# Principles of Law

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جامعة دمشق
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by

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## Introduction

The aim of this book is to educate students of law the basic principles of law, giving them a summarized comprehensive idea on law in general, an idea on the Syrian law (the law of their country for the most of the students), and about courts and lawyers. This is considered as a science but as a language to teach students the legal vocabularies and improve their standard in English whereby enabling them to use the key words in the science of law, expressing their viewpoints in English.

The development of societies, particularly in the means of communication necessitates for students of law to know how to express the basic principles and ideas of law and the law of their country in English. The legal vocabularies and the information in this book will give students of law a potential in their further studies. They will feel that they can cope quicker than they were before with other courses in law vocabularies, in English, in the following years of their study. This book will also be useful for students of law in other courses. The study of the principles of law constitutes part of studying comparative law and the study of the Syrian law is a study of the national law, both studies are the content of this book in a brief way.

This book is designed to be taught in the second year for students in the faculties of law, in conformity with the new plan of study, in the faculty of law, at Damascus University. This plan provided that the course must contain three elements: first, the course should be directed to improve skills in English; second, the course should be directed to make the

best knowledge of science of the civilized nations and thirdly, the course should be directed to teach law vocabularies.

Of course, this book and any book normally contains some defects. we hope despite that, that the reader will find it useful for the new knowledge of law. However we have tried to express the information in a scientific arranged manner.

The contents of this book have been divided into two parts: the first presents the classification of law (public law, private law and the branches of each with a relatively basic explanation of each branch of law) and the second deals with certain topics which are crucial in the science of law. These topics in the second part are: the right and wrong, human rights, court and claim, lawyer, the civil service, local administration, arbitration, the sovereignty of state, and the constitution of the Syrian Arab Republic.

The Author

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# Part I

## Classification of Law

Since ancient times, law is known to many cultures. It is not the creation of the contemporary state. Babylonian civilization which was before the time of Christianity had known law in many aspects of its life activities. For example, a person who breaks a tooth or an eye of someone may face the same problem; thus he may lose a tooth or an eye. This is because the law of king Hammurabi (The King of Babel) gave the victim an authorization to destroy the tooth or the eye of the criminal, as long as the action was done by intention. Ancient Egypt, the Chinese society, the Greek society and later, the Roman societies had known quite a considerable amount of legal norms in politics, democracy, administration and civil matters.

Basically, Law started with civil norms, which took in a latter time the form of customary rules. Those customary rules were the legal bases which were used to settle social disputes between individuals. Over time, customs had become written laws either on stones or other materials. Thereafter, with social and technical development, laws have become written on papers in the form we know today. Rules of law evolved over time, four thousand years or more.

Nowadays, much development in Law has occurred. There has been expansion and increase of laws to cover gradually almost all kinds of human activities. Traditionally, law is divided into two main divisions: the Public Law and the

Private Law. Let us consider these two main classical divisions, the branches of each and the items of each branch.

**Public Law**

Public Law is a set of legal norms in which the state or a public organization is party in the relationship with another state or with another public organization or with an individual acting as a public power.

It is worth to know that the state either acts as a public power or acts as an individual. In the first case, when the state acts as a public power, it enjoys the privileges of public authority, such as the right of confiscation and the right of acquisition for public benefit. In this case, the rules of Public Law must be applied. In the second case, when the state acts as an individual, the privileges of public authority do not work. Therefore, the Private Law is applied. Note that the privileges of the state as a public power do not apply if the state acts as an individual, giving up its privileges as a public power and applying the legal rules of private law.

Public Law is divided into the following branches:

1. Constitutional law
2. Administrative law
3. Financial law
4. Criminal law
5. Law of penal procedures
6. Public international law
7. Other Branches of Public Law

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## 1. Constitutional Law:

Constitutional law is the primary law of the state and all the laws of the state should be consistent with its constitution. A constitution organizes the powers of the state, limits the boundaries of each power in exercising its authority, contains the fundamental freedoms of citizens and their basic rights and duties.

A constitution is usually a written document and this is the form that most nations do today, but few nations still have a customary constitution. This second kind of constitution is not written, it is in the form of customs which the people of the country, in particular, lawmakers, judges and lawyers know the rules of the country's customary constitution. Among the countries which still have, until the present time, a customary constitution is the United Kingdom and probably the only one. This country has become a good example for students of law to study customary constitution.

All statutes, Acts of government and all kinds of legislation in the state, whatever their rank, must be coherent with the State's constitution and ought not to break the constitution. If any kind of legislation in the state breaks the provisions of its constitution, this means that the opposite legislation is unconstitutional and should definitely be abolished or amended to become consistent with its constitution. In other words, constitutions are in the first rank of the state's legislation.

The constitution of a state basically deals with three main matters:

Firstly, it organizes the powers of the state; legislative, executive and judicial power. That is to say, it sets out the jurisdictions of each power (the scope of its activities) and the relationship between these powers. The state constitution limits the authority of each power and prevents each power to exercise or interfere in the job of any of the two other powers. However, it is known that there is a co-operation between the powers of the state, particularly between the legislative and the executive because the latter; a) is always in office running public interests and; b) the application of law usually necessitates the issue of regulations and the executive power is entitled to that. Organizing the powers of State and limiting their jurisdictions certainly involves the principles of governing.

Secondly, the constitution contains the basic rights of individuals which mainly are:

- The right of living.
- The right to participate in the nation's affairs by giving to citizens the right to express their opinions, free and secret voting in elections (free and secret ballot), and the right to nominate themselves to be candidates for political jobs.
- The right to get a job either in the public sector or in the private sector as a source of income for respectable living.
- The right for marriage, forming a family and taking care of children.
- The right of equality; equal dealing with all citizens without any discrimination in getting services, benefits, or commodities from the state's organizations.

- The right of property.
- The right of assembling, forming unions and corporations. And:

Thirdly, constitutions contain the basic freedoms of individuals and perhaps the limits on the use of these freedoms including economic liberties. The most important of these freedoms are:

- freedom of expression, that is the freedom of any citizen to express his or her opinion, including assembling in processions or demonstrations to express their viewpoints on public matters according to the law.
- the freedom of correspondence and communication,
- the freedom of moving,
- the freedom of religion, and,
- the freedom of choosing the way of life.

Indeed, the constitution of a nation is the fruit of its development throughout its history. In its ordinary way, a constitution is created by an agreement of the vast majority of the nation's parliament (the legislative assembly) and may be supported by a referendum of the electorate. It is a way to make the constitution legitimate to the whole people. They feel the constitution is the creation of their representatives in parliament or at least their representatives had agreed for their interests, in addition, the result of referendum was in support of the constitution.

Indeed, many topics of the constitutional law are topics of the administrative law and can be studied in both laws.

## 2. Administrative Law

The following vocabularies are necessary in the context of the administrative law:

Public bodies: public organizations which provide services to citizens on equal bases.

Public establishments: public economic organizations which are for industrial, commercial, agricultural, financial or any economic activity, working in the public sector. This meaning is given to this term in Syria, but in other countries it may be different. That is, it may include administrative organizations([1]).

Discretionary powers: the autonomy of administration in making its decisions.

Administrative tribunals: courts which are specialized in the administrative disputes only (judicial or quasi-judicial).

In theory and practice, administrative law is the law of public administration.

*Definition of the administrative law*:

Administrative law is a set of rules that determine the relationship between public organizations themselves, on the one hand, and the relationship between public organizations and individuals including private companies on the other hand. Administrative law sets out the rules of the state's administration in its organizing and in its relationships with public organizations and private persons when the public administration acts as a public power.

As a matter of fact, there is no unified administrative law or a unified code of administrative law that collect all laws of

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[1]. See Syrian Legislative decree no. 18 issued in 1974.

the administration. Actually, having a code of administrative law is something difficult to achieve because administrative law is divided into a large number of laws such as; the law of state workers (the law of civil service), the law of local administration, the law of public bodies, the law of public establishments and public companies, the law of administrative contracts, the law of organizing universities and so forth. Normally, each public organization is founded by law stating its aims and functions and perhaps the ways which it ought to follow in its work. Administrative regulations are enormous in their quantity. The civil code and the criminal code, are in contrast, the first contains the collection of civil laws and the second contains the collection of penal laws. Whatever the size of civil or criminal legislation, it is less than the size of administrative legislation. Thus, it is much easier to make a civil code or a criminal code than to make an administrative code.

*The main topics of the administrative law:*

Basically, administrative law contains the following topics:

1. administrative public power,
2. public utilities: each public body provides a benefit (utility) to the public, in the late nineteen century administrative law was named the law of public utilities, that is to say, the law of public services.
3. public services,
4. public bodies: these are public organizations that provide administrative services to citizens,

5. public establishments, public companies and all public firms: these kinds of public organizations are of economic nature,
6. centralization and decentralization,
7. control on public administration,
8. the legal aspects of administrative decisions,
9. administrative contracts and their regulations,
10. public domain, confiscation and acquisition for public benefit,
11. the legal rules of the civil service,
12. local government or local administration which includes the system of municipalities,
13. administrative judiciary, and,
14. environment laws.

*Sources of administrative law:*

There is a variety of sources for administrative law; these sources are:

a) written legislation: it includes; statutes, regulations and decisions of the public organizations,
b) administrative custom: those have a great deal in public administration, and,
c) the jurisprudence of administrative tribunals, in particular, the high administrative court, in the countries which follow the system of administrative judiciary.

Syria is one of the countries that follows the pattern of independent administrative judiciary, it is clear that since 1959 the country established a Council of State organized by the

law number /55/ issued in 21 /2/ 1959([2]). Therefore, its administrative law depends mainly on these four sources:

1. written legislation,
2. administrative custom,
3. the Council of the State in its both departments: the judicial department, particularly the court of administrative judiciary and the higher administrative court, on the one hand, and the consultative department on the other hand, and;
4. precedents of the council of state in both France and Egypt because the Council of State in Syria takes these precedents as guidelines.

*Discretionary powers:*

The administration enjoys discretionary powers in some of its decisions and actions. This means that the administration is given freedom in the making of many decisions and can be in the implementation of its decisions to manage the public interest. The law does not limit how the administration should work; instead, the law leaves the administration to work on discretion making its decisions in favor of the public interest. In this case, the administration itself decides when and how the public interest is. It is the autonomous role of the administration.

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[2]. *The law of the Council of State* in Syria number /55/ dated 21 /2/ 1959 is published in the Syrian Official Gazette number /2/, February 1959, pp. 246 and after, also republished in number /33/ repeated B (unusual), on 21 /2/ 1959 of the official gazette pp. 10 and after. This law issued during the unity between Syria and Egypt and is applied on both territories.

*Administrative tribunals:*

France, Egypt and Syria have independent administrative judiciary; that is, disputes with the public administration are settled by administrative tribunals. The idea of establishing administrative judiciary is that specialized judges in the affairs of public administration would have a better knowledge in the following: a) in the administrative affairs of public organizations, b) in the needs of the administration and, c) in the interests of the state (the public interest) than judges in ordinary courts (the civil courts).

Tribunals of the administrative judiciary, in the course of their work, apply the administrative law. The Syrian Arab Republic has three kinds of these tribunals:

a) Administrative tribunals, b) the administrative judicial tribunals and, c) the high administrative tribunal([3]). The first and the second tribunals deal with cases related exactly to decisions of the administration as a public authority, and the third tribunal reviews the side of legality in the judgments of administrative tribunals and administrative judicial tribunals if the parties contested to that high administrative tribunal.

The person who has an interest to repeal an administrative decision can complain to the administration itself which issued the decision or to the administration which supervises the administration that issued the decision. Afterwards, if his or her question was sorted out it does not remain an interest to complain to an administrative tribunal. The law of the Council of the State, law number /55/ of the year 1959 provides that: in some kinds of decisions, tribunals in the judicial department of the State's Council, should not accept some kinds of cases,

[3]. *The law of the Council of State* in Syria number /55/ issued in 1959.

the cases where a complaint should be made first to the concerned administration. An example of these decisions; those which are related to the appointments and promotion of the state employees in the civil service.

Some countries apply civil law on administrative disputes and do not have a specialized administrative judiciary such as Britain and Germany but both have established tribunals for specific matters of administrative activities.

### 3. Financial Law

Financial law is a set of rules concerned with revenues, expenditure, taxes and the organization of the public budget. In other words, it is the law concerned with the collection of revenues and incurrence of expenditure of the public money.

