

South valley University

Faculty of Law



Introduction To The Study Of Law

Theory Of Right

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Preface:

Law is a set of rules that grants a set of rights and obligations to its subjects (i.e. individuals or a group of individuals in the society). These subjects, referred to as "right holders," rely on these rights and obligations to govern their relationships. The law governs the above-mentioned rights, such as ownership, personal property, and voting rights.

In this book, we will go over the legal privileges given by the law, which are divided into political rights and civil rights. The latter are divided into two categories: public and personal rights. Personal rights are classified as non-pecuniary rights and pecuniary rights, which are further classified as real property rights, personal property rights, and intellectual property rights.

Moreover, one of the most important legal topics that business students should be aware of is the study of legal rules governing work contracts. These rules, which appear to be very protective of workers' rights, also serve the interests of employers by imposing various obligations on workers and stating penalties that may be imposed by the employer if his employee violates his obligations.

As a consequence, this book have used simplified language and explained more complex legal terms where they appear. Furthermore, chapters and sections are organized in a systematic order for both learning and revision, and clear subheadings make it easy to locate specific points.

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Introduction:

Unlike many legal terms (such as ‘property’ and ‘contract’), ‘tort’ has no life outside the law. And yet rules and principles of tort law are relevant to a wide range of common phenomena as diverse as industrial disputes, libelous newspaper articles, road accidents, noisy neighbors, dangerous pharmaceutical drugs, vicious dogs, and so on.

The word ‘tort’ is derived, through French, from a Latin word commonly translated as ‘wrong’. However, this is an unsatisfactory translation because on the one hand, not all conduct that the law considers wrongful is tortious and on the other, not all torts consist of conduct that would colloquially be called wrongful.

The law of torts is part of private law, of which other parts are the law of property, the law of contract, and so on. Private law is contrasted with public law.

More importantly for our purposes, torts are also distinguished from breaches of contract and breaches of trust; and some breaches of contract, for instance, are also torts. Where conduct constitutes more than one tort or falls into more than one legal category, it is possible that a remedy may be more easily obtained, or a better remedy may be obtained, by treating the act as being one tort rather than another or as falling into one legal category rather than another.

To some extent, Australian law allows the plaintiff a free choice as to how to treat the conduct—for example as one tort rather than another, or as a tort rather than a breach of contract. Independently of any judgment about whether such ‘concurrence’ of causes of action is desirable or not, it certainly increases the law’s complexity.

For instance in some contexts⁶ it may be necessary to decide whether particular conduct constitutes ‘a tort’ (as opposed to any particular tort). But because the legal category of tort law was not systematically designed and encompasses a jumble of causes of action, it is almost impossible to provide a succinct dictionary definition of the word ‘tort’. In reality, tort law is what judges, legislatures and lawyers (practicing and academic) say it is; and although this book, like most other accounts of tort law, discusses a relatively short list of torts.

The legal system operating in England and Wales is a common law system of law. The essential difference between a common law system and a civil law system (the predominant legal system in Europe) is that in the former judicial decisions are binding both on lower courts and on the court that has made the decision. This is called a system of precedent. Although there are no formal divisions within English law, one can distinguish roughly between Public and Private law.

Within private law, there is again a rough divide between property law and the law of obligations. The law of obligations consists of contract, tort and restitution. In the compensation culture context we are primarily concerned with the law of tort. Tort law is concerned with civil wrongs. Undoubtedly the largest (and most dynamic) area of law within tort is the law of negligence. In the context of personal injury claims, the injured person will most likely sue in negligence, although there are other regimes which are also relevant. Negligence is a relatively new tort, and it has been largely developed by the judiciary.

Its expansion throughout the late 19th and 20th century reflects the pressures which the rise of industrial and urban society has brought to bear upon the traditional categories of legal redress for interference with

protected interests. Its flexibility means that it can be used by the courts to find liability in novel contexts. For the court to make a finding of negligence, the claimant must prove a number of things. Firstly it must be shown that the defendant owed the claimant a duty of care.

The duty concept was generalised in the famous judgment of *Donoghue v Stevenson*; in which the House of Lords rejected the previous law in which liability for careless behaviour existed only in a number of separate, specified situations, and embraced the idea of a general duty to “...take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour...[i.e.] persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question”.

The most recent authority on the question of establishing a duty of care is *Caparo v Dickman*. A court will find a duty of care if the claimant can show that the damage he suffered was foreseeable; that there was proximity between himself and the defendant; and that in all the circumstances it would be fair, just and reasonable to impose liability on the defendant. A denial of a duty of care means that even if the defendant was at fault, and his fault caused the claimant’s loss, there will be no liability – it is akin to immunity from liability for the defendant against the present and future claimants.

The concept was used regularly in the early 1990s to deny liability, especially in actions against public bodies, however since a ruling of the European Court of Human Rights in 1998 English courts have been more reluctant to deny a duty of care, preferring to decide the liability question

at the breach stage after full argument on the substantive merits of the individual case has been heard.

Once the claimant has shown that the defendant owed him a duty of care, he must prove that the defendant was at fault – i.e. that he is in breach of his duty of care. Determining whether the defendant was at fault is a two-stage process. First, the court must determine the standard of care that the defendant owed the claimant. The standard of care will be the standard that the ‘reasonable person’ would adopt in the profession, occupation or activity in question.

In determining this standard, the courts will often balance the degree of foreseeability or risk of harm against the cost of avoiding the harm, and the benefits to society foregone if the activity in question is not carried on⁶. The standard is objective. In professional negligence cases (e.g. cases of alleged medical negligence), the standard is that of a reasonably competent person in the profession in question or the particular branch of it. In practice this means that the courts defer substantially to the standards set by the profession itself and supported by a responsible body of opinion. Setting the standard is a question of law. The court will then determine whether the actions of the defendant himself reached this standard. This is a question of fact.

The aim of this book is to consider the definition, objectives and scope of the law of contract and the law of tort, and to take an overview of the subject. Tort law has developed over many centuries and has its origins in an agricultural society and largely rural economy of the middle ages in Britain. It is sometimes regarded as the area of common law which remains after all the other causes of action, such as contract or breach of fiduciary duty have been subtracted. As this area of law has developed it has proved

to be infinitely adaptable, but it has not developed in isolation. Other areas of law have evolved alongside tort. **This book will be divided into 6 chapters as following :**

- **Chapter one : Theory Of Right.**
- **Chapter Two : Civil contracts.**
- **Chapter Three: Sources of obligation.**
- **Chapter Four : Sale Contract .**
- **Chapter Five: Rules of Evidence .**
- **Chapter sex: Liability in Civil Law.**

Chapter One

Theory Of Right

Students Should Know after Studying This Chapter :

- Definition of rights .
- classification of rights.
- Legal personality.
- Characterization and identification of legal personality.

Firstly– Definition of the right:

The right is a legally protected interest. This interest could be either material or moral. The law grants the right holder the authority to ensure the enjoyment of his right. Property rights and copyright are two examples of rights.

Secondly–Classification of the rights:

Rights can be classified into two kinds; political rights and civil rights.

a. Political rights:

Political rights are powers that entitle their holder to participate in the government and administration of his country, such as the right to vote in national elections and hold public office. These rights are not enjoyed by all people, but only by citizens, so foreigners do not have these rights unless they are granted by a special legal text.

b. Civil rights:

- i.** Civil rights, unlike political rights, are enjoyed by all people, regardless of nationality. Individual freedom, freedom of belief and freedom to practise religious rights, freedom of expression, freedom of scientific research, the right to peaceful assembly, the right to form societies, and so on are all examples of civil rights.

ii. Divisions of civil rights:

Civil rights are divided into two kinds: public rights and private rights.

- A– Public rights are required for the protection of an individual's personality. These rights include the right to life, the right to

personal security, the right to freedom of conscience, the right to honour and reputation, and so on.

B- Private rights are enjoyed by particular persons. These rights include family rights, pecuniary rights and incorporeal rights.

iii. Classification of Pecuniary Rights:

If the right's subject-matter is an obligation to perform a certain act, refrain from performing a certain act, or deliver an object to another person, the right is in personam right because it does not fall on an object. If, on the other hand, the right grants its owner a certain amount of power over an object, it is an in rem right because it falls on an object. Finally, an intellectual right is one that grants the holder power over nonmaterial objects.

A- In personam Right:

A positive aspect of legal obligations arising from a legal relationship between two individuals, the obligor (debtor) and the obligee, is referred to as an in personam right (creditor). The obligee has the legal right to request or compel the obligor to deliver something (deliver the sold object), perform an act (convey the title of a real property), or refrain from performing an act (competing/antitrust acts) in this relationship. Meanwhile, the obligor is obligated to deliver an object, perform an act, or refrain from performing an act that the obligee has requested. As a result, the subject-matter of an in personam right is an obligation, as opposed to an in rem right, which has a property rather than an obligation as its subject-matter.

In personam right exists when the seller agrees to deliver the sold goods to the buyer. Likewise, the transporter must provide the service of delivering goods. It can also take the form of a legal obligation to refrain from performing a specific action, such as a non-rivalry clause or anti-trust non-compete rules.

B- In rem rights:

It is the legal authority granted by the law to a person over a movable or immovable object (i.e. property), allowing him to use, exploit, or alienate the object. This is referred to as "principal in rem right." It is also the legal authority granted to a creditor by law to recover his claims from the proceeds of a pledged object when the debtor fails to perform his obligation. This type of right is known as "in rem subordinate rights". As a result, the subject-matter of an in rem right can be either a movable object (a chattel) or an immovable object (a real property).

☑ Principal in rem rights:

A principal in rem right grants its holder complete control over an object by granting him three main rights. The *usus*, or right to use, is the first in rem right, allowing the holder to use, enjoy, and profit directly from the possession of an object without modifying it. A person who owns an apartment, for example, has the right to use and reside in it. He also has the authority to grant others permission to stay in the apartment. However, he cannot lease such an apartment because his right is limited to generating direct benefits/profits from the possession of the object.

The *usufruct*, or right to exploit, is the second in rem right that grants the holder the right to use, enjoy, and derive indirect benefits/profits from the possession of an object. A person could, for example, exercise his right to exploit by selling crops grown on cultivated land or leasing immovable property and taxing for entry.

The *abusus* is a third-in-rem right that grants the holder the right to use, enjoy, derive indirect benefits/profits from, and alienate the possessed object by consuming, destroying, pledging it as collateral, or transferring the title to someone else (e.g. sale, exchange, gift).

Depending on the in rim right granted, these rights may be exercised separately or jointly. All three in rem rights are included in the ownership right. In contrast, the right of usufruct grants the holder only the right to use and exploit the property. A right to habitation, such as a real estate lease, only allows the holder, the tenant, to use the property.

Finally, the right of affirmative easement gives the owner of a real property, known as the dominant tenement, a non-possessory interest in the use or enjoyment of another person's neighbouring real property, known as the servient tenement.

☑ Subordinate in rem rights or security interest:

The preceding rights are subordinate to a distinct in personam right. They are a type of security interest that safeguards the creditor against the debtor's insolvency and, as a result, failure to pay his debt when it is due. Despite its subordination to an in personam right, it is classified as an in rem right because the collateral is property. When a debtor defaults, the creditor has the right to forfeit the collateral and recoup his due payments from the sale proceeds.

When the debtor defaults, the holder of a subordinate in rem right is entitled to payment from the value of the pledged asset. As a result, it bestows an in rem right on an asset to its holder, but it does not stand alone because it is contingent on the failure of an in personam right. The creditor, as the beneficiary of collateral, has no rights as long as the debtor has paid his debt/loan.

A security interest provides the holder with two advantages. The right to precedence, as well as the right to locate and recover collateral. The right to track and restore collateral entitles the holder to claim and collect pledged property in the possession of another individual before it can be offered to any other person or entity or before a third party (other creditor) can claim any interest in the property. In contrast, the right of precedence gives its holder priority over the property when it comes to distributing available funds or assets in relation to other creditors.

Another type of security is the in personam guarantee, in which a juridical or natural person endorses a three-party agreement to guarantee that the promises made by the first party (the principal or borrower) to the second party (client or lender) will be fulfilled, and assumes liability if the principal fails to do so (defaults). In the event of a default, the guarantor must compensate the lender or client and typically has an immediate right of action against the principal for payments made under the guarantee.

Because the collateral is a person's estate, we infer that such security is in personam.

2–Sorts of Securities:

A real estate mortgage is a traditional non–possessory security interest in immovable property in which the debtor, known as the mortgagor, pledges real estate as collateral to provide a guarantee for the payment of the debt to the creditor.

Possessory mortgage, which is a traditional possessory security interest in an immovable or movable tangible property in which the debtor, known as the mortgagor, pledges real estate or a chattel as collateral to provide a guarantee for the payment of the debt to the creditor. Under such an agreement, the mortgagee or a third party will have possession of the collateral.

Intangible asset pledging is a traditional nonpossessory security interest in movable intangible property or securities such as stock or bonds. To be enforceable against third parties, such security should be registered.

Judicial attachment is a security interest right in the debtor’s real property, which is granted by the judge, when a bona fide creditor is the beneficiary of a judicial decision that should be executed against the debtor. This security interest affords the creditor the right to recover his claims from a specific real property. It always affords the creditor the right of precedence over other conflicting creditors.

A legal lien is a security interest that is granted to specific creditors by law due to the nature of the loan/debt. There are two types of legal liens: floating liens (general liens) and specific liens. In floating liens, the secured (the creditor) has a security interest in all of the debtor's assets, including movable and immovable properties. The secured party has a wide–ranging claim. The holder of such a lien has first priority. A floating lien is the amount of money owed to the government, such as taxes and fees.

The creditor has a security interest in a specific property, whether movable or immovable, due to the nature of the loan/debt. Typically, such property is related to the loan's causation and is characterised as collateral by operation of law. By operation of law, the landlord (lessor) has a security

interest in the tenant's (lessee's) moveable property located in the leased premises.

Similarly, in an installment sale agreement, the hotel owner has a security interest in the guest's moveable property, and the seller has a security interest in the sold object.

The legislature determines the order of precedence for each security interest, indicating which security comes first. If no legislative text governs the conflict of securities, however, the legal lien serves as the final security. When competing or conflicting securities of the same rank are of the same rank, the creditor recovers their debts equally and proportionately, i.e. *pari passu*, because the right of precedence does not apply in this case.

☑ Intellectual property rights:

It is a legally protected and recognised monopoly of use, enjoyment, and deriving indirect benefits/profits from mental work products. It is similar to ownership, except that the subject matter of the property is mental work product rather than an object. Common examples of these rights include copyright, patent rights, and trademarks.

In the following section, we will look at the subjects of the doctrine of legal right, also known as legal persons.

2- Legal personality:

According to law theory, law is defined as a set of rules that give individuals living in society legal rights. Individuals, on the other hand, are still indefinite. Is it applicable to all people, including children, infants, animals, countries, and corporations?

To answer this specific question, legal practitioners' doctrine of legal personality comes into play. It identifies the people who are the law's subjects. Individuals living in society are not the only subjects of the legal right doctrine; groups of individuals who qualify as legal persons are also included. As a result, before delving into the legal persons subject to the doctrine of legal right, we must first define the concept of legal personality. We will first demonstrate the concept of legal personality, and then we will show how legal persons are characterized and identified.

- The notion of legal personality:

Today, all humans are considered legal persons, with certain legal rights recognized by the international community, such as those outlined in the Universal Declaration of Human Rights. Previously, slavery was recognized by several states and was not prohibited by the international community.

Because slaves were not granted legal personality at the time, not all humans were designated as legal persons. They were defined as objects that can be owned by human beings with legal personality.

Legal personality is defined as a person's ability to acquire rights and bear obligations. Individuals granted legal rights are typically human beings, whether individually or collectively in groups formed by certain legal entities. These entities have legal rights and are bound by legal obligations in their interactions with other people.

Natural persons are individuals who have been granted legal personality, whereas judicial persons are individuals who have been granted legal personality collectively by forming a group of natural persons, such as corporations and associations.

1-Natural Persons:

Natural persons are human beings with the capacity to participate in legal affairs. It is worth noting that the acquisition of legal personality has no bearing on the person's discernment or awareness of his own actions. A newborn child, for example, has the same legal personality as an adult. As a result, in matters of succession and distribution of the decedent's estate among her heirs, the newly born child has all the rights of an adult.

Legal personality and legal capacity, on the other hand, should not be confused. Legal personality is required for legal capacity to exist. While legal personality allows a person to acquire a right, legal capacity allows them to bear obligations by making binding changes to their rights, duties, and obligations, such as getting married or entering into contracts.

Whereas legal personality is acquired at birth, legal capacity is acquired after reaching the age of majority and being free of any inherent physical or mental condition, such as insanity, mental illness, or physical disability, that

prevents a person from achieving the normal levels of performance expected of people of comparable age.

All humans have a legal personality, but not necessarily legal capacity, because legal personality is contingent on only one condition: being born alive. Thus, the natural person's legal personality begins on the day of birth and ends on the day of death.

A. The beginning of the legal personality (birth):

A natural person's legal personality begins on the date of his birth. A person must be born alive and completely separated from his mother, according to the legal definition of birth. The child has no distinct legal personality prior to birth and separation from his mother. As a result, if the child is born dead or dies during delivery, he is considered to have never lived a life and thus is never granted legal personality.

According to Egyptian Civil Code Article 29(1), a child's legal personality begins on the day he or she is born alive and ends on the day of death. However, in order to grant legal personality, French law requires an additional requirement. It stipulates that the child must be born "vivant et viable."

As a result, if a child is born alive and dies soon after, under Egyptian law, this child has been granted legal personality; however, under French law, this child has never lived a life because he was not born viable. The Shari'a, which holds that a person is alive from the day he is born alive, inspired the requirement of simply being alive.

The official birth certificate issued by the Ministry of Health serves as proof of birth. According to Article 30 of the Egyptian Civil Code, birth and death are recorded in official registers kept specifically for this purpose.

In the event that such evidence is lost or incorrectly entered, proof of birth or death may be established by any other means. 415. Pursuant to Art. 19, 20, 21, and 22 of the Civil Status Law ("Civil Status Law") promulgated by Law No. 143 of 1994, the parents, if not relatives from the second decree who have attended the birth, if not the manager of the hospital, undertake to declare the birth to the competent Health office within 15 days of the

date of birth. This declaration must be recorded in the register kept for that purpose.

Although legal personality begins at birth, for the sole benefit of the child, legal personality may be acquired on the date the fetus was conceived rather than the date of its birth, provided that it is born alive, even if only for a few seconds.

A fetus shall acquire legal personality for specific purposes, such as:

- (1) acquiring the nationality of his parents, whether the nationality of his mother or his father as per Art. 2 of the Egyptian Nationality Law issued by law No. 154 of 2004;
- (2) the right to inherit the estate of his/her deceased parent or sibling;
- (3) the right to receive legacy and/or gifts bequeathed in a will;
- (4) the right to receive the amount of the life insurance policy if it is designated as a beneficiary thereof.

Nonetheless, if the fetus is not born alive, all of his rights will be revoked retroactively, which means that all of the money set aside for him in anticipation will be redistributed as if there was no fetus or child to be born.

If there is a succession and the gender of the inheriting fetus is unknown, the probate court must decide to keep the share of a male because Sharia' requires a male to have twice the share of a female. On the day of birth, if the fetus is a male, it receives the entire preserved amount; if the fetus is a female, she receives the share of a female, and the remainder is redistributed to other inheriting heirs in accordance with Sharia's rules.

B. The end of the personality (death):

Death is the end of one's legal personality. An official certificate of death issued following a declaration of death communicated to the competent Health office within 24 hours of the death, as per the provisions of Art. 35 of the Civil Status Law, establishes evidence of death.

