INTRODUCTION TO LAW

FIRST PART

THE THEORY OF LAW

Gathered & Collected Materials

Via

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Let him that would move the world first move himself.

-Socrates (469 BC – 399BC)
INTRODUCTION TO LAW

Any introductory study of law for a law student should cover two cornerstones: the concept of law, and the right and obligation resulting from this law.

Due to current school policy, theory of law will be thought to you in English, while the second part will be thought to you in Arabic.
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CHAPTER ONE: THE CONCEPT OF LAW

Introduction

The law is a social phenomenon in almost all the countries over history. The law is a set of rules that govern the social conduct of individuals. These rules always exist both in primitive societies and in civilized countries. The aim of these rules is to regulate social life in a given society, safeguard the lives and properties of persons enable each person to enjoy his rights and liberties, and secure justice among the people. The law may succeed, or fail, to maintain justice but it is always binding upon all persons until it is either amended or repealed.

In the struggle for life, each class of the society may have conflict of interests
against other classes: workers and employers, tenants and landlords, the rich and the poor, etc. The law has to deal with such grievances and to find out solutions in order to maintain balance between the interests of the different classes of the society and fulfill justice and security for everyone.

I. Definition of Law

*Generally, ‘Law’ is a word of illimitable use in both its popular and its technical sense. In its broader sense it is best defined as a rule of action, and in this sense the term is used in all sciences.¹ In this context, the use of the word law is not exclusive to legal studies, some times other science use the same word but for a*

¹ From *Old English lagu "something laid down or fixed"; legal comes from *Latin legalis, from lex "law", "statute" (Law, Online Etymology Dictionary; Legal, Merriam-Webster's Online Dictionary)
different meaning. This for example is the case with economists when they use the words law of supply and demand, or scientists when they use the words law of gravity.

In its more technical sense a law is a rule of civil conduct prescribed by the legislation authority in the state. When we speak of the law of state we use the term ‘Law’ in a ‘special’ and ‘strict’ sense, and in that sense law may be defined as rule of human conduct, imposed upon and enforced among, the members of a given state.

Therefore, it will be useful for any introductory study of law to start with the explanation of the concept of law. This will take

2 Robertson, Crimes against humanity, 90; see "analytical jurisprudence" for extensive debate on what law is; in The Concept of Law Hart argued law is a "system of rules" (Campbell, The Contribution of Legal Studies, 184); Austin said law was "the command of a sovereign, backed by the threat of a sanction" (Bix, John Austin); Dworkin describes law as an "interpretive concept" to achieve justice (Dworkin, Law's Empire, 410); and Raz argues law is an "authority" to mediate people's interests (Raz, The Authority of Law, 3–36).

place once this word is defined, its rules being characterized and its different types being classified.\textsuperscript{4}

For the purpose of ‘legal study’, the word law possess a dual connotations: general and a special one. The general connotation of law refers to set of binding rules and standards governing the behavior and relations individuals inside the community. On the other side, a special connotations for a word law can be vary according to the ‘intended purpose’. Hence, law can mean the set of law enforced in a certain country, or the set of rules governing certain relationship, such as ‘civil’, ‘criminal’, ‘labor’, and ‘commercial law’.

In all its meanings, the term "law" provokes the idea of "order" or "uniformity". Used more strictly, it also provokes the idea of "authority". To this idea is generally annexed that of "enforcement". More strictly, the law involves

\textsuperscript{4} Nader M. Ibrahim, Introduction to Law, 2\textsuperscript{nd} Edition, 2006. p. 5
the assumption that the enforcement is applied by the state. To these ideas involved in law some writers add that of "Relative Justice".

The present study addresses the law from the perspective of its ‘general connotation’. Hence, put it in its simplest form, it can be said that law is ‘an obligatory social rule which governs social behavior in an abstract and general manner and which established in permanence by public authority and sanctioned by material force’. So that, violators will face penalties to be imposed by a competent authority, if a violation arises. The aim of law is to achieve the interest of individual as much as the interest of a particular society.

II. Analysis of the Characteristics of the Legal Rule

The legal rule can be defined as 'an obligatory social rule which governs social behavior in an
abstract and general manner and which established in permanence by public authority and sanctioned by material force’ From this definition we can extract the characteristics of the legal rule:

1. It aims to correct the social behaviors.
2. It has a general and abstract scope of application.
3. It is considered a social rule of conduct.
4. Enacted by public authority and attached by material and immediate sanction to ensure the respect thereof.

1. It aims to correct the social behaviors:

   In order to correct behavior, rules of law aim directly at establishing ‘order’, striking balance between conflicting interests and maintaining ‘stability’. Though, as long as rules of law are man-mad product, they are said to ultimately be aiming at relative justice. Absolute
justice is kept solely to the description of God’s justice.

It must be noted that rules of law are not the only social and corrective science other types of rules of behavior do also enjoy the same qualifications. These are the cases of the rules of religion, morality, ethics, and social traditions.

Nevertheless, rules of law are distinguished by being mainly concerned with external human behavior (e.g., theft and killing etc) while religion, morality and social traditions are mainly concerned with internal feelings (e.g., not to hate and not to envy etc.)

2. Generality and Abstraction of the legal Rule:

The words abstraction and generality are technical legal words, their legal meaning is not identical to their linguistic expression; they
describe two subsequent and different phases in the life of law: the phase of its creation and then the phase of its application.

Then, in order to understand differences between abstraction and generality, the time-element must be clear from the outset. It should be noted that in order to have a rule of law two phases should be considered, first the phase of the 'creation' of the rule and second the phase of its 'application'.

An example for such scenario is the case of a teacher in his first lecture. Usually this teacher will start his activity by determining discipline rules. He will devote some attention to the issue of the student's punctuality. He may agree with them on a rule by which students are not allowed to attend the class if they are late for more than 5 minutes (with possible catching up after the break). This will be for the avoidance of interruption and certainly for keeping order.

Here, the teacher and his students have actually created a rule that concerns unlimited number of persons. Using legal terminology,
they have created an 'abstract’ rule of behavior (i.e., a law) the creation of the rule is he detached from specific person(s), event(s), place(s) and time(s).

All decisions of public authority which are to be executed but once are not laws but administrative acts. Thus the order to depart given a soldier or an official are not laws. On the contrary, the duty which devolves upon young men who have just completed their twentieth one year, to submit to conscription, flows from law. This so because it constitutes a decision which is permanently obligatory, that is to say, binding for indeterminate number times.

In the next lecture, if the teacher applies the rule to everybody, the rule will acquire a second characteristic; it will be 'general’. In order for the existence of such generality, the rule should be applicable to unlimited number of people. This mans that application of the rule should be detached from specific person(s), event(s), place(s), and time(s).
Therefore, if the teacher applies the rule to some of his students and arbitrarily exempts others, or applies it one time circularly, a positive rule does not mean that it is not negative what is meant here is different.

Moreover, it must not be thought that a law is necessary of a general scope, as regards persons. A law is not always made for all people who compose the nation or who inhabit the territory of the state. It is almost solely to penal law, using this term in its broadest sense. That this rule strictly applies. In order that a law may be considered applicable to a given person, certain prerequisites fixed by it, are essential. Take, for example, laws affect tax property and those bearing upon duties of public official. They apply only to those who own landed property or who fill a public office. It thus follows that a law may apply to but a very restricted number of persons or even to but one person. The provisions of the law which define the special powers of the President of the Republic or of the Minister of justice, never relate to more than one more than one person.
Therefore, the legal rule is a general rule, when it addresses every person, or a group of persons in the society. The rules of criminal law address every person whether national or foreigner existing on the territory of the state. The rules of commercial law address the traders and those who are involved in commercial acts. The law of governing the bar association addresses a certain group of the society, those who are described as lawyers.

The legal rule does not address a certain person as a person in his own name, as this is the function of administrative decisions issued in application to the law.

The legal rule may concern a certain position such as the President of the Republic, and in this case it is still a general rule, because it provides for the stipulations required to fill this position, stipulations, which may be fulfilled by a big number of nationals who run in public elections in
democratic countries.

The legal rule is an abstract rule, which may not seek revenge of a person or seek advantage to another. If it is found out that the intention behind enacting a certain law was to get rid of some opponents of the government, the law is deemed contrary to the constitution and may be set aside by the supreme constitutional court, because that rule is not abstract as differentiates among citizens.

In the meantime, it is not necessary that a law be perpetual. It even happens, somewhat frequently, that the lawmaker himself limits in advance the duration of statute, for example, to five or ten years. It is principally in the fiscal and financial domain that laws of this nature are found. Other laws, designated as transitory provisions, serve to pave the way for the passage from old to modern legislation. Temporary laws are still found in the field of penal legislation.
3. It is Considered a Social Rule of Conduct:

Law is a ‘social rule’, that is to say, it’s a rule made for men living in society. This condition is elementary. Outside of social relations, there can be no law. A man living in absolute solitude like Robinson Crusoe on his island is not subject to any law. He will have his rule of conduct. Instinct, the desire to live, will incite him to work, to lead sober and regular life. This is because of his desire to preserve his health and his mind. But these rules are not laws. ‘Law presupposes relations between several human beings’. Outsides of this domain, the concept of law loses all juridical import. But all social rules are not laws. Law is a specific species forming part of more extensive group which is the genus. It is, therefore, necessary to distinguish law from all other rules and to do so by studying its special nature. Here are some of these differences that needs to be observed:
a - Our social life knows several rules of compliment and courtesy rules among individuals and families. For instance, in marriage ceremonies, the relatives and friends present some gifts to the spouses. This is a rule of conduct observed by people; but it is not a legal rule, because the legal rule is binding and has sanction to ensure its effectiveness.

b - In every society there are rules of morality laying down standards of conduct, which are approved as being morally right. These rules are often referred to as the "moral code". A violation of these rules will therefore incur the strong disapprobation of the society in general.

c - People are taught in their childhood some rules of ethics such as respecting older persons, assisting the poor, taking some care towards a weak person, refraining from telling lies or poking one's nose in other people's affairs ... etc. Such rules are not legal rules, because they are not binding and the sanction in case of infringement is not material. The sanction is
just a feeling of disapproval of other persons towards the rule breaking person but no legal issues are raised.

Some portions of the moral code coincide more or less precisely with parts of the legal code. In all societies killing and stealing are regarded as morally reprehensible, and it is equally certain that all societies have legal prohibitions against killing or stealing. In such spheres, therefore, the legal and the moral codes reinforce one another. The belief in the community that killing or stealing is morally reprehensible renders the criminal law prohibitions against such conduct both understandable and more easily enforceable. On the other hand, the criminal penalties in case of killing or stealing add weight to the feeling of moral disapprobation inspired by the rules of the code of morality.

Although law and morality thus correspond in important respects, it must not be thought that this correspondence is universal. The relationship of law to morality has sometimes been referred to as two intersecting circles. The
portion common to the two circles represents those rules, which have their counterpart both in the moral and the legal code. The two portions, which do not correspond, represent the sections of law and of morality, which are independent of one another. Reference has already been made to cases where the legal and moral code coincides. Therefore, we can say that there are a legal and a moral duty not to kill or to steal. There are, however, many instances where a given moral code disapproves of certain conduct, though the law does not prohibit the conduct in question. For instance, there are various types of sexual conduct which may be treated as morally wrong but which the law refrains from punishing. For example, it may be regarded as one's moral duty to try and to rescue a person whom one sees drowning, though many legal systems do not impose a legal duty in such case.

To take the other side of the picture, there are many instances where the law makes provision in some matter, which either conflict with accepted standards of morality, or in
regard to which the moral code is really quite natural. Where the law insists on punishing conduct which is not regarded as morally reprehensible, this is probably because the law has got out of touch with changing standards of morality, and is therefore becoming obsolete and is ready for amendment or repeal.

An example of this would be the old blasphemy laws, which are no longer in accord with the more tolerant spirit of the present age in the western countries. As for laws for which morality is completely natural, a typical illustration would be the so-called "rule of the road", which decrees that vehicles should keep to one side of the highway. Here the purpose of the law is to provide an ordered system for the movement of transport on public highways, but it is obviously a matter of total indifference, from a moral point of view, whether the left side is chosen, as in England, or the right side, as is normal in most other countries.

d. In our society, persons adhere to a certain religion, normally either Islam or Christianity.
Both religions contain rules to govern the relation of everybody towards God. This aspect is not dealt with in positive law, being a personal concern of everybody. Meanwhile, there is a common interest of law and religion in some matters such as prohibiting theft, betrayal, adultery and assassination, as these acts are contrary to the law and to the religion at the same time. Religious rules have their sanction in the other world in heavens; but legal rules have a material sanction' imposed in our actual life, as we shall see later.

4. Enacted by Public Authority and Attached by Immediate and Material Sanctions:

A. Various Kind of Sanctions:

The legal rule is different from other social
rules (of courtesy, ethics and religion) in that it has a material sanction. Other social rules either have sanctions in the other world (such as the religious rule) or an unfavorable reaction of the society (such as courtesy and ethic rules).

Laws differ their type of sanction and its level of severity; such difference is due to the variety of branches of law and social values, which the law protects.

