WHAT ARE STATE STATUTES?

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# Abstract

This paper will define statutes in the form of a case study. It will be exploring the making of laws in three different countries; United States, United Kingdom and Kenya. The purpose of looking at these countries is to explore the different legal systems in the world and how statutes come into being.

In the United States statutes originate from the Congress as a bill and through the congressional session bills can become laws. These laws are usually called slip laws before they are incorporated into Statutes at Large and become session laws. Session laws consist of laws that are made at the end of a congressional session.

In the United kingdom which has the popular legal system know as Common law most of its laws come from Judicial precedent but statutes which govern public or private policy come from the Westminster Parliament. Statutes in the United kingdom mostly stem from the House of Commons and are referred to the House of Lords if both houses pass the bill it is given to the Monarch for royal assent.

Kenya’s law making process is similar to that of the United kingdom due to Kenya being colonized by Britain. The Kenyan Parliament is a bicameral Parliament similar to the Westminster Parliament. It has the Upper House- Senate and the Lower House- National Assembly. Money bills originate from the National Assembly while bills involving the County must pass through the Senate if they have originated from the National Assembly. Bills in Kenya come into law after presidential assent and the president has Veto power.

**Introduction.**

Statutes in many legal systems around the globe are laws made by the Legislative arm of government. Essentially, they are acts that govern either public or private issues depending on the intent of the statute. Statutes act as a source of law in the legal systems known today i.e. Civil Law System and Common Law System, but not as the main source of law. In many legal systems, The Grudnorm which was by Hans Kelsen, there is a hierarchy in the sources of laws and on the top of the grudnorm more often than is a constitution followed by statutes.

**Statutes in the United States.**

According to Loreen Peritz- Advanced Legal Research(2021), federal statutes are laws enacted by Congress and are signed by the president to have the effect of law. Statutes are published in three formats: slip laws, session laws and codes. All statutes start as bills, when passed the bills become slip laws and then session laws. Many session laws are incorporated into codes.

After the president signs bills into law, the Office of the Federal Registrar assigns a public law number and publishes the law in an individual pamphlet known as a slip law. Public law numbers are sequential i.e. Pub.L.No. 115-1 is the first law passed in the 115th session of congress. Private laws are numbered in a similar manner.

## Federal session laws.

At the end of a congressional session, slip laws are compiled in chronological order and are published in the United States Statute at Large. A Statute at Large citation includes the volume and page number where the statute is located e.g. 129 Stat. 3. The Statute at Large is legal evidence of all the laws enacted during a session of congress. A session of congress lasts for two years.

## Federal Code.

The United States code contains the “general and permanent” laws of the United States. The Office of the Law Revision Council of the U.S House of Representatives (OLRC) takes each new public law and reorganizes its provisions into 54 broad titles according to subject matter. Some of the 54 titles of the code are “positive laws” the rest are called “non-positive law” titles. A title becomes positive law when congress enacts the entire title as a federal statute. Positive law titles are legal evidence of the law while non positive laws are *prima facie* evidence of the law. It is worth noting that general and permanent session laws are the ones incorporated into codes.

## Characteristics of session laws.

1. It is the law as it was passed by the legislature.
2. Arranged in a chronological order by year.
3. No amendments and no general index.
4. Usually used when doing historic research.

## Characteristics of codes

1. The law as it currently stands.
2. Arranged by order of subject and not year.
3. Amendments to sessional laws are integrated to the codes and a general index is available.

## Legislative Process.

A bill is introduced by a member of congress either in Senate of House of Representatives. The bill is numbered. If the bill is not passed by the end of the two-year session, it must be reintroduced into the next session and given a new number.

The bill is referred to the committee with the jurisdiction with the subject matter of the bill. The committee can choose to hold hearings on the bill. The committee can mark up the bill and report it to the House of Representatives or Senate depending where the bill originated.

The bill is brought before the chamber it originated from and it is debated upon. A bill passed by one chamber is called an engrossed bill.

Bill is referred to the other chamber and the process is repeated. If versions from the House of Representatives and Senate differ the bill is referred to a conference committee. After being passed by both houses (enrolled bill) it is presented to the president. The president has 10 days to either sign the bill into law or veto it. After the president signs the bill, the Office of the Federal Registrar assigns a number to the bill and it becomes a slip law.

# Statutes in the United Kingdom.

According to The Law academy, English Legal System(2023) in the UK the law-making process consists of three distinct elements:

* The House of Commons.
* The House of Lords.
* The Crown.

Westminster parliament is bicameral, it is divided into two chambers; House of Commons & House of Lords. The house of Commons comprises of 650 Members of Parliament (MP) who are chosen from the 650 constituencies in the United Kingdom. The majority in the House of Commons form part of the government and have a say on formulation of new laws.

House of Lords is the unelected branch of government meaning the positions are held by virtue of royal conferment. This chamber has little amount of power compared to the Commons owing the democratic nature of the House of Commons. An example is the Salisbury convection of 1945 that limits the powers of the House of Lords to block legislation that was on the manifesto of the majority party which forms the government.

Government departments with a policy concern will issue either green or white papers. A green paper is a document which outlines a topic of policy or law reform and its purpose is to provide guidance to the government. While a white paper is a document published with far more substantial position on what the government believes is the correct cause of action.

