Legal terms and contexts
In English language
For first Year Students

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Preface

"A generous and elevated mind is distinguished by nothing more certainly than an eminent degree of curiosity, nor is that curiosity ever more agreeably or usefully employed, than in examining the laws and customs of foreign nations"

Samuel Johnson

Part one

Introduction to the law

After studying this part you should understand the following main points:

1-what is the law.

2- The nature of the law.

3-what distinguished legal rules from other types of rules?

4- The role law plays In society.

5- Ways in which the law may be classified, including the differences between public and private law, civil and criminal law.

6- Legal systems around the world.

Chapter one
Basics of the law

Introduction:

It is suggested that we are living our lives with safety and freedom and enjoying it because we live in an order society and this order is a direct result of laws and regulations enacted to protect people.

Therefore it is idiomatic to understand certain essential legal concepts and terminology because they affect our life.

So I think it is better to address in this chapter all topics which deal with definition of law and its rule played in society, the distinctions of legal rules from other type of rules, and finally classifications of law.

1-defination of law:

There are different definitions of law ([1]) all of them raise great debate concerning three recurrent issues: How does law differ from and how is it related to orders backed by threats? How does legal obligation differ from, and how is it related to, moral obligation? What are rules and to what extent is law an affair of rules?([2])

1--for more details about definitions of law see harbert M.Bohlman and mary Jane Dundas,he legal ethical and international Environment of business,6thed.2005,p5

2- H.L.A.HART, THE CONCEPT OF LAW, SECOND EDITION, CLARENDON PRESS · OXFORD,1994,.p13

3-Wael Allam,legal studies in English, first edition, university of sharjah,2010,p.15,alsoAbdelmoneim El-Badraui ,juridical terminology, translated by Riad Habashy,Sayed AbdallahWahba Bookshop,Egypt,1971,p5.prof El-Baraoui defines the lawas"the whole set of compulsory rule which govern the relations between persons living in a society and which are put into force by public authority"

But the most accurate definition of law is the one which defines law as" a set of obligatory rules which governs and organizes relations in a given society "these obligatory rules called legal rules, constitute "the law". Every society has its law "there is no society without law.(٣)

But the rule of law must be supported by a sanction introducing the idea of compulsion or enforcement (٤) so, in many different situations in social life one person may express a wish that another person should do or abstain from doing something. When this wish is expressed not merely as a piece of interesting information or deliberate self-revelation but with the intention that the person addressed should conform to the wish expressed, it is customary in English and many other languages, though not necessary, to use a special linguistic form called the *imperative mood*, 'Go home!' 'Come here!' 'Stop!' 'Do not kill him!' The social situations in which we thus address others in imperative form are extremely diverse; yet they include some recurrent main types, the importance of which is marked by certain familiar classifications. 'Pass the salt, please', is usually a mere *request,* since normally it is addressed by the speaker to one who is able to render him a service, and there is no suggestion either of any great urgency or any hint of what may follow on failure to comply. 'Do not kill me', would normally be uttered as a *plea* where the speaker is at the mercy of the person addressed or in a predicament from which the latter has the

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-4-Hussein Elogugy,legal English terminology in context, brighter horizon group,2013p.22

power to release him. 'Don't move', on the other hand, may be a *warning* if the speaker knows of some impending danger to the person addressed (a snake in the grass) which his keeping still may avert.

The varieties of social situation in which use is characteristically, though not invariably, made of imperative forms of language are not only numerous but shade into each other; and terms like 'plea', 'request', or 'warning', serve only to make a few rough discriminations. The most important of these situations is one to which the word 'imperative' seems especially appropriate. It is that illustrated by the case of the gun man who says to the bank clerk, 'Hand over the money or I will shoot.' Its distinctive feature which leads us to speak of the gunman *ordering* not merely *asking*, still less *pleading with* the clerk to hand over the money, is that, to secure compliance with his expressed wishes, the speaker threatens to do something which a normal man would regard as harmful or unpleasant, and renders keeping the money a substantially less eligible course of conduct for the clerk. If the gun man succeeds, we would describe him as having *coerced* the clerk ,and the clerk as in that sense being in the gunman's power. Many nice linguistic questions may arise over such cases: we might properly say that the gunman *ordered* the clerk to handover the money and the clerk obeyed, but it would be some what misleading to say that the gunman *gave an order* to the clerk to hand it over, since this rather military-sounding phrase suggests some right or authority to give orders not present in our case. It would, however, be

quite natural to say that the gunman gave an order to his henchman to guard the door.(٥)

In the light of what we mentioned , we can conclude two things societies expect from the law(٦):-

First: that it should be predictable, so that persons can reasonably forecast what is and is not illegal behavior.

Second: that it should also be flexible, so that can adjust to various situations and changing needs of society.

2-Characteristics of the legal rule.

The most commonly noted characteristic of rules concerns the degree of precision, detail, or complexity they embody: how finely are different sorts of behavior to be distinguished? Such matters may arise in defining the scope of a legal command, providing for exceptions, adjusting sanctions based upon aggravating and mitigating circumstances, and so on. A related aspect of legal commands concerns *when* a given level of detail is provided - at the time of promulgation ('rules') or subsequent to individuals' actions, in the context of adjudication ('standards'). These aspects of rules are considered from a perspective that focuses upon information costs and dissemination: different sorts of legal commands involve differing costs of formulation and application by private parties (deciding upon their own conduct) and adjudicators, and the character of laws also

5-- H.L.A.HART,op cit p.19,20

6-Hussein El-Moguy,op cit,p.23

influences how well parties actually will understand them and conform their conduct accordingly([7]).

Also there are other characteristics distinguish legal rule from ethical rules and moral rules, as follow.([8])

First:law is promulgated by state through its legislative authority,or established by custom.

Second:the legal rule is general and abstract: it tends to apply to people in general rather than to mere individuals ,and we mean by saying the legal rule is abstract it concerns the formulation of it.

Third:the essential characteristic of law is that it is enforced by state by means of a sanction.

3- The functions of law:

Law can be said to perform four different functions([9]), each of which is of huge importance to our welfare.

(A) Defending us from evil

The first and most basic function of law is to defend us from evil – that is, those who would seek to harm us for no good reason. This function of law underlies 20th century developments in International Law such as the Nuremberg Trials and the creation of the International Criminal Court.

(B) Promoting the common good

Law is not just concerned with bringing evil people to account for their actions. A community made up of people who bear no ill-will to anyone else and are simply

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7- Louis Kaplow GENERAL CHARACTERISTICS OF RULES, Harvard Law School and National Bureau of Economic Researh,1999.p.504-505

8-ibid,p.25,26

9-Roscoe Pound,social control through law ,hamdan :Archon Books,1968,pp.23-30,alsoH.L.A. Hart ,concept of law,oxford,1994.p.45

concerned to pursue their own self-interest needs law because there are situations where if everyone pursues their own self-interest, everyone will be worse off than they would have been if they acted differently. So a community of self-interested actors needs law: (i) to solve 'Prisoner's dilemma' situations; (ii) to distribute into private hands property that would otherwise be exploited by everyone. (iii) to prevent people acting on their natural desire to extract 'an eye for an eye' in revenge for actual or perceived wrongs that they have suffered at other people's hands.

(c) Resolving disputes over limited resources

As every family knows, in any community there will always be disputes over who should have what of a limited number of resources. Law is needed to resolve these disputes.

(D) Encouraging people to do the right thing

It was thought even from classical times that law performed a fourth function – that of encouraging and helping people to do the right thing. For example, Aristotle (384 BC – 322 BC) argued that people needed the discipline of law to habituate them into doing the right thing, from which standpoint they could then appreciate why doing the right thing was the right thing to do. Up until the 20th century, this view of law was accepted by law makers, with the result that the Egyptian legal system contained a large number of 'morals rules' – that is, laws that were designed purely and simply to stop people acting immorally, according to the lights of prophet Mohamed teaching on what counted as immoral behaviour. However, in the 20th

century, the ‘harm principle’ propounded by John Stuart Mill in his book ‘On Liberty’, according to which the law should not sanction people for acting immorally unless their conduct involved some harm to others, gained more and more popularity, and resulted in the abolition of large numbers of ‘morals laws’. These trends triggered what is now known as the Hart-Devlin debate over the extent to which it is legitimate for the law to enforce morality. Lord Devlin – at the time, a judge in the House of Lords, the highest court in the UK – argued that law should enforce morality so as to preserve the cohesiveness of society. Professor H.L.A. Hart – at the time, the most famous legal philosopher in the world – based his position squarely on Mill’s harm principle, though subject to the caveats that the law might legitimately prevent someone acting immorally if doing so involved harm to himself or would cause offence to others.

alienates people from each other, and discourages people from helping other people for fear that doing so might result in their being sued.

4- Relation between law and moral.

Law, unlike morality, is made by someone. So it may, unlike morality, have aims, which are the aims of its makers (either individually or collectively). Not all law has aims, however, because not all law-making is intentional. Customary law is made by convergent actions that are performed without the intention of making law, and so without any further intention to achieve anything by making law, i.e. without any aim. There are also some other modes of accidental law-making. However for the time

being we will focus on law that is intentionally made and therefore is capable of having aims.

Some have thought that law must, by its nature, have certain distinctive moral aims when it has aims at all. If it lacks those aims it is not law. It must aim to be just ,or aim to serve the common good ,or aim to justify coercion, or aim to be in some other way morally binding or morally successful.(١٠)

Does morality ever form part of law?

Morality is gappy and sometimes needs law to help fill in the gaps. But the same is also true in reverse. Often law is gappy and needs morality's help to make it less so. Legal norms, like moral norms, often conflict among themselves, and often such conflicts cannot be resolved using legal norms alone. Indeterminacies of language and intention on the part of law-makers, moreover, can afflict law in such a way as to frustrate its role as a filler of moral gaps. Legal conflict and indeterminacy require extra-legal resources to overcome them. And the need to overcome them is often pressing in law. Many legal officials, notably judges, are bound by their oaths (or other duties) of office to decide any case before them that falls within their jurisdiction. They cannot suspend their judgment. Whereas the rest of us can often suspend judgment and keep it suspended.(١١)

10- Chaxiys E.Clarxt,the function of law in a democratic society, the university of Chicago law review,p.56

11- JOHN GARDNER, Law and Morality,p.3,4

12-Hussein El-moguy, op cit.p.33,34

5-law and justice:

Achieving justice is cornerstone of any legal system, but what is justice? And what is its relationship with law?

There is no general agreement on the meaning of the term justice; ad perfect justice is still a dream of humanity. What man strives for is a relative justice .most modern legal systems are based on the idea that, to achieve justice ,this objective requires precise rules, so that judges base their judgments on the application of this rules to the case before them and not on arbitrary factors.(١٢)

6-Legal terms.

Law	**القانون**
Custom	العرف
Moral	**اخلاق**
Justice	**عدالة / مستشار**
Interest	**مصلحة\عائد**
Obligation	**التزام**
Sanction	**جزاء**
State	**دولة/ولاية**
Society	**مجتمع**
Legal rule	**قاعدة قانونية**
Function	**وظيفة**
Order	**نظام/امر**
Protect	**يحمي**
Knowledge	**معرفة**
Abstract	**مجرد**
Gap	**فجوة**

Perfect justice	**عدالة تامة**
Intentional	**دولي**
Regulation	**لائحة /تنظيم**
Enact	**يسن**
Prophet	**نبي**
Frustrate	**يبطل/ينسخ**
Factor	**عامل**
Evil	**شيطان**
Promulgate	**يعلن**
Characteristics	**خصائص**
In the light of	**في ضوء**
Discrimination	**تمييز**
Compulsion	**اكراه**
Obligatory rule	**قاعدة ملزمة**
Power	**سلطة**
Legislation	**تشريع**
Respect	**احترام**
Obey	**يطيع/يمتثل**

Chapter one assessment

Translate into English:

القعدة القانونية
قاعدة ملزمة
القانون
اكراه
تمييز
العرف
الاخلاق
مجتمع

فجوة
نظام

Translate into Arabic the following legal comprehension:

There is no general agreement on the meaning of the term justice, ad perfect justice is still a dream of humanity. What man strives for is a relative justice .most modern legal systems are based on the idea that, to achieve justice ,this objective requires precise rules, so that judges base their judgments on the application of this rules to the case before them and not on arbitrary factors.

Choose the correct answer:

1-it is a set of obligatory rules which governs and organizes relations in a given society

A) Legal rule.

B) Law

C) Justice

2-It is so important for application of law but it hasn't any sanctions applied over its violators.

A) Custom.

B) Justice.

C) moral.

Chapter two
Classifications of law

There are several ways in which the law may be classified what follows will set out these whilst at the same time trying to overcome the confusion inherent in such duality and Nature of the topic, I think the confusion comes from the Repetition of the same terms to mean different things.

Before addressing the classifications of law it is better to make a brief comparison between the maim two legal system prevail the world today which are common law and civil law systems.

Civil law system and common law system:

The civil law and common law systems are the products of tow fundamentally different approaches to the legal process. in the civil law[(13)], the main principles and rules are contained in codes and statutes which applied by the courts, hence, codes and statutes prevail while case law constitutes only a secondary source of law, on the other hand, in the common law system, the law has been dominantly created by judicial decisions. This difference is the result of different role of legislator in civil law and common law, the former is based on the theory of separation of powers, whereby the role of legislator is to legislate, while the courts should apply the law ,in the other

(١٣) The term civil law has two meanings, in its narrow meaning it designates the law relating to the areas covered by the civil codes while Broader meaning of the civil law relates to the legal systems based on codes as contrasted to the common law system.

hand the latter gives the courts the main task in creating the law[14].

The other main difference between the civil law and common law systems is[15] the binding force of precedents. While the courts in the civil law system have as their main task deciding particular case by applying and interpreting legal norms, in the common law the courts are supposed not only to decide disputes between particular parties but also to provide guidance as to how similar disputes should be settled in the future. The interpretation of a legislation given by a court in specific case is binding on lower courts, so that under common law the court decisions, still make the basis for interpretation of legislation.

On the other hand , in contrast to common law, the case law in civil law system does not have binding force. The doctrine of star decisis does not apply to civil law courts, so that court decisions are not binding on lower courts in subsequent cases, nor are they binding on the same courts, and it is not uncommon for courts to reach opposite conclusions in similar cases.

finally[16] civil law system has its origin in roman law, as codified in the corpus iuris civilis of Justinian under this

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(١٤) kzweigert & H. Kotz, introduction to comparative law 3rd ed Clarendon press, Oxford ,1988 pp. 40- 62 .also. R.B. Sehlesinger, comparative law, new York, 1998 pp. 10- 12 J.KH. Merryman, the civil law traditions: in introduction to the legal system of western Europe and Latin America, 2nd Ed., Stanford university press, 1985 pp. 65-37.

(١٥) M A Glandon, comparative legal traditions, west publishing co, 1994 pp. 14-16.

(١٦) Wael Allam, legal studies in English 1st Ed, university of Sharjah ,2010.p33.

influence in the ensuing period the civil law has been developed in continental Europe and in many other parts of the world and it has become the most widespread legal system in the world, it is currently in practice in many countries such as, France, Austria ,Swiss and Egypt etc. the main feature of civil law is that it is contained in civil code while the common law system was developed in England since around the11th century and was latter adopted in the USA, Canada, Australia. New Zealand, and other countries of the British Commonwealth.

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.

But 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.

Classifications 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:

1- 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[17].

Public law is "a set of legal Rules governing 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 with out any sovereignty[18].

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 it's relation then the public law will govern this relation , but if it renounced its sovereignty while dealing with others ,then the private law will govern this deal[19].

Branches of public law:

Since the public law is concerned with the Relationship between the state and its citizens this comprises several specialist areas such as:

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

(١٧) Denis Keenman and Sarah Riches, business law, 7 th Ed, Pearson Longman, 2005 p.3.

(١٨) Elsanhory, op cit p.59.

(١٩) Noaman Jomaa, lessons in introduction to legal sciences, Dar Ellnahda Elarabiya, 1977. p. 15.

government and protecting the individuals rights and freedoms "[20] But the term constitutional law as a branch of the public law has, many definitions as follow[21] .

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 land. Also they usually adopted after a major political changes, such as a revolution or gaining independence[22]

2-Administrative law.

There has been a remarkable increase in the activities of governments around the world during the last hundred

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(٢٠) Steven Gifis, law Dictionary, 6 th ed, Barrons, 2010 p.109. In American law. The written instrument agreed upon by the people of the union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be the changed by the authority which established it. Henry Campbell, Black's law dictionary p.385.

(٢١) Henry Campbell , Blake's law Dictionary. Op cit p. 385.

(٢٢) Neil Parworth, constitutional and administrative law, 6th ed. Oxford, 2010 p.5.

years. every government introduces schemes to help ensure a minimum standard of living for its citizens. Government agencies are involved and a large number of disputes arise from the administration of these schemes, so the administrative law has developed to deal with the complaints of individual against the decisions of the administration[23] .

We can conclude from what we have mentioned that the definition of Administrative law is not easy process[24] . specially when we learn that administrative law consists of all the laws relating to public administration, this truth makes it a very vast subject, but for own purposes we can define administrative law as "the law governing the organization and operation of the executive branch of government, and the relations of the executive with legislative, the judiciary, and the public[25].

3-Criminal law:

Criminal[26] law is the branch of law which deals with offences against state, or society in general. According to

(٢٣) Denis Keenan and Sarah Riches, business law, op cit.p.4.

(٢٤) the difficulty of giving a precise and accurate definition of administrative law comes from the assertion of some writers that there was no administrative law in some counties in the sense that there is no separate system of administrative law applied in separate courts in those countries, examples of these countries is the UAE, see, Dicey, law of the constitution, 10th Ed. p.330.

(٢٥) Black's law dictionary, 77th Ed, west, 1999 p.46.

(٢٦) the term criminal may use as an adjective having the character of a crime in the nature of a crime criminal mischief, as amount criminal means one who has committed a criminal offence and one who has convicted of a crime, Black's law Dictionary 7 th Ed, op cit p. 380.

modern constitutions all crimes and punishments must be defined by the law[27].

Criminal law divides into two main branches:

a) Penal law.

b) Law of criminal procedures.

The penal law contains the provisions which determine the crimes and its penalties.

The general rules that penal statutes are to be construed strictly. By the word penal in this connection is meant not only such statutes as in terms impose a fine or forfeiture as a consequence of violating laws, but all acts which impose by way of punishment damages, beyond compensation for the benefit of the injured party[28].

While the law of criminal procedures contains the provision, which organize the methods which must be followed to investigate, to prove the violations of law, to prosecute and punish the guilty persons[29].

The Purpose of Criminal Law

We have seen that the criminal law primarily protects the interests of society, and the civil law protects the interests of the individual. The primary purpose or function of the criminal law is to help maintain social order and stability. The Egyptian criminal code proclaims that the purpose of criminal law is to "establish a system prohibitions, penalties, and correctional measures to deal

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(٢٧) Hussein Elmoguy, legal English terminology, in context, Brighter. Horizon publishers, 2013, p.151.

(٢٨) William M. lile, Brief making and the use of law Book 3rd Ed, 1914 p.344.

