University Of Sétif 2

Faculty Of Law & Political Science

Department Of Law.

Lectures in Legal English terminology

2nd Year _First semester

Academic Year 2024-2025.

Dr REGUIAI IKRAM

Lecture One :Introduction

1) Theory of Law :

Legal rules appeared when man began to live in society which varies from one county to another, and which is same in namely – the law science.

The purpose of law aims at organizing the individuals in the society. And the welfare of the community as a whole, it protects also the liberties and private interest of individuals. So as to live all in peace on these societies.

2) Definition of Law :

The term "Law" means a body of general rules that govern the behavior of individuals in society and which persons must obey, even by force, if need be.

Law is an insturment wich regulates human conduct/behavior, law means justice, morality, reason, order and righteous from the point of view of the society.

Law means statues acts, rules regulations, orders, and ordinances from point of view of ligislature.

3) Definition of legle rule :

Legale rule is a rule of conduct, a legal norm, having a general, abstract and compulsory character, a social purpose, and wich indicates what should be done in a given situation. Its source may be law or costom.

The roles of law is applied and sanctioned by the public authorities, al the legal rules constitute positive law, and this definition indicates the essential of the characteristics of legal rules:

1. The legal rules are general and abstract.

The legal rules is applied to every person it may be applied to a category of persons or to a single person. Like: (The employee, lawyers, Judges, Merchants) (Organizes the powers of the presidents of the state) It is general in space and permanent in time. It realizes equity among citizens.

2 The legal rules are social:

The legal rules exist only in the human beings, who live in a **community** and the **relationships** between the persons in this community.

3. Legal rules govern the conduct of individuals in the society:

The legal rules govern the **conduct** of individuals through the **state**, or the relationships of the **authorities** of the state, and law organizes social of the **behavior** which takes place in the form of **external** action.

4. The legal rules are compulsory and are Accompanied by sanction:

The persons who **violate** the law the public authority **imposed sanction upon them**, And the sanction are different from the point of nature and force, The sorts of sanction are: Penal sanction ,Civil sanction and Administrative sanction.

Lecture two: Classification of the law.

Legal rules are classified into public law and private law. Moreover the most usual used in all over the world and algeria.

This classification depends on the existence or non existence of the state as a party in the legal relationships that govern by these rules.

1) Public Law: Is a body of rules that govern the relationships which the state is considered as a party that processes authority and sovereignty. And The branches of public law are :

- Public international law : The public international law is a body of legal rules that organize the relationships among states and determine the rights and duties of each at times of peace or of war.

- Constitutional law : Is a body of legal rules that determine regime of the state. (Its public authorities /The competence of each/ The relationships among these authorities and The relationships between these authorities and individuals).

- Administrative law : Administrative law is a body of legal rules that concerned with the constitution and relations of those members of the executive which are charged with the care of those public interests which are the object of public administration and the relation of the administrative.

- Financial law : Is a body of legal rules that govern public funds of the state its various revenues, such as taxes, dues, and loans, and the ways of collecting any spending such funds.

- **Penal law or criminal law :** Is a body of legal rules that determine crimes and types of punishment.

- **The law of criminal procedures :** It is a group of legal rules that indicate the procedures that must be taken from the time of the commitment of a crime till the time of inflicting punishment on the wrong-doe

2) Private law : is a body of legal rules that govern the relationships among the individuals in general or between individuals on one hand and the state as an ordinary person doing ordinary acts. And not as possessor of sovereignty and authority on the other hand. And The branches of private law are the following:

- **Civil law :** Is a body of legal rules that organize the relationships among individuals except the relationships organized by other branches of private law.

- **Commercial law :** Is a body of legal rules that organize the relationships arising from commercial acts.

- **Maritime law :** Is a body of legal rules that organize the special relationships which arise from sea navigation.

- **Air law :** Is a body of legal rules which govern and settle all matters arising from, or relating to civil aviation

- **Labor law :** Is a body of legal rules that organize the relationships which arise between the laborers and the employers

- **The law of civil procedures** : Is a body of legal rules that determine the procedures that must be taken in civil courts to protect the rights if they are subject to disputes.

- **Private international law :** Is a body of legal rules which organizes the relationships among individuals bearing of foreign elements.

