

REPUBLIQUE DU CAMEROUN

PAIX - TRAVAIL – PATRIE

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PEACE – WORK – FATHERLAND

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GENERAL INTRODUCTION

A. Defining and Understanding the Concept of Law

The fundamental question that must be answered in any issue relating to law deals with the definition and nature of law. It does not seem to make much sense to study law if it is not clear what law is. Although the need for definition of law is obvious, it is a need that is not so easily satisfied. In the current age of globalization or universality, it is changing at high speed.

Much juristic ink has flowed in an endeavor to provide a universally acceptable definition of law, but with little sign of attaining that objective. From a general perspective, law is a set of rules, enforceable by the courts, which regulate the government of the state and govern the relationship between the state and its citizens and between one citizen and another.

B. Some learned opinions on the concept of law

Prof. H.L.A. Hart in his work titled ‘**The Concept of Law**’ opined that the definition of law as we know it today represents or reflects its historical development. In its simplest meaning, Law is a body of rules of conduct prescribed by an authority with binding legal force, the violation of which may attract punishment.

Salmond defined law as “the body of principles recognized and applied by the State for the administration of justice.”

Vinogradoff defined law as “a set of rules imposed and enforced by the society with regard to the attribution and exercise of power over persons and things.”

Roscoe Pound defined law as a means of social control through the systematic application of the force of politically organized society. Austin defined it as a rule laid down for the guidance of individuals by individuals with power over them.

Black's Law Dictionary 8th Edition defines law as “The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action.

The **Oxford Dictionary** refers to law as “the body of rules whether formally enacted or customarily which a State or community recognizes as binding on its members or subjects”. By **Cassel's Dictionary**, law means “a rule of conduct imposed by authority and accepted by the community is binding”.

C. The Importance of Law to the Society: Why do we Need Law?

➤ Maintenance of public order and safety

Law is seen as the ‘glue’ that holds the fabric of society together. The law protects us from complete social disorder and anarchy (i.e. lawlessness).

➤ Protection of individual rights and liberties

This is to ensure that everybody is equal before the law and that nobody is above the law. Therefore powerful persons are all controlled by the laws in place and this would mean that all individual rights are protected equally.

➤ The organization and control of the political sphere

The law sets out the boundaries of politics by preserving the political structure and process under which governance is possible.

➤ The regulation of economic activity

The law facilitates and encourages national and international trade in goods and services by setting out legal frameworks by which parties can be bound.

➤ The regulation of human relationships

It serves to legitimize and control various aspects of interpersonal relationships such as entering into marriages, distribution of family wealth, regulation of the parent-child relationship etc.

➤ **The preservation of moral order**

Sometimes law and morals overlap. Some morals are given the force of law.

➤ **The regulation of international relations**

The regulation of international relations is also done by a branch of law called public international law. It governs the creation of states, definition of state boundaries, diplomacy, international humanitarian law etc.

D. The Limits of the Law

The role of the law in the society is not without limitations. First, the law performs only a limited social function. Secondly, there are limitations to the effectiveness of the law.

➤ **The Limited Social Function of Law**

The prime objective of law is to regulate social life. It shapes behavior in society in conformity with the goals of those having influence within it. However, there are whole areas of life which are unregulated by law. For instance the most personal parts of one's life are really outside the law's domain. Law can neither give health nor comfort nor accommodation nor love. Even in public activities such as economic production and politics all the law can do is to provide a framework. Again, although law can be used to enforce morality, the moral standards emanates from elsewhere. Law provides the means rather than the ends.

Moreover, law cannot compel action. No one can be forced to do anything merely by law. No law can compel any particular course of action, even if the law is accompanied by a sanction. All that the law can do is to try to induce someone, by order or by persuasion or by suggestion, to a certain course of action. The endorsement may take various forms that is punishment or reward. A law which forbids murder does not stop

persons committing murder. It merely punishes them if they do so, assuming the crime is detected and the accused has a good defense.

➤ **Limitations to the Effectiveness of Law**

Effective laws should do what they are designed for. They should work. Unfortunately however, laws do not always work. They are not always efficient. A number of factors tend to limit law's efficiency.

- There is the problem of ascertaining facts. It is not easy to prove facts in courts even where there are witnesses. To guard against the unreliability of oral evidence, the law places reliance on the oath and the law on perjury. But not many people believe in oaths nowadays and perjury is difficult to prove.
- There are some social obligations which cannot sensibly or practically be enforced through law. For example, in sexual relations between husband and wife all the law can do is to deal with the consequences of refusal. Again, the law attaches no importance to boy-girl friend relationship and no obligations arising and therefore cannot be enforced at law.
- Official may fail to properly apply or implement the law. There may be a lack of staff resources, or suitable machinery for implementation zeal or efficiency may be lacking on the part of the institutions charged with implementing the law.
- There is old problem of language and failure of communication. Legal language is not always understood by all. The legislator may intend one thing but expresses it so badly that he is understood in another way. Some laws are vague, obscure, uncertain, and archaic, and this sometimes makes enforcement arbitrary, haphazard and difficult.

Chapter I: A Presentation of the Cameroonian Legal Regime

In this chapter we shall be discussing the historical evolution of the Cameroonian legal system (**Section I**) and the fundamental differences between the Common and the Civil law systems (**Section II**).

Section I: History of the Cameroon legal system

Cameroon has a legal system which has been largely determine by it colonial past. In fact the country has inherited from its colonial past a highly complex legal system, consisting of at least three bodies of laws, namely: English received law (known as the common law system), French received law,(known as civil law system), and customary law.

➤ Reception of the French And English Legal System In Cameroon

Cameroon was one country under the Germans. With the defeat of Germany in the first world war, the two occupying powers who had entered Cameroon (great Britain and France), provisionally agreed to the partition of Cameroon, giving France a larger share of Cameroon's territory.