There are different kinds of the material sanction characterizing the rules of law:

i. Criminal Sanctions:
A person committing a felony, a misdemeanor or a contravention may be punished by a criminal penalty. Such penalties may be an imprisonment or a fine. In dangerous crimes, such as murder the penalty may be execution (Le. hanging the murderer). Confiscation of the tools of the crime may be a supplement penalty.

ii. Administrative Sanctions:
If an employee of the government is in
default (did not fulfill his obligations towards his work or caused any harm to the funds of the state) he will be punished by an administrative sanction.

Such sanction may be to cut some of his wage, to degrade him or to dismiss him. In simple cases the administrative penalty may be to give the employee a warning to the effect that in case the contravention is repeated a severe penalty will be imposed upon him.

iii. Civil Sanctions:

If there is no crime and we are faced with a civil or commercial matter, a party may apply for damages from the other party. This is a civil sanction. For instance, where a party suffers from the non-performance of an obligation in a contract, he may file a lawsuit with the competent court; he is called "the claimant" or the plaintiff. The other party is called the defendant or respondent. The court examines the case and decides the amount of damages to be given to the claimant party, if he is right.
If the respondent has something to claim from the plaintiff, he must file a counter claim stating his allegations and the court rules an both claims in one or more judgments.

It worth to be mentioned that There are some doubts about the rules of the public international law, as it is sometimes said that they do not have the characteristics of the legal rule particularly in regard to the material sanction. There is no authority over the sovereignty of states that can impose sanctions upon a state violating an international rule. The sovereignty of each state is absolute and precludes any submission to any authority. That is why it is said that the rules of the public international law are not legal rules in the proper sense of the word.

But it must be noted that a lot of the rules of public international law are respected by all states willingly without interference with their sovereignty. In the few cases of violation,
negotiations are held through diplomatic channels to settle any dispute. Where such negotiations fail to clarify the situation, sanctions of diplomatic or economic nature may be imposed upon the violating state either through, the United Nations Organization or directly by the concerned state or states.

If such sanctions fail to make the violating state abide by the wishes of the international society, and the problem reached a state that may threaten international peace measures of war may be taken by the Security Council under the flag of the United Nations against the violating state. Meanwhile, the interests of some states may stop or delay such measures.

So, the statement that public international law rules do not have material sanction is not always true.

B. Enacted By Public Authority:
It is in thus considering law at its source that one is able to distinguish true law from certain rules established by private authority. The latter have more or less the same effect as laws properly so called, as far as those submitted to them are concerned. Such are, as the children, the orders given them by their father. And the same principle obtains in the case of regulations applied to laborers or employs by their employers or to the members of a religious congregations by their superiors.

The authority which makes the law, that is to say which possesses legislative power, varies according to the different political constitutions. It may be vested in one or more legislative assembles, as is the case in most modern states. It may be also be vested in the entire people which express its will by a vote, such as the Swiss referendum.

C. Sanctions Applied by Public Authority:
It is in this way that law is distinguished from moral rules which also dominate human society. Moral laws constrain, and command. Their determinant force is, however, slight because no positive sanction is attached to them.

The sanction of the law is sometimes preventive. Police measures intended to prevent a riot fall within this purview. Sanction is usually repressive. Fines, imprisonment, penalties of all categories applied to malefactors, come under this head. And in the civil domain the nullity of contracts contrary to law, damages awarded to repair the harm done by an illicit act, seizures and other means of execution applicable to recalcitrant or insolvent debtors are from so repression.

It is easy to note that laws differ in their type of sanction and its level of severity; such difference is due to the variety of branches of law and social values, which the law protects.

For example in the context of penal law, sanctions (preferred to be called punishments or
penalties) can take the form of losing one's life capital punishment or executions restriction free movement confinement or imprisonments) or depriving of assets (fine and confiscation)

Under administrative law particularly in case of civil service law sanctions can take the form of warning, reduction of grade or salary, suspension or dismissal.

In civil and commercial laws, sanctions usually take the form of specific performance performing exactly what was promised or payment of damages in case of impossibility of such performance?
IV. CLASSIFICATION OF LAW

Like any other science, and for simplification of study laws can be classified into categories, now, it will be suitable to speak of laws, rather than one law.

Classification of laws depends on the perspective adopted for such classification. One may distinguish between two different perspectives the macro-perspective and the micro perspective, this is similar, to some extent, to the economist’s classification of economics into macro and microeconomics.

Under the macro-perspective, the laws of the world can be classified into groups each sharing similar features. In this case, lawyers speak of ‘legal system of the world’. While under the micro-perspective; the laws of one country are classified into internal groups. In this latter case, lawyers speak of ‘branches’ or ‘departments’ of law.
A. Legal Systems of the World

The world contains many legal systems, the most important of which are the systems of ‘Civil law’, ‘Common law’ and ‘Islamic law’.

1. Civil Law System

Civil law (or Latin law) systems includes legal systems - the countries whose laws are based on the Roman law. Many countries belong to the civil law system, as to Latin America, most African countries, most of the Arab world, Japan, Thailand and Turkey. This legal system

5 Civil law is a legal system inspired by Roman law, the primary feature of which is that laws are written into a collection, codified, and not determined, as in common law, by judges. Conceptually, it is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Germanic, ecclesiastical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legislative positivism. Materially, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially-trained judicial officers.
particularly prevails in continental Europe where France plays the leading role.

Through Egypt is affected by Islamic Shari'a, specifically in matters of personal status laws, still it generally belongs to the Civil law system.

Countries of civil law system are characterized by the fact that their primary source of law is legislation mainly made by the parliament. However these countries are still in an interrelated independence and consequently their detailed laws need not to be identical. Therefore, it is not correct to say that Egypt applies French laws. It’s precise to say that many French laws are adopted by Egypt. Adoption involves selective choice, but, direct application does not.

2. Common Law System

Common law is law developed by judges through decisions of courts and similar tribunals (also called case law), rather than through legislative statutes or executive branch action. A "common law system" is a legal system that gives great precedential weight to
Common law system includes the countries, whose laws are based on laws of England and Wales. This law system has been adopted in Australia, Burma, Canada, India, Liberia, Malaya, New Zealand, Singapore, USA (with the exception of the state of Louisiana and which is a Civil law system) and in Britain's former colonies in Africa, such as Ghana and Nigeria through most of the Arab countries belong to the Civil law system, some belong to the common law system as are the cases of Sudan and Iraq.

common law, on the principle that it is unfair to treat similar facts differently on different occasions. The body of precedent is called "common law" and it binds future decisions. In future cases, when parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), judges have the authority and duty to make law by creating precedent. Thereafter, the new decision becomes precedent, and will bind future courts.
Common law system is characterized by the fact that it is based heavily on ‘case-law’ (in other words, judicial precedents) where statute comes second.

3. Islamic Law System

Islamic law system includes the countries, whose laws are based on Islamic Shari’ a. This prevails in few Islamic countries, as are the case of Saudi Arabia and Iran. Most of the Arab countries are partially affected by the Islamic law system, namely in their laws of personal status as is the case of Egypt.

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7 Islamic Law refers to the legal framework within which the public and private aspects of life are regulated for those living in a legal system based on Islamic principles of jurisprudence and for Muslims living outside the domain. Sharia deals with many aspects of day-to-day life, including politics, economics, banking, business, contracts, family, and social issues. Islamic law is now the most widely used religious law, and one of the three most common legal systems of the world alongside common law and civil law. During the Islamic Golden Age, classical Islamic law may have influenced the development of common law, and also influenced the development of several civil law institutions.
Islamic law system is characterized by the adoption of ‘Quran’ as the primary source of law, this system has however different versions of application in its adopted countries since Quran is supplemented by other sources of Shari‘a law and interpretations made by the pithead of Shari‘a jurists. These supplements played varied extent of influence on its countries of adoption.

B. Branches of Law in Egypt: Public vs. Private Law

Usually, the laws of each country are classified into that of ‘public or private’.\(^8\) The Romans first employed this classification many criteria are proposed for the classification of

\(^8\) Public law can be distinguished from private law, which regulates the private conduct between individuals, without direct involvement of the government. Private law and public law can overlap. For example, an unsolicited punch in the nose would constitute a crime for which the government would prosecute under criminal law but for which there would also be a private legal action possible by the injured party under tort law, which is private law (although governments can be held responsible under tort law).
laws into public or private, the most useful one among them is the public authority criterion according to which public law regulates relations that involve public authorities (e.g., ministries of the government) whereas private law regulates relations between individuals and those that involve public authorities not acting in their public authority states (e.g., commercial Company owned by the state).

1. Public Law

Public law refers to those rules governing the relations in which the ‘State’ appears as a party having authority and power.\(^9\) If the rules

\(^9\) **Sovereignty** is the quality of having supreme, independent authority over a territory. It can be found in a power to rule and make law that rests on a political fact for which no purely legal explanation can be provided. The concept has been discussed, debated and questioned throughout history, from the time of the Romans through to the present day, although it has changed in its definition, concept, and application throughout, especially during the **Age of Enlightenment**. The current notion of state sovereignty was laid down in the **Treaty of Westphalia (1648)**, which, in relation to **states**, codified the basic principles of **territorial integrity**, border inviolability, and supremacy of the state (rather than the Church). A **sovereign** is a supreme lawmaking authority.
govern the relations of the state with other states and international organization, they are termed, then, as international public law.

But, if the legal rules regulate the relations into which the ‘state’ will appear as a party having authority and power with the other persons of law, they are called, in this case, internal public law. The internal public law is classified into several branches we will discuss each of these branches in brief.

a. International Public Law

The international public law is a set of legal rules governing the relations among states and international organizations at times of peace and war.¹⁰

¹⁰ Public international law concerns the structure and conduct of sovereign states, analogous entities, such as the Holy See, and intergovernmental organizations. To a lesser degree, international law also may affect multinational corporations and individuals, an impact increasingly evolving beyond domestic legal interpretation and enforcement. Public international law has increased in use and importance vastly over the twentieth century, due to the increase in global trade, armed conflict, environmental deterioration on a worldwide scale, awareness of human rights violations, rapid
From this definition, we find that the international public law governs the relations among countries. It also defines the persons to whom it will apply (states and international organizations) and indicates the types of states in terms of complete sovereignty. The international public law also describes the rights of each state, and the diplomatic and consular representation systems. Further, it addresses the way of concluding treaties between states and how disputes are settled by peaceful means by conciliation or arbitration.

The international public law also is concerned with the regulation of relations among states at time of war. It lays down the rules indicating the time of starting the war and the time of terminating it. In addition, the rules of the international law regulate the rights and mutual obligations of warring states and the principles that should be adhered to concerning the protection of civilians, prisoners of war, and vast increases in international transportation and a boom in global communications.
detained people. It also defines the positions to be adhered to by the non-warring countries.

As the definition indicates, the scope of the international law is broad enough to embrace the regional international organizations (such as the league of the Arab states and the European Economic Community) and international organizations and their specialized agencies (such as the United Nations Organization\textsuperscript{11} and its agencies such as UNESEO, International Labor Organization, the World Health Organization, etc.) The diversity of the persons of the international law, necessarily, requires that the international public law should regulate the relations between the countries of the world and these international organizations, in addition, to regulating the relations among these international organizations themselves.

b. Internal Public Law

The internal public law regulates the state's entity and relations where it acts as an authoritative power. The internal public law is divided into the following branches.12

i. constitutional law

The constitutional law is the set of legal rules organizing the entity and structure of the state, defining the system of government, and regulating the relations among the public authorities on one hand and between the public authorities and individuals on the other hand.13

The rules of the constitutional law define the

12 Public law is that part of the law which deals with the state, either by itself or in its relations with individuals, and is called constitutional, when it regulates the relations between the various divisions of the sovereign power; and administrative, when it regulates the business which the state has to do.

13 Constitutional law is a body of law dealing with the distribution and exercise of government power. Not all nation states have codified constitutions, though all such states have a jus commune, or law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law or international rules and norms, etc.
ordinary and political rights of the individuals and lay down safeguards for their freedoms.

This definition indicates that the constitutional law is the basis of organization of all states. Therefore, it is called the supreme law or the basic law. The constitutional law deals with the foundations on which the state is built. Thus, it should define the structure of the state and its basic regime; the state may be a monarchy, a republic, a democracy, a dictatorship, parliamentary or unparliamentarily, simple or confederation, etc.

The rule of the constitutional law also regulates the public powers in the state and their responsibilities. The public powers are

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14 Constitutional laws may often be considered second order rulemaking or rules about making rules to exercise power. It governs the relationships between the judiciary, the legislature and the executive with the bodies under its authority. One of the key tasks of constitutions within this context is to indicate hierarchies and relationships of power. For example, in a unitary state, the constitution will vest ultimate authority in one central administration and legislature, and judiciary, though there is often a delegation of power or authority to local or municipal authorities. When a constitution establishes a federal state, it will identify the several
the legislative power, the judicial power, and the executive power. The bodies exercising this power should also be described. For example, the legislative power may be exercised by a council called the people's assembly, or the national council, or the chamber of deputies. It also may be exercised by two councils a house of representatives and a senate. The constitutional law also defines the moral, economic, and social fundamentals of the country.

