

Ministry of Higher Education and Scientific Research

Mohamed Boudiaf University - Msila

Faculty of Law and Political Science

Lectures in Legal English terminology

(Introduction to Legal Sciences)

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وزارة التعليم العالي والبحث العلمي

جامعة محمد بوضياف - المسيلة

كلية الحقوق والعلوم السياسية

مطبوعة بيداغوجية موجهة لطلبة سنة أولى جذع مشترك

محاضرات في المصطلحات القانونية باللغة الإنجليزية

(مدخل العلوم القانونية)

اعداد:

الدكتور بوعون نضال- أستاذ محاضر (أ)

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Legal sciences constitute the systematic study of normative systems governing human conduct within societal frameworks, encompassing the foundational principles, methodologies, and institutions that regulate interpersonal relations, state authority, and individual rights. As the gateway to juridical knowledge, this discipline elucidates the sources of law-legislation, custom, jurisprudence, and doctrine-their hierarchy, interpretation, and temporal/spatial application, while delineating the distinction between public law (regulating state-individual relations) and private law (governing individual-to-individual interactions).

At its core lies the science of legal interpretation, bridging textual enactment to practical adjudication through modalities such as legislative, judicial, and doctrinal exegesis, guided by canons like non-retroactivity and territoriality.

This introductory framework equips jurists to navigate conflicts of laws, ascertain legislative intent, and uphold public order , ensuring normative stability amid societal evolution.

مدخل العلوم القانونية هو المقرر الأولي لطلبة السنة الأولى ليسانس حقوق في الجامعات الجزائرية، يُقسم إلى جزئين رئيسيين: النظرية العامة للقانون في السداسي الأول ونظرية الحق السداسي الثاني، ويُعرف بأنه العلم الذي يحدد مصطلحات القانون، تطوره، خصوصياته، فروعه،

مصادره، ونطاق تطبيقه، مع التركيز على بناء المنطق القانوني، يُعتبر ركيزة أساسية لفهم فروع القانون مثل المدني والدستوري، مستندًا إلى التشريعات الجزائرية.

1- تعريف القانون:

القانون هو مجموعة قواعد عامة ومجردة وملزمة تنظم سلوك الأفراد في المجتمع، يفرض جزءًا منها السلطة العامة بقوة الإكراه، ويُميز عن القواعد الأخرى بأنه يحمي المصالح الاجتماعية بجزء مادي فوري، وتكمن أهميته في تنظيم العلاقات الاجتماعية وضمان العدالة، كما جاء في ديباجة الدستور الجزائري.

2- خصائص القاعدة القانونية:

- أنها تنظم سلوك: يركز على السلوك الظاهر (خارجي) لا الداخلي، ينشئ التزامات ويحمي المصالح.

- انها عامة ومجردة: لا توجه لشخص أو واقعة معينة، بل تخاطب الأشخاص والوقائع بشرط توافر صفات.

- أنها توفر جزاء: هي ملزمة بجزاء (جنائي، مدني، تأديبي)، أو أمر (غير قابلة للمخالفة) أو أن تكون مكملة أو مفسرة (قابلة للعرف).

3- أقسام أو فروع القانون:

تقسيمات القانون أحد المواضيع الأساسية في مقرر مدخل العلوم القانونية لطلبة السنة الأولى ليسانس حقوق، وتُبنى على معايير متعددة مثل طبيعة العلاقة المنظمة، درجة الإلزامية، والنظام القضائي المختص، والتقسيم الأبرز هو بين القانون العام والخاص، حيث يُعرف القانون العام بأنه القواعد التي تحكم العلاقات التي تكون فيها الدولة طرفاً بصفة سيادية، بينما القانون الخاص ينظم علاقات الأفراد دون تمسك الدولة بامتيازات السيادة، هذا التمييز له أهمية في تطبيق القواعد، العقود، والأموال العامة... الخ

- التقسيم حسب طبيعة العلاقة:

القانون العام: ينظم علاقات الدولة بغيرها من الدول أو بالأفراد بصفة سيادية، قواعده آمرة غالباً مع امتيازات للدولة (مثل عدم التقادم في الأموال العامة).

فروع خارجية: القانون الدولي العام (علاقات بين الدول والمنظمات الدولية)

فروع داخلية: القانون الدستوري، القانون الإداري، القانون الجنائي... الخ

المعيار المطبق: صفة الدولة السيادية، لا مجرد وجودها كطرف.

القانون الخاص: ينظم علاقات الأفراد أو الدولة بصفة شخص عادي، قواعده مكاملة غالباً (تسمح بالعقود).

فروعه: القانون المدني، القانون التجاري، قانون العمل، قانون الأسرة (قانون الأحوال الشخصية)

المعيار المطبق: عدم التمسك بالسيادة، تساوي الأطراف

- التقسيم حسب الشكل:

تقسيم القانون حسب الشكل ينقسم أساسًا إلى نوعين رئيسيين: الموضوعي والشكلي. القانون الموضوعي: هو الذي يحدد الحقوق والواجبات الأساسية، مثل القانون المدني والجناي، حيث يخلق الحقوق مباشرة.

القانون الشكلي أو الإجرائي: فيُعرف بأنه ينظم إجراءات التنفيذ والمحاكمة، مثل الإجراءات المدنية والإدارية، قانون الإجراءات الجزائية، ويحمي الحقوق ويضمن عدالة الإنفاذ.

- التقسيم حسب درجة الإلزامية:

التقسيم حسب درجة الإلزامية يُعد أحد التقسيمات الرئيسية للقواعد القانونية، حيث ينقسم القانون إلى قواعد أمر وقواعد مكملة، رغم أن جميع القواعد ملزمة بدرجة ما، هذا التقسيم يعكس سياسة المشرع في تنظيم سلوك الأفراد، إما بإجبارهم على اتباع القاعدة صراحة أو السماح لهم بالاتفاق على خلافها، ويهدف إلى التوفيق بين النظام العام والحرية التعاقدية، ويُطبق خاصة في القانون الخاص.

القاعدة الآمرة: هي القاعدة التي تأمر بسلوك معين أو تنهى عنه، ولا يجوز للأفراد الاتفاق على خلاف حكمها، فإذا خالفوه يُعتبر الاتفاق باطلاً، وتمثل قيودًا على الحرية الفردية لتحقيق المصلحة العامة والنظام الاجتماعي، وتكثر في القانون العام مثل قواعد العقوبات أو سن الرشد مثل منع القتل أو السرقة.

القاعدة المكملّة: هي القاعدة التي تُطبق في غياب اتفاق أو عرف يخالفها، ويجوز الاتفاق على خلاف حكمها دون بطلان، مما يمنح مرونة في العلاقات الخاصة، وتُصاغ عادة بـ"ما لم يقض الاتفاق بغير ذلك"، وتُستخدم لسد الفراغات في العقود مثلاً.

معايير التمييز بينهما:

لفضية: صريحة في القواعد الآمرة (عقوبة مباشرة)، مشروطة في المكملّة (ما لم يُتفق خلاف ذلك).

وظيفية: الآمرة تحمي النظام العام، المكملّة تُعزز الحرية التعاقدية.

نتيجة المخالفة: بطلان في الآمرة، صحة الاتفاق في المكملّة.

- تقسيمات أخرى:

داخلي مقابل خارجي: داخلي ينظم العلاقات داخل الدولة، خارجي (دولي) بين الدول.

مكتوبة مقابل غير مكتوبة: مكتوب (تشريعات)، غير مكتوب (عرف، مبادئ)

قوانين مختلطة: مثل قانون العمل، تجمع بين خصائص عام وخاص.

Introduction to Legal Sciences

Introduction to Legal Sciences constitutes the foundational course for first-year Bachelor's degree students in Law at Algerian universities, bifurcated into two principal components: The General Theory of Law during the first semester and the Theory of Rights in the second semester. It is delineated as the discipline that ascertains legal terminology, its evolution, distinctive attributes, branches, sources, and scope of application, with an emphasis on cultivating legal reasoning; it serves as the cornerstone for comprehending substantive branches of law, such as civil and constitutional law, predicated upon Algerian legislative enactments.

1. Definition of Law

Law comprises a corpus of general, abstract, and binding rules that regulate individual conduct within society, portions of which are enforced by public authority through coercive measures. It is distinguished from other normative frameworks by its safeguard of societal interests via immediate material sanctions, its paramount importance residing in the organization of social relations and the assurance of justice, as articulated in the Preamble to the Algerian Constitution.

2. Characteristics of Legal Rules

- **Regulation of Conduct:** It pertains exclusively to manifest (external) behavior, eschewing internal intent, thereby engendering obligations and protecting interests.

- **General and Abstract Nature:** It is not directed toward a specific person or factual circumstance but addresses persons and facts conditionally upon the presence of requisite attributes.
- **Provision of Sanctions:** It is binding through sanctions (penal, civil, or disciplinary); it may be imperative (non-derogable), suppletive, or interpretive (susceptible to custom).

3. Branches or Divisions of Law

Divisions of law represent a core topic within the Introduction to Legal Sciences curriculum for first-year law students, predicated upon multifaceted criteria such as the nature of the regulated relationship, degree of binding force, and competent judicial system. The preeminent division is between public and private law, wherein public law governs relations in which the State participates in its sovereign capacity, whereas private law regulates inter-individual relations absent the State's assertion of sovereign privileges; this distinction bears critical implications for the application of rules, contracts, and public funds.

Division by Nature of the Relationship

Public Law: Regulates the State's relations with other States or individuals in a sovereign capacity, its rules predominantly imperative with privileges accruing to the State (e.g., imprescriptibility of public funds).

- External branches: Public International Law (inter-State and inter-organizational relations).

- Internal branches: Constitutional Law, Administrative Law, Criminal Law, et cetera.
Applicable criterion: The State's sovereign character, beyond mere participation as a party.

Private Law: Governs relations among individuals or the State in a private capacity, its rules predominantly suppletive (permitting contractual deviation).

- Branches: Civil Law, Commercial Law, Labour Law, Family Law (Personal Status Law).
Applicable criterion: Absence of sovereign assertion, equality of parties.

Division by Form

The division of law by form bifurcates fundamentally into substantive and adjectival law.

Substantive Law delineates fundamental rights and obligations, exemplified by civil and criminal law, directly engendering rights.

Adjectival or Procedural Law ordains enforcement and litigation procedures, such as civil and administrative procedure or criminal procedure codes, safeguarding rights and ensuring just enforcement.

Division by Degree of Binding Force

This division constitutes a principal classification of legal rules into imperative and suppletive rules, notwithstanding the binding nature of all rules to varying degrees; it reflects legislative policy in modulating individual conduct, either mandating strict adherence or permitting contractual derogation, thereby reconciling public order with contractual freedom, particularly salient in private law.

Imperative Rule: Mandates or prohibits specific conduct, precluding individual agreement to the contrary, rendering such agreements null and void; it imposes restraints on individual liberty to advance public interest and social order, prevalent in public law (e.g., penal code provisions or age of majority), such as prohibitions on murder or theft.

Suppletive Rule: Applies absent contrary agreement or custom, permitting derogation without nullity, affording flexibility in private relations; typically phrased as "unless otherwise stipulated by the parties," it fills lacunae in contracts.

Criteria for Distinction:

- **Linguistic:** Explicit in imperative rules (direct sanction), conditional in suppletive ("unless otherwise agreed").
- **Functional:** Imperative safeguards public order; suppletive bolsters contractual autonomy.
- **Consequence of Derogation:** Nullity under imperative rules; validity of agreement under suppletive.

Other Divisions

- **Internal vs. External:** Internal law regulates domestic relations; external (international) law governs inter-State relations.
- **Codified vs. Uncodified:** Codified (statutory enactments); uncodified (custom, principles).
- **Mixed Laws:** Such as labour law, amalgamating public and private attributes.

الترجمة المتخصصة بالإنجليزية	المصطلح باللغة العربية
Introduction to Legal Sciences	مدخل العلوم القانونية
General Theory of Law	النظرية العامة للقانون
Theory of Rights	نظرية الحق
Law	القانون
Legal Rules	القاعدة القانونية
Public Law	القانون العام
Private Law	القانون الخاص
Sovereign Capacity	صفة سيادية
Substantive Law	القانون الموضوعي
Adjectival Law	القانون الشكلي

المصطلح باللغة العربية	الترجمة المتخصصة بالإنجليزية
قانون الإجراءات	Procedural Law
القاعدة الآمرة	Imperative Rule
القاعدة المكملة	Suppletive Rule
القوة الإلزامية	Binding Force
النظام العام	Public Order
الحرية التعاقدية	Contractual Freedom
المخالفة	Derogation
باطل	Null and Void
الجزاء	Sanctions
القانون الدستوري	Constitutional Law
القانون الإداري	Administrative Law
القانون الجنائي	Criminal Law
القانون المدني	Civil Law
القانون التجاري	Commercial Law
قانون العمل	Labour Law

الترجمة المتخصصة بالإنجليزية	المصطلح باللغة العربية
Family Law	قانون الأسرة
Personal Status Law	قانون الأحوال الشخصية
Public International Law	القانون الدولي العام

"Theory of Law"

Introduction

The subject of "Theory of Law" within the framework of legal studies courses for first-year students constitutes one of the most important topics proposed within their bachelor's degree curriculum. This is due to its status as a fundamental subject for building the essential scientific legal competencies required in the field of legal studies. Through general legal theory, the student can master the applications of the basic principles of the concept of law, including its definition, distinction between its various branches, in addition to its sources, scope of application, and culminating in the ability to interpret it.

Through this booklet, we shall present all aspects related to the applications of legal theory, with projection thereof onto Algerian legislation, pursuant to a plan divided into four (04) chapters, as follows:

- **Chapter One: The Nature of Law.**
- **Chapter Two: Divisions and Sources of Law.**
- **Chapter Three: Application of Law.**
- **Chapter Four: Interpretation of Law.**

Chapter One: The Nature of Law

In this chapter, we review the most important scientific legal principles and foundations that the student must master to the necessary extent, enabling him to pursue his legal studies with firm steps, given the utmost importance these basic principles carry.

Pursuant to the foregoing, we shall detail: the definition of law along with an exposition of the distinguishing characteristics of legal rules; clarification of the similarities and differences between the substance of law and other analogous behavioral rules; in addition to elucidating the relationship between law and other scientific disciplines.

Section One : Definition of Law

Before delving into the details of defining law, it is incumbent upon us to highlight the status and necessity of law within society. No human society can exist without binding rules—termed legal rules—imposed by public authority, which ensure order within society ; without them, chaos would prevail, pursuant to the principle that "no society without law."

Man is inherently a social being and cannot live except in community, Instinct drives him to seek his livelihood and achieve his interests as a guarantee of his continued existence, which he cannot accomplish except through benefiting from the efforts of others.

Were people left free to manage their affairs according to their whims, unencumbered by legal constraints, desires would clash, disputes would proliferate, and might would prevail over right.

Thus arose the necessity for rules governing and regulating individual and collective behavior—what has been conventionally termed "law" The latter constitutes a social necessity and inevitability indispensable in any society, as it ensures the organization of relations between individuals. Moreover, it may be considered a political necessity, as it enables the state to exercise its authority within an orderly framework between ruler and ruled.

Subsection One : Definition of Law

Before defining law, it is necessary first to uncover the origin of the word "law" (قانون), which is a loanword in Arabic. Its root is Greek kanun, referring in Greek to the straight rod—not the rod itself, but straightness. This concept was transferred to French as droit.

Thus, the word "law" expresses a type of fixed order manifested in the necessary connection between two phenomena, as if one exists at one end of a straight rod and the other at the opposite end without deviation. This term is used in other fields, such as the natural and physical sciences-like the law of gravity, expressing the inevitable relationship between an object's fall to earth upon being dropped-or in economics, such as the law of supply and demand and its relation to price increases and decreases. However, legal

science has particularly appropriated the term "law" and made it a specific designation for itself.

Branch One : Terminological and Doctrinal Definition of Law

If we seek a unified definition of law, we may state that no single generally agreed-upon definition exists. What people consider "law" varies from one society to another, and from one country to another, depending on their location and perception of their existence within society.

The educated and civilized person views law as the fundamental mechanism for regulating his dealings, whereas the illiterate person living in a remote area considers law to be the set of prevailing customs and traditions in his region.

Nevertheless, there is near-consensus on defining law as "a set of behavioral rules regulating relations between individuals within society," or "the set of binding rules regulating individual behavior within society, imposed by public authority in a manner that safeguards individuals' legitimate interests." It may also be defined as "all that people living in any community agree upon among themselves as rules organizing their common life."

Branch Two: Meanings and Uses of the Word "Law"

The word "law" is used in various senses. In the broad sense, it refers to the body of scientific knowledge related to law, known as *legal sciences* (*sciences juridiques*).

In the narrow sense, it denotes the set of legal rules issued by the competent authority in written form, *legislation* (*la loi*). It may also take another meaning: *codification* (*le code*), meaning all legal texts regulating a specific field of law, such as civil law or penal law.

Law has other meanings found in the concept of *positive law* (*le Droit positif*), the set of legal rules designated to organize life in society at a specific place and time, which change with changes in these factors. Thus, the law applied in Algeria differs from that applied in other countries. The positive law of a specific country is usually referred to as *national law* (*le droit national*).

