

The General Principles of Law

Amita Dhanda
Professor Emerita
NALSAR
Hyderabad

Overview

Four parts to the lecture

I Why do we need principles in Law

II Distinguishing between Rules and Principles

III Discussing Some Important Principles

IV How and Why is this Exposition Relevant for You.

Why do we need principles in law?

- All familiar with rules in law.
- Also talk of the rule of law
- Law is largely understood as a rule making and enforcing enterprise.
- When there are rules to tell us what to do or not do
- Rules also on how to do what we wish to do
- Rules on what happens when a rule is not followed
- Rules on who has to ensure that rules are followed

In order to answer this question need to distinguish between rules and principles.

Distinguishing Principles from Rules

- There is a definiteness about Rules
- All the examples I gave in the previous slide guided behaviour in particular situations
- Like what kind of act is a crime and what do you do to make a contract and what do have to do to make a will etc
- Principles on the other hand contain the **moral underpinning** of the law.
- They guide NO RULE situations
- They also guide the interpretation of Rules

Illustrating the operation of Principles

- Often speak of the form and the spirit of the law
- Principles in some manner encompass the spirit of the law
- A grandson who was the sole heir of his grandfather could not wait to inherit his property after he died and murdered him. There was no rule in the law which disqualified a murderer.
- Should the grandson be allowed to inherit?

Some Salient Principles

- **No one shall take advantage of their own wrong**
- **No one shall be judge in their own cause**
- **No one shall be condemned unheard**
- **Have to come to equity with clean hands**
- **No one is above the law.**

Relevance of this Exposition to you

- Principles are the kernel of the law
- Can guide your actions even if you are not fully sure of the rules of law
- Principles can help you create your own operative rules
- Principles also inform you when rules may not be determinative of decisions
- Ironically, **it is principles and not rules that drive the rule of law.**