(٢٩) AP Simister and GR Sullivan, criminal law, Hart publishing ,2nd ed.2003.p.1-26

with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate." we can set out the basic purposes of criminal law as follows:

•• *Harm.* To prohibit conduct that unjustifiably or inexcusably causes or threatens substantial harm to individuals as well as to society.

•• *Warning.* To warn people both of conduct that is subject to criminal punishment and of the severity of the punishment

•• *Definition.* To define the act and intent that is required for each offense

•• *Seriousness.* To distinguish between serious and minor offenses and to assign the appropriate
punishments

•• *Punishment.* To impose punishments that satisfy the demands for revenge, rehabilitation, and deterrence of future crimes.

Definition of crime.

There are various definitions of the term crime, depending on the approach adopted by the person defining it, this text suggest a strict legal definition of the term crime. It means a positive or negative act threatens the order and security of the society and this act is regarded as a legal wrong which can be punishable(30) .

(٣٠) the community is threatened by the crime for example, the crime of rape causes great harm not only to the victim ,but also to the society which be comes less secure by the rape. therefore the matter should not be left to the victim to take action against the criminal but the state must take the necessary proceedings to protect the society. See Michael Jefferson, criminal law, Longman, London, 6th Ed. 2003 . 11-14.

Elements of the crime:

The crime has two elements required to establish the criminal liability. These two elements are the material element and the mental element.([٣١])

1-the material element (known as *actus reus*)may consist of an illegal act (conduct),prohibited criminal result(consequence) and causation between the illegal act and the result

2-the mental element (known as *mens rea*) requires the existence of the mental intention or recklessness (a degree of blameworthiness).

Each crime has its own elements, for example, in the crime of crime of murder the material element is established when the unlawful killing of a person has done and the mental element is established when the criminal intended to kill the person.

Classifications of the crimes: Felonies and Misdemeanors

There are a number of approaches to categorizing crimes. The most significant distinction is between a **felony** and a **misdemeanor**.([٣٢]) A crime punishable by death or by imprisonment for more than three years is a felony. Misdemeanors are crimes punishable by less than three years in prison. Note that whether a conviction is for a felony or misdemeanor is determined by the punishment

31-Michael Jefferson, criminal law, London,6th edition,2003,pp.11-14,also Wael Allam,op cit, p.62

32- Rollin M. Perkins and Ronald N. Boyce, *Criminal Law,* 3rd ed.(Mineola,NY:foundation press,1982)pp.-1-46

provided in the statute under which an individual is convicted rather than by the actual punishment imposed. Many states subdivide felonies and misdemeanors into several classes or degrees to distinguish between the seriousness of criminal acts. **Capital felonies** are crimes subject to the death penalty or permanently imprisonment (life in prison).

The term **gross misdemeanor** is used in some states to refer to crimes subject to penalties applicable for felony, whereas other misdemeanors are termed **petty misdemeanors**.

Several states designate a third category of crimes that are termed **contravention** or **infractions**. These tend to be acts that cause only modest social harm and carry fines. These offenses are considered so minor that imprisonment is prohibited. This includes the violation of traffic regulations.

Classifications of crimes as to its Subject Matter

This textbook is organized in accordance with the subject matter of crimes, the scheme that is followed in most state criminal codes.

There is disagreement, however, concerning the classification of some crimes. Robbery, for instance, involves the theft of property as well as the threat or infliction of harm to the victim, and there is a debate about whether it should be considered a crime against property or against the person. Similar issues arise in regards to burglary. Subject matter offenses in descending order of seriousness are as follows.(٣٣)

33- Criminal law and developm Wayne LaFave, *Criminal Law*, 3rd ed. (St. Paul, MN: West publishing,2000)pp.45-50

•• *Crimes Against the State.* Treason, sedition, espionage, terrorism.
•• *Crimes Against the Person,.* Homicide, murder, manslaughter .
•• *Crimes Against the Person, Sexual Offenses, and Other Crimes.* Rape, assault and battery, false imprisonment, kidnapping .
•• *Crimes Against Habitation.* Burglary, arson, trespassing.
•• *Crimes Against Property.* Larceny, embezzlement, false pretenses, receiving stolen property, robbery, fraud .
•• *Crimes Against Public Order.* Disorderly conduct, riot .
•• *Crimes Against the Administration of Justice.* Obstruction of justice, perjury, bribery
•• *Crimes Against Public Morals.* Prostitution, obscenity.

The principles of legality of crimes and penalties.

This principle refers to the fact that an act is not considered a crime and deserves No punishment, unless the legislator determines and announce the criminal and its penalty before.

The principle of legality protects individual security by ensuring basic individual liberties against the arbitrary and unwarranted intrusion of the state. Thus, the criminal Judge cannot call the individual's acts crime and assign punishment for them or exert punishments that aren't prescribed by the legislator without any letter of law. If an act is morally rebutted or is socially against the public order, it is not regarded as crime and the legislator is the

only authority who can recognize some acts as crime and punish the actor[34] .

The modern constitutions included the principle of legality, for example Article 95 of the Egyptian constitution provides that a crime and punishment shall be defined by the law "also the constitution of many countries prohibit the process of punishing someone for conduct that accrued before it was made illegal by a properly promulgated law, for example, article 95 of the Egyptian constitution provides that" No penalty shall be imposed for any act or omission committed before the relevant law has been promulgated[35].

Criminal versus Civil Law

Criminal law defines breaches of duty to society at large. It is society, through government employees called *prosecutors*, that brings court action against violators. If you are found guilty of a crime such as theft, you will be punished by imprisonment or a fine. When a fine is paid, the money generally goes to the state, not to the victim of the crime.([٣٦])

Private duties owed by one person (including corporations) to another are established by **civil law.** For example, we have a duty to carry out our contractual promises.

([٣٤]) Mohammed Ja'far, legality principle of crimes and punishments in Iranian legal system. Educational research and review, vol.I.,2006 p 108.

([٣٥]) Hussein El moguy, selected legal readings, University Book shop, 2011, p.84.

33-1 Fargo Women's Health Organization v. FM Women's Help and Caring Connection, 444 N.W.2d 683(N.D. Sup. Ct. 1989).

Tort law defines a host of duties people owe to each other. One of the most common is a duty to exercise reasonable care with regard to others. Failure to do so is the tort of negligence.

Suit for the breach of a civil duty must be brought by the person wronged. Generally, the court does not seek to punish the wrongdoer but rather to make the wronged party whole through a money award called *damages.* For example, if someone carelessly runs a car into yours, that person has committed the civil wrong (tort) of negligence.

If you have suffered a broken leg, you will be able to recover damages from the driver (or his or her insurance company). The damages will be an amount of money sufficient to repair your auto, to pay your medical bills, to pay for wages you have lost, and to give you something for any permanent disability such as a limp. Damages for "pain and suffering" also may be awarded.

Although the civil law generally does not aim to punish, there is an exception. If the behavior of someone who commits a tort is outrageous, that person can be made to pay *punitive* damages (also called *exemplary damages*). Unlike a fine paid in a criminal case, punitive damages go to the injured party.

Sometimes, the same behavior can violate both the civil law and the criminal law. For instance, a person whose drunken driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by the survivors of the victim. If both suits are successful, the driver would pay back society for the harm done with a criminal fine and/or prison sentence and

compensate the survivors with the payment of money damages.

Public international law:

Public international law is a set of legal rules which regulates Relations between states whether in time of peace or war, and their relation with international originations[37] .

The origins of public international law go back to the peace of Westphalia in 1648, this event marked, Not only the end of feudalism, but also the birth of the modern slate with central governmental institutions that could control its population and defend its territory[38].

It goes without saying that public international law, in my opinion, hasn't become a law as exactly this term means, if you ask about the accomplishments which done by international organizations and all international agencies, you can account them by one of your hands, furthermore the international organizations today are a means in the hands of the big states to impose its own policies over other states.

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(٣٧) Ahmed Elkandry, op cit, p.46.

(٣٨) Westphalia is often used as shorthand for a system of equal and sovereign states, and the peace treaties of Westphalia concluded in 1648 at munster and Osrabruck and ending the thirty years war, are sometimes said to have established the modern concept of sovereign statehood, the peace of Westphalia earns its fame as the first world charter of sovereign nations, influencing the foundation of the congress of Aixla Chappell of 1818,the Paris settlement of 1919, the league of nations, and ultimately, united Nations charter which left greatly uncharged the peace of west aphelia's framework. see, Benjamin Straumann, the peace of Westphalia as a secular constitution, constellations volume 15, No 2,2003, p.173.

Branches of private law:

Private law is primarily concerned with the rights and duties of individuals towards each other. The role of state in this area is confined to providing a civilized method of resolving disputes that has arisen, thus in the light of what we have mentioned we can divide the private law into these main Branches:

1- Civil law:

Civil law is the fundamental branch of private law. Indeed, civil law includes the most basic principles of law be it public or private. Civil law may define as a set of legal rules which regulates private relations between individuals or between them and the state as the later is an ordinary person(39).

Civil law is considered to be the general Rules which regulate and apply to all private Relations arisen between individuals unless a special provision governing the relation which is the subject of dispute. Thus the first article of the Egyptian civil law asserted this truth by providing(40).

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(٣٩) civil law is the kind of law that evolved from Roman law, based on a written civil code this was adopted in France after the French revolution in 1789 called the code Napoleon, it covered only matters of private law as follow:-

- The legal attributes of persons. (e.g. Name, age of majority).
- The relationship between individuals (e.g.: marriage, adoption, parentage).
- property (e.g.: possession, land boundaries)
- the legal institutions governing or administering these relationships (e.g.: wells, sales, lease, partnerships) see, Brierly, Canadian Encyclopedia Historica, Foundation of Canada,p200.

(٤٠) Wael Allam, op cit, p.83.

1- Legislative provisions apply to all matters which are in letter and in spirit organized by these provisions.
2- In absence of any applicable legislative provision, the Judge will rule in accordance with the shar'a islamic.
3- In absence of the shariaa., the Judge. Will rule in accordance with the custom.

2 - Commercial law.

Commercial law is the branch of law regulating commercial transactions and relations between traders. Many principles of commercial law developed long time ago from whet was known as the law merchant(41).

The law merchant has its historical roots in medieval times. since then, its definition has undergone significant change and remains disputable, at best, at its core, the law merchant practice, to govern mercantile transactions, irrespective of the immediate locations of the transactions or the nationalities of the merchants(42).

The Republic Arab of Egypt has its unique commercial code:

The new Egyptian commercial law No 17 of 1999 Article 1 of this law provides that the law shall apply to

(٤١) Herbert M.Bohlman and Mary Jane Dundas, the legal, Ethical, and international Environment. of Business, 6th Ed. Thomson, 2005, p.254.

(٤٢) the law merchant, is sometimes depicted as an exemplification of a spontaneous ordering, a libertarian concept popularized by philosophers like karl Friadridrich Hayek. Merchants supposedly devised merchant law out of merchant practice and usage spontaneously, or in liberal terminology, freely and voluntarily. The law merchant developed overtime among merchants in England and Eventually In other. Countries.see, Leon E. Trakman, the twenty-first century law merchant, http://ssRn.com/abstract,p.2

traders, as well as to various commercial transactions carried out by any person even though he is not a trader[43]. Finally, commercial law addresses many subjects, like commercial transactions, trader, obligations and commercial contracts, negotiable instruments, bankruptcy, Brokerage, commission agency, corporations, partnerships and intellectual property, etc..

(3) Private international law.

The private international law is that part of the law of every state which deals with cases, having a foreign element. Private international law, then, comes in to play when the issue before the court affects some facts, events, or transactions that are so closely connected with a foreign system of law as to necessitate recourse to that system. The legal systems of the world consists of a variety of territorial systems, each dealing with the same phenomena of life, birth, death, marriage, divorce, bankruptcy, contracts, will, and so on. But in most cases dealing with them differently. The moment that a case is seen to be affected by a foreign element, the court must look beyond its own internal law, test the relevant rule of the internal system to which the case most appropriately belongs should happen to be in conflict with that of the forum. The forms in which this foreign element may appear are numerous one of the parties maybe foreign by nationality or domicile a businessman may be declared bankrupt in Egypt having numerous creditors abroad; the action may concern

(٤٣) Hussein Elmoguy, legal English terminology, op cit, p.227.

property situated abroad or a disposition made a broad of property situated in Egypt(44).

English judges and textbook writers have frequently used the term comity of nations to justify reference to a foreign law. Although , analysis of it reveals that it has been employed in a meaningless or misleading way. The word it self is incompatible with the judicial function, for comity is a matter for sovereigns not for judges, required to decide a case according to the rights of parties(45) .

I agree with the perspective which attributed the application of a foreign law not to courtesy, or sacrifice of sovereignty but to the desire to achieve Justice.

Finally, in contradiction to public international law, which seeks primarily to regulate the relations between different sovereign states and is at any rate in theory, the same everywhere, the rules of PIL are different from country to country.

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(٤٤) private international law has been described as meaning the rules voluntarily chosen by a given state for the decision of case which has a foreign complexion. see,Cheshire, North and Faweett, private international law, 14th ed. Oxford university press, 2008. p.-5.

(٤٥)another criticize to the tern comity of nations to justify applying the foreign law is, the word comity is given its normal meaning of courtesy it is scarcely consistent with the redlines of English courts to apply enemy law in time of war, moreover, if courtesy formed the basis of private international law ,a judge might feel compelled to ignore the law of utopia on proof that utopian courts apply No law but their own, since comity implies a bilateral not a unilateral, relationship if on the other hand, comity means that No foreign law is applicable in England except with the permission of the sovereign it is nothing more than a truism. see, Nadelmann, conflict of laws: international and interstate,p.141.

3-Civil and commercial procedures law.

Civil and commercial procedures law is a set of legal Rules regulating civil and commercial Jurisdiction[46]. Generally, procedural law distinguished from substantive law which crates, defines the rights and duties of individuals and judicial decisions form the substantive civil law on matters such as, contracts, torts and probate. Procedural law prescribes the methods by which individuals may enforce substantive laws. the basic concern of procedural law is the fair, orderly, Efficient, and predictable application of substantive.

Legal terms

Classify	يصنف/ينقسم
Classification	تقسيم
Public law	القانون العام
Private law	القانون الخاص
State	دولة/ولاية
Commercial law	القانون التجاري
Civil and commercial procedure law	قانون الاجراءات المنية والتجارية
Public international law	القانون الدولي العام
Civil law	القانون المدنى
Constitutional law	القانون الدستوري
Administrative law	القانون الاداري
Private international law	القانون الدولي الخاص
Criminal law	القانون الجنائي
Branch	فرع
Contract	عقد

(٤٦) El sanhory, op cit, p.189.

Penal law	القانون الجزائي
Criminal procedure law	قانون الاجراءات الجنائية
Conclude	يستنتج/يستخلص
Common law	النظام القانوني الانجلوامريكي
Civil law	النظام القانوني اللاتيني
Fine	غرامة
Religion	اقليم
Transactions	صفقة/معاملة
Bankruptcy	افلاس
Individuals	افراد
Applicable	قابل للتطبيق
Fundamental branches	فروع اساسية
Disputes	منازعات
Principle of legality	مبدأ الشرعية
Crimes and penalties	الجرائم والجزاءات
Punishment	عقاب
Precedents	السوابق القضائية
Higher courts	المحاكم العليا
Lower courts	المحاكم الدنيا
The Islamic law	الشريعة الاسلامية
Previous judgment	الحكم السابق
Capital	عقوبة الاعدام
Felony	جناية
Civil law	القانون المدني
Criminal procedure	الاجراءات الجنائية
Defendant	المدعي عليه
Double jeopardy	خطورة مزدوجة
Misdemeanor	جنحة
Infractions (contradiction)	مخالفة
Tort	مسؤلية تقصيرية

Violation انتهاك

Felonyجناية

Chapter two assessments

<u>What are the major legal systems around the world?</u>,

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…… <u>Define a crime.</u>

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<u>Distinguish between criminal and civil law. Distinguish between a criminal act and a tort.</u>

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<u>What is the purpose of criminal law?</u>

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Distinguish between felonies, misdemeanors, capital felonies, gross and petty misdemeanors.
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Translate into Arabic the following legal comprehension

The law merchant has its historical roots in medieval times. Since then, its definition has undergone significant

change and remains disputable, at best, at its core, the law merchant practice, to govern mercantile transactions, irrespective of the immediate locations of the transactions or the nationalities of the merchants.

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Chooswe the correct answer:

1-The common law system is based on.

A) Customary rule

B) Legislations and codifications

C) Precedents

2-Egypt follows

A) Common law system

B) Civil Law system

C) Socialism system

Part two
Sources of law

Learning objectives

After studying this part you should understand the following main points

1- Causes and sources of legal change and law reform.

2-The characteristics of the main sources of law, including law made by parliament (legislation)-judge-made law (judicial precedent) .

3- Importance of each source in modern legal systems.

4-Determine the priority of the sources of law.

Introduction

The word source can mean different things with regard to law it primarily refers to the process of law-making. Law stems from various sources which we will deal briefly with them.

Chapter one
The Constitution

The constitution is usually a document or group of documents.it is the highest source of law, since it establishes the structure of the government and the process for creating all other laws .from the constitution flows the other sources of law.

The need for a constitution is generally felt when a country has just had a revolution, has been defeated in a war or has become an independent state.([٤٧])

In the light of what I mentioned, Egypt has an amended Constitution, which made after the revolution of 30 June 2013 mainly on January15-2014. This constitution is considered to be one of the best Egyptian constitutions, especially it came after so bad one which issued by dethroned Muslim's brotherhood, constitution is the highest source of law in Egypt .Every other form of law must be consistent with the Constitution or it will be struck down by the supreme constitutional court.

In general, the constitution provides for:-([٤٨])

1-system of government:

A) presidential system:

47-Wael Allam,op cit p.39

48-ibid.p.39-41

In presidential system, like the United States of America, the president of state has substantial powers and the members of legislative power are elected independently of the election of the president.

B) Parliamentary system

In parliamentary system, like the united Kingdome, the legislative power is supreme and the executive power emerges from the democratically elected legislative power .the prime minister usually is the leader of the majority party in the parliament.

2-distribution of powers:

The constitution provides for the distribution of powers among the legislative power, the executive power, and the judicial power. The constitution generally defines the principles the three powers should respect when exercising their powers.

The principle of Separation of powers:

Separation of the three powers doesn't mean that the legislative power and the executive power don't have any influence or control over the acts of each other. It means that any any power should not exercise the whole power of the other, there is no strict separation between these powers.

3-form of the state:

The element of the state are people, territory,and sovereignty. Some forms of the state are federation and confederation.

A federal state consists of certain political units: called states or province. These units retain some control over their internal affairs and the federal government is

responsible for the significant common matters ,like defence, the federal budget, external affairs, etc. according to the first article of the Egyptian constitution, Egypt is an independent ,sovereign state.

On the other hand the confederation is a union of some states for the purpose of cooperation and defence but the confederate state does not have direct authority over the allied states.

Forms of the constitutions :

Traditionally, constitutions are classified into written and unwritten and to flexible and rigid.([٤٩]) **Written constitution** means the constitution which is set out in a document which may possibly be amended .Nearly all states except the United Kingdom have unwritten constitution.

