

Introduction to the Law & Regulatory Framework of Sri Lanka

AAT Level II
BLA - Business Law

Nayanathara Guruge

CIMA Passed Finalist, Reading for Attorney at Law, B.Sc. (UOC) Sp. Hons.



JMC Jayasekera Management Centre (Pvt) Ltd

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65/2A, Chittampalam Gardiner Mawatha, Colombo 02 | T: +94 112 430451 | E: info@jmc.lk | F: +94 115 377917

Introduction to Law and Regulatory Authorities

Nayanathara Guruge

Interpretation of Law

- The Law is the reason unaffected by desire
- Aristotle-
- The law is the order of the autocratic stimulated by penalty
-Realistic School-
- Law is a set of rights and obligations created by the state
-Socialistic School-

Interpretation of Law

- **A set of rules** which can be regulated for the **administration and proper life style** of a society”
- Presumption: **“Everyone should be aware of the existing law”**

Classification of Law

- Civil Law and Criminal Law
- Substantive Law and Procedural Law
- Domestic Law and International Law
- Personal Law and Common Law

Classification of Law

- Criminal offence - An offence committed against the society in common is an offence committed against the state.
- Public Nuisance- Criminal offence
- Private Nuisance- Civil offence

Classification of Law

Civil Law	Criminal Law
Cases regarding civil offences are instituted in Civil Courts. – District Court	Cases regarding criminal offences are instituted in Criminal Courts. – Magistrate Court, High Court
The purpose of a civil case is indemnifying the affected persons.	The purpose of a criminal case is to penalize the criminals.
The parties of a civil case are the Plaintiff and the Defendant.	The parties of a criminal case are Prosecution and Defense.
A civil case is filed by the prejudiced party (Plaintiff). The case should be proceeded by an Attorney-at-Law appointed by him.	A criminal case is instituted by the state on behalf of the prejudiced party. The case is handled by the Police in the Magistrate's Court and by the Attorney general in the High court on behalf of the prejudiced party.
The burden of proof of a civil case is based on preponderance of the evidence.	The burden of proof of a criminal case is beyond reasonable doubt.
The offender of a civil case is ordered to pay compensation.	The offender of a criminal party is punished with imprisonment, fines, compensation or death penalty.
Eg. Law of Marriage, Land Law, Law of Contract.	Eg. Murder , Rape, Possession and business of dangerous drugs, Robbery, Damaging Public Property, Damaging antiquities.

	Civil Law	Criminal Law
One who files the case	Plaintiff	Prosecutor
Against whom the case is filed	Defendant	Defense

Classification of Law

Substantive Law	Procedural Law
Law by which the “Offences” are interpreted and punishments affecting them are stipulated	How to carry out the court proceedings before the judiciary regarding certain offence.
Eg. Penal Code	Eg. Civil Procedure Code Criminal Procedure Code

Classification of Law

Domestic Law	International Law
Law applicable to a specific geographical area	A set of rules which creates binding obligations among the countries.
	Created through conventions signed together by the countries.

Classification of Law

Personal Law	Common Law
The law stipulating the provisions with regard to the resolution of disputes among the persons.	Law which stipulates the provisions regarding the factors effective between the state and the general public affecting the society and the lives of the general public.
Eg. Contract Law, Family Law, Property Law	Eg. Constitutional Law, Administrative Law, Criminal Law

Sources of Law

- Sources which affected the origination of a legal rule.
- Place of origin of the Law.

