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Starting a claim in the civil court

When you are in dispute with another person sometimes it is necessary to start a claim in the civil court. We sometimes call this process 'filing a claim' or 'issuing a claim'. Lawyers also say 'starting proceedings'. We do not use the verb 'to prosecute' in civil law because that verb is only used in criminal law. In England most civil claims are filed in the County Court. There are over 200 County Courts in England and Wales.

Most cities and large towns have a County Court. The person who starts the claim is called the claimant in the UK. This person was called the plaintiff until 1999, when there were new court rules in England to make everything easier for people to understand. However, in the USA the claimant is still called the plaintiff. In both England and the USA the other party is called the defendant.
A claim form is the document that a claimant uses to start legal action against the defendant. Why might a claimant start a claim? There are a lot of reasons, for example:

- someone refuses to pay you money that they owe to you
- someone does a job for you, but they do it badly. We call this bad workmanship
- something that you paid for is not supplied to you
- something that you bought is not working properly.

The claimant has to pay a sum of money, called a court fee, for the court to issue proceedings. In the claim form, the claimant must state the amount of his or her claim and request the defendant to pay all of the legal costs of the case.

Sometimes people talk about 'the small claims court'. They really mean the special procedure that exists at the County Court for small claims. A small claim is a claim for less than £5000. This amount will probably increase in the future.

The law of tort

The law of tort says that everyone has a civil duty to be careful and not to hurt or harm another person. Lawyers call this civil duty 'the duty of care'. Sometimes people breach this duty of care. To breach means to break. Very often they breach the duty of care by accident but sometimes they do it deliberately. If someone hurts or harms another person because of a breach, we call this harmful action a tort. This means that some things that might be criminal in your legal system are a tort in England and the USA.

Look at the list of harmful actions below. In England and the USA; they are usually torts.

- Leaving the floor of a shop in a dangerous condition so that a customer falls and hurts her leg.
- Saying something that is bad about someone, which isn't true.
- Writing a negative story in a newspaper about someone, which isn't true.
- Playing loud music late every night, which disturbs your neighbors.

This area of law is easier to understand by thinking of a tort as being a type of civil wrong. Each of the torts listed above has a special name. The tort that happens most often is called negligence.

Negligence is when someone is not careful enough and this person's carelessness hurts another person as a result. The person who is hurt is called the injured person.

When someone hurts you as a result of his or her actions, you need to consult a lawyer who specializes in the right area of tort. The lawyer will try to get you money from the careless person. This money is called 'compensation' or, more correctly, 'damages'. Sometimes the lawyers can't agree on the amount of damages. When this happens, the injured person may decide to sue the person who has hurt them. Suing someone is a more informal way of saying starting proceedings against someone in a civil court. The claim form will state the claimant's allegations against the defendant. An allegation is like an accusation. The claimant is stating that something happened, but the defendant has the opportunity to say that this is not true. The reasons for going to court are called 'the grounds'. The grounds for an action in tort are that the defendant committed a tort.

Sometimes a lawyer who specializes in the tort of negligence makes an agreement with a client. The agreement is that if the client does not win the case then he or she does not have to pay for the lawyer's services. This is called a 'no win no fee' arrangement. It is allowed in the UK and the USA.

Definition of a Crime

The most basic definition of a crime is "an act committed in violation of a law prohibiting it, or omitted in violation of a law ordering it". It is important to understand that criminal act, omission to act, and criminal intent are elements or parts of every crime. Illegality is also an element of every crime. Generally, the *government* must enact a *criminal law* specifying a crime and its elements before it can punish an individual for criminal behavior. Criminal laws are the primary focus of this document. As you slowly start to build your knowledge and understanding of criminal law, you will notice some unique characteristics of the United States' legal system.

Laws differ significantly from state to state. Throughout the United States, each state and the federal government criminalize different behaviors. Although this plethora of laws makes American legal studies more complicated for teachers and students, the size, cultural makeup, and geographic variety of our country demand this type of legal system.

Laws in a democratic society, unlike laws of nature, are created by people and are founded in religious, cultural, and historical value systems. People from varying backgrounds live in different regions of this country. Thus you will see that different people enact distinct laws that best suit their needs. This document is intended for use in all states. However, the bulk of any criminal law overview is an examination of different crimes and their elements.

To be accurate and representative, this document focuses on general principles that many states follow and provides frequent references to specific state laws for illustrative purposes. Always check the most current version of your state's law because it may vary from the law presented in this document.

Laws are not static. As society changes, so do the laws that govern behavior. Evolving value systems naturally lead to new laws and regulations supporting modern beliefs. Although a certain stability is essential to the enforcement of rules, occasionally the rules must change.

