

كلية الحقوق والعلوم السياسية
جامعة محمد لمين دباغين سطيف 02

محاضرات في مادة:
مصطلحات قانونية باللغة الإنجليزية

موجهة لطلبة السنة ثانية ليسانس

المجموعة _ج_

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السنة الجامعية: 2024_2025

Faculty of Law and Political Science
Mohamed Lamine Debaghine University

LECTURES ON:
LEGAL ENGLISH TERMS

A course for: Second years
Section _C_

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Senior lecture
Faculty of law and Political Science

Academic Year: 2023-2024

Civil liability

General Introduction

Liability is one of the most important pillars and foundations on which civil law is based in general, and through which the provisions of civil law are formulated, and our study in these lectures will revolve around civil liability. In particular, which is founded on the idea of compensation and reparation.

There is no civil liability whether contractual or extra-contractual, unless three elements are present, which are the element of “fault”, “damage”, and causal relationship between the “fault” and the “damage”.

Responsibility generally means the penalty that accrues to a person when he violates a rule of conduct.

This penalty varies depending on the type of rule violated, and the matter may relate to a penal rule, so liability arises Penal: This penalty consists of punishment (imprisonment or fine).

The rule that was violated may be civil, so liability is civil, and the penalty then is the obligation to compensate. It is worth noting that in addition to the confusion that existed in the past between civil liability and criminal liability, these two responsibilities may come together in one act, which necessitates distinguishing between them.

Definition of civil liability

Civil liability can be defined as a mechanism by which the author of damage caused to others unlawfully is obliged to repair it by offering the victim compensation.

The general principle of civil liability is the legal obligation imposed on any person to repair damage caused to the victim by his own act, by persons for whom he is responsible, or by things for which he is responsible.

Types of legal liability

Disciplinary liability

Any person who belongs to an institution and who does not respect the rules of common life within this institution is exposed to a certain number of disciplinary sanctions; a reprimand, a warning. The most serious disciplinary sanction is generally exclusion from the institution.

Criminal liability

Criminal liability is the legal obligation of a person, who is found guilty by a court, to bear the penalty stipulated by the law corresponding to the crime. Criminal liability also applies to legal persons, through corporate employees who represent them.

The distinction between civil liability and criminal liability

Civil liability differs from criminal liability in terms of its application conditions, while criminal liability presupposes a criminal offense, i.e. a violation of a criminal law, civil liability presupposes the existence of a civil fault, i.e. of an event causing damage.

A distinction must also be made between civil liability and criminal liability with regard to their subject matter. In fact, the subject of civil liability is reparation for the harm suffered by the victim through the allocation of compensate. On the contrary, the object of criminal liability is the punishment for crime, for behavior that caused a disturbance of public order. It follows that the only person responsible is the person who committed the crime, while the person can be held civilly liable for a wrong he did not personally commit.

Types of civil liability

There are two types of civil liability: civil liability arising from a contract, also known as contractual liability, and extra-contractual liability, which arises from a person's deeds and acts or omissions.

Both types of liability are based on the notion of "fault" which includes the violation, intentional or not, of a civil obligation.

Contractual liability is liability arising from someone's refusal or neglect to honour the commitments taken under a contract. They are not fulfilling, or only partially fulfilling; their obligations, which results in harm (or damage).

Extra-contractual liability designates situations of civil liability that occur in the absence of a contract between the victim and the guilty individual.

Contractual liability provisions are regulated by several articles of the Algerian Civil Code, in particular Articles 176, 178, 179, and the purpose of this liability is to repair the damage suffered by the creditor.

As for tort liability, the Algerian legislator has regulated its provisions, starting from the text of Article 124 and what follows.

Tort liability has three forms:

- _ Liability of personal act according to Articles 124-133 of the Civil Code
- _ Liability for other's act accordance with Articles 134-137 of the Civil Code
- _ Liability for damage of things in accordance with Articles 138 - 140 bis 1. Civil Law

Contractual liability

Any obligation entitles the creditor to claim the debtor to fulfil accordingly the performance he is bound to. An improper or delayed performance or the failure to perform by one party causes the other a prejudice, therefore entitling the latter to claim the former damages equivalent to the prejudice suffered.

