

# *Contents*

<b>1 Introduction</b>	1
1.1 Stories about Law	1
1.2 A Communicational Approach to Law	7
<b>2 Defining “Law”</b>	13
2.1 How to Construct a Definition?	13
2.2 How to Delimit the Empirical Reality We (Will) Call “Law”?	14
<b>3 (Possible) Characteristics of Law</b>	17
3.1 Human Behaviour, Human Interaction and Law	17
3.2 Law as a Set of Norms	19
3.3 Law as an Institutionalised Normative System	21
3.3.1 Formal Institutionalisation	21
3.3.2 Sociological Institutionalisation	24
3.3.3 Professional Institutionalisation	26
3.4 Law and State	27
3.5 Law and Coercion	33
3.6 The Autonomy of Law	37
3.6.1 Formal Autonomy	37
(a) Circularity	37
(b) Operative Closure and Cognitive Openness	39
(c) Types of Autonomy	40
3.6.2 Substantive Autonomy	42
(a) Which Kind of Autonomy?	42
(b) Degree of Autonomy	45
3.7 Closure and Comprehensiveness of Legal Systems	52
3.8 Law and Culture	56
3.8.1 General Culture	56
3.8.2 Legal Culture	57
(a) Legal Culture in Society	57
(b) Lawyers’ Legal Culture	58
(c) Legal Culture and Legal Harmonisation	58
3.9 Law and Justice	59
<b>4 The Functions of the Law</b>	61
4.1 Structuring Society	62
4.1.1 Political Power	63
4.1.2 Social Cohesion	64

4.2 Facilitating the Individual's Life	65
4.2.1 Creating Spheres of Autonomy	67
4.2.2 Bringing about Desirable Behaviour	68
4.2.3 Coordinating Human Behaviour	68
4.2.4 Facilitating Private Arrangements	69
4.2.5 Allocating Resources	69
4.2.6 Redistributing Goods and Services	70
4.2.7 Solving Conflicts	71
<b>5 The Concept of a Legal Norm</b>	<b>73</b>
5.1 Norms as Reasons for Human Action	74
5.2 Norm-Sender and Norm-Receiver	80
5.2.1 The Norm-Sender	83
5.2.2 The Norm-Receiver	86
5.2.3 The "Norm-Sender" of Non-Statutory Norms	88
5.3 Internal and External Aspect of the Norm	89
5.4 The Structure of Norms	91
5.4.1 The Basic Structure of a Norm	91
5.4.2 The Elements of a Norm	94
5.4.3 The Characteristics of Legal Norms	96
(a) Legal Norms as Means for Ends	96
(b) The Formality of Legal Norms	97
5.5 The Concept of "Right"	100
5.5.1 Types of "Rights"	100
5.5.2 Types of Legal Relations	102
<b>6 The Concept of a Legal System</b>	<b>105</b>
6.1 A "Basic Norm" or a "Rule of Recognition" as Closing Rule for a Legal System?	105
6.2 The Structure of a Legal System	109
6.2.1 What Kind of System?	109
6.2.2 What is Structured and How?	110
(a) The Machinery of Law	110
(b) Hierarchy, Anarchy or Circularity?	112
(c) Circularity: Game or Communication?	113
(d) The Building Blocks of Legal Systems	115
(e) Coherence	118
6.3 Form and Substance: the Structure of Legal Systems and Conceptions of Democracy	119
<b>7 Methodology of Law</b>	<b>125</b>
7.1 The Nature of Legal Thinking	125
7.2 Law and Language	128
7.2.1 Language as a Means of Communication	128
7.2.2 Legislation as Communication	130

7.3	Methodology of Legislation	131
7.3.1	Legislative Definitions	131
7.3.2	The Formulation of Legal Norms in Legislation	134
7.4	Interpretation of Statutes	134
7.4.1	Interpretation, Meaning and Context	136
7.4.2	The Plain Meaning Rule	138
7.4.3	Methods of Interpretation	140
	(a) The Grammatical Method	140
	(b) The Systemic Method	140
	(c) The Use of Legislative Materials	142
	(d) The Historic Method	143
	(e) The Teleological or Purposive Method	144
7.4.4	Weighing and Using the Different Interpretation Methods	150
7.4.5	Interpretive Choices, Interpretive Opposites	152
	(a) General Interpretive Opposites	152
	(b) Specific Interpretive Opposites	155
7.5	Legal Principles and Interpretation	160
7.5.1	Legal Principles and Legal Rules	160
7.5.2	Unwritten Legal Principles in Judicial Decisions	161
7.5.3	Types of Unwritten Legal Principles	163
	(a) Structural Legal Principles	163
	(b) (Purely) Ideological Legal Principles	164
7.5.4	Legal Principles and the Interpretation of Statutes	165
	(a) Interpretation by Analogy	165
	(b) Purposive Interpretation	166
7.5.5	Legal Text, Rule, Principle and Political Theory	167
7.5.6	General Principles as “ <i>Ius Commune</i> ”	168
7.5.7	Structuring Legal Principles	170
7.5.8	Legitimation of the Judicial Use of Unwritten Legal Principles	171
7.6	The Role of the Judge	171
7.7	The Role of Legal Doctrine	178
7.7.1	The Importance of Legal Doctrine	178
7.7.2	The Task of Legal Doctrine	180
	(a) Describing the Law	180
	(a) Systematising the Law	181
7.7.3	The Paradigm of Legal Doctrine	182
8	Legitimation of Law	187
8.1	The Importance of Legitimation for Law	187
8.2	Levels of Legitimation	188
8.3	Types of Legitimation	190
8.3.1	Formal Legitimation	191
8.3.2	Substantive Legitimation	195

8.3.3 Communicative Legitimation	197
(a) A Framework for Communicative Legitimation	198
(b) Communicative Legitimation in Law	199
<b>9 Conclusion</b>	<b>203</b>
9.1 Argumentation Theory	207
9.2 Theory of Democracy	210
<i>Index</i>	217