



Session 8

Sources of law 1

Law and ethics

- 1 Comment: Law refers to a rule or guideline for conduct and standard to perform or judge an action.
- 2 Comment: A maxim refers to a rule or guideline for conduct and standard to perform or judge an action.
- 3 What is ethical may not be legal and vice versa (e.g. if some consider same-sex relationships to be immoral they are not illegal; they used to be illegal but within particular communities not immoral)

Law defined

- 4 Law is the body of rules designed to regulate human conduct within a territory.
- 5 There are three types of law :
 - those which forbid certain types of behavior;
 - those that require people to compensate others whom they injure;
 - and those which specify what must be done to order certain types of human activity

Sources

6 Types:

- Primary: from historical and social development.
- Secondary: 1) from formulation by legislators and judges; 2) jurisprudence; 3) doctrine.

7 Main influences (primary sources) include:

- Common law
- Hammurabi Code: family affairs, labor, crimes, property, trade and business; trial.
- Greek Law: democratic practice; jury.
- Mosaic Law: forbid acts: killing, adultery, and bearing false witness.
- Roman Code-Justinian Code: equity in that a law must be fair and just.

Categories

8 As per the system:

- Common law: the use of precedents.
- Example: UK
- Civil law: the use of codes.
- Example: Switzerland

9 As per the purpose:

- Substantive: the rights and duties of a person or level of the state (e.g. when one has the right to make a complaint)
- Procedural: methods or procedures in the enforcement of substantive laws (e.g. how to go about making a complaint)

Categories

10 As per its jurisdiction:

- Domestic: applicable to the nation-state only
- Example: direct democratic principles in Switzerland
- International: applicable and involving a number of nation-states
- Example: EU green policies

11 As per its locus of application:

- Private: civil, contract, tort, wills, property
- Public: administrative, constitutional, criminal

Canada



Sources

12 Primary sources:

British Law based on the Magna Carta:

- rule of law;
- habeas corpus entitling person to appear before a court;
- Bill of Rights guaranteeing free speech, elections, and assembly.

Iroquois constitution:

- provision of checks and balances in a confederacy
- equality of vote between men and women.

Napoleonic Code: emphasis on what is written.

Customs and religion: long-established ways of doing and conventions.

- Example: aboriginal customs

Sources

13 Secondary sources

Constitutional Law:

- distribution of government powers

Statute Law:

- federal or provincial or local governments;
- limits of territorial applicability.
- Example: if some laws apply to Quebec but not to the rest of the provinces - *intra vires*, foreign policy concerns all provinces Quebec inclusive - *ultra vires*.

Case Law:

- use of a precedent so as to make a ruling in a case with similar circumstances (*stare decisis*).