Sources of Law

- The constitution
- Statutes
- Judicial Precedent
- Customs
- Opinions of the jurists
- Equity
- Religion

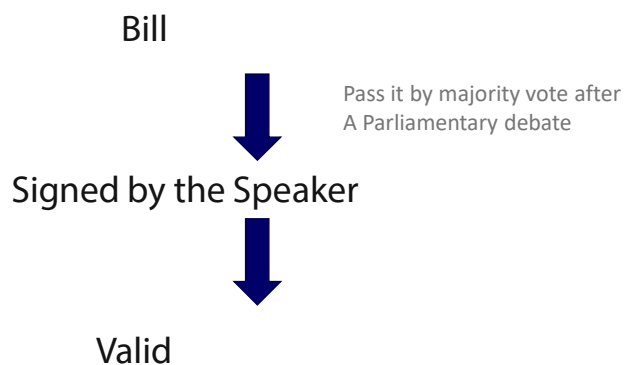
The constitution

- The supreme source of law in Sri Lanka
- Second constitution in Sri Lanka, passes in 1978 and the provisions therein had been amended in 20 times occasionally.

- Factors included in the constitution,

- Law making authority: Legislature of that country. (in Sri Lanka it is the Parliament)
- Statutes: the laws enacted by a legislature of a certain country.

The process of enactment of statutes



Delegated Legislation

Provincial Councils

Local Authorities

Government Institutions (University Grants Commission)

Stare Decisis/ Judgments

- Judgment given by a certain court with regard to a legal issue

Two requirements,

- The existence of a judicial system with a hierarchy from top to bottom.
- The documentation of judgments for the public awareness. (SCC)
- [Supreme Court Circulars, New Law Reports (NLR), Sri Lanka Law Reports (SLLR)]

Two main Parts of a judgment

Ratio Decidendi

Obiter Dictum

-The Statements made as the foundation on declaring his/her conclusion.

- Judge is bound by the Ratio Decidendi of a judgment.

Customs

- A habit that is inherent to a particular person or a group of persons.
- Morality in action.
- Importance as a source decreased over the period.

Characteristics of a custom for it to become a law

- The custom should be old and firmly established
- The custom should be fair
- The custom should not be contradictory to statutory law
- The custom should have been followed continuously and should not be abundant from the usage
- The people should have used the custom as a right

Opinions of the Jurists

- The books , reports prepared by the jurists expressing the ideas and opinions.
- Civil Law tradition countries
- Roman Dutch Law – Hugo Grotius, Arnold Willias, Johannas Voet
- Kandyan Law - John Doily, Simon Sawyer, Hayley

The Pluralistic Legal System of Sri Lanka

- Kandyan Law
- Thesawalamai Law
- Muslim Law
- Roman Dutch Law
- English Law

Special laws and Common laws

Special laws	Common laws
Laws which affect a person based on factors like religion, nationality or residential area.	Laws applying to persons living in a country without any special consideration as to the religion, nationality or residential area within that country.
Two fold <ul style="list-style-type: none">• Personal Laws• Territorial Laws	Eg. Roman Dutch Law, English Law
<ul style="list-style-type: none">• Eg. Kandyan Law, Thesawalamai Law, Muslim Law	

Residuary Law

- The law which is applicable in resolving a certain issues when there is no statutory law or special law with regard to a certain matter in relation to a certain person is residuary law.
- Residuary law of Sri Lanka: Roman Dutch Law

Kandyan Law

- The traditional descendants from the residents of upcountry before the 1815 convention signed are bound.

A personal law with a territorial foundation

Territorial factor	Personal Factor
Being a resident in a Kandyan region is in effect	Being a traditional Sinhalese

Williams V Robertson

Kandyan Provinces

The Kandyan Marriages and Divorce Act

- Central province, North Central Province, Sabaragamuwa Province and Uva Province
- Sath Korale and Demala Hathpattuwa in North Western Province
- Kilakkumalai in Vavuniya District Southern Korale and Chuniyacheddikulam East and Western Korale in Nothern Province

The Sources of Kandyan Law

- Traditional customs
- Books written by local and foreign jurists
- 1815 convention
- Statements of kandyan land transfers
- The kandyan Marriages and Divorce Ordinance
- Kandyan Succession Ordinance
- Commissioner Board decisions
- Judicial precedence theory

- Succession
- Adoption
- Marriage and Divorce
- Gifts

Thesawalamai Law

- The Malabar nationals who migrated from the South India lived in Jaffna.
- Thesawalamai Code composed by Class Isaac who was the Disawa of Jaffna in 1706.
- Applicable to Malabars resident in the province of Jaffna.