Contractual liability involves the debtor's obligation to compensate the creditor for the damage caused following the failure to perform or the improper or delayed performance of his contractual obligations.

Contractual liability is part of civil liability, it is incurred when the damage caused results from the non-performance of an obligation, or breach of an obligation, including late implementation. The purpose of this liability is to compensate the damages suffered by the creditor, due to non-compliance with contractual obligations.

Contractors may include clauses regulating their contractual liability, either to alleviate or increase the liability of the debtor, or to completely exonerate the debtor from its contractual liability, but any clause exonerating tort is void.

In all cases, non-performance of the contract (Article 54 Algerian Civil Code) is likely to bring into play the contractual liability of the person who has not fulfilled his commitment.

And he may be required to pay compensation for the damage caused to the contracting party as a result of his contractual fault.

According to the provisions of the Civil Code, the following conditions must be met in order to have contractual liability: the wrongful act resulting in the debtor failing to perform his contractual obligations (the contractual fault); the prejudice; the causal relation between the wrongful act and the prejudice;

Contractual Fault

contractual fault simply means an obligor's failure to perform his contractual obligations: this fault is a breach of a contractual obligation, and such breach is a deviation in an obligor's behavior as to such obligation that is not exercised by a normal person if he is under the same normal circumstances of an obligor, where a straight person cannot breach his obligations unless there is a foreign cause that prevents him from fulfilling his contractual obligations. An obligor who is governed under a certain contract must fulfill his obligations. There are many legal principles that require an obligor to implement his contractual obligation.

The contractual fault lies in the total or partial non-performance of the obligation, or a delay in execution; or poor execution; It should be mentioned that the Algerian legislator did not raise everything related to the poor execution of the contract.

Contractual obligations may be of means or result; if the obligation is of means; the person must make every effort to achieve it, the lack of result will not be proof of non-performance. Only the proof that everything was not implemented showed that the obligation was not Executed. For example: in the medical contract, the responsibility of the doctor is an obligation of means and not an obligation of result.

The obligation is of result when the debtor is committed to obtaining a specific result.

The debtor in the case of an obligation of result, to escape his responsibility; must prove a circumstance beyond his control.

The damage (prejudice)

In the context of contractual liability, the victim must prove the damage suffered.

The prejudice means the harmful patrimonial or non-patrimonial consequences deriving from the infringement by the debtor of the creditor's right to claim damages, through the failure to perform his obligation / obligations.

The different categories of repairable damage:

Damage is considered a necessary element for the emergence of civil liability, whether it is a tort or contractual liability. Both require compensation for damages to face the perpetrator, the damage was material or moral, both of which are obligatory for compensation, even if the legislation differed regarding compensation for moral damage.

Material damage

It is the damage that constitutes an infringement of a person's pecuniary rights

Moral damage

Moral damage is that which constitutes an infringement of extra-patrimonial rights, personality rights, an infringement of liberty, honor, privacy, or notoriety, it may be grief.

The Algerian legislator approved compensation for moral damage after the modification of the civil code.

Therefore, moral damage has become compensable according to the provisions of Article 182 bis of the Civil Code which provides that: "moral damage includes any attack on freedom. Honor or notoriety."

Physical damage

It results from an attack on the physical or psychological integrity of a person.

The right to compensation for the victim of Physical damage would find its justice in the right to life and physical integrity enshrined in various fundamental rights, notably in the Universal Declaration of Human Rights.

The characteristics of repairable damage within the framework of contractual liability

Damage can only be repaired if it has 5 major characters.

The damage must be certain

The damage, whatever it may be material, physical or moral, must be certain to occur and it will only be so if it has already occurred now, or will occur inevitably and with certainty, in the future.