Criminal law

Law can be classified in a variety of ways. One of the most general classifications divides law into civil and criminal. A basic definition of civil law is "the body of law having to do with the private rights of individuals". As this definition indicates, civil law is between individuals, not the government. Criminal law involves regulations enacted and enforced by government action, while civil law provides a remedy for individuals who need to enforce private rights against other individuals. Some examples of civil law are family law, wills and trusts, and contract law. If individuals need to resolve a civil dispute, this is called civil litigation, or a civil lawsuit. When the type of civil litigation involves an injury, the injury action is called a tort.

Characteristics of Civil Litigation

It is important to distinguish between civil litigation and criminal prosecution. Civil and criminal cases share the same courts, but they have very different goals, purposes, and results. Sometimes, one set of facts gives way to a civil lawsuit and a criminal prosecution. This does not violate double jeopardy and is actually quite common.

Parties in Civil Litigation

In civil litigation, an injured party sues to receive a court-ordered remedy, such as money, property, or some sort of performance. Anyone who is injured—an individual, corporation, or other business entity—can sue civilly. In a civil litigation matter, the injured party that is suing is called the plaintiff. A plaintiff must hire and pay for an attorney or represent himself or herself. Hiring an attorney is one of the many costs of litigation and should be carefully contemplated before jumping into a lawsuit. The alleged wrongdoer and the person or entity being sued are called the defendant. While the term plaintiff is always associated with civil litigation, the wrongdoer is called a defendant in both civil litigation and a criminal prosecution, so this can be confusing. The defendant can be any person or thing that has caused harm, including an individual, corporation, or other business entity. A defendant in a civil litigation matter must hire and pay for an attorney even if that defendant did nothing wrong. The right to a free attorney does not apply in civil litigation, so a defendant who cannot afford an attorney must represent himself or herself.

Goal of Civil Litigation

The goal of civil litigation is to compensate the plaintiff for any injuries and to put the plaintiff back in the position that person held before the injury occurred. This goal produces interesting results. It occasionally creates liability or an obligation to pay when there is no fault on behalf of the defendant. The goal is to make the plaintiff whole, not to punish, so fault is not really an issue.

If the defendant has the resources to pay, sometimes the law requires the defendant to pay so that society does not bear the cost of the plaintiff's injury.

A defendant may be liable without fault in two situations. First, the law that the defendant violated may not require fault. Usually, this is referred to as strict liability. Strict liability torts do not require fault because they do not include an intent component.

Another situation where the defendant may be liable without fault is if the defendant did not actually commit any act but is associated with the acting defendant through a special relationship. The policy of holding a separate entity or individual liable for the defendant's action is called vicarious liability. An example of vicarious liability is employer-employee liability, also referred to as respondent superior. If an employee injures a plaintiff while on the job, the employer may be liable for the plaintiff's injuries, whether or not the employer is at fault. Clearly, between the employer and the employee, the employer generally has the better ability to pay.

Harm Requirement

The goal of civil litigation is to compensate the plaintiff for injuries, so the plaintiff must be a bona fide victim that can prove harm. If there is no evidence of harm, the plaintiff has no basis for the civil litigation matter. An example would be when a defendant rear-ends a plaintiff in an automobile accident without causing damage to the vehicle (property damage) or physical injury. Even if the defendant is at fault for the automobile accident, the plaintiff cannot sue because the plaintiff does not need compensation for any injuries or losses.

Damages

Often the plaintiff sues the defendant for money rather than a different, performance-oriented remedy. In a civil litigation matter, any money the court awards to the plaintiff is called damages. Several kinds of damages may be appropriate. The plaintiff can sue for compensatory damages, which compensate for injuries, costs, which repay the lawsuit expenses, and in some cases, punitive damages. Punitive damages, also referred to as exemplary damages, are *not* designed to compensate the plaintiff but instead focus on *punishing* the defendant for causing the injury.

GENERAL PRINCIPLES RELEVANT TO INTERNATIONAL LAW

Upon becoming parties to a human rights treaty, states must comply with the obligations enshrined therein. Moreover, when applying human rights treaties, it is important to take into account the existence of general principles which are embedded in international human rights law and which guide their application.

It is relevant to attempt to define a general principle by distinguishing it from a human right. In 1986 the UN Commission on Human Rights put forth a definition (Resolution 41/120, December 1986), stating that a human right must:

a) Be consistent with the existing body of international human rights law;
b) Be of fundamental character and derive from the inherent dignity and worth of the human person;
c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
d) d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and
e) Attract broad international support.

