

CHAPTER 1

Theory and Sources of Law

CBSE Class 11 Legal Studies · Unit 1

CBSE · Legal Studies · Class 11

WHAT THIS CHAPTER DOES

A

Define 'law' and state its nature, characteristics and functions.

B

Explain the five schools of jurisprudence with one jurist + one idea each.

Boards prep that builds confidence, not anxiety.

TODAY'S MISSION

Today's mission

1

Define 'law' and state its nature, characteristics and functions.

2

Explain the five schools of jurisprudence with one jurist + one idea each.

3

List and explain the five sources of law (custom, precedent, legislation, constitution, convention).

4

Apply the three classification pairs — public/private, civil/criminal, substantive/procedural.

WHY THIS MATTERS

Why this chapter matters

- 1 Opens Class 11 Legal Studies. Every later unit (judiciary, rights, legal profession) assumes these foundations.
- 2 8-12 marks every school exam. Schools + sources + classification are the highest-marking clusters.
- 3 Directly tested in CLAT Legal Reasoning and useful for UPSC Polity — high transfer value for law-bound students.

TOPIC

A

What is law? Nature and functions

THEOREM · LOAD-BEARING RESULT

The meaning and nature of law



LAW is a body of rules of conduct, created and **ENFORCED** by the state, that binds all members of society and whose breach attracts a **SANCTION**. It is distinct from — though overlapping with — morality, religion and mere custom.

STATEMENT

Essential characteristics of law: (1) it is a set of **RULES** of conduct; (2) it is made or recognised by a recognised **AUTHORITY** of the **STATE**; (3) it applies **GENERALLY** to all persons within the

WHY THIS MATTERS

- The 'meaning, nature and functions of law' is a reliable 3-4 mark question and underpins every later debate in the chapter
- A precise definition + characteristics + functions earns full marks and frames the schools discussion.

WATCH OUT FOR

NOTE Do NOT equate law with morality. Law is enforced by the **STATE** through sanctions; morality is enforced only by conscience and society. Some immoral acts are legal, and some legal rules are morally debated — this distinction is the heart of the Natural-Law vs Positivist debate.

TOPIC

Law, morality and the role of the state

LAW VS MORALITY VS CUSTOM

LAW is enforced by the STATE through formal sanctions; MORALITY is enforced only by conscience and social disapproval; CUSTOM is enforced by community acceptance over time. The three OVERLAP — many laws (against murder, theft) are also moral and customary —

FUNCTIONS AND PURPOSES OF LAW

Law performs several social functions. (1) ORDER: it makes social life predictable and prevents the 'war of all against all'. (2) JUSTICE: it aims to give each person their due and treat like cases alike. (3) DISPUTE RESOLUTION: it provides courts and rules so conflicts are settled

WHY SOCIETY NEEDS LAW

Without law, society would rely only on individual strength, custom or morality — each uncertain and unequally applied. Law supplies CERTAINTY (written, knowable rules), EQUALITY (the same rule for all, the rule of law), and ENFORCEABILITY (a neutral authority that can compel compliance). It

JURISPRUDENCE — THE STUDY OF LAW

JURISPRUDENCE is the THEORY and PHILOSOPHY of law — the study of its nature, sources, purposes and the reasoning behind legal rules. It does not deal with any single statute but asks deeper questions: What IS law? Must law be just? Where does it get its authority?

TOPIC

B

The schools of jurisprudence

THEOREM · LOAD-BEARING RESULT

Five schools of legal thought

“ Jurists have answered 'what is law?' in five major ways — the **NATURAL**, **POSITIVIST (Analytical)**, **HISTORICAL**, **SOCIOLOGICAL** and **REALIST** schools — each identified with a leading thinker and a single central idea.

