I. Law and Society: Purposes and Functions of Law

Legal Norms and Scopes

Important Features of Law

I. Law is a collection of rules. When speaking of the law we imply usually the entire collection:

– law rooted originally in the day-to-day unwritten customs of the people, but later on the law was being created by a special body, exactly by the legislation.

II. Law is for measuring the human conduct

III. The larger is the community (which may be a group or even a state) the more complex and numerous will be the rules. Members of the society want to live and work together, so they need the law (rules or orders).

IV. We have to distinguish three main types of regulations:

<table>
<thead>
<tr>
<th>MORAL RULES</th>
<th>MORAL AND LEGAL RULES</th>
<th>LEGAL RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not covet</td>
<td>Do not commit Murder,</td>
<td>Keep parking offences,</td>
</tr>
<tr>
<td>Be polite with elder people</td>
<td>Theft</td>
<td>Speed limit</td>
</tr>
<tr>
<td>Do not be arrogant</td>
<td>Fraud</td>
<td></td>
</tr>
</tbody>
</table>

V. Two ideas form the background of law:

- **Order**
- **Compulsion** (or enforcement: force in action is a sanction)

VI. The law is a living one and it changed all the times in history. Law is corresponding with the public opinion and it is changing accordingly.

VII. The rule of law.

According to Dicey (a nineteenth-century author) the function of law had three features. First, that there should be no sanction without a breach, which means that nobody should be punished by state unless he/she had broken a law. Secondly, that the same law should govern everyone, including both ordinary citizens and state officials. Thirdly, that the rights of the single person were not secured by a written constitution, but only by the decisions of judges in a specific case.

VIII. Law and Justice

Justice is a difficult concept, chiefly because everybody has a different subjective idea about it, which depends on moral principles known as ethics, but principles may differ from person to person.

**Definition of law**

THE LAW IS A SET OF PRINCIPLES, RULES AND STANDARDS OF CONDUCT

1. THAT HAVE GENERAL APPLICATION IN THE SOCIETY
2. THAT HAVE BEEN DEVELOPED BY AN AUTHORITY FOR THAT SOCIETY
   FOR THE VIOLATION OF WHICH THE SOCIETY IMPOSES A PENALTY

- the whole set of such rules
- a rule that is supported by the power if government and that controls that behaviour of members of society
- a statement expressing what has always been seen to happen in certain conditions
- respect and obedience for the law in society
- a field of academic discipline

I.D / Functions of Law

What is the role of law in society?
The basic function of law is keeping the peace. We can draw a distinction between macro and micro functions of the law.

The Macro Functions of Law
There are 6 macro functions of law, the interactions of law with each these orders are extremely complex.

I. Public order
II. Political order
III. Social order
IV. Economic order
V. International order
VI. Moral order

➢ I. Public order – the preservation of public order
Primary function of law is to assist in the preservation of public order. Law sets
- the boundaries of acceptable behaviour and
- prescribes sanction.

➢ II. Political order – to underpin the political order of the country
This function is the constitutional function of law. In most countries the fundamental rules are contained in one document, there exists a written constitution or other form of basic law which defines the powers of the law-making institutions of the country. For example, the Constitution of the United States was reduced to writing in 1787 and the document which comprises it lays down the fundamental law of America today.

There are very few countries that do not have a written constitution. In the United Kingdom is no formal written constitution. Many of the most important constitutional principles are to be found not in any written document but embraced in unwritten practice, known as constitutional conventions. They arise from usage, or agreement, tacit or express, and they are adhered to, once they have developed, not because the courts will enforce them but because political expedience and respect for tradition demand their observance.

Some examples of constitutional conventions:
- Constitutional monarchy
  Constitutional monarchy means that the King or the Queen takes no active part in the running of the country. Though the Parliamentary year starts now in the UK with the ‘Queen’s Speech’ and though bills are given ‘royal assent’, the Queen is still kept informed about what is happening in Parliament but the monarch is no longer the source of political decision-taking or law-making.
- Prerogative powers
  Nevertheless, there are still certain functions of government which are based not in legislative authority, but on the historic exercise of power by the monarch. These are known as ‘Prerogative Powers’. The most dramatic example of this is the power to go to war, which is exercised by minister not under the authority of any Act of Parliament, but by exercise of prerogative powers.
- Cabinet government and collective responsibility
  The related doctrine of collective responsibility, whereby ministers who do not agree with the policy of the government as determined in Cabinet are supposed to resign from the government, is also based in constitutional convention.
- Individual ministerial responsibility
  Another constitutional doctrine is that ministers should take ultimate responsibility for what goes on in their department.

