**كلية الحقوق والعلوم السياسية**

**جامعة محمد لمين دباغين سطيف 02**

# محاضرات في مقياس:
# مصطلحات قانونية باللغة الإنجليزية

**موجهة لطلبة السنة ثانية ليسانس**

**المجموعة _ج_**

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**كلية الحقوق والعلوم السياسية**

**جامعة محمد لمين دباغين سطيف 02**

**السنة الجامعية: 2024/2025**

F*aculty of Law and Political Science*

*Mohamed Lamine Debaghine University*

# *LECTURES ON:*
# *LEGAL ENGLISH TERMS*

***A course for: Second years***

***Section _C_***

***By:***

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***Senior lecture***

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***Academic Year: 2024/2025***

# اسم المادة: مصطلحات قانونية باللغة الإنجليزية

## ميدان: القانون

**أ- وصف المقياس:**

*تعرف هذه المادة الطلبة بالمصطلحات القانونية الإنجليزية المرادفة للمصطلحات العربية بهدف تحقيق اكبر فائدة لغوية لدى الطلبة، تتناول هذه المحاضرات اهم المصطلحات القانونية التي تهم طالب السنة الثانية جذع مشترك، من خلال التعرف على بعض مصطلحات القانون المدني، والقانون التجاري، والقانون الجنائي.*

**ب _ اهداف المقياس:**

*_ أن يتعرف الطالب على اكبر قدر من المصطلحات القانونية الخاصة بالسنة الثانية ليسانس.*

*_أن تكون لديه القدرة المعقولة على التعامل مع العقود ومختلف الوثائق القانونية باللغة الإنجليزية.*

*_ أن تكون لديه القدرة على ترجمة المصطلحات والنصوص القانونية الإنجليزية.*

## أولا: مصطلحات القانون المدني

### The concept of contract

### 1. DIFINITION OF CONTRACT

### Definition of contract

*Contracts are made by ordinary people in everyday situations, often many times during a day. It may be oral or in writing.*

*Apart from a few exceptions (such as the sale of land) a contract may take Special form.*

*A contract is an agreement between parties, creating mutual obligations that are enforceable by law.*

*Is the concurrence of two intents to produce a juristic effect,*

*Or: He is the agreement of two wills to create amends or extinguish a legal or juristic relationship.*

*According to the Art. 1101 from the French civil code "**A contract is a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations".***

*According to article 54 of the Civil Code, "**a contract is an agreement by which one or more people bind themselves, towards one or more others, to give, to do or not to do something."***

*Article 87 from the Jordanian civil law define the contract : "is the joining and consistence of the offer from one of the contracting parties with acceptance from the order in a manner which proves the effect thereof on the object of the contract and obligation of each party by what he is bound with to the other".*

*From this definition, we derive the following elements:*

*_ The contract is different from the agreement to the extent that if the contract gives rise to specific obligations, the agreement not only creates obligations but also allows them to be transmitted, modified or extinguished. The contract is a variant of the agreement.*

*_ The contract includes obligations, it therefore constitutes a commitment and a reciprocal legality of each party towards the other (….gives, does, does not do).*

*_The contract is an act done with the aim of producing legal effects.*

## ***Distinction between the contract and the unilateral legal act***

*It is necessary to distinguish the contract from the unilateral legal act; the first is formed by the will of at least two people while the second is created by the will of a single person; the latter, in addition to alone creating the legal act, is the only one to bear the legal consequences of its commitment. The unilateral legal act must be distinguished from the unilateral contract which is created by the will of two people but only entails obligations towards a single person.*

## ***The different classifications of contracts***

*In practice, there is a large number and variety of contracts, hence the need to develop a classification in order to order this diversity.*

*Depending on the aspect taken into consideration, there are multitudes of classifications:*

*- The classification of contracts according to their mode of formation*

*- The classification of contracts according to their effects*

*- The classification of contracts according to the advantages obtained by the parties*

*- - The classification of contracts according to their mode of execution*

*- The classification of contracts according to the existence or not of special regulations*