In 1922, the “two Cameroons” were placed under the League of Nations as mandated territories. Both powers (Great Britain and France), administered their respective portion of Cameroon under the League of Nations “mandate and subsequently under the **United Nation Trusteeship agreement**”.

The two regimes of international administration, the Mandate and the Trusteeship System, were like ad hoc bodies charged with the defiant responsibility of protecting and guiding weak and uncivilized people; of seeing that they progressed and gained self-government or independence. Thus, the Mandate and the Trusteeship Agreement was the legal instrument that authorized the translocation of foreign laws into Cameroon.

This gave Britain and France license to introduce their respective laws and legal system in Cameroon. However, the fact must not escape notice that well before the formulation of the Mandate Agreement, the two powers had each extended to their

respective part of Cameroon some of their laws in force in their respective contiguous colonial territories. So when British Cameroon passed from the Mandate territory of the League of Nations to a Trust territory of the United Nations Organization, the foreign jurisdiction at 1890 which hitherto was the enabling statute for the introduction and observance of the English laws of Southern Cameroons remains in force. France, on the other hand, also set up the civil law system in her own part of the territory.

In 1960, the French Cameroon achieved independence and became known as the Republic of Cameroon. On October 1 1961, the formal British Trust territory of the southern reunified with the independence Republic of Cameroon to form the Federal Republic of Cameroon. Consequently, the federal Republic of Cameroon was born made up of two States: West Cameroon (formal British Cameroon) and East Cameroon (formal French Cameroon) each maintaining its own legal system. This merger of the two federated state of the East and West Cameroon was transformed into a United Republic of Cameroon following the institution of June 2, 1972 and the 1972 constitution guaranteed the preservation of the two legal system in it article 38.

Notwithstanding the foregoing political and constitutional evaluation of Cameroon, her Anglo French legal heritages persist. The English common law and the French civil law apply in the respect language zone of the country. In fact courts in English speaking

Cameroon, like in other African countries applying the common law practice and doctrines, have constantly cited English decisions as authorities to their guidance and rarely, if ever, stop to consider how far these English decisions are binding on them. This tendency is no less different in French-speaking Cameroon where the French civil law applies.

In the Anglophone regions of Cameroon, the courts apply English laws by virtue of section 11 of the southern Cameroon high court law 1955. That section guarantees the importation of English laws in Anglophone Cameroon. The content of the English law imported into Anglophone Cameroon include, the Common law, the Doctrine of Equity,

and the statutes of general application in force in England before the 1st day of January 1900. This provision however has a serious draw-back with regard to the extent and scope of English law in force in Cameroon since it limit the application of English law to pre 1900 enactment. It is in consequence of this short coming that the legislator in section 15 of the same law provides that:

“the jurisdiction of the High court probate, divorce and matrimonial cases and proceedings may, subject to the provision of this law and in particular section 27, and the rules of court be exercised by the court in conformity with the probate, divorce and matrimonial cases, the law in former west Cameroon changes with that in England”.

The enabling instrument for the introduction of French and French-derived laws in francophone Cameroon was the Decrees of 16th April 1924 and of 22 May of the same year. Both decrees were made pursuant to the provision of the French Mandate for the French Cameroon. It is against this backdrop that gave birth to ***the Cameroon Bi-jural Legal System***. Bijuralism is defined as *“the coexistence of two legal traditions within a single state.”* Cameroon is said to be bijural because there exists both the common law and civil law systems in Cameroon. The history of Cameroon bijuralism is unique based on its history from 1884 to 1961 as showcased above.

Section II: Differences between Common Law and Civil Law

Comparative law scholars vigorously debate whether the differences between civil and common law are more apparent than real.

From the definitional point of view, Civil law is the system of law that emerged in continental Europe in the Middle Ages and is based on codified law drawn from national legislations. Common law is the system of law that emerged in England beginning in the Middle Ages and is based on case law and precedent rather than codified law.

Common law is generally UNCODIFIED: There is no comprehensive compilation of legal rules and statutes. Civil Law is generally CODIFIED: Countries with civil law

systems have comprehensive and continuously updated legal codes that specify all matters capable of being brought before a court.

Common Law is based on PRECEDENTS: The judicial decisions that have already been made by courts & judges in similar cases. Common law judges traditionally justify their findings of law by reference to precedent and social norms. Civil Law is based on STATUTE LAW: Written law passed by legislatures. Statute laws are laws that are formally established to deal with specific situations, and written down in code books. These codes also specify the applicable legal procedures for each dispute and the appropriate punishment for each offense and case. Civil law judges traditionally justify their interpretation of a code directly by reference to its meaning.

In Common Law system, Judicial cases (Precedents) are regarded as the most important source of law, which gives judges an active role in developing rules. In a civil law system, the judge works within a framework established by a codified set of laws (Statute Law). The judge's role is to establish the facts of the case and to apply the provisions of the applicable code book.

In a common law system, judges have an enormous role in shaping Law under Common Law systems. In Civil law the judge's decision is consequently less crucial in shaping the law than the decisions of legislators.

The common law judges rely relatively more on past court decisions while civil law judges rely relatively more on the words in statutes.

The difference in the pattern of justification affects the training of lawyers. The common law method is taught by reading cases and arguing directly from them, whereas the civil law method is taught by reading the code and arguing from commentaries on it.

Another difference between the two systems concerns the use of juries. Juries are more commonly used in common law systems. In America, either party to a dispute usually has the right to a jury trial, although both parties sometimes waive this right and allow the judge to decide the case. In England, the jury has been abolished in almost all

civil trials since 1966, but it is often used in criminal trials. In France, however, the jury has been abolished for all trials except the most serious crimes, like murder. In general, the abolition of juries is more advanced in continental Europe than in some common law countries. In a common law trial before a jury, the judge is supposed to decide questions of law, whereas the jury is supposed to decide questions of fact.

