South valley University

Faculty of Law

Introduction To The Study Of Law

Theory Of Law

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Preface:

Each of us should have the bare minimum of legal knowledge relevant to our profession in order to follow the rules established for our daily life. Doctors, for example, should be aware of the legal grounds that may expose them to malpractice liability. Generally speaking, a natural person and a juristic person are recognized as the subject of rights. They are given the legal qualification as a subject of rights called "legal capacity" or "rights capacity". As for a natural person, the acquisition and the loss of legal capacity should be defined. The legal capacity of a natural person may be obtained by birth and lost by death, though it is not easy to define "birth" and "death". The recognition of brain death may be provided by civil law.

In addition, a person's residence needs to be stipulated to define a "missing" person and to deal with the property and the family relations of a missing person who may be declared to be absent and finally presumed to be dead. And the treatment and status of foreigners must be made clear in the general Part. How about the juristic person?
let us know about civil law. How does it function in our society? Why do we need it?

Esraa Adnan

Content

Introduction :

The principal objective of analytic jurisprudence has traditionally been to provide an account of what distinguishes law as a system of norms from other systems of norms, such as ethical norms. Accordingly, analytic jurisprudence is concerned with providing necessary and sufficient conditions for the existence of law that distinguish law from non-law.

While this task is usually interpreted as an attempt to analyze the concepts of law and legal system, there is some confusion as to both the value and character of conceptual analysis in philosophy of law.

Legal Theory, or Jurisprudence, as it is also known, constitutes the principles and body of rules that are enforceable in a court of law.The subject underpins all specific legal areas, and so provides new law students with a solid foundation on the English legal system.

You will delve into the fundamentals of contract, criminal and constitutional and administrative law in your first-year lectures and seminars. You will also be exploring legal methods and the Egyptian legal system.

All of these subjects are paired with learning and understanding legal theory. Together, these will enable you to gain a full picture of how we have reached the collection of legislation and case law that we have in our modern landscape.

Law has become the framework and vocabulary for constructing and debating development policies,1 but law and development, an area of scholarship that explores the relationship between law and economic and social progress, is relatively unknown and underdeveloped as an academic field despite decades of research.

In response to recent calls, particularly the one requiring the theoretical underpinnings, this book presents a general theory of law and development ("the general theory").

The general theory is comprised of two parts: the first part of the general theory sets the disciplinary parameters of law and development by clarifying the constituent concepts of "law" and "development"; the second part explains the causal relationship between law and development through "the regulatory impact mechanisms," i.e., the mechanisms by which law impacts development, with references made to institutional frameworks and socioeconomic conditions.

The clarification of the regulatory impact mechanisms is not only an academic exercise to establish law and development as a coherent and viable academic field, but it also raises important practical implications. International financial institutions and aid agencies have sponsored many law reform projects with development objectives, such as economic growth through the privatization and deregulation of the economy. However, these projects were developed and implemented without a solid understanding of how law impacts development in different institutional, economic, social, and political contexts. As a result, many of the laws and legal practices that were transplanted or adopted through law reform projects did not operate successfully in host countries or deliver their anticipated outcomes. The clarification of these causal mechanisms between law and development in the context of local socioeconomic conditions will assist reformers in improving the effectiveness of law reform projects through better regulatory design and implementation.

These regulatory impact mechanisms are comprised of three categorical elements: "regulatory design," "regulatory compliance," and "quality of

implementation," as well as additional sub-elements as summarized below. These elements are conceptually distinct but interrelated and influence one another.

Why do We Study Legal Theory?

Legal theory aims to provide a backdrop to the legal, moral, philosophical and societal influences impacting the English legal system. By providing this knowledge, the subject matter strives to increase students' critical awareness of the challenges and complexities affecting the legal environment.

Law students will analyze and develop a critical approach to abstract arguments. These studies will take place alongside assessing authorities and attitudes to explore areas of law. During your studies, you'll have to evaluate these laws from their roots to contemporary considerations regarding their position in the modern framework.

What Topics Can You Expect to Study؟

Throughout your law degree, your introduction and ongoing development of legal theory, teaching and thinking will be based on a selection of fundamental topics. You will be presented with questions relating to:

- ***What is law?***
- ***What is the nature of law?***
- ***What is its position and place within society?***
- ***How does law-making take place?***
- ***How the overall Egyptian legal system exists as a series of rules and as an established institution enforced for the benefit of society?***
- ***What are courts available in Egypt?***

You will also analyze and debate fairness, justice and moral ideals in the area of legal theory. If you're starting the first year of your law degree and are completely new to formal legal training, it is a good idea to dedicate extra reading time to legal theory – due to its prominence and applicability to a wide range of legal areas. After studying law theory, you will gain insights into dominant legal, societal and political philosophical concepts and how they interact with law.

Teaching in the form of lectures and law tutorials will center around these theories and associated criticisms. At university, you will also explore how these legal theories impact the English legal system, both in the past and in the present day.

During the study of law theory, students will acquire knowledge on the history, methodologies, criticism and standardized questions surrounding legal theories.

Equipped with this information, students will then be able to create and apply abstract philosophical debates, present philosophical arguments and critically evaluate theories and the assumptions that form their bases.

This book will be divided as following :

- **Chapter one** : **Introduction to Law**
- **Chapter Two** : **Branches of Law**
- **Chapter Three**: **Sources of Law**
- **Chapter Four** : **Scope of application of the law**
- **Chapter Five**: **The Egyptian Judicial system**

Chapter One

Introduction to Law

Students Should Know after Studying This Chapter :

- The definition of law.
- Difference between La w and other similars.
- History of law .
- Categories of Law.
- The important legal Terms indicated in this chapter.

The term "Law' denotes different kinds of rules and Principles. Law is an instrument which regulates human conduct/behavior. Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature. Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges. Therefore, Law is a broader term which includes Acts, Statutes, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory, etc.

1- Definition of law :

Generally the term law is used to mean three things:

First it is used to mean "legal order". It represents the regime of adjusting relations, and ordering conduct by the systematic application of the force of organized political society.

Secondly, law means the whole body of legal Percepts which exists in a politically organized society.

Thirdly, law is used to mean all official control in a politically organized society. This lead to actual administration of Justice as contrasted with the authoritive material for the Guidance of Judicial action. Law in its narrowest or strict sense is the civil law or the law of the land.

Law is a system of rules created and enforced through social or governmental institutions to regulate behavior, **with its precise definition a matter of longstanding debate**. It has been variously described as a science and the art of justice. State-enforced laws can be made by a group legislature or by a single legislator, resulting in statutes; by

the executive through decrees and regulations; or established by judges through precedent, usually in common law jurisdictions.

Private individuals may create legally binding contracts, including arbitration agreements that adopt alternative ways of resolving disputes to standard court litigation. The creation of laws themselves may be influenced by a constitution, written or tacit, and the rights encoded therein. The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people.

There are two kinds of law. One is based on *justice*, the other one is based on *control.* The latter part is in use today. "Might is right" principle is followed. It is retribution instead of restoration which should be followed.

- Justice is a set of universal principles which guide people to analyze what is right and what is wrong. It disregards the culture and society one lives in. *Fiat justitia ruat caelum* is a Latin phrase which means, "Let justice be done, though the sky falls."

- Social control refers to mechanisms which regulate individual and group behaviour. E.A. Ross, the famous sociologist believed that it is not the laws that guide human behaviour but it is the belief systems that guide what individuals do. Social control mechanisms can be adopted as laws and norms which control and define human behaviour.

Law serves many purposes and functions. It helps to maintain peace. Violence should not be allowed in the society and thus, peace is maintained by the orders or we can say the laws of the government. Law also helps to establish standards. It also protects rights of the people. Without laws, people will not even get the basic rights which they deserve.

Also, law can be called as a good career option. From Mahatma Gandhi to Barack Obama, all are associated with the career of law. It acted as a stepping stone to their success. There are various career options in law like litigation, civil services, professors or one can go in the corporate sector.

The Relation Between Law and Morality:

The order in the society is mainly based on morality and law. Both of them conduct the behaviour. We can imagine the relation between law and morality as follows:

A) indicates the area which morality organizes.

B) indicates the area which law organizes.

C) indicates the interfering area which morality and law organize.

A– Morality:

Morality contains all principles which are considered by the society as obligatory principles which everyone has to respect and follow. If one does not respect moral principle, people in the society will condemn his action. There is an area which morality organizes and law does not interfere; like the moral rule which asks us to pay charity to poor people and the moral rule which asks us to respect our teachers. Morality contains all the individual's duties and obligations towards the others; so the scope of morality is wider than law.

B– Law:

On the other hand, law contains the obligatory rules which everyone must follow. If an individual does not follow the law, he will be punished by a sanction imposed by the public authority. There is an area which law

organizes alone; like the legal rule which permits drinking alcohol although the morality condemns that.

C) The interfering area between morality and law:

There is an interfering area in which morality and law conduct the behaviour in the society; this is because most of the legal rules are derived from morality. Thus the crimes which are punished by the Penal Code are condemned by morality. Also the Civil Code considers the contract which is in contradiction with good morality and public order null(1).

Categories of Law

There are various ways of categorising law which initially tend to confuse the non-lawyer and the new student of law. What follows will set out these categorisations in their usual dual form whilst at the same time trying to overcome the confusion inherent in such duality. It is impossible to avoid the confusing repetition of the same terms to mean different things and, indeed, the purpose of this section is to make sure that students are aware of the fact that the same words can have different meanings depending upon the context in which they are used.

- **Common law and civil law**

In this particular juxtaposition, these terms are used to distinguish two distinct legal systems and approaches to law. The use of the term 'common law' in this context refers to all those legal systems which have adopted the historic English legal system. Foremost amongst these is, of course, the United States, but many other Commonwealth and former Commonwealth countries retain a common law system. The term 'civil law' refers to those other jurisdictions which have adopted the European continental system of

law derived essentially from ancient Roman law, but owing much to the Germanic tradition.

The usual distinction to be made between the two systems is that the common law system tends to be case centered and hence judge centered, allowing scope for a discretionary, ad hoc, pragmatic approach to the particular problems that appear before the courts, whereas the civil law system tends to be a codified body of general abstract principles which control the exercise of judicial discretion.

In reality, both these views are extremes, with the former over-emphasising the extent to which the common law judge can impose his discretion and the latter under-estimating the extent to which continental judges have the power to exercise judicial discretion.

It is perhaps worth mentioning at this point that the European Court of Justice (ECJ), established, in theory, on civil law principles, is in practice increasingly recognizing the benefits of establishing a body of case law. It has to be recognized, and indeed the English courts do so, that, although the ECJ is not bound by the operation of the doctrine of stare decisis, it still does not decide individual cases on an ad hoc basis and, therefore, in the light of a perfectly clear decision of the European Court, national courts will be reluctant to refer similar cases to its jurisdiction.

- **Common law and equity**

In this particular juxtaposition, the terms refer to a particular division within the English legal system. The common law has been romantically and inaccurately described as the law of the common people of England. In fact, the common law emerged as the product of a particular struggle for political power. Prior to the Norman Conquest of England in 1066, there was no unitary, national legal system. The emergence of the common law represents the imposition of such a unitary system under the auspices and control of a centralised power in the form of a sovereign king; in that respect, it

represented the assertion and affirmation of that central sovereign power.

Traditionally, much play is made about the circuit of judges travelling round the country establishing the 'King's peace' and, in so doing, selecting the best local customs and making them the basis of the law of England in a piecemeal but totally altruistic procedure. The reality of this process was that the judges were asserting

the authority of the central State and its legal forms and institutions over the disparate and fragmented State and legal forms of the earlier feudal period. Thus, the common law was common to all in application, but certainly was not common from all.

By the end of the 13th century, the central authority had established its precedence at least partly through the establishment of the common law. Originally, courts had been no more than an adjunct of the King's Council, the Curia Regis, but gradually the common law courts began to take on a distinct institutional existence in the form of the Courts of Exchequer, Common Pleas and King's Bench. With this institutional autonomy, however, there developed an institutional sclerosis, typified by a reluctance to deal with matters that were not or could not be processed in the proper form of action. Such a refusal to deal with substantive injustices because they did not fall within the particular parameters of procedural and formal

constraints by necessity led to injustice and the need to remedy the perceived weaknesses in the common law system. The response was the development of equity. Plaintiffs unable to gain access to the three common law courts might directly appeal to the sovereign, and such pleas would be passed for consideration and decision to

the Lord Chancellor, who acted as the king's conscience. As the common law courts became more formalistic and more inaccessible, pleas to the Chancellor correspondingly increased and eventually this resulted in the emergence of a specific court constituted to deliver

'equitable' or 'fair' decisions in cases which the common law courts declined to deal with.

As had happened with the common law, the decisions of the Courts of Equity established principles which were used to decide later cases, so it should not be thought that the use of equity meant that judges had discretion to decide cases on the basis of their personal idea of what was just in each case.

The division between the common law courts and the Courts of Equity continued until they were eventually combined by the Judicature Acts (JdA) 1873–75. Prior to this legislation, it was essential for a party to raise an action in the appropriate court – for example, the courts of law would not implement equitable principles; the Acts, however, provided that every court had the power and the duty to decide cases in line with common law

and equity, with the latter being paramount in the final analysis. Some would say that, as equity was never anything other than a gloss on common law, it is perhaps appropriate, if not ironic, that now both systems have been effectively subsumed under the one term: common law.

Common law remedies are available as of right. Remedies in equity are discretionary, in other words they are awarded at the will of the court and depend on the behaviour and situation of the party claiming such remedies. This means that, in effect, the court does not have to award an equitable remedy where it considers

that the conduct of the party seeking such an award has

been such that the party does not deserve it.

Common law and statute law:

This particular conjunction follows on from the immediately

preceding section, in that the common law here refers to the substantive law and procedural rules that have been created by the judiciary through the decisions in the cases they have heard. Statute

law, on the other hand, refers to law that has been created by Parliament in the form of legislation. Although there has been a significant increase in statute law in the 20th and 21st centuries, the courts still have an important role to play in creating and operating law generally and in determining the operation of legislation in particular.

Private law and public law:

There are two different ways of understanding the division between private and public law. At one level, the division relates specifically to actions of the State and its functionaries vis à vis the individual citizen, and the legal manner in which, and form of law through which, such relationships are regulated: public law. In the 19th century, it was at least possible to claim, as AV Dicey did, that there was no such thing as public law in this distinct administrative sense and that the powers of the State with regard to individuals were governed by the ordinary law of the land, operating through the normal courts. Whether such a claim was accurate or not when it was made – and it is unlikely – there certainly can be no doubt now that public law constitutes a distinct and growing area of law in its own right.

The growth of public law in this sense has mirrored the growth and increased activity of the contemporary State, and has seen its role as seeking to regulate such activity.

There is, however, a second aspect to the division between private and public law. One corollary of the divide is that matters located within the private sphere are seen as purely a matter for individuals themselves to regulate, without the interference of the State, whose role is limited to the provision of the forum for deciding contentious issues and mechanisms for the enforcement of such decisions.

Matters within the public sphere, however, are seen as issues relating to the interest of the State and general public, and as such are to be

protected and prosecuted by the State. It can be seen, therefore, that the category to which any dispute is allocated is of crucial importance to how it is dealt with. Contract may be thought of as the classic example of private law, but the extent to which this purely private legal area has been subjected to the regulation of public law, in such areas as consumer protection, should not be under-estimated. Equally, the most obvious example of public law in this context would be criminal law.

Feminists have argued, however, that the allocation of domestic matters to the sphere of private law has led to a denial of a general interest in the treatment and protection of women. By defining domestic matters as private, the State and its functionaries have denied women access to its power to protect themselves from abuse. In doing so, it is suggested that, in fact, such categorisation has reflected and maintained the social domination of men
over women.

Civil law and criminal law:

Civil law is a form of private law and involves the relationships
between individual citizens. It is the legal mechanism through which individuals can assert claims against others and have those rights adjudicated and enforced. The purpose of civil law is to settle disputes between individuals and to provide remedies; it is not concerned with punishment as such. The role of the State in relation to civil law is to establish the general framework of legal rules and to provide the legal institutions to operate those rights, but the activation of the civil law is strictly a matter for the individuals concerned. Contract, tort and property law are generally aspects of civil law.

Criminal law, on the other hand, is an aspect of public law and relates to conduct which the State considers with disapproval and which it seeks to control and/or eradicate. Criminal law involves the enforcement of particular forms of behaviour, and the State, as the

representative of society, acts positively to ensure compliance. Thus, criminal cases are brought by the State in the name of the Crown and cases are reported in the form of Regina v … (Regina is simply Latin for 'queen' and case references are usually abbreviated to R v …), whereas civil cases are referred to by the names of the parties involved in the dispute, for example, Smith v Jones. In criminal law, a prosecutor prosecutes a defendant (or 'the accused'). In civil law, a claimant sues (or 'brings a claim against') a defendant.

