

# What is legal literacy?

Examining the concept and objectives of legal literacy

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## 1.0 What is legal literacy? - Learning objectives

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After completing Unit 1 you should be able to:

1. describe the relationship between literacy and legal literacy
2. compare and contrast legal literacy and other literacies
3. explain the relationship of legal literacy to other concepts related to law in society

#### 4. list the objectives of legal literacy

## 1.1 Literacy and law

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To become literate (able to read and write) is to become a full member of a written language community. If someone is only capable of oral expression in a written language they are not a full member of the community that uses it. Being able to write extends the range of a person's words far beyond hearing distance; being able to read vastly increases the number of others whose words can be experienced. Being literate is considered such an important capacity that UNESCO calls it a human right (United Nations Educational, Scientific and Cultural Organization, 2009). Others describe literacy as an essential building block of healthy families (Centre for Family Literacy, 2009).

Being literate can therefore be seen as a crucial way in which an individual connects and interacts with the society around them. As Freire puts it, "Reading the word and learning how to write the word so one can later read it are preceded by learning how to write the world, that is, having the experience of changing the world and touching the world." (Freire and Macedo 1987, 49). Literacy can empower the individual to influence the society around them more effectively.

The relationship of literacy to law is a strong one, particularly in Western societies with a long tradition of written and published laws. To the extent that written law helps to form society and guide the actions of its members, literacy becomes important for participation in a legal system. Without literacy people can become intimidated and alienated from law. This may create a situation which results in people coming into conflict with law, or being unable to obtain help from it (Canadian Bar Association 1992). Courts have recognized the barrier raised by lack of literacy to asserting guaranteed rights effectively (The John Howard Society of Canada 1996). Simply put, low literacy may block people's access to justice (Council of Canadian Administrative Tribunals 2005). In addition, literacy requirements have been used to block access to the political system through voter registration procedures (South Carolina v. Katzenbach (No. 22, Orig.)).

Organizations at all levels of society are engaged in education to increase literacy levels (National Adult Literacy Database 2009). However, even basic literacy may not be enough to allow effective participation in a legal system:

Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand, and use material related to legal problems. They do not understand the concepts contained in the words, even if they understand the words themselves. Therefore, they cannot understand what is expected of them and often the implications of what is being said. (Council of Canadian Administrative Tribunals 2005, 11)

In modern societies with vast amounts of written law and complex legal systems it is necessary to go beyond basic literacy in order to understand and use law. The concept of legal literacy has been advanced to describe the capacity to interact effectively with law. Next, we look at what it means in more depth.

## 1.2 Legal literacy

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Originally, the term legal literacy was used to refer to an aspect of professional legal education. To be legally literate meant that you were capable of reading and writing the legal arguments, briefs, opinions, judgments and legislation that contribute to the body of law. This is a "literal" definition of legal literacy as being "literate in

the law". Used in this sense, legal literacy is primarily a concern of legal writing programs in law schools that teach students to think, and communicate "like lawyers".

Later, a broader meaning of legal literacy became more common as a result of two different approaches to the concept. One approach considers legal literacy as a capacity spread along a continuum, with lawyers and judges at one end and relatively incapable laypersons at the other. This approach was adopted by the legal scholar White who considered legal literacy to mean "that degree of competence in legal discourse required for meaningful and active life in our increasingly legalistic and litigious culture." (White 1983, 144) Another legal writer describes legal literacy as a "spectrum of functional skills" related to the conduct of litigation (Bilder 1999, 51). According to the continuum approach a certain degree of legal literacy is required for effective participation in modern society, but it is not necessary for the average citizen to reach the professional standard of "thinking (and writing) like a lawyer".

The other recent approach to the meaning of legal literacy is to consider it as a metaphor. According to this view, the term is "intended to suggest some parallels between the institution of the law, and a system of language to be mastered, knowledge gained and understanding achieved." (Manley-Casimir, Michael E., Wanda M. Cassidy, and Suzanne de Castell 1986, 47) These authors suggest that the term legal literacy can also function as a model for educators who seek to promote such literacy. Proponents of legal literacy may thus look to the teaching of language for guidance.

Both approaches lead to a broader conception of legal literacy that extends beyond the profession of law and into the community. Numerous broad definitions of legal literacy have been advanced. Some are:

Full legal literacy goes beyond the development of a basic legal competence and implies the acquisition of knowledge, understanding and critical judgement about the substance of law, legal process and legal resources, enabling and encouraging the utilization of capacities in practice. (Manley-Casimir, Michael E., Wanda M. Cassidy, and Suzanne de Castell 1986, 90) [emphasis in original]

The ability to make critical judgments about the substance of the law, the legal process, and available legal resources and to effectively utilize the legal system and articulate strategies to improve it. (American Bar Association, Commission on Public Understanding About the Law 1989, 5)

The ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action. (Canadian Bar Association 1992, 23)

Legal literacy is a process of self and social empowerment that moves women not only to activate the rights they do have, but to redefine and reshape the inadequate ones as expressed in law and in practice. (Hasan 1994, 70)

Common to these definitions is an emphasis on the ability to take appropriate action in response to problems involving the law. It is understood such action may sometimes be critical of, and challenging to, the legal system.