As for the concept of law described as *subjective right* (*le droit subjectif*), it comprises those capacities granted to a person by virtue of law, such as the right to life, property, movement, work, belief, etc.

Positive law is what grants these rights to the person and undertakes their protection : "no right without law." Law clarifies and delineates persons' rights, while the right is the authority that law grants to persons to exercise their rights.

Subsection Two: Distinguishing Characteristics of Legal Rules

Legal rules are distinguished by a set of essential characteristics and features that make them the fundamental instrument for regulating relations within society. **These characteristics are :**

- The legal rule is a discourse addressed to persons.
- The legal rule is a rule of social behavior.
- The legal rule is general and abstract.
- The legal rule is binding and coupled with a sanction.

Branch One : The Legal Rule as a Discourse Addressed to Persons

Law is considered a social necessity for preserving society's security and stability, and instilling reassurance among its members.

To fulfill this function within society, it must direct its discourse to persons in order to regulate and guide their behavior in specific matters as determined by the legal rule. Thus, the person-whether natural or juridical-is the addressee of its purport and content, and is obligated to comply and submit to its provisions. All legal texts issued by the legislator charge the person, natural or juridical, with applying its provisions; it is inconceivable that it addresses anyone else.

The legal rule addresses persons in the sense of all people without discrimination based on sex, language, or origin, it may concern an individual, an entire group, or even a juridical person such as companies,

associations, or public institutions. Accordingly, law excludes from its discourse other living beings such as animals, plants, and inanimate objects.

The characteristic that the legal rule is a discourse addressed to all persons cannot be applied absolutely, even though most laws address everyone without exception, such as the Penal Code or civil law.

There are legal texts addressing specific categories of society members due to the urgent need to regulate their activities, such as the law on advocacy addressing lawyers, or the basic law of the judiciary addressing judges. The content of the discourse varies and manifests in several forms, including:

- **Discourse in the form of command** : This involves an order to perform a specific behavior constituting a legal act, such as the husband whom Article 74 of the Family Code commands to provide maintenance to his wife upon consummation of marriage.
- **Discourse in the form of prohibition** : This prohibits performing a specific behavior, as stated in the text of the relevant article.
- **Discourse in the form of authorization**: This permits performing a specific behavior permissively, such as the contracting party who falls into a substantial mistake at the time of contract formation, who may, pursuant to Article 81 of the Algerian Civil Code, request its annulment.

Branch Two : The Legal Rule as a Rule of Social Behavior

Since the legal rule is a discourse addressed to persons, its purpose is to rectify and regulate their behavior within society in a specific and particular manner. Thus, the legal rule is described as a rectifying rule for individual behavior in a defined way. When alignment is achieved between this behavior and the content of the legal rule, the purpose of law is fulfilled. The legal rule's concern is limited to regulating external human behavior without regard for internal feelings and emotions, as it has no authority over these except to the extent they are linked to external behavior.

Law does not punish hatred or animosity unless it manifests in an external act prohibited by law, such as theft or murder.

Branch Three: The Legal Rule as General and Abstract

The legal rule is distinguished by a dual characteristic it is general and abstract.

This means its discourse is directed to persons by their attributes, and it encompasses facts and acts by their conditions. If the condition or attribute is fulfilled, the legal rule applies. For example, Article 124 of Ordinance No 05-10 of the Algerian Civil Code states : "Any act committed by a person through his fault and causing harm to another obliges the perpetrator to compensate.

" This rule is general and abstract because it is not directed to a specific person or particular fact but targets all persons and damaging facts.

The legal rule retains this feature even if its scope is limited to specific categories of persons, such as merchants, lawyers, or doctors, as these categories are defined by attributes, not names, confirming the general and abstract nature as an inherent characteristic of the legal rule.

Branch Four : The Legal Rule as Binding and Coupled with Sanction

The legal rule is distinguished by the characteristic of binding force coupled with sanction, taking the form of command or prohibition.

In this sense, it does not address its addressees with mere exhortation to a specific behavior, even by way of advice as in morals, but rather in the language of command and prohibition.

It binds them to adhere to the required behavior and refrain from deviation therefrom, under penalty of the sanction it prescribes upon violation, whether the act falls under public or private law rules, or whether the legal rule is mandatory or suppletive.

The sanction is intended as the tangible deterrent effect anticipated by public authority against anyone violating the legal rule's provisions.

Sanction is a consequence of binding force, not synonymous therewith; binding force does not necessarily lead to sanction, but coupling the legal rule with sanction provides conclusive evidence of its binding nature.

Sanction is an essential element of the legal rule, as mere enactment of legal texts without it leads to instability and undermines the foundations of social order. Depriving the legal rule of sanction strips it of its legal substance, reducing it to mere recommendation or advice.

In sum, the sanction in the legal rule is what distinguishes it from other analogous social behavior rules.

Paragraph One : Characteristics of the Sanction

The sanction in the context of the legal rule is distinguished by the following characteristics:

- a) Its material and tangible nature, meaning it has an external material manifestation rather than mere moral sanction; it affects the human being in his body, liberty, or financial liability, such as imprisonment or monetary fine.
- b) It is immediate and non-deferred, applied in this world and not postponed to the hereafter, unlike sanctions for violating religious rules.
- c) It falls within the competence of public authority, which determines its type and amount in advance, and its application is entrusted to the competent public authority for its imposition ; no individual may take revenge for himself.

Paragraph Two: Types of Sanctions

The sanction for violating legal rules takes various forms depending on each branch of law; each sanction suits a specific branch without others, achieving proportionate objectives and matching the nature of the violation.

Sanctions may be classified as follows:

First: Criminal Sanction

This type arises from violating criminal law rules and is considered the most stringent; it takes the form of corporal punishments affecting the offender's body, such as the death penalty depriving the right to life, or temporary or life imprisonment, in addition to financial sanctions on liability in the form of penal fines and confiscation orders.

Second: Civil Sanction

The civil sanction appears when a person commits no criminal act under the Penal Code, such as breaching a contractual obligation, committing an act or deed causing harm to another, or an error by someone under guardianship harming another, placing it under civil liability rules, the sanction is civil, based on the nature of the act.

Civil sanction is necessary accompanying civil-character legal rules; regulating relations between individuals requires crowning it with sanction, which may take one of the following forms:

a) Direct in-kind sanction : coercing the individual to perform what he committed to but failed to execute, such as a seller refusing delivery of the sold item despite full payment by the buyer, entitling the latter to resort to competent authority to compel contract performance.

b) Indirect sanction : meaning compensation payable by the perpetrator whose unlawful act caused harm to another.

c) Annulment sanction : its concept is nullity of the legal act's effects due to a defect at formation, whether in an essential element or condition specified by law; annulment may be absolute or relative.

d) Rescission sanction : cancellation of the legal act and its past/future effects due to non-performance by one or both contracting parties of their contractual obligation as per law.

Third: Administrative Sanction

This is the sanction prescribed within administrative law, taking various forms.

If concerning violation of rules specific to administrative contracts, the sanction is either annulment or compensation.

If concerning employee errors or crimes, it may be verbal or written warning, reprimand, demotion in rank, or dismissal.

Administrative sanction is necessary to maintain order within public facilities, as the relationship between civil servants and administration requires regulatory texts; to ensure respect, it must be coupled with sanction.

Subsection Three: Comparison Between Legal Rules and Other Behavioral Rules

In addition to legal rules, other rules derived from religion, morals, and social customs contribute to rectifying individual behavior and regulating certain societal affairs, raising the issue of differentiation between these rules and classification criteria, which we shall address herein.

Branch One : Distinction Between Legal Rules and Religious Rules

Religious rules are defined as the set of principles that a group of people believe are issued by God Almighty through His prophets, in the form of commands directing people to follow specific behavioral patterns and avoid others, under penalty of divine punishment for violators.

The legal rule resembles the religious rule in that both contain discourse directed to humans to control their behavior and regulate relations, with binding force inherent to both, albeit differing in sanction forms. Notably, despite legislative evolution, the superiority of religious rules over legal rules persists, particularly in family law and personal status, which derive rulings from religious rules.

Religious rules differ from legal rules as follows:

First:

Content

Religious rules are broader and more comprehensive, encompassing worship, morals, and transactions, whereas law is limited to regulating transactions.

Second:

Purpose

Religion's rules aim to refine and educate the individual toward pure virtuous conduct toward his Creator and others; law's purpose is practical and utilitarian: preserving social order and achieving justice/equality among individuals.

Third: Sanction

The legal rule relies on material tangible sanction applied immediately post-violation, whereas religious rule sanctions are deferred to the hereafter.

Branch Two: Distinction Between Legal Rules and Moral Rules

Moral principles constitute the set of supreme ideals that people consider obligatory to follow, such as committing to truthfulness and avoiding lies, assisting others, and charity to the poor. Fundamentally, they are a set of rules governing individual behavior based on distinguishing good from evil, error from correctness, virtue from vice.

Many moral rules form the basis of legislation; legislators have adopted many and formulated them as legal rules. Examples include crimes related to morals, such as indecent acts (Articles 333 and 333 bis of the Penal Code), crimes of indecent assault (Article 336 of the Penal Code), perjury (Article 232 of the Penal Code), bribery, and encroachment on property, etc. Despite similarities and the role moral rules play alongside legal rules, they differ in several aspects, including:

First: Scope

As ideal rules, moral rules are broader and wider in scope; they concern regulating human behavior toward himself, his Creator, and others, whereas the legal rule focuses solely on external material behavior of individuals without regard for intentions or inclinations.

Second: Sanction

Violating moral rules entails only personal conscience reproach and collective condemnation; the punishment does not exceed moral sanction.

In contrast, violating a legal rule always incurs material tangible sanction anticipated by competent authority in various forms.

Branch Three: Distinction Between the Legal Rule and Customary Rules

Customs (*التقاليد*) refer to habits adopted by society members as a set of behaviors habitually and consistently practiced over time until becoming part of societal morals. From these habits and customs emerge interaction

rules among society members of utmost importance, unaccompanied by binding force-hence termed "courtesy rules" (قواعد المجاملات), as they lack sanction upon disregard or violation.

Examples include: necessity of accepting invitations, responding to greetings, visiting on occasions, supporting in hardships, etc.

Law does not deem violation thereof sanctionable, as they are non-binding and do not affect essential social interests.

The sanction for violating social rules is moral : public disapproval and contempt for the violator of customs and traditions.

The purpose of these rules is strengthening interpersonal bonds, making them closer to moral rules.archive.

Subsection Four : Relationship Between Law and Other Scientific Disciplines

Proceeding from the idea that law is a set of rules aimed at regulating individual behavior and emergent relations, it may be said to belong to the social sciences category, inherently linked to other branches of the same category, such as economics, politics, sociology, and psychology.

Branch One: Relationship Between Law and Economics

Economics is the set of systems governing economic activity in its various manifestations—production, distribution, consumption—or the science studying resource management and transformation forms.

Economics has a strong relationship with law, as the latter studies laws chosen by society, translating economic reality.

Success of any economic activity depends on the efficacy of adopted management rules, highlighting the strong bond between economic activity (result) and legal system (means). This relationship manifests in two forms:

First: Law's Impact on Economics

Legislators may resort to law to establish a legal system regulating economic activity in a manner serving and responding to the prevailing political system's orientations.

These rules typically govern production and distribution processes according to state priorities/strategies, including:

- Rules regulating consumption, aiming to limit certain goods via texts capping consumption through production/import bans or price hikes to reduce consumption.
- Rules regulating production to provide essential goods/services, prioritizing them over others.

Second: Economics' Impact on Law

Law is influenced by economics whenever the latter operates independently and expands in scope/volume, imposing itself on law.

Diversity/evolution of economic fields and related activities compelled states to recognize it, enacting suitable legal texts ensuring protection and dynamism preservation. Thus, every new economic activity necessitates state intervention via legal texts for consecration/protection, such as e-commerce law accompanying digital economic activity.

Branch Two: Relationship Between Law and Political Science

Law connects to politics by dedicating part of its rules to the state's political system, elucidating-pursuant to its rules-the form of government, public authority organization, authorities' operation, separation principles, and public bodies' activities managing/running public facilities.

Branch Three: Relationship Between Law and Sociology

Sociology is the science concerned with studying social phenomena, social systems, humans and their relation to environment/society, covering: human behavior/interaction; social structure/system; patterns/phenomena; human society.

Sociology's relationship with law is constant, as law needs sociology to identify prevalent societal phenomena, uncover individual/group behaviors for enacting laws/regulations organizing them-especially if

threatening social order. Thus, every new social phenomenon emerging prompts law's intervention for regulation/combating.

Branch Four : Relationship Between Law and Psychology

Psychology is the science researching/studying persons' psychological aspects to uncover true intentions/inclinations for truth ascertainment-the latter humans conceal by nature, masking with material appearances not reflecting overt behavior. Humans always deny responsibility if harm results from their act, for example.

Law utilizes psychology in several fields, including:

Criminal Liability: Most penal codes exempt the accused if mental illness/incapacity proven; verification requires psychology/psychiatry (see Articles 21 and 47 of Algerian Penal Code).

Penal Policy and Offender Treatment: Modern trend recognizes individualized punishment/special treatment per offender category, especially juveniles, for psychological therapy over punishment.

General Law Application: Judges enlist psychologists to assess witness testimony veracity before them, analyze perpetrator psychology, determine criminal intent presence/absence.

Chapter Two: Divisions of Law and Its Sources

Law is divided into public law and private law, and legal rules are in turn divided into mandatory rules and suppletive rules. This division is among the oldest and most common divisions of law in most contemporary countries, particularly those following the Latin system, unlike Anglo-Saxon countries that do not recognize this division.

We shall clarify the bases of this division, its importance, the various branches of law, and the adopted classifications of the legal rule.

Section One: Division of Law Between Public and Private

Law divides fundamentally into two main branches: public law and private law. Before addressing each's concept and scope, it is necessary first to clarify the bases, criteria, and benefits of distinguishing between the two branches.

Subsection One: Bases and Criteria for Dividing Law into Public and Private

Public law comprises the set of rules regulating relations between two parties where one or both act in a sovereign and authoritative capacity, such as the state or one of its branches.

Private law, conversely, comprises the set of rules regulating relations between two parties where neither acts as sovereign or authoritative over the

other, such as natural persons, private juridical persons, or the state or its branches when engaging in activities akin to individuals.

Thus, public law may be said to represent and protect state interests and public interests, while private law regulates and protects individuals' private interests, whether natural or juridical persons, Accordingly, we inquire into the bases of this division and its consequences.

Branch One : Criteria Distinguishing Law

Jurisprudence has endeavored to identify fundamental criteria enabling distinction between public and private law, The proposed criteria are numerous and varied; we shall mention the most important:

First:	Formal	Criterion
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Some jurists rely on the form of rules constituting each law. Public law consists of mandatory rules that parties may not derogate from, as law of command and control; private law rules are suppletive, allowing parties to agree on contrary terms as law of liberty and party autonomy.

However, this criterion cannot apply absolutely, as many public law rules-such as constitutional rules-are dedicated to protecting individual rights, while some private law rules are mandatory and non-derogable, such as personal status and family law rules.

Second:	Substantive	Criterion
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Proponents hold interest as the distinguishing tool, jurist Aubry views

First-Public authority aims at public interest, requiring special privileges not grantable to individuals pursuing personal interests, which public law provides the state.

Second-Public law governs state-individual relations per domination-submission principle; private law governs equal-party relations.

Third-In contracts, administration concluding agreements with individuals enjoys unilateral modification power and sanction imposition for non-performance; equality principle inapplicable as in private law, lest depriving administration of authority and impeding public interest.

Fourth-Public funds subject to public law regime differing from private law; impermissible to dispose, sell, pledge, seize by prescription.

Fifth-Administrative courts have jurisdiction over state-individual disputes governed by public law rules; ordinary courts over disputes governed by private law rules.

Sixth-Public law rules govern state employee relations; private law governs private sector employee-employer relations.

Subsection Two: Branches of Public Law

Public law divides into external public law-where state intervenes as sovereign in relations with other states or international organizations like United Nations-and internal public law, where state exercises authority/sovereignty regulating relations with natural/juridical persons.

Branch One : External Public Law (Public International Law)

This branch encompasses public international law rules regulating state relations with other states in war/peace, and with intergovernmental organizations.

In peace, these rules govern state recognition within international community, international transactions principles, treaty conclusion mechanisms, peaceful dispute settlement means. In war, they regulate declaration modalities, conduct rules, prisoner treatment. This law also establishes mechanisms regulating state relations with international/regional organizations.

Some jurists deny this branch's necessity due to absent superior international authority imposing sanctions on violators; yet international community recognizes its legitimacy, continuously developing/activating international intervention mechanisms.

Branch Two: Internal Public Law

This comprises legal rules regulating relations between state/its branches and natural/juridical persons, or between state and its branches, including branches: constitutional law, administrative law, financial law, criminal law.

Paragraph One: Constitutional Law (le droit constitutionnel)

Constitutional law is state's fundamental law addressing citizens, defined as

rules elucidating prevailing governance system (republican, monarchical, presidential, parliamentary), economic system nature (liberal, popular, communist), public authorities' organization/operation/duties/relations.

