



**Ministry of Higher Education and Scientific Research
University of Ain Temouchent – Belhadj Bouchaib**

Faculty of Law

Department of Law



Lecture notes in

**English :
Legal Terminology**

Course

For second year licence in Law

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Introduction

English became the world's leading language gradually, not by official decision, but through history and politics, British colonialism imposed English as the language of administration and education, which laid the foundation for its global spread¹. After world War II, The growing power of the United states strengthened its global role¹. Today, no language can replace English in world politics, economy, science, technology, and international communication².

Publishing in english has become necessary for international impact in legal studies, as measured by citation counts and academic influence². Furthermore, most top-ranked legal journals publish in english, making its mastery an essential requirement for international academic legal publication³. Mastery of legal terminology in english is also essential for law students who wish to pursue postgraduate studies at prestigious universities, participate in international conferences, or work within international organizations⁴.

This course focuses on the study of fundamental legal terminology studied by second year licence in law students in their fundamental and discovery modules. Its objectives are as follows to introduce students to essential legal terms, to define them precisely to examine their usage within algerian law, and to apply them in short sentences. Various exercises are also provided to consolidate students understanding. Each section shall address legal definitions, translations of Algerian legal texts, and practical exercises.

¹ - Robert Phillipson, *Linguistic Imperialism*, Oxford University press, 1992, p.47.

² - David Crystal, *English as a Global language*, Cambridge University Press, 2003, p.78.

³ - Philip Altbach, *The Imperial Tongue : english as the Dominating Academic Language*, *Economic and political weekly*, Vol 42, no.36,2007, p.3690

⁴ - Péter Mezei, *Twenty Years of law, A comparative Analysis of international Publication trends*, *Publishing research quarterly*, Vol 38, no.1,2022, p45

The **1st title** deals with « **The Essential legal terminology in first semester courses** ». It covers Legal terminology of fundamental teaching units « **Chapter 1** » and Legal terminology of discovery teaching units « **Chapter 2** ». The **2nd** title is organized in the same way. It presents « **Essential legal terminology in second semester course** », including Legal terminology of fundamental teaching units « **Chapter1** » and Legal terminology of discovery teaching units « **Chapter 2** » .

Title 1 : The Essential legal terminology in first semester courses

During the first semester, students take various modules, including fundamental and discovery units. It is therefore essential that students learn the legal terminology of these modules in English, as this enables them to access diverse english language legal references in the course of their reseach.

Some of these courses are classified as fundamental teaching units « **Chapter 1** », while others as classified exploratory modules « **Chapter2** ».

Chapter 1 : Legal terminology of fundamental teaching units

The fundamental units in the first semester consist of the law of obligations, commercial law, general criminal law, and administrative law. These units may be classified into public law « **section1** » and private law « **section 2** ».

Section 1 : Public law

The public law branches included among the fundamental modules for second- year students are **general criminal law** and **administrative law**.

Subsection 1 : General criminal Law

General criminal law is the branch of law that governs infractions and establishes their essential elements, determines the forms of criminal liability, and regulates the penalties applicable to their commission¹.

Through general criminal Law, students study **the general theory of infraction**. This section is therefore dedicated to the examination of legal terminology relating to the elements of infraction and the classification of infractions.

1. Definition

The general theory of infraction constitutes the foundation of criminal law . An **infraction** may be defined as any act or omission prohibited by criminal law and sanctioned by a penalty². Infractions are classified into three categories according to their degree of seriousness : **contraventions, délits and crimes**, each governed by a corresponding set of rules³.

Crime : the most serious category of criminal offences, punishable by the most severe penalties.

Délit: an offence of intermediate seriousness, punishable by correctional penalties.

Contravention: the least serious category of offences, generally punishable by minor penalties or fines.

¹ - Patricia Faralado- Cabana, Excellence and anglophone dominance : The case of law, Criminology and social science, in Connective legal culture, springer, 2018, p.112.

² - Bryan A, Legal writing writing in plain, University of Chicago press, 2001, p.12.

³ - Jean-Claude Gémard and Nicholas Kasirer, Jurilinguistics : Between law and language, Thémis/Bruylant Montréal, 2005, p.45-47.

This tripartite classification determines the applicable penalties, the competent courts, and the procedural rules governing criminal proceedings¹.

The commission of an infraction requires the concurrence **of three essential elements**. The **materiel element** (*actus reus*)³, consisting of the physical act or omission, and the **moral element** (*mens rea*)⁴, representing the criminal intent of the **offender**⁵. Additionally, every infraction must be precisely defined by legislative text, in accordance with the principle of (*nullum crimen , nulla poena sine lege*)⁶ which constitutes the legal element of the infraction⁷.

2. Algerian legal text

Article 1 of the algerian penal code provides that « *No **infraction**, and no **security measure** may be imposed except by law* »². Article 27 of the penal code further provides that « *infractions are classified according to their degree of seriousness into **crimes**, **delits**, and **contraventions**. The penalties prescribed for crimes, délits, or contraventions shall apply accordingly* »³.

As regards the elements of infraction, **Theft**⁴ shall be taken as an illustrative example. The **legal element** of this infraction is established by **articles 350 to 364** of the algerien penal code . With respect to the **material element**, it consist of the act of misappropriation, which requires three cumulative conditions : the taking must concern a movable property , the property must belong to another

¹ - Jean Pradel, Comparative Criminal Law, trans. J. R. Spencer (London: Sweet & Maxwell, 2002), 45–47; Jean-Claude Gémard and Nicholas Kasirer, Jurilinguistics: Between Law and Language (Montréal: Éditions Thémis, 2005), 82–84.

² - تنص المادة 1 ق.ع. ج على أن " لا جريمة ولا عقوبة أو تدابير أمن بغير قانون " .

³ - المادة 27 من قانون العقوبات : " تصنف الجرائم وفقا لدرجة خطورتها الى جنائيات وجنح ومخالفات، وتطبق عليها العقوبات المقررة للجنائيات أو الجنح أو المخالفات

⁴ - السرقة

person, and the taking must occur without the owner's consent. The criminal result is the transfer of full possession of the property to the offender¹.

As regards the **moral element** it consists of the existence of criminal intent, meaning the offender must have acted knowingly and voluntarily, with the specific intention of permanently appropriating another person's property².

3. Practical exercises :

Answer with true or false, if the statement is false, correct it, If it is true write only true.

The commission of an infraction requires only the material and moral element

.....

Under Algerian law, infractions are classified into two categories.

.....

Délits are the most serious category of infractions.

.....

The moral element is not required for theft.

.....

Subsection 2 : Administrative law

Administrative law may be defined as a branch of public law governing the organisation, powers, and activities of public administration, as well as the legal relations between administrative authorities and private individuals³.

¹ - يتمثل الركن المادي لجريمة السرقة في فعل الاختلاس ، الذي يستلزم توافر ثلاثة شروط مجتمعة وتمثل في ان يكون المال منقولاً ، وأن يكون مملوكاً للغير ، وأن يقع الأخذ دون رضا المالك ، أما النتيجة الاجرامية فتتمثل في انتقال حيازة الشيء كاملة الى الجاني؛ المادة 350 ق.ع

² - يستلزم الركن المعنوي وفقاً لتوافر القصد الجنائي العام ، بمعنى أن يكون الجاني قد تصرف عن علم وإرادة ، مع نية خاصة بالاستيلاء النهائي على مال الغير؛ المادة 350 ق.ع .

³ - Bénédicte Fauvarque-Cosson et al., Law Dictionary French-English/English-French, Dalloz, 2008, p.18.

Through this section, we shall identify the key legal terms that students are required to acquire in the field of administrative law. The following terms have been selected public service, administrative centralisation, administrative deconcentration, administrative decentralisation, administrative hierarchy, and hierarchical authority¹.

1. Definition

Administrative centralisation may be defined as a system of administrative organisation in which decision-making power is concentrated at the top of the state apparatus, with all decisions emanating from a single central authority and being applied uniformly throughout the national territory. Under this system, local administrative bodies possess no independent legal personality and act solely as agents of the central state².

As regards **administrative decentralisation**, it may be defined as the transfer of powers and responsibilities from the central state to local authorities endowed with their own legal personality, financial autonomy, and elected governing bodies. It differs from deconcentration in that decentralised bodies are legally independent from the central state and are not subject to hierarchical supervision but only to administrative control³.

