

Legal systems – week 1 part I

Branch of law

Law?

- = has a broad important role in helping to maintain order in society.
- protect „weaker“ parties/groups/individuals

The function of law:

- to define: **the limits of acceptable behaviour** by specifying action that is so (morally) reprehensible that it will attract a (criminal) penalty
- Another important function of law is to ensure that those in public office do not abuse their power.

Function of law

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The law is:

- Protective
- Restrictive
- Facilitating
- Directive
- Predictive

Legal regulation

- Norm /standard - general binding rule, regulation;
- Normal - normal, usual, regular, average, representing the norm

Situation...

The role of pharmaceuticals has become more prominent in international scope:

- ...as health indicators have been increasingly linked with a country's successful development.

Situation....

In addition:

the legal issues that surround pharmaceuticals have become more complex:

Limitations/problems

- Pharmaceuticals/Pharmacy practice involve many parties:

...involves important risks:

-

Summary: Why pharmaceutical laws and regulations are necessary?

How to proceed it?

Governments:

to approve comprehensive laws and regulations

to establish effective national regulatory authorities

Differences between pharmaceutical laws, regulations, and guidelines

Legal systems of the world

Contemporary legal systems of the world are generally based on one of basic systems:

- Civil law
- Common law
- Religious

- *Customary – legal system or morality/ethics?*
- *Socialistic*

Legal systems of the world

Or combination of these basic systems

Legal systems of the world

However, the legal system of each country is shaped by:

- its unique history!

the basic system + incorporated individual variations

Civil and Common law

Civil (also known as *Roman*) and **Common** law:

systems can be considered like

the most widespread in the world.

Common law

Common law

System of law whose sources are:

The decisions in cases by judge

The principle of common law

- case law / based on precedents
- judges - bound to precedents

Precedents

Idea: stare decisis

- “rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases”

The principle of common law

- court or other tribunal when deciding subsequent cases with similar issues or facts are bound to this previous decision (precedents)

Common law

- But every system will have a legislature that passes some written laws and statutes
- *Statutes: allowed to be made by the government*
- The relationships between statutes and judicial decisions can be complex.

Common law

- In some jurisdictions:
 - such statutes may overrule judicial decisions or
 - codify the topic covered by several contradictory or ambiguous decisions
- In some jurisdictions:
 - what meaning is contained within the statutory provisions.

Common law

- developed in England
- Later: the Commonwealth of Nations, and almost every former colony of the British Empire has adopted it

Common law

- US – [Federal courts](#) and 49 states use the legal system based on English common law
-
- ([Louisiana](#))

Common law – Degree of judicial independence

- **High!!**

Civil law

Civil law

- The central source of law that is recognized as authoritative:
- codifications in a constitution or statute (statutory provisions) passed by legislative bodies

Civil law

- Civil law is **interpreted** by judges

“Historical detail”

- the oldest codification of legislation in Roman tradition: **Law of the Twelve tables**

Civil law

Usually is subdivided into several distinct groups

- French civil law (Napoleonic):
- German civil law (Germanistic):

Civil law

- Scandinavian civil law (Nordic):
- Chinese law:

Civil law: Degree of judicial independence

- High
- Separate from the executive and the legislative branches of government

Religious law

- *In some cases these are intended purely as individual moral guidance*
- Whereas in other cases they are intended and may be used as the basis for a country's legal system.

Religious law

- religious document being used as a legal source
- the methodology: varies

Pluralistic systems

- Civil law and common law
 - [Malta](#)
 - [Quebec](#)
(Canada)
 - [Louisiana](#)

- Other combinations

Hybrid law

- India
- Ethiopia

Conclusion:

Finally, laws and regulations are effective:

- only to the extent that they meet society's needs...
- enforceable...

Latin legal terminology
and basic general principles –
part II

Law is blind...

- Law does not accept any pressure
- Equality before the law
- The principle that each independent being must be treated equally by the law

Law is blind...

- the law must guarantee that **no individual nor group** of individuals should be **privileged or discriminated** against by the government.

Law is blind...

- regardless of race, gender, national origin, ethnicity, religion, disability, or other characteristics
- Without privilege, discrimination or bias!

Law enforcement

- discovering,
- deterring,
- punishing people

who violate the rules and norms governing that society

Law development / adopting

- What are the most important goals to achieve within five, ten, fifteenyears?
- What means are available to achieve them?
- In which order can they best be tackled?
- What help is available?

You know a lot of this

- **pro forma:** as a matter of form

Things done as formalities.

You know a lot of this

- **Veto:** I forbid.
- The power of somebody to prevent an action, especially the enactment of legislation.