The public budget normally is done for one year, it is the yearly financial plan for revenues and expenditures. This certainly means that the state every year organizes a public budget and the executive power has to do this function; each public body suggests its own budget. Thereafter, every ministry studies the budgets of public organizations which are under its control and may change some of the suggestions or all in the proposed budgets. In turn, the council of ministers revises the whole budget of the state which includes the share of each public organization. In the final stage, the budget is introduced to Parliament to study it and becomes finalized after the Parliament passes the bill of the public budget and for putting it in the execution, the president of the state makes the issue of the bill of public budget.

The financial policy of the state plays a significant role in changing and creating financial laws. No doubt, the economic

infra-structure whether it was industrial, agricultural or commercial has its own effect on the financial policy of the state. An explanation of this appears in the taxes that are imposed on each of these sectors, in that the state can play an important role in directing its economy. Hence, high taxes on the commercial activities normally lead some individuals to move to the work in either the agricultural sector or the industrial sector. In the same way, the state can make exemption of taxes on poor sects of the society, as a support to improve their economic and social situations.

Taxes, tariffs and expenditure must be rational, in other words, taxes and tariffs should be suitable to the existing economic situation, and should not be high or trivialized (a tax of %40 of the income is irrational and a tax of 1 per 10,000 of income is a trivial tax). Usually, the rate of taxes imposed increases gradually with the increase of incomes, i. e. people of good incomes can bear a higher amount of taxes than people of middle or low incomes. To exemplify this idea, the income is divided to categories; the first category is subject to low tax, then the tax increases a little in the second category, and gradual increase to the third and following categories ( a yearly income of 400,000 Syrian pounds may be divided to four categories. The first category 100,000, the second is between 100,000 to 200,000, the third is between 200,000 to 300,000 and the fourth category is between 300,000 to 400,000). Reasonably, regular incomes below the line of poverty are free from any tax.

State expenditure also should take into account all sectors of economic activities; meaning that the government should give consideration in the yearly plan of public expenditure to the agricultural, industrial and commercial sectors of the

country. The balance of expenditure between economic sectors does not mean necessarily the same amount of money should be spent on each economic sector, but a balance depends on how much each economic sector can contribute to the growth of the whole economy of the country.

Notably, there are two main divisions of expenditure:

a) Expenditure for consumption and, b) expenditure for investment. Public expenditure considers those two types and both are necessary for a healthy life of societies. If public expenditure goes only for consumption there will be no development and no new enterprise. Also, when little expenditure is for investment the development is very slow and does not *cope with* the needs of the society. In this way, development will not be achieved and the society will encounter socio-economic problems in the short or long-run, which requires the succeeding governments to do much work to overcome mistakes of the past. No investment, it means: unemployment problems and poverty. Differently, much public expenditure on investment activities accelerates economic growth and creates new economic assets of the society. In a public budget these two kinds of public expenditure are considered and any of both could not be ignored.

## 4. Criminal Law

Criminal Law = Penal Law

Offence = a crime is punished in law.

Minor offence: is a crime which is punished by law up to three years imprisonment. That is to say the maximum

imprisonment by law not more than three years imprisonment.

Crime: an act usually punished in law more than three years imprisonment. In other words, the minimum punishment by law is not less than three years imprisonment and more dangerous on society than minor offences.

People and writers of law do use the two terms; offence and crime often in the same meaning to mean any wrong criminal action.

*Mens rea*: the intent in a crime.

Motive of crime: the reason standing behind committing a crime.

Liability = responsibility. Not liable = not responsible.

"Criminal liability is the strongest formal condemnation that society can inflect, and it may also result in a sentence which amounts to a severe deprivation of the ordinary liberties of the offender"([4]).

Criminal Law: it is a set of rules which determine what the actions that constitute crimes and their punishments are, stating out the conditions of criminal liability.

The chief concern of criminal law is to prohibit behavior that represents a serious wrong against: a) an individual b) some fundamental social value, and c) institution([5]).

The obvious point in the arguments of criminalization is the "harm principle". Its essence is that the state is allowed to criminalize any conduct that causes harm to others or creates an unacceptable risk of harm to others. Significantly, harm

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[4]. Andrew ashworth, 2006, Principles of Criminal Law, P.1.

[5]. Andrew ashworth, 2006, Principles of Criminal Law, P.1.

varies from minor harm to serious harm. The minor harm is contraventions, medium harm in misdemeanors and the most serious harm is in felonies.

The Law of Punishments of Syria issued in 1949([6]) has some general principles. The most important principles therein are:

1. no crime without a legal text: this means if the law does not consider an act a crime, it should not be described as a crime,
2. no punishment without a legal text: the law determines punishments for crimes, and no punishment if the law does not determine a punishment for a crime.

   These two principles are described "no crime and no punishment without a law", which is provided in article / 51/ of the Syrian constitution of 2012 .
3. There must be a relationship between the criminal act and the tort. This is called the causation relationship. In a more explanatory words, the causation relationship literally means that the wrong act led to injury of the victim. An example of this: stopping the car in the middle of the highway caused the accident which injured two people of the other passing car and made some damage to the passing car. Here there is a relationship between the wrong stopping of the car and the harmful accident, it is a causation relationship. The causation here is the wrong stopping of the car on the

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[6]. The Syrian Punishments Law issued by legislative decree no. 148 on 22 June 1949 and it had some amendments. Its latest amendment was by the legislative decree number 1 on 3/01/ 2011. The main law was published in the Syrian official gazette no. 37 of 1949.

highway which was the reason of the accident or it was a reason for the accident. Students of law should remember that sometimes two reasons or more stand behind a tort or a crime.

4. no ex-post facto laws in the criminal matters: in other words, the law of punishments (the Criminal Law) should not punish crimes before the time of its issue.

*The Division of Crimes*:

Crimes are divided into three types; felonies, misdemeanors and, contraventions. Felonies are big crimes and the most dangerous one of these three and the punishment for committing any felony, according to criminal laws, is not less than three years imprisonment. In some cases, it may reach capital punishment which takes the life of the person off. Misdemeanors are the medium crimes in their danger; the punishment for such crimes in law does not exceed three years imprisonment as a maximum unless the law states otherwise. Contraventions are small offences and the maximum punishment in law for such a crime is ten days imprisonment. Also the penalty of fine can be in any kind of these three types of crime. Remember this is a triple division of crimes and the most known division in the world. The Syrian penal law (the Punishments Law) issued in 1949 has adopted this universal division of crimes.

The adoption of a penal system contains interests of the society and the individual. Those are:

The first interest of a society in the adoption of a penal system by the state is making individuals avoid retaliation. To describe retaliation, it can be pointed out that the victim of a

crime or the relatives of the victim retaliate from the criminal and in some cases from his relatives by doing adverse action. In fact, this may lead to a series of crimes when each party is condemning the actions of the other party and decides to retaliate again. Retaliation means no going to courts and every victim wants to punish the criminal according to its own law. The retailing person here makes the law, he is the judge and the power that implements the sentence.

The second interest of the society is to deter crime by bringing dangerous persons on society, who committed crimes, to prison and making reform (rehabilitation) of them to return to the society with healthy thinking. Deterring crime happens by two ways: the first is by keeping criminals in prison and reforming them to become healthy in their thinking and, the second way is that the punishment to criminals prevents many individuals of the society who think to commit a crime from doing such wrong action. By this way, the punishment will be expiation of crime to the criminal himself. We are discussing the deterring of crime not the prevention of crime, because it is difficult to imagine practically a society without crimes at all.

The third interest is interest of the individual; it is expiation. This means that the criminal feels that he received the punishment he deserves, so he would not blame himself for the rest of his life because he committed a wrong action against another person and would be free of any internal pressure on his thinking coming from his mistake.

*Provocation:* the act of provocation is a crime and the provocative person is subject to the same punishment of the criminal who committed the crime because of the provocation

from the point of law, whether provocation led to the wanted crime by the provocative person or not. However, in case of no crime is committed as a result of provocation, the punishment is reduced. That means the responsibility of the abettor is separate from the responsibility of the person who received the provocation by the abettor. Except in contraventions, there is no punishment if abetting did not lead to crime. Articles 216 and 217 of the Syrian Punishments Law did set out the rules concerning the abettor and provocation.

Provocative: a person who incites another to commit a crime.

Note: the provocative factor can be from inside the person which is not as the same as the abettor. The abettor always outsider.

Abettor: a person who creates enthusiasm to another for committing a crime.

Abettor = provocative provocation = incitement

Provoked: a person who commits a crime as a result of the encouragement of another.

As much as provocation leads to the loss of discretion in committing crimes, the criminal liability is reduced. This indicates that criminal liability depends on discretion; thus the criminal liability is reduced when the discretion of the criminal is reduced.

*Capacity:* persons who commit crimes are fully liable for their illegal actions as long as they enjoy the legal capacity.

Capacity = full perception

Persons who do not enjoy capacity are in a different legal status. Those are in a situation of incapacity = inadequate capacity.

Inadequate capacity situation applies on those who are below the legal age for full responsibility, from the point of penal law such as teenagers who are between the age of 15 to 18 years or those who have inadequate mental discretion either because of their age, who are less than 18 years in the Syrian law or because they have partial insanity. However, if a person in a case of complete insanity he is in a case of non-capacity. Liability in the Syrian Penal Law is based on the ability of discretion. Therefore, distinction is made between partial and complete insanity. In a complete insanity there is no criminal liability, but the criminal is to be kept in a shelter in case he is dangerous on public safety. When he becomes not dangerous on public safety or recovers from his insanity, he should be released. In case of the partial insanity, the punishment is considerably much reduced and if he was dangerous on public safety, he should be kept in a shelter by a court decision and treated medically([7]).

Incapacity applies of course to those who are children prior to the age of seven years. This incapacity negates their penal liability in the Syrian Punishments Law. No criminal procedure can be done against juvenile if he or she does not complete the age of seven([8]).

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[7]. Articles 230 to 233 of *the Law of Punishments* in Syria issued in 1949 dealt with insanity and partial insanity.

[8]. Article 2 of *the Law of Juvenile Delinquents* in Syria no. 18 of the year 1974.

*Self-defence case*

In the case of self-defence a person is free from punishment. Self- defence occurs when an aggression is imposed on a person or one of his dear persons or on his property or the property of dear persons to him. In this case, he or she has the right to defend himself or herself or the dear person and the property of himself or other dear persons. In self-defence the crime is justified by law.

*Irresponsibility*

Irresponsibility means that the person who committed the crime is not responsible in the penal law because he enjoys one of the reasons of irresponsibility. The most known reasons of irresponsibility in criminal law are: i) if the person was under the age of seven years (less than seven years of his or her age), ii) complete insanity and iii) non-voluntary intoxication.

*Mitigating and Aggravating Circumstances:*

Mitigating circumstances are situations of the crime whereby the punishment of the convict is reduced below the minimum legal punishment because of the certain situation of the crime. An example of mitigating circumstances is the poverty which led somebody to steal food. Because the thief here is under the pressure of hunger, this is a mitigating circumstance that reduces his punishment. Aggravating circumstances, on the other hand, make the judge increases the punishment of the convict more than the punishment which is determined by law for the committed crime, because of certain situations of the crime. Examples of aggravating circumstances; recidivism and the use of an arm in a stealing crime. The judge prior to making his decision of punishment

decides if the mitigating circumstances or aggravating circumstances can be applied on the case, and it is possible in many cases to apply both circumstances; the mitigating and the aggravating, if the case contained both. An example of this is a person who steals another using a pistol and he is in need of the food he had stolen because he is very poor. The need for the food because of his poverty is a mitigating circumstance and the use of the pistol is an aggravating circumstance. In this example, if the punishment was three years imprisonment, the mitigating circumstance perhaps reduces it to become two years and the aggravating circumstance raises it to become two years and nine months.

*Types of Punishment*

There is a variation of punishments in criminal laws depending on motives of crimes and the danger of the crimes. These types are:

1. Capital punishment, for murder and the most dangerous crimes, 2. Arrest, normally for political crimes, 3.Imprisonment with hard works for a great number of felonies, 4.Imprisonment with fine for misdemeanors and contraventions, 5. Prevention of residence in a particular area, often in the place of the crime.