In distinguishing between criminal and civil actions, it has to be remembered that the same event may give rise to both. For example, where the driver of a car injures someone through their reckless driving, they will be liable to be prosecuted under the Road Traffic legislation, but at the same time, they will also be responsible to the injured party in the civil law relating to the tort of negligence.

A crucial distinction between criminal and civil law is the level of proof required in the different types of cases. In the criminal case, the prosecution is required to prove that the defendant is guilty beyond reasonable doubt, whereas in a civil case, the degree of proof is much lower and has only to be on the balance of probabilities.

This difference in the level of proof raises the possibility of someone being able to succeed in a civil case, although there may not be sufficient evidence for a criminal prosecution. Indeed, this strategy has been used successfully in a number of cases against the police where the Crown Prosecution Service (CPS) has considered there to be insufficient evidence to support a criminal conviction for assault. A successful civil action may even put pressure on the CPS to reconsider its previous decision not to prosecute.

Law and Right:

In addition to the concept of law, there is a concept that derives from it, the concept of right .

If the law addresses the binding rule on the behavior of individuals in society, then it works - in the face of the intertwining and conflicting interests of individuals in the relations between them - to give priority to some of these interests over others, and to place the owners of the dominant interests in an excellent position in relation to other individuals, so that it establishes rights for them It authorizes them to monopolize certain powers that everyone is obliged to respect. He may authorize an individual to monopolize a thing by giving him his right of ownership over it, thus placing him in an excellent position over everyone else by respecting his right to this domination.

The law may authorize an individual with the authority to require an action or omission on the part of another person who is obliged to submit to this requirement, thus establishing a right before this person, placing him in an excellent position, both in relation to the one who is obligated to act or refraining from his ability to require the fulfillment of this obligation.

Law , morality and justice

Definitions of law often raise the question of the extent to which law incorporates morality. John Austin's utilitarian answer was that law is "commands, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience". Natural lawyers on the other side, such as Jean-Jacques Rousseau, argue that law reflects essentially moral and unchangeable laws of nature. The concept of "natural law" emerged in ancient Greek philosophy concurrently and in connection with the notion of justice, and re-entered the mainstream of Western culture through the writings of Thomas Aquinas, notably his Treatise on Law.

When having completed the first two parts of his book Splendeurs et misères des courtisanes, which he intended to be the end of the entire work, Honoré de Balzac visited the Conciergerie. Thereafter, he decided to add a third part, finally named Où mènent les mauvais chemins (The Ends of Evil Ways), entirely dedicated to describing the conditions in prison. In this third part, he states: "The law is good, it is necessary, its execution is poor, and the manners judge the laws based on the manner in which they are executed".

Hugo Grotius, the founder of a purely rationalistic system of natural law, argued that law arises from both a social impulse—as Aristotle had indicated—and reason. Immanuel Kant believed a moral imperative requires laws "be chosen as though they should hold as universal laws of nature". Jeremy Bentham and his student Austin, following David Hume, believed that this conflated the "is" and what "ought to be" problem. Bentham and Austin argued for law's positivism; that real law is entirely separate from "morality". Kant was also criticized by Friedrich Nietzsche, who rejected the principle of equality, and believed that law emanates from the will to power, and cannot be labeled as "moral" or "immoral".

In 1934, the Austrian philosopher Hans Kelsen continued the positivist tradition in his book the Pure Theory of Law. Kelsen believed that although law is separate from morality, it is endowed with "normativity", meaning we ought to obey it. While laws are positive "is" statements (e.g. the fine for reversing on a highway is €500); law tells us what we "should" do. Thus, each legal system can be hypothesised to have a basic norm (Grundnorm) instructing us to obey.

Kelsen's major opponent, Carl Schmitt, rejected both positivism and the idea of the rule of law because he did not accept the primacy of abstract normative principles over concrete political positions and decisions. Therefore, Schmitt advocated a jurisprudence of the exception (state of emergency), which denied that legal norms could encompass all of the political experience.

Later in the 20th century, H. L. A. Hart attacked Austin for his simplifications and Kelsen for his fictions in The Concept of Law. Hart argued law is a system of rules, divided into primary (rules of conduct) and secondary ones (rules addressed to officials to administer primary rules). Secondary rules are further divided into rules of adjudication (to resolve legal disputes), rules of change (allowing laws to be varied) and the rule of recognition (allowing laws to be identified as valid).

Two of Hart's students continued the debate: In his book Law's Empire, Ronald Dworkin attacked Hart and the positivists for their refusal to treat law as a moral issue. Dworkin argues that law is an "interpretive concept",

that requires judges to find the best fitting and most just solution to a legal dispute, given their constitutional traditions. Joseph Raz, on the other hand, defended the positivist outlook and criticised Hart's "soft social thesis" approach in The Authority of Law. Raz argues that law is authority, identifiable purely through social sources and without reference to moral reasoning. In his view, any categorisation of rules beyond their role as authoritative instruments in mediation are best left to sociology, rather than jurisprudence.

History of law:

The history of law links closely to the development of civilization. Ancient Egyptian law, dating as far back as 3000 BC, was based on the concept of Ma'at and characterised by tradition, rhetorical speech, social equality and impartiality. By the 22nd century BC, the ancient Sumerian ruler Ur-Nammu had formulated the first law code, which consisted of casuistic statements ("if … then …"). Around 1760 BC, King Hammurabi further developed Babylonian law, by codifying and inscribing it in stone. Hammurabi placed several copies of his law code throughout the kingdom of Babylon as stelae, for the entire public to see; this became known as the Codex Hammurabi. The most intact copy of these stelae was discovered in the 19th century by British Assyriologists, and has since been fully transliterated and translated into various languages, including English, Italian, German, and French.

The Old Testament dates back to 1280 BC and takes the form of moral imperatives as recommendations for a good society. The small Greek city-state, ancient Athens, from about the 8th century BC was the first society to be based on broad inclusion of its citizenry, excluding women and the slave class. However, Athens had no legal science or single word for "law", relying instead on the three-way distinction between divine law, human decree and custom. Yet Ancient Greek law contained major constitutional innovations in the development of democracy.

Roman law was heavily influenced by Greek philosophy, but its detailed rules were developed by professional jurists and were highly sophisticated. Over the centuries between the rise and decline of the Roman Empire, law

was adapted to cope with the changing social situations and underwent major codification under Theodosius II and Justinian I.

Although codes were replaced by custom and case law during the Early Middle Ages, Roman law was rediscovered around the 11th century when medieval legal scholars began to research Roman codes and adapt their concepts to the canon law, giving birth to the jus commune. Latin legal maxims (called brocards) were compiled for guidance. In medieval England, royal courts developed a body of precedent which later became the common law. A Europe-wide Law Merchant was formed so that merchants could trade with common standards of practice rather than with the many splintered facets of local laws. The Law Merchant, a precursor to modern commercial law, emphasised the freedom to contract and alienability of property.

As nationalism grew in the 18th and 19th centuries, the Law Merchant was incorporated into countries' local law under new civil codes. The Napoleonic and German Codes became the most influential. In contrast to English common law, which consists of enormous tomes of case law, codes in small books are easy to export and easy for judges to apply. However, today there are signs that civil and common law are converging. EU law is codified in treaties, but develops through de facto precedent laid down by the European Court of Justice.

Ancient India and China represent distinct traditions of law, and have historically had independent schools of legal theory and practice. The Arthashastra, probably compiled around 100 AD (although it contains older material), and the Manusmriti (c. 100–300 AD) were foundational treatises in India, and comprise texts considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

During the Muslim conquests in the Indian subcontinent, sharia was established by the Muslim sultanates and empires, most notably Mughal Empire's Fatawa-e-Alamgiri, compiled by emperor Aurangzeb and various scholars of Islam.In India, the Hindu legal tradition, along with Islamic law, were both supplanted by common law when India became part of the

British Empire. Malaysia, Brunei, Singapore and Hong Kong also adopted the common law system. The eastern Asia legal tradition reflects a unique blend of secular and religious influences. Japan was the first country to begin modernising its legal system along western lines, by importing parts of the French, but mostly the German Civil Code.

This partly reflected Germany's status as a rising power in the late 19th century. Similarly, traditional Chinese law gave way to westernization towards the final years of the Qing Dynasty in the form of six private law codes based mainly on the Japanese model of German law.

Today Taiwanese law retains the closest affinity to the codifications from that period, because of the split between Chiang Kai-shek's nationalists, who fled there, and Mao Zedong's communists who won control of the mainland in 1949. The current legal infrastructure in the People's Republic of China was heavily influenced by Soviet Socialist law, which essentially inflates administrative law at the expense of private law rights. Due to rapid industrialization, today China is undergoing a process of reform, at least in terms of economic, if not social and political, rights. A new contract code in 1999 represented a move away from administrative domination. Furthermore, after negotiations lasting fifteen years, in 2001 China joined the World Trade Organization.

Legal systems:

In general, legal systems can be split between civil law and common law systems. Modern scholars argue that the significance of this distinction has progressively declined; the numerous legal transplants, typical of modern law, result in the sharing by modern legal systems of many features traditionally considered typical of either common law or civil law. The term "civil law", referring to the civilian legal system originating in continental Europe, should not be confused with "civil law" in the sense of the common law topics distinct from criminal law and public law.

The third type of legal system—accepted by some countries without separation of church and state—is religious law, based on scriptures. The specific system that a country is ruled by is often determined by its history, connections with other countries, or its adherence to international

standards. The sources that jurisdictions adopt as authoritatively binding are the defining features of any legal system. Yet classification is a matter of form rather than substance since similar rules often prevail.

Civil law:

Civil law is the legal system used in most countries around the world today. In civil law the sources recognized as authoritative are, primarily, legislation—especially codifications in constitutions or statutes passed by government—and custom. Codifications date back millennia, with one early example being the Babylonian Codex Hammurabi. Modern civil law systems essentially derive from legal codes issued by Byzantine Emperor Justinian I in the 6th century, which were rediscovered by 11th century Italy. Roman law in the days of the Roman Republic and Empire was heavily procedural, and lacked a professional legal class. Instead a lay magistrate, iudex, was chosen to adjudicate. Decisions were not published in any systematic way, so any case law that developed was disguised and almost unrecognized.

Each case was to be decided afresh from the laws of the State, which mirrors the (theoretical) unimportance of judges' decisions for future cases in civil law systems today. From 529 to 534 AD the Byzantine Emperor Justinian I codified and consolidated Roman law up until that point, so that what remained was one-twentieth of the mass of legal texts from before. This became known as the Corpus Juris Civilis. As one legal historian wrote, "Justinian consciously looked back to the golden age of Roman law and aimed to restore it to the peak it had reached three centuries before."

The Justinian Code remained in force in the East until the fall of the Byzantine Empire. Western Europe, meanwhile, relied on a mix of the Theodosian Code and Germanic customary law until the Justinian Code was rediscovered in the 11th century, and scholars at the University of Bologna used it to interpret their own laws.

Civil law codifications based closely on Roman law, alongside some influences from religious laws such as canon law, continued to spread throughout Europe until the Enlightenment; then, in the 19th century, both France, with the Code Civil, and Germany, with the Bürgerliches

Gesetzbuch, modernised their legal codes. Both these codes influenced heavily not only the law systems of the countries in continental Europe (e.g. Greece), but also the Japanese and Korean legal traditions. Today, countries that have civil law systems range from Russia] and Turkey to most of Central and Latin America.

Anarchist law:

Anarchism has been practiced in society in much of the world. Mass anarchist communities, ranging from Syria to the United States, exist and vary from hundreds to millions. Anarchism encompasses a broad range of social political philosophies with different tendencies and implementation.

Anarchist law primarily deals with how anarchism is implemented upon a society, the framework based on decentralized organizations and mutual aid, with representation through a form of direct democracy. Laws being based upon their need. A large portion of anarchist ideologies such as anarcho-syndicalism and anarcho-communism primarily focuses on decentralized worker unions, cooperatives and syndicates as the main instrument of society.

Socialist law:

Socialist law is the legal systems in communist states such as the former Soviet Union and the People's Republic of China. Academic opinion is divided on whether it is a separate system from civil law, given major deviations based on Marxist–Leninist ideology, such as subordinating the judiciary to the executive ruling party.

Common law and equity:

In common law legal systems, decisions by courts are explicitly acknowledged as "law" on equal footing with statutes adopted through the legislative process and with regulations issued by the executive branch. The "doctrine of precedent", or stare decisis (Latin for "to stand by decisions") means that decisions by higher courts bind lower courts, and future decisions of the same court, to assure that similar cases reach similar results. In contrast, in "civil law" systems, legislative statutes are typically more

detailed, and judicial decisions are shorter and less detailed, because the judge or barrister is only writing to decide the single case, rather than to set out reasoning that will guide future courts.

Common law originated from England and has been inherited by almost every country once tied to the British Empire (except Malta, Scotland, the U.S. state of Louisiana, and the Canadian province of Quebec). In medieval England, the Norman conquest the law varied-shire-to-shire, based on disparate tribal customs. The concept of a "common law" developed during the reign of Henry II during the late 12th century, when Henry appointed judges that had authority to create an institutionalized and unified system of law "common" to the country.

The next major step in the evolution of the common law came when King John was forced by his barons to sign a document limiting his authority to pass laws. This "great charter" or Magna Carta of 1215 also required that the King's entourage of judges hold their courts and judgments at "a certain place" rather than dispensing autocratic justice in unpredictable places about the country. A concentrated and elite group of judges acquired a dominant role in law-making under this system, and compared to its European counterparts the English judiciary became highly centralized. In 1297, for instance, while the highest court in France had fifty-one judges, the English Court of Common Pleas had five. This powerful and tight-knit judiciary gave rise to a systematized process of developing common law.

However, the system became overly systematized—overly rigid and inflexible. As a result, as time went on, increasing numbers of citizens petitioned the King to override the common law, and on the King's behalf the Lord Chancellor gave judgment to do what was equitable in a case. From the time of Sir Thomas More, the first lawyer to be appointed as

Lord Chancellor, a systematic body of equity grew up alongside the rigid common law, and developed its own Court of Chancery. At first, equity was often criticized as erratic, that it varied according to the length of the Chancellor's foot. Over time, courts of equity developed solid principles, especially under Lord Eldon. In the 19th century in England, and in 1937 in the U.S., the two systems were merged.

In developing the common law, academic writings have always played an important part, both to collect overarching principles from dispersed case law, and to argue for change. William Blackstone, from around 1760, was the first scholar to collect, describe, and teach the common law. But merely in describing, scholars who sought explanations and underlying structures slowly changed the way the law actually worked.

Religious law:

Religious law is explicitly based on religious precepts. Examples include the Jewish Halakha and Islamic Sharia—both of which translate as the "path to follow"—while Christian canon law also survives in some church communities. Often the implication of religion for law is unalterability, because the word of God cannot be amended or legislated against by judges or governments. However, a thorough and detailed legal system generally requires human elaboration. For instance, the Quran has some law, and it acts as a source of further law through interpretation, Qiyas (reasoning by analogy), Ijma (consensus) and precedent. This is mainly contained in a body of law and jurisprudence known as Sharia and Fiqh respectively. Another example is the Torah or Old Testament, in the Pentateuch or Five Books of Moses. This contains the basic code of Jewish law, which some Israeli communities choose to use. The Halakha is a code of Jewish law that summarizes some of the Talmud's interpretations. Nevertheless, Israeli law

allows litigants to use religious laws only if they choose. Canon law is only in use by members of the Catholic Church, the Eastern Orthodox Church and the Anglican Communion.

Canon Law:

Canon law (from Greek kanon, a 'straight measuring rod, ruler') is a set of ordinances and regulations made by ecclesiastical authority (Church leadership), for the government of a Christian organisation or church and its members. It is the internal ecclesiastical law governing the Catholic Church (both the Latin Church and the Eastern Catholic Churches), the Eastern Orthodox and Oriental Orthodox churches, and the individual national churches within the Anglican Communion. The way that such church law is legislated, interpreted and at times adjudicated varies widely among these three bodies of churches. In all three traditions, a canon was originally a rule adopted by a church council; these canons formed the foundation of canon law.

The Catholic Church has the oldest continuously functioning legal system in the western world, predating the evolution of modern European civil law and common law systems. The 1983 Code of Canon Law governs the Latin Church sui juris. The Eastern Catholic Churches, which developed different disciplines and practices, are governed by the Code of Canons of the Eastern Churches.[11The canon law of the Catholic Church influenced the common law during the medieval period through its preservation of Roman law doctrine such as the presumption of innocence.