STATEMENT

NATURAL LAW (Aristotle, Cicero, Aquinas, Locke): law must conform to a higher universal MORALITY; an unjust law is no law.
POSITIVIST / ANALYTICAL (Austin, later Hart): law is the

WHY THIS MATTERS

- Schools of jurisprudence is the single most-asked 5-mark question (~92% of papers)
- Knowing one jurist + one keyword per school guarantees the marks and lets the student compare schools in higher-order questions.

WATCH OUT FOR

NOTE Keep the schools **DISTINCT**: do not blur Historical (Savigny, Volksgeist) into Sociological (Pound, social engineering), and do not confuse legal Natural Law with the laws of physics. Always attach the correct jurist to each school.

TOPIC

The schools compared

NATURAL LAW SCHOOL

Central idea: law derives its authority from a HIGHER, UNIVERSAL MORAL order — discoverable by reason, human nature or divine will — and is SUPERIOR to man-made law. Slogan: 'lex iniusta non est lex' (an unjust law is no law). Thinkers: ARISTOTLE and CICERO (reason in nature). St. Thomas

POSITIVIST / ANALYTICAL SCHOOL

Central idea: SEPARATE law from morality. John AUSTIN's COMMAND THEORY: law = the COMMAND of the SOVEREIGN backed by a SANCTION. A law's validity depends on whether the proper authority enacted it (its SOURCE), NOT on whether it is just. So an

HISTORICAL SCHOOL

Central idea: law is NOT consciously invented by a sovereign — it GROWS ORGANICALLY from the life, history and culture of a people. Friedrich Carl von SAVIGNY called this spirit the 'VOLKSGEIST' (the people's/national spirit). Law evolves slowly, like language and custom; hence CUSTOM is the truest source, and

SOCIOLOGICAL + REALIST SCHOOLS

SOCIOLOGICAL (Roscoe POUND, Rudolf von IHERING): law is a tool of SOCIETY — 'SOCIAL ENGINEERING' that balances and secures competing individual and social INTERESTS with the least friction. Law is judged by its SOCIAL EFFECTS and its power to drive social change.

WORKED EXAMPLE

Worked example — apply the schools

TOPIC

C

The sources of law

THEOREM · LOAD-BEARING RESULT

Five sources of law

Law in India flows from five principal sources — CUSTOM, PRECEDENT, LEGISLATION, the CONSTITUTION and CONVENTIONS — arranged in a hierarchy with the Constitution supreme and custom the oldest.

STATEMENT

CUSTOM: a long-established, continuous, reasonable, certain community practice accepted as binding — the **OLDEST** source. **PRECEDENT:** principles laid down by courts in earlier cases that bind later

WHY THIS MATTERS

- Sources of law is the second most-asked 5-mark question (~90% of papers)
- Listing all five with a one-line explanation of each, plus the precedent vocabulary, reliably earns full marks.

WATCH OUT FOR

NOTE Distinguish CUSTOM (bottom-up, grows from society) from PRECEDENT (top-down, made by courts). Do NOT treat ordinary legislation as equal to the Constitution — the Constitution is supreme and statutes are subordinate to it.

TOPIC

The sources explained

CUSTOM — THE OLDEST SOURCE

CUSTOM is a practice repeated over a long time within a community and accepted as obligatory. To be legally valid a custom must be ANCIENT (long-standing), CONTINUOUS (uninterrupted), REASONABLE, CERTAIN, and NOT opposed to statute or public policy.

PRECEDENT — JUDICIAL DECISIONS

PRECEDENT is law declared by courts in earlier decisions that BINDS later courts deciding similar facts — the doctrine of STARE DECISIS ('to stand by decided matters'). The binding legal principle is the RATIO DECIDENDI; judges' incidental remarks are OBITER

LEGISLATION — THE MODERN LEAD SOURCE

LEGISLATION is law consciously MADE by a competent authority and reduced to WRITING (statutes / Acts). It is the most important source today because it is CERTAIN, KNOWABLE, PROSPECTIVE and can deliberately REFORM society. SUPREME legislation is made by the

CONSTITUTION + CONVENTIONS

The CONSTITUTION is the SUPREME and fundamental law: it creates the legislature, executive and judiciary, distributes and limits their powers, and is the ultimate source of all legal authority. Any statute conflicting with it can be struck down by the courts.