- When it is inquired on to whom Thesawalamai applies, the meaning of Malabar and resident should be interpreted.
- **Jaffna Province:** Northern Province and the Trincomalee and Batticola are not relevant.
- **Malabar:** Classic Issac had not meant Tamils ad Malabars
- **Residence:** Temporary residence is not relevant to residence and only permanent residence is relevant.

Is Thesawalamai a Territorial Law? Or a Personal Law?

Territorial Law and Personal Law

Territorial Law	Personal Law
With regard to property of any person situated in Jaffna.	Applies with regard to matters incidental to that person (Welupillai v Sivagnanalingam, Sivagnanalingam V Sivagnanalingam)
-Right to Pre-emption -Servitudes -Utti Mortgages	- Adoption - Matrimonial rights - Succession

Muslim Law

- The only pure personal law which can be witnessed in Sri Lanka. (Prof. Cooray)
- Applicable to any Muslim living in Sri Lanka based on Islamic religion irrespective of the areas of residence of that person

Muslim Law was accepted by the 1801 convention



Applicable with regard to Muslims



By tradition

By converting into Islamic religion

Abeyundara V Abeyundara



If a person converts into Islam in order to obtain improper advances, the Muslim law is not applicable to him

The Sources of Muslim Law

Religious books are important sources of Law in Muslim Law

- Quran
- Sunna
- Hadiths
- Ijma
- Kiyas

Statutory Laws

The 1806 Muslim Code of Laws
Muslim Marriage and Divorce Act
Muslim Intestate Succession Act
Judgments

Occasions where Muslim Law is applied specifically

- Inheritance and succession
- Marriage and Matrimonial rights
- Divorce
- Minority
- Custody
- Charitable trust and Waqf

Occasions where Muslim Law is applied specifically

- Law of Contract
- Law of Delict
- Law regarding immovable property
- Family Law
- Law relating to judicial separations not falling into Divorce
- Law in relation to maintenance of old parents

Roman Dutch Law

- Residuary Law of Sri Lanka.
- Combination of ancient Roman Law and German customs.
- Introduced to Sri Lanka after the coastal regions of Sri Lanka were captured by the Dutch in 1656.

English Law

- 1799 declaration which was built up on the rule of **Campbell V Hall**
- Commercial spectrum

Civil Law Act 1952

- Sec 03
- The areas of the Partnership, Bank affairs, the relationship between the Principal and the Agent, Insurance in Srilanka, English Law should be used.
- Partnership Ordinance of 1890
- Sale of Goods Ordinance No.11 of 1896
- Bill of Exchange Ordinance No.25 of 1927
- Companies Act of 1938

