

Introduction to the Legal System

LAW & ITS TYPES · SOURCES OF LAW · CONSTITUTION · PROCESS OF LEGISLATION · ORDINANCE · DELEGATED LEGISLATION

Comprehensive Exam Revision Handout

1 CORE CONCEPT & KEY DEFINITIONS



Law = a set of rules or a system of rules of conduct **designed and enforced by the State** to **control and regulate the conduct of people**.

Law is not stagnant

As circumstances and conditions in society change, laws are also changed as per the requirements of society. The word "law" is often preceded by an adjective – **Civil Law**, **Criminal Law**, **Business Law**.

Mercantile / Business Law

The part of **civil law** that deals with the **rights and obligations** of persons dealing with each other – contracts, partnership, sale of goods, negotiable instruments etc.

Ignorance is no excuse

Civil law touches everyday life (debts, tenancy, sale of goods). One should know the law he is subject to – generally, **ignorance of law is neither an excuse nor a defence**.

Why do Chartered Accountants study law? (Not to become expert lawyers)

Be **aware** when legal problems arise

Judge when **outside assistance** is required

Evaluate the **financial implications** of law

Communicate with the lawyers

2 SOURCES OF LAW IN PAKISTAN



Basis of Pakistan's Legal System

Derived from English Common Law (including doctrine of equity)

Based on the Constitution of Pakistan 1973

and Islamic Law (Sharia)

4 MAIN SOURCES OF LAW 4

1. Legislation

Law created by **Parliament** and bodies to whom it has **delegated authority**. Includes: **Act of Parliament**, **Ordinance** by the President, and **delegated legislation**.

2. Precedent (Case law)

judgments/decisions of a **superior court** which are **binding on subordinate courts**.

3. Customs

Customs, practices and beliefs so **vital and intrinsic** to the social and economic system that they are treated as laws, e.g. **Sharia laws**.

4. Agreement

Parties stipulate terms in their agreement which constitute **law for the contracting parties**.

MCQ point: International treaties and conventions are **NOT** listed as a source of law in Pakistan.

3 COMPARISON – CIVIL LAW vs CRIMINAL LAW



Basis	Civil Law	Criminal Law
1. Definition / Application	Sets out the rights and duties of persons between themselves . Person whose rights are affected claims a remedy from the wrongdoer. Violation = a tort (a wrongdoing), <u>not</u> a crime.	Concerned with conduct so undesirable that the State punishes those who transgress. Violation = a crime . It is the State's responsibility (not private individuals) to bring the action in criminal trials.
Case title & parties	Tanveer v Khatri Tanveer = Plaintiff (claimant) · Khatri = Defendant	State v Khatri State prosecutes · Khatri = Accused ; if found guilty = Convict
2. Purpose	Provide a means by which an injured party can obtain compensation .	Regulate society by the threat of punishment .
3. Harm caused	Claimant sues the defendant for harm caused or losses suffered .	State prosecutes the accused whether or not harm was caused .
4. Burden of proof	Balance of probabilities → defendant held liable .	Beyond all reasonable doubt → guilty is convicted .
5. Remedy	Damages , or another remedy such as specific performance or injunction .	Fine , or other sentence such as imprisonment or death sentence .

Examples – Civil laws

- Property disputes (Transfer of Property Act)
- Work-related disputes (employment law)
- Negligence (Tort)
- Consumer claims against manufacturers / service providers
- Commercial disputes between businesses
- Copyright disputes
- Defamation of character (Tort)
- Breach of contract (Contract Act, 1872)