In addition, the constitution defines the rights and basic freedom of the individuals. These rights are based on two main elements: equality and freedom. Freedom includes the personal freedom; the freedoms of expression, ownership, and faith, the freedoms of trade, industry, and working. Equality means that all people should have equal rights in assuming the public posts as well as, in paying taxes and in performing military service.

levels of government coexisting with exclusive or shared areas of jurisdiction over lawmaking, application and enforcement
ii. administrative law

The administrative law\textsuperscript{15} is the set of legal rules organizing the way in which the executive power performs its role. This definition indicates that the administrative law is concerned with the following subjects:

1. The administrative law defines the types and nature of the functions and services carried out by the government's agencies and the specific role of each agency. The government offers the services of education, health, security, and communications through the ministries of

\textsuperscript{15} Administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (e.g., tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environment, taxation, broadcasting, immigration and transport. Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more government agencies to regulate the increasingly complex social, economic and political spheres of human interaction.
education, health, interior, and communications respectively.

2. It indicates the relation between the central executive branch (the government) and its agencies and other regional organizations and bodies such as governments and local councils.

3. It defines the system of public post and the relationship between the state and its public servants in terms of rules governing appointments, disciplinary punishment, promotion, dismissal, etc.

4. It defines the legal system of public properties and the way in which they should be managed, utilized, maintained, etc.

5. It deals with the administrative actions, the method of issuing administrative decisions, the concerned competent body, and the conditions of the validity of these decisions. In this connection, the administrative law lays down methods for the control of administrative
decisions and procedures for complaining against them.

iii. financial law

The financial law is a set of legal rules governing and organizing the treasury of the state public authorities in terms of determining the sources of revenues and the aspects of spending.\textsuperscript{16}

The financial law is considered a branch of the administrative law because of its direct link with the financial activity of the state in its capacity as a public authority. But, the diversity of financial and tax laws, and the ramification of the issues governed by this law have led to the

\textsuperscript{16} Public finance is a field of economics concerned with paying for collective or governmental activities, and with the administration and design of those activities. The field is often divided into questions of what the government or collective organizations should do or are doing, and questions of how to pay for those activities. The broader term (public economics) and the narrower term (government finance) are also often used.
development of the financial law into an independent branch of the public law.

iv. criminal law

The criminal law is the set of legal rules defining crimes and the penalties provided for each crime. The rules of the criminal law also organize the procedures to be followed in pursuing, questioning, trying, and sentencing the criminal.\(^\text{17}\)

According to this definition, the rules of the criminal law are divided into two main types: the substantive rules and the procedural rules. Whereas the substantive rules – called the penal code - define crime, and provide for the penalties to be imposed for each crime, the procedural rules - or the code of criminal procedure-

\(^{17}\) Criminal Law or penal law, involves prosecution by the government of a person for an act that has been classified as a crime. It is the body of statutory and common law that deals with crime and the legal punishment of criminal offenses. There are four theories of criminal justice: punishment, deterrence, incapacitation, and rehabilitation. It is believed that by imposing sanctions for the crime, society can achieve justice and a peaceable social order.
describe the procedures to be followed from the time the crime happens including investigation, the apprehension of the criminal, etc., till the sentenced penalty is imposed on the criminal.\textsuperscript{18}

The penal code is classified into two main sections; the general section and the special section. The general section contains the general rules and principles governing crime and penalty. It indicates the types of crimes and classifies them into felonies, misdemeanors and infractions. The elements of crime in general (the physical element and the moral element),

\textsuperscript{18} The term criminal law, sometimes called penal law, refers to any of various bodies of rules in different jurisdictions whose common characteristic is the potential for unique and often severe impositions as punishment for failure to comply. Criminal punishment, depending on the offense and jurisdiction, may include execution, loss of liberty, government supervision (parole or probation), or fines. There are some archetypal crimes, like murder, but the acts that are forbidden are not wholly consistent between different criminal codes, and even within a particular code lines may be blurred as civil infractions may give rise also to criminal consequences. Criminal law typically is enforced by the government, unlike the civil law, which may be enforced by private parties.
the rules organizing each type of penalty, and the cases in which the penalty falls, is commuted, or cancelled are also explained. The special section classifies each crime separately in terms or its elements, various forms, and the involved penalties.

The criminal procedure code regulates and explains the rules to be followed with respect to the enforcement of the provisions of the penal code. It describes, for example the procedure of apprehending, arresting, questioning and trying the offenders in addition to the procedures of implementing the sentenced penalty.

2. Branches of the Private Law

Private law is defined –as we have already said – as the set of legal rules regulating the relations among the legal persons in general on one end of the spectrum, and the relations between these persons and the state in its capacity as an ordinary person on the other end of the spectrum.
The Civil Law is the origin of all branches of the private law. At first, all the individuals, dealings were governed by the civil law but with the economic activity developing, the need to formulate special laws for each type of dealings has emerged. As a result, the other branches of the private law- i.e. the commercial law, the maritime trade law; the labor law, the code of civil and commercial pleadings, and the international private law were created. We shall discuss now each one of these branches.

i. civil law

The Civil Law is the set of legal rules regulating the relations among the people in the society except as may be provided for by the other branches of the private law.¹⁹ Indeed, all

¹⁹ The first version of Egyptian Civil Code was written in 1948 containing 1149 articles. The prime author of the 1948 code was Abdel-Razzak Al-Sanhuri, a jurist who received assistance from Dean Edouard Lambert of the University of Lille. Perhaps due to Lambert's influence, the 1948 code followed the French civil law
the other branches have stemmed from the civil law. Moreover, with the society widening and the economic activity enlarging, other branches may be separated too in future from the civil law as it happened recently when the agricultural law and the air law were created under the cloak of the civil law. It should be noted, however, that because the civil law is the origin of laws, its provisions are necessarily the main reference for the questions for which there are rules in the other branches of the private law.

Generally, the civil code is concerned with two types of relation and ties among the people. The first includes the family ties termed as personal status and covers the questions of marriage, divorce, ancestry, inheritance, competence, etc. The second type includes the financial relation or the so-termed real status these relations cover everything involving

model. The code focus on the regulation of business and commerce, and does not include any provisions regarding family law which is usually handled through Shari’a. Sanhuri purposely left out family law and succession to set it apart from the Turkish civil code.
money related to the activity of the people. Definitions of the things, the monies, and different patrimonial rights including, the ways of the other acquisition, extinguishment, and involved authorities are also covered under this type of relations. It must be noted, nevertheless, the Egyptian Civil Code (E.C.C) is only concerned with organizing the real status and has left the regulation of the personal status to Islamic Shari'ha and religious rules.

The Egyptian Civil Code (E.C.C) consists of a preliminary chapter followed by main three

20 The Egyptian civil code was issued in 1948 and entered into force on 15th October 1949 after the abrogation of the mixed courts which were competent to consider the lawsuits of foreigners in Egypt. Actually all persons whether foreigners or nationals submit to the jurisdiction of Egyptian courts.

21 The code also provides for Islamic law (shari’a) to have a role in its enforcement and interpretation. Article 1 of the code provides that, “in the absence of any applicable legislation, the judge shall decide according to the custom and failing the custom, according to the principles of Islamic Law. In the absence of these principles, the judge shall have recourse to natural law and the rules of equity.” Despite this invocation of Islamic law, one commentator has argued that 1949 code reflected a "hodgepodge of socialist doctrine and sociological jurisprudence."
books. The following kinds of rules are included in the preliminary chapter.

A. Rules relating to the conflict of laws between different states and the conflict of laws as to the time of their application in a given country.

B. Rules relating to the capacity of persons to be obligated.

C. Rules relating to the abuse of rights.

D. Rules relating to natural and juristic persons.

E. Rules relating to the classification of things and properties.

The main legal text in the Egyptian Civil Code is divided into three main parts that addresses the following subjects:

I. Obligations or personal rights (rights in-personum).

II. Nominate contracts; and
III. Real rights (rights in-rem).

The First Part (Obligations) is divided into:

A. Sources of obligations: the law comprises five sources from which obligations stem: contracts, unilateral obligations, torts, enrichment without cause, and the law.

B. Effects of obligations: including specific performance and performance by way of allotting damages.

C. Modalities amending the effect of obligation: such as: terms, conditions, etc.

D. Transfer of obligation by way of assignment of debt or assignment of right.

E. Extinction of obligation: such as by payment, set off, notation, subrogation and the like.
F. Rules relating to evidence were contained in the civil code, but recently were separated in a distinct law.

* The Second Part relating to nominate contracts includes:

A. Contracts of ownership: such as the contract of sale, of company, of donation, of loan or transaction (compromise).

B. Contracts of usufruct of things: such as lease.

C. Contracts of services: such as the contract of enterprise, of labor, of deposit or of mandate.

D. Aleatory contracts such as insurance contracts.

E. Contract of surety-ship.
The Third Part of the Civil Code is talking about real rights, and it includes two books:

A. Principal real rights, where provisions for the right of ownership and its derivatives are met. In this book we find also rules for the causes of acquisition of proprietorship. Derivatives of the right of ownership are: usufruct, the right of use and of abode, etc.

B. Accessory real rights: which comprise hypothecations or mortgages, pledge, judgment charge and rights of privileges.

Apart from this, there are some parts of civil law which have recently formed new branches of laws, such as: Agrarian law (including matters of agriculture regulations); Labor law (including social security); and Intellectual property law: relating to patents, trademarks and the like.

ii. commercial law
The ‘commercial law’ is the set of legal rules regulating commercial dealing and relations resulting from them. Commercial law\(^{22}\) determines who bears the title of a ‘merchant’ (i.e., businessman), their ‘acts of trade’ and the ‘legal system for commerce’. It also includes rules for regulating the process of commercial book keeping and different types of business companies starting from their creation down to their activities and ending with their winding up.

iii. maritime law

The ‘maritime law’ is the set of legal rules regulating the relations related to maritime navigation. As it appears from the previous definition, the maritime code deals with the rights concerning ships. In fact, the high value of commercial ships, their navigation in the international waters, the risks they face, and the increasing meriting commercial activity have led

\(^{22}\) Commercial law (sometimes known as business law) is the body of law that governs business and commercial transactions. It is often considered to be a branch of civil law.
The emergence of the maritime trade code as a separate branch from the civil code and the commercial code. The maritime code regulates the rules governing the ‘selling’ and ‘buying’ of ‘commercial ships’, ‘system of navigations’ and insurance on ships and shipments. It is also concerned with the maritime transportation contract the relation between the ship's captain and sailor, and the relations between sailors and the owner of the ship.

iv. aviation law

The ‘aviation Law’ is the set of legal rules regulating air navigation. With the increasing use of aircraft, the need for an independent Aviation Code as a separate branch of the private law has emerged for the same reasons that have led to the independence of the maritime code.

The previous definition of the aviation law is centered on trade via air navigation. Therefore, this code is concerned with the same issues of
the maritime code but in respect of the use of aircraft and air navigation. As the code has emerged only recently, the rules of this code are not grouped in one code but are rather scattered in separate legislations.

v. labor law

The ‘labor law’ is the set of legal rules regulating the hired labor relation between employees and employers. Labor codes in most Arab countries, in general are concerned with the relation of individual work relations and are geared to protect the worker. Provisions to this effect include; fixing working hours, rest time, annual vacations, a minimum age limit; organizing the work of women and children; focusing on industrial safety the health of workers and providing human proper conditions in the working place.

In addition, the labor law provides for punitive measure against workers, and controls the power of the employer to impose penalty
against the worker and his right to terminate the work relationship. The labor code also organizes collective labor relations through trade unions, employers, joint labor contracts, and provides for procedures for conciliation and arbitration.

vi. civil and commercial procedure law

Civil and commercial procedure law’ is the set of legal rules organizing the procedures to be followed before judicial bodies when resorting to them to enforce the substantive code in respect of the dispute question.

The previous definition indicates that unlike the other branches of the private law whose substantive rules define the rights and duties. The procedure code is an adjective or procedural law. It is considered an adjective code because its rules describe the methods and procedures to be followed for enforcing the substantive provisions.
The procedure law also defines the types and different degrees of courts and the way of their formation; the system of appointing the members of the judiciary and their assistants, besides, other questions related to them such as immunity, ways of appointing and dismissal etc. Further, the law shows how code suits are filed to be examined by the courts and defines the jurisdiction of courts of different degrees.

The rules of this law also address the procedures of proving the claimed rights, the pleadings that can be made, the way of ruling on the case, the ways of appeal against the judgments and the dates for submitting such appeals and the system of implementing imposed sentences.

vii. private international law

The private international law is the set of national legal rules governing the relations including a foreign element by indicating the
competent court to hear relevant cases and the law to be enforced.