### ***1/ Classification of contracts according to their mode of formation***

*By taking into account the method of formation of the contract, we can distinguish between consensual contracts and formal contracts, and real contracts:*

### ***A/ Consensual contracts:***

*The consensual contracts are formed by the sole exchange of consents of the contracting parties, without it being necessary to observe a particular form (e.g. sale). This is the principle in Algerian law according to the provisions of Article 59 of the Civil Code which states: "the contract is formed as soon as the parties have exchanged their concordant wills, without prejudice to legal provisions".*

### ***B/ Formal contracts:***

*The formal contracts are formed by the completion of a form well defined by law. In other words, the solemn contract is one for the validity of which the law requires that consent be given in certain forms. These consist of the drafting of a writing which can be, depending on the case, notarized or under private signature. In the event of non-compliance with these forms, the contract is void (Ex: the sale of a real estate).*

### ***C/Real contracts:***

*Real contracts are contracts that require, in addition to the consent of the parties, the physical delivery of the thing.*

### ***2/ Classification of contracts according to their effects***

*If the effects of the contract are reciprocal, we speak of synallagmatic or bilateral contracts. When they are not reciprocal, we speak of unilateral contracts.*

### ***A/ The synallagmatic or bilateral contract:***

*According to the provisions of article 55 of the algerienne civil code: "the contract is synallagmatic or bilateral, when the contracting parties are reciprocally obligated towards each other". What characterizes the synallagmatic contract is that it creates reciprocal and interdependent obligations between the parties. Each party plays the dual role of creditor and debtor.*

*Thus, in the sale, the seller undertakes to deliver the thing sold, the buyer reciprocally undertakes to pay the price.*

### ***B/ The unilateral contract:***

*According to article 56 of the Civil Code: «he (the contract) is unilateral when one or more persons bind themselves towards one or more others, without the latter having any commitment».*

*What characterizes the unilateral contract is therefore that it creates an obligation to be borne by only one of the parties.*

### ***3/Classification of contracts according to the existence or not of special regulations***

*We distinguish here between nominate and innominate contracts.*

### ***A/ Nominate contract***

*Nominate where the law gives the contract a special designation or particular name e.g: sale contract.*

### ***B/ Innominate contract***

*Innominate where the contract has no special regulation, or special name. e.g: medical contract.*

### ***4/ Classification of contracts according to the advantages obtained by the parties***

*In this context, we can distinguish between onerous and gratuitous contracts.*

### ***A/Onerous contracts***

*A contract is onerous where each of the parties receives a benefit from the other in return for what he provides.*

### ***B/ Gratuitous contracts***

*It is gratuitous where one of the parties provides a benefit to the other without expecting or receiving anything in return e.g donation.*

### ***5/ Classification of contracts according to their mode of execution (performance)***

*In this context, we distinguish between contracts of instantaneous performance and contracts of successive performance.*

## ***A/ Contract of instantaneous performance***

*A contract of instantaneous performance is one whose obligations can be performed as a single act of performance.*

## ***B/ Contract of successive performance***

*A contract of successive performance is one of which the obligations of at least one of the parties are performed in a number of acts of performance over a period.*

## ***Formation of contract***

*For a contract to validly produce its legal effects, it must meet, according to the Civil Code, conditions of formation and validity: valid consent, capacity to contact for all parties, a certain object, a legal cause.*

## ***THE CONSENT***

*Consent is the agreement of the contracting parties on all points of the contract. This is the first valid condition for the formation of a contract such as the Algerian Civil Code provides in Article 59 «the contract is formed as soon as the parties have exchanged their agreement, without prejudice to legal provisions».*

*Thus Article 59 of the Algerian Civil Code affirms the principle that the simple exchange of consents is generally sufficient to give rise to a contract except where a condition of particular form is required by law.*

## ***Offer and Acceptance***

*The agreement of the wills breaks down into two elements the offer and the acceptance a party takes the initiative of the contract, it expresses its will to contract by a statement to this effect. This is an offer or an offer. The addressee of the offer will express his agreement, either immediately or after a period of reflection, by a statement to that effect. This statement is acceptance.*

