

**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)

Lecturer: Miss N.Ferrak.

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 التنقل | 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 المطبق فعلاً في الدولة | The law applied in the country |
| التشريع | Law |
| التقنين | Coded |
| الحق | Right |
| النصوص القانونية | legal texts |
| قواعد الأخلاق | The rules of morality |
| قواعد المجاملات والتقاليد | Courtesy Rules |
| قواعد الدين | rules of religion |

| المصطلحات بالعربية | English terms |
|-----------------------------|----------------------------------|
| عامة ومجردة | 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 أمرية | 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 |

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|-----------------------------------|--|
| 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 |