Concerning **hierarchical authority**, it may be defined as the administrative hierarchy is the organisational structure through which administrative bodies are arranged in a pyramid of authority, from the highest central authorities down to the lowest local units. Each level of the hierarchy is subordinate to the level above it and is bound by the instructions and decisions of its superiors⁴.

¹ - F.H.S. Bridge, op.cit, p.45.

² - Ibid.

³ - Bénédicte Fauvarque-Cosson et al., op.cit., p.112.

⁴ - Gérard Cornu, Linguistique juridique, op.cit, p.156.

Regarding **Hierarchical authority** it may be defined the power vested in a superior administrative authority to direct, instruct, supervise, and if necessary annul the decisions of subordinate bodies within the same administrative structure. It constitutes the principal instrument of administrative control within a centralised system and operates without the need for an express legal text¹.

2. Algerian legal text

Article 4 of Law n° 12-07 on the Wilaya expressly refers to **centralisation** in the following terms: "The wilaya, in its capacity as an administrative district, shall be responsible for the **deconcentrated activities** of the state and shall contribute to the implementation of public policies within the framework established for the distribution of the state's powers and resources between its central and territorial levels."²

Article 17 of the Constitution provides that "the elected council constitutes the foundation of **decentralisation** and the framework for citizen participation in the management of public affairs"³.

Article 3 of law n° 12-07 on the Wilaya provides that "The wilaya, in its capacity as a **decentralised** territorial community, shall have its own budget to finance the works and programmes approved by the People's Assembly of the Wilaya"⁴.

Article 127 of the Law on the Wilaya further provides for **hierarchical authority** in the following terms: "The wilaya shall have an administration placed under the authority of the wali. The various **deconcentrated services** of the state

¹- Gérard Cornu, *Linguistique juridique*, op.cit, p.156.

² - المادة 4: من قانون الولاية ينص على أنه : "تكلف الولاية بصفتها الدائرة الإدارية، بالأعمال غير الممركزة للدولة وتساهم في تنفيذ السياسات العمومية ضمن الإطار المحدد لتوزيع صلاحيات ووسائل الدولة بين مستوياتها المركزية والإقليمية."

³ - المادة 17 من الدستور : " يمثل المجلس المنتخب قاعدة اللامركزية ومكان مشاركة المواطنين في تسبير الشؤون العمومي ".

⁴ - المادة 3: من قانون الولاية "تتوفر الولاية بصفتها الجماعة الإقليمية اللامركزية، على ميزانية خاصة بها لتمويل الأعمال والبرامج المصادق عليها من المجلس الشعبي الولائي."

shall form part of it. The wali shall be responsible for directing, coordinating and supervising these services."¹.

3. Practical exercises :

Complete the following sentences with the appropriate term:

- Article 3 of Law n° 12-07 on the Wilaya provides that the wilaya, in its capacity as a territorial community, shall have its own budget.
- The wali is subject to the of the Minister of the Interior.
- Under, all administrative functions are concentrated in the hands of the central state.
- Article 127 of Law n° 12-07 provides that the wilaya administration is placed under the of the wali.

Section 2 : Private law

During the first semester, students study two fundamental units of private law, that is, the law of obligations and commercial law.

Subsection 1 : The Law of Obligations

The law of obligations is a branch of private law governing the legal relations between two or more parties, whereby one party, known as the debtor, is bound to perform a specific act or to refrain from performing one, in favour of another party, known as the creditor². In the Algerian civil law tradition, the law of obligations is primarily codified in the Civil Code, which draws extensively from the French Civil Code and the Egyptian Civil Code³.

¹ - المادة 127 من قانون الولاية : "تتوفر الولاية على إدارة توضع تحت سلطة الوالي. وتكون مختلف المصالح غير الممركزة للدولة جزءا منها. ويتولى الوالي تنشيط وتنسيق ومراقبة ذلك"

² -Gérard Cornu, Dictionary of the Civil Code, op.cit., p. 189.

³ - Bénédicte Fauvarque-Cosson et al, op.cit., p.234.



Through this section, we shall examine the following essential legal terms: the principle of autonomy of will, the elements of contract, defects of consent, nullity, rescission, and termination .

1. Definition

The principle of autonomy of will may be defined as the fundamental principle of contract law whereby parties are free to create, modify, and terminate legal relations according to their own will, without external constraint, provided that such agreements do not contravene public order or good morals¹.

The elements of contract refer to the essential conditions required for the valid formation of a contract, namely consent, capacity, object, and cause².

Defects of consent are understood as the vices affecting the validity of consent, including error, fraud, and duress, which render the contract liable to rescission at the request of the affected party³.

Nullity consists of the sanction imposed by law upon a contract that fails to meet the essential conditions of its formation, rendering it void and without legal effect from the outset⁴.

Rescission is described as the judicial remedy whereby a contract is declared voidable at the request of one of the parties whose consent was vitiated, producing effects only from the date of the judicial decision⁵.

¹ - Gérard Cornu, Dictionary of the Civil Code, p. 112.

² - Bénédicte Fauvarque-Cosson et al., op.cit., 156.

³ - F.H.S. Bridge, Ibid., p. 78.

⁴ - Gérard Cornu, Linguistique juridique, Ibid., p. 203.

⁵ - Jean-Claude Gémard and Nicholas Kasirer, op.cit, p. 189.

Termination denotes the dissolution of a contract resulting from the failure of one party to perform its contractual obligations, entitling the other party to seek judicial termination and damage¹.

2. Algerian legal text

Article 106 of the Algerian Civil Code enshrines the **principle of autonomy of will** in the following terms: "A contract is binding upon the parties it may neither be revoked nor modified except by **mutual agreement of both parties**, or for reasons prescribed by law"².

Article 54 of the Algerian Civil Code defines **a contract** as follows: "An agreement whereby one or more persons undertake, towards one or more other persons, to give, to do, or to refrain from doing something³ ».

Article 59 of the Algerian Civil Code provides for the requirement of sound consent in the following terms: "A contract is concluded as soon as the parties have exchanged their concurring expressions of will, without prejudice to the provisions of law"⁴

Article 103 of the Algerian Civil Code governs the effects of nullity in the following terms: "In the event of nullity or rescission of a contract, the parties shall be restored to the position they were in prior to the conclusion of the contract if such restoration is impossible, the court may award equivalent damages"⁵

Article 104 of the Algerian Civil Code governs partial annulment in the following terms: "If a contract is partly null or voidable, only that part shall be

¹ - George A. Bermann and Pierre Kirch, French Business Law in Translation, Oceana Publications , New York, 2008,p. 234.

² - المادة 106 من القانون المدني الجزائري "العقد شريعة المتعاقدين، فلا يجوز نقضه، ولا تعديله إلا باتفاق الطرفين، أو للأسباب التي يقرها القانون

المادة 54 من القانون المدني الجزائري "اتفاق يلتزم بموجبه شخص أو عدة أشخاص اتجاه شخص أو عدة أشخاص آخرين بمنح أو "فعل أو عدم فعل شيء ما

⁴ - المادة 59 من القانون المدني الجزائري: "على أن يتم العقد بمجرد أن يتبادل الطرفان التعبير عن إرادتيهما المتطابقتين دون الإخلال بالنصوص القانونية."

⁵ - المادة 103 من القانون المدني الجزائري: "يُعاد المتعاقدان إلى الحالة التي كانا عليها قبل العقد في حالة بطلان العقد أو إبطاله، فإن كان هذا مستحيلاً جاز الحكم بتعويض معادل".

annulled, unless it appears that the contract would not have been concluded without the part that is null or voidable, in which case the contract shall be wholly annulled¹"

Article 119 of the Algerian Civil Code defines termination in the following terms: "In bilateral contracts, if one of the parties fails to perform his obligation, the other party may, after giving formal notice to the defaulting party, request either the performance or the termination of the contract, with damages in either case if warranted"²

3. Practical Exercises

Match each term with its correct definition.

