International Educational Corporation Handouts

. SUBJECT:
BASIS OF LAW

- **Lecture: №1 Introduction to basis of law**

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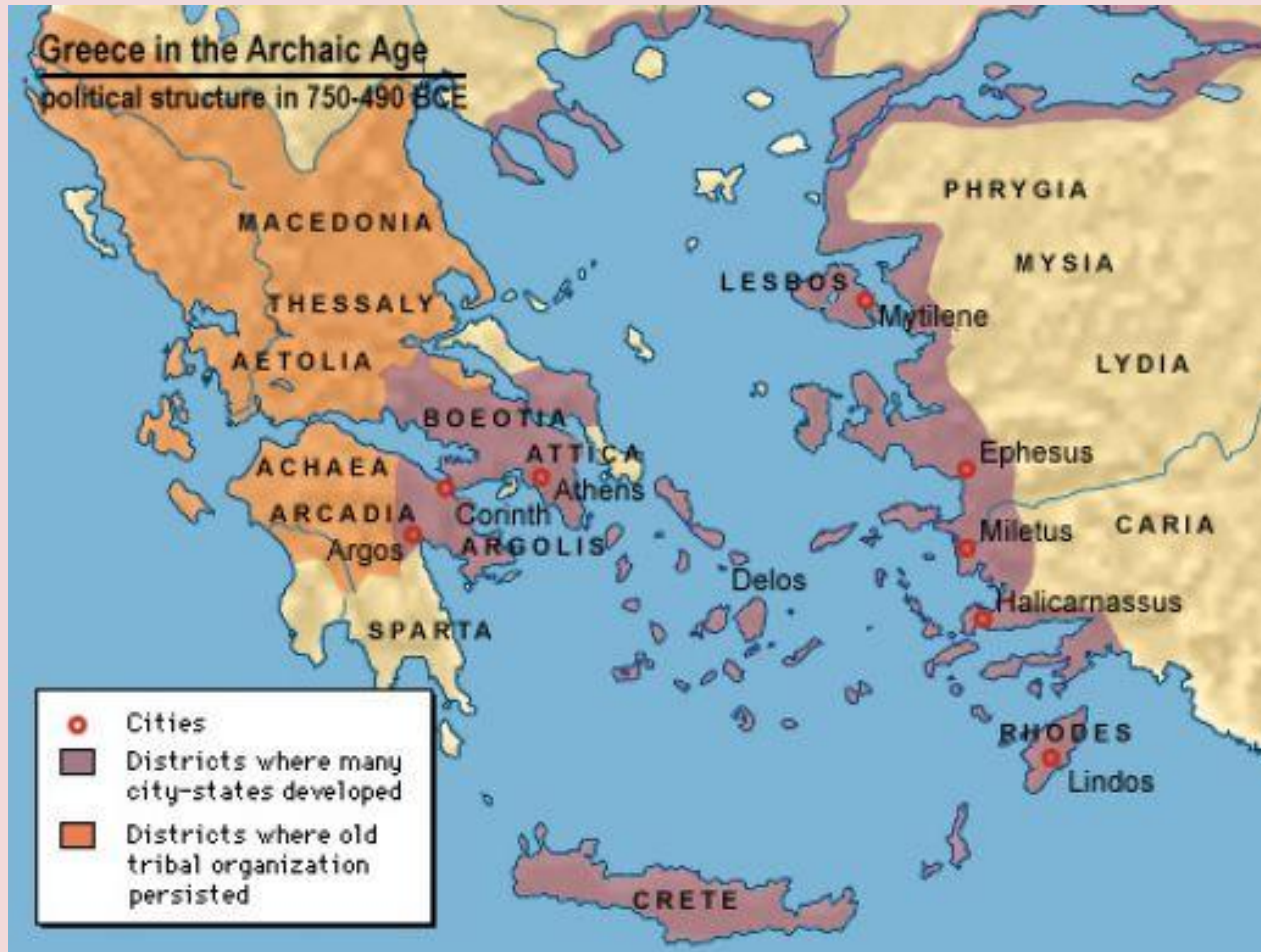- **assoc. professor**   **Yerkin Massanov**

The brief content:

- 1. Etymological definition;
- 2. Development of Law as science;
- 3. Branches of Law.

