INTRODUCTION TO LAW AND GOVERNANCE

Publisher Information

Published by: **Kindle Direct Publishing**
An Amazon.com, Inc. Company

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Synapse Global Institute
P.O Box 25970, 00100, Nairobi, Kenya
admin@sgi.ac
+254 100000050

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PREFACE

Professional ethics and governance are vital for the sustainable success of any organisation or professional practice. In today's dynamic and regulated environment, the principles of ethics, accountability, and integrity underpin trust, build reputations, and promote responsible leadership. This book, *Introduction to Law and Governance*, has been developed to offer a practical and comprehensive guide for learners and practitioners to understand and apply key legal and governance principles in both public and private sector contexts.

While this book is tailored to meet the requirements of the **Certified Public Accountants (CPA) Reviewed Examination Syllabus KNQF Level 7 June 2024**, its scope extends beyond examination preparation. It is also intended to serve as a valuable reference for professionals seeking to strengthen their understanding of the legal system, corporate governance structures, ethical standards, and compliance obligations in Kenya and other Commonwealth jurisdictions.

The book is structured in a progressive manner, beginning with foundational legal concepts such as the nature and classification of law, the Constitution, and administrative law. It advances to more specialised areas including tort, contract, sale of goods, agency, property law, and corporate governance. Each chapter incorporates Kenyan legal frameworks, comparative examples from Commonwealth systems, relevant case laws, and review questions to enhance comprehension and critical thinking.

Practical application is a key focus. Case studies and real-world illustrations provide readers with analytical tools to relate legal principles to real situations, particularly within the Kenyan regulatory environment. The content aligns with the expectations of professional bodies such as the **Law Society of Kenya (LSK)**, **Institute of Certified Public Accountants of Kenya (ICPAK)**, and **Capital Markets Authority (CMA)**, making it relevant for governance professionals, accountants, legal officers, and business leaders.

It is my hope that this book will not only support candidates preparing for the CPA examinations but also inspire current and future professionals to uphold the highest standards of professionalism, integrity, and accountability in their work.

I am grateful to all who contributed their insights and expertise in the development of this resource. Your commitment to quality education and governance excellence is deeply appreciated.

CPA Ronoh Benson Benhard
Synapse Global Institute
2025

Relevant Terms in Law and Governance

1. Law

A system of rules created and enforced by governmental or social institutions to regulate behaviour, ensure order, and provide justice. It governs interactions between individuals, businesses, and governments.

2. Governance

The processes, systems, and structures through which organisations or institutions are directed, controlled, and held accountable to ensure fairness, transparency, and compliance with legal and ethical standards.

3. Constitution

A set of fundamental principles or established precedents that constitute the legal foundation of a state, outlining the powers of the government and the rights of citizens.

4. Administrative Law

The branch of public law that governs the activities of administrative agencies of government, including rule-making, enforcement, and adjudication.

5. Corporate Governance

The system by which companies are directed and controlled, focusing on the roles of the board of directors, management, shareholders, and other stakeholders in ensuring accountability, transparency, and fairness.

6. Ethics

A set of moral principles or values that guide the behaviour of individuals or groups in their interactions and decision-making processes.

7. Professional Ethics

The standards of behaviour and moral conduct expected of individuals within a particular profession, aimed at ensuring accountability, integrity, and respect for clients and stakeholders.

8. Rule of Law

The principle that all individuals, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated.

9. Alternative Dispute Resolution (ADR)

A range of processes, such as mediation, arbitration, and negotiation, used to resolve disputes outside of traditional court proceedings.

10. Legal Personality

The recognition of an entity (individual or organisation) as having rights and obligations under the law, such as the ability to own property, enter contracts, or sue and be sued.

11. Tort

A civil wrong, other than a breach of contract, for which the injured party can seek compensation or relief in a court of law.

12. Contract

A legally binding agreement between two or more parties that creates mutual obligations enforceable by law.

13. Delegated Legislation

Laws made by individuals or bodies under the authority of an act of parliament, such as regulations, rules, and orders.

14. Judicial Precedence

A legal principle that requires courts to follow the rulings of higher courts in similar cases to ensure consistency in the application of the law.

15. Fiduciary Duty

The legal obligation of one party to act in the best interests of another, such as the duty of directors to act in the best interest of shareholders.

16. Stakeholders

Individuals or groups with an interest in the operations or decisions of an organisation, including shareholders, employees, customers, suppliers, and the community.

17. Breach of Contract

The failure to fulfil the terms of a legally binding agreement, giving the injured party the right to seek remedies such as damages or specific performance.

18. Natural Justice

The principles of fairness applied in decision-making, including the right to a fair hearing and the rule against bias.