Term	Definition
Principle of autonomy of will	The dissolution of a contract due to non-performance by one party
Elements of contract	The vices affecting the validity of consent
Defects of consent	The essential conditions required for the valid formation of a contract
Nullity	The freedom of parties to create and modify legal relations according to their own will

Subsection 2 : Commercial Law

Commercial law may be defined as a branch of private law governing the legal relations arising from commercial transactions, trade activities, and business operations between merchants and other economic actors³. In the second year,

¹ - المادة 104 من القانون المدني الجزائري: "إذا كان العقد في شق منه باطلاً أو قابلاً للإبطال، فهذا الشق وحده هو الذي يبطل، إلا إذا تبين أن العقد ما كان ليتم بغير الشق الذي وقع باطلاً أو قابلاً للإبطال فيبطل العقد كله."

² - المادة 119 من القانون المدني الجزائري "في العقود الملزمة للجانبين، إذا لم يوف أحد المتعاقدين بالتزامه جاز للمتعاقد الآخر بعد إعداره المدين أن يطالب بتنفيذ العقد أو فسخه، مع التعويض في الحالتين إذا اقتضى الحال ذلك."

³ - George A. Bermann and Pierre Kirch, op.cit,p. 3.

students are introduced to the rules governing commercial acts through commercial law. Through this section, we shall examine the legal concept of the following terms: merchant, commercial books, commercial establishment, and commercial register.

1. Definition

Commercial acts may be defined as legal acts or transactions governed by commercial law rather than civil law, by reason of their nature, their form, or the status of the parties involved as merchants. In the civil law tradition, commercial law governs two inseparable objects: commercial acts (*actes de commerce*) and the profession of merchant (*commerçant*). It developed historically as a body of rules derogating from ordinary civil law, tailored to the demands of trade, namely speed of execution, security of credit, and simplicity of proof¹. **Commercial acts** are classified into three categories: **commercial acts by nature** (*actes de commerce par nature*), **commercial acts by form** (*actes de commerce par la forme*), and **commercial acts by accessory** (*actes de commerce par accessoire*)².

As regards the term merchant, it may be defined as any natural or legal person who habitually performs commercial acts in a professional capacity and in their own name, for the purpose of generating profit.³ Under Algerian law, the merchant is subject to specific obligations, including registration in the commercial register, the keeping of commercial books, and compliance with the rules governing commercial transactions⁴.

As for **commercial books**, they may be defined as the mandatory accounting records that every merchant is required by law to keep, in order to record all commercial transactions carried out in the course of their business activity. They

¹ - George A. Bermann and Pierre Kirch, *op.cit.*, p. 45.

² - Bénédicte Fauvarque-Cosson et al., *op.cit.*, p. 67.

³ - *Ibid.*

⁴ - George A. Bermann and Pierre Kirch, *Ibid* p.52.

constitute a means of proof in commercial disputes and are subject to the supervision of the competent judicial authorities¹.

As for the **commercial establishment**, it may be defined as a movable incorporeal property comprising all the **tangible and intangible elements assembled** by a merchant for the purpose of attracting and retaining clientele, including goodwill, trade name, lease rights, equipment, and merchandise².

The commercial establishment comprises two categories of assets. The first category consists of tangible assets, which include equipment, tools, machinery, furniture, and merchandise held in stock⁸. The second category, by contrast, consists of **intangible assets**, which include goodwill (fonds de clientèle), trade name (nom commercial), trademark (enseigne), lease rights (droit au bail), intellectual property rights, and licences³.

2. Algerian legal text

Article 1 of the Algerian Commercial Code defines the **merchant** as « any natural or legal person who habitually performs commercial acts as a regular profession, unless the law provides otherwise »⁴.

As for **commercial books**, Articles 9 to 18 of the Algerian Commercial Code govern their keeping. Article 9 provides that « commercial books are the mandatory records in which every merchant must register all commercial operations ». Article 13 of the same Code further provides that « The court may accept duly kept commercial books as evidence between merchants in relation to commercial acts »⁵.

¹ - Gérard Cornu, op.cit., p.156

² - Bénédicte Fauvarque-Cosson et al., op.cit., p.89

³ - George A. Bermann and Pierre Kirch, op.cit, p. 67.

⁴ - المادة 1 من القانون التجاري "يُعَدَّ تاجرا كل شخص طبيعي أو معنوي يباشر عملا تجاريا ويتخذ مهنة معتادة له، ما لم يقض القانون بخلاف ذلك."

⁵ - تنص المادة 9 على أن " الدفاتر التجارية هي السجلات الإلزامية التي يقيد فيها كل تاجر عملياته التجارية". كما تنص المادة 13 من نفس القانون على أنه: "يجوز للقاضي قبول الدفاتر التجارية المنتظمة كإثبات بين التاجر بالنسبة للأعمال التجارية."

Article 78 of the Algerian Commercial Code enumerates **the tangible and intangible elements** of the commercial establishment in the following terms « The movable property allocated for the exercise of a commercial activity shall be deemed part of the commercial establishment. Such elements may be tangible, such as merchandise and equipment, or intangible, such as clientele, trade name, lease rights, trade mark, and patents »¹.

3. Practical Exercises

Identify the error in each sentence and correct it.

A merchant is any person who occasionally performs commercial acts.

.....

The commercial establishment comprises only tangible elements.

.....

Registration in the commercial register is optional for merchants under Algerian law.

.....

Commercial books are kept by judges to record commercial operations.

.....

Under Article 78, clientele is a tangible element of the commercial establishment.

.....

Patents are considered tangible assets of the commercial establishment.

.....

Chapter 2 : Legal terminology of discovery teaching units

As regards the discovery units studied by second year ilcence in Law students, these consist of family law « **section1** » and public international law « **section**

¹ - تنص المادة 78 من القانون التجاري على أنه تعد جزء من المحل التجاري الأموال المنقولة المخصصة لممارسة نشاط تجاري، وقد تكون هذه العناصر مادية كالبيضائع والمهمات، أو معنوية كالاتصال بالعملاء والاسم التجاري والحق في الإجارة والتسمية المبتكرة وبراءات الاختراع.

2 » . The following section presents the key legal terminology relating to these two subjects.

Section 1 : Family law

Family law may be defined as a branch of private law governing the legal relations arising within the family unit, including marriage, divorce, filiation, guardianship, maintenance, and succession. It is distinguished from civil law in that it draws not only from codified legislative texts but also from the principles of Islamic jurisprudence (fiqh), which serve as a supplementary source of law in matters of personal status.

The following study focuses on the essential legal terms relating to family law, namely, betrothal, marriage, conditions of marriage, and divorce.

1. Definition

As regards **engagement**, it may be defined as the mutual promise of marriage between a man and a woman, which precedes the conclusion of the marriage contract ¹.

As for **marriage**, it may be defined a contract concluded between a man and a woman in accordance with the legal conditions, with a view to building a family based on affection and mutual respect ⁹. The elements of the marriage contract under Algerian law are as follows ².

First, **consent** , the Algerian legislature regards mutual consent, expressed through offer and acceptance, as the fundamental element of the marriage contract. The presence of both contracting parties and the object of the contract are therefore essential conditions for its valid conclusion³.

¹ - Algerian Family Code, art. 4.

² - Algerian Family Code, art. 9.

³ - Algerian Family Code, art. 11

Second, **the matrimonial guardian** (wali), he may be defined as the male relative of the woman who is entitled by law to conclude the marriage contract on her behalf or in her presence¹.

Third, **the dower**, article 14 of the Algerian Family Code defines the dower as a gift paid to the wife in money or in any other lawful form, which becomes her exclusive property. Article 15 further provides that the dower must be specified in the marriage contract, whether payable immediately or deferred; in the absence of such specification, the wife shall be entitled to the customary dower².

Fourth, **two witnesses**: The presence of two witnesses is a condition of validity of the marriage contract under both Islamic jurisprudence and Algerian family law³.

As for **divorce**, it may be defined as the legal dissolution of the marriage contract by the will of one or both spouses, or by judicial decision. Under Algerian Family Law, marriage may be dissolved through different forms of divorce. **Unilateral divorce** allows the husband to terminate the marriage by his sole will, subject to the legal procedures established by the Family Code. **Khul** is a form of divorce initiated by the wife in exchange for financial compensation paid to the husband, usually consisting of the return of the dower or another agreed amount. Judicial divorce (Tatliq) is granted by the competent court upon the wife's request on legally recognized grounds, such as harm, non-maintenance, prolonged absence, or other causes provided by law. Finally, divorce by mutual consent occurs when both spouses agree to end their marriage amicably, and the court

¹ - Algerian Family Code, arts. 14–15.