Sharia law:

Until the 18th century, Sharia law was practiced throughout the Muslim world in a non-codified form, with the Ottoman Empire's Mecelle code in

the 19th century being a first attempt at codifying elements of Sharia law. Since the mid-1940s, efforts have been made, in country after country, to bring Sharia law more into line with modern conditions and conceptions. In modern times, the legal systems of many Muslim countries draw upon both civil and common law traditions as well as Islamic law and custom. The constitutions of certain Muslim states, such as Egypt and Afghanistan, recognise Islam as the religion of the state, obliging legislature to adhere to Sharia. Saudi Arabia recognises Quran as its constitution, and is governed on the basis of Islamic law. Iran has also witnessed a reiteration of Islamic law into its legal system after 1979. During the last few decades, one of the fundamental features of the movement of Islamic resurgence has been the call to restore the Sharia, which has generated a vast amount of literature and affected world politics.

The legal system in Egypt:

The legal system in Egypt is essentially influenced by Islamic law(shari'aa) and civil law. Therefore, the courts are not bound by principle of the case law. This means that previous judgments of higher courts are not binding upon the lower courts.

However, I think time has come for Egypt to join the trend prevailed around the world and apply the modern trend of convergence between the legal systems of the civil and common law traditions, I think this trend will offering a unique opportunity for mixed legal Jurisdictions to gain the strengths and avoid the weaknesses of the two legal systems, especially many Arabic countries like the UAE begins to follow this trend.

Branches of Law:

There are many ways, in which the law may be classified, but the most important and widespread way concerning classifications of law as follows:

- **Public and private law**:

As I have mentioned this classification of law is the widespread and traditional one prevailed in the roman law and continue till now.

Public law is "a set of legal Rule relationships between the state and its citizens". While private law is" a set of legal Rules which regulates private Relationships between individuals, or between them and the state if the later or one of its public authority party in this relation as it is ordinary person without any sovereignty.

Basis of distinction between public and private law:

From the previous definitions we can lay down the basis by which the distinction between public and private law is made. The common element in the two definitions is the state, if it maintained its sovereignty in its relation then the public law will govern this relation , but if it governing renounced its sovereignty while dealing with others ,then the private law will govern this deal. Branches of public law; Since the public law is concerned with the Relationship between the state and its citizens this comprises several specialist areas .

Glossary of Legal Terminology.

- legal rules — قواعد قانونية
- category — طائفة
- citizens — مواطنين
- Authority — سلطة
- State — دولة
- Govern — يحكم
- Civil sanction — جزاء مدني
- Compulsory — اجبار ي/ إلزامي
- Violate — يخالف
- Imperative rules/ peremptory norms — قواعد امرة
- Complementary rules — قواعد مكملة
- Abide — يلتزم
- Absolute — مطلق
- Violate — يخالف/ينتهك
- Restriction — تقييد
- Private law — القانون الخاص
- Public law — القانون العام
- Classification — تقسيم
- Contract — عقد
- contradiction — تناقض / تعارض
- good morality — الاخلاقيات الحميدة
- public order — النظام العام
- null/void — باطل
- crime — جريمة
- privileges — امتيازات

- provided that — شريطة / بشرط
- representative — ممثل / مندوب
- vis-à-vis — في المقابل/ مقارنة ب
- interests — مصالح
- Regulate — ينظم/ يشرع
- Constitution — دستور
- Supreme Authorities — السلطات العليا
- Legislative — تشريعي
- Executive — تنفيذي
- Judicial — قضائي
- Administrative capacity — الكفاءة الإدارية
- Case law (precedents law) — السوابق القضائية
- Child custody — حضانة طفل
- Chief Judge, Presiding Judge — رئيس محكمة
- Civil law — القانون المدني
- Commercial law — القانون التجاري
- Criminal law — القانون الجنائي
- Penal law — قانون العقوبات
- Administrative law — القانون الإداري
- International private law — القانون الدولي الخاص
- International Public law — القانون الدولي العام
- Interpretation of contracts — تفسير العقود
- Compensation — تعويض
- Conciliation — صلح
- Conclusive oath, decisive oath — اليمين الحاسة
- Contract of sale — عقد بيع
- Provision — نص قانوني
- Conviction/ condemnation — إدانة

- Judicial decisions أحكام قضائية
- Rulings أحكام محاكم
- Financial Law القانون المالي
- Constitutional Law القانون الدستوري
- Case/ action/lawsuit قضية

Important explanation

- **Adjudication** (deciding of a case through judicial or administrative hearing)- (n) الترافع أمام المحكمة والفصل فيها
- **admissible** (acceptable)- adj. مقبول لدي المحكمة
- **admission** (disclosure of adverse facts)- n. اعتراف و اقرار بالذنب
- **alimony** (support payment to divorced spouse)- n. نفقة المطلقة
- **allegation** (statement of fact the party intends to prove)- *n* ادعاء من احد الخصوم

Chapter Two

Branches Of Law

Students should know after studying this chapter :

- Branches of Public Law
- Branches of Private Law
- Types of Sanctions
- The important topics in all branches of law .
- Characteristics of the legal rule and its sanction:

First Category: Public law branches :

1– Constitutional law:

The term "constitution "may be used in several different contexts in the context of the state, a constitution can be defined as" the organic law creating a system of government and protecting the individuals rights and freedoms. But the term constitutional Taw as a branch of the public law has, many definitions as follow.

a) That branch of public law which treats of the organization and frame of government, the origin and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subjects.
b) That department of the science of law which treats of constitutions, their establishment construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law.

Since constitutions establish the original and fundamental principles according to which a country is governed .They are considered the superior law of the of land. Also they usually adopted after a major political o changes, such as a revolution or gaining independence.

2– Administrative law:

Administrative law means the set of rules that govern the formation of the administrative authority and its activity in the performance of its function of taking charge of public utilities in order to achieve the public interest, and to enable the administration to perform its mission that the administration enjoys powers and privileges that individuals do not enjoy.

Under these rights and privileges, the administrative authority usually exercises its activity through the administrative orders and decisions it issues.

In order to guarantee the rights of individuals, and to ensure the proper functioning of the executive authority without deviation or deviation from the law, it was necessary to find an effective means to control the work of the administration, with which it can be canceled or its implementation or compensation for damages arising from it. All this in the event of illegality or deviation of the administration in its work.

3– Criminal Law:

Criminal law, also known as penal law, pertains to crimes and punishment. It thus regulates the definition of and penalties for offences found to have a sufficiently deleterious social impact but, in itself, makes no moral judgment on an offender nor imposes restrictions on society that physically prevent people from committing a crime in the first place. Investigating, apprehending, charging, and trying suspected offenders is regulated by the law of criminal procedure. The paradigm case of a crime lies in the proof, beyond reasonable doubt, that a person is guilty of two things. First, the accused must commit an act which is deemed by society to be criminal, or actus reus (guilty act). Second, the accused must have the requisite malicious intent to do a criminal act, or mens rea (guilty mind). However, for so called "strict liability" crimes, an actus reus is enough. Criminal systems of the civil law tradition distinguish between intention in the broad sense (dolus directus and dolus eventualis), and negligence. Negligence does not carry criminal responsibility unless a particular crime provides for its punishment.

Examples of crimes include murder, assault, fraud and theft. In exceptional circumstances defences can apply to specific acts, such as killing in self defence, or pleading insanity. Another example is in the 19th-century English case of R v Dudley and Stephens, which tested a defence of "necessity". The Mignonette, sailing from Southampton to Sydney, sank. Three crew members and Richard Parker, a 17-year-old cabin boy, were stranded on a raft. They were starving and the cabin boy was close to death. Driven to extreme hunger, the crew killed and ate the cabin boy. The crew survived and were rescued, but put on trial for murder. They argued it was necessary to kill the cabin boy to preserve their own lives. Lord Coleridge, expressing immense disapproval, ruled, "to preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it." The men were sentenced to hang, but public opinion was overwhelmingly supportive of the crew's right to preserve their own lives. In the end, the Crown commuted their sentences to six months in jail.

Criminal law offences are viewed as offences against not just individual victims, but the community as well. The state, usually with the help of police, takes the lead in prosecution, which is why in common law countries cases are cited as "The People v ..." or "R (for Rex or Regina) v ...". Also, lay juries are often used to determine the guilt of defendants on points of fact: juries cannot change legal rules. Some developed countries still condone capital punishment for criminal activity, but the normal punishment for a crime will be imprisonment, fines, state supervision (such as probation), or community service. Modern criminal law has been affected considerably by the social sciences, especially with respect to sentencing, legal research, legislation, and rehabilitation. On the international field, 111 countries are members of the International Criminal Court, which was established to try people for crimes against humanity.

The principle of legality of crimes and penalties :

It is a legal principle which states that one cannot be punished for doing something that is not prohibited by law. This principle is accepted and codified in modern democratic states as a basic requirement of the rule of law. It has been described as "one of the most 'widely held value-judgments in the entire history of human thought'".

Article 95 of the amended Egyptian Constitution issued in 2014 states that punishment is personal, and there is no crime or punishment except on the basis of a law.

4- Public International law:

International law can refer to three things: public international law, private international law or conflict of laws and the law of supranational organizations.

Public international law concerns relationships between sovereign nations. The sources for public international law development are custom, practice and treaties between sovereign nations, such as the Geneva Conventions. Public international law can be formed by international organizations, such as the United Nations (which was established after the failure of the League of Nations to prevent World War II), the International Labour Organization, the World Trade Organization, or the International Monetary Fund. Public international law has a special status as law because there is no international police force, and courts (e.g. the International Court of Justice as the primary UN judicial organ) lack the capacity to penalize disobedience. The prevailing manner of enforcing international law is still essentially "self-help"; that is the reaction by states to alleged breaches of international obligations by other states. However, a few

bodies, such as the WTO, have effective systems of binding arbitration and dispute resolution backed up by trade sanctions.

Conflict of laws, or private international law in civil law countries, concerns which jurisdiction a legal dispute between private parties should be heard in and which jurisdiction's law should be applied. Today, businesses are increasingly capable of shifting capital and labour supply chains across borders, as well as trading with overseas businesses, making the question of which country has jurisdiction even more pressing. Increasing numbers of businesses opt for commercial arbitration under the New York Convention 1958.

European Union law is the first and so far the only example of a supranational law, i.e. an internationally accepted legal system, other than the United Nations and the World Trade Organization. Given the trend of increasing global economic integration, many regional agreements—especially the African Union—seek to follow a similar model. In the EU, sovereign nations have gathered their authority in a system of courts and the European Parliament. These institutions are allowed the ability to enforce legal norms both against or for member states and citizens in a manner which is not possible through public international law. As the European Court of Justice noted in its 1963 Van Gend en Loos decision, European Union law constitutes "a new legal order of international law" for the mutual social and economic benefit of the member states.

Second Category: **Private law branches** :

1– Civil Law:

The first and most important branch of private law is civil law. In fact, I used the term civil law as a synonym for private law. Civil law includes

legal rules that regulate normal life relations between individuals and each other.

In the past, the relationships of all individuals - whatever their kind, whether commercial or otherwise - were subject to civil law, but as a result of developments in society, the need to organize new branches derived from civil law emerged, each of which specializes in dealing with a certain type of relationship. Commercial, for example, appeared to regulate relations between merchants, labor law appeared to regulate the relationship of the employer with workers, and agricultural law appeared to regulate agricultural ownership and the relationship between owners of agricultural land and its tenants, and so on.

Legal jurists unanimously agree that civil law is the general sharia of private law, meaning that it serves as the general reference for regulating all relationships that arise between members of society in cases where the branches derived from civil law remain silent about regulating one of the issues within its scope.

The Civil Code regulates two types of relationships: those related to the family, which are called "personal status" issues, and those related to money, which are called "in-kind" issues (In Rem status) .

Below we briefly present these two types:

A. **Personal Status**:

Personal status issues deal with everything related to the family, whether issues of marriage, divorce, "khul", alimony, inheritance or wills.

Although personal status issues fall within the topics of civil law in most countries of the world, the situation is different in Egypt and in all Arab countries, where the influence of jurists in the Arab world left its rule to the rules of Islamic Sharia and various religious laws on the grounds that there is a close link between Religion and these issues.

B. In Rem status:

They deal with everything related to the activity of individuals in relation to money, as the civil law is concerned with financial rights in general, and these rights are divided into two types:

- **Personal rights**:

A personal right, or obligation as it is often called, means a bond between two persons under which one of them, the debtor, is obligated to do or refrain from doing an act for the benefit of the other party, which is the creditor. For example, the contractor's obligation to build a house, the doctor's commitment to perform surgery for the patient, or the seller's commitment not to open a similar store that engages in the same activity in order to avoid competition with the store buyer.

The Civil Code has specified the sources of the obligation, stating that they are in the contract, unilateral will, illegal act, or enrichment without cause.

- **Rights in rem**:

The right in kind is a direct authority over something, and it is divided into two parts:

The first section deals with the original rights in rem–:

Such as the right of ownership, the right of usufruct, the right of use, the right of housing, and other rights that are dealt with in detail in the books of the theory of right.

The second section deals with ancillary rights in rem:

Such as the formal mortgage, the possession mortgage and the right of concession, and these rights have been called subordination because they do not appear independent, but rather come subordinate to another personal right that guarantees its fulfillment.

2- Commercial Law:

Commercial law is a branch of private law, which is a set of legal rules that regulate commercial transactions that arise between merchants.

In light of the previous definition, the Commercial Law deals with many topics, the most important of which can be highlighted as follows:

- ☑ The Commercial Law defines for us what is meant by commercial business, and when a business is considered commercial so that the provisions of the Commercial Law apply to it.
- ☑ It determines who the merchant is, and what his obligations are, such as keeping commercial books and entering the commercial registry.
- ☑ The commercial law regulates everything related to commercial companies, showing their different types, whether they are people companies, money companies, or mixed companies. It also shows how these companies are formed, and how they practice their activities, in addition to the methods of their termination.
- ☑ The commercial law deals with the provisions relating to commercial papers, which are the bill of exchange, the check and

the promissory note. It shows the conditions that must be met in order for it to meet its legal form, as well as how it is endorsed and the consequences of that.

- ☑ The commercial law is subject to the rules of brokerage and agency on commission. It also regulates the provisions for declaring the merchant bankrupt, the procedures for appointing the bankruptcy trustee (the syndicate), the provisions of industrial property and what is related to trademarks, industrial designs and models, and patents.
- ☑ The Commercial Law explains the operations of banks such as current accounts, letters of guarantee and documentary credits, as well as the work of exchange companies, how shares and bonds are traded within the stock exchange, and other issues related to technology transfer and everything related to commercial activity in general.

3– Maritime Law

Maritime law means the set of rules regulating trade in the seas, and the special relations that arise in connection with maritime navigation. Maritime law includes many topics that revolve mainly around the sea ship:

- ☑ The Maritime Law regulates the contracts received on the ship, such as selling, renting or mortgaging, and it also shows how the ship is equipped and the ways of using it.
- ☑ Maritime law regulates the relations that arise between the ship owner or charterer and the master and those working on it.
- ☑ Maritime law regulates the maritime labor contract, the maritime transport contract, the carrier's liability, the insurance of ships and cargo on board, and other matters related to maritime trade.

Although the issues regulated by maritime law can be included within the topics of commercial law, a number of factors led to the separation of maritime law from commercial law and considering it an independent branch of private law. Independent regulation of the provisions of maritime law is the huge monetary value of naval ships, and their constant exposure to physical dangers, as well as being far from the supervision of their owner in most cases.

4– Air law:

Air law is the set of rules governing air navigation. It is clear from the definition that the rules of air law all revolve around the instrument of air navigation, which is the aircraft, and everything related to it.

The Air Law regulates the rights of the aircraft in terms of its nationality, ownership and registration procedures, as well as the relationship of the aircraft owner with its pilot, crew and passengers.

This law also regulates the contract of air transport, specifying the responsibility of the carrier, whether the transport is focused on people or goods, and determines the amount of compensation that may be paid in cases of damage or delay of goods or in cases of air disasters.

5– The Agricultural Law:

The agricultural law means the set of rules that regulate the ownership of agricultural lands, and the relationships arising between the owners, tenants and workers of these lands.

The agricultural law addresses those interested in agriculture, showing the maximum individual and family ownership of agricultural land. It also deals with issues related to the exploitation of agricultural land such as rent and

mortgage, in addition to regulating the relationship between the agricultural worker and the employer. The agricultural law is also concerned with organizing agricultural cooperative societies and agricultural credit.