Examples – Criminal laws in Pakistan

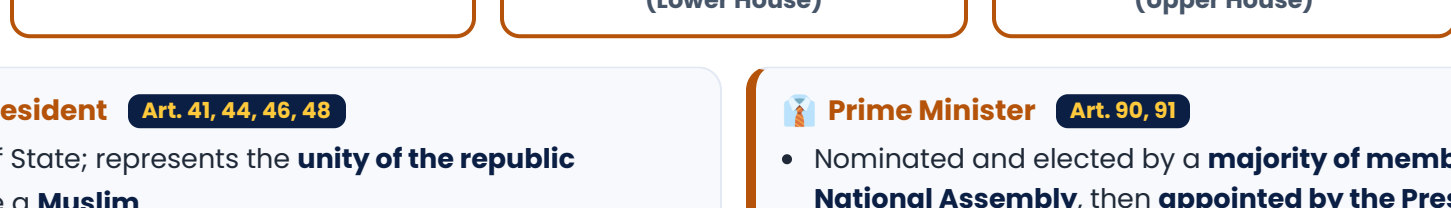
- Pakistan Penal Code
- Anti-Money Laundering Act
- Prevention of Electronic Crimes Act

In business: **fraud** and **money laundering** are criminal activities that may occur in business.

4 GOVERNING STRUCTURE OF PAKISTAN Art. 50



Federal Parliamentary System – **President** = Head of **State** · elected **Prime Minister** = Head of **Government**. Federal Legislature = **bicameral Majlis-e-Shoora (Parliament)**.



The President Art. 41, 44, 46, 48

- Head of State; represents the **unity of the republic**
- Must be a **Muslim**
- Elected for **5 years** by **Senate + National Assembly + members of Provincial Assemblies**
- Eligible for re-election, but **not more than two consecutive terms**
- Usually nominated/elected by the majority party in the NA
- PM keeps President informed on internal & foreign policy and legislative proposals
- Approves statutes passed by NA and Senate
- Acts on the **advice of the Cabinet / Prime Minister**

Prime Minister Art. 90, 91

- Nominated and elected by a **majority of members of the National Assembly**, then **appointed by the President**
- Assisted by the **Federal Cabinet** – council of ministers appointed by the President **on the advice of the PM**
- Federal Ministers are supported by secretaries and other officers in each department to ensure policies are acted upon

Senate Art. 59, 60, 49

- Permanent** legislative body; **equal representation** from each of the four provinces, elected by members of their **Provincial Assemblies**; also representatives from Islamabad Capital Territory
- Term **6 years**; **half retire after 3 years** → never dissolved all at once
- Members elect a **Chairman** and Deputy Chairman
- Chairman Senate** is next in line to **act as President** if the office becomes vacant
- Role: promote national cohesion; alleviate smaller provinces' fears of domination
- Approves all statutes passed by NA **except Money Bills**

National Assembly Art. 51, 52, 53

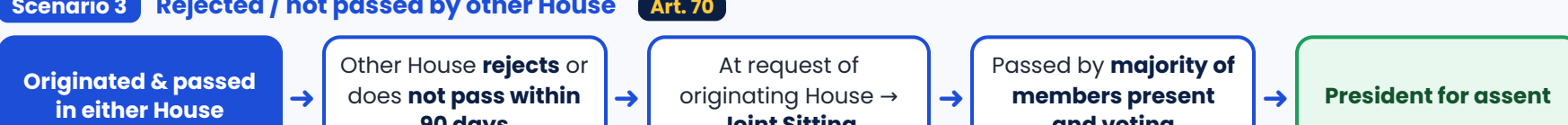
- Seats determined on the basis of **population** of provinces
- General seats: **5 years**, by **direct votes** of registered voters; **reserved seats** for women and non-Muslims
- Members elect **Speaker**, Deputy Speaker and **Prime Minister**
- Most important function: **law making** and formulation of policies

5 PROCEDURE / ROADMAP – PROCESS OF LEGISLATION

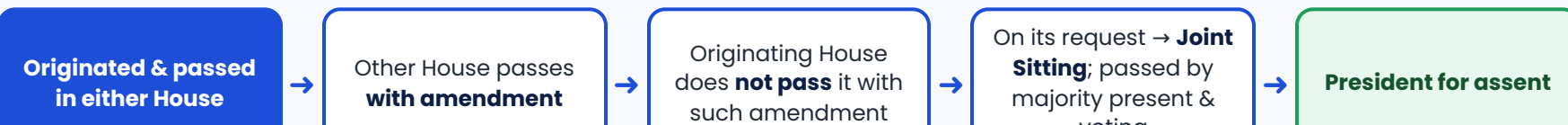


Act of Parliament: A Bill on any matter **other than a Money Bill** may originate in **either House** (National Assembly or Senate).