² - Algerian Family Code, arts. 14–15

³ - Algerian Family Code, arts. 48–57.

confirms the agreement in accordance with the provisions of the Algerian Family Code.¹ .

2. Algerian legal text

Article 5 of the Algerian Family Code governs **engagement** in the following terms "Engagement is a mutual promise of marriage; either party may withdraw therefrom."²

Concerning the elements of the marriage contract, Article 9 of the Algerian Family Code enumerates them in the following terms "The conditions of marriage are as follows: the capacity of both spouses, the offer and acceptance, the matrimonial guardian (wali), the dower (mahr), and two witnesses"³.

As for divorce, Article 48 of the Algerian Family Code provides for the forms of **divorce** in the following terms "The marriage contract may be dissolved by the will of the husband, by mutual consent of the spouses, or at the request of the wife within the limits prescribed by Articles 53 and 54 of this Code ."⁴

As regards the dower , Article 14 of the Algerian Family Code defines the **dower** in the following terms « The dower is a gift paid to the wife in money or in any other lawful form; it becomes her exclusive property and she may dispose of it as she wishes »⁵.

3. Practical exercises

Correct the following sentences identify the error in each sentence and correct it.

-divorce may only occur by the unilateral will of the husband.

¹ - Algerian Family Code, arts. 48–57.

² - المادة 5 من قانون الأسرة تعرف الخطبة بقولها: "الخطبة وعد متبادل بالزواج، ولكل من الطرفين العدول عنه".

³ - تنص المادة 9 من قانون الأسرة الجزائري على أنه: "يشترط لصحة الزواج: أهلية الزوجين، والإيجاب والقبول، والولي، والصدّق، والشاهدان".

تنص المادة 48 من قانون الأسرة الجزائري على أنواع الطلاق بقولها: "يُفكّ عقد الزواج بإرادة الزوج، أو بتراضي الزوجين، أو
⁴ - "يطلب من الزوجة في حدود ما حدّدته المواد 53 و54 من هذا القانون

⁵ - تنص المادة 14 من قانون الأسرة الجزائري على تعريف الصّدّق بقولها: "الصّدّق هو ما يدفع نحلة للزوجة من نقود أو غيرها من كل ما هو مباح شرعاً، وهو ملك لها تتصرف فيه كما تشاء".

.....

.....

- The wife may seek khul only with the consent of the husband.

.....

- Judicial divorce (tafriq) may only be requested by the husband.

.....

- Repudiation (talaq) requires the consent of both spouses for its validity.

.....

- Khul' and judicial divorce (tafriq) are the same form of divorce under Algerian law.

.....

Section 2 : Public international law

Public international law may be defined as the body of rules, norms, and legal customs that states and other actors feel an obligation to, and generally do, obey in their mutual relations¹. It governs the behaviour of the subjects of international law, including states, and reinforces the principle of sovereign equality among all states. It also lends predictability and order to the relationship between the subjects of international law².

Through this section, we shall focus on some of the essential legal terms of public international law namely: the primary sources and subsidiary sources of public international law, the United Nations, the General Assembly, the Security Council, the Economic and Social Council, and the Secretariat.

¹ - United Nations, Statute of the International Court of Justice, Art. 38.

² - United Nations, Charter of the United Nations, Art. 2.

1. Definitions

As regards **the primary sources of public international law**, Article 38 of the Statute of the International Court of Justice lists international conventions, **international custom** as evidence of a general practice accepted as law, and the general principles of law recognised by civilised nations as the primary sources of law applicable in cases before the Court¹.

The first primary source is **international conventions (treaties)**, which are formal written agreements concluded between states that create legally binding obligations. Article 38(1)(a) of the ICJ Statute defines them as international conventions, whether general or particular, establishing rules expressly recognised by the contesting states².

The first primary source is international conventions (treaties), which are formal written agreements concluded between states that create legally binding obligations. Article 38(1)(a) of the ICJ Statute defines them as international conventions, whether general or particular, establishing rules expressly recognised by the contesting states³.

The third primary source is the **general principles of law**, which Article 38(1)(c) defines as the general principles of law recognised by civilised nations. These principles fill gaps in treaties and customary law and ensure fairness in international adjudication⁴.

As regards **the subsidiary sources of public international law**, Article 38(1)(d) of the Statute of the International Court of Justice lists judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.⁵

¹ - United Nations, Statute of the International Court of Justice, Art. 38

² - United Nations, Statute of the International Court of Justice, Art. 38

³ - United Nations, Statute of the International Court of Justice, Art. 38

⁴ - United Nations, Statute of the International Court of Justice, Art. 38.

⁵ - Ibid.

The first subsidiary source is judicial decisions, which include **the judgments** of international courts and tribunals, in particular those of the - tribunals, such as the ICJ, the International Criminal Court, or regional courts, are not binding precedents in international law. However, they provide important guidance on how international law is interpreted and applied¹.

As regards **the teachings of the most highly qualified publicists**, Article 38(1)(d) of the Statute of the International Court of Justice describes them as a subsidiary means for the determination of rules of law, referring specifically to the teachings of the most highly qualified publicists of the various nations². The most highly qualified publicists are those with the most expertise in international law. In many cases, they will also produce the highest quality teachings. Holding an important official position is also considered an aspect of being most highly qualified, since appointment requires expertise and the work itself enhances that expertise³. Furthermore, the fact that these writers should represent different regions is in line with the wording of Article 38(1)(d) and its focus on publicists of the various nations⁴.

As for the **United Nations**, it may be defined as an international organisation founded in 1945, following the end of the Second World War, by 51 member states committed to maintaining international peace and security, developing friendly relations among nations, promoting social progress, better living standards, and respect for human rights¹⁰. The United Nations is founded on the principle that everyone, from the individual right up to the state itself, is

¹ - United Nations, Statute of the International Court of Justice, art. 38(1)(d)

² - United Nations, Statute of the International Court of Justice, art. 38(1)(d)

³ - United Nations, Statute of the International Court of Justice, art. 38(1)(d).

⁴ - Sondre Torp Helmersen, Finding 'the Most Highly Qualified Publicists': Lessons from the International Court of Justice, *European Journal of International Law*, N° 30, 2019, p. 509.



accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated¹.

Article 7 of the Charter of the United Nations establishes the following principal organs: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat².

First, **the General Assembly**. The General Assembly is the main deliberative, policymaking, and representative organ of the United Nations. All 193 member states of the United Nations are represented in the General Assembly, making it the only UN body with universal representation³.

Second, **the Security Council**. The Security Council is a 15-member body mandated to maintain international peace and security. It is the only organ of the United Nations whose decisions are legally binding upon all member states⁴.

Third, **the Economic and Social Council**. The Economic and Social Council is the principal body for coordination, policy review, and dialogue and recommendations on economic, social, and environmental issues, as well as the implementation of internationally agreed development goals. It has 54 members, elected by the General Assembly for overlapping three-year terms⁵.

Fourth, **the Secretariat**. Article 97 of the Charter provides that the Secretariat shall comprise a Secretary-General and such staff as the organisation may require. The Secretary-General shall be appointed by the General Assembly

¹ - Christopher Greenwood, *Sources of International Law: An Introduction*, New York: United Nations, 2008, p.6.

² - United Nations, *Charter of the United Nations*, Art. 2.

³ - United Nations, *Charter of the United Nations*, Preamble.

⁴ - United Nations, *Charter of the United Nations*, art. 7.

⁵ - United Nations, *Charter of the United Nations*, art 23–27.



upon the recommendation of the Security Council and shall be the chief administrative officer of the organisation¹.

2. Algerian legal text

Article 28 of the Algerian Constitution provides that " Algeria shall work for the reinforcement of international cooperation and for the development of friendly relations between States on the basis of equality, mutual interest, and non-interference in internal affairs. It recognizes the principles and objectives of the Charter of **the United Nation**².

3. Practical exercises

Complete the sentences using the following words: General Assembly – Security Council – Secretariat – United Nations

Theis the main deliberative body of the United Nations where all Member States are represented.

Theis responsible for maintaining international peace and security.

The carries out the day-to-day work of the United Nations.