Capital punishment caused an argument: in one side, opponents argued that if innocent person was executed it becomes impossible to bring him in life again. Moreover this type of punishment is uncivilized one. On the other hand, those who are in favour of capital punishment argued that those who commit big crimes which have great effect on society deserve such punishment. Also if few innocent people, in cases of mistakes by the courts and were executed, it is

better to the society than leaving many criminals without a satisfactory punishment. This could satisfy the society and reduces the number of criminals who think of committing terrible crimes. Notably, some countries had abolished capital punishment from their penal laws.

Anyway, the main purpose of punishment and criminal law is to deter crimes and reduce the occurrence of crimes.

*Amnesty and Grace*

Amnesty can be granted by the legislative power to those who committed crimes or certain crimes, in a specific period of time, which are not usually the dangerous crimes. This means crimes which were committed in the specified time, either between two dates or before a certain date are subject to amnesty. Therefore, persons who committed crimes under amnesty will not be adjudicated for punishment and if they were convicted, the sentence will not be carried out. Amnesty makes those who committed crimes irresponsible, from the viewpoint of criminal law, but they are still responsible for the torts they made which resulted from their crimes, from the viewpoint of the civil law. In conformity with the civil law, they must pay the damages. In many times, Syria granted amnesty by legislative decrees, included a variety of crimes. For dangerous crimes, amnesty usually covers them partially; it may reduce the punishment in a quantity of quarter or third. Also amnesty may substitute the punishment to another punishment lesser in amount and nature than the first punishment which the criminal had in his conviction.

Grace is granted by the president of the state as a head of the executive power, when the country is a republic and in

some countries by the king or the queen if the country is a kingdom. Grace aims at excluding a convicted person from the implementation of his punishment for considerable reasons. It is personal exclusion from the punishment not a common exclusion from punishment. This means it is granted for one person or few persons in each time, specifying the name or the names of the persons.

The difference between amnesty and grace is that amnesty considers the committed crimes, which are included in the amnesty, are out of punishment and the crime is not counted as crime in the record of the person who committed it. Amnesty is for both convicted and non-convicted criminals. But in grace, the person is convicted certainly. Grace is only for convicted people and the punishment will not be carried out or the punishment can be substituted by another punishment from the less hard ones. In addition, the punishment will be registered in the record of the person. Rightly, civil obligations remain under both; amnesty and grace, those should be paid to the victim([9]).

*Kinds of Crimes*

The most known crimes and offences are:

- homicide which is in three kinds: murder, voluntary manslaughter and involuntary manslaughter; a) Murder is a very dangerous crime. It is committed after a premeditated thinking or deliberate thinking.
  b) Voluntary manslaughter is committed by intention, but without deliberate thinking, c) Involuntary

[9]. The rules of amnesty and grace in the Syrian Arab Republic are in the articles from 150 to 155 of the Punishments Law.

manslaughter includes killing by recklessness and killing by negligence,

- Genocide; is a murder or a voluntary manslaughter, but the crime of genocide is committed against a group of people. It is the most terrible and dangerous crime at all because it takes the life of a group of people off.
- Attempted murder; is a person who attempts to kill but fails for reasons beyond his will.
- Kidnapping; is taking persons against their will from one place to another, and detaining them for illegitimate purposes, such as getting a sum of money or making a person accept a certain contract.
- Grievous bodily harm; is dangerous harm in the body of the person.
- Assault; is an aggression on another to harm him by beating or obliging. Battery is an assault of two kinds; assault and battery.
- Harassments in all its kinds are minor offences.
- Offences of dishonesty; include: a) theft which is taking from the money or property of other people without their knowledge. b) Taking a conveyance without consent. c) Robbery; is taking the property of others by using force. It is one of the dangerous crimes. d) Blackmail; is getting money or anything by threat of harm. e) Burglary; is entering houses of other people during night for stealing it and the criminal here is called a burglar. f) Handling stolen goods; means transferring stolen goods from one place to another or to another person as long as the acting person knows that the goods are stolen. g) Deception; is saying or doing something not true for changing the facts. h) Fraud; is

changing the facts for obtaining a certain thing or to achieve a certain aim.

- Other offences: a) incitement; it is an offence for making another or other persons to carry out a crime. This kind of offences is punishable in felonies, but in misdemeanors and contraventions the punishment varies between one state and another. The crime is carried out by the provoked person not by the abettor. b) Inchoate crimes; are those which the criminal begins to implement but does not continue to finish, I. e., incomplete crimes. Inchoate crimes, of course, are punishable in felonies. c) Omissions; are those kinds of offences that happen by negative behavior. The person does not do anything but he or she remain away from an act that must be done by them. An example of this when a woman who abstained from giving her baby milk and food, which led the baby to death, or a guardian who did not do his duty which led to a theft of the goods that he was responsible for. The guardian here is liable because he did not care enough for the goods; the fault in omissions is negative.

With regard to criminal disputes which contain a foreign element or crimes which are committed by aliens, those are topics of the international penal law. This is treated in Syria in the articles from 15 to 29 in the Law of Punishments.

The Criminal Law, however, is administered in courts by the application of the Law of Penal Procedures.

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## 5. The Law of Penal Procedures

The Law of Penal Procedures (the Law of Criminal Procedures) is a group of rules that determine the ways of administering the criminal laws and the process of litigation in criminal affairs. This law states the rules of prosecution for a public right. Public right here means the right of society, rights that are related to punishment are from the rights of society. Legally, both the injured person and public prosecutors have the right to claim against criminals for litigation. A public prosecutor represents the public right (the criminal punishment side) and the injured represents himself for personal damages.

*Lapse of Time*

Any prosecution against persons who committed a crime must be within a specific period of time. This period starts from the time of the commitment of the crime. This is derived from the idea that a criminal should not be threatened for ever because of his illegal action. There must be some stability in the life of people and the society forgets the wrong action after a period of time. Therefore, no need to bring to the memory of people bad actions of others in which the society did forget.

The period of prosecution in the Law of Penal Trials Procedures in Syria, which issued in 1950([10]), is the following:

1. ten years in felonies start from the time of committing the crime,

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[10]. *The Law of Penal Trials Procedures* in Syria, issued be legislative decree no. 112 in 13 / 3/ 1950 and was published in the official gazette of Syria no. 17 in 1950.

2. three years in offences of misdemeanors start from the time of committing the offence,
3. one year for contraventions starts from the time of committing the offence.

Significantly, if any judicial measure is done, within the mentioned period, the whole period for the right of prosecution restarts from the beginning and the count of ten years in felonies, three years in misdemeanors and one year in contraventions starts again from the beginning and a new lapse of time restarts. Lapse of time ceases if there are material barriers such as war, is a material barrier. Then lapse of time resumes when the barrier disappears.

Nevertheless, lapse of time on sentences is longer than lapse of time on a criminal case. This is because court decisions affirmed the occurrence of the crime. Whereby lapse of time for a sentence of capital punishment in Syria or permanent hard imprisonment is twenty-five years. Lapse of time on punishments is in the text of criminal law, but lapse of time for the criminal case is found in the provisions of the Law of Penal Trials Procedures.

Illegality of the procedures in a criminal trial makes the decision of a court illegitimate and subject to contest to a higher court.

*Bail:* according to the Law of Penal Trials Procedures, an accused or defendant who is in jail can get a bail. If the court which is holding the trial agreed, a bail makes the accused or the defendant out of prison and enables him to attend the trial free. Bail is two sorts: the first is *conditional bail* whereby some money are paid to the court to guarantee expenses of the trial and fines if the defendant or the accused is convicted.

The second sort is *unconditional bail* that enables the defendant who is detained to be freed without paying any money as a guarantee and can attend his trial free. In brief, both conditional bail and unconditional bail free a detained defendant from jail and enable him to attend his trial freely.

*Criminal courts and judges:* the criminal courts in Syria are:

1. Stipendiary courts (conciliation courts): for offences their maximum punishment in law is one year imprisonment, staffed with one judge.
2. Primary courts: for crimes in which the maximum punishment in law is three years imprisonment and do not fall within the jurisdiction of the stipendiary courts, staffed with one judge.
3. Appeal courts: to appeal decisions of the stipendiary and primary courts in the cases that the law allows.
4. Felonies courts: for crimes of felonies, staffed usually with three magistrates, a judge and two counselors.
5. Cassation court: for legal revision of the decisions of felonies courts and appeal courts; each chamber is staffed by three or five magistrates. A judge as a head of the chamber and two counselors with him when the chamber is composed of three, or four counselors when the chamber is composed of five magistrates.
6. Some other courts such as the traffic court and military courts.

Normally, a criminal case is allowed to pass three stages; the first instance court, the appeal court and, the cassation court. But in felonies the case passes the following stages:

a) the preliminary stage which includes collecting information by the judiciary police and the public prosecutor,

b) establishing the prosecution against the defendant,

c) investigation by the investigation judge who makes a decision of accusation or acquits the defendant,

d) the transformation judge, who makes a decision if the person is accused. If he thinks the accused has done the wrong act, he transforms him to the felonies court; otherwise he can acquit the accused by deciding that there is no need for a trial,

e) the court of felonies, it is court for trial that decides whether the accused is guilty or not guilty. If the court decided that the accused is guilty, it inflicts punishment and if the court thinks the accused is not guilty, it acquits him; and

f) the cassation court if the convicted or the public prosecutor wanted to contest the decision of the court of felonies when the law is not respected.

## 6. Public International Law

Public International Law is a set of norms embodied in international treaties, international declarations and international customs. It aims at organizing the relations between states and international organizations in all times of peace and war.

Public International Law is called "The External Public Law" because its rules deal with other states or international persons, while the other branches of public law are called "The Internal Public Law" because their rules are applicable within the country internally not outside the country.

The contents of public international law, in the more prominent topics are:

1. Diplomatic relations and diplomatic rights; this includes the relationship between sovereign states, and the relations with international organizations whether those are global or regional. In diplomatic relations there is the diplomatic immunity. By diplomatic immunity is meant ambassadors and diplomats and consuls that are not responsible before the hosting state and its courts([11]).
2. The rules of establishing states and international organizations.
3. International treaties and international agreements.
4. The duties and rights of the conflicting parties and the rights of civilians in the war. These are the rules of the humanitarian international law.
5. The freedom of using the high seas, international rivers and international waters.
6. The limits on using air space.
7. The limits and use of territorial waters.
8. International co-operation to sort out the world problems and to keep international security and peace, in accordance with the rules of international law not with the unjustified interests of the states.

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[11]. The main convention on diplomatic immunity is the Vienna Convention on Diplomatic Relations adopted by a United Nations Conference in 1961. For Consular protection their position is governed by the Vienna Convention on Consular Relations adopted in 1963. See Ian Brownlie, 1966, *Principles of Public International Law*, p. 516.

*Sources of Public International Law:*

The sources of public international law are:

- International treaties and international conventions. These are agreements between two international persons or more. International persons are states or international organizations, whereby a treaty creates an obligation on the parties, each must respect the rights of the other parties and implement the required duties. A state which is bound by a treaty gives supremacy of the treaty over its national laws. That is to say, the provisions of the treaty will be applied if those conflict with the rules of the national law.
- International customs: these what international persons are used to do in international affairs and international relations. An example of the international customs is the respect of international delegations by the visited state.
- Rules of justice: these are the general principles of law recognized by civilized nations and rules of equality and fairness whether these are in national laws or international laws.
- Jurisprudence: consists of the interpretation of laws by courts taking the decisions of courts in similar cases as a guidance on the one hand, and the writings of jurists and publicists of the various nations, as subsidiary means for the determination of rules of law on the other hand([12]).

*The Problem with Public International Law*

Two main problems encounter the Public International Law are: the first is its implementation which is left to the will of

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[12]. Compare the statute of the International Court of Justice and Ian Brownlie, *Principles of Public International Law*, 1966, P. 2.

states in much of its rules, even the resolutions of the United Nations and its organs are not always implemented by the Security Council in case of violations of those resolutions. The second problem, in many cases, international decisions were politicized depending on the interests of states and are not fair. A clear example can be taken from the resolutions which concern the Palestinian conflict with the Zionist entity (Israel) and the Arab conflict with the Zionist entity (Israel), in that the Israeli side did not respect the international resolutions concerning the Arab rights. This led many writers of law to consider that Public International Law is a moral law and not obligatory one.

*Examples of international organizations:*

The United Nations is the largest international organization. It aims at improving the world relations and helping in the overcoming of international problems for the achievement of international peace and security and the development of the world. It has been established in 1945 and its purposes are enshrined in its charter.