Scenario 1 Passed without amendment Art. 70



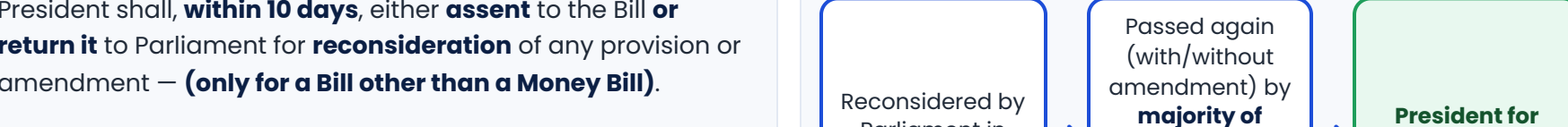
Scenario 2 Passed with amendment Art. 70



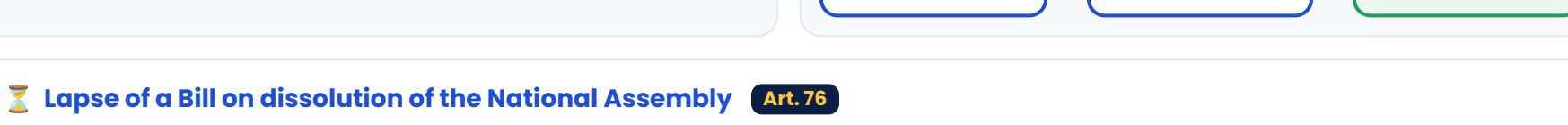
Scenario 3 Rejected / not passed by other House Art. 70



Scenario 4 Amendment not accepted by originating House Art. 70



Scenario 5 Money Bill (finance / tax etc.) Art. 73

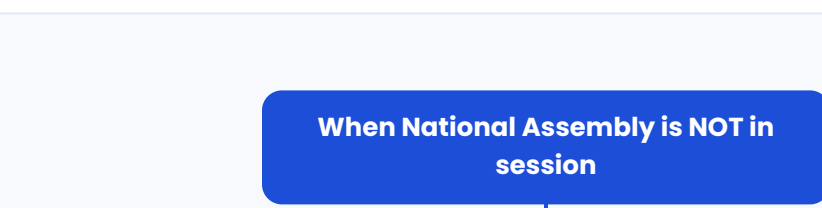


Senate's approval is **NOT required** for a Money Bill.

Power of President Art. 75

President shall, **within 10 days**, either **assent** to the Bill or **return** it to Parliament for **reconsideration** of any provision or amendment – (**only for a Bill other than a Money Bill**).