Chapter II: The Cameroonian Justice System

Unlike other jurisdictions around the world, the Cameroonian justice system possesses its own unique specificities influenced by her rich colonial heritage. As far as the Cameroonian justice system is concerned, the present chapter exposes students to the principles underlying the administration of justice in Cameroon (**Section I**) and Judicial Organization in Cameroon (**Section II**).

Section I: Fundamental Principles underlying the administration of Justice in Cameroon

The force of the Cameroon legal system resides in the principles and concepts underlying the administration of justice, the institutions where justice is administered and the way the legal rule, regulations and judgments are enforced. The following principles demonstrate how justice is administered in Cameroon.

1. Public administration of justice

The preamble of the 1996 Cameroon constitution provides that the law shall ensure the right of everyone to a fair hearing before the courts and the Cameroonian judicial organization corroborates that all judgments shall be pronounced in open court. This is an aspect of the broad principle of judicial neutrality and impartiality and independence. Therefore justice must not only be said but must be seen done. Yet there are exceptional circumstances where the court may hear cases in camera either on its own motion or upon the application of the parties on grounds of state security, public order or morality.

2. Reasoned judgments

Reasons must be given for judicial decisions. The law on Judicial Organization of Cameroon provides that all judgments must set out the reason upon which they are based in fact and in law. A judgment given in breach of this principle is invalid. One reason for this principle is to provide a safeguard against judicial arbitrariness. The principle of reasoned judgments also provides a means by which superior courts are enabled to control decisions of inferior courts.

3. Justice render free of charge

Article 6(1) of the law on judicial organization in Cameroon provides that justice shall be administered free of charge subject only to the fiscal provisions concerning stamps duty and registration. Judges are employed and remunerated by the State to perform a public service that of administering justice and are therefore not entitled to demand or receive payment from litigants for services they render.

Providing justice free of charge doesn't necessarily mean that litigants are exempted from paying costs, court fees, as well as stamps duty and registration fees. But such fees and expenses are borne finally by the party who fails in the actions, subject only to the reasoned decision of the court.

4. Unity of civil and criminal courts

In Cameroon, civil and criminal cases are handled by the same courts with only a few exceptions. First, customary courts do not deal with criminal matters. Secondly, the court of impeachment, the state security court and military court do not handle civil matters.

5. Decentralization of the courts system

In Cameroon, we have both judges who dispense justice only at fixed seats in permanent courts and itinerant judges who move from one town to other dispensing justice. The court structure in Cameroon is highly decentralized. With the sole exception

of the Supreme Court whose territorial jurisdiction covers the entire nation, all other courts are located at various territorial levels throughout the country. This has been prompted by the government's desire to bring justice nearer to the people. This desire itself has evidently been motivated by the realization that the courts located as they were in urban areas were physically inaccessible to the vast majority of the people in the suburban areas.

The decentralization of the courts structure is also intended to bring about cheap and quick justice. The nearer the institutions of justice are to an individual, the more he is secure in his person in terms of life, liberty, honor and property. He does not have to travel long distances to seek for legal redress in the law courts. He does not have to pay high transport fares in order to arrive at the seat of a court. It is for these reasons that the law on judicial organization in Cameroon makes provision for the setting up of the Magistrates court for each sub-division, one high court for each division and one court of appeal for each region.

Section II: Judicial Organization in Cameroon (Courts & competences)

The law on Judicial Organization in Cameroon states that Justice shall be administered in the name of the people of Cameroon. The administration of justice in Cameroon is on a tripartite basis.

I: Courts and their competences

A) Courts with Original Jurisdiction

These are courts which have an all-embracing jurisdiction to hear and determine actions of every kind whether criminal or civil for the first time.

1) Customary Courts

Customary courts apply the native law and custom prevailing in the respective areas of their jurisdiction. The jurisdiction of these courts is mentioned in section 16(1) (b) of ordinance No 72/4 of August 26 1972 as amended by section 16 (1) (c) of the 1989

law. By section 9 (1) (b) of the SCHCL 1955, the high court shall exercise original jurisdiction in matters pertaining to customary law. Customary courts include Alkali Courts that exist for the Fulani in the North-West Region, the Tribunaux Contumier and Tribunaux Premier Degree in the Francophone Region.

Customary courts have competence in civil matters, customary marriages, divorce and inheritance. Customary law courts apply the custom of the parties. Note should be taken that customary law courts have no competence in criminal matters. Note should also be taken that where the law has reserved a particular area exclusively to other courts, the customary law courts do not have competence.

2) Courts of First Instance or Magistrate Courts

There is a court of first instance for each sub-division. It is composed of a president, one or more judges, a State Council, one or more deputy State Counsel, a chief registrar and one or more registrars. Courts of First Instance have competence:

-In Criminal Matters: All offences classified as misdemeanors and simple offences. It is competent to grant bail. A *Simple Offence* is an offence punishable with a term of imprisonment of up to 10 days or a fine of not more than 25.000 FCFA. *Misdemeanor* is an offence punishable with loss of liberty from 10 days to 10 years or with a fine of more than 25.000 FCFA.

-In Civil, Commercial and Labor Matters: To hear matters where the amount of damages claimed does not exceed 10.000.000 FCFA. It is competent to entertain actions for the recovery of civil and commercial debts not exceeding 10,000,000 FCFA through the simplified recovery procedure.

3) High Courts

High Courts have competence in:

-In Criminal matters: To try felonies, related offences and to grant bail in felonious offences.

Felony is a serious offence usually punishable with death or a term of imprisonment whose maximum is more than 10 years.

-In Civil, Commercial and Labor matters: To hear cases related to the status of persons, marriage, divorce, filiations, adoption, inheritance; Recovery of debts exceeding 10.000.000 FCFA; and cases where damages claimed exceed 100,000,000FCFA.