Law – close to modern tradition based on the Ancient Greek

Greece in the Archaic Age
political structure in 750-490 BCE

PHRYGIA

MACEDONIA

THESSALY

AETOLIA

LESBOS
Mytilene

MYSIA

LYDIA

BOEOTIA

ACHAEA

ATTICA
Athens

Ephesus

ARCADIA

Corinth

ARGOLIS

Miletus

CARIA

Argos

Delos

Halicarnassus

SPARTA

RHODES
Lindos

CRETE

Cities
Districts where many city-states developed
Districts where old tribal organization persisted

Term of Law:

- Law is a set of rules of conduct, established by government, for all members of society to obey and follow.

Branches of Law:

- - Criminal Law;
- - Law of Contract;
- - Property Law;
- - Public Law;
- - Legal Writing;
- - Law of Torts;
- - Jurisprudence etc.

Etymology of Basis of Law:

- *LAW:* **Widely used since 1640 - "to litigate," from law. Old English had lagian "make a law, ordain." Related: Lawed;**

- **Words for "law" in the general sense mostly mean "what is right" and often are connected with adjectives for "right" (themselves often figurative uses of words for "straight," "upright," "true," "fitting," or "usage, custom." Such are Greek nomos (numismatic); from Latin directus; Russian pravo;**

- **Old English lagu (plural laga) "ordinance, rule prescribed by authority, regulation; district governed by the same laws;" also sometimes "right, legal privilege";**

- *BASIS:*
- **1. the bottom or base of anything; the part on which something stands or rests.**
- **2. anything upon which something is based; fundamental principle; groundwork.**
- **3. the principal constituent; fundamental ingredient.**

What is law?

✔ **System of rules**

✔ **Lays down standards to which we ought to conform**

✔ **Legal rule, moral rule and social convention**

✔ **Difference is: Failure to adhere to legal rules may result in a penalty**

✔ **Law is never static it is always changing.**

Definition of Law:

1. a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority;

- 2. the whole body of such customs, practices, or rules The courts exist to uphold, interpret, and apply the law.
- 3. A system of "rules and regulations made and enforced by a government that regulate conduct of the people within a society".

Tasks of Subject Basis of Law:

- **Providing** you with an understanding and overview of the Kazakhstan Legal System
- Introducing you to the skills of **finding** and reading **legal materials** and tackling law questions
- **Helping** you to understand the techniques of legal reasoning
- Introducing you to some of the **key skills of lawyers** and the operation of the legal system

Goals of the Legal System:

1. **Protecting basic human rights;**
2. Promoting fairness;
3. Helping resolve conflicts;
4. Promoting order and stability;
5. Promoting desirable social and economic behavior;
6. Representing the will of the majority;
7. Protecting the rights of minorities etc.

Subject of Law:

is the study and theory of law. It includes principles behind law that make the law. Scholars of jurisprudence, also known as jurists or legal theorists (including legal philosophers and social theorists of law), hope to obtain a deeper understanding of the nature of law, of legal reasoning, legal systems, and of legal institutions.

Modern jurisprudence began in the 18th century and was focused on the first principles of the natural law, civil law, and the law of nations.

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.

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

1. 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.

2. 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 constitution, 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.

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.

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
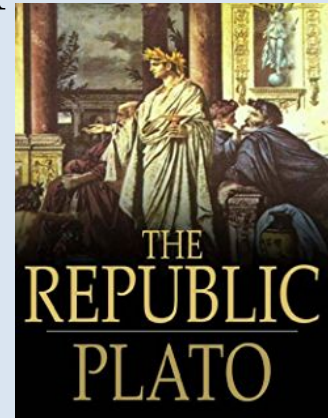
The terminology Law:

- **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.**

Low 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 sourses:

- **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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1 Seminar:

- 1. Definition of Law (3 def-n.)?
- 2. Main term in Law (Glossary - 10) ?
- 3. What is bases of law: moral, tradition or punishments (essay 1 p.)?