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**First-year law lecture in legal terminology**

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## I. Definition of law

### What is law? How do we define law?

#### Exploring the Definition of Law vs Ethics and Morality:

The fundamental task of **defining** the **term** and **nature** of the law.

By taking a natural starting point for doing so, is to look at the **concepts** of **ethics** and **morality**, certainly what we as a society consider to be ethical or moral **behavior** must **provide** some type of **guidance** as to what the law tells us to do, **put simply**, ethical or moral behavior is behavior that is **in line** with **societal expectations**. Conversely, **unethical** or **immoral** behavior is something that society **deems** (regard as, consider) **wrong** based on informal **norms** and **customs**.

let's contrast that with law. law is: **not about informal customs or norms, law consists of enforceable rules. Moreover**, law is not **necessarily or not fully reflective** with what society **deems to be moral**, for example: driving slightly over the speed limit may not be seen by some is immoral but it is **against** the law, at the same time the law does not **prohibit** all behavior that society **may perceive** as bad or unethical.

An action that is unethical may **nonetheless** be legal, this can often be seen in the business world, take for example **the case** of united states vs brown **decided** by the u.s **court of appeals** for the 11th **circuit** in its decision the court **noted**: “it is true that these man behave badly but bad man like good man are entitled to be tried and sentenced in accordance with law and the fraud statutes do not cover all behavior which strays from the ideal, congress has

**not yet criminalized all sharp conduct manipulative acts or unethical transactions”.**

As you can see the 11th circuit here clearly draws a line between ethical conduct and legal conduct, noting that simply because something is seen as unethical it doesn't necessarily mean that it is also prohibited by the law.

Ethics morality and the law are related since there are interconnections between them, for instance, a **judge** or **jury's assessment** of the ethical character of an action may determine how the law is **interpreted** and **applied** in a given case.

The law also often reflects society's consensus (agreement) about what **constitutes appropriate** (suitable, well judged, applicable) behavior, law can further help define the roles that individuals or business managers play, how they play those roles, and **evaluate** whether they played them well.

Law may also influence what we as a society deem ethical, so over time there are various often **subtle** (exact, accurate, precise) relationships between ethics morality norms customs and the law.

**The departments of justice** worldwide have provided this helpful statement about ethics morality and law, almost everything we do have a set of rules, there are rules for games for social clubs for sports and for the workplace. Rules of morality and custom tell us **what we should and should not do**. And **the rules made by government are called Laws**.

So, laws are **meant** to control or change our behavior and unlike rules of morality they are enforced by the courts if you **break** a law whether you like

that law or not, you may have to pay **a fine pay**(**a penalty of money that a court of law or other authority decides has to be paid as punishment for a crime or other offence**) for **the damage** you have done, or go **to jail**.

Or, in other words the law **embodies** a set of rules and what differentiates these rules from other rules that we encounter, is that ignoring them can have far more **drastic (extreme; dire; far-reaching) consequences**, it also **goes back (to be returned)** to the element of enforceability that we mentioned earlier.

### **II.Functions of law in the society**

The definition of law may be more interested in looking at law from a sociological perspective (that is, its effect on society), or historical perspective (that is, the history of law), or theological perspective (that is, the religious role of law), or analytical perspective (that is, law uninfluenced by any meta-legal consideration).

We shall, however, adopt for our purpose, Professors' definition of Law as: "**a body of rules for the guidance of human conduct which are imposed upon and enforced among the members of a given state. The object of such laws is to enforce certain standards of behaviour among citizens**".

Law carries out a lot of functions. It serves as a means on social control, assisted by such other means as public opinion (morality), religion, education and custom. However, Law is the most institutionalized means of **social control** in the society. The social functions of law are varied:

(1) Law **maintains public order**, otherwise called "law and morality" in the society: which is means that Law **evolved** to supplement the **informal**

**alternatives** and provides an acceptable rationalized and **conclusive settlement of dispute**. Law also suppress **deviant (strays)** behaviour through **provision of rules prohibiting** certain deviant behaviour and the enforcement of such rules. The criminal law is especially apposite here.

(2) Law facilitates **co-operation action** between persons in society and recognizes such action: law provides a system of **transfer of right and interests** (such as in contract and inheritance)

(3) Law constitutes and recognizes **the principal organs of power in the state**: It provides for **succession** to power and defines who has the right to exercise what kind of power in society. **The power so recognized by law turns round to make law in the society**. Thus, while the law creates the state, the state creates the law.