The sources of English Law

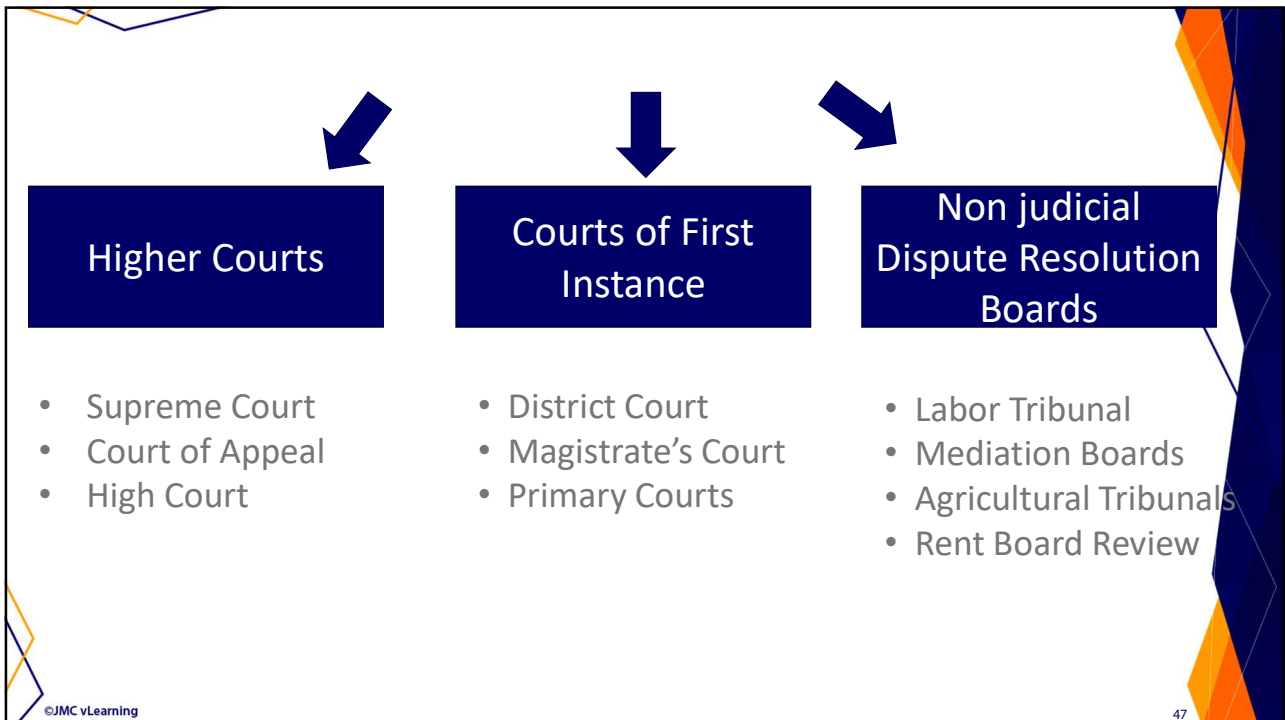
- Equity
- Judgments
- Legislative enactments

The Judicial System in Sri Lanka

- King was the source of Law in ancient days
- Mahanaduwa - Adhikaram, Disawe, Disawe
- Gamsabha, Ratasabha
- In Portuguese era slight changes only.
- Dutch established court system in Sri Lanka – Civil Raad, Land Raad and Raad Van Justice.
- British system was introduced later.

The current Judicial System

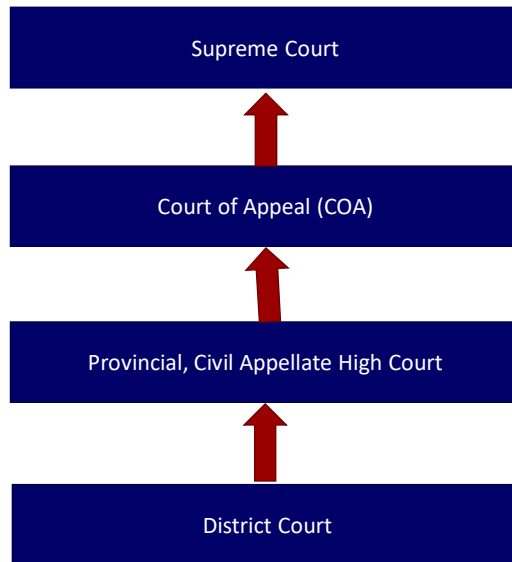
- The 1978 Constitution and Judicature Act No.02 of 1978 provides for the provisions on the Judicial System.
- According to Article 105(1) of the Constitution, The Supreme Court, Court of Appeal and High Court are recognized as courts of Sri Lanka.
- Judicature Act – District Courts, Magistrate's Courts and Primary Courts