The agricultural law was among the topics dealt with in the civil law, but the legislator's awareness of the importance of transactions on agricultural lands helped the emergence of this branch independent of the provisions of the civil law.

In this regard, we may refer to the most prominent Egyptian laws concerned with agricultural ownership, which is the Agricultural Reform Law No. 178 of 1952, which was followed by many amended laws that changed many of the principles and provisions of this law.

6– Labor law :

Labor law is a set of rules regulating the relationship between workers and employers within the framework of dependent work. The worker offers the employer his effort in return for what he receives from the wage, and in this he is linked with the employer by a bond of dependency according to which he is subject to his control and guidance.

The labor law arose as a result of the industrial revolution that spread all over the world, and the consequent use of modern machinery in the emergence of a working class that was subjected to social injustice for a period of time as a result of the supremacy of the individual sect and the freedom of contract it determines.

However, with the progress of industry and the increase in labor force that led to it, and its constant calls for the state to intervene to regulate labor relations in a manner that preserves workers' rights and protects them from

abuse, it led to the issuance of various legislations in this regard aimed at protecting the working class. It is independent from the branches of law, which is labor law.

Labor Law Topics

- ☑ The Labor Law is concerned with protecting the rights of workers. It regulates the individual labor contract and the collective labor contract. It also sets out the specific rules for working hours and the minimum wage. It also determines the weekly rest and paid holidays, in addition to the rules for the employment of women and juveniles.
- ☑ The Labor Law is concerned with regulating the role of trade unions in protecting the interests of workers and compensating them in cases of disability or illness, as well as regulating the rules for resolving labor disputes through conciliation and arbitration.

We do not fail to point out that in order to ensure the effectiveness of the protection established by labor laws for the benefit of a group of workers, the legislator considers that the rules established in the interest of workers are peremptory rules that it is not permissible to agree on anything in violation of them.

For example, if the law sets a maximum limit for working hours, the employer may not agree with the worker to increase these hours while continuing to receive his usual wage without an increase, such an agreement violates a legal norm, and therefore it is void.

7– The Civil and Commercial Procedures Law:

The Civil and Commercial Procedures Law can be defined as a set of rules regulating the judicial authority and specifying the procedures to be

followed before the courts in relation to disputes related to private law matters.

The Civil and Commercial Procedures Law is not concerned with clarifying the rights and duties of individuals, as is followed in various branches of private law, but rather with the procedures that individuals must follow in order to raise their grievances to the competent authority, and to obtain their usurped rights as a result of the aggression of others.

Civil and Commercial Procedures Law Topics:

This law has three main themes:

- **The first topic: the judicial system:**

Civil and Commercial Procedures Law sets out the formation of courts at their various levels, the conditions for appointing judges, how they are transferred or dismissed, and the guarantees assigned to them. The Pleadings Law also regulates the role played by judicial officers, including lawyers, clerks, and bailiffs.

- **The second topic: – Jurisdiction:**

Where the jurisdiction of the judiciary is distributed over the different types and degrees of courts, and the consequent determination of the rules of specific jurisdiction and value jurisdiction, as well as the rules of local jurisdiction.

- **The third topic:– Litigation procedures:**

Where the Procedure Code sets out the procedures to be followed before courts that apply the rules of private law. It shows the method of filing the lawsuit, the data that must be available in the newspaper in which it is filed, the formal and objective defenses that may be made, as well as the manner

of ruling in the dispute, the methods of appealing the judgments and the dates set for these appeals, even if the judgment becomes final, the pleadings law is subject to the procedures to be followed to implement Judgments and problems that can be made on implementation.

7– Private international law:

Private international law can be defined as a set of rules that define the law applicable to the relationship in which a foreign element is involved, as well as the extent of the jurisdiction of the courts to consider the dispute arising from this type of relationship.

In order to clarify this definition, we say that the origin in the relationships that arise between members of society is that we are patriotic in all its aspects and do not involve any foreign element, such as if an Egyptian marries an Egyptian woman and concludes the marriage contract in Egypt, or an Egyptian sells to another Egyptian real estate or movable located in the Egyptian land or That an Egyptian inherits his Egyptian relative, whose money is in Egypt.

In all of these cases, there is no problem with the knowledge of the courts competent to consider the disputes that may arise from these relations, or the law applicable to them, as the jurisdiction of the Egyptian courts falls, and the Egyptian law applies to them.

But the problem arises if the relationship involves one or more foreign elements, if one or both of its parties are foreign, or if the money in question is located in a foreign country. At that time, the question arises about the knowledge of the court that has jurisdiction over the dispute, and the law applicable to it.

For example, if an Egyptian marries a Frenchwoman and concludes the marriage contract in Switzerland, then a dispute erupts between the spouses regarding the marriage contract. In this case, the following question arises: Does the Egyptian court (as the husband's nationality court) have jurisdiction, the French court (as the wife's nationality court), or the court Swiss (as the court where the marriage contract is concluded). And if the consideration of this dispute falls within the jurisdiction of the Egyptian court, which laws do we apply: Is it Egyptian law, French law, or Swiss law?

The rules of private international law are the ones that answer such questions. The competent court is determined to look into the disputes in which the foreign element is involved, and jurisprudence is customary to call these rules "rules of conflict of jurisdiction." The rules of private international law also define the law applicable to the disputed relationship, and jurisprudence is known to call these rules "rules of conflict of laws or rules of attribution".

Private international law is not limited to determining the competent court and the applicable law, but also issues of nationality and the status of aliens. With regard to nationality, private international law determines the conditions for acquiring Egyptian nationality, and how it is revoked or withdrawn, as well as cases of dual nationality and its impact on a person's rights and duties.

Characteristics of the legal rule and its sanction:

We have already stated that the law is a set of binding rules that govern individuals' behavior in society. This definition makes it clear that the legal norm is the unit of law in a group, and It is characterized by:

- ***It is societal norm***
- ***It is an abstract general norm***
- ***It is a binding norm***

Firstly : **The legal rule is societal norm**:

Because the rule of law is a social one, the need for the rules of law arises only with the existence of the group, where the need to regulate the relations of the members of that group arises. If such a situation can be perceived outside or before the group, there is no need for a system and thus no need for law. Humans are natural civilians, a social being driven into community life by its own instincts, in order to defend human survival and meet its various needs.

As a consequence, one cannot live apart from one's own race, which is why social life has emerged in man's history.

Individual relationships must be regulated and subject to restrictions in order to strike a balance between the individual (selfish) aspect of human nature and the non-social aspect of this nature, which is the role of the law.

The law, then, is always necessary for the group, regardless of the sect that follows in establishing the law . In every group, for the possibility of peaceful coexistence, there must be rules that clarify what is permissible and what is not permissible, and define what must be done and what must not be done.

There is no group without a law, and hence the law was an essential element in the life of the group. Law is in essence a social phenomenon, a natural or spontaneous phenomenon that arises from an inherent necessity of the group.

The legal base being a social base results in the following results:

- **It does not, as a rule, concern itself with anything but the external behavior of man, without his intentions**. The law has nothing to do with pure intentions - whatever they are - pure or abstract intention, which remains latent in the soul of its owner without direct or indirect expression of it, is not considered by the law and has no effect.
- **The fact that the law does not care about intentions, does not mean that the law does not depend on the psychological motives of individuals, as it evaluates people's actions according to their will and intentions**.There is no doubt that when judging the legal value of an individual's actions, the internal aspect of these actions is of special importance. That is, the law takes into account the will and intentions that led to these acts.

In the criminal aspect, the effect of an act that was accompanied by premeditation differs from an act that was not preceded by premeditation, or in the distinction between intentional and unintentional error. In the civil aspect, we find that in the field of possession and the acquisition of rights by squatting, there are implications on whether the squatting was done in good faith or in bad faith. A person's suicide is originally outside the scope of the law. However, he may fall under the law if the suicide is insured for his life. As well as not punished for what a person does to his body of damage. However, the same act may be subject to the rule of law if it was done with the intention of evading military service, because the damages here extend to the group and are not limited to the person in particular.

Secondly : The legal rule is an abstract general norm:

One of the characteristics of the legal rule is that it is general and abstract,, it addresses individuals in the general form, whether it is an order or a prohibition, with their qualities and not with their selves, and to surround the facts with their conditions and descriptions, not with themselves either. The descriptions required by the persons intended by this letter, and the conditions that must be fulfilled in the facts to which this letter applies. This means that every person who fulfills these descriptions, and every incident in which these conditions are met, the rule applies in the form of a generalization.

The generality also means that the discourse is general in terms of place, meaning that its application is not limited to a specific part of the state without the rest of the parts, but rather it is general and includes all the territory of the state.

This means that generality requires placing the discourse in an abstract form, because the rule is intended to apply to a set of similar facts or to all persons who exist in the same circumstances.

Because the reality in life is that the circumstances of people and facts vary among themselves and are shaped in different ways, to the extent that it is rare for two people or two facts to unite in all their circumstances and in all their aspects. If the provisions are to be diversified to the extent that the circumstances are diverse and different, a special provision must be drawn up for each case separately.

Because the characteristics of the law are stability and permanence, meaning that it is not limited to the case, but rather deals with the future. Therefore, it is not lured by a specific person or a specific event, but rather the character of the person or the type of event, which includes an unlimited number. For example, the Military Service Law sets a legal rule

because the speech is general and abstract, directed to everyone who possesses, immediately or at the reception, certain characteristics related to gender, age, and physical ability, and who are present in the territory of the state.

Thirdly: **The legal rule is binding norm**:

The law must be equipped with the force that imposes its respect and must be obeyed. That is because the law was created to prevent the occurrence of error, so it must have the means to ensure that. A law that people cannot be compelled to respect by force is not a law except in terms of appearances only.

For it is not the law's business to provide advice and guidance, if its rules agree with their whims or interests, they follow it, and if they do not find their satisfaction, they turn away from it and disregard its rulings. Rather, its rules take the form of the command that must be carried out or the prohibition that must be completed - and that the penalty cannot be limited to mere indignation, contempt, or contempt.

Because this means the spread of chaos, the prevalence of claim, control, the rule of the law of the jungle, and the elimination of law at a time when its authority must be confirmed. The law that makes people follow its rules and does not oblige them to follow them, at the same time, he himself has denied the reason for his existence. Therefore, the legal rule - which aims to regulate living in the community - must be issued in a binding form so that the community system is upright and the rule of justice is established in it. For this reason, it is imperative that there be a competent public authority in the group entrusted with ensuring respect for the law, by monopolizing the right to inflict punishment with the material force majeure that is subject to it that individuals cannot resist.

If the origin is that the competent public authority who is entrusted with the execution of the penalty in respect of the law, and that the individual is not allowed to impose the penalty for his own benefit, except that there are cases in which the individual may undertake the application of the penalty himself as an exception.

As in the case of legitimate defense. Where a person may defend himself or his money by force against any attack on himself or money if the conditions and limits of legitimate defense are met without going beyond. Likewise, every person who is a creditor or debtor has the right to refrain from implementing his obligation as long as the other party does not offer to fulfill his obligation, as long as there is interdependence between the two obligations.

For example, if you repaired the car at a mechanic's workshop and the two obligors fixed the fault, but you refused to pay the repair fee, the worker has the right to seize the car and not deliver it to you until you pay him the repair fee. If you bought something, and the seller did not deliver it to you, you could refrain from paying the price, which is called non-performance payment.

Types of sanctions :

Sanction is the effect that, according to the law, results in a violation of the rule.In this regard, it is represented in all the legal means and measures taken by the state - represented by its various authorities - to ensure the enforcement and effectiveness of the legal rule, whether by preventing the violation from occurring in the first place, or by addressing the situation to which the violation led, or by deterring He broke the law and reformed it.

Types of sanctions are:

1– Criminal penalty:

It is the penalty imposed on anyone who violates the rules of the Penal Code, and it is a material penalty inflicted on the person, his freedom, or his financial liability. The example of the first is death, the example of the second is imprisonment and imprisonment, and the example of the third is a fine and confiscation.

Crimes are divided into felonies, misdemeanors and fines, and their penalties are graded according to the severity of the act. Crimes punishable by the following penalties:

Felonies are sentenced by death, life imprisonment, reclusion perpetua (imprisonment rigorous).

Misdemeanors are sentenced by confinement.

Contraventions are crimes punishable by a fine of more than one hundred pounds.

The reason is that these penalties are considered the most severe, because these crimes represent an assault on the right of the whole society to security and safety. The rules of criminal law therefore protect the public interest.

Given the severity of this criminal penalty, it is decided that it is not possible to apply a penalty or crime that is not stipulated in the Penal Code, which is the principle known as the principle of "no crime and no punishment without a text".

These penalties are called the principal penalties, but besides them there are consequential penalties. These subordination penalties are:

- **First**: Deprivation of the rights and privileges stipulated in Article 25.
- **Second**: Removal from princely positions.
- **Third**: Putting the convict under police surveillance.
- **Fourth**: confiscation.

2- Civil penalty:

It is the one that inflicts on whoever violates a rule that protects a private interest, or the penalty that is imposed in the event of a violation of the rules is a special right. It is every other effect - other than the criminal punishment - that the law arranges for the violation of the legal rule. This civil penalty may combine with the criminal penalty, and it may be independent of it, and this is the principle. The criminal and civil penalty may meet in the same picture.

When compensation is ordered in addition to the criminal penalty, whoever intentionally kills a person with premeditation or premeditation shall be punished with death, and he may be obligated in addition to paying the heirs of the murdered a sum of money as compensation.

Types of civil penalty :

1- Compulsory execution:

The debtor is supposed to implement the obligation voluntarily and voluntarily, and if the debtor does not perform the implementation by his own choice, the creditor, whenever he is a creditor of a natural civil obligation, can compel him to perform. This is the forced or coercive implementation.

Compulsory execution is characterized by three characteristics: it is general and civil, and it falls on the debtor's money, not his body. Coercive

enforcement is general, meaning that the one who owns the coercion is the general authority. It is not for the creditor to take his right into his own hands, but the public authorities are the ones who can compel the debtor to pay.

2- Execution in kind:

This is represented in obligating the debtor to carry out what he has committed himself. Whoever is obligated to supply a quantity of grain to others and fails to fulfill his obligation, the judge can obligate him to supply this agreed quantity. It is obligated to deliver a certain eye and not deliver it. It is obligatory to hand over the property as obligating the landlord to hand over the leased property to the tenant.

3- Compensation :

It is also called execution for a consideration, and it is intended to oblige the person responsible to pay an amount of money to the injured party equal to the value of the damage he inflicted on him. As previously said, the principle is the specific implementation, that is, the principle is that the debtor is obligated to carry out his obligation in kind.

The creditor may not first demand from the debtor other than the specific implementation, and if the debtor offers the specific implementation, the creditor may not demand the execution in return (i.e., the execution by way of compensation).

Compensation may be judicial, estimated by the judge and judged by it, and it may be legal as stipulated by the legislator himself, as in the entitlement guarantee case Article 443 Civil, specifying its elements on the basis of which it is calculated. The compensation may be an agreement, which is called the penalty clause, where the two parties agree upon and

estimate the amount of compensation due in advance. In principle, the amount of compensation should be proportional to the damage suffered by the other party.

4– Penalty fine :

It is an indirect means intended to induce the debtor and compel him to do so. If you contract with an artist to sing in a nightclub every night, but he refuses, here it is not reasonable to force the singer to sing by force, but we can say to him: If you do not sing, you are obligated to pay such an amount every night as compensation.

This method, which is called a penalty fine, often succeeds in a crackdown on singing. This penalty fine stipulates that the specific implementation of the obligation must still be possible, and the specific implementation of the obligation must not be possible or appropriate unless performed by the debtor, that is, the debtor's intervention must be personal in order to implement the obligation.

5– Violation removal:

The civil penalty may take the form of erasing the effect of the violation, that is, removing every effect that resulted from the violation of the law, if the removal is within the scope of the possibility. Which entails restoring the situation to what it was before the occurrence of this violation. Blocking open overlooks at a distance less than the legal permissible distance, or demolishing buildings erected outside the planning line.

6– The nullity:

Nullity means that the act issued in violation of the text of the law shall be considered as if it had not occurred, and the situation shall be restored to

the way it was. It is a penalty for the non-availability of the pillars of the contract from the place and reason, or for the contract's violation of public order and morals.

If the elements of the disposition were not fulfilled, as if the corner of the shop was left behind in the contract, or a contract was concluded in violation of public order, a person would buy a house or rent it with the intention of managing it or exploiting it in prostitution, or not following a certain formality stipulated by law, as if the property was given illegally Official, so the disposal is void because Article 488 requires that the gift in this case be made with an official paper.

