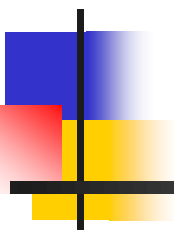


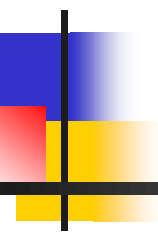
# Fundamentals Of Law(1)



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«Concept of Law»  
«Application of Legal Rules»

Asst.Prof.Dr.Zeynep Şişli



“No man is an island,  
entire of itself;  
every man is a piece of the  
continent...”

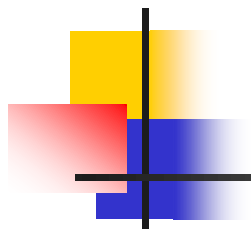
John Donne



# Order of Society

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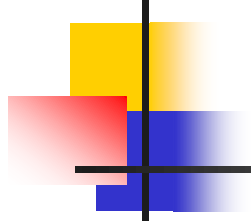
- Human beings live in a society,
- Society means; people living together,
- There must be an "Order" to live together,
- "Order of Society" is provided by social rules,
- Social rules are; rules of good manners, moral rules, religious rules and rules of Law...



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Why do people need rules?

Why does society need an“order”?



# "Social Order Rules"

are necessary  
for preventing chaos and  
anarchy in society,  
and for providing peace and  
security for everybody.



# Social Order Rules:

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- Rules Of Good Manners
- Moral Rules
- Religious Rules
- Legal Rules

Law or Legal Order  
is only one of the parts that  
make up the social order

Legal rules are;

most important and most  
effective social rules within the  
order of society,

Legal rules and institutions  
constitute the Legal Order of a  
country.



## Legal Rules

regulate individuals' behaviors to each other and society, for protecting rights and freedom of everybody, and for providing security and equality for all.





# Legal Order provides;

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- Peace; legal rules restrict the power of individuals and groups to secure other's rights,
- Security; legal order protects the weak individual and groups against the powerful ones,
- Equality, everybody is equal in front of law,
- Freedom, restricted but steady freedom is guaranteed for everybody.



# Moral Order

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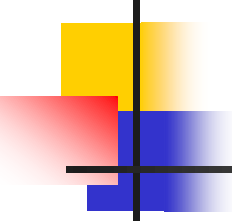
- The most important rules of the social conduct, apart from the law, are moral rules.
- Moral rules are principles, or standarts, concerning "*right*" or "*wrong*" conduct, which is also called "*ethics*".
- Moral Rules reflect the values which are embraced as desirable or ideal standarts of human conduct in that society.



# Public and private morality

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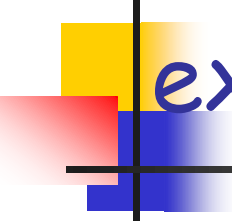
- Whether an action and/or contract is against good morals is usually determined according to general standards of morality.
- Generally subjective morality standards of a person are not taken into account.



Law and ethics; in other words, legal and moral rules are related, insofar both are concerned with human conduct.

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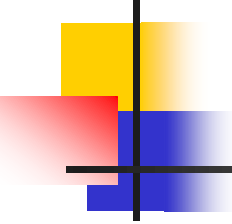
- Similar rules could be seen sometimes in legal and moral rules,
- The law makes direct reference to moral rules in some cases,
- Some moral rules are not regulated as legal rules, or in contrary, some legal rules are irrelevant to moral order.



# Examples for the similar cases existed in both legal and moral rules,

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- To rescue a person injured in an accident is a moral duty, besides a legal duty regulated under article 98 of Criminal Code.
- Contracts to bribe a judge or testify falsely in court are void and also prohibited by Criminal Code, because they are contrary to moral rules.

