

ANSWER KEY & MARKING SCHEME · CBSE CLASS 11**Theory and Sources of Law**

Legal Studies · Chapter 1 · Use this with the Board Paper · Companion to Quick Drill

HOW TO USE

Attempt the Board Paper first (closed-book, full time). Then come here. For 2-mark+ questions, compare your answer to the model. For 3-4 mark questions, also consult the **Topper Templates** below — these show the exact step-by-step structure that scores full marks per CBSE marking-scheme conventions.

MODEL ANSWERS · BOARD PAPER**Section A — Short (2 × 4 = 8 marks)****Q1. Define 'law' and state any two of its functions. [2 marks]**

Ans: Law is a body of rules made and enforced by the state, breach of which attracts a sanction. Functions (any two): maintaining order, delivering justice, resolving disputes, protecting rights, enabling social change.

Q2. State Austin's definition of law and name the school it belongs to. [2 marks]

Ans: Austin: law is 'the command of the sovereign backed by a sanction' (elements: command + sovereign + sanction). It belongs to the Positivist / Analytical school.

Q3. What is 'stare decisis'? Distinguish ratio decidendi from obiter dicta. [2 marks]

Ans: Stare decisis = courts must follow earlier decisions in similar cases. Ratio decidendi is the binding legal principle of a judgment; obiter dicta are incidental remarks that are only persuasive.

Q4. Give one example each of substantive law and procedural law. [2 marks]

Ans: Substantive: the Indian Penal Code / Bharatiya Nyaya Sanhita (defines offences). Procedural: the Code of Civil Procedure or the Code of Criminal Procedure / Bharatiya Nagarik Suraksha Sanhita (lays down process).

Section B — Medium (3 × 4 = 12 marks)**Q5. Distinguish between civil law and criminal law on any three grounds. [3 marks]**

Ans: (1) Parties: civil = private parties; criminal = State vs accused. (2) Proof: civil = balance of probabilities; criminal = beyond reasonable doubt. (3) Outcome: civil = remedy (compensation/injunction); criminal = punishment (imprisonment/fine).

Q6. Explain any three sources of law in India. [3 marks]

Ans: (1) Custom — long-established binding community practice; oldest source. (2) Precedent — court decisions binding later courts (stare decisis; ratio decidendi). (3) Legislation — written statutes made by Parliament/Legislatures. (Constitution / Conventions also acceptable.)

Q7. Briefly explain the Natural Law school and the Positivist school, and state how they differ. [3 marks]

Ans: Natural Law (Aquinas, Locke): law must conform to a higher universal morality — an unjust law is no law. Positivist (Austin): law = command of the sovereign backed by a sanction; validity comes from its source, not its morality. Difference: Natural Law ties validity to morality; Positivism separates law from morality.

Q8. Explain the difference between public law and private law with examples. [3 marks]

Ans: Public law governs the state-individual relationship and government structure — constitutional, administrative and criminal law. Private law governs relations between individuals — contract, tort, property, family law. Test: state-vs-individual = public; individual-vs-individual = private.

Section C — Long (5 × 2 = 10 marks)

Q9. Explain the main schools of jurisprudence with their leading thinkers and central ideas. [5 marks]

Ans: Natural Law (Aristotle/Aquinas/Locke) — law must reflect higher morality; an unjust law is no law. Positivist/Analytical (Austin, Hart) — law = command of sovereign + sanction; validity from source. Historical (Savigny) — law grows from the Volksgeist, the spirit of the people; custom is truest source. Sociological (Roscoe Pound, Ihering) — law as social engineering balancing interests. Realist (Holmes, Llewellyn) — law is what courts actually do, 'law in action'.

Q10. Discuss the various sources of law, arranging them from the supreme source to the oldest. [5 marks]

Ans: Constitution — supreme/fundamental law, source of all law-making power. Legislation — written statutes made by Parliament/legislatures (supreme + subordinate). Precedent — court decisions binding later courts (stare decisis; ratio decidendi binds, obiter persuades; Article 141). Custom — long-established, continuous, reasonable, certain community practice; the oldest source. Conventions — unwritten political practices, politically (not legally) binding. (Equity/justice/good conscience + juristic writings as secondary sources.)