-In non-administrative matters to hear applications:

To release a person immediately when the person is detained illegally; For an order prohibiting any person or authority from doing or performing any act which he is not entitled to do by law and For an order commanding any person or authority to perform any act which he is required to do by law.

4) Military Courts

They have competence amongst others to carry out trials for: theft committed by the use of fire arms; offences committed by military men in a military establishment or in the exercise of their duties; offences committed by civilians in a military establishment which causes damage to military equipment or to the physical integrity of a military man; offences relating to the purchase, sale, production or keeping of military apparels. It is important to note that the military Tribunal does not have competence to judge any person who is below 18.

5) Lower courts of administrative litigation

It is competent to hear administrative matters at first instance.

B) APPELLATE COURTS

1) **Courts of Appeal:** Hear appeals against judgments and decisions of customary law courts, the courts of First Instance, the High Courts and the Military Courts. The time limit for appeals in criminal matters is 10 days. Each Region has a court of Appeal.

2) **The Supreme Court:** The seat of the Supreme Court is in Yaoundé. Its function is to ensure that judgments of lower courts are in consonance with the law. It receives appeals from the various Courts of Appeal, the Lower courts of Administrative litigation,

The Lower or Regional Audit Courts. The Supreme Court is made up of the Judicial Bench, the Administrative Bench and the Audit Bench. The Judicial Bench: Appeals from the 10 courts of Appeal go to the Judicial Bench. These appeals are on civil, criminal, labor and customary law cases. Appeals in commercial matters from the courts of Appeal are heard by the Joint Court of Justice and Arbitration in Abidjan and not by the Supreme Court. The administrative Bench hears appeals against decisions in disputes relating to regional and council elections. It is also competent to hear appeals from the lower courts of administrative litigation. The Audit Bench of the Supreme Court controls and rule on the accounts of the State, public and semi-public enterprises. It also gives final judgment on the decisions of Regional Audit Courts.

C) Special Court

➤ The Constitutional Council

Law No 96/06 of 18 January 1996 created the constitutional council in Cameroon. By article 46 of the said law, the constitutional council shall have jurisdiction in matters pertaining to the constitution. It shall rule on the constitutionality of laws and it shall be the organ regulating the functioning of state institutions. The constitutional council according to article 48 shall ensure the regularity of presidential elections, parliamentary elections and referendum operations. It shall proclaim the results thereof. Rulings of the constitutional council are not subject to appeal. They shall be binding on all public, administrative, military and judicial authorities, as well as on all natural persons and corporate bodies.

Paragraph II: Actors in the Cameroon Judicial System

1) Magistrates:

They perform different functions. There are presiding Magistrates and judges, Examining magistrates, State counsel and Procureur General.

a) Presiding magistrates / Judges:

These magistrates act as referees between parties in matters brought before them. They sit in court, hear matters and take decisions on them. In the courts of first instance, these magistrates are called presiding magistrates. In the High Courts and Higher Courts, they are called Judges.

b) Examining Magistrates:

These are magistrates who carry out criminal investigations (preliminary inquiry) in felonious offences, all offences committed by persons below 18 years and in some misdemeanors. Anyone may decide not to lodge a complaint with the judicial police officer but instead lodge a complaint directly with the Examining magistrate. Examining Magistrates are found in the courts of First Instance, High Courts and Military Courts. The preliminary inquiry is not open to the public. Only parties involved in the inquiry are allowed to attend the inquiry. However, the examining magistrates may at their discretion allow any other person to attend the inquiry.

c) State Counsel:

These magistrates are in charge of enforcing laws, regulations and judgments and control criminal investigations and prosecution in their geographical area of competence. In the execution of their functions, the State Counsel amongst other things receive complaints, issue warrants of arrest, search warrants and control Judicial Police cells to make sure that suspects are detained in respect of the Law. They are the Bosses of Judicial police officers in their area of competence as far as criminal investigations are concerned. State counsel is assisted by deputy state counsel. The office of the State Counsel is called the State Counsel's Chambers.

d) Procureur General:

Each of the 10 Regions in Cameroon has a Procureur General. His or her office is called the Procureur General's Chambers. The Procureur General is in charge of the enforcement of laws, regulations and judgments and oversees criminal investigations in

his region. He is the boss of all the State Counsel in his region. The Procureur General is assisted in his job by the Advocate General and the Substitute General. The State Counsel's Chambers and the Procureur General's chambers are both referred to as the Legal Department.

2) Registrars: They receive and direct the public to the various services of the courts and legal department as well as other judicial services. They act as clerks of court during trials and registrars in attendance at preliminary inquiries. They keep registers.

3) Judicial Police officers: They consist of police, gendarmes (Note should be taken here that not all police and gendarmerie staff are judicial police officers. Only those empowered by law to investigate offences are judicial police officers) and staff of certain departments (e.g. the Ministry of Environment and Nature Protection, the Ministry of Forestry and Wild Life etc) who are empowered by the law to carry out investigations in criminal matters.

4) Lawyers: They advise, assist or represent their clients. They ensure their defense. The client can be: an accused in a criminal case, the victim of an offence, a person instituting a civil matter, a person defending a civil matter, or anybody in need of legal advice.

The lawyer exercises a liberal profession. The resort to a lawyer is not obligatory. It all depends on the litigant. The lawyer is paid by his client. However in certain cases the state pays the lawyer on behalf of the litigant. Generally in criminal or civil matters, where a person is too poor to afford a lawyer, he can apply to the **Legal Aid Commission** for a lawyer to be appointed to represent his interest.

