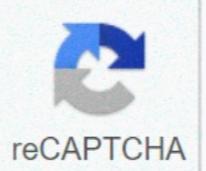




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Examples of procedural law and substantive law

Difference between substantive law and procedural law examples. Explain substantive law and procedural law. How do substantive law and procedural law differ. What is substantive law and procedural law.

Justinian I procedural law. Law that prescribes the procedures and methods for enforcing rights and duties and for obtaining redress (e.g., in a suit). It is distinguished from substantive law (i.e., law that creates, defines, or regulates rights and duties). Procedural law is a set of established forms for conducting a trial and regulating the events that precede and follow it. It prescribes rules relative to jurisdiction, pleading and practice, jury selection, evidence, appeal, execution of judgments, representation of counsel, costs, registration (e.g., of a stock offer), prosecution of crime, and conveyancing (transference of deeds, leases, etc.), among other matters. Substantive law and Procedural law are two major categories within the law. Substantive law refers to how facts of each case are handled and how to penalize or ascertain damages in each case. Whereas, Procedural law refers to the different processes through which a case proceeds. Substantive laws define the legal relationship between different individuals, or between individuals and the State.[i] Procedural laws define the rules with which substantive laws may be enforced. Illustration: The question of whether an individual is competent to enter into a contract is dealt under Substantive Law, whereas the question of the time within which one party may sue another is dealt under Procedural Law. Substantive part of law establishes the rights, duties and liabilities of individuals. Procedural law establishes the methods, practices and ways in which a court proceeding takes place. Substantive law consists of written statutory rules passed by legislature that govern how people behave. They also define our rights and responsibilities as citizens, on the other hand, Procedural law governs the mechanics of how a legal case flows, including steps and processes of a case, it adheres to due process.[ii] For instance, determining what facts constitute a crime is a matter of substantive law whereas determining which Court has the jurisdiction to try the matter is a matter of procedural law. In the case of Commissioner of Wealth Tax, Meerut vs. Sharvan Kumar Swarup & Sons[iii], the distinction between Substantive and Procedural Laws was made clear. "As a General Rule, laws which fix duties, establish rights and responsibilities among & for persons natural or otherwise are "Substantive laws", while those which merely prescribe the manner in which such rights & responsibilities may be exercised & enforced in a Court are 'Procedural Laws'." According to Salmond, The law of procedure may be defined as that branch of the law which governs the process of litigation. It includes all legal proceedings whether civil or criminal. All the residue is substantive law, it relates not to the process of litigation but to its purpose and subject matter.[iv] Substantive law deals with the ends which the administration of justice seeks while Procedural laws primarily deal with the means and instruments by which those ends can be achieved.[v] Substantive law relates to matters outside the Courts but procedural laws deal completely with matters inside courts. In the case of Thirumalai Chemicals Ltd. vs. Union of India and others[vii], the Supreme Court has held that all those laws which affect the substantive and vested rights of the parties have to be taken as substantive law, whereas any provision of law dealing with the form of the trial, mechanism of the trial or procedure thereof, has to be treated as procedural in nature. "Substantive law refers to body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them... Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right; and aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation." Distinction between Substantive and Procedural Laws: Sl. No. Points of Difference Substantive Laws Procedural Law 01. Definition It establishes rights, obligations and duties of individuals with other individuals or individuals with the State. It lays down the means and methods through which substantive law is enforced. 02. Powers It has independent powers to decide the fate of each case. It doesn't have any independent powers to decide the fate of each case. 03. Context It cannot be applied in non-legal contexts. It can be applied in both legal and non-legal contexts. 04. Regulation It governs the rights and duties of individuals. It governs the stages in which a civil proceeding proceeds. 04. Application It doesn't exclusively deal with proceedings inside a Court. It deals with the happenings of a Court. 05. Regulation It is regulated by Acts of Parliament or government implementation. It is regulated by Statutory laws. Few examples of Substantive and Procedural Laws: Substantive Laws- 1.

The Indian Contract Act, 1872 2. The Hindu Marriage Act, 1955 3. The Hindu Succession Act, 1956 4. Maternity Benefit Act, 1961 5. The Transfer of Property Act, 1882 6. The Factories Act, 1948 7. Industrial Disputes Act, 1947 8. The Law of Torts 9.



Code of Civil Procedure, 1908 (the first part that deals with general principles of law) 10. Negotiable Instruments Act, 1881 11. The Indian Penal Code, 1860 Procedural Laws- 1. Code of Civil Procedure, 1908 (the second part that deals with orders with respect to civil proceedings) 2. Code of Criminal Procedure, 1973 3. Law of Evidence, 1872 4. The Limitation Act, 1963 Recently, The Delhi High Court held in the case, NNR Global Logistics (Shanghai) Co Ltd v Aargus Global Logistics Pvt Ltd[vii] that the Law of Limitation is a procedural law rather than a substantive law. Interrelationship between Substantive and Procedural Laws: Substantive and Procedural Laws complement each other.