The damage is immediate if an action occurs and its elements and manifestations are formed that provide the judge with the ability to estimate it and determine its amount, that is, the damage must be real and certain to have occurred to the person, and its effects must have been embodied in reality, such as the injury that led to the death of the injured person or wounds to his body, or in the act causing damage or loss of the person's property or in one of his material interests.

It should be noted that damage may be future but certain, when there is no doubt that it will occur.

It may be difficult to determine the value of the damage that will occur in the future with certainty, before it actually occurs, but this difficulty does not prevent the injured person from filing a lawsuit to claim it.

Missing an opportunity is also a compensable damage, but the opportunity lost must not be so small that, for example, a person who is prevented from going to buy a betting ticket will not be compensated for missing the opportunity.

The damage must be foreseeable

The damage must not only be certain, it must also be foreseeable. Therefore, foreseeability is a characteristic specific to contractual liability.

Only damage foreseeable at the time of conclusion of the contract must be compensated.

Under the provisions of article 182 of the Algerian civil code “**debtor who has not been guilty of fraud or gross negligence will not be held liable for damages greater than those which could have normally been foreseen at the time of entering into the contract**”.

On the other hand, in tort, foreseen and unforeseen damages are compensated.

The damage must be direct

In contractual matters as in tort matters, the damage must be the direct result of the accident.

The damage must result from an attack on a legitimate interest

It is not enough for the damage to be direct and certain to be reparable, but also the injured interest must be lawful and legitimate, that is to say not contrary to good morals and public order.

Legitimate damage is an attack on a legally protected interest; for example, the burglar having lost the mobility of his arm cannot claim to be compensated for the fact that he will no longer be able to commit burglaries.

Under the conditions of admissibility of the action.

The Algerian legislator spoke of the interest under article 13 of the code of civil and administrative procedure “**no one can take legal action if he does not have real or possible quality and interest provided for by law**”.

The damage must not have already been repaired

In the context of contractual and tort civil liability, the victim cannot be compensated twice for the same damage, when the victim has been compensated the damage disappears.

Likewise, the injured person who filed a lawsuit, won it, and was awarded compensation, cannot file a new lawsuit for the same damage, because the compensation ruling issued in the first lawsuit has achieved the purpose of filing it, which is to redress and remove the damage.

Causation

It cannot be said that once a person is harmed by another person, the latter person is held responsible and is obligated to compensate. The mind does not accept this simple result, but it must. In addition to the occurrence of damage and the occurrence of a fault, this damage must have been caused by the fault of this person, or in other words, there must be a causal relationship between the person's fault and the damage that befell the other person.

The Algerian legislator expressed the causality element in the Article 124 of the Civil Code comes with the word 'and causes', as it stipulates that:

“Every act, whatever it may be, that a person commits through his own fault and causes harm to others requires compensation from whoever caused it.”

Therefore, an understanding of responsibility is not complete unless one understands the content of this relationship and the most important ideas on which it is based.

The condition of causality is not only required in tort liability, but it is also required in the field of contractual liability. It is not sufficient that there is a breach of the contract and damage, but rather the damage must be the result of a violation of the obligation, so the subject of contractual liability is compensation for the damage resulting from the violation of the contract.

This causal relationship must be proven, regardless of the nature and responsibility of the fault, whether it is a tortious or contractual breach.

If the victim demonstrates the causal relationship between the fault of the alleged person responsible and their damage, they may request compensation for their damage.

Through what was previously explained, this relationship can be defined as the established and direct link between the fault and the damage incurred. It is not enough to say that there is a fault and damage, but rather this damage must be an inevitable result of the fault so that compensation can be claimed.

The causal relationship is considered the third pillar of responsibility, which the injured party must prove in order to be able to claim compensation.

The causal relationship between the fault and damage is a basic condition for the establishment of civil liability and entitlement to compensation, as their absence results in the absence of responsibility and the non-entitlement to compensation.