Such a view of what legal literacy means is in keeping with the idea of becoming a member of a community. Membership "has its rewards" as the advertisement said, but it also has its demands. To become a member of a language community is to accept many rules and conventions about how to communicate, but it also entails the ability to challenge those constraints in a way that will be understood and perhaps accepted by other members. So it is with law. Becoming legally literate is gaining full membership in a community that shares a legal system. Such membership comes with many constraints but also many opportunities for action and change.

Modern society now recognizes many other forms of literacy besides legal literacy. This reflects the complexity of our world and the many "languages" and identifiable communities that now exist. Let's look next at some other modern literacies.

## 1.3 Other literacies

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In the twentieth century consumers rose in stature and power while the traditional professions came under criticism for being unresponsive and paternalistic. The increasing availability of information in digital formats has also challenged professional monopolies on expert knowledge. Taken together, these trends have resulted in new approaches to professional practices that are more collaborative in nature. Professionals have begun to involve their clients more actively in decision making and problem solving, based on shared information and knowledge. In order to play a more active role in securing their own welfare laypeople have been encouraged to develop deeper understanding of professional fields that were formerly considered the domain of experts only.

Perhaps the most conspicuous example of another type of literacy today is **information literacy** which has grown out of the earlier concept of computer literacy. Once computers became readily available in society there was a movement to educate the widest number of people to understand their functions and uses. As the amount of data available via the Internet increases dramatically it has been recognized that the skills of locating, analyzing and evaluating this information have become crucial for success both in business and private pursuits. Thus most Universities provide their students with opportunities to enhance their information literacy (Athabasca University Library 2009). To the extent that the information available online is legal in nature information literacy shares many of the same goals as legal literacy.

**Health literacy** is another prominent parallel development to legal literacy. It has been defined as “the ability to access, understand, evaluate and communicate information as a way to promote, maintain and improve health” (Rootman and Gordon-El-Bihbety 2008, 1). The Canadian Public Health Association recognizes that low health literacy can jeopardize peoples’ health in the same way that low legal literacy can affect peoples’ legal rights (Canadian Public Health Association 2009).

There are numerous other literacies similar to legal literacy. **Numeracy** is the equivalent in relation to scientific and mathematical understanding. **Financial literacy** is considered necessary to manage money and investments. **Environmental literacy** is a knowledgeable appreciation of the limits of environments to cope with human activity. Media literacy concerns capacities to access, utilize and evaluate communications in various media.

Other literacies share many similarities with legal literacy. They represent ways in which non experts can acquire the knowledge, information and capability to act effectively in various spheres of social life without relying entirely on professional help. Many other literacies share with legal literacy a focus on developing in people a critical appreciation of social forms and practices and the ability to challenge them when it is thought necessary.

In the legal field there are related concepts that do not use the word “literacy” and looking at these is next.

## 1.4 Related concepts

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There are other concepts concerning the law that may help to put legal literacy in perspective. Three of these are: **legal consciousness**; **legal mobilization**; and **legal socialization**.

**Legal consciousness** is a sociolegal term that refers to awareness of law and legal institutions, together with attitudes towards them, amongst members of the public. It helps us to understand the significance people attach to the law in relation to their everyday affairs. Legal consciousness can be seen as connected to popular culture which portrays law, lawyers and judges in the entertainment media (Podlas 2006) and the idea of “nomos”, or the sphere of life that involves norms and expectations of behavior, including morals and laws (Cover 1983).

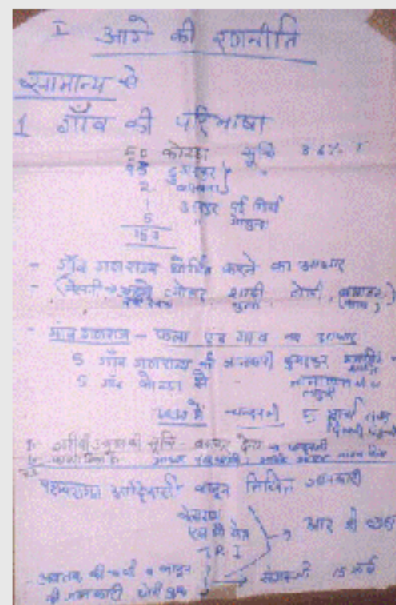
Studies of legal consciousness show how law helps to frame peoples’ perceptions of their lives and to constitute

the relations they have with others. Such interaction with the law can take many forms, including avoiding or accepting it: “people make claims on the law, but not necessarily rights claims; ... the law leads people to accept and acquiesce to existing social and economic arrangements without making them ‘lump’ their grievances; and ... people may reject the formal apparatus of the law even as they create viable substitutes for its power and authority.” (Marshall and Barclay 2003, 625)

The concept of **legal mobilization** is more concerned with how people actively appeal to law and legal institutions to advance personal and group interests. Thus, it is closer to the concept of legal literacy than legal consciousness because mobilization emphasizes the instrumental use of law by those subject to it. Where it differs from legal literacy is that mobilization usually builds upon existing law rather than offering a critique of it as legal literacy promises. Mobilization has been taken to mean the processes by which disputes enter the formal legal system, but more recently has been described as the strategies used by individuals and groups to focus the attention of legal institutions, and the public, on their justified grievances. Scholars have noted how mobilization of law using unchallenged legal systems and processes may not yield the intended results (Albiston 1999).