This kind of constitution is supported by judicial decisions interpreting its provisions and by customs and conventions regulating the working the machinery of the government.

While concerning **unwritten constitution** The British constitution is described as a famous practical application of the unwritten constitution. That means that in Britain, there is no single document in which one may find a constitutional law .Instead, there are judicial precedents and conventions, from which constitutional law is drawn.

A **flexible constitution** is defined as one which may be altered or amended in the same way as a law on any other topic. In this sense, a flexible constitution is very rare.

49-Alex Carroll, constitutional and administrative law,Longman,London,2002,2nd edition,p.3,4

Because an unwritten constitution is flexible, in this sense, the British constitution is extremely flexible as all laws are passed in the same way to the parliament.

Finally **the rigid constitution** it is one which may be amended only by a special procedure, in this way the constitutions is safeguarded against rash alteration. Almost all constitutions are rigid.

The Egyptian constitution

The Egyptian constitution is written one so it is flexible since it can be changed easily be the majority of the voting people.

Freedoms, rights, and public duties.

The new Egyptian constitution contains many article regarding freedom and rights and public duties that every citizen has and bear, some of these articles as follow:-(˚ˎ)

All persons are equal before the law, without distinction between the Egyptian citizens in in regard to origin, domicile, nationality, religious, believe or social status.

-personal liberty is guaranteed to all citizens.no person may be arrested, searched, detained, or imprisoned except in accordance with the provisions of law.

-no person shall be subjected to torture or to degrading treatment.

-crimes and penalties shall be defined by the law.no penalty shall be imposed for any act or omission committed before the relevant law has been promulgated.

50-see the articles,9, 12, 14 ,38, 51, 52, 53, 54, 57, 62, 64, 65, 73, 89, 95, 96, 97, 98,202.from the Egyptian constitution which becomes into force from January 15-2014

Penalty is personal. An accused shall be presumed innocent until proved guilty in a legal and fair trial. The accused shall have the right to appoint the person who is capable to conduct his defence during the trial. The law shall prescribe the cases in which the presence of a lawyer on behave of the accused shall be mandatory. Physical and moral abuse of the accused is prohibited.

Freedom of movement and residence shall be guaranteed to citizens within the limits of law.

-freedom of opinion and expressing it verbally, in writing or by other means of expression shall be guaranteed within the limits of law.

-freedom of communication and its secrecy shall be guaranteed in accordance with law.

-Freedom to exercise religious worship shall be guaranteed in accordance with established traditions, provided that it does not conflict with public order or violate public morals.

-freedom of assembly and forming association shall be guaranteed within the limits of law.

-every citizen shall be free to choose his gob, trade or profession within the limits of law, Due consideration being given to legislation organization some of such professions and trades.no person may be subjected to forced labor except in exceptional circumstances provided for by the law and In return for compensation.

-Every person shall have the right to submit complaint to the competent authorities, including the judicial authorities, concerning the abuse or infringement of the right and freedom.

Payment of taxes and public charges determined by law is a duty of every citizen.

-Defence of the state is a sacred duty of every citizen and military service is an honors for citizens which shall be organized by law.

-respect to the constitution, laws and orders issued by public authorities in execution thereof, observance of public order and respect of public morality are duties upon all inhabitants of the state.

Legal terms:

Sources of law	مصادر القانون
Document	وثيقة
Abuse	اساءة استعمال/اعتداء
The constitution	الدستور
Revolution	ثورة
Sovereignty of the law	سيادة القانون
War	حرب
Defeat	يهزم
Independent state	دولة مستقلة
The legislative power	السلطة التشريعية
The judicial power	السلطة القضائية
The executive power	السلطة التنفيذية
The parliament	البرلمان
The majority party	حزب الاغلبية
The prime minister	رئيس الوزراء
Presidential system	النظام الرئاسي
Parliamentary system	النظام البرلمانى
Influence	اثر/تأثير
Distribution	توزيع
Separation of powers	الفصل بين السلطات

Budget	ميزانية
Defence	دفاع
Federation	اتحاد
Cooperation	تعاون
Ratification	تصديق
Procedure	اجراء
Rigid constitution	دستور جامد
Written constitution	دستور مكتوب
Unwritten constitution	دستور غير مكتوب
Flexible constitution	دستور مرن
Freedom	حرية
Public duties	واجبات عامة
Distinction	تمييز
Origin	اصل/منشأ
Domicile	موطن
Nationality	جنسية
Religious believe	اعتقاد ديني
Social status	الحالة الاجتماعية
Personal liberty	حرية شخصية
Arrest	يعتقل/يستوقف
Search	يبحث/بحث
Detain	يعتقل/يقبض علي
Imprison	يسجن
Torture	عذاب/تعذيب/يعذب
Degrading treatment	الحط في المعاملة
Punishment	عقاب
Accused	متهم
Innocent	بريء
Guilty	مذنب
Legal and fair trial	محاكمة قانونية وعادلة

Case	قضية
Freedom of movement	حرية التنقل
Residence	اقامة
Freedom of opinion	حرية الرأي
Freedom of communication	حرية الاتصال
Worship	عبادة
Freedom of assembly	حرية التجمهر
Forced labor	القوة العاملة
Compensation	تعويض
Complaint	مدعى
The competent authorities	السلطات المختصة
The judicial authorities	السلطات القضائية
Taxes	ضرائب
Military service honor	شرف الخدمة العسكرية
Public authorities'	السلطات العامة
Public morality	الاخلاق العامة
Inhabitant	ساكن/مقيم

Chapter one assessment

What are the basic three things included in the constitution?

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There are three elements required to form a state. Mention them.

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What are the classifications of the constitutions?

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Why do we consider the Egyptian constitution flexible one?

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Translate into Arabic the following legal terms:

Rigid constitution
Procedure
Sovereignty
The majority party
The executive power
The prime minister
Confederation
Separation of powers
Freedom of opinion
The judicial power
Budget
Defence
Revolution
War
Citizen
Document

Translate into Arabic the following legal comprehension:

Traditionally, constitutions are classified into written and unwritten and to flexible and rigid. **Written constitution** means the constitution which is set out in a document which may possibly be amended .Nearly all states except the United Kingdom have unwritten constitution.

This kind of constitution is supported by judicial decisions interpreting its provisions and by customs and conventions regulating the working the machinery of the government.

While concerning **unwritten constitution** The British constitution is described as a famous practical application of the unwritten constitution. That means that in Britain, there is no single document in which one may find a constitutional law .Instead, there are judicial precedents and conventions, from which constitutional law is drawn.

Choose the correct answer:

The supreme power in the parliamentary system is……

A) The legislative power.

B) The executive power.

C) Both of them.

The law which considers the supreme law in the land is…….

A) The legislation.

B) The constitution.

C) The administrative decision.

Chapter two
The legislation

Within each legal system, federal or state, legislation (statutes) stand next in the hierarchy. Legislation is the product of the lawmaking of a legislature. Statutes may add details to the government framework by establishing a regulatory agency or an agency to provide a public service. Or statutes may establish rules that govern certain kinds of activities, such as the use of automobiles on highways. The entire criminal law, the law applicable to sales of goods, and almost all law limiting or regulating business activities make up statutory law.

Both parliament and the state legislatures enact a large number of statutes at every session. People tend to turn to Parliament and/or the state legislatures to urge the passage of "a law" (statute) whenever they recognize a problem. This seems to be true whether it is primarily an economic problem (such as the dwindling availability of petroleum), a moral problem (such as sexual abuse), or a health problem (such as misuse of drugs).

In general legislation is considered to be a primary source of law in most modern legal systems. If the legislature enacts legislation, all persons in the country must obey it.

Also it is suggested that an enacted legislation will continue to exist as law until either the legislature repeals it or a competent authority (such as the supreme constitutional court) declares it unconstitutional.(٥١)so that legislation must comply with the constitution.

51-Beth Walson ,introduction to law,West,3rd.,ed.,1999,11

There are two types of legislation, parliamentary and delegated legislation the functions of acts of parliament are as follows:([٥٢])

-*law reform* .relatively few statutes are concerned with changing substantive rules of law.

-*Consolidation*. Where existing legislation is gathered into one act this known as consolidation.

-*Codification.* This takes place when all the la on a topic is included in one act.

An act will come into force on the day on which it published in Egyptian gazette, unless other date is specified in the act itself. It will cease to have

effect only when it is repealed by another act .whilst in force an act is presumed to be operative throughout Egypt and nowhere else.

The superiority of legislation: the rational for the supremacy of legislation is that the will of elected representatives should prevail over that of appointed judges.

The need for statutory interpretation: where the words of a statute are absolutely clear the need for statutory interpretation will not arise, because the person affected by the statute will have no difficulty in conducting their affairs according to the statute, however, there is ambiguity or uncertainty interpretation is necessary.([٥٣])

a .*ambiguity* is caused by an error in drafting where by the words used are capable of two or more literal meanings.

52-Keith Abbotte,Norma Pendlebury,Kevin Wardman,Business law,8ed.,Thomson learning 2007,p.25,26

53-ibid,pp.25-29

b. un*certainty* arises when the words of a statute are intended to apply to various factual situations and the courts have to decide whether the case before them falls within the factual situations envisaged by the act. Uncertainty is far more common than ambiguity.

Delegated legislation:

a. delegated legislation comes into being when parliament confers on persons or bodies, particularly ministers in charge of government department, power to make regulations for specified purposes. Such regulations have the same legal force as the act under which they are made.

b. types of delegated legislation

i-Rules and regulations, Statute may authorize a minister or government department to make a wide variety of rules and regulations. These rules and regulations are collectively known as statutory instruments.

ii-By laws, these are rules made by local authorities. Their operation is restricted to the locality to which they apply.

Advantages of delegated legislation:

i.It saves the time of parliament, allowing parliament to concentrate on discussing matters of general bodies.

ii.it van be brought into existence swiftly, enabling ministers to deal with urgent situations, such as a strike in an essential industry.

iii.it enables express to deal with local or technical matters.

It provides flexibility, in regulations can be added to modified from time to time without the necessity for a new act from parliament.

Disadvantages of delegated legislation

i. law making is taken out of the direct control of elected representatives and is placed in he hands of employees of government departments This in theory less democratic.
ii. Parliament doesn't have enough time to effectively supervise delegated legislation or discuss the merits of the rules being created.
ii. A vast amount of law is created, statutory instruments out-numbering by far the amount of acts passed each year.

Legal terms:

Legislation	تشريع
Rules and regulations	القواعد واللوائح
Legislature	المشرع
Relatively	نسبيا
Substantive rule	قاعدة موضوعية
Codification	تقنين
Codify	يقنن
Come into force	يصبح نافذا
Presumed to be	يفترض ان يكون
Superiority of legislation	سمو التشريع
Interpretation	تفسير
Ambiguity	غموض
Uncertainty	عدم تاكد
Statutory	قانوني/تشريعي
Advantages	مزايا
Disadvantages	عيوب
By laws	قوانين محلية
Delegated legislation	التشريع المفوض
Strike	اضراب
Urgent	عاجل

Theory	نظرية
Authorities	سلطات
Government	حكومة

Chapter two assessment

List the advantages of delegated legislation.

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What are the disadvantages of delegated legislation?

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Translate into Arabic the following legal terms.

By laws
Rules and regulations
Legislature
Ambiguity
Uncertainty
Codification
Substantive rule
Urgent
Strike

Translate into Arabic the following legal comprehension.

The need for statutory interpretation: where the words of a statute are absolutely clear the need for statutory interpretation will not arise, because the person affected by the statute will have no difficulty in conducting their affairs according to the statute, however, there is ambiguity or uncertainty interpretation is necessary.

Chapter Three
Custom

Uses of the word custom: the word "custom "may be used in several different sense. In one sense it is the main source of English law since it is the original source of common law. It would, however, be wrong to equate "common law and custom today since most common law rules owe their origins to judicial decisions rather than ancient custom. In its second sense "custom" describes a conventional trade usage. custom in this sense is not a source of law, but a means by which terms are implied into contracts .the third use of custom is to describe rules of law which apply in a particular area, for example a country. In this sense custom is a distinct source of law. In addition to the characteristics of restriction to a particular locality, it must be an exception to the common law.

Proof of existence of custom: a person who alleges the existence of a custom must prove its existence by satisfying the following tests:-

a.*antiquity* local custom must have existed since time "immemorial" if this is shown the person denying the existence of the custom must prove that it could not have existed.

b.*continuity*. the right to exercise the custom must not have been interrupted. This doesnot mean that the custom itself must have been continuously exercised.

c.*peacable enjoyment*. A custom can only exist by common consent. It must not have been exercised by the use of force, secrecy, or permission.

d. *obligatory force*. Where a custom impose a specific duty that duty must be compulsory, not voluntary. Blackstone said in this affair

A custom that the entire inhabitant shall be rated towards the maintenance of a bridge will be good, but a custom that every man is to contribute thereto at his own pleasure is idle and absurd, and indeed no custom at all.

e. *certainty*.an alleged custom allowing tenants to take away turf in such quantity as occasion may require was held void for uncertainty.

f. *consistency*. Customs are by their nature inconsistent with common law, but they cannot, in a defined locality, be inconsistent with one another.

g. *reasonableness*, A custom must be reasonable. A custom cannot be reasonable if it conflict with a fundamental principle of the law

In recent years the tendency has been to standardize law by statute. This has led to the decline of custom as a source of law so that it is now almost extinct. The types of customary rights that do still exist are, for example, rights of way and rights to indulge in sports or pastimes on a village green.

Legal terms

Custom	عرف
Sense	مغزي /حس
Original source	مصدر اصلي
Restriction	قيد
Prove	إثبات
Allege	يزعم

Time immemorial	زمن سحيق
Antiquity	العصور القديمة
Continuity	استمرارية
Peaceable enjoyment	التمتع بالسلام
Force	قوه
Secrecy	سرية
Permission	اذن
Obligatory force	قوة ملزمة
Compulsory	اجباري
Voluntary	تطوعي
Maintenance	حفظ/صيانة
Certainty	تأكيد
Reasonableness	اعتدال
Tendency	ميل/نزعة/هدف
Indulge	يدلل
Usage	عادة

Chapter three assessment

What are the requirements for a customary rule to be a law?

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Translate the following legal terms into Arabic

Usage
Tendency
Custom
Secrecy
Compulsory
Voluntary
Time immemorial

Translate the following legal comprehension. Into Arabic

In recent years the tendency has been to standardize law by statute. This has led to the decline of custom as a source of law so that it is now almost extinct. The types of customary rights that do still exist are, for example, rights of way and rights to indulge in sports or pastimes on a village green.

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Chapter four

Principles of Islamic Shariea'a

The constitutions of all Arab and Islamic countries provide that the sharia'a commonly referred to as" Islamic law "is an important supreme or even sole source of law.

In Egypt, Islamic sharia'a is the principle source of law(according to article 2 of the Egyptian constitution of 2014) thus any law in conflict with sharia'a, regardless of its source, cannot be enforced.

An essential characteristic of Islamic sharia'a is that it merely lays down the guiding principles and objectives without attempting to address details. This are because it was meant to evolve according to the changing needs of society. Such details are to be elaborated by Muslims as situations occur, within the broader basic principles of sharia'a.(٥٤)

WHAT IS ISLAMIC (*SHARIE'A*) LAW?

The concept "Islamic *Sharie'a*" has imperceptibly various meanings and sharply different implications in Egypt than it often does in the European countries or the United States of America. There is a reason that numerous intellectuals, academics, and scholars claim that defining it as "Islamic law"—as it is often described in non-Muslim countries—is occasionally overly narrow. Islam is very much a law-oriented religion, it sets the framework for permissible economic, social, and political systems, and formulates the principles and rules upon which laws and regulations are to be established It provides a wealth of

54-Hussein El-Moguy,op. cit.p.55

prescriptions and guidelines governing legal relationships as well as spiritual inspiration.(٥٥)

One should bear in mind that *Sharie*‘*a* encompasses enormous areas of personal conduct not generally covered by legal rules in several societies.

Not only does it include private practice, ethics, and public law, but it also includes categories according to the theory of the “Scale of the Five Qualifications” such as *fard* or *wajib* (mandatory), *mobaah* (recommended),
mandoub (preferred but not required, which make moral but petite legal sense), *makrouh* (reprehensible or derive detestable but not banned), and *moharam* (forbidden). In one word, it might be “the Islamic way of doing things”. It is something quite different to declare that one prefers to do things in a non-Islamic way or that Islamic teachings have no application in public life. It would be as unpredicted as U.S. politicians claiming they favor the “un-American manner.” Public opinion keens on the subject provoke the equivalent response among the broader community.(٥٦)

55- M. CHERIF BASSIOUNI, INTRODUCTION TO ISLAM (Chicago 1988).

56- The term *Sharie*‘*a* is often erroneously equated with Islamic law. Although both in Western and Muslim discourses it is common to use “*Sharie*‘*a*” interchangeably with “Islamic law”, *Sharie*‘*a* is a much broader concept. For theologians, ethicists, and jurists, the broad meaning of *Sharie*‘*a* is the way or path to well-being or goodness, the life source for well-being and prosperity, and the natural and innate order created by God. Hence, in Islamic literature the term is employed to refer not just to the way of life, or what one may call the philosophy and method of life of Muslims, but also to any other group of people bonded by a common set of beliefs or convictions. Therefore, Islamic literary sources such as the *Qur*’*an* will often speak of “the ways of previous generations” (*shra*‘/*sharie*‘*at an sabaq* or *man qablana*), or “the Jewish way of life” (*sharie*‘*at al-yahud*) or even “the

In this respect, there is another terminological peculiarity that can shed some light on the connotations of the Islamic *Sharie*‘*a*. Egyptians will sometimes refer to other religious communities as *Sharie‘as/Sharie*‘*a*. Muslims would still esteem the Islamic *Sharie*‘*a* as superior—and indeed, as historically overriding those that came before—but they will sometimes refer to other religion’s *Sharie*‘*as* such as Christian or Jewish *Sharie*‘*as*, specifically regarding their provisions for personal status

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methods of the Greek logicians” (*shar*‘ *al-falasifa or tariqat al-falasifa*). *See* Mohamed ‘Arafa, *Corruption and ribery in Islamic Law*: *Are Islamic Ideals Being in Practice*?, 18 GOLDEN GATE ANNU. SURV. INT’L. & COMP. L. (2012), at 184-186. In Islamic legal usage, typically, the expression s*harie*‘*at Allah* or s*har*‘ *Allah* refers to the broad concept of the all-inclusive and total path to God, which is equated with the path leading to social goodness (*ma*‘*ruf*) and moral goodness (*husn* or *husna*). *Shar*‘ *Allah* or s*harie*‘*a* does not denote a positive set of divine commands with which humans must comply, but rather the ultimate good God desires for human beings. *Id*. On the other hand, Islamic law, or what is called *al-ahkam al-Shar*‘*iyya* or *ahkam al- Sharie*‘*a*, refers to the cumulative body of jurisprudential thought of numerous communities and schools of thought regarding the “divine will” and its relation to the public good. Islamic law is thus the fallible and imperfect attempt by human beings over centuries to explore right and wrong and discern what is good. The moral and ethical foundations and values of natural justice in *Sharie*‘*a* are accessible and cognizable by human beings, but this does not necessarily lead to a determinative system of law. *Sharie*‘*a*, as the foundation of and pathway to goodness, is everlasting, unchangeable, eternal, and perfect. But this pathway is not perfectly cognizable by human beings. Moreover, positive legal commandments that follow from or are based on these foundations and pathways are indeterminate, changeable, and contextual.