Because of the situation in which a person is in a complete coma for several months, the brain does not function, but he is still breathing thanks to medical devices, defining death is not a simple exercise. Also, when a person disappears or is absent for an extended period of time without

knowing whether or not he is alive, it is difficult to determine whether or not that person should be considered dead. Only when there is a corpse of a person is death certain.

Therefore, in order to define death, we must distinguish between three situations: death, absence and disappearance or missing.

1. Death :

It is widely accepted that the death of a natural person terminates legal personality. However, because of advances in medicine, it is becoming increasingly difficult to define death. It is widely accepted that death occurs when brain activity ceases for an extended period of time. Nonetheless, the Egyptian courts have yet to resolve this issue.

2. The declared death in absentia:

When a person is absent, it is because he has been gone for an extended period of time and it is unknown whether he is alive or dead. In general, an absentee is presumed to be alive until the court rules that he is dead.

The absentee is considered alive during the time between his absence and the decision declaring his death. Also, in this case, a person's death is not certain due to the lack of direct proof of the person's death, such as the discovery of remains of the person's corpse, and yet this person has been missing for an extended period of time and there is no evidence that the person is still alive, the person may be declared dead.

The absentee acquires all legal rights granted or attributed to him and bears all obligations imposed on him during the period preceding the decision declaring death. Furthermore, if the absentee has not already appointed an attorney and has been absent for more than a year, the court shall appoint an attorney to protect the absentee's rights and perform his obligations.

According to Art. 21 of the Civil Status Law, despite the absence of direct proof of the person's death, such as the discovery of remains (e.g., a corpse or skeleton) attributable to that person, the judge may issue a declaratory judgment ruling the death of an absentee (legal presumption of death). The legislature, however, did not specify a time limit after which an absentee should be considered dead. It has left such a decision to the judge's

discretion based on the surrounding circumstances, provided that the period of absence is not less than four years consecutively.

3. The declared death of a missing person:

A person is considered missing if he goes missing for an extended period of time due to life-threatening circumstances (e.g., an aeroplane crash). Such disappearance must be accompanied by circumstances that strongly support the belief that the person has died.

In general, the court shall issue a declaratory judgement ruling the death of a missing person four years after the date of his disappearance (legal presumption of death). The judge has no discretion in this case, as opposed to the discretion it has regarding the period after which the absentee should be considered dead.

The four-year period is reduced to 30 days if the missing person was lost in an accident involving a sunken ship or a crashed plane. Furthermore, if the missing person is a member of the armed forces who went missing during a military operation or a member of the police who went missing during a law enforcement operation, the four-year period is reduced to one year.

In this case, the legal presumption of death must be declared by a decree issued by the Cabinet, the Minister of Defense, or the Minister of the Interior, depending on the circumstances. Such a decree shall have the same legal force as a declaratory judgment ruling the death of an absentee or a missing person who does not fall under the aforementioned exceptions.

During the period of absence and until the declaratory judgment ruling the death of an absentee or missing person is rendered, the latter's wife cannot marry another person because the latter is presumed to be alive.

This means that, in the event of succession, his share of the estate remains untouched until his appearance or the issuance of the declaratory judgment.

2- The Juridical Person:

A juridical person is a group of natural persons and/or assets that enables people to act as a single entity (body corporate) to pursue a common goal, which could be political, social, economic, cultural, or athletic. For legal

purposes, such a single entity is given legal personality distinct from its founding individuals. A state, municipalities, commercial companies, trade unions, and sports federations are all examples of juridical persons.

In almost all legal systems, the legal fiction of juridical person was created for convenience's sake. Prior to this concept, if a group of people wanted to enter into an agreement, for example, people involved in football or individuals practicing a specific profession such as advocacy, they had to sign several separate agreements. This caused significant inconvenience and delay because not all members of the group were available to sign the agreement or agreed to the same terms and conditions.

Due to the aforementioned inconvenience, the concept of juridical person was developed in order to provide a distinct legal person, i.e. juridical person, that acts in their common interest. Such juridical person shall be represented by one natural person who shall negotiate and sign the agreements in his capacity as the juridical person's representative.

This means that the person who acquires rights and assumes liabilities eventually becomes the juridical person. Normally, the group of people and the representative do not acquire any rights or liabilities. There are several types of juridical persons in the Egyptian legal system, as defined in Article 52 of the Egyptian Civil Code.

These juridical persons are primarily classified as public or private based on a variety of criteria, including, but not limited to, the purpose of the juridical person and the law that governs it. If the juridical person's goal is to fulfill the public interest, it is most likely a public person; however, if the juridical person's goal is to fulfill the private interest and realize profit, it is most likely a private person.

The Law differs between juridical persons subject to public law and those subject to private law. Whereas public juridical persons, such as governorates and public universities and hospitals, are granted the authority to exercise rights in the public interest, other juridical persons, such as corporations and associations, are governed by private law. A valid juridical person must meet certain conditions.

Two general requirements must be met in order to establish a valid juridical person. **First**, a juridical person must be established in order to achieve a legitimate, lawful, possible, and continuing objective. For example, if the purpose of the corporation is to manage and operate illegal activities such as prostitution, the corporation is invalid and cannot be formed.

Second, the juridical person must be formed in accordance with the legal requirements so that its creation and existence are recognized by the State in which it is incorporated. A juridical person can be established and recognized through a statute, especially if that person is a public juridical person. On the other hand, the establishment and recognition of a private juridical person is accomplished by meeting the legal requirements, which include the registration of the juridical person.

For instance, under Egyptian law, the principal place of management of a joint stock company must be in Egypt. Public juridical persons acquire legal personality on the date that the law authorizing their establishment is published in the Official Gazette. Private juridical persons, on the other hand, acquire legal personality on the date they are registered in the Commercial Registry or the Companies Registry.

Unlike natural persons, the legal rights given to juridical persons are limited to the purpose for which the juridical person was established in the first place. This goal is explicitly stated in the person's articles of incorporation and by-laws. As a result, a juridical person cannot assert a legal right that is unrelated to its primary goal. A shipping company, for example, lacks the legal capacity to enter into a purchase agreement for a military aircraft.

The legal personality of a juridical person expires at the end of the term specified in its certificate of incorporation. It can also come to an end when its objective is exhausted or when it is liquidated.

- **Legal personality characterization and identification:**

The law must specify who does what and with whom or against whom. As a result, both natural and legal persons must be identified. The name, legal capacity, domicile, and personal status are the four main elements used to identify legal personality.

1- The name :

According to Law No. 143 of 1994, every natural person must have at least two names: surname, which is usually the name of the family or the fourth grandparent, and first name (which distinguishes the person within the family). Legal entities are also identified by holding a specific name that is a combination of the shareholders' names, the company's activity, the names of partners, or the company's commercial name.

There are various types of names. Civil name, which is the person's real and official name as stated in official documents such as a birth certificate.

Pseudonym (fictitious name) is a name that a person or group adopts voluntarily for a specific purpose, usually related to an activity such as communicating with the public or fans.

This name may be different from their given or civil name. A nickname is a familiar or humorous name given to a person in place of or in addition to their civil name. It is usually related to a person's intellectual, physical, or professional characteristics.

Finally, there is the commercial name, which is the name assumed or chosen by a merchant to be distinctive for the purposes of his business. This commercial name must include the civil name of the 150 merchant, as well as any other designations such as the merchant's nickname, profession, type of business, and so on.

For example, Orascom is a telecommunications company. The commercial name is distinct from the commercial sign, which is a creative designation under which the business operates and is known to the general public, such as MobiNil, Central Perk Coffee House, Friday's, and Maryland Coffee Shop. Commercial signs are distinct from registered trademarks.

The right to a name is legally protected. According to Article 51 of the Egyptian Civil Code, anyone whose name is used in false representation or used by another person without permission or proper cause has the right to stop such infringement and, if applicable, to claim damages.

Taking advantage of name similarity, where someone uses the name of a well-known successful person, is not permitted. It is also forbidden to address animals or comic characters with the names of famous people or

public figures. Injunctive relief by issuing a court judgement ordering the unlawful use of the name, as well as damages, are available to the prejudiced person whose name was unlawfully and illegally used.

2- legal capacity :

Capacity refers to a person's ability to carry out legal actions, fulfill obligations, and exercise his rights. Legal capacity is inextricably linked with discernment, or the ability to form sharp perceptions or make sound judgments. It allows the user to select from a variety of options. For example, the ability to determine whether or not a particular deal is beneficial. Sufficient discernment is determined by two factors: a person's age and mental condition/status.

Legally, unless he has a mental disability, every person is presumed to have full discernment by the age of majority. The age of majority differs from one legal system to the next. According to Article 44 of the Egyptian Civil Code, the age of majority is 21 years old, whereas the age of majority is 18 years old in France and most of the United States.

The capacity to acquire and receive rights differs from the capacity to exercise those rights.

The former is known as the capacity to acquire and the latter is known as the capacity to exercise. Whilst the capacity to acquire is afforded to everyone granted a legal personality, the capacity to exercise is not. Generally, the capacity to exercise is available to adults who have at least 21 years old and do not suffer any mental disabilities.

For example, a child of ten years old has the ability to acquire, and thus has the ability to receive his share of the descendant's estate and become the owner of it. Nonetheless, he cannot alienate any portion of this share because, as a minor, he lacks the legal capacity to exercise his ownership right. In this regard, Article 48 of the Egyptian Civil Code states that "no one shall waive his legal capacity or modify the rules governing it." As a result, it is widely accepted that the age of majority is a mandatory rule from which parties cannot deviate.

Despite the aforementioned, a minor may, in exceptional circumstances, exercise his rights through a representative. Article 47 of the Egyptian Civil

Code states that "persons who lack capacity or have an imperfect [incomplete] capacity are subject to guardianship, custody, and curatorship in accordance with the conditions prescribed by this law." As a result, a guard, custodian, or curator can exercise a minor's right.

Based on the foregoing, we conclude that legal capacity is divided into two types: the capacity to acquire and the capacity to exercise. A. Acquisition capacity (*capacité de jouissance*). The capacity to acquire refers to the ability to acquire and receive rights, as well as to bear obligations and duties. Every legal person has this capability. It is available to both natural and legal persons.

1. Natural persons :

It gives legal entities the ability to acquire rights and bear obligations. Unlike the ability to exercise, the ability to acquire is not affected by age. The ability to acquire is established at birth and terminates at death. However, the scope of such capacity may vary depending on the following factors:

- **Gender:**

In some jurisdictions, males' rights may be broader or narrower than females' rights. For example, in some legal systems, females do not have the same equal political rights as men and are not required to serve in the military. In addition, in intestate succession, a male's share is twice as large as a female's share.

- **Citizenship and nationality:**

Foreigners do not have the same rights as citizens or nationals in many jurisdictions. For example, they are denied all political rights and are not permitted to hold government positions.

- **Religion:**

The rights and duties that Muslims bear are different from those of Christians. For example, matters of marriage, divorce and adoption are different.

- **Person's position in a family:**

Duties and obligations imposed on parents are different from those imposed on the children. A child must obey his father, whereas the father must financially support his children.

2. Juridical persons :

The capacity of judicial persons to acquire stars begins on the date of their registration and ends when they are liquidated or their term expires. The scope of such capacity is limited to the nature and goals of each legal person. A juridical person, for example, may not be granted political rights or the right to marry or divorce. Furthermore, a juridical person is only entitled to rights to the extent that they allow it to achieve its goal. As a result, it is permitted to own property, conduct transactions, file lawsuits, be sued, and enter into agreements as long as they are consistent with its objectives.

A. Capacity to exercise (capacité de jouissance) :

The capacity to exercise is the person's ability to validly express his will. In other words, the person's ability to undertake and execute, by himself, all the legal acts that he is entitled to.

1. Natural persons :

According to Article 109 of the Egyptian Civil Code, "everyone has the capacity to enter into agreement, unless his capacity is lacking or incomplete under the provisions of the law." As a result, as a general rule, natural persons have the capacity to exercise, unless such capacity is incomplete or unavailable under the law.

There are two reasons why a person may lack capacity. Either a lack of discernment, which is related to the person's age, or disabilities, which include mental, physical, and legal disabilities.

a) Lack of capacity due to lack of discernment.

The ability to exercise is linked to discernment. As a general rule, due to a lack of discernment and awareness, all minors lack the capacity to exercise. Human life is divided into three stages when it comes to discernment and awareness. The first phase lasts from birth to seven years old, the second

from seven years old to 21 years old, and the third from 21 years old to death.

First phase: minor with no discernment.

Children under the age of seven are included in this phase. The minor has no discernment during this stage, so all children of this age lack capacity. Article 45 of the Egyptian Civil Code states that "any legal act executed or performed by such person is void, even if it is purely beneficial to the child."

Second phase: minor with discernment.

This phase includes children over the age of seven but under the age of 21. During this stage, the minor has a limited discernment. According to Article 46 of the Egyptian Civil Code, "legal acts performed by such minor may be valid, void, or voidable depending on the nature of the act." Accepting a donation, a will, or an assignment of rights free of any obligation [charge] is valid and binding when the act is purely beneficial to the child.

When a legal act is purely detrimental to the child, such as making a donation or granting a debt discharge, the act is null and void. However, if the act is neither purely harmful nor purely beneficial to the child, such as a sale agreement, it is void. This means that the act is valid, but it can be revoked by the guardian or the child once he reaches the age of majority.

It is important to keep in mind that the determination that an act is neither purely harmful nor purely beneficial is based on the nature of the act itself, rather than the eventual outcome. A sale agreement, for example, is an act that is neither purely detrimental nor purely beneficial, even if the outcome .of the sale is purely beneficial to the seller

In addition to the foregoing, the legislature adds some statutory exceptions under which acts performed by a minor with insufficient discernment are valid. Capacity to exercise his right to use, dispose and alienate properties and alimony that are specifically assigned to cover his expenses.

1- The capacity to exercise his right to enter into employment contracts. As an Employer, employment agreements are legal acts that are neither purely detrimental nor purely beneficial. If the minor is 18 years old or

older and has been granted permission by the court to engage in commercial activities, he has the right to enter into agreements related to those activities. If the minor is 16 years old and has earned an income from his labour, he has the right to enter into agreements to manage that income.

2- Capacity exercise his right to use, dispose and alienate the income that he obtained from his labor if the minor is 16 years old.

3-Capacity to exercise could be granted to a minor who is authorized by the court to manage all or a part of his wealth.

Third phase: adult with complete discernment and awareness:

Persons over the age of 21 are included in this phase. The person is an adult at this point, with full discernment and awareness. As a result, the legal acts carried out by such a person are valid. However, any pledge or quittance made by an adult to the interest of the custodian (rather than the guardian) within one year of submitting the financial statement of the period of legal representation, i.e. period of custody, is voidable.

c. Lack of capacity due to disabilities :

Certain natural persons lack the capacity to exercise although they are older than 21 years old. They are known as protected adults. The lack of capacity is due to certain disabilities, which may either be inherent disability¹ or incidental disability².

On the one hand, inherent disability is a type of natural mental disability that can be divided into two categories: inherent disability that completely excludes capacity and inherent disability that renders capacity insufficient. The incidental disability, on the other hand, is a non-mental disability classified into three types: physical disability, de facto disability, and de jure disability.

While inherent disability excludes or makes legal capacity insufficient, incidental disability makes legal capacity unavailable by preventing a person from relying on or using his capacity.

¹ موانع الأهلية

² عوارض الأهلية

A–Inherent disability :

- Inherent disability that completely excludes capacity:

Insanity and dementia are examples of this type of disability. Insanity is defined as a range of behaviours characterized by abnormal mental or behavioural patterns.

Dementia is a broad category of brain diseases that cause a long-term, often gradual decline in a person's ability to think and remember that is significant enough to interfere with daily functioning. As a result, a person suffering from dementia is neither insane nor normal.

Normally a protected adult is subject to conservatorship¹ which is a legal concept where a protector, named conservator, is appointed by a judge to manage the financial affairs and/or daily life of another, named conservatee, due to physical or mental limitations, or old age.

Legal acts performed prior to conservatorship by an insane adult or an adult suffering from dementia are valid unless the other contracting party acted in bad faith. Legal acts performed by an insane adult or an adult suffering from dementia following conservatorship, on the other hand, are null and void, even if the contracting party acted in good faith.

– Inherent disability that renders capacity incomplete :

This type of disability includes excess and folly. Lavishness is a disability that denotes a wasteful expenditure of money, which is usually made by a spendthrift, who is defined as a person who lacks the ability to spend his wealth reasonably and responsibly.

Foolishness is a disability that indicates a lack of good judgment or sense. Legal acts performed by a lavish or foolish adult prior to conservatorship are valid unless such person is involved in collusion or exploitation. This is due to the fact that a lavish or foolish person is rational and has a strong will.

However, legal acts carried out by a lavish or foolish person subsequent to conservatorship are governed by the same rules applicable to legal acts carried out by minor who has discernment, i.e. a minor of the second phase.

¹ الحجر

B. Incidental disability

- Incidental physical disability :

It is not a mental disability; rather, it is a physical disability that can be (1) a deficiency in at least two senses, such as deafness–dumbness, deafness–blindness, or blindness–dumbness; or (2) a severe bodily disability, such as hemiplegia.

Such individuals are aided by a court–appointed individual known as a judicial assistant, who assists the incompetent individual in carrying out legal acts.

- Incidental de facto disability :

De facto disability occurs when a person is unable to express his will – that is, he is deprived of his ability to exercise – because he is either absent or missing. Such a person is represented by a court–appointed person, usually an agent, who represents and acts on behalf of the absentee or missing person.

- Incidental de jure disability:

De jure disability occurs when a person is unable to express his will – that is, he is deprived of his capacity to exercise – as a result of criminal liability for committing a felony. A punishment prescribed for committing a felony, according to Article 25 of the Egyptian Criminal Code, precludes the convicted from exercising his right to manage his assets. A curator represents such a person and acts on his behalf and in his best interests.

A minor or a protected adult shall have his estate managed by guardian, custodian or curator. A guardian¹ is an adult is appointed by the court to care for a minor child ("ward") whose circumstances require it, and to make decisions about the child's education, support and maintenance and to manage the ward's assets. Parents are the natural guardians for their child and do not need to be appointed by a court.

¹ الولي

Whereas a custodian¹ is an adult is appointed by the court or the parent of the ward to make decisions about the child's education, support and maintenance and to manage the ward's assets.

Finally, a curator² is a person who is appointed to take care of anything for another, more specifically, he is a person who take care of managing the assets of a protected adult.

2. Juridical persons:

Juridical persons are afforded the capacity to exercise only the rights that are related to their purposes and objectives. However, since juridical persons are a legal fiction, they are represented by a natural person who acts on its behalf and expresses its will. This individual is either the chairman, a member of the board of directors, the CEO, or a manager. This is determined by the bylaws and articles of incorporation of the juridical person. This representative enters into contracts on behalf of the legal entity. In addition, he sues and is sued in his capacity.

3- The domicile :

Egypt's legal system distinguishes between the concepts of domicile, residence, and address. More specifically, for the purposes of determining jurisdiction in disputes involving foreign persons, Egyptian law uses the terms "domicile" and "residence" interchangeably and distinctively. Egyptian courts have jurisdiction over lawsuits filed against foreigners who have either a domicile or a residence in Egypt, according to the Egyptian Civil and Commercial Procedures Code.

As a result, even if a foreigner is not domiciled in Egypt but has a residence there, Egyptian courts have jurisdiction over any dispute involving such a foreigner. The distinction made by the Legislature between said links implies that they are not similar.

On the one hand, in Egyptian law, "domicile" refers to the address where it is legally permissible to deliver legal documents or serve a process on a person with the presumption that the recipient has been notified or served,

¹ الوصي
² القيم

even if no actual acknowledgement of receipt is provided. In other words, a "domicile" is the location of a person.

In Egyptian law, however, the term "residence" refers to all places where a person resides. Although the terms "residence" and "domicile" may refer to the same location, not every place where a person lives is considered its domicile because a domicile is more than just a place where a person lives.