Hierarchy of Courts with regard to various types of cases

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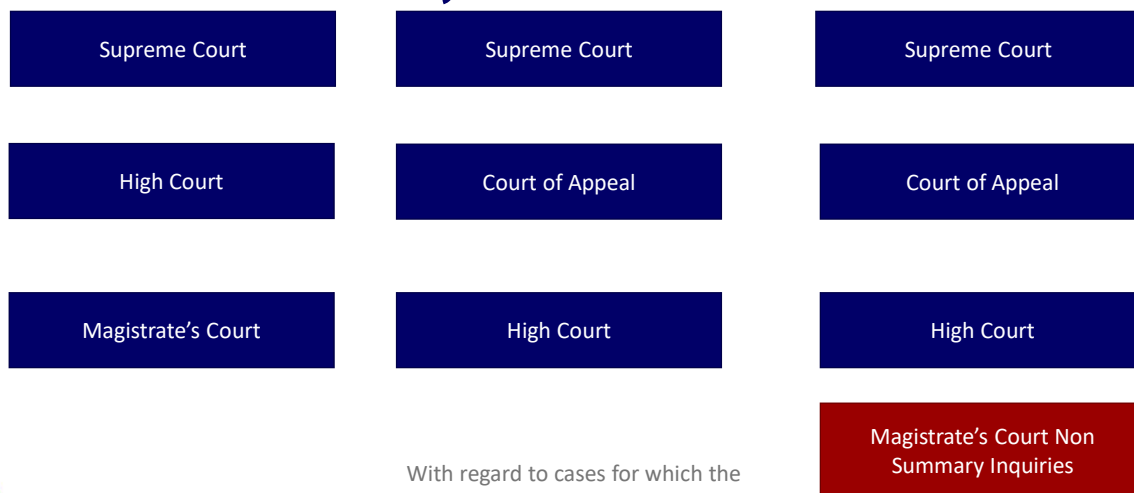
Hierarchy of courts with regard to Civil Cases



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Judicial Hierarchy of Criminal Cases



With regard to cases for which the Magistrate's

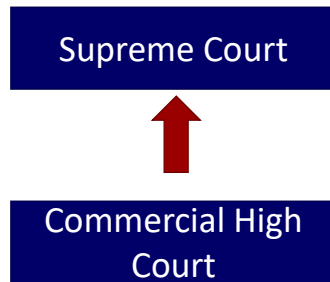
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With regard to cases for which the High court has jurisdiction

With regard to cases for which non Summary inquiries are held by the Magistrate's court

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With regard to commercial disputes having a value exceeding Rupees five million



Supreme Court

- The highest and final superior court of record.
- The head of this court is the Chief Justice.
- Consist of not less than 6 and not more than 11 judges including the Chief Justice.
- The powers of the Supreme Court are exercised with the sitting of 3 judges or more.

The powers of the Supreme Court

- The Final and conclusive Civil and Criminal Appeal Jurisdiction
- The jurisdiction on bills
- The jurisdiction on Fundamental Rights
- The jurisdiction on election petitions (Presidential election petitions, Referendum petitions, Appeals in respect of election petitions)
- Advisory jurisdiction
- The jurisdiction regarding breach of parliamentary privileges
- The power to draft Supreme Court rules
- The jurisdiction with regard to other factors determined by or vested by the Parliament under the spectrum of Law

Court of Appeal

- Head – President of the Court of Appeal
- It functions as a court of record.
- Consists of not less than 7 and not more than 12 judges inclusive of the President of Court of Appeal.

The Powers of the Court of Appeal

- Appellate jurisdiction
- Writ Jurisdiction
 - Certiorari – to prevent breach of rights of persons
 - Prohibitions
 - Procedendo
 - Mandamus – to force performance of a public service
 - Quo Warranto – to remove from a public post
 - Habeas Corpus- to order to bring a person before the court who had been held unlawfully or illegally under detention
- The jurisdiction regarding the election petitions (Parliament Election)
- Cases regarding Contempt of court
- Resolving disputes of courts of first instance (Eg: examination of case records)

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High Court

- Sri Lanka is divided into High Court divisions
- One High Court had been established per one division.
- Hearing is done by one judge with or without a jury consisting of 7 persons and in special case hearing the cases are heard by three judges.