From the regional international organizations, the Arab States University aims at improving Arab relations and settles problems of the Arab countries to push the development of the Arab community forward. Another regional international organization is the European Union that aims at the development of political, economic, social and military relations of its members.

## 7. Other Branches of Public Law

There are other branches of public law such as the Environment Law to protect the environment from pollution.

This law is still new in its existence. It was created when the legislature wanted to control environmental pollution. In Syria, this law came into existence few years ago. Significantly, other branches of the public law can be created depending on society needs.

These are the main branches of Public Law with a comprehensive idea on each branch. Today each branch of those is divided also into several laws. After this explanation of the branches of Public Law it ought to have an idea on the Private Law and its branches.

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## Private Law

Private Law had begun, thousands of years ago, in a form of customary rules. This was mainly in the civil law and thereafter, it was developed to written rules.

In its definition, Private Law can be defined as a set of norms which determine the legal relations between individuals and private persons.

The main branches of private law are:

1. Civil law
2. The law of personal status
3. Commercial law
4. Maritime law
5. Labor law
6. Private international law
7. The law of civil trials procedures

It is useful to know an idea on each branch of private law.

### 1. Civil Law

The rules of civil law are the most ancient among laws. Since a man lived in a community and since a man had individual or collective relationship with other individuals of the community he lives in. The oral rules of economic relations such as selling and buying had been founded and became customs. With the passing of time, those rules were evolved to the written form that we know today.

Civil law in Syria, as a complete and comprehensive book, was issued in 1949([13]), just three years after independence.

[13]. The civil law of Syria issued by the legislative decree no. 84 in 18 /5/ 1949 and was published in the Syrian official gazette of 1949.

Since that date, Syria has a modern civil law. In many of its contents it is similar to the French and Egyptian civil law. It contains a wide variety of civil rules which almost cover the rest of civilian activities.

The Syrian civil law consists of 1,130 articles and its introduction is called the explanatory document. We can read in the Syrian civil law the main following topics:

- Contractual obligations: these are civil contracts between two individuals or more, or between private persons such as private firms or private companies. The most well-known of these contracts are: contracts of sale (sale to the buyer), which usually are marked by free bargaining, contracts of loans, contracts of borrowing and contracts of transferring a right from one person to another, etc.

  Any civilian contract is characterized by the consent of both parties of the contract. A contract without assent of the parties is void and the party who lost consent in the contract has the right to complain to a court for making the contract void. From this point, it generates that all contracts which are signed under threat or force are illegal. A threat or force which obliges a person to sign a contract makes him out of his consent and there is no sense to oblige a person to perform a contract he did not willingly sign it.

  The substantial thing of a contract is that it creates mutual obligations between its parties and these obligations can be enforced throughout legal ways, if any of the parties did not perform them.

  However, a contract should not be against the law of the country of both contractors or the public order of the society.

The elements of a contract are:

a) an offer by the offeror,

b) an acceptance of the offer by the offeree,

c) consideration: the financial pay for what is contracted on it,

d) the intention of the parties to create legal relations. Without this intention it will be a social agreement, binding morally only not legally, such as an invitation for excursion from one person to his friend, even if his friend agreed but there is no intention to litigation if any of both did not implement what he was socially required.

- Obligations result from unlawful actions: that sort of obligations is non-contractual obligations. Those happen when a person does a harmful action to others whereby he becomes responsible to pay adequate compensation as a remedy to the tort he or she caused. Examples of these are: the destruction of other people property, leaving the animals in the street to harm people and children, the tort which comes from a car and so on.

Significantly, an action may lead to penal liability and civil liability at the same time such as the injury to a man caused by a car; the driver will be imprisoned in accordance with the provisions of penal law and, will compensate the victim under the provisions of the civil law.

Any study of illegal action takes into account three components: the wrong action, the tort, and the relationship between the wrong action and the tort (causation). In that, the wrong action must be the reason which led to the tort; otherwise, if there is no causation relationship between the wrong action and tort, then the man who made the wrong action is irresponsible. Like this diagram.

causation

wrong action ----------tort

**The abuse of the right**: it is the content of article /6/ of the Syrian civil law and this is the case when a person uses his right in a way which produces harm and adverse effect on others. These cases are gathered in three ones:

a) when the use of the right is intended to cause tort to others,

b) if the interests which are meant to be achieved, by the use of right are not too significant, the interests are trivial, when those are contrasted with destructions which are caused to others,

c) if the use of right aims at achieving illegitimate interests.

Estate in lands: those rights are related to the ownership of estates and investment of land or estates or any right that is related to the ownership of estates.

Remember: the civil law is the origin and the more important law in the private law because it is older than other kinds of law. It contains a variety and comprehensiveness of civil deal. As a general principle in law, judges return to civil law to apply its rules when they do not find the required rules in other laws, except in penal matters.

*Analysis in the Civil Law:*

The recognized sources of civil obligations are five: contract, unilateral will, illegitimate action, enrichment without a legitimate reason, and the law. The first and second

source of obligations are voluntary and the third, the fourth and fifth obligations are involuntary obligations. These sources are adopted by the Syrian civil law and most civil laws in the world follow this pattern in the sources of civil obligations. It is useful to know the meaning of these obligations as follows:

- The voluntary sources of obligations:

- Contract: this was defined earlier. It is a legal agreement between two parties, creates legal relations and obligations between them. Each party can claim to court in case of the breach of the obligations by the other party. Indeed, a contract is a biggest source of obligations.
- Unilateral will: it is an obligation by one side, by one person or a company or an establishment. To exemplify, a person makes a prize of 10,000 Syrian pound for each one purchase furniture from his shop, if the purchase amounted to a 100,000 Syrian pounds or more. The prize was by his will alone.

- The involuntary sources of obligations:

- Illegitimate actions: these are the illegal actions which include the infringement on other people rights, breach of law, and any non-contractual action which causes tort to another person or other persons. Legally this illegitimate action incurs damages to the injured person.
- Enrichment without a legitimate reason: that is, if a person was enriched at the expense of another without a legitimate reason for this enrichment. In other words, there is no contract between both and no another reason that justifies this enrichment. Getting a compensation here from the enriched person requires two elements; the first, the compensation must not exceed the poorness that had

happened to the claiming person; second the reason of enrichment at the expense of another should be illegitimate.

- The law as a source of obligations: that is, if texts of law obliged people or certain kind of people because they are in certain position to perform some duties or obligations. An example on that is when the law imposes duties on civil servants to perform their jobs, and imposes a duty on parents to look after their children.

Indeed, the contract and the illegitimate actions are the biggest sources of obligations.

*The theories of concluding contract:*

There is no problem in concluding a contract if both parties are in the same place, face to face situation. In this case, there are usually discussions between both parties, the offeror and the offeree about the offer. The offeror poses his offer and the offeree may accept or refuse either after a discussion or without. Actually, the problem appears when the offeree is far from the offeror, and they contract *in absentia*. Hence, there are five theories in concluding a contract *between the parties in absentia:*

a) The doctrine of announcing the acceptance: this doctrine considers that the contract comes to existence as soon as the acceptance of the offer issues from the offeree. The Syrian civil law is in conformity with this doctrine.
b) The doctrine of exporting the acceptance: by this theory a contract comes to existence on the moment of sending the letter or message of acceptance.

c) The doctrine of receiving the acceptance of the offer or the reaching of the acceptance to the place of the offeror: by virtue of this doctrine a contract comes to existence in the time that the acceptance is delivered to the offeror in the place he is usually in.

d) The doctrine of the knowledge of acceptance: owing to this doctrine the contract comes to existence only at the time of knowing the acceptance by the offeror and normally this is by receiving the acceptance by the offeror and knowing its content. Then, the place of the offeror is the place of the contract and the time of knowing the acceptance is the time of concluding the contract.

e) The doctrine of the option in acceptance: this doctrine considers that a contract comes to existence as soon as the acceptance of offer issues from the offeree but the offeror is not obliged until he knows the acceptance and within that period each party, the offeror and the offeree, have the option to return back to the case before contract, that is, they have the option to refuse the contract([14]).

[14]. See Dr. Saleh, F., 2011, *Civil Law: Sources of Obligations*, First Part, Voluntary Sources, Damascus University Publications, pp. 187-192, (in the Arabic references).

A type of suggested contract: Final Sale Contract

**The first party** (the salesman): Naser..... (full name, identification and address).

**The second party** (the buyer): Ali ..... (full name, identification and address).

**Introduction of the contract**: the first party is willing to sell his estate number / / of the area West Mezzah in Damascus city, it is around 400 four hundred square meters. The estate is within the organized plan. It is a piece of land ready to establish a building and the second party is willing to buy the mentioned estate. Both parties are in the legal capacity and are contracting with full consent and without any pressure or compulsion. Therefore, both came to an agreement and contracted on the following:

Article 1: the introduction of the contract is an inseparable part of the contract.

Article 2: the exact location and boundaries of the estate are: .....

Article 3: the price of the sold estate is /20000000/ twenty million Syrian pounds.

Article 4: it is paid on the time of the contract /15000000/ fifteen million Syrian pounds and the remaining /5000000/ five million Syrian pounds will be paid on the time of having the property transferred officially to the name of the buyer in the records of estates. The payment is from the second party to the first party.

Article 5: the first party guarantees that any problem that arises to the second party on the sold estate is the responsibility of the first party.

Article 6: taxes and tariffs on the sold estate are charged on the first party and all taxes and tariffs on the transforming of property later on are beared on the second party.

Monday / /

The first party the second party witness witness

Name:

signature :

We can see that a contract contains the following:

a) two parties: the offeror and the offeree,
b) the content of the contract (the introduction and articles),
c) the consent of the parties,
d) promise to transfer the ownership,
e) consideration (the financial value of the estate),
f) signature of the parties and witnesses.

The signature indeed is a very important matter in the law of contract and if the parties stamp in their fingers this makes the evidence a strong one, in case if a dispute between both happens.

## 2. The Law of Personal Status (family law):

This law deals with matters of marriage, divorce, inheritance, will, looking the interests of minors, orphans, people who have insanity or those who are absent from home and nobody represents them legally. For Muslim people, the

source of the rules of personal status law is the Islamic rules which are found in Qur'an, Sunna, and Islamic jurisprudence. Actually, in some foreign countries, the law of personal status is part of the civil law.

In the law of personal status of Syria which was issued in the year 1953([15]) had stated rules that concern the personal status of Muslims in Syria. We can read in this law rules concerning marriage, divorce, will, guardians on minors, inheritance and other matters. Some explanation of these terms gives a relevant idea in this context.

*Marriage:* marriage in Islam is a contract between a man and a woman that must be concluded in the presence of two men witnesses or one man and two women. Marriage aims at legitimizing the relationship between a man and a woman to live together and establish a family. Engagement, however, may take place before the contract of marriage; thereby, each party come to know the other before making the marriage contract. Engagement does not mean a contract of marriage. This means a contract of marriage can be concluded without passing through the stage of engagement if both parties agreed to go this way.

In a marriage contract in Islam, the consent of both parties is necessary; the man and the woman or the boy and the girl. The *wali* who is often the father or grandfather, is necessary to agree on the marriage of the girl. If the girl was not too young and the *wali* did not agree on her marriage the judge can allow this marriage if the prospected husband is qualified,

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[15]. The law of personal status in Syria issued by the legislative decree no. /59/ on 17 /9/ 1953 and there has been some amendments of this law.

that is; has *kafa'a* for such a girl. *Kafa'a* in marriage is required only from a man.

A man in a marriage contract has to pay his bride the gift of marriage (*Mahr*) which is usually a sum of money and from that time he must spend on her living expenses and afford her a reasonable house.

*Divorce:* a divorce is definitely putting an end for a marriage contract and finishing the joined life of the couple. In Islam, this right is given to the husband, but a wife can get separation of a marriage relationship when this relationship becomes harmful to her and that can be by judicial decision. A married Muslim man has the right to make divorce three times on his wife. He can bring her to remain his wife after the first and after the second divorce, but he cannot in the third divorce. After the third divorce, there is only one way for the couple to be re-joined in marriage, and that is, when the woman had married another man and the second man divorced her. Anyway, both parties, the husband and the wife can make an agreement to put an end to their marriage. This kind of contract is called "mukhala'a". Notably, divorce and any other kind of separation between husband and wife is something worse; it should not be done unless there is a necessity for that divorce or separation. It is often known that the divorce and separation had a bad effect on the family as a whole.