*Consent is the meeting of two components that are offer and acceptance..*

## ***A/ Offer***

*An offer can be defined as follows:*

***"An expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed ".***

*Offers can be one of two types:*

• ***Specific****: made to one person or group of people. Then only that particular person or group of people can accept.*

• ***General:*** *made to 'the whole world' (or people generally), particularly seen in the cases of rewards and other public advertisements.*

## ***Forms of expression of the offer***

*In general, the offer is express, it can be made to a person present or absent. It can be declared verbally; in written, by signs in general use, and also by such conduct as, in circumstances of the case; leaves no doubt as to its true meaning.*

*A declaration of intention may be implied when neither the law nor the parties require it to be expressed.*

## ***Offer and Invitation to treat***

*An offer must be distinguished from an invitation to treat, by which a person does not make an offer but inivites another party to do so, common examples of invitations to treat include advertisement or display of goods on a shelf in a self-servise store.*

## ***The withdrawal of an offer***

*An offer can be revoked, or withdrawn, by the offeror at any time before it is accepted. This must be communicated to the offeree before acceptance takes place.*

*An offer may not be withdrawn before the expiry of any period fixed by the offeror or, if no such period has been fixed, the end of a reasonable period.*

*If the person who declared the intention dies or becomes legally incapable before the declaration of intention takes effect, the declaration of intention shall not be less effective at the time it comes to the knowledge of the person for whom it intended, unless the contrary is shown by the declaration of intention or by nature of the transaction.*

## ***Irrevocable and revocable offer:***

*Article 63 of the Algerian Civil law stipulate that:"*

***1_ When a time is fixed for acceptance, the person who makes the offer is bound to maintain his offer until the expiration of the time limit.***

***2_ The time limit may be inferred from the circumstances or from the nature of the transaction****".*

*From the previous provision, we can distinguish between revocable and irrevocable offer as follows:*

## ***A/ Irrevocable Offer:***

*_ An irrevocable offer is an offer accompanied by a period specified by the offeror, during which the offerre is required to express acceptance or rejection. This means that the offeror cannot withdraw his offer after it has been communicated to the offeree before the end of this period.*

*_ The period may be specified explicitly or implicitly, meaning that it can be inferred from the circumstances or from the nature of the contract.*

*For example, if a person sends another an offer through the post office, the offer remains irrevocable for the period necessary for the message to reach the latter.*

***B/ Revocable Offer:***

*A revocable offer is an offer that can be revoked by the offeror at any time before it is accepted by the other party, as long as it does not specify a time limit for acceptance.*

***Termination of Offer***

*Article 64 of the Algerian Civil law lists the ways in which an offer can be terminated as it stipulates that: "*

*1_* ***If an offer is made during a contracting meeting without a time limit being fixed for acceptance, the offeror is released from his offer if it not accepted immediately, This also applies if the offer is made by one person to another person by telephone or by any other similar means.***

***2_ However, a contract is concluded even if the acceptance is not immediate, provided that, during the interval between offer and acceptance, there is nothing to indicate that the offeror has withdrawn his offer, and the declaration of acceptance is made before the end of the contracting meeting".***

*Based on the above, it can be said that the cases of termination of offer differ depending on whether the offer is revocable or irrevocable, as follows:*

***A/ Cases of termination of Irrevocable Offer:***

*Irrevocable offer may be terminated in two cases:*

*1_ Rejection or modification of the offer by the other party.*

*2_ Expiration of the specified period before acceptance.*

***B/ Cases of termination of revocable Offer***

*Revocable offer may be terminated in three cases:*

*1_ Rejection or modification of the offer by the other party.*

*2_ Revocation of the offer by the offeror before acceptance by the other party.*

*3_ The end of contracting meeting without accepting the offer by the other party.*

***B/ Acceptance***

*An acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer.*

*The acceptance shall be identical with the offer and if acceptance is attached with an additional restrictions or amendment of the offer, it shall be considered as rejection amounting to a new offer.*

