



**University of Mohamed Lamine Debaghine, Setif2**

**Faculty of law and political sciences**

**Department of law**



## **Legal English terminology courses/ second class**

**Prepared by:**

**Dr: Ladjadj Abdelkrim**

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## Lecture 1

### Public International Law

Public international law, also known as the law of nations, is a set of norms aimed at regulating the interaction between the subjects of international law that participate in international relations. Public international law norms create a common framework within which the subjects of international law operate and contribute to the existence of generally stable, organized, and consistent international relations<sup>1</sup>.

Public international law can also be defined as a set of legal rules that govern the relations between subjects of public international law and define the competences and obligations of each. Or it is the set of legal rules governing relations between the subjects of the international community<sup>2</sup>.

#### **The Difference between Public and Private International Law:**

While public international law governs the relationship between the subjects of international law, such as States, private international law addresses the private law rights of natural or legal persons. Private international law consists of a set of conflicts of laws rules applicable in international cases. These rules determine the applicability of a certain law in circumstances involving a choice between the municipal law of different States<sup>3</sup>.

#### **Branches of Public International Law:**

- International law of the sea

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<sup>1</sup> Malcolm N. Shaw, International Law, 9th ed, University Press, Cambridge, 2021, p12.

<sup>2</sup> Antonio Cassese, International Law, 2nd ed. Oxford University Press, Oxford, 2005, p 31

<sup>3</sup> Peter Malanczuk, Akehurst's Modern Introduction to International Law, 7th ed. London: Routledge, 1997, p 9.

- International space law
- International environmental law
- International humanitarian law
- International air law
- International human rights law<sup>1</sup>.

## Sources of Public International Law

We can identify the sources of public international law through **Article 38 of the Statute of the International Court of Justice**, which states the following<sup>2</sup>:

- International agreements, whether general or particular, which establish rules expressly recognized by the disputing States.
- International customs in force, recognized as law by frequent use.
- Principles of public law recognized by civilized nations.
- Judgments of courts and doctrines of leading authors of public international law in various nations.
- Principles of justice and equity if agreed to by the disputing parties.

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<sup>1</sup> Ian Brownlie, *Principles of Public International Law*, 8th ed, Oxford University Press, Oxford, 2012, p 45.

<sup>2</sup> Statute of the International Court of Justice, Article 38

## Legal terms

Public international law	القانون الدولي العام	rule	قاعدة
Public	عام	Certain law	قانون معين
Private	خاص	Circumstances	ملابسات-ظروف
Nation	أمة	Municipal	محلي
Norms	القواعد	Branches	فروع
To aim	يهدف	International law of the sea	القانون الدولي للبحار
To regulate	ينظم	Convention	اتفاقية
The interaction	تقاول	United nations	الأمم المتحدة
Subjects	أشخاص	International space law	القانون الدولي للفضاء
International relations	العلاقات الدولية	Environmental law	قانون البيئة
Commun	مشترك	International humanitarian law	القانون الدولي الانساني
Framework	إطار-نطاق	International air law	القانون الدولي الجوي
To operate	يعمل-يجري	International human right law	القانون الدولي لحقوق الانسان
To contribute	يساعد-يعاون	sources	مصادر
Organize	ينظم	To identify	يعرف
Consistent	ملائم- متناغم-متناسق	Statute of the international court	نظام المحكمة الدولية
Legal rules	قواعد قانونية	Judicial organ	عضو قضائي
To govern	ينظم- يحكم	function	وظيفة

Competences	الكفاءات-القدرات	Disputes	المنازعات
Obligations	الالتزامات	To state	ينص
International community	المجتمع الدولي	submitted	ترفع
Right	الحق	Provisions	الأحكام
Duty	الواجب	The court	المحكمة
Natural	طبيعي	Apply	تطبق
Legal persons	أشخاص قانونية	Convention	اتفاقية
Private international law	القانون الدولي الخاص	particular	الخاصة
Consist	يتكون من	nation	الأمة
Conflicts	المنازعات	States	الدول
Applicable	ينطبق	recognized	معترف بها
Cases	حالات	Subsidiary	احتياطية
Civilized nations	الأمم المتقدمة	custom	العرف
function	وظيفة	Provisions	الأحكام

## Lecture 2

### Civil law

Civil law as a legal system is an essential branch of law that governs disputes between private parties; it provides a legal framework for resolving disputes and, unlike criminal law, does not involve the state prosecuting an individual for a crime<sup>1</sup>.

Civil law can be defined as a body of laws that deal with non-criminal disputes between private individuals, corporations, and entities; it encompasses various legal areas. In this system, the parties to a dispute bring their case before a court or tribunal, and a judge determines the rights and obligations of each party based on existing laws and precedents<sup>2</sup>.

**Key principles and characteristics of civil law systems:** Civil law systems are based on several key principles and characteristics fundamental to their functioning, including:

- **Codification:** The laws in civil law systems are usually contained in a comprehensive code that serves as the primary source of legal authority. These codes are regularly revised and updated to keep the law current and in line with societal changes<sup>3</sup>.

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<sup>1</sup> Zweigert, Konrad, and Hein Kötz. *Introduction to Comparative Law*. 3rd ed, Clarendon Press, Oxford ,1998, p 45

<sup>2</sup> David, René, and John E.C. Brierley. *Major Legal Systems in the World Today, An Introduction to the Comparative Study of Law*, 3rd ed, London, 1985, p 62

<sup>3</sup> Merryman, John Henry, Rogelio Pérez-Perdomo, Daniel S, Clark, *The Civil Law Tradition, An Introduction to the Legal Systems of Europe and Latin America*, 5th ed, Stanford University Press, 2018, 110

- **Legal certainty:** Civil law provides predictability and clarity by establishing and following clear rules and procedures, enabling individuals to know their rights and obligations in advance<sup>1</sup>.
- **Judicial discretion:** Judges in civil law systems have more limited discretion in interpreting the law as they are primarily bound by codes and must apply the legal provisions consistently; this principle is designed to ensure fairness and consistency in legal decisions<sup>2</sup>.
- **Inquisitorial process:** In contrast to the adversarial system found in common law jurisdictions, civil law systems follow an inquisitorial process where the judge plays a more active role in investigating the facts and applying the law to the dispute at hand<sup>3</sup>.

**Civil law purpose and scope:** The primary purpose of civil law is to provide a legal framework that enables parties to resolve their disputes fairly, predictably, and efficiently. The scope of civil law encompasses a variety of legal issues, including:

1. **Contract law:** Deals with creation, interpretation, and enforcement of contracts between private parties, governing aspects such as performance, breach, and remedies for non-performance<sup>4</sup>.
2. **Tort law:** Concerns civil wrongs that cause harm and injury to others, including negligence. Victims of torts can seek compensation for damages suffered as a result of wrongful conduct of another party<sup>5</sup>.

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<sup>1</sup> Zimmermann, Reinhard, *The Law of Obligations: Roman Foundations of the Civilian Tradition*, University Press, Oxford, 1996, p 203

<sup>2</sup> Glenn, H. Patrick, *Legal Traditions of the World, Sustainable Diversity in Law*, 5th ed, Oxford University Press, Oxford, 2014, p 77

<sup>3</sup> Merryman, John Henry, *The Civil Law Tradition*, 5th ed, Stanford University Press, Stanford, 2018, p 115

<sup>4</sup> Farnsworth, E. Allan, *Contracts*, 4th ed, Aspen Publishers, New York, 2004, p 233

<sup>5</sup> Dobbs, Dan B, *The Law of Torts*, St Paul, West Academic Publishing, 2000, p 89

3. **Property law:** Governs ownership, use, and transfer of property, both real estate and personal property. Property law principles regulate various aspects, including property rights, leases, and mortgage agreements<sup>1</sup>.

### Legal terms

Civil law	القانون المدني	Case	القضية
Legal	قانوني	Tribunal	المجلس
System	نظام	Court	المحكمة
Essential branch	فرع أساسي	Judge	القاضي
Govern	يحكم	Rights	الحقوق
Disputes	المنازعات	Obligations	الالتزامات
Private parties	أطراف خاصة	Party	الطرف
Provide	يوفر	Exiting laws	القوانين الحالية
Legal framework	إطار قانوني	precedents	السوابق
Criminal law	القانون الجنائي	characteristics	خصائص
State	دولة - حالة	fundamental	أساسي
prosecuting	مقاضاة	Codification	تقنين
individual	فرد	Code	قانون - قانون
Crime	جريمة	Primary source	مصدر أساسي
Non-criminal	غير جنائي	Legal authority	سلطة قانونية
Corporations	جماعات	Regularly	بانتظام

<sup>1</sup> Abdul Razzaq Al-Sanhuri, Al-Wasit in Explaining Civil Law, The Right to Ownership, Vol, 8, Mansha'at Al-Maaref, Cairo, 1967, p. 12.

Entities	كيانات	Revise	يراجع
Legal areas	مجالات قانونية	Update	يحدث
Legal certainty	يقين قانوني	Current	الحالي
predictability	تبؤات	Societal changes	التغيرات المجتمعية
clarity	وضوح	Inquisitorial	تحقيق
procedures	إجراءات	Process	عملية- أسلوب
individuals	أفراد	Common law	القانون العام
Judicial	قضائي	jurisdiction	السلطة القضائية
discretion	تقدير	Investigation	التحقيق
Interpreting	تفسير	facts	الواقع
Ensure	ضمان	Dispute	النزاع
Fairness	العدالة	purpose	الهدف- الغاية
Efficient	فعال	Contract	العقد
Issues	القضايا	enforcement	تنفيذ
Aspects	جوانب	Performance	الأداء
Tort law	المسؤولية التقتصيرية	Civil wrongs	الأخطاء المدنية
Harm- injury	الضرر	Cause	يسبب
negligence	الاهمال	breach	إخلال
Victims	الضحايا	Torts	الضرر
Compensation	التعويض	Damages	الأضرار
result	النتيجة	conduct	سلوك
Property- ownership	الملكية	govern	ينظم
Real estate	العقارات	leases	عقود الإيجار

mortgage	الرهن الرسمي	transfer	نقل
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## Lecture 3

### **Algerian judicial organization**

The Algerian legislator adopted the principle of dual jurisdiction in Article 152 of the 1996 constitutional amendment<sup>1</sup> And in Organic Law No. 22-10 of June 2022 relating to the judicial organization; The judicial system includes the regular judicial system, the administrative judicial system, and the Conflict Court.

The regular judicial system includes the Supreme Court, judicial councils, and courts. The administrative judicial system includes the Council of State, administrative courts of appeal, and administrative courts<sup>2</sup>.

#### **Section one: Regular judicial authorities:**

##### **I- Jurisdictions of the 1st Degree (The court of first instance)**

The court is the judicial body with public jurisdiction and is considered the first instance of litigation, this is what is stipulated in Article 19 of Organic Law No. 22-10 of June 9, 2022, relating to spatial organization, published in Official journal No. 41 of June 16, 2022. and consists of<sup>3</sup>:

###### **1- Judges of the ruling:**

- President of the Court
- Vice-President of the Court
- Judges
- One or more investigating judges

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<sup>1</sup> Presidential Decree No. 96-438 of December 7, 1996 promulgating the text of the constitutional amendment, Official journal of December 8, 1996

<sup>2</sup> Article 3 of Organic Law No 22-10 of June 9, 2022, relating to spatial organization, published in Official journal No 41 of June 16, 2022

<sup>3</sup> Kodri Fatima Al-Zahra, Developments in Algerian judicial organization (study in laws enacted in 2022), Journal of the Department of Legal and Political Research and Studies, Vol 7, Issue 2, 2023, pp 1-25.

- One or more juvenile judges
- One or more judges enforcing penalties for courts located at the headquarters of the Judicial Council.

## **2- Public Prosecution Judges:**

- Public Prosecutor.
- Assistant Prosecutors<sup>1</sup>.

## **3- Court sections:** The Court is divided into the following sections:

**A-Civil Section:** The Civil Division is headed by a judge, and is responsible for settling disputes of a civil nature, such as those related to sales contracts and rental contracts. However, to relieve the burden on this division, other divisions have been established, namely:

**-The Real Estate section:** Hears disputes relating to real estate<sup>2</sup>, In particular, the right of ownership, other real rights, insurance, possession, prescription, usufruct, use, exploitation and the right of habitation<sup>3</sup>.

**-Commercial Section:** It considers all commercial matters and, where necessary, also maritime matters.

The Commercial Division consists of a single judge<sup>4</sup>.

Specialized commercial courts were established in accordance with Article 28 of Organic Law 22-10.

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<sup>1</sup> Article 20 of Organic Law No. 22-10 of June 9, 2022, relating to Judicial organization, published in Official journal No 41 of June 16, 2022

<sup>2</sup> Article 511 of the law 08-09 of 25 February 2008, including the Code of Civil Procedure, Official journal No 21 of April 23, 2008

<sup>3</sup> Article 512 of the law 08-09 of 25 February 2008, including the Code of Civil Procedure, Official journal No 21 of April 23, 2008

<sup>4</sup> Article 533 of Law No. 22-13 of July 12, 2022, amending and supplementing Law No 08-09 of February 2008, containing the Code of Civil and Administrative Procedure, Official journal No 48 of July 17, 2022

The Judicial Council may include specialized courts to adjudicate disputes of a commercial, labor, and real estate nature.

Article 6 of Law 22-07 stipulates that specialized commercial courts shall be established, with their headquarters located within the jurisdiction of certain judicial councils.<sup>1</sup>

**-The Social section:** it consists of a judge, a workers' representative, and an employer's representative. It adjudicates disputes between workers, as well as disputes related to social security and retirement, disputes related to collective labor agreements, and disputes related to the exercise of the right to strike and union rights...<sup>2</sup>

**-Family Affairs section:** The Family Affairs Division is headed by a judge, and looks into the following cases in particular:

- Actions related to engagement, marriage, and dissolution of marriage.
- Actions related to alimony obligations and the exercise of custody and visitation rights.
- Actions related to "kafala".
- Actions related to judicial prohibition (judicial interdiction), absence, disappearance, and guardianship<sup>3</sup>.

