

# Business Law: L01

# What constitutes a Legal system?

- ▶ Legal regimen of a country consisting of (1) a written or oral constitution, (2) primary legislation (statutes) enacted by the legislative body established by the constitution, (3) subsidiary legislation (bylaws) made by person or bodies authorized by the primary legislation to do so, (4) customs applied by the courts on the basis of traditional practices, and (5) principles or practices of civil, common, Roman, or other code of law.
- ▶ The term can be used very simply to mean the sum of legal rules, legal institutions and machinery which operate within the particular country or jurisdiction. This definition is not necessarily limited to a geographical jurisdiction, for within any country's legal system, there will be certain legal rules, such as rules of international law, which may originate from outside that country's geographical area, but which should be viewed as being part of its legal system. (Belle-Antoine, R.-M. (2008) *Law and Legal Systems in the Commonwealth Caribbean*. 2nd edn. Cavendish Publishers.)

# Purpose of the law

The purpose of law is to enforce public order, social control, social cohesion. It also aids in promoting change in the society, to define rights and duties and to balance conflicting interests in the particular society.

(Belle-Antoine, R.-M. (2008) *Law and Legal Systems in the Commonwealth Caribbean*. 2nd edn. Cavendish Publishers.)

Do you believe that the law should reflect morality?

- ▶ → *Shaw v DPP* [1962] AC 220; [1961] 2 All ER 446, HL.: The House of Lords upheld a conviction of the offence of a conspiracy to corrupt the public's morals when the defendant published a pornographic book. The Court found that a fundamental purpose of the law was to 'conserve not only the safety and order but also the moral welfare of the State'.

# What are the different sources of Law?

- ▶ 1. Constitution of a country (In Jamaica this is the supreme law of the land and anything in contravention with the constitution is considered void).
- ▶ 2. Statutes
- ▶ 3. Case Law
- ▶ 4. Customary Law
- ▶ 5. Common Law
- ▶ 6. Civil Law
- ▶ 7. Equity

N.B. Jamaica along with other commonwealth countries such as England, Canada and Australia uses the common law.

# Distinction between the common law, statutes and equity.

- ▶ One of the essential characteristics of the common law is the structure and development of its legal rules. Laws or legal rules under the common law tradition were promulgated on an ad hoc basis by the common law courts as matters came before such courts. Thus, the legal rules of the common law tradition are often referred to as ‘judge-made law’ or ‘soft law’, to reflect the somewhat arbitrary and changeable origins of such legal rules.<sup>12</sup> This phenomenon resulted in a doctrine called judicial precedent, whereby the applicable legal rules and norms were handed down through these judicial pronouncements. This created a coherent system of rules as well as a procedure through which new legal principles could be made.
- ▶ Thus the common law is said to be precedent based or ‘judge made’.
- ▶ Statutes on the other hand are written laws passed by the legislative body of a country.

- ▶ In law, the term equity refers to a particular set of remedies and associated procedures. These equitable doctrines and procedures are distinguished from "legal" ones. Equitable relief is generally available only when a legal remedy is insufficient or inadequate in some way.
- ▶ Equity can be seen as the name given to a body of legal principles based on justice and fairness.
- ▶ Historically, the common law and equity were seen as two bodies of law which ran side by side, and equity would only come into play where the common law could not offer a form of relief. However the Supreme Court Judicature Acts of 1873 and 1875 vested the Supreme Court with the jurisdiction to administer the rules of both common law and equity thus fusing the two.
- ▶ Section 25 (11) of the Act however states that where there is a conflict between the common law and that of equity then the principles of equity should prevail.

# Principles of Equity

- ▶ These principles are known as ‘Maxims of equity’.
- 1. He who comes to equity must come with clean hands
- 2. He who comes to equity must do equity
- 3. Delay defeats equity

Please select the link below to find the full list as well as explanations of each.

[The law of equity | Law Teacher](#)