The same applies to the invalidity of the actions of the undistinguished child, and this invalidity necessitates that the act be considered as if it had not occurred and the situation must be restored to what it was. This nullity is not subject to the permission, and every interested person can request a ruling for it, and the judge may rule on it on his own, and this nullity is called absolute nullity.

However, there is another type of nullity, which is relative nullity, in which the contract is voidable and cannot be judged unless the stakeholder requests this nullity and no one else can request it.

If the stakeholder requests it, the judge shall rule it based on this request, as the judge cannot rule on it on his own, and if he does not request nullity, the contract shall be valid .

This relative nullity is decided as a penalty for the lack of capacity of one of the contracting parties, or due to the presence of a defect of will, such as error, fraud, or coercion, or by a special provision in the law, such as the invalidity of selling someone else's property.

7- Rescission:

It is a penalty that results from a contracting party's breach of his contractual obligations, and it is a penalty in response to the disposition or a contract that has completed its pillars and conditions, so it is valid, but during the implementation of the contract, one of the parties breaches the implementation of the obligations placed upon him, so the other party has the right to request the termination of the contract as a penalty for non-implementation and rescission may be judicial, that is, the judiciary must rule it.

It may be consensual and the contract is rescinded without the need for it to be requested by the judiciary, but the other party must be notified, and the contract may be automatically rescinded by mere breach without the need for judgment or excuses.

Rescission may be legal as stipulated by the legislator itself. Rescission, as a general rule, has a retroactive effect, according to which the contracting parties must be returned to the state they were in before the contract. Each party is obligated to return to the other what he obtained from him under the contract, and there is an exception to this rule.

3- Administrative penalty :

In addition to the criminal penalty and the civil penalty, there is another type of penalty, which is the administrative penalty, which is a penalty that is inflicted when the provisions of the administrative law are violated, as if the worker (such as government employees) was absent from work or failed to perform his job duties. These penalties vary in many forms. They may be blame, warning, deprivation of part of the salary, promotion, bonus, or postponement, or denial of reward.

Distinguishing imperative norms from complementary norms

Imperative norms (jus cogens):

They are the ones that individuals may not agree on what contradicts them. So, describing it as commanding does not mean that it commands or forbids, as all legal rules command or forbid and do not advise or recommend, but rather that its ruling cannot be avoided or evaded.

If the individuals tried to agree on the violation, their agreement was void and the ruling that I wanted to exclude was arranged.The will of individuals here does not count, because the area regulated by these rules is of such importance for the stability of the system in society that it cannot tolerate any other organization that comes from their side.

An example of jus cogens: laws that impose taxes and military service and laws that prohibit gambling and betting, as the text of Article 739 of the Civil Code: "Any agreement relating to gambling or betting is void - and the rules that set a maximum rate of the agreed interest and which stipulate that it is not permissible to charge interest on the suspended interest."

Complementary norms:

Complementary rules mean those that individuals may agree on in violation of its provisions. As its presence facilitates the legal life of individuals through the easiest solutions. As the facts in the work indicated that individuals do not deal with organization all the minutes and details of their relationships, but rather they are limited to organizing the important ones.

This is due to several reasons, including the lack of experience that would enable them to enumerate and organize all the details, including the lack of time or lack of effort for this inventory, and finally, the lack of realization that a particular part later leads to disagreement, so they do not cut it by agreement in advance.

Example of complementary rules:

The agreement of the seller and the buyer on the sale and the price, whereby the seller and the buyer are free to determine the place of delivery for the thing sold and the freedom to determine the place of payment of the price. Article 456 of the Civil Code states that:

1- " The price is due for payment at the place where the sold item was delivered, unless there is an agreement or custom to the contrary".
2- "If the price was not due at the time of delivery of the thing sold, it must be paid in the place where the buyer is located at the time of the price due."

The criterion for distinguishing between imperative and complementary norms

In view of the fundamental difference between imperative and complementary rules, it was necessary to search for a criterion to distinguish between these two types of rules.

a. Formal or verbal standard:

This criterion depends on the basis of referring to the words and expressions contained in the text of the legal rule to find out whether they are peremptory or imperative. An example of imperative norm is what the

Egyptian legislator stipulated in Article (131) civil that "dealing with the estate of a living person is void even if it is with his consent".

Likewise, Article (232) Civil, which states that "it is not permissible to charge interest on the accrued interest, and it is not permissible in any case for the total interest received by the creditor to be more than the capital."

But if the legislator uses words or expressions that lead to permissibility and non-prohibition or carry the meaning of choice, such as "may, may, be entitled, unless agreed otherwise, unless there is an agreement or custom to the contrary" or the like, then the rule is complementary or interpreted.

An example of this is what the Egyptian legislator stipulated in Article (462) civil, which states that "the expenses of the sales contract, stamp and registration fees, and other expenses shall be borne by the buyer unless there is an agreement or custom that stipulates otherwise".

As well as the text of Article (103) civil, which states that "the payment of the deposit at the time of concluding the contract indicates that each of the contracting parties has the right to withdraw from it, unless the agreement stipulates otherwise."

B. Objective or moral criterion:

Sometimes the words or phrases contained in the text of the legal rule may not help in determining whether the rule is imperative or complementary, meaning that resorting to the formal criterion is not helpful in determining the type of legal rule.

Here it is necessary to search for another criterion to know the type of the rule, and this is what the jurisprudence sought, as it adopted the idea of the objective criterion when it was not possible to use the formal criterion.

This criterion is based on the consideration of the subject regulated by the legal rule. If this topic is related to the basic interests upon which the society is based, the rule is imperative. But if this topic is not related to the basic interests of society, the rule is complementary, meaning that the subject of the rule regulates a special interest between individuals. It does not prejudice the entity of the group or its basic interests.

An example of this is what Article (44) civil states that "the age of majority is twenty-one full Gregorian years." The phrase and wording of the article do not indicate the type of rule contained in it. The rule contained in it crosses an imperative rule.

Work has been done to name everything related to the basic interests of society or to the entity of the state as "public order and morals." Accordingly, if the legal rule is related to public order and morals, then it is an imperative norm, and if it is not, then it is a complementary rule.

Glossary of Legal Terminology.

- Prosecutor — وكيل الادعاء
- Attorney General / the Prosecutor General — النائب العام
- Lawyer / Attorney — المحامي
- Non bis in idem — عدم جواز معاقبة الشخص علي ذات الجرم مرتين
- Nullum crimen sine lege — لا جريمة إلا بنص القانون
- Nulla poena sine lege — لا عقوبة إلا بنص القانون
- ratione temporis — الاختصاص الزماني
- Ratione Materiae — الاختصاص الموضوعي
- Ratione Loci — الاختصاص المكاني
- Ratione Personae — الاختصاص الشخصي
- Habeas Corpus — حق المثول أمام القضاء
- Aut Dedere Aut Judicare — واجب التسليم والمحاكمة
- Criminal behavior — السلوك الاجرامي
- Criminal responsibility — المسؤلية الجنائية
- Illegal act — فعل غير قانوني
- Punishment / penalty — عقاب
- Voluntary criminal act — فعل إجرامي إرادي
- Awareness — الادراك
- Will — الارادة
- Material element , *Actus Reus* — الركن المادي
- Mental element, *Mens Rea* — الركن المعنوي
- Felony/ major crime — جناية
- Murder — قتل
- Capital punishment — عقوبة الاعدام
- Misdemeanor — جنحة
- Imprisonment — السجن
- Fine — غرامة

- Contravention مخالفة
- Accused متهم
- Warrant for arrest امر القبض
- Search and seizure التفتيش والمصادرة
- Prosecution النيابة
- International dispute نزاع دولي
- Territorial dispute نزاع إقليمي
- Diplomatic solutions حلول دبلوماسية
- Negotiations مفاوضات
- Good offices المساعي الحميدة
- Mediation الوساطة
- Adjudicative procedures الاجراءات القضائية
- Convention – Treaty اتفاقية
- International community المجتمع الدولي
- International Humanitarian Law القانون الدولي الانساني
- Arab League جامعة الدول العربية
- De Facto بحكم الوقع
- De Jure بحكم القانون
- Nullity بطلان
- Companies Law قانون الشركات
- Commercial Register السجل التجاري
- Commercial Papers الاوراق التجارية
- Anti-Commercial Fraud Law قانون مكافحة الغش التجاري
- Commercial Agency الوكالة التجارية
- Law of Settlement Against Bankruptcy نظام التسوية الواقية من الافلاس
- Labour law قانون العمل
- Employee موظف
- Debt دين
- Debtor مدين

- Creditor دائن
- Endorsement تظهير
- Enjoy a usufruct ارتفاق
- Heritage تراث
- Appeal استئناف
- Seizer استيلاء
- Detention الاعتقال/ الحجز
- Agricultural reform اصلاح زراعي
- Declaration اعلان
- Order of performance امر الاداء
- Real estate execution التنفيذ علي عقار
- Legal person الشخص الاعتباري
- Natural person الشخص الطبيعي

Chapter Three

Sources of law

Students should know after studying this chapter :

- Main sources of law
- Secondary sources of law
- Procedures of enacting legislations
- Enforcing legislations

The first article of the Egyptian civil code identified these sources, stipulating in the first article that "legislative texts shall apply to all issues addressed by these texts in their wording or in their content. If there is no legislative text that can be applied, the judge shall rule according to custom. There is, according to the principles of Islamic Sharia, and if it does not exist, then according to the principles of natural law and the rules of justice."

We may derive from the aforementioned text a set of observations, their statement as follows:

First: the gradation in strength:

The official sources of law in Egypt were arranged - in terms of their hierarchy of power - in a binding arrangement for judges, which is the legislation, followed by custom, then the principles of Islamic law, and finally the principles of natural law and the rules of justice.

This means that the judge, when deciding on a particular dispute, must resort to the source mentioned first, and if he does not find anything in it to resolve the dispute, he resorts to the next source, then the next, and so on.

The memorandum of the preliminary draft expressed the arrangement of the sources of law in Article 1 of the Civil Code, saying:

" The project in this article gathers what is known in the terminology of jurisprudence as sources of law... The gathering of sources in this way is not intended to merely enumerate them, but rather intends in particular to indicate their hierarchy in terms of priority in application... Therefore, it creates the judge to seek the ruling that is applied to the dispute from texts Legislation first.

It should be noted that official sources are not the same in all societies, as they differ from one society to another depending on the social, economic, political and historical conditions specific to each society. We can illustrate this by comparing the sources of law in both the Latin system (as is the case in France, Belgium, Spain and Egypt) and the Anglo-Saxon system (as is the case in England and the United States of America). At a time when the judiciary and custom occupy a leading place in the Anglo-Saxon system, and the legislation has only a complementary role, we find that the legislation occupies a leading position in the laws of the countries belonging to the Latin system.

Even more than that, we will find that the sources of law differed in the same society over time as a result of certain factors. For example, custom occupied the center stage in society and remained so until it left its position in favor of legislation after the spread of the legalization movement worldwide.

Second: Religion and personal status issues

On the aforementioned text, jurisprudence notes that it neglected to refer to religion as one of the official sources for personal status issues in Egypt. However, it is settled that religion is an official source governing personal status issues in cases where there is no legislative text. On this basis, jurisprudence concludes that the enumeration contained in Article 1 of the Civil Code of the sources of law is limited to issues of real status only, while personal status issues are based on religion as long as there is no legislative text regulating them.

Third: Jurisprudence as a source of legislation

It is noted that both jurisprudence and the judiciary are not mentioned in the text on the sources of law, and therefore they do not constitute an official source in Egyptian law - unlike in ancient systems such as Roman law, and in some contemporary systems such as English law - although they play in the interpretation of law, in Egypt And other systems, an undeniable role, which justifies the need to write articles about them as interpretive sources of the law.

Main Sources of law:

The First Source: Legislation:

Definition: Legislation is intended to enact legal rules and bring them out in writing, in specific words, through the authority that the constitution grants the jurisdiction to do so. In this sense, it is said, for example, that the House of Representatives is the authority that undertakes the process of legislation. The term "legislation" also has a meaning other than the above, as it is called the same legal base enacted by the competent authority, and in this sense it is said, for example, tax legislation, customs legislation and labor legislation.

It is learned from the foregoing that the term "legislation" refers to the process of putting the law in written form, as well as to the legal rules themselves that are established under this process, as it is the source and the result at the same time.

If the legislation occupies at the present time the center stage among the sources of law in most modern countries, but this was not the case in the ancient societies or the late societies that live in the modern era. Custom was and still is in these societies the first, if not the only, source of law.

❖ Legislation's merits and demerits:

In fact, what led legislation to occupy such a prominent position as an organizer of most social relations is its many advantages that made it prefer custom, which was relegated to the second place, and its role became of little importance in establishing legal rules when compared to the important role that legislation plays in ruling Social ties of all kinds.

It is noticeable that the primacy of the legislation to the official sources of the legal base was not proven arbitrarily, but rather because of the advantages that the legislation has over other sources, such as custom.

Merits of legislation

The most important advantages of the legislation can be presented as follows:

1- Legislation is characterized by the fact that it is issued as a result of the activity of a rational and thoughtful force, and accordingly it passes through specialized committees before its issuance. These committees examine the validity of the legislation to be promulgated, and the extent to which it responds to popular demands. They also coordinate between its provisions and the provisions of previous legislation, and then issues the legislation. In harmony with social conditions and responsive to the needs of society.

2- Legislation is characterized by its rapid creation, amendment and repeal. Through legislation, it is possible to enact the legal rules required by the circumstances of the situation. If the urgency calls for the speedy issuance of a specific legislation, we can issue it and make it effective in a short period of time, unlike the case in custom that requires a long time to emerge. Likewise, when the legislation becomes inappropriate to the

conditions of society, it is possible to intervene by amending or repealing the existing legal rules, all with great speed and ease.

3- Legislation is also distinguished by being clear and obvious, as it is contained in an official written document that leaves no room for any doubt about proving the existence of the legal rule or the date of its inception.

4- In contrast to custom, which is often regional and applies only to a part of the state's land, legislation is characterized by the generality of its rules. It is issued to apply to all parts of the state, and thus it is an important factor in achieving national unity and consolidating solidarity among the people.

Legislation's Demerits:

However, despite the many advantages that legislation provides, on the other hand, it has not escaped from the disadvantages that can be summarized as follows:

1. The rigidity of the drafting is the most prominent defect of the legislation, as its rules are set in specific terms that do not change automatically with the change of the needs of society. The circumstances of the situation may change, however, the texts of the legislation do not change, and thus the legislation becomes static and does not keep pace with the developments that occur in society.
2. Legislation is also defective in that it is always incomplete. No matter how capable and accurate the legislator is, he cannot deal with legal regulation all the problems facing society, and this is a natural matter, especially since we know that legislation is man-made, and what is man-made must lack perfection.

Legislation's features:

Legislation is the establishment of the legal rules in written form by the competent authority in the state, whereby this authority sets binding rules for regulating relations in society in accordance with the procedures established for that, and legislation in this sense is considered a source of law.

It is clear from the previous definition that legislation is characterized by several characteristics, namely that it sets a legal rule and is issued by a competent public authority in a written form.

1. **Legislation lays down a legal basis**:

The availability of the description of the legislation must have an objective element and another formal element. Legislation, as an official source of the legal base, contains an objective element that is the content of the discourse addressed to all. The objective element means the existence of a legal base that has the characteristics previously stated, and this is related to the content of the legislation and this is what is called legislation in the objective or material sense. The formal element means the issuance of the legal rule in accordance with the rules for enacting legislation established in the Constitution.

2– Legislation is issued in written form:

The legislative rule is issued in the form of an official written document. The written form of the legal rule achieves the necessary identification and stability for the independence of transactions and removes from it any ambiguity or ambiguity that may relate to its existence, its meaning or the date of its establishment.

3–Legislation is issued by a competent authority:

The legislative base is not formed automatically within the community, as is the case with custom. Rather, there must be a conscious will that takes over its status and obliges it. This will is represented in the legislative authority, where the constitution grants it as a public authority with sovereignty with jurisdiction to draft legislation.

The emergence of the principle of separation of powers led to the jurisdiction of the legislature to set the legal rule that organizes society. These rules are an expression of the will of the people, because the council that assumes their status is elected by the people. Legislation may be passed directly by the people through a popular referendum. It may be issued by the executive authority in the cases granted by the constitution this right.