It covers civil/political/economic/social/cultural individual rights (equality, intellectual/religious freedom, expression, etc.), plus public duties (national defense, tax payment, etc.).

Paragraph Two: Administrative Law

Set of rules regulating executive authority performance; it manages/runs subordinate bodies/institutions and state public facilities, subjecting it to administrative law rules.

This law includes rules regulating administration-subjects relations, inter-administration relations, administrative decisions/contracts, administrative dispute settlement procedures before administrative judiciary.

Paragraph Three: Financial Law

Rules regulating state finances, primarily identifying revenue sources (fees/taxes), expenditure means, budget preparation/execution modalities, oversight mechanisms. Financial law is recently independent from administrative law.

Paragraph Four : Criminal Law

Rules defining crimes, prescribed penalties, procedures for

apprehending accused, investigation, trial, punishment imposition, plus competent courts.

This definition reveals criminal law encompasses two rule types:

First: Substantive Rules-Collectively forming Penal Code: state-enacted texts defining crimes/penalties. Algerian Penal Code first issued by Ordinance 66/156 dated June 8, 1966, plus criminal liability rules, aggravating/mitigating circumstances, crime classification, defining each crime/related penalties.

Second: Formal/Procedural Rules-known as Criminal Procedure Code: rules regulating public action proceedings from search/investigation to trial/appeal. Algerian Criminal Procedure Code first issued 1966 by Ordinance 66/155.

Subsection Three: Branches of Private Law

Private law divides into numerous branches encompassing legal rules regulating relations between parties neither acting with sovereign authority over the other.

Key private law branches : civil law, commercial law, maritime/aviation law, labour law, civil/administrative procedure law.

Branch One: Civil Law

Civil law is the primary/fundamental branch of private law, encompassing rules regulating personal-character relations between individuals, commonly termed personal status rules and real status rules.

Civil law is considered the general charter in private law relations, such that its rules apply to all relations lacking specific provisions in other branches.

It includes rules on legal capacity (الأهلية), property definition/classification, obligations and various contracts (sale, lease, contracting, etc.), real rights (الحقوق العينية الأصلية), in addition to subsidiary real rights. The Algerian civil legislation was issued by Ordinance No. 75/58 dated September 26, 1975, comprising four books dedicated successively to: general provisions, obligations and contracts, principal real rights, subsidiary real rights, and branches of personal status.

Branch Two: Commercial Law

Commercial law may be defined as the set of rules regulating relations arising from commercial transactions. It encompasses rules defining merchants and commercial acts, commercial contracts, companies, commercial papers, and all pertaining to commercial activity in its multiple manifestations.

Commercial law constitutes an independent branch from civil law rules due to trade movement evolution nationally/internationally and pressure for swift/effective legal alternatives regulating commercial relations.

Subsidiary laws of special nature branched from commercial law due to commercial relations diversification: competition law, consumer protection law, industrial property law, credit/money law, etc.

The first Commercial Code was issued September 26, 1975 by Ordinance 75/59, subject to numerous amendments adapting it to commercial reality, latest by Law 15/21 dated December 30, 2015.

Branch Three: Labour Law

Labour law is defined as the set of rules regulating workers' legal relations-a relatively modern branch emerging mid-19th century due to production development post-Industrial Revolution, leading to dominant monopolistic forces imposing arbitrary logic on workers, necessitating special legislative organization protecting workers/employers equitably.

Labour law regulates: working hours/conditions, daily/weekly rest periods, holidays, wage regulation, union rights exercise, termination cases, foreign employment rules, etc.

In Algeria, since Ordinance 75/30 dated April 29, 1975 on legal working duration, to Law 08/08 dated 2008 on social security disputes, over

twenty (20) legislative texts regulate labour relations in public/private sectors or social security/labour disputes.

Branch Four: Maritime and Aviation Law

Just as commercial law detached from civil law, maritime navigation circumstances/surrounding risks necessitated maritime law independence from commercial law to regulate maritime navigation activities.

Thus, it is defined as the set of legal rules regulating commercial relations arising from maritime navigation, covering navigation instrument (ship) construction, equipping, owner-captain/crew relations, owner liability, insurance issues, all resultant acts, plus maritime exploitation forms (ship chartering, goods/passenger transport), fishing zones determination, maritime inspection procedures, maritime dispute resolution methods, etc.

Maritime law derives texts primarily from legislation, supplemented by international conventions/customary maritime law. Algerian maritime legislation issued 1976 by Ordinance 76-80.

Aviation law comprises rules regulating air navigation/commerce-a branch emerging from air transport importance in modern era-covering aircraft definition/types, state sovereignty over airspace, airworthiness certificates, takeoff/landing rules, prohibited carriage items, suppressing onboard crimes, etc. Algerian Civil Aviation Law issued 1998 by Law 98/06 (232 articles); previously, most texts scattered in international conventions as primary source.

Branch Five: Law of Civil and Administrative Disputes

This law may be defined as the set of rules regulating litigation procedures before ordinary/administrative courts from claim filing to final judgment/decision issuance and enforcement modalities by legal means.

It specifies procedures for right protection via judiciary: judicial organization description, jurisdictional competence/hierarchy/composition, claim filing principles/proceedings, incidents/proof methods, judgment issuance/appeal means, enforcement mechanisms favoring one party.

Debate arose on classifying it as private law branch despite procedural rules posited by authority holder; evidence includes: civil/administrative procedure law principle that litigation belongs to parties-they initiate, submit requests/defenses, provide supporting/negating evidence; they hold rights, may abandon litigation/waive rights-unlike public action rules prosecuted by public prosecutor on society's behalf, where victim lacks punishment imposition power.

Algerian civil/administrative procedural rules governed by Law No. 08/09 dated February 25, 2008 on Civil and Administrative Procedure Law.

Branch Six: Private International Law

Set of rules regulating relations between persons involving foreign element, determining applicable rules, competent court for disputes, foreign judgments/orders enforcement procedures. Examples: Algerian marrying

Tunisian, Algerian buying French good for resale in Tunisia, owning property abroad.

Via its texts, it regulates:

- 1) Conflict of laws rules determining applicable law for relations with foreign element among several laws.
- 2) Conflict of jurisdiction rules determining competent court for foreign-element disputes.
- 3) Nationality rules.
- 4) Foreign judgments/orders enforcement rules.
- 5) Foreigners' status.

This branch's contours appear in Algerian legislation via assignment rules in amended Civil Code 2005 by Law 05-10, plus Nationality Law issued by Ordinance 70-86 (1970), amended/supplemented by Ordinance 05-10 (2005).

Subsection Four : Division of Legal Rules Between Mandatory and Suppletive

Legal rules divide by binding force on individuals into mandatory (أمرية) and suppletive/m dispositive (مكملة) rules. This distinction stems from necessity of scope where legal organization exhibits binding degree compelling individuals' response to law's commands/prohibitions achieving public interest assessed by legislator; outside this, law grants parties liberty

confronting its rules to organize activities as they deem balancing their interests.

Accordingly, legal rules divide into mandatory and suppletive.

Branch One : Mandatory Legal Rules

Significant jurists defined this rule type : Egyptian doctrine as "binding rules individuals may not contravene, posited to preserve public order and morals » ; "rule leaving no choice to addressees to follow or not, but obligatory in all cases."

French doctrine : "rule impossible to evade." Regardless of definition, it means rule mandatorily applicable to all society members; any contrary agreement unenforceable.

Legislator resorts to mandatory rule when public order or society's superior/fundamental interests at stake; such issues must be imperative, lest public order concept vanish if individuals free to contravene.

Examples: constitutional texts, penal texts prohibiting theft/murder/assault, tax performance texts, contract legality, etc.

Branch Two: Suppletive Rule

Suppletive rules may be defined as those regulating individual behavior/relations specifically, yet parties may contravene or agree contrary

thereto without one dominating other; binding only absent agreement/parties' will.

Suppletive rules have other designations like relative/interpreting, but "suppletive" closest reflecting complementary role embodying contractors' will, highlighting parties' position: not liberty restraint, as they may agree contrary thereto regulating relations not affecting public interests.

Examples of suppletive rules include texts permitting seller/buyer to defer delivery of sold item/purchase price to later time/place per their will (see Article 387 of Algerian Civil Code), or those requiring lessor to perform necessary repairs on leased property absent contrary agreement.

Branch Three: Criteria Distinguishing Mandatory from Suppletive Rules

Distinguishing mandatory from suppletive rules holds utmost importance due to consequences of deeming rule mandatory: invalidating contrary agreement (annulment sanction entailing differing legal effects from suppletive violation, permitting contrary agreement).

Necessarily, distinguishing criteria between these rule types must be sought.

One: Formal / Literal Criterion

Requires scrutinizing drafting mode, delving into wording/phrasing embodying legal rule in written form. Mandatory if containing phrases:

"prohibited" (لا يجوز), "forbidden" (يمنع), "banned" (يحظر), "impossible" (لا يمكن), "must" (يجب), "null" (يقع باطلا), "void" (يكون لاغيا); or phrases implying sanction on violators (act/omission).

Examples: Family Code Article 46 "Adoption prohibited by Sharia and law"; Article 33 "Marriage contract void if consent element lacking".

Conversely, suppletive if text contains "permissible unless agreement provides otherwise" (يجوز ما لم يقتضي الاتفاق بخلاف ذلك), "absent provision to contrary" (ما لم يوجد نص يقضي بخلاف ذلك). Examples: Civil Code Article 92 "Obligation object may be future thing..."; Article 368 "If delivery to buyer required, delivery perfected upon receipt absent contrary agreement".

Two: Substantive / Interest Criterion

Entails examining rule meaning to ascertain protected interests importance. If linked to vital/fundamental societal interests, mandatory—individuals may not agree contrary thereto. Conversely, if concerning individuals only absent vital public interests, contrary agreement permissible as suppletive.

Jurisprudence formulates: mandatory rule connects to public order (النظام العام)—set of basic indispensable rules for social organization individuals cannot exclude as transcending private to public interests.

Public order's breadth/vital interests vary by time/place/philosophy necessitates flexible criterion accommodating numerous rules.

Section Two: Sources of Law

Studying law sources examines diverse means whereby state expresses will capable of generating infinite legal rules. Primary law source : state will; state expresses via legislation, custom, Islamic Sharia reliance, natural law. Given legal rules multiplicity/state will expression diversity, enumerating legal rule sources necessary.

"Source" means origin whence legal rule derives, determining positive law (القانون الوضعي) applied law at specific time/place, Jurists distinguish formal/interpretive sources. Per Algerian Civil Code Articles, primary source binding individuals: legislation; absent, apply Islamic Sharia rulings; absent, customary rules (العرف); absent, justice/natural law principles.

This general principle admits exceptions : some laws adopt contrary source hierarchy.

Administrative law precludes Islamic Sharia in administration management—administrative judiciary substitutes as secondary source post-legislation.

Commercial Code Article 1 bis explicitly: "Commercial Code governs merchant relations; absent provision, civil law/applicable trade customs.

Family Code Article 222: Absent provision herein, refer to Islamic Sharia rulings.

Conversely, some laws rely solely on legislation: Penal Code/related laws per constitutional legality of crimes/penalties principle (Article 43 Constitution; Penal Code Article 1).

We shall clarify formal/interpretive sources.

Subsection One: Formal Sources of Law (Legislation as Formal Source)

Legislation constitutes formal law source per Algerian Civil Code Article 1, with clear precise meaning plus characteristics/features as follows:

Branch One: Definition of Legislation

Legislation denotes every written legal rule issued by public authority pursuant to prevailing constitutional rules; or competent state authority positing binding behavior rules in written form within competence scope per prescribed procedures-also termed legislative process-typically as laws (civil, penal, commercial, maritime codes, etc).

Branch Two: Characteristics of Legislation

For texts from legislative authority to qualify as legislation, following must obtain:

First: Written form-official document specifying meaning/imposition, achieving legal rule definiteness/stability excluding ambiguity/uncertainty.

Second: Issued generally/abstractly/bindingly; thus, authority order targeting specific person/particular fact not legislation.

Third: From competent authority per law-granted powers/privileges.

Branch Three: Advantages and Disadvantages of Legislation

First: Legislation prima facie contains clear rules; chief merit: written official document enabling individuals comprehension/assimilation, knowing enforceability date/application scope.

Second: Achieves legal unity; issuance by competent authority expressly manifests will, avoiding regulatory ambiguity.

Third: Responds swiftly to societal needs: legislative process enables new text issuance/amendment/abrogation confronting exigency per authority will.

Fourth: Enables foreign law borrowing; most states import legal systems from others, adapted to society circumstances/needs.

Disadvantages:

First: Legislation not always reflecting societal needs; state posits/imposes legal rule, often serving its interests against individuals.

Second: Written rules rigid/inflexible pre-determined phrasing incapable development confronting novel circumstances.

Despite defects, legislation remains primary/modern law source in most states, except Anglo-Saxon (UK) relying on custom/equity/judicial precedents as primary.

Branch Four : Types of Legislation

Hierarchy: Constitution highest, followed ordinary then subsidiary legislation.

Paragraph One : Fundamental Legislation (Constitution)

Constitution occupies apex in state legal pyramid, comprising legal rules elucidating governance system, public authorities therein, inter-relations, individual rights/duties; all state laws derive principles/rulings therefrom, non-derogable.

Algerian Constitution (2022) covers:

- State political system/basic principles governing Algerian society.
- Public rights/freedoms.
- Three powers organization.
- Constitutional oversight mechanisms.
- Constitutional amendment matters.

The Constitution is promulgated through various methods, varying with circumstances of its drafting : as grant from rulers, covenant/agreement between ruler/ruled, product of elected constituent assembly, or directly by people via popular referendum as occurred in Algeria 1996.cte.

Combining elected constituent assembly work with popular referendum is most consonant with democracy principles, deeming people sovereignty source.cte.

For constitutional amendment, flexible constitutions amend via ordinary law procedures; rigid ones require special procedures. Algerian Constitution specifies amendment methods:

- Presidential initiative : via popular referendum post-parliament chambers approval per Article 219, or parliamentary vote post-Constitutional Council approval on content, in joint session with three-quarters members approval (Article 221).
- Parliamentary initiative per Articles 222-223: chambers jointly propose amendment, sent to President for approval via popular referendum (acceptance/rejection).

Paragraph Two: Legislation Issued by Parliament

Algerian Constitution Article 114: legislative power exercised by bicameral Parliament (National People's Assembly, Council of the Nation) sovereign in law-making/voting.

Law initiative right for Prime Minister/deputies/Council members. Prime Minister projects discussible post-State Council opinion/Cabinet approval, deposited at National Assembly or Council secretariat per case.

Council secretariat for local organization/region preparation/partition laws; otherwise National Assembly secretariat.

Parliament legislates per Articles 139-140 exclusively:

Organic Laws : Fundamental laws complementing Constitution on essential issues linked to governance system/basic freedoms/authorities operation.

Parliament enacts organic laws on: public authorities organization/operation; elections system; political parties law; media law; National Assembly/Council organization law; Supreme Court/State Council/Conflicts Court organization law; Higher Judicial Council composition law; State Supreme Court composition law.

Organic law requires absolute majority (half +1) National Assembly deputies/Council members, then Constitutional Council review for constitutionality.

Ordinary Laws :Except organic laws (Article 140), Parliament legislates remaining Article 139 fields via ordinary laws post-present members majority vote per chamber (Article 118)—not absolute majority.

Covers 30 exclusive fields: persons' rights/duties; nationality rules; state budget vote; general public domain/population rules; education/scientific research general rules, etc.

Legislation Issued by Executive Authority : Broadly laws issued by President/Prime Minister as ordinances/regulations.

First- Presidential Ordinances (*les ordonnances*) : President legislates urgently during National Assembly vacancy/parliamentary recess post-State

Council opinion/Constitutional Court opinion (10 days), submitting to chambers first post-vacancy/recess session.

Ordinances void if Parliament disapproves—in ordinary cases, Exceptional cases per Article 98 (imminent danger threatening security/independence/stability warranting emergency declaration): President legislates via ordinances post-Cabinet meeting.

Second- Regulations (*les règlements*): Executive authority's regulation field broader than law; Parliament cannot legislate beyond specified fields, nor President. Constitution Article 141 grants executive legislation via regulations outside law fields.

President's termed regulatory decrees (*مراسيم تنظيمية*); Prime Minister's executive decrees (*مراسيم تنفيذية*). Issuance extends to ministers/central/local authorities within law limits.

1. **Regulatory Decrees (*مرسوم رئاسي*)**: Equivalent to laws legislated by President outside Parliament competence, e.g., public procurement Ordinance 15/247 dated January 16, 2015 regulating public procurement/public facility delegations.
2. **Executive Decrees**: Prime Minister competence (Article 141); apply Parliament/Presidential decrees laws, containing general principles/basic requirements, detailing via "executive decree."
3. **Control Decisions/Police Regulations**: Applicative texts from executive head/ministers/directors (security/health) within

competence, constitutional despite lacking legislative link—clarifying public security/health/tranquility preservation, e.g., traffic/health regulations.