Theis an international organization founded in 1945 to promote peace and cooperation among states.

¹ - United Nations, Charter of the United Nations, art 61

² - United Nations, Charter of the United Nations, art. 97.

Titre II : Essential legal terminology in second semester courses

During the second semester, students take various modules, including fundamental and discovery units. It is therefore essential that students learn the legal terminology of these modules in English, as this enables them to access diverse english language legal references in the course of their reseach.

Some of these courses are classified as fundamental teaching units « **Chapter 1** » , while others as classified exploratory modules « **Chapter2** ».

Chapter 1 : Legal terminology of fundamental teaching units

The fundamental modules studied by students during the second semester may be classified into two categories. Modules relating to substantive law « **section 1** » and modules relating to procedural law « **Section 2** ».

Section 1 : Substantive law

Substantive law may be defined as the body of legal rules that establish, define, and regulate the rights and obligations of individuals, as opposed to procedural law, which governs the means by which those rights and obligations are enforced before the courts¹¹.

The fundamental substantive law modules studied during the second semester of the second year consist of the law of obligations and administrative law.

Subsection 1 : The law of obligations

Through this section, we shall examine the essential legal terms relating to the law of obligations, namely: the characteristics of obligation, the assignment of a claim, the transfer of a debt, and the extinction of obligation .

1. Definition

As regards the **characteristics of obligation**, they may be defined as the legal traits, attributes, and descriptions that identify the nature of an obligation, distinguish it from other legal relationships, and determine its legal effects, conditions, and enforceability. These characteristics generally include its binding force, its patrimonial nature, its relativity between the parties, and its susceptibility to judicial enforcement.¹

As regards **the transfer of debt** may be defined as a legal transaction whereby a debtor transfers his obligation or debt to another person who becomes responsible for performing the obligation toward the creditor, subject to the conditions required by law, particularly the consent of the creditor in many legal systems².

As regards **the assignment of claim**, it may be defined as a transfer of a creditor's right against the debtor to another person (the assignee), who steps into the position of the assignor without modifying the underlying obligation³.

With regard to **extinction of an obligation** may be defined as the legal process by which an obligation is terminated and ceases to produce its effects, either through performance, agreement of the parties, impossibility of performance, or any other cause provided for by law, resulting in the release of the debtor and the disappearance of the legal bond between the parties⁴.

2. Algerian legal text

Regarding one of **the characteristics of obligations**, namely the binding force of contracts, the Algerian Civil Code provides in Article 106 that "A

¹ - F.H.S. Bridge, op.cit., p. 189.

² - F. Terré, P. Simler, and Y. Lequette, Civil Law: Obligations, Dalloz, 2018,p.25.

³ - F. Terré, P. Simler, and Y, op.cit, p.50.

⁴ - Idem,p.54.

contract is the law of the contracting parties; it may not be revoked or modified except by mutual agreement of the parties or for the reasons provided by law " ¹.

With regard **to the assignment of claim**, Article 251 of the Algerian Civil Code provides that it sets out the conditions governing the transfer of debt " The transfer of debt shall not be effective against the creditor unless he approves it; he may refuse it, and the original debtor shall not be discharged unless the creditor accepts the transfer " ² . .

With regard to **the extinction of obligations**, Article 108 provides one of its main causes, namely performance (payment), stating that "An obligation is extinguished when the debtor performs it in kind in accordance with its terms and conditions. Performance shall be valid if carried out by the debtor, his representative, or any person having an interest in its performanc³".

3. Practical exercises

Match each term with its correct definition.

Term	Definition
Characteristics of obligation	The transfer of a creditor's right to a third party
Assignment of a claim	The termination of an obligation by one of the means prescribed by law
Transfer of a debt	The substitution of a new debtor for the original debtor
Extinction of obligation	The specific qualities that determine the nature and scope of an obligation

¹ - ينص في المادة 106 من القانون المدني على أنه : " العقد شريعة المتعاقدين، فلا يجوز نقضه ولا تعديله إلا باتفاق الطرفين أو للأسباب التي يقررها القانون .

² - تنص المادة 251 من القانون المدني على أنه : " لا تكون حوالة الدين نافذة في حق الدائن إلا إذا أقرها، ويجوز له أن يرفضها، ولا تبرأ ذمة المدين الأصلي إلا بقبول الدائن للحوالة"

³ - تنص المادة 105 من القانون المدني على أنه : " ينقضي الالتزام إذا وفى به المدين عيناً وفقاً لشروطه وأحكامه. ويكون الوفاء صحيحاً إذا صدر من المدين أو نائبه أو من أي شخص له مصلحة في الوفاء به."

Subsection 2 : Administrative law

Through this section, we shall define the essential legal terms relating to administrative law, namely : administrative activity and the types of public services .

1. Definition

As regards **administrative activity**, it may be defined as the sum of activities carried out by public authorities for the purpose of serving the public interest. Administrative law in the civil law tradition is first and foremost about enabling the proper functioning of the administration in its principal activity of serving the public, rather than about the control of the administration. Administrative activity comprises two main forms: public service activity (*activité de service public*), which aims to satisfy collective needs, and police activity (*activité de police administrative*), which aims to maintain public order ¹.

As regards the **public service** refers to a broader notion encompassing all activities of collective utility and general interest, carried out or governed by a public authority in accordance with the legal obligations incumbent upon it.¹ The concept of public service constitutes the cornerstone of French and Algerian administrative law, around which the entire system of administrative organisation is built: Public services in Algeria are classified into four main categories² .

First, **public administrative establishments** (*établissements publics administratifs EPA*), which are public entities of an administrative nature, governed exclusively by public law rules, such as universities and public hospitals³.

¹ -John Bell, Sophie Boyron, and Simon Whittaker, *Principles of French Law*, Oxford University Press, 2008, p.147.

² - John Bell, Sophie Boyron, and Simon Whittaker, *op.cit*, p.147.

³ -- F.H.S. Bridge, *Ibid.*, p.189.

Second, **public economic establishments** (établissements publics économiques EPE), which are public entities carrying out economic activities under state supervision, governed partly by private law rules ¹ .

Third, **industrial and commercial public establishments** (établissements publics à caractère industriel et commercial EPIC), which are public entities carrying out activities of an industrial or commercial nature, such as electricity and water supply companies² .

Fourth, **local public establishments** (établissements publics locaux — EPL), which are public entities operating at the local level, under the supervision of territorial communities such as the wilaya or the commune³ .

As regards **administrative police activity** (la police administrative), it may be defined as the activity through which public authorities intervene to regulate individual and collective behaviour in order to maintain public order, which comprises three essential components: public security (sécurité publique), public tranquillity (tranquillité publique), and public health (salubrité publique)⁴.

Administrative police activity is further classified into two categories. **General administrative police activity** (police administrative générale) is exercised by the state over the entire national territory and aims to maintain public order in general. **Special administrative police activity** (police administrative spéciale) is exercised in specific domains prescribed by law, such as urban planning, environmental protection, and road traffic regulation¹².

2. Algerian legal text

As regards public **administrative establishments**, executive Decree n° 92-19 of 9 January 1992 governs the payment procedures applicable to public

¹ -Bénédicte Fauvarque-Cosson et al., op.cit.p.234.

² -- John Bell, Sophie Boyron, and Simon Whittaker, op.cit., p.147.

³ -- Gérard Cornu, op.cit, p.156.

⁴ -John Bell, Sophie Boyron, and Simon Whittaker, op.cit., p. 152.

administrative establishments (établissements publics à caractère administratif), confirming their status as public law entities subject to state budgetary control. Furthermore, Order n° 15 of 9 March 2023 provides that the approval of budgets of public administrative establishments and public establishments under state supervision shall be delegated to budgetary controllers¹.

As regards **public economic establishments** Law n° 88-01 of 12 January 1988, known as the Orientation Law on Public Economic Establishments, constitutes the primary legislative source governing public economic establishments in Algeria. It was subsequently amended by Order n° 01-04, which extended their autonomy by subjecting them to commercial law rules in their organisation and management².

The legal framework governing industrial and commercial public establishments in Algeria is primarily established by Law n° 88-04 of 12 January 1988, subsequently reformed by Framework Law n° 21-50, which aims to transform such establishments into joint-stock companies while retaining the privileges of public law³.