The right to look after the children of marriage (nursing), in case of divorce or separation is given in the first place to their mother, and if she cannot or is not qualified for that, or remarried from somebody who is not kin to a certain degree to the child, then children will be given to other relatives

according to law, with certain arrangement of relatives, taking into account the interest of the child. In this regard, article number /139/ of the Law of Personal Status in Syria arranged the right of nursing as the following:

The mother, the grandmother up from the side of mother, the grandmother up from the side of father, the sister, a sister from the mother only, a sister from the father only, the daughter of the sister, the daughter of a sister from mother, the daughter of a sister from father, sisters of the mother (aunts), sisters of the father (aunts), then the relatives of the father according to their arrangement on inheritance.

However, the father has to spend on his children in all cases.

*Capacity:* in the law of personal status of Syria, capacity starts in the age of 18 complete years which is the same age in the Syrian civil law (see article 162 of the law of personal status). Before that age the person is a minor. Legally minors do not enjoy legal capacity; therefore, they cannot make by themselves some kinds of contracts. The interests of minors are looked after by one of their relatives, often is the father, or next of kin if the father is not alive or absent. Those who look after minors are "guardians"; their function is to manage the interests of minors. The same rules are applied on those who have insanity or partial insanity or are lost or absent. In these cases, the judge is authorized by law to appoint someone for each of those to look after their interests and manage their money or property. He works as an agent on behalf of the absent or the person who has insanity.

*Will:* a will is an act added to the time after death, related to the distribution of a person's property after death.

The rules of will are:

1. It should be on a legitimate thing.
2. It can be on a correct condition.
3. The will in Islam should not exceed a third of the whole inheritance which is left.

It is understood from the rules of the will that a man can grant some of his property or money to another person, not exceeding a third of what he has at the time of his death. If he exceeded a third of what he owns, then the exceeding part needs to be agreed by the heirs. But any will, however, is implemented after his death.

*Inheritance:* it is meant by inheritance the legal distribution of the whole property of a person after his death. The system of inheritance in Islam makes the distribution consistent with Qur'an; that is, certain portion for each heir; the wife, the sons and daughters, the mother or any one has the right to inherit. Nonetheless, some important rules of inheritance in Islam must be observed:

- The religion must be the same; both Muslims: the person who left the inheritance and the heir.
- The killer of the man who left inheritance does not inherit.
- No inheritance before the repayment of debts of the dead person and the implementation of his will.

These rules are incorporated in the law of personal status in Syria.

## Commercial Law

The recent commercial law in Syria issued towards the end of the year 2007([16]), for sorting out of commercial activities and commercial contracts, whether they are on land, sea or in the aerospace scope, by natural persons or companies or any trader, even the state when it does these activities.

The reason for the creation of a separate commercial law is the different nature of commercial activities which are not as the same as civil activities. Commercial contracts and commercial legal deals require rules for fast treatment in the easy ways, which are not normally present in the legal civil rules.

Basically, the main topics of commercial law are: merchants, shops, commercial contracts, commercial financial means, such as cheques, crossed cheques, bill of exchange and other financial instruments, commercial establishments, the commercial works, insurance for the shop, commercial pledge, shipping passenger and cargo, bankruptcy of merchants and companies, arbitration and its procedures including the board of arbitration and the judgments of arbitrators([17]), commercial companies in all their kinds which include the establishment and the administration of companies. In Syria there is a law of companies issued in the

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16. It is the law of commerce no. 33 issued on 9 /12/ 2007, it was published in the Syrian official gazette no. 2 on 9th of January 2008. The former commercial law of Syria was issued by legislative decree no. 149 on 22nd of June 1949, and was published in the Syrian official gazette no. 41 of the year 1949.

17. Since 25 March 2008 there is a separate law for arbitration in civil, economic and commercial disputes in Syria, it was published in the Syrian official gazette no. 15 on 2 April 2008, p. 637 and after, it was put in force from the beginning of April 2008. Prior to that date, the rules of arbitration in the law of trial procedures were applied.

year 2008 and was substituted by another law in the year 2011 which is called "Organizing the Establishment of All Kinds and Forms of Legal Companies"([18]). Therefore, companies did not remain in the law of commerce.

## 4. Maritime Law

Maritime law has a dual nature: the first concerns with the commercial law when there is shipping or investment in the sea and this is often included in the commercial law. The second is concerned with the public international law when the matter is related to the freedom of high seas or the regime of the sea, and how each state is entitled by international treaties and public international law to use the international waters.

The right of navigation and the right of fishing are topics of the maritime law. Some countries may not have a separate maritime law; then it remains divided between the commercial law and public international law.

## 5. Labour Law

Labour law is a set of rules determining the legal relationship between employers and employees in the private sector and the duties and rights of each towards the other.

Analyzing this definition shows the following:

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[18]. The law of companies no. 3 issued on 13/3/2008, was published in the Syrian official gazette no. 14 on 26 March 2008, pp. 582 and after. Today, the present law for all kinds of companies is the law of: "Organizing the Establishment of All Kinds and Forms of Legal Companies" issued by the Legislative Decree number /29/ on 14/02/ 2011, and published in the Syrian Official Gazette no. 9 on 23 February 2011, pp. 278 and after.

1. workers (civil servants) are not the subject of labour law, those have independent laws to organize their matters with state administrations([19]).
2. Labour law deals with individual labour contracts and collective labour contracts.
3. Labour law includes the organization of work, in particular:
   a) the working hours and the maximum working hours,
   b) wages and the training of workers,
   c) committees for defining wages,
   d) rest and breaks of workers,
   e) penalties on a worker, in case of his mistakes,
   f) the conditions of juvenile work,
   g) conditions of work for women,
   h) labour co-operations and workers associations,
   i) overtime work,
   j) arbitration of work disputes,
   k) social security of workers, which includes compensation after the termination of job and for injuries of work,
   l) the right environment for work in the firm, particularly the healthy conditions for workers,
   m) inspection and scrutiny on firms by the state authorities to ensure that the employer had respected the law for the interest of work and workers; if he has not respected the law, he will be subject to penalties.

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[19]. At present, the Basic Order of State Workers in Syria is law no. /50/ of the year 2004, it is the main law for state workers. For workers in the private sector, the present law in force is *The Law of Workers Rights and Labour Relationships In the Private Sector, United Arab and Foreign Companies, the Cooperative Sector and the Joined Sector*, no. 17, issued on 12 April 2010. It was published in the Syrian official gazette no. 16 on 21 April 2010. Before that time, the law of labour in Syria was no. 91 of the year 1959.

## 6. Private International Law

Private international law is a group of rules organizing matters of nationality and laws conflict between states in the legal relationship which has a foreign element.

This law is *private* because it concerns individuals and it is *international* because it involves a foreign element; this foreign element is embodied by the application of national legal norms on a foreigner or the application of foreign legal norms on a person from home (the citizen of the state).

The law of nationality, which states how a person gets a nationality and the conditions of getting the nationality of the country is part of the private international law.

Other examples of the topics of the private international law are contracts between two persons, from two different nationalities, such as a contract between a Syrian man and a French man in Syria. This raises a number of questions like, what is the law that must be applied on this type of contract? Is it the Syrian law or the French law? And what are the courts which have the jurisdiction to judge on a dispute of this contract? Are they the Syrian courts or the French courts? The answer for each country is inside its private international law.

Accordingly, the form of a contract is governed by the law of the place, that is; by the law of the country where the contract was concluded. But the legal capacity to make a contract is to be looked in the law of the country that each party belongs to. The law and the courts of the country where the contract was signed or the tort happened are the competent to see any dispute about this contract and tort and the law is to be applied. In our example above, the Syrian

courts have the jurisdiction and the Syrian law must be applied.

Articles number 11 to 30 of the civil law of Syria set out the rules of private international law. These rules determined for example:

1. In the rights related to estates the law of the state in which the estate is must be applicable.
2. In contractual obligations the law of residence if it was the same, for both parties, and if it was different, the law of the country where the contract took place, unless both parties agreed on another law.
3. The form of the contract is subject to the rules of the country where the contract was done unless there is another agreement between the parties.
4. Non-contractual obligations are subject to the law of the country where the tort occurred.
5. Trial procedures are following the law of the country where the legal case is established.

In case of laws conflict between two countries or more and the case created a danger in their international relations, the dispute may be settled by an agreement of states or they may introduce the case to an international court.

## 7. The Law of Civil Trials Procedures

The law of civil trials procedures (the law of civil procedures) sets out the rules of litigation before courts for the right application of civil laws. In other words, it is the law of managing justice and not the content of justice. Primarily, it includes:

a) how to claim to a court, which includes the requirements of a judicial claim,

b) managing the court sessions,

c) representation of the parties of a case in court,

d) notification to the defendant to appear in court and defends himself,

e) managing court proceedings,

f) the competence of courts,

g) the challenge to a judgment by the ways of appeal or cassation,

h) rules of compulsory execution of judgments.

The Law of Trials Procedures, which was issued in 1953 and had some amendments, is applied on civil and commercial cases in courts([20]). It is the law for administering the ways of litigation.

This brief idea of the branches of both public law and private law should not make us ignore that there are other laws with different names that are not explained or mentioned in this book, such as the law of universities, the law of elections, and the law of lease, These laws fall within one of the two main categories, either in the public law or the private law.

After finishing the first part of the book, some questions are posed to help students in understanding the information of this book and could help them afterwards in their exam. Then

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[20]. *The Law of Trials Procedures* issued by the legislative decree no. 84 on 28/9/1953, is published in the official gazette of Syria in 1953, pp.4805 and after.

the explanation will be in the second part and this includes right and the practical side of law.

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Questions:

1. What are the two main divisions of law?
2. Write (c) for correct answers and (f) for false answers:

   a) The branches of the public law:

   - the constitutional law
   - the administrative law
   - the civil law
   - the financial law
   - the criminal law
   - the commercial law.

   b) The branches of the private law:

   - the civil law
   - the law of personal status
   - the maritime law
   - the public international law
   - the law of civil procedures

3. Complete the spaces: Constitutional law usually contains three main issues;

   i) the rights of .....

   ii) ..... Liberties

   iii) organizing the powers of the .....

4. Put (adm.) for topics of administrative law and (fin.) for topics of financial law:

   -public bodies and public establishments

   - public authority
   - taxation
   - tariffs

- discretionary power
- administrative tribunal
- public budget
- public expenditure.

5. Give a definition of criminal law.
6. What is the difference between "crime" and "offence"?
7. What is the most hard punishment.
8. Explain how criminal law can deter the commission of crimes.
9. What are the circumstances which reduce punishment on criminals? Explain.
10. What are the circumstances which increase punishment on criminals? Explain.
11. Answer (T) for true answers and (F) for false answers:
    - the age of capacity for criminal liability in Syria is 18 years,
    - amnesty is granted by law and makes no punishment, reduces it, or substitutes it,
    - amnesty frees the criminal from civil damages,
    - grace is granted by the president of the republic (the head of the executive power).
    - insanity makes the criminal irresponsible.
    - partial insanity does not reduce the amount of punishment,
12. Put (T) for correct answers:
    a) the penal procedures law puts the rules of litigation in criminal cases,

b) if there is no prosecution in a felony for ten years then any prosecution in that case becomes normally illegal because of the lapse of time,

c) "bail" is one type; conditional bail,

d) Stipendiary court is lower than an appeal court,

e) the criminal case is a right of the society,

f) the whole criminal case is the right of the individual,

g) in the "lapse of time" there is no difference between prosecution and a sentence of capital punishment.

h) the transformation judge sees the criminal case before it can be seen by the judge of investigation.

13. What is the difference between *conditional bail* and *unconditional bail*?
14. Define public international law.
15. Name five topics of public international law.
16. Mention the sources of public international law.
17. What are the branches of private law?
18. How can you make a distinction between contractual obligations and obligations that result from illegal actions?
19. Name three cases of the abuse of right in the Syrian civil law.
20. Explain the elements of a contract.
21. The right of ownership of an estate is from ..... in lands.
22. Put (T) for true answers: the law of personal status is:
    - its rules are taken from Islamic legislation in Muslim countries,
    - deals with matters of marriage and divorce,
    - deals with matters of will and inheritance,
    - does not contain rules for absent people managing and looking after their interests,
    - not concerned with insanity and partial insanity.