Four- Legislation Enforceability : Legislation effective from drafting, ending repeal. "Legislation" here, legislative authority texts subject to special protracted publication/enforceability procedures.

Law Enactment Stage (Proposal) : Initial stage; Constitution Article 143: Prime Minister/deputies/Council members law initiative right. Prime Minister: "law project"; deputies/Council: "law proposal."

Distinction: proposal referred to proposals committee for law drafting given National Assembly composition (people's representatives lacking sufficient legal culture); project directly to Parliament as pre-drafted legally by experts.

Article 143-2: law projects Cabinet-reviewed post-State Council opinion, deposited Prime Minister at National Assembly/Council secretariat per Article 144-1

Post-specialized committees examination/reports, presented Parliament/discussed/amended; mandatorily National Assembly then Council. Organic laws require absolute majority; ordinary present majority. Disagreement: equal-member chamber proposes dispute text, chambers approve unamendable absent government consent.

Persistent: government requests National Assembly decision or withdraws disputed text.

Ratification Stage : Post-chambers discussion/vote approval, mandatorily submitted President for opinion pre-promulgation/publication.

Ratification: Presidential approval per Article 148.

Via:

- Project delivery post-Parliament ratification.
- President 30-day period from receipt for approval/objection; approval promulgation/publication; objection → Parliament redrafting/discussion, two-thirds chambers vote, immediately promulgate post-second approval.
- Silence post-30 days deems approval, mandatory promulgation.
- Constitutional Court notification halts 30-day count; no promulgation pre-resolution.

Publication and Enforceability Stage : Beyond enactment/ratification, mandatory publication for public knowledge; unreasonable enforceability pre-notification. Via legally specified means.

Publication medium: Official Gazette; other media (daily/weekly papers, radio/TV) auxiliary information dissemination.

Algerian Civil Code Article 4: "Laws apply Republic Algerian Democratic People's Territory from Official Gazette publication day."

Effective Algiers post-full day publication ; other areas post-full day Gazette arrival at wilaya headquarters, attested by wilaya stamp on Gazette-Gregorian calendar absent contrary provision.

Law Repeal : Law repeal terminates enforceability/precludes application from termination date-express or implied. Civil Code Article 2 expressly: express repeal via new rule disclosing prior rule abrogation, via laws' final provisions explicitly, or post-fixed term (temporary laws).

Implied repeal: new law reorganizes subject implying prior texts repeal, or prior/new legislation conflict.tribunaldz.

Examples of suppletive rules include texts permitting the seller and buyer to postpone delivery of the sold item and payment of the price to a later time and place of their choosing pursuant to their will (see Article 387 of the Algerian Civil Code), or those requiring the lessor to undertake necessary repairs on the leased property absent agreement to the contrary.

Branch Three: Criteria for Distinguishing Mandatory from Suppletive Rules

Distinguishing mandatory from suppletive rules is of utmost importance due to consequences of classifying a rule as mandatory: nullity of contrary agreement, entailing legal effects differing from suppletive

violation permitting derogation. Necessarily, criteria distinguishing these rule types must be examined.

Paragraph One: Formal or Literal Criterion

Necessitates examining drafting mode, scrutinizing wording/phrasing formulating the legal rule in written form. Mandatory if containing: "shall not be permitted" (لا يجوز), "prohibited" (يمنع), "banned" (يحظر), "impossible" (لا يمكن), "must" (يجب), "null and void" (يقع باطلاً), "lapsed" (يكون لاغياً); or phrases implying sanction on violators (positive/negative acts). Examples: Family Code Article 46: "Adoption prohibited by Sharia and law"; Article 33: "Marriage contract void if consent element absent".

Conversely, suppletive if containing "permissible unless agreement provides otherwise" (يجوز ما لم يقتض الاتفاق بخلاف ذلك), "absent provision to contrary" (ما لم يوجد نص يقضي بخلاف ذلك).

Examples: Civil Code Article 92: "Obligation object may be future..."; Article 368: "If delivery to buyer required, perfected upon receipt absent contrary agreement".

Paragraph Two: Substantive or Interest Criterion

Involves probing rule meaning to ascertain protected interests' importance. Linked to vital/fundamental societal interests mandatory, non-derogable.

Solely individual interests absent vital public ones suppletive, derogable. Jurisprudence encapsulates: mandatory rule pertains to public

order (النظام العام) basic indispensable social organization rules individuals cannot exclude, transcending private to public interests.

Public order breadth/vital interests varying by time/place/philosophy requires flexible criterion accommodating rules.

Section Two: Sources of Law

Law sources study diverse means whereby state manifests will generating infinite legal rules, Primary source is state will expressed via legislation, custom, Islamic Sharia reliance, natural law.

Legal rules multiplicity/state will diversity necessitates enumerating sources.

"Source": origin whence legal rule derives for positive law (القانون الوضعي) specific time/place applied law. Jurists distinguish formal/interpretive.

Algerian Civil Code Article 1: primary binding source legislation; absent, Islamic Sharia rulings; absent, custom; absent, justice/natural law principles.

General principle admits exceptions: administrative law precludes Sharia in administration—judiciary secondary post-legislation.

Commercial Code Article 1 bis: "Governs merchant relations; absent, civil law/trade customs."

Family Code Article 222: "Absent herein, Islamic Sharia."

Penal Code/related: legislation only per crimes/penalties legality (Constitution Article 43; Penal Code Article 1).

Clarify formal/interpretive sources.

Subsection One: Formal Sources (Legislation as Formal Source)

Legislation primary formal source (Civil Code Article 1), clear/precise meaning plus characteristics:

Branch One : Legislation Definition

Written legal rule issued by public authority per constitutional rules; or competent authority positing binding written behavior rules within competence/procedures legislative process typically laws (civil/penal/commercial/maritime, etc).

Branch Two: Legislation Characteristics

Qualifying legislative texts require:

First: Written-official document specifying meaning/binding, ensuring definiteness/stability excluding ambiguity.

Second: General/abstract/binding; specific person/fact order not legislation.

Third: Competent authority per law powers/privileges.

Branch Three: Legislation Advantages/Disadvantages

Advantages:

First: Clear rules; written official document aiding comprehension/enforceability date/scope.

Second: Legal unity; competent authority explicit will avoids ambiguity.

Third: Swift societal needs response: new/amend/repeal confronting exigencies.

Fourth: Foreign borrowing/adaptation to society.

Disadvantages:

First: Not always reflecting needs; state-imposed serving its interests.

Second: Rigid/inflexible pre-phrased incapable novel circumstances adaptation.

Legislation remains primary modern source except Anglo-Saxon (UK: custom/equity/precedents).

Branch Four: Legislation Types

Hierarchy: Constitution apex, ordinary, subsidiary.

Paragraph One: Fundamental Legislation (Constitution)

Legal pyramid apex, rules elucidating governance/public authorities/inter-relations/rights/duties; laws derive therefrom non-derogably.

Algerian Constitution 2022 covers political system/principles; rights/freedoms; powers organization; constitutional oversight; amendments.

Promulgated variously per drafting circumstances: rulers' grant, ruler-ruled covenant, elected constituent assembly product, popular referendum (Algeria 1996).cte.

Constituent assembly + referendum most democratic, people sovereignty source.cte.

Amendment: flexible via ordinary procedures; rigid special.

Algerian specifics:

- Presidential: referendum post-chambers (Article 219), or Parliament post-Council (joint three-quarters, Article 221).
- Parliamentary Articles 222-223: joint proposal to President referendum.

Paragraph Two: Parliamentary Legislation

Article 114: bicameral Parliament (National Assembly/Council of Nation) sovereign law-making. Initiative: Prime Minister/deputies/members. Projects: State Council/Cabinet post, deposited secretariats per case (local: Council; other: Assembly).

Article 139-140 exclusive:

Organic Laws: Complement Constitution essentials (governance/freedoms/authorities); absolute majority then Council constitutionality.

Ordinary: Remaining Article 139 fields, present majority (Article 118); 30 fields e.g. rights/duties, nationality, budget, public domain, education.

Paragraph Three: Executive Legislation
Broad laws by President/Prime Minister: ordinances/regulations.

Presidential Ordinances: Urgent vacancy/recess post-Council/Court (10 days), chambers post-session; void if disapproved.

Exceptional Article 98 (emergency): Cabinet ordinances.

Regulations: Broader; Article 141 executive outside law fields. Presidential regulatory decrees; Prime Minister executive. Ministers/central/local within law.

1. **Regulatory Decrees** (مرسوم رئاسي): Laws outside Parliament, e.g. public procurement Ordinance 15/247 (2015).
2. **Executive Decrees:** Apply laws/Presidential decrees.
3. **Control Decisions:** Security/health etc. constitutional despite non-legislative link-public security/health/tranquility (traffic/health).

Paragraph Four: Legislation Enforceability
Effective drafting to repeal; legislative texts special publication/enforceability.

Enactment (Proposal): Article 143 initiative; project (PM)/proposal (members). Committees/reports , chambers mandatory Assembly then Council. Organic absolute; ordinary present.

Dispute equal chamber, unamendable absent government; persistent Assembly/government withdrawal.

Ratification: President 30 days approval/objection , promulgation/publication or return two-thirds mandatory. Silence approval, Court halts 30 days pre-resolution.

Publication/Enforceability: Official Gazette mandatory public knowledge unreasonable pre-notification auxiliary (papers/radio/TV).

Civil Code Article 4: Territory application from publication. Algiers full day post; others Gazette wilaya arrival attested stamp—Gregorian absent contrary.

Repeal: Terminates enforceability. Article 2 express: new disclosing prior abrogation (final provisions/temporary expiry).

Implied: new reorganization/conflict.

Subsection Two: Islamic Sharia Rulings as Law Source

Per Civil Code Article 1, Islamic Sharia first subsidiary Algerian law source, followed custom/natural law/justice.

Branch One: Islamic Sharia Meaning/Sources

Linguistically: straight path/method; Quran Al-Jathiya 18: "We placed you on a Sharia from the command, so follow it..." not legislation but God's rulings via prophets (belief/action).

Islamic Sharia: principles/rulings ordained by God Muslims bound to obey commands/avoid prohibitions. Consensus four sources:

1. **Quran**: God's speech revealed to Prophet Muhammad via Gabriel, Arabic, miracle/challenge shortest sura, mutawatir transmission.
2. **Sunnah**: Prophet's verified sayings/acts/approvals.
3. **Ijma'**: Post-Prophet mujtahids consensus on Sharia ruling (e.g. Quran mushaf compilation, marriage sans mahr naming).
4. **Qiyas**: Analogizing non-textual incident to textual one sharing illah.

Branch Two: Islamic Sharia Status in Algerian Law

Special place in Algerian society/law; Constitution Article 2: "Islam state's religion."

Civil Code Article 1 : first subsidiary source.

Legislation primary/constitutive of positive law branches rests on Sharia-derived general principles; impermissible legislating contrary Sharia lest incoherence. Civil law/family/personal status derive from Sharia.

Sharia material/historical source beyond personal status: many real status rules Sharia-based (written proof/witnesses debt contracts; good faith obligations; deposit preservation; civil liability). Penal Code Sharia-based (prohibiting theft/embezzlement, murder, breach trust, indecency/incest, assault).

Sharia material legislation found but subsidiary absent legislative text.

Subsection Three: Custom as Subsidiary Law Source

Historically predating formal sources; no legislative authority needed—spontaneously forms per community needs/belief binding with material sanction matching unwritten legal rule-generating custom.

Another sense: unwritten rule from habit. Custom source not authority-posed but individuals' behavior/habit.

Some jurists (Savigny) deem official source as community conscience/will/nature expression; persists remote areas; governs trades (professional customs); Anglo-Saxon (England) primary with precedents; Commonwealth/Latin-German systems secondary; international law primary state/organization relations.

Current decline due state written texts adapting novelties vs. slow custom formation.

Branch One: Custom Definition/Importance

Custom: rules arising from people's habituation to specific behavior in social life facet engendering binding belief/violation material sanction—non-written legal rule generator.

Branch Two: Custom Advantages/Disadvantages

Paragraph One: Advantages

- Spontaneous community expression of majority-approved behavior rules—authentic collective will.
- Flexible adapting social circumstances.

Paragraph Two: Disadvantages

- Unwritten unlike legislation—content determination difficulties.
- Slow formation/evolution per habituation/binding perception duration.
- No state law unification—varies regions/wilayas/intra-region.

Branch Three: Pillars of Custom

Custom rests on two essential pillars: material pillar (habituation to regulated behavior) and moral pillar (primarily binding conviction tied to behavior repetition).

Paragraph One: Material Pillar

Repeated application of specific habit; custom forms via persons' repeated application in specific place/long duration same habit, instilling stability/strength in customary rule.

Material pillar requires:

First: Habit generalness-essential for behavioral rule acquiring legal status; not if one person wills, but general behavior. No need nationwide/all strata; local/specific group (merchants/farmers) suffices.

Second: Habit ancient/regular-long societal adherence required; no fixed duration, left to subject judge discretion.

Consequent: continuous/renewed adherence sans temporary interruption-continuity/regularity essential.

Third: Habit compliant public order-legitimacy-derived; rule elevating to legal requires non-contravention public order. Contravening behaviors (vendetta/prostitution/alcohol) disregarded.

Paragraph Two: Moral Pillar

Conviction habituation engenders is binding as customary legal rule; its presence distinguishes custom from resembling contractual habit (العادة الاتفاقية).

Modern jurists posit binding condition: authority recognition of custom's bindingness; modern state permits customary rule application only if recognized expressly (legislation referral) or impliedly (silence on field applying custom).

Branch Four: Distinction Between Custom and Contractual Habit/Agreement

Custom/habit often resemble; some deem custom habit, sharing material pillar differing others. Custom requires material/moral pillars; contractual habit only material—raising judge application necessity absent suitable prior source.

Contractual habit: general/abstract behavior parties follow generally/habitually/repeatedly sans binding conviction as law, adherence volitional/transactional. Examples:

- Adding 5% cotton weight, 15% vegetables, fruits by count.
- Working partner entitled two-thirds profits vs capital partner's one-third.

Distinctions :

1. Individuals cannot plead ignorance excluding customary rule (binding); contractual habit ignorance excuse/non-application absent agreement.
2. Custom existence presumed judicially (judge deems knowledge), despite difficulty especially local.

Branch Five: Role of Custom

Modern legislation-reliant societies cannot dispense custom; legal rules cannot govern complex social relations/bonds-custom complements legal deficiencies.

Custom binding basis societal implicit consent via non-objection; legislator consent via non-objection/explicit application.

Binding foundation: necessity organizing society justly—complementary/auxiliary to legislation.

Paragraph One: Custom Complementary to Legislation

Primary role as subsidiary source: fill legislative gaps resolving disputes per Civil Code Article 1—but judge first ascertains legislative/Sharia absence, Reasons:

- a) Legislator silence on issue implies established custom governance unnecessary legislation.
- b) Desirable recognizing custom bindingness ensuring legal stability.

Complementary role inapplicable uniformly; Penal Code absent text, accused acquittal sans hesitation; Commercial Code permits excluding legal rule favoring custom.

Subsection Three: Custom as Subsidiary Law Source (continued from prior)

Paragraph Two: Custom as Legislation Aid

Legislative texts often expressly refer to custom regarding specific issue; custom interprets legislator's referral, guiding judge applying custom rulings to interpret legislator-referred matter.

Example: Civil Code Article 11: "If contract interpretation needed, seek parties' common intention beyond literal wording, guided by transaction nature, requisite good faith/trust between parties per commercial custom (العرف التجاري)." Legislator charts judge path seeking intention per prevailing custom.

Subsection Four : Principles of Natural Law and Justice Rules

Natural law principles/justice rules constitute ultimate law source per Civil Code Article 1; we review concept/reason for inclusion among sources.

Branch One: Meaning of Natural Law and Justice Rules

Natural law/justice rules breadth led jurisprudence to three views:

First View: Natural law: reason-revealed perfection principles legislator follows drafting law; justice: detailed rules giving each his right.

Second View: Natural law: human reason-extracted rules from social bonds nature as legislator supreme ideal; justice: sound conscience-revealed/illuminated inner voice aiming similarity equality.

Third View: Natural law/justice rules synonymous; natural law: nature-imposed governing human behavior-must match justice rules, nature incapable imposing unjust rule.

Branch Two: Purpose of Classifying Natural Law Principles/Justice as Law Source

Legislator refers thereto empowering judge dispute resolution via *ijtihad* per these, absent solution in legislation/Sharia/custom. Legislation/human work inherently deficient—humans cannot encompass minutiae/regulate all relations/behaviors/predict disputes.

Judge rejecting claim absent legal rule violates Judiciary Basic Law Article 12 prohibiting justice obstruction ; incurs denial of justice crime penalty per Penal Code Article 136 : public office deprivation 5-20 years/fine DA 750-3,000-compelling *ijtihad* protecting litigation right guaranteed all.

Chapter Three: Application of Law

Having reviewed law concept/divisions/sources, examine law's vital dynamic via basic principles governing application scope re persons/place/time.

Section One: Law Application Scope re Persons

Law application scope re persons encapsulated in principle: "ignorance of law excuses no one" (*la ignorance de la loi n'est pas une excuse*)-Constitution Article 78.

