LEGAL SYSTEM OF SRI LANKA

A LEGAL SYSTEM includes

- Laws
- Court Structure
- Legal Profession
- Court Procedure
SOME OF OUR LAWS

Our Legal system

- any different laws
- a mixed system of law
Is our legal system a pickle or an achcharu?

SRI LANKAN LEGAL SYSTEM IS MIXED BECAUSE

1. Many special laws (Kandyan law/Tesavalamai law & Muslim law) operate alongside the general law

2. It has features of both the the common law system as well as the civil law system
Our Legal system is **mixed** because

1. several **Personal laws** (special Laws / Customary laws) operate within our legal system

PERSONAL /SPECIAL LAWS THAT ARE PART OF SRI LANKA’S LEGAL SYSTEM
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>
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<tr>
<th>KANDYAN LAW</th>
<th>THESAWALAMAI LAW</th>
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<td>•Administration of mosques</td>
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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

Our Legal system is mixed because

2. our system has features of both the common Law system and the civil law system
Both common law & Civil Law features in Sri Lanka

- due to historic reasons
- **British** introduced features of common law system & the **Dutch** introduced features of the Civil law system

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<tr>
<th>Common law influence in Sri Lanka</th>
<th>Civil law influence in Sri Lanka</th>
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| • Principles of English law have entered our legal system  
  • **Doctrine of judicial precedent**  
  • Our courts structure  
  • **Adversarial court procedure** | • **Principles of Roman Dutch law** have entered our legal system  
  • Opinions of jurists is a direct source of law in certain areas of our law which are based on Roman Dutch law |
During the Dutch colonial period Roman Dutch law was introduced

- **Today**
  
  Roman Dutch law = 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 English Law term is Torts)

During the British period colonial period English Law was introduced

- Areas of Sri Lankan Law that are governed by English Law
  - * Commercial Law*
  - *Law relating to Civil and Criminal Procedure*
  - *Law of Evidence*
  - *Administrative Law*
SOURCES OF SRI LANKAN LAW

Where one could find Sri Lankan Law

Sources of Law

- Legislation
- Case Law
- Custom
- Opinions of writers
- Religion
- Equity
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

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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 GROTIUS
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
COURT OF APPEAL
PROVINCIAL HIGH COURT
HIGH COURT
DISTRICT COURT
MAGISTRATES COURT
PRIMARY COURT
Supreme Court

• Highest Court/ Highest & Final Appellate court
• Interpretation of the constitution
• Fundamental Rights Petitions
• Admitting and enrolling Attorney-at-law
• Making rules
• Pouncing upon the constitutionality of Bills of Parliament
Supreme Court

- Presidential election petitions
- Referenda petitions
- Appeals from parliamentary election petitions
- Appeals from the court of Appeal and other lower courts
- Matters relating to the breach of parliamentary privileges
- Impeachment proceedings
- Writ jurisdiction

Court of Appeal

- Second Highest Appellate court
- Power to issue writs of certiorari, mandamus, prohibition, quo warranto, procedendo e.t.c
- Power to issue the writ of habeas corpus
- parliamentary election petitions
- Provincial Council election petitions
- Cases relating to contempt's of court
- Power to transfer cases from one court to another
Court of Appeal

• Power to issue injunctions
• Power to call for records of lower courts
• Revision applications from lower courts
• Actions for *Restitutio in integrum*
• Power to transfer prisoners from one prison to another

Provincial High Court

Established by the 13th amendment (to devolve judicial power to the provinces)

• Usually goes into *criminal appeals* from courts such as the Magistrates court
• It also has power to issue writs pertaining to provincial matters
• JSC can authorise the PHC to inspect the administration of Courts of first instance
• Specialised Provincial high courts
  1. Commercial High Court
  2. Civil Appellate High Court
Commercial High Court

- Goes into commercial matters where the value of the dispute exceeds Rupees five Million
- Intellectual Property matters
- Certain matters under the Companies Act

High Court

- Conducts criminal trials in respect of Serious Criminal offences
  - e.g. Murder, Rape and Treason
- Can impose death sentence
- Three types of Trials (Trials before a single High Court Judge, Trials at-Bar, Trials before a single High Court judge and a Jury)
- Power to grant bail in respect of certain offences
- Admiralty jurisdiction
- Power in respect of Arbitrations
- Powers in respect of Extradition
District Court

Cases for the partitioning of undivided land
(Partition cases)

District Court

*Land cases

e.g

1. cases for the declaration of title
2. cases relating to servitudal rights
3. cases for the definition of boundaries
4. cases for evicting persons from land
District Court

*Actions for damages

e.g

1. damages from accidents
2. damages for defamation
3. damages for professional negligence
4. damages for malicious prosecution

District Court

Family matters

1. divorce cases
2. Nullity cases/ Annulment of marriage
3. cases for a legal separation
4. cases to claim damages for breach of promise of marriage
5. cases for the custody of children/ access to children
District Court

Family matters
   6. seduction cases
   7. adoption cases
   8. Maintenance cases (under principles of Roman Dutch law)
   9. cases relating to the property and administration of the estates of minors
   10. cases for the amendment of Birth & marriage registers

District Court

Family matters
   11. cases relating to matrimonial property
   12. declarations about legitimacy and illegitimacy
District Court

1. Trust cases
2. actions in respect of the estate of insane persons
3. Cases for the ejectment of tenants
4. Mortgage actions
5. Action relating breach of contract
6. Actions for the recovery of moneys bases of cheques, bills of exchange and promissory notes (liquid claims)
7. Insolvency cases

District court & Injunctions

- Where a party acts in a way in violation of the rights of the plaintiff the court can grant an injunction to restrain the defendant from acting in that way
- Power to issue enjoining orders
- Power to issue interim injunctions
- Power to issue permanent injunctions
Testamentary cases – District court

Estate of the diseases

No last will (testate)

There is a last will (intestate)

Court issues Letters of Administration

Court issues Probate

Magistrates Court

- Usually goes into minor criminal offences (Summary Trials)
- Conducting non summary inquiries
- Can try maintenance cases (under the Maintenance Act)
- Can issue warrants, search warrants etc
- Can conduct identification parades
- Power to grant bail
- Power to conduct Inquests (inquiries into sudden deaths)
**Magistrates Court**

- Claims for the payment of EPF and ETF
- **Orders under the Domestic Violence Act**
- Enforcing orders of Quazi courts, Labour Tribunals etc

**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 an action called a “**66 Action**” can be instituted in the Primary Court
- Enforcement of By laws of local government authorities
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- HIGH COURT
- DISTRICT COURT
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- PROVINCIAL HIGH COURT
A few *Alternative dispute resolution methods* that operate in Sri Lanka

These institutions settle dispute outside the formal court structure.

Examples

- Labour Tribunals
- **Mediation boards**
- Human Rights Commission
- **Ombudsman**
- Rent Board