57- M. CHERIF BASSIOUNI, INTRODUCTION TO ISLAM (Chicago 1988).p.12

law (covering marriage, divorce, adoption, alimony, and inheritance).

In short, the term *Sharie*‘*a* is often erroneously equated with Islamic law. Although both in Western and native conversations it is common to use *Sharie*‘*a* interchangeably with Islamic law, *Sharie*‘*a* is a much broader concept. In the linguistic practices of theologians, ethicists, and jurists, the extensive significance of *Sharie*‘*a* is “the right way or path to well-being or goodness, the life source for well-being and prosperity, and the natural and essential ways and order created by God (*Allah*).”[٥٧]

While the Islamic *Sharie*‘*a* sometimes means more than simply Islamic law, it certainly has extensive legal content. Commercial business transactions, contracts, torts, criminal punishments (*quesas*/*hudud/ta*‘*azir*), inheritance, legal procedures, international commitments, and human rights among many other areas, have been the theme of scholarship by those who searched religious sources to discover the ways that a community of Muslims should operate. Furthermore, the Islamic *Sharie*‘*a* provides some guidance on how violations must be treated, by compensation, penalties, or the voiding of contracts.([٥٨])

The Islamic *Sharie*‘*a* law, is based on two fundamental sources, which are the Holly *Qur*’*an* (the constitution of Muslims) and the *Sunnah* (the sayings and

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58- For further discussion on the Islamic criminal justice system, its fundamental principles, and the Islamic criminal taxonomy of crimes and punishments, see ‘Arafa, *supra* note 56, at 187-196.

the authentic deeds of the Prophet Muhammad Peace and Blessing Be Upon Him) along with the secondary sources, as *Ijma'a* (consensus) and *Qiyyas* (analogical deduction through *Ijtihad*: *individual reasoning*).([٥٩])

Opinions over the centuries have diverse considerably about what God has required and what the earthly consequences are of breaching a rule. For that reason, Muslims will sometimes distinct between the Islamic *Sharie'a* as "unchanging divine guidance", and *Fiqh* (jurisprudence) refers to "the understanding of Islamic rules and principles, as the fallible human effort to understand the content of that guidance." The four major schools of jurisprudential thought (*fiqhal-madhhabs*) in Islam have impacted the development of *Sharie'a*. In that domain, we can say "one *Sharie'a* but numerous interpretations". Nor is the varied nature of *fiqh* seen as a problem; it is not rare to hear several Muslims today cite the multiplicity of Interpretations in their legal heritage as a virtue, since it indicates how attempts to discover and apply the Islamic *Sharie'a* naturally evolve with prevailing conditions and community needs.([٦٠])

59- M. Cherif Bassiouni & Gamal Badr, *The Sharia'h*: *Sources, Interpretation, and Rule-Making*, 1 UCLA J. ISLAMIC & NEAR E.L. (2002), at 135, 150. *Ijm'*

60- RAJ BHALA, UNDERSTANDING ISLAMIC LAW (SHARIE'A) 392-396 (2009) .

Eventually, then, a call to apply or follow the Islamic *Sharie‘a* will have to confront the queries of which rules to apply from this rich tradition of legal and ethical speculation and—perhaps more critically—who has the authority (power) to decide which interpretations or visions are to be enforced or implemented. These are difficult issues, but there are surprising areas of convergence on them in Egyptian deliberations. Such conjunction sets the terms for debates but it hardly resolves them. All in all, one of the most outstanding features of the discussion is how flexible key concepts and positions are.([٦١])

Legal terms

Commonly	شائع
Sole	وحيد
Principle source	مصدر رئيسي
Regardless	بصرف النظر
Essential characteristic	السمة الاساسية
Lay down	يضع
Elaborate	دقيق/مفصل
Imperceptibly	بصورة تدريجية
Concept	مفهوم
Spiritual inspiration	الهام روحي
Encompass	تشمل
Enormous	عديد
Reprehensible	مستحق اللوم
Forbidden	محظور
Provoke	إثاره /يحرض

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mond Ibrahim, *Egypt*: *Islamists vs*. *Copts*: *An Animosity that Seeks Any Excuse to Attack*, GATESTONE INSTITUTE (Jun. 20, 2012)

Community	مجتمع
Shed some light	القاء بعض الضوء
Broader concept	مفهوم اوسع
International community	المجتمع الدولي
Consensus	اجماع
Analogy	قياس
Jurisprudence	فقه
Fallible	غير معصوم
Confront	يواجه

Chapter four assessment

Translate the following legal terms into Arabic

Reprehensible
Community
Principle source
Consensus
Analogy
Jurisprudence
Confront
Forbidden

Translate the following legal comprehension: into Arabic

Eventually, then, a call to apply or follow the Islamic *Sharie*‘*a* will have to confront the queries of which rules to apply from this rich tradition of legal and ethical speculation and—perhaps more critically—who has the authority (power) to decide which interpretations or visions are to be enforced or implemented. These are difficult issues, but there are surprising areas of convergence on

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Part three
Resolving disputes

Learning objectives:
After studying this part you should understand the following main points:
1- The sources of legal advice and assistance available to individuals.
2-the ordinary and non ordinary court systems including conditions in which every kind of courts applied
3- the nature and distinctive features of tribunals.
4-Alternative to litigation and the different forms of alternative deputes resolutions.

Chapter one
The Egyptian judicial system

Written on the French judicial structure, the bulk of the Egyptian judiciary is composed of two separate hierarchies, one focused on civil and criminal law and the other dealing with administrative law.

Additional judicial bodies include the Supreme Constitutional Court (SCC) and exceptional courts.

The organisation and functions of the judiciary are detailed in articles 165-178 of the 1971 Constitution and additional legislation for each arm of the judiciary further governs appointments and disciplinary procedures.

The Court of Cassation (sits at the apex of the ordinary court system and acts as the final appellate court for all matters of civil and commercial law, personal status law, and criminal law. Judges in the regular judiciary are appointed by decree of the President of the Republic with the approval of the Supreme Judiciary Council. The Supreme Judiciary Council is made up of the President of the Court of Cassation, the President of the Cairo Court of Appeal, the Attorney General and the two most senior presidents of the Courts of Appeal. Judges "may not be dismissed, suspended or sent to retirement before the legal age. Moreover, they may not be transferred to a non-judicial function." Disciplinary proceedings are presided over by the President of the Court of Cassation, the three most senior heads of the Courts of Appeal and the three most senior councilors of the Court of Cassation. The ordinary judiciary is generally considered to be independent of the direct control of the executive branch of

government, although there have been occasions in which reform-minded judges faced disciplinary hearings.[٦٢]

The Supreme Administrative Court sits at the apex of the administrative court system and acts as the final appellate court for all matters of administrative law. The administrative courts serve as an important forum in which citizens can challenge executive actions or any agency within the state bureaucracy. Citizens can challenge state agencies on the grounds that they violated administrative laws or that administrative laws themselves contradict the Constitution. The Administrative Courts regularly rule against the executive authority. The functions of the Administrative Courts are governed by article 172 Law 47 of 1972. These regulations provide the administrative courts with substantial independence in matters of appointments, promotions, and other internal functions.([٦٣])

62-6 For detailed treatments of the Egyptian legal system, *see* Nathalie . Bernard- Maugiron and Baudouin Dupret (eds *Egypt and Its Laws*, 2002 . *See also* Adel Sherif, 'The Origins and Development of the Egyptian Judicial System', in Boyle and Sherif (eds.), *Human Rights and Democracy, The Role of the Supreme Constitutional* . *Court of Egypt*, 1996

63- A comprehensive treatment of Administrative Court rulings and the political context can be found in Farouq Abd al- Bur, *Dor Majlis al-Dawla al-Misri fi Hamayit al-Haquq wa al-Hurriyat al-'Ama* [*The Role of the State Council in Protecting Public Rights and Freedoms*], 1991

64- For more on the SCC and the political context that it operates within, see Tamir Moustafa, The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt, 2007 . The official website for the . *Supreme Constitutional Court can be found at* http://hccourt.gov.eg/

The Supreme Constitutional Court (SCC), established in 1979, plays a leading role in the Egyptian judiciary. It has exclusive authority to perform three important roles: issue binding interpretations of existing legislation when divergent views emerge; resolve conflicts of jurisdiction between different judicial bodies; and perform judicial review of legislation.(٦٤)

Articles 174-178 of the Law 48/1979 govern the activities of the Supreme Constitutional Court. Article 29 of Law 48 of 1979 specifies that the SCC is empowered to perform judicial review when it receives cases transferred from courts of merit. If any court, in the course of deciding a concrete case finds that a law being applied may be unconstitutional, it can request judicial review by the Supreme Constitutional Court. In most cases, petitions for judicial review are initiated at the request of litigants themselves. However, judges also have the right to initiate petitions for judicial review if they question the constitutionality of the laws they are applying. In technical terms, judicial review in Egypt is centralized rather than diffused, the timing of judicial review is *a posteriori* rather than *a priori*, and the SCC practices concrete review rather than abstract review, with legal standing restricted to litigants engaged in real legal controversies.

The SCC struck down many laws, particularly through the 1980s and 1990s. It was much less assertive vis-à-vis the executive after 2005. Justices on the Supreme Constitutional Court are appointed by the President from

among two candidates, one chosen by the General Assembly of the Court and the other by the Chief Justice.

The President of the Republic formally appoints the Chief Justice of the SCC, but for the first two decades following its establishment, the President appointed the most senior justice serving on the SCC to the position of Chief Justice. Mubarak eventually departed from this norm in 2001, asserting direct and exclusive control over selection of the Chief Justice of the SCC.

SCC Justices cannot be removed, although they are subject to the mandatory retirement age for state employees. The General Assembly of the SCC is the only body empowered to discipline members of the Court. Articles 56-60 of Law 48of 1979 also give the SCC full control of its own financial and administrative Matters.

Exceptional Courts - Running parallel to the regular judiciary are exceptional courts. As one study explains, "The procedural organisation of the exceptional courts is different from that of ordinary and special courts. The accused does not enjoy the same guarantees. He has no right to challenge sentences; the prosecution has more power than in ordinary circumstances and the executive power plays an important role in the ratification of the judgments, in the composition of the courts and in distribution of jurisdictions."(٦٥) The two exceptional courts now in operation in Egypt are the Emergency State Security Courts and the Military Courts.

65- A. Seif el-Islam, 'Exceptional Laws and Exceptional Courts', in Bernard-Maugiron and Dupret (eds.), *Egypt and Its Laws*, 2002, p. 369.

Emergency State Security Courts - Law 162 of 1958 governs the activities of the state security courts, which applies sanctions for violations of the Law on the State of Emergency. Article 9 of that law authorizes the President to transfer trials of ordinary crimes from the regular judiciary to the Emergency

State Security Courts. The President is not required to give justifications for his request and the grounds need not have any tie to the reasons for which the state of emergency was originally declared. Three ordinary judges staff the emergency state security courts. Two of these judges may be replaced by Military judges appointed by the President.(٦٦) There are far fewer procedural protections in place at the emergency state security courts as compared with regular courts. A state of emergency has been in effect in Egypt for all but 18 months since 1967, essentially making the Emergency State Security Courts a permanent feature of the Egyptian judiciary.

Military Courts - Law 25 of 1966 provides for military courts . These courts have jurisdiction over matters within the ranks of the military, but article 6 of Law 25/1966 additionally provides for military trials of civilians during a state of emergency. As with the emergency state security courts, there are many fewer procedural protections as compared with the regular judiciary.

66- *See* Law 162 of 1958. *See also* United Nations Human Right Council, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism', 14 October 2009, p.13

Judges are military officers appointed directly by the Minister of Defence and the President for a two-year renewable term. Judges are not required to have training in law, and they are under the jurisdiction of the Ministry of Defence rather than the Ministry of Justice. Finally, there are fewer procedural safeguards in the military courts, trials may be held in secret, and there is no right to appeal.

Arbitration

In recent years the development and growing complexity of international commercial transactions defined the need for speedy and internationally acceptable means of settling disputes. The concept of arbitration was devised for that particular purpose and Egypt was one of the first countries in the region where the concept of arbitration has gradually been gaining popularity for more than three decades now.

At the outset, contracts between Egyptian and foreign parties commonly provide for some form of international arbitration in the event of any disputes. The Egyptian Court of Cassation has, on a number of occasions, confirmed the validity of such arbitration clauses. An Egyptian court will generally respect an arbitration clause and stay proceedings brought before it. Arbitration may be conducted under any set of rules chosen by the parties. One of the most popular set of rules used in contracts between Egyptian and foreign parties is the Rules of Arbitration of the International Chamber of Commerce (ICC). Arbitration proceedings under the ICC Rules may be held in Egypt or abroad.

A regional arbitration body that is often used is the Cairo Regional Center for International Commercial Arbitration (the "**Center**"). The Center applies the rules of the United Nations Commission on International Trade Law (UNCITRAL). With the rare exception of technology transfer contracts where arbitration must be held in Egypt, there is generally no requirement under Egyptian law that arbitration be conducted under the auspices of the Center or in Egypt.

The Arbitration Law 27 of 1994 brings Egypt further into line with the UNCITRAL model law on international commercial arbitration (which it appears to have been largely modeled after) and is a comprehensive statement of the law on Arbitration and therefore facilitates the conduct and enforcement of international arbitration proceedings in Egypt. The Arbitration Law also clarifies certain aspects of Egyptian arbitration law by legislating in areas that have previously been neglected.

Under the Arbitration Law and provided certain formalities are satisfied, the Egyptian Government is specifically deemed accountable for arbitration agreements it enters into and may no longer take the position that it is not subject to commercial arbitration clauses. In addition, the procedures surrounding the appointment of experts are outlined in the text of the Arbitration Law.

The Arbitration Law provides for an exhaustive set of grounds for the annulment of arbitration awards. Provided one (or more) of those grounds is satisfied, annulment proceedings against an arbitration award must be initiated within 90 days from notification of the award's issuance.

However, this requirement does not preclude the enforcement of the award except under extreme circumstances (e.g. where there is clear evidence of fraud). Applications for the enforcement of arbitral awards must be accompanied by the original or a signed copy of the award, a copy of the agreement to arbitrate, an Arabic translation of the award authenticated by the competent authority if the award was not issued in Arabic, and a copy of the minutes evidencing deposit of the award with the competent court in Egypt (usually the Cairo Court of Appeal). The Arbitration Law therefore provides a firm base for arbitration and enforcement of awards in Egypt.

Legal terms

Chief justice رئيس المحكمة العليا
Depart from بصرف النظر عن
Norm قاعدة/معيار/مبدأ
Remove يزيل
Financial and administrative matters مسائل مالية وادارية
Exceptional courts محاكم استثنائية
Parallel بالتوازي
Accused متهم
Guarantees ضمانات/ضامنين
Right to challenge الحق في الطعن
Sentence حكم
Prosecution النيابة العامة/الملاحقة القضائية
Ratification تصديق
Emergency state security courts محاكم امن الدولة طوارىء
Military courts المحاكم العسكرية
Sanctions جزاءات

Arbitrationتحكيم
Right to appeal الحق في الاستئناف
Procedural safeguards الضمانات الاجرائية
Ministry of justice وزارة العدل
Ministry of defence وزارة الدفاع
Civiliansالمدنيين
A state of emergencyحالةالطواريء
Justificationsمبررات
International commercial transactionsمعاملات تجارية دولية
Regionاقليم
At the outset International arbitrationفي بداية التحكيم الدولي
Arbitration clauseشرط التحكيم
Attorney generalالنائب العام
Dismissيفصل
Suspendيعلق
Retirementالتقاعد
Reform-mind اصلاح العقل
Supreme administrative courtالمحكمة الادارية العليا
Apexقمة/اوج
Violate ينتهك
Promotion ترويج/ ترقية
Contradictتناقض
The supreme constitutional court المحكمة الدستورية العليا
Establish ينشأ
Exclusive حصري
Reform اصلاح/يصلح
Binding interpretation تفسير ملزم
Divergent متباين
Conflicts of jurisdictions تنازع الاختصاصات
Judicial review المراجعة القضائية

Meritيستحق
Unconstitutionality غير دستوري
Petition التماس
At the request of بناء علي طلب
Litigant خصم
Posteriori استدلالي
Priori بداهة
Egyptian judiciaryالقضاء المصري
Hierarchyشكل هرمي
Supreme constitutional court المحكمة الدستورية العليا
Appointmentتعيين/موعد
Disciplinaryالتخصصات/انضباطي
Court of cassation محكمة النقض
Apexقمة/اوج
Ordinary courtsالمحاكم العادية
Appellate court محكمة الاستئناف
personal status lawقانون الاحوال الشخصية
Supreme judiciary council مجلس القضاء الاعلي
President of the court of cassationرئيس محكمة النقض
Abstract reviewمراجعة مجردة
Struck down مطروح
Assertiveجازم
Vis a visحيال
Justicesالقضاه
General assembly of the courtالجمعية العامة للمحكمة
Stay proceedingsوقف الاجراءات
Bring a suit يرفع دعوي
Foreign party الطرف الاجنبي
Rules of arbitrationقواعد التحكيم
International chamber of commerceغرفة التجارة الدولية

Arbitration proceedings اجراءات التحكيم
Abroadفي الخارج
Regional arbitration تحكيم اقليمي
United nation commission on international trade law لجنة الأمم المتحدة للقانون التجاري الدولي

Technology transfer contractsعقود نقل التكنولوجيا
Under auspices ofتحت اشراف
International commercial arbitrationالتحكيم التجاري الدولي
Comprehensiveشامل
Enforcementتنفيذ
Deem يعتقد
Accountable for مسؤول عن
Arbitration agreement اتفاق التحكيم
Expertsخبراء
Exhaustiveشامل
Annulmentالغاء/ابطال/فسخ
Arbitration awards احكام التحكيم
Preclude يحول /يمنع
Fraud غش
Competent authority سلطة مختصة

Chapter one assessment

Put right or wrong sign against the following sentences

1-the judiciary system in Egypt consists of three main categories.
2-members of the Egyptian supreme constitutional court are appointed by a decree from the president of republic.
3-court of cassation has the right to hear suits for firs time.

4-Applying exceptional judicial system is considered to be an aspect of democracy.
5-ordinary courts contain four tire of litigation.

Translate the following legal terms into Arabic.