Lecture three : Sources of law.

The sources of law means The bodies of rules or principles according to which a judge is bound to decide cases, Either material or formal sources.

1) **Material sources are**: (Those from which the substance of law is drived). These sources are numerous such as: 1- Social. 2- Natural. 3- Geographical. 4- Political. 5- Religious facts. 6- Traditions of the nation.
2) **Formal sources are:** Which the legal rules derive their obligatory force they are:

1- **Legislation:** Is the formulations of legal rules by a competent authority according to determined procedures in the state. Legislation is the principal source of modern law.

The judge has to resort to it to settle disputes unless he can not find a provision in the original sources, Legislation plays a very important part in law-making at the present day.

2- **Islamic law :** is considered as a principal formal source with respect to personal status, all matters that came under the title (personal status) are subject to the application of religious rules of various sects. Islamic sharia is considered as a source of law by the Algerian law maker.
3- **Custom:** Is collective habit or usage that has become constant and it is considered obligatory by the public. **Or** Is a usage or practice of the people which by common adoption.

And acquiescence and by long unvarying habit has become compulsory and has acquired the force of a law with respect to the place and subject matter to which it relates

4- **Rules of equity) :** It means The spirit and habit of fairness, Justness and right dealings, Which regulate the inter course of man with man.
5- **Jurisprudence:** The legal opinion given by jurists and all authors who are interested in law. The legal opinion the works of such jurists as professors or lawyers. The court and the judge may refer to it for guidance only. And it is not a formal source.

3) The legal sources of Algerian law.

Article 1 of the Civil Code stipulates:**"** Legislative texts apply to all issues that these texts address in their wording or content.

If there is no legislative text, the judge will rule in accordance with the principles of Islamic Sharia, and if there is none, then in accordance with custom.

and if it does not exist, then according to the principles of natural law and the rules of justice."

So According to the Article above ,the legal sources of Algerian law in order, are as follows: ; legislation, sharia (Islamic law), custom and natural law and rules of equity.

LESSON Four: The contract.

According to the civil code The sources of obligation are: The contract, Unilateral disposition, The injurious act (illicit acts), Quasi-contract ,The law.

1) Definition of the contract:

A contract is an agreement between two or more people to produce a specific legal effect.

According to (Article 54) of Algerian civil code the contract is :"An agreement by which one or more persons bind themselves in favor of one or more person to give, to do, or not to do something".

2) The elements of contract:

This element must be available and if one of these elements is not available the contract will be absolutely void.

Here, a distinction must be made between a contract that is absolutely void and voidable, because the first fails to fulfill a basic condition for its existence (the pillar), while the second arises from a legal standpoint, but has a defect that makes it voidable **(for example**, the lack of legal capacity/ the presence of a defect in the will)

1- The consent of the parties.

The contract shall be made as soon as the offer is joined with acceptance subject to the condition which the law in addition prescribes.

The expression of the will is done verbally, in writing, or by a gesture commonly used by custom, and it is also done by taking a position that leaves no doubt as to its indication of the intention of its owner.

The expression of will may be implicit if the law does not stipulate or the two parties agree that it should be explicit.

2- Legal capacity

International legislation including Arab legislation, differed in determining the time frame for eligibility.

As for the Algerian legislator, he also distinguished between the stages of eligibility and defined them in accordance with the text of Articles 40, 42, and 43 of the Civil Code.

Referring to Article 25 of it, which states: “The human personality begins with the completion of his birth alive and ends Upon his death, the fetus enjoys the rights determined by law, provided that it is born alive.

Therefore, the issue of legal capacity relates to legal personality, as every person who has reached the age of majority enjoys his judicial powers and is not deprived of his full capacity to exercise his civil rights, and the age of majority is 19 full years.

Anyone who is incapable of discernment due to young age, dementia, or insanity is not eligible to exercise his civil rights. Anyone who has not reached thirteen years of age is considered incompetent(undistinguished)

Anyone who has reached the age of discernment but has not reached the age of majority, and anyone who has reached the age of majority but is foolish or negligent, shall be lacking legal capacity in accordance with what the law stipulates.

3- A legal object :

The object of the contract is the legal process that the two parties agreed to achieve.

The subject matter of the contract must exist or be capable of existence, be specific, and be legitimate and not contrary to public order and morals.

