

Unit 1: Law, Society and You

**Introduction • What is a rule? • The need for rules
What is a law? • The need for law • The functions of law
The difference between a rule and a law • The rule of law
The early history of law • Other fundamental legal concepts**



1.1 Introduction

People have always been fascinated with the law and the judiciary system. Television shows like Boston Legal, Conviction, Cops, CSI, Family Law, Judge Mathis, Judge Joe Brown, Judge Judy, L.A. Law, Law & Order, Law Enforcement, Matlock, Perry Mason, The Defenders, The Guardian, The People's Court, The Practice, and others, have introduced legal terminology and the functioning of the legal system to many people. Law has always been a popular subject for television, movies and books.

As citizens of a society, it is our responsibility to learn about our legal system. Since we all live in a city, province, and country, we must abide by the laws that have been established. It is therefore important to understand how laws are created, enforced, and how our human rights and freedoms can be protected.

1.2 Rules

What is a “rule”?

A *rule* is a prescribed guide or convention for conduct that governs the behaviour of members of an organization.

Rules are a part of our everyday lives, whether they are made by institutions, organizations, schools, or parents. Only if we are a member of that group do we have to obey the rules, or face the consequences.ⁱ

For example, schools have rules which students must follow. Normally there are consequences for breaking the rules.



School Rules

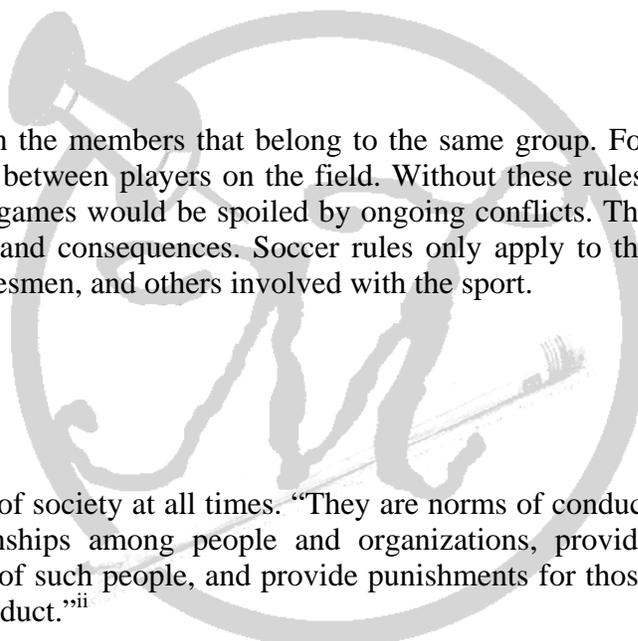
The need for rules

Rules help maintain order and peace between the members that belong to the same group. For example, soccer rules keeps order and peace between players on the field. Without these rules, players would argue, get into fights, and the games would be spoiled by ongoing conflicts. The referee reinforces these rules with warnings and consequences. Soccer rules only apply to the players, coaches, team managers, referees, linesmen, and others involved with the sport.

1.3 Laws

What is a “law”?

A *law* is a rule which applies to all members of society at all times. “They are norms of conduct which mandate or permit specified relationships among people and organizations, provide methods for ensuring the impartial treatment of such people, and provide punishments for those who do not follow the established rules of conduct.”ⁱⁱ



Type of laws

There are different types of laws:

- **Natural law** (moral standards that govern human behaviour)
- **Law of supply and demand** (an economics principle which states that when supply exceeds demand, prices fall; and when demand exceeds supply, prices rise)
- **Newton's law of motion** (a physics principle which says that an object in motion will remain in motion unless acted upon by a force; that the force of an object equals mass multiplied by acceleration; and that for every action there is an equal and opposite reaction)
- **Laws of exponents** (math principles relating to exponents)
- **Civil laws** (help to solve problems which occur between individuals or groups; trained legal personnel and courts can help solve)
- **Criminal laws** (designed to protect society as a whole from wrongful actions; police can take action)
- Other...

The need for laws

Since laws apply to all members of society at all times, laws help prevent chaos and enable our society to run smoothly. We must have laws in order to help protect the safety, human rights and freedoms of all citizens.