1. Natural persons:

With this distinction in mind, Article 40 of the Egyptian Civil Code defines a natural person's domicile as the place where it habitually resides. The Explanatory Memorandum of the Egyptian Civil Code exemplifies this definition further, stating that simply staying or living in a place does not qualify this place as domicile unless such stay is stable.

As a result, if the condition of stability is not met, this location will be treated as a residence under Egyptian law. Furthermore, the Explanatory Memorandum clarifies that the term "stability" does not imply a continuous stay. It denotes a continuous stable stay that may be interrupted by periods of absence, whether close or distant, and that, despite the interruptions, meets the requirements of habitual residence.

That being said, according to the provisions of Article 40 (2) Egyptian Civil Code, "it is permissible for a [natural] person to have more than one domicile at the same time".

2. Juridical persons:

The domicile of a juridical person is the location of its management's premises and offices. In this regard, Egyptian Civil Code Article 53 (2) (d) states that "the domicile [of a juridical person] is the place where its principal place of management is located".

When the wording of Articles 40 (1) and 53 (2) (d) of the Egyptian Civil Code is compared, it is clear that the connotation of juridical persons' domicile differs from that of natural persons' domicile. The domicile of a juridical person is expressly and specifically defined by law as the location of a corporation's principal place of management. There is no mention of "residence."

Typically, Egyptian doctrine uses the terms "domicile" and "siege social" interchangeably to refer to the principal place of management, which is typically the location where all corporate decisions are made.

The domicile of a juridical person, according to prominent scholar Soliman Morcos, is "[...]the place where its management is based, that this place is where the central body it represents is located [...]."

More specifically, a corporation's principal place of management is the location of the corporation's directory activity, which is typically the location of board meetings and general assemblies, as well as the administrative offices.

Egyptian law recognises the concept of principal place of business. It is the location where a corporation conducts its primary operations in order to achieve the goals outlined in its articles of incorporation and by-laws. In the context of applying Egyptian law to foreign corporations whose actual principal place of management is outside Egypt but they exercise their activities there, Egyptian law refers to principal place of business.

In such a case, the foreign corporations' local place of management will be treated as their domicile for the purposes of domestic law (i.e. Egyptian law).

Given the preceding, a primary place of business/operation differs from a primary place of management. The principal place of business is where a company's operations and activities are located, whereas the principal place of management is where a corporation's directory activities are located. More specifically, the principal place of management is the location of the board of directors and general assembly meetings, as well as the management offices.

The principal place of management is sometimes referred to as the corporation's principal place in Egyptian law. In this regard, Egyptian Companies Law states that any joint stock company incorporated in Egypt must have its principal place of business there and be subject to Egyptian law. Article 41 of the Old Commerce Law No. 1 of 1883 ("Old Commerce Law"), which is still in effect, grants Egyptian nationality to joint stock companies incorporated under it.

- Importance of domicile:

The links “domicile” and “nationality” are usually referred to in matters related to the choice of law, jurisdiction, the performance of certain contractual and commercial obligations, procedural rules such as service of process and tax.

a) Choice of law:

To determine the applicable law, Egyptian conflict of laws rules refer to "domicile." In general, Egyptian law applies to Egyptian nationals, whether natural or legal persons. Furthermore, a foreign juridical person is subject to the law of the state in which its actual principal place of management is located.

A foreign corporation, on the other hand, is subject to Egyptian law if it conducts its main business in Egypt, even if its actual principal place of management is elsewhere.

Moreover, Egyptian rules of conflict of laws provide that when parties to an agreement are domiciled in the same place, the law of the said place shall be the governing law of their agreement.

b) Choice of jurisdiction

Egyptian law refers to both "domicile" and "nationality" to determine whether Egyptian courts have jurisdiction over disputes involving foreigners. Egyptian courts have jurisdiction over disputes involving Egyptian nationals, whether natural or legal, according to Article 28 of the Egyptian Civil and Commercial Procedures Code. Furthermore, Article 29 of the Egyptian Civil and Commercial Procedures Code extends Egyptian courts' jurisdiction over foreign corporations based in Egypt.

c) Service of process:

The Egyptian Civil and Commercial Procedures Code governs the process of serving a notice through a number of articles, the most important of which are articles 10, 11, and 13. The aforementioned articles define "domicile" as the location where it is legal to deliver legal documents or serve a process with the presumption that the recipient has been notified or served, even if there is no actual acknowledgement of receipt. In the case

of juridical persons such as corporations, domicile is defined as the corporation's primary place of management, as stated in its Articles of Incorporation and By-laws.

d) Place of performing or fulfilling contractual obligations:

The term "domicile" is used in the Egyptian Civil Code to refer to the location where an obligor must perform and fulfil its contractual obligations. Unless the parties agree otherwise, an obligor must perform his obligation at his domicile. Furthermore, according to the Egyptian Commercial Code promulgated by Law No. 17 of 1999, a bill of exchange is due at the drawee's domicile, unless the drawer specifies otherwise.

e) Income tax

The Income Tax Law No. 91 of 2005 ("Tax Law") states that a juridical person's net profit is taxable if (a) the juridical person is a resident of Egypt; or (b) the juridical person is not a resident of Egypt but realized its profits through a permanent establishment in Egypt.

All net profit realized by juridical persons resident in Egypt, whether in Egypt or abroad, is subject to taxation.

F) Personal Status:

Personal status refers to a person's affiliation with a particular nationality or political status, religion or religious status, and family or social status. This distinguishes juridical persons from natural persons because juridical persons, by definition, cannot have religious or social status.

4-Nationality:

Nationality is the link that connects a person to a sovereign state. is a legal concept that denotes a legal person's subordination or legal dependency on Egypt. Nationality is defined as the legal relationship that binds a person to a State's population. Its goal is to identify individuals in the international community.

Nationality is conferred on both juridical and natural persons. It is widely assumed that nationality or citizenship is acquired through birth. A child must have the nationality of both parents. Furthermore, in some states, a

child is entitled to the nationality of the state in which he was born. Furthermore, a person can obtain the nationality of a state during his or her lifetime through naturalization.

Citizenship is granted to juridical persons based on the location where they are registered (i.e. the location of their principal place of management), as well as the location of their principal place of business. It is granted in some jurisdictions based on the nationality of the persons who control the juridical person.

1. Natural persons:

It is primarily conferred or granted on the basis of the right of blood (*jus sanguinis*) or the right of soil (*jus soli*). The right of blood grants a child the nationality of his parents, whereas the right of soil grants a child the nationality of the sovereign state in which she or he is born.

The Egyptian legislature has adhered to the doctrine of the right of blood. Since 2004, any child born to an Egyptian father or mother has been considered Egyptian. Exceptionally, a child born within Egyptian territory to unknown parents is considered Egyptian.

The aforementioned nationality is referred to as original nationality, and it is granted automatically by operation of law. Aside from that, Egyptian law recognizes nationality by naturalization, which can be obtained through a request submitted by the applicant to the competent authority if she meets all of the requirements for acquiring Egyptian nationality. Even if all requirements are met, the Egyptian government has the discretion to accept or reject such an application.

2. Juridical persons

If certain conditions are met, judicial personnel may be granted Egyptian "nationality." For example, it is well established in Egyptian doctrine²⁷ and case law²⁸ that joint stock companies incorporated in Egypt and having their primary place of management (i.e. domicile) in Egypt are Egyptian companies.

5- Religion:

Every individual in society has the right to freedom of belief, which allows him or her to freely choose his or her own religion. Religion may have a direct impact on whether or not a person can run for public office in some societies.

In Lebanon, for example, the President of the Republic must be a Maronite Christian, the Prime Minister must be a Muslim Sunni, and the Speaker must be a Muslim Shia.

Furthermore, matrimonial right varies according to the religion of the concerned parties. Matters related to alimony, financial support, divorce, valid marriage, wills and intestate succession are differently regulated by religions.

6–Social Status:

These are the characteristics of the person which define its legal status.

A– Natural persons:

Birth, death, adoption, parenthood, and marriage are all examples of social status. There are two types of family relationships: relatives and step-relatives. Relatives are blood relatives such as a father, mother, grandfather, grandmother, grandchildren, siblings, and cousins. There are several degrees of these relatives. Step-relatives, on the other hand, are blood relatives of the spouse, such as a step-father, step-mother, step-grandfather, step-grandmother, step-sister, and step-brother.

Besides, social status aids in the identification of individuals based on their age and mental capacities, as well as the consequences that follow, such as reaching the majority age and the ability to enter into valid agreements.

This classification is critical because it determines the various legal consequences. Certain rights and duties are only applicable to certain types of relatives. For example, moral damages or damages for loss of consortium are only available to spouses and first and second degree relatives. Incest is prohibited between certain degrees of relatives. Furthermore, being a relative or step-relative is a reason to call a judge or an expert witness into question.

B– Juridical persons:

Juridical persons do not have a social status; instead, they have a copy of their commercial registration, which is recorded at the Commercial Registry or Companies Registry. This registration requirement is roughly equivalent to having civil status.

7- The notion of “estate” (*le patrimoine*)¹

First, in order to avoid any misperception, it is worth noting that estate is not synonymous to wealth. The term "estate" pertains to all legal relations that may be subject to financial assessment, including a person's assets (debt claim, property, usufruct) and liabilities (debt, easements). Therefore, an estate is the net worth value of all the assets owned and rights held by a person less the value of all its outstanding liabilities and duties attached to the person. The estate has a universal character, which means that the assets and liabilities are inseparable; thus, any transfer of net worth implies a simultaneous transfer of assets and liabilities, similar to the effect of intestate succession.

Each legal person has an estate that is inextricably linked to its legal personality. As a result, a person cannot have more than one estate that is not transmittable during the person's lifetime. Furthermore, it is impossible to have an estate that has not been assigned to a person.

As previously stated, a person's estate is the sum of a legal person's present and future rights and obligations. Every estate has a balance that is made up of the assets' side, which contains the legal rights, and the liabilities' side, which contains the legal obligations.

The assets side is made up of various pecuniary rights, which can be in personam rights, in rem rights, and/or intellectual property rights. It also includes compensation obtained to repair damages sustained as a result of a violation of non-pecuniary rights. The liabilities side, on the other hand, includes all of the obligations that the legal person bears, regardless of the source of these obligations.

There are two reasons why the estate is significant. First, a descendant's estate is not distributed among the heirs until all debts have been paid.

¹ الذمة المالية

Second, the estate's assets serve as the creditor's general security for payment of the debt. In the event of a default, the defaulter's assets guarantee the payment of the debt. The creditor has the right to recover all of his money from the defaulter's estate, and this right is not limited to a specific property.

The creditor may foreclose and forfeiture any property in order to recover his claim from the proceeds. In the event that there is more than one creditor and the assets of the debtor are not enough to pay all the debts, the creditor shall be paid *pari passu*.¹

Moreover, a creditor whose debt is not due but wishes to ensure that the debtor does not default may impose one of the following legal instruments to constrain and limit the debtor's ability to alienate his assets. These instruments are :

A. Indirect Action

It is a civil action that a creditor may bring on behalf of his reckless/irresponsible debtor to assert the debtor's rights against third parties. A creditor may file an indirect action if and only if the following conditions are met :

- (1) the creditor's claim is actual and certain, which is unaffected even if the debt is subject to a subsequent condition, because only debts subject to a condition precedent are considered probable,
- (2); the debtor's imprudence and irresponsibility, which has resulted in his insolvency; and
- (3) the creditor's may claim all the debtor's rights, whether *in personam* or *in rem*, unless rights that are not subject to seizure such as right of habitation and right to use.

B. Fictitiousness/Fabrication Action

¹ The *pari passu* principle means that all unsecured creditors in insolvency processes, such as administration, liquidation and bankruptcy must share equally any available assets of the company or individual, or any proceeds from the sale of any of those assets, in proportion to the debts due to each creditor.

It is an action that allows the creditor to demonstrate the forgery of his debtor's agreements, which can be substantiated by any means of evidence. The goal of such action is to declare all of these agreements unenforceable in order to keep all of the debtor's assets in his estate, which is the creditor's general security. Fabrication can take many forms.

The legal act by which a property is transferred to a third party may be fictitious. This occurs when the parties fictitiously agree to a sale agreement, despite the fact that no actual agreement or sale occurred.

Even when there is an actual agreement, the second type of fabrication may occur. This occurs when the parties agree to expressly refer to and characterize the agreement as a sale agreement when it is in fact a donation.

Finally, even when there is an actual agreement with an actual and real characterization, the third form of fabrication may occur. This occurs when the agreement's terms and conditions are fictitious. Fabrication occurs, for example, when the parties to a sale agreement expressly state a price that differs from the actual real price paid by the purchaser in order to avoid paying higher title registration fees.

C. Revocation Action :

The lawsuit is defined idiomatically as the lawsuit to invalidate the actions, as it was known in Egyptian jurisprudence, though the creditor does not request the invalidation of the debtor's disposal, but rather that this act not apply to him, while it remains between the debtor and the disposer.

The action of non-enforceability of actions in relation to its effect on the contested act, and thus it is more accurate to name the non-enforceability of actions in view of its clarity in the work. This lawsuit is known as one of the means of ensuring creditors' rights in the general guarantee, and it was stipulated by the Egyptian legislator in the third chapter of the second part of the first book of the Civil Code under the title "What guarantees creditors' rights from the means of implementation and guarantee."

This lawsuit seeks to protect creditors from actions that detract from the debtor's rights or increase his obligations, which the debtor may take if his financial situation worsens in order to harm and vex his creditors.

Such as disposing of the sale of apparent funds, such as selling a house to him in order to conceal its price from his creditors, and also favouritism from others, such as his relatives, by donating his money or selling it for a low price, and complimenting one of the creditors at the expense of other creditors in order to avoid the division of rivals.

In relation to the action of non-enforcement of actions, the Egyptian Court of Cassation ruled: "The police case – and what happened in the judiciary of this court is in reality nothing more than a claim for the non-enforcement of the action issued by the debtor to the detriment of his creditor." It falls within what the law guarantees the rights of creditors within the means of guarantee, without implying that the property returns to the debtor, but the property returns only to the general guarantee of the creditors.

Glossary of Legal Terminology.

• Legal rules	قواعد قانونية
• Inherent disability	موانع الأهلية
• Incidental disability	عوارض الأهلية
• Category	طائفة
• citizens	مواطنين
• Authority	سلطة
• State	دولة
• Govern	يحكم
• Civil sanction	جزاء مدني
• Compulsory	اجباري / إلزامي
• Violate	يخالف
• Imperative rules/ peremptory norms	قواعد امرة
• Custodian	الوصي
• Guardian	الولي
• Curator	القيم
• 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	الاحلاقيات 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
• Conservatorship	الحجر
• Chief Judge, Presiding Judge	رئيس محكمة
• Estate	الذمة المالية
• 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 الحاسمة
• 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

Some Legal Statements

- Reus in excipiendo fit actor : the defendant by his pleading becomes the plaintiff. In other words, a party submitting a preliminary objection during the preceding is in the position of a complaining party .

إن الطرف الذي يقدم دفعاً أولاً خلال الإجراءات يكون في موقف المدعي. وبمعنى آخر أن وضع الأطراف ينقلب عند تقديم دفع أولي: فالمدعي عليه، الذي يقدم الدفع، تطلب المحكمة منه أن يقدم مدعاه أولاً، ثم يرد عليه المدعي، كما أن عليه إثبات ما يدعيه وهكذا).

- The more abstract and general a rule, the more stable it is, and vice versa.

كلما كانت القاعدة مجردة وعمامة، كلما كانت مستقرة والعكس صحيح.

- The question whether a tribunal failed to exercise jurisdiction is clearly a legal question.

إن مسألة تقاعس المحكمة عن ممارسة الاختصاص تعد بوضوح مسألة قانونية.

- Reparations must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would have existed if the act had not been committed.
يجب أن يزيل التعويض، بقدر الإمكان كل آثار الفعل غير المشروع وأن يعيد الوضع الذي كان سيوجد إذا لم يكن قد تم ارتكاب الفعل.
- The commission by a tribunal of a fundamental error in the procedure may render its decision null and void.
إن ارتكاب المحكمة خطأ جوهري في الإجراءات قد يجعل قرارها باطلاً.
- Everyone has the right to claim before an independent and impartial tribunal established by law.
لكل شخص الحق في محكمة مستقلة و محايدة تنشأ وفقاً للقانون.
- Everyone has the right to have the case heard and determined within a reasonable time.
لكل شخص الحق في نظر قضيته والبت فيها في غضون فترة زمنية معقولة.
- The right to a reasoned decision means that the court must support its decision by adequate reasoning.
الحق في حكم مسبب يعني أن المحكمة يجب أن تدعم حكمها بتسبيب كاف .
- If the court has exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred in a question of law or committed a fundamental fault in procedures, its decision may be void and null.
إذا تجاوزت المحكمة ولايتها أو اختصاصها ، أو تقاعست عن ممارسة الاختصاص القضائي المخول لها ، أو أخطأت في مسألة قانونية ، أو ارتكبت خطأ جوهرياً في الإجراءات ، فيمكن إبطال حكمها.
- A conclusion is more powerful than a presumption.
النتيجة أقوى من القرينة.
- There is a principle whereby international law prevails over national law.

هناك مبدأ مقتضاه أن القانون الدولي يسمو على القانون الداخلي.

- In relations between states the provisions of municipal law cannot prevail over the treaty.

في العلاقات بين الدول لا يمكن أن تسمو نصوص القانون الوطني على المعاهدة.

- The principle of prohibition of retroactivity means, as rule, that the retroactive application of legal texts is prohibited.

فمبدأ حظر رجعية النصوص القانونية يعني ، كقاعدة ، أن تطبيق النصوص القانونية بأثر

رجعي محظور.

- The presumption of innocence until proof of guilt is the keystone of human liberties.

قرينة البراءة حتى الإدانة هو حجر الزاوية في حريات الإنسانية.

- Due process supposes the existence of several elements: fair hearing, presumption of innocence, proper evidence, no reliance can be placed on an undisclosed document, statement of reasons and respect of acquired rights.

تفترض المحاكمة الواجبة وجود عدة عناصر: مراعاة عدالة ، قرينة البراءة ، والأدلة الصحيحة ، وعدم الاعتماد على مستند لم يتم الكشف عنه ، وذكر الأسباب ، واحترام الحقوق المكتسبة.

Chapter Two

Civil Contracts

Students Should Know after Studying This Chapter :

- The definition of contract.
- Classifications of contracts.
- Requirements for formation of contracts.
- The termination of contracts.

Most people will describe a contract as a piece of paper they sign when they start a job, buy a house, etc. While it is true that these documents are legally binding contracts, the term contract has a broader meaning that includes any legally binding agreement, written or unwritten. An agreement must satisfy certain requirements in order to be legally binding, which will be discussed in the section on contract formation. The general rule is that these requirements do not include being in writing, unless the law expressly requires writing as an exception to this general rule.

Actually, we make contracts every time we go to the supermarket, get on a bus or train, or put money into a machine to buy chocolate or drinks, all without a single word being written down or even spoken. This chapter will clarify the definition of the word "contract," state the requirements for contract formation, describe the effects of a valid contract, and finally define cases for terminating the contractual relationship.

A) The definition of contract:

A contract is an agreement that creates obligations that are legally enforceable or recognized. A contract could thus be defined as "the exchange of promises between two or more parties with the intent of creating, modifying, or extinguishing legal obligations on each of them." The goal of each obligation is to either give something, do something, or refrain from doing something".

Contract law refers to the law that governs the formation, effects, and termination of contracts, among other things. Contracts in Egypt are generally governed by the Egyptian civil code, which was established by Law No. 131 of 1948.

