

LAW

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FUNCTIONS OF LAW

- **Law – what is this about?**
- **Why do societies need law?**
- **Law – a modern concept?**

FUNCTIONS OF LAW

- **Norm of conduct** = a directive targeted at a specific addressee, ordering or preventing certain behaviour under specific or all circumstances
- Norm of conduct establishes a **model of behaviour**

FUNCTIONS OF LAW

- Norm of law (**legal norm**) v. norm of conduct (**social norm**)?
- **Legal norms** = directives that organise, manage and control social life through the will of the public authorities (state)
- **Legal norms are:**
 - created by the state
 - applied by the state
 - enforced by the authorities of the state (*imperium*)

FUNCTIONS OF LAW

- Law allows for the **maintenance of the order and harmony** of the structures of social organisations that **are established** by the legal norms

LAW AND OTHER NORMS

- **What determines a content of legal norms?**
- **Morality? Religion?**
- **Moral standards are behavioural directives based on the category of „good” and „evil”**
(understood differently in various cultures and religions)

LAW AND MORAL NORMS

- **Law** comes out of moral standards
- **Law** applied in a formal way and due to formal criteria
- **Mechanism of coercion** in order to enforce the law

PROPERTIES OF LAW

- Law itself defines **formal criteria of its applicability**
- Law must be **applied and observed in its entirety**
- **Every entity must obey (observe) legal norms** (even if in disaccordance with their content)

PROPERTIES OF LAW

- Durability
- Stability (continuous change... coherent!)
- Continuity
- Standardisation
- Predictability

CONTENT OF LAW / changes

Law is constantly **broadening**...

- new legal institutions
- „rebuilding” old institutions

... in order **to adapt to new** social,
economic and technological **circumstances**

OBJECTIVES OF LAW

Law should:

- **define the framework of activities** of the subjects of law
- **ensure order** in social, business and political relationships
- **protect the fundamental values** of social life
- **guarantee compensatory justice**
- **establish effective procedures** for the legal settlement of social disputes

JUSTICE

- **Law** must be **JUST**
- **Compensatory justice**: compensation of good with the appropriate and evil with the necessary evil (*principle of rewards*)
- **Distributive justice**: based on the formula of the distribution of goods, while maintaining an identical treatment of people with the same key features

PRINCIPLES OF LAW

- Norms of high significance
- Principles that have remained stable over ages
- Examples:
 - equality
 - presumption of innocence
 - *pacta sunt servanda*

LEGAL NORM

- Statement containing the directive of a public authority ordering its addressees to behave under specific circumstances in a way that is specified in it

LEGAL NORM

- **ADDRESSEE (who?)**
- **CIRCUMSTANCES (when & where?)**
- **CONDUCT (how?)**

- **SANCTION (negative consequences)**

LEGAL NORM - example

- § 108. [German Civil Code]
(1) If the minor concludes a contract without the necessary consent of his legal representative, the validity of the contract depends on the consent of the legal representative.

LEGAL NORM - example

- The minor may conclude a valid contract only with the consent of the legal representative.

LEGAL PROVISION

- **Sentence in the grammatical sense**, clearly highlighted in the legal text and usually marked as an article or paragraph
- A legal norm is usually shaped by several provisions
- Legal doctrine & practice is expected to restore legal norms on the basis of provisions

LEGAL PROVISION

- **General provisions** (at the beginning of texts) / **specific (detailed) provisions**

§ 310. [Contract concerning future property] A contract whereby one party binds himself to assign his future property or a fractional part of his future property or to charge it with a usufruct, is void.

REFERANCE LEGAL PROVISION

§ 173. [German civil code]

The provisions of §§ 17D, 171(2) and 172(2) do not apply if the third party knows or should know of the termination of the agency at the time when the legal transaction is entered into.

LEGAL DEFINITIONS

- **Article 4. [Polish competition act]**


For the purpose of this Act:

- 5) "distribution agreements" shall mean agreements concluded between entrepreneurs acting at the different levels of the economic process aimed at purchase of products for further resale;
- 6) "products" shall mean goods as well as all forms of energy, securities and other property rights, services as well as construction works;

ANNOUNCING THE LAW

- Publication of legal acts – obligatory for universally binding acts
- Legal acts announced = authentic text
- Specific official journals (*Dziennik Ustaw*)

DEROGATIONS & AMENDMENTS

- **Derogation:** repealing the whole act or individual provision
- **Amendment:** changes to the legal act (by one of provisions in a legal act or by a separate act)
- Lots of amendments  consolidated text (original act with the further amendments, not a new act)

