

Business law

Prepared by Dr. Galal Elmasry

MGM412

Lecture 1





مجموعة جامعة
الجميع الذكية
للتعليم القابضة

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Business law

Lecture 1

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The most important main themes of the lecture:

- 1- State and Law.
- 2- Legal Norm.
- 3- Legal Act.
- 4- Legal Relation.
- 5- Effect of Time on Legal Relations.
- 6-Subjects of Law.

1- State and Law:

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- ❑ In a broad sense, a state is an organisation regulated by a special system of rules (law) of the ruling class with the monopoly of physical coercion, which submits the population in a certain territory to its sovereign authority, thus sustaining the way of production and political relations in the given society that are in the interest of the ruling class. A state is comprised of three constituent elements: territory, population and sovereignty/ sovereign public power. In a narrower sense, a state implies a state organisation or state apparatus. State organisation, i.e. a state in a narrow sense, is a hierarchically ordered and legally organised system of authorities which have a monopoly of physical coercion and a power of creation and application of rules of conduct.

1- State and Law:

- ❑ Sociologically observed, law represents one of the systems of rules of people's conduct within a society organised into a state. Law substantially differs from other systems of social norms because it contains a request to implement sanctions by state authorities.
- ❑ In a broader sense, the term law encompasses the legal system. It is a hierarchically systematised set of rules of conduct that apply for subjects within a society, whose violation in social relations is sanctioned by a special organisation with the monopoly of physical coercion (the state). Such rules of conduct are created by state authorities (parliament, government), non-government authorities (corporations) and natural persons. A legal norm is a rule of conduct of subjects whose potential violation should be sanctioned by the state.

- ❑ **A legal norm**, a set of legal norms or an entire system of law are sometimes called objective law or law in objective sense. The term objective law includes all legal norms created by the state and other authorised subjects.

1- Legal system:

- ❑ Law consists of an enormous number of legal norms, i.e. rules of conduct. In order for them to be as efficiently and fully applied in practice as possible, i.e. implemented in social relations, in order to easily identify potential contradictions between particular norms and to better fill legal gaps, it is necessary to systematize all existing legal norms into a single collection/unit. Therefore, a legal system is a unique and non-conflicting unit created by hierarchical systematisation of all existing legal norms and their classification into smaller or bigger, lower or higher related groups.

1- Legal system:

- ❑ According to the applied legal technique, i.e. the method of regulation of social relations primarily in the areas of sources of law, existing legal systems in the world can be classified into three major groups: European Continental, Anglo-Saxon and religious-traditional system.

2- Elements of a legal system:

- Based on various criteria, three basic elements of any legal system can be identified: a legal norm, a legal institution or institute and a branch of law. Legal areas that incorporate a number of related branches of law may but do not have to be an element of a legal system. This depends on a specific legal order.
- A legal norm is a basic cell, an atom of law. Accordingly, a legal norm must be a fundamental element of a legal system. A legal institution or institute is a common name for a collection of all legal norms that regulate different sides of a single legal relation using a common method.

2- Elements of a legal system:

- A branch of law is a set of, generally higher, more complex institutions that use the same basic method to regulate a broad area of related social relations. Firm and absolute boundaries may not be set either among institutions or among branches of law. Property relations of subjects, those created in objects that carry a certain economic value which can be expressed in money, are regulated by an extensive range of branches of law. The most relevant group of such relations, those created by goods and in an exchange of goods and money or due to it, normatively express civil law and business law. In contemporary world.

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1-Elements of a legal norm:

- A legal norm is comprised of two basic elements: disposition and sanction. Each of these elements of a legal norm represents a rule of conduct and therefore has a normative character. Each of these rules of conduct may be applied if certain requirements are met. This part of a norm that contains the requirements for the application of one of the basic elements of a legal norm is their hypothesis. A hypothesis represents a description of a real, factual condition that should occur and exist in order for a disposition (disposition hypothesis), or a sanction (a hypothesis of a sanction) to be applied.

