

**CITY ACADEMY LAW COLLEGE**

**LL.B.HONS 3<sup>rd</sup> -SEM**

**POLITICAL SCIENCE**

**UNIT-II**

UNIT II SYLLABUS	SOURCE OF LAW: CUSTOM , PRECEDENT, LEGISLATION
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UNIT II LECTURE 1	CUSTOM AS A SOURCE OF LAW	<a href="https://youtu.be/Z3dltrpL-Aw">https://youtu.be/Z3dltrpL-Aw</a>
LECTURE 2	PRECEDENT AS A SOURCE OF LAW	<a href="https://youtu.be/5RrhLIIFdM">https://youtu.be/5RrhLIIFdM</a>
LECTURE 3	LEGISLATION AS A SOURCE OF LAW	<a href="https://youtu.be/s8lBasx0VKo">https://youtu.be/s8lBasx0VKo</a>

**LECTURE-1**

**TOPIC-** Custom

**Previously asked question**

Q.1- Define custom , what are essential elements of a valid custom ? explain it.....(2019)

Q.2-write a note on Custom as a source of law, explain?.....(2019).

**NOTES-**

- ❖ **Austin considered** custom as a rule of conduct which the governed observe spontaneously and not in pursuance of law set by a political superior.
  
- ❖ **Salmond:** - According to Salmond, “custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility”.

**KINDS OF CUSTOM**

- Non-Binding Customs
- Binding Customs
- Legal Customs
- Local Customs
- General Customs
- Conventional Customs

**ESSENTIAL ELEMENTS OF A VALID CUSTOM**

- IMMEMORIAL ANTIQUITY
- REASONABLENESS
- MORALITY
- CONTINUANCE
- PEACEABLE ENJOYMENT
- CONSISTENCY
- CERTAINTY
- COMPULSORY OBSERVANCE
- JURIDICAL NATURE
- PUBLIC POLICY

## Assignment

Q.1- Which one is a valid essential for custom?

- a) reasonableness
- b) morality
- c) both

Q.2- Which one is source of law?

- a) Custom
- b) Legislation
- c) both

Q.3- Who said that “custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility”?.?

- a) Austine
- b) Salmond

Q.4-Write down two kinds of custom?

Q.5-define custom according to Austin .

Q.6- write down two judicial test for a valid custom .

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**LECTURE-2**

**TOPIC-Precedent**

**Previously asked questions**

Q.1- What is stare decisis ? discuss the factors which weaken the binding force of precedent....(2019)

Q.2- What are the circumstances which destroy the binding force of precedence?.....(2107)

**NOTES-**

❖ **Definition of Precedent**

- **Salmond** – Precedent is, in a loose sense, ‘it includes merely reported case law which may be cited & followed by courts.’ In a strict sense, that case law which not only has a great binding authority but must also be followed.

❖ **Types of Judicial Precedent**

- Declaratory or Original Precedent .
- Persuasive Precedent –
- Absolutely authoritative
- Conditionally authoritative

❖ **Ratio decidendi**

Ratio decidendi derives from Latin term and the literal meaning of the term is “reason for the decision”. It includes the rule of law or principle upon which a judicial decision is based.

❖ **Obiter dictum**

Obiter dictum also derives from Latin term which observation or remark on the other issue made by a judge which does not form a necessary part of the court’s decision

❖ **Advantages**

- Judicial precedent helps to prepare new statutory laws and will adjust according to the changing conditions of the society.
- Judicial precedent helps the court system to save time on future cases and increases convenience as a question once decided is settled.
- It creates a system where everyone dealing with a similar case will treat in a similar manner, which leads to equality and fairness of justice.

❖ **Disadvantages**

- It is considered to be rigid to alter a precedent once followed.
- A judicial precedent imposes a foundation on lower courts to follow it, which sometimes forces them to take lesser or harsher decisions than actually required.
- There are many precedents regarding many cases which make it difficult to implement the right precedent in the right case.
- Some situations are not recognized under precedent as they are not considered into account.
- When a case is distinguished it is not mandatory to follow a precedent.

## Assignment

Q.1- Judicial precedent helps the court system to save time on future cases and increases convenience as a question once decided is settled.

- a) true
- b) false

Q.2-Ratio decidendi derives from

- a) Latin term
- b) French term

Q.3- observation or remark on the other issue made by a judge which does not form a necessary part of the court's decision known as

- a) Obiter dictum
- b) Ratio decidendi

Q4.- write down Definition of Precedent according to salmond.

Q.5-write down two disadvantages of precedent.

Q.6-What is the meaning of term *Ratio Decidendi*?

Q.7-Write down two advantages of precedent?

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**LECTURE-3**

**TOPIC-Legislation**

**Previously asked questions**

Q.1- what do you mean by legislation as a source of law ?.....(2019)

Q.2- What do you mean be delegated legislation , discuss the control of delegated legislation.....(2017)

**NOTES-**

- ❖ **According to Salmond:** “Legislation is that source of law which comprises in the assertion of lawful standards by a competent specialist.”

**KINDS OF LEGISLATION**

- **Supreme Legislation**
- **Subordinate Legislation**
- **Delegated legislation**

**KINDS OF SUB ORDINATE LEGISLATION**

- 1) Colonial Legislation
- 2) Executive Legislation
- 3) Judicial Legislation
- 4) Municipal Legislation
- 5) Autonomous Legislation

**Delegated Legislation**

- **Delegated (subordinate or subsidiary) Legislation** means those laws made by people or bodies to whom parliament has delegated law-making powers.

## Difference Between Legislation And Precedent

S.N	LEGILATION	PRECEDENT
1	The legislation has its source in the process of law	the precedent has its origin in ancient and historic judicial pronouncements
2	Legislation has an authoritative force on courts by the assembly	precedents are made <b>by the courts</b> themselves.
3	Legislation signifies formal declaration of law by the governing body	precedents are acknowledgement and use of new standards of law by courts in the administration of <b>equity, justice and good conscience.</b>
4	Legislation is ordered before a case emerges	precedent appears simply after the case has developed and taken for the choice of the court.

### Assignment

Q.1- Who said that, "Legislation is that source of law which comprises in the assertion of lawful standards by a competent specialist."

- a) Salmond
- b) Bemtham

Q.2- Colonial Legislation is a..

- a) Supreme legislation
- b) Subordinate legislation

Q.3- The legislation has its source in the process of law

- a) True
- b) False

Q.4-What are the kinds of legislation?

Q.5- what do you mean by delegated legislation?

Q.7-write down two differences between legislation and precedent

