

Salahaddin University-Erbil

College of Law

Law Department



LEGAL TERMINOLOGY

1st year

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INTRODUCTION:

- In any society, everybody is subject to law. Everybody must do as the law says, or face the punishments which can be handed out to law-breakers.
- In order to make people obey the laws of the society, there has to be punishments. The main reason that many people obey the law is that they know they may be punished if they break the law.
- The main purpose of these lectures is to meet the needs of students at the college of Law – Salahaddin University in English Legal Terminology which deals with many terms and concepts that are useful for the student to get a firm grasp of the meaning of terms which are frequently used.

WHAT IS LAW? DEFINITION OF THE LAW:

The law is a body of rules and principles which govern and regulate the social conduct of people, or formally recognized as binding and enforced by a controlling authority.

This means, law is:

- ☐ body of rules and principles
- ☐ Laws governs conduct and can be enforced.
- ☐ Laws bind individuals, e.g., an offender can be punished through criminal law, or a tradesman may be forced to compensate the damages for breaching a contract under the Civil Code.
- ☐ Laws also bind institutions, e.g., a government may be required to act (or refrain from acting).

THE NECESSARY & PURPOSE OF LAW:

Law is "man-made", changes over time to meet the needs of society. Its issued by the legislative authority, applied by the courts (judicial authority) and enforced by the executive authority.

Accordingly, the law is very important to achieve the justice and to create a balance between what you want and what should you do. And give the enforcement to respect its rules against any violations (breaches).

Ultimately, the society cannot be progressed without the existing of law to safeguard the structure of the state.

FUNCTIONS OF LAW:

1. Maintains order and provides protection.
2. Set out rights and obligations, regulates conduct and avoids or settles disputes.
3. To decide the legal system elements and sets up the structure of government.

THE RULE OF LAW:

The law in a broad sense, includes legislation, custom, religion, principles of justice, Judiciary and jurisprudence; while the law in a narrow sense means only legislation or the rule of law, which means a body of general and abstract conduct rules to regulate the social relations and accompanying with a punishment enforced by the public authority towards a violator.

CHARACTERISTICS OF THE RULE OF LAW:

A rule of law is, always, characterized by the following attributes:

- 1) It is an outcome of human society, and its meaning can vary between different nations and legal traditions.
- 2) The rules of law must regulate the human conduct in the society.
- 3) It is, in the meantime, general and abstract.
- 4) It is enforceable by a punishment (a sanction or a penalty), enforced by a controlling authority.

THE DIFFERENCE BETWEEN LEGAL AND OTHER SOCIAL RULES:

1- Legal Rules and Religious Rules

A religion is a particular system of faith and worship derived from an unseen force that aims to achieve the welfare of humanity.

What are the differences between law and religion?

1-Religious rules are usually unchanging and apply only to followers of that religion, but laws can be amended or improved, and applicable to all regardless of their religion.

2-Religious rules could be more effective than law in some societies; but in general, the law can be enforced on people more effectively than religion.

