
Why study law?

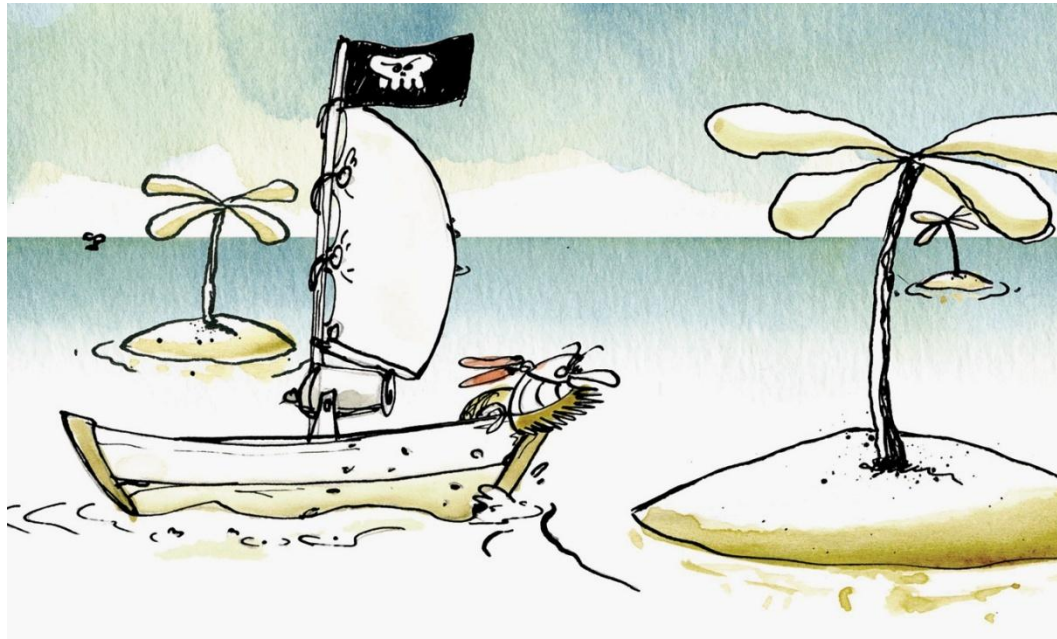
- To become a more effective business operator by:
 - recognising and managing risks
 - being aware of the law and the legal environment and how they impact on decision making
 - To become a more resourceful consumer
 - Everyone is presumed to know it, so it will be beneficial to know the basic concepts
 - The law is a reflection of community values (Do you agree?)
 - Law not only shapes the business environment, but is shaped by business
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What is law?

- A definition: law is the system of control (i.e. a set of rules) through which society operates (i.e. citizens must obey or suffer a penalty)
 - Law declares how we must behave and consists of those rules which are enforced through the legal system (particularly the courts)
 - The system is more complex in reality as the 'rules' are affected by social, economic, political and international considerations
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Law, order, morality & justice

- Preservation of order within the community (e.g. road rules)
 - Society's values:
 - changing
 - competing
 - 'victimless' crimes
 - Fair treatment
 - The rule of law
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What is a legal system?

- The totality of laws that regulate a state (i.e. a legally organised community)
 - Types of legal systems:
 - common law legal systems
 - civil law legal systems
 - Religious law – e.g. Islamic legal system, Halakha in Judaism, Indigenous legal system
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Genesis of a legal system

- The basic requirements are that there should be:
 - a body of laws
 - some source with the power necessary to create and alter those laws
 - some institution or process with the authority to administer and enforce them
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Genesis of a constitution

- A *constitution* is the basis of the legal system of any state

‘[A constitution is] the system of laws, customs and conventions which define the composition and powers of the organs of the state and regulate the relations of the various state organs to one another and to the private citizen.’