1-Elements of a legal norm:

-A disposition hypothesis determines a factual situation that should occur in order to create an obligation to certain conduct according to the disposition, i.e. to a legal norm. For instance, those who possess property are obliged to pay taxes; motor vehicle drivers are obliged to drive on the right. The disposition here is an obligation to pay taxes or to drive on the right. However, such an obligation only occurs for those who own property or those who drive motor vehicles. A disposition hypothesis, therefore, is those who have property or those who drive motor vehicles. Hypothesis is sometimes formulated as a component of a legal norm. In other cases, it is apparent from the context, the logic of a norm. It is so clear that there is no need to emphasise it. For instance: pedestrians may cross the street when there is green light on traffic lights. The assumption for the application of this norm is that in that street there is a traffic light installed.

2- Legal norms according to scope and object of regulation:

- According to whether a legal norm pertains to an indefinite number of cases of the same kind or it regulates a specific relation, norms are classified into general and individual. General norms refer to all entities that are or may be in a situation anticipated by the disposition hypothesis of that norm. Therefore, general norms regulate a specific type of relations. The number of cases that they refer to is theoretically unlimited. This is why it can be said that general norms determine its object of regulation in advance. Persons who possess property are obliged to pay taxes is an example of a general norm. Individual norms refer to one specific case; one specific person. For example, J.M. is obliged to pay 1,000KM of total income tax.

2- Legal norms according to scope and object of regulation:

- Norms can further be classified according to which area of social life they regulate, which branch of law they belong to. There are: constitutional norms, civil law norms, criminal law norms, administrative norms, etc. Civil law norms regulate civil law relations; criminal law norms regulate criminal law relations, etc.

- Norms of substantive legal nature are those that regulate relations between subjects in the society. On the other hand, procedural legal norms regulate the procedure itself, i.e. how those who should act according to a norm shall behave, primarily a state authority when it needs to apply a legal norm. Substantive legal norms are contained in various laws (primarily in the civil code and criminal code). Procedural legal norms are contained in the regulations of specific types of proceedings (the Law on Civil Proceedings, the Law on Criminal Proceedings, the Law on Administrative Proceedings).

3- Legal norms according to degree of disposition determination:

-In a peremptory norm, a disposition is predetermined, it is clearly defined what kind of conduct is expected. A subject can only behave in accordance with a clearly formulated rule of conduct; otherwise a sanction is applied. For instance, a debtor is obliged to repay a debt. Such norms (and dispositions) are also known as absolutely definite and categorical.

- An alternative norm includes two or more rules of conduct, from which a subject to which a norm is addressed (addressee) can choose whichever he finds more suitable. Whichever rule of conduct within that norm the subject opts for, the conduct is in accordance with the norm. A subject is therefore left to choose which rule of conduct to obey to. He is free within that framework. Therefore, alternative norms belong to a type of relatively indefinite legal norms, which give a subject a freedom to choose a rule of conduct from that norm and to behave in accordance with it, e.g. Taxes can be paid either in cash or by depositing securities.

3- Legal norms according to degree of disposition determination:

-A dispositive norm includes a rule of conduct, but simultaneously gives subjects authorisation to regulate their relation in a manner that suits them, to create a different rule of conduct in a manner they find appropriate. Only in cases when addressees do not want to determine what kind of rules and obligations should arise from a particular relation, a rule of conduct from a legal norm is applied. Therefore, a dispositive norm gives an absolute freedom to parties to regulate their behaviour, as long as it is within the framework of objective law. A rule of conduct which is contained in a dispositive norm determines how entities ought to behave only if they do not determine it themselves. Hence, they are also known as replaceable, e.g. A seller is obliged to deliver the goods of medium quality, unless otherwise provided by the contract. Dispositive norms are typical of obligatory agreements. In regards to their formulation, as one can notice, they usually include the phrase unless otherwise provided by the agreement.