2- Legal Rules and Moral Principles

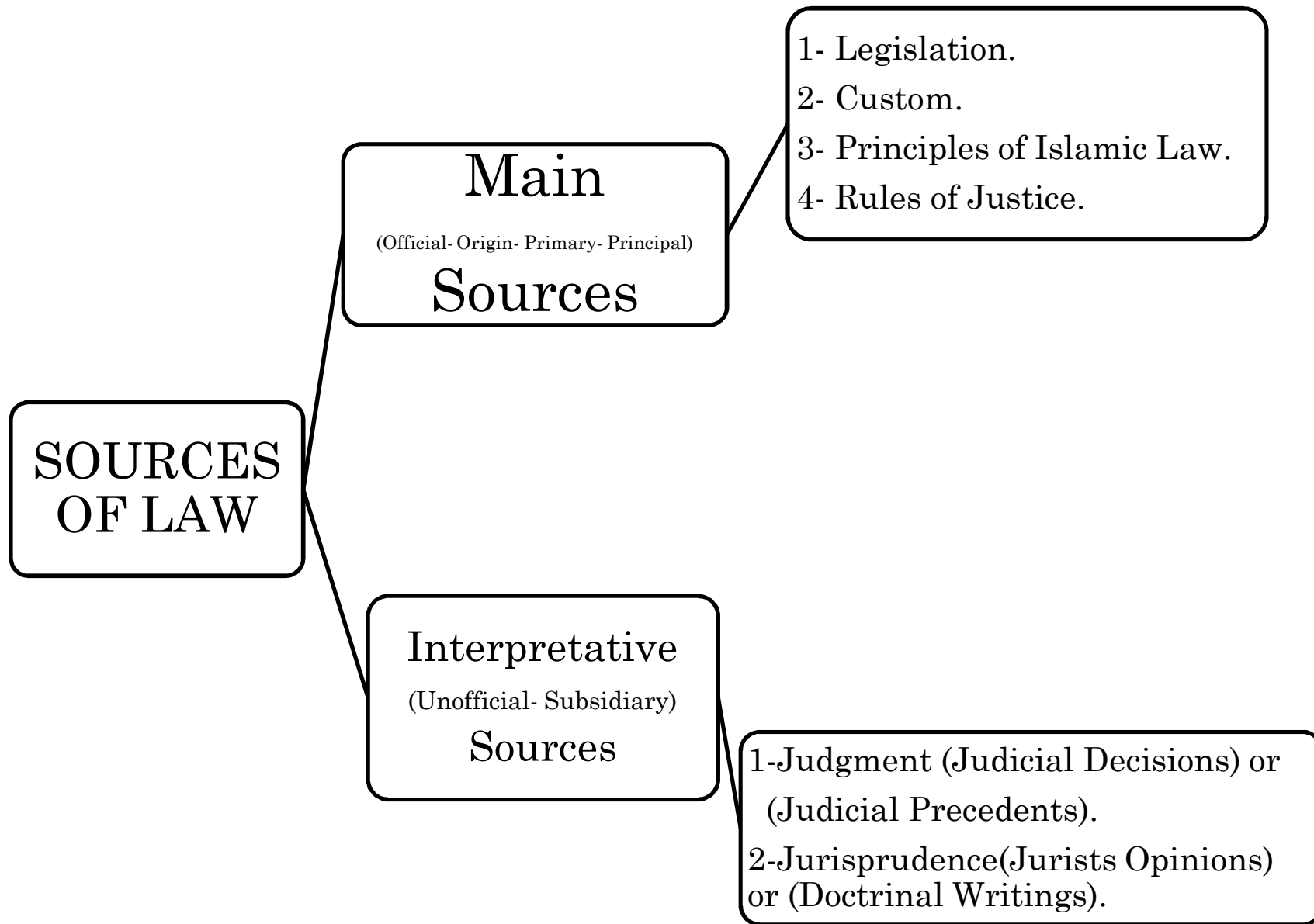
Morality means principles concerning the distinction between right and wrong or good and bad behaviour.

What are the differences between law and morality?

- 1-Morality derives from religion and life necessities; unlike law which is made by humankind.
- 2-There is no such materialistic (bodily) authority for the enforcement of morality; unlike law which is binding legal rules with punishment, it has enforcing authority and applies to all the citizens whether they want or not.
- 3-Moral disputes can be solved by the reconciliation, but legal disputes can only be settled by an appropriate court.

SOURCES OF LAW

- They give the law its mandatory characteristic and oblige the courts to apply it on the cases standing before them.
- According to both paragraphs (2) and (3) of article (1) of Iraqi Civil Law, official and unofficial sources of law are six sources classified into two categories; the main sources and the interpretative sources.



THE MAIN SOURCES

1) Legislation:

Legislation is the written legal rules enacted by a competent organ or power in a State. This organ or power is usually parliament, which come to the existence by election.

KINDS OF LEGISLATION:

There are three kinds of legislation, serially:-

a) Constitutional Legislation (Constitution):

The fundamental law of a State, written or unwritten, which sets out how that State will be organized or determines the political system of State, the form of government and the relationship between executive, legislative and judicial authorities, as well as organizing the relationship between these powers and citizens.

b) Ordinary Legislation:

An ordinary law is a normal law (such as: administrative, criminal, civil , commercial laws), generally distinguished from a constitutional law and Subordinate law. It is enacted by the legislative body of the State (parliament) which is determined by the constitution.

c) Subordinate Legislation:

Subordinate Legislation in Iraq (and Kurdistan Region) issued by the executive authority after being authorized to do so by the legislator. It is issued in the form of Systems, Instructions and Internal Regulation (System) to facilitate the implementation of the ordinary legislation.