**-The referral section:** the referral section headed by the president of the court, is responsible for adjudicating urgent cases that cannot wait and are characterised

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<sup>1</sup> El bah Said, specialized commercial courts are a step towards the specialized judiciary in Algerian legislation, ELBAHITH for Academic Studies journal, vol 11, Issue 2, 2024, pp 490-512

<sup>2</sup> Articles 500, 533 of the Civil and Administrative Procedure, law 08-09 of 25 February 2008

<sup>3</sup> Article 423 of the Civil and Administrative Procedure, law 08-09 of 25 February 2008

by speed, such as stopping work, a lawsuit(trial) challenging execution, a lawsuit suspending execution, and a lawsuit imposing a threatening fine<sup>1</sup>.

**B- Criminal Section:** The Criminal Section includes the Misdemeanor Section, the infraction Section, and the Juvenile Section.

- **Misdemeanor Section:** It handles misdemeanor cases such as petty theft, fraud, and issuing a bad check.<sup>2</sup>

The misdemeanor is punishable by imprisonment for a period ranging from two months to five years or a fine exceeding 20,000 dinars<sup>3</sup>.

- **infractions Section:** infractions are the type of crimes punishable by imprisonment from at least one day to a maximum of two months or a fine from 2,000 to 20,000 dinars<sup>4</sup>, like Failure to comply with traffic signals.

- **The Juvenile section:** the Juvenile Division is responsible for investigating and adjudicating misdemeanor cases committed by children, who are minors who have not yet reached the age of 18 at the time of committing the crime. It consists of a presiding juvenile judge and two jurors (two sworn assistants)<sup>5</sup>.

- **The Maritime Section:** the Maritime Section is a section that examines disputes arising from maritime transport contracts, whether related to goods or persons. It is a section that exists only in courts within whose jurisdiction there are operating seaports<sup>6</sup>.

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<sup>1</sup> Articles 299 of the Civil and Administrative Procedure, law 08-09 of 25 February 2008

<sup>2</sup> Article 350 of Order No 66- 156 of July 8, 1966 containing the Penal Code

<sup>3</sup> Article 27 of Order No 66- 156 of July 8, 1966 containing the Penal Code

<sup>4</sup> Article 27 of Order No 66- 156 of July 8, 1966 containing the Penal Code

<sup>5</sup> Article 80 of Law 15-12 issued on July 15, 2015, relating to child protection, Official journal No 39 issued on July 19, 2015

<sup>6</sup> Belhireche Hussein, Lectures on Civil and Administrative Procedure Law, Dar Belqis, Algiers, 2019, p 61

However, the President of the Court may, after consulting the Public Prosecutor, reduce the number of sections or divide them into branches according to the importance and volume of judicial activity<sup>1</sup>.

**C- court clerks(The Registry):** Court clerks are employees of courts and judicial bodies who carry out the administrative and technical procedures necessary for the smooth running of the judiciary, including registering cases, issuing summonses, drafting court documents such as judgments and minutes, classifying files, and archiving documents. They also assist judges in conducting hearings and enforcing judgments.

Given the important role played by these employees, Executive Decree No. 08-409 of December 24, 2008, was issued, which includes the Basic Law for Clerkship Employees in Judicial Bodies. This law specifies the special provisions applicable to employees belonging to the judicial clerkship staff, the clerkship code, and the conditions for joining the various ranks and corresponding job positions<sup>2</sup>.

These clerkships are divided into:

- Clerkship Section Clerkships
- Clerkship Clerks

The Registry Clerk Corps consists of three ranks:

- Registry Clerk
- Chief Registry Clerk
- First Chief Registry Clerk

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<sup>1</sup> Article 21 of Organic Law No 22-10 of June 9, 2022

<sup>2</sup> [www.Mjustice.dz](http://www.Mjustice.dz), accessed August 22, 2025, at 23:46 PM

The Registry Clerk Corps consists of four ranks:

- Registry Clerk Assistant
- Registry Clerk Assistant
- Registry Clerk
- Chief Registry Clerk<sup>1</sup>

**D- Prosecution section:** The public prosecution department is headed by the Public Prosecutor and his assistants at the court level, and the Public Prosecutor and his assistants at the council level. Its mission is to initiate and conduct public lawsuits, issue filing decisions, and conduct judicial mediation<sup>2</sup>. It also has an administrative function, which is to supervise the judicial police and judicial bailiffs. It is also responsible for implementing criminal rulings<sup>3</sup> and monitoring the integrity of the registry.

**E- Investigation section:** The investigating judge investigates felonies or misdemeanors, as well as investigating civil claims brought before it by the injured party.<sup>4</sup>.

**F-Presidency of the Court:** The court is headed by a judge appointed by presidential decree. He is responsible for overseeing the smooth running of the court, distributing judges to departments, and supervising the clerks. He is also responsible for examining urgent cases<sup>5</sup>.

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<sup>1</sup> Articles 1 to 38 of executive decree No. 8-409 of December 24, 2008, containing the basic law for judicial clerks, Official journal No. 73 of December 28, 2008

<sup>2</sup> Articles 36, 37, 12 of the Code of Criminal Procedure

<sup>3</sup> Article 10 of Law 05-04 issued on February 6, 2005, containing the law regulating prisons and social reintegration, Official journal No. 12 of February 13, 2005

<sup>4</sup> Articles 66, 67 and 72 of the Code of Criminal Procedure

<sup>5</sup> Belhireche Hussein, previous reference, p 62

**II-Judicial Council:** "court of appeal" court of second instance: the Judicial Council is an appeal body for rulings(judgements) issued by the courts<sup>1</sup>.

There are 58 courts of appeals in the Algerian territory<sup>2</sup>, they are courts of jurisdiction for all the cases formed against the judgments given in all matters by the courts in the first resort.

courts issue judicial judgments by the judges but appeal courts issue decisions by the judges called "counselor", and it is headed by a judge appointed by presidential decree<sup>3</sup>.

The Judicial Council is an appellate body for court judgments and includes the following chambers: civil chamber, criminal chamber, indictment chamber, matters of special urgency chamber, family affairs chamber, juvenile chamber, social chamber, real estate chamber, maritime chamber, commerce chamber, sanctions implementation chamber<sup>4</sup>.

**-Civil Chamber:** the civil chamber is responsible for adjudicating appeals against all rulings issued by the primary courts in its civil division. It also adjudicates all requests related to a conflict of jurisdiction between judges if the matter concerns two judicial bodies under the same jurisdiction of the Judicial Council<sup>5</sup>.

**Criminal chamber:** The Criminal Chamber is competent to adjudicate appeals filed against judgments issued by the Criminal Division of the Courts of First Instance in misdemeanors and contraventions cases.

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<sup>1</sup> Article 14 of Organic Law No. 22-10 of June 9, 2022, relating to Judicial organization, published in Official journal No. 41 of June 16, 2022

<sup>2</sup> Article 3 of Law No. 22-07 of May 5, 2022, including the judicial division

<sup>3</sup> Darbal Abdel Razzaq, A Brief Introduction to Civil and Administrative Procedures, Berti Publishing, Algeria, 2022, p. 11

<sup>4</sup> Article 15 of Organic Law No. 22-10

<sup>5</sup> Belhireche Hussein, previous reference, p 72

**Indictment chamber:** The Indictment Chamber is located at the level of the Judicial Council. Its president and advisors are appointed by decision of the Minister of Justice. It has the jurisdiction to indict in felony cases<sup>1</sup>.

It is concerned with adjudicating appeals against orders issued by investigating judges at the court level<sup>2</sup>, and it also adjudicates any breach attributed to judicial police officers while performing their duties<sup>3</sup>.

**Matters of special urgency chamber:** it is responsible for adjudicating appeals filed against court rulings issued by the urgent division.

**- Family Affairs Chamber:** It handles appeals against court rulings issued by the Family Affairs section.

**- Juvenile Chamber:** The Juvenile Chamber is composed of a Juvenile Judge as President and two advisors chosen from among the Council's judges who have practiced as Juvenile Judges and/or for their interest and care in juvenile matters, based on the second paragraph of Article 91 of Law No. 15-12 on Child Protection. It is responsible for deciding on appeals against rulings issued by the Juvenile Division at the court level<sup>4</sup>.

**- Social Chamber:** the social chamber is responsible for examining appeals against rulings(judgments) issued by the social section of the courts.

**- Real Estate Chamber:** this section is responsible for examining appeals against judgments issued by the real estate section of the courts.

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<sup>1</sup> Boubchir Mohand Amoqrane, Fourth Edition, Office of University Publications, Algeria, 2005, p. 296

<sup>2</sup> Articles 272-296 of Law No. 25-14 of August 3, 2025, includes the Code of Criminal Procedure, Official journal No. 54 of August 13, 2025

<sup>3</sup> Articles 304-307 of Law No. 25-14 of August 3, 2025, includes the Code of Criminal Procedure, Official journal No. 54 of August 13, 2025

<sup>4</sup> Article 90 of Law No. 15-12 on Child Protection

- **Maritime Chamber:** this section is responsible for examining appeals against judgments issued by the maritime section of the courts.

- **Commercial Chamber:** it is responsible for examining appeals against judgments issued by the commerce section of the courts.

- **Sanctions Implementation Chamber:** The Penalty Implementation Chamber is responsible for following up on the implementation of custodial penalties issued pursuant to final rulings and decisions<sup>1</sup>.

**Specialized Commercial Courts:** Specialized commercial courts have been established within the jurisdiction of some judicial councils<sup>2</sup>. They are responsible for examining disputes related to intellectual property, commercial companies, judicial settlement, bankruptcy, disputes between banks and financial institutions and merchants, maritime disputes, air transport disputes, and insurance disputes related to commercial activity and international trade<sup>3</sup>.

The Specialized Commercial Court consists of divisions headed by a judge and assisted by four assistants with extensive knowledge of commercial matters<sup>4</sup>.

**criminal court:** At the level of each judicial council, there is a criminal court (a criminal court of first instance and a criminal court of appeal).

- **criminal court of first instance:** The Criminal Court is a judicial body that adjudicates serious crimes (felonies) that threaten the safety of society, such as

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<sup>1</sup> Belhaouari zohra, supervision by the judge on the application of penalties for the implementation of criminal sentences, Journal of the Professor and Researcher for Legal and Political Studies, vol 7, April 2022, p 55

<sup>2</sup> Article 6 of Law No. 22/07

<sup>3</sup> Article 536 bis of Law No. 22/13 of July 12, 2022, containing the Code of Civil and Administrative Procedure, Official journal No. 48 of July 17, 2022

<sup>4</sup> ELBAH Said, specialized commercial courts are a step towards the specialized judiciary in Algerian legislation, ELBAHITH for Academic Studies revue, vol 11, issue 2, 2024, pp 490-512

murder, rape, armed robbery, and drug trafficking. It is a popular court composed of professional judges and popular judges (jurors)<sup>1</sup>.

**- criminal court of appeal:** The Criminal Court of Appeal in Algeria is a judicial body established by the March 2017 amendment to the Code of Criminal Procedure (Law 17-07), establishing the principle of two-tiered litigation in criminal cases. This court is competent to review the rulings of the Criminal Court of First Instance, ensuring a fair trial. It reconsiders the case before higher-level judges and issues final rulings subject to appeal before the Supreme Court<sup>2</sup>.

The Judicial Council is composed of:

- Chairman of the Council
- One or more Vice-Chairmen
- Heads of Chambers
- Advisers, counsellors
- general prosecutor or general assistant prosecutor
- court clerks

**III-Supreme Court:** The Supreme Court is a court of law and may be a court of trial in the cases specified by law, and exercises control over judicial orders, judgments and decisions in terms of their proper application of the law and their respect for the forms and rules of procedure.

**-Composition of the Supreme Court:** The Supreme Court consists of the following:

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<sup>1</sup> Article 26 of Organic Law No. 22-10

<sup>2</sup> Sabar Farida, Yazid Mihoub, The legal system for appealing criminal court rulings under Law 07-17, revue of Legal Studies, vol 9, Issue 2, December 2022, pp 113-143

**-Judges:** first president - vice-president - presidents of chambers - heads of departments - counsellors.

**Judges of the public prosecution:** attorney general (general prosecutor, general assistant attorney, general advocates).

**Supreme court chambers:** The Supreme Court consists of the following chambers:

-civil chamber

- real estate chamber

- chamber of family and inheritance affairs

- chamber of commerce and maritime

- social chamber

- criminal chamber

- chamber of misdemeanors and infractions.

## **Section two: Administrative judiciary authorities:**

**I-Administrative courts:** Administrative courts in Algeria are judicial bodies primarily competent in administrative disputes<sup>1</sup>, as they adjudicate cases in which the state, the province, the municipality, or a public administrative institution is a party.

We note that the Administrative Court is considered the first instance of litigation in administrative matters, and that there is an administrative court at the level of each judicial council<sup>2</sup>.

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<sup>1</sup> Article 179 of the Constitutional Amendment of 2020, Article 9 of organic law No. 22-10

<sup>2</sup> Article 31 of Organic Law No. 22-10

The Administrative Court consists of:

❖ **Judges of ruling:**

- President.
- Vice-Presidents or two Vice-Presidents.
- Heads of Sections.
- Branch heads, if required.
- Judges.
- Judges in charge of petitions.

❖ **Judges of the State Governorate:**

- Governor of the State

Assistant Governor of the State or two Assistant Governors of the State, if necessary

**II-Administrative Courts of Appeal:** The Administrative Court of Appeal has jurisdiction to adjudicate appeals against judgments and orders issued by administrative courts, In a dispute over jurisdiction between two administrative courts within the jurisdiction of the same administrative court of appeal.

The Administrative Court of Appeal shall consist of at least three judges, including a president and two assistants with the rank of counsellor<sup>1</sup>.