B) Classifications of contracts:

Contracts have different classifications⁴³, each classification has practical importance. Contracts may be classified into the many classifications, since this book addresses business students not law students we discuss only five of these classification as follows:

- Nominate and in nominate contracts.
- Bilateral and unilateral contracts.
- Onerous and Gratuitous contract.

- Consensual and formal contracts.
- Immediate and continuous contracts.
- Time limited and unlimited contracts.

1- Nominate contracts and innominate contracts

Before distinguishing between the nominate and in nominate contracts we should clarify that the Egyptian legislature enacted the general rules of contracts which govern all kinds of contracts then specified some kinds of important contracts by their names and enacted special rules to govern each of them in specific matters otherwise they will be also governed by the general rules of contract, This will be detailed in the following:

- **Nominate contracts:** are those specified by their name and governed by special rules in the law. such as: sale and lease contracts.

- **Innominate contracts:** are those contracts not named and not governed by special articles in the law, they are governed by the general rules of contracts. for example: contracts concluded between a client and restaurant or hotel.

2- Bilateral and unilateral contracts (classifying contracts as to obligations):

- **Bilateral contract:** contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other ; such as contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it.

- **Unilateral contract:** is the contract which impose obligations only on one party of the contract, for example: in donation contract all the obligations are only on the side of the donor, While the done is not obliged by any obligation . It must be noted that even unilateral contracts requires the mutual consent of their parties (the debtor and creditor) at the time of constituting the contract.

3- Consensual and formal contracts.

- **Consensual Contracts:** in principle, all contracts are consensual. Which means they are concluded by the mere exchange of mutual consent

between the parties of contract (contracts concluded by the mere offer and acceptance) without the need of any further procedures.

– **Formal contracts:** They are Exceptional contracts which are not concluded by the mutual consent of the parties but require certain formality defined expressly by law to follow such consent. Formal contracts are of two kinds; written or real contracts.

– **Writing as a kind of formality may be a requirement to prove the contract, or a requirement for its existence:**

The law may require writing only to prove the contract. For example, the law may state that if the contract's value exceeds \$1,000, it must be proven in writing. 52 while the contract is still in effect.

It may also require writing as an element necessary for the existence of the contract, such as the partnership contract, in which case the contract will be formal and will not exist unless it is written.

III- The requirement of formality is related to public order:

Individuals cannot agree to the contrary, so any agreement derived from a formal contract, even if consensual, is null and void. Individuals can, however, make a formal contract from a consensual one, and such a contract is completely valid. For example, the parties to a lease contract may agree that unless the contract is written, it is not legally binding.

The requirement of a formality for the contract's existence raises awareness of the significance of the intended contract. As a result, the requirement of a formal deed for immovable donations induces the donor to be aware of the significance of the intended donation before concluding it.

4- Immediate and continuous contracts.

– **Immediate contracts:** Contracts in which time does not constitute a fundamental element, and executed immediately even if that execution postponed to the future or on monthly installment. Such as contract of car sale is an immediate contract even if the price will be paid in the future or will be divided on monthly installments.

- **Continuous contracts:** Contracts in which time constitutes a fundamental element, in a way that the extent of the obligations of parties is measured by time units. Such as contract of lease, and contract of work.

5- Time limited and unlimited contracts:

Both the time limited and unlimited contracts are kinds of the continuous contracts. Both are contracts in which time constitutes a fundamental element and obligations of parties are measured by time units.

- **Time Limited contract:** continuous contracts concluded for specified period. For example: a lease contract for five years, and work contract for 3 years.

- **Unlimited contracts:** continuous contracts concluded for unspecified period. For example: a unlimited lease contract, and unlimited work contract.

C) Requirements for formation of contracts:

Contract requirements: are those elements that are required for the existence of the contract; if one of them is missing, the contract will be inexistent (it will not be formulated) and will have no legal effect; it will be an absolutely null contract (a dead one).

The Egyptian doctrine states that there are three main requirements for the formation of a contract: the consent of its parties, the existence of a valid object, and consideration.

First requirement: The consent of its parties:

The existence of valid mutual consent requires the existence of the consent, and The validity of such consent.

i- The existence of the consent:

The existence of consent requires the existence of offer and acceptance.

Valid offer + Valid acceptance= Mutual consent

Firstly: the offer:

A-The definition and expression of offer:

It expresses a willingness to enter into a contract on certain terms. An offer can be made expressly (in writing or verbally), or it can be implied. An implied offer is one that is inferred from a person's behaviour or the facts of a particular case. For example, if a coolie picks up your luggage and transports it from the railway platform to the taxi, the coolie is offering his services for a fee. The coolie is making an implied offer. However, in most cases, an offer cannot be made through silence.

B) conditions of the offer:

- If the offer is accepted by the other party, the offeror must intend to establish legal relations and be legally bound by the contract.
- The terms of offer must be specific: definite and not ambiguous, indicating all of the fundamental elements of the proposed contract. In order to make a valid offer in a sale contract, you must define the object of the contract and its price, whereas in a work contract, you must specify the type of work, hours of work, and salary.
- Finally The offeree must be informed of the offer. An invitation to treat can be defined as an indication of willingness to begin negotiations and receive bids on a specific contract. The person issuing the invitation is not looking for an acceptance, but rather an offer.

Secondly: The acceptance.

A) definition and expression of the acceptance:

Acceptance is defined as "an expression of willingness to accept a contract on the same terms as the offer." Acceptance by be can be either explicit or implicit. i.e. through behaviour By beginning performance, partial performance, or full performance, or by delivering the incorrect goods. In general, silence cannot be used to gain acceptance, but there is exception to this rule:

* **The concomitant silence:** it could be defined as the silence surrounded by circumstances, leading to the inference of acceptance. here are two illustrating examples of this case :

- The first** is that there has already been prior dealing between two parties, and it is customary for the two parties to treat silence as acceptance. As a

dealer, sending a definite good to a client and sending the price later. In this case, the client's silence is interpreted as acceptance.

So, if the merchant sends an invoice to his client that includes additional terms or changes the price, the client's silence is interpreted as acceptance of the new modified terms.

- **The second** is when the offer is made, for the mere benefit of the offeree: an offer of donation is made merely for the benefit of the donee, so the silence of the donee is considered as an acceptance.

B) Conditions of acceptance:

- 1- The offeree must intend to accept the offer and become legally bound by the contract. the same as the offeror when making the offer.
- 2- The acceptance terms should be the same as the offer terms (the mirror image rule). If the offeree attempts to add new terms when accepting, this is considered a counter-offer rather than an acceptance. A counter-offer implies the rejection of the original offer, which is thus destroyed and cannot be accepted later. Modifying acceptance or making a counter-offer (conditional acceptance) is not the same as accepting.
- 3- Finally, the offeror should be informed of the acceptance.

Second requirement: The existence of a lawful object of contract:

A) definition of object of obligation:

The object of obligation may be: to give a thing or to do some act or to abstain from doing some act. But the object of the contract consist of several obligations created toward its parties. Both have the same conditions of validity.

B) conditions of the object of obligation (of contract):

1- The object must be really existing or possible:

This object must exist at the moment of concluding contract otherwise contract will be null. But exceptionally the object of obligation may be a future thing. This exception is not allowed if the future

thing was a future succession.

2– The object must be determined or determinable:

We should distinguish between fungibles and non-fungibles things:

* **If the object is fungible:** it should be determined by its kind and quantity. If the quality of such a thing is not fixed by contract, the debtor should supply an article of average quality.

* **If the object is non-fungible thing:** it should be determined by its specific characters or qualities for example: in selling a flat we should define the specific location, the number of flat, its specific area....etc.

3– the object must be or lawful:

Contract is void if its object is contrary to public policy or morality.

2– Contract must be tradable :

Tradable or merchantable means that the object of an obligation is a commercial item, which means that it can be owned by individuals and can be transferred to others. So no one can sell a planet or sell air because they cannot be owned by individuals and thus are not commodities. Also, no one can sell a property dedicated to the public good because the law prohibits dealing with such property.

Third requirement: The existence of a lawful cause of contract.

Generally the cause of contract could be defined as the reason that induced each of the parties to conclude the contract.

D) Ending Contracts:

The contractual relationship may end by extinction, termination, dissolution and nullity:

A) The Extinction of contractual relationship:

It happens by the complete execution of contractual obligation emanating from the contract. The effect of extinction happens only for the future and never includes the past.

B) The termination of contracts:

It occurs when a contract is terminated without the full execution of the contractual obligations that result from it. Contract termination can occur before or after the execution begins, but before the execution is completed.

*** Termination of contracts may happen by one of the following means:**

1-Termination by mutual consent:

It refers to the termination of a contract by mutual agreement between its parties, either expressly or implicitly; this agreement is treated as a new contract, and it is concluded by a new offer and acceptance. The effect of the termination is determined by the two parties' agreement; they may agree that the effects of termination include only the future effects of the contract, or they may agree that the termination includes both past and future effects by agreeing that the termination has retroactive effect and the parties would be reinstated to the case prior to the contract.

2- Unilateral termination of contracts:

It means that the contract can only be terminated by one of its parties. The unilateral termination has no effect in the future. The principle is that contracts cannot be unilaterally terminated by one of the parties, but unilateral termination is permitted in the following circumstances:

- a. the existence of a term in the contract.
- b. In some contracts, the law expressly allows for unilateral termination.

C) Dissolution (recession) of contract:

It is the termination of a contract due to one party's failure to perform his contractual obligations, even if the other party has performed or is willing to perform his obligations. In general, dissolution is accomplished through judicial decision, but it can also be accomplished through the prior express agreement of its parties or through a text of law. This could be explained as follows:

- a- Contract dissolution through the courts (tacit resolutely conditions).
- b- The pre-agreed dissolution (expressly stated condition): The parties to a contract may agree on the dissolution of their contract in the event that one of its parties fails to perform his contractual obligations.

The term containing that agreement must be expressly written in a definite words reflecting their agreement on dissolution of contract without the need of judicial decision and formal .

D- The nullity of contracts

Nullity of contracts has two kinds the relative and the absolute nullity these two kinds are detailed in the following comparison:

- **Absolute nullity:**

Absolute nullity makes the contract inexistent, and not producing any legal effect.

contract is absolutely null (void) in the next cases:

- 1- nonexistence of one of its requirement.....no consent (contractor physically forced) or no object or cause (or it exists but unlawful).
- 2- Contracts of minors less than 7 years.

- **Relative nullity:**

Relative nullity means that the Contract is correctly formed, it exists and produces all its legal effects until annulment judgment.

Contract is annulable (voidable)for the benefit of one of its parties as follows:

- 1- for the benefit of the person whose consent was vitiated by a vice of consent (mistake, fraud....).
- 2- for the minor over 7 years in making profitable and detrimental contracts.

Glossary of Legal Terminology.

- Offeree متلقي العرض / الموجب له
- Offeror مقدم العرض / الموجب
- Including but not limited to / Including without limitation على سبيل المثال لا الحصر
- Notwithstanding what was stipulated in بغض النظر عما ورد في
- Without prejudice to مع عدم الإخلال ب
- Subject to (the rules of law). مع مراعاة أحكام القانون
- I, the undersigned أنا الموقع أدناه
- Baseless and foundless لا أساس له من الصحة
- And vice versa والعكس صحيح
- Except where the context otherwise requires ما لم يقتض النص بغير ذلك
- So far as is practicable بقدر ما يكون ذلك ممكنا
- Unless otherwise provided for ما لم يرد فيه نص يقضي بغير ذلك
- Aforesaid/above said/aforementioned السابق ذكرها / المذكور انفا
- Force majeure قوة قاهرة
- De facto بحكم الواقع
- De jure بحكم القانون
- Bona fide حسن نية
- Mala fides سوء نية
- Annex/appendix/addendum/rider ملحق
- Provided that بشرط / شريطة أن
- Unless otherwise agreed upon ما لم يتفق الطرفان علي غير ذلك
- As the case may be بحسب الأحوال
- As may be necessary حسب الضرورة

• As may be provided in	حسبما ينص علي ذلك في
• As such	من هذا القبيل
• Article	مادة قانونية
• Clause/paragraph	فقرة
• Criminal record	سجل جنائي
• Deed	صك
• Patent	براءة اختراع
• Petition	عريضة
• Waiver	تنازل / إعفاء
• Subject to the penalty of the law	تحت طائلة المسؤولية
• In witness whereof	إثباتا لما تقدم
• Competent entity /Competent authority	السلطة المختصة
• Breaking and entering	السطو علي الممتلكات
• Terms and conditions	الشروط والأحكام
• Goods /chattels	منقولات
• In good condition	بحالة جيدة
• Keep /maintain	يحافظ
• Made and signed	حرر
• Null and void	باطل ولاغي
• Fraud and deceit	غش و خداع
• Save and except	فيما عدا وباستثناء
• Acknowledge and confess	يقر ويعترف
• Act / deed	فعل / عمل
• Free and clear of	خالي من
• Title	عنوان
• Parties	أطراف
• Legal capacity of contracting parties	أهلية المتعاقدين
• Preamble	ديباجة

- Mutual obligations التزامات متبادلة
- Payment and method of payment الثمن و أهلية السداد
- Duration of contract مدة سريان العقد
- General provisions الأحكام العامة
- Law and Court of jurisdiction regarding disputes القانون والمحكمة المختصة في نظر النزاعات
- provisions الأحكام القانونية
- Date of signing تاريخ التوقيع
- Number of articles and copies عدد النسخ و البنود
- Signature التوقيع
- Employment contract عقد عمل
- Rental agreement/Lease عقد إيجار
- Sales contract عقد بيع
- Intellectual property ملكية فكرية
- Power of Attorney توكيل / وكالة قانونية
- General Power of Attorney توكيل قانوني عام
- Specific Power of Attorney توكيل قانوني خاص
- Durable Power of Attorney وكالة قانونية مستمرة
- Place of residence/address محل الإقامة
- First, Second party الطرف الأول / الطرف الثاني
- Shall be in writing كتابة/ كتابياً
- Duplicate copies نسخ طبق الأصل
- Witness شاهد
- Arbitration تحكيم
- Notarization توثيق / مصادقة
- Notary Public كاتب عدل
- An integral part جزء لا يتجزأ
- Nationality الجنسية

• National ID	الهوية الوطنية
• Domicile	موطن
• Employment duration	مدة التعاقد
• Salary	مرتب
• Financial obligations	التزامات مالية
• Termination	إنهاء
• Execution	تنفيذ
• Expiration	انتهاء
• Revoke/terminate	يفسخ/يلغي
• Validity	سريان
• Lessor	مؤجر
• Lessee/tenant	مستأجر
• Landlord	صاحب العقار/المشرف على العقار
• Owner	المالك
• Property / Real estate	العقار
• Violate /Breach	يخالف/يخل ب
• Deposit	عربون
• Compensation	تعويض
• The Parties agreed to the following	اتفق الطرفان على ما يلي
• Examine/inspect	يعاين
• Upon signing the contract	عند توقيع العقد
• Outstanding amount	المبلغ المتبقي
• Shall be subject to and interpreted in accordance with	يقسر ويخضع ل
• Executed in duplicate	حُرر في نسختين
• Monthly payments / Monthly installments	دفعات او أقساط شهرية
• Duly authorized	مفوض تفويضاً صريح
• Attorney-in-fact	وكيل فعلي

- Agent وكيل
- Principal موكل
- Nominate and innominate contracts. العقود المسماة وغير المسماة
- Bilateral and unilateral contracts. العقود الملزم لجانبين والملزمة لجانب واحد
- Onerous and Gratuitous contract. عقود المعاوضة وعقود التبرع
- Consensual and formal contracts. العقود الرضائية والعقود الشكلية
- Immediate and continuous contracts. العقود الفورية والعقود الزمنية
- Time limited and unlimited contracts العقود محددة المدة وغير محددة المدة
- Absolute nullity البطلان المطلق
- Relative nullity البطلان النسبي
- Dissolution (recession) of contract فسخ العقد

Some legal statements

- The disturbance of enjoyment is prohibited .
التعرض لحق الانتفاع محظور.
- Extinction of obligations may be : by payment, by release of obligation, by impossibility of performance or by extinctive prescription.
يكون انقضاء الالتزامات : عن طريق الدفع، أو الإبراء من الالتزام، أو استحالة التنفيذ، أو التقادم المسقط .
- The proof of obligations may be by : documentary evidence, by witnesses, by presumptions, by admission or by oath.
إثبات الالتزامات يكون : بالدليل المكتوب، أو بالشهود، أو بالقرائن، أو بالإقرار، أو باليمين .
- A provision of law can be repealed by a subsequent law: 1- expressly providing so (express repeal); or 2- containing a

provision inconsistent with a provision of the former law (tacit repeal).

يمكن إلغاء نص من نصوص القانون بقانون لاحق: 1- ينص صراحة علي ذلك (وهذا هو الإلغاء الصريح)

2- أو يتضمن نصاً يتعارض مع نص القانون السابق (وهذا هو الإلغاء الضمني)

- A person who legitimately exercises his rights is not responsible for prejudice resulting thereby.

لا يكون الشخص الذي يمارس حقوقه بطريقة مشروعة مسؤولاً عن الضرر الناجم عن ذلك (ولكن هذه القاعدة يمكن أن يرد عليها بعض الاستثناءات)

- Legal personality commences from the time a person is born alive and ends by death.

تبدأ الشخصية القانونية من وقت ميلاد الشخص حياً و تنتهي بوفاته .

- No person can renounce his personal liberty nor his legal capacity.

لا يمكن لأي شخص التنازل عن حريته الشخصية، ولا عن أهليته القانونية.

- The intention of a person may be declared verbally , in writing, or by signs.

يمكن التعبير عن نية لشخص شفاهة أو كتابة أو بالإشارة.

- As a rule, a party who committed a mistake cannot take advantage of the mistake.

كقاعدة، لا يمكن للشخص الذي ارتكب خطأ أن يستفيد من الخطأ.

- A contract may not create obligations binding on third parties, but may create rights in their favor.

لا يمكن أن يخلق العقد التزامات تلزم الغير، لكن يمكن أن ينشئ حقوقاً لصالحهم.

- Effects of obligations are, in general, specific performance or compensation in lieu of performance.

اثار الالتزامات بصفة عامة التنفيذ المحدد أو التعويض بدلا من التنفيذ.

- Insolvency: a debtor may become insolvent if his asset are insufficient to pay his debts.

الإعسار: يصبح المدين معسراً إذا كانت أمواله غير كافية لسداد ديونه.

- An obligation is conditional when its existence or extinction depends on a future and uncertain event.
يكون الإلتزام شرطياً إذا اعتمد وجوده أو انقضاؤه علي حدث مستقبلي غير مؤكد.
- Solidarity between creditors or debtors is not presumed. It is made only so, either by agreement or by law.

التضامن بين الدائنين أو المدينين لا يفترض ، وهو يكون كذلك ، سواء بالاتفاق أو بنص القانون.

- The conflict is settled by arbitration.

تم تسوية النزاع بواسطة التحكيم

- Crimes are comely used as offences against the state not disputes between private individuals.

إن الجرائم تعتبر جرائم ضد الدولة وليست منازعات بين الأفراد العاديين.

- Res judicata supposes an identity of parties acting in the same capacity, an identity of claim and the same basis of application. (eadam persona, eadem res, eadem causa petendi).

تفترض حجية الأمر المقضي به تماثل الأطراف بذات صفاتهم، وتماثل الادعاء، ونفس أساس الطلب.

- Safeguards that are a normal part of the judicial process are, inter alia, equality of the parties, respect of rules of procedures and correct application of legal rules.

تتمثل الضمانات التي تشكل جزء من العملية القضائية، بين أمور أخرى، في المساواة بين الخصوم، و احترام قواعد الإجراءات، والتطبيق الصحيح للقانون.

