

Functions of Laws

Many of the ancient laws were based on an "eye for an eye" philosophy to ensure that justice was done and that no vengeance was exacted by the parties who had been wronged. Which of the following laws do *not* reflect this philosophy?

- a) If anyone delivers silver, gold, or anything else to another for safe keeping, before a witness, but he denies it, he shall be brought before a judge, and all that he has denied he shall pay in full.
- b) If a man knocks out the teeth of his equal, his teeth shall be knocked out.
- c) If a builder builds a house for someone, and does not construct it properly, and the house, which he built, falls and kills its owner, then that builder shall be put to death.
- d) If anyone hires oxen, and kills them by bad treatment or blows, he shall compensate the owner, oxen for oxen.
- e) If anyone is committing a robbery and is caught, then he shall be put to death.

Answer: e). This approach seems to be based on deterrence rather than on "an eye for an eye."

Functions of Law (guide, p.32)

Formalized law serves various functions within a society. It is:

a set of established rules of conduct, which serves to minimize or reduce possible conflicts, and as a means to settle conflict when it does arise:

- a set of pre-existing, impartial rules, based upon criteria, that can be used to judge and settle conflicts
- a protection for individual rights and freedoms
- a protection for society by serving as a framework defining orderly conduct
- a mechanism of legitimacy for actions of the state
- a mechanism for defining and protecting private property
- a mechanism for allocating power within society.

Law is the primary avenue to remedy injustice in a peaceful, orderly manner. In Canada, the Constitution empowers the federal government "to make Laws for the Peace, Order, and good Government of Canada."

Evolution of Codified Law

Among the earliest recorded attempts to achieve greater consistency and fairness in applying the rules of societies was that of Babylonian King Hammurabi, who recorded nearly 300 laws for his subjects over 3800 years ago. This Code of Hammurabi is the earliest written record of a complex set of laws governing human behaviour, and was based in the concept of retribution, mandating "an eye for an eye" as the philosophy of punishment for breaking a law.

Later systems of codified law included the Mosaic Law, based on the Old Testament, and the Justinian Code of the Roman Empire. This Justinian Code, also called the Laws of the Twelve Tables, influenced law in continental Europe until the formalization of the Napoleonic French Civil Code of the early 1800s. In England, the feudal system of rule featured the lord of each manor as the sole judge in any matter of legal nature. This continued until the 12th and 13th centuries, when the desire for equity served as the basis for judges to begin recording their decisions, and the reasons for these decisions. This was the beginning of a common law, based

on the recorded case law of judges in each district. It was at this time that the concept of precedent began to guide judges' decisions, leading to greater consistency in the application of law.