## Acts of Parliament.

The start as bills. They are either started by government ministers as a matter of policy or as private member bills. Private member bills are created and introduced by a private member of parliament. Private member bills rarely receive royal assent because government holds majority of the parliament timetable. A notable exception to this is the Abortion Act 1967 which was presented before the parliament by a private member.

There are two methods in which private member bills are introduced in parliament:

1. Ballot process.
2. The ten-minute rule.

The ballot process is where a ballot is allowed in every parliamentary session and 20 private members are allowed to present their vision of the bill.

The ten-minute rule is when an MP is given ten minutes to present a bill and supporting a particular piece of legislation.

## Public and Private bills.

A public bill is a legislation intended to regulate matters of public policy. A private bill looks to impact a particular person or organization. Hybrid bills are a combination of private and public bills introduced by government but if passed have an impact on a particular community/organization.

## Parliamentary law-making process.

This process consists of the following stages:

* First reading.
* Second reading.
* Committee stage.
* Report stage.
* Third reading.
* House of Lords.
* Royal assent.

### First reading.

This is a formal procedure of reading out the bill to the house and the bill is presented before the house by the sponsor of the bill. In this stage there is no room for debate or deliberation nor is there a vote that takes place at this stage. There will be a compatibility reading where it is clearly stated that the bill is compatible with the Human Rights Acts. This is an important requirement for every bill presented before the house.

### Second reading.

Discussion and debate on the bill will take place. The debate does not focus on details of the bill rather it focuses on the intent of the bill. At the end of the second reading there will be a vote on whether the bill should proceed to the next stage. If the members vote against the bill, it will not proceed and cannot be reintroduced back into the house.

### Committee stage.

Here finer details of the bill are discussed and deliberated upon. A committee will consist of a selection of MPs and all the political parties will be represented depending on their percentage in the House of Commons. In this stage appropriate amendments are made and voted upon.

### Report stage.

Amendments made in the committee stage are presented before the house in a report and are voted upon. If no amendments were made in the committee stage there will be no need for a report stage.

### Third reading.

There is little deliberation on the bill and a final vote takes place. Th e bill is then sent tot the other chamber and the whole process is repeated. Essentially if the bill began in the House of Commons it is referred to the House of Lords. Bills concerning financial matters originate from the House of Commons. If amendments are made by the other house the bill is sent back to the house it originated from for approval. In some cases, there will be a back and forth between both houses, this is called **ping-ponging**.

### Royal assent.

The monarch gives royal assent to the bill through their signature making it a law.

# Law making process in Kenya.

According to Collins Odhiambo (2024), Statutes in Kenya were introduced through the order in council of 1898 and were later retained by the Judicature Act of 1967. According to Section 3 of the Judicature Act Statutes are a source of law in Kenya. Due to its Colonial roots most of Kenya’s status pick inspiration from statutes of the United kingdom. In Kenya the legislature is in charge of making statutes and is bicameral in nature i.e. Upper House- Senate, Lower House- National Assembly.

The Law Making Process in Kenya.

1. Drafting of the bill.

Arises as an idea or the need for legislation. For public bills they are introduced by the attorney general while private member bills are introduced by a member of Parliament. The bill is either introduced in the Senate or National assembly. Money bills usually originate from the National Assembly.

1. First reading.

Here the bill is introduced before the house by the sponsor of the bill and the title is formally read before the house. In this stage neither debate nor voting takes place.

1. Second reading.

The members of Parliament here a debate on the merits and general legal principles of the bill. The members take a vote in this stage and if majority vote for the bill it proceeds to the next stage. Here members are allowed to propose amendments on the bill.

1. Committee stage.

The bill usually goes through a house committee or to a committee of the whole house where there are deep deliberations on the bill and there is a vote of each amendment that is proposed. The public is also allowed to present amendments and referendum on the bill.

1. Report stage.

After the bill has passed the committee stage , the committee tables a report of their findings before the floor of the house. At this stage there are further chances to amend the bill by members and the house reconvenes into a committee to discuss the amendment.

1. Third reading.

This is the final version of the bill incorporating any approved amendments and they are read out. The members here have a final opportunity to debate on the bill before voting. A vote is taken and if the majority approves the bill is passed to the next house where the same process is repeated.

1. Presidential assent.

The bill has to get presidential assent in Kenya for it to become a law; and that is after it is passed by both houses. Under the 2010 constitution, a bill that has been passed by Parliament and assented to by the president shall be published in the gazette as an act of Parliament.

Act of Parliament into force on the 14th day after it’s publication in the Kenya gazette, unless the act stipulates a different date at which it will come into force.

The President has several options:

* Assent- He signs the bill into law.
* Veto- He can reject the bill.
* Withholding assent- He can choose not to sign the bill, allowing it to become law after a specified period of time.
* Refer the bill back- He may refer the bill back to Parliament with specific reservations for considerations. If the Parliament addresses the president’s preservations and passes the bill again the president is constitutionally obligated to sign it into law.

# References

* Loreen Peritz- Advanced Legal Research(2021)
* The Law academy, English Legal System(2023)
* Collins Odhiambo (2024)