One without the other isn't of much value therefore, both are essential for the delivery of justice. In Saiyad Mohammad Bakar El-Edroos ... vs Abdulhabib Hasan Arab And Ors[viii], Justice A.P. Misra held that, "A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law." Procedural law ensures the enforcement of substantive law. Both substantive and procedural laws exist in civil as well as criminal laws. Edited by Pushpamrita Roy Approved & Published - Sakshi Raje Reference [i]www.pathlegal.in/Substantive-Law-Vs-Procedure-Law-blog-1511931 [ii] [iii] Commissioner of Wealth Tax, Meerut vs. Sharvan Kumar Swarup & Sons(1994)122CTR(SC)380 [iv] Salmond, Jurisprudence (12th ed.), 461. [v] V.D. Mahajan, Jurisprudence & Legal Theory (5th ed.), 421. [vi]Thirumalai Chemicals Ltd.

Criminal Procedure

SUBSTANTIVE LAW VS. PROCEDURAL LAW

vs. Union of India and others[AIR 2011 SC 1725] [vii]NNR Global Logistics (Shanghai) Co Ltd v Aargus Global Logistics Pvt Ltd [(2012 (8) AD (Delhi) 125)] [viii]Saiyad Mohammad Bakar El-Edroos ... vs Abdulhabib Hasan Arab And Ors(SC-1998-4-58] Substantive law is a type of law that handles the legal relationship between individuals, or between individuals and the state. Substantive law differs from procedural law in that it defines people's rights and responsibilities. Procedural law focuses more on the rules that are used to enforce those rights and responsibilities. To explore this concept, consider the following substantive law definition.NounAn area of law that focuses on people's rights and responsibilities as they are owed to each other and to the state.Orgin1350-1400 - Middle English substantive law deals with people's rights and responsibilities. For example, substantive law dictates the kind of punishment that someone may receive upon being convicted at the conclusion of his criminal trial. Substantive law also defines types of crimes and their severity. For example, substantive law may decide whether a crime was a hate crime, whether a disorder was committed in self-defense, and so on. Substantive law is thus responsible to determine the rights that are afforded to the accused. Procedural law differs from substantive law in that it guides the state on how best to enforce substantive laws. Procedural law is made up of all of the rules that a court will consider when determining how best to handle a civil or criminal court proceeding. Procedural law decides the kind of steps that are to be taken, how the facts of each case are to be handled, and how the case should proceed in order to reach a desired goal, whether that goal is trial, settlement, or otherwise. Substantive law in a lawsuit refers to the "substance" of a case, in that it deals with the elements of the case, and clearly defines the area of law that applies to each particular case. This way, the best plan of action can be taken insofar as bringing a lawsuit against someone, or defending someone who has found himself at the center of a lawsuit. For instance, substantive law in a lawsuit for a negligence claim consists of four major elements: The laws of the state in which the lawsuit is brought will dictate the nature of the case, and will determine to what extent each of these elements exists.Negligence is most commonly pursued in cases involving motor vehicle accidents. While all states will insist that a plaintiff prove the existence of these four elements of substantive law in a lawsuit to be victorious in a negligence claim, each state will differ insofar as its specific driving laws are concerned.

For instance, while someone is not allowed to make a right turn on red light in one state, he may be allowed to do so in another state. Therefore, a plaintiff in a state where this is illegal may have a case for negligence, while a plaintiff in a state that allows it might not. Substantive criminal law deals with the elements of a case insofar as whether the issue at hand can be considered a crime or not. For every alleged crime that has taken place, there are specific elements that must exist in order to classify it as a crime. For instance, substantive criminal law would dictate that, for a person to be charged with the crime of burglary, the following elements must be present: If these three elements are not present, then the incident may not be classified as a burglary, and a jury may decide that the accused is innocent, and that no crime had been committed. Substantive criminal law differs based on the state or jurisdiction in which the alleged crime took place.

There do not exist standard elements for every crime, nor for every jurisdiction. In the state of California, for instance, for a person to be convicted of assault, the prosecution would have to prove that: The accused touched the victim with the intent to harm him/That the victim did not want to be touched/That the accused harmed the victim/That another reasonable person would have been offended by the accused's touch/Therefore, if Gary punched Jason in a bar, and broke his nose, for making a comment that offended Gary, Gary would likely be convicted of assault because Gary made contact with Jason with the intent to hurt him/ Jason surely did not want to be punched/Gary injured Jason by punching him/Another reasonable person would have been offended by Gary punching him in the face/Substantive law and procedural law work together, in that procedural law system boosts the substantive law system by providing the guidelines that need to be followed so that substantive law can be applied to real-world disputes. Substantive law is then relied upon by a judge and/or jury when evaluating the evidence in a case to determine the nature of the case and the appropriate way to settle the matter. Substantive law defines the elements of a case, while procedural law focuses on the burden that is on the plaintiff to prove any wrongdoings to a jury that fit within the elements provided. Substantive law is the "substance of the case," and procedural law provides the "procedure" that would be best to handle the substance of each particular case. The Erie Doctrine is a civil law doctrine which provides that a federal court, when trying to decide whether to apply federal or state law to a case, must follow state law with regard to substantive law issues.

