Faculty of Commerce

Introduction To The Study Of Law

(Theory Of Law-Theory Of Rights)

Compiled By

Dr. Esraa Adnan Fangary

Lecturer of Law

South Valley University

1st year students

Faculty of Commerce
Academic Year 2022-23

Preface:

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

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

Esraa Adnan

Content

- **Preface**... **2**
- **Introduction** **4**
- **Chapter One** : **Introduction to Law** **14**
  - Definition of law 15
  - The Relation Between Law and Morality..........................17
  - Categories of Law.. 18
  - Types of Legal systems..29
- **Chapter Two** : **Branches of Law**...................................... **37**
  - First Category: Public law branches 38
  - Second Category: Private law branches............................42
- **Chapter Three**: **Sources of Law**...................................... **68**
  - Main Sources of law...71
  - Secondary sources of law 86
- **Chapter Four** : **Scope of application of the law**................ **93**
  - The territorial scope of the law.....................................94
  - The temporal scope of the law..................................... 96
  - Interpretation of the law... 98
- **Chapter Five**: **The Egyptian Judicial system**................... **103**
  - Ordinary Courts...104
  - Administrative Courts 105
  - Military and Emergency...106
- **Chapter Sex : Theory Of Right**... **113**
  - Definition of rights 114
  - classification of rights...114
  - Legal personality..120
  - Characterization and identification of legal personality..........128
- **Chapter Seven : Civil contract**... *151*

- The definition of contract.. 152
- Classifications of contracts...152
- Requirements for formation of contracts..........................154
- The termination of contract.......................................160
- **Chapter Eight: Sources of obligation.............................. 163**
- The concept of obligation.. 164
- Classification of obligations..164
- Sources of obligation in Egyptian legal system 168
- **Chapter Nine : Sale Contract 170**
- Terms of the validity of Sale contract 171
- Implications of the sale contract................................. 177
- The seller's obligations.. 177
- The purchaser's obligations...................................... 196
- **Chapter Ten: Rules of Evidence 198**
- Sub-Burden of Proof 200
- Evidentiary Methods..200
- **Chapter Eleven: Liability in Civil Law.............. 208**
- Contractual Liability... 209
- Tort Liability...211
- Damages..212

Introduction :

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

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

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

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

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

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

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

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

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

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

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

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.

Why do We Study Legal Theory ?

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

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

What Topics Can You Expect to Study؟

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

- ***What is law?***
- ***What is its position and place within society?***
- ***How does law-making take place?***
- ***What are courts available in Egypt?***
- ***What are requirements of sale contract?***
- ***What is difference between contractual liability and tort liability ?***

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

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

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

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

This book will be divided as following :

- **Chapter one** : **Introduction to Law**
- **Chapter Two** : **Branches of Law**
- **Chapter Three**: **Sources of Law**
- **Chapter Four** : **Scope of application of the law**
- **Chapter Five**: **The Egyptian Judicial system**
- **Chapter Sex**: **Theory Of Right**.
- **Chapter Seven**: **Civil contracts**.
- **Chapter Eight**: **Sources of obligation**.

- **Chapter Nine: Sale Contract .**
- **Chapter Ten: Rules of Evidence .**
- **Chapter Eleven: Liability in Civil Law.**

Chapter One

Introduction to Law

Students Should Know after Studying This Chapter :

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

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

1- Definition of law :

Generally the term law is used to mean three things:

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

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

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

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

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

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

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

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

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

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

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

The Relation Between Law and Morality:

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

A) indicates the area which morality organizes.

B) indicates the area which law organizes.

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

A– Morality:

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

B– Law:

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

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

C) The interfering area between morality and law:

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

Categories of Law

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

- **Common law and civil law**

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

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

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

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

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

- **Common law and equity**

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

represented the assertion and affirmation of that central sovereign power.

Traditionally, much play is made about the circuit of judges travelling round the country establishing the 'King's peace' and, in so doing, selecting the best local customs and making them the basis of the law of England in a piecemeal but totally altruistic procedure. The reality of this process was that the judges were asserting
the authority of the central State and its legal forms and institutions over the disparate and fragmented State and legal forms of the earlier feudal period. Thus, the common law was common to all in application, but certainly was not common from all.