TOPIC

D

Classification of law

THEOREM · LOAD-BEARING RESULT

The classification pairs

“ The same body of law can be classified along several **INDEPENDENT** pairs — public vs private, civil vs criminal, substantive vs procedural, and national vs international — each pair viewing law from a different angle.

STATEMENT

PUBLIC vs PRIVATE — by the **PARTIES**: state-vs-individual (constitutional, administrative, criminal) vs individual-vs-individual (contract, tort, property, family). **CIVIL vs CRIMINAL** — by **PURPOSE**,

WHY THIS MATTERS

- Classification of law is a near-certain 3-4 mark question (~78% of papers)
- Knowing the **FOUR** pairs and one example per pair earns the marks and shows mature understanding of how a single statute can be classified many ways at once.

WATCH OUT FOR

NOTE The pairs are **INDEPENDENT**, not alternatives — one statute (say the IPC/BNS) is simultaneously national, public, criminal **AND** substantive. Do not say civil law leads to 'punishment'; it leads to a remedy.

TOPIC

How law is classified

PUBLIC LAW VS PRIVATE LAW

PUBLIC LAW governs the relationship between the STATE and individuals and the organisation of government — it includes CONSTITUTIONAL law (structure + rights), ADMINISTRATIVE law (working of the executive) and CRIMINAL law (offences against society). PRIVATE LAW

CIVIL LAW VS CRIMINAL LAW

CRIMINAL law deals with wrongs against SOCIETY/the STATE (theft, assault, murder); the STATE prosecutes; the standard of proof is 'BEYOND REASONABLE DOUBT'; the result is PUNISHMENT (imprisonment / fine). CIVIL law deals with disputes between

SUBSTANTIVE LAW VS PROCEDURAL LAW

SUBSTANTIVE law defines RIGHTS, DUTIES, OFFENCES and LIABILITIES — it tells us WHAT the law is. Examples: the Indian Penal Code / Bharatiya Nyaya Sanhita (defining theft and its punishment), the Contract Act (defining a valid contract).

OTHER CLASSIFICATIONS

NATIONAL (municipal) law operates within a single state and is enforced by its own courts; INTERNATIONAL law governs relations BETWEEN states through treaties, conventions and customary international law, with weaker enforcement because there is no world sovereign. Law may also

TRY IT · SOLVE BEFORE YOU PEEK

Quick self-test

Work it out before you flip the answer.

SOLUTION

TOPIC

Law vs morality

TRAP → TRUTH

× **MISTAKE** Law and morality are the same thing — whatever is morally wrong is also illegal.

✓ **CORRECT** Law and morality OVERLAP but are NOT identical. Law is a body of rules made and ENFORCED by the state through sanctions; morality is a set of values enforced only by conscience and social disapproval. Some acts are immoral but NOT illegal (e.g., lying to a friend, ingratitude); some acts are illegal but not seen by all as immoral (e.g., a minor traffic violation). The Natural-Law school argues law SHOULD reflect morality ('an unjust law is no law at all'), while the Positivist school insists law's VALIDITY does not depend on its morality — only on whether it was enacted by the proper authority. Treating the two as the same erases the single most important debate in the chapter.

TOPIC

Natural Law = man-made law

TRAP → TRUTH

× **MISTAKE** Natural law means the natural laws of science, like gravity.

✓ **CORRECT** In jurisprudence, NATURAL LAW does NOT mean physical/scientific laws. It refers to a higher, UNIVERSAL, unchanging body of moral principles — derived from reason, human nature or divine order — that exists independently of, and is SUPERIOR to, man-made (positive) law. Thinkers: Aristotle, Cicero, Aquinas (divine reason), Hobbes, Locke, Rousseau (social-contract natural rights), Fuller (inner morality of law). Its slogan 'lex iniusta non est lex' — an unjust law is no law. Confusing legal natural law with physics-style natural laws is a classic 2-mark loss.