23. Count the conditions of inheritance in Islam.
24. Why there is a separate law for commercial activities?
25. Mention five topics of the commercial law.
26. Name the topics of the maritime law and explain one only.
27. State a definition of the labour law.
28. What the labour law organizes?
29. Explain the difference between public international law and private international law.
30. Find out what the law that can be applied on the following in the Syrian Law is: estate, contractual obligations with a foreign person, the form of a contract, non-contractual obligations, trial procedures.
31. Name five topics of the law of civil trials procedures.

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## Part II
## Rights and The Practical Side of Law

This part of law explains:

1. What is Right and What is Wrong
2. Rights of Man (Human Rights)
3. Courts and Divisions
4. Going to Court
5. Lawyer: in the office and in the court
6. The Civil Service
7. Local Administration
8. Arbitration
9. The Sovereignty of State
10. The Constitution of the Syrian Arab Republic
    -The Constitution of the Syrian Arab Republic of 1973
    -The New Constitution of the Syrian Arab Republic of 2012

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# 1
# What is Right And What is Wrong

The Meaning of Right and Wrong:

The word "right" could not be defined in a precise meaning and any definition of the word "right" usually is a subject of criticism. This is because people overall the world may not agree on what is "right" and what is "wrong", what is right in a place may be not a right in another place of the world and what is right in a time or an era is not a right in another era or another time.

The main factor to define rights is the feeling of people in a society, whatever the sources of their education for rights; religion, morals, or the practical life. Once people in a society agree on a right, they decide to respect this right. Therefore, we can say: " right is what people respect in a society". In a further explanation, every individual in a society should respect the rights of other individuals, whether they are single or in a form of an organization. Examples of organizations; public organizations such as schools, hospitals, universities, public bodies and the state or private organizations like companies and associations of the private sector.

"Right" in the legal meaning is a legal power that entitles a person to keep material or moral value and enjoy a monopoly, prevention and litigation against everyone infringes or denies this right([21]).

[21]. This definition is taken from Prof. Mouhammad Wasel in his book " *The Entrance to the Science of Law*", 2011, University of Damascus, P.355 and this is coherent with the modern theory in defining the right, (in the Arabic references).

There has been a development of rights from old times up till today, in all kinds of rights. Simultaneously, there has been a development in the ways of getting the rights of people when these rights are under infringement. Actually, the development of technology, in particular, the means of communication helped in developing the ways of getting rights.

Any infringement on the "rights" of people, whether is an individual right or a group right is called "wrong" action. The present world legalizes their rights and those who break the laws and rights which are legalized are making "wrong". This pattern of wrong is called "legal wrong" because the actions constitute a "legal wrong" unless it is protected by law. Our concern is directed mainly to the "legal wrong" which can lead to a criminal action or civil action.

Criminal action = criminal case in a court

Civil action = civil case in a court (a lawsuit).

This leads us to make our discussion as clear as that: "the correct behavior of an individual is a conduct which does not make any infringement on the rights of other people, the rights which are protected by law". The definition of a correct behavior contains two elements:

a) no infringement b) the infringement must be on the rights of other people which are protected by law.

In a more explanation, a person should not destroy any right of other people, partly or completely, like destroying the property of another, and should not involve himself in the rights of others unless he is entitled by law. If he has done so, a destroy or involvement in the rights of others means he has done "wrong" actions, whether by acting or saying.

The distinction between "right" and "wrong" is a very important matter. Fortunately, the world has reached to an acceptance and in many cases to agreements of the basic rights of man.

Kinds of Rights:

Rights can be divided depending on the ways they are looked at. From the point of enforcement, rights are legal rights and moral rights. Thus,

1. Legal rights are the rights which are protected by law and any break of those rights is restored either by the agreement of the parties or by courts and legal ways. A person who breaks the law in his society or in another society means he exceeds his border and steps beyond his boundaries in society. Every right which is protected by law is a legal right. Within the legal rights there are two divisions; public rights and private rights.
   - Public rights: these are the rights in which the state is part as a public authority.
   - Private rights: these include the rights of individuals and private companies and private organizations.
2. Moral rights: these are the rights that the law does not protect; it is up to the individuals to implement these moral obligations or not. The good thing about these rights is that they show a good standard of behavior, over the ordinary standard required by law if the person performed them.

Depending on the nature of the activity rights are divided to:

- Civil rights and political rights: civil rights include the right of life and civil liberties such as the freedom of religion, the freedom of expression and the freedom of peaceful assembling. Political rights include the right of joining public elections, the right of joining authorized political parties, and the right to join political jobs after a success in political elections.
- Economic rights and social rights: economic rights include the rights related to economic activities, such as the right to establish a business when the requirements are fulfilled, the right to have a job and the right to invest money. For social rights; those are related to social activities like the right to exercise sport and the right of joining associations for social purposes.
- National and international rights: these are related to the scope of the activity. If the rights are of national concern they must be within the homeland whatever their kind is; civil, political, economic or social. But if the rights are international, this means other states are concerned too and the rights are applied on the international level.

Sources of Rights:

There is a variety of sources of rights, these sources are:

1. Religion: all religions; Islam, Christianity, and other religions included a wide range of human rights. Significantly, religion was the main source of rights in the past and is so in the present time.
2. Tradition and history: no body denies the importance of ancient discoveries of legal documents in the Babylonian and Roman ages and how they managed their rights; civil, penal and political rights. In the Hammurabi age, a person

who had destroyed an eye of another may lose an eye because the victim is entitled to destroy an eye of the criminal who had done so. In analogy with that, in the Roman age, a person who is indebted and failed to pay the debt to those who deserve it is to be cut to pieces. Each creditor takes a piece of his body equal to the debt he ought to receive. Concerning political rights, at that time, these were managed by a single person, the king or the emperor and his council.

3. Custom: this is what people in a country are used to practice for a long period of time. There are two kinds of custom: the national custom which applies on the rest of the country. This is more important for making laws than local custom. The other is the local custom which is applied on a locality and not applicable in the other localities of the country. Simultaneously, on the international level there is the international custom.
4. International documents of human rights: these include international covenants, the Universal Declaration on Human Rights on 10 December 1948 and Geneva Conventions in 1949 with its attached protocols.
5. Legislation of States: each state, in the modern time, has legislation which contains the rights of its people and those who live within the state. The legislation is; a constitution, law and regulations.
6. Precedents of courts: that is the judgments of courts, particularly decisions of high courts in similar cases which can guide to be a source of rights in similar cases.
7. Jurisprudence: this is the most famous writings by jurists and publicists about laws and courts.

8. Principles of natural law and equity: it is what is known to be accepted as a natural right and from the principles of equality.

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## 2
## Rights of Man
## (Human Rights)

Rights of man on earth are found to make everybody live free of any pressure or control of other people. These rights help everyman to reach some happiness in his or her life. Thus, rights of man help each man to choose the way of life and take part in the human activities of the world. These rights can be divided to: political, civil and economic rights.

a) Political Rights

Political rights of man are:

1. The right of free and secret election: that is, every man or woman who are enjoying the legal capacity has the right to join elections and elect or does a referendum, free and secret, without pressure of choosing his or her representative for a political job. The age of legal capacity in the Syrian Arab Republic and in many countries is eighteen years of age, but in some countries, the age of legal capacity is by the completion of twenty-one year of age. In the difference between election an referendum; i) an election is held to choose one candidate or more from the list of candidates, ii) a referendum is to write "yes or no" for one candidate or to agree or disagree on a certain matter. Ballot boxes are and must be secret.
2. The right for those who have certain qualification, according to the law of their countries, to nominate themselves to be candidates as long as they are willing to take part in the political life of the country and become political representatives in their community. Examples of political

representatives are: legislators of parliaments, representatives of political parties and representatives in the local councils, as long as the job has a political nature.

3. The right to join political parties which are allowed by the law of the state that a man lives in and participates in the activities of these political parties within the legal framework of the country. Furthermore, the right to do participation in all legal political activities like authorized demonstrations and processions.
4. The right of free expression by all means; speaking, writing, art or other means. However, this should not be against the public order of the society, whether people act as an individual or as a group. In fact, this is from the democratic process.
5. Free press: the free press can explain and show the illegal exercises in the society.
6. The right of nationality: a stateless man does not find himself protected by a state nor does he enjoys the rights of a citizen. Hence it becomes necessary for each man to have a nationality.

b) Civil Rights:

We may not write and discuss a comprehensive study of civil rights of man because of the wideness of these rights, but we can argue the most important and well known civil rights.

1. The right of life: every man has the right to live. The main idea of this right is that nobody should put an end to the life of another except God. But as a matter of fact, penal laws of many countries allow courts to make sentences against dangerous criminals who commit big and horrible crimes as

long as they are responsible. Those must be convicted and punished by capital punishment. They will be hanged if they were civilians and to be shot if they were members of a military organization. In some countries, the punishment is imprisonment for life.

2. The right of creed and religion and practicing religion within the limits of public order of the state.
3. The right of freedom which is a holy right. As a principle, it is a freedom in everything and the boundaries of the right of freedom is not to make infringe on other people rights.
4. The right of security: that is, each person has the right to be protected from any aggression on him or on his property. It is a protection by the state.
5. The right of secret correspondence and communication.
6. The right of having domicile: that is, the right of each person to have a comfortable house to stay in. Actually, some people in the poor countries are not able to achieve this right.
7. The right of moving within the state territory, and travelling abroad.
8. The right of marriage and forming a family which includes that the state must protect the motherhood and the childhood.
9. The right of each man to get medical treatment and care about his health and the right of social security.
10. The right of ownership and the protection of ownership by the state.
11. The right of inheritance.

12. The right of writers and inventors to have their writings and inventions protected.
13. The right of equality between men and women.
14. Nobody should be illegally detained.

c) Economic Rights:

Economic rights include:

1. The right to have a job: that is, everybody in so far as he can work must work and earn income to live. Surely this includes joining the civil service if the legal requirements are attained.
2. Payments of work should be equal to the work done and no slavery.
3. From the socio-economic rights there must be no discrimination. Hereby all people are equal regardless of colour, sex, origin, race, language or religion.
4. The right to join social or economic associations.
5. These rights lead to a more comprehensive right which gathers these rights; it is the right of **self-determination**. This right includes:

- political self-determination,
- human self-determination and,
- economic self-determination.

The right for self-determination is first for the individual whether as a single person, or within an association. Second, for groups and thirdly, for states as a political unit.

These rights are found in religions, international law, domestic constitutions of states and their laws.

*The Difference between Political Job and Administrative Job:*

1. The nature of political job is more comprehensive than administrative job because political decisions consider the interests in a wide sense. The decisions often are concerned with the national interest, either on a national level or for the interests of a large sheet of the community.
2. Political jobs are unstable, temporary (not permanent) like members of parliaments are elected for a certain period of time, usually four years, or ministers whose job finishes once the ministry is changed. Parallel to that, administrative job is more stable than a political job, and is thus, not terminated in a short period of time, or by political changes. It lasts legally until the age of retirement. Therefore, it is often a permanent job.
3. Political jobs are often occupied by elections and administrative jobs are occupied by appointments.

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# 3
# Courts and Divisions

Normally, courts are divided to two or three levels to enable those who claim for a right and those who are convicted or lost a trial, to contest or review the court decision. This means a person often has two or three opportunities to confirm a right or defend himself before courts in each case, whether it is a suit case or a penal case.

The explanation here is from the courts of Syria to make students know about the Syrian Arab courts.

*Kinds of Courts*

The courts in the Syrian Arab Republic are divided into:

- Criminal Courts (Penal Courts),
- Civil Courts,
- Personal Status Courts,
- Exceptional Courts
- The Administrative Judiciary which was explained in the section Administrative Law and will not be explained here.

1. Criminal courts in Syria are the following:
   a) Courts for contraventions and misdemeanors, which are:
      - Conciliation courts: these courts look into cases of contraventions and cases of misdemeanors if the punishment by law, of a misdemeanor is fine or does not exceed one year imprisonment in general and some other defined offences of misdemeanors,

that the legislature wanted these courts to judge on these offences.