2) THE CUSTOM:

It is the general practices and usages of a certain behaviour that is usually, by common adoption and unvarying habit, come to have the force of law. Courts in Iraq are applying custom rules as a formal source when there is no legislation applicable to the case raised before them.

Conditions of Custom:

1- It must be general and constant practices existed for a long time. It should not be against the public policy of legislation.

2- It derives its force of law from the tacit consent of the legislature and general adoption from people in public or particular places.

3) PRINCIPLES OF ISLAMIC LAW:

Islam does not only include matters of purely religious flavor, that is regulating the relationship of the individual to God, but also legal rules for the regulation of human conduct between the individuals themselves. For example: the rules regulating marriage, divorce, inheritance, civil transactions, crimes, matters of public law, and affairs of international relations. Thus, it is justifiable to designate Islam as being "a religion and a State".

4- EQUITY (PRINCIPLES OF JUSTICE):

Equity as a formal source of law, may be defined as a body of rules existing by the side of the original positive law of the country. It is founded on distinct principles of reason, or deduced from absolute justice.

Therefore, principles of equity are strong, interrelated with the idea of natural law.

THE DIFFERENCE BETWEEN JUSTICE AND EQUITY

Law aims to achieve justice, not equity. Justice and equity are based on equality among people. However, justice is an abstract equalization that is most likely to general judgment regardless to the detail circumstances of the people. But equity is based on realistic equality on the basis of specific circumstances.

THE INTERPRETATIVE SOURCES OF LAW

1- Judiciary or Judgment (Judicial Decisions):

It's a judicial opinion, **of a particular case in front of the judge**, written by **him** in the framework of applying sources of law in the course of resolving a legal dispute and usually indicating the facts which led to the dispute and an analysis of the law used to arrive at the decision.

However, the question that will arise is whether such legal sources in the form of judgments or judicial precedents are applicable to all cases of a similar kind? The answer of this question depends on the judicial system followed in the country; in England and all Anglo-Saxon legal **systems** the judicial decision regarded as a main source of law, but in the other legal **systems** it **is** regarded as a supplementary source of law as it is the case in Iraq and many other countries in the world which is binding only the parties to the case in the courts.

2. JURISPRUDENCE (JURISTS OPINIONS):

Jurisprudence, or science of law, is the views of prominent legal scholars and their interpretations of the law which seeks to analyze, explain, classify, and criticize entire provisions of law. It can be found in their books, articles, research papers and other writings. Although such views are theoretical not binding to the courts practically, but they play a great role in clarifying the meaning of written legal rules, i.e. the legislation.