Chapter III: Sources of Law and their classifications

Sources of law are the origins of laws that is the binding legal rules that enable any state to govern its territory independently. The term 'source of law' may sometimes refer to the sovereign or the seat of power from which the law derives its validity. Our geographical discussion will be in Cameroon and as such like other democratic nations;

the sources of law will be discussed from a national and international perspectives (**Section I**). Also as an object of this chapter, we shall establish the classification of law (**Section II**), and criminal and civil responsibilities distinguished (**Section III**).

Section I: The sources of law in Cameroon

The sources of law in Cameroon will be discussed from the national and international levels.

A. National sources

The main sources of Cameroonian law are the constitution, legislation, judicial precedents and customary law.

1. The Constitution

The constitution itself is recognized and accepted by the people as the political and legal machinery of the state, as the fundamental norms for which other legal norms derive their authority and validity. Since independence and the reunification of the former British Southern Cameroons and the French Cameroun, the country can be said to have had at least three different constitutions and numerous constitutional amendments. What can be considered to be the first constitution was in reality the constitution under which the French Cameroun became independent on the 1st of January 1960. The second constitution was in reality simply an amendment of the 1960 constitution of the French Cameroun in 1961 when the British Cameroon got its independent through reunited and was styled as the constitution of the Federal Republic of Cameroon.

Progressively in 1972 after a referendum, a new unitary constitution was adopted and the name of the country was changed to the United Republic of Cameroon. In 1996, the constitution was subsequently revised or amended that gave birth to a decentralized unitary state with some of its provisions amended in 2008. What is germane is that at the summit of the hierarchy of legal norms in Cameroon is the constitution of the republic. Its provisions are acknowledged to have a special prestige. Since the constitution is the

highest law in the land all other law must conform to it. Any law that does not is unconstitutional and therefore invalid.

Some of the important functions of the constitution are:

- It serves as a framework for Government
- It Limits the Powers of Government
- It protects individual and collective rights of citizens
- It serves as the Supreme Law of the State
- It provides Government legitimacy and stability

2. Legislation

Legislation otherwise known as enacted law is the principal source of law in Cameroon. Legislation is a law made by formal and express declaration of rules of conduct by legislators or the executive by virtue of the constitution of the republic. The law thus made is binding. Its authority cannot be questioned on moral grounds. This law is binding because the legislature and the executive are empowered by the constitution to make laws. It should be noted that Legislation is a way to create new rules and to modify or derogate existing ones. The products of legislation have different names, such as **statute, act, decree, bylaw**, and many more. Sometimes, a large collection of related laws is called a “**Code**”. Legislation is both a source of origin and a validity source of law. Part of the law has been created or codified in the form of legislation, and therefore legislation is a source of origin of the law.

Law N° 96/06 of 18 January 1996 to amend the constitution of 2 June 1972 provides two sources from which legislation emanate in Cameroon; from the national assembly (i.e. parliament) known as the legislative domain and from the executive (i.e. the head of state and the government ministers) known as the executive domain.

Article 14(1) of January 18 1996 revised constitution provides that “legislative power shall be exercised by the parliament which shall comprise of 2 (two) houses :(a) the national assembly; (b) the senate”. In Cameroon therefore matters reserved for

legislative domain are specifically stated out in article 14 to 26 of January 18 1996 reserved constitution. Pieces of legislation passed by parliament on any subject listed in the legislative domain are known as “laws” in the formal sense of the word.

Part II chapter I of the January 18, 1996 revised constitution deals with executive power. The president of the republic is the head of the executive power. Article 25 of the above constitution states that “bills may be tabled either by the president of the republic or by the members of parliament, while article 28(1) parliament may empower the president of the republic to legislate by way of ordinance for a limited period and for a given purpose. Such ordinances shall enter into force on the date of their publication. They shall be tabled before the bureau of the national assembly and the senate for purpose of ratification within the time limit lay down by the enabling law. They shall be of a statutory nature as long as they have not been ratified.

3. Case law as a source of law

Judges ordinarily do not make the law, but they administer the law, that is to say decide the cases in accordance with the existence legal rules. This gives rise to the doctrine of binding precedent whereby the judge is not merely referred to earlier decisions for guidance; he is bound to apply the rules of Laws contained in those decisions. In fact the authority of case law as a source of law rest on judicial precedent. In the English-speaking part of Cameroon, as in England, case-law is considered as a source of law. But the French-speaking part of Cameroon, as in France, the formal attitude remains that case-law is not a source of law. Does this means that the court in the English-speaking part of Cameroon follow precedent while those in the French-speaking part do not.

4. Customary law

Probably the oldest source of law is customary law. It is usually assumed that two conditions must be met so that we can speak of customary law. The first condition is that there must be a custom concerning a guideline for behavior. This means that this

guideline must be effective because in the absence of effectiveness, it is hard to speak of a customary guideline for behavior. The second condition is that the custom is accepted as a binding one (Opinion Juris). Customary law is both a source and form of law in Cameroon. Customary law constitutes a very important source of Cameroonians law because in many aspect of personal law, for example marriage, divorce and inheritance, most Cameroonians are governed by custom. The customary Court Ordinance Cap 142 of 1948 applicable in Anglophone Cameroon defines Customary Law in its S. 18(1) (a) as follows:

“the native law and custom prevailing in the area of the jurisdiction of the court so far as it is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with the written law for the time being enforce”.

The Southern Cameroons High Court Law, 1955 directs the High court to observe and enforce the observance of the customary law. Section 27 (1) of the said law enacts: “the High court shall observed and enforce the observance of every native laws and custom which is not repugnant to natural justice equity and good conscience, nor incompatible with any law for time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom”

The phrase “the observance of native law and custom which is not repugnant to natural justice, equity and good conscience” has understandably given room to much debate. This is so because of the difficulty in trying to harmonize customary law with legislative enactments.