The functions of law

Law helps protect and control our society. They help maintain discipline, safety, and protect our human rights and freedoms. The law helps reduce or eliminate conflicts, helps settle disagreements, and creates a safer place to live.

Laws also discourage people from harming others. They also protect people from being taken advantage of and protect them from unfair agreements or contracts.¹

In summary, the function of the law is to create order and ensure that disagreements are solved peacefully and fairly.

1.4 The difference between a rule and a law

Rules only apply to members of a closed group (like a team, club, or organization). Laws apply to all members of a society at all times.

A *society* is defined as “a group of interacting people who share a geographical region, a sense of common identity, and a common culture.”ⁱⁱⁱ A society could refer to a culture group such as Asians (people that live on the continent of Asia) or to specific people like the First Nations People.

1.5 The “rule of law”

Rule of law means that laws are equally applied to everyone and that no individual or government official is above the law.

In earlier days, some kings, queens and law enforcement officials considered themselves above the law and abused their powers. They believed that the laws should only apply to the average citizen and not themselves.

In 1215, the clergy and other powerful groups in England forced King John to sign a document called the *Magna Carta*. This “carta” (charter document), made up of 63 statements, forced the

King of England and all other high ranking officials to obey the laws. The idea behind the Magna Carta became known as the “rule of law”.

“If the law rules, leaders cannot use their power any way they like; they must apply the laws or guidelines to everyone, including themselves. The law should apply to everyone. No one should be exempt from the law because he or she holds a position of power. Each individual is equal before the law.

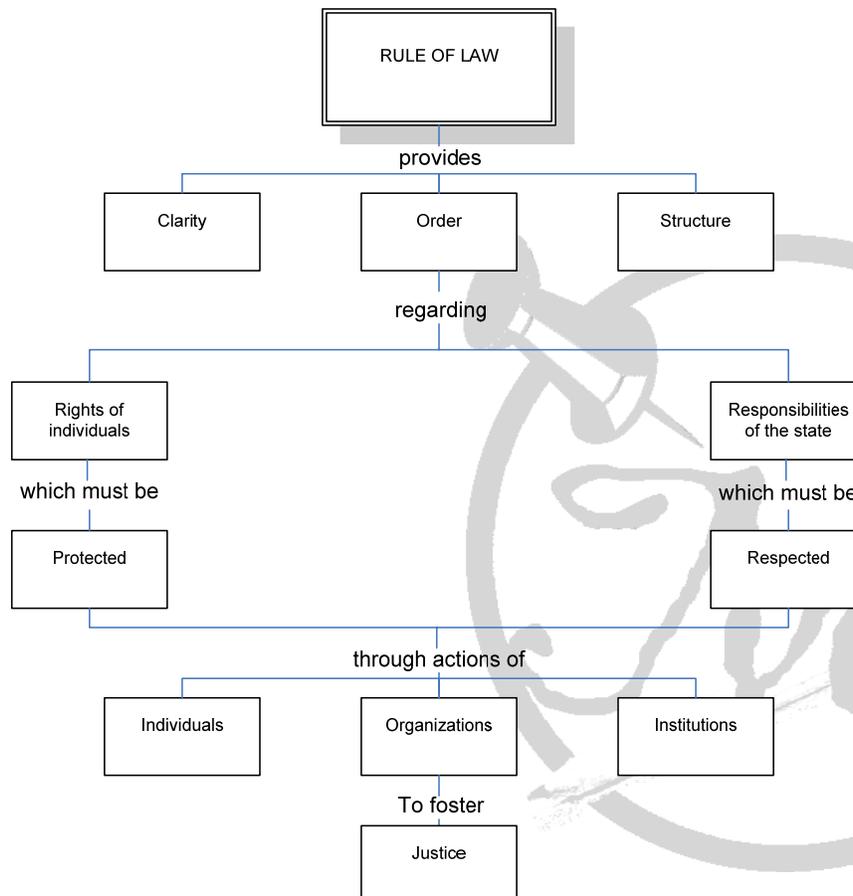
If we have a system of law, everyone must respect and obey the law. We also need to have peaceful and orderly ways to change the law. There must be guidelines about how to change the law that can be understood and used by everyone.