19. Intellectual Property (IP)

Legal rights granted to individuals or organisations for creations of the mind, such as inventions, artistic works, trademarks, and patents.

20. Compliance

The act of adhering to laws, regulations, standards, or ethical practices within an organisation or profession.

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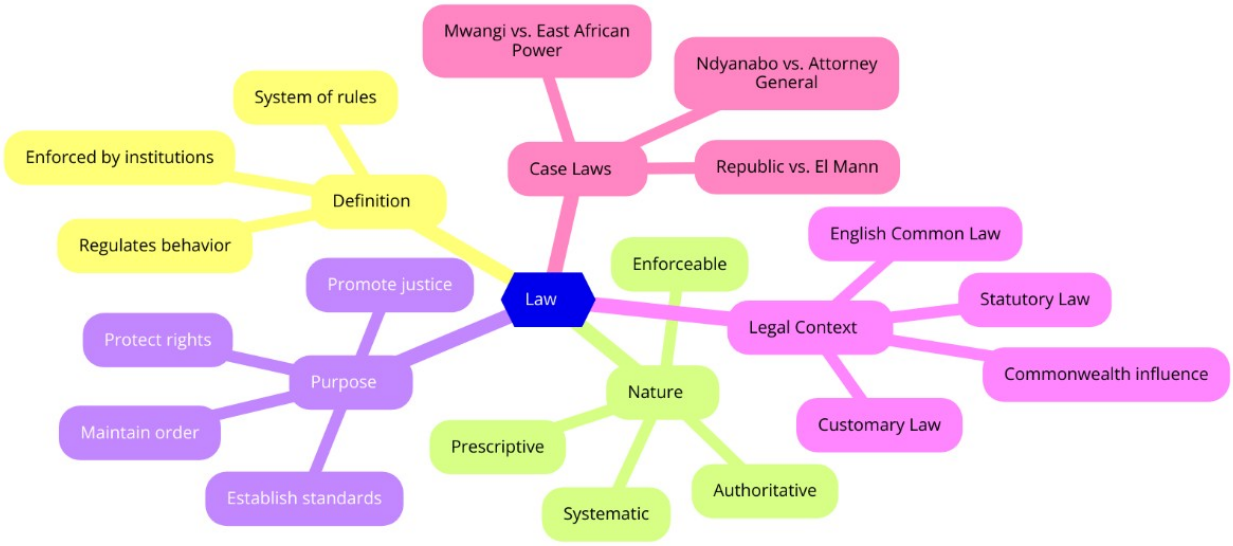
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CHAPTER 1

NATURE, PURPOSE, AND CLASSIFICATION OF LAW

Section 1.1: Definition and Nature of Law



Definition of Law Law is defined as a system of rules created and enforced through social or governmental institutions to regulate behavior. It serves as a framework for the regulation of social relationships, guiding conduct, and ensuring order within a society.

Nature of Law The nature of law encompasses its characteristics and the role it plays within society. Law is:

- **Prescriptive**: It prescribes the behavior expected of individuals and organizations.
- **Authoritative**: Laws are issued by recognized authorities and have to be obeyed by all citizens.
- **Systematic**: Laws form part of a larger legal system and are not standalone dictates. They are interconnected and structured.

- **Enforceable**: The legal system possesses mechanisms to enforce laws, including penalties and sanctions for non-compliance.

Law in the context of the Commonwealth, which includes Kenya, operates under a mixed legal system influenced by English Common Law, customary law, and statutory enactments. These influences shape the legal environment, blending traditional practices with imported legal principles.

Purpose of Law The purpose of law is multi-dimensional and includes:

- **Establishing Standards**: Law sets out accepted behaviors and processes in various aspects of society, including business, politics, and personal conduct.
- **Maintaining Order**: It provides a basis for ensuring order within society, managing disputes, and preventing chaos.
- **Protecting Liberties and Rights**: Laws safeguard individual rights and freedoms, offering protection against abuses by individuals, organizations, or the state.
- **Promoting Social Justice and Welfare**: It aims to ensure fairness and equity, distributing resources and opportunities in a manner that promotes public welfare.

Relevant Case Laws

1. **Mwangi vs. East African Power & Lighting Co. Ltd. [1983]**: This case is a cornerstone in the Kenyan legal landscape, demonstrating how negligence and duty of care are treated under the Tort Law, reflecting principles derived from English Common Law.
2. **Republic vs. El Mann (Kenya) Ltd. and Others [1997]**: This landmark case illustrates the application of administrative law in Kenya, particularly how governmental powers are checked by judicial review.
3. **Ndyanabo vs. Attorney General [2001]**: In this case, the East African Court of Justice highlights the enforcement of rights under the Treaty for the Establishment of the East African Community, showing the influence of international law on domestic legal proceedings.

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