Justices
Arbitration awards
Court off appeal
Court of first degree
Court of cassation
Stay of proceedings
Supreme constitutional court
Foreign party
bring a suit
Experts
Arbitration clause
Annulment
Competent authority
Accountable for
Enforcement

Translate following legal comprehension. into Arabic the

Emergency State Security Courts - Law 162 of 1958 governs the activities of the state security courts, which applies sanctions for violations of the Law on the State of Emergency. Article 9 of that law authorizes the President to transfer trials of ordinary crimes from the regular judiciary to the Emergency State Security Courts. The President is not required to give justifications for his request and the grounds need not have any tie to the reasons for which the state of emergency was originally declared. Three ordinary

judges staff the emergency state security courts. Two of these judges may be replaced by Military judges appointed by the President. There are far fewer procedural protections in place at the emergency state security courts as compared with regular courts. A state of emergency has been in effect in Egypt for all but 18 months since 1967, essentially making the Emergency State Security Courts a permanent feature of the Egyptian judiciary.

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Chapter two
legal services

introduction

The question of who is allowed to provide particular type of legal services has undergone significant changes as a result of many reforms to laws that regulate these matters.

There are many persons presenting aids and assistance to the parties of the case, but I will concentrate in this study only on the important ones which are barristers and notaries public notaries.

1-Barristers

Barristers are the consultant specialists; they specialize in advocacy (i.e. representing a client in a court) and have a right to appear in any court or tribunal.

Historically, the Egyptian legal profession has played an important role in advancing law reform and fighting against government abuses. In the 1930s and 1940s, Egypt's lawyers were among the most highly educated in the Arab world Despite this proud history, Egyptian human-rights lawyers and defenders today face wide-ranging challenges in advising and acting for clients and advocating for human rights.63.

During its mission, the IBAHRI noted the following main challenges for lawyers in Egypt today: (i) lack of respect for basic due process guarantees in military and emergency courts; (ii) inadequate protection of due process in the ordinary criminal courts; (iii) interference with human rights lawyers work; (iv) the poor quality of legal education and training; (v) a lack of detailed ethical regulation; (vi) tensions between lawyers and judges; and (vii) low pay.

Other obstacles relate specifically to the EBA, and will be discussed later.

Relevant international standards

All constitutions provide that all persons shall be equal before the courts and tribunals, and are entitled to a fair and public hearing. Lawyers are essential to the delivery of this right. In explaining what these provisions mean in criminal cases, the UN Human Rights Committee issued General Comment in 2007 which provides in paragraph 34 that 'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter'.

International fair trial guarantees include the right of a defendant to free assistance from counsel of his own choosing.72 The defendant must be able to communicate with counsel confidentially. Defence counsel must also receive adequate and timely disclosure of the case file, and have adequate time and facilities to prepare the defence.73

The UN Human Rights Committee has emphasised that these provisions will 'apply to all courts and tribunals .whether ordinary or specialised', and that civilian trials before military or special courts should 'take place under conditions which genuinely afford the full guarantees stipulated under Article

The UN Declaration on Human Rights Defenders also makes clear in Article 12 that: a '[s]tate shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in

association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.'

The UN Basic Principles on the Role of Lawyers also provide that: 'in exercising their rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession'. Codes of professional conduct for lawyers should be established by the legal profession through its associations, or by legislation Disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee (Principle 28) and be determined in accordance with a code of professional conduct

Current challenges

(i) Lack of due process in military and emergency courts

In addition to concerns regarding independence and impartiality , the lack of basic due process in military and emergency courts present a fundamental obstacle to lawyers. This issue had assumed particular relevance in light of the significant increase in the use of military courts to try civilians in the months following the revolution.

Defence attorneys interviewed by the delegation spoke of the difficulty of locating clients being detained by the military. One lawyer recalled how there had been no declaration of martial law or initial public statement by the SCAF about the arrests being made. There was therefore confusion amongst lawyers as to which authority had

ordered an arrest and where the arrested individual was taken to, with lawyers sometimes spending hours or days trying to locate clients being held incommunicado.

Delegates heard from lawyers that during the investigation stage, defence counsel did not always have the right to attend their client's interview by the military prosecutor.76 Often, lawyers would arrive at a distant military facility only to find that the interview had been completed in their absence. Military personnel would sometimes allegedly obstruct lawyers' entry to the facility, further delaying access to clients. In one case involving protesters outside the Israeli Embassy on 15 May 2011, an interrogation was reportedly conducted in a military prison instead of at the military prosecution headquarters (as it ought to have been).

Some interviewees reported the inadequacy of court-appointed defence counsel in these cases. They explained that the military court maintains a list of lawyers paid by the Ministry of Defence for this purpose and once in court the military prosecutor asks the detainee if he has a lawyer. If he does not, the court designates one present in court at that time from the list.

Unprepared, and in some cases lacking the relevant experience, these lawyers were alleged to often simply plead for mercy on behalf of their client, without first examining the propriety of the charges or the strength of the evidence against them.

Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of

Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

The IBAHRI was told that military trials could last as little as five minutes; and that the longest trials took just one week, a period inadequate for a complex multi-defendant trial. One such trial allegedly took place in the kitchen of a military prison at 4am.77 Interviewees stated that a session would typically run for about an hour-and-a-half at most, though sometimes the judges would agree to adjourn the session until the next day. Observers needed government permission to attend court sessions, and human rights activists were generally excluded from the public gallery.78

Delegates were also alerted to problems with the sentencing process. Some sentences were allegedly handed down minutes after the end of a trial. Sometimes, by the time the lawyer gained access to the court, the sentence had already been announced. Most sentences were read out *in absentia*. Defendants were reported to have received disproportionately harsh sentences with some taken to prisons very far from Cairo (for instance 1,200 km south, close to the border with Sudan) to serve these sentences, making it very difficult for families to visit.

. Some defence lawyers did report a few improvements in the conduct of military trials. Delegates heard how non court-appointed defence counsel had been able to attend more investigations and hearings, and had better access to their clients' case file in some cases.

Although interviewees spoke specifically of trials before military courts, the IBAHRI notes that the UN has

found that due process concerns apply equally to emergency courts.

After his 2009 mission to Egypt, the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin concluded that 'deep concerns' remain regarding due process in the Egyptian emergency court system. These include the fact that there is no right to appeal convictions or sentences, and the failure to respect the principle of *non bis in idem* enshrined in Article 14 of the ICCPR.79 And, as in the military courts, the death penalty may be imposed.

Lawyers defending clients before both types of exceptional courts therefore face significant challenges in trying to secure a just outcome for their clients. Lawyers have so far also been unable to challenge the very existence of these courts through a judicial review of their constitutionality. According to judges at the Supreme Constitutional Court, there have been challenges to the constitutionality of trials of civilians by military and emergency courts, but none has so far managed to satisfy procedural requirements. The IBAHRI was, however, informed that a prominent NGO, the Egyptian Center for Economic and Social Rights, planned to seek a judicial review of trials of civilians by military courts on the basis that they failed to provide due process guaranteed in the constitution.80 It is hoped that this will happen soon.

(ii) Inadequate due process guarantees in ordinary criminal courts

In the ordinary criminal court system, lawyers told the IBAHRI that a gap existed between the protection of due process rights under the law and their patchy implementation in practice.

Particular concerns were reported at the investigation stage of a case. In theory, the right of the lawyer to attend interviews at the pre-trial stage of a case is guaranteed under the law. However, delegates heard that they were often not allowed to attend interrogations by the Public Prosecutor's office.81 Civil society groups have also repeatedly reported that indigent defendants have inadequate access to defence counsel, including at police stations upon arrest.82

The problem appears to be largely one concerning the proper implementation of Article 124 of the Criminal Procedure Code. Under this provision, the prosecutor is permitted to begin an interrogation if the lawyer is not there in 'exceptional circumstances'.83 In practice, what may amount to 'exceptional circumstances' is susceptible to subjective interpretation by individual prosecutors.84 In addition, in misdemeanour cases, which are *not* punishable by mandatory imprisonment, the investigator is not obliged to notify the lawyer of the accused before beginning the investigation, and therefore, the questioning can take place in the lawyer's absence. Rephrasing this law; providing published guidance as to how the right to access to counsel should be interpreted so as to conform to applicable human rights standards; and/or ensuring that interviews that took place improperly without counsel are not admissible as

evidence, would all be helpful steps to improve the position of criminal defendants in this regard.

Another challenge for defence counsel in criminal cases is their restricted access to clients more broadly. Under Article 53 of the Advocates Law, a lawyer who is 'authorized by the Prosecution' to visit a detained person at a prison 'may visit such person at any time and meet him or her in private in decent surroundings inside the prison'. But a number of lawyers explained that in practice access was restricted.

This concludes that approximately 30–60 per cent of lawyers were able to meet their clients, while 40–70 per cent could not.85

A further problem identified in relation to safeguarding defendants' human rights in criminal cases is the legal aid system. Although Article 64 of the Advocates Law provides that a 'lawyer must provide legal aid' to those 'unable to bear the costs', one lawyer remarked that the concept of pro bono work is alien to the vast majority of lawyers in Egypt.

Article 124(1) Criminal Procedure Code (Law No 145 of 2006) 'With respect to felonies and misdemeanors punishable by mandatory imprisonment, the investigator may not interrogate the accused or confront him with other accused persons or witnesses except after inviting his lawyer to attend the investigation, with the exception of the case of in-flagrante-delicto and cases of urgency resulting from the fear of losing evidence, in the manner established by the investigator in the minutes of the investigation. The accused must declare the name of his lawyer in writing in

the court's register or to the prison's officer, or to notify the investigator thereof.'

The Court of Cassation ruled that the investigator's determination of the existence of a case of urgency is subject to the review of the court that hears the merits of the case and, therefore, the investigator is required to demonstrate the elements of urgency and the reasons behind it (judgment rendered on 15 February 1976). However, it is not clear whether the result of any such review would affect the admissibility of the interview as evidence.

See The United Group 'Crime and Punishment: The Vision of Egyptian Lawyers on the Phenomenon of Torture and the Means to Fight it',

Lawyers told the IBAHRI that what happens in many legally-aided cases is that in court the judge will appoint defence counsel on the spot, and then simply put the case to the end of the day's list, meaning that counsel only has about two hours (or less) to prepare the defence. This would mean that in practice, the system may restrict criminal defendants 'right to select a lawyer of their choice, as well as the right to effective legal representation.

The IBAHRI was also told by practising defence counsel that their access to case files is unsatisfactory. Sometimes, defence counsel was not permitted to photocopy files in the possession of the prosecution. The IBAHRI heard from one lawyer that, since the revolution, public prosecutors' offices are more open, and there is better access for lawyers. Others did not agree. The matter

still appears – unacceptably – to be left to individual prosecutors' discretion.

Some lawyers highlighted the challenge of inadequate technology in the courts and of patchy access to legal documents. Although some legislation is available online,86 a fully searchable database that also includes case law is only available by subscription. This means that smaller law offices and solo practitioners may not have adequate and affordable access to the law in defending their clients' interests.

(iii) Interference in human rights lawyers' work

Although human rights litigation remains a niche field in Egypt, lawyers and other individuals working in the human rights arena are extremely active. Human rights organisations report that human rights defenders are subject to harassment, stigmatisation and restrictions on freedoms of expression and association.87 During its mission, the IBAHRI heard that physical attacks and arrests of human rights lawyers were relatively uncommon and had become less frequent in 2011. However, a number of arrests and attacks on lawyers were reported to have occurred in the aftermath of the revolution.

In one incident that took place in February 2011, human rights lawyers involved in documenting violence against civilians and providing legal advice to demonstrators arrested in Tahrir Square were themselves arrested and detained by military police.

(iv) Declining quality of legal education and inadequate training

With the exception of a small number of private institutions, and despite an elite standing in legal education in decades past, the system of legal education in Egypt appears to be in crisis.

The admissions policy for public Egyptian law schools is clearly problematic.93 Since 1961, the Egyptian Government has provided free higher education to all Egyptians who possess a secondary certificate. With the increase in population, the number of students admitted to public Egyptian universities has likewise increased. In the 1960s, Alexandria University's College of Law admitted approximately 300 students. This number increased to approximately 7,000 by 1997.94 Now, up to 38,00095 students are enrolled at the Cairo University law faculty is determined by the Ministry of Higher Education. The university has no decision making control over admissions, or even the curriculum. According to one interviewee: in a letter, the Ministry tells a student which university to attend and which subject to study based on eligibility requirements. Students who attain high grades are usually given the opportunity to enter the medical and engineering faculty, whilst those with lower grades are assigned to languages, literature and law.97 Practical skills training is not integrated into the Egyptian law school curriculum.

Many interviewees also raised concerns regarding current professional training opportunities. Although there is some training delivered at the Institute of Lawyers (and, for prosecutors, at the National Judicial Institute), the IBAHRI heard from lawyers that this is grossly inadequate for the needs of the modern lawyer. Lawyers told the

delegation that these training sessions are not all compulsory. In addition, the IBAHRI was told on many occasions that the vast majority of lawyers are completely unfamiliar with international law. One lawyer considered that 'more than 90 per cent of Egyptian lawyers have never been acquainted with the international conventions, though in the Constitution these conventions take the status of the laws'.

Opportunities for training contracts and continuing legal education are also scarce. The American Bar Association Rule of Law Initiative has partnered with Cairo University to conduct additional trainings for young lawyers in Cairo and Alexandria.98 Other ad hoc courses are offered by other institutions. But there is no compulsory, rigorous training for every practicing lawyer or even every young lawyer.99

(v) Lack of a clear ethical code and disciplining system

Ethical rules, sometimes referred to as the rules of professional responsibility, are a set of standards that govern the way in which lawyers conduct their professional lives. Ethical rules usually address four main areas of concern: conflict of interest, confidentiality, competence and independence.101

During its consultations, the IBAHRI did not hear of any case of individual misconduct within the Egyptian legal profession. However, unscrupulous practices have been reported. In March, one human rights NGO denounced, for instance, the military court trial of a 15-year-old boy whose court-appointed lawyer did not raise the issue of the boy's age, or question the court's

jurisdiction over him.102 Delegates also heard of questionable practices by court-appointed defence counsel in military courts.103

Under Article 56 of the 1971 Egyptian Constitution, 'trade unions and associations are obliged to examine their members' conduct in the course of duty in accordance with codes of ethics, and to defend the rights and liberties accorded to their members by law.'

Delegates were told that the EBA has not, however, adopted any document that constitutes a code of professional conduct of lawyers.

100. There is an indication in the Advocates Law (Law No 17 of 1983) of the basis upon which a lawyer can be disciplined, in Article 98. This provides that any lawyer who violates the duties of the profession, who perpetrates acts that affect the integrity of the profession or renders it in a non-respectable light shall be liable to disciplinary measures ranging from a notice to permanent disbarment. In addition, the Advocates Law and EBA By-laws include the following scattered provisions relevant to ethical conduct:

a. the text of the oath to be taken before becoming a practicing lawyer includes an obligation 'to carry out the duties of a lawyer with honour and integrity', 'to protect the ethics of the profession and its traditions and to respect the Constitution and the Law'.104

b. the duties of the lawyer include requirements of ethics, integrity and honesty,105 duties towards the client106 and to provide legal aid;107 a duty of confidentiality;108 and to avoid conflicts of interest.109

c. lawyers' dress code and demeanour in court should be respectable;110 and
d. there is an obligation to supervise subordinates to ensure their integrity.111

What is the structure of the legal profession?

Lawyers are self-employed or work as part of a firm, as partners or associates. Very few law firms are constituted of more than ten lawyers.

All lawyers must be registered at the Bar Association. The law does not distinguish between attorneys and advocates, barristers and solicitors; they are all lawyers. Lawyers registered at the Bar Association are ranked according to the level of the tribunal before which they are admitted to appear. All lawyers must undertake a two years training period before being admitted before a court of first instances. After having practiced for at least five years before a court of first instance, a lawyer may be registered to appear before the Court of Appeal. A lawyer may be admitted before the Court of Cassation (the highest court in Egypt) and the Constitutional Court only after practicing as a lawyer admitted to appear before the Court of Appeal for ten years.

Only lawyers admitted to appear before the Court of Appeal and the Supreme Court have the right to issue written legal advice. Lawyers are generally specialise in commercial law, tax law, intellectual property law, criminal law, maritime law, administrative law, or family law.

How is the legal profession regulated?

The Advocacy Law No. 17 of 1983 regulates the Bar Association (www.baegypt.org/index.php) (website in

Arabic) and the registration of lawyers at the Bar Association at all levels. The law includes the code of professional conduct of the lawyers.
Every lawyer in Egypt must renew his registration at the Bar Association every year. A card is issued to each lawyer to evidence his registration at the Bar Association and the level of courts before which the lawyer is admitted.

Legal terms

Undergone خضع
Significant هام
Reform اصلاح/تعديل
Barristers محامين
Representing تمثيل
Client عميل
Role دور
Challenge تحدي
Due process الاجراء القضائي
Fair عادل
Essential جوهري
Provision نص
Un human rights committee لجنة الامم المتحدة لحقوق الانسان
international fair trial محاكمة دولية عادلة
take place يحدث
un declaration اعلان الامم المتحدة
lack of نقص
military and emergency court محكمة الطواريء و العسكرية
attorneys محامين
inadequacy عدم كفاية
last يستمر

Rapporteur ر	مقر
Protection	حماية
guarantees	ضمانات
criminal court ة	محكمة جنائي
interference	تدخل
declining	هبوط/تراجع
exception	استثناء
ethical cod	مدونة اخلاقية
document	وثيقة,
structure	هيكل
regulate	ينظم

Chapter two assessment

Translate the following legal terms into Arabic:

exception
ethical cod
document
structure
regulate
Due process Fair
Essential
Provision
Un human rights committee
international fair trial
take place

II-translate the following legal terms into English

خضع
عدم كفاية
مقرر

يحدث
تراجع
الاجراء القضائي
عميل
محامي
جوهري
تحدي

Translate the following legal comprehension into Arabic:

The Advocacy Law No. 17 of 1983 regulates the Bar Association (www.baegypt.org/index.php) (website in Arabic) and the registration of lawyers at the Bar Association at all levels. The law includes the code of professional conduct of the lawyers.

Every lawyer in Egypt must renew his registration at the Bar Association every year. A card is issued to each lawyer to evidence his registration at the Bar Association and the level of courts before which the lawyer is admitted.

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Chapter three

Public notaries

A notary public is an officer of the law who is authorized, among other things, to draw up, attest and certify deeds and other documents

To prepare wills and probate documents, to administer others and take a statement of truth.

The Governor's Notary Section answers hundreds of telephone inquiries every week regarding the notary law and proper notarial procedures. In talking with notaries, it is surprising how many of them do not understand the basic act of "notarizing a signature."

Many incorrectly assume that they are just verifying identification and witnessing a signature. But, the act of notarization is much different.

When you notarize a signature, you must perform one of two official notarial acts: take an acknowledgment from or administer an oath (or affirmation) to the document signer. These two acts have different purposes. The lack of understanding of these basic duties causes confusion and often leads to errors in notarizations, even among the most experienced notaries.

To take an acknowledgment, the document signer must personally appear before you, the notary public, and declare that he or she has signed the document voluntarily. You should ensure that the signer understands the document and has not been coerced into signing. If there is any question about the signer's willingness to execute the document or his or her understanding of the contents of the document,

you should refuse to notarize and perhaps refer the person to an attorney for legal advice.

You may want to ask the signer, “Do you acknowledge that this is your signature and that you are executing this document of your own free will?” If the answer is yes, you should then complete a certificate which states that the execution of the document was acknowledged by the signer.