Personal liberty principle presumes individuals know acts consequences/bear results universally; presumed bound by prevailing regulatory law within application scope/jurisdiction. Jurists agree knowledge duty incumbent on all relating to enacting resident state.

Subsection One: Content of Ignorance of Law Non-Excuse Principle

Accepting ignorance excuse paralyzes legal rules/limits dynamism; proof difficult permitting violators escape via ignorance claim annihilating rule. Presuming knowledge applies universally including judge bound applying sans parties guidance.

Presumption covers citizen/foreigner alike; no ignorance excuse for recent resident foreigner or abroad-resident citizen Official Gazette publication achieves knowledge.

Algerian Civil Code Article 4: Territory application post-Gazette publication-Algiers full day post; others Gazette wilaya arrival attested-Constitution 2020 Article 78: "Ignorance of law no excuse; all must respect Constitution/laws".

Applies all excuses (illness/travel/illiteracy/misunderstanding/ambiguity) any loophole destroys principle/legal binding force.

Subsection Two: Scope of Ignorance Non-Excuse Principle

Applies multiple angles:

Branch	One:	Law	Source-	Wise
Civil Code Article 1	sources	(legislation/Sharia/custom/natural law/justice)		
all-inclusive	sans	exception;	no	ignorance excuse re
legislation/Sharia/custom/natural law/justice.				

Branch Two: Legal Rule Type-Wise
Mandatory/suppletive classification (binding/derogable; public order/private interests)-jurisprudence split scope.

First View: Limited mandatory rules (binding/non-derogable protecting public interest); ignorance permissible suppletive.

Second View: Mandatory/suppletive alike; suppletive-though permitting party will-binding; perpetual disputes absent mutual ignorance excuse eroding transaction stability/law.

Branch Three: Exceptions to Principle

Jurists consensus legitimate exception: force majeure permitting ignorance proof via impossibility (natural disasters/invasion impeding Gazette)-exception confirms rule, justice-mandated.

Modern developments avoid issues : universal knowledge presumption unrealistic amid legislative proliferation; jurists advocate delayed enforceability via publication/entry date allowing review/adaptation. Algerian Procedure Law delays one year post-promulgation for adaptation.

Section Two: Law Application Scope re Place

Law application re place determines territorial scope : applies all residents regardless nationality/apatrides or transcends.

Subsection One: Territoriality Principle

Branch	One:	Principle	Concept
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Domestic law applies all occurring within territory/all therein regardless nationality—respecting other states' territorial sovereignty (Constitution Articles 13/74).

Bases:

- State legislation within territory on all therein (nationals/foreigners).
- Non-application within other states' territories/persons therein.

Branch	Two:	Territoriality	Scope
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Prima facie public law (total domination as state sovereignty/control over territory): constitutional/criminal/financial/administrative; subsidiary legislation/regulations public order-related. Extends private law jurisdiction/procedure/labour contracts/real property, etc..

Algerian legislator adopts: Constitution 2020 Articles 14-15: "State exercises sovereignty over land/air/sea; sovereign rights per international law maritime zones appertaining thereto."

Penal Code Article 3 explicit: "Applies all Republic crimes."

Criminal Procedure explicit re Algerian-flag ships/high seas crimes regardless perpetrator nationality; Algerian ports foreign commercial ships crimes.

Article 591: Algerian jurisdiction Algerian aircraft crimes regardless perpetrator; foreign aircraft if perpetrator/victim Algerian or post-crime Algerian landing.

Subsection Two: Personality and Objective Principles as Territoriality Exceptions

Territoriality principle admits two exceptions: personality principle and objective principle.

Branch One: Personality Principle

While territoriality rests on state territorial sovereignty, personality principle rests on state sovereignty over nationals bearing its nationality-political/legal bond between individual/state.

Contemporary legislation consensus affords foreigners personal law re personal status (marriage/divorce/legacy/alimony/inheritance)-state law extending extraterritorially covering subjects abroad.

Principle mandates state laws apply all nationals (nationality-holders) whether territorially present or abroad; inapplicable original nationals other states.

Branch Two: Personality Principle Applications in Algerian Law Manifests multiple fields:

- Constitution: rights/freedoms/duties bind Algerian nationals abroad.

- Criminal law: Penal Code extends to abroad-residing nationals crimes under Algerian courts per Procedure Code (Penal Code Article 3)- applies Algerian penal law to national committing abroad crime fleeing foreign punishment upon return.
- Private law/personal status: guardianship/custody/headship/civil status/capacity subject Algerian law abroad (Civil Code Article 10: inheritance/legacy/post-mortem acts per deceased nationality; Article 16 para. 2

Branch Three: Objective Principle

Permits national law application to foreign-perpetrated criminal acts if arrested territorially or extradited per judicial cooperation conventions-due crimes nature threatening internal security (espionage/currency forgery/spying/arms smuggling/national security threats).

Victim state may inaction/benefit perpetrator acts (espionage serving interests harming victim state).

Section Four : Law Application re Time

Laws non-eternal; currently-applied previously inapplicable/future inapplicable-prior century law repealed/successor; today's successor eventual per societal changes.

Subsection One : Time Application Principle Concept

Law enactment prima facie repeals prior; old rules cease post-repeal/Gazette publication succeeding day (Civil Code Article 4). Legal facts/positions under old transfer to new sans conflict-yet frequent old-formed facts/positions producing effects under new engender temporal conflict.

Two hypotheses:

First: Fact/position arisen/effects under old pre-new enforceability—no issue single applicable law.

theft punished 5-year max imprisonment sentenced pre-new raising 10 years.

Second: Old-formed fact/position effects (all/part) under subsequent new law. E.g., theft under old 5-year arrested post-new 10-year; unilateral divorce-permissible marriage under new bilateral-only.

Jurisprudence solutions: new law immediate effect/non-retroactivity principles.

Subsection Two: New Law Immediate/Direct Effect Principle

Solves old/new conflict re old-origin facts effects; Savigny originated, adopted by Rubier et al, new legislation applies immediately enforceability date instantly affecting post-enforceability facts/persons-regulates future not past.

Old law repealed post-new; old governs completed cases inapplicable new; novelties new-bound. Civil Code Article 2 para. 1: "Law applies future only, no retroactive effect." new criminalizing prior licit act inapplicable pre-promulgation perpetrators; post-perpetrators new-bound.

Bases justifying:

1. Prevents legal dualism; new extends immediately covering thereunder facts—single law one issue.
2. New issuance (novel/modified texts) admits prior inadequacy/superiority; interest applying to old-origin long-effectuating positions—old continuance defeats new reform goals.

Branch Two: Exception to Immediate Effect Principle

Immediate effect principle rule non-interference old law new domain admits exception: old law continuing effect (الأثر المستمر للقانون القديم)-old law continuance exceptionally governing effects of positions formed thereunder pre-new law.

Scope: ongoing contractual relations contracted under old law producing effects under new, party will predominant (labour relations persisting under new despite old origin); excludes law-based contracts (marriage).

Algerian legislator adopts resolving temporal conflicts via issues:

First:	Capacity	Issues
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Civil Code Article 6: "Capacity laws apply possessing conditions;

prior capacity-full per old text incapacity per new does not affect acts." Old-capacity adults acts valid despite new minor status.

Second: Prescription Issues

Civil Code Article 7: "New procedure texts apply immediately; old texts govern prescription start/stop/interruption duration pre-new."

New prescription shortened applies immediately incomplete old prescription; distinguish cases:

Case One: New extends prescription-complete remainder.

Old 15-year - new 20-year: complete 5-year remainder.

Case Two: Old remainder exceeds new full-new directly.

Old 15-year post-3-year (12 remaining) - new 10-year: restart 10-year disregarding.

Case Three: Old remainder , new full-old continues immediate effect exception. Old 15-year post-10-year (5 remaining) - new 10-year: complete 5-year.

Third: Proof Judgments Conflict

Civil Code Article 8: "Pre-prepared evidence governed preparation-time/envisaged-time rules." Old informal contract proof-validity persists despite new formal requirement.

Fourth: Litigation Rules Conflict

Civil Code Article 7: old rules govern procedure timings.

Subsection Three: Non-Retroactivity Principle of New Law

Non-retroactivity/no retroactivity permission solves temporal conflicts; clarify concept/bases/exceptions.

Branch One: Concept and Bases

New law non-application past re prior facts/positions/effects under old (Civil Code Article 2). Old retains authority; new non-encroachment.

Bases:

1. **Justice:** Unreasonable judging past acts under prior law by new; prior licit act new-criminalized non-punishable—justice violation.
2. **Transaction Stability:** New past-application disrupts legal relations stability; wastes old authority/erodes trust in texts/weakens individuals re today's law tomorrow's demolition.

Algerian Constitution adopts: criminal (2020 Article 43: "No conviction sans pre-act prohibiting law"); financial (Article 82: "No tax sans law, no retroactive tax/fee/duty/right").

Branch Two: Exceptions to Principle

Exceptions permitting new law prior facts application:

Paragraph One: Explicit New Law Retroactivity Text

Legislator expressly discloses exiting non-retroactivity for public interest where retroactivity imperative outweighing stability. Judge bound applying new past sans parties request—public order.

Paragraph Two: Law More Favorable to Accused

Penal Code scope: new penal repealing/amending prior favoring accused retroactive pre-act despite no final judgment (Penal Code Article 2: "Applies past except milder").

Favorable cases:

- Old criminal new decriminalized.
- New mitigating/exempting circumstances.
- New responsibility obstacle.
- Reduced penalty/general amnesty.

Requires no final judgment.

Paragraph Three: Interpretive New Law

Legislator issues clarifying prior ambiguities/deficiencies/contradictions via new texts.

Strong jurisprudence opposition:

- Rare interpretive legislation.

- Interpretation judicial prerogative; multiple legislatures—interpreter possibly different prior.

Chapter Four: Interpretation of Law

Legislator incites expressing intended meaning via phrasing believed conveying; yet human drafter/addressees variance engenders incomprehension (judges particularly)-necessitating interpretation ascertaining contained meaning.

Interpretation: determining legal rule meaning delineating practical application bounds-clarifying ambiguous/generalizing detailed.

Interpretation typically legislative rules (primary source) extendable Sharia albeit rare; review types/schools/rules.

Section One: Types of Interpretation

Three methods: legislative, judicial, doctrinal.

Subsection One : Legislative Interpretation

Legislator-performed re own laws application-revealed ambiguities post-time issues interpretive law per "law-positing authority interprets" principle.

Legislator best resolving application disputes ; separation of powers judge applies sans interpretation, refers ambiguities legislator avoiding deviation.

Characteristics:

- Binding legislation.
- Retroactive pre-law.

Subsection Two: Judicial Interpretation

Judicial interpretation performed by judges adjudicating submitted claims; judge cannot apply law sans understanding/meaning determination interprets pre-application; aggregate interpretations: judicial interpretation.

Judge interprets per criteria/bases reviewed later; characteristics:

First: Practical—precedes law application re submitted claim.

Second: Non-binding issuing court/other courts re similar claims.

Subsection Three: Doctrinal Interpretation

Legal scholars' efforts interpreting law texts via explanation/commentary/critique ; aggregate efforts form doctrinal trends/opinions aiding legislator amendment/development; judge consults confirming/revising views.

Characteristics:

First: Predominantly theoretical/academic.

Second: Non-binding judges/legislator/even origin scholars (changeable).

Section Two: Diverse Schools of Law Interpretation

Jurisprudence multiplicity engendered traditional/modern trends; key schools establishing interpretation bases/principles.

Subsection One: Traditional School (Literal Explanation)

Early 19th century post-Napoleon Civil Code 1804 revolutionary treating sacred/inviolable/complete; engendered "legislative works" positing legislation encompasses all issues/facts; applicator reaches apt interpretation via text.

Proponents: interpretation seeks true legislator will at drafting not application even circumstances change irrelevant.

Interpretation: state will/legislator intent at positing via linguistic/terminological semantics/logical inference. (لا اجتهاد مع النص) (الصريح).

Failing true will presumed (legislator would express confronted dispute drafting via similar texts).

Failure: poor interpretation not text defect.

Merit: text stability. Defect: law rigidity/immobility societal evolution.

Subsection Two: Historical/Social School

Savigny-originated Germany, French support: law not legislator will but society needs/evolution reflection social/political/economic circumstances expression; legislator voices society conscience/nation spirit.

Interpretation dual: fixed text framing rule; variable social goal. Text divorced legislator will-no intent search drafting but fixed drafting bounds non-exceedable.

Merit: law flexibility/evolution matching social changes achieving general interest.

Defect: total legislator intent neglect; interpreter broad powers enabling judges legislative control/application per personal views under interpretation guise.

Subsection Three: Modern Interpretation School (Scientific Research)

Geny (Sale friend) response traditional; free practical research first seeks legislator will via text; clear sans external contradiction - dictates decision.

Law as substance four realities: natural/historical/rational/ideal-not mere form but content/spirit.

Failing legislator will (no clear pointer) → other sources (custom/doctrine) all law-constituting factors/ spirit free scientific research

precise society observation. Judges/interpreters bound filling texts' deficiencies answering era questions via all economic/social/religious/linguistic/philosophical givens not 1804 Napoleon values.

Paragraph One: Text Meaning via Wording/Substance

Civil Code Article 1: "Law governs expressly worded/substantive issues..."

Wording: Clear single-meaning phrases literal application. E.g., Civil Code Article 40-2: "Majority 19 full years" judge cannot seek other age.

Substance (الفحوى): Text spirit/mechanisms/terminological meanings M19 common "grandchild" male child erroneous; linguistic/legal both sexes per Family Code Article 109.

Paragraph Two: Text Meaning via Inference

Interpreter/judge transcends wording/substance to rational inference ascertaining true meaning via analogy (مفهوم الموافقة) or opposition (مفهوم المخالفة).

First: Analogy Inference

Analogizing non-textual to textual sharing illah more evidently warranting a fortiori application.

Family Code Article 135: intentional killer heir-excluded (principal/partner); Article 188: legatee intentional killer excluded: legatee killer accelerates property seizure.

1. **Ambiguity:** Multi-meaning phrases. E.g., "night" theft aggravation astronomical sunset-sunrise or darkness (dark warehouse/home theft).
2. **Content Deficiency:** Missing phrase essential meaning. E.g., pre-2005 Civil Code Article 124 "any act causing harm obliges compensator" added "error"; delict requires fault.
3. **Material Error:** Inapt/incorrect phrasing confusing term, Civil Code Article 467 "lease contract enables lessee enjoyment (الانتفاع) thing"—real right term; apt "use (تمتع)" personal right.
4. **Text Conflict:** Irreconcilable collision post-final provisions/temporary expiry or internal/international.

Subsection Three: Defective Texts Interpretation Methods

Interpreter employs multiple means overcoming text defects, summarized sequentially:

First: Linguistic Controls and Text Parts Harmonization

Primary application attempting defective text interpretation; interpreter ascertains meaning linking parts overcoming defect.

Second: Texts Comparison

Intra-law or multi-law texts aiming defective text correct meaning. E.g., Family Code Article 52 vs. Civil Code Article 124 bis re arbitrary.

Third: Preparatory Works Reference

Official documents: explanatory memoranda/proposing assembly discussions—foremost interpretation means clarifying text purpose;

legislature issues subsequent interpretive laws facilitating intent discovery.

Fourth: Original Text Reference (French Version)

Algerian legislation bilingual Arabic/French Official Gazette—Arabic "original," French "translated"; reality opposite: most proposed/prepared French subsequently Arabic-translated engendering errors rectified referencing French original.

E.g., Civil Code Article 674 property right: Arabic "right of enjoyer (المتمتع)," French "la propriété est le droit de jouir" "right to enjoy" not "enjoyer".

Fifth: Legislative Wisdom Reference

Roman law principle "law ends where causes end" text purpose (social/economic/political) determined ambiguous text interpretation harmonizing justice/legal security.