Professor Hood Phillips, *Constitutional and Administrative Law*, 5th ed, 1973

Civil law

- Is the most widespread system of law in the world. It is also sometimes known as Continental European law. Civil law systems mainly derive from the Roman Empire.
 - Civil law was also partly influenced by religious laws such as Canon law and Islamic law.
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- The legal system of the Republic of Kazakhstan, along with legal systems of Italy, France, Germany, Austria and other countries, belongs to the Roman-German legal system.
 - As opposed to the Anglo-Saxon legal system (England, the USA), where judicial precedents are the main legal
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- sources, Roman-German legal system has a single hierarchically structured system of enacted law sources.
 - The Constitution has the highest juridical force on the entire territory of Kazakhstan.
 - International treaties ratified by Kazakhstan have priority over its domestic laws .
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Common law

- Common law are systems of law whose sources are the decisions in cases by judges.
 - Common law developed in England.
 - Almost every former colony of the British Empire has adopted it.
 - Hong Kong, India, Pakistan, USA and other places.
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Religious law

- Religious law refers to the notion of a religious system, being used as a legal source.
 - The main kinds of religious law are Sharia in Islam, Halakha in Judaism and Canon law in some Christian groups.
 - Religious law countries: Afghanistan, Bangladesh, Iran, Saudi Arabia, Sudan, Yemen.
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Pluralistic systems

- There are some countries that using two types of the legal systems.
 - These countries are called pluralistic countries.
 - For example: Civil law and religious law countries, Bahreyn, Indonesia etc.
 - Common law and religious law,
 - Nigeria, Malaysia etc.
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The sources of law

- *Customary law*
 - The law established by the habitual use of a group of people over a long period of time
 - *Common law*
 - The law developed by the courts
 - *Legislation*
 - The laws made by the body recognised by the legal system as having the supreme power and authority to make laws (usually the Parliament)
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Characteristics of the law: certainty

- People in both their personal and business lives should be able to:
 - form relationships with others
 - enter into contracts, such as those relating to marriage and the acquisition and disposal of property
- reasonably secure in their knowledge of what they are doing and their understanding of its effects
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Characteristics of the law: flexibility

- The law must be able to respond without undue delay to the challenge of change at all levels of society



Characteristics of the law: fairness

- The effectiveness of law depends upon its acceptance by members of society and that will not be available where a law is inequitable, unfair or unreasonable



Characteristics of the law: accessibility

- All should have access to knowledge of the law, either directly or through intermediaries

‘[T]o bind the citizen by a law, the terms of which he has no means of knowledge, would be a mark of tyranny.’

Sir Garfield Barwick, *Watson v Lee* (1979) 144 CLR 374 at 379

Classification of the law: public law and private law

- Public law

- regulates the interaction of citizens with the state (e.g. criminal law, constitutional law, administrative law)

- Private law

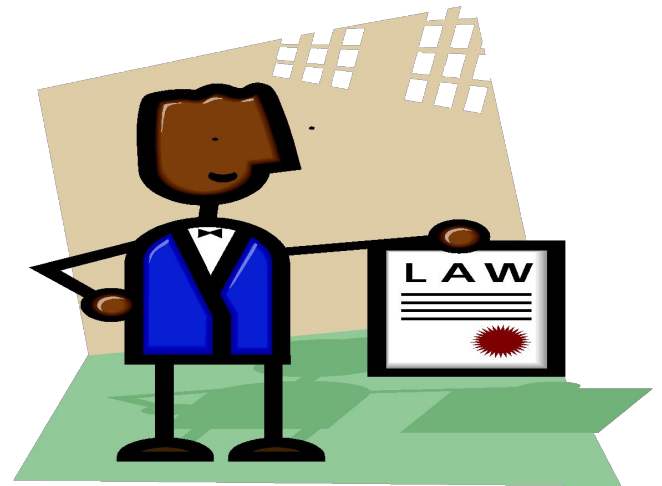
- regulates the relationship between individuals within a state (e.g. contract law, tort law, property law)
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Public law

- administrative law
 - company law (some)
 - constitutional law
 - criminal law
 - industrial law (some)
 - taxation and revenue law
 - trade practices law (some)
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Private law

- banking law
- company law (some)
- contract law
- equity law
- family law
- property law
- succession law
- tort law
- trust law



Classification of the law: criminal law and civil law

- criminal law
 - generally aims to punish

- civil law
 - generally aims to compensate



Civil law

- contract law
 - tort law
 - negligence
 - trespass
 - defamation
 - nuisance
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Civil law