As regards **Local Public Establishments**, Under Algerian law, local public establishments are governed by Law n° 11-10 of 22 June 2011 on the commune and Law n° 12-07 of 21 February 2012 on the wilaya, which provide that local public establishments operate under the supervision of the territorial communities

¹ - يحكم المرسوم التنفيذي رقم 19-92 المؤرخ في 9 يناير 1992 إجراءات الدفع المطبقة على المؤسسات العمومية ذات الطابع الإداري، مؤكداً وضعها بوصفها هيئات خاضعة للقانون العام وللرقابة الميزانية للدولة. كما يقضي القرار رقم 15 المؤرخ في 9 مارس 2023 بتفويض صلاحية الموافقة على ميزانيات المؤسسات العمومية ذات الطابع الإداري إلى المراقبين الميزناتيين.

² - يعد القانون التوجيهي رقم 01-88 المؤرخ في 12 يناير 1988 المصدر التشريعي الأساسي الذي يحكم المؤسسات العمومية الاقتصادية في الجزائر. وقد عدله الأمر رقم 04-01 الذي وسع استقلاليتها بإخضاعها لقواعد القانون التجاري في تنظيمها وتسييرها.

³ - يحكم المؤسسات العمومية ذات الطابع الصناعي والتجاري في الجزائر القانون رقم 04-88 المؤرخ في 12 يناير 1988، المعدل بموجب القانون-الإطار رقم 50-21 الذي يرمي إلى تحويلها إلى شركات مساهمة مع الاحتفاظ بامتيازات القانون العام..

and are subject to the administrative control (tutelle) of the competent authorities ¹.

3. Practical exercises

Read the following situation and answer the questions .

"The Algerian state created a new entity responsible for the management and distribution of drinking water at the level of the wilaya. This entity has its own legal personality and financial autonomy, and its activities are of an industrial and commercial nature."

- What type of public establishment is this entity?
- Which legal framework governs it?
- Is this entity subject to public law, private law, or both? Justify your answer.
- Under whose supervision does this entity operate?

Section 2 : Procedural law

Procedural law may be defined as the body of legal rules governing the methods and mechanisms by which substantive rights and obligations are enforced before the courts. It determines the conditions of admissibility of actions, the rules of evidence, the conduct of proceedings, and the means of appeal and enforcement of judicial decisions. In the civil law tradition, procedural law is distinguished from substantive law in that it does not create rights in itself, but rather provides the legal framework within which such rights are exercised and protected² .

¹ - تخضع المؤسسات العمومية المحلية في الجزائر لقانون البلدية رقم 11-10 المؤرخ في 22 يونيو 2011 وقانون الولاية رقم 12-07 المؤرخ في 21 فبراير 2012، اللذين يقضيان بأن هذه المؤسسات تعمل تحت إشراف الجماعات الإقليمية وتخضع لوصاية السلطات المختصة.

² -Gérard Cornu, Dictionary of the Civil Code, op.cit, p. 189.

The second semester covers two procedural law modules, the Code of Civil and Administrative Procedure "**Subsection 1**" and the Code of Criminal Procedure" **Subsection 2**".

Subsection 1 : The code of civil and administrative procedure

Through this section, we shall examine the various judicial bodies of the ordinary judiciary as well as the various judicial bodies of the administrative judiciary .

1. Definition

As regards **the ordinary judiciary**, it may be defined as the set of courts and tribunals competent to adjudicate disputes between private individuals, whether in civil, commercial, or criminal matters. In the civil law tradition, the ordinary judiciary is organised in a hierarchical structure comprising two levels of jurisdiction and one supervisory body. Under Algerian law, the ordinary judiciary comprises the following judicial bodies.

First, **the tribunal**, which is the court of first instance competent to adjudicate disputes at the local level in civil, commercial, social, and criminal matters¹.

Second, **Judicial Council** , which is the second-level court competent to review judgments rendered by tribunals at first instance, within the limits prescribed by law².

Third, the **Supreme Court** , which is the highest judicial body of the ordinary judiciary, competent to review judgments rendered by courts of appeal on grounds of law, ensuring the uniform interpretation and application of the law throughout the national territory³.

¹ - Article 2 of Organic Law n° 22-10 of 9 June 2022 on Judicial Organisation.

² - Article 12 of Organic Law n° 22-10 of 9 June 2022.

³ - Article 179 of the Algerian Constitution.

2. Algerian legal text

As regards **the tribunal**, Article 32 of Law n° 08-09 of 25 February 2008 containing the code of civil and administrative procedure provides that « The tribunal shall have jurisdiction to adjudicate all civil, commercial, social, and criminal disputes at first instance, unless otherwise provided by law »¹.

As regards **judicial council** Article 12 of Organic Law n° 22-10 of 9 June 2022 provides that « The Judicial Council is the second instance court established at the level of each wilaya, competent to review judgments rendered by tribunals within its territorial jurisdiction »².

As regards **Supreme Court** Article 179 of the Algerian Constitution provides that « The Supreme Court and the Council of State shall ensure the uniform interpretation and application of the law throughout the national territory and shall supervise compliance with the law »³.

3. Practical exercises

Complete the following sentences with the appropriate term:

Under Article 32 of Law n° 08-09, the shall have jurisdiction to adjudicate all civil, commercial, social, and criminal disputes at first instance.

The is established at the level of each wilaya and is competent to review judgments rendered by tribunals.

Article 179 of the Algerian Constitution provides that the shall ensure the uniform interpretation and application of the law throughout the national territory.

¹ - ننص المادة 32 من القانون رقم 09-08 المؤرخ في 25 فبراير 2008 المتضمن قانون الإجراءات المدنية والإدارية على أنه: "تختص المحكمة بالفصل في جميع المنازعات المدنية والتجارية والاجتماعية والجزائية ابتدائياً، ما لم يقض القانون بخلاف ذلك".
² - تنص المادة 12 من القانون العضوي رقم 10-22 المؤرخ في 9 يونيو 2022 على أنه: "يُنشأ المجلس القضائي على مستوى كل ولاية بوصفه محكمة الدرجة الثانية، ويختص بمراجعة الأحكام الصادرة عن المحاكم الواقعة في دائرة اختصاصه الإقليمي".
³ - تنص المادة 179 من الدستور الجزائري على أنه: "تضمن المحكمة العليا ومجلس الدولة توحيد الاجتهاد القضائي في جميع أنحاء البلاد ويسهران على احترام القانون .



The ordinary judiciary in Algeria is organised in levels of jurisdiction and one supervisory body .

Subsection 2 : Code of criminal procedure

The code of criminal procedure may be defined as the body of procedural rules governing the State's response to infractions and offenders. According to a widely cited definition in the civil law tradition, the Code of Criminal Procedure is the set of legal rules that govern the State's response to offences and offenders, guiding the behaviour of police, prosecutors, and judges in dealing with a possible infraction¹³. Through this section, we shall examine the essential legal terms used in the code of criminal procedure, namely public action, judicial police, the public prosecutor, the investigating judge, ordinary remedies, and extraordinary remedies.

1. Definition

As regards **public action**, it may be defined as the legal action initiated by the state, through the Public Prosecution, for the purpose of prosecuting the perpetrators of infractions and applying the penalties prescribed by law¹.

As for the **public prosecutor**, he may be defined as the magistrate heading the Public Prosecution at the level of the tribunal, responsible for initiating and exercising public action, supervising the judicial police, and ensuring the enforcement of judicial decisions².

It may be defined as the body of officers and agents entrusted by law with the task of detecting infractions, gathering evidence, and apprehending the

¹ - George A, op.cit., p.112.

² - Algerian Code of Criminal Procedure, Law n° 25-14, art. 1.

perpetrators thereof, under the supervision and direction of the public prosecution¹.

As **for the investigating** judge, he may be defined as the magistrate entrusted by law with conducting judicial investigations in serious criminal matters, with a view to establishing the facts of the case, gathering evidence, and determining whether there are sufficient grounds to refer the accused to the competent trial court ².

As **regards ordinary remedies**, they may be defined as the legal means available to the parties to criminal proceedings to challenge a judicial decision that has not yet acquired the force of res judicata, before a higher court, within the time limits and conditions prescribed by law. Ordinary remedies comprise two main forms under Algerian law³.