One of the basic principles underlying British constitution is that of the separation of powers. (More – in the second Part)

➢ III. Social order – preservation of the country’s social order
The ability of law directly to foster social justice or equality is limited, but there is nevertheless an important claim for law: that it does have a role to play in protecting the weak
against the powerful. This has become a very important function for law in the twenty-first century.

- **IV. Economic order – the preservation of the country’s dominant economic**

- **V. International order – the provision of support for international order**

  This is a complex and controversial subject. There are those who argue that there is really no such thing as international law. But in many respects the international law is very important. For example:
  - Regulation of the use of the sea, or even space
  - Crimes against humanity
  - Regulation of world trade
  - The protection of the environment
  - Prevention of torture in war
  - Independent international courts, etc.

- **VI. Moral order – the provision of support for the moral ordering of society**

  This function is extremely controversial. There are clear dangers and considerable difficulties in seeking to equate law and morality, not least because of the problems of determining what the common morality is on given issue. Nevertheless many rules of law are founded on a moral view of society. Perhaps the clearest example is the moral imperative not to kill people, reflected in rules of criminal law which outlaw such activity. Conversely, there may be rules of criminal law, for example not exceeding speed limits, which many would not regard as morally repugnant, but which should nevertheless be defined as criminal.

**The Micro Functions of Law**

1. Defining the limits of acceptable behaviour
2. Defining the consequences of certain forms of behaviour
3. Defining processes for the transaction of business and other activities
4. Creating regulatory frameworks
5. Giving authority to agents of the state to take actions against citizen
6. Preventing the abuse of power by officials
7. Prescribing procedures for the use of law

**Conclusions**

1. All the functions of law, whether defined as ‘macro’ or ‘micro’, are contingent upon the stage in the development of that society. While many of these functions of law will be common to very many societies, others will certainly not be.
2. The laws that exist and the ways in which they are used are dependent on the ideology and politics of the particular country.
3. The functions of law are by no means always consistent with each other: the role of law in advancing equality, or social justice may be conflict with its role in supporting current social and economic orders.

**I.E / Legal norm, scope**

- determine standard conduct (rules of conduct)
- general principle (democratic/common rule) – but rules may either be general, personal and local scope
- sanction (reckless act is punishable)
- pressure
- reciprocity

**Types of conducts from legal view:**

- **Active conduct** (do something – for example: giving help at the scene of an accident)
- **Passive conduct** (order of sufferance – for example: easement of access)
• **Prohibited conduct** (must not do – for example: homicide)

• Legal conduct

• Illegal conduct

• **Intention** (An act of crime is perpetrated intentionally by person who wishes the consequences of his conduct or acquiesces.)

• **Negligence** (An act of crime is committed by negligence by the person who foresees the possible consequences of his conduct, but carelessly trusts in their non-occurrence; as well by the person who fails to foresee the possibility of the consequences, because he omits to pay attention or exercise the circumspection that may be expected of him.)

**Persons from legal view**

**LEGAL CAPACITY**
- *to have* rights and obligations,
- *all persons* in the Republic of Hungary
  (Right to life, Right to dignity of the human being, Right to inherit, Right to be owner, etc.)


**Legal Capacity**

Section 8

1. (1) All persons in the Republic of Hungary shall have legal capacity; all persons shall be entitled to have rights and obligations.

2. (2) Legal capacity shall be equal regardless of age, sex, race, ethnic background, or religious affiliation.

3. (3) Contracts and unilateral statements limiting legal capacity shall be null and void.

