

FINAL TERM EXAMINATION

INTRODUCTION TO LAW

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Q No. 1: What are the main sources of Islamic law and explain any three in detail?

ANS #1:

These sources of Islamic law are given below:

1. Al-Qur'an
2. Sunnah
3. Hadith (Hadees)
4. Ijma
5. Qiyas
6. Ijtihad

1.QURAN:

The primary source of Islamic law is the Quran. Command of the Quran create an obligation that are bind on Muslims; all the Muslim Schools, Sunni or Shi'a are in agreement that this is of divine origin through revelation the word of Allah. All Other sources are secondary to the Quran, and the legal validity or justification as sources is derived from the Quran. The other kind of revelation (Wahi) being internal (brain) which consists of acts, deeds and utterances from time to time of the Prophet.

The Qur'an is the Book revealed to the Messenger of Allah, Muhammad (Peace be upon him) as written and transmitted to us from him through an authentic continuous narration without doubt.

The compilation of the Quran has a detailed and well documented history. These details can be gleaned elsewhere. The reason why it is studied under the title of the Qur'an as a source of Islamic law is to

provide further Justification for its having been transmitted by way of tawatur and also to explain the reason for its unique arrangement. The Qur'an is divided into chapters and is composed of Ayat, there are approximately six hundred Islamic law, and other matters. To be specific, about 70 verses pertain to family Law, 80 to trade and finance, 13 to oaths, 30 to crimes and sentencing, 10 to constitutional and administrative matters, 25 to international law and prisoners of war, while the rest pertain to Ibadat. They have reasoned from the verses. It is to be remembered that though the particular cases mentioned in the Qur'an are few; there are many broad and count of legal verses may differ for different jurists according to the way general principles that facilitate the derivation of countless directions. The Quran during a space of over twenty-three years of which about 12 years were in Mecca and the remaining at Medina. The Mecca verses are mostly short and concise and concentrate on fundamental doctrines of monotheism, resurrection and retribution. Thus, they deal with matter relating to God's unity, religion and observances. The Madanes verses are long and embody most of the detailed Islamic legislation. concerning matters generally, of legal social and political interest. The Qur'an was revealed gradually according to the causes of revelation so as to discard old customs and substitute new ones. Thus, Qur'an is unquestionably direct revelation of God and is the universally accepted Book of the Muslims. It was not collected by the Prophet in one volume but after his death Zayd ibn Thabit collected and prepared an authorized edition of the Quran under the directions of the first caliph Abu Bakar and then during the Caliphate of Uthman it was embodied in one unified text. The Qur'an was revealed in plain Arabic language. It has now been translated in various other languages.

2.IJMA:

Ijma, is the essential characteristic of the Sunni School of jurisprudence and all the four Sunni Schools accept it as a valid source of law. Shafi'ites and Malikites even apply the principle of ijma to matters other than law and religion e.g., organization of army, preparation of war and questions of executive administration. Ijma or consensus of opinion is defined as the agreement of Muslim jurists in a particular age on a juridical question. Its authority is based on certain Quranic and traditional texts. Some of the texts relied upon as basis of this principle are: -

"Whatever the Muslims hold to be good is good before God."

Maliki's, some Mu'tazila's and the Zahiris do not recognize the validity of difference between regular and irregular ijma, but some Sahafi's, some not indicate dissent it will be irregular. Some Hanafi doctors make no mujtahids adopt a particular view of the law, it will be regular, and if some do revenge administration. Ijma or consensus of opinion is defined as the

"Whatever the Muslims hold to be good is good before God."

"My followers will never agree on what is wrong";

"You must follow the most numerous body".

Some jurists hold that the ijma of the majority is of absolute authority even if the qualifications of the dissentient minority are not challenged. Others say that if the majority do not admit the dissentient minority having the qualifications of a jurist, then alone their decision has absolute authority. The Hanafis, Shafi'is and the Malikis hold that if the number of dissentients be not large, then the majority view though not absolute, is valid and of binding authority. The reason for unanimity is that whereas an

individual jurist is liable to err, unanimity is a quality that raises presumption of infallibility in favor of the entire body.

The general view of the Sunni School is that a question decided by ijma cannot be reopened by individual jurists of the same or subsequent age unless the decision is one in which a particular jurist had differed. Ijma of an age may be reversed or repealed by a subsequent ijma of the same age and an ijma of one age may be repealed by an ijma of a subsequent age except an ijma arrived at by the companions of the Prophet, which is unrepealable and as such incapable of being repealed later.

A decision constituted by ijma may be expressed in words known or by practice of the jurists called (fa'ili'). In both cases it can either be regular or Irregular. If the mujtahids severally declare their opinion in words, the ijma so constituted will be regular. But if some observe silence without expressing assent, it will be irregular. Similarly in the case "of ijma by practice if the mujtahids adopt a particular view of the law, it will be regular, and if some do irregular ijma at all.

Further the number of jurists participating in the deliberations, Hanafis and

Malikis do not consider that the number should be large. But some say that it should not be less than two.