Documents typically requiring an acknowledgment include deeds, mortgages, contracts, and powers of attorney (except those pertaining to motor vehicle titles).

An oath or affirmation is administered to a document signer when the signer is required to make a sworn statement about certain facts. The signer personally appears before you to swear (or affirm) to you, an officer duly appointed to administer oaths, that the information contained in the document is true. A person who makes a false oath or affirmation is subject to criminal charges for perjury. Sworn statements are commonly used in affidavits, depositions, and applications.

A notarization requiring an oath begins with the administration of an oath or affirmation. The courts have held that there should be a verbal exchange between the notary and the document signer in which the signer indicates that he or she is taking an oath. An oath similar to one administered in court by a judge or bailiff would be sufficient. Or, you may simply ask, “Do you swear (or affirm) that the information contained in this document is true?” After receiving an affirmative answer, you must

complete a proper notarial certificate indicating that an oath or affirmation was taken.

If the document you are asked to notarize contains a prepared notarial certificate, look for the key words “acknowledged” or “sworn to” to tell you which notarial act is required. If there is no notarial certificate on the document, the signer must direct you whether he or she wants to make an acknowledgment or take an oath. Unless you are an attorney, you are not authorized to advise a person which notarial act is appropriate for the document presented for notarization, and you may not advise the person about the contents of the document.

In order to correctly perform the duties of your office, you need to understand what it means to “notarize a signature” and the difference between the acknowledgment and the oath.

Affidavits

An affidavit is a common form of sworn statement requiring an oath.

. Please note that the affiant is the person making the sworn statement.

Depositions

A deposition is the testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution. The person giving the testimony is called the deponent.

Notaries are authorized to administer an oath for a deposition for use in a court case or an investigation. When

administering the oath, the notary must require the deponent's physical presence and properly identify him or her. If the notary keeps a journal or record of notarial acts, the journal entry should be made at this point, including the deponent's signature. The notary would then administer the oath or affirmation, perhaps by having the deponent raise his or her right hand and asking:

"Do you swear (or affirm) that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth?"

Once an affirmative answer is given, the deponent is now under oath, and the notary's responsibility is over.

Legal terms

Public notary الموثق العام
Officer of the law موظف القانون/ مراقب القانون
Authorized مفوض
Attest and certify يشهد ويصدق
Deeds عقود ووثائق
Verifying تحقيق
Acknowledgement اعتراف/شكر
Before امام
Sign يوقع
Perform ينجز
Affidavits شهادات/ اقرارات
Common form شكل شائع
Sworn يمين
Statement بيان
Oath اداء اليمين
Deposition الاقرارات
Testimony شهادة

Witness شاهد
Authorized مفوض
Criminal prosecution محاكمة جنائية
Administer ادارة
Identify يتحقق
Swear يقسم
About to علي وشك

Chapter three assessment:

I Translate the following legal terms into Arabic:

Public notary
Officer of the law
Authorized
Attest and certify
Deeds
Verifying
Acknowledgement
Identify
Swear
About to

II Translate the following legal terms into English:

يشهد ويصدق
عقود ووثائق
تحقيق
اعتراف/شكر
امام
يوقع
ينجز
شهادات/ اقرارات

شكل شائع

يمين

III Translate the following legal comprehension into Arabic:

A deposition is the testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution. The person giving the testimony is called the deponent.

Notaries are authorized to administer an oath for a deposition for use in a court case or an investigation. When administering the oath, the notary must require the deponent's physical presence and properly identify him or her. If the notary keeps a journal or record of notarial acts, the journal entry should be made at this point, including the deponent's signature. The notary would then administer the oath or affirmation, perhaps by having the deponent raise his or her right hand and asking:

Part four
The civil law

After studying this part you should understand the following points:

1-the nature of liability in tort and contract and the types of harmful activity for which the law of tort provides a remedy:

2-Circumistances in which liability is imposed without fault.

3-Details of liability in negligence for defective goods and services.

4-Meaning and elements of a contract.

5 Requirements for a person to be a party to a contract.

6- differences between an offer and an invitation to treat.

Chapter one
Kinds of civil liability

The Egyptian Civil Code discusses various sources of obligations, the most important of which for present purposes are contract and tort. The applicable Egyptian legal provisions are quite similar to those prevailing in most European civil law jurisdictions. In general, a claim for compensation under the Egyptian Civil Code, unlike the law in some other Arab jurisdictions, must be based on either contractual or tort liability. In other words, a plaintiff may not base its claim against a defendant on a combination of the two types of liability. Where a contract exists, a contractual party seeking compensation for harm suffered generally must proceed under contract principles.

(a) Contractual Liability

In the case of harm suffered by a purchaser of a product, the seller's liability would be based on contract. Under Egyptian law, the seller of a product implicitly warrants that it is free from any defect.

Article 447 of the Egyptian Civil Code contains some general rules as to a seller's liability to a purchaser: C A seller is liable to a purchaser if, at the time of delivery, the relevant product does not possess those qualities that the seller guaranteed, or if the product has a defect(s) that diminishes its value or usefulness for the purpose intended, as indicated in the contract or from the nature or destined use of that product. The seller is liable for harm caused by the defect even if the seller was unaware of such defect. C However, the seller is not liable for any defect of which the purchaser was aware at the time of the sale, or for any

defect that the purchaser could have discovered by examining the product with the care of a reasonable person. As an exception to this general rule, a seller would be liable to the purchaser if the seller had assured the purchaser that the product was free of any defect, or if the seller fraudulently concealed such defect.

Despite such generally applicable rules on seller liability, the Egyptian Civil Code allows contractual parties relatively broad freedom to negotiate their respective obligations and liabilities, through specific contractual provisions on warranty, indemnification and waiver. For example, Article 453 of the Egyptian Civil Code states that the parties to a contract may agree to increase, decrease or eliminate the seller's warranty, again provided that the seller has not fraudulently concealed defects from the purchaser. Along these same lines, general contract rules in the Egyptian Civil Code allow parties to agree that the obligor be discharged from all liability for its failure to perform contractual obligations, with the exception of liability arising from the obligor's fraud or gross negligence

(b) Tort Liability

Absent 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, i.e., liability for damages and injuries arising out of non-contractual obligations.

According to Article 163 of the Egyptian Civil Code, a person committing any fault, causing harm to another, is obliged to compensate for the damages suffered. 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.

The Egyptian Civil Code does not permit parties to disclaim liability for tortious acts, unlike the case with contractual liability. Article 217(3) of the Egyptian Civil Code provides that "any clause discharging a person from responsibility for wrongful acts [torts] is void". Nonetheless, Egyptian tort principles favorable to a defendant -- such as contributory fault, intervening cause, and necessity may help to reduce the number of product liability lawsuits that are actually initiated in Egypt.

(c) Damages

Article 221 of the Egyptian Civil Code contains some general principles for quantifying damages resulting from breach of an obligation, whether arising under contract or tort. (The Civil Code often refers to the party breaching its obligation as the ‘debtor’, and the party suffering harm from that breach as the 'creditor’.)

The judge will determine the amount of damages, if it has not been established within the parties’ contract (e.g., a liquidated damages clause) or by law. The amount of damages shall include losses suffered by the creditor as well as lost profits, provided such are the normal result of the debtor’s failure to perform its obligation (or its delay in performing). For these purposes, such losses shall be considered to be a ‘normal result’ if the creditor is not able to avoid those losses despite making reasonable efforts. If the relevant obligation arises from contract (rather than tort) principles, then a debtor will not be liable for damages

greater than what could have been normally foreseen at the time of entering into the contract although this limitation does not apply if the debtor committed fraud or gross negligence.

Egyptian Civil Code liability provisions do not explicitly use the term "consequential" damages.

In Egypt, a person generally is not liable for indirect damages. A person may be liable for direct damages, including both “material damage” and “moral damage.

Contractual liability includes those damages which are both direct and foreseeable, i.e., the “natural result” of a contractual breach.

Tort liability includes all direct damages, i.e., whether foreseeable or unforeseeable. Egyptian jurists have summarized these rules in the following examples: Direct/Indirect. If a less r fails to fulfill the provisions of a lease and the lessee is forced to move its business to other premises, the cost of the move (including increased rent at the new premises) would be direct damages arising from the contractual breach. However, if the new premises contain certain harmful bacteria which cause the lessee's employees to become ill, this harm would be indirect damages for which the lessor would not be liable under either contract or tort principles.

Foreseeability. A bus company can foresee that a passenger will carry luggage containing articles of more or less considerable value (as opposed to items of quite exceptional value). Consequently, if the bus company misplaces a passenger's luggage, it will be liable for such damages.

Compare the situation where a passenger is traveling to a destination in order to participate in 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 arrived late at the destination, the passenger normally cannot recover the damages suffered by not participating in the event, unless circumstances indicate that the bus company foresaw the special risk which it was assuming.

Loss of Profit, If a singer breaks his/her contract with a theater owner, the latter can claim expenses incurred in preparing for the performance, advertising, set designs and the like, as well as for the loss of profits which the theater owner would have derived from the concert. In addition to these material damages, a court may consider whether the theater owner also suffered moral damages (e.g., loss of reputation with the public) due to the singer's breach of contract.

Mitigation, If a farmer hires a moving company to transport a broken piece of equipment to be repaired, but the equipment is lost by the moving company, the farmer cannot wait for months to pass and then claim losses for being without the equipment for an entire season. Rather, when the farmer learns that the equipment is lost, he should use his best efforts to obtain replacement equipment.

The Egyptian Civil Code also contains some other rules on damages that apply specially to either contractual liability or tortious liability, but not both. For example, contractual parties may agree in advance as to "liquidated damages" owed in the event of contractual breach. Articles

224 and 225 of the Egyptian Civil Code contain three important general principles:

The liquidated amount is not owed if the debtor proves that the creditor did not suffer any damage; The liquidated amount may be reduced if the debtor proves that the parties' estimation was excessive, or if the debtor has partly 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.

legal terms

civil liability	مسئولية مدنية
egyptian civil code	تقنين القانون المدنى المصري
contract	عقد
tort	ضرر
Plaintiff	مدعي
contractual liability	مسئولية عقدية
purchaser	مشتري
product	منتج
seller	بائع
based on	يستند علي
defect	عيب
Diminish	يتناقص
Harm	ضرر
Unaware	غير مدرك
even if	حتي اذا
negotiable	قابل للتفاوض
indemnification	تعويض
increase	يزيد
decrease	ينقص

conceal	يخفي
tort liability	مسئولية تقصيرية
commit	يرتكب
discharge	يبرىء
breach	يخالف
Debtor	مدين
Creditor	دائن
gross negligence	اهمال جسيم
foreseen	يتوقع
contractual relationship	علاقة تعاقدية
compensate	يعوض
disclaim	يتنازل
void	باطل

chapter one assessment

***I* translate the following legal terms into Arabic:**

defect
diminish
harm
unaware
even if
gross negligence
foreseen
contractual relation ship
compensate
disclaim

II translate the following legal terms into English:

مسئولية مدنية
عقد
مسئولية عقدية
بائع

مشتري
مدعي
بائع
مشتري

III translate the following legal comprehension into English:

Tort liability includes all direct damages, i.e., whether foreseeable or unforeseeable. Egyptian jurists have summarized these rules in the following examples: Direct/Indirect. If a less r fails to fulfill the provisions of a lease and the lessee is forced to move its business to other premises, the cost of the move (including increased rent at the new premises) would be direct damages arising from the contractual breach. However, if the new premises contain certain harmful bacteria which cause the lessee's employees to become ill, this harm would be indirect damages for which the lessor would not be liable under either contract or tort principles.

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Chapter two
Law of contract

What is a contract?

The whole essence of business life is the making of contracts – contracts to perform work; contracts to buy and sell; contracts to make something; or to employ someone; or to use something. We must, therefore, know what a contract **is**, and **when we have one**.

A contract is an **agreement** between **two or more people**. Every contract is an agreement – but not every agreement is a contract. Two people agree about something to be done. They are called "the parties". First, the subject of their agreement may be such that neither of them has the remotest intention that any legal consequences should flow from it. For example, you invite someone to dinner and he says "*Yes, I would love to come*". You have an agreement. However, if he just does not turn up, neither of you would expect to hurry round to court and sue for the cost of the wasted food! So, the first essential of a contract is that the parties should intend their agreement to have legal consequences.

In the second place, the agreement reached may have certain aspects about it which make it such that the law will not enforce it. In other words, although it is a contract, it is not a **valid** contract.

Essential Elements of a Valid Contract

In order that an agreement can be a valid contract which the law recognizes and will enforce, it must contain certain essential features. We shall be discussing them all in much

greater detail later, but at this stage you should know what they are.

(a) There must be agreement between the parties, or a **meeting of minds**. This is called "consensus ad idem".

(b) Usually, there must be "**consideration**" present – that is, something of **value** must be given in exchange for a promise.

(c) There must be an intention to **create legal relations**.

(d) The parties must have **legal capacity** to contract.

(e) There must be no circumstances surrounding the contract which make it **unenforceable, void** (i.e. as if it had never existed), **voidable**, or **illegal**.

Form of Contract

Most contracts are equally valid and effective, whether they are oral or written. The only difficulty with oral contracts is that the parties may not properly remember what they actually agreed, and it is more difficult – should need arise – to prove the details of the agreement. However, certain contracts must be in writing, and others are unenforceable unless evidenced by writing.

Contracts which by Statute Must be in Writing

! A **bill of exchange** or **promissory note** must be made in writing .

! **Contracts of marine insurance** are void unless made in writing in the form of a policy.

! A **consumer credit agreement**, such as a hire-purchase or loan agreement must be in writing and signed by both parties.

! A **bill of sale** must not only be in writing but also in a certain form; otherwise, it is void .

! Contracts for the sale of land – but not contracts to grant a leasehold – must be in writing and must be signed by or on behalf of both parties **.**

THE AGREEMENT

As we have seen, in order to have a contract there must be an agreement, a "consensus ad idem" – there must be an offer, and an acceptance. However simple or however complicated the contract may be, this rule is invariable. For example, at one end of the scale you may say: "*I will sell you this book for £1*". The other person replies: "*OK*". Offer has been followed by acceptance – hence there is a contract. At the other end of the scale, a civil engineering contractor may submit tender documents for the construction of a dam for £200 million. After months of negotiation, all the details will finally be accepted. Once again, an offer has been made and accepted. A contract exists.

As you can imagine, a number of rules have grown up to regulate and decide on whether a valid offer or acceptance has been made

The Offer

An offer is an expression by one person (the "offeror") that he is willing to contract with another (the "offeree") on specified terms. If it is to form the basis of a contract, the offeror must intend that legal consequences shall result.

An offer can be made to one or more specified people, or it can be general, made to "the world at large". It can take a number of forms – as follows.

! An offer made to a specified person, either verbally or in writing. This is straightforward.

! An offer made to the "world at large". This is where a person announces that he will do so and so, if anyone who cares to accept will do what is required by the offer.

For example, a person puts an advertisement in the newspaper: "*£5 reward will be given to anyone who returns my lost dog, Fido*". That is a valid offer to anybody who finds Fido, and duly returns him. If the offer is in the form of a promise by the offeror to do or pay something in return for some act by the offeree, then the performance of the required act is in itself an indication of acceptance of the offer.

The company manufactured a patent "smoke ball" which, it claimed, prevented influenza. It advertised in the press that it would pay £100 to anyone who contracted influenza after taking one of its smoke balls. Mrs Carlill read the advertisement, bought a smoke ball from the chemist, and used it as directed. However, she promptly got influenza, and she sued the company for the promised sum of £100. The company claimed that it was a "mere puff", and not meant to be taken seriously.

HELD: The promise to pay £100 was a valid offer to the world at large. Mrs Carlill had accepted by complying with the conditions, and was entitled to the money.

Of course, only one person can return a dog; the smoke ball situation is different.

! An offer can be inferred from conduct. This type of offer is very frequent in everyday life. For example, if you board a bus, you are offering to pay the fare if it takes you to your destination.

Or if you go into the newsagent, pick up a copy of a paper and hold out the correct money, you are offering to buy the newspaper for the price printed on it.

However, even in more complicated transactions, an offer can also be inferred from conduct.

Invitations to Treat

An offer must be distinguished both from a **request for information**, and from an **invitation tomake an offer**. Neither of these creates the basis of contractual relations.

! An example of a request for information P sent a telegram to D, saying: "*Will you sell us Bumper Hall Pen? Telegraph lowest cash price*". D replied by wire: "*Lowest cash price Bumper Hall Pen for £900*". P promptly sent another telegraph: "*We agree to buy Bumper Hall Pen for £900*". The sale never went ahead, and P sued.

HELD: The first telegram was a mere request for information. The second was information supplied as requested. The third was the only one with any contractual meaning, as it constituted an offer to buy for £900. This offer was never accepted, so no contract came into being.

! There are many instances of "offers to treat".

A shopkeeper (or supermarket) displaying goods marked at a certain price is inviting the public to make an offer. The price tag is merely an indication of the price he (or it) is likely to accept.

What happens is that, in a shop or supermarket, the act of taking goods off the shelf contractually means nothing. However, putting them down in front of the shopkeeper or cashier constitutes an offer to buy (at the named price,

unless otherwise stated in the offer). Ringing up the price on the till, for example, constitutes acceptance.

Communication of Offer

In order to be effective, an offer must be communicated to the offeree – or, at least, he must know about it. This is not quite as ***Communication of Offer***.

In order to be effective, an offer must be communicated to the offeree – or, at least, he must know about it. This is not quite as obvious as it sounds, because, if a person does something in ignorance of the offer, he can neither reap the benefit nor be bound by any obligations. To revert to our example concerning "offers to the world at large", if Fido had had his owner's address on his collar, and the finder returned the dog without knowing about the offer of a reward, he would not be entitled to it.

The motive for accepting is not relevant but the offeree must be aware of the offer

Termination of Offer

An offer, once made, does not remain open for acceptance indefinitely. It can terminate for a number of reasons and, once terminated, it is no longer capable of being accepted. An offer terminates in **four** ways:

! **If It Is Withdrawn**

Unless an offer specifically states that it is irrevocable, or that it will remain open for a definite stated time, it can be withdrawn at any time before it has been accepted – provided, that is, that the revocation has been communicated to the offeree.

That is the general rule. However, difficulties can arise. For instance, if the acceptance of an offer involves the

doing of some act (acceptance by conduct), can the offer be withdrawn when the act has been partially completed? According to the strict rule, the answer should be "yes" – but, fortunately common sense has prevailed. if one man offers another £100 if he will go to York, can the offer be withdrawn when the traveller is halfway there? Much judicial ink has been used to explain this but the generally accepted solution is that the acceptance is complete once the offeree has commenced the performance, but the offeror is not bound to pay until it has been completed.

! **On the Death of Either Party Before Acceptance**

The death of the offeree always terminates an offer. His personal representative cannot accept on his behalf. There is some doubt as to whether an offer can be accepted if the offeree is not aware of the death of the offeror. One view states that the death of the offeror automatically terminates the offer, and that knowledge of it is immaterial. The better view is, probably, that it is terminated only if the offeree is aware of the fact, unless the personality of the offeror is an essential ingredient of the matter. **If It Is Rejected**

This is fairly obvious. A point to note is that the act of rejection destroys the offer, and the offeree cannot change his mind, and later accept.