General principles are not human rights but there is a degree of overlap as some general principles, such as the principle of non-discrimination and non bis in idem have gradually evolved into substantive human rights by being sufficiently precise and fulfilling the conditions described above.

There is no consensus on general principles, but it is proposed that, to qualify as such, a principle must be:

a) Universally or in a specific jurisdiction, generally accepted;
b) Distinct from human rights to the effect that they are insufficiently precise to give rise to legally identifiable and practicable rights and obligations;
c) Considered either to limit the margin of appreciation of a state or to guide it when examining or evaluating the human right(s) of an individual; and
d) Relevant for the individual enjoyment of human rights.

General principles form, as such, a substratum of law, which helps in interpreting human rights law and international law in general. On the one hand, the principles provide guidelines for judges in deciding individual cases; on the other, they limit the discretionary power of judges and the executive power in deciding individual cases. As such, general principles have an important place in the application of human rights.

A. The rule of law

The rule of law is a cornerstone of the concept of human rights and democracy. There is, however, no international consensus on its meaning. Different traditions in the Anglo-Saxon world (rule of law) and in Continental Europe attach slightly different interpretations to the term. In official

documents the concept is not always explicitly defined. A strong consensus does, however, exist on the rule of law as a fundamental principle.

The rule of law implies that rights must be protected by law, independently of the will of the ruler. Individual rights and freedoms are to be protected against any manifestation of arbitrary power by public authorities. The principle of the 'rule of law' is contained in the Preamble to the Charter of the United Nations, which states its objective:

[T]o save succeeding generations from the scourge of war, and to reaffirm faith in fundamental human rights [?] in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from international law can be maintained.

The International Commission of Jurists has proposed the following definition: 'The rule of law is more than the formal use of legal instruments, it is also the Rule of Justice and of Protection for all members of society against excessive governmental power.' In sum, the rule of law means that law shall condition a government's exercise of power and that subjects or citizens are not to be exposed to the arbitrary will of their leaders.

1. HISTORICAL DEVELOPMENT

As the rule of law is an old concept, we must go back to its origins in Medieval England to understand its development. After defeating the last Anglo-Saxon King Harold II (1066), William the Conqueror established a central administration. Two factors were characteristic of the political institutions in England at the time: the undisputed supremacy of the central government throughout the country, and the rule or supremacy of the law. The supremacy of the central government was embodied in the power of the King. He was the source of all legislation, while the administration of justice and the jurisdiction were his privileges. Yet, this did not mean that the King stood above the law; according to a widely held belief in England - and other countries - in the Middle Ages, the world was governed by rules deriving either from what was considered divine right or from what was popularly considered to be right. Thus, the King was subject to the law, because it was the law that had first made him King. This is what was originally meant by the rule of law.

Partly because of the feeling among the English people that some sort of 'higher' law existed and the early development of parliament, and partly because of the efforts of the nobility to secure its ancient rights against the King, attempts to establish absolute authority failed. The common law courts and parliament, which became increasingly powerful, not only preserved the existing order of justice but also succeeded in giving it a meaning. This reflected the changes taking place in society and the people's value systems. This development marked the beginning of the rule of law, which could be reconciled with the doctrine of parliamentary supremacy (originated in the seventeenth century dispute with the Crown).

In a substantive sense, the principle implied that the standards and acts of the government must be directed towards the realization of justice. This principle required not only legislation based on the best possible balance of interests, but also the recognition of freedoms and the existence of an independent judiciary fit to check governmental powers.

2. DYNAMIC CONCEPT

The meaning of the rule of law, since its rise in the early Middle Ages, has gone through a process of change, which runs roughly parallel to evolving views on the role and objectives of a national government. It is a dynamic concept not only in this respect. The rule of law does not stand for an abstract, unchanging set of unambiguous rules but rather for a range of principles which have to be applied and developed on a case-by- case basis. The rule of law should thus be seen as a whole set of legal standards by which governments and subjects are bound. The exact content of these standards is determined by several factors, including public opinion, political consciousness and the prevailing sense of justice.

The fact that the rule of law is constantly changing does not mean that guidelines cannot be distilled from it. On the contrary, it is, to some extent, possible to identify the rules and principles that follow from the rule of law at a certain point in time. Basically, some principles have been part of the rule of law from its origin.