The Administrative Court of Appeal consists of:

❖ **-Judges of ruling:**

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<sup>1</sup> Belhouchet Lynda, Administrative Courts of Appeal in law 22-13, International Journal of Legal and Political Research, Vol 8, Issue 3, December 2024, pp 255-268

-President.

-Vice-Presidents or two Vice-Presidents.

-Heads of Sections.

-Judges.

-Judges in charge of petitions.

**❖ Judges of the State Governorate:**

-Governor of the State.

Assistant Governor of the State or two Assistant Governors of the State, if necessary<sup>1</sup>.

There are six courts of appeal in Algiers, Oran, Constantine, Ouargla, Tamanrasset and Bechar<sup>2</sup>.

**III-The Council of State:** The Council of State is an oversight body for the work of administrative bodies. It is subordinate to the judicial authority and ensures the unification of administrative judicial rulings in the country and ensures respect for the law<sup>3</sup>.

The Council of State is competent to adjudicate appeals against decisions issued by the Administrative Court of Appeal of Algiers. It is also competent to decide appeals against final judgments and decisions issued by administrative judicial

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<sup>1</sup> Article 30 of Organic Law No. 22-10

<sup>2</sup> Article 8 of Organic Law No. 22-07

<sup>3</sup> Organic Law No. 11-13 of July 2011 amending and supplementing Organic Law No. 98-01 of July 30, 1998 relating to the organization, operation and attributions of the Council of State, Official journal No. 43 of 2011

bodies. It is also competent to adjudicate appeals for cassation granted to it by law pursuant to special texts<sup>1</sup>.

The State Council consists of the Chairman of the State Council, the Vice-Chairman of the State Council, the Presidents of the Chambers, the State Counsellors, the State Governor, and the Assistant State Governors<sup>2</sup>.

**Section three: The Conflict Court:** The Conflict Court is competent to adjudicate disputes over jurisdiction between judicial bodies subject to the ordinary judicial system and judicial bodies subject to the administrative judicial system.

Also, we can say that The Conflict Court is a judicial body established to adjudicate jurisdictional disputes between different courts, whether between ordinary and administrative courts or between courts of the same type, with the aim of resolving positive (each court defends its jurisdiction) or negative (both courts refuse to hear the case) conflicts and ensuring the unity of the legal system<sup>3</sup>.

### **Composition of the Conflict Court:**

- President of the Conflict Court.
- It consists of seven judges, including a president.
- The State Governor and an Assistant State Governor<sup>4</sup>.

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<sup>1</sup> Fadli Idris, Judicial Organization and Civil and Administrative Procedures, Dar Bin Mrabet, 1st edition, 2009, p. 105

<sup>2</sup> Articles 20, 21 of the Organic Law No. 98-01

<sup>3</sup> Article 3 of Organic Law 98-03 of July 3, 1998 relating to the organization, operation and attributions of the Conflict Court, Official journal No. 39 of July 7, 1998

<sup>4</sup> Articles 5 and 9 of Organic Law 98-03 of July 3, 1998 relating to the organization, operation and attributions of the Conflict Court, Official journal No. 39 of July 7, 1998

## Legal terms

Jurisdictions	الجهة القضائية	vice-president	نائب الرئيس
degree	الدرجة	Juge	القاضي
court of first instance	المحكمة الابتدائية	investigating judge	قاضي التحقيق
public	عام	magistrate	القاضي
President	الرئيس	juvenile	الحدث
instance	الدرجة	Public prosecutor	نائب العام
litigation	النضال	court clerks	كتاب الضبط
sections	الأقسام	civil section	القسم المدني
misdemeanor section	قسم الجنح	infraction	المخالفات
family affairs section	قسم شؤون الأسرة	juvenile section	قسم الأحداث
social section	القسم الاجتماعي	social section	القسم الاجتماعي
real estate section	القسم العقاري	maritime section	القسم البحري
commercial section	القسم التجاري	court of appeals	محكمة الاستئناف
territory	الإقليم	cases	القضايا - الدعاوى
judgments	الأحكام	trial	المحاكمة
decisions	القرارات	chamber	الغرفة
counsellor	المستشارون	criminal chamber	
indictment chamber	غرفة الاتهام	criminal court	محكمة الجنائية
chairman of the council	رئيس المجلس	vice-chairman	نائب الرئيس
heads of chambers	رؤساء الغرف	general assistant prosecutor	نائب العام المساعد
supreme court	المحكمة العليا	organic law	القانون العضوي
organization	تنظيم	Judicial orders	الأوامر القضائية
departments	الأقسام	public prosecuting	النيابة العامة

## Lecture 4

### Obligations

**Obligation** is a legal bond of financial value between two or more parties, whereby one of them, called the debtor, is obligated to perform a certain act, give something, do something, or refrain from doing something, for the benefit of another party, called the creditor<sup>1</sup>.

#### Section one: Characteristics of obligation:

**The term "obligation" refers to a binding relationship between individuals:** it means that the obligation is a legal relationship between two parties: the creditor and the debtor, in which the debtor is bound to perform an action, refrain from performing an action, or deliver something for the benefit of the creditor.

**The subject of the obligation is to perform a specific financial duty:** this duty may involve the debtor providing something or performing a specific act for the benefit of the creditor, such as paying a sum of money or providing an item. It could also involve refraining from a particular act, such as a specific trader (debtor) refraining from competing with another trader (creditor) in a certain business activity. What distinguishes this performance is that it can be assessed in monetary terms, thereby differing from general legal duties, such as the obligation to perform national service. For this reason, some legal scholars consider an obligation a specific legal duty<sup>2</sup>.

**An obligation is a legal bond:** Obligation is a legal bond means that it is legally binding, representing a legal duty upon the debtor. Should the debtor fail to fulfill this duty voluntarily, the creditor has the right to compel its execution through

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<sup>1</sup> Jamil Al-Sharqawi, *La théorie générale de l'engagement*, (Sources de l'engagement), Dar Al-Nahda Al-Arabiya, Le Caire, 1975, p. 52.

<sup>2</sup> Sulayman Marcus, *Al-Wafi* in *Explaining Civil Law*, Volume 1, Fourth Edition, 1987, p. 22

legal means. This distinguishes a legal obligation from a moral or religious obligation and from a natural obligation<sup>1</sup>.

**Section two: Kinds of obligations:** there are three kinds of obligations, which are:

**1-In terms of legal protection:** obligations can be categorized into civil and natural obligations based on the legal safeguards afforded to the creditor.

**-A civil obligation:** it means that comprises both the elements of liability and indebtedness. Therefore, based on the element of liability, the creditor has the right to compel the debtor to fulfill the obligation through legal means. Consequently, the creditor enjoys adequate legal protection to ensure that he can recover the debt from the debtor.

**-The natural obligation** is: that obligation which consists solely of the element of indebtedness and lacks the element of liability. If the debtor does not voluntarily fulfill the obligation, the creditor cannot compel him to do so due to the absence of liability. Therefore, we can state that the natural obligation does not enjoy legal protection.

**2- In terms of its subject matter:** The obligation is divided into three types, represented by:

**-Obligation to give something:** refers to the obligation to establish or transfer a real right, such as the obligation of the owner to create a servitude or the obligation of the seller to transfer ownership of the sold item.

**-Obligation to Perform an Act:** The subject of the obligation may involve the debtor performing a specific act for the benefit of the creditor or another party. This applies in cases where the debtor commits to engaging in a particular activity

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<sup>1</sup> Youcef Muhammad Obeidat, Sources of Obligation in Civil Law, A Comparative Study, 2nd ed, Dar Al-Masirah for Publishing, Distribution and Printing, Amman, 2nd ed, 2005, p. 54.

for the creditor, such as an artist undertaking to create a specific painting for a designated individual. Similarly, this act may be physical, but it can also be a legal act, such as the obligation of an agent to execute a specific legal transaction on behalf of the principal and for their account.

**-Obligation to refrain from an Act:** In this type of obligation, the debtor undertakes not to do a certain act, such as a person's commitment not to build a wall on his land, because this construction would obstruct air and light to his neighbour. In this case, the person is considered to be compliant as long as he does not construct the wall. However, if he built the wall, he would be in breach of his obligation, and in this case, the creditor can demand obliging the debtor to remove the construction.

**- Obligation to achieve a result or to exercise care:**

An obligation to achieve a result" is one in which the substance of the debtor's obligation represents the goal that the creditor seeks to accomplish by binding the debtor. For example, the seller's obligation to transfer ownership and the buyer's obligation to pay the price.

**-Obligation of due diligence:** this is an obligation in which the debtor's performance is not the final aim or goal that the creditor seeks to achieve by obligating the debtor. Instead, it represents only the means that ultimately leads to the creditor's aim and his final purpose, for this reason, this obligation is called "obligation of mean", as an example, the issue of doctor's responsibility, he does not undertake to cure the patient (the creditor), but only undertakes to provide the necessary care to treat patient until he is fully recovered.

**Section three: Sources of Obligation:** Sources of Obligation are:

**1-A contract:** the Algerian legislator defined the contract as an agreement by which one or more persons commit themselves towards one or more other persons to give, do, or refrain from doing something<sup>1</sup>.

**2-Unilateral will:** it is a legal action undertaken solely by the will of one party, aimed at producing specific legal effects independently, without requiring the concurrence of another party's will<sup>2</sup>.

**3-Tort liability:** it refers to the penalty resulting from a breach of a general legal obligation, which is the duty to avoid causing harm to others.

The Algerian legislator addressed this liability in the first section related to the sources of obligation, specifically in Chapter Three, under the title "Act Entitling Compensation." From Article 124 to Article 140 bis 1 of the Algerian civil law. This chapter is divided into three sections as follows<sup>3</sup>:

-Responsibility for Personal Action: articles from 124 to 133 of the Algerian civil law.

-Responsibility for the action of others: articles from 134 to 137 of the Algerian civil law.

-Responsibility for things: articles from 138 to 140 bis 1 of the Algerian civil law.

**4-unjust enrichment:** the Algerian Civil Code states: Anyone who, in good faith, gains from the work of another or from something of his that has no justification shall be obligated to compensate the person at whose expense the enrichment occurred, to the extent that he gained from the work or thing<sup>4</sup>.

**5-Law:** the Algerian Civil Code states that: The legal texts that it has established

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<sup>1</sup> Article 54 of the Algerian Civil Code

<sup>2</sup> Articles 123 bis, 123 bis 1 of the Algerian civil code

<sup>3</sup> Articles 124, 140 bis 1 of the Algerian civil code

<sup>4</sup> Article 141 of the Algerian Civil Code

shall apply to obligations arising directly from the law (and no other)<sup>1</sup>.

### Legal terms

Obligation	الالتزام	individuals	
Financial value	قيمة مالية	Subject of the obligation	محل الالتزام
Parties	أطراف	Duty	واجب
Debtor	مدين	Paying a sum	دفع مبلغ
Creditor	دائن	Particular act	عمل معين
To perform	يؤدي - يقوم بـ	Trader	الناجر
Act-action	فعل - عمل	Competing	التنافس
Refrain to do Something	الامتناع عن القيام بشيء ما	Business activity	نشاط تجاري
Benefit	مصلحة	National service	الخدمة الوطنية
voluntarily	إراديا - طوعية	To compel	يجر
execution	تنفيذ	distinguishes	يميز
moral	أخلاقي - معنوي	religious	ديني
natural	طبيعي	Kinds of obligation	أنواع الالتزام
safeguards	ضمانات	Civil obligation	الالتزام المدني
liability	المسؤولية	indebtedness	المديونية
fulfill	تنفيذ	Legal means	الطرق القانونية
adequate	مناسب	Protection	حماية
establish	إنشاء	owner	مالك

<sup>1</sup> Article 53 of the Algerian Civil Code

Servitude	الارتفاق	transfer	ينقل
Seller	البائع	undertaking	يتعهد
Agent	الوكييل	neighbour	الجار
Compliant	منفذ-مطيع- مذعن	In breach of his obligation	في خرق لالتزامه
structure	البناء	Achieve a result	تحقيق نتيجة
Transfer the ownership	نقل الملكية	buyer	المشتري
price	الثمن- السعر	Due diligence	العناية المطلوبة- المناسبة-
Final aim	الغاية النهائية	To lead to	يؤدي إلى
similar	مشابه	guarantee	ضمان
patient	المريض	contract	العقد
agreement	اتفاق	commit	يرتكب
will	إرادة	action	تصرف
Legal effect	أثر قانوني	undertaken	تم التعهد به
independently	بصفة مستقلة- منفردة	concurrence	توافق- تطابق-منافسة
penalty		General legal obligation	التزام قانوني عام
causing	يسبب	Act entitling compensation	الفعل المستحق للتعويض
responsibility	المسؤولية	Personal action	الفعل الشخصي
Unjust enrichment	الإثراء بلا سبب	Good faith	حسن النية
gain	ينال- يكسب	compensate	يعوض- يكفى
expense	نفقة	enrichment	إثراء
To the extent	إلى الحد- بقدر		

## Lecture 5

### Criminal law

#### I-Definition of criminal law:

Criminal law is a set of legal rules that regulate the principles of criminalization and punishment and determine the acts that constitute crimes. It also regulates the procedures for investigating and prosecuting crimes, the rules of the trial, and the execution of punishment<sup>1</sup>.

The criminal law is a branch of public law, that includes both penal code which is a set of legal rules that define the crime and shows its prescribed punishment, and the criminal procedure code, which includes a set of legal rules that indicate the procedures that must be followed from the time of the occurrence of the crime until the perpetrator is punished.

**II-The purpose of criminal law:** The criminal law aims to protect society from harm from criminal behaviour by deterring people from committing crimes, by punishing those who do commit crimes, and by rehabilitating those who have been convicted of crimes<sup>2</sup>.

There are two types of deterrence: General deterrence and specific deterrence.

General deterrence can be defined as the impact of the threat of legal punishment on the public at large, but Specific deterrence is the effect of punishing people who have committed crimes<sup>3</sup>.