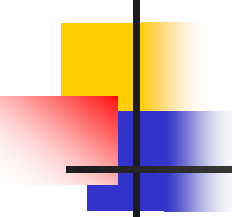


The law makes direct reference to moral rules in some cases,

---

Good faith which is essentially a moral principle, has also been made a fundamental principle of law by the 2nd article of Civil Code.

*"Every person is bound to exercise his rights and fulfill his obligations according to the principles of good faith"*



# Turkish Code of Obligations(C.O) refers to good morals.

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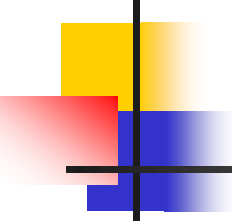
Contracts which are contrary to good  
morals are void according to the article  
27 of C.O.

which means they have no legal effect.

# A moral duty is turned out to a legal obligation many times;

- *All persons are bound to contribute towards the maintenance of their ascendants(lineal ancestors) and descendants in the direct line as well as of their brothers and sisters, where without such assistance they would become destitute"(Article 364 of Civil Code)*
- *A spouse is required to take good care of his/her step-children according to the article 338 of the Civil Code.*





Some moral rules are not regulated as legal rules,  
or in contrary, sometimes legal rules are irrelevant to or even be in conflict with moral rules;

- Selfishness is contrary to good moral but lawful.
- Licensed prostitution is immoral but lawful.
- Statutory period of limitation is lawful but immoral.

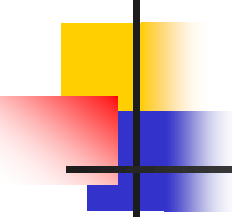


# Religious Order

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Religious rules are one of the most important social order rules and affected legal orders of societies for centuries.

- However, where law is made an integral part of a religion, a serious problem arises. Religious rules can not be changed or altered because of being the will of God. On the other hand, legal rules have to be flexible dependent upon the changing needs of the society.
- Additionally, the conscience of individual is not free when religion controls the law.
- The law is separated from religion, by taking a neutral position towards it, in modern times because of these reasons, which is called as "Secularism".



# Turkish Law is based on the principle of "secularism"

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- Secularism does not mean that the law completely ignores religion, on the contrary, religion as a social institution, is among the areas regulated by law.
- Religion is not an institution and doctrine shaping the Structure of the State under the principle of Secularism.
- Religious beliefs of citizens are protected by law as a fundamental freedom which is called "freedom of belief".



# Article 24 of the Constitution guarantees freedom of conscience, religion and opinion for everyone.

No one can be compelled to worship or participate in religious ceremonies or to reveal his/her religious faith and opinions.

On the other hand, the exploitation and abuse of religion or religious sentiments for political and personal gain are prohibited by Constitution.



# There are several regulations for providing these rules within the different Codes:

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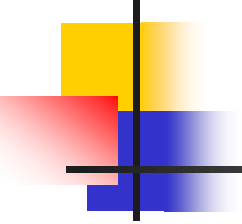
- Criminal Code, Article 115  
(protecting freedom of belief)
- Law about Political Parties,  
Articles 84-89  
(Protection of Secularism)



# Concepts of Law and Right

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- "Law", as a word, originally comes from Arabian language in Turkish and means "Rights",
- "Right" means an authority given to persons by law for having, doing or not doing something, also sense to "God", "Rightness" in Turkish,
- "Law" is an objective concept, but "right" is subjective one.



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*"Law" means objective rules, but "Right" is a "subjective authority" given to a person to apply the rules of Law.*



# "Law";

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- Objective Law="Law", "*The Legal Rules*"

Turkish; "*Hukuk*"

German; "*objektives Recht*"

French; "*droit objectif*"

- Subjective Law="Right"

Turkish; "*Hak*"

German; "*subjektives Recht*"

French; "*droit subjectif*"





# Definition of Law

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Whole rules,

for regulating society and pushing everybody to obey them with the sanctions by public(state) force,

which are put for the general profits of society and fundamental rights of individuals.