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The powers of the High court

- Fundamental Jurisdiction

- Hearing of cases sent to the High court after a non-summary inquiry in the Magistrate's court.

- Eg: Murder, Rape, Attempt to murder

- Cases directly heard by the High Court

- Eg: Treason, Statutory Rape, cases falling under the Prevention of Terrorism Act, cases falling under the Poisons, Opium and Dangerous Drugs Act

The powers of the High court

- Appellate jurisdiction (with regard to cases heard in a Magistrate's Court, Labor Tribunals, Agricultural Boards)

- Writ Jurisdiction (jurisdiction to issue habeas corpus writs within the High Court division and jurisdiction to issue writs of Certiorari and Mandamus within the province)

- Arbitration cases

- Admiralty Jurisdiction

Commercial High Courts

- Established under the Provincial High Courts (Amendment) Act No. 10 of 1996
- The purpose: fast resolution of commercial disputes
- Functioning in Colombo and Homagama in present.

The powers of the Commercial High Court

1. Commercial cases exceeding the value of Rupees 5 Million like Bank, Export Import, Insurance, Business, Ocean freight, Air freight, Agency.
2. Cases under the Intellectual Property Act
3. Hearing of cases filed under the Companies Act (cases in relation to neglecting of provisions which should be followed up by the Private Companies, cases in relation to Company meetings, cases in relation to a harm caused to a certain member of the company, cases in relation to mismanagement)

Provincial Civil Appellate High Courts

- Established in provincial level with the appellate jurisdiction with regard to the judgments of the District courts.
- Established by the Provincial High Courts (Special Provisions) Act No.54 of 2006.

District Court

- Every High Court Division is divided into District Court Divisions and one District Court had been established per one division.
- The cases are heard by the District Judge or Additional District Judge.
- Only civil cases are heard.

Powers of the District Court

- Partition Cases
- Land cases
- Trust cases
- Testamentary cases
- Cases to recover damages
- Cases on ejection of tenants
- Cases on breach of contract
- Divorce cases
- Cases on custody of children
- Protection of property of minors and insane persons
- Claiming damages for breach of promise to marry

Magistrate's Court

- The lower criminal court.
- The Magistrate hears the cases there.

Powers of the Magistrate's Court

- Hearing of minor criminal cases (theft, hurt, illegal liquor, mischief)
- Jurisdiction on Public Nuisance under the Criminal Procedure Code
- Conducting Non Summary inquiries (examining whether sufficient evidence are there to refer cases on offences of Murder, attempt to murder, rape to the High Court)
- Issue of search warrants and warrants to arrest suspects
- Conducting autopsy
- Recovering due amounts in EPF and ETF

The functions of the Regulatory Institutions

- The Regulatory institutions had been created in order to enforce and implement specific regulations existing for the carrying out of the businesses consistently.

Examples:

- Association of the Chartered Certified Accountants
- Sri Lanka Accounting and Auditing Standards Monitoring Board
- Securities and Exchange Commission
- Colombo Stock Exchange
- Board of Investment
- The Department of the Registrar of Companies
- Customs Department
- Central Bank of Sri Lanka

The Chartered Accountants of Sri Lanka

- The Institution of Chartered Accountants of Sri Lanka can be cited as one of the highest professional organizations in Sri Lanka, providing the leadership and paving the way with regard to the spectrums of Accountancy and Finance, Internationally and in National Level

The duties of the Chartered Accountants

1. Continuous management of financial systems and budgets
2. Financial Auditing
3. Negotiating with the clients and provision of financial information and instructions
4. instructing the clients on their tax planning in respect of reducing the clients' tax liabilities
5. Provision of Accountancy and Management details for small scale businesses and also maintaining accounts
6. Provision of instructions to the client on subjects like bankruptcy/mounting up businesses
7. Accountancy laws (Investigations and reducing frauds)

Sri Lanka Accounting and Auditing Standards Monitoring Board

- The Sri Lanka Accounting and Auditing Standards Monitoring Board which had been established by the Act No. 15 of 1995 consists of former officers who had done a special public service or persons recommended by special institutions.
- This Board consists of Companies Registrar, Commissioner General of Inland Revenue and Director General of Securities and Exchange Commission and 10 members appointed by the respective minister.