4- The legal cause :

The reason for the contract is the motive that motivates the contract.

The reason for the contract must be present and legitimate and not contrary to public order and public morals.

5- A formality requirement in some contracts :

Consensus is considered the general rule for contracts, but some contracts require that they take a form in order to be concluded and enforced.

This form is determined by the legislator, meaning that it is imposed by law. In the event of the absence or failure of this form, the Invalidation affects all stages of the contract from conclusion until implementation.

LESSON Five: Effects of the contract.

A valid contract stipulates obligations on the contracting parties, which must be fulfilled under penalty of forced execution. The obligation of the contract is based on moral, economic, and social foundations.

In addition to the duty to respect the contract that a person makes with himself, the stability of transactions must be guaranteed so that people can be reassured and peace prevail in society.

The contract is considered the law of the contracting parties as one of the principles emanating from the principle of the authority of will, and what it means is that the

contracting party is not permitted to revoke or amend the contract on the one hand, and on the other hand the contracting party is obligated to implement this contract.

Article 106 of the Civil Code stipulates: “The contract is the law of the contracting parties and may not be annulled or amended except by agreement of both parties or for reasons determined by law.”

The legislator likened the contract with regard to its binding force towards the contracting parties to the law, as the contracting party cannot free himself from the restrictions of the contract unilaterally, nor can he introduce any amendment to its provisions, regardless of their type or importance.

The contract must be implemented in accordance with what it contains and in good faith. The contract is not limited to obligating the contractor only to do what is stated in it, but it also addresses what is among its requirements in accordance with the law, custom, and justice according to the nature of the obligation.

However, if general exceptional incidents occur that could not have been expected, and their occurrence results in the implementation of the contractual obligation.

and if it does not become impossible, it becomes burdensome for the debtor such that it threatens him with a heavy loss, the judge may, depending on the circumstances and after taking into account the interests of both parties, reduce the burdensome obligation to a reasonable extent, and here the matter relates to the rule commanding.

However, the law sometimes allowed the contractor to revoke or amend the contract without the consent of the other contractor, for example terminating the lease contract Article 469 bis 1 of the Civil Code, terminating the agency Article 587 of the Civil Code.

As for amending the terms of the contract, an example is the work relations between the employer and the workers (for example, working hours).

Since the contract creates obligations that fall on each of its parties, and the binding force of the contract requires that each party implement its contractual obligation, if the contracting party does not perform this implementation in kind and the creditor requests it, the debtor is forced to implement it.

The principle is the specific implementation of the obligation, but if this is not possible and the creditor does not request it and the debtor does not express his willingness to implement it, then the judge has no choice but to award compensation if its conditions are met, which is what is known as contractual responsibility.

1- Contractual error: It is represented by the debtor's failure to implement his contractual obligation or delay in implementing it, whether intentionally or negligently on the part of the debtor.

2- Harm: It is the harm that befalls a person as a result of compromising his legitimate interest or one of his rights, whether that interest is material or moral.

3- The causal relationship between the error and the damage: The error occurred is the cause of the resulting damage, and the creditor has the burden of proving that.

LESSON Six: The nullity theory.

1) **Definition :**nullity is the penalty resulting from a contract that did not complete its elements or did not meet its conditions.
2) **nullity occurs:** nvalid contract is absolutely invalid and non-existent, and therefore there is no need for the judge to intervene to confirm the invalidity for it.

As for the voidable contract, it is valid unless it is decided to invalidate it by agreement or judgment, and here the invalidity is determined by the intervention of the judiciary.

As for the right to claim invalidation, if the law has permitted every interested party to claim invalidation, then the right of invalidation is limited to the contracting party in whose interest this right has been decided.

3) The right to claim invalidity.

Article 102 of the Civil Code stipulates: "If the contract is absolutely invalid, every interested party may cling to this invalidity, and the court may rule on it on its own initiative, and invalidation is not permitted by authorization."

As for the voidable contract, Article 99 of the Civil Code stipulates: "If the law grants one of the contracting parties the right to void the contract, the other contracting party has no right to insist on this right."

4) Expiry of the right of annulment.

Both an absolutely void contract and a voidable contract are subject to different provisions with regard to the issue of the expiration of the right to avoidance.