Scenario 6 Returned by President Art. 75

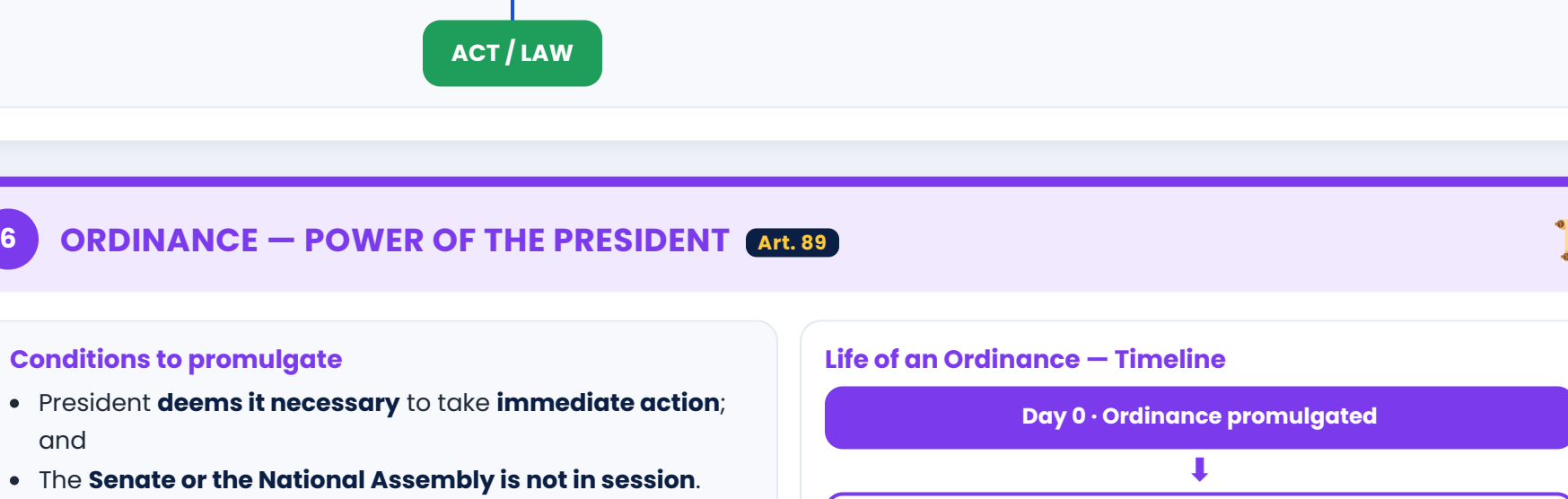


Lapse of a Bill on dissolution of the National Assembly Art. 76

✖ Bill LAPSES if: It is **pending in the**, or **passed by**, the **National Assembly** and is **pending in the Senate**.

✔ Bill does NOT lapse if: It is **pending in the Senate** and has **not been passed by the National Assembly**.

Process of Legislation – Overview Chart



6 ORDINANCE – POWER OF THE PRESIDENT Art. 89



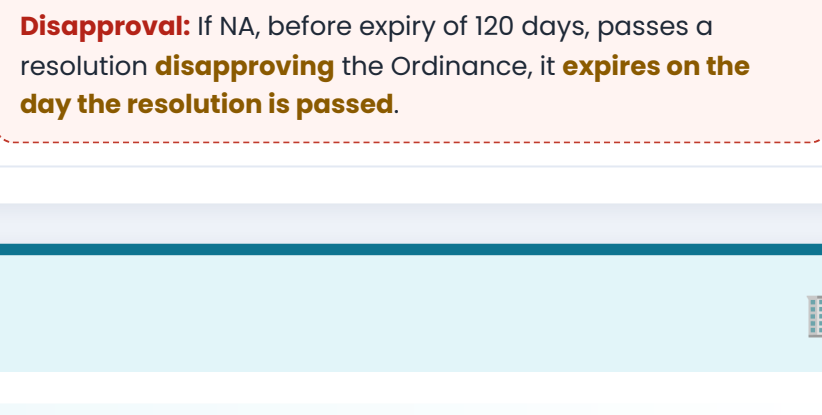
Conditions to promulgate

- President **deems it necessary** to take **immediate action**; and
- The **Senate or the National Assembly is not in session**.

Legal effect

An Ordinance has the **same force and effect as an Act of Parliament**.

Life of an Ordinance – Timeline



7 DELEGATED LEGISLATION



Power is given by Parliament to an **Executive** (a **minister or public body**) to make **subordinate / delegated legislation** for **specified purposes only** – e.g. **local authorities** make **bye-laws** that apply within a specific locality.

