

Lecture 2

Custom

Like legislation, custom is an important source of law. However, legislation is written. Custom is not written. It comes as a social habit. People respect it because it organizes their life. They find it useful for them to follow it. If it does not break legislation, the court will apply it.

A custom should be general. Everybody should obey it. It should be old enough. It should be stable and regular.

A custom should encourage good behavior. It develops itself with the development of the society. So, it is more flexible than a written law.

A custom is three types:

1. Comprehensive: everybody in the state should obey it. Muslims in Egypt, for example, say that the furniture of a house would belong to the wife, not to the husband!
2. Local: it is obeyed in some parts of the country only, like the customs of tribes in Iraq.
3. Professional: it concerns a certain job, like counting the interest in different banks. Each bank counts a certain interest on the money it lends to people.

If the comprehensive custom and the local custom do not agree, people follow the local custom.

Custom has no place in some laws, like the financial law and the commercial pleadings.

In Iraq, custom completes legislation. If legislation does not say anything about a certain matter, the judge goes to custom.

Key words.

Comprehensive شامل

Local محلي

Professional مهني

State دولة

Regular منتظم

Custom عرف

Habit عادة

Apply يطبق

Stable مستقر