- Clerk of court – An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

سكرتير الجلسة أو أمين السر – مسؤول تعيينه المحكمة للعمل مع رئيس المحكمة في الإشراف على إدارة المحاكمة ، ولا سيما للمساعدة في إدارة نظر القضايا بالمحكمة والحفاظ على سجلات المحكمة.

- Common law – The legal system that originated in England and is now in use in the United States. It is based on court decisions rather than statutes passed by the legislature.

القانون الأنجلوسكسوني: هو نظام قانوني نشأ في إنجلترا والمستخدم الآن في الولايات المتحدة. ويستند إلى أحكام المحاكم بدلاً من القوانين التي تقرها السلطة التشريعية.

- Complaint – A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

شكوى – بيان مكتوب من قبل المدعي يوضح المخالفات التي يزعم ارتكابها من قبل المدعى عليه.

- Acquittal – Judgment that a criminal defendant has not been proven guilty beyond a reasonable doubt.

حكم بالبراءة – الحكم بأن المتهم الجنائي لم تثبت إدانته بما لا يدع مجالاً للشك.

- Action: Also called a case or lawsuit. A civil judicial proceeding where one party sues another for a wrong done, or to protect a right or to prevent a wrong.

قضية أو دعوي: إجراء قضائي مدني حيث يقاضي أحد الطرفين طرفاً آخر لارتكاب خطأ ، أو لحماية حق أو لمنع خطأ.

- Adjournment: Postponement of a court session until another time or place.

التأجيل: تأجيل الجلسة إلى وقت أو مكان آخر.

- Affidavit: A written statement made under oath, swearing to the truth of the contents of a document.

إفادة كتابية مشفوعة بيمين: إقرار أو تقرير كتابي مصحوب بقسم ، يقسم فيه المقر على صحة محتويات المستند.

- Affirmed: In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

تأييد حكم درجة أدني: وهذا يعني أن محكمة الاستئناف قد خلصت إلى أن قرار المحكمة الأدنى درجة صحيح وسوف يكون على النحو الذي أصدرته المحكمة الأدنى درجة.

Chapter Three

Sources Of Obligations

Students Should Know after Studying This Chapter :

- The concept of obligation.
- Classification of obligations.
- Sources of obligation in Egyptian legal system .

- Definition and classifications of obligation:

While most people understand that legal obligations are duties that must be performed by the force of law, few understand the true meaning and types of "obligation," as well as the relationship between obligation and what is known as "personal right."

A- the concept of obligation:

Clarifying the concept of obligation requires stating its definition, then explaining how the existence of a new obligation requires the existence of a counterpart personal right.

1-Definition of obligation:

An obligation is "a legal bond between two or more parties under which one of them is bound to give something, do something, or refrain from doing something".

It should be noted that the person who is bound by the obligation is referred to as the debtor, while the person who has the right to demand the performance of the obligation is referred to as the creditor.

2-Obligation is the counter part of personal right:

An obligation imposes on the obligor (debtor) ⁽³³⁾ a duty to perform, and simultaneously creates a corresponding personal right to demand performance by the obligee (creditor) ⁽³⁴⁾ to whom performance is to be tendered. For example if "A" borrowed 10 pounds from "B" then "A" has a legal obligation to pay back the 10 pounds to "B" , on contrary that means that "B" has a legal personal right to get his money back.

- So obligation equal personal right but what is meant by personal right: it is a part of what is called pecuniary rights, And it has the same definition of obligation.

B- Classification of obligations:

Obligations have a lot of classifications the most important of which are the classification of obligation as to performance, as to enforceability and as to result.

- **Classification of obligations as to performance:**

As to their performance obligations could be classified into three kinds. Obligations to do, to give and the obligation not to do.

1- The obligation to do:

The obligation which imposes on a person to do certain act. Such as the obligation to pay the borrowed money back, or to pay the price. All obligations imposing a duty to do certain act are “obligations to do” except one act that would be classified as obligation to give as explained in the next kind.

2- The obligation to give:

It is the obligation which imposes upon the doer to transfer a real right such as transferring ownership.

3-The obligation not to do:

If there is no such obligation, it is the obligation that imposes on the doer not to do a certain act that he was legally permitted to do.

In the sale of a shop, for example, the vendor and purchaser may agree that the vendor is obligated not to open a similar shop in the same city as the sold shop. Although the vendor was legally entitled to open any type of shop in any part of the state, after entering into this agreement, the vendor's freedom to open a new shop is limited by two conditions: it must not be of the same type as the sold shop and it must not be in the same location as the sold shop.

- **Classification of obligations as to their enforceability**

1- Civil obligation:

It refers to any obligation arising from any of the five sources of obligations (voluntary or involuntary). Civil rights are enforceable by courts regardless of whether they are obligations to do, give, or not do.

As a result, this type of obligation has two sides: debt (the object of obligation) and enforceability (being enforced by courts if the obliged does not do it voluntarily). The obligation to pay the price of a sold item is an example of a civil obligation.

2- Natural obligation:

It is a normal civil obligation that was surrounded by special circumstances that rendered it unenforceable by law. It is the obligation that binds the obliged in honour and conscience but cannot be enforced in court.

Natural obligations have only one side, which is the debt, because they cannot be enforced by courts, but the debtor cannot retribute what is performed voluntarily and with the intention of discharging a natural obligation, according to the Egyptian civil code. The civil obligation, which is extinct by prescription, is an example of natural obligation.

In these examples, a civil obligation has been extinguished by the passage of time but has been replaced by a natural obligation. The debtor is still obligated in honour to pay the debt, and if he performed that obligation voluntarily and intentionally (knowing that he is fulfilling a natural obligation), he will not be entitled to restitution.

- Classification of obligations as to result:

1- Obligation of result:

It is the obligation placed on the debtor to achieve a specific result. If he fails to do so, his failure will be considered a fault, allowing the creditor to seek damages regardless of the debtor's efforts. For example, the purchaser's obligation to pay the price is an obligation of result; if he fails to pay the price, it will be considered a fault, entitling the creditor to seek damages for any harm caused by non-payment, regardless of the purchaser's (debtor's) efforts to fulfil this obligation.

2- Obligations of means:

The debtor is not required to achieve a specific result; he is only required to act prudently. The judge uses the objective criterion to determine whether the debtor acted with due care or not, so the debtor will be considered to have performed his obligation if he acted with the care normally given by a reasonable person (the care of the intermediate man, not the reckless of the careful man) in the same circumstances.

Even if he did not achieve the goal of his act. For example, a lawyer's obligation to assume the defence in a particular case does not imply that he

is obligated to win the case (though winning the case is the goal of initiating the case); rather, he is only obligated to act with the care of a reasonable lawyer in the same circumstances while assuming defence. So, if he did not win the case, that will not be considered a fault entitling his client to seek damages; this client will only be able to seek damages if the lawyer failed to act with due care while carrying out the procedures of the case.

Criteria of differentiating between the obligation of result and that of means:

Some criteria that may aid in defining the nature of obligation are as follows:

- If the debtor is obligated with a material obligation, such as paying the price, it will be a result obligation.
- An obligation of means exists if the debtor is obligated with intellectual obligation, such as the obligation of the lawyer.
- Finally, if the obligation is contingent on events beyond the debtor's control, it will be a means obligation. An example of this is the obligation of doctors to their patients, because their obligation is contingent on a variety of factors, some of which are intellectual, some of which are material, others contingent on the patient's health, and so on.

It should be noted that the obligation to give and the obligation not to do are always obligations of result, whereas the obligation to do can be a result obligation or a means obligation.

- Sources of obligation in Egyptian legal system :

These sources are five divided into two main categories:

- **The first category: is the voluntary sources of obligations:** which are the obligations created by the free will of the obliged person they include:

This part of the book is designed to deal with the different sources of obligation, These sources are five divided into two main categories:

- **The first category: is the voluntary sources of**

obligations: which are the obligations created by the free will of the obliged person they include:

* **the contract** : A contract is an agreement concluded when one party has communicated to another an offer, and the other accepted it. For example: in sale contract, the seller offers the prospective buyer to purchase his car with a specific price. Then, the contract is concluded when the purchaser accepts the offer and agrees to buy it with the price fixed in the offer.

* **the unilateral undertaking:** it could be defined as a legal act emanating from one person by his unilateral will such as: the will and public promise of a reward.

the second category is the involuntary sources of obligations which are the obligations not created by the free will of the obliged person but imposed involuntarily on him they include:

* **the tort:** according to this source of obligation

– Every person in possession of discretion is responsible for his unlawful acts.

– a person may also be responsible for torts committed by minors under his supervision or by his employees

– he may also be responsible for damages caused by machines, animals and buildings under his supervision with certain conditions.

* **enrichment without just cause:**

According to this source a person, who without just cause enriches himself to the detriment of another person, is liable, to the extent of his profit, to compensate such other person for the loss sustained by him.

* **finally law as a direct source of obligation:**

law may directly impose some involuntary obligations on individuals such as imposing taxes.

Glossary of Legal Terminology.

• source of obligation	مصادر الالتزام
• unilateral undertaking	الإلتزام بالإرادة المنفردة
• enrichment without just cause / Illicit enrichment	الإثراء بلا سبب
• the tort	المسؤولية التقصيرية
• Will	إرادة
• Adjudicative procedures	الاجراءات القضائية
• Legal person	الشخص الاعتباري
• Natural person	الشخص الطبيعي
• 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
• 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 مدى الحياة

• Litigation	خصومة قضائية / نزاع قضائي / عملية التقاضي
• Impeachment	إقصاء / إبعاد / إقالة
• Malicious mischief	القيام بالإيذاء مع توافر القصد والنية على الإيذاء
• Manslaughter	قتل خطأ
• Trial	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
• time served	الوقت الذي قضاه المحكوم عليه من مدة حكمه
• bench	منصة القضاء
• vacate (to cancel) / abolish	يلغي، يطل
• verdict	حكم قضائي بواسطة هيئة محلفين وليس قضاة
• victim	ضحية
• weight of evidence	رجحان البينة وقوتها
• witnesses	شهود
• writ (a formal legal document)	سند رسمي

Some Legal Statements

- **Jurisdiction:** The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

الاختصاص القضائي: السلطة القانونية للمحكمة للنظر والبث في نوع معين من القضايا. كما يتم استخدامه كمرادف للمكان، بمعنى المنطقة الجغرافية التي تتمتع المحكمة باختصاص إقليمي عليها للبث في القضايا.

- **Jurisprudence:** The study of law and the structure of the legal system.

الفقه: دراسة القانون وبنية النظام القانوني.

- **Jury:** The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

هيئة المحلفين: مجموعة الأشخاص المختارين للاستماع إلى الأدلة في المحاكمة وإصدار الحكم في الوقائع.

- Jury instructions: A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

تعليمات هيئة المحلفين: توجيهات القاضي إلى هيئة المحلفين قبل أن تبدأ المداولات بشأن الأسئلة الواقعية التي يجب أن تجيب عليها والقواعد القانونية التي يجب تطبيقها.

- Plea: In a criminal cases, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges.

دفع المتهم: بيان المتهم، في القضايا الجنائية، الذي يقر بـ "مذنب" أو "غير مذنب" ردًا على التهم الموجهة إليه.

- Pleadings: Written statements filed with the court that describe a party's legal or factual assertions about the case.

وثائق أو مستندات المرافعات: البيانات المكتوبة المقدمة إلى المحكمة والتي تصف التأكيدات القانونية أو الواقعية للطرف حول القضية.

- Sanction: A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

العقوبة: جزء أو أي نوع آخر من التنفيذ يستخدم لتحقيق الامتثال للقانون أو مع القواعد واللوائح.

- Sentence: The punishment ordered by a court for a defendant convicted of a crime.

العقوبة: الجزاء الذي تأمر به المحكمة على المتهم المدان بجريمة.

- Settlement: Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.

التسوية: هي أن يقوم الأطراف في الدعوى بحل نزاعهم دون محاكمة غالبًا ما تنطوي التسويات على دفع تعويض من قبل أحد الأطراف في تلبية جزئية على الأقل لمطالبات الطرف الآخر ، ولكنها لا تتضمن عادةً الاعتراف بالخطأ.

Chapter Four

Sale Contract

Students Should Know after Studying This Chapter :

- Terms of the validity of Sale contract .
- Implications of the sale contract.
- The seller's obligations.
- The purchaser's obligations.

The Sale Contract, also known as the Purchase Agreement, is a legally binding contract that details the agreed-upon terms and conditions between the buyer and seller of a property (e.g. a vehicle, house, phone, company, etc.). A sale agreement, according to Article 418 of the Egyptian Civil Code, obligates the seller to convey/transfer the title of ownership of the sold object (the property) to the purchaser in exchange for a price (pecuniary value).

The main legal document in any sale process is the sale agreement. In essence, it lays out the agreed-upon terms and conditions of the transaction. It includes a number of important safeguards for all parties involved.

Essentially, the sale and purchase contract should include all of the transaction's technical and commercial terms and details so that both parties are on the same page. It also establishes the legal framework for closing the deal and completing the sale of a property. The sale agreement is thus a vital legal operative instrument that establishes the obligations and rights of both the sellers and buyers. As a result, it should be approached with caution and strictness, with legal experts advising both the seller and the purchaser.

Terms of the validity of Sale contract:

The general rules of contract law govern the validity of a sale agreement, which include:

- (1) valid consent deduced from a valid offer and acceptance,
- (2) the subject-matter of the agreement is lawful, and
- (3) the cause or purpose of the contract is lawful.

In addition to the general conditions stated above, the validity of the sale contracts is governed by specific rules expressly stated in Articles 418 and subsequent of the Egyptian Civil Code. These additional rules include some mandatory rules that, if violated, may render the contract null and void.

- Terms pertaining to the sold object:

The sold object and the price paid in consideration for the sale contract are the subject-matter of a sale contract.

A. Identification of the sold object:

A future property or object may be the subject-matter of a contract or an obligation in principle. Furthermore, if the subject-matter of the contract is not specifically identified, it must be identified by its kind and quantity; otherwise, the contract is null and void. For example, suppose the parties agree to sell 100 pieces of unfinished wooden dark Carrefour chairs. This type of agreement is valid for two reasons.

First, even though the chairs do not exist at the time the contract is signed, the latter is valid because it is legal to sell future properties. **Second**, even though the chairs are not specifically identified, the contract is valid because they are identified by type, in this case dark Carrefour chairs, and quantity, in this case the seller must deliver 100 chairs. In such a case, the seller must deliver goods that correspond to the description stated in the sale agreement.

Furthermore, if the parties agree to sell 50 KG of dark roasted Mexican coffee beans grown on Adam's farm, the contract is valid because the sold object is specifically identified. As a result, the seller must deliver the specified goods. As a result, the sold object must be specifically identified in the contract, or at the very least identified by its kind and quantity. Furthermore, the purchaser must have sufficient knowledge of the sold item.

A. Adequate knowledge of the sold item:

If the sold object is fairly described in the contract in a way that allows anyone to identify the said object, the purchaser is presumed to have sufficient knowledge of it. Nonetheless, the contract's validity is unaffected if it lacks a detailed description of the sold object as opposed to identification of the sold object.

This is due to the fact that the sufficient knowledge requirement differs from the identification requirement. On the one hand, parties must determine and ascertain the kind and quantity of the sold object in order to adequately identify it. This determination enables the purchaser to identify it. For example, the sold vehicle is a 2020 Red Volvo model C160.

Another example of a sold item is a piece of land with a surface area of 2300 metres on El-Narges street in New Cairo, which is bounded on the east, west, south, and north by A, B, and C, respectively.

On the other hand, sufficient knowledge of the sold items implies that the purchaser has a thorough understanding of the sold object, including its main characteristics, type, and potential uses. For example, whether or not it is agricultural land. If this is agricultural land, what types of crops could be grown on it.

Given the preceding distinction, we can conclude that the sufficient knowledge requirement is more specific than the identification requirement. The legislature requires that the purchaser have sufficient knowledge to fulfil the purpose for which he purchased the object. One of the following methods shall be used to satisfy the requirement of sufficient knowledge.

1. Examining or checking the sold item:

The object could be inspected and examined by the purchaser or his agent. Such an inspection is valid if it is performed prior to the conclusion of the sale contract. However, the purchaser's right to challenge the contract's validity is unaffected if the inspection occurred after the contract was signed. However, if the inspection is carried out in accordance with the conditions mentioned, the purchaser is presumed to have adequate knowledge of the sold item.

2. Defining the main characteristics and properties of the sold item in the contract:

If the principal properties and characteristics of the sold object are stated in a contract in a way that allows the purchaser to recognise it, the purchaser is presumed to have sufficient knowledge of it. In other words, stating the object's main characteristics and properties shall suffice for knowledge purposes if such statement renders physical inspection unnecessary.

3. The contract requires the purchaser to recognize that he is aware of the sold item:

The requirement of adequate knowledge is satisfied by a simple provision stating that the purchaser is well-aware of the sold object. It is worth noting that such acknowledgement does not preclude the purchaser from claiming that the contract is null and void if it was based on a misrepresentation.

- Terms pertaining to the price:

The purchaser must pay a certain amount of money in exchange for obtaining the sold object. This sum is referred to as the price. According to general rules, the price of the sold item should be determined or determinable because it is an obligation arising from the sale contract.

In other sayings, the parties to a sale agreement must agree on the price or, at the very least, on how to calculate it. For example, if the sold object is a future property, it is permissible to agree that the price of the sold object will be determined by the market price when it exits. It is also permissible to agree that the price of the sold object will be determined by a third party when the future sold object exits.

Another consideration is that the designated third party is not an expert. This is due to the fact that neither the judge nor the parties find an expert's opinion compelling. The appointed third party's opinion, on the other hand, is compelling for both the judge and the parties. This is due to the parties' initial will and consent in appointing that person.

Furthermore, for the price to be valid, it must not only be determined or determinable, but it must also be real. As a result, the price must be fixed or determinable, and it must be real. The term "real price" refers to the actual amount of money paid in exchange for the sold item. It is the sum of money that the purchaser is obligated to pay based on the parties' actual intent. Such a requirement, by definition, excludes the scenarios of fictitious price, unconscionability, and lesion.

1. Fictitious price:

A price is fictitious when the parties to a sale agreement expressly and intentionally state a price that differs from the actual price paid to the seller by the purchaser. There are two possibilities for a fictitious price.

- **First and foremost**, the purchaser did not pay any price at all.
- **Second**, the purchaser paid a price that differed from the one stated in the contract; typically, the fictitious price was less than the actual price paid.

The sale contract is null and void in the first scenario because price is one of its validity conditions. However, under the doctrine of contract reformation, the fictitious sale contract may be retransformed into a donation contract if all conditions of the donation contract, except the formality requirement, are met.

Because the parties had agreed to a specific price in the second scenario, the contract's validity is unaffected. As a result, under the general rules governing fictitious legal acts, parties cannot rely on the fictitious price between them. However, such deception should not be harmful to third parties.

As a result, if the fictitious price is in the interest of a third party, the parties are bound by it even if it is not the actual price. If the fictitious price is harmful to a third party, the latter may impose the true price on the parties.

2. Trivial price:

When a price is significantly disproportional to the value of the purchased object, it is considered trivial. Nonetheless, it is regarded as an actual price as opposed to a fictitious price, which is not.

In general, a trivial price may render the sale agreement null and void if the price conditions are not met. There is, in fact, a price, but it is so insignificant that it almost seems as if no price is paid.

Under the tenet of contract reformation, a sale contract with a trivial price may be transformed into a donation contract if the parties' intention was to enter into a donation contract and all conditions of the donation contract, except the formality requirements, are met.

3. Lesion/unconscionability:

Lesion means that the price or consideration is unjust because it is disproportionate to the value of the sold object, but it is not insignificant. In this case, the price or consideration is actual, which means that the seller

sold the item in exchange for money. However, the stated price is unconscionable and unfair, as no reasonable or informed person would agree to it otherwise. As a result, the contract's validity is unaffected.