*Silence does not constitute acceptance. But, it is considered as acceptance in exception cases determined by the law.*

*According to the provisions of the article 68 of Algerian civil law " in the case in which an offeror could not, by reason of the nature of the transactions in accordance with commercial usage, or an account of the other circumstances have anticipated a formal acceptance, the contract is deemed to have been concluded, if the offer is not refused within a reasonable time, failure to replay is equivalent to acceptance when the offer relates to dealing already existing between the parties, or when the when the offer is solely in the interests of the offeree .".*

## ***Time and Place of Contract***

*The time and place at which the offer is accepted differs depending on whether the contract is between present or absent parties.*

### ***A/ Time and Place of Formation of the contract Concluded Between Present Parties***

*The time and place of the contract between attendees is the time and place at which the acceptance comes to the knowledge of the offeror. If the parties are in the same place, the time and place of the formation of the contract is the time and place that they share because there is no time lag between the issuance of the acceptance and the offeror's knowledge of it.*

*If the meeting of the parties is unified by operation of law, as is the case with a contract through telephone, the time of contract formation is when the acceptance comes to the knowledge of the offeror, and the palace of contract formation is the place of the offeror.*

### ***B/ Time and Place of Formation of the contract Concluded Between Absent Parties***

*A contract is between absentees when the parties to it are not in the same place, so that there is a time between the issuance of the acceptance and the offeror's knowledge of it, as is the case with contracts concluded by mail.*

*In the absence of an agreement or provision to the contrary, a contract between absentees is deemed to have been formed at the place and time when the offeror becomes aware of the acceptance, It is assumed that the offeror becomes aware of the acceptance at the place and time when the acceptance reaches the offeror.*

## ***Validity of Consent***

*As we said before, the existence of consent isn't sufficient to form a contract, but in addition to that, that consent must be valid.*

*Consent is only valid if it is given by a person who has a legal capacity, and his will is free, So we will discuss the legal capacity then the vices of will.*

### ***1/ Legal Capacity***

*Legal capacity is the capability of a person to acquire rights and bear obligations, and his ability to practice legal acts that make him acquire rights or bear obligations.*

## ***Types of Legal Capacity***

*Legal capacity is divided into two types as follows:*

***A/ Capacity of Enjoyment :***

*It means the capacity of a person to acquire rights and assume obligations. It is expressed as legal personality, which is granted to a person from birth and remains with him until his death.*

***B/ Capacity to Exercice :***

*It means the ability of a person to practice legal acts that make him acquire rights or bear obligations, i.e., the person's ability o undertake by himself the legal actions that will result in those rights and obligations.*

## *Vices of Will*

## *Vices of Will*

*The mere presence of the will of the parties is not enough to conclude a contract; this will must be free from any defects or vices.*

*Thus, the will is defective if it is affected by any of the following defects or vices: Mistake, fraud, duress, and exploitation.*

*1_* ***Mistake or error :***

*Error is a false representation of reality. It may result from ignorance of the existence of something that really exists or from a wrong belief in the existence of something that actually does not exist.*

*Mistake requires the presence of two conditions :*

*1_ Mistake must be essential. A mistake is an essential mistake when its gravity is of such a degree that if it had not been committed the party who was mistaken would not have concluded the contract.*

*The mistake is deemed to be essential more particularly:*

*A_ when it has bearing on the quality of the thing, which the parties have considered essential or which must be deemed essential, taking into consideration the circumstances, surrounding the contract and the good faith that should prevail in business relationship.*

*B_ If the mistake is about the person himself or one of his characteristics, and that characteristic was the main reason for entering into the contract, For example, when a scientific institution awards a prize to a person because he is outstanding in his studies.*

*It is clear from the above that the criterion for an essential mistake is subjective, as it is determined based on the contracting party's state and circumstances.*

*2_ The mistake must be shared with the other contracting party, which occurs in three cases:*

*A_ If the other contracting party had the same mistake.*

*B_ If the other contacting party was aware of the mistake at the time of contracting.*