Generally speaking, the view on the rule of law has gradually shifted from a source of rights for the individual to a means of protection against excessive governmental power. Other rules and principles derived from the rule of law are:

- No arbitrary power. This principle includes the separation of powers. It does not only apply in relations between the legislature, the executive and the judiciary. As the state regulates national life in many ways, discretionary authority is inevitable. Yet, this does not mean pure arbitrary power, i.e., power exercised by agents responsible to no one and subject to no control. The way power and authority are delegated to lower state institutions has to be controlled and the way in which those institutions use their power has to be accounted for. Clearly, a 'carte blanche' delegation goes against the rule of law.
- Independence of the judiciary. The independence of the judiciary is closely linked to the principle above. Independence of the judiciary implies the control of legislation and administration by an independent judiciary, and the independence of the legal profession. Fundamental rights and freedoms can best be guaranteed in a society where the judiciary and the legal profession enjoy freedom from interference and pressure, and where every person is entitled to a fair and public hearing by a competent, independent and impartial tribunal.

The rule of law has come to be regarded as the mark of a truly free society. Although its precise meaning differs from country to country, and from one epoch to another, it is always identified with the liberty of the individual. The rule of law aims to maintain a delicate balance between the opposite notions of individual liberty and public order. Every state has to face the challenge of reconciling human rights with the requirements of public interest. This can only be accomplished through independent courts, charged with guarding the balance of power between the citizen and the state.

The most powerful entity in any community, and hence the greatest potential violator of human rights, is the state itself through its public authorities, its officials and agents. Any democratic society needs laws to protect the rights and freedoms of individuals, as laid down in constitutions and treaties or institutionalized as common law. There should be laws enabling individuals to obtain a remedy for any violation, and there should be a legal system that ensures that those remedies will be enforced, especially against the state itself.

In recent years, new standards have been developed to strengthen the role of the rule of law, in addition to those already incorporated in international conventions (e.g., Article 14 ICCPR and Article 6(1) ECHR). The International Commission of Jurists has played a significant role in the promotion of these standards. Under the framework of the UN, important standards include the UN Basic Principles on the Independence of the Judiciary; the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary; and the UN Basic Principles on the Role of Lawyers.

Under the framework of the OSCE, an important document on the rule of law is the document of the Copenhagen Meeting of the Conference of the Human Dimension of the CSCE (1990). This document sets out that states are determined to support and advance those principles that form the rule of law and that the Rule of Law does not mean 'merely a formal legality [?] but justice based on the recognition of the acceptance of the supreme value of the human personality' and 'reaffirm[s] that democracy is an inherent element of the Rule of Law.'

B. The principle of equality and non-discrimination in the enjoyment of human rights

The principle of non-discrimination is of the utmost importance in international law. Various formulations of prohibition of discrimination are contained in, for example, the UN Charter (Articles 1(3), 13(1)(b), 55(c) and 76), the Universal Declaration of Human Rights (Articles 2 and 7), the ICCPR (Articles 2(1) and 26) and the CRC (Article 2). Some instruments are expressly aimed at addressing specific prohibited grounds for discrimination, such as the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Other instruments aim at addressing the prohibition of discrimination in the exercise of one or several rights, such as ILO 111, which refers to discrimination in the exercise of the right to work (employment and occupation), and the UNESCO Convention against Discrimination in Education.

A definition of discrimination is included in Article 1(1) CERD, Article 1 CEDAW, Article 1(1) ILO 111, Article 1 CRPD and Article 1(1) Convention against Discrimination in Education. From these different definitions it is possible to conclude that 'discrimination' refers to any distinction, exclusion or preference, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, disability, color, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the equal enjoyment of any human rights. Other grounds of prohibited discrimination, which are recognized to an increasing degree, are age, sexual orientation and gender identity. In general, human rights instruments require states to respect human rights and ensure that all persons within

their territory, and subject to their jurisdiction, enjoy the guaranteed rights without distinction of any kind. It should be noted that in exceptional circumstances the state may derogate from some human rights provisions; such measures may, however, never be discriminatory.

It is well established in international human rights law that not all differences in treatment constitute discrimination. This is summed up by the axiom, 'persons who are equal should be treated equally and those who are different should be treated differently' ('in proportion to the inequality'). As indicated by the Human Rights Committee, 'the enjoyment of rights and freedoms on an equal footing [?] does not mean identical treatment in every instance.' Hence, there may be situations in which different treatment is justified. Although not all differences in treatment are discriminatory, international law has established criteria for determining when a distinction amounts to discrimination. In a nutshell, a distinction is compatible with the principle of equality when it has an objective and reasonable justification, pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought. These requirements have been stressed by some of the major human rights supervisory bodies. For example, in the words of the Human Rights Committee:

Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant. (General Comment 18).

As the European Court of Human Rights has stated:

According to the Court's established case-law, a distinction is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realized (Marckx v. Belgium).

In the same vein, the Inter-American Court of Human Rights has held that:

Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.