# Law;

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- The positive law (Applied Law)  
*"De Lege Lata"*
- Natural Law/Ideal Law  
*"De Lege ferenda"*

# The positive law (Applied Law)

consists of ;

- Written rules;
  - Constitution
  - Codes
  - international treaties
  - governmental decrees
  - regulations
  - law orders(by laws)
- Unwritten rules, such as customary rules etc.



# Enacted Law (Written Rules)

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The legal rules which are enacted and in force within a specific period of time for the particular State.



# Characteristics of Rules of Law;

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- Common and general,
- Objective and nonpersonal,
- Abstract and steady.

# Joint qualities of rules of Law;



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- Have judgement of values for the regulation needs of society,
- Regulate human behaviors and some natural cases,
- Consist of positive or negative orders, which give acting authority to persons,
- Can be applied for cases which have similar qualifications (General and abstract)
- Supported with sanctions by public force.



# Sanctions in the field of Law

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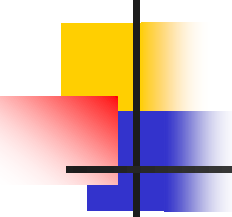
- Defined within the legal rules,
- Force people to do something or not.
- Different types of sanctions are described for criminal, civil and other codes; punishments restrict freedom or force to pay the damage or cancel an act or decrees, etc.



# Main Types of Legal Sanctions applicable for different legal areas;

- Criminal Sanctions  
(Imprisonment and Fines)
- Civil Sanctions  
(Legal Invalidity, Nullity and Compensation)
- Administrative Sanctions  
(Annulment and compensation)
- Constitutional Sanction  
(Annulment of a law)





# Application of Legal Rules in Civil Law Area

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## Law and Facts

- A dispute shall be resolved
  - a. By legal rules (if not exist, then)
  - b. By customary rule applicable  
(if not exist, then)
  - c. By the judge created rules
  
- A judge has to
  - a. To establish the relevant facts  
(brought by plaintiff or prosecutor)
  - b. To ascertain the applicable law



Judge may apply only written law for Criminal Cases.

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*"Neither crime, nor punishment without law"* is one of the main principles of Criminal Law



# Burden of proof

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- The general rule is that a plaintiff (civil case) and a prosecutor (criminal case) has to prove his/her allegation.
  - a. Civil case (Article 6 of the Civil Code)
  - b. Criminal case (beyond reasonable doubt, presumption of innocence)
- Affirmative defence: when defendant does not deny existence of facts put by the plaintiff but asserts new facts which refute them, this is called affirmative defence.
- As a general rule, burden of proof falls on the party who bases his claim on an exceptional or unusual fact.



# Presumptions

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Presumption is the assumption  
(acceptance) of the truth of a fact  
without direct proof.

(an inference as to the existence of one  
fact from the known existence of  
some other fact/s)

# Examples of the Legal Presumptions

## 1) Rebuttable presumption

(inaccuracy of them may be proven)

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### a) Presumption of innocence

"No one shall be held guilty until proved guilty in a court of law"

### b) Presumption of good faith

"Every person is presumed in good faith until the contrary has been proved"

### c) Presumption of ownership

"The person in possession of a movable chattel is presumed to be its owner"

### d) Presumption of Paternity

"The man, cohabited with the child's mother in the period between the three hundredth and the one hundred and eightieth day before its birth, is presumed the father of the child"

"the husband is presumed to be the father of a child born during the marriage"

# Examples of the Legal Presumptions

## 2) Irrebuttable Presumptions

(law does not allow to be rebutted)

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"Sexual intercourse with a minor who is under fifteen will be punished in all conditions

(even if with the consent of the minor)"

"Everyone is presumed to know all entries in the land register"



**The purpose of every law  
must be to uphold justice.**

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**Justice is the fair, correct  
outcome of the dispute,  
in other words,  
the proper and fair  
administration of law.**



*"Eyes of justice are blind"*

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*Everyone is equal before the law*



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