**III-Definition of the crime:** There are several definitions of crime, including:

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<sup>1</sup> Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed, Oxford University, Oxford, 2019, p 25

<sup>2</sup> Mahmoud Naguib Hosni, *Explanation of the Penal Code - General Section - Cairo*, Dar Al Nahda Al Arabiya, 2007, p. 45.

<sup>3</sup> Andrew Ashworth and Lucia Zedner, *Preventive Justice*, Oxford University Press, Oxford, 2014, 45.

-A crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to legal punishment.

-A crime is a legal wrong that remedied by punishing the offender in the courts of the state.

-An act or abstention from act in the violation of criminal law without justification and sanctioned by the law as felony or misdemeanour<sup>1</sup>.

Whatever definition of a crime may be adopted, we can say that the crime is;

- an act or omission.

-Prescribed by the state.

- has a penalty determined by law<sup>2</sup>.

**IV-Classifications of Crimes:** Criminal law categorizes crimes to reflect their severity. It recognizes three categories of crimes: felonies, misdemeanors, and infractions.

**1-Felonies** represent the most serious crimes and include crimes such as murder, rape, and armed robbery. Severe penalties often accompany these crimes. Penalties can include long-term imprisonment and capital punishment<sup>3</sup>.

**2-Misdemeanors** are less severe than felonies but more serious than infractions. Examples of these crimes include vandalism and petty theft. Typical penalties may include community service, fines, or shorter jail terms.

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<sup>1</sup> Mahmoud Naguib Hosni, Explanation of the Penal Code: General Section, 7th ed, Dar Al Nahda Al Arabiya, Egypt, Cairo, 2019, p. 25.

<sup>2</sup> Hamad Fathi Sorour, The Mediator in the Penal Code, The General Section, 4th ed, Dar Al Nahda Al Arabiya, Cairo, Egypt, 2020, p. 33.

<sup>3</sup> Mahmoud Naguib Hosni, Explanation of the Penal Code: General Section, 3rd ed, Dar Al Nahda Al Arabiya, Cairo, Egypt, 2019, p. 112.

**3-Infractions** are the least serious category of crimes. These crimes usually involve minor offences, such as public nuisance or traffic violations. They may be punishable by imprisonment or a fine<sup>1</sup>.

The Algerian Penal Code stipulates that crimes are divided, according to their seriousness, into felonies, misdemeanors and contraventions<sup>2</sup>.

**V-Crime Penalties:** Crimes are punished by applying penalties and prevented by taking security measures<sup>3</sup>.

**1-Original penalties:**

**A-Felony penalties:** according to the Algerian penal code, the original penalties in felonies are:

-Death penalty

-Imprisonment for life

-Interim imprisonment for a period ranging from 5 to 20 years.

**B-misdemeanour Penalties:** The penalties for misdemeanors are:

Detention for a period exceeding two months to five years, except in cases where law stipulates other limits.

-A fine exceeding 20000 dinars

**C- contraventions penalties:**

- Detention for a period of one day at least to two months

-A fine from 2000 dinars to 20000 dinars<sup>4</sup>.

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<sup>1</sup> Abdel Fattah Bayoumi Hijazi, Introduction to the Study of Criminal Law – General Section, Dar Al-Fikr Al-Jami'i, Cairo, Egypt, 2015, p 93

<sup>2</sup> Article 27 of the Algerian Penal Code

<sup>3</sup> Article 4 of the Algerian Penal Code

<sup>4</sup> Article 5 of the Algerian Penal Code

**2-Additional penalties:** the Algerian penal code has defined the additional penalties as follows:

- Legal interdiction
- interdiction of exercising national and civil and family rights
- Determine of residence
- Prohibition of residence
- Partial confiscation of properties
- Temporary forbid to practice a profession or activity
- Closing the establishment
- Exclusion from public deals
- interdiction of issuing checks and/or using payment cards
- Suspending, withdrawing or cancelling the driving license with preventing the issuance of a new licence
- Withdrawal of passport
- Publishing or displaying the conviction judgement or decision<sup>1</sup>.

### Legal terms

Criminal law	القانون الجنائي	Acts	أفعال
Legal rules	قواعد قانونية	constitute	يكون
Principles	مبادئ	crime	جريمة
Criminalization	تجريم	Regulate	ينظم
Punishment	عقاب	Procedures	إجراءات

<sup>1</sup> Article number 9 of the Algerian penal code

determine	يحدد	investigation	بحث- تحقيق
Trial	المحاكمة	Penal code	قانون العقوبات
implementation	تطبيق -تنفيذ	Legal rules	قواعد قانونية
To protect	يحمي	prescribed	المقرر
society	المجتمع	Criminal behaviour	السلوك الاجرامي
deter /deterrence	ردع	rehabilitating	إعادة التأهيل
convicted of crime.	أدين بجريمة	impact	تأثير
threat	تهديد	Legal punishment	عقوبة قانونية
public	عام	default	قصیر
Private deterrence	ردع خاص	offence	جريمة
guilty	مذنب	offender	الجاني
violation	مخالفة- خرق- انتهاك	sanction	عقوبة
felony	جناية	misdemeanour	جنحة
To adopt	يتبنى	omission	امتناع
Prescribed by the state	مقررة من الدولة	murder	قتل
rape	اغتصاب	armed robbery	سرقة بالسلاح سطو مسلح
Severe penalties	عقوبات شديدة	Long term	مدة طويلة
imprisonment	سجن	capital punishment	إعدام
vandalism	تخريب	petty theft	سرقة بسيطة
typical penalties	عقوبات نموذجية	society service	خدمة المجتمع
fine	غرامة	jail	حبس
infraction	مخالفة	Minor offences	جرائم بسيطة
Traffic violation	مخالفة المرور	stipulate	ينص

Death penalty	الإعدام	Imprisonment for life	السجن مدى الحياة
Interim imprisonment	الحبس المؤقت	Detention	الحبس- الاحتجاز- الاعتقال
A fine exceeding 20000 dinars	غرامة تتجاوز 20000 دج	Additional penalties	عقوبات تكميلية
Legal interdiction	الحجر القانوني	Temporary forbid to practice a profession or activity	المنع المؤقت من ممارسة مهنة أو نشاط
interdiction of exercising rights	الحرمان من ممارسة الحقوق	Closing the establishment	إغلاق المؤسسة
Determine of residence	تحديد الإقامة	Exclusion from public deals	الإقصاء من الصفقات العمومية
Prohibition of residence	المنع من الإقامة	interdiction of issuing checks	الحظر من إصدار الشيكات
Partial confiscation of properties	المصادرة الجزئية للممتلكات	payment cards	بطاقة الدفع
Suspending	تعليق	withdrawing	سحب
driving license	رخصة السيارة	preventing	منع
issuance of a new licence	إصدار رخصة جديدة	Withdrawal of passport	سحب جواز السفر
Publishing	نشر	displaying	تعليق
conviction judgement	حكم الإدانة	decision	قرار

## Lecture 6

### Elements of the crime

**Elements of the crime:** The elements of crime are defined as the components that must be proven in order for a judge to establish the guilt of the defendant in committing a crime and achieve a conviction, these are the material element, the legal element, and the moral element<sup>1</sup>.

**I-The material element:** it means the external appearance or material behaviour as defined by the text of the law and considered a crime, and through it the attack on the interest protected by law is achieved under the rule “There is no crime without a material element.”

**Elements of the material element:** The material element consists of three elements:

Act, effect (result) and causal relationship between them

**1-Act:** is the behaviour or action that the perpetrator performs, which is the external physical activity of the crime, or the perpetrator's voluntary movement that results in a change in the external world<sup>2</sup>.

The crime goes through three stages:

- **The first stage**

The stage of thinking and determination

- **The second stage**

Preparatory stage of the crime

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<sup>1</sup> Abdullah Suleiman, Explanation of the Algerian Penal Code, General Section, Part One, Crime, University Publications Office, Algeria, 1998, pp. 65-66

<sup>2</sup> Abdel-Azim Morsi Wazir, Explanation of the Penal Code, General Section, General Theory of Crime, Part 1, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 186

- **The third stage:**

Is the beginning of executing the crime (the attempt)

The first stage is not punishable by the legislator because it is related to intention and thinking only.

The second stage, which is the stage of preparatory work for the crime, is not punishable by the legislator unless the crime is committed

**Example:** Buy sleeping pills, wire, rope, or a knife

The third stage: is the beginning of executing the crime.

Criminal behaviour may be positive or negative:

**Positive behaviour:** This behaviour involves using some parts of the body, such as moving the hand to hit, steal, or forge. It may also involve using all parts of the body, such as crimes of violating the sanctity of the home or illegal immigration.

**Negative behaviour:** This behaviour is represented by the act of leaving or refraining from doing a positive action, and it is of two types:

Abstention that constitutes a crime in itself: The law considers this abstention a crime regardless of whether or not a harmful result occurs, such as:

Article 136 of the Algerian Penal Code, which stipulates that any judge or administrative employee who, under any pretext, refuses to decide between the parties after being asked to do so and insists on his refusal after being warned by his superiors, may be prosecuted and punished with a fine of 20000 to 100000 dinars, and deprivation from practicing public service for a period of five to twenty years.

Article 327 of the Penal Code states: Anyone who does not hand over a child under his care to the persons who have the right to claim him shall be punished with imprisonment from two to five years.

Abstention is also considered a crime in other articles of the Penal Code, namely:

### **138- 182- 331- 382**

Abstention is a means of committing a crime: such as committing a crime in front of a person who could have done something to prevent it from being committed, such as the crime of not providing assistance to a person in danger <sup>1</sup>- Article **182** of the Penal Code.

**2-Criminal result:** The criminal result constitutes one of the elements of the material element and the purpose of criminalization because it shows the harm that affects the interests protected by the law, and shows the assault that threatens society. The result is the change that the crime causes in the outside world.

The result has two concepts, a material concept and a legal concept.

The material concept of the result: It is the material effect that occurs in the external world as a result of criminal behaviour.

**Example:** The result of the crime of murder is the loss of life, the result of the crime of robbery is the transfer of possession, and the result of the crime of fraud is the acquisition of money.

**The legal concept of the result:** It is the harm or danger caused by the perpetrator's behaviour that affects a legally protected interest. Example: The result in the crime of murder is an assault on the right to life, and the result in the crime of assault and hitting is an assault on the right to bodily integrity.

**3-Causal relationship between criminal behaviour and the result:** This means that the criminal behaviour carried out by the perpetrator is the reason for causing the crime, and this means that there is a causal relationship between the perpetrator's activity and the criminal result. Example: A person fired a bullet and

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<sup>1</sup> Muhammad Najib Husni, The General Theory of Aesthetics, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2017, pp. 299-307

killed a person. Most legislations have adopted the theory of appropriate causation, which means that the perpetrator is responsible for the resulting result if his action leads, according to the normal course of events, to causing this result.<sup>1</sup>

**The attempt:** Attempt can be defined as starting to commit a crime without achieving the result due to a circumstance beyond the will of the perpetrator of the crime.

The Algerian legislator addressed the attempt to commit a crime in Article 30 of the Penal Code which stated: All attempts to commit a felony that begin with the commencement of execution or with unambiguous acts that directly lead to its commission are considered the same felony if they are not stopped or their effect does not disappear except as a result of circumstances independent of the will of the perpetrator, even if the intended goal cannot be achieved due to a material circumstance unknown to the perpetrator.

### **Provisions of the attempt:**

- Attempts are made in material crimes such as robbery and murder, but attempts are not conceivable in formal crimes.
- Attempts are made in positive crimes, but not in negative crimes.
- There is an attempt to commit intentional crimes, but there is no attempt in unintentional crimes
- The attempt to commit all felonies shall be punishable by the same penalty prescribed for the full felony in accordance with Article 30 of the Penal Code
- Attempting to commit a misdemeanor shall not be punishable unless there is an explicit law.<sup>2</sup>

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<sup>1</sup> Abdullah Ohaibiya, Explanation of the Penal Code, 2<sup>nd</sup> Edition, Dar el afkar, 2022, pp. 230-232

<sup>2</sup> The same reference, pp 250-252

-Attempted contraventions are not punishable at all (articles **30-31** of the Penal Code)

**Conditions for the occurrence of an attempt:** There are two types of attempted crime: beginning the execution, and not completing the crime for a reason beyond the perpetrator's control, here we distinguish between the stopped crime and the failed crime

**Suspended crime (incomplete attempt):** Suspended crime is the crime in which the result is absent due to the suspension of the execution of the act for reasons beyond the perpetrator's control, where the perpetrator is unable to complete all of his activity.

**Example:** Someone who puts gasoline to burn crops and is unable to light the fire because someone else prevents him from doing so or someone who climbs the wall of the house and is then prevented from entering it to complete the robbery

**The failed crime:** failed crime is the crime in which the perpetrator exhausts his criminal activity, but the result is not achieved due to a reason beyond his control, such as:

-someone who shoots at someone but did not hit him, or someone who sets fire to the agricultural crop but the rain extinguishes it.

-A man shot a person but missed.

-A man shot and injured a person, but he was taken to the hospital and did not die

**The Impossible Crime:** the perpetrator has exhausted all activity and physical behaviour towards achieving the result, but it is impossible to achieve it.

**Ex:** In the crime of murder: the perpetrator committed all the behaviour except that the victim had been dead for some time.

Attempting to abort a woman who is not pregnant at all, as it is impossible to achieve the result

But jurisprudence raised a question about the possibility of punishing this person for attempting to do so

Here, a distinction is made between several concepts, namely:

**Legal impossibility:** Some have argued that if the impossibility is legal, then there is no punishment for attempting it.

Legal impossibility means the absence of one of the elements of the crime, which leads to the impossibility of its realization.

**Ex:** The absence of the element of life in the crime of murder makes it impossible to commit it.

The absence of the pregnancy characteristic in the crime of abortion leads to the impossibility of its occurrence.