*C_ If it was easy for the other contracting party to discover the mistake.*

***Indifferent mistake***

*_The secondary qualities of the things or person*

*_The value of the things .*

*_The simple motives*

*_The figures on a reckoning.*

***Remedy for Mistake :***

*If the previous conditions of the mistake are met, the party who made the mistake may request to annul the contract.*

***2_ Fraud:***

*Fraud is the use of deceptive or misleading methods to induce a party to conclude a contract.*

*_ This fraud requires two conditions to arise:*

*A_ The use of fraudulent methods by one of the parties or by his representative with the intention of deceit to lead the other party to conclude the contract.*

*The intentional silence or concealment of a fact or accompanying circumstances may constitute fraud if it can be demonstrated that the contract would not have been concluded by the other party had he known the truth before contacting. As it mentioned on the paragraph 2 of the Article 86 of the Civil law.*

*B_ The fraud must be connected to the other contracting party.*

*This is achieved if the fraud comes from the other contracting party himself.*

*When the fraud comes from a third party, the defrauded party cannot demand the avoidance of the contract unless he can establish that the other contracting party had, or should necessarily have had, knowledge of that fraud.*

***Remedy for fraud***

*The consequences of fraud is that the contract is voidable for the benefit of the party who was defrauded.*

***3_ Duress:***

*Duress can be defined as an act that creates fear in the other contracting party leading to contract.*

*Duress can be physical or moral.*

*This duress requires three conditions to arise:*

*A_ Duress must be so grave that it leads to the conclusion of the contract.*

*Article 88 of the Civil code states that a contract is voidable as a result of duress when one of the parties has contracted under the stress of justifiable fear unlawfully instilled in him by the other party.*

*Fear is considered justifiable when the person who claims to experiencing it has a reason to believe, based on the surrounding circumstances, that a serious and imminent danger to life, body, honor, or property threatens either him or others.*

*The fear that causes duress does not have to be directed at the contracting party, who is being coerced into signing contract. It can also be directed at someone close to him, such as his child, spouse, friend, ect.*

*Furthermore, the party under duress must have no other means of averting this danger apart from contracting.*

*The extent of duress must be evaluated based on the circumstances of the contracting party, such as his sex, age, social position and health, as well as any other circumstances that might have aggravated the duress, So, the criterion here is subjective.*

*B_ The duress must be connected to the other contracting party.*

*This is achieved if the duress comes from the other contracting party himself.*

*When it comes from a third party, the party under duress cannot demand the avoidance of the contract unless he can establish that the other contracting party had, or should necessarily have had, knowledge of that duress.*

*C_ Illegitimate of duress:*

*Duress is considered illegitimate when its purpose is to achieve an unlawful end, meaning that the contracting party aims to obtain something that is not rightfully theirs.*

*Therefore, the threat of using legal means to achieve a legitimate purpose is not considered duress, such as when an employer threatens an employee who has embezzled to report him to the authorities if the embezzled amount is not returned.*

***Remedy for Duress***

*The party under duress has the right to request the annulment of the contract.*

***4_ Exploitation:***

*Exploitation is the lack of the balance between the obligations of one of the contracting parties and the advantages that he obtains from the contract or the obligations of the other contracting party as a result of exploiting his obvious levity of character or his unbridled passion.*

*Exploitation requires three conditions to arise:*

*A_ The lack balance between what contracting party receives and what he provides, based on the true market value of the thing.*

*The judge, when assessing the value of a thing, must consider the value of the thing to the contracting party. So, the criterion is subjective, not objective.*

*For example, if a stamp collector buys a stamp for a large amount of money because it completes a collection he has, the judge must consider the value of the stamp to the buyer, not its market value, when assessing exploitation.*

*B_ the aggrieved contracting party concluded the contract only because the other party had exploiting his obvious levity of character of his unbilled passion.*

*Obvious levity of character refers to the excessive lack of caution when taking action, disregarding potential consequences. It can be exemplified by a young person buying a car at an exorbitant price solely show off to his friends.*

*Unbridled passion refers to an intense desire that leads a person to become infatuated with someone or something, causing them to lose their ability to make sound judgments when it comes to that person or thing. An example of this is when some individuals become excessively attached to specific type of car.*