المصطلح العربي	المصطلح الإنجليزي	الشرح
القاعدة القانونية	Legal Rule	القاعدة الملزمة المنظمة للسلوك
الجزاء	Sanction/Penalty	العقوبة المرتبطة بمخالفة القاعدة
القانون العام	Public Law	ينظم علاقات الدولة بالأفراد
القانون الخاص	Private Law	ينظم علاقات الأفراد ببعضهم

المصطلح العربي	المصطلح الإنجليزي	الشرح
القواعد الأمرة	Mandatory Rules	غير قابلة للمخالفة بالاتفاق
القواعد المكملة	Suppletive Rules	قابلة للاتفاق على خلافها
النظام العام	Public Order	المصالح الأساسية للمجتمع
التشريع	Legislation	النصوص القانونية المكتوبة
العرف	Custom	القاعدة غير المكتوبة من الاعتياد
الشريعة الإسلامية	Islamic Sharia	المصدر الاحتياطي الأول
مبدأ عدم جواز الاعتذار بجهل القانون	Ignorance of Law Excuses No One	يُفترض علم الجميع بالقانون
مبدأ الإقليمية	Territoriality Principle	تطبيق القانون داخل الإقليم
مبدأ الشخصية	Personality Principle	تطبيق على حاملي الجنسية
مبدأ العينية	Objective Principle	جرائم تمس أمن الدولة
الأثر الفوري	Immediate Effect	تطبيق القانون الجديد فوراً
عدم الرجعية	Non-Retroactivity	لا تطبيق على الماضي
التفسير التشريعي	Legislative Interpretation	تفسير من المشرع
التفسير القضائي	Judicial Interpretation	تفسير من القضاة
التفسير الفقهي	Doctrinal Interpretation	تفسير من الفقهاء

المصطلح العربي	المصطلح الإنجليزي	الشرح
الأعمال التحضيرية	Travaux Préparatoires	المذكرات التوضيحية
مفهوم الموافقة	Analogy (Qiyas)	القياس الكلي
مفهوم المخالفة	Contradiction Inference	نقيض الحكم
الحكمة التشريعية	Legislative Wisdom/Purpose	غرض النص (اجتماعي/اقتصادي/سياسي)
الركن المادي	Material Element	الاعتقاد المتكرر
الركن المعنوي	Moral Element	الشعور بالإلزامية
الأثر المستمر	Continuing Effect	استمرار القانون القديم
النصوص المعيبة	Defective Texts	غموض/نقص/خطأ/تعارض

"Theory of Legal Rights"

Introduction

The topic of "Theory of Legal Rights" within the framework of legal studies curricula for first-year students represents one of the most important subjects proposed as part of the undergraduate program pathway. This topic necessarily complements the legal knowledge acquired through the study of legal theory. Through the study of these two theories—Law and Rights—students are enabled to master the application of fundamental principles governing the definition of law and rights, their types, and their classifications. Additionally, students acquire the capability to properly address problematic issues arising from matters concerning the enforcement, proof, termination, and annulment of rights.

This study material is structured in accordance with a plan divided into six chapters, addressing all aspects of the application of the Theory of Rights with application to Algerian legislation:

- **Chapter One: Concept of Rights**
- **Chapter Two: Types of Rights**
- **Chapter Three: Elements of Rights**
- **Chapter Four: Sources of Rights**
- **Chapter Five: Proof of Rights**
- **Chapter Six: Extinction of Rights**

Chapter One: Concept of Legal Rights

The term "right" is frequently used in ordinary language, and individuals typically encounter no difficulty in determining its common meaning. However, defining the concept of rights from a legal perspective represents a point of substantial doctrinal debate among jurists. This controversy has historically affected the determination of the concept's definition and significance. This chapter surveys the principal theories advanced by both classical and modern jurisprudence in their attempts to define rights, as well as distinguishing rights from related conceptual categories.

Section One: Definition of Rights

Whereas the overwhelming majority of legal theorists accept the concept of rights as a concept inherently necessary from both legal and social perspectives, consensus has not been reached among them regarding a unified definition of "rights." The scholarly debate continues as jurists endeavor to formulate a comprehensive definition, with each faction defending its particular viewpoint and criticizing alternative doctrinal approaches.

These definitional differences may be attributed to several legal schools, which shall be examined within the framework of both classical and modern theories.

First Subsection: Definition of Rights in Classical Theory

The definition of "rights" has occasioned extensive scholarly debate among legal theorists and commentators, resulting in the emergence of three principal doctrinal approaches: proponents of the subjective doctrine (doctrine of will), proponents of the objective doctrine, and proponents of the mixed doctrine. Each has contributed substantially to establishing jurisprudential foundations that have shaped the determination of the substance and concept of rights.

The Subjective Approach (Doctrine of Will)

The subjective doctrine, also designated as the doctrine of will, represents the earliest doctrine concerning the definition of rights; consequently, it is termed the classical doctrine. This doctrine examines the definition of rights through the lens of the subject possessing the right. This doctrine was championed by German jurists Windscheid and Savigny, who defined rights as "an authority or volitional capacity recognized by law and granted to the will of individuals or to a particular individual, conferring upon that individual the capacity to perform certain acts." According to proponents of this doctrine, rights exist only insofar as the rights-holder wills their existence. Rights are considered to possess validity only if exercised and enjoyed by a subject exercising protection. The law is that which grants the individual this capacity. Savigny articulated that the two constituent elements of rights under the subjective doctrine are absolute will and freedom and independence.

Proponents of this doctrine incurred criticism due to their elevation of personal volition to an exalted position in their definition of rights. The principal criticisms advanced are summarized as follows:

- The law recognizes certain rights in persons lacking capacity and will, as well as in heirs or legatees.
- The right and will should not be conflated, as each possesses an independent conceptual definition.
- A distinction must be maintained between two separate concepts: the right itself and the exercise of the right, the latter necessarily entailing the condition of will.

The Objective Doctrine

This approach is designated the objective doctrine because it examines rights from the perspective of their object or purpose. This doctrine was championed by German jurist Jhering, who vehemently rejected the substantive content of the subjective doctrine. He held that the role of will with respect to rights is secondary, concerning itself solely with the utilization of rights. Consequently, he defined rights as "an interest protected by law."

Pursuant to this definition, rights are constituted upon two elements: interest, namely the utility and benefit conferred upon the rights-holder by the right; and protection, as every right requires protection as an element to ensure

respect for the interest the right seeks to achieve. This doctrine incurred several criticisms, the most prominent being:

- Rights ought to be defined through illumination of their essence and substance, not through their purpose.
- Protection, while constituting an element of rights, remains an external element; the right itself precedes protection. Therefore, it cannot be accepted that protection generates the right.

The Mixed Doctrine:

In response to the criticisms directed against proponents of both the subjective and objective doctrines, a third doctrine emerged, endeavoring to avoid these prior criticisms through formulation of a definition encompassing the viewpoints of both preceding doctrines. Consequently, it was designated the mixed doctrine. This doctrine combines the concepts of will and interest, examining rights through both the rights-holder and the object of the right simultaneously. According to this doctrine, the right constitutes both a volitional authority and, concurrently, a protected interest; it is simultaneously will and interest.

Proponents of this doctrine subdivided themselves into two factions: one regarding rights as a volitional capacity of a person recognized and protected by law for the purpose of achieving a particular interest; the other regarding rights as an interest protected by law through the volitional capacity of the person. This doctrine did not achieve acceptance and

similarly incurred criticism in the form of aggregated criticisms directed toward both preceding doctrines.

Second Subsection: Definition of Rights in Modern Theory

Contemporary jurisprudence endeavored to formulate a definition of rights that discloses their characteristics, thereby avoiding criticisms directed against classical theories. The efforts of Belgian jurist Jean Dabin proved substantially influential in this regard. He defined rights as "the exclusive appropriation by a particular person of a thing or value, conferring upon him dominion and entitlement, aimed at the realization of an interest protected by law." Pursuant to this definition, rights decompose into two fundamental elements:

The element of appropriation—the exclusion and exclusivity of one person with respect to a thing or value. Appropriation does not signify enjoyment; the latter may inure to one other than the rights-holder. The right does not exist merely through the presence of "interest"—interest constitutes solely its purpose. Additionally, the right is not dependent upon will; rights may inure to those lacking will, such as those lacking legal capacity.

The element of dominion—the other facet of the right, constituting the inevitable consequence of appropriation. The bestowal of rights upon a person confers upon him the right of dominion and the exercise of control. This signifies the authority vested in the rights-holder over the thing, and the capacity to dispose of it freely, either materially or legally, through its use or non-use.

The element of dominion persists notwithstanding the presence of a material or legal impediment. The interdicted person and the minor remain incapable of exercising dominion until the impediment is removed. Jurist Jean Dabin interconnected these two elements in his definition of rights through the presence of a third element: reciprocity—the reciprocal relationship among the diverse rights of persons—resulting in the generation of reciprocal obligations ensuring respect for the rights of others by each person.

Ultimately, it may be stated that the preponderant jurisprudential view embraces the dual definition of rights—adopting principles from both subjective and objective doctrines in defining rights and elucidating their legal nature. Accordingly, rights constitute "a collection of authorities granted to a person with respect to a particular thing or in opposition to another person, within the limits delineated by law."

Section Two: Characteristics of Rights and Distinction from Related Concepts

Rights possess distinctive legal characteristics and attributes differentiating them from related concepts such as law, authority, duty, and license. This section surveys each such distinction.

Subsection One: Characteristics of Rights

Through the aggregate of definitions previously referenced, a collection of characteristics distinguishing rights from other related concepts may be identified:

1. Legality:

Rights express an authority recognized by law; they are distinguished by the characteristic of legal legitimacy. Accordingly, rights are grounded either in legal provisions, judicial decisions, or contractual agreement. This legality results in the consideration of rights as sufficient evidence binding those obligated to respect them. This legality grants the rights-holder legal protection, most significantly recourse to judicial proceedings. A right lacking judicial protection is undeserving of this designation.

2. Subjective nature:

Rights presuppose a subject upon whom they depend—their holder. The rights-holder may be a natural or juridical person. Natural persons possess the capacity to acquire rights and assume obligations, as they constitute the center of legal organization, enjoying such capacity from birth until death. Juridical persons represent merely an expression of attribution of such capacity to a collective of assets and persons as a technical means of conferring legal status upon such aggregation.

3. Object of rights:

Rights in here in a particular value, which may constitute material property, action, omission, or abstract or personal matters such as liberty and honor.

4. Authority vested in the rights-holder:

The authorities conferred by rights upon their holder collectively reflect the meaning of exclusive appropriation of the value constituting the subject matter of the right. The scope of these authorities varies according to the specific nature of rights.

Subsection Two: Distinction of Rights from Related Concepts

Rights, by virtue of the characteristics previously enumerated, are distinguished from numerous related and similar terms, including law, duty, freedom, authority, and license.

Rights and Law:

A close relationship exists between the theories of law and rights. Educational institutions in the legal field are designated as faculties or institutes of law, affirming the relationship between law and rights.

Whereas legal norms constitute the source regulating relationships among various persons within society, these relationships may conflict with one another, necessitating legal intervention to preferentially recognize one interest over another. This, in turn, requires the recognition of a right favoring one person over another, thereby conferring upon that person exclusive authority over the value constituting the subject matter of the right. Law thereby constitutes the source of rights.

Rights and Duties:

A right is manifested in a value with which a person is exclusively invested and which the law protects, thereby imposing upon all persons the obligation to respect this value and refrain from interference with its holder's exercise thereof. When law establishes a right, it simultaneously establishes the duty to respect that right. Each right is accompanied by the duty to refrain from interference with the rights-holder.

Duties are of two types: general duties imposed upon all persons (save the rights-holder) requiring them to refrain from interference with the exercise of the right through negative conduct—their abstention from encroachment upon the rights of others; and personal or individual duties resting upon the obligated party alone, constituting a burden, potentially preventing the performance of an action originally permissible and potentially obligating performance of an action to which the obligated party was originally not bound. The individual duty constitutes the complete counterpart to the right.

Rights and Freedom:

Whereas rights grant their holder the advantage of exclusive appropriation, positioning the holder in a position superior to others with respect to the subject matter of the right, freedom recognizes no concept of exclusive appropriation or exclusivity. Freedom constitutes a concept enjoyed equally by all, presupposing their existence in identical positions

with respect thereto, such as freedom of conscience, freedom of movement, freedom of work, and freedom of marriage.

Such freedom represents merely recognition that a person may act as he wishes and conduct himself according to his personal judgment. It is thus distinguished from rights by the absence of a clearly defined subject matter or object. It constitutes merely a general, undefined condition.

Rights, License, and Authority:

A license, when compared to rights, represents an option left to the discretion of a person. The person may follow a particular course or select another according to his conviction and his assessment of what is appropriate to achieve his interest. By way of example, pursuant to Article 206 of the Algerian Family Law, the recipient of a gift in a gift deed may accept or refuse the gift.

Authority, conversely, constitutes a legal power enabling a person to manage the affairs of another. Examples include paternal authority over children, the authority of a guardian in managing the affairs of a minor, and the authority of an agent in managing the principal's assets. Authority typically closely approximates the position of a rights-holder; nevertheless, significant distinctions remain:

- The rights-holder seeks, through exercise of his right, to achieve his private interest, whereas the authority-holder seeks the achievement of another's interest, such as an agent in a contract of agency.

- Rights constitute an advantage exclusively possessed by their holder, whereas authority constitutes a burden and obligation upon those exercising it, such as paternal authority over children.
- A rights-holder may waive the advantage conferred by his right, whereas an authority-holder may not waive his authority, as he is bound by it as an obligation.

Chapter Two: Types of Rights

Rights subdivide into political and civil rights, general and private rights, and monetary and non-monetary rights. This chapter sequentially surveys the various classifications of rights according to their distinctive characteristics.

Section One: Political and Civil Rights

Rights fundamentally subdivide into political rights, enjoyed exclusively by a particular group of individuals, and non-political rights—that is, civil rights—to which every individual possesses equal entitlement.

First Subsection: Political Rights

Political rights constitute those rights whose exercise requires that an individual possess the nationality of a particular state, thereby permitting such individual, to the exclusion of foreigners, to participate in matters of governance and assume positions of public authority within the state. Examples include the right to vote and the right to candidacy. Mere possession of state nationality does not directly entitle an individual to

exercise political rights; typically, specific conditions must be satisfied before an individual possesses the capacity to exercise political rights.

Political rights are characterized by the following:

- They cannot be valued in monetary terms, possessing a non-monetary character, and accordingly are incapable of transfer through contractual disposition or waiver.
- These rights do not constitute advantages or interests exclusive to certain individuals; rather, they are regarded as political functions, primarily understood as impositions or duties.

Concerning examples of political rights in Algerian legislation, the following may be noted: the right to vote, granted to all attaining age eighteen (Article 62 of the Algerian Constitution; Article 3 of Organic Law No. 16-10 on Electoral Systems); the right to candidacy for the National People's Assembly, granted to those attaining age twenty-five, possessing Algerian nationality, and demonstrating completion or exemption from national service (Article 92 of Organic Law No. 16-10 on Electoral Systems); and the right to assume public office (pursuant to Article 63 of the Algerian Constitution).

Second Subsection: Civil Rights (Non-Political)

All rights other than political rights are considered non-political or, alternatively, civil rights. These latter are distinguished by their non-limitation to citizens exclusively, permitting all individuals to enjoy them.

They enable the performance of activities in the context of freedom, apart from political activity.

Civil rights also encompass the aggregate of general reciprocal rights existing between the state and individuals residing within its territory, whether nationals or foreigners. The state is accordingly obligated to provide protection by securing their right to life and physical safety, protecting their right to conscience and religion, freedom of movement, and recourse to judicial process, as well as the inviolability of their domiciles and all rights guaranteed to them, provided they do not breach any legal provision or sovereign order of the state. Conversely, the state's rights with respect to those residing within its territory correspond to the extent of their observance and respect for the laws and orders emanating from the state.

Civil rights subdivide further into private and general rights, as shall be demonstrated hereafter.

Section Two: General and Private Rights

Contemporary jurisprudence has subdivided civil rights into general rights and private rights.

First Subsection: General Rights

General rights constitute those rights vesting in every human being by virtue of their humanity. These rights ensure adequate protection for physical, intellectual, and social life. Without such rights, individuals cannot secure their lives, cannot exercise daily activities, cannot enjoy personal

freedom, and moreover, cannot maintain their legal personality or possess legal existence. Accordingly, jurisprudence has designated these rights as "natural rights." These are rights established in all legal systems and recognized in all legal traditions across all peoples, These rights are numerous and diverse; prominent examples include:

- The right to life, established pursuant to Article 3 of the Universal Declaration of Human Rights.
- The right to protection, established pursuant to Article 7 of the Universal Declaration of Human Rights.
- The right to judicial recourse, established pursuant to Article 8 of the Universal Declaration of Human Rights.
- Freedom of movement, established pursuant to Article 13 of the Universal Declaration of Human Rights.

These rights are distinguished by characteristics and attributes not found in other rights:

- They are non-monetary rights incapable of disposition or waiver.
- They are permanent rights not subject to extinguishment through non-exercise over an extended period.
- They entitle their holder to claim compensation for damages resulting from encroachment upon them.
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Second Subsection: Private Rights

Whereas general rights are vested in a person by virtue of their humanity, enjoyed regardless of political status and without discrimination between that person and another, private rights inhere only in consideration of a person's familial status or position in financial transactions. Accordingly, private rights subdivide into family rights and monetary rights.

First Division: Family Rights

Family rights, alternatively designated as domestic rights, constitute authorities vesting in a person by virtue of their status as a family member, enabling the exercise of activity through the enjoyment of a collection of rights and the assumption of corresponding obligations within their family. A family comprises a collection of persons united by bonds of descent, blood relationship, affinity, or marriage. Examples of family rights include the husband's right to obedience from his wife, the father's right of correction over his child, children's right to maintenance and support from their parents, and heirs' right to succession.

These rights are characterized by their incapability of monetary valuation; they fall outside the sphere of commercial transactions and accordingly may not be waived or subject to disposition, nor do they transfer to heirs. They are established to achieve the family's general interest and are regulated in the majority of positive legal systems within what is designated civil law in Western legal systems.

In Algerian legislation, family rights are encompassed and established in the Family Law Code. Examples of such rights include:

- The right to legitimate maintenance established for the wife and incumbent upon the husband.
- The right to equitable treatment in the case of polygamous marriage.
- The wife's right to visit family members and host them.
- The wife's right to dispose of her property.