The first form is **opposition**, which is the remedy available to a defendant convicted in absentia, allowing him to challenge the judgment before the same court that issued it⁴.

The second form is **appeal**, which is the remedy by which a party challenges a judgment rendered at first instance before the Judicial Council, seeking its review on both factual and legal grounds.

Concerning extraordinary remedies in criminal matters comprise three forms exclusively. Cassation , appeal in the interest of the law and petition for review⁵.

The first extraordinary remedy is **cassation** It is an extraordinary remedy aimed at ensuring that judgments and decisions rendered at last instance conform

¹ - Algerian Code of Criminal Procedure, Law n° 25-14, art. 29.

² - F.H.S. Bridge, op.cit., p.156

³ - Ibid.

⁴ - Gérard Cornu, op.cit., p. 189.

⁵ - Bénédicte Fauvarque-Cosson et al., op.cit, p. 198

to the law, on grounds of law only, without re-examination of the facts of the case. It is exercised before the Supreme Court¹.

The second is **appeal in the interest of the law**, which is an extraordinary remedy exercised exclusively by the Prosecutor General before the Supreme Court, aimed at ensuring the uniform interpretation and application of the law, without affecting the rights of the parties².

The third **extraordinary remedy is petition** for review, which is an exceptional remedy allowing the reopening of criminal proceedings following a final conviction, where new facts or evidence emerge that were unknown at the time of the trial and that are likely to establish the innocence of the convicted person³.

2. Algerian legal text

Concerning public prosecution, Article 1 of the Algerian code of criminal procedure provides that « public prosecution for the enforcement of penalties shall be initiated and conducted by judicial officers or officials entrusted with such duties by law. The injured party may also initiate such proceedings under the conditions prescribed by this code »⁴.

As for the public prosecutor, Article 35 of the Algerian Code of Criminal procedure provides that « The public prosecutor represents the prosecutor general before the court, either personally or through one of his assistants, and conducts public prosecution within the territorial jurisdiction of the court where he performs his duties »⁵.

¹ - Algerian Code of Civil and Administrative Procedure, Law n° 08-09, art. 313.

² - Algerian Code of Criminal Procedure, Law n° 25-14, arts. 495–499.

³ - Algerian Code of Criminal Procedure, Law n° 25-14, Art 692.

⁴ - الدعوى العمومية، تعرفها المادة 1 من قانون الإجراءات الجزائية على أنها « الدعوى العمومية لتطبيق العقوبات يحركها ويباشرها رجال القضاء أو الموظفون المعهود إليهم بها بمقتضى القانون. كما يجوز أيضا للطرف المضرور أن يحرك هذه الدعوى طبقا للشروط المحددة في هذا القانون. ».

تنص المادة 35 من قانون الإجراءات الجزائية على أنه " يمثل وكيل الجمهورية النائب العام لدى المحكمة بنفسه أو بواسطة أحد مساعديه، وهو يباشر الدعوى العمومية في دائرة المحكمة التي بها مقر عمله

Concerning the investigating judge, Article 38 of the Algerian code of criminal procedure provides that « the investigating judge is responsible for conducting investigations and may not participate in adjudicating cases that he has investigated »¹.

As for opposition, Article 975 of the Algerian Code of Criminal Procedure provides that « a judgment rendered in absentia shall be deemed as having never existed with respect to all its provisions where the defendant files an opposition and such opposition is declared admissible »².

As for appeal, Article 586 of the Algerian code of criminal procedure provides that « judgments rendered in matters of misdemeanors and contraventions shall be subject to appeal »³.

Article 651/1 of the Algerian Code of Criminal Procedure provides the « cassation may be filed before the supreme court against decisions of the indictment chamber on the merits, or ruling on jurisdiction, or containing final provisions which the judge is not empowered to modify »⁴.

Article 692 of the Algerian Code of Criminal Procedure provides that « Where the prosecutor general before the supreme court becomes aware of a final judgment rendered by a tribunal or a decision rendered by a judicial council, and such judgment or decision is contrary to the law or to essential procedural rules, yet none of the parties has filed a cassation appeal within the

¹ - تنص المادة 38 من قانون الاجراءات الجزائية على أنه « يتولى قاضي التحقيق إجراءات التحقيق والتحري، ولا يجوز له المشاركة في الفصل في القضايا التي سبق له التحقيق فيها »

² - تنص المادة 975 من قانون الإجراءات الجزائية على أن « الحكم الصادر غيابيا يُعد كأن لم يكن بالنسبة لجميع ما قضى به إذا قام المتهم بالمعارضة وحكم بقبولها شكلا ».

³ - تنص المادة 586 من قانون الإجراءات الجزائية على أن الأحكام الصادرة في مواد الجنب والمخالفات تكون قابلة للاستئناف.

⁴ - تنص المادة 651 / 1 من قانون الاجراءات الجزائية على أنه يجوز الطعن بالنقض أمام المحكمة العليا في قرارات غرفة الاتهام في الموضوع أو الفاصلة في الاختصاص أو التي تتضمن مقتضيات نهائية ليس في استطاعة القاضي ان يعدله.

prescribed time limits, he may refer the matter to the supreme court by way of petition »¹.

As regards Article 396 of the Algerian Code of Criminal Procedure, it provides that " Petitions for review shall only be admissible in respect of decisions rendered by Judicial Councils or decisions rendered by tribunals that have acquired the force of res judicata and which impose a conviction for a crime or a délit »² .

3. Practical exercises

State whether the following statements are true or false. .

- Cassation involves a re-examination of the facts of the case.
- The appeal in the interest of the law may be exercised by any party to the proceedings.
- Petitions for review are admissible in respect of decisions imposing a conviction for a contravention.
- Under Article 692, the Prosecutor General may refer an unlawful final judgment to the Supreme Court even if no party has filed a cassation appeal.
- Extraordinary remedies may be exercised before ordinary remedies have been exhausted.

¹ - تنص المادة 692 من قانون الاجراءات الجزائية على أنه اذا وصل لعلم النائب العام لدى المحكمة العليا صدور حكم نهائي من محكمة أو قرار مجلس قضائي ، وكان هذا الحكم أو القرار مخالفا للقانون أو القواعد الاجرائية الجوهرية ومع ذلك لم يطعن فيه أحد من الخصوم بالنقض في الأجل المحددة فله أن يعرض الأمر بعريضة على المحكمة العليا.

² - تنص المادة 396 على أنه لا يسمح بطلبات اعادة النظر الا بالنسبة للقرارات الصادرة على المجالس القضائية او الصادرة عن المحاكم اذا حازت قوة الشئ المقضي به وكانت تقضي بالادانة في جنابة أو جنح.

Chapter 2 : Legal terminology of discovery teaching units

The discovery units studied during the second semester consist of human rights law «**section1** » and labour law « **section2** ». Accordingly, we shall examine the essential legal terms of each discovery unit.

Section 1 : International humanitarian law

Human rights may be defined as the universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. International human rights law lays down obligations which states are bound to respect. By becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect, and to fulfil human rights¹.

Through this section, we shall dedicate our study to five essential universal human rights instruments.

1. Definition

The universal protection of human rights is enshrined in a series of **fundamental international instruments** adopted under the auspices of the United Nations. The following five instruments constitute the cornerstone of international human rights law².

First, the **Universal Declaration of Human Rights** , adopted by the United Nations General Assembly on 10 December 1948, constitutes the foundation of the entire international human rights system. It was the first instrument in human history to set out, in a comprehensive and universal manner, the basic civil, political, economic, social, and cultural rights to which all human beings are entitled without distinction of any kind. Although the Declaration is not legally binding in itself, it has served as the basis for the elaboration of all subsequent

¹ -United Nations, The Foundation of International Human Rights Law.

² - United Nations General Assembly, Universal Declaration of Human Rights, Resolution 217 A (III).



human rights treaties and has been incorporated into the constitutional law of numerous states¹.

Second, **the International Covenant on Civil and Political Rights**, building upon the foundations laid by the Universal Declaration, the International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. It constitutes a legally binding treaty protecting a wide range of civil and political rights, including the right to life, the prohibition of torture, the right to a fair trial, freedom of expression, freedom of religion, and the right to political participation. States parties to the Covenant are bound to respect and ensure the rights recognised therein to all individuals within their territory².