TOPIC

Austin's Command Theory

TRAP → TRUTH

× **MISTAKE** According to Austin, law is whatever is fair and just.

✓ **CORRECT** John AUSTIN, the leading ANALYTICAL / POSITIVIST jurist, defined law as 'the COMMAND of the SOVEREIGN backed by a SANCTION'. The three elements are COMMAND + SOVEREIGN + SANCTION (punishment for disobedience). For Austin the test of law is its SOURCE (was it commanded by the sovereign?), NOT its moral content — so an unjust statute is still 'law'. This is the OPPOSITE of the natural-law view. Saying Austin equates law with justice gets the school exactly backwards.

TOPIC

Custom vs precedent

TRAP → TRUTH

× **MISTAKE** Custom and precedent are two words for the same source of law.

✓ **CORRECT** They are DIFFERENT sources. CUSTOM is a long-established practice of a community, accepted as binding through repeated usage over time (e.g., personal-law customs, mercantile usages); it is the OLDEST source of law. PRECEDENT (judicial decision) is a principle laid down by a court in an earlier case that BINDS later courts in similar cases — the doctrine of STARE DECISIS ('to stand by decided matters'). Custom grows bottom-up from society; precedent flows top-down from courts. Confusing the two costs marks on the most-asked 'sources of law' question.

TOPIC

Civil vs criminal law

TRAP → TRUTH

× **MISTAKE** Civil law and criminal law are decided by the same procedure and lead to the same outcome.

✓ **CORRECT** They differ on PARTIES, PURPOSE, STANDARD OF PROOF and OUTCOME. CRIMINAL law concerns wrongs against SOCIETY/the STATE (theft, murder, assault); the State prosecutes; proof required is 'beyond reasonable doubt'; outcome is PUNISHMENT (imprisonment / fine). CIVIL law concerns disputes between PRIVATE parties (contract, property, tort, family); the aggrieved party sues; proof is on the 'balance of probabilities'; outcome is a REMEDY (compensation / injunction / specific performance) — not punishment. Treating both alike erases the core of the classification-of-law topic.

TOPIC

Substantive vs procedural law

TRAP → TRUTH

× **MISTAKE** Substantive and procedural law are basically the same set of rules.

✓ **CORRECT** SUBSTANTIVE law defines RIGHTS, DUTIES and LIABILITIES — WHAT the law is (e.g., the Indian Penal Code / Bharatiya Nyaya Sanhita defining the offence of theft and its punishment; the Contract Act defining a valid contract). PROCEDURAL (adjective) law lays down the PROCESS by which substantive rights are enforced — HOW a case proceeds (e.g., the Code of Civil Procedure, the Code of Criminal Procedure / Bharatiya Nagarik Suraksha Sanhita, the Evidence Act / Bharatiya Sakshya Adhinyam). One says WHAT, the other says HOW. This pairing is a near-certain 3-mark question.

TOPIC

Legislation vs constitution

TRAP → TRUTH

× **MISTAKE** Ordinary legislation and the Constitution have the same legal force.

✓ **CORRECT** They are HIERARCHICALLY different sources. The CONSTITUTION is the SUPREME / FUNDAMENTAL law of the land — it creates the legislature itself and limits its power. LEGISLATION (statutes made by Parliament / state legislatures) is law made WITHIN the framework of, and SUBORDINATE to, the Constitution; any statute that conflicts with the Constitution can be struck down. So the Constitution is the highest source, legislation a derived source. Equating them misunderstands the hierarchy of legal sources.

TOPPER TEMPLATE · MARK-BY-MARK

5 marks: Explain the main schools of jurisprudence (theories of law).