Thus, differences in treatment (distinction, exclusion, restriction or preference) that comply with the criteria mentioned above are not discriminatory and do not infringe the principle of equality and non-discrimination. Furthermore, certain preferential treatment, such as the special treatment aimed at protecting pregnant women or disabled persons, is not considered discrimination as the purpose of the preferential treatment is to remedy inherent inequalities. Similarly, affirmative action, defined as measures necessary 'to diminish or eliminate conditions which cause or help to perpetuate discrimination' aimed to benefit historically disadvantaged groups within society, must not be considered 'discrimination'

In the Name of God, the Compassionate the Merciful.

DEFINITION AND SCOPE OF CONSTITUTIONAL LAW

WHAT IS A CONSTITUTION

Applied to the system of law and government by which the affairs of a modern state are administered, the word constitution has two meanings. The narrower meaning of the word will be considered first. In this Sense, a constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of government within the state, and declares the principles by which those organs must operate. In those countries in which the constitution has overriding legal force, there is often a constitutional court which applies and interprets the text of the constitution in disputed cases. Such a court is the Supreme Court in the USA or the federal constitutional court in the federal Republic of Germany. In these countries legislative or administrative acts may be held by the constitutional court to be without legal force where they conflict with the constitution.

In this Sense of the word, the United Kingdom for instance, has no constitution. There is no single document from which is derived the authority of the main organs of government, such as the crown, the cabinet, parliament and the courts of law. No single document lays down the relationship of the primary organs of government one with another or with the people. But the word constitution has a wider meaning. As Bolingbroke stated in 1733;

«By constitution, we mean whenever we speak with propriety and exactness that assemblage of laws, institutions and customs, derived from certain fixed principles of reason… that compose the general system, according to which the community hath agreed to be governed».

Or, in more modern words, constitution in its wider sense refers to the whole system of Government of a country, the collection of rules which establish and regulate or govern the government. In this sense, the United Kingdom has a constitution since it has a complex and comprehensive system of government. This system is founded partly on Acts of Parliament and judicial decisions, partly upon political practice,

and partly upon detailed procedures established by the various organs of government for carrying out their own tasks, for example the law and custom of Parliament.

The wider sense of the word constitution includes a constitution in the narrower sense. In countries like Canada the USA and states of Western Europe, the written constitution occupies the primary place amongst the «assemblage of laws, institutions and customs» which make up the constitution in the wider sense. However, undue emphasis can be placed on the possession of a written constitution. No written document alone can ensure the smooth working of a system of government.

A written document has no greater force than that which persons in authority are willing to attribute to it. Around a written constitution will evolve a wide variety of customary rules and practices which attune the operation of the constitution to changing conditions. These customary rules and practices will usually be more easily changed than the constitution itself and their constant evolution will reduce the need for formal amendment of the written constitution.

Nor can a written constitution contain all the detailed rules upon which government depends. Thus the rules for electing the legislature are usually found not in the written constitution but in ordinary statutes enacted by the legislature within the limits laid down by the constitution. Such statutes can when necessary be amended by the ordinary process of legislation whereas amendments to the constitution may require a more elaborate process, such as a special majority in the legislature or approval of a referendum.

The making of written constitutions

It was in the late 18th century that the word constitution first came to be identified with a single document, mainly as a result of the American and French Revolutions. The political significance of the new concept of constitutions was stressed by the radical tom Paine;

"A constitution is a thing antecedent to a government, and a government is only the creature of a constitution… A constitution is not the act of a government, but of a people constituting a government; and government without a constitution, is power without a right."

In the modern world, the making of a constitution normally follows some fundamental political event – the conferment of independence on a colony; a

successful Revolution; the creation of a new state by the union of states which were formerly independent of each other; a major reconstruction of a country's institutions following a world war. A documentary constitution normally reflects the beliefs and political aspirations of those who have framed it.

The principle of legality

The principle of legitimacy or legality is the principle of supremacy of law. It means that all acts, procedures, dispositions and final decisions of the public authorities at any level cannot be valid and legally binding as to the people they affect, save to the extent they consistent with the law.

If such decisions are issued contrary to applicable law, they are invalid or unlawful. The principle of legitimacy or supremacy of law is a general principle, which is so deeply rooted in modern man's conscience that no civilized society can function effectively without it.

This principle governs the interactions of all the authorities of the state and the individual.

THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN

CHAPTER 3
THE RIGHTS OF THE PEOPLE

Principle 19

The people of Iran, of whatever ethnic or tribal origin, enjoy equal rights; and colour, race, language, and the like shall not be grounds for privileges.

Principle 20

Every individual of the nation, whether female or male, shall have equal protection under the law, and shall be entitled, with due observance of the Islamic principles, to all human, political, economic, social and cultural rights.

