International Educational Corporation Handouts

- **Topic №2 Structure and Function of Law**

- **Basis of law**   **2018-2019 years**
- **2 credits**   **7/8 semester**
- **assoc. professor**   **Yerkin Massanov**

The brief content:

- 1. Function of Law;
- 2. 4 primary types of values;
- 3. 4 schools of Law.

The function of Law:

1. **Regulates conduct -** acts as a deterrent i.e. if you do "x" you face punishment "y".

2. **Avoids or Settles disputes** – Contract law sets out rules for making and enforcing agreements.

3. **Set out rights and obligations** - for example the Charter of Rights limits the government's authority over citizens.

4. **Provides remedies -** if your rights have been violated under the law, the law provides a system of recourse.

5. **Maintains** Order and provides protection - prohibits certain acts and provides for an authority (police) to protect us.

6. **Sets up the structure of government -** The Constitution Act assigns power and duties to the various levels of government.

7. **Directs how to make laws** - The Parliament.

LAW AND VALUES:

• **Laws are created to reflect and promote a society's values (the ideas of right and wrong);**

• **They often stem from religious and cultural background;**

• **The stronger the value, the stronger the law and the more severe the punishment.**

Laws are based on <u>4 primary types</u> of values:

1.Moral values - **Ideas of Right and Wrong Protection of Life Severe Punishment;**

2.Social values - **Important Issues Change over Time Laws encourage values Punishments less severe;**

3.Economic values - **Deal with accumulation, preservation, use, and distribution of wealth Laws to protect property;**

4.Political values - **Regulate the relationship between citizens and government.**

4 schools of Law:

- **Formalism** proposes that law is a science
- **Realism** holds that law is just another name for politics;
- **Positivism** suggests that law must be confined to the written Laws, rules and regulations enacted or recognized by the Parliament & the government.
- **Naturalism** maintains that the law must reflect eternal principles of justice and morality that exist independent of governmental recognition.

Scope of Law:

- The study of Law started with the Romans. It was only <u>in 1826 that John Austin</u> became the first professor of Jurisprudence at the University of London. The word jurisprudence in France was referred to Case Law whereas in US it was referred to the Philosophy of Law. There has been a shift during the last century and jurisprudence today is envisaged in more broader sense.

Overview:

- Law permeates all social activity. It defines relationships, **protects rights**, imposes obligations and gives structure to governmental and commercial enterprise.

- **Knowledge** in area Law help to analyze complex issues, find solutions to a wide variety of problems and contribute to decision-making at all levels. Also understand the limits of law and its relationship with other social forces.

MAIN TWO BRANCHES OF L.:

- 1 Realism;
- 2 Formalism.

School of Realism:

- **The realist movement, which began in the late eighteenth century and gained force during the administration of President Franklin D. Roosevelt, was the first to attack formalism.**

- **They believed that law is not a scientific enterprise in which deductive reasoning can be applied to reach a determinate outcome in every case.**

School of Formalism:

- Legal formalism, also known as conceptualism, treats law like a math or science. Formalists believe that in the same way a mathematician or scientist identifies the relevant axioms, applies them to given data, and systematically reaches a demonstrable theorem, a judge identifies the relevant legal principles, applies them to the facts of a case, and logically deduces a rule that will govern the outcome of a dispute. Judges derive relevant legal principles from various sources of legal authority, including state and federal constitutions, statutes, regulations, and case law.

The History of Law:

- 	The "law" cannot be spoken of as a single homogenous entity. "Law" is defined in the Concise Oxford Dictionary as "a rule or system of rules recognized by a country or community as regulating the actions of its members and enforced by the imposition of penalties". Beyond this, however, the history of law of different communities has developed in distinct ways, reflecting the prevalent socio-political norms and values of the society which they regulate. The history of "laws" of pre-literate Kazakhstan societies, for example, are significantly different from the history of laws of a developed Western democracy.

For example:

- -   the control brought about by the existence or enforcement of such law preserved law and order in the town;
- - the action of laws considered as a means of redressing wrongs; also : litigation.

Plato: "Republic":

- One of the Earliest book close to Low book written by Plato: "Republic";
- The Republic (Greek: Politeia; Latin: Res Publica) is a Socratic dialogue, written by Plato around 380 BC, concerning justice, the order and character of the just city-state and the just man.
- It is Plato's best-known work, and has proven to be one of the world's most influential works of philosophy of Low, both intellectually and historically.

THE REPUBLIC PLATO
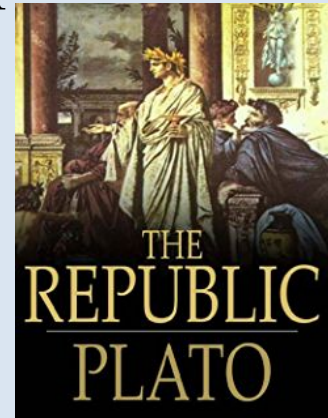
The terminology Law:

- Law is a system of rules that are created and enforced through social or governmental institutions to regulate behavior. Law as a system helps regulate and ensure that a community show respect, and equality amongst themselves. State-enforced laws can be made by a collective legislature or by a single legislator, resulting in statutes, by the executive through decrees and regulations, or established by judges through precedent, normally in common law jurisdictions.

Law as a science:

- It may seem obvious, but what is law? Law, or legal studies, comes into contact with almost every area of human life, touching upon issues relating to business, economics, politics, the environment, human rights, international relations and trade.

- As a educated man, you can expect to learn how to tackle some of the most problematic – indeed, often seemingly irresolvable – conflicts and issues in modern society and morality. In providing a framework through which to examine and understand different societies and cultures, basis of law are a useful way to prepare not only for specific legal careers, but for a broad range of professional roles – and indeed, for life in general.

Two main sources of from antiquity:

- **These are the philosophical speculation of the Greeks and the legal and administrative practice of the Romans. The speculative genius of Plato issued in the Republic and The Laws.**

- **Aristotle consolidated this body of philosophical thought and brought to it the strength of empirical observation in his treatises on ethics and on politics.**

Roman Law -

- on the other hand, had an autonomous development based on a millennium of judicial experience and administrative practice. Greek philosophical theories permeated the essence of Roman law, but the slow, steady accumulation of legal experience and its crystallization into general principles of law and finally into codification gave Roman law its enduring character. For the Romans, jurisprudence always remained an eminently practical study.

These two sources of L.:

- **namely, Greek theories of the nature of justice and Roman experience in political administration, became, after religion, the most dominant aspect of medieval culture. The idea of the Holy Roman Empire with the Corpus Juris Civilis as a statute binding all Christendom and the Roman Catholic church with its manifold forms of law as spiritual authority for all Christians formed a coherent theoretical structure.**

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17 Seminar:

- 1. Describe function and structure of L.?

- 2. Differences of 4 school of Law?

- 3. The role of values in society? (essay 1 p.)?