LEGAL RELATIONSHIPS AND FACTS

- **Legal relationships:** all social relationships governed by legal norms
- **Legal facts:** facts that have consequences due to legal norms

LEGAL INSTITUTIONS

- Regulations referring to a certain aspect of social relationships
- Examples:
 - Inheritance
 - Ownership
 - Marriage

IGNORANTIA IURIS NOCET

„Ignorance of the law harms”

If the subjects of law do not know their rights, they will obviously not exercise them

DOMESTIC (NATIONAL) LAW

- **Internal law of a state**
- **Obligatory:** every citizen is subject to the law of the state, regardless a place of residence
- **Territorial:** even foreigners are subject to the law of the state of their temporary or permanent residence

INTERNATIONAL LAW

- **used to impose duties on states and certain international institutions**
- **sometimes incorporated into domestic legal systems** (then directly govern rights and duties of citizens)

PUBLIC LAW & PRIVATE LAW

- Division that dates back to ancient Rome

„Public law is the law which applies to the government of the Roman Empire; private law is the law which applies to the interests of the individuals”

Ulpian

PRIVATE LAW

- All the principles that regulate the **autonomous and free activity of society** in the social and economic sphere (e.g. norms regarding the conclusion of agreements)
- Parties equal to each other and before the law (civil-law method of regulation – neither of the parties can unilaterally (authoritatively) change the legal situation of the other party)

PRIVATE LAW

- *luris dispositivi* (relatively valid regulations)
 - regulations only suggest suitable conduct, but such conduct is not definitely imposed or prohibited
 - Declaration of the will of the parties is binding and takes a priority over the provisions of such law
- Authorities (courts) do not act *ex officio*, but on the initiative of the parties

PRIVATE LAW

- Civil substantive law (including commercial law – private law on commercial activities)
- Family and custodianship law
- International private law
- Some parts of labour law, maritime law, environmental law, agricultural law

PUBLIC LAW

- Public law regulates the system of public authorities and relations between the state and society.
- Purpose of public law: to protect collective, general & social interests, the interests of the state and other common interests (public interests)

PUBLIC LAW

- Parties to public law relations: public authorities & other subjects of the law (natural & legal persons)
- Public law creates subordination relations between entities (one of the party has a superior position to the other entity)
- Inequality of parties - administrative law method (the state threatens the use of direct coercion (imprisonment or fine) in the event of a violation of legal obligations)

PUBLIC LAW

- Public law includes: constitutional law, administrative law, criminal law, financial law, public law on commercial activities, criminal, civil and administrative procedures law; international public law
- Some parts of labour law, maritime law, environmental law, agricultural law

LINGUISTIC ASPECT OF LAW

- **Legal norm** = linguistic statement that communicates duties and/or rights to its addressee
- Norms are **not sentences in a logical sense** (no attribution of truth or false!)

LINGUISTIC ASPECT OF LAW

Legal norms:

- **written** (legal acts, legal decisions, judgements, contracts)
- **unwritten** (mainly principles of law)
- Bilingualism and multilingualism of some legal systems

INTERPRETATION

Legal norms (linguistic statements)



open for interpretation

- Linguistic interpretation
- Logical interpretation
- Doctrinal interpretation
- Purposive interpretation

INTERPRETATION OF LEGAL REGULATIONS

Interpretation = a set of interpretation activities + the outcome of these activities

The application of specific interpretation directives enables the reconstruction of the standard of conduct from the legal regulation in which it is expressed.

- abstract interpretation or in individual case

INTERPRETATION OF LEGAL REGULATIONS

Interpretation performed by state authorities =
formal interpretation (usually binding)

Various types of interpretation distinguished
from the point of view of entities performing
the interpretation

INTERPRETATION OF LEGAL REGULATIONS

- **Authentic interpretation:** performed by legislator (law-maker)
- **Legal interpretation:** performed by the authority to which the legislator granted competence for interpreting the law
- **Operational interpretation:** performed by the authority applying the law (the court or administrative body)

INTERPRETATION OF LEGAL REGULATIONS

- **Doctrinal interpretation:** performed by legal science
- **Unofficial interpretation:** performed by the lawyers for the purposes of decision-making by various entities (a lawyer as an advisor at company)

RULES OF INTERPRETATION

- *Contra legem* interpretation prohibited
- Linguistic interpretation - priority