The law addresses the questions of (1) in which legal jurisdiction may a case be heard; and (2) the law concerning which jurisdiction(s) apply to the issues in the case.23

An American citizen comes to Egypt to trade, to sell and purchase merchandise, and property. He has debtors and creditors. He has law suits. He commits crimes. He dies leaving a succession, a testament. By what law will his acts and their judicial consequences be governed? Will it be the Egyptian law, on account of the place, or will it be the American

23 The previous definition shows the special nature of the relations to be regulated by the private international code. The branches of the code we have discussed so far deal with national relations in all their elements (persons, object of the relation, causal link or the legal fact that has created the case). A sale contract in which an Egyptian citizen sells to another citizen a property inside Egypt, for example, is a pure national relationship in all its elements. But if one of the elements of this relation is non-Egyptian, the case will be different. In the previous example of the sale contract, the buyer may be a foreigner and the seller a national, and vice versa. Both the seller and buyer may be nationals but the purchased property may be situated at a foreign country.
law on account of the nationality? If their decisions are different, there is a risk of a conflict between the Egyptian and the American law.

The may be a conflict between more than two laws. An Egyptian, for example, living in America and there making his last will and testament, dispose of property which he owns in Switzerland. To further complicate the matter, it may even be supposed that the beneficiaries belong to a fourth state and are Belgian or Germans. The same conditions arise in the case of contracts, when the parties are of different nationalities or when the merchandise id to be delivered in foreign parts.

Those abovementioned paradigms raise questions on the state whose courts will be competent to here a possible dispute concerning the relations having a foreign element and on the law to be enforced.24

24 The private international law which is a national code peculiar to each country solves these problems by defining the competent
V. COMMANDING AND SUPPLEMENTARY RULES

A. THE PRINCIPLE OF FREEDOM

Every juridical act is the work of one or more several wills. To what extent do the forms, the conditions, the effects of juridical acts depend upon individual wills? The will of private parties is neither absolutely free nor is it absolutely subordinated to the law. It enjoys a partial freedom. It now becomes necessary to inquire into the extent of this partial autonomy.
Here is outstanding rule of law which is nowhere written in formal terms. Its existence is, however, certain. It runs: all that is not prohibited by law is permitted. Freedom is the rule. Private will is autonomous, with due regard to the limits fixed by law. It will, therefore, suffice to set force these legal limitations.

B. PROHIBITIONS IN THE LAW

The prohibitions established by law are quite numerous and of different kinds. They cannot therefore form the subject of a general theory, and they do not follow a common rule, except as regards their sanction, which is ordinary the nullity of the act performed in violation of law prohibiting it.

Some issues need the interference of the law by commanding or prohibiting certain actions; thereby placing restrictions on the freedoms of the individuals and their activities. This organization is linked to the basic interests
of the society. Other issues are neither related to the basic interests nor to the general system of society, but are associated with the private interests of the individuals.

In the later type of relation, the law leaves to the individuals the freedom of choice. It does not force their behaviors or organizing their relations or when they do not have the ability or enough time to do this organization.

Egyptian doctrines usually call the first category of legal rules ‘commanding or prohibiting rules’ because the legislator interferes by commanding or prohibiting certain actions without leaving any room to legal persons to agree on anything contrary to these rules that are relevant to public orders and morals.

The second category of legal rules are coined ‘agreed or supplementary rules’ as the parties related to the relation organized by these rules can agree on something contradicting with their
provisions that are not related to public orders and good morals.

We will discuss in following passages the nature of both rules and the criterion for distinguishing between them.

C. Commanding and Prohibiting Rules (Mandatory)

The ‘mandatory’ rules are those which the people have to respect and may not agree on what contradict with their provisions. These are termed ‘mandatory provisions’ because they mandate man to do or refrain from doing certain action. These should not be violated because they are related to the basic interests of the society (i.e., penal code). Therefore, any agreement contrary to their provisions is absolutely null and void. For example, penal rules are mandatory commanding rules are also those rules related to regulating the state's powers and the relation between these powers
in their political capacity and the others persons in the society.

D. SUPPLEMENTARY OR AGREED RULES

(Optional)

‘Supplementary’ legal rules are those which people are not forced to follow and may agree on something contrary to their provisions. These rules are also called agreed or interpretative rules because they are not binding on people if they choose to ignore them they are then rule which interpret the will of the individuals or which the individuals agree on at their own free will.

The law gives the individuals the freedom either to apply the provision of these rules or agree otherwise because they are not linked to the ‘public order’ or ‘morality’. The object of regulation in these rules is on the contrary related to the people's rights and their own interests.
An example is the rule governing the delivery of the price of a sold thing. According to Art. 456 of the E.C.C (Egyptian Civil Code): the price of a sold thing should be paid at the same place where the delivery of the sold thing is made, unless otherwise agreed or as may be required by custom. This rule, however, is optional as the parties of the sale relation have full liberty to agree on a different place for paying the price. Thus, the rule governing the delivery of sale price is a supplementary rule because it supplements the will of the contracting parties.

1. The Binding Character of the Supplementary Rules

You may get the impression that the supplementary rules are not binding on the understanding that the parties to the relation can agree on something contrary to them. The question, now, is how for the binding character of legal rule can be seen with the possibility that
It can be agreed on something contrary to them. To remove any misconception, it should be clear that Egyptian doctrine completely agree that the supplementary rule is binding and that there is no difference at all in this regard between the supplementary rule and the commanding rule.

In fact, the supplementary rule, like all other rules, is applied only when the conditions of its enforcement exist, if we scrutinize in the conditions of the supplementary rule, we find that its application is made conditional on the absence of an agreement to the contrary. Therefore, the supplementary rule will not be enforced if there is an agreement between the persons concerned something contrary to its provisions, because in this case one of the conditions for its application would not have been met.

2. Differentiating Commanding Rules from Supplementary Rules
There are two criteria for differentiating between these two types of legal rules. These are as follows:

a. Semantic Method

If the nature of the rule is not clear from the words and phrases of the provision, the content of the text should be examined to know whether it is related to the public order or morality. The essence of differentiation between the commanding rules and the supplementary rules is that the former organizes the issues related to the basic order of the society.

If the purpose of the provision is to regulate a relation related to the basic interests of the society, the rule is, then a commanding rule and is mandatory. But if the provision regulates questions related to individual persons and not linked to the basic order of the society or the group interests, the
rule is, then, a supplementary rule and is optional.

What does ‘public order’ mean, or what rules are related to ‘public order’? It compromises, first of all and necessarily, all laws appertaining to public law. By this term is meant, those laws which govern the organization and functions of the different governmental organs and their agent, as well as the duties and rights of private persons in respect of political matters, elections, taxes, military service, etc. All these laws which make up the political regime of the country, take precedence over private wills.

A law may also fall within the category or private law and nevertheless concern public order. This is the case whenever the provisions of a law are inspired by a general interest which would be adversely affected if private persons were free to prevent their application. For example, law related legal capacity and majority of natural person, Art. 44 provide “All persons attaining majority in possession of their mental
faculties and not under legal disability, have full legal capacity to exercise their civil rights. The majority of a person is fixed at twenty one years completed in accordance with the Gregorian calendar.”

What does ‘morality’ mean? Morality has three principal connotations. In its first, descriptive usage, morality means a code of conduct or a set of beliefs distinguishing between right and wrong behaviors. An example of the descriptive usage could be "common conceptions of morality have changed significantly over time." 25

25 The arbitrariness of morality stems from the observation that actions that may be deemed moral in one culture in time may not be classified as such in others or in a different time. The subjectiveness of morality is shown by the observation that actions or beliefs which by themselves do not seem to cause overt harm may be considered immoral, e.g. marrying someone of the same or opposite gender, being an atheist or a theist, etc. Descriptive morality does not explain why any behavior should be considered right or wrong, only that it may be classified so. For the most part right and wrong acts are classified as such because they cause benefit or harm, respectively. However, this is not by any means an all encompassing criterion; it's possible that many moral beliefs are due to prejudice, ignorance or even hatred.
In its second, normative and universal sense, morality refers to an ideal code of belief and conduct which would be preferred by the sane "moral" person, under specified conditions. In this "definitive" sense, claims are made such as "Killing is immoral."

Third usage, morality is synonymous with ethics. Ethics is the systematic philosophical study of the moral domain. A juridical act is null if it is contrary either to the laws of public orders, or against good morals. As a consequence the immoral juridical act is null even when it is not contrary to any disposition of positive law. Immorality is thus assimilated illegality when it is a question of the validity of juridical act.

This method, however, requires defining the indented meaning of the idea of public order and public morality; a matter which is not easy due to the ambiguity usually wrapping these
idea. In addition, the idea of public order and public morality is elastic; it has different connotations at different times and places. But, in general the public order means anything that may affect the entity and basic interests of the group, whether politically, socially, economically, or the like.

b. Verbal Method

The verbal criterion enables to know the type of the rule from the wording and phrasing of the text. The legal rule may include words or phrases indicating that it is a commanding or prohibiting rule. For example, the rule may provide that its provisions may not be violated and that any breach of its provisions will be null and void. The legislator may also formulate some provisions in the imperative mode. Or, the legal rule may contain words purporting a command or prohibition.

Examples of this are common in the Egyptian civil code. According to Art. 131 of
ECC, any agreement made with regard to the succession of a living person is void even if the living person consents to such agreement. Also, Art. 227, provides that the interests rate should not exceed seven per. If the parties agree to a rate exceeding seven per cent, the rate shall be reduced to seven per cent and any surplus that has been paid shall be refunded. Additionally, Art. 317(3) provides, any stipulation discharges a person from responsibility for unlawful act shall be void.
CHAPTER TWO
PRIMARY SOURCES OF LAW

I. LEGISLATION
   A. Definition
   B. Advantageous of Legislation
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II. SUPREME LEGISLATION: THE CONSTITUTION
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      1. Creation of Constitutions in General
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1971 Constitution
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CHAPTER TWO: PRIMARY SOURCES OF LAW

Introduction

When courts are required to solve disputes, they apply the law with the help of ‘sources’ of the law determined as such by the lawmaker. These are the formal sources of law and which are classified into two types: First, the ‘primary’ (on in other words the principle) source and which is used by court in first resort and second, the ‘subsidiary’ source of law and which will be used by court in second resort when the answer under the principle source is not available. This chapter will concentrate on the primary source of law legislation.²⁶

²⁶ Legislation is composed of written, or more accurately enacted, rules of law; the word legislation is derived from two Latin words ‘lex’ or ‘legis’ and ‘ferre’ or ‘latum’ and which mean law making (or enactment).
This approach is demonstrated by Art. 1 of the Egyptian Civil Code (ECC) which provides that legislative provisions shall govern all matters to which they apply in letter and spirit. If there is no applicable legislative provision, the judge will rule according to the custom, in the absence of custom, the judge will rule according to the Islamic shari’ah, and, if not, according to the natural law and equity rules.

The previous provision indicate that the Egyptian legislator has arranged the official sources in a special order that should be followed in law enforcement, the judge should first apply the legislative provisions as the original primary sources. The other sources named in the previous provision are subsidiary sources which the judge will invoke only if the legislative provision does not help him in ruling on the issues in hand.

It is noted that the order in which these subsidiary sources is listed should not be ignored. For example, if the judge does not find a proper legislative provision, he should resort
to the Custom first before he turns to Islamic Shari'a, and cannot move directly from the legislative provisions to Islamic Shari'ah unless he does not find in the customary rules a proper provision to settle the issue in question. The same order is also followed in moving from Islamic Shari'ah to the Natural Law and Equity Rules.

The process of enacting legislation differs according to the type of this legislation, i.e., whether it is, 'supreme legislation' (i.e., the Constitution), ‘ordinary legislation’ (i.e., statutes) or ‘subordinate legislation’ (i.e., regulations).

I. LEGISLATION

Introduction

Legislation is the principal official source of the law in Egypt. It is considered the general source of legal rules because it is the first reference to which the judge should resort.
A. DEFINITION

Generally, a ward legislation can be used to point to set of legal rules regulating a particular matter, i.e., labor, commerce, and insurance etc. Nevertheless, it is not the intended meaning of the study, current study of legislation refers to the ‘process’ of laying down legal rules in a written form by competent authority in the State.

B. ADVANTAGEOUS OF LEGISLATION

Legislation is the best method to ensure orienting production tools and maintaining balance in social relations. It must be laid down in a written form, as it usually phrased via experts and specialists. Theses characteristics make legal rule clear, accurate, and specific. For example, there would not be difficulties in indemnifying its promulgated (‘effective’) date or the date when it was introduced to the Parliament.
Legislation can also be seen as a rapid source of legal rules, as it effectively responds to particular society demands. More importantly, legislation can be easily amended and modified to cope up with new development, i.e., E-Signature law No. 15 of 1004. Likewise, it works as an effective instrument that aims to legal certainty and seeks unification of law in the State.

C. DISADVANTAGEOUS OF LEGISLATIONS

The fact that legislation are issued in a written form by a competent authority, leads to their stagnation, and failure to cop up with the developing needs in the State. But this does not apply to legislations in democratic societies that reflects the genuine people’s authority. People’s representatives can feel and demonstrate people’s demands in a democratic manner. Also, they would immediately amend obsolete legislations or propose new legislations, if circumstances justify so.
D. TYPES OF LEGISLATION

Legislations are not all of the same nature. These are three types of legislations which are ranked according to their legal force, importance, and issuing authority.

