

لینے استحضار کے لئے اس کتاب کے قواعد
 اس لوگ کے قائلوں سے اس قانون کے قواعد کو
 حرجہ، موضوعیت، موجودہ و قیلہ کلمہ کے لئے اس کتاب کے قواعد کو

III SOURCES OF LAW

قائم اداروں، مکتبہ نجات،
 صدر کتب خانہ

The term 'sources' is here used to connote those agencies by which rules of conduct acquire the character of law by becoming objectively definite, uniform, and above all, compulsory. In other words, a source of law is any fact which in accordance with the law determines the judicial recognition and acceptance of any new rule as having the force of law.

The word 'source' as applied to law has many meanings, and is a frequent cause of error. Some writers distinguish between two kinds of sources, 'legal' and 'historical'. Legal sources are those recognised as such by the law itself, as when we say that the applicable rule is such and such an article of the Iraqi Civil Code No. 40, 1951. Historical sources are those which are such in fact, but are nevertheless destitute of legal recognition. Thus, the provision of a certain article of the Code might have been the opinion of the Chairman of the Drafting Committee, al Sanhoury, who, in turn, might have been influenced in his view by the opinion of his French Professor, Lambert, who, again, might have been influenced by a rule of a certain foreign law. In this case, the historical source of the Iraqi article becomes represented by the opinions of al-Sanhouri, and Lambert, and the provision of the foreign law.

This division of sources, and, indeed, any division, can be criticised on the basis that a source is either a source of law in the actual sense of the term, or not. However, the division set out above is helpful to the novice in law in so far as it assists him to distinguish between what is enforceable as a rule of law, and what has been the basic material which leads to the formulation of what is enforceable.

However, in view of the definition of the term 'sources' adopted above, we can determine the important sources of law generally as follows:-

Compulsory = mandatory, forced, imperative, obligatory, in Voluntary, imperative, obligatory, coercive → کو اجباری

what is the reality

1 - Religion.

2 - Custom.

3 - Equity.

4 - Judicial Decisions.

5 - Juristic Opinions.

6 - Legislation.

الدين
العرف
العدل

قرارات المحاكم

الرأى الفقهي

From the point of view of Iraqi law, not all are relevant. Thus, Article (1) of the Iraqi Civil Code lists 'authoritative' sources of Iraqi law, that is those courts as of right, to be legislation, customs, religious law, Islamic law, and equity. Judicial precedents and juristic opinions are authoritative in all this only as enforcing or rejecting a particular application of law from the previously mentioned sources.

However, all sources of law merit some discussion to be done briefly in the following sections, according to the following enumeration formerly set out.

1 - Legislation - mid, h