LEGAL SYSTEM OF SRI LANKA

A LEGAL SYSTEM will constitute

• LAWS
• COURTS STRUCTURE
• COURT PROCEDURE
• THE LEGAL PROFESSION
• OUR LAWS

Laws that operate within the Sri Lankan Legal system

SRI LANKA HAS

A MIXED LEGAL SYSTEM

SEVERAL SPECIAL LAWS

FEATURES OF BOTH COMMON LAW SYSTEM & THE CIVIL LAW SYSTEM
Mixed b’cos several personal(special)laws

Sri Lanka’s personal laws

* Kandyan law
* Thesavalamai law
* Muslim law
* Mukkuwar law (no longer applicable)
Kandyan Law
( applicable to Kandyan Sinhalese)

Tesawalamai Law
( to Tamils of the province of Jaffna)
Muslim Law
(To Sri Lankan Muslims)

PERSONAL LAWS APPLICABLE ONLY TO CERTAIN LIMITED AREAS

<table>
<thead>
<tr>
<th>KANDYAN LAW</th>
<th>THESAWALAMAI LAW</th>
<th>MUSLIM LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Marriage</td>
<td>• Pre-emption</td>
<td>• Marriage</td>
</tr>
<tr>
<td>• Divorce</td>
<td>• Intestate succession</td>
<td>• Divorce</td>
</tr>
<tr>
<td>• Intestate succession</td>
<td></td>
<td>• Intestate succession</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Administration of mosques</td>
</tr>
</tbody>
</table>
TO AREAS FOR WHICH THE PERSONAL LAWS WILL NOT APPLY

THE GENERAL LAW OF THE COUNTRY WILL APPLY

.e.g.:- Criminal law is common to everyone and a person who steals will be charged for theft under the general law irrespective of his race or religion

Mixed b’cos it contains features of both common law system and the civil law system
The Civil Law system

<table>
<thead>
<tr>
<th>Countries that adopt this system</th>
<th>Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>* France</td>
<td>*Importance given to opinions of jurists</td>
</tr>
<tr>
<td>* Netherlands</td>
<td></td>
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<tr>
<td>* Germany</td>
<td>*Inquisitorial system of conducting trials</td>
</tr>
</tbody>
</table>

During the Dutch colonial period
Roman Dutch law was introduced

- Today **Roman Dutch law** is treated as the **common Law of Sri Lanka**
- Areas of Sri Lankan Law that are governed by Roman Dutch Law
  - *Law of Property*
  - *Family Law*
  - *Law of Delicts* (the corresponding Eng Law term is Torts)
The Common Law system
( Anglo- American legal system)

<table>
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<tr>
<th>Countries that adopt this system</th>
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<tr>
<td>*England *USA *Australia</td>
<td>*Doctrine of judicial precedent</td>
</tr>
<tr>
<td></td>
<td>*Adversarial system of conducting trials</td>
</tr>
</tbody>
</table>

During the British period colonial period English Law was introduced

- Areas of Sri Lankan Law that are governed by Roman Dutch Law
  - * Commercial Law
  - * Law relating to Civil and Criminal Procedure
  - * Law of Evidence
  - * Administrative Law
LAND DISPUTE IN THE DISTRICT COURT OF BALANGODA

• THE LAND LAW APPLICABLE – BASED ON ROMAN DUTCH LAW WHICH IS DERIVED FROM THE CIVIL LAW SYSTEM
• THE PROCEDURAL LAW AND THE LAW OF EVIDENCE ADOPTED DURING THE TRIAL – BASED ON ENGLISH LAW WHICH IS DERIVED FROM THE COMMON LAW SYSTEM
Is our legal system an achcharu?

SOURCES OF SRI LANKAN LAW

Where one could find Sri Lankan Law
LEGISLATION AS A SOURCE OF LAW
Laws passed by the Legislature (parliament is Legislation)

Subordinate Legislation

Laws passed by any other person or authority but subject to the law making power of parliament is subordinate Legislation
### TYPES OF SUBORDINATE LEGISLATION IN SRI LANKA

<table>
<thead>
<tr>
<th>TYPE</th>
<th>BY</th>
</tr>
</thead>
<tbody>
<tr>
<td>EMERGENCY REGULATIONS</td>
<td>PRESIDENT</td>
</tr>
<tr>
<td>RULES</td>
<td>SUPREME COURT</td>
</tr>
<tr>
<td>ORDERS, REGULATIONS</td>
<td>MINISTERS</td>
</tr>
<tr>
<td>STATUTES</td>
<td>PROVINCIAL COUNCILS</td>
</tr>
<tr>
<td>LOCAL GOVT AUTHORITIES</td>
<td>BY LAWS</td>
</tr>
</tbody>
</table>

Judgements of superior courts (case law) as a source of law
How judges make Law

- Only superior courts (Supreme court and the court of Appeal) can make Law
- They do so by pronouncing a legal principle or by interpreting an statute
- Unlike British courts Sri Lankan courts cannot create offences

Opinions of Jurists

- Will be a direct source on certain areas which are based on Roman Dutch Law
- On any other area the opinion may be considered by a court but the court is not bound to follow it
Roman Dutch jurist
HUGO GROTIOUS

JOHANNES VOET
SRI LANKA’S MOST FAMOUS JURIST

Custom as a source of Law

Our courts have accepted as law, local customs such as customs adopted by the fishing community and the customs that are used in gemming.
2 other sources of Sri Lankan Law

• Religion
• Equity

SRI LANKA’S COURTS
Supreme Court

- Highest Court/ Highest Appellate court
- Interpretation of the constitution
- Fundamental Rights Petitions
- Admitting and enrolling Attorney-at-law
Court of Appeal

- Second Highest Appellate court
- Power to issue writs

Provincial High Court

- Usually goes into criminal appeals from courts such as the Magistrates court
- Commercial High Court
- Provincial High Courts that go into civil appeals
High Court

- Conducts criminal trials in respect of Serious Criminal offences
  e.g. Murder, Rape and Treason
- Can impose death sentence

District Court

Conducts civil trials
  e.g.
  * Land cases
  * Family disputes
  * Cases to recover compensation
Magistrates Court

• Usually goes into minor criminal offences
• Can try maintenance cases
• Can issue warrants, search warrants etc
• Can conduct identification parades

Primary Courts

• Usually goes into minor civil and criminal disputes
• If there is a breach of peace or a threat or a breach of peace as a result of a land dispute a so called “66 Action” can be instituted in the Primary Court
<table>
<thead>
<tr>
<th>SUPERIOR COURTS</th>
<th>INFERIOR COURTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• SUPREME COURT</td>
<td>• PRIMARY COURT</td>
</tr>
<tr>
<td>• COURT OF APPEAL</td>
<td>• MAGISTRATES COURT</td>
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<td>• DISTRICT COURT</td>
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