2-Custom

**What does the Custom mean?**
It’s 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 so 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 jurispedence has always been recognised it as greatly influencing through the development of legal institutions.

**How did the modern jurispedence 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 distinguish 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’.