B. International sources of law in Cameroon

Next below the constitution are international Treaties, Conventions and Agreements duly ratified by Cameroon. By article 43 of the 18th January, 1996 revised constitution, the president of the republic shall negotiate and ratify treaties and international agreement. Treaties and international agreement falling within the area of

competence of the legislative power as define in article 26 of the constitution shall be submitted to parliament for authorization to ratify. A duly ratified treaty becomes binding and ranks higher than any municipal law. In the event of any conflict between a provision of the treaty and that of any municipal law, the treaty provisions prevail. Furthermore, a municipal law cannot be passed purporting to amend, expressly or by implication, any treaty provision. Any administrative act or measure against a treaty provision will be nullified

It is worthy to note that every sovereign state has the monopoly of legislation over its territory. Therefore the only pieces of legislation that ought normally to apply in Cameroon are those provided by the Cameroonian law-maker and promulgated in Cameroon in accordance with the Cameroonian constitution. That, however, is the general principle. By way of exception international laws apply in Cameroon. A number of factors account for this

The first of these factors is international social intercourse. Improved means of transport has made the world look smaller; facilitate trade and cultural exchanges thereby bringing the peoples of the world closer. As a result of this it does happen that cases with a foreign complexion do come before a municipal court. The court in resolving these cases applies or takes into account some foreign law. There is a particular branch of law known as conflict of laws or private international law, which deals with problems involving foreign element.

The second factor that may impel, a Cameroonian court to apply some pieces of legislation that is not national is the fact of international relation and comity Cameroon as a sovereign state. But it cannot live in cloistered isolation. For a variety of reasons is that it must maintain relations with other friendly Nations. Frequently, treaties (conventions or agreements) dealing with matters of mutual interests are entered into with foreign states.

Section II: The Classification of Law

There are various ways in which the law may be classified; the most important are **public and private law**. It is important to make a distinction between public and private law.

1. Public law

Public law is concerned with the relationship between the state and its citizens. This comprises several specialist areas such as:

a. Constitutional law

Constitutional law is a body of law which defines the role, powers, and structure of different entities within a state, namely the executive, the legislature and the judiciary, as well as the basic rights of citizens. It governs the relationship between the central government and the State, as well as the local entities. It covers such matters as the position of the presidency, the composition and procedures of Parliament, the functioning of central and local government, citizenship and the civil liberties of individual citizens.

b. Administrative law

Another branch, which probably covers the most extensive part of public law today, deals with the many interactions between government agents and civilians or private organizations. This part is called administrative law. Administrative law has many branches of its own, including social security law, environmental law, and tax law.

2. Private law

Private Law deals with the mutual relations between citizens. Both property law and contract law are major branches of private law, which regulates things such as sales, ownership, and mortgages. A third branch of private law is tort law, which deals with the compensation for damage that occurs when there is no contract. Again, other branches of private law are family law (marriage, adoption, right to a name) and the law of commerce, which regulates, for instance, the transport of goods. A special branch is

private international law, which determines which laws are applicable if a case is connected to the law of more than one jurisdiction.

For instance, it determines which family law governs the divorce of persons with different nationalities. The state's involvement in this area of law is confined to providing a civilized method of resolving the dispute that has arisen. Thus, the legal process is begun by the aggrieved citizen and not by the state. Private law is also called civil law and is often contrasted with criminal law.

3. Criminal and civil law

Legal rules are generally divided into two categories: criminal and civil. It is important to understand the nature of the division because there are fundamental differences in the purpose, procedures and terminology of each branch of law.

i. Criminal law

The criminal law is concerned with forbidding certain forms of wrongful conduct and punishing those who engage in the prohibited acts. In **criminal cases** you have a **prosecutor** who **prosecutes** a **defendant** in the **criminal courts**. The consequences of being found guilty are so serious that the standard of proof is higher than in civil cases: the allegations of criminal conduct must be proved **beyond a reasonable doubt**. If the prosecution is successful, the defendant is found **guilty (convicted)** and may be **punished** by the courts. Punishments available to the court include imprisonment, fines, or community orders such as an unpaid work requirement. If the prosecution is unsuccessful, the defendant is found **not guilty (acquitted)**.

ii. Civil law

The civil law deals with the private rights and obligations which arise between individuals. The purpose of the action is to remedy the wrong that has been suffered. Enforcement of the civil law is the responsibility of the individual who has been

wronged; the state's role is to provide the procedure and the courts necessary to resolve the dispute. In **civil proceedings** a **claimant** sues a **defendant** in the **civil courts**. The claimant will be successful if he can prove his case on the **balance of probabilities**, i.e. the evidence weighs more in favor of the claimant than the defendant. If the claimant wins his action, the defendant is said to be **liable** and the court will order an appropriate remedy, such as damages (financial compensation) or an injunction (an order to do or not do something). If the claimant is not successful, the defendant is found **not liable**. Many of the laws affecting the businessperson are part of the civil law, especially contract, tort and property law.

The distinction between the criminal and civil law does not depend on the nature of the wrongful act, because the same act may give rise to both civil and criminal proceedings. For example consider the consequences of a typical motor accident. Caroline was crossing the road when she was struck down by a car driven by Lionel. An ambulance took Caroline to the Yaounde Central Hospital where it was discovered that she had sustained a broken leg. Meanwhile, the police have arrived at the scene of the accident and they apprehended Lionel. The result is positive and Lionel is charged with a criminal offence based on driving with excess alcohol. He appears before the magistrates' court and was convicted. He was disqualified from driving for 18 months and fined 400 000FCFA. The fine is paid to the court: it does not go to compensate the victim of the criminal act. However, a criminal court now has a limited power to order an offender to pay compensation for any 'personal injury, loss or damage' caused to the victim of his offence.