Second Division: Monetary Rights

Monetary rights constitute those rights whose subject matter is susceptible to monetary valuation. These are designated "monetary rights" because they typically arise from financial transactions among individuals; the subject matter of such rights is constituted of money. Consequently, they merit the designation "patrimonial rights," as they constitute the positive aspect of a person's patrimonial estate.

Monetary rights enter into a person's patrimonial estate; accordingly, whatever enters the patrimonial estate of a rights-holder constitutes general security for creditors. Rights form the positive component of the patrimonial estate. Additionally, these rights are distinguished by their capacity to transfer to heirs following the rights-holder's death and are subject to seizure. Whereas civil law addresses family rights, that same law, alongside other legislation such as commercial and maritime law, regulates monetary rights.

Monetary rights are numerous and varied, classified as personal, real, and intellectual rights.

Personal Rights:

Legal theorists collectively define personal rights as a relationship between two persons conferring upon one (the creditor) the capacity to demand from the other (the debtor) the delivery of property, performance of an act, or abstention from performance of an act. It has also been defined as "indirect exclusive appropriation of a particular performance."

A personal right inheres in a particular act. This act may be positive, consisting of the debtor's performance of a particular act, or negative, consisting of the debtor's obligation to refrain from performing a particular act. The relationship between creditor and debtor is designated a creditor's right or personal right when viewed from the creditor's perspective and designated an obligation when viewed from the debtor's perspective. Examples of contracts generating personal rights include:

- Sale: The seller acquires the right to receive the price, and the buyer acquires the right to receive the purchased item. Correspondingly, the seller incurs the obligation to deliver the item, and the buyer incurs the obligation to pay the price.
- Lease: The lessor is entitled to receive rent in the form of a personal right, incumbent upon the lessee to perform, while the lessee is entitled to enjoyment of the leased item.

- **Employment:** This contract imposes upon the employee an obligation constituting work performance, corresponding to a personal right of the employer. Accordingly, personal rights rest upon the existence of a creditor-debtor relationship; no personal right exists independently; instead, it must be accompanied by an obligation incumbent upon the debtor.

Subject Matter of Personal Rights:

The subject matter of a personal right consists of either performance of an act or abstention from performance. Personal rights do not inhere in things, as do real rights; they focus upon the person bound by the obligation in favor of the rights-holder (the creditor).

- **Obligation to perform or act:**

This refers to circumstances in which the obligated party commits to performing positive action, such as the contractor's obligation to construct a building, the physician's obligation to administer treatment, the seller's obligation to transfer ownership, and the wrongdoer's obligation to compensate for harm. The acts capable of constituting the subject matter of personal rights are countless; any lawful, determinable, and possible act may constitute such subject matter.

- **Obligation to refrain from performance:**

The subject matter of a right may be negative in the form of an obligation to refrain from performing a particular act, such as the

merchant's obligation to refrain from opening a competing business establishment, or the employee who has resigned from a position's obligation to refrain from employment with a competing enterprise for a specified period.

Conditions for Acts Constituting Personal Rights:

Personal rights do not arise unless three conditions are satisfied in the act:

- The act must be lawful—that is, not contrary to public order or public policy. A right arising from an unlawful act, such as rights arising from narcotics trafficking, would be void.
- The act must be determinable or susceptible of determination. The seller must specify the type, class, and quantity of the item sold, as a right cannot arise with respect to an undetermined object.
- The act must be possible—that is, the act must not be impossible and must be susceptible of realization.

Intellectual (Immaterial) Rights:

Contemporary social developments have generated the emergence of intellectual and ideational human production in the domains of science, literature, and arts. It is natural that contemporary legal thought should accompany this development through recognition of a new category of rights alongside traditional rights (personal and real), designated intellectual or immaterial rights.

Intellectual rights are defined as a person's exclusive appropriation of ideational production attributed to them, whether such production be literary, artistic, or patents (referred to as "literary works").

Intellectual rights in here in non-material objects; they constitute a person's authority with respect to an idea the person has originated or an invention the person has discovered, enabling the person to maintain attribution of such idea or invention to themselves, thereby enabling monopolization of the financial benefit potentially arising through publication or exploitation of such idea. Examples include the author's right over literary works, the musician's right over musical compositions, and the inventor's right over inventions.

The Algerian legislator recognizes this category of rights through legislation enacted in the protection of trademarks and protection of copyright and related rights, specifically Ordinance No. 03-05 dated 19 Jumada al-Awwal 1424 AH (corresponding to 19 July 2003), concerning copyright and related rights. Additionally, the legislator has recently sought to develop and strengthen these provisions in accordance with the principle of legislative evolution accompanying the development of manifestations of encroachment upon these rights, in light of the remarkable progress in communication and information technology.

Real Rights:

Real rights constitute exclusive direct appropriation vesting in a person with respect to a particular material thing, whereby direct connection exists

between the thing subject to the right and the person holding the right. Exercise and enjoyment of the authorities attached to the right do not require intervention by another person. For example, the owner of a residence may utilize it personally, lease it to others, or dispose of it through sale or gift without requiring another person's intervention. Real rights constitute authority vested in a person over a particular material thing, conferring upon the person exclusive appropriation for achievement of a lawful interest.

Elements and Characteristics of Real Rights:

From the aforementioned definition, the elements of real rights may be extracted, consisting of two fundamental elements:

A. Existence of a thing:

The right inheres in something, and the thing must be material and tangible—that is, the subject matter of real rights cannot be an act (as with personal rights) nor an immaterial thing (as with intellectual rights). Additionally, the thing must be determinable and specified, as exercise of authority over a thing necessarily requires knowledge of that thing, whether immovable or movable property.

B. Exercise of authority by the person over the specified thing:

The person exercises authority over the specified thing, whether such authority is comprehensive and absolute or limited and restricted. The essential requirement is the rights-holder's capacity to exercise authority directly without intervention by another person.

Concerning the **characteristics of real rights**, the following may be noted:

1. Real rights are exercisable by their holder against all persons. The holder of a real right may assert against all parties their exclusive appropriation of the subject matter and may bind third parties to refrain from interference.
2. Real rights entitle their holder to the right of pursuit. The holder of a real right possesses the right to pursue the debt secured by the thing and the right of priority and preference in satisfaction thereof against ordinary creditors.

Classification of Real Rights:

Real rights subdivide into principal and accessory rights.

Principal Real Rights:

Principal real rights constitute rights valued for themselves, existing independently and not dependent upon another right—that is, not existing derivatively or as security for another right.

They entitle their holder to obtain financial advantages and benefits from material things. The holder of such a right may exclusively enjoy the economic value of the thing subject to the right. Should the holder's authority be limited, the rights-holder possesses only authorities derived from ownership, not exceeding such derivation.

A) Property Rights:

Property rights constitute the strongest and most important principal real rights, with other rights deriving therefrom. They represent the most comprehensive category of rights and are defined as the right conferring upon the holder authority to use, exploit, and dispose of the thing subject to the right.

Article 674 of the Algerian Civil Code defines property rights as the right to enjoy and dispose of things, provided such use complies with the restrictions imposed by law and regulation. Pursuant to this definition, property rights constitute an authority combining the right of use, the right of exploitation, and the right of disposition vested in the rights-holder over the thing, and therefore are described as the strongest principal real rights. The components include:

- Right of Use:

The direct enjoyment of the thing and obtaining the benefits and services it may provide, exclusive of fruits, without impairing the substance of the thing. If the subject matter constitutes a dwelling, the right of use manifests as residence therein.

- Right of Exploitation:

Obtaining what is generated or produced by the thing—fruits or benefits—without impairing its substance. Fruits are what is periodically generated by the thing, whether natural fruits (such as wool from sheep),

artificial fruits (such as agricultural products requiring human effort), or legal fruits (such as rental income from leasing the thing).

- Right of Disposition:

The right to utilize the thing in a manner exhausting it wholly or partially. Disposition may be material (affecting the owned thing through consumption, alteration of form, or destruction, such as the homeowner's authority to demolish, rebuild, or modify the residence) or legal (transferring the authority of the owner wholly or partially to another, such as sale or gift).

In all cases, the owner may transfer the rights of use and exploitation to another while remaining owner; however, this ceases to be the case upon transfer of the right of disposition to another.

Rights Derived from Property Rights:

Certain principal real rights derive from property rights, granting their holder some of the authorities of "complete ownership" but not all. The owner retains the right of disposition exclusively, while authority of exploitation is distributed among other persons who possess real rights in the thing. These rights include:

- Usufruct:

A principal real right derived from property rights, conferring upon its holder the authorities of use and exploitation of the thing without disposition. The right of disposition remains vested in the owner, designated the "owner

of the corpus." The usufructuary may cultivate land or lease it to others and receive the income therefrom.

- Right of Use:

A principal real right derived from property rights, conferring upon its holder the authority to use property belonging to another. It differs from usufruct because it does not grant the rights-holder the right of exploitation. If the subject matter constitutes agricultural land, the rights-holder may cultivate it and benefit from its fruits to the extent sufficient for personal use only and may not sell it or derive income therefrom.

- Servitude:

A right limiting the utility of one immovable for the benefit of another immovable possessed by another person. It constitutes an obligation imposed upon an immovable, designated the servient immovable, for the benefit of another immovable, designated the dominant immovable, possessed by another person.

An example is the situation where an immovable is enclosed and inaccessible from public thoroughfare, whereby the owner of such immovable possesses the right of passage across the adjacent immovable belonging to another in order to access the public thoroughfare, The right of passage constitutes a servitude.

Accessory Real Rights:

Accessory real rights share with principal real rights the characteristic of constituting direct exclusive appropriation by a person in a particular thing. They differ in that they do not exist independently but derive their existence from another right. Additionally, they do not grant their holder the authority to use, exploit, and dispose of the thing; rather, they grant the right to satisfy the primary right incumbent upon the thing subject to the principal real right.

These rights fundamentally exist to secure and assure satisfaction of a personal right—that is, a creditor's right—providing special security. They are dependent upon it in validity, voidability, existence, and extinction. They entitle their holder to pursue the thing securing the right, whether it passes from the obligated party's possession, and the authority to execute against it and satisfy their right from its material value with priority and preference over other creditors.

These rights protect their holder against risks of obligor insolvency and prevent competition among ordinary creditors. These rights subdivide into three categories: mortgage, judicial lien, and privilege.

B) Mortgage:

Mortgage exists in two forms: conventional and possessory.

Conventional mortgage constitutes an accessory real right vesting in the creditor through a formal deed against an immovable property designated

to secure satisfaction of the creditor's debt. Pursuant thereto, the creditor is entitled to precedence over ordinary and subsequently ranked creditors in satisfaction of the creditor's right from the proceeds of such immovable in whatever hands it may be.

Possessory mortgage constitutes an accessory real right arising from an agreement whereby a person obligates themselves as security for a debt incumbent upon such person or another. This right arises from a consensual agreement and need not be formal. It constitutes a right inhering in movable and immovable property. Pursuant to it, possession of the mortgaged thing transfers to the creditor or to another person agreed upon by the parties, who assumes the obligation to preserve it and manage and invest it, with income derived therefrom credited against the debt incumbent upon the obligor.

Judicial Lien:

Constitutes an accessory real right arising by judicial order for the benefit of a creditor in good faith holding an enforceable judgment against the obligor with respect to one or more immovables of the latter. It resembles mortgage in that it inheres in immovable property exclusively, requires no transfer of possession for its exercise, and cannot be asserted except following obtainment of an enforceable judgment by the court against the obligor, with the holder being a creditor in good faith.

Privilege:

Privilege rights arise pursuant to legal provisions. The law determines that certain debts, by virtue of their nature, require special consideration and accordingly grants such debts priority in satisfaction, ensuring their holders the privilege of precedence over other creditors in the event of competition. Neither judicial officers nor private parties possess the capacity to create a privilege right; the law possesses exclusive authority in this regard. Privilege rights are of two categories:

General privilege: rights incumbent upon all assets of the obligor, both immovable and movable property, whereby the creditor possesses the authority to execute against any thereof to satisfy the claim, such as the privilege granted the state to satisfy amounts due to the national treasury.

Special privilege: rights granting their holder a privilege with respect to a particular asset, movable or immovable, conferring upon the holder the right of precedence and pursuit. An example constitutes the privilege conferred upon the lessor for satisfaction of rental dues.

Chapter Three: Elements of Rights

Following the discussion in the first two chapters regarding the definition and concept of rights and their types, this chapter addresses the elements of rights, which may be summarized into three: the rights-holder, the subject matter of the right, and legal protection.

Section One: The Rights-Holder as an Element of Rights

The legal term "subject" differs in legal language from its meaning in ordinary language. Whereas in common usage it is synonymous with "person," in legal terminology it does not coincide.

In legal language, a subject constitutes one to whom legal personality attaches—that is, one qualified to acquire rights and assume obligations. All who possess such qualification are designated a legal subject. The fundamental principle establishes that legal personality vests in human beings alone; nevertheless, societal development has necessitated attribution of legal personality to non-human entities such as corporations and associations, enabling them to perform their assigned functions. The personality of such entities is designated juridical personality.

Subsection One: Natural Personality

No rights or obligations accrue from a legal perspective except to those enjoying legal personality. It is inconceivable that inanimate objects or animals possess such personality, nor is it conceivable that a human being enjoys rights and assumes obligations unless he possesses legally recognized existence, from the initiation of his personality until its termination.

The Commencement of Personality:

Article 25 of the Algerian Civil Code, as amended by Law 05-10 of 2005, provides: "Human personality commences upon the completion of live birth and terminates upon death. Nevertheless, the fetus enjoys the rights

determined by law, provided it is born alive." Accordingly, the commencement of personality is contingent upon one essential condition: the completion of live birth.

The Commencement of Personality upon Completed Live Birth:

Human personality commences upon the complete birth of the child alive, the birth must be complete—that is, the child must separate from the mother completely and descend alive, even if only for a single minute. Life is evidenced by signs indicating it, such as crying, respiration, and movement. Upon the verification of such signs, the newborn acquires legal personality from that moment forward and becomes qualified to enjoy rights and assume obligations. The newborn is not considered to possess such qualification if descended stillborn.

The occurrence of birth is evidenced in Algerian law through means prescribed in Article 26 of the Algerian Civil Code, which provides: "Birth and death are proven through registers prepared for such purpose. Should such evidence not exist or should what has been registered prove inaccurate, proof may be established through any means according to procedures prescribed in the Civil Status Law." Referencing the provisions of Ordinance 70-20 concerning civil status, Article 63 thereof provides that birth is recorded in official registers specifying the hour and place of birth, the sex of the newborn, the name and surname of the father and mother, their occupations and ages, such recording to occur within five days following birth.

The Exception Regarding the Fetus and Unborn Child:

Article 25 of the Civil Code provides that the fetus enjoys the rights determined by law, provided it is born alive. By this provision, the legislator sought to afford the fetus certain rights corresponding to its legal status. The fetus's life in this instance constitutes a legal, presumptive life. The legislator has accordingly recognized the fetus's right to life through criminalization of abortion pursuant to Articles 304-313 of the Penal Code and secured its right to succession pursuant to Article 173 of the Family Law Code.

It has also authorized the fetus to benefit from testamentary disposition pursuant to Article 187 of the Family Law Code. All such protections are contingent upon live birth; should the child be born stillborn, it is regarded as if it had not existed, pursuant to Article 25 of the Civil Code.

Characteristics of Natural Personality:

Natural persons possess a collection of characteristics distinguishing them: name, status, capacity, patrimonial estate, and domicile.

Name:

Name constitutes that by which a person is known, distinguishing them from other persons. In this sense, name constitutes a social necessity for expressing individuality, enabling distinction of the person from others in the community in which he resides.

A name typically comprises two elements: the given name, which distinguishes the person from other family members, and the family name or surname, which establishes common identity among all family members.

The Algerian legislator provided in Article 28 of the Algerian Civil Code that every person must possess one surname and one or more given names. The surname of a person passes to his children. Names must be Algerian, though exceptions exist for children born of non-Muslim parents.

Accordingly, a person may not waive his name or dispose of it or make it subject to transactions. A name does not extinguish through non-use and cannot be changed or corrected except for substantial reasons and following procedures prescribed by law, in view of the risks posed to public order by unrestricted alteration.

Status:

Status refers to the aggregate of qualities that characterize a person and determine his legal position and affect it by determining the collection of rights and obligations vested in and incumbent upon him. Each person possesses certain characteristics resulting from his membership in a particular state, designated political status, and membership in a family resulting in determination of his family status.

In certain instances, the law establishes particular effects based on religious affiliation, designated religious status.

Political Status:

Political status refers to a person's position regarding his membership in a particular state, A person belongs to and is bound to a particular state as one of its nationals through the bond of allegiance and dependency, This bond is designated nationality and constitutes the criterion distinguishing nationals from foreigners.

Nationals possess such nationality; foreigners do not. This distinction possesses paramount importance in determining rights and obligations incumbent upon each party. Generally, foreigners are deprived of certain rights enjoyed by nationals, such as the right to candidacy in elections.

Article 6 of the Nationality Law, as amended by Ordinance 05-01 of 2005, provides that one is regarded as Algerian if born of an Algerian father and Algerian mother.