3.QIYAS:

Qiyas or analogy is a source of law for the applicability of which the basis reasons, logic or opinion. This was necessitated by occurrence of new cases due to passage of time and expansion of the Islamic State and was development more systematic reasoning on the existing sources viz; Qur'an and Sunnah. All the four Sunni Schools are agreed that in matters not provided for by a Quranic text or sunnah nor determined by consensus opinion, law may be deduced from what has been laid down by any of the other three authorities by the use of Qiyas.

The function of analogy is stretched to extension of the law of the texts to cases not falling within the purview of its terms. However, writers of jurisprudence do not admit that extension of law by process of analogy establishes a new rule of law. Their theory is that analog merely helps to discover the law and not to establish a new law.

The root meaning of the word Qiyas is 'measuring or accord or equality. Analogy has been one of the causes of conflict between the various Schools. The Imamiyah Shi'ah reject it. The anti-analogy group allege that there was no need for it because the Qur'an was sufficient relying upon "And we revealed the Book -unto thee as an exposition of all things"(Qur'an 16:89), "And we have neglected nothing in the Book (Qur'an 6:38)", - "and in whatsoever ye differ, the verdict therein belonged to God" (Qur'an 42: 10) They further protest that analogy being a guess cannot be depended upon and cite "a guess can never take the place of the truth (Qur'an 53 :28).

A further ground in support of analogy is that the Companions were unanimously in agreement concerning its application. For a valid analogical deduction, it must conform to certain conditions. In the opinion of Mahama Sani there are four pillars of analogy viz; the origin subject against which the new subject is compared; the tributary of the subject which is the object of analogy; the rule arrived at by

analogy, and is 'the reason for analogy-The pre-requisite conditions for analogy may therefore be stated as: -

1. The cause must be the compelling factor i.e., the idea intended by the Shari'ah.
- 2: The cause should be identical in both the original subject and the subject of analogy, viz both subjects be equal in every respect.
3. The rule in the original case should be generally applicable.

Q No. 2: What do you understand by the term “Common Law” and elaborate the similarities and dissimilarities with Common Law legal system and Civil Law legal system?

ANS#2:

COMMON LAW:

Common law is usually uncodified law means not written in a systematic way or in a single document. The Law available in scattered form usually in judicial decision of the court or precedent. Most of the countries use common law system or mix system of civil and common law.

The Historical Origins of Common and Civil Law Systems:

The original source of the common law system can be traced back to the English monarchy, which used to issue formal orders called “writs” when justice needed to be done. Because writs were not sufficient to cover all situations, courts of equity were ultimately established to hear complaints and devise appropriate remedies based on equitable principles taken from many sources of authority (such as Roman law and “natural” law). As these decisions were collected and published, it became possible for courts to look up precedential opinions and apply them to current cases. And thus the common law developed. Civil law in other European nations, on the other hand, is generally traced back to the code of laws compiled by the Roman Emperor Justinian around 600 C.E. Authoritative legal codes with roots in these laws (or others) then developed over many centuries in various countries, leading to similar legal systems, each with their own sets of laws.

Differences between Civil Law and Common Law:

The common law and civil law systems are the products of two fundamentally different approaches to the legal process. In civil law, the main principles and rules are contained in codes and statutes, which are applied by the court’s codes. Hence, codes and statutes prevail, while case law constitutes only a

secondary source of law. On the other hand, in the common law system, the law has been dominantly created by judicial decisions, while a conceptual structure is often lacking. This difference is the result of different role of legislator in civil law and common law. The civil law is based on the theory of separation of powers, whereby the role of legislator is to legislate, while the courts should apply the law. On the other hand, in common law the courts are given the main task in creating the law. The civil law is based on codes which contain logically connected concepts and rules, starting with general principles and moving on to specific rules. A civil lawyer usually starts from a legal norm contained in a legislation, and by means of deduction makes conclusions regarding the actual case. On the other hand, a lawyer in common law starts with the actual case and compares it with the same or similar legal issues that have been dealt with by courts in previously decided cases, and from these relevant precedents the binding legal rule is determined by means of induction. A consequence of this fundamental difference between the two systems is that lawyers from the civil law countries tend to be more conceptual, while lawyers from the common law countries are considered to be more pragmatic. One of the main differences between the civil law and common law systems is the binding force of precedents. While the courts in the civil law system have as their main task deciding particular cases by applying and interpreting legal norms, in the common law the courts are supposed not only to decide disputes between particular parties but also to provide guidance as to how similar disputes should be settled in the future. The interpretation of a legislation given by a court in specific case is binding on lower courts, so that under common law the court decisions still make the basis for interpretation of legislation. On the other hand, in contrast to common law, the case law in civil law systems does not have binding force. The doctrine of stare decisis does not apply to civil law courts, so that court decisions are not binding on lower courts Page 8 of 9 in subsequent cases, nor are they binding on the same courts, and it is not uncommon for courts to reach opposite conclusions in similar cases. In civil law the courts have the task to interpret the law as contained in a legislation,