**LEGAL COMPETENCY**
- *to get* rights and obligations,
- everybody whose competency is *not limited or disqualified* by the law

**I. Degrees of capacity (age)**

- Full legal capacity – over 18 (in Hungary)
- Limited capacity – 14-18 years old (in Hungary)
- Incompetent – under 14 years old (in Hungary)

**II. Degrees of capacity (mental state)**

- Full legal capacity - Limited capacity –
- Incompetent (loss of capacity)


**Legal Competency**

Section 11

1. (1) Everybody whose competency is not limited or disqualified by the law is legally competent.

2. (2) Whoever is competent is entitled to conclude contracts and make other legal statements.

3. (3) Any contract or a unilateral statement restricting legal competency shall be null and void.

DOLI INCAPAX – a child under the age of ten is not responsible for his/her criminal actions (in Great Britain)
Scope
There are three types of scope:

- **Personal scope**
- **Territorial scope**: may be town, region, country (for example: Budapest, Balaton or Hungary)

  **State territory:**
  - Territorial (inside geographical state borders)
  - Extraterritorial (outside geographical state borders) - Territory of embassies, cars of ambassadors, crafts, water crafts with national flag

- **Scope in time**: In principle, all legislation has unlimited duration. Where no specific mention is made of the duration of the act in question, it is assumed that it also has unlimited duration.

II.

Sources of Law

The word source can mean several things with regard to law, but for our purpose it primarily describes the means by which the law comes into existence.

**In ancient societies** sources of standard and compulsory/applicable conducts were

- Custom
- Moral rules
- Religious norms
- Codified rules/acts by state or legitimate power.

**In modern societies** law stems from seven main sources, though these vary in countries and a great deal in importance.

I. Statute law or Acts of Parliament - It prevails over most of the others

II. Case law, a mass of judge-made decisions – Lays down rules to be followed in future cases. In England for many centuries it was the main form of law and it still very important today.

III. Delegated legislation – Related source, laying down detailed rules made to implement the broader provisions of statutes.

IV. Legislation of the European Communities – only for EU Member States

V. Custom

VI. Equity

VII. Obligations relating to international treaties

Law-making institutions

I. Parliament

Legislation is enacted law. In the most of the countries the ultimate legislator is Parliament. The **Sovereignty of Parliament** means that Parliament is legislatively supreme and can make and unmake (i.e. repeal) laws to any extent.

The legislation with which most people are familiar is statute law.

**Definition of Statute**

A statute may be defined as an express and formal laying-down of a rule or rules of conduct to be observed in the future by persons to whom the statute is expressly, or by implication, made applicable.
Bills proposed in Parliament become Acts. These Acts may either be general or personal and local. Both of these are sometimes known as primary legislation. General Acts apply to everybody, everywhere within the legal system. In this context it is important to remember that there are several different legal systems within Europe or the World.

A legal rule in a statute can only be changed by another statute. Any statute, no matter how important it seems, can be changed in the same way as any other.

Personal and local Acts apply either to particular individuals or to particular areas.

Most legislation consists of a direct statement about how people should behave or indicates the consequences of certain behaviour. For example, a statute may define crime and say what the punishment will be for that crime. Sometimes Parliament cannot decide exactly what the law should be on a point. In such cases Parliament may pass an Act giving somebody else the power to make law in the appropriate area. (delegated (secondary) legislation).

Parliament creates law but not all the law that is created through Parliament is of the same kind.

II. Delegated (secondary) Legislation

Because Parliament is legislatively omnipotent, it can grant to some other person or body the power to make orders, regulations or rules which have the force of law. In strict legal theory, Parliament ought to retain in its own hands the power and duty to enact all the laws and the rules affecting the State. In practice, Parliament can not discharge this duty mainly because it has so much to do and so little time in which to do it. It overcomes this difficulty by resorting to delegated legislation, sometimes called subordinate legislation.

Acts of Parliament lay down general principles or policy and to leave the working out of the administrative details to subordinate authorities who are responsible for carrying the Acts into effect.