(4) Law communicates and **reinforces** social values in the society: Social values are the morals of the society. Law **assists** the society by identifying these values, ensuring that they are communicated to the society and, if necessary, that they are enforced by the state.

(5) Law also provides certain basic and **fundamental freedoms** for the people. This freedom which **are rooted in the social contract theory of government**, includes freedom of life, property, association and so on. **Recently, attempts** have been made to extend this freedom to include such **welfare issues** as free education, minimum standards of living and so on.

These are the basic functions of law in every society. It is important to note also that law is **inevitable** for any society to grow. With the points which have been

mentioned and discussed above, **it is undoubtedly clear** that law **play a vital role** to ensure growth in the society.

### III. Characteristics of law

Another important contribution on the definition of the law comes from legal professors who developed a set of eight widely recognized **characteristics** that rules must **possess** (have, hold) before they can be called legal rule, they are not 100% applicable to today's legal system but overall, they still capture the nature of legal rules.

The **first** one is **generality**: legal rules must be formulated so that they apply generally and not to specific situations or persons.

The **second** is **stability**: a legal rule has to be at least somewhat stable it cannot change constantly.

The **third** is **prospectivity**: legal rules should be forward-looking not retroactive;

The **fourth** is **promulgation**: legal rules cannot be hidden or secret they must be published;

The **fifth** is **clarity**: legal rules must be clear and understandable in what they say.

The **sixth** is **non-contradiction**: legal rules must not contradict each other.

The **seventh** is **congruence (compatibility; match)**: there mustn't be any differences between rules as announced and rules as applied.

The **eighth** is **possibility**: legal rules may not call for actions that are not feasible for those that are subject to the rules overall.

These eight characteristics are a useful guide in describing what law is; they may not always be applicable and not all factors at the same time may apply but together they are still one of the best attempts at capturing the characteristics of law.

## IV. Classification of Law

### Public vs Private Law

Having discussed the **nature** and **characteristics of law**, we are now ready to **familiarize** (educate in, make known) **ourselves** with different **branches** within the law on a **very fundamental level**, law can **be divided** into public law and private law

Public law is **concerned** with **matters** that **affect** society as a whole. Public law **sets** (put down; lay) the rules for the relationship between **individuals** and **the government**, public law also sets the rules for government **itself** and how its **branches operate**. Public law, therefore, **includes among others constitutional law administrative law tax law criminal law and procedural law**.

**Private law** on the other hand **deals with the relationships between individuals among others**, it **contains** (include; comprise) the rules for **contracts toward law business organizations and corporations, property ownership, the rights and obligations of family members and so**.

On private law is particularly important for business although public law such as tax are of course also significant.

another important distinction is that between **criminal law and civil law**.



**Criminal vs civil law:**

**Criminal law is part of public law** it deals with **behavior** that can be **construed** (interpret; understand) as an **offense** (crime) **against the public society or the state**, even if **the immediate** (instant) **victim** is an **individual**, for examples: are **murder** (killing; homicide) **assault** (physically attack) and **theft**.

**Civil law** on the other hand, deals with behavior that **constitutes** (initiate; establish) an **injury** to an **individual** or other **private party** such as a **corporation**, **tort law** for example deals with **civil wrongs** such as injury to **property** or **bodily (physical) harm (injury; hurt; pain)** that is not criminal in nature.

**Tort law** is therefore part of civil law however a certain injury may well invoke both civil and criminal laws, it is even possible for someone to be **convicted (condemned, found guilty) criminally** but still **win** in a **civil trial** and **vice versa**.

For example, in the famous case involving a football player O.J Simpson there was **an acquittal** (vindication; clearing, absolution) that is a **non-guilty verdict** by a **criminal jury**, however **he was found civilly liable based on tort**, criminal law and civil law differ with respect to **how cases are initiated, how cases are decided, what kinds of punishment penalty may be imposed, what standards of proof must be met** and **what legal protections may be available to the defendant**.

#### IV. Sources of law

The sources of law refer to: “**The set of written and unwritten resources from which binding legal norms are drawn;**” the sources do not contain information about the law, they constitute the law as they decide what counts as law.

Sources of law are **the origins of laws**, the binding rules that enable any state to govern its territory.

The term "source of law" may sometimes refer to **the sovereign** or to the **seat of power** from which the law **derives its validity**.