**Material impossibility:** This is the impossibility related to the material aspects of the crime and not its legal elements, meaning that the circumstances only make it impossible for the result to be achieved.

Stealing money from an empty pocket.

Stealing money from an empty pocket, here the result could have been achieved if there was money in the pocket, it is a material circumstance, not a legal circumstance.

**The attitude of the Algerian legislator:** The Algerian Penal Code punishes the impossible crime as a general principle, and this is what is stated in Article 30, even if the intended goal cannot be achieved due to a material circumstance unknown to the perpetrator.

There are some scholars who believe that the legislator has combined legal and material impossibility. For example, in Article 260 of the Penal Code, which stipulates that poisoning is an assault on a human life by the influence of

substances that can lead to death, and therefore there is no attempt if the substances are not toxic.<sup>1</sup>

**Contribution to crime:** Contribution is defined as the combination of several activities of several perpetrators to commit a single crime that could have been committed by one person.

Criminal participation is achieved by the multiplicity of perpetrators and the unity of the crime, but it must be clarified that sometimes the multiplicity is necessary for the crime to occur, as the crime cannot occur without it. An example of this is the gathering and the crime of adultery, in which case participation is necessary<sup>2</sup>.

**Elements of criminal contribution:** Criminal contribution is based on two elements:

**Multiple perpetrators:** This means the contribution of more than one person. If it was one person, there would be no criminal contribution. It also does not mean that one person committed a group of crimes, because this situation is called multiple crimes.

**Crime unity:** Crime unity assumes that a group of people, each working towards achieving a single goal

**Ex:** In the crime of theft, criminal contribution is as follows:

One person guards the road, another climbs the wall, and another carries the means to help them climb, waits for them in the car, and transports the stolen goods.

Here, the two units must be present: the material unit, which is the carrying out of the agreed-upon activities, and the moral unit, which is the psychological link that

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<sup>1</sup> Abdullah Ohaibiya, p r, PP 266-276

<sup>2</sup> Muhammad Najib Husni, p r, p 433

exists between the perpetrators, as all their actions are directed towards achieving one goal and one result<sup>1</sup>.

**Types of criminal contribution:** Original Contribution: the original contributor is the one who carries out the crime in the main role. he is divided into three according to the Algerian legislator: the direct perpetrator, the instigator, and the moral perpetrator

**Direct perpetrator:** returning to the text of Article 41 of the Algerian Penal Code, a direct perpetrator is considered to be anyone who directly contributed to the execution of the crime, or anyone who carried out the material element of the crime. It is sufficient to return to the criteria of initiation to know the direct perpetrator of the crime. According to most jurisprudence, some resort to another complementary condition, which is the appearance of the perpetrator with his act at the crime scene, so his activity is contemporary with the time in which it occurred.

**The instigator:** unlike most legislations, the Algerian legislator made the instigator the main perpetrator and not the accomplice. Instigation is defined as creating the idea of the perpetrator in a criminally responsible adult, and this is by returning to the text of article 41, Instigation is based on three things<sup>2</sup>:

**Use of means of incitement:** These means are specified in the law in Article 41, namely: a gift (the instigator giving a gift to the person instigated), a promise (to give a reward when the crime is committed, threats (pressuring the instigator's will to kill or publish news or pictures about him), abuse of authority whereby the instigator has legal authority over the incited, such as the authority of a superior over a subordinate, or a servant over a master, fraud or criminal deception, lying

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<sup>1</sup> Muhammad Najib Husni, p 1, p 433-441

<sup>2</sup> Abdullah Ohaibiya, p 1, p291

or deception, such as falsely claiming to a son that his father was beaten by another person.

**The incitement must be direct:** that is, the idea of the crime is broadcast explicitly, so it is not considered an incitement that arouses hatred or loathing in the person's soul and leads to the commission of the crime.

**The incitement must be personal:** that is, it is directed to a specific person and not to all people<sup>1</sup>.

**The moral perpetrator:** Returning to the text of Article 45 of the Penal Code, the moral perpetrator is the one who creates the idea of the crime in a person who is not criminally responsible. The instigator shares with the moral perpetrator the fact that they both commit the crime through others, except that the instigator commits it through a person who is criminally responsible, while the moral perpetrator commits it through a person who is not criminally responsible, such as a young child or a madman.

**Affiliate contribution:** (Partner): The Algerian legislator stipulated the form of subsidiary contribution in Articles 42 and 43 of the Penal Code. The partner can be defined as someone who did not directly participate in the execution of the material acts, but who assisted the perpetrators in all ways that lead to the realization of the crime. Accordingly, it is clear that the role of the partner is completed in the stage of preparatory acts, or those that facilitate or implement the commission of the crime.

**Subscription forms:** Through Articles 42 and 43, the subscription forms are clarified as follows:

**Assistance:** These steps are carried out during the preparatory work phase and can be carried out in all ways provided that they are limited to previous assistance

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<sup>1</sup> Mamoun Muhammad Salama, Penal Code - General Section - 4th Edition, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 1983-1984, p. 440

(preparatory work) or contemporary assistance, whereby the partner is required not to be present at the crime scene, or subsequent assistance, which is after the crime is completed, such as the crime of concealing stolen items.

**Habitual harbouring and hiding criminals:** returning to the text of Article 43 of the Penal Code, it becomes clear that there is a second form of participation, which is represented by what is called the legal partner, in which the habit of harbouring and hiding criminal groups is required, with knowledge of their criminal plans.

**Punishment for criminal participation:** According to the Algerian Penal Code, the original perpetrator is sentenced to the penalty prescribed for the crime, whether he is a direct perpetrator, instigator or moral perpetrator. If the instigator does not commit the crime, the instigator is punished because incitement is an independent crime in itself. As for the penalty for the accomplice, by returning to the text of Article 44 of the Penal Code, the accomplice in the felony or misdemeanor is punished with the penalty prescribed for the felony or misdemeanor, and participation in the contravention is not punished at all. As for personal circumstances, they do not affect and therefore only those who have them benefit from them without an accomplice; they are limited to their owners, whether mitigated, aggravated or exempted.

### Legal terms

Element of the crime	أركان الجريمة	To abort/ abortion	إجهاض/يجهض
judge	قاضي	Pregnant	حمل
establish	يثبت	Jurisprudence	فقه
Guilt	ذنب	Distinction	تمييز
Defendant	متهم	Legal impossibility	استحالة قانونية

Commit	يرتكب	Characteristic	خصائص
Conviction	إدانة	Material impossibility	استحالة مادية
Material element	الركن المادي	Steal	يسرق
Behaviour	سلوك	The attitude of the Algerian legislator	موقف المشرع الجزائري
Text	نص	Poison	سم
Law	قانون	Influence	تأثير
Interest	مصلحة	Death	وفاة
Rule	قاعدة	Toxic	سام
Act	فعل	Contribution to crime	المساهمة الجنائية
effect	نتيجة	Single crime	جريمة واحدة
Causal relationship	العلاقة السببية	Gathering	تجمهر
action	ال فعل	Adultery	زنا
perpetrator	الفاعل - الجاني	Multiple perpetrator	تعدد الجناة
Physical activity	النشاط المادي	Multiple crime	تعدد الجرائم
crime	الجريمة	Crime unity	وحدة الجريمة
result	النتيجة	Means	وسائل
determination	التصميم	Stolen goods	الأشياء المسروقة
Executing	التنفيذ	Moral unit	الوحدة المعنوية
Attempt	الشروع	Psychological link	الرابطة المعنوية
Punish	يعاقب	Main role	الدور الرئيسي
Legistrator	المشرع	Direct perpetrator	الفاعل المباشر

Intention	النية- القصد	Instigator/ instigated	من وقع / المحرض عليه التحرير
Preparatory work	العمل التحضيري	Moral perpetrator	الفاعل المعنوي
Positive behaviour	السلوك الإيجابي	Initiation	الشروط
Negative behaviour	السلوك السلبي	Complementary condition	شرط متكم
body	الجسم	Crime scene	مسرح الجريمة
violating	انتهاك	Main perpetrator	فاعل أصلي
sanctity of the home	حرمة المنزل	Accomplice	شريك
immigration	الهجرة	Incitement	التحريض
Refraining to do an action	الامتناع عن القيام بعمل	Gift	هدية
Illegal	غير قانوني	Promise	الوعد
forge	التزوير	Reward	مكافأة
Abstention	الامتناع	Threat	التهديد
Constitute	تشكل	Pressure	الضغط
Harmful	ضار	Abuse the authority	إساءة استعمال السلطة
Stipulate	تنص	Subordinate	المرؤوس
Administrative	إداري	Master	الرئيس
Pretext	حجـة	Servant	الخادم
Parties	أطـراف	Deception	التدليس
Superior	الرئيس	Lying	الكذب
Prosecute	يحاكم	Deception	التحايل

Fine	غرامة	Falsely claiming	الادعاء الكاذب
Deprivation	حرمان	Explicitly	صراحة
Public service	خدمة عمومية-مرفق عام	Hatred	الكراهية
Child	طفل	Loathing	البغض
Hand	يسلم	Saul	الروح- النفس
Right	حق	Personal	شخصي
Claim	مطالبة	Moral perpetrator	الفاعل المعنوي
Imprisonment	حبس	Criminally responsible	مسؤول جنائيا
Article	مادة	Affiliate contribution	مساهمة تبعية
Penal code	قانون العقوبات	Partner	الشريك
Providing assistance to a person	تقديم مساعدة لشخص	Stipulate	تنص
Assault	اعتداء	Subsidiary contribution	مساهمة تبعية
Material effect	النتيجة المادية	Assist	يساعد
Murder	القتل	Lead	يؤدي إلى
Robbery	السرقة	Realisation	تحقيق- إنجاز
Possession	الملكية	Preparatory act	عمل تحضيري
Fraud	النصب	Stage	مرحلة
Material concept	المفهوم المادي	Facilitate	مساعدة
Legal concept	المفهوم القانوني	Subscription	الاشتراك
Right to life	الحق في الحياة	Phase	مرحلة
Bodily integrity	السلامة الجسدية	Previous assistance	مساعدة سابقة

Reason	السبب	Subsequent assistance	مساعدة لاحقة
purpose	القصد	Concealing stolen items	إخفاء أشياء مسروقة
Criminal result	النتيجة الاجرامية	Harbouring	إيواء
Kill	يقتل	Hiding	إخفاء
Legislation	التشريع	Habitual	معتاد
Circumstances	ظروف	Criminal groups	جماعات إجرامية
Will	إرادة	Knowledge	معرفة
Felony	جناية	Criminal plans	مخططات إجرامية
Unambiguous	لا لبس فيها	Original perpetrator	الفاعل الأصلي
Independent	مستقلة	Sentence	عقوبة
Intended goal	الهدف المقصود	Penalty prescribed	العقوبة المقررة
Material crime	جريمة مادية	Misdemeanor	جنحة
Formal crime	جريمة شكلية	Contravention	مخالفة
adopt	يتبنى	Personal circumstances	ظروف شخصية
Intentional crime	جريمة عمدية	Accomplice	شريك
Unintentional crime	جريمة غير عمدية	Aggravated	مشددة
Explicit provision	حكم صريح	Mitigated	خففة
Stopped crime	جريمة موقوفة	Exempted	معفية
Failed crime	جريمة خائبة	Legal partner	شريك حكمي
Suspended crime	جريمة موقوفة	Incomplete attempt	شروع ناقص
Exhausts the criminal activity	يستنفذ نشاطه الاجرامي	Impossible crime	جريمة مستحيلة

## lecture 7

### Criminal liability

**Definition of criminal liability:** Criminal liability is the obligation to bear the legal consequences resulting from the presence of the elements of the crime, and the subject of this obligation is to impose a penalty or precautionary measure specified by the legislator in the event that any person is held responsible.

Criminal liability is also defined as: a person's obligation to bear the consequences of his criminal actions<sup>1</sup>.

**The basis for establishing criminal liability in Algerian legislation:** The Algerian legislator established criminal liability on the basis of freedom of choice<sup>2</sup>. The evidence for this is that he excluded criminal liability in cases where freedom of choice was absent. Article 47 of the Penal Code states: "No punishment shall be imposed on anyone who was in a state of insanity at the time of committing the criminal act." Article 48 states: "No punishment shall be imposed on anyone who was forced to commit a crime by a force that he was unable to repel." Article 49 states: "Only protective and educational measures shall be imposed on a minor who has not completed the age of thirteen"

All these articles express the impossibility of criminal liability due to the loss of freedom of choice, but the legislator has restricted the scope of this freedom by adopting the middle school. In this context, he has decided on security measures for the insane person despite the impossibility of his responsibility to protect society from the dangers of his actions, as Article 74 has indicated the application of the provisions of the second paragraph of Article 21 with regard to judicial detention in a psychiatric institution. He has also adopted the mitigated liability

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<sup>1</sup> Suwailem Muhammad Ali, Criminal Responsibility in Light of Criminal Policy, Dar ennachr eldjamilia, Alexandria, 2007, p 8

<sup>2</sup> Faraj Reda, Explanation of the Algerian Penal Code, General Section, 2nd ed, National Publishing and Distribution Company, Algeria, 1976, p. 105

when freedom of choice is diminished in the second paragraph of Article 49: “A minor who has reached the age of 13 to 18 years shall be subject to protection or educational measures or to mitigated penalties.”

**Exclusion of criminal liability:** The Algerian legislator has determined the factors for exclusion of criminal liability as personal factors, which he mentioned in Articles 47 to 51 under the chapter on criminal liability.

**Firstly:** Impediments to liability due to lack of awareness: Capacity is absent due to lack of awareness in two cases (madness and young age)

**Madness:** Article 47 states: “No punishment shall be imposed on anyone who was in a state of madness at the time of committing the crime.”