II. SUPREME LEGISLATION: THE CONSTITUTION

‘Constitution’ or ‘Supreme legislation’ refers to the fundamental law of the State which establishes the form of the government and the prerogatives of political organs. The constitutional fabric of the State has, since 1923, been defined by a solemn act superior to ordinary laws and which places primary principles above the constant fluctuations of politics.

Furthermore, ‘Constitution’ has already been introduced when the different types of public laws were discussed. As it has already
been noted. Constitution is the best example of a public law; it deals with the government states authorities and constitutional rights.

Namely, the supreme legislation is called as such because it supersedes any other rule of law. This is expressed by the legal maxim of 'supremacy of the constitution'.

This chapter will concentrate on the basic of creating Constitution and their amendments whether generally or in Egypt.

A. CREATION AND AMENDMENTS OF CONSTITUTION IN GENERAL

Not every country has a constitution, properly speaking, still many governments (namely rulers) have unlimited extent of state powers, usually uncontrolled and consolidated in one body (usually the Ruler) with no separation between its different types, namely
with the legislative and executive authorities in one hand.

Transition from the phase of absolute authority to the phase of controlled authorities will result after acquiring a Constitution, properly speaking. This has to be explained, first from a general perspective and then from the perspective of the Egyptian case.

1. Creation of Constitutions in General

A constituent power exists separate and apart from the ordinary legislative power. Most of the Constitutions of the world are composed of enacted (i.e., ‘written’) rules as, is the case of the Egyptian Constitution of 1971, however some Constitutions are basically based on customary rules as are the case of Britain and Israel

There is no one unique mechanism for creating Constitutions. This is true whether when adoption of a constitution is made for the
first time or when it is completely replaced by another. However, generally speaking such creation can either be made according 'non-democratic' or 'democratic' methods.

a. Non–Democratic Methods

Under non-democratic methods, Rulers play vital role. Non democratic methods include creating Constitution through ‘grant’ and ‘agreement’

Some rulers decide to put their powers under control, adopting the principle of separation of state powers (legislative judicial and executive) and limiting their powers to the executive aspect under control to be exercised by the other authorities (i.e., the legislative and judicial authorities).

If the Ruler drafts and issues the Constitution, he will actually be granting his people a Constitution it is a Constitution made by a ‘grant’.
Constitutions by grant are created through non-democratic method because they are made by the unilateral will of the Ruler; while the people do not share in its creation.

Sometimes the Constitution is made by the shared wills of the Ruler and his governed people. This Constitution is made by an ‘agreement’ or (pact).

Constitutions by agreements are usually created in response to pressure exercised by the people on his Ruler. This is made through struggle against the absolute power of Ruler (e.g., demonstrations. Civil disobedience, rebellion, revolution etc). Here the Ruler concedes some of his powers to the benefit of his people. The agreement is often made after negotiations with representatives of the people.

b. Democratic Methods
Under democratic methods, Constitution is solely made by the people. The ruler will not play a creative role in this regard. This exists when the Constitution is created through a ‘Constituent Assembly’ or a ‘Referendum’.

Creation of Constitution through a ‘Constituent Assembly’ is an expression of the ‘indirect’ democracy; here the people will elect representative whose mission is the creation of the Constitution.

Referendum is an expression of the ‘direct’ democracy. According to this method, it is the people who will be asked for the approval of the Constitution. The draft of such a Constitution will be made either by the Ruler or a group of the people, especially elected for this mission (i.e., Constituent Assembly). Then the draft will be put for the referendum by the people. This is the most prevailing procedure in the creation of modern constitution (i.e., Iraq).

2. Amendment of Constitution in General
Constitutions can also be ‘flexible’ or ‘rigid’. While flexible Constitutions can be amended along the same procedure used for the amendment of ordinary legislation, rigid Constitutions are, to the contrary, amended according to rather onerous procedure in comparison to that of the ordinary legislation.

B. CREATION AND AMENDMENTS OF CONSTITUTION IN EGYPT

1. Historical Background

After the end of World War I the Egyptian 1919 Revolution broke demanding freedom and independence for Egypt, as well as establishing a full democratic and parliamentary life. This Revolution resulted in the issuance of the Declaration of February 28, 1922 and which acknowledged Egypt as an independent sovereign state( despite four British
reservations) and also ended British protection over Egypt. Based on this new reality a new Constitution was issued on April 19, 1923.

Along the history of the political development of Egypt other Constitutions were adopted namely in the years 1956, 1958, 1964, and 1971. The current Constitution in force is that of 1971 and which has been amended in 1980 and 2005.

2. Creation and Amendment of the 1971 Constitution

a. Creation of the 1971 Constitution

The 1971 Constitution was created along a democratic method. That is through a Referendum, the direct expression of democracy. Regrettably it was a governmental committee that prepared the draft of this Constitution. Of course, it would have been better to leave this mission to an elected committee (i.e., Constitutional Assembly)
The 1971 Constitution contains 6 parts on: the State basic constituent of the society; public freedom; rights & duties; sovereignty of the law; system of government, new provisions on the Shoura Council and general & transitional provisions.

b. Amendment of 1971 Constitution

The 1971 Constitution is a ‘rigid’ Constitution; this is due to the fact that its procedure of amendment (or modification) is more onerous than that required for the amended of ordinary legislation. This can be noticed in all the steps of amendment; ‘request’, ‘discussion’, and ‘enforcement’.

i. amendment request

The ‘President’ as well as the members of the ‘People’s Assembly’ may request the amendment of one or more of the Articles of the Constitution.
The ‘Articles to be amended’ as well as the reasons justifying such amendment must be mentioned in the request.

In case of the request emanating from the members of the people's assembly, it should be signed by a specific ‘quorum’ and which is composed of at least ‘one-third’ of the assembly members. And since the members of the people's assembly are 454, then their one third will be 152.

ii. amendment discussion

The request of amendment will be submitted to the ‘People’s Assembly’. This discussion will be made in two stages: preliminary and final.

* Preliminary Discussion

The people's assembly shall discuss the amendment in principle for a preliminary approval. At least, the majority of the members
of the People's Assembly, i.e., 228 members, should approve the principle of amendment.

If the amendment request is rejected, the amendment of the same particular articles may not be requested again before the ‘expiration of one year’ from the date of rejection. If the People's Assembly approves the revision in principle, the requested articles shall be discussed after two months from the date of the said approval. For the mean while, a ‘constitution’ with the Shoura Council should be made.

* Final Discussion

After two months from the date of the preliminary discussion, the People's Assembly will convene for the full and detailed discussion of the request of amendment for a full approval. Such approval should be made by, at least, ‘two-thirds’ of the members of the Assembly, i.e., 303 members.
A consultation should have already been made with the Shoura Council before starting the detailed discussion, through that Council cannot veto approval of amendment.

iii. amendment enforcement

Once the amendment of the Egyptian Constitution is approved by the People's Assembly it will be ready for enforcement. This is done by an endorsement by the People themselves through a ‘Referendum’.

Referendum will be favor of the amendment if approved by the electorate votes in favor of such amendment. The enforcement of amendment will take effect from the ‘date of the announcement’ of the result of the referendum.

II. THE ORDINARY LEGISLATION

(‘STATUTE’ OR ‘ACT’)

Ordinary legislation (‘Statute’ or ‘Act’) is the most common form of legislation; its
appreciation should cover: the ‘authorities involved in the legislative process’ and ‘process of enacting ordinary legislation and its equivalents’.

A. AUTHORITIES INVOLVED IN LEGISLATION

The Egyptian modern legislative organ is presented by its parliament and which is composed of one chamber, the People's Assembly. This Parliament is supported by an advisory organ and which is the Shoura Council.

1. The People's Assembly: The Parliament

The People's Assembly is the Parliament of Egypt; its members are the representative of the Egyptian People. Three aspects of this assembly should be highlighted its; ‘composition’, ‘functions’ and ‘meetings’.

a. Composition
Under the Constitution, the minimum number of members of the Egyptian Parliament is 350. They are now 454 parliamentarians including 444 elected and 10 appointed members. Elections are made each 5 years in public direct ballot under the supervision of judiciary authority.

b. Functions

The functions of the People's Assembly are not to serve direct needs of their electorate but to serve the whole country through political process and which includes; ‘Legislation’, ‘approval of the state budget’, ‘monitoring proper government and supporting candidacy for presidency’.

c. Meeting

The Egyptian People's Assembly is elected each 5 years. This is called the legislative term the ‘legislative term’ is composed five periods of regular work, one each year. This is called the
'legislative round’, each ‘legislative round’ is composed of many ‘legislative sessions’. In principle, the majority of the members must be present for a valid session (i.e., at least 228) and decisions are made, at least, by the majority of its present votes (i.e., at least 115).

2. The Consultative Council: the Shoura Council

The Shoura Council was initiated in 1980 by an amendment to the 1971 Constitution. However, this Council is not a back reference to the experience of Egypt with its Senate of 1923, since the Shoura Council does not enjoy legislative role, it is just a consultative organ. Then Egypt does not have a bi-cameral system of legislative authority. Particularly, when the word parliament is used, the Shoura Council is excluded.

Appreciation of the role of Shoura Council can be attained through shedding some lights on its compositions and functions.
a. Composition

According to the 1971 Constitution, the Shoura Council is constituted of a minimum member of 132 members. Currently it is composed of 264 members. Two thirds of the members, i.e., 176 are elected through public direct ballot. The president of the republic appoints the remaining one third, i.e., 88 members.

The term of membership to the Shoura Council in 6 years. Half of the elected members are changed and half of the appointed members are chosen every 3 years.

b. Functions

The Shoura Council is not a legislative organ; it is simply an advisor (consultant) to both the legislative and executive authorities. However, seeking consultancy of the Shoura Council is mandatory in matters of amendments of the
constitution and bills of law complimentary to the Constitution.

B. ORDINARY LEGISLATION PROCESS

Rules of law having the power of ordinary legislation results from two types of such types legislation, each has its process of enactment and enforcement. These are the cases of ‘ordinary legislation by definition and the rules of law equivalent to ordinary legislation’.

1. Creation Ordinary Legislation by Definition

Regular process for the creation of an ordinary legislation includes two phases, first ‘enactment’, and then ‘enforcement’.

a. Enactment of Ordinary Legislation

The phase of the enactment of an ordinary legislation includes the steps of ‘proposition’ then ‘discussion’.
i. proposition

The president of the republic and any parliamentarian may suggest creation of an ordinary law. This is called a ‘law bill’ or ‘law draft’. If suggested by a parliamentarian, the bill will be called a ‘law proposition’ while when it is suggested by the president it will be called the ‘government's bill’.

In Egypt most of the law bills take the form of government's bill, regrettably this is a bad sign for weakness of the Parliament.

The law bill is first to be sent to its relevant specialized committee within the Parliament for a preliminary preparation for its discussion. For example, economic-related bills are sent for the economic affairs. The committee will examine the bill and reports thereon. Both the bill and its report
Will consequently be submitted to the Parliament to facilitate its discussion. Unlike the government's bill, the Parliamentarian's bill (i.e., law proposition) will first be reviewed by the Parliamentary Committee for companies and propositions before being sent to the specialized committee.

ii. discussion

The legislative session for the discussion of the law bill will not be legally held unless a quorum of majority members is satisfied. i.e., 228 members. Decisions are made through the majority of the votes of the present members, i.e., at least 115 members. Equal number of votes means rejection.

Discussion of the law bill will first start with voting on its general principles represented by the reporter of the specialized committee. Then voting will be made on the articles of the law one by one. A final voting will be made at the end of the discussions on the whole bill.
Every law bill suggested by a parliamentarian and rejected by the People's Assembly may not be re-proposed in the course of the same legislative round. This ironically is not applicable to government's bill.

b. Enforcement of Ordinary Legislation

Once the Parliament approves the law bill, the enactment of the ordinary legislation is considered achieved, but it is not enforced until it is promulgated and then published.

i. promulgation

* Concept

Promulgation is a right of the President of the Republic and is sometimes an obligation on him. It is an order issued by the President of the Republic to the different authorities of the State to the effect of enforcing the legislation. This is usually done through the following statement.
“We order that this law be sealed with the seal of state, published in the official gazette and enforced as a law of the state”.

* Types
The President of the Republic has the right to object to promulgation; this is done by a vote. Logically, this will be in case the bill has been suggested by a parliamentarian.

When the President of the Republic objects to a law bill, he should refer it back to the Assembly within ‘thirty’ days. If the law bill is not referred back within this period, it will be considered as being impliedly accepted for promulgation.

If the bill is referred back to the People's Assembly within the period of 30 days and this assembly insisted on its enactment by a majority of ‘two-thirds’, (i.e., 303 members), the President will have no choice but to promulgate the bill, he is not entitled to a
second veto. Therefore promulgation is of three types 'actual', 'imposed', and 'presumed'.

ii. publication

All laws are be published in the 'Official Gazette' (al-jarida al-Ras’mya) within 'two weeks' from the date of their promulgation. They shall be put into force after a month following the date of their publication unless provided otherwise in the promulgation law.