A source of law provides legal norms with authority based on their origin, and makes legal norms binding in their effect.

It can only **be derived from** specific sources that thereby give authority to legal norms. To ensure **legal certainty**, only a limited set of sources counts as sources of law: International treaties, legislation, Islamic sharia’a, case law, doctrine, fundamental principles and customary law. Only these sources provide legal norms with authority and make them binding in a specific jurisdiction (either national, international, or supranational).

The sources of law are usually imitatively summed up as: written sources: international treaties; legislation; Islamic sharia’a, case law; doctrine.

unwritten sources: fundamental principles, and customary law. So, in the Algerian legal system Legislation is an original official source. a. Official sources:

**1. Legislation:** is the prime source of law. and consists in the declaration of legal rules by a competent authority. Legislation can have many purposes: to

regulate, to authorize, to enable, to proscribe, to provide funds, to sanction, to grant, to declare or to restrict. A parliamentary legislature frames new laws, such as Acts of Parliament, and amends or repeals old laws. The legislature may delegate law-making powers to lower bodies.

Most legislatures have their powers restricted by the nation's Constitution, and Montesquieu's theory of the separation of powers typically restricts a legislature's powers to legislation. Although the legislature has the power to legislate, it is the courts who have the power to interpret statutes, treaties and regulations. Similarly, although parliaments have the power to legislate, it is usually the executive, who decides on the legislative programmed. The procedure is usually that a bill is introduced to Parliament, and after the required number of readings, committee stages and amendments, the bill gains approval and becomes an Act. 2.

Types of legislation:

**1. Basic legislation (Constitution):** A constitution can be written (legislation) or unwritten (customary law); it constitutes the legal powers of the state and the rights of its citizens, and their public freedom.

**2. Treaty:** An international agreement concluded between two or more States in writing, subject to international law. 3. Organic legislation: it's a basic statutory law ratified by the legislature, which the Parliament, within the limits of the competence vested in it in the text of the Constitution, enacted to define or supplement the provisions of the Constitution and bring them into force. it represents a new type of law that falls between the categories of constitutional and ordinary laws, first appeared in the 1996 Constitution and is superior to ordinary laws.

4. **Ordinary legislation:** These ordinary laws have legislative value set by a competent authority represented by the legislative authority, which the parliament, within the limits of its competence set out in the Constitution, so it may prepare and vote on the law.

5. **Subsidiary legislation:** These legislative texts are called regulations, and they are graded in terms of legal force, depending on the issuer, that is, according to the hierarchy of executive authorities, so presidential and executive decrees are at the top of these organizations, the lowest of which is the degree of ministerial decisions and joint ministerial decisions, then decisions issued by officials of local authorities and other departments. It is of three types:

❖ **Regulations:** They are also expressed as independent regulations, which are those related to the organization of public interests and public utilities in the State, since the general management of these facilities is better known than the legislative authority.

❖ **Implementing Regulations:** Regulations issued by the Executive Authority relating to the detailed rules for the implementation of In this case, it is the legislation that determines the rules and the regulatory authority intervenes by executive decree.

❖ **police regulation:** They are regulations or regulations drawn up by the public administration (the President of the Republic, a minister authorized by him, the governor or the president of the People's Municipal Assembly, where the latter two have the authority to control the administrative under the law related to them) to regulate traffic or ensure tranquility and tranquility for citizens. These powers are called administrative control, which is defined as "the set of

activities and actions taken by the public administration of its own will to ensure the maintenance or re-preservation of public order in the event of disturbance".

**2.Principles of Islamic Sharia:** Islamic law means what Allah Almighty prescribed for His servants from the rulings of His Messenger Muhammad (peace be upon him), whether in the Qur'an or the Sunnah (saying, doing, reporting).

The Algerian legislation based on Islamic “shari’a” background. its most (majority) legal provisions have been derived (contrived, inferred) from various codified and uncoded Islamic shari’a sources. The Quran; the Prophetic Sunnah; Islamic jurists’ consensus “Ijma’a”; analogy (identification) Qiyas; custom "Urf"; precedents; equity; and various legislation which are not contrary (are not in violation) to Sharia.

In the same vein, there are four major Sunni schools of thought: Hanifa, Hambali, Maliki, and Shafi. These four schools recognize (acknowledge, admit, confess) one another’s validity, and they have interacted (reacted, combined) in legal debate (discussion, dispute, Islamic jurist wrangling) over the centuries.