This is what is stipulated in the Article 127 of the Civil Code, which stipulates the following:
" **“If the person proves that the damage arose from a cause beyond his control, such as unforeseen events and for cases of force majeure , a fault on the part of the injured person, or a fault on the part of a third party, he is not obligated to compensate for the damage, unless there is a legal provision or agreement to the contrary”**.

From the text of Article 127, we conclude that the debtor can exempt himself from responsibility by proving the absence of a causal relationship between the fault and the damage according to the following:

The force majeure

Force majeure is legally defined as the unpredictable and insurmountable event independent of a person's will, which eliminates the obligation for the person responsible to repair the damage, when force majeure is noted; she is exclusive of all liability because it eliminates the causal relationship between the fault and the damage.

The Article 176 stipulates the following: " **When specific performance by the debtor is impossible, he will be condemned to pay damages for nonperformance of his obligation, unless he establishes that the impossibility of performance arose from a cause beyond his control. The same principle will apply, if the debtor is late in the performance of his obligation**".

The Article 178 stipulates also the following : “ **The debtor may by agreement accept liability for unforeseen events and for cases of force majeure. The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation, with the exception of liability arising from his fraud or gross negligence.**

The debtor may, nevertheless, stipulate that he shall not be liable for fraud or gross negligence committed by persons whom he employs for the performance of his obligation. “

A fault of the injured person

What is meant is that the defendant is the one who committed the harmful act, and the standard for measuring the fault of the injured person is the standard of the ordinary man, and therefore the injured person is considered to have committed a fault if he deviated from the behavior of the ordinary man.

The plaintiff can cling to the fault of the injured person, not only in confronting the injured person, but also in confronting his inheritance if the accident ends with the death of the injured person.

A fault on the part of a third party

If the fault occurred at the hands of a third party, no problem will arise as the causal relationship is eliminated and this third party is the only one responsible for compensation. The third party means the person who caused the damage.

Who is a foreigner to the defendant, meaning that the latter is not responsible for him, and is not considered a third party person subject to supervision.

Reparation of damage

Compensation is considered a means of restoration for an injured party. It may be monetary or an equivalent consideration for the loss suffered by the injured party, or opportunities missed as a result of the harmful act. Concurrently, it is a general penalty resulting from the

establishment of civil liability, hence it is a means for the judiciary to mitigate the impact of the damage in question.

Although the purpose of ‘penalties’ in civil liability is to repair the damage which has occurred, and returns the injured person to their standing prior to the occurrence of the harmful act, the entitlement of ‘compensation’ shall revolve around the damage and its availability as a remedial act, without taking into account the gravity of act itself. Instead, a claim should be focused on quantifying the exact damage caused without increasing or detracting from it.

The injured party shall be entitled to compensation for all the damages it has suffered from the defaulting party, regardless of whether the claim is for material (monetary) damages, or moral damages such as psychological harm. To be entitled to compensation, the three pillars of tort liability must be fulfilled, as follows:

_Proven Default – meaning an omission of an agreed-upon responsibility that causes damage.

_Actual Damage – meaning a violation of a human right or a legitimate interest, which causes damage, regardless of whether this is direct/indirect, past or in the future, expected or unexpected. The consideration shall be upon the actual achievement of such damage, not the possibility of achieving it.

_Causal relationship – meaning that the damage is an inevitable result of the harmful act committed. The occurrence of the harmful act alone is insufficient to entitle compensation, but rather damage must be a result of this act.

Moreover, the amount of compensation does not have to be specified by an agreement or legal articles to be entitled, as the compensation is ultimately dependent on the judge’s discretionary authority in order to derive the fulfillment of the above pillars which leads to liability, damage and the causal relationship between the two, as interpreted by the wider context of the case without supervision by the Court of Cassation.

The pre-discretionary authority in estimating the amount of compensation is restricted by the condition that the compensation is based on justifiable grounds, and resulting from proven elements and reasons which balance the basis of compensation, with the reason for imposing it.