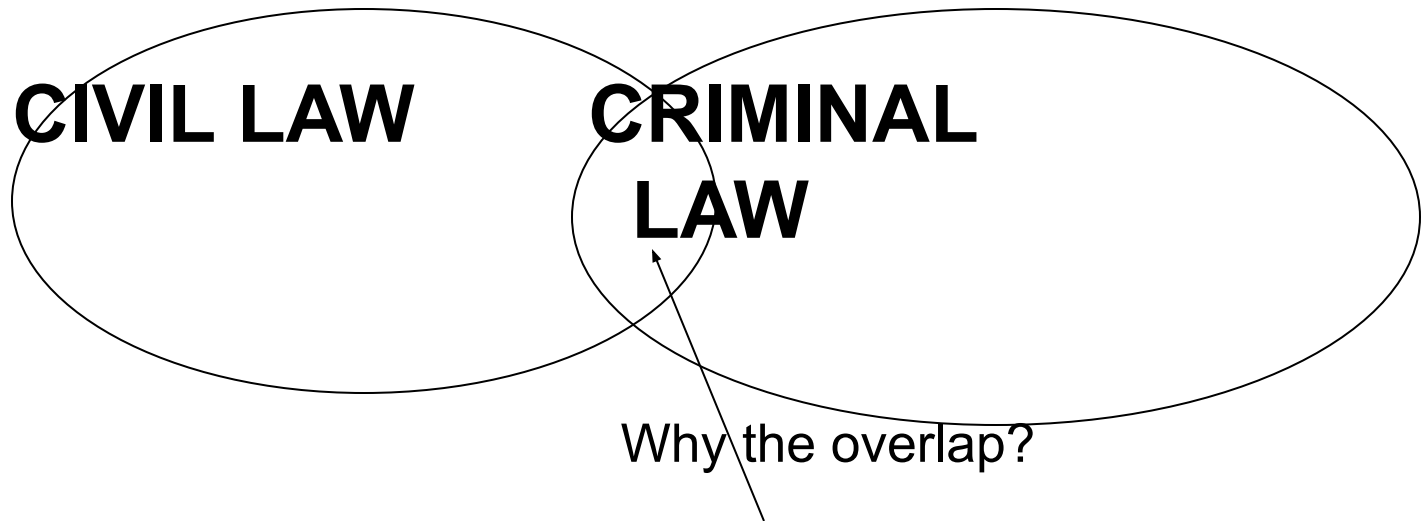
- corporations law
 - trade practices law
 - administrative law
 - family law
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Criminal law

- offences against the person
- offences against property



Types of law



Why the overlap?

Constitutional law

- Constitutional law is concerned with the workings of Kazakhstan constitution, it covers such matters as the position of the President, procedures of Parliament, functioning of Government and citizenship.
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Constitutional law

- Every modern democratic state has three principal organs, the executive, which runs the country, the legislature, which makes the laws, and the judiciary, which settles legal disputes.
 - . Judicial power in the Republic of Kazakhstan belongs only to the courts in the face of permanent judges.
 - Justice in the Republic of Kazakhstan shall be administered only by a court.
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- Judicial power shall be exercised on behalf of the Republic of Kazakhstan and is
 - intended to protect the rights, freedoms and lawful interests of individuals and
 - organizations, and to ensure the implementation of the Constitution, laws, other regulatory legal acts, and international treaties of the Republic.
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- Everyone shall be guaranteed judicial defense against any unlawful decisions and acts of state agencies, organizations, officials and other persons which infringe or restrict the rights, freedoms and lawful interests provided by the Constitution and the laws of the Republic.
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What is the Constitution?

The Constitution says how the government works. It creates the President. It creates the Parliament. It creates the Supreme Court.