- Primary courts: judge on all other penal cases which are not from the competence of other courts, as long as these cases are misdemeanors.

b) Felonies courts: those courts look into and decide on crimes which are felonies after the stage of investigation by a judge of investigation who makes accusation decision (indictment). If the judge of investigation accused the defendant, then the transformation judge sends the accused to the felonies' court. And this court is authorized by law to adjudicate on a misdemeanor if it is attached to a felony.

c) Criminal appeal courts: these are a second degree courts which review a wide-range of conciliation courts sentences according to law and sentences of primary courts in penal affairs, when the parties of the case are dissatisfied with the sentence issued or the decision of the court of first instance.

d) Cassation court: it is the highest judicial court in the country. In criminal matters it reviews decisions of Criminal appeal courts and felonies courts and some decisions of first degree courts when the law allows.

The explanation of these arrangements of criminal courts shows that there are three levels of criminal courts in the cases of contraventions and misdemeanors which are conciliation and primary courts as a first degree court, appeal courts as a second degree court, and cassation court as a third degree court. In felonies, however, there are two degrees of courts; felonies court as a first degree court, adjudicate felonies after the accusation decision by a judge

of investigation, through the transformation judge. And the cassation court as a second and upper court decides on the legality of the felonies courts decisions, when the parties of the case make a contest to it. Perhaps the investigation stage by the judge of investigation and the transformation stage by the judge of transformation is similar somehow to a degree of trial. Anyway, many of the parties in criminal cases do not contest a court decision in their cases. The cassation court is not considered a court of trial because its function is to look for the right application of law and not to analyze the facts of cases.

2. Civil courts: civil courts of Syria are divided three levels, this is not different from penal courts division in contraventions and misdemeanors. These levels are;

   a) The first level is:

      - Conciliation courts (stipendiary courts): look into civil matters either to a certain sum of money, which is now up to 200,000 Syrian pound and some other civil matters whatever the value of the case is, according to law, like the tort on farming.

   - Primary courts: to look at all civil and commercial matters which are not from the competence of conciliation courts and matters within their competence by law.

   b) The second level is appeal courts: those look into the vast majority of decisions and judgments of conciliation and primary courts if there is a contest of appeal against those decisions or judgments.

   c) The third level of courts is the cassation court: this court makes a revision of civil judgments which issued from the appeal courts, from the points of legality, to see whether

the law was respected in the case or not; hereby, it is not a court of facts, but it is a court of law. The contest to the cassation court must be made by a lawyer who is a legal representative of any of the parties of the case.

3. Personal Status Courts: the Syrian personal status courts look into cases which are related to the person's situation in matters of marriage, divorce, will and its conditions, inheritance, and looking after the interests for those who do not enjoy legal capacity such as orphans([22]), missed people, absent persons from home and people with partial or full insanity.

   Judgments of the personal status courts can be reviewed by the cassation court if the parties or any of them contested to the cassation court and the contest must be done by an advocate, as a legal representative of the contesting party. Thereby a case in personal status cases may be looked on two levels; the personal status court level as a first instance court and the cassation court as an upper level of courts. The cassation court looks into the points of law only, it is not a rehearing court.

   Those are called legitimate courts and there are some courts for other religions not only for Muslims.

4. Exceptional courts: this kind of courts is either for specific sorts of crimes or certain kind of people. Here two examples of those exceptional courts.

   Juveniles courts: which are for minor people who commit crimes. These courts are specialized in the crimes are perpetrated by juveniles. Judgments of those crimes can be contested to the cassation court.

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[22]. An orphan is a baby or a child lost his parents.

Military judiciary: courts of the military judiciary are specialized in crimes which are committed by members of the military or perpetrated against the military and its interests. Some decisions of these courts can be contested to the cassation court.

These are the kinds of courts and the levels of courts in the Syrian Arab Republic in our era.

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# 4
# Going to Court

Court is a place to claim against others for restoring infringed rights to those who legally enjoy them.

Everybody has the right to claim to courts in case of any infringement on his or her rights. Surely, if the person who suffered from infringement on his rights chose to settle his dispute with his opponent, whom the tort was committed by, out of the court and succeeded in that settlement, then no need for going to court. Anyway, court remains the last legal way to restore rights if these are not restored by other ways such as agreement of the parties, arbitration, or administrative settlement.

## How a claim to court is made

Here there is a difference between claims in criminal matters and claims in civil matters.

In criminal matters: public prosecution is the authority to claim for going into the process of litigation in the crimes which are committed and the role of an individual, who is a victim of the infringement, is to inform the public prosecution about the crime. A public prosecutor usually makes a claim. Often it is enough to inform the police, in turn, the police informs the prosecutor of the city or the area. Substantially, in many offences, often contraventions and some misdemeanors the law stipulates that the injured person has to claim to the prosecutor and continues in his claim to get the personal right. Always the punishment whether it was imprisonment or fine is a public right and prosecutors represent this public right on

behalf of the society. The characteristics of claim to a court for personal rights resulting from offences are:

1. The claim for the personal right of the injured person, I mean the damages which result from a crime can be before the penal courts or civil courts. If the victim chose the penal court must claim before the trial takes place or during the trial of the case, but if the injured had chosen the civil court, his case before the civil court will remain in a standstill situation until the penal court makes a final decision, that has no anymore way of review.
2. The claim to civil or penal courts for personal rights: any claim to a court must contain the following:

   -The name of the court in which the case is introduced to it,

   -The date of a claim,

   -The name of the plaintiff and the defendant, their professions or their jobs and the place of residence for the court's notification,

   -The topic of the case in a clear way, that is; an explanation of the dispute,

   -The legal aspects of the case; to put the legal points, which are in support of the claim, very clear. Herein, the claim must contain the evidences and be attached to documents which support the rights of the plaintiff,

   -The signature of the plaintiff on the claim or the signature of his legal vice, who must be entitled by a formal document, containing a date and ratification of the entitled administration.

   -Following to that, the plaintiff submits his claim to the office of the court, which he intended to have his case in,

-Photocopies of the claim must be presented to the court, as many as the number of defendants. All copies of the claim must be signed by the plaintiff or his legal representative,

-The fees of the claim must be paid in the office of the court.

After all of this, the court can specify a certain date for looking into the case. Then the court should notify the defendant formally for the session mentioning the day and the date. According to the Law of Trials procedures in Syria, the defendant must be notified three days, at least, before the court's session. In urgent cases however, this time is reduced to be twenty four hours at least([23]). Notably, people who are staying abroad are given a period of sixty days between the time of notification and the session of the court.

Plaintiff: plaintiff is defined as a person who makes a claim to a court against another person or against an institution for restoring his rights.

Defendant: defendant is defined as a person or an institution against whom a claim is submitted or it by somebody alleging that the defendant infringed on his or its rights.

The Right of Claim:

For the right which the claim is made for, there must be conditions to be fulfilled. Therefore, the people whose their claim is accepted are:

[23]. The periods for notification for a trial are set in the Law of Trials Procedures.

1. Any person who has a present interest which is protected by law.
2. The likely interest is enough to make a claim accepted if the purpose was to avoid a tort or to document a right that the clue is likely to be lost. In other words, the law required for a claim, to be accepted, either the present interest or the likely interest of the man who claimed.
3. One person or more can claim for a right in the same case. Article number /12/ of the law of trials procedures allows a person or more to claim for a right if there was a right to the people of a village in the following cases:
   a) the use of estates which are left to the village,
   b) the abandon of the use of estates left to the village,
   c) rights which are won by the people of the village on public ownership.

Of course, the person who claims in these cases must be one of the people who stay or live in the village. The people of the village, in these cases, should exceed a hundred person.

The following articles numbers (nos.) 13 and 14, respectively, allow any of the inheriting people to claim for the rest of the inheritance, as long as the person is a heir, for himself and on behalf of the other heirs. In accordance with article no. 14 of the law of trials procedures, the person who claims must be having the capacity to claim. The required age to claim to a court in Syria is at least 18. Some kinds of courts require the representation by a lawyer, like the administrative tribunals in Syria. A lawyer there only can present the claim and with the process of the case on behalf of the claiming person. Those who are minors or lost capacity

are represented in courts by those who look after their interests.

The person who claims or his representative must attend the sessions of the court. If he did not do so, the case will be deleted unless the defendant asks the court to continue in the case. However, the deletion of the case is not an abandonment of the right. In spite of the deletion of the case, the right remains and the plaintiff can renew his claim.

When a trial begins between the parties of a case, it takes usually several sessions. It lasts for several months or more; thereafter, a court judgment is issued. Within the trial, each party the plaintiff and the defendant has the right to present all what supports his right unless the law forbids some of these means.

At the end, the party who lost the case or some aspects of the case, normally has the right to contest the court's decision to a higher court, the appeal or the cassation court. Significantly, no right of review for the parties when the judgment fulfill their questions.

RIGHT OF REVERSAL ---------- when the demands are not accepted

NO RIGHT OF REVERSAL ---------- when the demands are accepted

Review of Court Decisions:

There are two ways of Review; the review of appeal and the review of cassation.

The review of appeal: it is characterized that most of the decisions of the first degree courts accept appeal and both

parties of the case; the plaintiff and the defendant have the right of appeal if the judgment contained any wrongs of the facts or law. The person who makes an appeal of judgment is called "appellant". By an appeal, the appeal court is authorized to do a re-trial for the case under appeal, that is; a rehearing of the case.

Rehearing means hearing the case again.

Any claim of appeal must be introduced within a certain period of time that starts from the time of announcing the courts judgment or its decision, if the parties were present, or from the time of notification of the judgment or decision in some kinds of courts, often when the parties are also absent. The period of appeal in Syria differs between penal and civil decisions.

a) *In penal sentences*: appeal should be done within 10 days for the decisions of the conciliation and primary courts start from the following day of the conviction or the sentence if the parties were present, or from the following day of notifying the court's decision if the parties were absent. For public prosecution, the time begins from the following day of the issue of sentence or the court's decision if it was from a primary court and from the following day of reporting the case to the office of the prosecutor if the decision was from a conciliation court([24]).

The person against whom there is an appeal and who lost the time of appeal or did not want to appeal, still has the right to make a junior appeal in the time of the first session of the appeal court. A junior appeal is accepted if the original appeal is accepted and is rejected if the

[24]. *The law of penal procedures* of Syria.

original appeal is rejected. Also the contents of the junior appeal should not exceed the contents of the original one. That is: the junior appeal is limited to the same demands in the original appeal, thus the junior appellant can defend his rights in the junior appeal within the scope of the original appeal.

Original appeal = is submitted within the period of appeal

Junior appeal = is submitted in the first session of the case in the appeal court

If the other party made an original appeal and the person against whom the appeal is made and who lost the time of appeal or does not want to submit an original appeal can submit a junior appeal in the first session for looking into the case.

Appeal of the decisions of judge of investigation by the prosecutor must be within 24 hours, start from the time of notifying the decision to the prosecutor and the appeal must be submitted to the judge of transformation.

There is however a significant difference between an appeal and **objection on sentence.** The latter influences sometimes the rights of a person or is against him directly and he was not been notified to the court. The sentence was *in absentia* thereby **the objection** must happen within five days of notifying the sentence or the decision of the court and to the same court which issued the sentence.

*b) In civil judgments:* an appeal must be introduced within fifteen days in all judgments of conciliation and primary courts and within five days for the decisions of the judge of urgent matters. The time starts here from the following day of the issue of the judgment in conciliation courts if

the parties were present, but if the party was not present the period, for submitting an appeal, starts from the following day of notification. In analogy to judgments of primary courts and those of the judge of urgent matters, the period of appeal starts from the following day of notification in both cases. It is a text of law.

The form of appeal must contain the following : a) be within the specified period, b) the name of appellant, c) the name of appelee, d) the judgment or decision that is submitted to appeal. These four requirements are from the form of appeal and, e) the reasons of appeal which should be clear and reasonable and should point out that there is something wrong in the first trial. If these conditions are not fulfilled, the application for appeal will be rejected.

**Objection on civil judgments** which are without notification to the concerned person are subject to objection to the court which issued the decision, it continues until the right falls by prescription.

Review by Cassation: the right to submit a contest of a judgment to the cassation court is 30 days for all judgments whether they are penal, civil or from the courts of personal status([25]). Notably, the judgments of personal status courts in Syria accept revision by the way of cassation to the cassation court and could not be appealed to the court of appeal, except few exceptions. The period to contest for cassation, basically starts from the following day of notification of the judgment.

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[25]. The law of civil trials procedures which was issued by legislative decree no./84/ in the year 1953 and its amendments. The latest amendment was by law no./55/ on 4 January 2010.