Nevertheless, because the offered consideration is clearly insufficient, the judge may cancel the contract or modify the obligations arising from it.

More specifically, according to Art. 129 Egyptian Civil Code, when a contract is unconscionable or unjustified because one of the parties utilised the prejudiced counterparty's recklessness, foolishness, or unreasonable obsession (i.e. exploitation), the judge may, upon the prejudiced counterparty's request, cancel the contract or reduce the obligations imposed on the prejudiced party. This is attributable to the fact that enforcing the contract in such circumstances is unfair to the prejudiced party who is attempting to avoid the contract.

However, unconscionability or lesion in and of itself is not a sufficient reason to cancel a contract. It must be linked to exploitation.

- **Implications of the sale contract:**

The sale contract creates a number of contractual obligations that are imposed on both parties. The obligations imposed on the seller, however, are greater than those imposed on the purchaser. The obligations that each party bears will be discussed briefly in the following paragraphs.

1. The seller's obligations:

Articles 428:455 of the Egyptian Civil Code outline the seller's responsibilities. The seller primarily agrees to convey the title of ownership of the sold object to the purchaser, to deliver the sold object to the purchaser, to guarantee the purchaser proper and peaceful possession against de facto and de jure disturbances caused by the seller or third parties, and to warrant the latent defects.

A. Obligation to transfer legal title/ownership:

The main objective of a sale contract is to transfer ownership of the sold item. The mechanism of such transfer, however, is determined by the nature of the sold object. It is sometimes automatic, which means that the title is transferred once the sale agreement is signed. Other times, the

transfer of ownership may be postponed (relaxed) to a later date after the sale agreement is signed.

The title is not transferred upon the formation of the sale contract when the subject-matter of the sale agreement, i.e. the sold object, is identified by its kind. It is transferred once the sold object has been separated from its similars. Furthermore, when a real property (real estate) is sold, ownership is only transferred through recording/registration.

1. Chattels that are particularly identified :¹

According to Article 204 of the Egyptian Civil Code, ownership of a specifically identified chattel automatically transfers upon the formation of the sale contract if the seller owns it. This is without prejudice to any registration requirements that may apply.

Particularly identified chattels are movable properties distinguished by their distinct characteristics and properties. As a result, a specifically identified chattel is a distinct property that is distinct from its peers and cannot be replaced by another property of the same kind. This is consistent with the nature of the ownership right, which only applies to specific properties/objects.

Non-fungible properties are frequently identified properties. Furthermore, fungible property can be easily identified when it is sorted through several similar properties on a specific date and location.

In addition to the foregoing, in order for a chattel to be automatically transferred, the property must exist at the time the sale agreement is formed.

Although contracting on future properties is legal, the conveyance of the title to those properties is neither legal nor possible. This is due to the fact .that it is logically impossible to own something that does not exist Furthermore, the seller must own the chattel. If not, the sale agreement is null and void because it involves the sale of someone else's property. In practise, however, the sale of a chattel may be associated with some legal

¹ المنقول المعين بالذات

issues concerning ownership due to the legal presumption that the possessor of a chattel is presumed to be its owner.

A genuine purchaser of a chattel will assume that the seller owns it simply because she has it. In most cases, if the seller is not the actual owner, the sale contract is null and void.

However, because the aforementioned legal presumption should not harm a bona fide purchaser, the sale agreement in the aforementioned scenario shall be exceptionally valid.

Eventually, the sale contract should not be subject to a condition precedent .in order to have legal effect, i.e. the conveyance of legal title
In other words, unless the parties agree otherwise, ownership will be automatically transferred upon the formation of the contract, unless the parties agree that ownership will not transfer until after the occurrence of a specific event. For example, ownership will not be transferred until the final installment is paid.

2. Chattels identified by kind

When the property, subject-matter of the sale agreements, is fungible and can only be identified by its kind, the title shall be transferred by sorting the sold object out of its similars, according to Art. 205 Egyptian Civil Code. A fungible property identified by its kind can be separated and distinguished from its counterparts by setting it aside or marking it. As a result, regardless of the date of receipt, legal title passes from the date of sorting out the chattel.

3. Real properties:

According to Article 924 of the Egyptian Civil Code and Article 9 of the Notary Public Law, ownership or legal titles and in rem rights may not be transferred unless they are registered with the Real Estate Registry Authority.

In general, the seller is responsible for registering the sale agreement with the appropriate real estate registry office in order to transfer the legal title of the sold property to the purchaser. Because it is an in personam obligation imposed on the seller as a result of the sale agreement, the latter can compel the former to perform such obligation. In order to pursue this, the

purchaser may file a lawsuit in which he seeks an injunction acknowledging the validity and enforceability of the sale agreement as relief.

It is worth mentioning that the seller agrees to deliver the real estate whether or not the sale agreement is registered. This is due to the fact that it is a separate in personam obligation arising from the sale contract.

C. Obligation to deliver the sold object:

Delivery refers to placing or holding the sold object at the purchaser's disposal, allowing him to possess and use it without interruption. The delivery obligation is divided into two parts.

First, the sold object is placed at the purchaser's disposal, allowing him to possess and use it without interruption.

Second, giving the purchaser reasonable notice, which is required for taking delivery, is referred to as tender of delivery. Satisfying the two requirements fulfills the delivery obligation.

The sold property, which is the subject of the delivery, must fully comply with the terms of the contract. That is, it must be the property specified in the contract. As a result, in order to be considered a valid delivery, the delivered property must meet the characteristics and properties specified in the contract.

Delivery shall include all sequels to the sold property that are required for its use, in addition to the sold property itself. Sequels of sold property are determined by the property's nature, what is established in society, custom, and commercial utilization.

Lease agreements, for example, that encumber real property are sequels to this property. As a result, when the purchaser receives this real estate, he will do so burdened by all lease agreements unless the parties expressly agree to exclude those agreements.

1. Ideal tender of delivery:

In general, the tender of delivery must conform to the terms of the sale agreement, which means that the delivered property must correspond to the characteristics, properties, and amount specified in the contract. The

amount specifies that the delivered items must be of the same quantity, weight, or size as specified in the contract.

This is a requirement to achieve a specific result, so any discrepancy should be interpreted as a lack of a perfect tender. Amount discrepancy may occur if the quantity of the delivered object is less or greater than the agreed upon one. The legal ramifications of such a difference differ depending on whether the delivered object is less or more.

2–A less–than–ideal tender:

Per the Egyptian Civil Code Art. 433 (1), the seller is responsible for any decline in the amount of the sold item, unless the parties agree otherwise or custom provides otherwise. Several businesses' custom may disregard a decrease in the amount of sold item.

As a result, if there is no customary rule or explicit agreement between the parties that releases the seller from liability due to a decrease in the value of the sold object, the provisions of Art. 433(1) Egyptian Civil Code apply.

The aforementioned Article provides the purchaser with two alternative remedies from which to choose. The purchaser may either reduce the contract price to reflect the actual consideration for the amount delivered.

As a second option, the purchaser may request rescinding the contract if the decrease is significant enough that he would not have agreed to enter into such an agreement if he had known the amount.

3– A more than ideal tender:

When the amount of the delivered item exceeds the amount stated in the contract, the seller is entitled to an increase in the price in consideration for the excess in the amount of the sold item, provided that:

- (1) the sale was based on a retail price, and
- (2) the sold item is not divisible or its value will be diminished if it is divided.

As a result, if the sold item is not divisible, the purchaser must increase the price paid to account for the excess amount of the sold item. Unless the increase is excessive, in which case the purchaser has the right to cancel the contract. For example, parties agreed to sell a 100–meter–long piece of land, but when the land was tendered, they discovered that the land's

surface was 110 meters long. In this situation, the purchaser will possess the extra 10 m2 in exchange for a higher price.

If the sold item is divisible, the excess amount belongs to the seller. Because the excess is not included in the sale agreement, he owns it. As a result, the purchaser is not obligated to acquire such excess in exchange for a price increase, selling papers in bundles, for example.

Nevertheless, if the sold object is indivisible but the sale was based on a wholesale price, the excess amount belongs to the purchaser, who is not required to pay any price increase in exchange for the excess. Although the Egyptian Court of Cassation established such a concept, it is not accepted by many scholars. The rationale for such a concept is the parties' intent to base their agreement on a wholesale price, as well as the seller's negligence.

- Excuse of nonperformance because of the other party failure to perform (*exceptio non adimpleti contractus*)

Per the general rules, in bilateral agreements where the performance of two obligations is reciprocal, the non-breaching party may withhold his or her own performance as a remedy, accompanied by the right to ward off a claim for such nonperformance until the breaching party has duly performed his or her obligations under the contract. This type of non-performance excuse is known as *exceptio non adimpleti contractus*.

The preceding rule is applicable to purchase contracts. Once the breaching party is the purchaser, who fails to pay the price of the sold object, the seller may withhold delivery of the sold item until the former receives full payment and any interest, if any, from the latter.

The purchaser's failure to pay the price does not have to be complete in order for the seller to invoke the principle of *exceptio non adimpleti contractus*. A partial failure is sufficient to invoke the principle of *exceptio non adimpleti contractus*.

Thus, the seller may refuse to deliver the sold item to the purchaser if the latter paid a portion of the price, provided that the transaction is a single consolidated transaction over an object that is not divisible. In other words, the purchaser who paid a portion of the purchase price cannot compel the seller to deliver the sold item or a portion of it in proportion to the amount

paid. Having said that, the seller may waive his right to refuse to deliver the sold object, either implicitly, by performing the contract, or expressly, by agreeing to do so in the contract.

When the breaching party is the seller, who fails to deliver or tender the sold items, the purchaser, who has already paid the sale price, may request specific performance of the sale contract. Because he has already paid the price, it cannot rely on the principle of *exceptio non adimpleti contractus*.

- Failure of the seller to tender/deliver the sold objects:

The seller's obligation to tender the sold item is not a best efforts obligation. As a result, the seller is in breach when he fails to deliver the sold object or a portion of it, delays delivery, or tenders delivery that is less than perfect. Because it is a performance obligation, the seller's breach is not excused, even if the reason for the breach is extrinsic.

In the event of such a breach, the purchaser may seek specific performance as a form of relief. If this is not possible, he may perform the agreement at the seller's expense by purchasing the same object that the latter failed or delayed in delivering.

Furthermore, the seller has the right to request contract revocation. However, such a request is at the discretion of the judge, who may reject the recession if the contract has been partially performed or the seller's conditions require giving him the opportunity to cure the breach. In both cases, the purchaser has the right to seek compensation for the losses incurred as a result of the failure to deliver the sold item, or a delay in delivery, or a defective tender of delivery.

Whether the purchaser opts for specific performance, performance at the seller's expense, or rescission, he must notify the seller first. The awarded compensation is calculated as follows: the difference between the contract price and the market price on the date when the seller's failure to tender the sold item is definite. It becomes final if the seller ignores the purchaser's notice or if delivery is impossible.

- Risk of loss:

Risk of loss issues arise in the following scenarios: (i) the contract is formed, (ii) but before the buyer receives the goods, (iii) the goods are damaged or

destroyed, and (iv) neither the buyer nor the seller is at fault. In general, because the seller's obligation to tender or deliver the sold object is a performance obligation, the seller bears the risk of partial and total loss. As a result, according to Article 437 of the Egyptian Civil Code, if the sold object is destroyed or damaged before delivery or tender of delivery for reasons unrelated to the seller, the contract is rescinded and the purchaser must return the price paid, unless the damage occurred after the purchaser was notified of the delivery.

Nevertheless, if the sold object is damaged after delivery but before title transfer, as may occur in installment sales, the purchaser bears the risk of loss even though he is not the owner. This is due to the fact that the risk of loss is associated with delivery and possession. It has nothing to do with the title.

Exceptionally, the purchaser bears the risk of loss prior to delivery or tender of delivery if:

- (a) the parties expressly agree that the purchaser bears the risk of loss from the date of contract conclusion;
- (b) the seller has alerted the purchaser that he has tendered the delivery and the purchaser is reluctant to receive the sold object without just reason; or
- (c) damage to the sold item while in the possession of the seller when he validly exercises his right of *exceptio non adimpleti contractus*; or
- (d) damage to the sold item while being unlawfully possessed by the purchaser without the seller's authorization or a judicial judgement.

D. Guarantees of against disturbance:

The seller must ensure that the sold property is used properly and peacefully, free of any disturbance caused by the seller, his subordinates, or even a third party. Such a guarantee is an obligation that arises directly from the sale agreement.

Disturbance is defined as any action taken by the seller, his subordinates, or even a third party that denies the purchaser his right to properly possess the sold object and peacefully enjoy and use it.

A- A- Guarantees against de facto and de jure seller disturbances:

A de facto disturbance occurs when the seller does something that prevents the purchaser from peacefully enjoying the property that he purchased from the seller. Disturbance occurs, for example, when the seller opens an Italian cuisine restaurant on the same block where he sold his previous Italian restaurant to the purchaser. Because the seller's customers will leave the sold restaurant to go to the second new one, such action disrupts the purchaser's use and enjoyment of the sold restaurant.

Similarly, it is considered a de facto disturbance when a seller is a double dealer who sells a property to a purchaser, then sells the same property to a second purchaser who first records/registers the sale agreement. Despite the fact that the contract between the seller and the second purchaser is a legal act, it is a de facto disruption to the first purchaser because he is a third party to the second sale agreement.

A de jure disturbance, on the other hand, occurs when the seller asserts any right, whether in rem or in personum, on the sold object, which may completely or partially deprive the purchaser of his right to peacefully enjoy the property that he purchased from the seller.

For example, the seller's claim that he owns the sold property after the sale agreement is a breach of his obligation to protect the purchaser from disruptions.

As a result, because he is bound by the obligation not to disturb the purchaser, the seller has no right to recover the sold property based on acquiring ownership after concluding the sale contract.

c) Requirements for enforcing the seller's guarantees against disturbances:

First and foremost, the disturbance must be real. The mere proximity of a disturbance is insufficient to activate the guarantees against it. As a result, threatening the purchaser with the opening of a restaurant next to the sold one that will engage in the same activity is insufficient to trigger the guarantee against disturbances.

Second, the disturbance must partially or completely deprive the purchaser of his right to enjoy and use the sold property peacefully.

Third, there is no express agreement that increases or decreases the law's default guarantees. Parties may amend the guarantees in this regard, but they must not agree to remove the guarantees.

- Breach of the seller's guarantees against disturbances:

If the seller breaches his obligation to protect the purchaser from disturbances caused by him, the purchaser may seek

- (a) specific performance,
- (b) compensation for damages sustained, and/or
- (c) rescission of the sale agreement, provided that the disturbance is gross, which is subject to the judge's discretion.

If the disturbance is *de facto*, the purchaser could seek specific performance by obtaining an injunction to close down the competing restaurant.

- Guarantees against *de jure* disturbances carried out by a third party:

The seller shall not only guarantee the purchaser against his own disturbances, but also against disturbances made by third parties.

A) Conditions for enforcing the guarantees against disturbances of a third party:

First, the seller only guarantees the *de jure* disturbances in this context. As a result, if a third party commits a material act that disturbs and harms the purchaser, the seller is not obligated to protect the purchaser from such disruption. For example, an unlawful takeover or seizure of the sold property by a third party does not fall within the scope of guarantees against third-party disturbances.

In this case, the purchaser may seek to have the violation removed by requesting a restraining order, an injunction prohibiting the purchaser from occupying the land without legal title (i.e. an ejectment action), or restoration of possession.

When the disturbance is based on a legal ground, such as a transfer of title, a registered sale agreement, or a judicial decision granting ownership to a third party, the seller is obligated to guarantee the purchaser against such de jure disturbance carried out by the third party.

A third-party disturbance typically occurs when a third party asserts a legal right over the sold item, regardless of whether such right is established or not, and regardless of whether such right is in rem right such as ownership or in personum right such as a valid enforceable lease.

Second, similar to guarantees against seller-caused disturbances, the disturbance caused by a third party must be actual in order for the seller's obligation to guarantee the purchaser against such disturbance to be triggered. Immediacy is insufficient.

Third, the legal ground giving rise to third-party claims over the sold property was established on a date prior to or subsequent to the date of the sale agreement, provided that such legal ground was established as a result of the seller's act.

As a result, the seller guarantees the purchaser against third-party disturbances based on a legal ground established prior to the date of the sale agreement, regardless of whether this ground is established due to the seller's act, such as a subsequent registered sale agreement, or an extrinsic cause, such as adverse possession of the sold item.

Nonetheless, the seller does not guarantee the purchaser against third-party disturbances if such disturbance is based on a legal ground established after the date of the sale agreement and is not the result of the seller's act. For example, the government may later expropriate the sold item in the public interest.

b) Enforcing the guarantees against a third party's disturbances :

In general, the purchaser is protected against third-party disruptions, which primarily include "restitution claims." When a third party rightfully restores and reclaims the sold property, this is referred to as restitution. In most cases, a seller will guarantee the buyer against partial or total restitution.

The restitution scenario occurs when a final judicial decision determines that the sold object must be returned to the plaintiff, who is the third party. In this case, the seller has breached his contractual obligation to guarantee the purchaser, entitling the latter to recover damages. In this regard, the general remedies available under Egyptian Civil Law are automatic contract cancellation and compensation for tortious liability, if any.

If the seller is not the owner of the sold property, his titles have been voided or rescinded, a third party has acquired ownership through adverse possession, or a second purchaser has registered the sale agreement before the first purchaser, complete restitution may occur.

Given the unique nature of sale agreements, the legislature provides an additional remedy to the purchaser – one that is specific to the scenario of restitution in sale agreement – in addition to the remedies available under general rules. When a third party completely takes possession of a sold item, the purchaser may recover from the seller the value of the sold item on the date of restitution, as well as all legal interests that accrue from that date.

This holds true whether the parties acted in good faith or not. This alternative remedy departs from the general rules in that legal interest begins to accrue on the date the judicial claim is filed, whereas in the sale agreement, legal interest accrues on the date of restitution.

We can see from the preceding that the purchaser recovers the value of the sold item; thus, if the value of the sold item has increased at the time of restitution compared to the value at the time of the sale agreement (i.e. contract price), the purchaser shall recover the amount of money equal to the value of the sold object.

Notwithstanding, if the value of the sold item has decreased by the time of restitution, the purchaser is entitled to the contract price under general compensation rules. As a result, the purchaser must seek cancellation of the sale agreement rather than a breach of contractual obligation claim, and he will be entitled to legal interest beginning on the date he files his judicial claim.

Having said that, the purchaser may choose between the two available remedies, namely a specific remedy for a breach of the contractual obligation to guarantee against disruptions or a general remedy for the automatic cancellation of the agreement.

E. Warranty of latent defects:

Per the Egyptian Civil Code Article 447, the seller is bound by warranty if the sold object does not include the characteristics that he was assured were true, or if there is a defect in the sold object that adversely affects the said object either by decreasing its value or preventing the purchaser from using it for the purposes for which he purchased it.

A warranty for a latent defect can come in a variety of forms. **First**, there is a quality warranty, which occurs when the sold item lacks a specific characteristic or quality that the seller has confirmed to be true. In this case, warranty is violated when the promised quality or characteristic is not true or not as expected, even if the lack of such quality or characteristic is not characterised as a defect in the strictest sense. A warranty, for example, is the seller's assurance that the sold apartment will be leased for at least 2000 EGP per month, which was relied on when determining the contract price.

Second, there is the warranty of machinability, that implies that the seller guarantees the buyer that the sold object is free of defects that a standard functional object may not have. Furthermore, machinability warranty implies that the sold object must reasonably conform to an ordinary buyer's expectation and be fit for the ordinary purpose for which such item is normally used. This means that if a defect exists in all normal similar items, the warranty is not violated.