Principle 21

The government is obliged, with due observance of the Islamic principles, to guarantee women's rights in every respect, and to provide for the following:

1. Creation of favourable grounds for the fostering of women's personality and the revival of their material and intellectual rights.
2. Support of mothers, particularly during the period of pregnancy and child care, and protection of children who are without guardians.
3. Setting up a competent court for the preservation and continuation of the family.
4. Establishment of a special insurance scheme for widows, elderly, and people without guardians.
5. Conferring guardianship of children on suitable mothers for the benefit of the children in cases where there are no legal guardians.

Principle 22

Dignity, life, property, rights, residence and occupation of people are inviolable unless the law prescribes otherwise.

Principle 23

Inquisition of beliefs is forbidden and no one may be persecuted for the mere possession of certain belief.

Principle 24

Publications and the press are free to express their ideas unless they are injurious to the bases of Islam or public rights. Details will be provided by legislation.

Principle 25

Inspection and interception of the mail, recording and revealing the contents of telephone conversations or telegraphic or telex messages, and censorship and failure to transmit or deliver messages, and eavesdropping and spying of any kind is prohibited except as provided by the law.

Principle 26

Formation of political parties, associations, syndicates, and the Islamic and recognized religious minorities is free, provided that they are not inimical to the principles of independence, liberty, national unity, the Islamic precepts, and the foundation of the Islamic Republic. No one may be prevented from joining thereto or forced to join one of them.

Principle 27

Unarmed gatherings and demonstrations are free unless they are injurious to the Islamic principles.

Principle 28

Every person has the right to pursue the occupation of his or her choice, provided that it does not infringe on Islam, the public interest or the rights of others. With due regard to the needs of society for various occupations, the government is duly bound to provide equal possibilities for all individuals to have equal opportunities, as well as equal possibilities for all to choose their own profession.

Principle 29

It is a universal right of all to enjoy social security for retirement unemployment, old – age, disability, lack or guardian, wayfaring, and accident, and to receive hygienic and treatment services and medical care under an insurance or similar scheme. The government, in accordance with the laws and by drawing on national revenues and the contribution of the public at large, is required to provide such services and financial protections to each and every citizen of the state.

Principle 30

The government is obliged to provide free educational facilities for the whole nation until the end of the middle school and free high education to the extent that the country meets its own needs.

Principle 31

It is the right of every Iranian individual and family to have suitable accommodations. The government is obliged to provide for the implementation of this principle, giving priority to those who in are more urgent need, particularly the rural inhabitants and workers.

Principle 32

No one may be arrested except as described by the law and in the manner defined therein. When detained, the accused must be informed immediately in writing of the charges against him or her. Within a maximum of 24 hours; his or her preliminary file must be placed before competent judicial authorities and trial proceedings must be initiated as Soon as possible. Violators of this principle will be punished according to the law.

Principle 33

No one may be exiled from his or her place of residence, or prevented from living in the place of his or her choice, or coerced to live in a place, except in such cases as determined by the law.

Principle 34

It is the unquestionable right of every individual to seek redress, and every person can refer to competent courts for redress. All members of the nation are entitled to have access to such courts and no one may be prevented from referring to the courts to which he or she can turn according to the law.

Principle 35

Before all courts, the parties to a case have the right to choose their attorneys and if a party cannot afford to secure an attorney, it must be provided therefor.

Principle36

Imposition of a sentence and the ordering of its enforcement must be done only through a competent court and according to the law.

Principle 37

Innocence is presumed, and no one may be considered guilty unless guilt is proven before a competent court.

Principle38

It is forbidden to inflict physical or psychological torture with the intention of extracting confession or information. It is absolutely forbidden to coerce a person to give testimony, to confess or to take an oath. Testimony, confession or oath so secured are void and without validity. Violations thereof shall be punished by the law.

Principle 39

It is forbidden to violate, in any form, the honour or dignity of an individual who has been arrested, imprisoned or exiled. Violations thereof shall be punished by the law.

Principle 40

No one is entitled to exercise his rights in such a way as to cause damages to others or infringe upon public interests.

Principle 41

The right to Iranian nationality is an absolute right of all Iranian individuals, and the government cannot deprive any Iranian of this nationality unless the individual so requests or else when a person acquires the nationality of another state.

Principle 42

Foreign nationals may acquire Iranian nationality in accordance with the law. They may be deprived thereof only when another state would grant them nationality or the person should so request.

THE CONSTITUTION OF ISLAMIC REPUBLIC OF IRAN

Chapter 11

The Judiciary

Principle156

The judiciary is an independent power that supports individual and social rights of the people and is responsible for the administration of justice. The judiciary is also entrusted with the following duties:

(1) Investigating and deciding grievances, injustice, complaints lawsuits and taking necessary decisions on the probate affairs as determined by law.