★ TOPPER ANSWER TEMPLATES

3 TEMPLATES · MEMORISE THE FORMAT

★ TOPPER TEMPLATE — 5 marks: Explain the main schools of jurisprudence (theories of law).
Annual

Step 1 [1 mark]	Natural Law school	The NATURAL LAW school holds that there exists a HIGHER, UNIVERSAL and unchanging body of moral principles — derived from reason, human nature or divine order — and that man-made law derives its validity from conformity to this higher law. Its slogan: 'lex iniusta non est lex' (an unjust law is no law at all). Key thinkers: Aristotle and Cicero (ancient), St. Thomas Aquinas (divine reason), and the social-contract theorists Hobbes, Locke and Rousseau, who grounded natural RIGHTS in natural law.
Step 2 [1 mark]	Positivist / Analytical school	The POSITIVIST (Analytical) school, led by John AUSTIN, separates law from morality. Austin's COMMAND THEORY defines law as 'the COMMAND of the SOVEREIGN backed by a SANCTION'. The validity of a law depends on its SOURCE (was it commanded by the proper authority?), NOT on its moral content. H.L.A. Hart later refined positivism with his idea of primary + secondary 'rules'. Positivists insist: an unjust statute is still law, though one may have a moral duty to disobey it.
Step 3 [1 mark]	Historical school	The HISTORICAL school, founded by Friedrich Carl von SAVIGNY, argues that law is NOT made consciously by a sovereign but GROWS ORGANICALLY out of the spirit of a people — the 'VOLKSgeist' (national/people's spirit). Law evolves like language and custom, reflecting the history, traditions and culture of a society. Hence custom is the most genuine source of law, and codification that ignores a people's spirit is unsound.
Step 4 [1 mark]	Sociological school	The SOCIOLOGICAL school views law as a tool to serve SOCIETY and BALANCE COMPETING INTERESTS. Roscoe POUND described law as 'SOCIAL ENGINEERING' — the task of harmonising conflicting individual and social interests with the least friction and waste. Rudolf von Ihering saw law as a means to secure 'interests'. Law is judged by its SOCIAL EFFECTS and its capacity to bring about social change.
Step 5 [1 mark]	Realist school	The REALIST school (mainly American — Holmes, Gray, Llewellyn) focuses on LAW IN ACTION rather than law in books. It holds that law is essentially what COURTS and judges ACTUALLY DO — 'the prophecies of what the courts will do in fact' (Justice Holmes). Realists stress the human, psychological and practical factors that influence judicial decisions, rather than abstract rules alone.

COMMON LOSS OF MARKS:

- Naming a school but not naming its lead jurist (Austin / Savigny / Pound / Holmes).
- Mixing up Historical (Savigny, Volksgeist) with Sociological (Pound, social engineering).
- Saying Natural Law = laws of science.
- Forgetting the central idea / slogan of each school.

★ **TOPPER TEMPLATE — 5 marks: Discuss the various sources of law.**

Annual

Step 1 [1 mark]	Custom	CUSTOM is the OLDEST source of law. It is a long-established practice of a community, repeated over time and accepted as BINDING. For a custom to have legal force it must be ANCIENT, CONTINUOUS, REASONABLE, CERTAIN and not opposed to public policy or statute. Examples: personal-law customs governing marriage and succession, and mercantile usages in trade. The Historical school regards custom as the most genuine source of law.
Step 2 [1 mark]	Precedent (judicial decisions)	PRECEDENT is law laid down by courts in earlier decisions, binding on later courts in similar cases — the doctrine of STARE DECISIS ('to stand by decided matters'). The binding part of a judgment is the RATIO DECIDENDI (the legal principle); incidental observations are OBITER DICTA (persuasive only). In India, decisions of the Supreme Court bind all courts (Article 141). Precedent ensures consistency, predictability and equality before law.
Step 3 [1 mark]	Legislation	LEGISLATION is law consciously MADE by a competent authority — Parliament or state legislatures — in written, codified form (statutes / Acts). It is the MOST IMPORTANT modern source because it is certain, prospective, and can deliberately reform society (e.g., the Indian Penal Code / Bharatiya Nyaya Sanhita, the Contract Act). Legislation may be SUPREME (by the sovereign legislature) or SUBORDINATE/delegated (rules made by an executive authority under a parent Act).
Step 4 [1 mark]	Constitution	The CONSTITUTION is the SUPREME and FUNDAMENTAL source of law. It creates the legislature, executive and judiciary, distributes powers, and limits them. Every other law must conform to it; a statute that conflicts with the Constitution can be struck down by the courts. In India the Constitution is the highest source from which all other law-making authority is derived.
Step 5 [1 mark]	Conventions + secondary sources	CONVENTIONS are unwritten but generally-observed practices of constitutional and political life (e.g., the convention that the leader of the majority party becomes Prime Minister). They are not legally enforceable in court but are politically binding. Other secondary sources include JURISTIC WRITINGS / opinions of legal scholars and PRINCIPLES OF EQUITY, JUSTICE AND GOOD CONSCIENCE, which courts use to fill gaps where no statute or precedent applies.

