

INTRODUCTION AU DROIT

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INTRODUCTION : La notion de droit – le rôle du droit de la vie économique

Le **DROIT OBJECTIF** est un ensemble de règles abstraites d'objectifs de conduite de l'homme en société et ces règles sont sanctionnées. Des règles existent que tout le monde doit respecter et si on ne les suit pas on est sanctionné. Il faut qu'il y ait une autorité pour imposer les règles et les sanctionner.

⇒ Pourquoi doit-on obéir à ses règles et est-ce qu'on doit toujours y obéir ? Pour y répondre on va chercher le fondement de la règle juridique.

Il existe deux écoles de pensées, les **doctrines idéalistes** et les **doctrines réalistes**.

1. Les doctrines idéalistes : le droit naturel

Elles sont fondées sur l'idée suivante : à la base des règles juridiques il existe un ordre supérieur. La règle juridique n'avait valeur que dans la mesure qu'elle est en accord avec cet ordre supérieur.

Si ce n'est pas le cas, il y a un réveillon contre la loi. Le **droit naturel** correspond à un **droit idéal imposé par la nature des choses, par la raison**.

Ex : un enfant à sa naissance ne peut pas se débrouiller seul, donc la raison nous dit que ses parents doivent s'occuper, donc le droit organise la protection des jeunes enfants par leurs parents. En pratique le droit naturel évidemment ne débouche pas forcément sur des lois. N'est pas tjrs à l'origine des lois. Ex : la protection des consommateurs, Montesquieu était un artisan du droit naturel

2. Les doctrines réalistes ou positivistes

- Opposées aux doctrines idéalistes.

Pour ces doctrines le **droit ne doit pas être discuté, il ne doit pas trouver un fondement naturel** Le **droit ne peut pas être susceptible d'être l'objet d'un jugement quelconque**. On doit donc se concentrer à les appliquer. On doit les accepter.

Ex : âge min pour conduire une voiture est 18 ans. On doit accepter cet âge minimum. On ne peut pas modifier la loi. Lorsqu'il y a des grèves les communes doivent accueillir les enfants, donc ils doivent appliquer cette loi. **MARX** faisait partie des positivistes.

Introduction Au Droit

JG Myers



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Table of Contents Introduction Au Droit

1. Understanding the eBook Introduction Au Droit
 - The Rise of Digital Reading Introduction Au Droit
 - Advantages of eBooks Over Traditional Books
2. Identifying Introduction Au Droit
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Introduction Au Droit
 - User-Friendly Interface
4. Exploring eBook Recommendations from Introduction Au Droit
 - Personalized Recommendations
 - Introduction Au Droit User Reviews and Ratings
 - Introduction Au Droit and Bestseller Lists

5. Accessing Introduction Au Droit Free and Paid eBooks
 - Introduction Au Droit Public Domain eBooks
 - Introduction Au Droit eBook Subscription Services
 - Introduction Au Droit Budget-Friendly Options
6. Navigating Introduction Au Droit eBook Formats
 - ePub, PDF, MOBI, and More
 - Introduction Au Droit Compatibility with Devices
 - Introduction Au Droit Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Introduction Au Droit
 - Highlighting and Note-Taking Introduction Au Droit
 - Interactive Elements Introduction Au Droit
8. Staying Engaged with Introduction Au Droit
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Introduction Au Droit
9. Balancing eBooks and Physical Books Introduction Au Droit
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Introduction Au Droit
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Introduction Au Droit
 - Setting Reading Goals Introduction Au Droit
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Introduction Au Droit
 - Fact-Checking eBook Content of Introduction Au Droit
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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