Reparation of damage within the framework of contractual liability:

According to the provisions of article 179 of the Algerian civil code « **Damages, subject to an agreement to the contrary, are not due unless the debtor has been formally summoned**”.

The formal summon is an essential condition in contractual liability, therefore, the creditor must send a formal summon to the debtor, by which the creditor reminds him of the need to perform his specific obligation

According to the Algerian civil code: “**A debtor is formally summoned by a summons or by an equivalent act. The summons may be by post in the manner provided in this code or may result from an agreement stipulating that the debtor shall be considered to be in default by the mere fact of the expiration of the time period without any other formality being required**”.

This formal summon is not necessary, in the cases provided for in article 181 of the Algerian civil code:"

A formal summons to the debtor will not be necessary in the following cases:

- a) if the performance of the obligation becomes impossible or without interest by an act of the debtor;
- b) if the object of the obligation is the payment of damages in respect of an unlawful act;
- c) if the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him;
- d) if the debtor declares in writing that he does not intend to perform his obligation" .

Assessing compensation

Article 182 stipulates that: " **The judge will fix the amount of damages, if it has not been fixed in the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, provided that they are the normal result of the failure to perform the obligation or of delay in such performance.**

These losses shall be considered to be a normal result, if the creditor is not able to avoid them by making a reasonable effort”.

According to this article, compensation can be judicial, contractual, or legal.

Judicial compensation

Judges possess the authority to estimate compensation in the absence of specific legal provisions or agreements, but their freedom is restricted when there is an agreement or legal text. This principle emphasizes that judges cannot exercise their will and authority without considering these limitations.

The basis for compensation is judicial compensation, meaning that the judge determines it. The Algerian legislator has stipulated this type of compensation in several articles in the Algerian Civil Code.

In order to be entitled to judicial compensation, the conditions for the establishment of both types of civil liability must be met, and the establishment of this liability requires the availability of the three pillars that we studied in the previous lectures.

If these pillars are met, the debtor is obligated to compensate the creditor for the damage he has suffered.

Compensation includes the creditor's losses and lost profits

Methods of compensation for damage in contractual liability

The ideal way to compensate for the damage is to remove it and erase it whenever possible so that the victim returns to the same situation as before the damage was caused. This is specific performance.

However, in many cases the specific performance of an obligation is impossible, especially in the case of tort, but the judge can only award compensation in Lieu of Performance.

Thus, once the conditions of civil liability have been established, the judge has the right to award compensation, and in this matter he has broad authority to determine the method on the basis of which compensation is to be made.

Article 132 of the Civil Code stipulates the following " **The judge shall decide the method of payment of damages in accordance with the circumstances. The damages may be paid by installments, or in the form of a regular periodical payment, in either of which cases the debtor may be ordered to provide insurance.**

Damages will consist of a money payment. Upon the demand of the victim, however, the judge may, in accordance with the circumstances, order that the damage be made good by restoration of the original position, or by the performance of a prestation that has a connection with the unlawful act".

Definition of tort liability

Tort Liability refers to a penalty for breach of a general legal obligation imposed on any person who causes harm to others.

Tort liability is incurred as a result of the wrongful act of the person causing damage to others that require liability and that requires compensation for such damage.

Distinction between contractual civil liability and tortious civil liability

There are many differences between the contractual liability system and the tort liability system, as the most important differences appear as follows.

The source

Contractual liability is the rule that obliges the defaulting debtor to repair the damage caused by the non-performance of the obligation arising from the contract, whereas tort and quasi-tort liability is established by law and independent of the will of the parties.

Contractual liability, on the contrary, is formulated between the Contracting Parties by the payment of each contract, and the general rules given by law only complement the Parties' will to amend them.

In terms of the relevance of the two liability system to public order

Tort liability is related to public order and therefore it is not possible to agree to violate its provisions, while contractual liability is not related to public order and therefore it is permissible to agree to reduce its conditions or agree to exclude the guarantee that could result from it.