The idea of the Rule of Law is demonstrated in our political and legal system. Our political system allows us to control how our laws are made through a democratic, parliamentary process. This process gives us an organized way to change the law. At the same time, our leaders are representatives of the public who are elected and responsible to us. They cannot act arbitrarily, in any way they like, just because they have power. If they do, they can be defeated in the next election. If they break the law, they can be charged.

In our legal system, police, lawyers, and judges are also accountable. They cannot charge or convict people of crimes just because it is their wish. In all of their work, they must follow the law. If they do not, their decisions or actions could be invalid. They could be disciplined, charged with a crime or lose their jobs.”^{iv}

The Rule of Law Concept Map^v



1.6 The early history of law

In earlier civilizations, people's values and beliefs governed their society. Their sense of what was right and what was wrong was passed on verbally from one generation to the next. When people acted inappropriately, there were often punishments which we might find bizarre today.

The Code of Hammurabi

About 4 000 years ago, the king of an ancient civilization that is now known as Iraq, passed many laws and wrote them down in order to ensure that citizens knew about them. These laws were known as *The Code of Hammurabi*.

Mosaic Law

The *Mosaic Law* is the set of principles that God gave to the Israelites through Moses. The first set of laws was known as the Ten Commandments.

Roman law

Roman law is the basis of the law system in Europe (except England). Roman law was founded in Rome near 100 C.E. (current era).

Napoleonic Code

The *Napoleonic Code* is a mix of Roman and the Justinian Code which Napoleon put together in France in the early 1800s. This is now known as the *French Civil Code* which is also the basis of *Quebec's Civil Code*.

1.7 Other fundamental legal concepts and terminology

Act

An *Act* is a written and approved law (also referred to as legislation or a statute).

Defendant

The *Defendant* is the person who is being sued.

Disputes

A *dispute* occurs when there are conflicts between two or more people or groups of people and a solution through the legal system (court) becomes the only way to settle the dispute.

Habeas Corpus

The Latin term *habeas corpus* (meaning "you have the body") is a court order forcing law enforcement authorities to bring a prisoner before the court to determine if he or she is being detained unlawfully. If it is determined that the prisoner is being held without just cause, then that person is released. If the court decides that the prisoner is held for valid reasons, then that person will be tried.

Intent of the law

The term *intent of the law* refers to the purpose of the law, the reasons behind why a law was created.

Interpretation

Interpretation of the law is to apply it to a new fact situation. The interpreter looks at the written words of the law and decides how they apply to a particular fact situation.^{iv}

Jurisprudence

Jurisprudence is the philosophy, science, study, and application of law. It is the formal study of the principles on which legal rules are based and the means by which judges guide their decision making. One of the principal sources of law are previous court case judgements called *Jurisprudence*.

Legal system

The *legal system* is the mechanism for creating, interpreting and enforcing the laws.

Legislation

Legislation is a written and approved law (also referred to as a statute or an Act).

Letter of the law

The term *letter of the law* refers to the wording of an Act (law).

Litigate

To *litigate* means to sue or carry on a legal contest by judicial process. A *litigation* is a lawsuit or civil action brought before a court in which the party commencing the action (the plaintiff) asks for a legal remedy.

Natural law

Natural law refers to the moral standards that govern human behaviour. It is a set of principles which govern human interactions, which are built into the structure of the universe, as opposed to being imposed by human beings.

Negligence

Negligence is a conduct that failed to use the degree of care demanded by the circumstances.

Contributory negligence

Contributory Negligence occurs when the plaintiff's conduct is a legally contributed cause with the defendant's negligence causing the plaintiff's harm.

Norm

A *norm* is a standard or custom shared by members of a group about how they should behave. Norms can be informal or formal. If norms are formal they are said to be rules or laws.

Plaintiff

A *plaintiff* is the complaining party in litigation – a person who commences a personal action or lawsuit to obtain a remedy for an injury to his rights.

Sanction

A *sanction* describes the techniques for maintaining social control over society. We are rewarded if we follow norms of society, but if we don't follow the norms, we face sanctions (punishments).

Social engineering

Social engineering is the process of developing and controlling society through law. Evidence of this is the increase of minority rights.