1- **The invalidation suit falls.**

An invalid contract is absolutely invalid and cannot be corrected by approval, nor does it become valid with the passage of time, because the contract is void from a legal standpoint because it did not fulfill its elements.

if the invalid contract has been concluded, it becomes absolutely void 15 years, so the claim of invalidity cannot be upheld because it has expired due to the statute of limitations, and this does not mean that the contract has become valid, but rather it remains invalid.

However, it remains for every interested party to insist on the invalidity of the contract by defending it instead of the main lawsuit.

2- **the voidable contract.**

As for the voidable contract the expiration of the right to void it is removed by approval, and is extinguished by statute of limitations as a general rule.

- **Approval .**

Article 100 of the Civil Code addressed it: “The right to annul the contract is replaced by express or implicit permission, and the permission is based on the date on which the contract was concluded, without prejudice to the rights of others.

Approval is defined as the contractor’s waiver of his right to request annulment of the contract, and it is a unilateral legal act.

If it is done correctly, it results in the contract being stable and no longer in danger of being dissolved, thus all its legal effects are settled.

- **Prescription .**

Article 101 of the Civil Code stipulates: “The right to void the contract shall be forfeited if the owner does not claim it within 5 years.”

This period begins to run in the case of lack of capacity from the day on which this reason ceases, in the case of error or fraud from the day on which it is discovered, and in the case of coercion from the day it ceases. However, it is not permissible to invoke the right of annulment due to error, fraud or coercion if 10 years have passed. From the time of concluding the contract"

Lesson Seven: Delegate system in contracting.

In addition to the normal method through which the consent element is achieved in a contract, there are some special forms, through which the will is expressed by a person

other than the one in whose name the contract is being concluded, which is called the representation system in contracting.

1) Définition:

Legal representation is defined as the replacement of the will of the representative by the will of the principal in concluding a legal act, as the effects of this act return to the principal person and not to the representative person, And This is what is stated in the provisions of the Algerian civil codification in Articles 73 to 77.

2) Conditions for legal representation:

Article 73 of the Civil Code stipulates: "If the contract is concluded by representation, the representative person, not the original person, is the subject of consideration when examining the defects of consent, or in the event of knowledge of some special circumstances or the inevitable assumption of knowledge of them."

Therefore, the terms of the representation in contracting are:

- The will of the representative replaces the will of the principal.
- Commitment to the limits of the prosecution.
- Directing the act in the name and for the account of the principal.

3) representation effects: The effects of the representation in Algerian legislation are as follows.

1- Legal representation for the original person (principal):

The purpose of the legal actions created by the will of the parties is to create a legal effect, which is represented by establishing new rights and duties, and the principal is considered a party to the action concluded by the representative in his name and for his account.

As long as the contract was concluded through the representation and that this representative adhered to the limits of his representation and the person dealing with him was aware of them, everything that results from that is added to the financial liability of the principal without the need for his consent or approval.

In this regard, Article 74 of the Civil Code stipulates: "If the representative, within the limits of his representation, concludes a contract in the name of the principal, the rights and obligations arising from this contract shall be added to the principal."

2- The effects of the representation for the representative:

The contract is concluded by the representative, who is responsible for setting the terms and conditions of this legal transaction with the third party contracting with him.

The lesson regarding the validity of consent is the defects in the consent of the representative, and yet he remains a stranger to legal action, and therefore he does not acquire a right over the contracting party nor does he bear any obligation towards him.

3- **Effects of the contract on the third party contracting with it (creditor or debtor to the principal):**

Although the third party does not directly enter into a contract with the principal, after completing the legal disposition, he becomes a creditor or debtor to the principal, as he has the right to claim the rights he gained from this disposition or is obligated to fulfill his obligation towards this principal.

In this regard, Article 75 of the Civil Code stipulates: "If the contracting party does not announce at the time of concluding the contract that he is contracting in his capacity as a representative, then the effect of the contract is not credited to the principal as a creditor or debtor, unless it is absolutely assumed that the person with whom the representative contracted knew of the existence of the representation or was It is equal for him to deal with the principal or the representative."

LESSON Eight :Concept of Commercial Law.

First we can say that Commercial Law has to deal with legal relationships between individuals and this is why it is included in Private Law.