Caroline must pursue a separate civil action against Lionel to remedy the personal wrong she has suffered. She sues Lionel in the tort of negligence, seeking damages for the injuries she has sustained. The case is heard in the county court where Lionel is found liable. He is ordered to pay 600,000FCFA as damages. Normally, the loser in a civil

action pays the winner's costs. So Lionel is ordered to pay Caroline's costs in bringing the action.

iii. Substantive and Procedural Laws

A second, twofold division of the law, which is perpendicular to the division between public and private law, is the division between substantive and procedural law. Substantive law consists of rules that determine what people should do and that give people rights. Not everyone always complies with all duty-imposing rules, nor are all the rights of persons always respected. Therefore, if law is to function well, it has to provide means through which compliance with duties and respect for rights can be enforced.

These means are given by procedural law. This field of law provides the rules for court procedures and for the organization of the judiciary. It also includes rules that specify how judicial orders can be enforced. There are branches of procedural law for each of the major branches of substantive law. This means that there exist rules for civil procedure, which deal with the enforcement of private law. There are also rules for criminal procedure, which specify how criminal suspects can be traced, prosecuted, and after conviction punished. And there are rules of administrative procedure indicating, for example, how environmental law or tax law can be enforced.

4. Concept of corporate or legal personality

Natural and Legal Persons as well as legal rules impose duties upon, and assign competences and rights to legal subjects. These legal subjects are typically human beings, but in theory the law can give the status of a legal subject to anyone or anything it wants. For example, a foundation, a company with limited liability, a state, and a municipality, all of these can and in many countries do count as legal subjects. Human beings are called "natural persons", while organizations that have received the status of legal subjects are called "legal persons".

The consequences of being a legal subject vary from one field of law to another.

In criminal law, being a legal subject means that one is addressed by rules of criminal law and can become punishable in case of violation. Natural persons are legal subjects in this sense, but it is not evident that legal persons are also addressed by criminal law rules.

In public law, natural persons are protected by the human rights that are assigned to them. Human beings have a right to privacy, freedom of expression, freedom of religion, and a right to physical integrity. Not all of these rights make equally sense in the case of legal persons. It is thinkable that a legal person exercises its freedom of expression, but it is not immediately clear what the protection of physical integrity would mean in the case of legal persons.

In private law, important consequences of being a legal subject are that one can have rights, such as property or a claim to be paid money, and that one can perform juridical acts. These consequences pertain to both natural and legal persons. For example, both a private person and a foundation can own property, and both a natural person and a company with limited liability can contract.

5. Some key aspects of Cameroonian Penal Law

One of the fundamental characteristics of modern criminal law is premised on the doctrine of legality of offences expressed in Latin as “*nulum crimen nula sine lege*” This presupposes that for any act to constitute an offence, it must be expressly prescribed by a written law, which is in force before the alleged wrongful act is committed. The 1996 Constitution of Cameroon and the Penal Code all espouse in very strong terms the principle of legality of offences. This is equally refers to as the principle of retrospection as recognized by the Cameroonian Penal Code in its Section 3 which says that no criminal law shall apply to acts or omissions committed with its coming into force.

a. Penal Classification of offences in Cameroon

In Cameroon, offences are classified into three categories namely felonies, misdemeanors and simple offences (Section 21 of PC).

A ***felony*** is an offence punishable with death or with loss of liberty for a maximum of more than 10 (ten) years.

A ***misdemeanor*** is an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than 10 (ten) days but not for more than 10 (ten) years, and the fine more than CFAF 25 000 (twenty-five thousand).

A ***simple offence*** is an offence punishable with imprisonment for up to 10 (ten) days or with fine up to CFAF 25 000 (twenty-five thousand).

b. The different kinds of penalties recognized by the Cameroonian penal law

These penalties range from death, imprisonment and fines on physical persons and dissolution as well as closure of establishment on corporate bodies.

➤ Death Sentence

According to Section 22 of the Cameroonian PC, every sentence of death shall be submitted to the President of the Republic for his decision on commutation. No death sentence may be executed until the President shall have signified his decision not to commute. No woman with a child may be executed until after her delivery. No execution may take place on Sunday or on a public holiday.

It should be noted that execution of a death sentence shall be by shooting or hanging as may be ordered by the judgment and shall be public unless otherwise ordered in the decision not to commute. The bodies of persons executed shall be returned to their families at their request, but on condition of a quiet funeral. Nothing may be published by the press beyond the official record of the execution and any official communiqué that may be released.

➤ Imprisonment

It refers to the loss of liberty during which the offender shall be obliged to work, subject to any contrary order of the court for reasons to be recorded in the judgment.

➤ **Fine**

It refers to a financial penalty by virtue of which a convict, natural person or corporate body, pays an amount of money, specified by Law, into the Public Treasury. The maximum amount of fine applicable to corporate bodies shall be five times that provided for natural persons. Where a corporate body is guilty of an offence punishable with imprisonment only, the fine to be paid shall be from CFAF 1 000 000 (one million) to CFAF 500 000 000 (five hundred million).

➤ **Dissolution**

It refers to that capital punishment which may be passed against corporate bodies. A judgment on dissolution may be passed against a corporate body that has acted in violation of its object clause.

➤ **Closure of an establishment**

The penalty of closure of an establishment shall mean the temporary or final closure of an establishment considered to be a corporate body.

c. Offences against persons

i. Intentional killings and harms

➤ **Murder**

According to Section 275 of the PC, whoever causes another's death shall be punished with imprisonment for life. It is carried out either by premeditation or by poisoning or with a view to trafficking the organs of the victim, as well as in the preparation, facilitation or commission of a felony or misdemeanor or to enable the

escape or to procure the impunity of the offender or of an accessory to such felony or misdemeanor, shall be punished with death. Murder is deemed to be premeditated notwithstanding that the identity of the victim is not decided or that the enterprise depends on the fulfillment of a condition.