This authority is responsible for issuing bylaws and subsidiary legislation, and the description of the legislation is approved objectively if it includes general and abstract rules of conduct issued within the jurisdiction of the executive authority. Therefore, it is considered a source of law. But regulations and subsidiary legislation differ from ordinary legislation in terms of form because the latter is issued by the legislative authority.

The importance of the legislation:

Legislation is one of the most important sources of law in the modern era. The vast majority of legal rules derive from it their presence in contemporary legal systems. Legislation did not occupy this position in the past, as custom occupied the first place among the sources of law. The reason for the increasing importance of legislation lies in the consolidation of the state's authority, the complexity of its activities, and the growth of social trends that require state intervention in many areas to regulate them through legislation. Add to that the development and complexity of social

ties in a way that requires the rapid issuance of many legislations that govern them.

Sorts of legislations :

The legislative rules are not all of a single kind, but are varied and staggered in strength depending on the importance of the issues we deal with by regulation.

In this regard, three types of legislation can be distinguished in the following order:

i. Basic legislation or constitution.
ii. Ordinary legislation drawn up by the legislature.
iii. Subsidiary legislation or regulations are drawn up by the executive authority.

i. Basic legislation or constitution:

The Constitution defines the distribution of competencies between the State's public authorities (the legislature, the judiciary and the executive) and their relationship with each other, as well as the general freedoms and rights of members of society vis-à-vis the State.

It should be pointed out that while most countries in the world use the term "Constitution" to express higher State legislation, some countries use the term "basic legislation" to express the same meaning. For example: the Basic Law of the State of Qatar of 1972 and the Statute of Oman of November 1996.

A. Enactment of Basic Legislation (Enactment of Constitution):

If it comes to a new constitution, we will note that the way it is drawn up will vary depending on the political circumstances and the prevailing system of government in the Community:

1) **Dictatorial Regimes**:

In dictatorial regimes in which rulers prevail and dominate the destiny of nations, some constitutions come in the form of a grant from the Governor to his people, and others come in the form of an agreement or a contract that meets the will of the Governor and the people.

☑ **Grant Method**:

The Constitution shall be issued in the form of a grant if the governing institution, by its own will, abdicates some of its powers to create a State constitution.

The Egyptian Constitution, promulgated by Royal Decree No. 43 of 19 April 1923, is one of the most prominent in the form of a grant from the Governor to his people, as is the Japanese Constitution of 1889 and the Yugoslav Constitution of 1931. The Constitution of the Principality of Monaco, promulgated in 1911, has been one of the most awarded constitutions of the twentieth century and has so far been in existence.

☑ **Contracting Method**:

It is established on the basis of an agreement between the Governor on the one hand and the people on the other, so as to eliminate the singularity of the Constitution. In this case, it is difficult for individual contracting parties to repeal or unilaterally amend the Constitution.

Examples of constitutions that come in the form of an agreement or a contract that meets the will of the governor and the people: The French

Constitution of 1830, the Belgian Constitution of 1831, the Greek Constitution of 1844, and the Iraqi Constitution of 1925 are some of the most notable examples.

2) **Democratic systems**:

In democratic systems the enactment of a new constitution can be processed by two methods:

❖ **Constituent Assembly**:

In democratic systems where the role of the people in the conduct of their affairs is highlighted, the Constitution may be drawn up by a constituent assembly elected by the people for that purpose, which shall be considered effective once the Assembly has completed its work and without the need for a referendum or approval by the Governor.

Examples are the constitutions of the American states before their integration into the Union, followed by the American Union Constitution in 1787, the French Constitutions of 1791, 1848, and 1875, the Spanish Constitution of 1931.

❖ **Popular referendum**

The Constitution may be promulgated in the manner of a popular referendum, that is, by taking the people's opinion of it after it has been prepared by the ordinary legislature or government bodies specifically constituted for that purpose.

The Constitution shall be promulgated if it is approved by the people, and if the people reject the Constitution, they shall continue to have regard

regardless of who has drafted it, even if it involves an elected Constituent Assembly. This method is the most democratic one because it fully applies the principle of the sovereignty of the people and allows that people, who are the source of power, to exercise their original constitutional authority and to directly establish the Constitution that suits them.

B. Amendment to an existing Constitution:

In the case of amending an existing Constitution, the path laid down by the Constitution itself must be followed.

- **Flexible Constitution**:

It might provide that the Constitution could be amended by the legislature and in the same way as ordinary legislation, such a Constitution being called a flexible Constitution.

Flexible constitutions appear only in States that refuse to uphold the principle of the highest Constitution, and England is at the forefront of these States where Parliament may amend the Constitution in the same way as ordinary legislation, which does not envisage oversight of the constitutionality of laws, i.e. control that ordinary legislation is subject to the Constitution, as long as ordinary legislation has the power to amend the Constitution.

- **Rigid Constitution**:

The Constitution may require a more complex procedure than that used to amend ordinary legislation. Such a Constitution is characterized as a rigid Constitution, and the powers behind it are often aimed at ensuring respect for the Constitution so that it is not undermined by the Governor or the

Executive. Most of the current constitutions belong to rigid constitutions, such as the current Egyptian Constitution of 2014.

ii. **Ordinary legislation**:

Ordinary legislation is the body of legal rules issued by the competent legislative authority. According to the Egyptian Constitution, the House of Representatives has the inherent competence to draft legislation. Other State authorities may not dispute this matter because they have other powers.

However, while the legislative branch, represented in the Chamber of Deputies, is competent to draft ordinary legislation, the provisions of the Egyptian Constitution permit, on an exceptional basis, that the executive branch - represented by the President of the Republic - will replace the legislature in carrying out this task, if necessary. The following are the stages of the enactment of ordinary legislation, as well as the authority of the President of the Republic to enact legislation.

First) phases of enactment of ordinary legislation:

Chapter I of Title V of the Constitution sets out the three stages of ordinary age: the proposal stage, the voting stage and, finally, the presentation stage to the President of the Republic.

1) The phase of proposal – who has the right to propose laws:

The first stage of the enactment of ordinary legislation begins with a proposal for a law submitted by the President of the Republic or the Council of Ministers to the Chamber of Deputies or by a member of the latter. The proposal of the law is the right of the President of the Republic,

the Council of Ministers and every member of the House of Representatives (article 22 1 of the Egyptian Constitution).

Submission by the Government or 10 members of the House of Representatives of a bill, which shall be referred directly to the competent "parliamentary" specific committees, which shall examine, examine and report on them, which shall serve as a basis for discussion during the sessions of the House.

The distinction between the proposal submitted by the Government and that of a member of the House is that the proposal submitted by the Government is carefully prepared and drawn up by specialized government committees prior to its submission to the Legislation Section of the House of Representatives for review. Of course, all these possibilities are not available to the proposal of a member of the House of Representatives who has not fulfilled his right to study and research.

2) **Voting phase**

After the consideration of the draft law by the competent quality committee, it shall draw up a report on the bill, indicating its point of view, and shall then be put forward through the meetings of the House of Representatives to take the views of the members, through an article-by-article discussion, if the bill has the consent of the absolute majority of the members present, and at least one third of the number of members of the House, it shall be deemed approved. If the votes are equal, the project is rejected.

3) **No objection from the President**:

After the approval of the draft law by the members of the Council, the author of the right to pass the law or to object to it shall be sent to the

President of the Republic. If the President of the Republic objects to the draft law passed by the Council, he must be returned to it within 30 days from the date of its notification to the Council. Otherwise, he shall be considered to be silent in the absence of the use of his right to object.

The draft was returned to the Council within a 30-day period requiring the Council to re-discuss it again. If the Council approves it by a two-thirds majority of its members, it shall be deemed a law and promulgated (Article 123 of the Constitution).

- **The power of the President of the Republic to enact legislation**:

We have already pointed out that the enactment of ordinary legislation is by origin within the competence of the legislature, while the executive is ensuring its implementation. However, some practical considerations may justify a departure from this origin by assigning the task of legislation to the executive, represented by the person of the President of the Republic. If necessary, the President of the Republic may pass decisions that have the force of law passed by the House of Representatives.

Second) Entry into force of legislation (commencement of an act):

If the legislation is enacted, the legal existence of the legislation is achieved, but its application to the people and the taking of them by virtue of its provisions depends on the mandate of the executive authority to implement it by issuing it, as well as to disseminate it so that individuals can know about it.

This means that the legislation is in force in two stages; promulgation and publication

First: **Promulgation of the Act** :

The promulgation of the act is intended to be signed by the President of the Republic and to mandate the men of the executive branch to implement it. However, the President of the Republic has the right to object to the bill and not to pass it. If he objects to the bill, he must return it to the House of Representatives within 30 days from the date on which he is informed.

If he does not respond in time, his right to object will be extinguished and he must pass it as a law of the State. But in this case we have to be approved by the House of Representatives by a two-thirds majority of the members of the Council, not by a simple majority.

Types of Promulgation:

Based on the above, some jurists distinguish between three types of promulgation:

A. De-facto Promulgation of the de facto law:

The bill is approved by the President of the Republic in accordance with the normal course of matters.

B. Supposed Promulgation:

The 30-day period during which the President of the Republic is entitled to raise his objection to the Bill, during which time his silence implies that he accepts the passage of the Act.

C. Mandated Promulgation:

If two thirds of the members of the House of Representatives approve the bill, the President has responded to the Council as a result of his objection.

- **The President and Promulgation** :

The competence of the President to pass legislation is based on a rationale. If it is customary that the legislative branch (the House of Representatives) has the inherent competence to enact legislation, it cannot, by contrast, issue orders to the executive branch, which receives orders from the President in accordance with the principle of separation of powers.

Since the Promulgation of the legislation included an order for the men of the executive branch to implement it, it was obvious that the head of the executive branch (the President) had competence to issue such an order.

The Promulgation, as is the right of the President, is also his duty. He may not refrain from passing a law because it thereby disrupts the implementation of this law, which amounts to an attack on the legislature. Although Promulgation is an obligation of the President , the new Constitution, like its predecessors, has not definitively defined a particular date during which it must conduct it, as it has done in connection with the publication procedure.

This may have been, and continues to be, criticized by Egyptian jurisprudence, which considers it important to set a maximum period for the enactment of legislation so that the executive branch will not have to exercise this right and delay the implementation of the new legislation.

Second: **The Act publication**:

The promulgation of the law is not sufficient for it to be forced and to operate, but rather for individuals to be made aware of it. Justice requires that individuals be informed of the legislation before it is applied to them and is applicable to them, and for the law to acquire this effect at the final stage of publication.

Publication is an essential measure for the entry into force of all legislation, as is constitutional, ordinary and subsidiary legislation. Since the legislation has not been published, it is not applicable to its holders and cannot be bound by the provisions contained therein. Article 225 of the Egyptian Constitution stipulates that:

"Laws shall be published in the Official Gazette within 15 days from the date of their publication and shall be in force 30 days from the day after the date of their publication, unless otherwise specified. The provisions of the laws shall apply only to those that occur from the date of their entry into force. However, in other than criminal and tax articles, the law may provide otherwise, with the consent of a two-thirds majority of the members of the House of Representatives. "

It follows from this constitutional provision that the publication of the legislation must take place in the Official Gazette within two weeks from the date of its promulgation, and that the legislation shall not apply, i.e., to individuals, until 30 days have passed, calculated from the day after the date of publication, not from the day of publication itself.

iii. Subsidiary legislation or regulations:

Regulation is the legislation established by the Executive under the jurisdiction established in the Constitution. Originally, the executive has the task of implementing the laws enacted by the legislature, but some practical considerations have made it necessary to grant legislative competence to the executive on an exceptional basis.

The Authority shall call it a "subdivision" or "regulation and administrative decision". It aims at implementing laws (implementing regulations), Arrangement of Public Interests (Regulations) or the maintenance of the

security, health and health of society (Regulations of Control or Police); Sub-legislation is considered to be at the lowest level.

The Second Source: Principles of Islamic law. For matters of personal status only:

However, while both legislation and religion are original sources of Egyptian law, they are not as important. Legislation is the general source to which all social relations are subject. Only matters defined by the legislation itself are excluded from its jurisdiction and referred to another official source.

Religion is a private source that applies only to matters of personal status that there is no legislative provision, meaning that if a judge does not find a legislative text governing a matter of personal status, it does not refer to backup sources such as custom, but rather to religion as an official source for matters of personal status.

B-Secondary Sources of Law

1.Custom:

Custom is that people are accustomed to certain conduct in a matter of their lives and feel that such behaviour has become binding, and that those who disagree with it are subject to a physical sanction.

The term "custom" may be useful in a sense other than the above, since it is intended for the same unwritten legal rules that arise from custom.

Thus, the term "custom" - like that of legislation - is likely to be one of two meanings: first, the source that generates the legal rule, and second, the same rules derived from that source, so that it is called both the source and the result.

2. Principles of Islamic law:

The judge draws up the principles of Islamic law as a backup source in Egypt by referring to the general principles recognized in the jurisprudence of Islamic law, that is, through holistic rules and origins, which are not disputed in various doctrinal doctrines, without addressing the detailed solutions or partial provisions in which these doctrines differ. If the legislator in another State determines a doctrine from which the provisions are drawn, the judge must follow.

3. **Principles of natural law and rules of justice**:

Natural law means the set of ideal principles that do not change in time or space and that are achieved by man's thinking, mind and reflection, and by which the legislator is guided by the path of legislation to perfection. The rules of justice are an inherent sense of self that is revealed by the right mind, inspired by an informed conscience and aimed at giving every right.

C–Interpreting sources of the law

In other Arab countries such as Syria, not including Egypt, Patti is ranked after the original and reserve sources of the law.

1. **Judicial Rulings**:

It is the set of substantive rules that stems from the stability of court decisions to be followed in all cases in which they are dealt with.

2. **Jurisprudence**:

All opinions issued by legal scholars in connection with their explanation and interpretation thereof, whether in their writings, research, fatwas or lectures.

– **Ignorance of the law excuses not** (**Ignorantia juris non excusat**):

"Ignorance of the law excuses not" is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content.

The rationale of the doctrine is that if ignorance were an excuse, a person charged with criminal offenses or a subject of a civil lawsuit would merely claim that one was unaware of the law in question to avoid liability, even if that person really does know what the law in question is. Thus, the law imputes knowledge of all laws to all persons within the jurisdiction no matter how transiently.

Even though it would be impossible, even for someone with substantial legal training, to be aware of every law in operation in every aspect of a state's activities, this is the price paid to ensure that willful blindness cannot become the basis of exculpation. Thus, it is well settled that persons engaged in any undertakings outside what is common for a normal person will make themselves aware of the laws necessary to engage in that undertaking. If they do not, they cannot complain if they incur liability.

The doctrine assumes that the law in question has been properly promulgated—published and distributed, for example, by being printed in a government gazette, made available over the internet, or printed in volumes available for sale to the public at affordable prices.

In order that a law obtain the binding force which is proper to a law, it must be applied to the men who have to be ruled by it. Such application is made by their being given notice by promulgation. A law can bind only when it is reasonably possible for those to whom it applies to acquire knowledge of it in order to observe it, even if actual knowledge of the law is absent for a particular individual. A secret law is no law at all.

In criminal law, although ignorance may not clear a defendant of guilt, it can be a consideration in sentencing, particularly where the law is unclear or the defendant sought advice from law enforcement or regulatory officials. For example, in one Canadian case, a person was charged with being in possession of gambling devices after they had been advised by customs officials that it was legal to import such devices into Canada. Although the defendant was convicted, the sentence was an absolute discharge.

In addition, there were, particularly in the days before satellite communication and cellular phones, persons who could genuinely be ignorant of the law due to distance or isolation. For example, in a case in British Columbia, a pair of hunters were acquitted of game offenses where the law was changed during the period they were in the wilderness hunting In reaching this decision, the court refused to follow an early English law case in which a seaman on a clipper before the invention of radio was convicted even though the law had been changed while he was at sea.

Although ignorance of the law, like other mistakes of law, is not a defence, a mistake of fact may well be, depending on the circumstances: that is, the false but sincerely held belief in a factual state of affairs which, had it been the case, would have made the conduct innocent in law.

a) **Scope of Ignorance of the law excuses not principle**:

The rule not to apologize for ignorance of the law applied to all legal norms, which were not limited to legislation, but extended to all other legal norms such as customary or religious norms. Just as no reply could invoke ignorance of a particular legislative rule to exclude its application, so could it not invoke ignorance of a customary or religious rule. The rule of

non-ignorance of the law also applies to all peremptory or complementary legal norms, whether private or public.

