

Essential Elements of the Legal System

Lecturer's Introduction

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Our Goals – Main Capabilities

- Identify the essential elements of the legal system, including the main sources of law
- Pass the test

Literature in English

- Basic literature:

A.V. Shashkova “Russian Business Law”

Chapters:

- The Russian legal system
- Subjects of Law
- The law of contract
- Property rights
- Categories of legal entities
- Family law
- Labor and employment law

Laws in English

- **The Constitution, Civil Code, Family Code, Labor Code of the Russian Federation *in English*.**
- **You can find the text of the Constitution and the Codes in English *in Internet*.**

Lecture 1

Institutes of the Russian and foreign Legal Systems

Our tasks are:

To discuss:

- what law is
- sources of law
- peculiarities of different legal systems

Homework

To read the textbook by

A.V. Shashkova “Russian Business Law”,

Chapter I “The Russian legal system”:

- 1. A definition of law**
- 2. Classification of laws**
- 3. Sources of law**

Plan:

- What is Law?
- What are the branches of Law?
- Classification of Law: *Public and Private Law, Substantive and Procedural Law.*
- Sources of Law
- Main western legal systems

What is law?

- In all societies, relations between people are regulated by prescriptive rules:
- customs,
- morality,
- rules of social institutions:
социальные нормы (культурные, в области образования и т.д.),
- and laws.

A question

- There are so many different rules, which regulate relations between people! Does a society need law?
- Can you imagine a society without law?
- **What will follow from this?**

What are the similarities and differences between laws and other social rules?

- **Let's consider different social rules.**

- **What are customs?**

Customs

- Customs are informal rules of social and moral behavior that are passed on from one generation to the next over time.
- They are not usually written down.
- They prescribe the ways in which people behave (talk and eat, work and relax together and so on).

Rules of social institutions

- Rules of social institutions:
- educational (college rules)
- cultural (to eat with a knife and a fork or with chopsticks)
- some others

Rules of social institutions

- Rules of social institutions, such as educational, cultural or religious ones, govern the life of those institutions and apply to their members only.
- They can be unwritten, or can be formal and written.
- They are not, however, enforceable by any political authority.

- **What are the consequences of the breaking of these rules?**

- Can other members of society apply to court or to police to **force the offender to observe a custom or a social rule?**

- **No, because customs are not the rules, which have been established by a state.**
- **Only the rules, established by a state, can be enforced by the court or other law-enforcement state agencies (police, army and so on) .**

- So the main difference between customs, other social rules and laws is that **laws are the rules, which are established by a state and enforced by the state** (with the weapons of compulsion (courts, police, prisons, army)).

A DEFINITION OF LAW

Law can be defined as:

- 1. the collection of rules imposed by authority, which are recognized as binding on all persons of the country;**
- 2. the rules are usually written;**

A DEFINITION OF LAW

3. There are specific **law –enforcement agencies** like police, courts, prisons, army (the weapons of compulsion).
4. In order to ensure that everyone adheres to the law, there are **specific penalties**, such as fines or imprisonment, for those who are found guilty of breaking law;

A DEFINITION OF LAW

- The general nature of modern law is that **it is enforced equally** against all members of the nation and **no one is above the law.**
- This principle is known as “**the rule of law**”.

- **What are the functions of the law?**

The main aims of the law are:

- To establish the system of government;
- To protect people and set the rules for their life;
- To protect people's property from the wrong and violent actions of others;
- To punish people who behave in anti-social ways.
- To teach people what things are good (right) and what things are bad (wrong).

Sources of the Russian Law are official documents, which are adopted by the state, which contain the obligatory rules (normative legal acts)

- ✓ The Constitution
- ✓ International treaties
- ✓ Federal laws
- ✓ Laws of the Subjects of the Russian Federation
- ✓ Decrees of the Russian President
- ✓ Executive regulations

What about customs?

- Some customs can be recognized by the state to be obligatory if they are reasonable, useful and do not contradict the law.
- In this case they become a source of law.
- **For example:**

**customs of business turnover –
обычай делового оборота**

Customs of Business Turnover (обычай делового оборота)

- A custom of business turnover shall be deemed to be **a rule of behavior** which has been formed and extensively applied in any domain of entrepreneurial activity and is not provided for by legislation irrespective of whether it has been fixed in any document.
- (The Civil Code of the Russian Federation, Art.3)

Incoterms

- They are used to divide transaction costs and responsibilities between buyer and seller and reflect state-of-the-art transportation practices.

Incoterms

- **Incoterms 2010** came into effect on January 1, 2011.
- You can read about it here:
<http://www.youtube.com/watch?v=X0oO7NTdGZg>; <http://en.wikipedia.org/wiki/Incoterm>

A task

- Give examples of written and unwritten sources of law:
- Constitution
- Decrees and orders of the president
- Customs of business turnover in cases where it does not contradict the Russian legislation or terms of contract

Classification of the **sources of the Russian Law**

The statutes (законы):

- ✓ The Constitution of the Russian Federation
- ✓ International treaties
- ✓ Federal constitutional laws
- ✓ Federal laws

Decrees of the Russian President

Subordinate legislation (подзаконные нормативные акты)

- ✓ Executive regulations

The lawful customs (правовые обычаи)

- The statutes are passed **by the Federal Assembly** as usual
- *Sometimes laws can be adopted directly **by the people by referendum.***
- *For example, the Constitution of the Russian Federation was approved by the state referendum.*
- *But as for the other federal laws it happens very rarely.*