Powers of this Board.

1. Making a request by way of a notice to relevant specific business institution or its' Auditors in order to produce some information about financial statements.
2. Inquiring from a respective Director, Officer or Auditor of the business with regard to any issue in relation to sending summons and production and preparation of financial statements
3. Execution of investigations which can be considered as essential for the functioning of this institution and its' affairs under the Act and in order to achieve that objective, a Director, officer or an Auditor of a respective institution should come forward to this institution and that institution should produce the thing like the documents which are requested for the investigation.

Securities and Exchange Commission

- Established by the Securities Board Act No. 36 of 1987
- It regulate and guide the Securities Market of Sri Lank and granting of licenses to the persons engaged in businesses within the securities of stock brokers, stock exchanges, stock dealers.
- Though all the companies in Sri Lanka are considered to be within the spectrum of the Companies Act, institutions which are listed in the Colombo Stock Exchange are subject to the spectrum of Exchange law in addition to the Companies Act.

The functions of the Securities and Exchange Commission.

- Advising the government on the development of the securities market
- Regulating the listing and issue of securities in a licensed stock exchange
- Inspecting the licensed stock market in order to reject a respective application made for
- Inquiring and conducting investigations into any activity of licensed stock brokers or stock dealers, a licensed managing company or a trustee of a unit trust, a registered market intermediary or any listed public company
- Implementing the policies and programmes of the government with respect to the market in securities

Colombo Stock Exchange

- The Stock Exchange can be cited as a **market limited by guarantee** conducting business of shares and debentures.
- All public companies under the Companies Act of Sri Lanka should inquire on getting listed on the Colombo Stock Exchange in order to issue share capital and debt capital to the public.
- It comes under the spectrum of the Securities and Exchange Commission and if any company wishes to get listed on the Colombo Stock Market, it is essential for that company to adhere to the relevant legal provisions of the Companies Act, provisions of the Securities and Exchange Commission Act, rules imposed by the Securities and Exchange Commission.
- Because it provides an entrance to the share capital in giving a share owned by the investors within the company.

Board of Investment

- Basically, the Board of Investments was cited as 'Greater Colombo Economic Commission'.
- This was established again in 1992 as the "Board of Investment".
- The main statute relevant to the Board of Investment is the Board of Investment Law No. 04 of 1978 and its' subsequent amendment.

The basic functions of this board

- Conducting discussions with the investors on project proposals
- Accepting voluntary projects and reviewing and also forwarding them to the respective government institutions to take the necessary steps.
- Providing special advisory assistance and preparing relevant documents
- Providing tax and other reliefs
- Marketing infra-structure projects to future investors

Registrar of Companies

Functions of the Registrar of Companies

- Incorporation of companies
- Registration of business names
- Compiling of information that can be used for public in relation to enforcement of Companies Act.
- Compiling of encumbrances in relation to companies.

Department of Customs

- Enforces tariff on imports.
- The main function of this is the calculation and collection of customs duty on goods exported from the country as well as on the goods imported to the country

Central Bank of Sri Lanka

The main functions

- Maintaining the economic and price stability
- Maintaining the stability of the financial system.

[The price stability protects the value of money. It also includes minimum inflation. On the other hand, a suitable surrounding for the investors and savers is created by the stability of the financial system. This incentivises an effective market mechanism and effective financial intermediation.]

Agent functions of the Central Bank of Sri Lanka

- Management of Employees' Provident Fund
- Management of Foreign exchange,
- Management of public debt
- Provincial development
- Financial intelligence affairs
- Supervision of provincial centers can be cited as.

- Management of foreign exchange is an extensive function of the Central Bank of Sri Lanka.