*Affection and compassion between individuals are not considered unbridled passion. The usual bond of love that exists between spouses and relatives is not considered unbridled passion.*

*C_ The exploitation must be connected to the other contracting party: The other contracting party's connection to the exploitation is established when he exploits the other party's obvious levity of character or unbridled passion, resulting in obligations that are not at all equivalent to the benefits that the exploited contracting party has obtained under the contract.*

***Remedy for Exploitation***

*The judge may; at the request of the aggrieved contracting party, annul the contract or reduce the obligations of such party.*

*In onerous contracts, the other party may avoid annulment proceedings by making an offer, which the judge considers adequate to remove the imbalance.*

***Second pillar: Object***

*The term "object of the contract" refers to the legal transaction intended by the contract. It answers the question of what the contract is about.*

*So, the object of the contract is the thing is being exchanged between the parties to the contract. For example, in a sale contract, the object is the transfer of ownership in exchange for a price.*

***Characteristics of the object***

*The object must meet the following four conditions:*

***1_ The object must be existent or will exist in the future:***

*The object must exist at the time of the conclusion of the contract. If it does not exist or was completely destroyed before the conclusion of the contract, the contract is absolutely void, For example, if a person buys a house that either does not exist or was existent but was burned before the conclusion of the sale contract.*

*If the object does not exist at the time of the conclusion of the contract but will exist in the future, the contract is valid.*

*An example of an object that will exist in the future is agreeing to buy apartments for housing while they are still under construction.*

***2_ The object must be possible:***

*Article 93 of the algerienne Civil law stipulates that:* ***" If the object of an obligation is something impossible in itself, the contract is void****".*

*The possibility means that the object is not impossible to do. Impossibility means an absolute impossibility that no one can do that act whether the debtor or anyone else.*

*However, if the impossibility is relative, which means that the debtor cannot do the act but there are others who can do it, the performing of the act is not impossible because it is possible for others.*

*An example of relative impossibility: If someone agree with another to draw a portrait, but the latter is actually ignorant of the art of painting, it is a relative impossibility here because it is just about the debtor, but it is still possible in itself.*

*Impossibility may be either material or legal, Material impossibility is like when someone vows to return a dead man to life or vows to put sunlight in bottles.*

*Legal impossibility is like an agreement between a client and a lawyer that the latter will file an action on his behalf while the appeal's period has lapsed.*

***3_ the object must be determined or determinable:***

*The object of the obligation must be determined or at least determinable. The method for determining the object of the obligation various on the object itself.*

*_ When the object is fungible, it must be determined as to its kind, quantity, and quality; otherwise, the contract is void. For example, if the object is rice, the type and quantity (number of tons of kilograms) must be specified.*

*_ When the object is a thing distinct in value, it must be determined by itself, For example, if the object is a piece of land, it must determined by stating its location, boundaries, area, and type, whether it is desert or agricultural, ect.*

*_ When the object is a sum of money, the debtor is obliged to pay only the exact amount of money specified in the contract, Regardless of any increase or decrease in the value of that money at the time of payment.*

***4_ The object must be legal:***

*The object of the obligation should be legal and not contrary to public order and morality, otherwise the contract is void.*

*An example of an illegal object is when a person agrees with another to commit a murder for the benefit of the first party, this contract is void.*

*Public order means the core political, economic, social, and financial interests, which are essential for the existence of the society, while public morality means the minimum rules of morality that, are necessary for the existence of the society.*

## *Third pillar: Cause*

*The cause is the motive for contracting. The law requires that two conditions be met as follows:*

***1_ The obligation must have a cause***

*Article 98 of Civil law stipulate that : " **A contract is void when an obligation is assumed without a cause"***

*When entering into a contract, there must be a purpose behind the obligation that the debtor aims to achieve, otherwise, the obligation becomes groundless, leading to the nullity of the contract, In onerous contracts, for the obligation of one party to be valid, there must be a reciprocal obligation from the other party. For example, in a sale contract, a seller transfers ownership because the purchaser will pay the price. If the seller commits to transferring ownership without receiving any consideration, the contract of sale becomes void due to the absence of a purpose.*