Forms of Delegated Legislation in England

- Orders in Council, i.e. Orders made by the Queen in Council, have been described as the most dignified form of subordinate legislation. In practice, the Minister of a Government department usually drafts and makes the Order in the name of the Queen, whose approval ‘in Council’ is formality.
- Statutory Instruments, Rules and Orders are normally made by Ministers in charge of Government departments, but such rules must be submitted to Parliament for approval.
- By-laws are made by local authorities, railways, water boards and other such bodies, and like statutory instruments, draw their authority from Acts of Parliament. By-laws require the approval of the appropriate Minister before they have legislative force.

Growth of Delegated Legislation - reasons

- Lack of Parliamentary time
- Urgency (Parliament is not always in session, and its legislative procedures are slow)
- Flexibility (A statute requires elaborate and cumbersome procedures for its enactment. It can be revoked or amended only by another statute. A ministerial order or statutory instrument can be made speedily.)
- Technicality of subject-matter (Modern legislation tends to be technical and detailed - Parliament may be inexpert and unfamiliar with the technicalities involved.)

III. The courts

Not all legal rules are laid down in an Act of Parliament or some other piece of legislation. A number of fundamental rules are found in the statements of judges made in the course of
deciding cases brought before them. - See English Law/Common Law Country. A rule made in the course of deciding cases, rather than legislation, is called a rule of common law. A common law rule has as much force as rule derived from statute. Many important areas of English law, such as contract, tort, crime, land law and constitutional law, have their origins in common law. Some of the earliest common law rules still survive. Common law rules are still being made today, though as a source of new legal rules common law is less important than statute. The application of case law is easiest to understand when the issue presently before the court has been raised in some previous analogous case. In such a situation the court will look to see if there is a potentially applicable rule in the reports of previously decided cases. Then they will decide whether they have to, or should, apply that rule. Cases are decided in court. Different kinds of legal disputes are decided in different kinds of courts.

A statute and a judgement may be contrasted thus:

<table>
<thead>
<tr>
<th>Statute</th>
<th>Judgement</th>
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<tbody>
<tr>
<td>Creates new law</td>
<td>Disclaims any attempt to create new law</td>
</tr>
<tr>
<td>Lays down general rules for the guidance of future conduct</td>
<td>Applies an existing law to a particular set of circumstances</td>
</tr>
<tr>
<td>Is imperative</td>
<td>Gives reasons</td>
</tr>
</tbody>
</table>

IV. European institutions
V. Other sources of law-making
Local and regional government
Local Government has long had power to make by-laws – since by-laws are made under the authority of Acts of Parliament but apply only in the area of the local authority.

Other rule-making agencies
The legislative instruments made by these bodies fall outside the conventional institutional framework of Parliament though in most cases are based in legislative authority that has been conferred by Act of Parliament.

Other international institutions and bodies of international law

III.

Divisions of Law, Branches of Law

III.A / Divisions of Law
Legal rules can be divided up in many different ways. They show differences
- in purpose
- in origin and form
- in the consequences when the rules are breached
- in matters of procedure, remedies and enforcement

A. Criminal and Civil law
One of the most fundamental divisions in law is the division between criminal and civil law. There are more rules of civil law than that of criminal law; more court cases involve breach of the civil law than that of the criminal law. Criminal law means just the law relating to crime. A crime is any act or omission of an act that violates the law and is declared punishable by the state. Crimes are considered injurious to society or the community. They include both felonies (more serious offences like murder or rape) and misdemeanours (like shoplifting or speeding).
Civil law can be taken to mean all the rest. Civil law aims to regulate relations between individuals or between individuals and organizations. There are many branches of civil law, for example family law, law of property, law of intellectual property (trademarks, designs, copyright materials – musical, artistic works, etc.), law of contract, law of succession, law of tort, etc.

The distinction relies not so much on the nature of the conduct which is the object of a legal rule but in the nature of the proceedings and the sanctions that may follow. Some kinds of conduct give rise to criminal liability, some to civil liability and some to both civil and criminal liability.

B. National, EU and International Law

The term “national” or “municipal” law is used to mean the internal legal rules of a particular country, in contrast to international law, which deals with the external relationships of a state with other states.