The event giving rise

In contractual matters, this presupposes a contractual fault which consists of non-performance, late or defective non-performance of the obligation.

In terms of tort liability, it is the tort whose source is either a delict or quasi-delict; it can be a fault caused by man, by things, or by another person.

The damage

On a contractual level, each contractor measures its liability linked to foreseeable and repairable damage during the contract.

Article 182 limits compensation to the actual loss or loss of profit; except in the case where it is in bad faith, it cannot be asked for unforeseeable damages as a consequence of the non-performance of the contract, while the tortious faults, require compensation for all the damage it causes even if the fault was very slight due to negligence or imprudence and even when it was committed, the agent could not envisage the extent of the damage caused, it is sufficient that the damage is certain and direct to require compensation.

At the contractual level, the legislator often measures the seriousness of the fault necessary to make the debtor responsible for the non-performance of the promised service.

The required capacity

Contractual liability requires the capacity to discriminate, while tort liability does not require the capacity to discriminate in certain laws.

Burden of proof

The creditor bears proof of the existence of the contract, the debtor bears the burden of proving that it has performed its contract obligation, but in default the creditor bears the full burden of proof.

Liability Arising from Things

Article 138 stipulates that any person who's in charge of a thing and has the ability to use, manage, and control it is considered responsible for the damage caused by that thing.

Article 139 stipulates that "A person in charge of an animal, even if he is not its owner, is liable for any harm done by the animal, even if the animal strays or escapes, unless such person shows that the accident was due to a cause beyond his control".

Article 140 of the Civil Code stipulates: "Whoever is in possession, in any way, of real estate or part thereof, or movable property, in which a fire occurred shall not be liable to others for the damages caused by the fire unless it is proven that the fire is attributed to his fault or the fault of those for whom he is responsible »

A person who is in danger of damage from a building is entitled to call on the owner to take the necessary precautions to prevent the danger, and if the owner fails to take such precautions, to obtain an order from the Court authorizing him to take necessary precautions himself at the cost of the owner.

Civil and administrative Procedure law

Definition

The Civil and Administrative Procedure law is a set of rules that organize the Judiciary and determine the rules of procedure that govern litigation in its courts. It seeks to settle disputes between moral and physical persons.

Judicial organization in Algeria

In Algeria, the organic law no. 05-11 of July 17 governs the judicial organization, according to article 2 of this law, the judicial organization includes ordinary judicial order, administrative judicial order and jurisdiction court.

1_ Ordinary Judicial Order:

The ordinary judicial order includes the **Supreme Court, Tribunals and Court.**

1.1 The Supreme Court

The organic Law No. 11-12 of July 26, 2011 governs the Supreme Court, It outlines the Supreme Court's organization, functions, and jurisdiction. The Supreme Court is the final arbiter of the law and may act as a trial court I, the cases determined by law. And it has control over Ordinances, Judgments and Judicial decisions in terms of how they appropriately apply the law and their respect for compliance forms and rules of procedure law.

1.1.1 The Supreme Court Justices.

The Supreme Court consist of two kinds of Justices: the judges and the Public Prosecutor's. The judges are: the Chief, Vice Chief, Heads of Chambers, Heads of Sections, and Consultant, The Public Prosecutors are: The Prosecutor, Deputy Prosecutor, and General Advocate. The Registrars are in charge of the function of the Supreme Court Registry.

1.1.2 The structure of the Supreme Court

In the Algerian law we have two kind of Supreme Court structures: the judicial structures and the non-judicial structures as we mention it below.

The judicial Structures

_The Presidency of the Supreme Court; Chambers (Civil Chamber, Real estate Chamber, Chamber of Family affairs and Inheritance, Maritime and Commercial Chamber, Social Chamber, Criminal Chamber, Mixed Chamber, Joint Chamber), The public Prosecutor at the Supreme Court.

_ The Supreme Court includes seven chambers, and chambers can be subdivided into sections according to the importance and volume of the judicial activity.