BRANCHES OF LAW

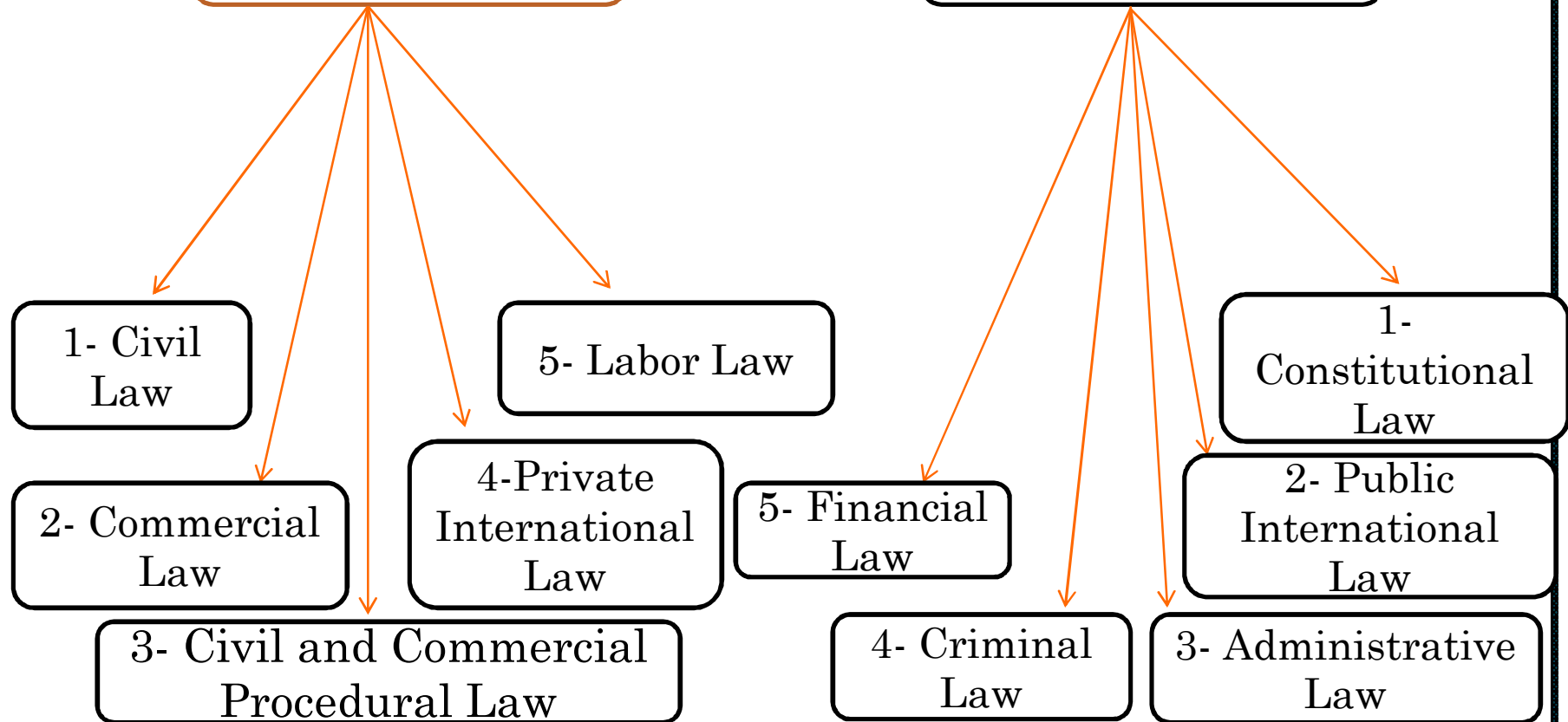
The branch of Law is the body of rules governing the specific field from social life fields. It can be divided into two **main** branches: Public Law and Private Law, each one is classified into a number of branches.

The distinction criterion between both is the existence of public authority in case of Public Law, in regarding that the **S**tate has sovereignty and the right of privilege in legal relationships, unlike the case of private law that governs individual relations among themselves on one hand, and between individuals and the **S**tate on the other as a normal judicial person.

BRANCHES OF LAW

Private Law

Public Law



FIRST: BRANCHES OF PUBLIC LAW:

1- Constitutional Law: We have taken the definition of constitution in previous lectures.

2- Public International Law:

Is that branch of public law which governs relations among subjects of Public International law. Such as: states, international organizations, and other interactive international entities (national liberation movements and sometime individuals); whether in time of peace or in time of war.

3- Administrative Law:

It is a body of rules which determines the administrative organization of the state and legal relationships between the State and individuals through Administrative Courts (State Consultative Council). It organizes the executive authority, and strongly linked with the constitutional law.

4- Criminal Law:

Criminal law is a body of legal rules which defines offences and punishments, which fixes procedures for the apprehension, charging and trial of accused. Nowadays, criminal law is increasingly concerned with the reform of the criminal rather than with retributive punishment. Its divided into two sub-branches:

a) Penal Law (whether Public or Private): It is a body of rules that defines which of human acts is regarded as crime and determines the punishment for it, through many procedures to be taken in the criminal courts.

b) Law of Criminal Proceedings: It regulates the activities of investigation and prosecuting authority in criminal matters. Its aim is to guarantee that the offenders can get an appropriate punishment and no innocent person is convicted.

5- Financial Law:

It deals with all financial aspects of the State activity. The most important topic of this law is the budget, state expenditures and national incomes ...etc.

B) PRIVATE LAW:

Private law is concerned primarily with the relations of private individuals among themselves. Private persons are mean either an individual, group of individuals, an association or corporation. The private law also regulates the relationship between individuals and the State, when the latter acts in a contractual manner like any entity possessing legal personality.

The distinction between state's duties in public and private law:

In private law, the state is indeed present, but it is present only as an arbiter of the rights and duties which exists between one of its subjects and another. **In public law**, the State is not the only arbiter, but is also one of the parties interested.

Branches of Private law

1- Civil Law:

The term of civil law is used to designate the body of rules, which regulates the private relations of individuals, and deals with family relationships and contract obligations among the individuals.