Statute

A *Statute* is a written and approved law (also referred to as legislation or an Act).

QUESTIONS: UNIT 1 (Part 1) – Law, Society and Youⁱ

On a separate ruled loose-leaf paper, answer the following questions in well-structured sentences.

1. Why do you think people and popular culture are so fascinated by the law? Provide two examples to support your theory.
2. Why do you think the laws and punishments are not the same in every country or society?
3. What would happen without rules or laws to govern relations between people?
4. What benefits do rules have for clubs and organizations?
5. What is the difference between a set of rules and a set of laws?
6. What do you think would be the trade-off (or negative consequence) of increasing the number of laws?
 - A. Historically speaking, do individuals have more or less freedom in Canadian society?
 - B. Does your response in part A conflict or support your statements in question 6? Explain.
8. The function of the law is to create order and ensure that disagreements are solved peacefully and fairly. In what three (3) ways does the law achieve this goal?
9. Name a few specific instances where you have recently seen or heard about law.
10. Laws are everywhere and control much of what you do and how you behave. Name five (5) laws that control what you do and how you behave.
11. What was the significance in the signing of the “Magna Carta” in 1215?
12. What does the “habeas Corpus” do for a detained individual?

QUESTIONS: UNIT 1 (Part 2) – Is it a Rule or a Law?ⁱ

In the spaces provided below, write the letter “R” for rule, “L” for law or “N” for neither. Be prepared to explain your reasoning.

1. ____ You and your brother (or sister) share the same room. You have both agreed that he/she will keep his/her things on one side and you will keep yours on another.
2. ____ When you play poker, three of a kind beats a pair.
3. ____ You shovel the front steps and clear the ice so that visitors don't fall and hurt themselves.
4. ____ When going to the bank to make a withdrawal, people line up at the teller's wicket and wait their turn.
5. ____ In class, when you want to ask a question, you raise your hand and wait until you are given the floor.
6. ____ Your parents drive their car on the right-hand side of the road.
7. ____ You cannot pull the fire alarm in school unless there is a fire.
8. ____ You cannot wear jeans on the golf course.
9. ____ When finished with the lawnmower you've borrowed from the neighbour, you return it.
10. ____ Your club requires that to be a member, you must first pay your fees.

CASE 1a: Mountain climbing (make-believe situation)

Every year in August, three elite rock climbers David, Steve, and Tim fly to challenging rock-climbing mountains for a 5-day mountain climbing expedition.

This time while flying to Georgia's Southern Appalachian Mountains, the three men prepared their gear and discussed the dangerous climb that awaited them. They decided to climb the steep walls using a technique they invented, a form of Traditional Lead Climbing where all climbers are attached to each other using climbing rope.



During their discussion, all three men agreed that if one man slipped and the other two could not belay him (lift him) or hold him any longer, that they would cut the rope and let that person fall to his death in order to save their own lives.

When they arrived at the foothills of the Appalachian Mountains, they geared-up and began their climb. All was going well until they reached the 90 degree vertical wall. The winds were blowing forcefully and it began to rain.

Tim slipped and no matter what David and Steve tried, they could not belay him nor could they hold him any longer. Using their voice-activated radio, they gave the signal to cut the rope. David cut the rope that connected him to Tim and just as Steve was going to do the same, a rescue helicopter arrived and Tim was repelled to safety.

Discussion

1. During their conversation in the plane, did the three men pass a rule or a law? Explain your thinking.
2. If Steve had cut the rope, sending Tim to his death,
 - a. do you think Steve and/or David would have been charged with anything?
 - b. do you think both men would have been charged, or only Steve?
 - c. what would the men have been charged with?
 - d. what would be the men's defence?
3. If Steve and David were tried under criminal law and were found guilty, what do you think their sentence should be? Explain your reasoning.

ⁱ Special thanks to Mr. Szalai.

ⁱⁱ <http://en.wikipedia.org>. July 2007.

ⁱⁱⁱ <http://farahsouth.cgu.edu/dictionary/>, Claremont Graduate University. July 2007.

^{iv} Public Legal Education Association of Saskatchewan. Reprinted with permission.