Family Status:

Family status refers to the quality determining a person's position within the family to which he belongs,"Family" is understood broadly here, encompassing not merely spouse and children but all persons united by kinship bonds.

A person's position within his family results in important legal consequences, for example the right to maintenance constitutes a right vesting in the wife and children against the father, and kinship may constitute a bar to marriage.

Kinship exists in several forms:

1. Lineal kinship: The bond uniting and connecting an individual with others with whom he shares blood unity and common ancestry (Article 32 of the Civil Code).
2. Direct kinship: As defined in Article 33 of the Civil Code, the connection between ancestors and descendants, such as a person's relationship to his father, mother, and grandfather.
3. Collateral kinship: Kinship uniting persons united by a common ancestor without one being the descendant of the other, such as a person's relationship to brothers, sisters, uncles, and maternal uncles.
4. Affinity through marriage: Relationship arising from the marriage contract, resulting in creating relationship between the relatives of one spouse and the other spouse. This relationship extends only between one spouse and the relatives of the other, not among such relatives themselves and the relatives of the other spouse.

Religious Status:

Article 18 of the Universal Declaration of Human Rights provides that every person possesses the right to freedom of thought, conscience, and religion, Article 2 of the same Declaration prohibits discrimination based on religion.

Chapter Four: Sources of Rights

Rights vary according to the diversity of their holders, objects, and protective mechanisms. Irrespective of the right's nature, it invariably originates from a source—the cause precipitating its creation. Jurists diverge on classifying these sources, eschewing unified taxonomy.

Some posit statute as paramount; others elevate will; still others invoke facts or legal acts. Consensus emerges on two principal categories, voluntary sources (contracts, unilateral wills) and non-voluntary sources (tortious acts, unjust enrichment, statute)

Section One : Voluntary Sources of Rights (Legal Acts)

Legal acts denote the will's orientation toward a determinate legal consequence—be it right creation, transfer, modification, or termination—deriving efficacy from volitional authority.

Right-creating acts lack uniformity: sometimes contractual (binding parties, contract as source); sometimes unilateral (self-binding, reward promise).

Requirement One : Contract as Source of Rights

Algeria's Civil Code Article 54 defines contract as : "An agreement whereby one or more persons undertake to give, perform, or refrain from something toward one or more others."

Doctrinally, concurrence of wills producing legal effect. Primordially reliant on consent, object, cause.

Branch One : Consent (Mutual Assent)

Concurrence of wills for legal effect; internal volition inferred from manifestations (express/implied).

Express :

verbal/written/gestural/unequivocal conduct (e.g., taxi halt at stand).

Implied: interpretive conduct (handling goods signals acceptance).

Requisites:

discerning issuer (capacity); vice-free (error/fraud/duress); offer-acceptance alignment (specific proposal met by responsive acceptance).

Branch Two: Object (Subject Matter)

Beyond consent, contract demands object—the willed subject. Performance/forbearance yields personal right must be possible, determinate/determinable, lawful (contra public policy void).

Branch Three: Cause (Consideration)

Parties' sought end, subjective/motive-driven; must be lawful (non contra bonos mores), Supreme Court per Article 97: illicit , immoral cause voids contract, Article 98 presumes lawfulness absent proof.

Requirement Two: Unilateral Will

Unilateral act:

solitary will self-binding sans counterparty (right-creating legal act), testament (no legatee assent); public reward promise (binding fulfillment irrespective awareness).

Civil Code Article 123 bis:

"Legal acts may arise unilaterally unless binding third parties; contract rules apply mutatis mutandis."

Section Two: Non-Voluntary Sources (Legal Facts)

Legal fact:

event law imputes effect to (creation/extinguishment/transfer)
Natural/human; statute non-voluntary.

Requirement One : Facts as Sources

Branch One : Natural Facts

Nature-engendered sans human input : birth vests rights; death transmits estate; disasters invoke force majeure excusing performance, ignorantia juris.

Branch Two: Human Facts (Voluntary Facts)

Human-chosen material events law-effectuated, intent irrespective, Beneficial/harmful.

Paragraph One: Beneficial Acts (Threefold Civil Code grounds)

1. Unjust Enrichment (Art. 141):

Good-faith benefit sans justification mandates impoverishee compensation (10-year limit). E.g., neighbor irrigator claim.

2. Undue Payment (Art. 143):

Recipient restitution duty.

3. Negotiorum Gestio (Art. 150):

Voluntary affair-management, ratification of excess acts.

Paragraph Two: Harmful Acts

1. Tortious Liability (Art. 124):

Damage-causing act spawns indemnity; fault (civil breach per reasonable person), damage, causation.

2. Vicarious Liability:

Custodianship (Art. 134): Supervisors liable for wards' harm.

Committal (Art. 136): Principals for agents in course/scope.

Res/Animal (Arts. 138-139): Controllers/keepers liable absent exoneration.

Branch Three: Statute as Source

Art. 53: Statutory obligations directly govern, sale transfer, payment (**Arts. 361-396**).

Chapter Five: Proof and Extinguishment of Rights

This chapter examines rules governing proof of rights-encompassing evidentiary systems, methods, and procedures-alongside mechanisms for rights' extinguishment.

Section One : Proof of Rights

Proof holds paramount importance in adjudicating rights disputes ; claimants bear the onus probandi, with proof matters statutorily circumscribed and proceduralized to avert arbitrary right contestation.

Requirement One : Definition and Systems of Proof

Proof admits clear, consensual definition, variegated by plural evidentiary regimes.

Branch One : Definition and Importance of Proof

Proof of right constitutes adducing evidence of its existence—or, alternatively, the means deployed to convince the judge of the veracity of the factum generating the right.

Equivalently, proof evinces the juridical fact or act birthing the right, tendering evidence before the bench of the claimed source.

Proof's salience in right protection manifests via the axiom: "A right sans existence equates to a right sans proof"- undocumented rights, when contested, equate to nullity scientifically, bereft of evidentiary value.

Branch Two: Proof Systems and Principles

Right proof submits to evidentiary regime precepts per legislator's prescription, Three systems share core principles but diverge methodologically.

Proof Systems :

Juridical organization of proof diversifies into three doctrines :

1. Free Proof Regime/Doctrine :

Anchored in liberty, untrammelled by statutorily prescribed means; judiciary enjoys plenary discretion tailoring proof to suit/circumstances. Critique : evidentiary heterogeneity even identical facts-judge's latitude permits acceptance/rejection inconsistently, imperiling judicial impartiality.

2. Restricted Proof Regime/Doctrine :

Contra antecedent defects, mandates judicial **strict neutrality** and passivity; evidence statutorily regimented/hierarchized by probative value, curtailing appraisal discretion. Rationale: bolstering litigant safeguards, proof stability/uniformity.

Critique: compels judgment per evidence irrespective conviction.

3. Mixed Proof Regime/Doctrine :

Synthesizes antecedents' merits, eschewing flaws; judge presumptively neutral (documentary proof) yet affirmatively appraises (testimonial) per case.

Algeria predominantly restricted (Civil/Commercial/Family Codes enumerating means/effects), tempered commercially for celerity/flexibility/trust/usage.

Paragraph Two: Fundamental Proof Principles

General proof theory submits to cardinal tenets:

1. Judicial Neutrality:

Claimant-bound to prove per statutorily delimited means sans contestation; judge consequentially non-intervenient (administratively bound), eschewing compulsion of adverse evidence production, assuming receptor role with ancillary powers (expertise ordering). Ergo, judgments per tendered evidence, not personal knowledge.

2. Confrontation Principle:

Evidence tendered by one party must be propounded to adversary for contestation/opinion. Judicial testimonial admission mandates reciprocity (Civil Code Article 323).

3. Adversary Right to Proof :

Corollary of neutrality; parties privileged to tender evidence per law.

4. Presumption of Debt-Free Estate:

Prima facie, estate unencumbered; claimant disproves.

5. Burden on Claimant, Oath on Denier:

Proof-failure permits oath tender.

6. **No Compulsion to Self-Incrimination:**

Neutrality precludes imposing adverse evidence; voluntary tender extractable.

7. **No Self-Fabricated Proof:**

Statutory means binding; formality/testimony prescriptive.

Requirement Two: Means of Proof

Evidentiary statutes circumscribe methods: writing, testimony, presumptions, admission, oath-sequentially surveyed.

Branch One: Writing

Civil Code Article 323 bis:

"Writing proof arises from letter/symbol/number/mark/sign sequence bearing known meaning."

Paramount evidential instrument : rights documented/paper-sourced, unambiguous phrasing foreclosing dispute.

Official vs Private Writing :

One: Official Writing (Authentic Instruments)

Public officer recording declarations per legal form/competence bounds (**Article 323 ter** admits electronic).

Notarial deeds (civil/commercial); administrative instruments. Compulsory for immovables (sale/gift/lease/mortgage), incorporations—conclusive absent forgery; binds parties/heirs; nationally enforceable.

Three: Private Writing (Private Instruments)

Presumed issuer absent express denial; dated binds third parties, Signed missives/telegrams equate; merchants' ledgers inter partes if regularly kept.

Branch Two : Testimony (Witness Proof)

French doctrine : personal knowledge declaration.

Arabic: judicial intimation of another's right over another; witness oath; judge presumes veracity absent partiality.

Algerian regime: pecuniary threshold (Article 333): "Non-commercial juridical acts exceeding DZD 100,000/indeterminate value inadmissible by testimony absent contrary statute."-below threshold admissible.

Branch Three: Presumptions

Legislator/judge-inferred unknown from known; probabilist, rebuttable absent irrebuttable statute (Article 340 inadmissible where oath permitted).

Branch Four: Admission

Judicial acknowledgment of opponent's claimed juridical fact mid-proceedings (Article 341) -"queen of proofs", binding admitter. Requisites:

capacity; plausibility (20-year-old cannot acknowledge 30-year paternity); unilateral (no acceptance/rejection).

Branch Five: Oath

Exhaustion post exhaustion invokes opponent's conscience via tailored formula.

decisive oath:

swearing ends claim adversely; refusal favors claimant; returnable. Parties privileged (Article 343).

Completive oath:

judge-initiated inference aid (Article 348).

Section Two: Extinguishment of Rights

Rights bifurcate political/civil; political (non-pecuniary) excluded—focus pecuniary (real/personal).

Requirement One: Extinguishment of Real Rights

- **Object Destruction :**

Ownership/usufruct/habitation/servitude extinguish upon subject perdition (building collapse); mortgages , privileges likewise.

- **Non-Use (Extinctive Prescription) :**

Prolonged disuse forfeits (usufructuary: 15 years, Article 308), ownership perpetual exception.

- **Term Arrival:**

Fixed-term usufruct lapses eo die.

Requirement Two: Extinguishment of Personal Rights

Pecuniary, enumerable per Civil Code :

Branch One: Performance

Natural obligation fulfillment by debtor/proxy/interested party (Article 258 under "Right Extinguishment").

Branch Two: Remission

Voluntary creditor discharge sans performance; debtor acquiescence requisite (**Article 305**); gratuitous rules apply.

Branch Three: Performance Impossibility

Force majeure extinguishes:

"Obligation extinguishes if debtor proves impossibility from extraneous cause." (Article 307)

Branch Four: Novation

Juridical act terminating antecedent right, inaugurating novus ordo, Article 287 modalities:

- a. Debt substitution (distinct object/source).
- b. Debtor subrogation (third-party substitution, antecedent discharge).
- c. Creditor change (debtor ascends creditor).

Branch Five: Compensation (Set-Off)

Mutual creditor-debtor reciprocity extinguishes pro tanto (DZD 5,000/15,000 example nets DZD 10,000 residual). Articles 297-303.

Branch Six: Merger of Estates

Coalescence creditor-debtor in one person extinguishes: "Concurrent creditor-debtor status vis-à-vis single debt extinguishes pro merger extent." (Article 304)

Chapter Six: Extinguishment of Rights

Rights constitute fundamental pillars of civil law, designed to regulate interpersonal relationships and safeguard legitimate interests. However, these rights are not perpetual but may extinguish for manifold causes delineated by statute, whether by parties' volition or operation of law. The subject of right extinguishment holds paramount significance in Algerian civil law, serving to ensure transactional stability and preclude indefinite disputes.

The Algerian legislator has codified obligation extinguishment provisions under Articles 258-322 of the Civil Code, enumerating causes precipitating right cessation while distinguishing right extinguishment per se from associated claim prescription.

Section One: Nature of Right Extinguishment in Algerian Civil Law

Requirement One: Definition of Right Extinguishment and Distinction from Analogous Concepts

Right extinguishment denotes the juridical termination and cessation of legal existence, depriving holder of enforcement or judicial claim thereto.

Such extinguishment may be total (complete right cessation) or partial (claim extinction only, obligation persisting as natural obligation, as in prescription).

Distinguish from transfer :

Latter preserves right quantum mutatus (person-to-person), whereas extinguishment effects absolute nullity.

Requirement Two: Characteristics of Right Extinguishment

Extinguishment manifests distinct hallmarks:

volitional (performance, remission) or statutory (prescription).

Temporal nexus ensures legal stability, circumscribing dormant rights, thereby promoting juridical security and transactional certainty.

Section Two : Causes of Right Extinguishment in Algerian Civil Law

Requirement One : Extinguishment by Performance and Equivalents

Performance constitutes natural obligation discharge, debtor executing vis-à-vis creditor per (Articles 258 et seq), effecting definitive right cessation.

Equivalents include:

- **Substitute Performance:** Creditor accepts alternative pro interesse suo.

- **Novation:** Antecedent obligation superseded novus ordo seclorum.
- **Compensation/Set-Off:** Reciprocal obligations extinguish pro tanto.
- **Merger of Estates:** Concurrent creditor-debtor status in single person.

Requirement Two: Extinguishment Absent Performance

Rights extinguish sans execution via:

- **Remission:** Creditor's unilateral discharge, obligation lapses gratuitously.
- **Performance Impossibility:** Objective supervening impossibility ex causa extranea.
- **Extinctive Prescription:** Lapse of prescriptive period bars claim, yielding **natural obligation** (unenforceable judicially; voluntary performance irreversible).

Requirement Three: Extinguishment by Juridical Facts

Cessation via juridical facts:

- **Subject-Matter Perition:** Object destruction nullifies right.
- **Resolutive Condition/Term:** Suspension lapses upon triggering.
- **Holder's Death:** Personal rights (usufruct) extinguish absent heritability.

Section Three: Effects of Right Extinguishment

Requirement One: Right Cessation

Extinguishment precipitates absolute nullity, precluding judicial enforcement and terminating juridical relationship.

Requirement Two: Transformation into Natural Obligation

Prescription cases transmute enforceable right into natural obligation—morally binding, judicially unenforceable; voluntary satisfaction irrevocable.

Requirement Three: Role of Extinguishment in Transactional Stability

Extinguishment fosters transactional repose, circumscribing indefinite claims, incentivizing timely enforcement, and equilibrating creditor protection against debtor repose from stale demands.

المصطلح	الترجمة الإنجليزية القانونية	شرح مختصر
الحق	Right	Legal entitlement or power recognized by law
الحق العيني	Real Right / Right in rem	Direct power over a thing enforceable against all (ownership)
الحق الشخصي	Personal Right / Right in personam	Obligation owed by specific person (debt)
نظرية الحق	Theory of Rights	Jurisprudential study of rights' nature, sources, classification
الاستئثار	Appropriation / Exclusive Entitlement	Sole possession or dominion over right's object
التسلط	Dominion / Control	Authority to act upon/use right's object
المذهب الشخصي	Subjective (Volitional) School	Right as will / power (Windscheid, Savigny)
المذهب الموضوعي	Objective School	Right as protected interest (Jhering)

المصطلح	الترجمة الإنجليزية القانونية	شرح مختصر
المذهب المختلط	Eclectic / Mixed School	Synthesis of will + interest
مصلحة محمية	Protected Interest	Benefit safeguarded by law
الإرادة	Will / Volition	Mental faculty enabling legal acts
سلطة إرادية	Volitional Power	Will-endowed authority
أركان الحق	Elements of Right	Subject, object, protection
مصادر الحق	Sources of Rights	Contracts, facts, statute
إثبات الحق	Proof of Right	Evidentiary establishment before court
انقضاء الحق	Extinguishment of Right	Legal cessation/termination
التقادم	Prescription / Laches	Time-barred extinction (extinctive)
الوفاء	Performance / Discharge	Obligation fulfillment
الإبراء	Remission / Release	Creditor waiver
التجديد	Novation	New obligation superseding old

المصطلح	الترجمة الإنجليزية القانونية	شرح مختصر
المقاصة	Set-Off / Compensation	Mutual debt netting
اتحاد الذمة	Merger of Estates	Creditor-debtor coalescence
وقائع قانونية	Juridical Facts	Events law-effectuated
تصرف قانوني	Juridical Act	Will-directed legal effect
حق سياسي	Political Right	Civic participation (voting)
حق مدني	Civil Right	Private entitlements (property)
حق عام	Public Right	Fundamental/human rights
حق خاص	Private Right	Contractual/family
الحماية القانونية	Legal Protection / Remedy	Judicial enforcement mechanisms

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