Madness: The Algerian legislator did not define the madness (insanity).

it is agreed upon that madness is a disorder in the mental faculties that causes a person to lose the ability to distinguish and control his actions. In general, when doubt surrounds the mental state of the accused, the judge resorts to mental expertise (the specialist doctor)<sup>1</sup>.

madness generally includes all deficiency in mental abilities, such as dementia and imbecility. madness may be continuous or intermittent, and other forms of nervous and psychological diseases that strip a person of perception fall under insanity. In this context, drunkenness and drugs are not included among the obstacles to responsibility, and therefore are punished with the prescribed penalties. In fact, drunkenness and drugs are sometimes considered aggravating circumstances of the crime, as in the case of murder or crimes of negligence<sup>2</sup>.

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<sup>1</sup> Omar Al-Saeed Ramadan, Explanation of the Penal Code - General Section - Dar Al-Nahda Al-Arabiya, Cairo, 1998, p 222

<sup>2</sup> Article 290 of the Algerian Penal Code.

**Effects of madness:** madness results in the absence of responsibility, so the insane person is not punished and only therapeutic measures are taken regarding him. Conditions of insanity that does not lead to responsibility: the following conditions are required for this type of madness:

**-That the madness be contemporaneous with the commission of the crime:**

This is what is inferred from the ruling of Article 7 “at the time of committing the crime.” madness is not taken into account if it occurred before or after the commission of the crime. However, madness that occurs after the commission of the crime results in some consequences, as follows:

-If madness occurs before the judgment is issued, the case against the accused is suspended and his trial is suspended if he is in the process of being tried. Therefore, if madness occurs during the initial investigation before the investigating judge, it is likely to suspend the investigation against the accused due to his inability to defend himself

-If madness occurs after the judgment is issued, the punishment must be postponed until he recovers (placed in a mental hospital). As for all other punishments, the afflicted person remains subject to them, as is the case with the fine<sup>1</sup>.

**-That the madness be complete:** it means that the madness is so serious that there is no feeling, and this is an objective matter that is left to the judges of the subject matter to assess following medical expertise.

**Young age:** It is accepted that a child is born helpless, devoid of awareness and perception, and legislation differs in setting a specific age. After reaching maturity, a person is considered responsible for his criminal acts. According to most legislations, the child is initially devoid of discernment and therefore is not

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<sup>1</sup> Abdullah Suleiman, Explanation of the Algerian Penal Code, General Section, Part One, “Crime,” Office of University Publications, Algeria, 1998, pp. 312-313

held accountable for any act he commits. At a later stage, he becomes discerning and here he is held accountable with reduced responsibility. This stage extends until he reaches adulthood, and then he is held accountable with full responsibility. According to the text of Article 49 of the Penal Code, the legislator has distinguished between three stages of criminal responsibility.

**First stage:** Boy under 13: Referring to the text of the first paragraph of Article 49, the boy at this stage is not considered responsible by law, but this does not prevent him from being subjected to protection or educational measures

**The second stage:** A minor between the ages of 13 and 18. Here he becomes a lesser liability. If he commits a crime after reaching the age of 13 and before 18 (the age of criminal majority), the law allows him to be subjected to protection or educational measures or to reduced penalties.

**The third stage:** It is the stage of criminal maturity, which means reaching the age of 18, when his awareness is complete, his mental and psychological faculties mature, and he becomes fully responsible for his actions<sup>1</sup>.

**Secondly: Abstention from responsibility due to lack of will (coercion):** the Penal Code stipulates that there is no punishment for someone who was forced to commit a crime by a force that he is unable to repel<sup>2</sup>. Unlike insanity, which causes loss of consciousness and discernment, coercion is a psychological cause that negates freedom of choice. Coercion is of two types: material and moral.

**Physical coercion:** the presence of a physical force that robs a person of his will and pushes him to do an act prohibited by law.

**Physical coercion forms:** There are several forms of this type:

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<sup>1</sup> Abdullah Suleiman, the previous reference, pp 315- 318

<sup>2</sup> Article 48 of the Algerian Penal Code

**-It may be a violent force of nature:** a flood that prevents the witness from reaching the scene to give his testimony.

**-It may also result from the action of an animal:** such as an animal running wild with its rider and injuring a passerby. It may also result from the action of a human, such as someone grabbing the hand of another person to sign a forged contract, or someone threatening a bank teller with a firearm and forcing him to hand over the money deposited in it<sup>1</sup>.

**Characteristics of physical coercion:** There are several characteristics of physical coercion, which are:

**Unpredictability of force:** That is, the force must be sudden, such as someone surprising a cashier and threatening him with a firearm to force him to hand over the deposited money

**Impossibility of repelling force:** it means that the perpetrator is in a position where it is impossible for him to do anything other than commit the crime<sup>2</sup>.

**Moral coercion:** If physical coercion is characterized by physical force, then moral coercion is characterized by a moral force that weakens the will of the coerced person in a way that makes him lose his choice, so the person threatened by it commits the crime because he sees that its harm is less severe for him than the occurrence of the harm threatened, such as someone who threatens a person with killing his son or burning his shop if he does not commit the crime. Thus, it was decided in France that moral coercion that removes criminal liability requires an external act with respect to the perpetrator<sup>3</sup>.

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<sup>1</sup> Abdullah Suleiman, previous reference, pp 319-322

<sup>2</sup> The same reference, p 323

<sup>3</sup> Habbas Abdelkader, Coercion and its Impact on Criminal Responsibility, A Comparative Study between Maliki Jurisprudence and Algerian Criminal Law, A Study of Coercion Models, Master's Thesis, Faculty of Humanities and Islamic Civilization, University of Oran, Algeria, 2006-2007, pp. 80-81

**Thirdly: The state of necessity:** In this context, we will discuss the following:

**1- Definition of the state of necessity:** state of necessity is a state in which someone cannot protect himself or others from an imminent evil except by committing a crime against innocent people. An example of this is when a person tries to steal food to save himself from death, or when a doctor performs an abortion on a pregnant woman to save her life. Jurisprudence has been divided between those who say that it is an obstacle to criminal liability or a reason for permissibility. It is worth noting that Algerian law did not refer to a state of necessity, and its neglect is not justified, as this issue must be decided upon<sup>1</sup>.

The Algerian Penal Code stipulates that there is no punishment for anyone who is forced to commit a crime by a force that he is unable to resist<sup>2</sup>.

**2- The case of necessity and legitimate defense:** The case of necessity and legitimate defense are similar in that the perpetrator (the perpetrator of the crime of necessity or the defender in legitimate defense) in both cases performs his work to prevent a current danger, but there are fundamental points of difference between them, which are:

-The source of danger in the case of legitimate defense is the human being, while the non-human being is the source of danger in the case of necessity. -The danger emanating from the human being (the act of attack) in legitimate defense is a crime.

-the act of defense is directed to stop this crime, while the danger emanating in the case of necessity is not considered a crime, such as floods, and the act of necessity is directed to get rid of this danger by attacking an innocent person.

-In the case of legitimate defense, the aggressor against whom the act of defense is committed may not use the right of legitimate defense, However, in the case of

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<sup>1</sup> Abdullah Ouhaibia, Explanation of the Algerian Penal Code, General Section, Dar Houma, Algeria, 2009, p. 170

<sup>2</sup> Article 48 of the Algerian penal code

necessity, the person who is subjected to the act of necessity may use the right of defense against the perpetrator of the necessity.

-Legitimate defense erases the crime, so it is not permissible to demand civil compensation, However, in the case of necessity, it is permissible to demand civil compensation<sup>1</sup>.

**3- State of necessity and moral compulsion:** The state of necessity meets moral compulsion in the following points:

- The will of the agent is not erased in both cases
- The will of the agent is stripped of freedom of choice in both cases
- The criminal incident is directed against an innocent person in both cases

The state of necessity differs from moral coercion in several aspects, which are:

- Moral coercion by human action, unlike the case of necessity by an act of nature.
- The crime that occurs in a state of moral coercion aims to ward off harm that threatens the perpetrator personally, while in a state of necessity the danger may be to the person, his property, or others (broader in scope).
- In the case of moral coercion, freedom of choice is limited, while in the case of necessity, the actor usually has more than one course of action.

**4-Conditions of a state of emergency:** A state of emergency requires the presence of two elements: danger and a reaction to it.

**a- Danger:** There are several conditions for a danger that could be a cause of a state of necessity, which are:

- That the danger exists: It is not permissible to use a non-existent danger as an excuse to say that a state of necessity has occurred. However, if the perpetrator imagines that the danger exists and his imagination is based on reasonable

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<sup>1</sup> Abdullah Suleiman, previous reference, p 327

reasons, then his action on this basis is not considered a crime, but rather a state of necessity.

- The danger must be serious: it affects the will because it threatens irreparable harm.
- To be present: that is, about to happen or that it has started but not finished
- That the will of the perpetrator has no role in the occurrence of the danger: that is, that the danger does not arise from the perpetrator himself. This condition was stipulated by the Egyptian legislator, and accordingly, the person who intentionally sets fire to a place is not exempted from criminal accountability if the fire surrounds it and he is forced to kill or injure a person while he is trying to escape.
- The law does not require the actor to bear the risk: An example of this is that some jobs impose risks on the actor, as a firefighter bears the consequences of his profession resulting from fires<sup>1</sup>.

**Conditions of the act of necessity:** If the danger meets the previously mentioned conditions, the perpetrator may repel it by an act of necessity, which are:

- That the act of necessity be directed to avert the danger: If the act of necessity deviates from its goal, it is considered a crime and the perpetrator receives its punishment<sup>2</sup>.
- That the act be the only means of getting rid of the danger: If there are multiple means of getting rid of the danger, he is not permitted to follow the act that leads to committing the crime<sup>3</sup>.

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<sup>1</sup> Abdullah Suleiman, previous reference, pp 328-330.

<sup>2</sup> Ben Sheikh Al-Hussein, Principles of General Criminal Law, Dar Houma, Algeria, 2005, p. 112.

<sup>3</sup> Akram Nashat Ibrahim, General Rules in Comparative Penal Law, Dar el djamia, Beirut, 1999, p 255.

### Legal terms:

Criminal liability		المسؤولية الجنائية
obligation		الالتزام
elements of the crime		عناصر الجريمة
penalty		العقوبة
precautionary measure		تدبير احترازي
legislator		المشرع
freedom of choice		حرية الاختيار
evidence		الدليل
punishment		العقوبة
to repel		دفع
minor		القاصر
Loss of freedom of choice		فقدان حرية الاختيار
Scope of this freedom		نطاق هذه الحرية
provisions		الأحكام
insanity		الجنون
detention		الاحتجاز
mitigated liability		مسؤولية مخففة
mitigated penalties		عقوبات مخففة
restricted		قيد
educational measures		تدابير تربوية
Protective measures		تدابير الحماية
Security measures		الأمن
psychiatric institution		مؤسسة عقلية

Exclusion of criminal liability		انفاء المسؤولية الجنائية
personal factors		عوامل شخصية
Impediments to liability		موانع المسؤولية
lack of awareness		انعدام الوعي
Capacity		الأهلية
young age		صغر السن
Madness		الجنون
disorder in the mental faculties		اضطراب في القدرات العقلية
to lose the ability to distinguish		فقدان القدرة على التمييز
Control of actions		السيطرة على الأفعال
the mental state		الحالة العقلية
mental expertise		الخبرة العقلية
dementia		العنة
imbecility		الغفلة
psychological diseases		أمراض نفسية
nervous diseases		أمراض عصبية
perception		الإدراك
drunkenness		السكر
the prescribed penalties		العقوبات المقررة
aggravating circumstances		ظروف مشددة
murder		القتل
negligence		الإهمال - الغفلة
Effects of madness		آثار الجنون

absence of responsibility		غياب / انفقاء المسؤولية
therapeutic measures		تدابير علاجية
the madness is contemporaneous with...		الجنون معاصر / مزامن ل...
the commission of the crime		ارتكاب الجريمة
trial is suspended		توقف الدعوى
the initial investigation		التحقيق الابتدائي
inability to defend himself		عدم القدرة على الدفاع عن النفس
the punishment must be postponed		يتم تأجيل العقوبة
the complete madness		الجنون التام
medical expertise		خبرة طبية
objective matter		مسألة موضوعية
helpless		عجز
reaching maturity		البلوغ
criminal acts		الأعمال الإجرامية
discerning		مميز
accountable		مسؤول
reduced responsibility		مسؤولية مخففة
adulthood		سن الرشد
full responsibility		مسؤولية كاملة / تامة
is not considered responsible		لا يعتبر مسؤولا
lesser liability		مسؤولية مخففة
criminal majority		الرشد الجنائي
reduced penalties		عقوبات مخففة

mental and psychological faculties		الملكات الذهنية والنفسية
lack of will		انعدام الإرادة
coercion		الإكراه
Physical coercion		الإكراه المادي
act prohibited by law		فعل محظور بموجب القانون
violent force of nature		قوة طبيعية عنيفة
prevent		يمنع
testimony		الشهادة
animal running wild		حيوان جامح
forged contract		عقد مزور
threat		يهدد
bank teller		صراف البنك
firearm		سلاح ناري
to hand		يسلم
physical coercion		الإكراه المادي
Unpredictability of force		عدم توقع القوة
a cashier		أمين الصندوق
Impossibility of repelling force		استحالة دفع القوة
Moral coercion		إكراه معنوي
moral force		قوة معنوية
the harm		الضرر
external act		فعل خارجي
imminent evil		شر محقق

innocent people		ناس أبرياء
a doctor performs an abortion		الطبيب يقوم بالإجهاض
a pregnant woman		امرأة حامل
permissibility		إباحة
a state of necessity		حالة الضرورة
negligence		الإهمال
not justified		غير مبرر
legitimate defense		الدفاع الشرعي
The case of necessity		حالة الضرورة
the perpetrator		الجاني، مرتكب الجريمة
the defender		المدافع
to prevent a current danger		لتولي الخطر الحال
moral compulsion		الإكراه المعنوي
innocent person		شخص بريء
to get rid of this danger		لدرء هذا الخطر
the aggressor		المعتدي
Legitimate defense erases the crime		الدفاع المشروع يمحو الجريمة
civil compensation		التعويض المدني
The will of the agent		إرادة الفاعل
The criminal incident		الحادثة الإجرامية
human action		ال فعل البشري
to ward off harm		درء الضرر
state of emergency		حالة الضرورة
The danger must be serious		أن يكون الخطر جسما

To be present		أن يكون حالا
intentionally		عمدا
exempted from criminal accountability		يعفى من المسؤولية الجنائية
to avert the danger		تجنب الخطر
getting rid of the danger		التخلص من الخطر
to committing the crime		لارتكاب الجريمة

## Lecture 8

### Civil procedure law

**Civil procedure law** is the body of law that sets out the rules and regulations along with some standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced; what kind of service of process (if any) is required; the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials; the process for judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function<sup>1</sup>.