# The difference between Company Law and Contract Law

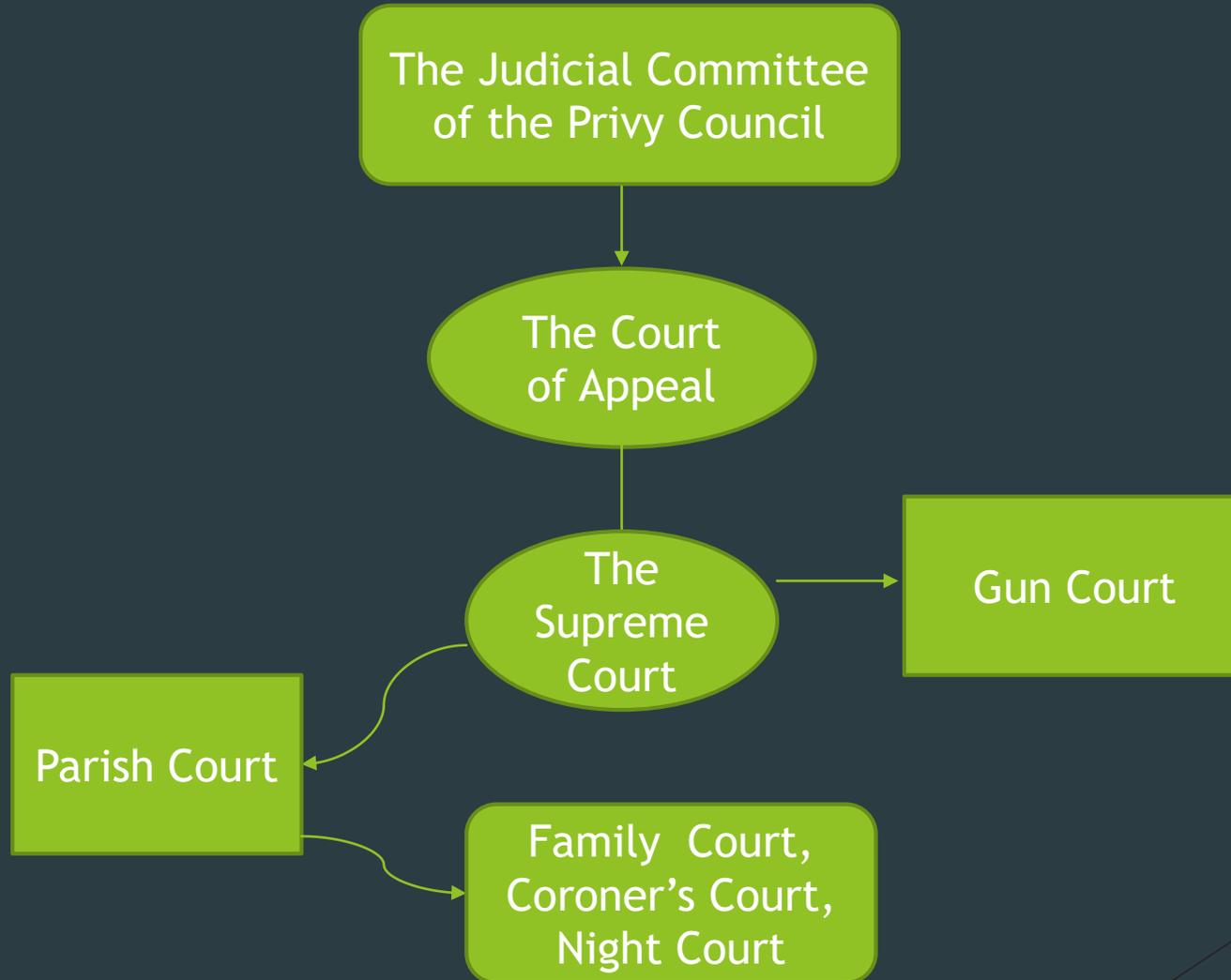
- ▶ Company law refers to that body of law which governs the formation, incorporation, registration and execution of a business. Note however that the formation of a company by parties must be agreed upon and thus there is the use of the law of Contract within companies.
- ▶ The law of contract however speaks to the legally binding agreement between two or more parties which may or may not be in writing. This agreement may not necessarily have to be one which speaks to any form of business or company creation.

# The role of the government in law making.

- ▶ Within any government there are three distinct bodies. These are known as the Executive, Legislature and Judiciary.
- ▶ The legislature is that arm of the government which forms the legislation. In Jamaica for example before a law which is written can formally be known as legislation, it would first have to be sent to the executive to be approved. At this stage this 'law' is known as a Bill. Once this Bill is approved then it is passed as new legislation.
- ▶ This new legislation is then enforced by the judiciary arm which includes Judges and Attorneys-at-law.

# Organization of the Judiciary.

- ▶ The administration of the Judiciary is carried out through our court systems.



# Jurisdictions and Structures of the Court.

- ▶ Judicial Committee of the Privy Council: Twelve law lords, Hears matters which have been given leave of appeal by the Court of Appeal.
- ▶ Court of Appeal: This court is divided in two divisions, the criminal and civil division and has three sitting judges and no jury.
- ▶ Supreme Court: Divided into two divisions, criminal (includes gun court) and civil (includes family court). In civil matters there is no jury however in criminal matters there is a judge and jury.
- ▶ Parish Court: Judge sitting alone.

# Business Units.

- ▶ A logical element or segment of a company (such as accounting, production, marketing) representing a specific business function, and a definite place on the organizational chart, under the domain of a manager. Also called department, division, or a functional area.
- ▶ What is the interrelationship between these units and marketing?