(2) Restoration of the rights of the public and promotion of justice and legitimate freedoms.

(3) Supervision to ensure proper enforcement of law.

(4) Detection of crimes; prosecution and punishment of offenders and executing the specified sanctions and provisions of the Islamic penal code.

(5) Taking proper measures to prevent crime and to rehabilitate criminals.

Principle 157

In order to discharge the duties of the judiciary in all judicial, administrative and executive affairs, the Leader shall appoint a sagacious even-handed Mojtahed (theologian) possessed of judicial knowledge and management capabilities as the Head of the Judiciary, the highest judicial rank, for a period of five years.

Principle158

The duties of the Head of the Judiciary are as follows:

(1) The creation of necessary judicial organizations in the Ministry of Justice as required to fulfill the responsibilities envisaged under Principle156.

(2) Preparing appropriate judicial bills for the Islamic Republic.

(3) Recruitment of competent and righteous judges, their appointment, dismissal, promotion, assignment, transfer and any other similar administrative affairs in accordance with law.

Principle 159

The official authority to deal with litigations and complaints rests with the Ministry of Justice. Formation of Courts of Justice and their jurisdiction shall be determined by law.

Principle160

The Minister of Justice shall be responsible for all matters concerning relations of the judiciary with the executive and legislative branches, and shall be appointed as such from among the candidates recommended to the President by the Head of the Judiciary. The Head of the Judiciary may delegate to the Ministry of Justice full power in the matters of finance, administration, and also in that of employment of the staff other than judges. Upon this delegation of authority, the Minister of Justice shall have the same powers and duties as those stipulated by law for the ministers as the highest executive officials.

Principle 161

The Supreme Court shall be formed on the basis of the criteria set forth by the Head of the Judiciary in order to supervise the proper administration of laws by the courts of justice, to maintain judicial consistency and to perform the responsibilities entrusted to it by law.

Principle 162

The President of the Supreme Court and the Prosecutor General must be even-handed Mojtaheds (theologians) well versed in judicial matters, and shall be appointed as such by the Head of the Judiciary in consultation with the judges of the Supreme Court for a period of five years.

Principle163

The requisite qualifications of judges shall be determined by law in conformity with the principles of Islamic jurisprudence.

Principle 164

Judges shall not be dismissed, either provisionally or permanently, without trial and establishment of the guilt grounding such dismissal; nor shall they be transferred or given different positions without their consent, save where the interests of the society should otherwise require and it has been so decided by the Head of the Judiciary in consultation with the President of the Supreme Court and the Prosecutor General. The periodic rotation of judges shall take place according to the procedure determined by law.

Principle 165

Trials shall be held in open sessions allowing the public attendance unless the court decides that open sessions would be injurious to bonos mores or to public policy, or when, in private litigations, the parties request that the trial not be public.

Principle 166

Court decisions and judgments shall be reasoned and supported by the underlying statutory provisions and principles.

Principle 167

Judges are bound to endeavor to find the applicable statutory provisions in each case, and failing that, they must decide the case by relying on authoritative sources of the Islamic law or on valid precedents. They may not refuse to adjudicate a case and, hence, withhold judgment on the ground that the laws on the issue are silent, defective, ambiguous, or inconsistent.

Principle 168

Political and press offenses shall be heard in open sessions of the Courts of Justice in the presence of a jury. The procedure for the appointment of jury members, their eligibility and jurisdiction as well as the definition of a political offense shall be determined by law in accordance with Islamic precepts.

Principle 169

No act or omission shall be considered ex post facto as an offense by a subsequent act.

Principle 170

Judges of the courts of justice shall refrain from the execution of any government decrees or regulations proving contrary to Islamic laws and precepts or exceeding the power of the executive branch. All individuals are entitled to request the administrative courts to annul such decrees and regulations.

Principle 171

In case an individual should suffer material or moral damage as a result of a judge's error or misinterpretation, the judge, if at fault, shall be liable according to the Islamic precepts, otherwise the loss shall be compensated by the government and, in any event, the reputation of the accused shall be restored.

Principle 172

Military courts shall be formed by law to adjudicate the offenses related to the special military or security duties of the personnel of the Armed Forces, Gendarmerie, Police and the Guardian Corps of the Islamic Revolution. However, ordinary offenses of such personnel or the offenses committed by them as law enforcement officers shall be considered by the ordinary courts of justice. Public Prosecution Office as well as the military tribunals shall be an integral part of the judiciary of the country and shall be subject to the provisions relating to that branch.