#### **Differences from criminal procedure law:**

In most cases, criminal prosecutions are pursued by the state in order to punish offenders, although some systems, such as in English and French law, allow citizens to bring a private prosecution. Conversely, civil actions are initiated by private individuals, companies or organizations, for their own benefit. Government agencies may also be a party to civil actions. Civil and criminal cases are usually heard in different courts.

In jurisdictions based on English common-law systems, the party bringing a criminal charge (in most cases, the state) is called the "prosecution", but the party bringing most forms of civil action is the "plaintiff" or "claimant". In both kinds of action, the other party is known as the "defendant"<sup>2</sup>.

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<sup>1</sup> Ahmad Abu Al-Wafa, Civil and Commercial Litigation, , Dar Ennahdha Elaarabia, Alexandria, Egypt, 2005, p. 12

<sup>2</sup> J. H. Baker, An Introduction to English Legal History, 5th ed.: Oxford University Press, Oxford, 2019, p 213.

Most countries make a clear distinction between civil and criminal procedure. For example, a criminal court may force a convicted defendant to pay a fine as punishment for their crime, and the legal costs of both the prosecution and defence. But the victim of the crime generally pursues their claim for compensation in a civil, not a criminal, action. In France and England, however, a victim of a crime may incidentally be awarded compensation by a criminal court judge<sup>1</sup>.

Evidence from a criminal trial is generally admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured them is found guilty of the crime of careless driving. The victim still has to prove his case in a civil action, unless the doctrine of collateral estoppel applies, as it does in most American jurisdictions. The victim may be able to prove their civil case even when the driver is found not guilty in the criminal trial, because the standard to determine guilt is higher than the standard to determine fault. However, if a driver is found by a civil jury not to have been negligent, a prosecutor may be estopped from charging them criminally.

If the plaintiff has shown that the defendant is liable, the main remedy in a civil court is the amount of money, or "damages", which the defendant should pay to the plaintiff. Alternative civil remedies include restitution or transfer of property, or an injunction to restrain or order certain actions.

The standards of proof are higher in a criminal case than in a civil one, since the state does not wish to risk punishing an innocent person. In English law the prosecution must prove the guilt of a criminal "beyond reasonable doubt"; but the plaintiff in a civil action is required to prove his case "on the balance of probabilities".<sup>[2]</sup> Thus, in a criminal case a crime cannot be proven if the person

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<sup>1</sup> Neil Andrews, *Principles of Civil Procedure* Sweet & Maxwell, London, 2013, 45–46

or persons judging it doubt the guilt of the suspect and have a reason (not just a feeling or intuition) for this doubt. But in a civil case, the court will weigh all the evidence and decide what is most probable.

### Legal terms

Civil procedure law	قانون الإجراءات المدنية
courts	المحاكم
adjudicating civil lawsuits	الفصل في الدعاوى المدنية
criminal law	القانون الجنائي
pleadings	المرافعات
applications	الطلبات
prosecutions	المحاكمات
offenders	الجناة
civil actions	الدعاوى المدنية
private individuals	الأفراد
companies or organizations	الشركات أو المنظمات
Government agencies	وكالات/ هيئات حكومية
common-law	القانون العام
prosecution	النيابة العامة
plaintiff	المدعي
claimant	المدعي
defendant	المدعي عليه
a convicted defendant	المتهم المدان
claim for compensation	المطالبة بالتعويض

the victim of a road accident	ضحية حادث مرور
guilty	مذنب
careless driving	قيادة متهاورة
fault	الخطأ
negligent	مهمل
charging them criminally	متابعاتهم / اتهامهم جنائياً
liable	مسؤول قانونياً
damages	تعويضات
property	ملكية
injunction	أمر قضائي
prosecution	الادعاء
the suspect	المشتبه فيه
civil case	دعوى / قضية مدنية
to prove	لإثبات
proof	الدليل

## Lecture 9

### international treaties

**Treaties** are one of the main **sources of international law** which means an **international agreement** concluded between **States** in written form and governed by **international law**, whether embodied in a single **instrument** or in two or more related instruments and whatever its particular designation<sup>1</sup>.

#### **Means of expressing consent to be bound by a treaty:**

**The consent** of a **State** to be bound by a treaty may be expressed by **signature**, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed<sup>2</sup>.

#### **Consent to be bound by a treaty expressed by signature:**

**1-The consent** of a State to be bound by a treaty is **expressed** by the **signature** of its **representative** when:

**A**-the treaty provides that signature shall have that effect.

**B**-it is otherwise established that the negotiating States were agreed that signature should have that effect.

**C**-the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation<sup>3</sup>.

**Signing the Treaty:** the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed.

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<sup>1</sup> Mohamed Bousultan, Principles of Public International Law, Part One, Office of University Publications, Algeria, 2005, pp. 56-57

<sup>2</sup> Article 11 of the 1969 Vienna Convention

<sup>3</sup> Paragraph 1 of Article 12 of the Vienna Convention on the Law of Treaties of 1969

the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty<sup>1</sup>.

### **Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty:**

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- 1-the instruments provide that their exchange shall have that effect.
- 2-it is otherwise established that those States were agreed that the exchange of instruments should have that effect<sup>2</sup>.

### **Consent to be bound by a treaty expressed by ratification, acceptance or approval:**

**1**-The consent of a State to be bound by a treaty is expressed by ratification when:

**A**-the treaty provides for such consent to be expressed by means of ratification.

**B**-it is otherwise established that the negotiating States were agreed that ratification should be required.

**C**-the representative of the State has signed the treaty subject to ratification.

**D**-the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation<sup>3</sup>.

**2**-The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification<sup>4</sup>.

### **Consent to be bound by a treaty expressed by accession:**

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<sup>1</sup> Paragraph 2 of the Article 12 of the Vienna Convention on the Law of Treaties of 1969

<sup>2</sup> Article 12 of the Vienna Convention on the Law of Treaties of 1969

<sup>3</sup> Paragraph 1 of the Article 14 of the Vienna Convention on the Law of Treaties of 1969

<sup>4</sup> Paragraph 2 of the Article 14 of the Vienna Convention on the Law of Treaties of 1969

The consent of a State to be bound by a treaty is expressed by accession when:

**A**-the treaty provides that such consent may be expressed by that State by means of accession.

**B**-it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession.

**C**-all the parties have subsequently agreed that such consent may be expressed by that State by means of accession<sup>1</sup>.

**Exchange or deposit of instruments of ratification, acceptance, approval or accession:**

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

a-their exchange between the contracting States.

b-their deposit with the depositary.

c-their notification to the contracting States or to the depositary, if so agreed<sup>2</sup>.

**Consent to be bound by part of a treaty and choice of differing provisions**

**1**-Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

**2**-The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates<sup>3</sup>.

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<sup>1</sup> Article 15 of the Vienna Convention on the Law of Treaties of 1969.

<sup>2</sup> Article 16 of the Vienna Convention on the Law of Treaties of 1969.

<sup>3</sup> Article 16 of the Vienna Convention on the Law of Treaties of 1969.

## **Obligation not to defeat the object and purpose of a treaty prior to its entry into force:**

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

**a**-it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

**b**-it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed<sup>1</sup>.

### **Legal terms**

international treaties	المعاهدات الدولية
main sources	المصادر الأساسية
international agreement	اتفاقية دولية
international law	القانون الدولي
instrument	وثيقة
to be bound by a treaty	الالتزام بالمعاهدة
may be expressed by signature	يعبر عنه بالتوقيع
exchange of instruments constituting a treaty	تبادل الوثائق المكونة لاتفاقية
ratification	التصديق
acceptance	الموافقة
approval	القبول
accession	الانضمام

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<sup>1</sup> Article 17 of the Vienna Convention on the Law of Treaties of 1969.

representative	ممثل
the treaty provides	تنص المعاهدة
the effect	الأثر
negotiating States	الدول المتفاوضة
intention of the State	نية/ قصد الدولة
full powers	صلاحيات كاملة/ تفويض كامل
To express	التعبير
Signing the Treaty	توقيع المعاهدة
initialling	توقيع بالأحرف الأولى
if confirmed by his State	إذا أجازت دولته ذلك
instruments exchanged	الوثائق المتبادلة
Consent to be bound by a treaty	تعبر الدولة عن رضاها الالتزام بالمعاهدة
accession	الانضمام
Exchange or deposit of instruments	تبادل أو إيداع الوثائق
contracting States	الدول المتعاقدة
depositary	جهة الإيداع
notification to the contracting States	إخطار الدول المتعاقدة
part of a treaty	جزء من المعاهدة
choice of differing provisions	الاختيار بين نصوص مختلفة
Without prejudice to articles	عدم الإخلال بالمواد
is effective	نافذا
Obligation not to defeat	الالتزام بعدم تعطيل
object and purpose of a treaty	موضوع أو غرض الاتفاقية
entry into force	الدخول حيز التنفيذ

defeat the object and purpose of a  
treaty

تعطيل موضوع وغرض المعاهدة

## Lecture 10

### International treaties

The term treaty is used generically to describe a variety of instruments, including conventions, agreements, arrangements, protocols, covenants, charters, and acts. In the strict sense of the term, however, many such instruments are not treaties. The key distinguishing feature of a treaty is that it is binding. For example, whereas the United Nations (UN) Charter (1945) created a binding agreement and is thus a treaty, the Charter of Paris (1990), which established the Organization for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), is not a binding document as such and thus is not officially a treaty. Treaties are expected to be executed in good faith, in keeping with the principle of *pacta sunt servanda* (Latin: “agreements must be kept”), arguably the oldest principle of international law. Without this principle, which is explicitly mentioned in many agreements, treaties would be neither binding nor enforceable<sup>1</sup>.

A treaty is normally negotiated between plenipotentiaries provided by their respective governments with the “full power” to conclude a treaty within the scope of their instructions. A country’s signature is often sufficient to manifest its intention to be bound by the treaty, especially in the case of bilateral treaties. In multilateral (general) treaties, however, a country’s signature is normally subject to formal ratification by the government unless it has explicitly waived this right. Apart from such an express provision, the instrument does not become formally binding until ratifications have been exchanged. Multilateral treaties bind only those states that are parties to them and go into effect after a specified number of ratifications have been attained. After the time specified for states to sign the

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<sup>1</sup>Mohammed Bousultan, Principles of Public International Law, Part 1, University Publications Office, Algeria, First Edition, 2005, p. 56

treaty has passed, states may become parties to the treaty through a process known as accession<sup>1</sup>.

The use of multilateral treaties has increased dramatically since the early 20th century (e.g., the 1919 Treaty of Versailles and the 1945 UN Charter). Such treaties have proved to be effective in establishing new rules of international law—particularly where there is a need to respond quickly to changing circumstances or where the issue in question is unregulated. An example of the former kind of treaty is the Convention on the law of the sea which is signed in 1982 and came into force 12 years later. Examples of the latter kind of treaty include a range of environmental treaties, such as the Geneva Convention on Long-Range Transboundary Air Pollution (1979) and the Vienna Convention for the Protection of the Ozone Layer (1985) as well as their succeeding protocols; the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (both of which were adopted in 1992); and the Kyoto Protocol (1997)—the first addition to the UNFCCC—which was superseded by the Paris Agreement on climate change in 2015. In addition, human rights protections have been expanded tremendously through a series of international conventions and regional agreements, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the European Convention on Human Rights (1950), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and the Inter-American Convention on Human Rights (1969).

Treaties do not need to follow any special form. A treaty often takes the form of a contract, but it may be a joint declaration or an exchange of notes. Important

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<sup>1</sup> Mohammed Bousultan, p r, p 57

treaties, however, generally follow a fixed plan. The preamble provides the names and styles of the contracting parties and is a statement of the treaty's general objectives. It is usually followed by the articles containing the agreed-upon stipulations. If the treaty is concluded for a definite period, a statement of the period follows; or, if it is in perpetuity, there may be a provision inserted that either party may "denounce" (give notice to terminate) the treaty. Any reservations, which alter the treaty's provisions for the concerned state, may then appear; they are followed by an article that provides for the treaty's ratification and for the time and place for the exchange of ratifications. The treaty usually ends with a clause stating that "in witness whereof the respective plenipotentiaries have affixed their names and seals," below which are the signatures and indications of the signatory and the date. "Additional articles" often are appended and signed by the plenipotentiaries, with the declaration that they have the same force and value as if they had been included in the body of the treaty or convention<sup>1</sup>.

International jurists have classified treaties according to a variety of principles. In addition to the distinction between multilateral and bilateral treaties, there is also the distinction between treaties representing a definite transaction (e.g., a cession of territory) and those seeking to establish a general rule of conduct (e.g., the "renunciation of war"). Treaties also have been classified according to their object, as follows: (1) political treaties, including peace treaties, alliances, territorial cessions, and disarmament treaties; (2) commercial treaties, including tariff, consular, fishery, and navigation agreements; (3) constitutional and administrative treaties, such as the conventions establishing and regulating international unions, organizations, and specialized agencies; (4) treaties relating to criminal justice, such as the treaties defining international crimes and providing for extradition; (5) treaties relating to civil justice, such as the conventions for the

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<sup>1</sup> Mohammed Bousultan, p r, p 57

protection of human rights, for trademarks and copyright, and for the execution of the judgments of foreign courts; and (6) treaties codifying international law, such as the procedures for the peaceful settlement of international disputes, rules for the conduct of war, and definitions of the rights and duties of states. In practice it is often difficult to assign a particular treaty to any one of these classes, and the legal value of such distinctions is minimal<sup>1</sup>.

