

2-Custom

What does the Custom mean?

It is any body of rules which exist by the side of the original law, that created by the traditions and the habits of the people for a long time.

What are the kinds of custom?

There are two kinds of custom:

- Legal custom.
- Conventional custom.

What does the legal custom mean?

It is the custom operative custom per se as a binding rule of law independently of any agreement on the part of those subject to it.

What does the conventional custom mean?

It is the one operating only indirectly through the medium agreement whereby it is accepted and adopted in individual instances as a conventional law between the parties.

What is the importance of the legal custom as source of law?

- 1- The legal customs are considered to be as an important source of law in early times; its importance continuously diminishes as the legal system grows.
- 2- The importance of custom as a source of law that all civilized jurisprudence has always been recognised it as greatly influencing through the development of legal institutions.

How did the modern jurisprudence the historical school of (Savigny) found in custom the true source of law?

Because the customs according to the attitude of this historical school can be deriving it from the common consciousness of the people

What is the different between the (custom) and the (usages)?

- In English law the term custom is more commonly confined to legal system exclusively; while conventional custom is distinguished as 'usage'.
- In French law consider the term custom is regarded as the source of a rule of law, while the usage is not a source of a rule of law and it's just used to regulate the relationship between the parties.

What are the advantages of the custom?

- 1- Custom is more flexible than the written law.
- 2- Custom implements legislation.
- 3- Custom is found as reflection to the true needs of the community.

What are the disadvantages of the custom?

- 1- Customary rules are often ambiguous.
- 2- Customary rules develop very slowly.
- 3- Custom may not facilitate the evolution of a complete harmony in one country due to the existence of different local customs.

What are the conditions to a custom to be as a source of law?

- 1- Custom must be general.
- 2- Custom must have existed for a long time to be 'immemorial antiquity'.
- 3- Custom must be constant.
- 4- Custom should not be against the rules of 'public policy'.
- 5- Custom should not run counter to the 'written law'.
- 6- Custom must have been observed as of 'right'.