Procedural Law	Substantive Law
Structure:	Elaborates on the steps which the case passes through
Enforcement:	Creates the machinery for the enforcement of law
Powers:	No independent powers
Application:	Can be applied in non legal contexts
	Deals with the structure and facts of the case
	Defines the rights and duties of citizens
	Independent powers to decide the fate of a case
	Cannot be applied in non legal contexts

When the question pertains to procedural law, however, then the court must apply federal law to the matter at hand. The origin of the Erie Doctrine is the Supreme Court's landmark decision from 1938 in Erie Railroad Co. v. Tompkins. Here, the Court overturned the prior decision that had been made in Swift v. Tyson wherein federal judges were permitted to ignore their state's common law decisions in certain cases. An example of substantive law can be found in a case involving a defendant with a history of prior felonies, who argued that he had been sentenced too harshly, based on discrepancies between state and federal law. In 2010, police entered Gregory Welch's apartment, believing that a robbery suspect was present. After getting Welch's consent to search his apartment, the police discovered a gun and ammunition that Welch admitted were his own. Welch was then arrested. Welch was charged with one count of being a felon in possession of a firearm, to which he pled guilty. Because Welch had three prior felonies on his record, he was sentenced to 15 years in prison. Welch argued that some of his felonies should not have been considered. His argument was that, at the time of his conviction, Florida law allowed for individuals to be convicted of robbery at a significantly lower level of force than the related federal laws required. However, the U.S. Court of Appeals for the Eleventh Circuit disagreed, affirming the district court's decision. The Court's argument was that the force Welch had used during that robbery was "capable of causing physical pain or injury to another person." Therefore, the Court agreed with the lower court that this conviction was appropriately considered when determining the most appropriate punishment for Welch. In 2013, Welch challenged his conviction, arguing that his prior conviction for strong arm robbery was vague, and that his trial attorney was ineffective in his allowing Welch to be sentenced so harshly. He sought an appeal to the appellate court, which the district court denied. He then tried to appeal directly to the appellate court based on a similar case to his own that the Supreme Court was in the midst of deciding - Johnson v. United States - but the appellate court too denied his request. Three weeks later, the Supreme Court decided Johnson, holding that the very standard that Welch was convicted under - the Armed Career Criminal Act (ACCA) - was too vague in nature and was therefore unconstitutional. It was ruled to be unconstitutional because, according to the Court, it failed to give individuals enough notice of the type of illegal conduct that it was about to punish.

The Court ultimately held that application of the ACCA was "unconstitutionally arbitrary and unpredictable." The question then became whether the Supreme Court's ruling in Johnson, insofar as what constituted a violent offense, could be considered retroactively. If so, could Welch be successful in appealing his own conviction? When the Supreme Court agreed to hear Welch's case, they found in his favor in a nearly unanimous vote (7 to 1). Here, the Court held that, unlike procedural laws that change the ways in which conduct is determined to be punishable, substantive laws affect the reach of the statute, rather than its application.

Procedural vs. Substantive

PROCEDURAL LAW	SUBSTANTIVE LAW
Procedural law deals with methods of enforcing rights and duties.	Defines rights and duties
Laws that specify how and when police can make arrests and what methods can be used in a trial.	Defines offenses, such as murder, theft, vehicular homicide, breach of contract, and negligence
Example: If you murder someone your punishment would be similar to previous cases (see next slide)	2 types of substantive law: 1. Criminal Procedure- defines the process for enforcing the law when someone is charged with a crime 2. Civil Procedure- concerned only with private offenses

Further, procedural laws are not usually retroactive, but substantive laws are. As such, the ruling the Court handed down in Johnson, the Court decided, should also apply retroactively to Welch's case. This is an interesting example of both substantive law and procedural law. Substantive law applies to the facts of each of Welch's crimes, and the actual laws governing the levels of, and punishments for, those crimes. Procedural law applies to the procedures that must be adhered to determine whether an appeal has merit, and whether elements of the law can be applied retroactively. In addition, this is an example of the application of the Erie Doctrine, as Welch complained of being the victim who charged and tried a case against a person who is accused of committing a crime. Proximate Cause - An event sufficiently related to an injury to be considered the cause of that injury.