2- Commercial Law (sometimes Known as business law):

It is a body of rules that govern commercial transactions and relations between the merchants and all other commercial business activities, such as commercial contracts, brokerage, bankruptcy, commercial pledge and bills of exchange.

3- Private International Law:

It is a body of rules regulating relations between individuals with foreign elements. The private international law often referred to as “conflict of laws” governs the choice of law to apply when there are conflicts in the domestic law of different nations related to private transactions between those nations. It deals with a variety of topics such as contracts, marriage, divorce, jurisdiction, recognition of judgments, child adoption, etc.

4- Civil and Commercial Law Procedure:

It is the body of rules which regulate the mode of presentation and adjudication by civil courts of various kinds of claims, controversies and disputes by persons against one another. Moreover, the law of civil procedure is concerned with the organization of civil courts, civil process, and methods of civil execution.

5- Labour law:

Labor law also is known as employment law that mediates the relationship between workers, employing entities, trade unions and the government and deals with legal problems arising from employment.

MAIN LEGAL SYSTEMS IN THE WORLD

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graph TD; A[MAIN LEGAL SYSTEMS IN THE WORLD] --> B[Common Law]; A --> C[Civil Law]; A --> D[Religious Law]; A --> E[Pluralism Laws];
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Common Law

Civil Law

Religious Law

Pluralism Laws

COMMON LAW SYSTEM:

A common law system is also called 'Anglo-Saxon Legal Systems' that generally not codified. it is based on judicial precedents, under which the judicial decisions that have already been made in similar cases, i.e. the lower courts must follow the decisions of the higher courts, rather than statutory laws. e.g. UK, USA, Australia, and ... etc.

CIVIL LAW SYSTEM:

It is also called 'Latin or French System, in contrast, the civil law system is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that are applied and interpreted by judges. e.g. Europe States, Brazil, and ... etc.

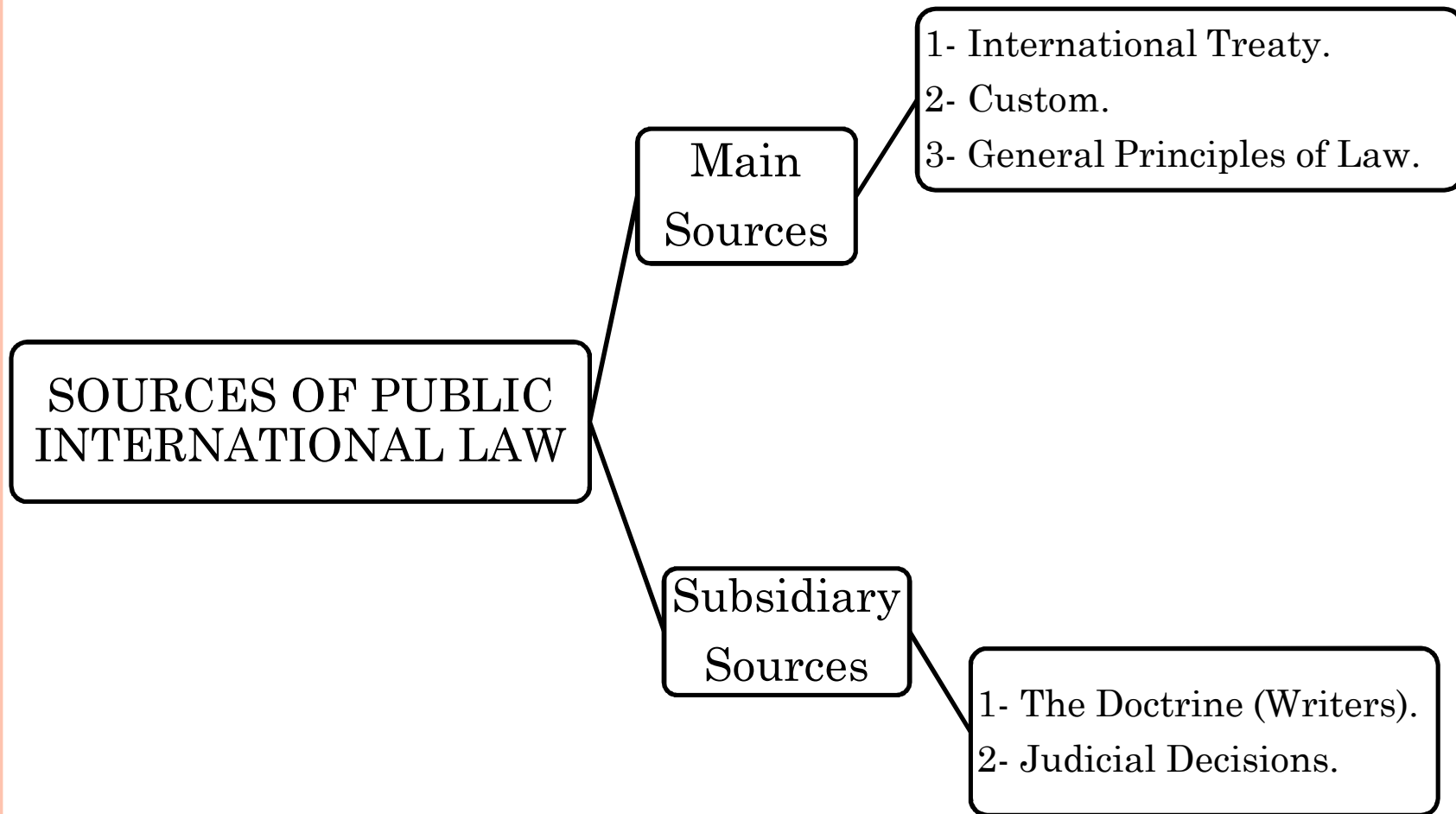
RELIGIOUS LAW:

Religious Law refers to a religious system or document used as a legal source. The main Religious Laws are Sharia in Islam, Halakha in Judaism, and Canon Law in Christianity. 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. e.g. Iran, Saudi Arabia, and ... etc.

LEGAL PLURALISM:

There are some countries that using two types of legal systems. These countries are called pluralistic countries. Such as: Israel uses common law and civil law; Indonesia and Malaysia use civil law and religious law.

PUBLIC INTERNATIONAL LAW



PUBLIC INTERNATIONAL LAW – BASIC LEGAL TERMS :-

- Sovereignty and independence of States
- Recognition of a State (Defacto & Dejure)
- Territory of State
- International Boundaries
- International Allies
- Responsibility of the Protection
- Humanitarian Intervention
- Military Intervention
- International Responsibility
- International Criminal Court (Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity).
- Proposals to settle International Disputes
- Good Neighborliness
- Maintenance of International Peace and Security
- The Right of Self-defense
- The Right of Self-determination
- Non-governmental International Organizations

LAWS RELATED TO PUBLIC INTERNATIONAL LAW:

- Human Rights.
- Humanitarian International Law.
- International Criminal Law.
- Space Law.
- Maritime Law.
- Migration Law.
- International Asylum Law (Refugee & IDP-Internal Displaced Person-).
- The Charter of the United Nation (General Assembly, Security Council, Secretariat, Economic and Social Council, The Trusteeship Council and The International Court of Justice).

DIPLOMATIC RELATIONS TERMINOLOGIES:

- Head of Mission
- Foreign Minister
- Ambassador
- Honorary Consul
- Diplomatic Privileges and Immunities
- Through Diplomatic Channels
- Exchange of Views
- Diplomatic Negotiations
- Breaking off (Severance) of Diplomatic Relations

v) Guidelines for the drafting of a legal text

To make a text clearer , simpler and understandable the following guidelines should be taken into account ;

- 1- the preamble should justify the enacting and supporting provisions in simple terms ;
- 2- the wording and phraseology of the act should be clear , concise and unambiguous ;
- 3- references to other texts should be , as far as possible , avoided ;
- 4- the various texts of the act should be consistent with each other ;
- 5- the same term used in the act should be employed throughout to express the same idea and concept ;
- 6- standard structure (e.g. , chapters , sections , articles , paragraphs) should be followed ;
- 7- avoidance of provisions without legislative character (e.g., wishes , political statements) ;
- 8- avoidance of inconsistency with existing legislations ;
- 9- clear statement of provisional provisions ;
- 10- clear statement of the date of entry into force ;
- 11- non-encroachment on the fundamental rights and basic freedoms of individuals ;
- 12- respect for legitimate acquired rights

F - Drafting legal texts

ح - مصطلحات خاصة بصياغة النصوص القانونية

A negotiated text نص يتم التفاوض عليه

Except as provided in article 5

بإستثناء ما هو منصوص عليه في المادة ٥

In pursuance of (In accordance with - according to)

وفقا للمادة ١٠ article10