Third, the warranty fitting a specific purpose, which means that the purchaser has a specific reason for purchasing the sold item and relies on the seller to select the appropriate item, who has reason to know of the purpose and reliance.

A. Conditions for warranty of hidden defect:

In order to enforce the warranty of latent defect, the purchaser must establish the following.

1– The discovered defect is an old one:

The warranty shall not cover "defects that the purchaser was aware of at the time of the sale agreement," according to Article 447 of the Egyptian Civil Code. However, the ambiguous wording of the aforementioned Article resulted in a different interpretation of when the defect should exist. In other words, scholarly writings and judicial decisions differed on whether the defect must exist before the sold item is delivered or at the time the agreement is signed in order to claim warranty of latent defect.

On the one hand, some scholarly writings argue that the defect only needs to exist prior to delivery in order to trigger the warranty of latent defect, regardless of whether it existed at the time the agreement was signed or not.

Other scholarly writings, on the other hand, believe that the issue is determined by whether the sold item is specifically identified or identified by its kind. If the sold item is specifically identified, the defect must exist at the time of agreement conclusion; however, if the sold item is identified by its kind, the defect must exist when it is sorted out of its similars.

2– The defect must be of a significant adverse effect:

The defect reduces the value of the sold item or renders it unfit for ordinary use to the extent that if the purchaser had been aware of such unfitness, he would not have purchased the item.

Whether or not the defect has a significant impact is a factual issue that the judge must resolve using the reasonable person standard. The judge may consider the parties' course of dealing, the nature of the sold item, what is common in custom and commercial usage, and the parties' good faith in making this determination.

As a result, unless it is expressly stated in the contract or the seller is aware of it, the judge may not rely on the purchaser's intention. As a result, a latent defect occurs when the sold item is unfit to fulfill a specific purpose expressly stated in the sale agreement.

Furthermore, if the seller assured the purchaser that the sold object is of a certain quality, the absence of that quality is regarded a hidden defect, regardless of whether the defect has a significant adverse effect, with no reference to the reasonable person standard.

3– The defect must be latent or hidden:

When the sold item is specifically identified, this condition is required. If a reasonable person could not have discovered the defect after ordinary inspection at the time of receipt, the defect is hidden.

Having said that, the inspection process varies depending on the nature of the item being inspected. A reasonable specialized engineer, for example, shall perform a reasonable inspection of a building. If the building was inspected by a regular person, it would not be considered reasonable.

Exceptionally, the seller guarantees an unhidden defect if the defect has a negative impact on the fitness of the sold item, the purchaser is unaware of the defect, and either:

- (a) the seller has expressly assured the purchaser that the sold item is free of such defect and the latter relied on such statement in order to enter the agreement; or
- (b) the seller has committed fraud by concealing – intentionally and in bad faith – the defect even if the purchaser was careless in inspecting.

4–The purchaser is not aware of the defect:

This condition, like the previous one, is required when the sold item is specifically identified. The purchaser must be unaware of the defect; otherwise, his actions should be interpreted as a waiver of his warranty rights because he entered into the agreement despite being aware of the product's flaw.

Such recognition must be actual, not assumed, unless it is a very common and widespread defect that the purchaser was supposed to expect with due and reasonable diligence. For example, when purchasing a used car, the buyer should be prepared to accept the defects that are common in used vehicles. On the other hand, awareness of the seller is irrelevant. He guarantees the defect even if he is not aware of its existence.

- Breach of warranty:

If the seller breaches the warranty, the purchaser may seek both relief and, if applicable, specific performance. To enforce the warranty, however, the purchaser must notify the seller of the defect within a reasonable period of time, provided that the defect is discoverable by a reasonable person and regular inspection, or the purchaser is presumed to have waived his right to the warranty.

However, if the defect is not detectable by a reasonable person and routine inspection, the purchaser must notify the seller as soon as he discovers it; otherwise, the purchaser is presumed to have waived his right to the warranty. However, as long as the defect is not discovered, the warranty remains in effect until the prescription period expires. Notification can be communicated in any way. It can either be oral or written.

When the seller breaches the warranty, the buyer may seek specific performance as a form of relief. The purchaser may seek injunctive relief ordering the seller to repair the defect or obtain a replacement item; if this is not possible, he may seek contract rescission. In all scenarios, he has the right to sue for damages, if any.

Unless the sold item is lost, the warranty claim is unaffected. However, the remedies available to the purchaser under such a claim differ depending on the cause of the loss or damage. If the loss was caused by a flaw in the sold item, the seller is obligated to fully compensate the purchaser for the full value of the item, as is the case in restitution claims. The same rule applies if the seller's action or negligence caused the loss.

Nevertheless, if the loss was caused by an extrinsic cause or the purchaser's action or negligence, the warranty claim compensation is limited to the damages that the purchaser would have received if he had chosen to keep the defective item. This means that the purchaser will suffer damages equal to the decrease in the value of the sold item or the cost and damages incurred in order to repair the sold item.

It is important to note that notification does not exempt the purchaser from filing a warranty claim, which has a one-year statute of limitation starting from the date of delivery of the sold item, unless the parties agree on a

longer period. If the seller committed fraud in concealing the defect, he cannot use the one-year statute of limitations as a defence. In this case, the warranty claim is subject to the general rules of statute of limitation, which are 15 years beginning from the date of sale and not the date of delivery.

Most scholars believe that the date of delivery here refers to the date of actual delivery rather than the date of tender of delivery, because normally determining whether a sold item is defective or not is done through inspection, which implies and necessitates actual delivery.

- **The scope of the warranty of latent defect:**

In general, parties may agree to modify the warranty's scope by broadening or narrowing it, i.e. increasing or decreasing the obligation covered by the warranty. They may also agree to waive the warranty for latent defects unless the seller commits fraud, intentional misrepresentation, or concealment.

- **Express warranty:**

It is essentially a seller's guarantee that the product will meet a certain level of quality and dependability for at least a specified period of time. If the product fails to function as it should, the purchaser must notify the seller within a month of its occurrence and file a warranty claim within six months of notification. If the buyer fails to meet the aforementioned requirements, he forfeits his right to the express warranty.

- **Express warranty does not override warranty of latent defect:**

If the parties to a sale agreement include an express warranty in their contract, the express warranty does not take precedence over the warranty of latent defect for the following reasons.

First, the express warranty's scope is broader than the latent defect warranty's scope because it covers situations in which the sold item is not functioning as it should.

Second, an express warranty is associated with a specific time period during which the seller guarantees that the sold item is sound and in good condition.

Third, the period in which the purchaser must notify the seller of a breakdown within one month, or he waives his warranty. whereas in the case of a latent defect warranty, the notification must be communicated within a reasonable period of time from the date of discovery of the defect.

Fourth, the purchaser has six months from the date of notification to file his warranty claim, whereas the statute of limitation of warranty of latent defect is one year and begins running from the date of actual delivery; otherwise, the warranty is waived.

Fifth, the remedies available under express warranty differ from those available under latent defect warranty. If repair is not possible under the express warranty, the seller must provide the purchaser with another item that is sound and in good condition.

– The purchaser’s obligations:

The purchaser's obligations are simpler. Unless the parties agree otherwise, the purchaser agrees to pay the full price. The default rules state that payment must be made at the time and place where the sold item is delivered. If the payment and delivery are not simultaneous, the payment should be made at the purchaser's domicile and at the time of agreement. As a result, if the agreement does not state the date of delivery, the delivery is presumed to be on the date of agreement conclusion, implying that the payment should also be on the same date.

Because delivery and payment are correlative (reciprocal) obligations, the party seeking enforcement of the agreement may not do so until he or she has fulfilled his or her obligation.

The purchaser bears the sale expenses and costs, such as the cost of registration, shipment, delivery, and other associated costs, as they are considered part of the price. Furthermore, the purchaser undertakes to receive the sold item provided that it is rightfully delivered or tendered by the seller.

Glossary of Legal Terminology.

• Chattels that are particularly identified	المنقول المعين بالذات
• Tenders	المنافضات أو العطاءات
• Payment / price	الثمن أو المقابل
• The date of delivery	ميعاد التسليم
• good faith	حسن النية
• enforcement of the agreement	تنفيذ الاتفاق
• expenses	نقاقات
• correlative (reciprocal) obligations	الالتزامات المتبادلة
• costs of shipment	تكاليف الشحن
• express warranty	الضمان الصريح
• warranty of latent defect	ضمان العيوب الخفية
• Repository	مستودع أو مخزن
• Exceptio non adimpleti contractus	الدفع بعدم تنفيذ العقد
• Sale agreement/ Purchase agreement	عقد البيع
• legally binding contract	عقد ملزم قانونا
• pecuniary value	القيمة المالية
• transaction	معاملة أو صفقة
• legislature	المشرع
• preclude	يمنع أو يعيق
• As per the general rules	وفقا لقواعد العامة
• fictitious price	سعر وهمي
• lesion	غبن
• Unconscionable bargain/ Unconscionability	صفقة جائرة أو غير عادلة
• Contracts of adhesion/ Standard form contract	عقود الإذعان
• Subordinate	تابع
• seller	بائع
• Purchaser	مشتري
• the sold object / the sold item	المبيع
• unlawful takeover	الاستيلاء الغير قانوني
• de jure disturbance	إشكالات قانونية
• third party	طرف ثالث

• restitution claims	دعاوي الاسترداد
• warranty / guarantee	ضمان
• Concluding agreements or contracts	ابرام العقود
• adverse possession	حيازة سلبية
• personum right	حق شخصي
• legal right over the sold item	حق قانوني علي المبيع
• valid contract	عقد صحيح
• legal ground	سند قانوني
• a subsequent registered sale agreement	عقد بيع مسجل لاحقاً
• extrinsic cause	سبب خارجي
• the acquisition of the ownership of the sold item	اكتساب ملكية المبيع
• expropriation of the sold object	نزع ملكية المبيع
• public interest	المصلحة العامة
• the judge's discretion	السلطة التقديرية للقاضي
• obligation of performance	الالتزام بعمل
• tender of delivery	الاتفاق علي التسليم أو عرض التسليم
• terms / requirements	شروط أو بنود
• Discrepancy	التعارض أو التناقض
• retail price	سعر التجزئة
• obligation to achieve a result	الالتزام بتحقيق نتيجة
• bundles	حزم أو ربط أو باقات
• compelled	يجبر
• wholesale price	سعر الجملة
• the seller negligence	إهمال البائع
• the breaching party	الطرف المخالف
• Trivial price	سعر تافه
• donation contracts	عقود التبرع
• the prejudiced party	الطرف المتضرر
• Implications of the sale agreement	أثار عقد البيع
• Exploitation	الانتفاع

Some Legal statements

- Tender of delivery must comport with the terms of the sale agreement.

ويجب أن يتوافق الاتفاق علي تسليم المبيع مع شروط عقد البيع .

- The seller may waive his right to refrain from delivering the sold object whether implicitly, by performing the contract, or expressly, by agreeing so in the contract.

يجوز للبائع أن يتنازل عن حقه في الامتناع عن تسليم المبيع سواء كان ذلك ضمنيا بتنفيذ العقد، أو صراحة بالاتفاق على ذلك في العقد.

- The seller is liable for the decrease in the amount of the sold object.

البائع مسؤول عن النقص في كمية المبيع.

- The delivered property must comport with the characteristics, properties and amount provided in the contract.

يجب أن يوافق العقار المسلم الخصائص والأغراض والمبلغ المنصوص عليه في العقد.

- Lesion : In civil law jurisdictions, the word is often used in the context of an 'unfair' loss, as where an adult takes advantage of a minor or someone purchases something for much less than it's worth.

فالغبن، في نطاق القانون المدني، غالبًا ما تُستخدم هذه الكلمة في سياق الخسارة "غير العادلة" ، حيث يستغل شخص بالغ قاصرًا أو يشتري شخص ما شيئًا بمقابل أقل بكثير من قيمته.

Chapter Five

Rules of Evidence

Students Should Know after Studying This Chapter :

- Sub-Burden of Proof .
- The evidentiary Methods.

Evidence is the available body of facts or information indicating whether a belief or proposition is true or valid. It is used to establish the truthfulness or untruthfulness of a legal disputed fact by one of the evidentiary means set forth in the evidence rules.

As such, evidence is of utmost importance because failure to establish a persuasive and convincing evidence means that there is no right, even if this right has *de facto* existed. The law protects and ensures the enforcement of rights that are supported by evidence.

There are three systems of evidence: the free evidentiary system, the restricted evidentiary system and the mixed evidentiary system. The free evidentiary system is based on two pillars: the parties' freedom to offer any kind of evidence and the judge's freedom in assessing the probative value of the offered evidence.

This system is mainly adopted in the common law jurisdictions. Nonetheless, the freedom of the parties and the judge is not absolute. The freedom of both is controlled by several rules, *inter alia*, relevancy, conditional relevancy, discretionary exclusions, policy based exclusions, privileges, best evidence rule, parol rule, inadmissibility of hearsay and the exception thereto.

To the contrary, the restricted evidentiary system is based on two pillars: the parties are bound with particular means of evidence and the judge is bound by specific standard of proof and methods of persuasion.

Eventually, the mixed evidentiary system compromises the two preceding systems as it provides for the methods of evidence that the parties may offer and the probative value of some these methods leaving the judge the discretion in evaluating the probative value of other methods. According to this system, the extent of freedom is the broadest in criminal matters and the narrowest in commercial matter. Civil matters pertain to restricted evidentiary system rather than a free one.

Before we discuss the methods of evidence admitted under the Egyptian law, we believe that it seems more coherent to show the persons who bear producing evidence. As such, we shall discuss the burden of proof, where we demonstrate whether the plaintiff or the defendant has the burden of

producing evidence, then we demonstrate the different admitted methods of evidence that the plaintiff and the defendant can offer into evidence.

a. Sub-Burden of Proof:

Burden of proof is the burden of one party to introduce sufficient evidence to avoid a judgment against her as a matter of law. It is her burden to prove that there is a real dispute and claim is not frivolous.

The person who invokes or claims something contrary to what is established has the burden of proof. For example, the person who is claiming a real estate mortgage security interest must proof his claim by showing the mortgage deed. The burden as to this fact may shift to the adversary when the pleader has discharged her initial duty by showing the judge the plausibility of her claim. The burden of producing evidence keeps shifting until the judge is persuaded by one the two opposing propositions.

b. Evidentiary Methods:

In Evidence law, promulgated by law No. 25 of 1968, the legislature has exclusively set out the methods of evidence which include: written or documentary evidence, testimonial evidence, presumptions, admission and oath.

A. Written/documentary Evidence:

Documentary evidence is the most important method of evidence due to its high probative value. Under Egyptian law, written evidence only includes signed documents, which means that unsigned documents are not considered as written evidence for purposes of evidence law. Signature here denotes, *sensu lato*, handwritten signature, fingerprint signature, personal seal stamp and electronic signature provided that it meets the specific technical and legal requirements prescribed by the law.

Documentary evidence is classified into authentic official documents and unauthentic documents.

1. Authentic official documents:

Authentic documents are writings whereby a public official or a public servant, usually notary public, states what he has witnessed or what he has

received from the concerned parties according to the law and within the scope of his competence.

Statements made before the competent notary public, such as statement where the notary confirms that offer and acceptance occurred in form of him or payment of the price happened during his presence, are authentic official statements.

Moreover, statements that the competent notary public receive from a party whereby he acknowledges a certain fact, such as the seller's acknowledgement of receiving the money, are also authentic official statements. Such statement is referred to as an affidavit.

Although the above two documents are authentic official documents, they do not have the same probative value. Statements made before the competent notary public are enforceable against everyone and cannot be rebutted unless by forgery.

Whereas, affidavits can be rebutted by any evidentiary method. The reason for such distinction lies in the fact that in statements made before the competent notary public, the latter has witnessed himself the content of the statement, whilst in affidavits the competent notary public received the statement from a party. The notary did not witness the veracity of such statement himself.

2. Unauthentic private documents:

Unauthentic private documents are writings that are executed and signed by the concerned parties. It does not involve the interference of a notary public or a public official to authenticate the document.

These documents may be prepared for evidentiary purposes or not. The private documents prepared by the concerned parties for evidentiary purposes must be signed by the debtor/obligor regardless whether the document itself was drafted by the him or by the creditor/obligee. By contrast, private documents for nonevidentiary purposes are not signed by the debtor/obligor, such as invoices, exchanged correspondences, accounting books, etc. Although these documents are not prepared for evidentiary purposes, it is an admissible and valid item of evidence that is acknowledged by the legislature.

However, it has a lower probative value. All the statements set out in private unauthentic documents, including the dates, are enforceable against its parties. It can only be rebutted by another evidentiary document. Similarly, the statements set out in private unauthentic documents are enforceable against third parties except for the dates stated therein unless there is an event(s) shows beyond reasonable doubt that the document was drafted before its occurrence.

Under any event, the private unauthentic document is attributed to the person who signed it unless he expressly denies the signature, the handwriting, the fingerprint or the seal stamp that is attributed to him. In case of denial, the document shall be referred to investigation according to the provisions of Art. 215 of the Criminal Code.

Once denial is raised as a defense, the burden of proof shifts to the proponent of the private unauthentic document. However, this is not the case in authentic official documents where forgery must be established in order to the documents to lose its probative value.

B. Testimonial Evidence:

Factual and legal issues can be substantiated by testimonial evidence. The witness must be competent, which means that he has personally observed, by one of his senses: sight, smell, touch or taste, the fact he is testifying to.

Under the Egyptian Evidence Law, it is permissible for a witness to testify to statement made by a person other than the witness, the declarant, in order to prove the truth of the matter asserted.

Such testimony is named as *hearsay*. Also, witness may testify to a statement that is widely spread among people.

The probative value of the testimony varies depending whether the witness has witnessed the matter asserted by himself or not. The judge may rely on or disregard the witness' statement if he is not persuaded thereby provided that he explains in his decision the grounds for such disregard.

Testimonial statements are admissible for the following matters:

1. Factual matters

All factual question whether they arise because of a human's action, such as construction, destruction, embezzlement, or natural reasons such as flood and earthquakes.

2. Legal matters (legally operative or dispositive instrument)

Legal operative or dispositive instrument denotes all legal acts that affords a right or impose an obligation, such as contracts, unilateral acts or even a legislative text. However, the probative value of legally operative documents varies depending on the nature of the underlying activity of the instrument.

a) Commercial Legal Operative Instrument

Such instrument could be substantiated by any method of evidence whether testimonial or documentary irrespective of the value of the instrument in dispute. This is due to considerations of celerity and flexibility required in commercial transactions.

b) Civil Legal Operative Instrument:

In principle, it is not permissible to offer testimonial evidence to show the truthfulness of a matter related to a civil legal operative instrument if the value of the said instrument is more than 1000 EGP or undetermined. Moreover, it is not permissible to rebut an established written evidence, whether by stating the opposite or the excess thereof, by testimonial evidence.

This means that established written evidence can only be rebutted by written evidence. However, the legislature sets out three exceptions where testimonial evidence is permissible notwithstanding the above restrictions.

***Prima facie* written evidence:**

when a document drafted by the opposing party, the party against whom the oral testimony is offered, implies that the existence of the legal operative instrument is probable. For example a letter making reference to the legal operative instrument. In such scenario, the testimonial evidence along with the document drafted by the opposing party form a complete evidence equivalent to the written evidence.

A material impediment, such as unexpected circumstance, or **a moral impediment**, such as martial relationship or kinship, which prevents the parties from preparing an evidentiary document. In such scenario, the testimonial evidence to the proposition of the existence of legal operative instrument displaces the written evidence.

An impediment subsequent to obtaining the evidentiary document substantiating the existence of the legally operative instrument, such as the destruction or the loss of the instrument due to an extrinsic reason independent from the proponent's will, which prevents the proponent from offering it into evidence.

In such scenario, the testimonial evidence to the proposition of the existence of legal operative instrument displaces the written evidence.