2. Creating Rules of Law Equivalent to Ordinary Legislation

Rules of law equivalent to ordinary legislation include the cases of; 'law-decrees', and 'international conventions', incorporated in the Egyptian legal system.

a. Law-Decrees
Sometimes creation of ordinary legislation through the People’s Assembly is feared to be inconvenient (due to needs of rapidity and/or confidentiality) or happened to be impossible (absence of Parliament: e.g., recess or dissolution). In such cases the Constitution exceptionally allows for the creation of ordinary legislation through a decree (i.e., order) made by the president. This is ‘law-decree’ (Karar-bi-Kanoun) and which will be equivalent to an ordinary legislation.

Law-decrees include two types; the ‘delegated regulation’ and ‘urgency regulation’.

i. delegated regulation

For the existence of a delegated regulation, there should be
- Existence of ‘necessity’ or an exceptional case (e.g., top secret laws related to the army);
- The decree is made by the president;
• Delegation by at least two-third of the People’s Assembly (i.e., 303 members)
• The delegation for a limited period of times;
• The delegation for a determined subject(s)’ and
• Subsequent submission of the decree to the People’s Assembly for ‘approval’.

If the delegated regulation is not submitted to the Parliament, or if it is submitted and not approved, it will cease to have the force of law. This repeal will be of a ‘direct’ effect, i.e., it will not extend to the past.

ii. urgency regulation

For the existence of an urgency regulation, there should be;
• ‘Absence’ of the People’s Assembly (e.g., holiday,
  invalidity, dissolution etc.);
• ‘Necessity’ to take measures which cannot suffer

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delay;

- Issue of a presidential ‘decree’ in this respect and
  which has the force of law and
- Subsequent submission of the decree to the People's Assembly for ‘Approval’.

If the urgency regulation is not submitted to the Parliament, or submitted but disapproved, its force of law will ‘retroactively’ disappear, i.e., it will be repealed from its moment of creation in the past.

b. International Conventions

Not every international convention is applicable everywhere, each State determines the requirements for the incorporation of international convention into its legal system; this is regulated under its constitution.

In Egypt, international conventions are not incorporated into the Egyptian legal system unless they are ‘signed’, ‘ratified’ and
‘published’ in the Egyptian Official Gazette. They will thereafter be of the power of an ordinary legislation though they are not as such by definition.

In principle, the President of the Republic is the competent authorities to sign the international convention and ratify it when it is concluded by one of his Ministers.

President is only under obligation to communicate conclusion of the international convention to the Parliaments accompanied with a suitable clarification. Particularly, the President is not required to acquire the approval of the parliament for such activity unless the international convention concerns;

- ‘Peace’;
- ‘Alliance’;
- ‘Commercial’ and ‘Maritime’ matters;
- State ‘sovereignty’ (e.g., amendment of territory) or
- Burdening state ‘treasury’ of charges not included

in the budget
III. SUBORDINATE LEGISLATION: THE REGULATIONS

The lowest level of legislations is the ‘subordinate legislation’ or ‘regulation’. Most of rules of law are found under regulations because they usually include the detailed rules. In order to appreciate the role of regulation some lights should be shed on its creation and types.

A. CREATION OF REGULATIONS

The executive authority usually carries its mission by juridical facts (e.g., provision of public services), however this mission might require creation of rules of law and which rank in a lesser degree than ordinary legislation. These are the ‘subordinate legislation’ or simply, the ‘regulations’.

Regulations are not suggested or discussed in a specific manner; particularly they need not
be to promulgated because the authority that will apply them, i.e., the executive authority, issues them. However, they will not be enforceable unless they are punished in ‘Al Waka’a Al-Misrya’, this is the Egyptian Official Gazette's Annex.

**B. TYPES OF REGULATIONS**

Subordinate Legislation are of there types: ‘executive’, ‘organizational’ and ‘control’ regulations.

**1. Executive Regulations**

Executing some ordinary legislation may require detailed rules; these are left to executive regulations and which the President of the Republic or any other delegated Minister issues.

For example, an executive regulation on traffic is issued by the Minister of interior affaires supporting execution of the Traffic Act.
2. Organizational Regulations

Organizational Regulations are made by the President to ‘establish’ and ‘organize’ the ‘public utilities’ of the State, e.g., creations of the public authority for rails.

The President of the Republic is not entitled to delegate the power to issue organizational regulations to other executives, since this involve financial consequences and which burden the Stat’s budget.

3. Control Regulations

Control regulations are made to safeguard ‘public order’ by protecting the three elements of : ‘public health’, ‘public tranquility’ and ‘public security’. Control regulations are of the inclusive authority of the President of the Republic with no possible delegation.
CHAPTER THREE

SUBSIDIARY SOURCE OF LAW
CUSTOM, SHARI’A AND EQUITY

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   D. DISTINCTION OF CUSTOM AGAINST PRACTICE
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CHAPTER THREE: SUBSIDIARY SOURCE OF LAW CUSTOM, SHARI’A AND EQUITY

Introduction

According to the Egyptian lawmakers, if the judges doesn’t find solution for the dispute under legislation then he will have to resort to other ‘subsidiary’ sources of law starting with ‘custom’. In case of insufficiency, the judge will have to recourse to the ‘principles of Islamic Shari’a’. By the same token, in case of insufficiency the judge will have to resort to the ‘principles of equity and natural law’ These are the main topics of this chapter, to which a note on the accessibility of legal information through the internet will be added.

I. CUSTOM

Custom is a subsidiary formal source of law. And through custom occupies the second rank
after Legislation, it has an essential role in some fields, namely business and maritime trade.

Discussion of custom should cover its: ‘definition’, ‘elements’ and ‘differentiation of custom against practice’.

**A. Definition of Custom**

Custom can be defined as ‘a regular course of conduct whose observance is felt to be obligatory by the society’.

**B. Elements of Custom**

In order for the existence of a custom two constituent elements should be satisfied these are the ‘material’ and ‘moral’ elements.

1. **Material Element: Practice**

Custom is an unwritten law and its material existence takes the form of a common practice adopted by the people. This is the material
element and which is also called ‘practice’ or ‘course of dealing’.

Practice need not to be adopted by all people; it could prevail in a particular place of the country, e.g., customs of the people in Upper Egypt; and they could only be applicable to a particular category of persons, e.g., merchants.

2. Moral Element

Not all practices or courses of dealing constitute customs. The society must feel that practice or the course of dealing is obligatory. This is the moral element. Practices sometimes exist without being felt obligatory by their concerned people. This for example is the case of payment of tips. Then practices are not customs. Though they constitute a preliminary step for the possible birth of a custom. Practices can be obligatory when their concerned parties agree to make them as such. Here, subsequent violation to practices will be countable, because it will be a violation to a pre-existed agreement.
While, a custom does not need an agreement to render it obligatory, violation of a custom is a violation to the law and agreement not to violate the law is not needed in order for the existence of its obligatory force.

C. Types of Custom

There are many types of custom, inter alia; ‘universal vs. local’ complementary vs mandatory’ and ‘domestic vs. international customs’.

1. Universal vs. Local

Universal custom is applicable to all the places of a country while ‘local’ custom is only applicable to a certain place within the country. However, both universal and local custom are characterized by being general rules of law, as is the case of any other rule of law.

2. Complementary vs. Mandatory
Most of the customary rules of law are ‘complementary’ or ‘facultative’. This is due to the fact that the parties may modify them or disregard their application altogether, by agreement.

However, some customary rules of law are ‘mandatory’ where the parties are not entitled to derogate from their application by an agreement to the contrary. An example for a mandatory custom is the constitutional custom. An application for such a constitutional custom is the case of Lebanon where there is a customary rule that mandates that Head of State should be nominated from the Christian population.

3. Domestic vs. International

‘Domestic’ or ‘nation’ custom considers national relations, while ‘international’ custom considers international relations.
International custom can consider relations of international public law, i.e., relations between States and Organizations. Thus, it is more correct to characterized this custom as an international public custom, international public custom is a source of the international public law.

However, international custom can also consider relations or Private International Law, i.e., international relations between Private persons. Most of these relations are business relations. This kind of custom is usually known as ‘international trade usage’.

International business organization used to collect international trade usages and publish them in guidelines. An example for such efforts is the INCOTERMS (i.e., of the International Commercial Terms) of the International Chamber of Commerce in Paris (the last version is that of 2000)

INCOTERMS regulate international sales under abbreviated terms, the most famous of
which are EXW, CIF and FOB (They are 13 terms). Reporters and importers negotiate their contract of sale based on these abbreviated terms without the need discuss their details and which are left to the interpretations made by the International Trade Usage crystallist in the INCOTERMS.

So, when a seller accepts to sell CIF, this means that he will arrange for insurance and carriage, however if he insists on selling FOB, this means that insurance and carriage are to be arranged by the other party (the buyer). In both cases, the parties of sale need not to trouble themselves with negotiating details.

D. DISTINCTION OF CUSTOM AGAINST PRACTICE

If every custom necessarily contains a practice, an opposite statement cannot be correct, since practice itself do not mount to the level of custom. Consequently, custom differs
from practice in a number of points, the most important of which are:

- Courts are presumed to be aware of custom, however they are not presumed to be aware of practice;
- Courts apply custom on their own initiative, while they will not apply practice unless they are asked for such application;
- The Courts of Cassation can only review misapplication of custom and not practice,

This can be explained in further details as follow:

1. Courts are presumed to be Aware of Custom

    Custom is a subsidiary source of law; it is a type of law, then ‘courts are presumed to be aware of them’. This is explained by the legal maxim, ‘courts should take note of law’.

    However, practice is not a type of law; it is a type of an agreement (i.e., contract) then,
courts cannot be presumed to be aware of it, because courts are supposed to be aware of the agreements of the parties. Also, this is impossible to be required since the agreement of the parties are not published in the Official Gazette; they confidentially kept between the concerned contracting parties.

The above point of distinction is vital for the process of judicial application of both custom and practice. While the dispute parties are not required to prove the existence of a customary law in court, their practices will not be considered by the courts unless at least one of them prove an agreement to their application.

2. Courts Apply Custom on their Own Initiative

Since the disputants need not to request the court to apply the law, they are not claim application of custom in order for the court to apply them. The court will apply the custom on its own initiative, or in other words it will ex officio apply it.
However, practices are like agreements, courts do not consider them unless their application is claimed and proved by the interested party. Courts cannot apply practices by their own initiative, i.e., they cannot ex officio apply practices.

3. Cassation Court Reviews Application of Custom

The elements of any dispute can either be a matter of ‘fact’ or ‘law’. For example, when you make a contract you will be under an obligation to respect it. However, in case you do not respect the contract, the other contracting party will need first to prove existence of such contract; this is a matter of fact. After such proof, this party does not need to prove to the court that a contract should be respected because this is a matter of ‘law’, and courts are presumed to be aware of law.
However, sometimes courts make wrong judgments, misapplying fact or/and law to their related cases. Regarding the matter of fact, the Court may mistakenly disregards existence of a contract through its existence has been proved. Sometimes the judgment is wrong regarding a matter of law, for example, the Court may mistakenly excuse unilateral withdrawal from a contract though this is not permitted by law (in principle, this must mutually made). In both cases, the judgment can be claimed to be wrong and challenged for correction through appeal or cassation.

While Court of Appeal is entitled, in principle, to review misapplication of matters of law and fact, Court of Cassation can only review misapplication of matters of law. Since, a custom is a matter of law while a practice is a matter of fact. Then the Court of Cassation can only review alleged misapplication of custom.

II. PRINCIPLES OF ISLAMIC SHARI'A
Judge is under an obligation to render justice; he cannot deny justice for an excuse based on lack of legislative and customary rules. In such a case; the judge will be prosecuted for the crime of ‘denial of justice’. However, what shall the judge do when he is short of legislative and customary rules of law.

The Egyptian lawmaker made the answer clearly; the judge will have to recourse to the principles of Islamic Shari’a. Here, the Islamic Shari’a will be a subsidiary formal source of law.

III. PRINCIPLES OF EQUITY AND NATURAL LAW

‘Principles of equity and natural law’ are the last subsidiary sources of law. They are the simple sense of justice, consequently, they are philosophical concepts leading to flexibility that enables the courts to overcome shortage of other sources of law.
When the court resorts to the ‘principles of equity and natural law’. It will actually take the position of a legislator, and creates the rule of law and then comes to its natural role as an applicant of such rule and apply it to the dispute.

Equity and Natural law were the promoters of many important rules of law in Egypt as is the case of protection of copyright such protection first started in courts in application of rules of equity and natural law.

IV. INTERPRETIVE SOURCES OF LAW

Sometimes the resulting rules form the official sources may be ambiguous and uncertain. Therefore, judges seek to identify the reality of rules guided by some jurists ‘Doctrines’ and opinion of judicial precedents ‘Jurisprudence’. Hence, doctrine and jurisprudence rulings have become interpretative sources of legal rules.
A. **Jurisprudence**

The manner in which court interpret the law is called ‘Jurisprudence’. Compared to the role of legislator the role of the judge seems modest. In reality it is almost equal. In fact, law takes effect only when applied, and in manner in which it is applied. And there is a fact universal and inevitable: the interpretation of the laws by the judicial authority furnishes a thousand occasions for the modification of the legal rule, and sometimes the judge paralyzes the will of legislators.

