

Sources of Law

SECOND SEMESTER- LECTURE 2

المحاضرة الثانية- الكورس الثاني

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Juristic Opinion

The professional legal opinion has a great influence on the development of the law.

Can the opinion of law professors be a source of law?

In French Law: juristic opinion is not an authoritative source of law, as it is not legally binding upon the judge. However, it is highly likely that the judge is to be influenced by the writers. The doctrinal writers in France have set themselves to interpret the Codes.

Juristic Opinion

In Iraqi Law: According to Article 1 of the Civil Law no 40, 1950, juristic opinion is an *interpretative source of law*

Legislation

Legislation is the formulation of law by the appropriate organ or organs of the state, in such a manner that the actual words used are themselves part of the law.

Legislation includes the making of new law, and the alteration or repeal of existing law.

Great part of the law in civilized countries to be found embodied by the law-making authorities in decrees or statutes.

By legislation, the law is embodied in an authoritative form of written words and this is an essential part of the law.

Why is legislation important?

1. The increased range of activities of the modern state which is a normal regulator of social life and director of social activities
2. The rise of democratic forms of government;
3. The emergence of socialism in many countries. In area of social change, legislation is the natural method of law-making.

Advantages of Legislation

1. Clarity: the legislative organ states to the citizens the rules which are henceforth to be rules of law, normally in an easy language;
2. Speed: A change in the law is effected by the simple process of repeal and substitution of new rules;
3. Universality: law applies in all parts of the country.

Kinds of Legislation

1. Constitutional Legislation: This is the most supreme kind. It is the constitution of the state which defines its political system, the form of its government, and the relationship between the state's public authorities
2. Ordinary Legislation: It includes all legal rules enacted by the legislature in accordance with principles of the constitution
3. Subordinated legislation: it refers to the legal rules enacted by the executive authority acting upon a delegated authority from the legislature as is the case with enacting regulation or when it acts on the legislature's behalf, for example executive orders.

Codification

Codification is the reduction of all rules of law, so far as practicable, to the form of enacted law.

Advantage of codification:

1. It makes the law simple and accessible, logically arranged and harmonious, certain and definite
2. It unifies the country through the unification of legal rules which culminates in the imposition of a national legal system
3. Codification is a good mean for receiving the benefits of legal solutions supplied by foreign legal systems

legislature	السلطة التشريعية	constitution	الدستور
political system	النظام السياسي	Government	الحكومة
public authorities	السلطات العامة	Enact	يشرع
executive orders	الاورام التنفيذية	executive authority	السلطة التنفيذية
Codification	تدوين	Juristic Opinions	اراء الفقهاء
binding	ملزم	interpretative sources	المصادر التفسيرية
interpret	يفسر	Legislation	تشريع
formulation	صيغة	Organ	جهاز
alteration	تغيير	repeal	الغاء
decrees	امر قانوني	statutes	قانون, نظام اساسي
Constitutional Legislation	التفسير الدستوري	constitution	الدستور
Subordinated legislation	التشريع الثانوي	delegated authority	سلطة مفوض بها