1) Definition of commercial law:

Jurisprudence has differed in defining commercial law due to the different trends and theories advocated by each jurist. In general, commercial law is defined as the set of legal rules that apply to business and regulate the craft of trade.

2) **Characteristics of commercial law:** The most important characteristics that distinguish commercial law can be summarized as follows:

1- **Achieving profit:** Commercial law aims as a main goal at achieving profit, which requires providing legal mechanisms that facilitate speed in dealing.

2- **Speed and flexibility in dealing:** This is one of the most important characteristics of commercial law that achieves profits for the merchant, given that the merchant carries out several transactions, including buying, selling, fulfillment, loans, rentals, and

rentals. This can only be achieved by liberating these contracts and commercial operations from formal procedures.

2- **Trust and credit**: Commercial law is based not only on the pillar of speed, but also on the pillar of credit. The world of commerce is based on the trust that prevails in it, as the wholesaler purchases a large quantity of goods by simply calling or sending a fax to the producer, whether a natural person or a company, and he transfers them in the same way. methods and without providing compensation at the time, whether to the producer, the seller, or the carrier until it is received.

3- **Publicizing commercial activity and merchants:**

One of the characteristics of commercial law and the foundations upon which it is based is its resort to registering commercial activity and merchants, in particular by registering in the commercial register so that others can identify the merchant's identity, the nature of his activity, his legal form, his residence, and other information that must be declared. It is submitted to the competent administrative authority, as stipulated in Article 19 of the Algerian Commercial Code.

1) The relationship of commercial law to civil law:

Commercial law, according to the previous definition, is only a branch of private law, like civil law, along with other branches such as labor law and family law. If the civil law basically regulates all relationships between different individuals without distinguishing between the type of behavior or the character of the person performing it, that is, a general law, then the commercial law only regulates certain relationships, which are commercial relationships.

The emergence of this type of legal rules was led by economic conditions and practical necessities that required the submission of a certain group of people, namely merchants, and a certain type of transactions, namely commercial businesses, to a legal regulation distinct from that applied to civil transactions, as civil rules were unable to regulate commercial transactions based on speed. On the one hand, trust and credit on the other. It is noted that civil transactions are always characterized by stability and discretion.

In contrast to this, the commercial environment requires speed and confidence at the same time. The nature of the contracts that are concluded in the field of commerce is completely different from those that are concluded in the civil environment, because the deals concluded by the merchant are not for the purpose of personal use or for the purpose of keeping them, but rather to resell them to make a profit. of price differences.

Moreover, such deals are concluded over and over every day for every trader, and he concludes them in a quick manner. Certain customs and traditions have actually emerged that a group of merchants adhered to in their commercial transactions, different from those rules that regulate civil transactions, and the legislator was forced to codify these commercial customs into groups specific to trade and merchants, and these new rules continued to increase little by little until they became an independent entity.

LESSON Nine: Commercial companies.

The legislator addressed the concept of the company in the text of Article 416 of the Civil Code: "The company is a contract according to which two or more natural or legal persons undertake to contribute to a joint activity, by providing a share of work, money, or cash, with the aim of sharing the profit that may be produced, achieving an economy, or achieving an economic goal." of mutual benefit, and they shall bear the losses that may result from that."

It is clear from the text of this article that the legislator considered the company a "contract," and this concept requires a set of implications for its establishment from a legal standpoint, especially the idea of multiple (two or more), regardless of the nature of the partners, whether they are natural or legal persons (legal).).

1) Distinguishing between a civil company and a commercial company.

The legislator addressed the types of commercial companies with the text of Article 544 of the Commercial Code: "The commercial character of the company is determined either by its form or its subject matter. Solidarity companies ,Limited liability companies, Stock companies, Simple joint stock companies, Simple partnership company, Stock limited companies are considered commercial by virtue of their form, regardless of their subject matter."

It is clear from the text of this article that the legislator has indirectly specified for us the situation in which the company is civil, by specifying the commercial company.

That is, if the company takes one of the forms stipulated in the above article, which it stipulates exclusively, then it is commercial according to the form. However, if the matter is related to the subject, then the company, if its subject is commercial, is commercial, and if its subject is civil, then it is civil.