1. **Characteristics**

‘Jurisprudence’ has characteristic peculiar to itself. It refers to the entire rulings issued by courts when deciding on the disputes brought before them. More accurately, it means that the judges be issuing theses rulings establish a set of legal principles that can be followed and adopted.
It does not work in the manner of writers or of professors, who expound their ideas in synthetic and co-ordinated form, which constitute systematic treatment of subject as a whole. The tribunal pass on matters which are submitted to them from day to day, and which are nearly always on details, or in any case questions isolated from each other. In addition one of the fundamental rules of our judicial organization is that a tribunal is never bound by the decisions which is formerly rendered: it can always change its mind, still less is it bound by the decisions rendered by other tribunals even if they are higher in rank, except in certain cases in connection with the Court of Cassation. From this a great variation results, as the number of judgments are very numerous and often in contradiction with each other.

Being as an ‘interpretive source’ of the law, jurisprudence does not establish new legal rules having binding force but rather, is restricted to explaining and applying the legal rules of any official sources whatsoever. ‘Jurisprudence’ addresses the legal ruling both in their entirety
and in their parts, evaluates them, and presents them as they should be. Jurisprudence, also, helps interpret the applicable legal provisions and enables the judges and legislators to be guided by this interpretation in performing their functions.

2. The Fixity of Jurisprudence

Nevertheless the courts eventually arrive at established solutions; and that for a double reason.

a. In the case of ‘conflict between tribunals’, it is the Court of Cassation which has the last word. When a question of law arises which is novel, or doubtful, as to which there are divergent opinions, it can always be deferred to the Court of Cassation, and the latter, each time that a matter is submitted to it, has the power to impose its point of view on the other tribunals.
b. The judicial body, whatever it may be, has a tendency to create a tradition, to decide always in the same way, when they have once adopted solutions.

Under the combined action of these two influences, the one of fact, the other of law, certain trends are produced which can neither be stopped nor turned aside. One says that the rule is fixed, or that the solution has been made. This universal phenomenon, well known to the legal world, brings it about that lawyers always take care to find out whether or not there are judgments in their favor. The more there are, the more sure they are of success. Also they say that in the courts they count the judgments, while in the law schools they weight them.

3. General Results of Modern Jurisprudence

It is not sufficient to know how the ‘jurisprudence’ is made. It is also necessary to know the general results. Here there can only be an appreciation of the work as a whole. Details
would take too long. The principal points are explained each in its place. It can be said the judicial interpretation of the text has had a very unequal bearing. Sometimes it is very bold, sometimes very limited.

The courts have in certain cases believed themselves so bound by the text that they have neglected to avail themselves of a solution more equitable or more useful which has been proposed to them. In other cases they have been questionable means paralyzed dispositions which they considered bad. Another part of the task of the courts has consisted of making rules for the regulation of matters which the written law has not foreseen, i.e., relations between employers and employees.

B. DOCTRINE
‘Doctrine’ is the opinion expressed and the idea set forth by jurists in their works. It plays in the science of law about the same role as public opinion does in politics, and its role is considerable: it gives orientation; it prepares from afar many changes in legislation and in case law. But even when it is fixed the teaching of ‘jurists’ does not constitute a source of law, as do the decisions of the courts, because the ‘commentators’ do not possess the power of constraints. Nevertheless it is in their books, and in their oral teaching that scientific principles and juridic ideas are developed and

27 Doctrine (Latin: doctrina) is a codification of beliefs or "a body of teachings" or "instructions", taught principles or positions, as the body of teachings in a branch of knowledge or belief system. The Greek analogy is the etymology of catechism. Often doctrine specifically connotes a corpus of religious dogma as it is promulgated by a church, but not necessarily: doctrine is also used to refer to a principle of law, in the common law traditions, established through a history of past decisions, such as the doctrine of self-defense, or the principle of fair use, or the more narrowly applicable first-sale doctrine. In some organizations, doctrine is simply defined as 'that which is taught', in other words the basis for institutional teaching of its personnel internal ways of doing business.
come to determinate the thought of judges and of the legislator himself. It is called ‘tradition’.

With the development of societies, the role of ‘doctrine’ has developed and become an ‘interpretive source’ guiding the legislator and judges to the good application of legislative rules and advising on certain issues. In the Islamic society, in which Islamic Shari’a is applied, remain the largest international community linked to doctrine as Islamic doctrine ‘Usul al-fiqh’\textsuperscript{28} has contributed to forming Islamic Shari’a and is still a source for supplying it with the appropriate legal rules on new issue.

Islamic Doctrine has developed since it emerged till present. Explanations, interpretations, and independent reasoning

\textsuperscript{28} literally: the origins/fundamentals of the law) is the study of the origins, sources, and principles upon which Islamic jurisprudence is based. In the narrow sense, it simply refers to the question of what are the sources of Islamic law. In an extended sense, it includes the study of the philosophical rationale of the law and the procedures by which the law applicable to particular cases is derived from the sources.
were common at the time of the Companions and the followers of the Prophet until it came a time when writings and research were conducted on different judgments depending on the legislative sources of those jurists.
CHAPTER FOUR
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CHAPTER FOUR: APPLICATION OF LAW

Introduction

Once created, the law will be subject to application. This dynamic aspect of law raises issues of extent of such application. Powers of courts and persons applying the law, ‘repeal’ of the law and ‘judicial review’ of inconsistency between different types of legislation.

I. EXTENT OF THE APPLICATION OF LAW

Though laws are generally applicable, they do not enjoy an absolute extent of application for each law, there is an extent of application in respect of ‘territory’, ‘persons’ and ‘time’.

A. TERRITORIAL SCOPE OF APPLICATION OF LAW
Independence of States and their equal footing from the perspective of their sovereignty lead to the authority of each State to create its own laws.

However, movement of persons and their properties from one state to another and its consequent connection to more than one law required determination of the territorial scope of application of the law of each State. This is regulated by three different principles. These are the principles of ‘territorial’, ‘extraterritorial’ and ‘personal’, application of the law.

The concept of such principles should first be clarified before discussion of their application within the Egyptian legal system.

Restriction of the application of each state's law to its territory is an application of the principle of territorial application of law. This means that the laws of the State X are applicable only to the territory of the State X.

Strict application of the law of the State to its territory may release some criminals from liability for their crimes that are committed outside the territory of such state. This has led to exceptional application of the law of the state to some acts that are committed outside its territory. This is concept of extraterritorial application of some laws and which usually takes place for state security topic (e.g., Terrorism).

An example for the extraterritorial application of law is the case of a State X and which punishes crimes committed on the territory of State Z because they hamper its security (i.e., that of the State X).

It goes without saying that territorial application of law disregards nationalities of the
Persons domiciled in the territory of application. Therefore strict application of the principle of territorial application of the law also lead to the prevention of the application of the law of the State to its citizens when they are out of their home country. This may lead to unfair and unsuitable applications, especially when the laws of the host State are irrelevant (e.g., Islamic shari'a while the foreigners are not Muslims) or the foreign residence is incidental (e.g., tourism). In such cases, justice mandates permission of the application of certain laws to their nationals regardless to the place of their residence. For example, the State X will allow application of the law of the State Z on its territory to the citizens of the State Z.

Therefore, sometimes, States are tolerant to the application of national laws of the foreigners, particularly in personal status matters. This is an application of the principle of ‘personal’ application of law.
2. Territorial Scope of Application of Law in Egypt

In line with most of modern legal systems, Egypt adopts the principle of territorial application of law. However, this principle is exaggerated and sometimes moderated by some exceptions.

Exaggeration to the principle of territorial application of the Egyptian law means extending application of Egyptian laws to acts committed outside the Egyptian territory, e.g., allowing extraterritorial application of the Egyptian law. This exists with most of the Egyptian criminal laws that protect State security.

Moderation to the principle of territorial application of the Egyptian law means permission to the application of foreign laws to its nationals in Egypt (e.g., personal status matters) 29 or simply by allowing exemptions for

29 This done by the rules of choice law and which allows court to apply a foreign law to a case that involves a foreign element, Rules
foreigners from being subject to Egyptian laws (e.g., military service laws).

B. PERSONAL SCOPE OF APPLICATION OF LAW

Even when the law is territorially applicable, one wonders to whom it will be applicable? Particularly, shall it only be applicable to those who are aware of its content? Or should everybody be subject to the law regardless to such awareness? This is regulated by the principle of ‘ignorance of law excuses no one’ and its sole exception case of Force Maejeure.

1. Ignorance of Law Excuses no One

Stability in the State requires presumption of awareness of the content of any rule once its...
procedure of enactment and enforcement is satisfied.

If violators of law are allowed to escape punishment by proof of their ignorance of law, this will certainly cause disorder. Therefore, absence due to traveling out of the country, illness or being illiterate cannot be valid excuses for escaping observance of law. The principle of ignorance of law excuses no one is applicable to all types of laws regardless to their particular source; that is to say whether it is legislation or custom.

2. Exception: Force Majeure

Though ignorance of law excuses no one body can deny possible logical and acceptable excuses for such ignorance. This takes place when one is prevented from taking notice of law due to an uncontrolled and unforeseen event. This happens when parts of the country are
isolated due to foreign occupation, floods or earthquakes. The laws, which are made in such periods of time, may excusably be ignored. Here, the official Gazette which contains the law will not reach the isolated parts of the country and consequently the inhabitants of such pars will be excused for ignorance of law due to a case of ‘force majeure’.

C. Time Scope of Application of Law

Scope of application of law from the perspective of time require highlighting its problematic aspects and then its legal solutions.

1. Problem

Law is asocial creature; it develops with the development of society. Law is therefore rarely permanent; it is subject to modifications and possible repeal (i.e., cancellation). This phenomenon may lead to new laws and consequently possible conflict in application between the new and old laws.
For example, imagine a person is accused of trading in drugs and that such act of trade took place when the law used to punish its perpetrators with a life sentence; however, at the moment of trial (i.e., being to court), such law was already modified to punish the perpetrators with (death penalty). Shall the accused be tried the old law (life sentence) or the new law (death penalty)? will the answer be different when the situation is the opposite?

2. Solution

In order to solve the above problems regarding time application of law, two concepts of law should be explained; these are the principle of direct effect of law and its exception, the retroactive application of law.

a. Principle: Direct Application of Law

In principle, laws should be directly applicable, that is to say that the acts which
have been committed under an old law will be subject to that law even when this law is modified or repealed by a subsequent law. This is the principle of ‘direct’ effect of law.

New laws are only applicable to the new acts, which took place when these laws were into effect.

Therefore in the above-mentioned case the accused will be subject to the life sentence through its law has already been repealed at the time of trial.

b. Exception: Retroaction Application of Law

However, justice or necessity may allow exceptions to the principle of direct effect of law. Here the old act will be subject to the new law, though it has taken place under the sovereignty of the old law. The new law is law is said to be ‘retroactive’ or ‘retrospective’
The People's Assembly may, by exception, render an ordinary legislation retroactive upon satisfaction of certain constrains.

These constraints are:
Not penalizing old legitimate acts;
High interests of the country justifies retroactively;
Express provision of retroactively and Approval by the majority of People’s Assembly (i.e., 228 members)

This is application of Article 187 of the Egyptian Constitution of 1971

However, law can be retroactive regardless to any express legal provision. Legal provision. This exists when a new criminal law is considered to be ‘more favorable to the accused’, This exits when a person trades in illegal drugs under a law that penalizes such act with death penalty. and at time of trial the applicable law is modified to punish such acts with life sentence. Here, the accused will be
subject to the new law because it is more favorable to him.

II. POWERS OF COURTS AND PERSONS IN APPLYING THE LAW

Actual extent of application of law varies, taking into consideration the different powers granted by law to courts and concerned parties regarding this application.

A. POWER OF COURTS: FLEXIBLE VS. RIGID

From the perspective of the power of court regarding application of law; laws are either ‘flexible’ or ‘rigid’.

Under flexible laws, courts enjoy ‘discretionary’ power in their application. This is the case, for example, when the laws use flexible concepts like the concept of necessity. For example, carriers can change the course of
trip in case of necessity. This will give the court a wide power in deciding when the necessity took place.

Under rigid laws, courts will enjoy strict power in their application, as is the case when the law provides that age of majority is 21 years. Here, the courts will never enjoy the powers to consider some people major though they are not under the age 21 years, even when these persons are among the most intelligent people. Hence, this law is ‘rigid’.

B. POWERS OF PERSONS: MANDATORY VS. COMPLEMENTARY

Laws can also be ‘mandatory’ or ‘complementary’. This classification is made from the perspective of the ‘faculty’ of the persons in the application of law. This topic raises two points of interests the meaning of mandatory and complementary concepts and then their criterion of differentiation.
1. Concept

All laws are ‘obligatory’ because they are supported by the material sanctions. However, most of laws can be disregarded by the agreement of its concerned persons. Such laws are called ‘facultative’ or ‘complementary’. They are facultative because they grant the persons the faculty to avoid their application, and they are called complementary because they are made to complement of the parties when they are silent regarding the points of substance of such laws.