CIVIL LAW AND COMMON LAW:

TWO DIFFERENT PATHS TO THE SAME GOAL

without being bound by the interpretation of the same legislation given by higher courts; this means that under civil law, the courts do not create the law, but only apply and interpret it. In practice, however, the higher court decisions certainly have a certain influence on lower courts, since judges of lower courts will usually take into account the risk that their decisions would probably be reversed by the higher court if they contradict the higher court decisions. Judges normally try to avoid the reversal of their decisions by higher courts as if too many of their decisions are reversed their promotion may be adversely affected. Hence, even though in civil law systems the case law formally has no binding force, it is generally recognized that courts should take into account prior decisions, especially when the settled case law shows that a line of cases has developed.

Roles of a Lawyer and Judge in Each System: In civil law countries, judges are often described as “investigators.” They generally take the lead in the proceedings by bringing charges, establishing facts through witness examination and applying remedies found in legal codes.

Lawyers still represent the interests of their clients in civil proceedings, but have a less central role. As in common law systems, however, their tasks commonly include advising clients on points of law and preparing legal pleadings for filing with the court. But the importance of oral argument, in-court

presentations and active lawyering in court are diminished when compared to a common law system. In addition, non-litigation legal tasks, such as will preparation and contract drafting, may be left to quasi-legal professionals who serve businesses and private individuals, and who may not have a post-university legal education or be licensed to practice before courts.

In contrast, in a common law country, lawyers make presentations to the judge (and sometimes the jury) and examine witnesses themselves. The proceedings are

then “refereed” by the judge, who has somewhat greater flexibility than in a civil law system to fashion an appropriate remedy at the conclusion of the case. In these cases, lawyers stand before the court and attempt to persuade others on points of law and fact, and maintain a very active role in legal proceedings. And unlike certain civil law jurisdictions, in common law countries such as the United States, it is prohibited for anyone other than a fully licensed lawyer to prepare legal documents of any kind for another person or entity. This is the province of lawyers alone.

As these descriptions show, lawyers almost always have a significant role to play in formal dispute resolution, no matter in which country they practice. But the specific tasks assigned to them tend to vary quite a bit. And outside the courtroom, tasks typically performed by lawyers in one country may be performed by skilled lay people in another.

Each country has its own traditions and policies, so for those who wish to know more about the role of legal practitioners in a particular nation it is important to do additional research.

To provide readers with a jumping-off point, here are a few examples of countries that primarily practice common law or civil law.

Common Law Countries:

The United States

England

India

Canada

Civil Law Countries:

China

Japan

Germany

France

Spain

Q No. 3 What are the main Functions of law, Explain any two in detail?

FUNCTIONS OF LAW:

The basic functions of laws are to preserve the unity, identity of people and place, protect lives and property of its subjects and ensure peace and order in the society for progressive growth and continuity of life. For more definite understanding we can draw a distinction between macro and micro functions of the law.

(a) The Macro Functions of Law:

The few macro functions of law are following:

- 1. Build Society in Order:** The first function of law is to maintenance of society, means to resolve disputes and the solution of legal problems with justice and equity
- 2. Public Order:** Law is based on ordered rules that guide the conduct of individuals and society. Law reaffirms, whether the norm violated is or is not to be enforced.
- 3. Political Order:** Law and politics are deeply entangled. Law is an essential tool of government action, it provides guidance to government how an institution will work, create balance between three pillars of the State; Executive, Judiciary and Legislature. Law is an instrument with which government tries to influence society. Law is also, the means by which government itself is structured, regulated and controlled. It is no surprise then, that law is important in the political struggle and that law shapes how politics is conducted.

(b) The Micro Functions of Law:

1. Defining the limits of acceptable behavior.
2. Defining the consequences of certain forms of behavior.
3. Defining processes for the transaction of business and other activities.
4. Creating regulatory frameworks.
5. Giving authority to agents of the state to take actions against citizen.
6. Preventing the abuse of power by officials.
7. Prescribing procedures for the use of law.

Question No. 4 Define any four of the legal Terminology:

- a. **Summon**
- b. **Appeal**
- c. **Plaintiff**
- d. **Notice**
- e. **Prayers**
- f. **Precedents**

Ans#4:

(a)Summon:

Summons, also called Citation, in law, document issued by a court ordering a specific person to appear at a specific time for some specific purpose. It is issued either directly to the person or to a law officer who must carry out the instructions.

(b)Appeal:

In law, an appeal is the process in which cases are reviewed by a higher authority, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying and interpreting law.

(c)Plaintiff:

Plaintiff, the party who brings a legal action or in whose name it is brought—as opposed to the defendant, the party who is being sued. The term corresponds to petitioner in equity and civil law and to libelant in admiralty.

(f)Precedents:

Precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues. If the facts or issues of a case differ from those in a previous case, the previous case cannot be precedent.