In fact, a limited controversy had been raised as to the extent to which ignorance of complementary rules could be invoked. The view in doctrine was that the ignorance of complementary rules could be invoked on the basis that the claim of ignorance of those rules by individuals was evidence that their will to comply with them was no longer being observed. While the prevailing view was that the rule of non-apology could not be applied by ignorance of law only to jus cogens norms, to say so would mean that complementary rules would be seen as rules of actual knowledge, that would be removed from binding status, whereas complementary rules would in fact be binding norms just like jus cogens norms.

b) **Role of the judge in proving the rules of law**:

It is noted that the presumption of knowledge of the law imposes two main obligations on the judge:

First: The judge must examine on his own initiative the rule of law applicable to the dispute before him. There is no doubt that the judge's task is easy if laws are consistent, yet the difficulties resulting from amending legislation do not exempt him from this obligation.
It should be noted, however, that the judge does not deny his obligation in this regard if they use the expertise and are empowered to search for the rules found in certain regulations.
Second: The judge is required to know the content of the rule of law through interpretation, subject to the supervision of the Court of Cassation. It is therefore not the power of the judge to question the adversaries because they have not provided him with the interpretation of

the applicable legal texts, nor does he comply with the interpretation put forward by the adversaries before the court.

Since judges were supposed to be aware of the laws they applied, there were problems with their assumption of knowledge of those laws, especially when it came to proving the existence of a foreign custom or law.

We have noted that the idea of assuming the judge's knowledge of the law has faltered twice:

The first time in the way of proof of custom, this faltering comes under the weight of practical considerations that make it difficult for a judge to know clearly the existence and conditions of custom, but in no case does this justify the question of establishing the existence of custom as a matter of fact; The Court of Cassation must modify its position in a manner commensurate with the legal nature of the custom, while stressing that the obligation of the trial judge to investigate the custom and apply it on his own initiative is not incompatible with his right to seek the assistance of the adversaries.

The second comes with the proof of foreign law, which also comes under alleged practical considerations with which some scholars have found it difficult for a judge to learn about foreign law, but which, whatever they may be, do not justify the question of the application of foreign law as a matter of fact; The Egyptian Court of Cassation must therefore modify its position in proportion to the legal nature of foreign law, which is no longer subject to dispute.

C) Exceptions to Ignorance of the law excuses not principle:

While the rule is that no one is excused by ignorance of the law, this rule

is not to be issued, if the only exception is the case of force majeure, which prevents the Official Gazette from reaching a part of the territory of the State, such as the occupation of a particular area by foreigners or an earthquake or flood resulting in the isolation of members of a particular area from the rest of the country, and thus individuals in such circumstances may invoke their ignorance of the law. Although there is no legislative provision establishing this exception to the rule of non-apology for ignorance of the law, the view is well established in the jurisprudence and the elimination of the fact that the ignorance of the law and the request for exemption from its application may be invoked in the case of force majeure referred to, since there is no doubt that the requirements of justice do not accept the binding of individuals to the detriment of their ability.

Glossary of Legal Terminology

• Ignorance of the law excuses not	مبدأ عدم جواز الاعتذار بالجهل بالقانون
• Jurisprudence	الفقه
• Custom	العرف
• Statutes / Acts	القوانين الاساسية
• Regulations	اللوائح
• Promulgation	إصدار القانون
• House of Representatives	مجلس النواب
• Abidance by law	الالتزام بالقانون
• Voting phase	مرحلة التصويت
• Enact legislation	سن التشريع
• Offense	مخالفة / جريمة
• Bill	مشروع قانون
• Interpretation	تفسير
• Propose laws	اقتراح القانون
• Ordinary legislations	القوانين العادية أو الأساسية
• Judicial jurisdiction	الاختصاص القضائي
• Amendments	تعديلات
• Constituent Assembly	الجمعية التأسيسية
• Insurance	التأمين
• Hearing	نظر القضية
• Homicide	قتل الغير
• Immunity	حصانة
• Impeachment of witness	استبعاد الشاهد
• Illegal (not legal; unlawful)	غير قانوني
• Indictment (formal charging with a crime)	لائحة الاتهام
• Infraction	خرق وانتهاك للقانون أو العقد
• Motion/ memorandum / petition	عريضة / مذكرة

- Inmate (prisoner) سجين
- Intent (state of mind when performing an act) القصد
- Jail (place where prisoner is confined) السجن
- Judgment (final decision) حكم قضائي
- Larceny (theft) سرقة
- Lease عقد ايجار
- Life imprisonment عقوبة السجن مدي الحياة
- Litigation خصومة قضائية / نزاع قضائي / عملية التقاضي
- Lynching (murder by mob action, without lawful trial) الاعدام بدون محاكمة قانونية صحيحة و عادلة
- Impeachment إقصاء / إبعاد/ إقالة
- Malicious mischief القيام بالإيذاء مع توافر القصد والنيّة على الإيذاء
- Manslaughter قتل خطأ
- Trail محاكمة
- Objection overruled الاعتراض تم رفضه
- Objection sustained الاعتراض تم قبوله
- Offender مذنب، مرتكب جريمة
- Perjury اليمين الكاذبة
- Personal estate الملكية الشخصية
- Plaintiff / claimant / petitioner المدعي
- Defendant / respondent المدعي عليه
- Appointment تعيين
- force majeure قوة قاهرة
- on the basis علي أساس
- pretrial offense جريمة سابقة للمحاكمة
- rebuttal دحض، نقض
- relinquishment التنازل عن الحق
- remedy جبر الضرر

- Rehabilitation إعادة التأهيل
- revoke (to rescind, withdraw, cancel, turn down) يبطل، يلغي
- sentence (punishment assigned by the court) عقوبة
- self defense الدفاع عن النفس
- discipline التأديب
- serve a sentence (to complete one's punishment) ينفذ عقوبة
- settlement (negotiated solution to a lawsuit) تسوية
- stipulate (to specify as an essential condition of an agreement) يشترط
- sue يقاضي
- Sustain يؤيد، يجيز، يقرّ
- Swear يقسم / يحلف اليمين
- Testify يدلي بشهادته تحت القسم
- Testimony شهادة شفوية تحت القسم
- tort (wrongful act or damage) المسؤلية التقصيرية
- time served الوقت الذي قضاه المحكوم عليه من مدة حكمه
- bench منصة القضاء
- Unconstitutional غير دستوري
- vacate (to cancel) / abolish يلغي، يبطل
- verdict حكم قضائي بواسطة هيئة محلفين وليس قضاة
- victim ضحية
- Visitation زيارة بقصد التفتيش
- weight of evidence رجحان البيّنة وقوتها
- witnesses شهود
- writ (a formal legal document) سند رسمي

Chapter Four

Scope of application of the law

Students should know after Studying this chapter :

- The spatial scope of the law
- The temporal scope of the law
- the principle of non-retroactivity
- Types of the abolition of legislation in Egyptian law

First: The spatial scope of the law:

– Territorial principle:

There is a general principle recognized among all States and societies that the jurisdiction of a State is confined within its borders, that is, within its territory. It is well known that the most important elements of the territorial State and the people, namely, that each State has its own territory or territory.

The people are also individuals who live within and belong to this State with their nationality. The law is derived from the will of the State and its scope is determined by the extent to which it prevails. The State has the right to sovereignty over all its territory, over anyone and everything that exists in that territory.

It also has the right of sovereignty over all persons of its nationality. The State shall enact legislation governing whatever is on its territory, whether national or foreign, but may not enact legislation for another State or leave its law to be applied in foreign territory, in the event of an attack on the sovereignty of the other State.

This principle is known as the principle of territorial law. The principle of the personality of laws when we talk about the operation of the law in a particular State can also be called upon its subjects, even if they are outside its borders.

Exception to territorial principle:

The strict application of the territorial principle is not compatible with the reality of modern life, but cannot be strictly applied today. States had

therefore allowed foreign law to apply to their territory, leaving it with some issues to extend. the first thing that comes to mind here is the question of whether this would allow a State's sovereignty over its territory to be diminished?

We find that jurisprudence has worked hard to justify a departure from the territorial principle. Some have argued that the basis is courtesy of States, and it is argued that such derogation is required by the nature of matters and even imposed by international custom or otherwise, it would be difficult for individuals to move from one State to another, especially since it is reciprocal, in the sense that each State approves and applies it, and in this case it is not considered a derogation. In the view of some, without going into the details of such justification, this derogation is a reality in all countries.

In our view, the exception to the territorial principle by extending the scope of application of the law beyond the borders of the State or by applying foreign law within the State's borders, if it is considered a departure from the sovereignty of the State in formal terms, is not so objectively.

The fact is that it is not unpleasant to allow the operation of foreign law within the State or vice versa, as long as it is done by agreement between States, whether bilateral agreements or international agreements, as is the case of the jurisdiction of the jurisdiction of the International of the International of the International of the International of the International Court and the International of Justice and extradition agreements between States and others.

However, it is important and internationally agreed that such exceptions should not result in any breach of public order or morals in the State where foreign law is applied, as stipulated in article 28 of the Civil Code.

Second: **The temporal scope of the law**:

The temporal scope of the law is intended to determine the period within which the law is applied, or the age of the law. If the law is a permanent feature of the law, in the sense of stability, persistence, non-change and modification overnight, the law is not established for the sake of the principle of stability of transactions. It doesn't mean that it's set to be established.

It shall have a time at which it shall be applied or served, the provisions of which shall be in force, and the period from the time specified for its entry into force, that is, from the time specified for its entry into force, either upon publication or after the expiration of the time limit for its operation and during the period in force of the law, which shall apply to what occurs prior to or after the expiration of the period, shall not be established or applied accordingly.

However, things are not always so easy, as we are faced with obstacles, both de facto and de jure, that make it appropriate or fair for the law to apply to facts or relationships that occurred before its entry into force. It's known by name as the regressive effect of the law, because it goes back or back.

The facts may not always be spoken, created or produced under a particular law or legal rule. Here there is no problem, but the problem comes from the fact that the fact may occur under a particular law or rule and produce its effects under a different law. Here the difficulty is that the situation arises

in the time range of one law and its effects are produced in the time range of another law.

- **Exceptions to the principle of non-retroactivity**:

Although the principle of non-retroactivity is important, there are considerations that justify retroactivity, i.e. there are exceptions to the principle of retroactivity:

- **First**: Explicit provision for retrogression of the new law.
- **Second**: The usability law for accused.
- **Third**: Interpretative legislation.

Pictures of the abolition of legislation in Egyptian law

According to article 2 of the Egyptian Civil Code, "A legislative text may be repealed only by subsequent legislation which expressly provides for repeal, contains a provision that is incompatible with the text of the old legislation, or re-regulates the subject already established by that legislation." It is clear from that provision that the cancellation may be explicit and may be implicit.

1- The explicit abolition:

An explicit abolition is for the new legislation to clearly disclose the transcription of certain existing legislation, i.e. a legislative rule expressly providing for repeal. The repeal of the previous law may be provided for in the latest article of the new law. The legislature may set out the provisions for repeal in the so-called Promulgation Act, which predates the provisions of the new legislation. The transcript is not required to include an alternative to the woven provision, but may only overturn the existing provision as it was prior to the overturned provision.

2-Implicit abolition:

Implicit abolition is not explicitly stated. The legislator does not express his will to repeal existing legislation, but it follows from recent legislation that contains provisions that are incompatible with those of previous legislation. There are two texts, one earlier and the other later, which are impossible to combine simultaneously. The new text contains a provision that conflicts with that of the old text.

The rule is that modern legislation reproduces previous legislation in the conflict between them. The legislator's intention to repeal the previous legal rule by means of the new rule is clear.

For this reason, it is necessary to say that the old and new texts must be based on one place where their work is impossible. A conflict that entails the repeal of a legislative text by a provision in subsequent legislation is only if the provisions of a single place in which the business is impossible to act together.

If the business is different, each law has to be applied in its place regardless of the difference between them as long as each has its own sphere of application. If it is possible to establish a separate scope for the operation of the provision of each law, we do not exist in connection with an implicit repeal. Duplication of legislation in the law of the same country is not prevented, since it is the street that appreciates the wisdom of such duplication and it is only for the judge to apply the legislation accordingly.

Interpretation of the law

The origin of the provisions of the legislation is clearly defined and understood to be formulated in a way that does not give rise to confusion

or ambiguity or that does not specify whether they apply to the facts or the statements that regulate them. It happens, however, that the provisions of the law are not so clear and specific. The working side reveals problems with the application of the legal text and therefore needs to be explained.

- **Definition of legal interpretation**:

Legal interpretation means to state the truth of the meaning of a written legislative rule issued. Interpreting the law, i.e. determining the true meaning from a competent authority of the content of the rule set by the legislator. It is that mental process that is intended to determine the meaning and extent of the legal rule.

Interpretation is only conceivable in terms of written rules, which rules are derived from their official sources in certain words, and this applies to legislative rules as well as to rules derived from the texts of celestial books. The need for interpretation of the rules of law requires that they be formulated in certain terms.

The interpretation is based on a determination by choosing a particular meaning of the text from among the different meanings its possible potential meaning. This is done by clarifying the language, supplementing the short text, graduating from its provisions and reconciling its contradictory parts.

As for unwritten rules such as custom or the principles of natural law and the rules of justice, the determination of their content does not constitute an interpretation, but rather takes the form of the confirmation that they exist, that is, that the search for their meaning is at the same time proof of their existence.

Interpretation was essentially about legislation, as the usual picture of legal rules written at present, and therefore speaking about the interpretation of the law was intended to speak about the interpretation of legislation because it was at the forefront of all legal norms.

- **Types of legal interpretation**:

1- **Legislative interpretation**:

This type of interpretation is when the legislator passes a particular law and then considers it necessary to interpret it. A second law is an interpretation of the former. The law interpreted by the original law is considered to be part of and part of the original law and must be followed in all cases in which the original law is applied, i.e. they are equally mandatory.

The Egyptian legislator assigned the Supreme Constitutional Court the task of interpreting the law in Law No. 48 of 1979 establishing the Supreme Constitutional Court. It stipulates in Article 26 of this law that "the Supreme Constitutional Court interprets the texts of laws issued by the legislative authority and decisions by laws issued by the President of the Republic in accordance with the provisions of the Constitution, if they raise a conflict in implementation and are of such importance that their interpretation is unified."

2- **judicial interpretation**:

It is the most common type of interpretation; it is issued by judges in applying legal rules that need to be interpreted. It would clarify the meaning of the law so that it is easily understood and its provisions are found; it avoids shortcomings and helps to expand and develop the law.

Judicial interpretation differs from legislative interpretation in that judicial fiction has no mandatory standing except for the fact for which it was made, and consequently it may be violated and a different interpretation adopted in other similar cases either by the court of interpretation or by other courts.

3- **Jurisprudential interpretation**:

This type of interpretation is made by scholars and persons with competence in the article of rights. It is obvious that it does not have any mandatory force and may be adopted or neglected by the courts. However, this does not diminish the importance of this type of interpretation.

4- **Administrative interpretation**:

It is a form of interpretation by public administrations through instructions issued to their employees to explain to them the provisions of the laws to which they are mandated to apply and to indicate how this is done. The mandatory force of this type of interpretation is limited only to the officials concerned.

- **Cases and causes of legal interpretation**:

The legal text may be flawed by defects that make it need to be interpreted:

1- Material or moral error.

2- Ambiguity and thumb.

3- Deficiency and silent.

4- Contradiction and conflict.

1- **Material or moral error**: The text is considered to have a material or moral error when its wording contains a phrase

containing a material or moral error so that the meaning of the text can only be rectified.

2- **Ambiguity or thumb**: If the phrase of the text is so unclear that interpretation and interpretation can be more than meaningful, the text is in this case flawed by ambiguity and ambiguity, and the task of the interpreter in this case is to choose between the different meanings that the text has the most valid meaning and is more true and correct.

3- **Deficiency and silence**: The text is considered incomplete if its phrase is free from some words that the rule is not correct without, or if it neglects some cases that it was supposed to stipulate, and it is the duty of the judge or interpreter in this case to try to fill the deficiency in the law by deducing provisions for cases not stipulated in it.

4- **Contradiction and conflict**: There is a contradiction or conflict between two texts if the provision indicated by one of them is completely contrary to the one that can be inferred from the other. In this case, if the two texts cannot be reconciled with their application together, the late text is considered to be a copy of the advance.

