**Chapter One**

**Introduction**

**Suggested answers to the review questions and case problems**

**1. Give the legal definition of law.**

**Answer:** Numerous jurists have attempted to state a precise definition of the term “law” and various are the classifications. A standard definition of the law, however, does not exist. The legal rules which are acceptable in any community vary depending on time and place. It is commonplace today to define law as a set of obligatory rules, principles, and standards of conduct that govern the way members of a society act toward one another.

**2. Describe the main functions of law.**

**Answer:** Among the most important functions of the law is the need to maintain the social order and stability in the political, social, and economic system. Because disputes threaten the stability of society, law has to protect the public interest as well as the lawful rights of individual citizens. Law is also designed to facilitate planning the future: laws allow companies and individuals to invest time and money into their activities because they know that a rule of law will apply in case of future dispute. Thus, the law promotes rational decision-making. Another function of the law is to promote social justice. With the aid of legal rules, the legislator corrects perceived injustices and attempts to correct them.

**3. Identify and discuss the following terms:**

1. **Enforceability of the legal rule;**
2. **Legal sanctions.**

**Answer:** An essential aspect that makes law is its enforceability by the State. It is the coercive power that distinguishes law from other rules: a law is a rule of conduct imposed and enforced by the State. Legal enforceability means judicial coercion of unwilling members of a given society for violation of provisions, rights and laws of the State. In other words, enforceability ensures observance and obedience to the law.

Sanctions are the means by which the law enforces the decisions of the courts. A rule without sanctions is not considered as legal rule, but as mere exhortation. Legal rules might impose damages for breach of contract, impose fines for the violation of rules governing common areas, or create crimes and punish them with imprisonment. Legal rules would be meaningless and unenforceable without legal sanctions. The severity of sanctions is chosen by the State depending on the offence committed and the value of the sanctions in preventing a recurrence of the conduct. The sanction can be as severe as affecting the wealth of the offender if the transgression is a monetary one, or as severe as a life term or even a death penalty for more serious crimes like murder.

**4. What characteristics must law possess to be effective?**

**Answer:** In modern states one of the most important characteristics of law is its general application to the generality of people whose activities it is intended to regulate. The rule of law is said to be general if it applies to objectively determined situations and involves legal consequences for categories of persons viewed in a general and abstract manner. It follows that legal rules must be developed by an authority equipped with the power to lay down norms and to adopt binding legal acts of general application in society.

The other essential aspect that makes law is its enforceability by a variety of legal sanctions. It is the coercive power that distinguishes law from other rules: a law is a rule of conduct imposed and enforced by the State. Sanctions are the means by which the law enforces the decisions of the courts.

**5. Is there a difference between law and morals?**

**Answer:** Morality refers to personal or cultural values, codes of conduct, or social mores that distinguish between right and wrong. Although morality greatly influences the law, law and morality are distinct concepts. In many cases what is legal is also morally correct and the law often incorporates ethical standards to which most citizens subscribe. On the other hand, there are numerous moral precepts that are not enforced by law.

Another difference stands between these two types of norms and the obligations they impose. If law channels individuals’ behavior through the threat of sanctions, morality involves different incentives. Bad actions may result in guilt and regret while good actions may result in appreciation and praise.

**6. State some actions that are legally right but morally wrong.**

**Answer:** Death penalty, cloning practices, child labor or adultery are all examples of actions which are legal in some countries even if they are regarded as morally unacceptable by the majority of members of the society concerned.

**7. Define and compare private and civil law.**

**Answer:** Private law deals with relations between individuals, meaning individual people or organizations. For example, tort law defines duties the violation of which constitutes a wrong against the individual injured by the violation. Private law includes civil law, commercial law, intellectual property law, and private international law.

Civil lawis the branch of private law which defines, regulates, and enforces rights and duties of one individual to another in particular areas of law such as contract law, tort law, or property disputes.

**8. Distinguish between common law and civil law legal systems.**

**Answer:** Legal systems can be divided into four main traditions: common law, civil law, Islamic law, and socialist law based on the model of the former Soviet Union. However, the common law and civil law systems are the most prevalent worldwide.

The common law is a tradition developed in England during the Middle Ages and applied within the British colonies across continents. It forms an essential part of the legal system of many nations, in particular those with a history as British colonies. Common law is law developed by judges through decisions of courts and similar tribunals, rather than through legislative statutes or regulations issued by the executive branch. These case-by-case decisions were applied repeatedly to similar situations and thereby became a unified system of law *common* to the country.

Civil law, or Roman law, differs from common law in that the legislation is the primary source of law and courts are not obliged to adhere to precedents. This represents the distinctive feature of civil law systems. Consequently, laws are codified into comprehensive legislative enactments which aim to provide a coherent group of rules enforceable by the courts. The most evident example is that of civil codes.

**9. Suppose a group seizes power in a specific area and orders that everyone must be indoors at certain times during the night by the threat of a sanction. Explain whether this rule may be considered as a legal rule or not.**

**Answer:** This is an example of curfew. Whether the decision to be indoors at certain times during the night constitutes a legal rule or not depends on three elements. First, it must have general application to the generality of people whose activities it is intended to regulate. The curfew must apply to objectively determined situations and must involve legal consequences for categories of persons viewed in a general and abstract manner. It follows – and this is the second element - that the curfew must be developed by a formal authority such as a military body with the power to lay down norms and to adopt binding legal acts of general application in society.

The third essential aspect that must be considered to determine whether the curfew constitutes a legal rule is its enforceability. It is the coercive power that distinguishes law from other rules: a law is a rule of conduct imposed and enforced by the State. Sanctions are the means by which the law enforces the decisions of the courts. This means that in the case above, the curfew can be considered as a legal rule only if there is a legal sanction in case of violation. A rule without sanctions is not considered as legal rule, but as mere exhortation.

**10. Aew is an employee of ABC, a small company which specializes in complex electronic products. According to the employment contract, Aew has to work exclusively for her employer and use her skills in order to bring new customers to the company. Within few months, Aew brings more customers than ABC Company can reasonably support. Therefore, she decides to divert some customers to WXY Company and receive a commission in return. Without discussing applicable legal rules, would you expect a potential problem to arise from such behavior?**

**Answer:** Under the employment contract, Aew is supposed to work solely for the employer. In case Aew diverts any extra business elsewhere and takes the commission without disclosing, at minimum, the idea to her employer, she will likely be in breach of both her contractual and moral obligations. As a result, Aew may face different types of consequences. Sanctions for the violation of contractual obligations include compensation for damage and other legal liabilities. On the other hand, violations of moral rules do not entail legal sanctions. They may only lead to moral self-blame and guilt.