EU Law. The European Union is an international organisation established and developed by treaty between Member States. Public international law regulates the external relations of states with one another. It is a form of law very different from national law. There is no world government or legislature issuing and enforcing laws to which all nations are subjects. The international legal order is essentially decentralised and operates by agreement between states. This means that the creation, interpretation and enforcement of international law lie primarily in the hands of states themselves.

International law is created in two main ways:

- **By treaty** – Treaties are agreements between two or more states, and are binding on the states involved if they have given their consent to be so bound.
- **By custom** – Customary law is established by showing that states have adopted broadly consistent practices towards a particular matter and that they have acted in this way out of a sense of legal obligation.

C. Public and Private Law

Another distinction that may be drawn between different types of law is the division between “public” law and “private” law.

Public law is concerned with the distribution and exercise of power by the state and the legal relations between the state and the individual. For example, the rules governing the powers and duties of local authorities, the operation of the National Health Service in the United Kingdom, the regulation of building standards, the issuing of passports, etc.

Private law is concerned with the legal relationships between individuals, such as liability of employers towards their employees for injuries sustained at work, consumer’s rights against shopkeepers or owners’ rights to prevent others walking across their land. The division of law into public and private law and civil and criminal law are two clear examples of categories which overlap. Thus, for example, some public law is civil and some is criminal.

D. Substantive Law and Procedural Law

Substantive Law: for example Tort of Law, Family Law, Law of Property.

Procedural Law lays down the rules governing the manner in which a right is enforced under civil law, or a crime prosecuted under the criminal law. Thus a legal action is started by taking out a writ in civil cases, by a summons or an arrest in criminal cases, and ends by the trial and judgement in the court itself, followed by the execution of the judgement. Procedural law governs the steps in the progress of the civil legal action or criminal prosecution.

The distinction between substantive law and procedural law is not always clear. It is an important rule of law that the prosecution may not (except in special circumstances) refer to the accused’s bad character during the course of the trial, for this could clearly prejudice his case.

III.B / Branches of Law

There are many branches of law. The main branches of law:

**PUBLIC LAW comprises -**

1. Constitutional Law
Constitutional Law has been defined as the rules which regulate the structure of the principal organs of government and their relationship to each other, and determine their principal functions.

2. Administrative Law
Administrative Law is defined as that body of legal principles which concerns the rights and duties arising from the impact upon the individual of the actual functioning of executive instruments of government. For example, administrative law determines the legal rights of a private citizen whose house a local authority intends to acquire compulsorily.

3. Criminal Law
Criminal Law has already been described, with its distinction from civil law.

CIVIL LAW comprises -

1. Law of Contract
The Law of Contract determines which forms of agreement entered into between individuals are legally binding and whom they will be binding, what are its legal consequences.

2. Law of Tort
The Law of Tort covers categories of civil wrong, other than breach of contract, which may give rise to legal causes of action. It includes the law of negligence, trespass, libel and slander.

3. Law of Property
Law of Property covers the rights people have over land and other property.

4. Law of Succession
Law of Succession decides how a person’s property will be divided after hi/her death.

5. Family Law
Family Law is the body of law which regulates family relationships, including marriage, divorce, the treatment of children, adoption, and money issues, governs the rights and duties of husband/wife or parent/child.

6. Company Law
Company Law is the area of law relating to businesses organised as companies. It includes the formation and ending of companies, their legal status and duties of their members.

OTHER LAWS -

1. Labour Law
Labour Law is the area of law relating to the employment of workers. It includes their contracts and conditions of work, trade unions and the legal aspects of industrial relations. Also it is called Industrial law.

2. International Law
International Law has already been described, with its distinction from national law.

3. Conflict of Laws
Conflict of laws is the area of law of each legal system which regulates how to deal with cases involving a foreign element. Also it is called Private International Law or International Private Law.

4. Health Law and Health Care Law
It regulates the public and private health affairs in a society. Public health affairs fall under administrative law and involve seemingly private affairs, if the individual health care was taken over by public financing (National Health Service system, or social health insurance).

IV.

The Families of Legal Systems of the World

IV.A / Style of Legal Families

The theory of ‘legal families’ seeks to provide the answer to several distinct questions in comparative law.