CONTEMPORARY LAW

- Democratic states (states of law) v. totalitarian regimes (ostentious law)
- Cross-border legal systems
- Globalised law
- Law-making partly detached from states
- New areas of law connected with technological development
- Co-existence of different legal cultures

STATE OF LAW

- A state in which public authorities (legislative, executive, judicial and control authorities) are organized **in accordance with the law**
 - competencies are clearly regulated
 - authorities do not exceed the limits of authorizations
 - citizens & their organizations have measures allowing for controlling and protecting their interests

STATE OF LAW – main principles

- **Respect for:**
 - human dignity & human rights
 - freedoms (of ownership, of speech, of association)
 - tolerance
 - pluralism
 - justice & solidarity
 - non-discrimination & equality

STATE OF LAW – main principles

- **Equality before the law**
- **Equality in the law**

LAW MAKING

- unilateral official act of public authorities that are competent to establish the law, resulting in a binding legal text
- Law-making follows precisely defined procedure
 - always **preparatory phase** (studies, draft acts)

LAW MAKING - stages

1. Draft legal act
2. Review of the draft act by a competent authority / amendments
3. Decision on the new legal act / voting
4. Signature
5. Announcement / publication

LAW MAKING

- Law is established by **a single or collective legislative bodies**
- Broad category of bodies with law-making powers
 - parliament (representative authorities): laws
 - administrative (executive) bodies (central offices, agencies): sub-laws
 - other bodies (e.g. *Warsaw Stock Exchange Joint-Stock Market*)

LAW MAKING

- Structure of law-making depends on the **territorial structure of the state** (central / federal)
- Law-making at **central & local level** (self-government; local administration)

TYPES OF LEGAL ACTS

- Differentiated legal force of acts
- Acts of lesser legal force used for implementing acts of greater legal force
- **No inconsistency** between acts of lesser and greater legal force
- **Act of a greater legal force can repeal** (derogate) acts with a lesser legal force

HIERARCHY OF LEGAL ACTS

Constitution

Laws (Statutes)

Ratified international agreements

Regulations

Local legal acts (Local law)

CONSTITUTION

- **The highest rank** in the hierarchy of legal acts
- Issued by the parliament or another specially appointed body (constituant assembly)
- Special procedures of adopting constitutions
- „**Rigid**” or „**flexible**” constitutions

LAW (STATUTE)

- Subordination of laws to the constitution
- Consistency with the axiology and principles expressed in the constitution
- Autonomous acts (no special legal grounds required for passing them)
- Unlimited scope of the content
- Passed by the parliaments

RATIFIED INTERNATIONAL AGREEMENTS

- **Ratification** = expressing the will to be bound by an agreement
- Ratification by the **president** and **parliament** (referendum)


SUB-LAWS

- Executive acts: mainly regulations
- Sub-laws must be based on a law
- Laws may amend and repeal sub-laws
- Scope of a sub-law limited by a law
- **Certain range of matters may be regulated only by laws**

LOCAL LAW

- Usually issued by local (self-governmental) institutions
- Binding force limited to a specific territory

CODES

- Dispersed regulations
codification 
- comprehensive, relatively exhaustive, internally consistent regulation of a selected (although extensive) area of social life

DELEGATED LEGISLATION

- Possibility to establish legal acts under different names having the legal force of a law
- Examples:
 - regulations with the force of a law
 - orders with the force of a law
- Delegated powers entrusted to the government or the president (executives)
- Clear limits of subject areas of such regulations

COMMON LAW

In the common law system, the court makes a specific & individual decision on a particular case **by reference to another similar specific case previously decided upon** by a court.

The first decision is considered a **precedent**.

COMMON LAW

- If the case is submitted to the court for the 1st time &
- if there has been no similar case resolved by the court



the court establishes a new norm

COMMON LAW

- The court distinguishes the unique and secondary features of the cases examined (**obiter dicta**) AND
- taking into account the essence of the case the court formulates the reasoning for the decision (**ratio decidendi**) and makes it a foundation of the judgement.
- The (established) principle becomes the basis for settling all similar cases by courts of the same or lower position.

COMMON LAW

- Law-making and law-applying is not as clearly separated as in the statutory law
- The **principle of the precedent** is based on the assumption that **similar cases should be settled in a similar manner**

COMMON LAW

- Law-making precedents currently the most important in civil law (criminal law, administrative law, financial law)
- Case law **coexists** with statutory law
- Every law can repeal a precedent, but precedents cannot repeal a law

COMMON LAW & STATUTORY LAW

- **Differences** between the civil law and common law systems are **clearly disappearing** today
- The **expansion of statutory law in the case law system** (precedents are the sources of the law with lesser legal force than laws)
- The **role of judicial decisions in civil law systems** and their participation in shaping the wording of the law **is increasing**

VALIDITY OF THE LAW

Formal criteria of validity of legal regulations

- fundamental significance in the systems of statutory law
- Validity = checking if a legal regulation was valid in a formal sense:
 - at the particular time
 - in a specific place
 - to a specific person.

