that might qualify as law, favouring rationality over morality and ethics.

Modern legal positivists consider international law as a unified system of rules that emanates from the states' will. International law, as it is, is an "objective" reality that needs to be distinguished from law "as it should be." Classic positivism demands rigorous tests for legal validity and it deems irrelevant all extralegal arguments.

### **International Human Rights Law:**

Refers to the body of **international law** designed to promote and **protect human rights at the international, regional and domestic levels.** As a form of international law, international human rights law is primarily made up of treaties, agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way.

Other international human rights instruments while not legally binding contribute to the implementation, understanding and development of international human rights law and have been recognised as a source of *political* obligation.

Enforcement of international human rights law can occur on either a domestic, regional or international level. States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When Domestic Law fails to provide a remedy for human rights abuses parties may be able to resort to regional or international mechanisms for enforcing human rights.

### **Human Rights:**

Are commonly understood as "inalienable fundamental rights to which an individual is inherently entitled simply because she or he is a human being." Human rights are thus conceived as universal (*applicable everywhere*) and egalitarian (*the same for everyone*).

These rights may exist as natural rights or as legal rights, in both national and international law. The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental organizations, has been a cornerstone of public policy around the world.

In "*The idea of human rights*", it says: "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights."

### **Freedom of Contract:**

Right of an adult to make a legally binding mutual agreement with one or more other persons, without governmental interference as to what type of obligations he or she can take upon himself or herself.

### **Interpretation Act:** (Canada, 1867)

(1) The enactments in any Act apply to the whole Dominion of Canada;

"Person." The word "person," shall include any body corporate and politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context can apply according to the law of that part of Canada to which such context extends ;

**Interpretation Act:** [RSBC 1996] CHAPTER 238

"**person**" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

**Interpretation Act:** (Canada, 1867)

**Territorial Operation**

8. (1) **Every enactment applies to the whole of Canada**, unless a contrary intention is expressed in the enactment.

**Property and Civil Rights:**

**Duality of legal traditions and application of provincial law:**

**8.1** Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

**Terminology:**

**8.2** Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.

**Forms:**

**32.** Where a form is prescribed, deviations from that form, not affecting the substance or calculated to mislead, do not invalidate the form used.

**Person:** An individual, agency, association, branch, corporation, estate, group, partnership, or other entity or organization or **government** having legal rights and responsibilities separate from those of other entities and/or of its owners or members. See also **juridical person**.

**Juridical Person:** Entity (*such as a firm, or government*) other than a natural person (*human being*) created by law and recognized as a legal entity having distinct identity,

legal personality, and duties and rights. Also called artificial person, juridical entity, juristic person, or legal person. See also body corporate.

### **Conclusion:**

Everyone will be presumed to be exercising every inalienable fundamental human right, including exercising the basic human right to be treated as a legal person, unless that individual expresses his or her right to exclude a specific right or rights, according to his or her private law.

Everyone is free to exclude exercising and benefiting from any human right or any legal right, by way of expressing his or her private law. No individual is obligated to exercise every human right under every circumstance, nor to exercise any legal right without mutual consent (*which occurs by default if an individual does not exclude his or her basic human right to be treated as a legal person*).

Everyone has the inherent natural human right to freedom of expression in any form, thus having the right to freely contract with others including governments, inclusive of expressing and declaring and proclaiming his or her private law, or of posting his or her private property, and no other party is obligated or may do so on his or her behalf without informed consent.