Third, **the International Covenant on Economic, Social and Cultural Rights**, adopted simultaneously with the International Covenant on Civil and Political Rights on 16 December 1966, the International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976. It protects a broad range of economic, social, and cultural rights, including the right to work and just conditions of employment, the right to social security, the right to an adequate standard of living, the right to health, and the right to education. Together with the Universal Declaration and the International Covenant on Civil and Political Rights, it forms what is commonly referred to as the International Bill of Human Rights³.

Fourth, **the Convention on the Rights of the Child**, adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990, is the most widely ratified human rights treaty in history, having

¹ - United Nations General Assembly, International Covenant on Civil and Political Rights, Resolution 2200A (XXI).

² - United Nations General Assembly, International Covenant on Civil and Political Rights, Resolution 2200A (XXI).

³ - United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, Resolution 2200A (XXI)



been ratified by 196 states. It sets out a comprehensive framework for the protection of the rights of children, covering civil, political, economic, social, and cultural rights, and establishes four core principles: non-discrimination, the best interests of the child, the right to life, survival and development, and the right to be heard. Algeria ratified this Convention on 16 April 1993¹.

Fifth, **the Convention against Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984 and entered into force on 26 June 1987. It constitutes the primary international instrument prohibiting all forms of torture and cruel treatment, imposing on states parties absolute obligations to prevent, investigate, and punish acts of torture committed within their jurisdiction. The prohibition of torture is recognised as a peremptory norm of international law (*jus cogens*), admitting of no derogation under any circumstances².

2. Algerian legal text

Algeria ratified the **Convention on the Rights of the Child** on 16 April 1993, Article 71 of the Algerian Constitution (2020) provides that « The family shall enjoy the protection of the state. The rights of the child shall be protected by the state and the family, having regard to the best interests of the child. The state shall protect and guarantee the rights of abandoned children and children of unknown parentage. Under penalty of criminal prosecution, guardians are required to ensure the upbringing of their children. Under penalty of criminal prosecution, children are required to fulfil their duty of filial piety towards their guardians and to assist them. The law shall punish all forms of violence against

¹ - United Nations General Assembly, Convention on the Rights of the Child, Resolution 44/25 (New York: United Nations, 20 November 1989).

² - United Nations General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Resolution 39/46

children, their exploitation, and their abandonment. The state shall endeavour to guarantee assistance and protection to the elderly¹

3. Practical exercises

Fill in the blanks.

The ICCPR protects rights such as the right to life and freedom of expression.

The ICESCR protects rights such as the right to work and education.

Unlike the other four instruments, the Universal Declaration of Human Rights is not

The Convention against Torture prohibits

The Convention on the Rights of the Child protects

Section 2 : Labour law

Labour law may be defined as the varied body of law applied to such matters as employment, remuneration, conditions of work, trade unions, and industrial relations. Through this section, we shall focus our study on **the internal and interpretive sources of labour law**.

1. Definition

As regards **custom and professional practices**, they constitute a single interpretive source of labour law, defined as the set of rules, usages, and habitual modes of conduct consistently and uniformly observed within a particular profession or industry over a prolonged period of time, to the extent that they have acquired a normative value in the interpretation and application of labour law

¹ - المادة 71 من الدستور تنص على أنه : " تحظى الأسرة بحماية الدولة. حقوق الطفل محمية من طرف الدولة والأسرة مع مراعاة المصلحة العليا للطفل. تحمي وتكفل الدولة الأطفال المتخلي عنهم أو مجهولي النسب. تحت طائلة المتابعات الجزائية، يلزم الأولياء بضمان تربية أبنائهم. تحت طائلة المتابعات الجزائية، يلزم الأبناء بواجب القيام بالإحسان إلى أوليائهم ومساعدتهم. يعاقب القانون كل أشكال العنف ضد الأطفال واستغلالهم والتخلي عنهم. تسعى الدولة إلى ضمان المساعدة والحماية للمسنين" .



rules. They operate as a supplementary source, filling gaps left by legislative texts and collective bargaining agreements ¹.

As regards **legal doctrine**, it may be defined as the body of scholarly writings, opinions, and analyses produced by eminent jurists and legal academics, which contribute to the interpretation and development of labour law rules. Although ¹⁴legal doctrine is not a binding source of law in the civil law tradition, it plays a significant role in guiding judges, practitioners, and legislators in the interpretation and application of legal texts. ²

As regards collective labour agreements, they may be defined as written agreements concluded between one or more representative trade unions on behalf of employees and one or more employers or employers' organisations, governing the conditions of employment, wages, working hours, and other matters relating to the employment relationship within a given sector or enterprise. Under Algerian law, collective labour agreements constitute a primary internal source of labour law and are binding upon all parties within their scope of application³.

As regards **internal regulations and work instructions**, they may be defined as the set of written rules and directives established unilaterally by the employer within the enterprise, governing the organisation of work, discipline, health and safety, and the conduct of employees in the workplace. Under Algerian law, internal regulations constitute a binding source of labour law within the enterprise and are enforceable upon all employees, provided that they have been duly communicated to the employees and do not contravene the provisions of the Labour Code or the applicable collective labour agreement⁴.

¹ - Gérard Cornu, op.cit, 156

² - Jean-Claude Gémard and Nicholas Kasirer, op.cit., p.215

³ - George A. Bermann and Pierre Kirch, op.cit., p.145

⁴ - Bénédicte Fauvarque-Cosson et al, op.cit., p.210

2. Algerian legal text

Article 114 of Law n° 90-11 of 21 April 1990 on Labour Relations, as amended by Law n° 22-16 of 20 July 2022, defines collective labour agreements in the following terms " A collective labour agreement is an agreement concluded between one or more representative trade unions on behalf of employees and one or more employers or employers' organisations, governing the conditions of employment, wages, and working conditions within a given sector or enterprise¹".

As regards the internal regulations and work instructions, article 75 of Law n° 90-11, as amended by Law n° 22-16 of 20 July 2022, governs internal regulations in the following terms: "Every employer employing twenty workers or more shall be required to draw up internal regulations governing the organisation of work, discipline, health, and safety within the enterprise.

As regards custom and professional practices, article 2 of Law n° 90-11, as amended by Law n° 22-16 of 20 July 2022, provides that "In the absence of any legislative, regulatory, or contractual provision, custom and professional practices shall apply as supplementary sources for the regulation of employment relationships"².

As for Legal Doctrine, Article 2 of Law n° 90-11, as amended by Law n° 22-16 of 20 July 2022, further provides that: "Workers are entitled to benefit, once during their professional career, from unpaid leave to establish their own enterprise." This provision reflects the growing influence of legal doctrine in

¹ - تنص المادة 114 من القانون رقم 90-11 المعدل بالقانون رقم 22-16 المؤرخ في 20 يوليو 2022 على تعريف الاتفاقية الجماعية للعمل بقولها: "الاتفاقية الجماعية للعمل هي اتفاقية تبرم بين ممثلي نقابة أو عدة نقابات للعمال من جهة وبين مستخدم أو عدة مستخدمين أو منظماتهم المهنية من جهة أخرى، وتحكم شروط التشغيل والعمل والأجور في قطاع أو مؤسسة معينة.

² - تنص المادة الثانية من القانون رقم 90-11 المعدل بالقانون رقم 22-16 على أنه: "في غياب أي نص قانوني أو تنظيمي أو اتفاقي، تطبق الأعراف والممارسات المهنية بوصفها مصادر تكميلية لتنظيم علاقات العمل»

shaping new labour rights and adapting the law to evolving social and economic needs¹.

3. Practical exercises

Fill in the Blanks

In the absence of any legislative or contractual provision, and professional practices shall apply as supplementary sources.

A is concluded between trade unions and employers governing conditions of employment.

..... plays an important role in guiding judges in the interpretation of labour law rules.

¹ -كرس القانون رقم 16-22 المؤرخ في 20 يوليو 2022 حقاً جديداً نص على أنه: "يحق للعامل الاستفادة، مرة واحدة خلال مساره المهني، من عطلة غير مدفوعة الأجر لإنشاء مؤسسته." ويعكس هذا النص الدور المتنامي للفقهاء القانوني في تشكيل حقوق عمالية جديدة وتكييف القانون مع المستجدات الاجتماعية والاقتصادية ..

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