The non-Judicial Structures

The non-Judicial Structures includes: The Supreme Court Registry, The Central Registry, The Chamber Registry, The Office of the supreme court and its General Assembly, The Administrative structures of the Supreme court, The Secretariat, Section of Documents, Section of Administration and Facilities, Section of Documents ,Legal and judicial Studies, Section of Statistics and Analysis.

1.2_ The Tribunals

Definition

The Tribunals are Courts of Appeal for judgments handed down by the Courts and other cases specified by the law.

1_ Chambers of The Tribunals

Tribunals includes the following Chambers:

_ Civil Chamber; Real estate Chamber; Commercial Chamber; Social Chamber; Maritime Chamber; Family Affaire Chamber; Urgency Chamber; Misdemeanor Chamber; Minors Chamber; Indictment Chamber.

1.3_ The Court

Definition:

The Court does indeed lie at the bottom of the judicial pyramid as it decides on all cases that fall within its jurisdiction. The Court situated within the purview of every Algerian judicial council and it functions as the primary judicial body for them.

_ The Court Judges

President of the Court; Vice President of the Court; Judges; Investigating judge; Prosecutor; Deputy Prosecutor; The Registry.

_The Sections of the Court

_ ***Civil Section:*** gives a ruling in civil cases as Conclusion of a Sale contract, Rental contract

_ ***Real estate Section:*** gives a ruling in Real estate disputes.

_ ***Commercial Section:*** gives ruling in Trade disputes.

_ ***Social Section:*** gives ruling in Individual labor disputes, as well as social security disputes.

_ ***Maritime Section:*** gives ruling in Maritime Contract disputes.

_ ***Family Affairs Section:*** gives ruling in all disputes that are addressed by family law, including inheritance, marriage contract, divorce, deprivation of legal rights.

_ ***Urgency Section:*** gives ruling in Urgent cases.

_ ***Misdemeanor Section:*** gives ruling in Misdemeanor cases.

Minors Section: gives a ruling in minors criminal cases.

2 Administrative Judicial Order:

The Administrative Judicial Order includes **The Administrative Courts** and the **Council of state**.

2-1_ The Administrative Courts:

The Administrative courts have jurisdiction over disputes between individuals and administrations (in other words, any cases in which the state, the municipally or any public administrative entity is party). The administrative courts are appealable to the Council of state.

2-2_ The Council of State:

The Council of state is a constitutional judicial institution created by the Algerian Constitution of 1996, and it is governed by the organic law N: 98-01 of May 30Th1998, modified and completed by the organic law N: 11-13 of July 26th, 2011, and the organic law N: 18-02 of March 7th, 2018 on skills, organization and functioning of the Council of the state, The Council is the highest administrative court and it acts as a legal adviser on the draft legislation received, and it proposes the amendments that it deemed necessary.

3_ The Jurisdiction Courts (Penal Courts):

Beside the Dispute Court, under the fourth chapter of Organic law 05-11 there are two other penal Courts: The Criminal Court, and the Military Court.

3-1_ The Criminal Court:

The Criminal Court has jurisdiction over acts committed by adults and described as a felony and misdemeanors connected there to.

3-2_ The Military Courts:

The Military courts has jurisdiction over military crimes committed by military or civilians personal, such as abandoning military obligations. The local jurisdiction is granted to the military court based on the place of crime and where the accused is being held, or which military unit the accused is a member of .

3_ The Dispute Court:

The Dispute court is governed by the Organic law N: 98-03 of June3, 1998 relating to the the jurisdiction, organization, and function of the dispute court, This court has jurisdiction over resolving conflicts of jurisdiction between the judicial authorities of the ordinary and admirative judicial order.

Family Law

The first Algerian Family Law (also known as personal status law) was adopted in 1984 and was last amended in 2005, and it is significantly based on Islamic law (Sharia law). The Algerian Family includes four books; the marriage and its dissolution, legal representation, legal guardianship and inheritance and Gifts.