2) The company is based on the personal consideration:

These are companies in which personal consideration is dominant and the person of the partner is considered and important in the formation of the company. Personal consideration leads to the conclusion of the company contract on the basis of mutual trust between Partners.

It also leads to others dealing with the company on the basis of trust in the partners with their personal qualifications, and this results in the responsibility of these partners in their personal funds for the company's debts, in addition to what they provided in the company, but the degree of trust in the partners' persons varies according to the type of company and the position of the partner in it. And his willingness to bear responsibility with his own money, in addition to what he provided to the company, and from here the types arise Various companies of people.

Personal companies are included in the Algerian Commercial Code in Articles 551 to 563, which are the joint-liability company, the limited partnership, and the joint-venture company.

3) **The Company based on financial consideration:** those companies are in which financial consideration is the basis of their formation, and they are based on collecting funds, and the responsibility of a partner in them is only to the extent of the shares he owns. Therefore, personal consideration is not important in these companies, and they do not expire as a general rule with the death of one of the other partners.

Financial companies have been classified into four types: limited liability companies, sole proprietorships and limited liability companies joint stock companies limited by shares.

4) **The legal personality of the commercial company.**

A legal personality is defined as a group of persons or funds united to achieve a specific goal. The law recognizes the authority to acquire incentives and obligations. The legislator has stipulated in Article 49 of the Civil code that companies are considered legal persons: "Legal persons are...civil and commercial companies... ".

In this regard, Article 417 of the Civil Code stipulates that the company acquires legal personality once it is formed. However, this personality cannot be invoked against others except after completing the registration procedures, which constitutes the general rule as it applies to civil companies only.

As for commercial companies, they do not acquire legal personality except from the date of their registration in the commercial register, which is what was established

Article 549 of the Commercial Code: “The company shall not have a legal personality except from the date of its registration in the commercial register.”

Whether it is a civil or commercial company, it maintains its legal personality throughout the life of the company and the duration of the liquidation procedures, which justifies the possibility of it being subject to the bankruptcy system if it stops paying its debts. Article 50 of the Civil Code stipulates the rights that the company enjoys once it acquires legal personality (Financial liability independent of the liabilities of its partners/ Legal capacity/ Legal representative/ Company name and legal address/ Domicile and nationality).

LESSON Ten : Merchant.

In determining the status of a merchant, the Algerian legislator took the personal criterion, which is based on the person carrying out the trade exclusively, which is what was stipulated in Article 1 of the Commercial Code: “Any natural or legal person who carries out a commercial business and uses it as his usual equipment is considered a merchant, unless the law requires otherwise.”

1) Conditions for acquiring merchant status.

In order to acquire the status of a merchant in Algerian legislation, it is necessary to carry out commercial activities in a professional manner, repeatedly, continuously and regularly.

The merchant is also required to practice commercial work for his own account and bear all the risks related to his commercial activity, in addition to the necessity of having legal capacity, taking into account the provisions of rationalization in accordance with the text Article 5 of the Commercial Code.

2) Merchant's obligations.

1- Commercial bookkeeping:

These are the records in which the merchant records all his commercial operations, which show his financial position and the circumstances of his trade, and are considered an accounting document, regulated by the legislator in the texts of Articles 9 to 18 of the Commercial Codification.

The importance of these commercial books is to determine the taxes owed by merchants, provided that they are organized and in good condition. They can also be considered a means of proof in disputes between merchants as well as with those dealing with them.

As for the persons obligated to keep commercial books, they are addressed in Article 9 of the Commercial Codification: Every natural or legal person who has the status of a trader is obliged to keep a daily book in which he records the business operations day by day, or to at least review the results of these operations monthly, provided that in this case he retains all Documents with which these operations can be reviewed daily."

2- Registration in the commercial register:

The commercial registry is a book in which each merchant is unique, whether a natural or legal person, in which the data of these merchants is recorded, as well as their commercial activity under the control and supervision of the state. It is a means of informing others of the merchants' activity and their legal positions.

Registration in the Commercial Register in accordance with the Commercial Law results in acquiring the status of a merchant in accordance with the provisions of Article 21 of the Commercial Codification, and thus the creation of a legal personality for companies, which is stipulated in Article 549 of the Commercial Codification.