COMMON LOSS OF MARKS:

- Confusing custom with precedent.
- Forgetting ratio decidendi vs obiter dicta under precedent.
- Treating the Constitution and ordinary legislation as equal.
- Listing sources without explaining each.

★ **TOPPER TEMPLATE — 5 marks: Explain the classification of law (public/private, civil/criminal, substantive/procedural).**

Most years

Step 1
[1 mark] **Public law vs Private law**

PUBLIC LAW governs the relationship between the STATE and INDIVIDUALS and the structure of government — it includes constitutional law, administrative law and criminal law. PRIVATE LAW governs the relationship between PRIVATE INDIVIDUALS among themselves — contract, property, tort, family law. The dividing line is WHO the parties are: state-vs-individual (public) or individual-vs-individual (private).

Step 2
[1.5 marks] **Civil law vs Criminal law**

CRIMINAL law deals with wrongs against SOCIETY/the STATE; the STATE prosecutes; the standard of proof is 'BEYOND REASONABLE DOUBT'; the outcome is PUNISHMENT (imprisonment / fine). CIVIL law deals with disputes between PRIVATE parties (contract, property, family); the aggrieved party SUES; the standard is 'BALANCE OF PROBABILITIES'; the outcome is a REMEDY (compensation, injunction, specific performance) — NOT punishment. A single act (e.g., a road accident) can give rise to BOTH civil and criminal liability.

Step 3
[1.5 marks] **Substantive law vs Procedural law**

SUBSTANTIVE LAW defines RIGHTS, DUTIES and LIABILITIES — it tells us WHAT the law is (e.g., the Indian Penal Code / Bharatiya Nyaya Sanhita defining the offence of theft; the Contract Act defining a valid contract). PROCEDURAL (adjective) LAW lays down the PROCESS for enforcing those rights — it tells us HOW a case is conducted (e.g., the Code of Civil Procedure, the Code of Criminal Procedure / Bharatiya Nagarik Suraksha Sanhita, the Evidence Act / Bharatiya Sakshya Adhinyam). Substantive = WHAT; procedural = HOW.

Step 4
[1 mark] **National law vs International law**

NATIONAL (municipal) LAW operates WITHIN a state and binds individuals through the state's own courts and enforcement machinery. INTERNATIONAL LAW governs relations BETWEEN STATES (and increasingly individuals) through treaties, conventions and customary international law; its enforcement is weaker because there is no single global sovereign with coercive power. Some classifications also note the divide between written (codified) and unwritten law.

COMMON LOSS OF MARKS:

- Mixing up substantive (what) with procedural (how).
- Saying civil cases lead to 'punishment' — they lead to remedies.
- Putting criminal law under private law — it is public law.
- Giving the classification without an example of each.

MARKING SCHEME — GENERAL NOTES

- Each school must be tied to its jurist (Austin / Savigny / Pound / Holmes / Aquinas) and its one central idea.
- Sources answer must list all five (custom, precedent, legislation, constitution, convention); credit precedent vocabulary (stare decisis, ratio decidendi, obiter dicta).
- Classification answers require WHO the parties are, the standard of proof, and the outcome for civil vs criminal; substantive = WHAT, procedural = HOW.
- At least one EXAMPLE per source / classification for full marks.
- Do not award full marks if Natural Law is described as the laws of science, or if custom and precedent are treated as the same.