***2_ The cause of obligation must be legal:***

*Article 97 of Civil code stipulate that :" **A contract is void when an obligation is assumed without cause or for a cause contrary to public order, or morality**".*

*For example, if a person purchase a car with the intention of using it to run over someone, the purpose of his contract is considered unlawful, and as a result, the contract is void.*

*Article 98 of the Civil law stipulate that :" **An obligation is deemed to have a lawful cause, even if such cause is not expressed in the contract, unless the contrary is proved.***

***_ The cause expressed in the contract is deemed to be the true cause until evidence to the contrary is produced."***

*According to the previous provisions, it can be said that the absence of mention of the cause of the contract or the cause of the obligation in the contract does not lead to its invalidity*

## ***Nullity of contract***

## ***(The Penalty for violating the Rules of Contract Formation)***

*Nullification is the termination of the contract and return of the contracting parties to the state they were in before the conclusion of the contract, as a result of the absence of one of the pillars of the contract ( consent_ object_ or cause), or a condition of validity ( legal capacity or vices of will).*

*If any of the pillars of the contract is void (absolute nullity). However, if any of the conditions for the validity of a contract are lacking, the contract is voidable (relative nullity).*

*There are two kinds of nullity:*

*Absolute nullity and relative nullity.*

## ***1_ Absolute nullity***

*The absolute nullity is the sanction for the absence of one of pillars of the contract, which are: Consent, object, and cause.*

*Article 103 Of Civil law stipulate that :"* ***When a contract is void or annulled, the parties are returned to their position prior to the conclusion of the contract, if such reinstatement is impossible, damages equivalent to the loss may be awarded".***

*For example, if a sale contract is annulled, the purchaser shall return the sold item to the vendor and the latter shall return the price to him.*

*In the case where the nature of the contract does not allow for the retroactive effect of nullity, as is the case with contracts of duration like a lease contract, the nullity does not affect the effects that occurred in the past; instead, it has an immediate effect.*

*Also, article 102 of the Civil law stipulate that : " _* ***When a contract is void, its nullity may be invoked by every person having an interest in the contract, and such nullity may also be declared by the court on its own initiative. Nullity cannot be cured by ratification of the contract.***

***_ Nullity lawsuits are prescribed after fifteen years from the date of the conclusion of the contract****".*

## ***2_ Relative Nullity***

*Relative nullity is the sanction for the absence of any of the conditions of the validity of the contract: legal capacity, and vises of will.*

*The voidable contract exists and has its effects in the period prior to the nullity judgment.*

*Generally, what we will clarify applies to the two types of nullity:*

*A_ Article 104 of the Civil law stipulates that : "* ***When a part of the contract is void or voidable, that part alone will be annulled, unless it is established that the contract would not have been entered into without such a part, in which case the entire contract will be annulled****".*

*For example, if the interest rate is agreed to be 8%, the contract will not be invalidated, but the interest rate will be reduced to the permissible limit of 5% .*

*B_ Article 105 of the Civil law stipulates that : "* ***When a void or voidable contract contains the elements of another contract, the contract will be deemed to be valid to the extent of the other contract, if it appears that the parties intended to conclude such another contract".***

*For example, a sale contract that includes a very small price may be converted into a donation contract.*

*If a contract is void or voidable in its entirely and contains the elements of another contract, the judge shall step in for the contracting parties and replace their old, annulled contract with a new contract that he established for them out of the destruction of the old contract.*

*But the judge's authority in the scope of converting the contract is not discretionary, as it is limited by the availability of three conditions, which are:*

*1_ The original contract must be void or voidable, If the contract is valid, the judge does not have the authority to replace it with another contract.*

*2_ All the elements of the new contract established by the judge must have been available in the original contract, The judge cannot introduce a new element into the original contract.*

*3_ The invalidity or violability must cover the entire original contract. This is because if the contract were invalid or voidable in part, then only that part would be invalidated.*