3- Legal norms according to degree of disposition determination:

-A discretionary norm includes an authorisation of a state authority to, taking into consideration certain circumstances, act as it considers being the most purposeful, i.e. it gives it discretionary powers. The freedom of a state authority to exercise discretionary powers is limited not only by circumstances but also by an aim for which it was constituted. Under no circumstances should it be used for the interest of official persons who constitute that authority (abuse of power). The authorisations from discretionary norms are performed on the basis of and within the framework of regulations.

- A form of a legal act represents a dialectical unity of a process of generating an act and the very act as a special social and legal creation. The aforementioned definition clearly indicates that the term of a form of a legal act contains several elements. The first element is the authority. It implies an authorisation to issue a specific legal act. Such a definition includes the authorisation of state authorities (parliament, government) as well as the right of non-state entities (companies, associations) to create some types of legal acts.

- The second element of the form of a legal act is the procedure of issuance. The procedure should be a guarantee of quality of the act which will result from the procedure. Hence, it is understandable why a complex procedure is expected to occur for the issuance of more significant acts. A legal order does not merely regulate the procedure of issuing legal acts by state authorities; but also by persons and legal entities – subjects of civil and business law. The same rule applies here as well: the more significant the act, the more complex the foregoing procedure.

- The third element of the form is a materialisation of an act, i.e. “a physical action whereby an act is expressed externally, and a material instrument that potentially provides its duration”. The expression of an act (decision of a will) can be: oral, expressed by unambiguous gestures or other actions (conclusive acts), and written. Exceptionally, in certain cases prescribed by the law, decisions of a will expressed tacitly have the same effect. Nowadays, a written act, as a result of a written expression of a decision of a will, is the most frequent type of a permanent materialisation of an act. In theory of law, due to their generality, the content and form of an act are the most common criterion of classification of legal acts.

1- General legal acts:

-A general legal act regulates in advance and in a general manner a number of more or less definite repeatable relations with the same characteristics and of the same kind. The manner in which a general act is applied depends on the degree of determination of a disposition hypothesis and a disposition of the general legal norm which it contains. Considering the legal form criterion, general legal acts can be classified into the following sub-groups: the constitution, the law, bylaws (ordinances, decrees, decisions), a court ruling based on precedent, customary law and general acts of social organisations authorised by a legal order to create legal norms.

1-General legal acts:

1- In a legal sense, a constitution is a system of general legal acts or one general legal act which incorporates political and legal norms, principles of organising a monopoly of physical coercion and legal order in a given society, as well as legal principles of organising those segments of social life on which the holders of a monopoly of physical coercion particularly insist. It is a legal act with the highest legal power. Authority to enact a constitution belongs to the highest state authorities. Which one of them specifically has the authority to do it depends on the social circumstances in which the constitution is being enacted.

1-General legal acts:

2-Constitutional principles are formulated in such a way that it is very difficult to implement them directly. Hence, it is necessary to implement their concretisation, elaboration and sanction in secondary legal acts. The first act in which this is done is a law. A law can be defined as a written legal act which is enacted by a legislative authority according to a legislative procedure and which contains either individual or general legal norms.

3-**In a broader sense**, all legal acts which are lower than a law could be classified as bylaws regardless of who the legislator is and what they incorporate. In a narrower sense, only general acts issued by state authorities who are lower in authority than the assembly are considered as bylaws.

1-General legal acts:

4-There are three ways in which a state adopts general acts of social organisations (companies, associations) into a legal order. The first one is a legal initiation, i.e. an advance assessment made by a constitution or a law to determine whether acts passed by social organisations are legal acts. The second way is mostly a legal sanction, i.e. adopting into a legal order the acts which were not legal at the time of the enactment. The third way is a combination of the previous two: a legal initiation and a legal sanction. With its ordinance, the state declares that an act of a social organisation is a legal act if a certain state authority verifies it. The first system is accepted in our law when it comes to general acts of companies and associations.

1-General legal acts:

5-A custom is a social norm which occurs due to a certain way of behaviour of persons in one situation being repeated until a conscience is formed that such a behaviour is mandatory in any future identical situations. In order for a customary rule to be sanctioned and so admitted as a source of law by the state, it must meet two requirements. Firstly, a respective custom must not be contrary to existing legal regulations, principles of the legal order or moral principles of a given society. Secondly, it must be in accordance with the basics of a social-political order.