➤ **Grievous Harm**

Whoever permanently deprives another of the use of the whole or of any part of any member, organ or sense will be punished with imprisonment for from 10 (ten) to 20 (twenty) years.

➤ **Genital Mutilation**

Whoever mutilates the genital organ of a person, by any means whatsoever, shall be punished with the imprisonment for life where the offender habitually carries out such practice or does so for commercial purposes and it leads to the death of the victim.

➤ **Torture**

Whoever involuntarily causes death by torture shall be punished with life imprisonment. This penalty can be in the form of imprisonment from 10 (ten) to 20 (twenty) years where torture causes a permanent deprivation of the use of all or part of a limb, organ or sense. Generally, the word torture refers to any act by which acute pain or suffering, either physical, mental or psychological, is intentionally inflicted to a person by a public servant, a traditional leader or any other person acting in the course of duties either at his own instigation or with his express or implied consent, in order to obtain information or confessions from that person or from another, to punish her for an act that she or any other person has committed, or is presumed to have committed, to intimidate or overawe her or any other person, or for any other motive based on any discrimination.

ii. **Unintentional Killing And Harm**

➤ **Unintentional murder**

According to **Section 289** whoever by lack of due skill, carelessness, rashness or disregard of regulation causes another's death or such harm, sickness or incapacity shall be punished with imprisonment from 3 (three) months to 5 (five) years or with fine of from CFAF 10 000 (ten thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine.

➤ **Drivers of Vehicles**

The punishment provided by section 289 will be double for an offence committed by the driver of any vehicle who is drunk or drugged when driving; or who has not the license required for driving the vehicle in question; or who with intent to avoid his liability departs before being identified.

Other crimes and punishments relates to hostilities against the Fatherland as provided in Section 102 of the PC. It says that any citizen: taking part in hostilities against the Republic; or assisting or offering to assist the said hostilities; shall be guilty of treason and punished with death.

Section III: Criminal Responsibility and Civil responsibilities

A. Criminal responsibilities

According to Section 74 of the PC, no penalty may be imposed except upon a person criminally responsible. Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it. Corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives. The criminal

responsibility of natural persons who are authors of reprehensible acts may be compounded with that of corporate bodies.

In criminal matters, the State acts as the prosecutor. Prosecutors are legal officers who represent the state in criminal proceedings. Within the context of Cameroon, there are two categories: Prosecutors with general jurisdiction and special prosecutors. General prosecutors (Legal Department) have traditional supervening competence in all criminal matters irrespective of their nature, to conduct judicial inquiries, investigations, institute and prosecute all offences. The practice is that the police or gendarmes who work under the legal department carry out investigations and forward file to the state counsel for possible court actions.

Above the legal facts validating criminal responsibilities, there are circumstances of criminal irresponsibility as well as diminished responsibility of an act or omission. These circumstances are as follows:

- **Accident and Physical Compulsion:** No criminal responsibility will arise from accident or irresistible physical compulsion.
- **Insanity:** According to Section 79 of the PC, no criminal responsibility shall arise from the act or omission of a person suffering from mental illness which deprives him of all will-power or of the knowledge that what he does is blameworthy. Mental illness whose consequences are only partial shall diminish responsibility.
- **Infancy:** According to Section 80 of the PC, no criminal responsibility shall arise from the act or omission of a person aged less than 10 (ten) years. An offence committed by a person aged not less than 10 (ten) years and not less than 14 (fourteen) years may attract only such special measures as may by law be provided. For an offence committed by a person aged over 14 (fourteen) and under 18 (eighteen) years, responsibility shall be diminished.
- **Threats:** No criminal responsibility shall arise from submission to threats, not otherwise avoidable, of imminent death or of grievous harm as defined by the Pena

Code. Provided that where the act committed is defined as an offence punishable with death or has resulted in death or in grievous harm, the responsibility of the person committing the act shall be merely diminished.

- **Obedience to Lawful Authority:** No criminal responsibility shall arise from an act performed on the orders of a competent authority to whom obedience is lawfully due.
- **Lawful Defense:** No criminal responsibility shall arise from an act dictated by the immediate necessity of defense of the person acting or of any other person, or of any right of himself or of any other, against an unlawful infringement provided that the means of defense be proportionate to the seriousness of the infringement threatened. Intentional killing should be proportionate to an attack causing a reasonable apprehension of death or grievous harm as defined by the Penal such as cases of rape or of sodomy.
- **Provocation:** Responsibility can be diminished for an offence immediately provoked by the unlawful act of another against the offender or, in his presence, against his spouse, descendant or ascendant, brother or sister, employer or employee, or a minor or incapable in his charge provided that the reaction be proportionate to the provocation. Intentional killing or wounding shall be proportionate to a provocation by violent blows or injuries.
- **State of Necessity:** No criminal responsibility shall arise from an infringement of a right of property, not justified as lawful defence under Section 84 of the PC, but inflicted in order to protect the person acting or any other person, or his or another's property, from a grave and imminent danger not otherwise avoidable. This is provided where the means of protection be proportionate to the harm.

B. Civil Responsibilities

The civil law deals with the private rights and obligations which arise between individuals. The purpose of the action is to remedy the wrong that has been suffered. Enforcement of the civil law is the responsibility of the individual who has been wronged; the state's role is to provide the procedure and the courts necessary to resolve the dispute. In **civil proceedings** a **claimant** sues a **defendant** in the **civil courts**. The claimant will be successful if he can prove his case on the **balance of probabilities**, i.e. the evidence weighs more in favor of the claimant than the defendant. If the claimant wins his action, the defendant is said to be **liable** and the court will order an appropriate remedy, such as damages (financial compensation) or an injunction (an order to do or not do something). If the claimant is not successful, the defendant is found **not liable**. Many of the laws affecting the businessperson are part of the civil law, especially contract, tort and property law.

THE END!