Advantages

- Time** – Parliament does not have time to examine matters in detail
- Expert opinion** – technical content is better worked out with professional, commercial or industrial groups outside Parliament
- Flexible** – far simpler to amend than an Act of Parliament

Disadvantages

- Undemocratic** – law making moves from elected members to **unelected civil servants and experts** under a minister's supervision
- Bulk volume** – produced in large amounts; becomes unmanageable and impossible to keep up-to-date

Control over it

- Parliament** restricts it and defines the power to make rules.
- Courts** – rules may be challenged as **ultra vires** (exceeding prescribed limits or made without due compliance). If the objection is valid, the court declares them **void**.

8 APPLICATION TO SCENARIOS



Case: Talal v Kashif

Talal files a suit in the **civil court** against Kashif.
→ Talal = **Plaintiff**; Kashif = **Defendant**.

Train accident

A train crash causes deaths and injuries.
→ **State** may prosecute the company / managers in the **criminal court**.
→ Injured persons & relatives may bring **civil actions** for **compensation**.
The same act may be both a crime and a tort – managers must know both.

NA passes, Senate rejects

→ Not effective unless, at the **request of the NA**, it is considered in a **joint sitting**.
→ If passed by majority present & voting → President, who **within 10 days** assents or returns it for reconsideration.

Money Bill – NA in session

Originates in NA; after NA passes it, it is presented to the President **without being transmitted to the Senate** for approval.

Money Bill – NA not in session

President (if immediate action needed) issues an **Ordinance**; repealed after **120 days** if not passed by the NA.

Bye-law exceeds powers

A local authority's bye-law goes beyond its delegated limits → challenged in court as **ultra vires** → court declares it **void**.

9 COMMON EXAM TRAPS (MCQ DISTRACTORS)



! Criminal burden of proof: **beyond any doubt / any reasonable doubt** → **beyond ALL reasonable doubt**. Civil = **balance of probabilities**.

! Non-money Bill origin: **most start in NA** → **may originate in EITHER House**. Money Bill → **NA only**.

! President's electoral college: **Senate + NA only** → **Senate + NA + members of Provincial Assemblies**.

! Returned Bill reconsidered by: **NA & Senate independently** → **both Houses in JOINT sitting**.

! Re-election: **three consecutive terms** → **not more than TWO consecutive terms**.

! Ordinance life: **90 / 60 / 100 days** → **120 days** (90 days = time for the other House to pass a Bill).

! Acting President on vacancy: **PM / Speaker / Chief Justice** → **Chairman of the Senate**.

! "Bulk volume" and "power to unelected civil servants" are **DISADVANTAGES** of delegated legislation – not advantages.

! Parliament consists of: **President, NA & Provincial Assembly** → **President, National Assembly & Senate**.

! **Tort** = **violation of civil law**, not of criminal law. A guilty accused = **Convict** (not plaintiff/defendant).

! Ministers appointed by President on advice of: **Chief Justice + Governor** → **the Prime Minister**.

! Criminal law aims to **penalize wrongdoers** – **compensating injured parties** is the aim of civil law.

10 QUICK REVISION BOX – NUMBERS & ARTICLES

5 yrs

President's term · NA general seats

2

Max consecutive terms of President

6 / 3 yrs

Senator's term / half retire every 3 years

90 days

Other House fails to pass → joint sitting

10 days

President to assent or return Bill

120 days

Ordinance repealed if not passed

+120 days

One extension by NA resolution

4

Sources: Legislation, Precedent, Customs, Agreement

- **Art. 50** Governing structure / Parliament
- **Art. 41, 44, 46, 48** President
- **Art. 90, 91** Prime Minister & Cabinet
- **Art. 59, 60, 49** Senate · **Art. 51, 52, 53** National Assembly
- **Art. 70** Act of Parliament (Scenarios 1–4) · **Art. 73** Money Bill
- **Art. 75** Power of President / return of Bill · **Art. 76** Lapse of Bill
- **Art. 89** Ordinance
- Civil vs Criminal on **5 points**: definition, purpose, harm, burden of proof, remedy

Delegated legislation in one line: Advantages = **Time · Experts · Flexible** | Disadvantages = **Undemocratic · Bulk volume** | Control = **Parliament + Courts** (ultra vires → void)