CONDITIONS OF VALIDITY

- 1. Act was established in the appropriate form and mode by an authority.**
- 2. Act was not formally withdrawn (derogated)**
- 3. It is not contrary to any other legally valid norm (and if it is contrary, it has not lost its binding force under the accepted collision rules)**
- 4. Act was officially published in the publication journal.**

COLLISION RULES

- **Lex inferior non derogat legi superiori**

The lower norm in the hierarchy does not derogate the higher norm in the hierarchy

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INTERPRETATION OF LEGAL REGULATIONS

Various types of interpretation
according to the method & scope

- Linguistic interpretation
- Systematic interpretation
- Functional interpretation

LINGUISTIC INTERPRETATION

What is checked?

- whether the term has been defined by legal definition
- whether there is a binding interpretation decision of any authority
- whether there is a uniform position of the doctrine & the meaning indicated in the literature can be accepted

If answers are negative – the meaning of a term must be determined.

SYSTEMATIC INTERPRETATION

What is checked?

- the consistency in understanding the norm with other norms in the legal system, considering the position of the norm in the legal system and its compliance with the principles of law

LEGAL DISPUTES

- **Legal disputes settled, firstly, out of court by:**
 - negotiations (without a participation of the third party)
 - mediation and arbitration (alternative dispute resolution - ADR)
- mediation: „*it is better to reconcile than to judge*”
- arbitration: state courts award decisions with executory formulas (legal force of state court decision)

LEGAL DISPUTES

- Legal disputes settled by courts („judicial administration of justice”)
- Legal disputes settled in administrative proceedings

COURTS

Courts:

- settle cases and „administer justice”
- resolve disputes related to the breach of norms by specific entities
- resolve conflicts related to private or public interests
- sometimes only define the rights and duties of entities

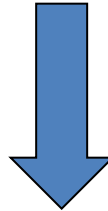
COURTS

Courts are organised in accordance with the **principle of instance**:

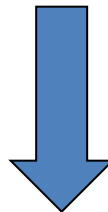
Judgments and decisions of courts of first instance can be appealed against in appeal proceedings to the court of the second (higher) instance

PRINCIPLE OF INSTANCE - Poland

- **District courts**



- **Regional Courts**



- **Courts of Appeal**

Extraordinary means of appeal

- Cassation (Supreme Court)
- Complaints to the European Court of Human Rights

Judgements & decisions by courts

- Courts pronounce judgments and decisions **on behalf of the state**
- Judgments that cannot be appealed against are **final and binding**
- **Court proceedings – always contradictory**

„Free” Evaluation of Evidence

Judges evaluate the evidence on the basis of regulations & the accepted principles for identifying the facts in the science, in accordance with the principle of correct reasoning, recommendation of the state of knowledge and life experience

Application of the law – stages

1. Definition of the actual state

- it requires the hearing of evidence
- a court has a duty to identify **the material truth** (exceptionally: **formal truth** – legal presumptions)

Evidence:

- personal (e.g. eyewitness) & material (e.g. original document)
- direct or indirect (e.g. hearsay witness)

Application of the law – stages

2. Determining legal grounds for the decision
(legal inference and interpretation of the law)

3. Final (justified) decision

SUBJECTS OF THE LAW

Natural person: a person from the moment of birth until death (or recognised deceased)

Not every natural person has full public rights (e.g. voting rights) and capacity to conduct civil law transactions. This is decided upon by the domestic law.

Legal person: an independent subject of the law, which is established for a particular purpose and bears legal responsibility for its activities.

Conditions for obtaining legal personality are defined by the domestic law.

NATURAL PERSONS

Natural person: a citizen or a foreigner

Citizenship: a linkage between a state and a natural person

Citizenship determines a scope of rights & duties of the natural person with the respect to the state and vice versa.

NATURAL PERSONS

Acquiring citizenship: *ius sanguinis* or *ius soli*

ius sanguinis (the law of blood)

children acquire the citizenship of their parents, irrespective of the place of birth

ius soli (the law of land)

children acquire the citizenship of the state, on the territory of which they were born, irrespective of parents' citizenship