1-General legal acts:

6-Nowadays, theoreticians agree that the decisions made by a constitutional court are a source of law. Since constitutional courts make decisions regarding a compliance of lower general legal acts with higher general legal acts, their decisions must have a general character. In theory, along with the decisions of a constitutional court, the attribute of being a source of law is acknowledged by the decisions of the highest court in a country as they are considered to have a precedent character. Attaching the attribute of being a source of law to the adjudications of lower courts is controversial. It seems that a standpoint according to which a judicial act is always given an attribute of being a source of law can be adopted. The existence of and necessity for filling legal loopholes, the method of work of courts and the formation of a judicial practice are in its favour.

2-Individual legal acts:

-An individual act regulates a specific, unrepeatable, existing relation. It is issued ‘backwards’ and therefore is generally unconditional. Moreover, except in the case of a legal gap – absence of a general norm required for a social relation which should be regulated beforehand, an individual legal act is issued based on a general legal act. Therefore, it represents a concretisation of a general act which does not exclude the element of creativity.

Incompletely individual legal acts are divided into those which contain a disposition: administrative acts and legal affairs and those which contain a sanction – court rulings.

2-Individual legal acts:

- 1- An administrative act is defined in several ways. If the content of an act is taken as a criterion, then it is “an individual act which determines a disposition which obliges a subject whose conduct it regulates even against their will” .
- 2- A legal affair is an individual legal act issued by a non-state subject which was created voluntarily on the basis of the authorisation of a legal order and within its framework, and which is made binding according to such a basis.
- 3- a legal act. In theory, a legal affair obliges only its creators, on the basis of their own consent. If a legal affair occurs in the field of economic and property relations, it is a civil-law affair. Civil-law affairs can be divided into civil-law affairs in a narrower sense and affairs of business (commercial) law.

2-Individual legal acts:

4-A court act can be defined as an act issued by court authorities (courts) using a special court procedure. The multitude of court authorities, various procedures that they apply, and the diversity of needs which are met by court acts have led to the creation of several types of court acts. The most significant among them are: judgement, resolution and principled stand. A judgement is a court act by which the court “makes a decision regarding the claim i.e. the subject of a dispute . A resolution is a court act by which a court “makes resolutions regarding all matters except the subject of a dispute” .

3-Definition and hierarchy of sources of law:

- All social factors which affect the creation and implementation of legal norms, as well as the facts by which those norms are acknowledged, are in theory figuratively known as sources of law. Regarding whether they create or merely express a norm, all sources of law can be divided into material and formal sources of law. Material sources of law could be defined as social facts and factors which lead to the creation of legal norms and their implementation. Formal sources of law are, in essence, acts by which material sources of law take a legal shape. We believe that sources of law, in a formal sense, are all legal acts which include either a general or an individual legal norm.

3-Definition and hierarchy of sources of law:

-A hierarchy generally denotes a formally determined relation of authority and subordination of sections within a particular system. A hierarchy of sources of law is a set of general legal acts and those individual legal acts that include legal norms, arranged according to their legal power. A legal power of a legal act is its effect (impact) on other legal acts and factual human behaviour. That power depends on the issuer of an act and on the procedure according to which the act was passed.

4-Sources of European Union law:

-European Union law implies a set of legal norms of the European Union which regulate the authority of its institutions and the rights of member states and individuals that are part of it.

Primary community law consists of legal norms which are incorporated in acts adopted by member states within their contractual-constitutional roles, i.e. in their roles of subjects of international law and founders of the Community as a supranational foundation sui generis. The rules incorporated in such acts of the Community, along with the group of general legal principles, represent a constitutional-legal framework of the European Union.