- **vis major** greater or superior force

Lege artis

- **abbreviation:** *de lege artis medicinae*
- Denotes that a certain intervention is performed in a correct way

Sources of law

- Law made by Parliament – referred to as ‘legislation’, ‘statute law’ or **‘Acts of Parliament’**.
- Law decided in the courts – referred like **‘case law’**.
- European Union law – referred to as ‘EU law’
- European Convention on Human Rights
- Regulation, guidelines...

Constitution

- set of fundamental principles to which a state is governed

Precedents

An earlier event or action that is regarded

as an example or guide to be considered in subsequent similar circumstances

Act of parliament

- Acts of parliament – the formally codified result of deliberation by a legislative body;
 - Short title, number, date coming into force

Statutory provisions

After their adoption:

- amendments - may to follow
- **amendment is a formal or official change made to a law or other legal document**

Regulations

- Regulations can be passed more rapidly and simply than laws
- *Act* usually enables the *government* to issue regulations based on the law.
- They can also be altered more easily.
- After approval: regulation has the same power as the law itself.

Guidelines

- Do not carry the force of law
- Can be more easily modified and updated
- Offer informal information on what the government's thinking is regarding the best way to implement regulations.

Lex scripta

- written law
- Statutory law; contrasted with lex non scripta

Legal duty

- obligation arising from the law
- breach of the duty would constitute a legal wrong (illegality)

Types of legal behaviour/duties

- Dare – *Give* – e.g.
- Facíre – *Do* – e.g.
- Ommittere – *Omit* – e.g.
- Pati – *suffer/tolerate*:

Vacatio legis

- which refers to the period between:

the promulgation of a law and the time the law takes legal effect

Pacta sunt servanda

- Promises/agreements must be kept
- basic principle of civil law, common law, and international law
- non fulfilment of respective obligations is a breach of the pact

Clausula rebus sic stantibus

Meaning:

things thus standing

- allowing for treaties to become inapplicable because of a fundamental change of circumstances.

Periculum in mora

- danger in delay
- A condition given to support requests for urgent action

Ex post facto law

Retroactive effect of legal norms

- *technically possible,*
- Undesirable
- With some exception

Ignorantia iuris non excusat

Meaning:

“ignorance of law excuses no one”

De iure

Meaning:

“in law”

- describe practices that are legally recognized by official laws

De facto

Meaning:

“in fact” or “in practice”

- describes situations that are generally known to exist in reality, even if not legally authorized

Praeter legem

Meaning:

refers to an item that is not regulated by law
and therefore is *not illegal*

- Public authorities can act only within law
- Physical and legal persons can also act praeter legem:

Contra legem

Meaning:

something that is directly against the law
and therefore illegal

In fraudem legis

Meaning:

in circumvention of the rules of law

De lege lata

Meaning:

according to law as is

De lege ferenda

Meaning:

being on the basis of new law

- Lex ferenda – what the law should be

Lex superior derogat inferiori

If two laws govern the same factual situation,
a lex superior (with higher legal force) **overrides** a lex inferiori (lex
with lower legal force)

Lex specialis derogat generali

- If two laws govern the same factual situation, a law governing a specific subject matter (*lex specialis*) **overrides** a law governing only general matters (*lex generalis*)

Lex posterior derogat priori

- A later law repeals an earlier

Dolus

Dolus directus:

- The intention to perpetrate unlawful conduct or engage in a wrongful act.

Dolus indirectus:

- negligence

Culpa lata

- Culpa lata: gross negligence
- Culpa levis: ordinary or slight negligence
- **Culpa lata dolo comparabitur – Gross negligence is comparable to intent.**

Bona fide

- Bona fide – made in good faith without fraud
- Contrary: Mala fide

Ne bis in idem

- not twice in the same
- no legal action can be instituted twice for the same cause of action.

Res iudicata

- a matter already judged

Ratio decidendi

Meaning:

- “the reason of the decision”
- is binding

Orbiter dictum

- “by the way”

Nullum crimen sine lege

requiring that no one can be punished for doing something that is not prohibited by law

Nulla poena sine praevia lege poenali

- no crime / no punishment without a previous penal law
- A form of prohibition on retroactive laws.

Volenti non fit injuria

- Injury is not done to the willing.
- a person cannot bring a claim against another for injury, if said person willingly placed themselves in a situation where they knew injury could result...

Judge

Common law:

- Judges act as impartial referees; lawyers are responsible for presenting the case

Civil law:

- Judges dominate trials

Public prosecutor

Attorney

Lawyer

Audiatur et altera pars

Meaning:

let the other side be heard as well

In dubio pro reo

Meaning:

- in doubt, for the accused
- defendant may not be convicted by the court when doubts about his or her guilt remain.
- **presumption of innocence**

Ei incumbit probatio qui dicit, non qui negat

- the burden of the proof lies upon him who affirms....
(not who denies)

lura novit curia

- the court knows the law