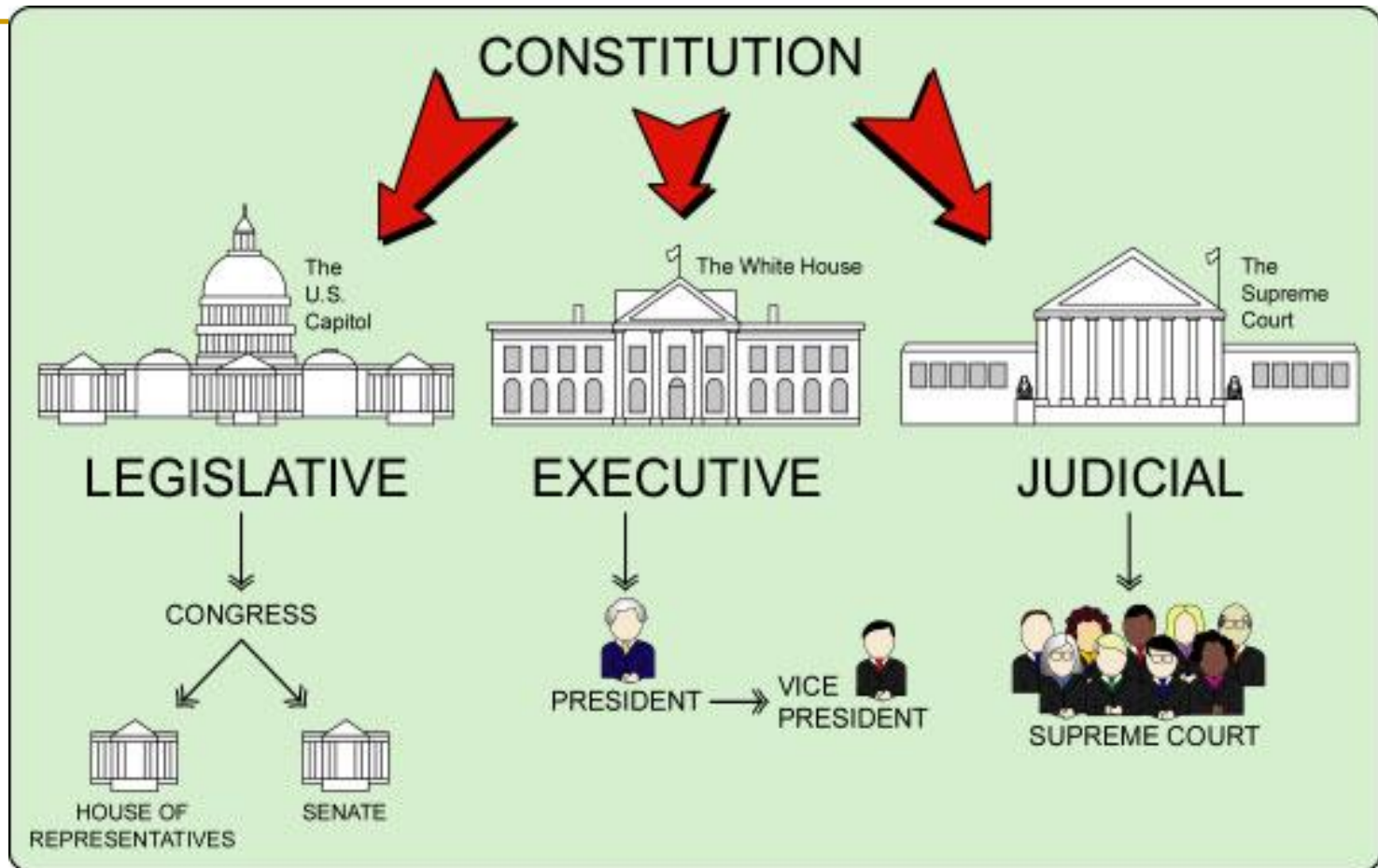
The Constitution gives us rights and freedoms as citizens of the Republic of Kazakhstan.

The Constitution sets up the government.

The government is split into three parts or branches.

1. One branch is the Parliament. The Parliament makes laws. The people elect the members of the Parliament.
 2. The next branch is the President. The President enforces the laws.
 3. The last branch is the Courts. The courts decide what the law means when there are questions.
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- All of the parts have to work together. Just like the Framers agreed on the Constitution, the parts have to agree on the laws. No part has too much power. The power is shared. This helps protect the people.

How it all works



The President

- The President is the head of the state.
- The President is also a commander in chief of the armed forces and may veto legislation that has been passed by the Parliament.
- The President represents his country in international relations, he is the symbol and guarantor of the unity of the people and the state power.

The Parliament

- The Parliament is the highest representative body of the Republic performing legislative functions.
- The Parliament consists of two Chambers acting on permanent basis: Senate and Majilis.

Functions of Constitutions

- To empower states
 - To establish unifying values and goals
 - To provide government stability
 - To protect freedom
 - To legitimize regimes
 - To build legitimacy.
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