4-Sources of European Union law:

-Secondary law represents a special group of sources of law which are adopted, i.e. passed by institutions of the European Union, in accordance with the relevant provisions of primary community law. Regarding the enactor, this group of sources of law can be divided into acts issued by the Council of Europe, acts of the European Commission which were passed either individually or with the participation of the European Parliament, and acts issued by the Court. In terms of the formal-legal effect, they can be classified as binding, coercive or non-binding. Secondary law includes: regulations, directives, decisions, recommendations and opinions.

4-Legal Relation:

- Law regulates social relations between people, legal entities (companies, associations) and other entities. Not all social relations are a subject of legal regulation. Those relations which are arranged and regulated by a legal norm, regardless of whether they existed before the norm was proposed or whether the norm caused their adoption are considered as legal relations. In accordance with objective law, persons who are in such a relation are defined as subjects of a legal relation. A legal relation consists of an authorisation of one subject and an obligation of the other subject that participate in that legal relation. According to legal ordinances, from objective law, individuals as well as legal entities either obtain authorisation or obligations are imposed on them.

4-Legal Relation:

- Two very important components of a legal relation are: authorisation and responsibility or obligation. In a legal relation, authorisation and responsibility are in correlation: every authorisation of one subject corresponds with an obligation of another subject, and vice versa (e.g. the authorisation of a vendor to request of a buyer to pay for the price of an item corresponds to the buyer's obligation to pay).

5-Effect of Time on Legal Relations:

- The lapse of time may result in the obtainment, loss or modification of rights. This means that the time affects the occurrence, change and termination of a legal relation. In a legal terminology, the time which has an effect on legal situations is called a deadline. The effect of deadlines on law is manifested through the beginning and the end of a legal relation, as well as obsolescence, positive prescription and preclusion. Obsolescence is a legal institute according to which the possibility of a coercive exercise of a right ceases due to a failure to act during a period of time prescribed by the law. Courts and other state authorities do not, by virtue of their positions (*ex officio*), pay a great attention to the expiration of obsolescence period.

5-Subjects of Law:

-In legal relations, persons are found either directly or through their organisations (companies, associations). They are the bearers of authorisations and obligations of those relations. These bearers of rights, authority and obligations (holders of title) are referred to as subjects of law, subjects in a legal relation, legal subjects. Their attribute to be bearers of rights and obligations, and the possibility to have the rights and obligations is defined as a legal capacity. Under the conditions set forth by the legal order, a group of people, a collective (a company) can be given special or independent legal. Such a subject of law is called a legal entity.

5-Subjects of Law:

1-Natural persons as subjects of law:

- Modern law recognises every individual, every natural person to have the characteristic of a subject of law. For a person to have such an attribute recognised, it is sufficient for a child to be born and to have a human shape, not to be a behemoth. Natural persons cease to be a subject of law once they die. Under certain legal conditions, a court can proclaim a missing person to be dead. In such cases, a rebuttable legal presumption regarding the termination of being a subject of law is prescribed by a court act. The opposite can be proven.

5-Subjects of Law:

2-Legal entities as subjects of law:

- A legal entity is a social creation, an organisation, which has its own special socially-acceptable goals and interests and whose state of being a legal entity is recognised by a legal order. As a special subject, a legal entity clearly differs in a practical and juridical manner from individuals who are in their structure or are related to them. A legal entity starts to exist at the moment of establishment and ceases to exist once it is deleted from the relevant register where all its status data are listed. In order for a social legal creation (entity) to have the attribute of being a legal entity recognised, the following requirements need to be met:

5-Subjects of Law:

2-Legal entities as subjects of law:

- 1- there has to be a legal organisation (organisational unity) and the boards of that organisation through which it formulates its interests, goals and decisions, and enters into relations with third parties;
- 2- that organisation needs to have a goal for which it was established, tasks it needs to accomplish in order to reach that goal, vision and mission;
- 3- it should appear in its own name for the purpose of exercising the rights and performing obligations, it should have its independence and existence, separate from the existence of founders/members and employees;
- 4- it should have its own property (independent property) separate from the property of any member of that legal entity (e.g. company) and it should be solely responsible for it.



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