C. Presumptions:

It is the process of inductive inference according to which the judge or the legislature infers from a specific known fact a general unknown fact known as conclusion.

When the judge conducts inductive inference, the presumption is judicial, which is usually found in courts' precedent. However, when the legislature conducts inductive inference, the presumption is legal, which is stated in legislative texts. The legal presumption is binding on everyone including the judge.

To prove matters that could be substantiated through testimonial evidence, it is permissible to rely on legal or judicial presumption. "The possession of a chattel denotes the ownership thereof," for example, is an example of a legal presumption. This means that if a person can demonstrate that he has possession of the chattel, he is presumed to be the owner of the chattel.

As a result, presumption works as follows: a certain conclusion, in this case the ownership of the chattel, is assumed once a certain fact on which the presumption is based, in this case the possession of the chattel, is proven.

A presumption has the advantage of making the judge's and disputing parties' jobs easier.

The presumption was designed to save time by eliminating the need for proof of a fact that is highly likely in any event. Rather than proving every

single fact, evidence of one crucial fact, determined based on previous social experiences and judges collective professional experience, will suffice to reach a conclusion.

Furthermore, presumption serves to correct an imbalance caused by one party's superior access to proof on a specific issue. It can also be used as a tool for social or economic policy.

While the judge has complete discretion over whether to accept or reject judicial presumption, he is bound by legal presumption. This means that once the facts on which a legal presumption is based have been established, the judge cannot ignore the presumption. He must accept the logical conclusion of such a presumption.

For example, the judge is not bound by the judicial presumption that a contract concluded among relatives is a basis for presuming its fabrication. According to the surrounding circumstances and set of facts in the case at hand, the latter may rely on or disregard such presumption.

However, when the presumption at issue is a legal presumption, the judge lacks such discretion. For example, according to Egyptian civil code Art. 587, the payment of the most recent rent installment establishes a presumption that the previous installments were paid, unless the contrary is established. This is a legal presumption that the judge must uphold if it has been established that the previous month's rent was paid.

As a result, the legal presumption is not evidence in and of itself that the lessor has paid the previous months' rent; rather, it prevents him from proving it until such presumption is rebutted.

Once a presumption is established, the burden of proof shifts to the other party, the lessee, who must demonstrate whether there was no payment made for the previous month in order to destroy the basis of the presumption or whether the rent for the preceding months was not paid in order to rebut the presumption.

D. Admission:

An admission is a statement made against interest by an opposing party during litigation or arbitration proceedings. Admissions, both judicial and non-judicial, are admitted into evidence.

A non-judicial admission is a statement against interest made outside of court (i.e. not before a judicial entity) or made before a judicial entity but in proceedings unrelated to the admission's subject matter.

Admissions, both judicial and non-judicial, are conclusive and binding on the person who makes them. This means that the latter will be unable to revoke his admission.

E. Oath:

An oath is either a statement of fact or a promise with wording referring to something sacred as a sign of veracity. According to Article 128 of the Egyptian Evidence Law, the oath may be administered in accordance with the religious practices of the person being sworn in. There are two types of oaths in Egyptian law, which are described below.

Dispositive oath: This is when a party asks his opponent to swear that his allegations or defences are true. In such a case, the adversary has the option of either accepting to swear and thus resolving the dispute in his favour, or redirecting the request to his adversary, i.e. the party who requested the dispositive oath in the first place. In the event of redirection, the initial party may accept it and swear to end the dispute in his favour. It is obvious that such a method of evidence is ineffective. As a result, no one relies on dispositive oath unless no other evidence is provided.

Supportive oath: It actually occurs when the judge orders one of the disputing parties to swear that his allegations and/or defences are true in order to complete or support the judge's persuasion.

Glossary of Legal Terminology

• arbitration proceedings	إجراءات التحكيم
• Dispositive oath	اليمين الحاسمة
• swear	يخلف
• allegations	ادعاءات
• defenses	دفع
• judge's persuasion	اقتناع القاضي
• litigation	التقاضي
• Admission	الإقرار
• Evidence Law	قانون الأثبات
• Article	مادة
• Principles of natural law	مبادئ القانون الطبيعي
• The disputing parties	الأطراف المتنازعة
• Rules of equity	قواعد العدالة
• Periods	المواعيد
• Supportive oath	اليمين المتممة
• Abrogate	يلغي
• Expressly / Explicitly	صراحة
• Implicitly	ضمنياً
• Former law	قانون سابق
• Unless the law provides otherwise	مالم ينص القانون علي غير ذلك
• Illegitimate	غير مشروع
• Legitimate	مشروع
• Harm others	إضرار بالآخرين
• 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 وفقاً ل
- Rules prescribed by law القواعد المقررة قانوناً
- Renounce نزول / تنازل

Some Legal Statements

- Both judicial and non-judicial admissions are conclusive and binding on the admitting person.

يعتبر كل من الإقرار القضائي وغير القضائي حاسماً وملزماً للشخص المقر.

- Admission is a statement made against interest by an opposing party during litigation or arbitration proceedings.

الإقرار هو بيان يدلي به ضد المصلحة من قبل طرف معارض أثناء التقاضي أو إجراءات التحكيم.

- Good against all the world (erga omnes).

يتم الاحتجاج به قبل الكافة .

- Who comes into the equity must come with clean hands.

من يأتي إلي العدالة يجب أن يأتي نظيف الأيدي.

- Who seeks equity must do it.

من يطلب العدالة يجب أن يطبقها .

- Cab-rank rule.

مبدأ التزام المحامي بالدفاع عن القضية التي تقدم إليه، بعض النظر عن معتقداته السياسية والدينية والشخصية.

- Canons of construction of laws.

قواعد تفسير القوانين.

- Each case must be judged by its own circumstances.

يجب الحكم في كل قضية طبقاً لظروفها الخاصة.

- In civil litigation, the court decides only issues raised by the parties.

Illegality is an exception to this rules: if facts pleaded reveal an illegality issue, the judge must consider it of his own motion.

كقاعدة عامة، في المنازعات المدنية، تحكم المحكمة فقط في الأمور التي يثيرها الأطراف، وتشكل عدم المشروعية استثناء من هذه القاعدة، ذلك أنه إذا أظهرت الوقائع المدعاة مسألة عدم مشروعية، فعلي القاضي أن ينظرها من تلقاء نفسه.

- One who negligently or willfully injures another is liable in damages.

من يضر بإهمال أو عن عمد شخصاً آخر يكون مسؤولاً عن التعويض.

- Parole evidence rule.

قاعدة الاثبات الشفهي : ومقتضاها أن ما تم الاتفاق عليه شفاهه لا يمكن أن يضيف أو يغير أو يناقض ما هو

مكتوب. و إن كانت المحاكم يمكنها اعتبار ذلك عقداً جانبياً collateral contract

- Alimony: Money that a court requires one spouse to pay the other spouse for support before and/or after the divorce is granted.

الأموال التي تلزم بها المحكمة أحد الزوجين بدفع إعانة للزوج الآخر قبل و/أو بعد الطلاق.

- Allegation: Saying that something is true. The assertion, declaration or statement of a party in a case, made in a pleading.

ادعاء: القول بأن شيئاً ما صحيح. تأكيد أو إعلان أو بيان طرف في قضية ما ، ويكون عند بدء إجراءات المرافعة.

- Appeal: Asking a higher court to review the decision or sentence of a trial court because the lower court made an error.

الاستئناف: مطالبة محكمة أعلى بإعادة النظر في قرار أو حكم المحكمة الابتدائية لأن المحكمة الأدنى ارتكبت خطأ.

- Capital sentence: A crime punishable by death..

عقوبة الإعدام: جريمة يعاقب عليها بالموت.

- Answer: A court document, or pleading, in a civil case, by which the defendant responds to the plaintiff's complaint.

الدفع: وثيقة قضائية أو مرافعة في دعوى مدنية يدفع أو يرد بها المدعى عليه علي شكوى المدعي.

- Bail: Also called Bond. Money or property given to the court for the temporary release of a defendant, to ensure that the defendant will return to court.

الكفالة: الأموال أو الممتلكات الممنوحة للمحكمة للإفراج المؤقت عن المدعى عليه، لضمان عودة المدعى عليه إلى

المحكمة.

- Domicile: The permanent home of a person. A person may have several residences, but only one domicile.

الموطن: المسكن الدائم للفرد. قد يكون للفرد عدة مساكن ولكن موطن واحد فقط.

- Habeas Corpus: A court order used to bring a person physically before a court in order to test the legality of the person's detention. Usually, it is directed to the official or person detaining another, commanding him to bring the person to court for the judge to determine if that person has been denied liberty without due process of law.

أمر قضائي بوجوب إحضار السجين أمام المحكمة للنظر في شرعية حبسه: أمر من المحكمة يستخدم لتقديم شخص ما جسدياً إلى المحكمة من أجل اختبار شرعية احتجاز الشخص. عادةً ما يتم توجيهه إلى المسؤول أو الشخص الذي يحتجز شخصاً آخر ، ويأمره بتقديم الشخص إلى المحكمة للقاضي لتحديد ما إذا كان هذا الشخص قد حرّم من الحرية دون اتباع الإجراءات القانونية الواجبة.

- Charge: Formal accusation of a crime.

الإدانة: اتهام رسمي بجريمة.

- Chattels: All property except real property; personal property. For example: jewelry, clothing, furniture, and appliances.

المنقولات: كل الممتلكات باستثناء العقارات ؛ الممتلكات الشخصية. على سبيل المثال: المجوهرات ، والملابس ، والأثاث ، والأجهزة.

- Custody: A court order deciding where a child will live and how decisions about the child will be made. Parents may ask for any custody arrangement that they believe is in the best interest of their child.

الحضانة: أمر من المحكمة يقرر أين سيعيش الطفل وكيف سيتم اتخاذ القرارات بشأن الطفل. ويجوز للوالدين أن يطلبوا أي ترتيبات حضانة يعتقدان أنها تصب في مصلحة طفلها.

- Dismissal: A judge's decision to end the case.

رفض الدعوي: قرار القاضي بإنهاء القضية.

- Impeachment: The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached".

رد الشاهد أو إبعاده: إذا استطاع المحامي إثبات أن الشاهد ربما يكون قد اختلق أجزاء من شهادته ، فيقال إن الشاهد قد "تم رده".

Chapter Sex

Liability in Civil Law

Students Should Know after Studying This Chapter :

- Contractual Liability.
- Tort Liability Damages.

Traditionally, Egyptian law governing "product liability" has been found in general Civil Code principles governing contract or tort (wrongful act in Arabic).

The Egyptian Civil Code discusses various sources of obligations, the most important of which are contract and tort for the purposes of this discussion. The applicable Egyptian legal provisions are strikingly similar to those found in the majority of European civil law systems.

In general, unlike the law in some other Arab jurisdictions, a claim for compensation under the Egyptian Civil Code must be based on either contractual or tort liability. In other words, a plaintiff's claim against a defendant may not be based on a combination of the two types of liability. Where there is a contract, a contractual party seeking compensation for harm suffered must generally proceed in accordance with contract principles.

(a) Contractual Liability:

In the event that a purchaser of a product suffers harm, the seller's liability would be based on contract. According to Egyptian law, the seller of a product implicitly guarantees that it is free of defects. Article 447 of the Egyptian Civil Code contains the following general rules regarding a seller's liability to a purchaser:

A seller is liable to a purchaser if, at the date of shipment, the relevant product lacks the qualities that the seller guaranteed, or if the product has a defect(s) that reduces its value or usefulness for the purpose intended, as specified in the contract, or from the nature or intended use of that product.

The seller is liable for harm caused by the defect even if the seller was unaware of such defect.

Notwithstanding, the seller is not liable for any defect that the purchaser was aware of at the time of the sale, or for any defect that the purchaser could have discovered by inspecting the product with reasonable care. As an exception to this general rule, a seller would be liable to the purchaser if the seller falsely represented to the purchaser that the product was defect-free, or if the seller fraudulently hidden such defect.

Even through such broadly applicable rules on seller liability, the Egyptian Civil Code gives contractual parties relatively broad latitude in negotiating their respective obligations and liabilities through specific contractual provisions on warranty, indemnification, and waiver.

Article 453 of the Egyptian Civil Code, for example, states that the parties to a contract may agree to increase, decrease, or eliminate the seller's warranty, provided the seller has not fraudulently concealed defects from the purchaser. In a similar vein, general contract rules in the Egyptian Civil Code allow parties to agree that the obligor be discharged from all liability for failure to perform contractual obligations, with the exception of liability arising from the obligor's fraud or gross negligence (gross error)¹.

(b) Tort Liability:

In the absence of a contractual relationship between a manufacturer and the purchaser of a defective product, the manufacturer's liability to the purchaser would be based on tort, that is, liability for damages and injuries resulting from non-contractual obligations. According to Article 163 of the Egyptian Civil Code, a person who commits any fault (or error) that causes

¹ خطأ جسيم: in Arabic

Thus, three elements must be present for tort liability to arise:

- (i) a fault or error (which may be either an act or a failure to act);
- (ii) damage to another; and
- (iii) a casual connection between the fault and damage.

Unlike contractual liability, the Egyptian Civil Code does not allow parties to disclaim liability for tortious acts. According to Article 217(3) of the Egyptian Civil Code, "any clause absolving a person of responsibility for wrongful acts [torts] is void."

Nonetheless, defendant-friendly Egyptian tort principles such as contributory fault, intervening cause, and necessity may help to reduce the number of product liability lawsuits filed in Egypt.

(c) Damages:

Article 221 of the Egyptian Civil Code includes some basic principles for calculating damages resulting from a breach of an obligation, whether contractual or tortious. (The Civil Code frequently refers to the party breaching its obligation as the 'debtor,' and the party harmed as the 'creditor.')

If the amount of damages has not been established within the parties' contract (e.g., a liquidated damages clause) or by law, the judge will determine it.

The amount of damages shall involve losses caused by the creditor as well as lost profits, provided that such losses are a natural consequence of the debtor's failure to perform its obligation (or its delay in performing). Such losses shall be considered a 'normal result' for these purposes if the creditor is unable to avoid those losses despite making reasonable efforts.

If the pertinent obligation comes up from contract (rather than tort) principles, the debtor will not be liable for damages in excess of what could have been reasonably foreseen at the time the contract was entered into – though this limitation does not apply if the debtor committed fraud or gross negligence.

The term "consequential" damages is not explicitly used in Egyptian Civil Code liability provisions. In Egypt, a person is not generally liable for indirect damages. A person may be held accountable for direct damages, including both “material damage”¹ and “moral damage”².

Contractual liability encompasses and foreseeable damages, i.e. the "natural result" of a contractual breach. Tort liability encompasses all direct damages, whether foreseen or unforeseen. These rules have been summarized by Egyptian jurists in the following examples:

- **Direct/Indirect:**

If a lessor fails to fulfill the terms of a lease and the lessee is forced to relocate its operations, the cost of the relocation (including increased rent at the new location) would be direct damages resulting from the contractual breach. However, if the new premises contain certain harmful bacteria that make the lessee's employees ill, this would be considered indirect damage for which the lessor would not be liable under either contract or tort principles.

- **Foreseeability:**

A transport company can anticipate that a passenger will bring luggage containing items of varying value (as opposed to items of quite exceptional

¹ (in Arabic:الضرر المادي)

² (in Arabic:الضرر الالهي)

value). As a result, if the bus company misplaces a passenger's luggage, it will be held liable for any resulting damages.

Consider the case of a passenger travelling to a destination to attend a special event, such as a jockey at a horse race, a student at an important university exam, or a businessman at an important contract negotiation.

If the bus is late arriving at its destination, the passenger cannot normally recover the damages incurred by not participating in the event, unless circumstances indicate that the bus company anticipated the special risk that it was presuming.

- **Loss/Profit:**

If a musician breaches a contract with a theatre owner, the latter can seek reimbursement for expenses incurred in preparing for the performance, such as advertising, set designs, and so on, as well as for the loss of profits derived from the concert. A court may consider whether the theatre owner suffered moral damages (e.g., loss of reputation with the public) as a result of the singer's breach of contract in addition to these material damages.

- **Mitigation:**

If a farmer hires a moving company to transfer a broken piece of equipment to be fixed, but the moving company loses the equipment, the farmer cannot wait months and then claim losses for being without the equipment for an entire season. Rather, when the farmer discovers that the equipment has been lost, he should make every effort to obtain replacement equipment.

The Egyptian Civil Code also includes some additional damage rules that apply only to contractual liability or tortious liability, not both. Contractual

parties, for example, may agree in advance on "liquidated damages" owed in the event of a contractual breach. Three important general principles are contained in Articles 224 and 225 of the Egyptian Civil Code:

- ❖ If the debtor can demonstrate that the creditor was not harmed, the liquidated amount is not owed;
- ❖ The liquidated amount may be lowered if the debtor demonstrates that the parties' estimate was exaggerated, or if the debtor has only partially performed the contractual obligation.; and
- ❖ The creditor is not entitled to claim more than the liquidated damages, even if harmed in excess of the liquidated amount, unless the debtor has committed fraud or gross error.

(c) Wrongful Death:

Unlike some other Arab civil codes (such as those in Kuwait and the United Arab Emirates), the Egyptian Civil Code does not include special statutory rules that apply only to wrongful death damages. In contrast, the UAE Civil Code, for example, reflects Islamic law (Shari'ah) principles on this issue: A person who commits a harmful act that results in death is required to pay diyya. (sometimes translated as "blood money"¹).

¹ in Arabic الدية

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 آراء 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 وقي
- 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 هجوماً

- 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

سمسة

- Common property

ملكية شائعة

- Terminal sickness

مرض الموت

- Export

استرداد

- Preemption

شفعة

- Replevin action
- Liability

دعوى الاسترداد
مسؤولية

Some Legal Statements

- Statute: A law passed by a legislature.
القانون العادي أو الأساسي: هو قانون سنته السلطة التشريعية.
- Testimony: Evidence presented orally by witnesses during trials or before jury.

الشهادة: الأدلة التي قدمها الشهود شفويا أثناء المحاكمات أو أمام هيئة المحلفين.

- Tort: A civil, not criminal, wrong. A negligent or intentional injury against a person or property, with the exception of breach of contract.

الضرر/ المسؤولية التقصيرية: خطأ مدني وليس جنائي. الضرر الناتج عن إهمال أو عمد بحق شخص أو ممتلكات، باستثناء الإخلال بالعقد.

- Verdict: The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

الحكم: القرار الصادر عن هيئة المحلفين التي تقرر إدانة أو براءة المتهم الجنائي ، أو القرار الذي يحدد النتيجة النهائية للقضية المدنية.

- The facts in issue are the things you will need to prove in order for your case to succeed.

الحقائق المطروحة هي الأشياء التي ستحتاج لإثباتها حتى تكسب قضيتك.

- In a case of negligence, a person must show that the other party owed them a duty of care, that this duty was breached and that the person suffered damage.

في حالة الإهمال ، يجب على الشخص إثبات أن الطرف الآخر مدين له بواجب العناية ، وأن هذا الواجب قد تم انتهاكه وأن الشخص قد تعرض للضرر.

- hearsay – Statements by a witness who did not see or hear the incident in question but learned about it through secondhand information such as another’s statement, a newspaper, or a document. Hearsay is usually not admissible as evidence in court, but there are many exceptions to that rule.

دليل من أقوال الغير عن الواقعة: بيانات أدلى بها شاهد لم ير أو يسمع الحادث المعني ولكنه علم به من خلال معلومات ثانوية مثل بيان آخر أو صحيفة أو وثيقة. عادة ما تكون تلك الأقاويل غير مقبولة كدليل في المحكمة ، ولكن هناك العديد من الاستثناءات من تلك القاعدة.

- The principle no interest, no action.

مبدأ حيث لا مصلحة لا دعوي