Rejection does not have to be expressed: it can be implied. It is sufficient if the offeror can reasonably infer from the offeree's conduct that he does not intend to accept.

! **If It Lapses**

An offer will lapse and thereafter be incapable of acceptance, in **three** events:

(i) In the first place, if the offer specifically stated that it would cease, or had to be accepted, by **a** certain date.
(ii) Second, if it stated that it was conditional upon some circumstances other than time.
(iii) In the third place, an offer lapses if it is not accepted within a "reasonable" time. It would, plainly, be quite wrong if every offer remained open for ever and a day, unless the offeror remembered to withdraw it. Hence this rule – but what constitutes a "reasonable" time depends on the facts of the particular case. An offer to buy perishable fruit or vegetables will lapse after quite a short period, one to sell a house or a motor car will remain open much longer.

Acceptance

The cardinal rule to remember is that the acceptance of an offer must be absolute and unqualified. Offer and acceptance must correspond in every particular.

If a purported acceptance alters or qualifies the offer in any way, it constitutes a rejection of the offer, followed by a counter-offer. The counter-offer is then open to acceptance or rejection in the same way as the original offer.

If an offer is made in alternative terms, the acceptance must make it quite clear which alternative is being accepted.

! If an offer is accepted but the acceptance introduces additional terms not contained in the offer,
this also constitutes a rejection .

! An acceptance does not have to be express it can be inferred from conduct. An offer to buy

goods is accepted by supplying them .

! As in the case of an offer, an acceptance must be **communicated** to the offeror, otherwise it is not effective.

Tenders

This topic has to be specially considered regarding acceptance of an offer. Suppose a local authority invites tenders for the supply of specified goods to be delivered over a given period. A trader puts in a tender showing that he is prepared to supply at a given price; this is clearly an offer. But there may be difficulty in deciding whether subsequent action by the corporation is an acceptance. There are two possibilities, depending on the wording of the corporation's original invitation.

If the corporation states that it requires a specified quantity of the goods during a particular period, then, on "acceptance" of the tender, the trader is bound to deliver.

If the corporation advertises that it may require specified goods up to a maximum amount, deliveries to be made if and when required, the effect of acceptance is quite different. The trader has made a standing offer. There is no acceptance by the corporation in the legal sense: this will only take place when a requisition for a definite quantity of goods is made. Each requisition by the offeree, i.e. the corporation, is a separate act of acceptance which creates a separate contract .

Incomplete Agreement

It sometimes happens that the parties to a contract will agree in principle only, leaving many details unresolved, or they will agree only certain things, or omit other necessary matters. These are called "incomplete agreements".

In extreme cases, the court will hold the whole contract void for uncertainty. However, it is reluctant to do this, and it will uphold a contract if at all possible.

CAPACITY TO CONTRACT

In general, anybody over the age of 18, who, at the time, is sober and mentally unimpaired, is capable of contracting.

This also applies to corporations which can contract in exactly the same way as living persons – but, of course, they must do it through the agency of a human being. A corporation can contract under its corporate seal or by parol.

However, certain categories of person have no capacity (or only limited capacity) to contract.

Minors

A minor is a person under the age of 21ears. He becomes adult at the beginning of his 18th birthday – i.e. at one minute past midnight.

Most contracts with a minor are "voidable" at his option. That is to say, he – **but not the other party** – has the right not to be bound by the contract. Such contracts are as described below.

! **Binding on the minor**, unless he repudiates them during his minority, or within a reasonable time after reaching his majority.

This category covers the majority of contracts into which a minor enters, except those mentioned below.

So, it is at the minor's option whether he wishes to be bound by his contract or not.

A minor became liable to a firm of brokers for £547. After he reached his majority (then 21)
the firm sued, and he compromised by giving two bills of exchange for £50. One of the bills was endorsed to Mr Smith, who took it in ignorance of the circumstances.

Mentally-disordered Persons

Except for contracts for necessaries, contracts are not binding on such persons, unless they specifically ratify them during a **lucid period**.

Drunken Persons

Exactly the same applies to a drunken person. To be bound, he must ratify the contract when he sobers up.

Legal terms

Contract	عقد
Employ	يوظف
Agreement	اتفاق
Legal consequences	اثار قانونية
Essential elements	اركان جوهرية
Meeting of minds	تطابق ارادتين
Consideration	مقابل
Value	قيمة
Legal capacity	الاهلية القانونية
Illegal	غير قانونى
Voidable	قابل للابطال
Bill of exchange	كمبيالة
Promissory note	سند اذنى
Marine insurance	تأمين بحري
A bill of sale	فاتورة بيع
Offer	ايجاب
Offeror	الموجب

Offeree	المقدم اليه الايجاب
Expression	تعبير
Held	حكم
Invitation to treat	دعوة للتعاقد
Communication of offer	ايصال الايجاب
Termination of offer	انتهاء الايجاب
Withdrawn	سحب
Acceptance	قبول
Reject	رفض
Lapses	مرور الزمن
Cardinal rule	قاعدة رئيسية
Tender	عطاء
Incomplete agreement	اتفاق غير كامل
Capacity to contract	اهلية التعاقد
Corporation	شركة
Minor	قاصر
Adult	راشد
Binding	ملزم
Mentally-disordered persons	اشخاص مضطربين عقليا

I Translate the following legal terms into Arabic:

Communication of offer

Termination of offer

Withdrawn

Acceptance

Reject

Legal capacity

Illegal

Voidable

II Translate the following legal terms into English:

اتفاق

عقد
يوظف
اركان جوهرية
كمبيالة
سند اذني
تامين بحري
دعوة للتعاقد
ايجاب
الموجب

III Translate the following legal comprehension into Arabic:

That is the general rule. However, difficulties can arise. For instance, if the acceptance of an offer involves the doing of some act (acceptance by conduct), can the offer be withdrawn when the act has been partially completed? According to the strict rule, the answer should be "yes" – but, fortunately common sense has prevailed. if one man offers another £100 if he will go to York, can the offer be withdrawn when the traveller is halfway there? Much judicial ink has been used to explain this but the generally accepted solution is that the acceptance is complete once the offeree has commenced the performance, but the offeror is not bound to pay until it has been completed.

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Part five

Public international law

Learning objectives

After studying this part you should understand the following main points;
1-the nature and definition of public international law.
2-functions of international law.
3-principles of international law.
4-What is the meaning of sovereignty of the state

Introduction to International Law

This part is intended to provide students an overview of international law and the structure of the international legal system. In many cases it oversimplifies the law by summarizing key principles in less than one page in order to provide the student with an overview that will enhance further study of the topic.

DEFINITION OF INTERNATIONAL LAW

International Law consists of the rules and principles of general application dealing with the conduct of States and of international organizations in their international relations with one another and with private individuals, minority groups and transnational companies.

INTERNATIONAL LEGAL PERSONALITY

International legal personality refers to the entities or legal persons that can have rights and obligations under international law.

1. States

A *State* has the following characteristics: (1) a permanent population; (2) a defined territory; (3) a government; and (4) the capacity to enter into relations with other States. Some writers also argue that a State must be fully independent and be recognized as a State by other States. The international legal system is a horizontal system dominated by States which are, in principle, considered sovereign and equal. International law is predominately made and implemented by States. Only States can have sovereignty over territory. Only States can become members of the

United Nations and other international organizations. Only States have access to the International Court of Justice. .

2. International Organizations

International Organizations are established by States through international agreements and their powers are limited to those conferred on them in their constituent document. International organizations have a limited degree of international personality, especially vis-à-vis member States. They can enter into international agreements and their representatives have certain privileges and immunities. The constituent document may also provide that member States area legally bound to comply with decisions on particular matters.

The powers of the United Nations are set out in the United Nations Charter of 1945. The main political organ is the General Assembly and its authority on most matters (such as human rights and economic and social issues) is limited to discussing issues and making recommendations.

The Security Council has the authority to make decisions that are binding on all member States when it is performing its primary responsibility of maintaining international peace and security.

The main UN judicial organ is International Court of Justice (ICJ), which has the power to make binding decisions on questions of international law that have been referred to it by States or give advisory opinions to the U.N.

3. Nationality of individuals, companies, etc.

Individuals are generally not regarded as legal persons under international law. Their link to State is through the

concept of *nationality*, which may or may not require *citizenship*. *Nationality* is the status of being treated as a national of a State for particular purposes. Each State has wide discretion to determine who is a *national*. The most common methods of acquiring nationality at birth are through one or both parents and/or by the place of birth. Nationality can also be acquired by adoption and naturalization.

Companies, ships, aircraft and space craft are usually considered as having the nationality of the State in whose territory they are registered. This is important because in many circumstances States may have international obligations to regulate the conduct of their nationals, especially if they are carrying out act activities outside their territory.

Under the principle of *nationality of claims*, if a national of State A is injured by State B through internationally unlawful conduct, State A may make a claim against State B on behalf of its injured national. This is known as the doctrine of *diplomatic protection*.

D. SOVEREIGNTY OF STATES OVER TERRITORY

Sovereignty is the exclusive right to exercise supreme political authority over a defined territory (land, airspace and certain maritime areas such as the territorial sea) and the people within that territory. No other State can have formal political authority within that State. Therefore, sovereignty is closely associated with the concept of political *independence*.

Classical international law developed doctrines by which States could make a valid claim of sovereignty over

territory. The doctrines included *discovery* and *occupation* and *prescription*.

During the period of Western colonial expansion new territories and islands were subject to claims of sovereignty by discovery and occupation. Sovereignty could also be transferred to another State by *conquest* (use of force) or by *cession* where the sovereignty over the territory would be ceded by treaty from one State to another.

Since a State has sovereignty over its territory, the entry into its territory by the armed forces of another State without consent is a *prima facie* breach of international law. Among the attributes of sovereignty is the right to exclude foreigners from entering the territory, which is traditionally referred to as the right to exclude aliens.

Since a State has sovereignty within its territorial sea (with some exceptions such as the *right of innocent passage*), it has the exclusive authority to exercise police power within its territory sea.

For example, if foreign ships are attacked by "pirates" in the territorial sea of a State, the only State that can exercise police power and arrest the pirates in the territorial sea is the coastal State.

E. INTERNATIONAL OBLIGATIONS (SOURCES OF LAW)

It is generally accepted that the sources of international law are listed in the Article 38(1) of the Statute of the International Court of Justice, which provides that the Court shall apply:

a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b) international custom, as evidence of a general practice accepted as law;
c) the general principles of law recognized by civilized nations;
d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, *as subsidiary means* for the determination of rules of law.

1. Treaties

International conventions are generally referred to as *treaties*. *Treaties* are written agreements between States that are governed by international law. Treaties are referred to by different names, including agreements, conventions, covenants, protocols and exchanges of notes. If States want to enter into a written agreement that is not intended to be a *treaty*, they often refer to it as a *Memorandum of Understanding* and provide that it is not governed by international law.

Treaties can be bilateral, multilateral, regional and global.

The law of treaties is now set out in the 1969 Vienna Convention on the Law of Treaties which contains the basic principles of treaty law, the procedures for how treaties becoming binding and enter into force, the consequences of a breach of treaty, and principles for interpreting treaties.

The basic principle underlying the law of treaties is *pacta sunt servanda* which means every treaty in force is binding upon the parties to it and must be performed by them in *good faith*. The other important principle is that treaties are binding only on States parties. They are not binding on third States without their consent. However, it may be possible for some or even most of the provisions of a multilateral, regional or global treaty to become binding on all States as rules of customary international law.

There are now global conventions covering most major topics of international law. They are usually *adopted* at an international conference and opened for *signature*. Treaties are sometimes referred to by the place and year of adoption, e.g. the 1969 Vienna Convention. If a State becomes a *signatory* to such a treaty, it is not bound by the treaty, but it undertakes an obligation to refrain from acts which would defeat the object and purpose of the treaty.

A State expresses its *consent to be bound* by the provisions of a treaty when it deposits an instrument of *accession* or *ratification* to the *official depository* of the treaty. If a State is a signatory to an international convention it sends an *instrument of ratification*. If a State is not a signatory to an international convention but decides to become a party, it sends an *instrument of accession*. The legal effect of the two documents is the same. A treaty usually *enters into force* after a certain number of States have expressed their consent to be bound through accession or ratification. Once a State has expressed its consent to be bound and the treaty is in force, it is referred to as a *party* to the treaty.

The general rule is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. The preparatory work of the treaty and the circumstances of its conclusion, often called the *travaux preparatoires, are a* supplementary means of interpretation in the event of ambiguity.

2. Custom

International custom – or customary law – is evidence of a general practice accepted as law through a constant and virtually uniform usage among States over a period of time. Rules of customary international law bind all States. The State alleging the existence of a rule of customary law has the burden of proving its existence by showing a consistent and virtually uniform practice among States, including those States specially affected by the rule or having the greatest interest in the matter. For example, to examine the practice of States on military uses of outer space, one would look in particular at the practice of States that have activities in space.

Most ICJ cases also require that the States who engage in the alleged customary practice do so out of a sense of legal obligation or *opinio juris* rather than out of comity or for political reasons.

In theory, *opinio juris* is a serious obstacle to establishing a rule as custom because it is extremely difficult to find evidence of the reason why a State followed a particular practice. In practice, however, if a particular practice or usage is widespread, and there is no contrary State practice proven by the other side, the Court often finds the existence

of a rule of customary law. It sometimes seems to assume that *opinio juris* was satisfied, and it sometimes fails to mention it.

Therefore, it would appear that finding consistent State practice, especially among the States with the most interest in the issue, with minimal or no State practice to the contrary, is most important.

Undisputed examples of rules of customary law are (a) giving foreign diplomats criminal
immunity; (b) treating foreign diplomatic premises as inviolable; (c) recognizing the right of innocent passage of foreign ships in the territorial sea; (d) recognizing the exclusive jurisdiction of the flag State on the high seas; (5) ordering military authorities to respect the territorial boundaries of neighboring States; and (6) protecting non-combatants such as civilians and sick or wounded soldiers during international armed conflict..

3. General Principles of Law

General principles of law recognized by civilized nations are often cited as a third source of law.

These are general principles that apply in all major legal systems. An example is the principle that persons who intentionally harm others should have to pay compensation or make reparation.

General principles of law are usually used when no treaty provision or clear rule of customary law exists.

4. Subsidiary means for the determination of rules of law

Subsidiary means are not sources of law, instead they are subsidiary means or evidence that can be used to prove the existence of a rule of custom or a general principle of law.

Article 38 lists only two subsidiary means - the teaching (writings) of the most highly qualified publicists (international law scholars) and judicial decisions of both international and national tribunals if
they are ruling on issues of international law. Writings of highly qualified publicists do not include law student articles or notes or doctoral theses.

Resolutions of the UN General Assembly or resolutions adopted at major international conferences are only recommendations and are not legally binding. However, in some cases, although not specifically listed in article 38, they may be subsidiary means for determining custom. If the resolution purports to declare a set of legal principles governing a particular area, if it is worded in norm creating language, and if is adopted without any negative votes, it can be evidence of rules of custom, especially if States have in practice acted in compliance with its terms. Examples of UN General Assembly Resolutions which have been treated as strong evidence of rules of customary international law include the following:

• GAR 217A Universal Declaration of Human Rights (1948)

• *GAR 2131 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of*
States and the Protection of their Sovereignty (1965) [Declaration on Non-
Intervention]

• GAR 2625 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among

States in Accordance with the Charter of the United Nations (1970) [Declaration on Friendly Relations]
• GAR 3314 Resolution on the Definition of Aggression
Some of these resolutions have also been treated as subsequent agreement or practice of States on how the principles and provisions of the UN Charter should be interpreted.

In addition, Article 38 fails to take into account the norm-creating effect of modern global conventions. Once the international community has spent several years drafting a major international convention, States often begin in practice to refer to that convention when a problem arises which is governed by the convention - in effect treating the rules in the Convention as customary. Furthermore, if the Convention becomes universally accepted the provisions in the Convention may become very strong evidence of the rules of custom, especially if States which are not parties have also acted in conformity with the Convention. Examples of such conventions would be the 1959 Vienna Convention on Diplomatic Relations and the 1969 Vienna Convention on the Law of Treaties.

5. Hierarchy of norms

In theory there is no hierarchy among the three sources of law listed in Article 38 of the ICJ Statute. In practice, however, international lawyers usually look first to any applicable treaty rules, then to custom, and last to general principles.

There are two types of norms or rules – not previously discussed - which do have a higher status.

First, *peremptory norms* or principles of *jus cogens* are norms that have been accepted and recognized by the international community of States as so fundamental and so important that no derogation is permitted from them. Examples of *jus cogens* principles are the prohibitions against wars of aggression and genocide. A war of aggression is the use of armed force to take over another State or part of its territory. Genocide is the killing or other acts intended to destroy, in whole or in part, of a national, ethnical, racial or religious group.

Second, members of the United Nations are bound by the Article 103 of the United Nations Charter, which provides that in the event of a conflict between the obligations of members under the Charter – including obligations created by binding decisions of the Security Council – the Charter obligations prevail over conflicting obligations in all other international agreements.

6. Role of the International Law Commission (ILC)

The ILC was established by the UN in 1948. The 34 members of the ILC are elected by the General Assembly after being nominated by member States. They possess recognized competence and qualifications in both doctrinal and practical aspects of international law and the ILC reflects a broad spectrum of expertise and practical experience The mandate of the ILC is the progressive development and codification of international law. The ILC usually spends many years studying areas of international law before presenting draft articles to the General Assembly for adoption as a draft convention. The primary written products of the ILC aside from the draft articles

themselves are the detailed periodic reports prepared by the Special Rapporteurs on each subject and the official commentary for each draft article.

Sometimes the official commentary to an ILC draft article or the Rapporteur's report will indicate whether that draft article is intended to codify a rule of customary law or is intended to progressively develop the law on that point. When the ILC Draft Articles are approved, they are approved together with the official commentaries.

The official commentaries to ILC draft articles and the reports of the ILC and its rapporteurs can be considered for two purposes. First, they are part of the *travaux préparatoires* when interpreting a treaty related to the subject of the draft article. Second, they are the writings of 34 highly qualified publicists speaking in unanimity and therefore serve as a subsidiary means for determining rules of customary law.

F. JURISDICTION OF STATES

1. Principles of Jurisdiction

The concept of *jurisdiction* refers to the power of a State to prescribe and enforce criminal and regulatory laws and is ordinarily based on the *territorial principle*, under which a State has jurisdiction over activities within its territory. Some states also claim jurisdiction over activities outside their territory which affect their territory.

States can also claim jurisdiction based upon the *nationality principle* by extending jurisdiction over their nationals even when they are outside the territory. For example, civil law countries extend their criminal law to

cover their nationals while abroad while common law countries usually only do so in exceptional cases.
There is also a very narrow category of crimes – including genocide and war crimes - over which States may assert jurisdiction based upon the *universality principle*, *which gives* all States have jurisdiction irrespective of nationality or location of the offence.