Glossary of Legal Terminology

• Article	مادة
• Principles of natural law	مبادي القانون الطبيعي
• Rules of equity	قواعد العدالة
• Periods	المواعيد
• Abrogate	يلغي
• Expressly / Explicitly	صراحة
• Implicitly	ضمنينا
• Former law	قانون سابق
• Unless the law provides otherwise	مالم ينص القانون علي غير ذلك
• Illegitimate	غير مشروع
• Legitimate	مشروع
• Harm others	إضرار بالأخرين
• Exercise rights	ممارسة الحقوق
• Intended benefits	المصالح التي يرمي الشخص إلي تحقيقها
• Application of law	تطبيق القانون
• Conflict of laws	تنازع القوانين
• Conditions/ terms	شروط
• Legal capacity	أهلية قانونية
• Validity	مشروعية
• Come into force	الدخول حيز النفاذ
• Prescription / Limitation period	التقادم
• Commencement	بدء
• Domicile	موطن
• Minor	قاصر
• Ward	محجور عليه
• Legal representative	ممثل قانوني
• In a similar legal position	ومن في حكمه

• Elected domicile	الموطن المختار
• Written instrument	دليل كتابي
• Compulsory enforcement	تنفيذ جبري
• Exclusion	استبعاد
• Age of majority	سن الرشد
• Age of discretion	سن التمييز
• Not under disability	لم يحجر عليه
• Mental faculties	عته
• Devoid of discretion	فاقد التمييز
• Mental deficiency	عته
• Insanity	جنون
• Prodigal	سفيه
• Imbecile	ذا غفله
• Person lacking of legal capacity	ناقص الاهلية
• Person devoid of legal capacity	فاقد الأهلية
• As the case may be	بحسب الأحوال
• Natural guardianship	ولاية
• Legal guardianship	وصاية
• Custody	قوامة
• In accordance with	وفقا ل
• Rules prescribed by law	القواعد المقررة قانونا
• Renounce	نزول / تنازل

Chapter Five

The Egyptian Judicial system

(Overview of the courts)

Students should know after studying this chapter :

- The structure of the Egyptian Judicial system
- Types of ordinary courts
- Administrative Courts
- The Supreme Constitutional Court
- Competences of the High Judicial Council

Chapter three of the 2014 Constitution concerns the judiciary in Egypt. As noted previously, Article 94 states that "the state is subject to the law, while the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms" and Article 186 provides that the conditions and procedures for appointment, secondment, retirement and disciplinary accountability shall be governed by laws which ensure "the independence and impartiality of the judiciary and judges and shall prevent conflicts of interest".

The Constitution also provides that each judicial body "shall have an independent budget," and shall be "consulted on the draft laws governing their affairs". Despite these protections, as detailed in Chapters Three to Seven below.

The Egyptian judiciary consists of judges sitting in ordinary, administrative, military, and emergency state security courts.232 This chapter provides a brief overview of the Egyptian courts, including the different types of courts and how they are structured.

I. ORDINARY COURTS:

Ordinary courts are divided into criminal and civil courts. Each court has a General Assembly composed of all judges of that court. The Office of the Public Prosecutor (OPP) is also invited to attend meetings of the General Assembly and the opinion of the OPP is considered on issues that are related to prosecutorial work.

A court's General Assembly is tasked with, among other things: organizing and establishing the court's circuits and the composition of the circuits; distributing cases to the various circuits; determining the number, days and timings of hearings; and assigning judges of courts of appeal to work in

felonies courts and judges of first instance courts to summary courts. Courts of first instance are located within each of the 27 governorates in Egypt and hear all civil and commercial cases and preside over criminal cases involving minor offences, "misdemeanours".

Eight appellate courts located throughout Egypt hear appeals from the courts of first instance, and serve as the court of first instance in relation to serious crimes known as "felonies".

The Court of Cassation is the high instance appellate court for all criminal, civil and commercial matters. The Court of Cassation is composed of a President and a "sufficient number" of judges, known as "Deputies" (vice presidents) and "Counsellors". Separate sections of the Court address criminal, civil, commercial, personal status, and other matters. The Deputies of the Court of Cassation are appointed with the consent of the High Judicial Council, after nomination by the Court's General Assembly.

The Supreme Constitutional Court (SCC) has jurisdiction, among other things, over questions about the constitutionality of laws and regulations and the interpretation of legislation.

II. ADMINISTRATIVE COURTS:

The State Council ("Majlis il Dawla") is a quasi-judicial body. First established in 1946, it gives legal advice to the government, reviews draft contracts to which the State or a public authority is party, reviews and drafts draft laws and has jurisdiction over administrative cases, including disciplinary cases involving public officials.

In the judicial section of the State Council, lower administrative courts hear cases in the first instance. The Administrative Judicial Court hears appeals from these courts. At the top of the judicial section is the Supreme

Administrative Court, which hears appeals from the Administrative Judicial Court.

Administrative courts hear cases in which a state organ is a party. The Supreme Administrative Court has played a pivotal role in shaping events since the 2011 uprising. Shortly after President Mubarak stepped down from power, the Supreme Administrative Court issued a verdict dissolving the political party he chaired, the National Democratic Party (NDP).

In April 2012, the Supreme Administrative Court dissolved the first Constituent Assembly. This was followed by a ruling in June 2012 nullifying a decision of the Ministry of Justice that would have allowed military police to arrest civilians.

III. MILITARY AND EMERGENCY COURTS:

Military and emergency courts exist in parallel to the ordinary court system. They have been used by successive governments to try civilians in proceedings that afford less respect for the minimum guarantees of fair trial than afforded in the ordinary courts. Since military courts are not part of the ordinary court system of Egypt, the rulings of military courts are not subject to review by the Court of Cassation. Additionally, because there is no right of appeal against any decision of any emergency court, there is also no review by the Court of Cassation for cases heard in emergency courts. During a state of emergency, emergency courts have jurisdiction over cases transferred to them by the President. The types of cases that can be transferred to such courts has varied over the years, to include, amongst others, offenses under the emergency law and those against the internal and external security of the State.

IV. HIGH JUDICIAL COUNCIL:

The High Judicial Council (HJC), established by Law No. 35 of 1984, is designated both by this law, and the Constitution as the body overseeing the judiciary.243 However, since its establishment in 1984, its independence has been limited by the Executive branch's control over its composition and appropriation of its functions.

Although the 2014 Constitution has reduced the control of the Executive over the composition of the HJC, the independence of the functions of the HJC continue to be undermined by the broad powers granted to the Minister of Justice in relation to the judiciary and the careers of judges. In particular, while the HJC "approves" almost all decisions with regard to the management of judicial work and careers, many of the initial decisions relating to the appointment, transfer, promotion and disciplining of judges are taken by the Minister of Justice. By law, the HJC has the following composition :

- the Chief Justice of the Court of Cassation (President);
- the Prosecutor-General; the two most senior vice-presidents of the Court of Cassation; and
- the two most senior presidents of the other appellate courts.

The 2014 Constitution did not alter the composition of the HJC. However, it did alter the powers of the President over the appointment of the Chief Justice of the Court of Cassation and the Prosecutor- General, which in turn should ultimately bolster the independence of the members of the HJC. Under the 1971 Constitution and Law No. 46 of 1972, the Judicial Authority Law (JAL) before being amended, the President of the Republic was given the power to appoint both the Chief Justice of the Court of Cassation and the Prosecutor-General. The HJC could offer its opinion on these appointments, but had no power to reject them.

The 2014 Constitution now provides for the Prosecutor-General to be chosen by the HJC and appointed by the President. Although the Chief Justice of the Court of Cassation continues to be appointed by the President, the ICJ was informed that the candidate is appointed solely based on seniority from among the vice-presidents of the Court.

The 2014 Constitution contains limited reference to the functions of the HJC. Article 188 states that the "affairs of the judiciary are managed by a higher council whose structure and mandate are organized by law". Duties of the HJC stipulated in the 2014 Constitution include the selection of the Prosecutor-General, and, along with other judicial bodies, the election of members to the National Elections Commission.

Other functions of the HJC are set out in the JAL. The HJC has a role, although sometimes a limited one, in matters relating to the appointment, assignment, secondment and discipline of judges and members of the Office of the Public Prosecutor (OPP). In relation to appointments, the HJC conducts interviews with prospective candidates prior to their appointment to the bench. In addition, other than the Chief Justice and Vice-Presidents of the Court of Cassation, the HJC must approve a judicial candidate once he or she has been appointed by either the President of the Republic, the Minister of Justice or the chief judge of the court to which the judge will be appointed.

Following HJC approval, the candidate is formally appointed. Regarding, promotions and assignments, the HJC is responsible for preparing the rules used by the Judicial Inspection Department, a body that is part of the Ministry of Justice and composed of judges selected by the Minister of Justice, in preparing the roster of judges eligible for promotion and assignment.

The HJC must also formally approve the assignment and secondment of judges. The HJC's role is limited regarding the disciplining of judges. Specifically, the HJC is responsible for investigating and deciding whether the President or General Assembly of a court was justified in issuing a written warning to a judge of that court.

For more serious allegations of judicial misconduct, the HJC's role is limited to authorizing the commencement of the investigation. The JAL also contains a general requirement that the HJC be consulted on draft laws concerning the judiciary and the Office of the Public Prosecutor. However, the JAL does not state at what stage of the legislative drafting process and by whom the opinion of the HJC must be considered. In contrast to the somewhat limited role played by the HJC, the Minister of Justice plays a significant role in the administration of the court system and the careers of judges.

The courts are subject to the administrative supervision of the Minister of Justice. The Minister of Justice makes decisions, which are subject to the consent of the HJC, about assigning judges to particular courts or transferring them to non-judicial work. Thus, the Minister of Justice, with the approval of the HJC, may assign appellate judges to be presidents of first instance courts, assign appellate judges to the Court of Cassation for short-term periods, transfer judges between courts, or assign judges to serve within the Office of the Public Prosecutor or to other administrative posts within the Ministry of Justice.

It is also the Minister of Justice who, with the consent of the HJC, arranges the system and conditions under which judges and prosecutors receive health care and social welfare.

A list of powers of the Minister of Justice under the JAL is set out in the table below:

1- Assignment of judges of the Courts of Appeal to preside over a Court of First Instance for up to one year, renewable, subject to the approval of the HJC.

2- Requiring the General Assemblies of first instance courts to reconsider any of their decisions and discretion to refer the matter to the HJC for a decision.40 General Assembly decisions relate to the organization and administration of courts, including the assignment of cases, designation of hearing dates and times and the assignment of judges to a case.

3- Nomination of one of two judges as candidates for the Cassation Court (The General Assembly makes the other nomination), the President of the Republic appoints and choice is approved by the HJC.

4- Assignment of judges to administrative positions at the Ministry of Justice for a period of up to one year, renewable, subject to the approval of the HJC.

5- Nomination of the assistant to the Minister in charge of judicial inspections and the directors and members of the Judicial Inspection Department, subject to the approval of the HJC.

6- Assignment of a judge of the Court of Appeal to the Court of Cassation for a period of six months, renewable once, following consultation with the General Assemblies of the concerned Court of Appeal and the Court of Cassation and, subject to the approval of the HJC.

7- Assignment of a judge of the Court of Appeal to another Court of Appeal for a period of six months, renewable once, after consultation with the General Assembly of the Court of Appeal from which the judge is assigned and subject to the approval of the HJC.

8- Assignment of a judge of the Court of Appeal to work in the prosecution service for a period of up to six months, renewable once, after consultation with the General Assembly of the Court of Appeal from which the judge is assigned and subject to the approval of the HJC.

9- Assignment of the presidents and judges of a Court of First Instance to another Court of First Instance for a period of six months, renewable once, after the approval of the HJC.

10- Assignment of judges to carry out additional judicial and legal functions, on top of their existing workload, after consulting with the General Assembly of the court to which the judge belongs and the approval of the HJC.

11- Elaboration of the rules of judicial inspection, subject to the approval of the HJC.

12- Requesting the President of the Republic to force a judge into retirement in cases of physical incapacity as a result of which the judge has exceeded the days of sick leave provided for by the law, subject to the approval of the HJC.

13- Requesting the Disciplinary Board to suspend a judge from carrying out his functions during the investigation and trial of an alleged crime.

14- Requesting the Prosecutor-General to initiate disciplinary proceedings against judges.

15- Article 99 Assignment of one of the vice-presidents of the Court of Cassation, the vice-president of a Court of Appeal or the head of the relevant court to conduct an administrative or criminal investigation relating to alleged professional and/or criminal misconduct of a judge of the Court of Cassation or the Courts of Appeal.

16- Requesting the Disciplinary Board to decide whether to require "unfit judges" to retire or to assign them to non-judicial functions, in cases other than physical incapacity.

17- Delegating judges and prosecutors as the director and senior members of the Judicial Inspection Department, issuing the Statute of the Judicial Inspection Department and determining its competences, upon the suggestion of the Prosecutor- General and subject to the approval of the HJC.

18- Control and administrative supervision of the Office of the Public Prosecutor and its members.

19- Requesting the Prosecutor-General to initiate disciplinary proceedings against prosecutors.

Other laws also give the Minister of Justice wide powers to interfere in and to influence judicial matters. For example, Article 65 of the Code of Criminal Procedure empowers the Minster of Justice to request the General Assembly of the court of appeal to assign an investigative judge to a particular case or to specific types of crime. Article 185 of the 2014 Constitution states that each "judicial body or organization" has an "independent budget, whose items are discussed by the House of Representatives" .

Once approved, each budget is incorporated in the state budget as a single figure. Under the JAL, the HJC is responsible for preparing the budget of the judiciary with the Ministry of Finance, and distributing funds in coordination with the Ministry of Justice.

Glossary of Legal Terminology

• Ministry of Justice	وزارة العدل
• Ministry of Finance	وزارة المالية
• Judiciary	السلطة القضائية
• Court of appeal	محكمة الاستئناف
• Code of Criminal Procedure	قانون الاجراءات الجنائية
• Office of the Public Prosecutor	مكتب النائب العام
• Delegation	تفويض
• Judicial Inspection Department	مكتب التفتيش القضائي
• Competent court	المحكمة المختصة
• Disciplinary proceedings	إجراءات تأديبية
• Fair trial	محاكمة عادلة
• Competences	اختصاصات
• Disciplinary Board	مجلس التأديب
• Court of Cassation	محكمة التأديب
• Court of First Instance	محكمة أول درجة
• Nomination	ترشيح
• High Judicial Council	مجلس القضاء الأعلى
• State Council	مجلس الدولة
• Supreme Administrative Court	المحكمة الادارية العليا
• Jurists' opinions	اراء الفقهاء
• Judge of provisional matters	قاضي الامور الوقتية
• Joinder	متدخل في الخصومة
• Administrative Prosecution	النيابة الادارية

- Military courts المحاكم العسكرية
- Ordinary courts المحاكم العادية
- Judge recusal تنحي القاضي
- Judges subject to challenge رد القاضي
- State Lawsuits Authority هيئة قضايا الدولة
- quasi-judicial body جهة شبه قضائية
- "Deputies" (vice presidents) / "Counselors" نائب رئيس محكمة
- Interim orders أمر وقتي
- Inquiry judge قاضي التحقيق
- Lawyers syndicate (Bar Association) نقابة المحامين
- Legal precedents سوابق قضائية
- Libel, defamation التشهير بالكتابة أو بالرسم
- Non-case value jurisdiction عدم اختصاص قيمي
- Non-specialty jurisdiction عدم اختصاص نوعي
- Non-territorial jurisdiction عدم اختصاص إقليمي
- Note of protest مذكرة احتجاج
- Open argument فتح باب المرافعة
- Objections to execution of judgment اشكالات التنفيذ
- Partial court, trial court محكمة جزئية
- Circuit دائرة قضائية
- Panels هيئة أو دائرة قضائية
- Plea bargaining المساومة أو المفاوضة الجنية مع المتهم
- Postponement as a request by litigants to submit documents

التأجيل كطلب من الخصوم لتقديم مستندات

- Postponement for acknowledging litigants with demands of intervening party

التأجيل لإعلان الخصوم بطلبات المتدخل هجومياً

- Postponement for review

تأجيل الدعوي للاطلاع

- Refer to a partial circuit for non-case value jurisdiction

إحالة الدعوي لعدم الاختصاص القيمي

- Refer to another circuit or non-specialty jurisdiction

إحالة الدعوي لعدم الاختصاص النوعي

- Refer to another circuit for non-territorial jurisdiction

إحالة الدعوي لعدم الاختصاص المكاني

- Refuse cause of action, Rejection , case denied

رفض الدعوي

- Rule of law سيادة القانون
- With malice aforethought سبق الإصرار والترصد
- Attach document ضم المستند
- Hearing Roll رول الجلسات
- Hearing Room قاعدة المحكمة
- Lead , Clerk امين السر
- Bail كفالة
- Brokerage سمسرة
- Common property ملكية شائعة
- Terminal sickness مرض الموت
- Export استرداد
- Preemption شفعة

- Replevin action دعوى الاسترداد
- Liability مسؤلية