By the end of the 13th century, the central authority had established its precedence at least partly through the establishment of the common law. Originally, courts had been no more than an adjunct of the King's Council, the Curia Regis, but gradually the common law courts began to take on a distinct institutional existence in the form of the Courts of Exchequer, Common Pleas and King's Bench. With this institutional autonomy, however, there developed an institutional sclerosis, typified by a reluctance to deal with matters that were not or could not be processed in the proper form of action. Such a refusal to deal with substantive injustices because they did not fall within the particular parameters of procedural and formal
constraints by necessity led to injustice and the need to remedy the perceived weaknesses in the common law system. The response was the development of equity. Plaintiffs unable to gain access to the three common law courts might directly appeal to the sovereign, and such pleas would be passed for consideration and decision to
the Lord Chancellor, who acted as the king's conscience. As the common law courts became more formalistic and more inaccessible, pleas to the Chancellor correspondingly increased and eventually this resulted in the emergence of a specific court constituted to deliver

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

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

The division between the common law courts and the Courts of Equity continued until they were eventually combined by the Judicature Acts (JdA) 1873–75. Prior to this legislation, it was essential for a party to raise an action in the appropriate court – for example, the courts of law would not implement equitable principles; the Acts, however, provided that every court had the power and the duty to decide cases in line with common law
and equity, with the latter being paramount in the final analysis. Some would say that, as equity was never anything other than a gloss on common law, it is perhaps appropriate, if not ironic, that now both systems have been effectively subsumed under the one term: common law.

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

Common law and statute law:

This particular conjunction follows on from the immediately
preceding section, in that the common law here refers to the substantive law and procedural rules that have been created by the judiciary through the decisions in the cases they have heard. Statute

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

Private law and public law:

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

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

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

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

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

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

Civil law and criminal law:

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

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

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

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

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

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

Law and Right:

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

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

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

Law , morality and justice

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

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

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

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

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

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

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

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

History of law:

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

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

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

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

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

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

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

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

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

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

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

Legal systems:

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

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

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

Civil law:

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

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

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

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

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

Anarchist law:

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

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

Socialist law:

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

Common law and equity:

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

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

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

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

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

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

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

Religious law:

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

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

Canon Law:

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

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

Sharia law:

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

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

The legal system in Egypt:

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

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

Branches of Law:

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

- **Public and private law**:

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

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

Basis of distinction between public and private law:

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

Chapter Two

Branches Of Law

Students should know after studying this chapter :

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

First Category: Public law branches :

1- Constitutional law:

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

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

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

2- Administrative law:

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

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

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

3- Criminal Law:

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

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

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

The principle of legality of crimes and penalties :

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

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

4- Public International law:

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

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

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

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

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

Second Category: Private law branches :

1- Civil Law:

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

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

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

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

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

Below we briefly present these two types:

A. Personal Status:

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

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

B. In Rem status:

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

- **Personal rights**:

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

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

- **Rights in rem**:

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

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

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

The second section deals with ancillary rights in rem:

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

2- Commercial Law:

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

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

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

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

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

3- Maritime Law

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

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

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

4- Air law:

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

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

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

5- The Agricultural Law:

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

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

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

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

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

6- Labor law :

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

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

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

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

Labor Law Topics

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

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

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

7– The Civil and Commercial Procedures Law:

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

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

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

Civil and Commercial Procedures Law Topics:

This law has three main themes:

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

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

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

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

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

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

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

7- **Private international law**:

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

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

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

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

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

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

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

Characteristics of the legal rule and its sanction:

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

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

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

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

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

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

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

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

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

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

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

Secondly : The legal rule is an abstract general norm:

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

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

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

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

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

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

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

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

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

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

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

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

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

Types of sanctions :

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

Types of sanctions are:

1- Criminal penalty:

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

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

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

Misdemeanors are sentenced by confinement.

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

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

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

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

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

2- Civil penalty:

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

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

Types of civil penalty :

1- Compulsory execution:

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

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

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

2- Execution in kind:

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

3- Compensation :

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

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

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

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

4- Penalty fine :

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

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

5- Violation removal:

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

6- The nullity:

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

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

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

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

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

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

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

7- Rescission:

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

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

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

3- Administrative penalty :

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

Distinguishing imperative norms from complementary norms:

Imperative norms (jus cogens):

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

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

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

Complementary norms:

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

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

Example of complementary rules:

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

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

The criterion for distinguishing between imperative and complementary norms

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

a. Formal or verbal standard:

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

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

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

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

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

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

B. Objective or moral criterion:

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

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

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

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

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

Chapter Three

Sources of law

Students should know after studying this chapter :

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

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

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

First: the gradation in strength:

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

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

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

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

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

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

Second: Religion and personal status issues

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

Third: Jurisprudence as a source of legislation

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

Main Sources of law:

The First Source: Legislation:

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

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

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

❖ Legislation's merits and demerits:

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

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

Merits of legislation

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

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

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

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

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

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

Legislation's Demerits:

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

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

Legislation's features:

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

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

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

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

2- Legislation is issued in written form:

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

3-Legislation is issued by a competent authority:

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

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

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

The importance of the legislation:

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

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

Sorts of legislations :

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

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

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

i. Basic legislation or constitution:

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

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

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

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

1) **Dictatorial Regimes**:

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

☑ **Grant Method**:

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

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

☑ **Contracting Method**:

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

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

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

2) Democratic systems:

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

❖ Constituent Assembly:

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

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

❖ Popular referendum

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

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

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

B. Amendment to an existing Constitution:

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

- **Flexible Constitution**:

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

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

- **Rigid Constitution**:

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

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

ii. Ordinary legislation:

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

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

First) phases of enactment of ordinary legislation:

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

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

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

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

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

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

2) Voting phase

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

3) No objection from the President:

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

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

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

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

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

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

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

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

First: **Promulgation of the Act** :

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

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

Types of Promulgation:

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

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

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

B. Supposed Promulgation:

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

C. Mandated Promulgation:

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

- **The President and Promulgation** :

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

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

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

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

Second: **The Act publication**:

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

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

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

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

iii. Subsidiary legislation or regulations:

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

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

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

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

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

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

B-Secondary Sources of Law

1.Custom:

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

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

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

2. Principles of Islamic law:

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

3. Principles of natural law and rules of justice:

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

C–Interpreting sources of the law

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

1. Judicial Rulings:

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

2. Jurisprudence:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the applicable legal texts, nor does he comply with the interpretation put forward by the adversaries before the court. Since judges were supposed to be aware of the laws they applied, there were problems with their assumption of knowledge of those laws, especially when it came to proving the existence of a foreign custom or law.

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

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

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

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

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

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

Chapter Four

Scope of application of the law

Students should know after Studying this chapter :

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

First: The spatial scope of the law:

– Territorial principle:

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

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

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

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

Exception to territorial principle:

The strict application of the territorial principle is not compatible with the reality of modern life, but cannot be strictly applied today. States had therefore allowed foreign law to apply to their territory, leaving it with some issues to extend. the first thing that comes to mind here is the

question of whether this would allow a State's sovereignty over its territory to be diminished?

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

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

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

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

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

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

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

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

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

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

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

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

Pictures of the abolition of legislation in Egyptian law

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

1- The explicit abolition:

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

2-Implicit abolition:

Implicit abolition is not explicitly stated. The legislator does not express his will to repeal existing legislation, but it follows from recent legislation that contains provisions that are incompatible with those of previous legislation.

There are two texts, one earlier and the other later, which are impossible to combine simultaneously. The new text contains a provision that conflicts with that of the old text.
The rule is that modern legislation reproduces previous legislation in the conflict between them. The legislator's intention to repeal the previous legal rule by means of the new rule is clear.
For this reason, it is necessary to say that the old and new texts must be based on one place where their work is impossible. A conflict that entails the repeal of a legislative text by a provision in subsequent legislation is only if the provisions of a single place in which the business is impossible to act together.

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

Interpretation of the law:

The origin of the provisions of the legislation is clearly defined and understood to be formulated in a way that does not give rise to confusion or ambiguity or that does not specify whether they apply to the facts or the statements that regulate them. It happens, however, that the provisions of the law are not so clear and specific. The working side reveals problems with the application of the legal text and therefore needs to be explained.

- **Definition of legal interpretation**:

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

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

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

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

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

- **Types of legal interpretation**:

1- **Legislative interpretation**:

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

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

2- **judicial interpretation**:

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

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

3- **Jurisprudential interpretation**:

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

4- **Administrative interpretation**:

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

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

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

1- Material or moral error.
2- Ambiguity and thumb.
3- Deficiency and silent.
4- Contradiction and conflict.

1- **Material or moral error**: The text is considered to have a material or moral error when its wording contains a phrase containing a material or moral error so that the meaning of the text can only be rectified.