- Can we divide the vast number of legal systems into just a few large groups (legal families)?
- How do we decide what these groups should be?
And, supposed, we know what the groups should be, how do we decide whether a particular legal system belongs to one group rather than another?

The following factors are crucial for the style of legal system or legal family:

- **Historical background and development**
  It is self-evident that historical development is one of the factors, which determine the style of modern legal systems. The Common Law is perhaps the clearest example of this, but it is not so easy to group the system of the European Continent. They stem from Roman and Germanic law, but should they all (with the admitted exception of Nordic law, which stands by itself) be put in one legal family or should there be a
  - **Germanic family** (Germany, Austria, Switzerland and affiliated systems) and a
  - **Romanistic family** (France and all the systems, which adopted the French Civil Code, along with Spain, Portugal and South America).
  The Romanistic, Germanic and Nordic systems each have a closer relationship with each other than with the Common Law, but given their recent development and the presence of the other stylistically distinctive features, clarity requires to put them into different legal families.

- **Predominant and characteristic mode of thought in legal matters**
  Another hallmark of a legal system or family is a distinctive mode of legal thinking.

  **Differences in the English Common Law and the Continental Law**

<table>
<thead>
<tr>
<th>In England</th>
<th>On the Continent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gradual development from decision to decision – it is case law, not enacted law</td>
<td>The reception of Roman law, from the interpretation of Justinian’s Corpus Iuris to the codification, nation by nation, of abstract rules</td>
</tr>
<tr>
<td>Common law comes from the court</td>
<td>Continental law from the study</td>
</tr>
<tr>
<td>The great jurists of England were judges</td>
<td>The great jurists on the Continent were professors</td>
</tr>
<tr>
<td>Lawyers predict how the judge would deal with the problem, given existing decision</td>
<td>Lawyers faced with a problem, even a new and unforeseen one</td>
</tr>
<tr>
<td>Lawyers think concretely, in term of cases, the relationship of the parties, ‘rights and duties’</td>
<td>Lawyers think abstractly, in terms of institutions</td>
</tr>
<tr>
<td>The lawyers feel their way gradually from case to case</td>
<td>The system is conceived as being complete and free from gaps</td>
</tr>
<tr>
<td>Lawyers are sceptical of every generalization</td>
<td>Lawyers delight in systematic</td>
</tr>
<tr>
<td>Lawyers think in pictures</td>
<td>Lawyers operate with ideas, which is often, dangerously enough</td>
</tr>
</tbody>
</table>

- **Especially distinctive institutions**
  Certain legal institutions are so distinctive that they lend a characteristic style to a legal system. For examples:
  - In the Common law: various degrees of property, law of evidence, etc.
  - In the Romanistic family: the concept of cause, the institution of negotiorum gestio (=one of the quasi-contracts, where one person managed the affairs of another without the latter’s consent or permission, conduct of business without mandate), etc.
  - In the Germanic family: the doctrine of the abstract real contract, liability for culpa in contrahendo (=concept of pre-contractual liability, for example: the lessor promises enter into the lease contract, so the future tenant avoid the previous lease contract, but the lessor even so not enter into this contract) the land register, etc.

- **The kind of legal sources**
The style of legal systems is obviously also marked by the choice of sources of law which they recognize and by the methods of interpreting and handling them in connection with the court machinery and rules of procedure. (See above statutory and case law systems)

- **Ideology**

Finally, the style of a legal system may be marked by an ideology, that is, religious or political conception of how social or economic life should be organized. Islamic and Hindu law offer examples of this and until recently, this were the ground on which ‘socialist legal systems’ were treated as a special legal family.

This is not a factor, which helps us distinguish between the various Western legal systems; here other criteria must be sought.

The two most important families of law in the modern world are unquestionably the **Romano-Germanic**, and the **Common law**. (Before the 1990s the **Socialist Law** was the third important family of law in the world!) They extend over the whole of Europe and the Americas, thus grouping together the most powerful and, economically, the most highly developed nations on earth. They have also had enormous influence in Africa and Asia. There is virtually no country which has not received the principles of a European law in some measure, whether English, Romanist or Socialist.

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