### Legal terms

conventions	معاهدات
agreements	اتفاقيات
arrangements	اتفاقيات
protocols	بروتوكولات
covenants	العهود
charters	مواثيق
treaties	اتفاقيات
binding	ملزم
United Nations charter	ميثاق الأمم المتحدة
Organization	منظمة
Security and Co-operation	الأمن والتعاون
Conference	مؤتمر
binding document	وثيقة ملزمة
to be executed	تنفذ
in good faith	بحسن نية
principle of pacta sunt servanda	العقد شريعة المتعاقدين

<sup>1</sup> Mohammed Bousultan, p r, p 58

principle of international law	مبدأ القانون العام
explicitly mentioned	مذكور صراحة/ منصوص عليه صراحة
enforceable	قابل للتنفيذ
negotiated	يتم التفاوض عليها
plenipotentiaries	المفوضون
respective governments	حكوماتهم المعنية
full power	تفويض كامل
to conclude a treaty	لإبرام اتفاقية
instructions	تعليمات
bilateral treaties	معاهدات ثنائية
multilateral treaties	معاهدات متعددة الأطراف
formal ratification	تصديق رسمي
waive the right	التنازل عن الحق
20th century	القرن العشرون
Treaty of Versailles	اتفاقية فرساي
Convention on the Law of the Sea	اتفاقية قانون البحار
came into force	دخلت حيز النفاذ
environmental treaties	معاهدات بيئية
Geneva Convention	اتفاقية جنيف
Geneva Convention on Long-Range Transboundary Air Pollution	اتفاقية حول تلوث الهواء على المدى البعيد عبر الحدود
Vienna Convention for the Protection of the Ozone Layer	اتفاقية فيينا لحماية طبقة الأوزون
succeeding protocols	البروتوكولات اللاحقة
the UN Framework Convention on Climate Change	اتفاقية الأمم المتحدة الإطارية بشأن تغير المناخ

Convention on Biological Diversity	اتفاقية التنوع المناخي
Kyoto Protocol	بروتوكول كيوتو
Paris Agreement on climate change	اتفاقية باريس للتغير المناخي
regional agreements	اتفاقيات إقليمية
Crime of Genocide	اتفاقية الإبادة
Convention on the Elimination of All Forms of Racial Discrimination	اتفاقية القضاء على كل أشكال التمييز العنصري
International Covenant on Economic, Social and Cultural Rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
International Covenant on Civil and Political Rights	العهد الدولي للحقوق المدنية والسياسية
Inter-American Convention on Human Rights	الاتفاقية الأمريكية لحقوق الإنسان
a joint declaration or an exchange of notes	إعلان مشترك أو تبادل للوثائق
preamble	ديباجة
contracting parties	الأطراف المتعاقدة
statement	بيان
reservations	التحفظات
clause	بند
In witness	الشهود، إثباتاً لذلك
seals	الأختام
value	القيمة
International jurists	خبراء القانون الدولي
definite transaction	معاملة محددة
cession of territory	تنازل عن الإقليم
political treaties	المعاهدات السياسية
peace treaties	معاهدات السلام

alliances	التحالفات
territorial cessions	تنازلات إقليمية
disarmament treaties	اتفاقيات نزع السلاح
commercial treaties	اتفاقيات تجارية
tariff	التعرفة الجمركية
consular	قنصلية
fishery	صيد السمك
navigation agreements	اتفاقيات الملاحة
constitutional	دستورية
administrative treaties	اتفاقيات إدارية
international unions	اتحادات دولية
specialized agencies	وكالات متخصصة
criminal justice	عدالة جنائية
extradition	تسليم المجرمين
civil justice	عدالة مدنية
trademarks	علامات تجارية
copyright	حقوق التأليف
execution of the judgments	تنفيذ الأحكام
foreign courts	المحاكم الأجنبية
treaties codifying international law	المعاهدات التي تدون القانون الدولي
peaceful settlement	التسوية السلمية
international disputes	النزاعات الدولية
conduct of war	قواعد/سلوك/ إدارة الحرب
legal value	قيمة قانونية

## Lecture 11

### Geneva Convention

The Geneva Conventions are a set of four international agreements adopted on August 12, 1949, which aim to:

Protect the wounded and sick of armed forces: in the field and at sea.

Protect prisoners of war: ensuring their humane treatment.

Protect civilians: those not taking part in the fighting or who find themselves under foreign rule during a conflict.

The primary objective of the conventions is to limit the effects of war: The conventions aim to alleviate human suffering during times of armed conflict.

Protection of individuals: Providing basic protection to people who are not participating in the fighting or who are no longer participating in it<sup>1</sup>.

-The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances<sup>2</sup>.

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them<sup>3</sup>.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

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<sup>1</sup> Ali Abu Hani, Abdul Aziz Al-Ashawi, International Humanitarian Law, Dar Al-Khaldouniya, Algeria, 2010, pp. 28-31

<sup>2</sup> Article 1 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949

<sup>3</sup> Article 2 of the Geneva Convention

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof<sup>1</sup>.

-In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

**1.** Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

**(a)** Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

**(b)** Taking of hostages;

**(c)** Outrages upon personal dignity, in particular humiliating and degrading treatment;

**(d)** The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

**2.** The wounded and sick shall be collected and cared for.

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<sup>1</sup> Article 2 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict<sup>1</sup>.

-Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals<sup>2</sup>.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are<sup>3</sup>.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War

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<sup>1</sup> Article 3 of the Geneva Convention

<sup>2</sup> Paragraph 1 of the Article 4 of the Geneva Convention

<sup>3</sup> Paragraph 2 of the Article 4 of the Geneva Convention

of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention<sup>1</sup>.

-Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State<sup>2</sup>.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention<sup>3</sup>.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be<sup>4</sup>.

**Principles of International Humanitarian Law:** The basic principles of international humanitarian law are established in the Hague Conventions of 1899 and 1907, the four Geneva Conventions of 1949 for the protection of war victims, the Hague Convention for the Protection of Places of Cultural Value of 1954, the two Additional Protocols of 1977, and others, and are as follows:

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<sup>1</sup> Paragraph 3 of the Article 4 of the Geneva Convention

<sup>2</sup> Paragraph 1 of the Article 5 of the Geneva Convention

<sup>3</sup> Paragraph 2 of the Article 4 of the Geneva Convention

<sup>4</sup> Paragraph 3 of the Article 4 of the Geneva Convention

- **Distinction:** Parties to a conflict must distinguish between combatants and civilians, and between military objectives and civilian objects. Direct attacks on civilians or civilian objects are prohibited, as are indiscriminate attacks.
- **Proportionality:** Attacks that may cause incidental loss of civilian life, injury to civilians, or damage to civilian objects are prohibited if they are excessive in relation to the anticipated concrete and direct military advantage.
- **Precautions:** Constant care must be taken to spare civilians and civilian objects. This includes verifying targets, cancelling attacks if the target is not military, and giving advance warnings to civilians when possible.
- **Humanity :** The principle of humanity seeks to reduce suffering and uphold respect for human beings during conflict.
- **Necessity:** This principle allows for actions that are necessary to achieve a military advantage but limits them by ensuring they are not excessive or cause unnecessary suffering.
- **Prohibition on Unnecessary Suffering:** Attacks should not inflict suffering that goes beyond what is necessary to achieve the military objective<sup>1</sup>.

#### Legal terms:

Geneva Convention	معاهدة جنيف
relative to the protection	المتعلقة بحماية
Civilian Persons	الأشخاص المدنيون
Time of War	زمن الحرب
The High Contracting Parties	الأطراف السامية المتعاقدة
undertake to respect	تعهد باحترام

<sup>1</sup> Bekraoui Mohamed Mehdi, Fekra Said, International Humanitarian Law, A Study of Concept and Development, Al-Wahat Journal of Research and Studies, Volume 8, Issue 1, 2015, pp. 209-218

implemented in peacetime	تسرى وقت السلم
declared war	حرب معلنة
armed conflict	نزاع مسلح
partial or total occupation	احتلال جزئي أو كلى
territory	الإقليم
armed resistance	مقاومة مسلح
Powers in conflict	دول النزاع
mutual relations	علاقات متبادلة
international character	طابع دولي
following provisions	الأحكام التالية
hostilities	الأعمال العدائية
laid down their arms	ألقوا أسلحتهم
detention	احتجاز
treated humanely	يعاملون بإنسانية
distinction founded on race	تمييز على أساس العرق
religion	الدين
faith	معتقد
prohibited	محظور / ممنوع
violence to life and person	الاعتداء على الحياة والشخص
murder	القتل
mutilation	التشويه
cruel treatment	المعاملة القاسية
torture	التعذيب
Taking of hostages	أخذ الرهائن

Outrages upon personal dignity	الاعتداء على كرامة الشخص
humiliating and degrading treatment	المعاملة المهينة والهادفة
The passing of sentences	إصدار الأحكام
previous judgment	أحكام سابقة
carrying out of executions	تنفيذ العقوبات
regularly constituted	مشكلة قانونا
judicial guarantees	ضمانات قضائية
civilized peoples	الشعوب المتقدمة
impartial humanitarian body	هيئة إنسانية غير متحيزة
International Committee of the Red Cross	اللجنة الدولية للصليب الأحمر
to bring into force	لوضعها حيز التنفيذ
special agreements	اتفاقيات خاصة
application of the preceding provisions	تطبيق الأحكام السابقة
legal status	الوضع القانوني
Nationals of a State	رعايا دولة
Nationals of a neutral State	رعايا دولة محايدة
co-belligerent State	دولة متشاربة
diplomatic representation	تمثيل دبلوماسي
Wounded and Sick	الجرحى والمرضى
Shipwrecked Members	الأفراد الغرقى
Armed Forces at Sea	القوات البحرية المسلحة
Treatment of Prisoners of War	معاملة أسرى الحرب
the State in whose hands they are	الدولة التي يقعون تحت سلطتها

## Lecture 12

### **Human rights**

Human rights are rights we have simply because we exist as human beings, these universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language or any other status. They range from the most fundamental- the right to life – to those that make life worth living, such as the rights to food, education, work, health and liberty.

The universal declaration of human rights (UDHR) adopted by the UN General assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. The UDHR continues to be the foundation of all international human rights, its 30 articles provide the principles and building blocks of current and future human rights conventions.

The UDHR, together with the 2 covenants – the international covenant for civil and political rights and the international covenant for economic, social and cultural rights – make up the international Bill of rights<sup>1</sup>.

**Characteristics of human rights:** Human rights have several characteristics, including:

**-Universal and inalienable:**

The principle of universality of human right is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights, it is as first emphasized in the UDHR, and repeated in many international human rights conventions, declarations and resolutions.

Inalienability of human rights means that they should not be taken away except in specific situations and according to due process, for example the right to liberty may be restricted if a person is found guilty of a crime by a court of law<sup>2</sup>.

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<sup>1</sup> Ksentini Fatma zohra, les procédures onusiennes de protection des droits de l'homme, Edition pubi sud, 1994, p 14

<sup>2</sup> Pierre Marie dupuy, Droit international public, Dalloz, Paris,1998, p p 204-205

**Indivisible and interdependent:** All human rights are Indivisible and interdependent, this means that one of set of rights cannot be enjoyed fully without the other, for example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights, similarly violating economic, social and cultural rights can negatively affect many other rights<sup>1</sup>.

**Equal and non-discriminatory:** Article 1 of the UDHR states: « All human beings are born free and equal in dignity and rights, freedom from discrimination set out in the article 2, is what insures the equality. Non-discrimination cuts across all in human rights law, this principle is present in all major human rights treaties, and provides the central theme of two core instruments: the international convention on the Elimination of all forms of racial discrimination, and the convention on the Elimination of all forms of discrimination against woman.<sup>2</sup>

### Legal terms:

Human rights	حقوق الانسان
Guaranteed	مضمونة
State	الدولة
Universal rights	حقوق عالمية
Nationality	الجنسية
Fundamental human rights	حقوق الانسان الاساسية
Universal declaration on human rights	الاعلان العالمي لحقوق الانسان
UN general assembly	الجمعية العامة للأمم المتحدة
Adopted	المتبناة – المعتمدة

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights: Handbook for Parliamentarians, No. 26 (Geneva: United Nations, 2016), p12

<sup>2</sup> United Nations, Universal Declaration of Human Rights, 1948, Articles 1–2; see also United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, and Convention on the Elimination of All Forms of Discrimination against Women, 1979

Legal document	وثيقة قانونية
Universally protected	محمية عالميا
Foundation	اساس
Articles	مواد
International covenant on civil and political rights	العهد الدولي للحقوق السياسية والمدنية
International covenant on economic, social and cultural rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
International bill of rights	الشرعية الدولية لحقوق الانسان
Principle of universality of human rights	مبدأ عالمية حقوق الانسان
Inalienability of human rights	عدم قابلية حقوق الانسان للتصرف
International human rights conventions	الاتفاقيات الدولية لحقوق الانسان
Declarations	اعلانات
Resolutions	لوائح - قرارات
Due process	اجراءات قانونية
Found guilty=convicted	مدان
Crime	جريمة
Court of law	المحكمة
To exercise rights	ممارسة الحقوق
Equality	المساواة
Non discrimination	عدم التمييز
To state- to set out	تنص - تؤسس
Human rights treaties	معاهدات حقوق الانسان
Human rights law	قوانين حقوق الانسان
Instruments	وسائل - صكوك

Convention on elimination of all forms of racial discrimination	اتفاقية القضاء على كل أشكال التمييز العنصري
Convention on elimination of all forms of discrimination against woman (CEDAW)	اتفاقية القضاء على كل أشكال التمييز ضد المرأة

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