For example, in application of sale law, once a buyer receives the property sold, he will have to pay the price, however the parties of the sale may agree on partial payments to be made in installments. Here, the law is said to be complementary or facultative; it orders instant payment unless the parties choose the faculty to agree otherwise; it is made to complement their possible silence.
In opposition to a widely spreading untrue concept among laymen (i.e., non-lawyers) fewer laws are mandatory in comparison to complementary laws and which cannot be disregarded by the agreement of the concerned persons.

For example, according to penal law no one can kill even for mercy, therefore if a patient who lost hope for cure asked his doctor to put an end for his suffer. The doctor will not be allowed to make an agreement on the killing for mercy. This is said to be against a mandatory law (i.e., criminal law) also, a bribe will still be punishable though its concerned parties agreed to its commitment.

It is to be noticed the, with the adoption of liberal economic systems (e.g., privatization), scope of complementary laws prevails and mandatory laws decrease and vice versa.

2. Criteria for Differentiation
Usually, distinguishing between complementary and mandatory rules of law is made through the analysis of the words of the text of law. This is called the ‘textual’ or ‘literal’ criterion in case, such criterion is not sufficient, a subsidiary criterion will always be available and which is called the ‘functional’ criterion.

As regards the textual criterion, laws are mandatory when they use words, which signify order. For example, this will be the case when the text of law involves the words shall must, has to. also, the law will be mandatory when a prohibition is involved namely when a criminal punishment will be implemented in case of violation

By the same token a rule of law can be classified complementary when it uses statements as ‘may’ or ‘unless otherwise agreed upon by the concerned parties’.

However, when the textual criterion does not help in classifying the law, recourse will be
made to the functional criterion. This means the analysis of the function of the text of law. When the text considers safeguard of the essential values related to ‘public order’ and vice versa.

It is to be noted that the rules of public laws, are of mandatory nature, unlike the rules of private laws, they fall into the sphere of complementary laws.

III. INTERPRETATION OF LAW

Interpretation of laws means determination of its meaning. this can be made by any of the following three interpreters; legislator, judge or jurist, leading to three types of interpretations; legislative, judicial or doctrinal.

A. LEGISLATIVE INTERPRETATION

Legislative interpretation is made by the legislator, the (i.e., People's Assembly). This can be made in two different methods: the preceding and subsequent methods.
Under a ‘preceding’ method, the legislator will set up in the preamble of the legislations, this means that the definitions will be issued in the same text of legislation. Then interpretation is made preceding any application.

Under a subsequent method, the legislator will have to deal with an ambiguity of an created and applied legislation. This will be done through a consequent clarifying legislation, this latter law is an interpretation of the early made but vague legislation; it is an interpretative thereto.\(^{30}\)

The legislative it is interpretation of law is obligatory because it is has been created by the same creator of the legislation the legislator, i.e., legislator.

**B. JUDICIAL INTERPRETATION**

\(^{30}\) E.g., Law No.11 of 2002 and which was issued to interpret a vague tax provision already promulgated under the sale’s tax law, Law No.11 of 1991.
When courts come to the application of laws they are required to first interpret them. This called judicial interpretation

Judicial interpretation affects the litigants of the case upon which the interpretation is implemented. However, other courts, than the interpretative court, are not bound by this latter court's interpretation. Therefore, it is said that judicial interpretation is not obligatory.31

An exception to the above principle is the case of the interpretation of the law made by the Supreme Constitutional Court.32 Such

31 Compare the ‘stare decise’ rule in case-law under the Common law system.

32 Article 49 of Law No.48 of 1979. The Court is the highest judicial power in Egypt and it alone undertakes the judicial control in respect of the constitutionality of the laws and regulations and shall undertake the interpretation of the legislative texts in the manner prescribed by law. In addition the supreme court is empowered to settle competence disputes between the judicial and the administrative courts. The establishment of the Court has been stipulated in the body of the Egyptian Constitution in 1971. Articles from 174 to 178 talked about this court, its competences and its staff. And, According to Article 174, the Court is an independent judicial authority whose headquarters is in Cairo. The SCC is alone responsible for censoring the constitutionality of the laws and
interpretation is made by a decision published in the Official Gazette (within 15 days of its issue) and it is binding to every person

regulations and it assumes interpreting legislative texts. By virtue of constitutional provisions, the law No. 48/1979, known as that of the Supreme Court, has been issued. Article No. 25 of this law has specified the competences of this court as follows:

The image that is put is not for the Supreme Court. the supreme court is in maadi in greater cairo. To censor the constitutionality of the laws and regulations.

- To decide on the disputes over the competent authority among the judicial bodies or authorities of judicial competence.
- To decide on the disputes that might take place as to carrying out two final contradictory rulings where one of the aforementioned rulings has been issued by one of the judicial body and the other by another body of judicial competence.
- And by virtue of the provision of Article No. 26 of the aforementioned law, the SCC alone has the power to interpret the laws issued by the Legislative Authority and the decrees issued by the Head of the State in case of any divergence as regards their implementation.
- The SCC can, in all cases, judge on the unconstitutionality of any provision in a law or a regulation being presented to it when assuming its competences and connected to the dispute presented before it. The chief judge of the Supreme Court was the head of the Presidential Election Commission that supervised and ran the country’s first multi-candidate presidential elections in 2005.
and authority in Egypt from the next day to its publication.\textsuperscript{33}

C. DOCTRINE INTERPRETATION

Lawyers, particularly teachers of law, use to interpret laws when they write law books and articles, here, a ‘jurist’ interprets the law. Each group of jurists who adopt the same line of interpretation is called a doctrine leading to a doctrinal interpretation. Doctrinal interpretational is ‘not obligatory’ regardless to the number of jurists who support it or their prestigious status in the legal community.\textsuperscript{34}

IV. REPEAL OF LAW

Laws are social creatures; they are made to satisfy social needs. In line with the development of their social needs, laws will also evolve; this is done through modification of laws

\textsuperscript{33} E.g., interpreting the requirement of a parliamentarian satisfy military service for a valid membership to Parliament (2000)

\textsuperscript{34} This is an informal source of law.
or laws or its coming to an end. Coming to an end of a law is technically called repeal or ‘abrogation’ awareness of ‘repeal’ requires shedding some light on its ‘concept’ and ‘types’.

A. CONCEPT

‘Repeal’ or ‘abrogation’ of a rule of law means terminating its application. In principle, the authority, which creates the rule of law, or any authority superior to it, can repeal that rule of law.

Hence the People's Assembly can repeal any ordinary legislation, because it is its natural creator. Also the People's Assembly can repeal any subordinate legislation. It is true that the executive authority creates and repeal the subordinate legislation; however the executive authority is lower than the People's Assembly when it comes to legislation.

B. TYPES

This is through its normal function of enactment of statutes.
Repeal of law can either be ‘express’ or ‘implicit’. An express repeal exists when the new law includes clear statements that the old law is replaced or modified by the new law. However, the implicit repeal of law exists when the new law does not include any statement to the old law. Though it actually modifies or repeal that old law, here, it is said that the new law implicitly repeals the old law partially or totally.

IV. JUDICIAL SUPERVISION OF LAW

In principle, courts are made to apply the law and not too interfere with the legislative authority through its creation. This is left to the competence of this latter authority. However, courts might be confronted with a problem of inconsistency of rules of law and which belong to different degrees of powers. This for example happens when a (i.e., regulation subordinate) legislation violates a statute (i.e., ordinary legislation) or when a regulation or a statute violates the constitution (i.e., supreme
legislation). Here, shall the courts be entitled to set things right and repeal the lower rule of law? The answer to such question is yes and no at the same time. It is Yes; this is due to the fact that courts entitled to such revision; however, it is also No, because not any court can supervise such inconsistency.

Particularly, when a regulation violates a statute, the regulation will be ‘illegitimate’ or (or ‘illicit’) while when a regulation or statue violates the constitution the regulation or statute will be unconstitutional. Therefore, review of inconsistency the ‘legitimacy’ or ‘constitutionality’ each has its competent court of review and particular procedure.

A. REVIEW OF LEGITIMACY

Regulation should be in line with the ordinary legislation, this is means that regulations should not contradict with the ordinary legislation. For example, a regulation cannot modify an ordinary legislation otherwise it will be illegitimate.
The judicial section of the State Council\textsuperscript{36} is the competent authority to review legitimacy of regulations. If the regulation is found illegitimate. It will be repealed by a judgment to this effect.

The regulation is a type of decree; it is a regulatory decree; and all administrative decrees can be reviewed by courts upon a challenge made directly by the concerned party against this regulation within 60 expires from their date of issue. This is called the ‘direct’ review; however, once a regulation is issued and 60 days passed, direct contest will not be possible.

\textsuperscript{36} Administrative Courts do have a separate structure, where the Supreme Administrative Court sits at the apex of such structure. There are also departments for opinions and legislation which advises public entities on diverse aspects of public law such as administrative contracts, tenders, ministerial decrees etc. In any governmental authority or agency there exists an in-house member of the State Council (in addition to a department for legal affairs) whose opinion should be sought with respect to any administrative law matter.
Nevertheless if any person is negatively affected by the illegitimate regulation his, e.g., request of a license is denied in application of an illegitimate regulation; this person can still contest the decree, and which has led to the refusal of his request. Here the regulations is ‘indirectly’ contested through attacking its effects.

B. REVIEW OF CONSTITUTIONALITY

Ordinary and subordinate legislations (e.g., statutes and regulations) should not be in conflict with the supreme legislation (e.g., constitution), otherwise the ordinary or subordinate legislation will be unconstitutional, however, review of constitutionality has its particular ‘procedure’ and ‘consequences’.

1. Procedure of Constitutionality Review

In Egypt, constitutionality is reviewed after creation of the statute or regulation. This can be done by one court; that is the Supreme
Constitutional Court, through any of the following three types of procedure; ‘review due to a plea’, ‘review by committal’ and ‘ex officio review’.

a. Review Due to a Plea

No one can directly claim review of constitutionality by a direct action to be lodged at the Supreme Constitutional Court. There should be a lawsuit already in litigation before another court.

Here, any of the litigants can submit a plea (e.g., defense) of unconstitutionality of an ordinary or subordinate legislation. In case the litigation court considers the plea to be serious; it will stay proceedings and grant the contestant a chance to resort to the Supreme Constitutional Court to litigate on the unconstitutionality. This later court will only render a decision on the issue of unconstitutionality, while the substance of dispute will belong to the competence of the
court of litigation (called in this case the court of substance).

b. Review Due to a Committal

Sometimes no one of the litigants object to the constitutionality of the applicable ordinary or subordinate legislation, but the court of litigation doubts such constitutionality. As has already been noted, court of litigation cannot itself review such matter; the only option available will be sending the issue to the supreme constitutional court. Technically speaking, the court of litigation will commit the issue to the Supreme Constitutional Court and that the review will be due to such committal.

c. Ex Officio Review

The Supreme Constitutional Court is sometimes required to fulfill another mission other than the missing of reviewing constitutionality. This for example is the case when this court is requested to interpret an
ordinary legislation. In such a case, the Supreme Constitutional Court may incidentally finds that the legislation under consideration of interpretation is already in violation to the constitution. Here, the constitutionality issue is neither provoked by plea no committal. however, the court will ex officio (i.e., on its own imitative) review the constitutionality issue. this is why it will be a case of an ex officio review.

2. Consequences to Unconstitutionality

Once legislation is found unconstitutional (wholly or partially) it will be ‘repealed’ (wholly or partially) by a judgments issued by the Supreme Constitutional Court. Such judgments should be ‘published’ in the Official Gazettes within 15 days from the date of its issue.

The unconstitutional legislation will be repealed from the next day of publishing (i.e., of direct effect). In principle, the repeal will ‘not be
retroactive’ unless the Supreme Constitutional Court expressly decides so in its judgments.\textsuperscript{37}

\textsuperscript{37} Regarding timing of repeal, four points should be pointed out:
- In case of unconstitutionality of a criminal law, the Head of the Commission on the Supreme Constitutional Court will take measures necessary to release any accused or sentenced persons once the Supreme Constitutional Court judgment is rendered.
- In case of unconstitutionality of non-criminal rules of law, they will be directly repealed from the next day of publication of judgment in the Official Gazette
- In case of unconstitutionality of non-criminal rules of law, the Supreme Cons
- Constitutional Court may order a retroactive repeal of the unconstitutional rule of law. However, this restricted to laws, which will not burden the Public Budget of the State (i.e., not allowed for Taxation Laws)
- The judgment of unconstitutionality, by definition, is ‘retroactive’ in favor of the contestant of unconstitutionality.
This volume of Introduction to Law includes a comprehensive legal treatment for the following subjects:

- **The concept of law**
- **Analysis of the characteristics of the legal rule**
- **Classification of law**
- **Branches of law in Egypt**
- **Commanding and Supplementary rules**
- **Primary sources of law**
- **Subsidiary sources of law: custom, shari‘a and equity**
- **Application of law**

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