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

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

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

Chapter Five

The Egyptian Judicial system

(Overview of the courts)

Students should know after studying this chapter :

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

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

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

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

I. ORDINARY COURTS:

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

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

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

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

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

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

II. ADMINISTRATIVE COURTS:

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

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

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

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

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

III. MILITARY AND EMERGENCY COURTS:

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

IV. HIGH JUDICIAL COUNCIL:

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

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

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

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

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

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

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

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

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

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

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

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

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

1- Assignment of judges of the Courts of Appeal to preside over a Court of First Instance for up to one year, renewable, subject to the approval of the HJC.
2- Requiring the General Assemblies of first instance courts to reconsider any of their decisions and discretion to refer the matter to the HJC for a decision.40 General Assembly decisions relate to the organization and administration of courts, including the assignment of cases, designation of hearing dates and times and the assignment of judges to a case.
3- Nomination of one of two judges as candidates for the Cassation Court (The General Assembly makes the other nomination), the President of the Republic appoints and choice is approved by the HJC.
4- Assignment of judges to administrative positions at the Ministry of Justice for a period of up to one year, renewable, subject to the approval of the HJC.
5- Nomination of the assistant to the Minister in charge of judicial inspections and the directors and members of the Judicial Inspection Department, subject to the approval of the HJC.
6- Assignment of a judge of the Court of Appeal to the Court of Cassation for a period of six months, renewable once, following consultation with the General Assemblies of the concerned Court of Appeal and the Court of Cassation and, subject to the approval of the HJC.
7- Assignment of a judge of the Court of Appeal to another Court of Appeal for a period of six months, renewable once, after consultation with the General Assembly of the Court of Appeal from which the judge is assigned and subject to the approval of the HJC.

8- Assignment of a judge of the Court of Appeal to work in the prosecution service for a period of up to six months, renewable once, after consultation with the General Assembly of the Court of Appeal from which the judge is assigned and subject to the approval of the HJC.
9- Assignment of the presidents and judges of a Court of First Instance to another Court of First Instance for a period of six months, renewable once, after the approval of the HJC.
10- Assignment of judges to carry out additional judicial and legal functions, on top of their existing workload, after consulting with the General Assembly of the court to which the judge belongs and the approval of the HJC.
11- Elaboration of the rules of judicial inspection, subject to the approval of the HJC.
12- Requesting the President of the Republic to force a judge into retirement in cases of physical incapacity as a result of which the judge has exceeded the days of sick leave provided for by the law, subject to the approval of the HJC.
13- Requesting the Disciplinary Board to suspend a judge from carrying out his functions during the investigation and trial of an alleged crime.
14- Requesting the Prosecutor-General to initiate disciplinary proceedings against judges.
15- Article 99 Assignment of one of the vice-presidents of the Court of Cassation, the vice-president of a Court of Appeal or the head of the relevant court to conduct an administrative or criminal investigation relating to alleged professional and/or criminal misconduct of a judge of the Court of Cassation or the Courts of Appeal.
16- Requesting the Disciplinary Board to decide whether to require "unfit judges" to retire or to assign them to non-judicial functions, in cases other than physical incapacity.

17- Delegating judges and prosecutors as the director and senior members of the Judicial Inspection Department, issuing the Statute of the Judicial Inspection Department and determining its competences, upon the suggestion of the Prosecutor- General and subject to the approval of the HJC.
18- Control and administrative supervision of the Office of the Public Prosecutor and its members.
19- Requesting the Prosecutor-General to initiate disciplinary proceedings against prosecutors.

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

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

Chapter Sex

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:

- 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.
- **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.

- **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 absus 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 inpersonam 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 salves 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 acquires 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 disability[1] or incidental disability [2].

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.

A-Inherent disability :

- **Inherent disability that completely excludes capacity:**

[1] موانع الأهلية

[2] عوارض الأهلية

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 conservatorship[3] 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

[3] الحجر

carried out by minor who has discernment, i.e. a minor of the second phase.

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 guardian[4] is an adult is appointed by the court to care for a minor child ("ward") whose circumstances require it, and to make

[4] الولي

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.

Whereas a custodian[5] 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 curator[6] 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.

---

[5] الوصي
[6] القيم

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, 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*) [7]

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.

[7] الذمة المالية

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. 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*.[8]

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

[8] 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.

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

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.

Chapter Seven

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.

Actuality, 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 classifications[43], 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.

5- 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 exits 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 annullable (**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.

Chapter Eight

Sources Of Obligations

<u>Students Should Know after Studying This Chapter :</u>

- 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 restitute 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 carful 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.

Chapter Nine

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.

B. 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 :[9]

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.

[9] المنقول المعين بالذات

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 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.

6- 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 contractusi*)

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 presonum, 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 exit 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.

Chapter Ten

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.

Chapter Eleven

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)[10].

(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

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."

[10] in Arabic :خطأ جسيم

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”[11] and “moral damage”[12].

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**:

[11] (in Arabic:الضرر المادي)
[12] (in Arabic: الضرر الادبي)

A transport company can anticipate that a passenger will bring luggage containing items of varying value (as opposed to items of quite exceptional 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"[13]).

[13] in Arabic الدية