Almost all States claim jurisdiction under the *protective principle*, under which a State asserts jurisdiction over acts committed outside their territory that are prejudicial to its security, such as treason, espionage, and certain economic and immigration offences. The most controversial basis for jurisdiction – followed by very few States - is the *passive personality principle*, which establishes jurisdiction based on the nationality of the victim.

In recent years States have asserted jurisdiction over terrorist acts outside their territory directed against their nationals , thereby basing jurisdiction on a combination of the protective and passive personality principles.

Modern counter-terrorism treaties establish jurisdiction among State Parties based on the *presence of the offender* within their territory. If a persons who are alleged to have committed the offence established in the treaty (e.g, hijacking of an aircraft) is present in their territory, a State Party to the treaty is under an obligation to take the persons into custody, and to either prosecute them or extradite them to another State Party that has jurisdiction over the offence.

If two or more States have jurisdiction over a particular offence, they are said to have *concurrent jurisdiction*. In such cases the State which is most likely to prosecute the

offender is the State which has custody over him. No State may exercise jurisdiction within the territorial sovereignty of another State. The police of State A cannot enter the territory of State B to arrest a person who has committed a crime in State A. Also, if a crime takes place in the territorial sea of a coastal State, no State other than the coastal State my intercept and arrest the ship carrying the offenders.

States enter into bilateral treaties to provide for the *extradition* of alleged offenders. Sending an alleged criminal to another State for investigation or prosecution in the absence of an extradition treaty is referred to as *rendition*.

The high seas and outer space are outside the territorial jurisdiction of any State. The general principle of jurisdiction in these common areas is that ships, aircraft and spacecraft are subject to the jurisdiction of the "flag State", or State of registration. The general principle is that ships on the high seas are subject to the exclusive jurisdiction of the flag State, and cannot be boarded without its express consent. The most notable exception is piracy. All States have a right to board pirate ships on the high seas without the consent of the flag State.

2. Immunities from Jurisdiction

The principle of *sovereign equality of States* requires that the official representatives of one State should not be subject to the jurisdiction of another State. For example, the law of the sea provides that warships are subject only to the jurisdiction of the flag State. Even if warships commit acts contrary to the right of innocent passage or the laws and

regulations of the coastal State, the coastal State's only remedy is to escort the offending warship out of the territorial sea.

The principle of *State immunity or sovereign immunity* provides that foreign sovereigns enjoy immunity from the jurisdiction of other States. The principle of *diplomatic immunity* provides that the diplomatic agents of the sending State have complete immunity from the criminal jurisdiction of the receiving State. Since this immunity belongs to the sending State and not to the diplomat, it can be waived by the sending State. Also, the receiving State has the right to expel any diplomatic agent from its country by declaring them *persona non grata*. The premises of an embassy or diplomatic mission as well as its records and archives are also inviolable. The authorities of the receiving State cannot enter a foreign embassy without the express permission of the head of mission, even in the case of an emergency.

G. STATUS OF THE SEAS, OUTER SPACE AND ANTARCTICA

1. High Seas

The high seas are governed by several fundamental principles. First, no State may purport to assert sovereignty over any part of the high seas. Second, all States have the right to exercise the freedoms of the seas, including freedoms of navigation, freedom of over flight, freedom to lay submarine cables and pipelines, and freedom to conduct marine scientific research. Freedom of fishing was a traditional high seas freedom but fishing on the high seas is subject to restrictions as set out in the 1982 United Nations

Convention on the Law of the Sea. It is generally agreed that freedom of the seas also includes the right of all States to use the high seas for military purposes, including weapons testing and naval exercises.

2. Exclusive economic zone

Coastal States are permitted to claim an exclusive economic zone (EEZ) of up to 200 nautical miles from the baselines from which the territorial sea is measured wherein they have the sovereign right to explore and exploit the natural resources of the sea and of the seabed and subsoil. The EEZ is neither under the sovereignty of the coastal State nor part of the high seas. It is a specific legal regime, in which coastal States have the rights and jurisdiction set out in UNCLOS, and other States have the rights and freedoms set out in UNCLOS. Other States have the right to exercise high seas freedoms in the EEZ of any State. With respect to jurisdiction over matters outside of economic activities, the principles of jurisdiction governing the high seas apply in the EEZ.

3. Deep Seabed beyond the limits of national jurisdiction

The natural resources of the deep sea bed beyond the limits of national jurisdiction are vested in mankind as a whole under the principle of the *common heritage of mankind*. No State may claim or exercise sovereignty or sovereign rights over any part of this area or its resources and it is governed by the International Sea Bed Authority (ISBA) No State or natural or juridical person may appropriate any part of the area or its resources except under the authority of the ISBA.

4. Outer Space

The principles governing the use of outer space are similar to those that the high seas. First, no State may purport to assert sovereignty over any part of outer space. Second, all States have the freedom to use outer space for peaceful purposes. Third, States on whose registry a space object is launched shall retain jurisdiction and control over the space object and over any persons on board the space object. .

5. Antarctica

Official claims to sectors of the ice-covered continent of Antarctica were made by seven States – Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom. A sector was also claimed by Admiral Byrd on behalf of the United States, but the United States never officially adopted Byrd's claim, and refused to recognize the claims of the six claimant States.

In 1959 the seven claimant States, together with 5 other States whose scientists had been conducting research in Antarctica (Belgium, Japan, South Africa, the United States and the USSR) entered into the Antarctic Treaty. The Antarctic Treaty "froze" the claims of the seven claimant States, and stated that no new claims to sovereignty would be made. It also stated that Antarctica should be used only for peaceful purposes. The Antarctic Treaty permits States parties to conduct scientific research in Antarctica and its provisions are generally respected by non-party States as customary law.

H. PRINCIPLES GOVERNING RELATIONS BETWEEN STATES

The general principles governing friendly relations between States are set out in UN General Assembly Resolution

2625. It states that the progressive development and codification of the seven principles below would secure their more effective application within the international community and would promote the realization of the purposes of the United Nations. Therefore, the resolution sets out the consensus in the international community on the content of the following seven principles:

1) States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purpose of the United Nations

2) Pacific settlement of disputes

3) Non-intervention in matters within the domestic jurisdiction of any State, in accordance with the Charter

4) Co-operation with one another in accordance with the Charter

5) Equal rights and self-determination of peoples

6) Sovereign equality of States

7) States shall fulfil in good faith the obligations assumed by them in accordance withthe Charter

I. RESPONSIBILITY OF STATES FOR WRONGFUL ACTS

The 2001 ILC Articles on the Responsibility of States for Internationally Wrongful Acts set out the principles in this important field of international law. The ILC Articles are a combination of codification and progressive development. Even though the ILC Articles have not been adopted as an international convention, some of the provisions have been referred to by international courts and tribunals as reflective of customary international law.

States are responsible to other States for their *internationally wrongful acts*. A State commits *internationally wrongful act* when conduct consisting of an act or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation owed by that State to the injured State or the international community. Therefore, if a dispute arises between two States, the first question is whether the offending State owed an international obligation to the injured State under either a treaty or under customary law. The second question is whether that obligation was breached by conduct consisting of either an act or an omission that is attributable to the offending State.

The rules on attribution are based on common sense. The conduct of an organ of the State is attributable to the State because a State acts through its official representatives, such as its Head of State, Minister of Foreign Affairs, Ambassadors and government ministries and departments.

The official acts of these persons and organs are attributable to the State. The conduct of private persons or private entities is generally not attributable to the State unless the State knew of the conduct and failed to act in relation to that conduct when it had an international obligation to act.

However, the conduct of a person or entity empowered by the law of the State to exercise elements of government authority is attributable to the State and a State may also ratify and adopt the conduct of private persons or control their conduct in such a manner that it can be attributed to the State.

A State is in breach of an international obligation when conduct attributable to it is not in conformity with what is required by the obligation. A State may not rely on provisions of its internal or domestic law as justification for failure to comply with an international obligation. The responsible State is under an obligation to *cease the wrongful act* if it is continuing. It is also under an obligation to offer appropriate *assurance and guarantees of non-repetition*, if circumstances so require. In addition, the responsible State is under an obligation to make full *reparation* for the injury – both material and moral - caused to the other State by the internationally wrongful act.

The *forms of reparation* under international law are *restitution, compensation and satisfaction*.

The preferred form of reparation is *restitution*, which requires the State to re-establish the situation which existed before the wrongful was committed. Insofar as the damage is not made good by restitution, the State much pay *compensation* to cover the financially assessable damage, including loss of profits insofar as it is established. If the injury cannot be made good by either restitution or compensation, the State must provide *satisfaction*, which may consist of acknowledgement of the breach, an expression of regret, a formal apology or another appropriate remedy.

There are defenses available to the responsible State which precludes the wrongfulness of an act, including valid consent by the injured State, self-defence, force majeure, distress, necessity and valid countermeasures. The ILC Articles set out the requirements which must be met before

these defenses can be invoked. Some of the provisions of the ILC Articles on these "defences" can be classified as "progressive development" rather than a codification of customary international law.

J. THE ROLE OF THE ICJ

The ICJ is the chief judicial organ of the United Nations. All members of the UN are automatically parties to the Statute of the International Court of Justice. The jurisdiction of the ICJ in "contentious disputes" between States is subject to the principle of consent. It can obtain jurisdiction in three ways. First, the States parties to a dispute may enter into an *ad hoc* agreement to refer a particular legal dispute to the court. Second, States can submit an "optional clause declaration" to the UN Secretary-General declaring that they accept the jurisdiction of the ICJ over certain categories of disputes with other States which have also filed an optional clause declaration. This category of disputes is quite rare, as many States are not willing to accept the
jurisdiction of the ICJ in advance for wide categories of disputes. Third, many international conventions contain dispute settlement clauses called "compromissory clauses" allowing disputes between States parties to the convention to refer disputes concerning the interpretation or application of provisions of that convention to the ICJ by one of the parties to the dispute. Some conventions allow States to "opt out' of such compromissory clauses.

If a dispute between two States is decided by the ICJ, the decision is final and binding as between the parties to the case. It is not binding on other States. However, to the

extent that the ICJ pronounces on issues of customary law or treaty law, its judgment will be treated as an authoritative interpretation of international law by many States.

The ICJ also has advisory jurisdiction. The UN Security Council and the UN General Assembly may request advisory opinions on any legal question. The UN General may also authorize other UN organs or specialized agencies to request advisory opinions on legal questions arising within the scope of their activities.

Legal terms

Public international law
القانون الدولي العام

Definition تعريف

Legal personality شخصية قانونية

State دولة

Permanent دائم

Population سكان

Territory
اقليم

Government
حكومة

International organization
منظمة دولية

United nation
الامم المتحدة
Charter ميثاق
Nationality جنسية
Companies شركات
Sovereignty of state سيادة الولة
Doctrines مبادىء
Occupation احتلال
Prescription تقادم
Consent موافقة
Custom عرف
Customary law قانون عرفي
General principle of law المبادىء العامة للقانون
Hierarchy of norms التسلسل الهرمى للمبادىء
Commission مفوضية
Jurisdiction of state اختصاص الولة
International obligation التزام دولى
Treaties اتفاقيات
Sources of law مصادر القانون
Convention معاهدة
Civilized nation امة متحضرة
Bilateral ثنائى
Multilateral متعدد الاطراف
Regional اقليمي
Global عالمى
Immunity حصانة
Law of the sea قانون البحر
Outer space الفضاء الخارجي
High seas اعالي البحار
Fundamental اساسي

Exclusive economic zone المنطقة الاقتصادية الخالصة
Seabed قاع البحر
Natural sources مصادر طبيعية
Refrain يمسك عن/يمتنع عن
Disputes منازعات
Settlement تسوية
Domestic juristic اختصاص محلى
Responsibility مسئولية
International court of justice محكمة العدل الدولية
Security council مجلس الامن
Specialized agencies الوكالات المتخصصة
Advisory opinions اراء ارشادية
Scope نطاق
Satisfaction اشباع
Reparation اصلاح

Part five assessment

I Translate the following legal terms into Arabic:

Public international law
Definition
Legal personality
State
Permanent
Population
Hierarchy of norms
Commission
Jurisdiction of state
International obligation
Treaties
Sources of law

II Translate the following legal terms into English:

يمسك عن/يمتنع عن
منازعات
تسوية
اختصاص محلى
مسئولية
محكمة العدل الدولية
مجلس الامن
الوكالات المتخصصة

III Translate the following legal comprehension into Arabic:

The rules on attribution are based on common sense. The conduct of an organ of the State is attributable to the State because a State acts through its official representatives, such as its Head of State, Minister of Foreign Affairs, Ambassadors and government ministries and departments.

The official acts of these persons and organs are attributable to the State. The conduct of private persons or private entities is generally not attributable to the State unless the State knew of the conduct and failed to act in relation to that conduct when it had an international obligation to act.

Part six

United nation organization

Learning objective

At the end of studying this part the student learns this things:

Characteristics of the united nation

Structures of UN

Functions of UN

Learning About the charter of UN

what are the specialized agencies

Chapter one
introduction

To most of the world, the United Nations symbolizes the hope for international peace and security through global cooperation, dialogue, and collective responses to security threats. The UN flag,

as it flies over UN offices and peacekeeping missions around the world, is a constant reminder of this aspiration. The flag's blue field holds a lonely planet earth embraced by olive branches. This cloth was woven from the last remaining threads of hope which had survived two devastating world wars. In 1945, when the UN was created, nations were emerging from a second world war. Millions had been killed and maimed and much of Europe lay in rubble. The truth of the horrific genocide perpetrated against the Jews and other groups in Europe by the Nazis was coming to light. Yet, only two decades before the outbreak of this renewed violence, the world had witnessed the close of what was thought to be "the war to end all wars." Modern war fighting technology had demonstrated in these two global conflicts its efficiency at killing and destruction.

In World War Two, the bombing of innocent civilians and the razing of cities became a doable strategy. The inhumanity of mankind made the front
pages of the news on a daily basis. Waves of fear and guilt, images of the very dark side of human nature, washed over us as we witnessed accounts of each new atrocity. Even as the deaths mounted, many began to seek some hopeful solution out of this despair. Many began to hope that those nations which united to defeat the Axis powers might stay united to prevent another world war.

The founders of the United Nations had history to draw upon for their plan. Nations had come together at various times to respond to crises, but the concept of an ongoing global organization was still considered experimental. The United Nations, as an intergovernmental organization, is based on the unit of the State, which in itself had not evolved until well into the 17th century, historically recorded by an agreement reached among several European nations at the Treaty of Westphalia which ended the Hundred Years War in 1648.

At the onset of statehood, bilateral diplomacy was the primary means of communication and conflict resolution between States, but in nineteenth century Europe that process began to change, and the concept of large-scale, multilateral conferences emerged as a tentative first step toward developing a dialogue on cooperation. Four major conferences took place between 1815 and 1822 in response to the devastation created by the Napoleonic Wars. The first of these, the Congress of Vienna, marked the primary attempt to reach a broader peace through agreement among stronger and weaker powers, through a balance of power, to deter future aggression like that of France under Napoleon. Over the next one hundred years, leaders of Europe's greatest nations, referred to as the Concert of Europe, assembled some thirty times to discuss urgent political matters of the day. These resplendent gatherings took place in Berlin, Paris, London, and other cities around Europe. The most powerful countries became known as the "great powers" who formed a kind of executive committee of European affairs. The Concert gradually admitted new members, accepting Greece and Belgium in 1830 and Turkey in 1856. As UN scholar Inis Claude explains, "Diplomacy by conference became an established fact of life in the nineteenth century."

At the same time, in addition to the focus on security issues addressed by
the Concert, Europe was also engaging in international efforts to organize across state territories on other issues. River commissions were created to manage navigation on the Danube and Rhine rivers. The Universal Postal Union and the International Telegraphic Union were created to address the increasing demand for intercommunication, institutions which still exist today. Increased trade and migration brought the spread of diseases like cholera which motivated a total of six international conferences dealing with health issues between 1851 and 1903.

At about the same time, two international "peace" conferences were held at the Hague in the Netherlands, the first in 1899 with

twenty-six countries and the second in 1907 at which the number of nations was expanded to forty-four, including most of Latin America. The contribution of the Hague Conferences was not only the introduction of non-European states, but also the sense of equality given to all those participating, in contrast to the "great power" hegemony of the Concert. In addition, the Hague Conferences introduced the notion that international relations might be based on standard norms and the regular convening of members. These conferences did not create a permanent institution, but they laid the ground work for an established multilateral consultation process which eventually led to the formation of an international court(the Permanent Court of International Justice which was located in the Hague)and the League of Nations following the Great War.

The Creation of the League of Nations

The First World War brought an end to the Concert of Europe and a scheduled third Hague peace conference. But, following the War, the two concepts reappeared and were merged into the formation of the League of Nations which retained the great power executive committee status of the Concert in combination with the egalitarian universality of the Hague idea.

The League's Council became the executive committee, granting permanent status to five major powers, who would serve with a number of rotating members, but who enjoyed greater power and influence. The Council and Assembly, reflecting the egalitarian ideal of the Hague concept, granted equal voting rights to all League members. The League not only merged the two earlier ideas but added another layer by establishing a permanent Secretariat and regular meetings to further institutionalize the cooperation which had been initiated by the conferences, river commissions, and public unions.

However, the League experiment encountered a number of serious setbacks before its ultimate collapse at the outbreak of World War Two which it had failed to prevent. First, the United

States, whose President Woodrow Wilson is credited with being the "father" of the League, never joined. Wilson, a Democrat, did not succeed in convincing the Republican led Senate to give their consent to ratify the treaty which was required for membership. The permanent seat reserved for the US was left unoccupied throughout the League's short life span. This comment about the absence of the United States was made by someone present at the first Council meeting of the League: "As the afternoon wore on, the sun which streamed across the Seine and through the windows cast the shadow of the empty chair across the table. The shadow lengthened that day and the days that followed until the League died."

Now it is true that in the early days of the League and up until World War II broke out, the State Department was so afraid of being identified with the League since the Senate had rejected the League, that we did not have a regular observer. We had Prentiss Gilbert in Geneva report unofficially; the League was hush-hush, but only for that reason; no real hostility to it.

The Creation of the League of Nations

The other problem was that two of the permanent members on the League's Council were Italy and Japan who emerged as aggressor nations, forming an unholy union with Nazi Germany to ignite yet another global conflict. The League's rules of consensus gave everyone on the Council a veto which deadlocked the organization. The procedures were clearly a stumbling block, but the will to act was also weak, leaving it unable to effectively react when permanent member Japan invaded Manchuria and Italy invaded Ethiopia. While economic sanctions were imposed on Italy, in fact, they were removed when Italy completed its occupation of Ethiopia. The League's creators believed that war could be prevented through peaceful settlement and hoped to thwart aggression through collective action by its members. But, the League Covenant never condemned war and only asked its members to wait three months before resorting to war.

The League had been built on the premise that war was a mistake and that dialogue and negotiation could resolve disputes that might arise among its members.

Ultimately, League members lacked the will to deal with the purposeful aggression of the Axis powers.

Legal terms

United nation organization **منظمة الامم المتحدة**

Threat **يهدد**

Peacekeeping **حفظ السلام**

Global cooperation **التعاون الدولي**

Symbolize **يرمز**

League of nation **عصبة الامم**