- 1 NATURAL LAW SCHOOL**
1 m

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.
- 2 POSITIVIST / ANALYTICAL SCHOOL**
1 m

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.
- 3 HISTORICAL SCHOOL**
1 m

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.
- 4 SOCIOLOGICAL SCHOOL**
1 m

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.
- 5 REALIST SCHOOL**
1 m

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

TOPPER TEMPLATE · MARK-BY-MARK

5 marks: Discuss the various sources of law.

1 CUSTOM

1 m

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.

2 PRECEDENT (JUDICIAL DECISIONS)

1 m

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.

3 LEGISLATION

1 m

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).

4 CONSTITUTION

1 m

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.

5 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

TOPPER TEMPLATE · MARK-BY-MARK

5 marks: Explain the classification of law (public/private, civil/criminal, substantive/

1 PUBLIC LAW VS PRIVATE LAW

1 m

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).

2 CIVIL LAW VS CRIMINAL LAW

1.5 m

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.

3 SUBSTANTIVE LAW VS PROCEDURAL LAW

1.5 m

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.

4 NATIONAL LAW VS INTERNATIONAL LAW

1 m

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.

PYQ PATTERNS

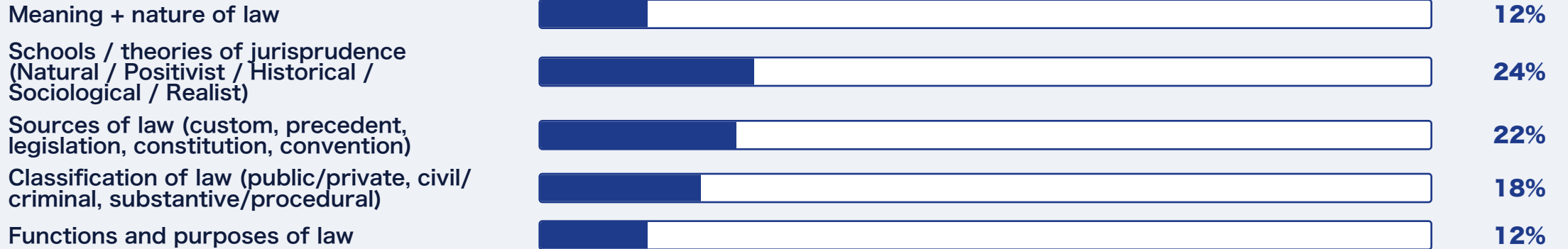
Top PYQ patterns to drill

#1	Explain the main schools of jurisprudence (Natural Law, Positivist, Historical, Sociological). (5 marks)	Annual
#2	Discuss the various sources of law in India. (5 marks)	Annual
#3	Explain Austin's Command Theory of law / the Analytical (Positivist) school. (4-5 marks)	Most years
#4	Distinguish between (a) substantive and procedural law, (b) civil and criminal law, (c) public and private law. (3-4 marks)	Most years
#5	What is meant by 'law'? State its essential characteristics and functions. (3-4 marks)	Annual

MARKS DISTRIBUTION

10-year marks distribution

10-YEAR PYQ MARKS DISTRIBUTION



RECAP · MEMORISE THESE

Recap — what you must know cold

1 Meaning of law — Rules made + enforced by the STATE, breach → SANCTION. Overlaps with but differs from morality. Functions: order, justice, dispute-resolution, rights, social change.

2 Five schools — Natural (Aquinas/Locke — morality) · Positivist (Austin — command+sovereign+sanction) · Historical (Savigny — Volksgeist) · Sociological (Pound — social engineering) · Realist (Holmes — courts).

3 Austin's test vs Natural Law — Positivist: validity = SOURCE, not morality. Natural Law: an unjust law is no law. The central debate of the chapter.

4

5

6

WHAT'S NEXT

What's next

- Next unit — Political Institutions / the Indian Constitution and the organs of government.
- Sit the 15-MCQ Quick Drill.
- Then the 30-mark School-Pattern Paper.

You've laid the foundation of law.

Schools · sources · classification — now prove it.

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