

Criminal procedure

Business



How does a criminal procedure pursue to ensure fairness and equality of the suspected and charged individual and the state? The suspected and charged individual is often disadvantaged as compared to state in terms available resources. Therefore, the criminal procedure ought to ensure fairness and equality in its dealings. First, the criminal procedures can be divided into stages and assigned to various bodies. The investigating, trying, persecuting, deciding guilt, sentencing and execution of the sentences can be assigned to different independent bodies. This step is known as the separation of powers so as to avoid biasness if only body executes all the stages of the criminal proceedings.

The divided criminal system tends to improve the fairness and equality in trial. Another way to strike the balance is to involve the jury. Unlike other criminal bodies which are branches of the state, the jury is separate and independent. A case decided by the jury is either unanimously made or based on majority. It is, therefore, hard for the state to exert their influence and if they have too, they will need to persuade majority of judges as well as ordinary citizens that the suspect is actually guilty.

The decision of the jury is based on the provision of the law as explained by the judges. It is vital the suspected and charged individual to be well versed with the charges leveled against him at the proper time and to be given an opportunity to seek legal advice and help from a trained advocate. In other words, the prosecution must table their evidence ahead of time, but the defense is spared from doing the same. Other countries permit the suspect not to answer questions that are likely to incriminate him/her. The prosecutor is prohibited to comment the suspects' inability to answers

questions. Another way of redressing the balance between the state and the suspected individual is the presumption of innocence.

In other words, the prosecutor has the daunting task of proving the suspected individual is indeed guilty of the crime and if they fail to prove the guilt of the suspect, then he/she will be acquitted. 6) Compare the main characteristics of crime and tort law Both laws work to eliminate the culture of wrong doing. Offences have often left many people injured or dead. Many people have often suffered as a result of wrong done to them. In order to keep people from doing wrong, the tort law will call for compensation of the offended person. On the other hand, the criminal law will seek to imprison the offenders.

These two measures are so painful when adjudicated. Many people will, therefore, work so hard to stay away from evil because of the pains associated with a punishment. The criminal law works to bring justice to the offended person. This is done when punishment is effected for every wrong done. The tort law also works to bring justice to the offended person. The tort law does this by means of calling for compensation to the offended person.

Any offended person deserves to have his/her rights protected by the law. If someone was killed, the criminal law will ensure that the defendant is imprisoned. The tort law touches on petty offences. These are small incidences that can be solved out of court. In such a setup, the offended person will have to be compensated for every wrong done to them. 7) What are the reasons for having legal forms and procedures and what are the reasons for choosing informal alternatives? The use of forms and procedures

helps to attain certainty by outlining the steps and actions that must be taken and done respectively.

The written materials help in bringing the surety about the exact terms of the legal arrangements. For instance, treaties and statutes are often written for reference purposes. Contracts are always put in writing just to ensure that the terms of an agreement are clear to each party involved and that no mistake is likely to arise. A good example is the issue of written wills.

Without a written will, the relatives of the deceased may falsify information for their own interest. In such a case, a written will help resolve any disputes arising.

In simple terms, written forms helps to establish the facts of a legal arrangement. A formal rule is important in guiding against the eventualities that are associated with informal persuasions. The formal rule provides the standards upon which actions are to be based on. Forms and procedures are essential in reducing hasty choices which may detrimental to the happiness of an individual. They often remind people of the consequences of the actions they are yet to take. In other words, all legislations have to be rechecked before it is passed a rule.

Forms and procedures help to ensure fairness in trial, especially between individuals and state. To seek justice and fairness, the parties must be considered as equal before the law. This means that two parties have equal opportunities to put their case forward and the judge making the decision must not incline on one side to the disadvantage of another. It is the value that the society gives to fairness that will determine whether the dispute and

trial procedures are fairly conducted. The various judicial bodies such as the judges, the police, and jury should uphold courtesy and honesty. This means that there should be outlined codes to govern criminal and private procedures.

8) Compare the textual, the purposive and the intentional approaches to legal interpretation. The textual approach to legal interpretation highlights that the text must convey a clear message in its ordinary face for a proper interpretation to occur. Any technical term used in the law should be given an ordinary meaning by the legal or scientific experts. However, the surface meaning of a text may convey a very absurd message. The complexity is occurred when different judges present different interpretation to the law.

That is, what is absurd to one judge may not be absurd to another. The textual approach to interpretation gives more weight to the words used in the law more the author's intentions. Purposive approaches to interpretation of law focus on the purpose of the treaty, the contract, or the agreement. The interpretation is done based on the general claims of the legal system such efficiency, security, and justice. Sometimes the purpose of a law may contradict the ordinary meaning of the words used. In this case, the proponents of purposive approach advocate that the purpose should override the ordinary meaning.

Legal systems often vary in terms of the limits that are set. The interpretation of the law should also focus on the earlier laws on a similar subject, taking into account the status of the previous law in terms of defects and strengths. In purposive interpretation, information must also be

gathered from other sources such as the proposals and reports from the official commissioners and other relevant materials which are solely prepared to pass a law or make a treaty. The intentional approach focuses on the motive of the writers in using specific word or words in a law or treaty. There is a slight difference between what the author meant by using the words and what he means to achieve by using words.

I tend to believe that interpreters should seek to understand the intentions of the parties in a treaty or a contract, or a will so as to achieve a comprehensive interpretation.