[Currently, Sri Lanka is following a floating exchange rate system. This rate is decided by the market influence based on the demand and supply for the foreign exchange in the foreign market. If there is a continuous devaluation of the exchange rate, it becomes the cause for the rise of import price and increasing of stringent inflation effects. At that point, the Central Bank of Sri Lanka intervenes and issues foreign currency to the market and controls the devaluation of the local currency].

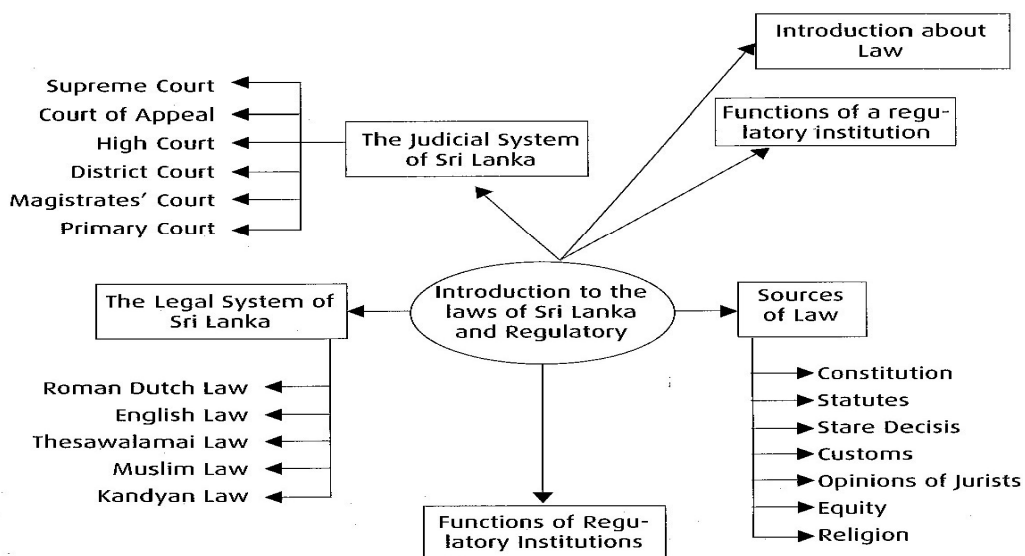
- Controls the rise of the rate by purchasing foreign currency.

Exchange Control and Information Bureau

- Commenced under the recommendations of the Central Bank of Sri Lanka by the Act No. 18 of 1990
- Objective is to facilitate the banks and financial institutions with regard to decision taking on granting debts by increasing the access to information of credit and controlling flowing of credit to every aspect of the Opinions of Jurists economy within it.
- The banks and financial institutions have the ability to obtain the credit details about the debts and obligations of those parties through the credit information bureau before granting a loan or any other financial facility to a person. The report issued by the Credit Information Bureau in such manner is called as the Detailed Credit Information Report. Also the general public has the ability to obtain a report on their credit information through the Credit Information Bureau on requirement. That report is called as the I Report.

- Provides value added services to the financial institutions.
- Maintenance of the “Secured Transactions Registry” for registering the ownership in relation to security of movable property.

Summary



July 2020

1.1 The most supreme source of law in Sri Lanka is:

- (1) Civil Law.
- (2) Criminal Law.
- (3) The Constitution.
- (4) Case Law.

July 2020

1.10 State two(02) functions of the Board of Investment.

January 2020

1.1 The court which has the exclusive jurisdiction regarding the Fundamental Rights cases in Sri Lanka is:

- (1) Court of Appeal.
- (2) Supreme Court.
- (3) District Court.
- (4) Magistrate's Court.

January 2020

1.2 Of the following, select the correct statement:

- (1) Thesawalamai law is a special law in Sri Lanka.
- (2) The common law in Sri Lanka is Roman Dutch law.
- (3) Magistrate's court exercises original jurisdiction in criminal cases.
- (4) All of the above.

January 2020

1.9 State two(02) functions of the Securities and Exchange Commission of Sri Lanka.

END