1- Mariage and its dissolution:

The Algerian Family Law (article 4) defined the marriage as 'consensual contract between a man and a woman, in legal form. Its goal is, among other things, the creation of a family based on affection, domestic tranquility and mutual help, as well as the moral protection of spouses to preserve family ties. Article 5 determines the Engagement as a Promise of Marriage.

A man is allowed to marry up to 4 wives at any one time, according to the Egyptian law. The husband must inform his previous wife and the future wife.

Conditions of the marriage contract are:

- The consent of the two parties for marriage
- Bride Gift
- The presence of the bride's father or guardian
- The presence of two witnesses
- The absence of marriage impediments.

The impediments of marriage according to article 24 are:

- kinship
- marriage kinship
- Milk siblingship

The marriage can be dissolved by divorce or death. According to article 53, the wife can apply for divorce on the following grounds:

- The non-payment of Alimony
- Infirmities that hinder the realization of the goals of marriage
- Husband's refusal to cohabit with his wife for more than four months
- Condemnation of the husband for a crime that dishonors the family and makes it impossible to lead a common life and marital relations
- Absence of husband for more than a year without good reason or maintenance
- Violation of provisions of article eight
- Committing an open Lewdness and Obscenity (Fahash)

- Constant discord between spouses
- Violation of the clauses stipulated in the marriage contract
- Every recognized legal harm.

_ If a wife is left by her husband or get divorced she must performs iddah (waiting period) either by waiting for the birth of her baby if she is pregnant, or for the

completion of several Quru's (sacred period), or by the completion of three ten- day months.

_ The Algerian family law establishes a hierarchy of relatives who are successively entitled to custody of a child. Only if the first relative is excluded from custody does the next relative in the hierarchy have custody. Article 64 of the law provides that the hierarchy begins with the mother, followed by the father, followed by the maternal grandmother, etc. in a fixed list based solely on the status of the relative. Accordingly, under Algerian law, the mother receives sole custody, and only if it is proven that the mother is unqualified can the father take custody. A division of custody roles is not possible. Sole custody is the only option.

2- Legal guardianship:

Algerian family law recognizes “Guardianship” as a legal right to supervise the movements and actions of a person who, due to mental deficiencies, is unable to care for himself and manage his own affairs, for example, an infant, an imbecile or a lunatic. A “guardian” is a person legally authorized to protect the person or property of a minor. In addition, the guardians are necessary for the purpose of a wedding, to protect the person and property of the minor. “Guardianship of a child” includes overall responsibility for the child throughout his or her childhood. According to Article 87, in the event of the unavailability of the father, the mother, the natural guardian of the minor, has control over the person of the minor.

There are several kinds of Guardian:

- A natural or legal guardian
- Testamentary guardian
- Guardian appointed by courts or statutory guardian

_ Also, the Algerian family law protects the legal rights of the “interdicted persons” from various forms of exploitation and from injustice and violations against them. “Interdiction” in this case means restricting legal capacity of the owner of property from exercising contractual power involving conveyance of his or her property, for his or her own personal interest or for the interest of a third party.

2- Inheritance:

Algerian family law regulates “inheritance” according to the provisions of Sharia law, which establishes strict and rigid inheritance rules that determine how a Muslim's estate should be divided between his heirs in the event of his death. Chapter 2 of the law determines the three classes of heirs:

- **The Sharers:** are those people who are entitled to a certain share of the assets left by the deceased. The number of these shareholders is twelve; four men: father, grandfather,

mother's brothers and husband; and eight women: wife, single daughter, daughter of a son, mother, grandmother, full sister, consanguineous sister, uterine sister.

- **The Residuaries:** When the heirs of the first group have received their respective shares, the rest of the property falls on the share of those relatives who are called “Asaba”, which, according to Sharia, means those relatives in whose line of kinship No woman comes in.

- **The Distant-Kindred:** are those relatives linked by blood who are neither sharers nor residuaries, as well as relatives linked by women, but in extremely rare cases receive a share in the inheritance.