Principle 173

A tribunal called the Administrative Court of Justice shall be formed under the supervision of the Head of the Judiciary in order to investigate complaints and grievances of the public against the government officials, units or government bylaws and to safeguard their rights. The jurisdiction and the procedure of this tribunal shall be determined by law.

Principle 174

With a view to the right of the Judiciary to ensure the proper conduct of affairs and due compliance with laws by the administrative bodies, an institution by the name of the General State Inspectorate Organization shall be formed under the supervision of the Head of the Judiciary. The jurisdiction and the functioning procedure of this institution shall be determined by law.

THE CIVIL CODE

Section 6

On Termination of Obligations

Article 264

Obligations are terminated in one of the following ways:

1. By fulfillment of the obligations.
2. By mutual revocation.
3. By release from the obligation.
4. By novation
5. By set-off.
6.- By acquisition-of the debt.

Subsection

On Fulfillment of the Obligation

Article 265

If anyone gives a property to another, the presumption is that he has not done so gratuitously; therefore, if a person gives a thing to another person without that thing being owned to the latter, the former can ask for the return of such thing.

Article 38 of the statute of the I.C.J

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply;

A)- international convention, whether general or particular, establishing rules expressly recognized by the contesting states;

B)- international custom, as evidence of a general practice accepted as law;

C)- the general principles of law recognized by civilized nations;

D)- subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 2 of the charter of the UN

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1) - The Organization is based on the principle of the sovereign equality of all its Members.

2)- All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3) - All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4) - All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5)- All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6)- The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7)- Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Essential expressions and words.

A) - Essential expressions

1) - No crime or punishment except in accordance with the law = Nulla poeno sine lege _Nullum crimen sine lege (lat.)

2) - No punishment except in accordance with the law.
3) - There must be no injury (loss) in Islam
4) - A denial made after a confession is not admissible.
5) -people have full control and dominion over their property.
6) - words in contracts should be given their ordinary meaning.

7) - Do not enforce (the prescribed) punishment in cases of doubt.

8) - Absolute legal authority of the owner to exercise dominion or control over property.

9) - everybody is presumed innocent = presumption of innocence.

10) - everybody is presumed free of any obligation = presumption of clearance.

11) - mistake of law is no defence. (Mistake of law).

12) - mistake of fact is a good defence. (Mistake of fact).

13)-Necessita non habet legem = necessity knows no law.

14) - The law is not retroactive = the law is not retrospective.

15)- The law is prospective.
16) - the burden of proof rests with claimant.

17) - there is always an exception to the rule.

15)- taking possession of properties belonging to no particular person = acqui

B) - Essential words

1) - legal presumption of continuity.
2) - fulfilment of an obligation
3) - enforcement of a judgment.

4) - administration of justice.

5) - performance of a contract.

6) - Honour your contract.

7) - National system law

8) - International system law

9) - Transnational system law

10) - Universal system law

11) - Jurisdiction = competence

12) - National = Internal = domestic jurisdiction

13) - International jurisdiction

14) - Extraterritorial jurisdiction

15) - Extraterritoriality

1-Prescriptive Extraterritorial Jurisdiction.

2-Descriptive Extraterritorial Jurisdiction.

3- Executive Extraterritorial Jurisdiction.

16) - Territorial Jurisdiction=territoriality

A) - Objective territorial jurisdiction

B) - Subjective territorial jurisdiction

17) - Personal jurisdiction

A) - Passive personal jurisdiction

B) - Active personal jurisdiction

18) - Protective jurisdiction

19)-universal jurisdiction

20) - Concurrent jurisdiction.

21)- Complementarity jurisdiction = Complementary jurisdiction

22)-Legal Guardian (appointed by the law). And Natural Guardian

23) - Legal Guardianship and Natural Guardianship

24) - discharge from an obligation = discharge from a debt.

25) - Attorney at law = Counsel

26) - Attorney with right of substitution

27) - Under an obligation

28) - Legality = legitimacy

29) - Legal = lawful =legitimate

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30)- Legal Adviser = Counsellor

Plaintiff

Defendant

31) - The judiciary=judicial power

32) - The Executive= executive power

33)- The legislative= legislative power

13) - Retroactive law = Retrospective law

14)- A term which is contrary to the requirements of the contract

15)- Specified Contracts

16)- Unspecified Contracts

17)- Revocable Contract

18)- Irrevocable Contract

19)-Optional Contract

20)- Valid Contract

21)- Operative Contract

22)- Inoperative Contract

23)-Invalid Contract

24)- Conditional Contract

25)- Unconditional Contract

26)- Express term

27)- Implied term