

**MINISTRY OF HIGHER EDUCATION AND SCIENTIFIC
RESEARCH**

University Laarbi Ben M'hidi -Oum El Bouaghi- Algeria



**Faculty of Law and Political Science
Department of LAW.**



Major: 1st year students (bachelor)

1st Section (group 1 to7)

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Topic: Meaning, Nature and Functions of Law

1. Introduction:

The term “Law” refers to various forms of rules and principles. It serves as a mechanism that governs human conduct and behavior. The concept carries a broad meaning connected to justice, morality, reason, order, and righteousness within society. From a legislative perspective, it includes statutes, acts, rules, regulations, orders, and ordinances. From the judicial viewpoint, it encompasses court rules, decrees, judgments, orders, and injunctions.

Meaning of Law:

In Old English, the word “Lagu” meant law, ordinance, or rule. The meaning of law has varied across places, societies, and historical periods. Different terms for law appear in various languages — for instance, in Islam it is called “Hokum,” in Roman tradition “Jus,” in French “Droit,” and in Arabic “Al-Qanoon.” Its interpretation also differs culturally, such as in matters like adultery. Law evolves alongside societal changes and shifts in government or legislative amendments and acts.

2. Definitions of Law:

Defining the term “law” is challenging, and many jurists have attempted to explain it. For clarity, some definitions given by jurists in different periods are summarized below.

Roman and other ancient jurists viewed law in its idealistic form. Roman jurist Justinian defined law from this idealistic standpoint.

(a) Salmond:

According to Salmond, “the law may be defined as the body of principles recognized and applied by the state in the administration of justice.”

(b) John Chipman Gray’s Definition of Law:

Gray stated that “the law of the State or of any organized body of men is composed of the rules which the courts, that is, the judicial organ of the body, lay down for the determination of legal rights and duties.”

(c) Austin's Definition of Law:

John Austin (1790–1859), an English jurist, developed analytical positivism, defining law as the command of a sovereign backed by sanctions. He described a legal system that excluded values, morality, idealism, and justice. According to Austin, law in its strict sense is a general command issued by a sovereign individual or sovereign body to those who are subject to its authority, enforced by the physical power of the state. Austin stated, “Law is an aggregate of rules set by men politically superior or sovereign to men as politically subject.” He also noted that “a law is a command which obliges a person or persons to a course of conduct.”

Definition of the Historical School of Law:

The chief representative of the historical school is Von Savigny. Historical jurisprudence studies how legal systems develop over time. It addresses the general principles that influence the origin and growth of law as well as the evolution of legal concepts and principles found in legal philosophy.

Savigny's Definition of Law:

Savigny stated that law is not produced directly by legislation but arises from the gradual development of customs and the unexpressed will of the people or professionals. He viewed law not as a set of rules imposed by a specific authority but as principles derived partly from social habits and partly from experience. According to him, law originates in society and is found in custom.

3. Origin of Law:

Ancient Egyptian law, dating back to around 3000 BC, included a civil code likely divided into twelve books. It was based on the concept of Ma'at, which emphasized tradition, eloquent speech, social equality, and impartiality. Ur-Nammu, an ancient Sumerian ruler, produced the earliest known law code consisting of conditional statements (“if...then...”) around 1960 BC. Later, King Hammurabi expanded Babylonian law by codifying and inscribing it on stone pillars (stelae) placed throughout the kingdom, forming what became known as the Code of Hammurabi.

Ancient India and China also developed their own distinct legal traditions with independent schools of theory and practice. The Arthashastra (400 BC) and the Manusmriti (100 BCE) were influential legal texts in India. However, the Hindu and Islamic legal traditions were later replaced by common law during British colonial rule.

During the Middle Ages, Islamic law and jurisprudence became one of the major legal systems. “Hawala,” an early informal value-transfer system, is recorded in Islamic jurisprudential texts as early as the 8th century. This system later influenced the development of “Aval” in French civil law and “Avallo” in Italian law. Roman law itself was significantly shaped by Greek legal thought.

4. Nature of Law:

The question “What is the nature of law?” has been central to jurisprudence and legal philosophy in the modern period and remains a key topic in contemporary analytic jurisprudence. This summary highlights the main perspectives in the debate.

Historically, two major answers are offered. The classical view is represented by natural law theory, which maintains that law is inherently connected to morality and justice. The modern perspective is represented by legal positivism, most notably developed by John Austin, who argued that law consists of commands issued by a sovereign and backed by the threat of punishment.

5. Functions of Law:

Since the dawn of human civilization, people have relied on rules to organize and regulate life in society. Laws establish the standards necessary for individuals to coexist harmoniously. They define acceptable behavior, safeguard freedom, ensure justice for those harmed, and protect citizens from

Law also provides mechanisms for resolving disputes that arise from rights and obligations, enabling parties to enforce agreements through the courts (Corley and Reed 1986, p. A). According to Corley and Reed (1986), law is “a body of rules of action or conduct prescribed by controlling authority and having legal binding force.”

Laws exist to prevent disorder within both business and society. In business, they offer guidelines for employment, regulatory compliance, and internal organizational conduct.

Some terminologies:

المصطلحات بالعربية	English terms
القانون	Law
قواعد قانونية	legal rules
القانون ظاهرة إنسانية واجتماعية	Law is a human and social phenomenon
الحرية والعدالة والمساواة	Freedom, justice and equality
قواعد ملزمة	binding rules
السلطة العامة	Public Authority
السلطة التشريعية	the legislative power
حرية الرأي وحرية التเคลل	Freedom of Opinion, Movement
حق التملك وحق الحياة	Property, Life
المصلحة العامة	the public interest
العدالة في المجتمع	Justice in Society
القانون الوضعي الجزائري	Algerian Law
القانون المنطبق فعلًا في الدولة	The law applied in the country
التشريع	Law
النفاذ	Coded
الحق	Right
النصوص القانونية	legal texts

قواعد الأخلاق	The rules of morality
قواعد المجامالت والتقاليد	Courtesy Rules
قواعد الدين	rules of religion

المصطلحات بالعربية	English terms
عامة و مجردة	General and abstract
دائمة	Always
ملزمة	Obligatory
قاعدة سلوك اجتماعي	Social behavior rule
الجزاء المدني	Civil penalty
الجزاء الجنائي	Criminal penalty
الجزاء الإداري	Administrative penalty
قواعد قانونية مكتوبة	Written legal rules
قواعد قانونية غير مكتوبة	Unwritten legal rules
قواعد قانونية موضوعية	Objective legal rules
قواعد قانونية شكلية	Formal legal rules
قواعد قانونية أمرة	Peremptory legal rules
قواعد قانونية مكملة	Complementary legal rules
النظام العام والأداب العامة	Public order and public morals
مصالح الخاصة للأفراد	Private interests of individuals

Terminology Table

المصطلحات بالعربية	English terms
المعيار المالي	Financial standard
القانون العام	Public law
القانون الدولي	International law
القانون العام الداخلي	Internal public law
القانون الدستوري	Constitutional law
القانون الإداري	Administrative law
القانون المالي	Financial law
القانون الجنائي	Criminal law
قانون العقوبات	Penal code
قانون الإجراءات الجزائية	Criminal procedure law
القانون الخاص	Private law
القانون المدني	Civil law
القانون التجاري	Commercial law
القانون الأسرة	Family law

القانون الدولي الخاص	Private international law
القانون المختلط	Mixed law
قانون الإجراءات المدنية والإدارية	Law of civil and administrative procedures
القانون العمل	Work law
القانون البحري	Maritime law
القانون الجوي	Air law