**Legal socialization** is a concept used to study individuals’ relationships to the legal order surrounding them. It describes how people internalize, identify with, or reject the law and legal institutions. The concept of socialization as applied to law has been criticized as accepting law as it is, however oppressive or unjust, and emphasizing conformity to it. Some scholars however, have given legal socialization a more liberal meaning so as to include peoples’ critical perspectives on the law. They consider that the highest level of legal socialization demonstrates a concern for justice rather than just simple obedience to law.

**In India legal literacy camps are conducted to help people assert their rights under tribal law.**



See:

<http://www.policy-powertools.org/>

Tapp and Levine thus state that legal socialization “works to clarify and elaborate reciprocal role orientations and rights expectations in relation to law, not to institutionalize blind obedience or preach the goodness of specific rules.” (Tapp and Levine 1974, 4). They go on to define as legally impoverished an individual “who lacks the knowledge of rights and resources, the sense of self, and the problem-solving competence sufficient to mobilize the law.” (Tapp and Levine 1974, 8). This description fits well with the concept of legal (il)literacy. Legal socialization envisages interaction between individuals and the legal system that may lead to change on both sides. In this respect it is a concept that is compatible with, and supportive of, legal literacy.

What goals and objectives does the concept of legal literacy suggest? Let’s turn to those now.

## **1.5 Legal literacy goals & objectives**

The concept of legal literacy suggests a number of goals to those who are interested in it. Chief among them are:

- dissemination of information and increase of knowledge about law
- empowerment of individuals to make active use of law
- support for constructive criticism of law



These may be described as the **educational**, **competency** and **critical** goals of legal literacy.

The **educational goal** of legal literacy has been most prominent and has often been linked to wider programs promoting basic literacy. The idea of public legal education, or community legal education has attracted legal professionals and others interested in promoting legal literacy (Cassidy and Pitsula 2005). Education in the law has been coupled with service provision by legal clinics and other community agencies (McDonald 2000). Often these educational efforts have taken the form of community talks or publication of pamphlets.

Law related education is the term sometimes used to describe teaching to promote legal literacy amongst school students. It is often linked to citizenship education (Manley-Casimir, Cassidy, and de Castell. 1989). For young people not in school, “street law” education programs have been created to reach out to youth who are, or may come into conflict with the law (Grimes 2003; Street Law 2009). Education for legal literacy has sometimes been targeted at other groups in society considered to be in special need of it, such as teachers, academic administrators, doctors and nurses.

It has been recognized that information and knowledge are not sufficient to ensure legal literacy when skills and **competencies** to engage with the legal system are lacking. Accordingly, some legal literacy programs try to help members of the public increase their capacity to mobilize law on their own behalf. Many such efforts can be found in India where legal protections for women and marginalized groups go unused due to widespread lack of legal knowledge and competency in asserting rights (Upadhyay 2005).

Encouragement and support for **critical perspectives** on the law and legal institutions is the least developed objective of legal literacy. Probably this has much to do with the involvement of the legal profession in legal literacy programs. Professionals are more likely to support existing institutions in their field than criticize them. Nevertheless, the value of informed critical perspectives on the law has been appreciated. For instance, a connection has been drawn between levels of legal literacy and economic development that acknowledges the value of criticism for the improvement of legal institutions. Thus, the Asian Development Bank has stated that “Dissemination of information regarding legal rights can be the starting point for communities to mobilize on a common platform to achieve legal and policy reforms.” (Asian Development Bank 1999, 2). This is a recognition that peaceful legal progress can occur if people have sufficient knowledge about law and the competency to engage with it.

In the following units we will keep the three objectives of legal literacy in mind. Information will be presented about the law, its systems and processes designed to increase your knowledge of these areas. Strategies and skills to help you interact with the legal system will be suggested. Finally, critical perspectives on each topic will be presented in order to encourage you to think about how the law and its institutions may be improved.

The New Brunswick Family Law Information Centre has produced videos to inform the public about divorce law.



See:

[http://www.familylawnb.ca/english/ask\\_an\\_expert\\_videos#video\\_1](http://www.familylawnb.ca/english/ask_an_expert_videos#video_1)

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\*LawSource is a database available through the Athabasca University Library. Login to the database and use the locator citation to retrieve the material.



# Self study quiz for this Unit

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When you have finished studying this Unit, try the [self study quiz](#). It is not assessed.