Any challenge to a judgment presented to the cassation court (the high court in Syria) except in penal cases must be by a qualified lawyer. In a successful cassation the reasons of cassation of a judgment are accepted, otherwise the rejection of the reasons of cassation in a judgment by the cassation court leads to the failure of the cassation. The accepted reasons for cassation are the following:

- Something legally wrong in the judgment from the point of law,
- Something wrong in the interpretation of law,
- Incoherency with a former judgment,
- The judgment did not mention the demands of the parties to the court of the subject or,
- The judgment judged things for the parties they did not ask the court for.

The court of cassation, when the cassation is accepted, has the power to return the case to the court which made the trial and asks it to make a revision of its judgment in the light of the directions of the cassation court. However, the cassation court can decide on the case, by itself, if the cassation was for the second judgment after the judgment issues from the court following to the directions of the cassation court whether the court followed the directions or not.

Judgments, which are not contested, or which are ratified by the cassation court if the judgment was lawful become ready to be implemented and the party who wanted implementation can ask the office of implementing judgments to implement the judgment he wanted, usually the party who won the case. The judgment then becomes absolute and no further trial or review.

Retrial is possible on limited conditions, such as the discovery of new relevant documents to the case and those documents were excluded by the opposite party, or if there were in the same case and the same parties two contradicting judgments, or the victim appeared alive.

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# 5
# Lawyer: in the Office and the Court

How somebody becomes a Lawyer:

A lawyer is a person who has legal education and is ready to advice and advocate for the rights of people, companies, private and public organizations.

A person who is willing to become a lawyer must fulfill the following requirements:

- To read law at a university and get a university degree in law which should be, at least, Bachelor of Law.
- To be of a good reputation in society. Branches of bar association make sure of that([26]) at the time the lawyer wants to join the bar association.
- Two years training at least in the office of a lawyer who is a qualified lawyer in the rank of a master "ostath" for seven years at least([27]).
- Some categories of people are not required to do training when they join the membership of the bar association such as those who occupied the position of judge for several years or the position of university professor in the faculties of law. The law "Organizing the Profession of Bar in the Syrian Arab Republic" issued

[26]. Law no. 30 in Syria, "*Organizing the Profession of Bar in the Syrian Arab Republic*", issued in 11/7/2010, was published in the Syrian official gazette no. 29 of 21 July 2010, pp. 932 and after, provided this condition as one of the required conditions for the membership of the bar association and exercising the profession as a lawyer. Prior to that law was law no. 39 issued on 21/8/1981.

[27]. Articles nos. 24 and 25 of the law "*Organizing the Profession of Bar in the Syrian Arab Republic*". It is seven years in the mentioned new law no. 30 of 2010, but it was five years in the former law no 39 of 1981.

in the year 2010 has exempted from training of this profession the following groups:

a) A judge if he or she worked as a judge for five years and was not dismissed from the service, b) Arab lawyers in the rank of a master "ostath" on condition of equal treatment to the Syrian lawyers, c) members of the academic staff in the faculties of law if they taught legal sciences for five years at least and, d) the lawyer who advocated in the administration of the state affairs for five years, at least, and was not dismissed from his service([28]).

- Other requirements related to the age, health and residence in the area of the bar association branch.

The Duties of a Lawyer:

When a person becomes a lawyer in the full meaning of the word or you may call him an "advocate", he/she has to do the oath of the profession of Bar before any practice of bar profession as an independent lawyer. An independent lawyer who is one has finished the period of training and succeeded. Therefore, he/she is not under the directions of the mastership lawyer. During the period of training the trainee lawyer advocates using the name of his master lawyer.

The oath in the law of "Organizing the Profession of Bar in the Syrian Arab Republic" in article no. /22/ is that:

" I swear by my almighty God to exercise my profession with trust and honor and I will not

[28]. Article no. 26 of the law *"Organizing the Profession of Bar in the Syrian Arab Republic"*, issued in 11/7/2010.

disclose the secret of the bar profession and I will respect the laws".

After the oath, a lawyer must have an office to practice his profession as a lawyer. Without an office, it is impossible for a lawyer to practice his profession. In fact, the branches of bar association do not accept a nominated person to swear the bar oath until they are assured that there is a respectable office for him to exercise the profession as a lawyer. The office of bar profession must continue as long as the lawyer is practicing his profession. A lawyer should not have more than one office for the bar profession; nevertheless, a lawyer can have another office if he is elected as a head of the bar association or as a member in the council of the bar association. This second office continues during the period as a head of the bar association or the membership in the council of the bar association, and the place of the second office is in the capital city Damascus([29]).

The lawyer should put a signal written on it his name and surname and his character as a lawyer to show the place of his office, which is to be put outside the office. It should not be of a strange form, but it must be consistent with the traditions and customs of the bar profession.

The reception of the lawyer's clients ought to be in his office. By this way lawyers keep respect of the profession, unless there are exceptional circumstances.

Lawyers must work in a faithful way with clients and keep their secrets which they have known throughout the cases or

[29]. This is in the law of *"Organizing the Profession of Bar in the Syrian Arab Republic"* issued in 11/7/2010, in article /67/.

consultations and no disclosure of the clients' secrets. This is part of the oath of lawyers which was mentioned earlier.

Lawyers in Office:

The work of lawyers is divided into three functions: consultation, writing contracts and legal documents and, representing people in cases.

Consultation: it is part of the advocate job. Generally, a lawyer has duty to give a legal advice to his clients; to advice whether the client has a right in his case or not and how can he get his right if he has. The lawyer must analyze the matter of the client, thereafter, and gives his opinion. If this required him to collect information from legal texts and materials, he should not give the advice immediately; instead he asks the client to return on another day. Today, because of the enlarging of legal science, lawyers do not prefer to give their advice quickly, they do analyze the case and then give their legal advice, which can be on another day, unless the case was simple and clear and already lawyers know the answer. The lawyer, particularly when he is paid, is responsible if he committed a big mistake in his advice. Actually, in recent days, the number of consultations to lawyers has increased. This comes from two facts; the first is that people today are educated, whether from schools and universities or from mass media. Therefore, they have become aware of the importance of the legal advice. The second fact is that in our time the state and local authorities have much control on the economic and financial activities of individuals. It is a complexity that necessitates a legal advice before any involvement in a judicial

case. However, a legal advice should be in the office of the lawyer, because this keeps the respect of the profession.

Making contracts and legal documents: lawyers are the competent people to write contracts between two parties or more. Examples of contracts; purchase and sale contracts, buying a car, rent of houses and, contracts of industrial and commercial investment. In the same meaning, lawyers can write other legal documents, such as in trust matters, a settlement of a dispute between two people or more, to write an agreement or to make arbitration between the opponents if they entitled the lawyer. Writing a contract or a legal document between two parties must depend on their consent and each of them freely signs the contract or the document after a full understanding of its content.

We should always remember that an advocate is not a civil servant. He works in a free profession; hence the contracts and the papers which are written by an advocate are not formal documents. Therefore, those could not be implemented directly unless all the parties of the document agree. But such papers which are issued by a lawyer are important informal documents in court to confirm a right or rights.

Representing people in cases: perhaps the bulk of a lawyer's work is preparing the cases of his clients and representing them either in the state's administration or in courts. The most important illustration which should be made here is that people or companies, even public bodies and establishments, do not have to claim or follow their cases in the administrative machinery or in courts. Any person can choose a lawyer from

the members of the bar association, or more than one lawyer to represent him in his case.

Lawyers in Court:

A lawyer who becomes a vice for his client works on behalf of him in the client's case. The defense of a client passes throughout the following stages: First of all, the procuracy; whereby the client signs a formal document in the presence of a lawyer, who is entitled by the bar association to ratify such documents, either in the office defined by the bar association or in the office of the lawyer who is authorized by the bar association to ratify. It is called procuracy or procuration. The lawyer, by this mean becomes attorney at law (procurator). Procuration is a formal document that determines what the lawyer is entitled to in the case or the cases of the client. Procuration may be general authorization or specific authorization to the lawyer. By general authorization the lawyer is entitled to defend the client almost in many and variety of cases. By specific authorization the lawyer has an authorization to a particular case or particular cases, even his powers may be limited in the case itself. Always a lawyer should not exceed what he is entitled to.

Second, the main work of a lawyer in court is pleading. This includes: writing the claim to establish a suit, the defenses, responses and all written papers which he is required to do in the case. Thus, the lawyer presents pleadings of the case in the court on behalf of his client. Pleadings include the first instance court, the review of appeal and a challenge for cassation, also defenses before private and public agencies

when the case is not introduced to a court, and the implementation of the judgment.

Third, the client must completely cooperate with his lawyer, by introducing all documents and papers which support the client's case and give him the names and addresses of witnesses if this was necessary or a supporting evidence in the case. However, witnesses are not accepted in all cases as an evidence to prove the right. In a phrase, the client must cooperate and provide all right information which could help for winning the case.

Fourthly, lawyers usually are paid by their clients. It is a payment for the efforts which are done by the lawyer. This is normally determined in an agreement between the lawyer and his client; each become responsible to the other because the agreement creates a contractual responsibility to both. That is, the lawyer must work, at least, as an ordinary lawyer in the cases of the client, to avoid big mistakes and the client must pay for the efforts of his attorney at law in the time and place they defined.

*From the Duties and Rights of Lawyers:*

Whether in office or in court, the lawyer ought to behave in a respectable way. In office, people who wanted advice or the clients of the lawyer should be treated in a respectable way, even in the cases which the lawyer does not want to engage in. Inside courts and the other places which the lawyer has to exercise his profession or to do work, the good behavior of the lawyer is required. He must respect judges and the staff of the court, civil servants and all other people in the place of his

work. The wrong behavior of a lawyer is reflected badly on the bar profession and on the lawyer himself.

As a general rule, the lawyer is free to engage in a case or not. An attorney at law freely decides the successful ways of defending his client([30]). For those two points bar is called a free profession.

[30]. See article /57/ of the law *"Organizing the Profession of Bar in the Syrian Arab Republic"*, issued in 11/7/2010.

# 6
# The Civil Service

The meaning:

Civil service is the machinery of government which functions to provide public services to citizens.

Appointment in the civil service:

There are some rules of the civil service for those who wanted to work in the civil service. Law usually sets the rules for appointment in the civil service and these rules are:

a) Nationality: normally citizens of the state are the only people who are allowed to join the civil service and make their career in the civil service. Foreigners may be employed temporarily through contracts.
b) Capacity: joining the civil service should be only for people who reached the legal age for full responsibility because they will run a public service and will be responsible before their administration or to a higher administration for any wrong they commit. The legal age for joining the civil service in Syria is 18 years at least.
c) Healthy requirements: a person who applies for the civil service must enjoy a reasonable health that enables him or her to perform his job and must be free from endemic diseases.
d) The required qualifications, by the administration, must be obtained such as the scientific degrees and the experience.

e) Not sentenced with a felony or heinous misdemeanor (heinous misdemeanors in Syria are defined by the minister of justice)([31]).

Vocabularies of Civil Service:

Some conceptions are useful for students of public service to know which help in the understanding of the civil service.

**The Public Service:** it is all the services which are provided by the state and its public organizations including the military service.

**The Civil Service:** in its content, is the services of the state except the military service. In its form, it is a set of offices arranged in a certain way, managed by bureaucrats and has super- and sub-ordination.

Thus, the term public service is a more comprehensive one than the term civil service. Our discussion does not include the military service because it has its own rules.

**Planning:** drawing a plan for an organization to make programs of the future of the organization.

**Control:** the activities for watching if the civil service is going all right or not.

**Supervision:** the main activities for directing the work of the administration.

**Co-ordination:** linking the activities of the public organization in a coherent way and the activities of the organization as a whole with other organizations.

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[31]. Law no. 50 issued on 6 /12/ 2004 in Syria is *"The Main System of State Workers"* includes the requirements for joining the civil service. This law was published in the Journal of Advocates, no. 3 & 4, the year 2005, Damascus, Syria.

**Organizing**: making the units of a public administration work consistently with a clear division of the functions.

**The Administrative unit**: any public organization is called administrative unit.

**Training**: courses and practices to civil servants for improving the quality of civil servants work.

**Career**: the permanent job that a person works in or looking to work in.

**Duties on Civil Servant**: the functions which are required from a civil servant to do in his official work.

**Forbidden on Civil Servant**: what is prevented for a civil servant to do or act.

**Bureaucracy**: the machinery of the public service and the doing of its work.

**Bureaucrat**: the public servant who works in a public administration.

**Public Employees**: public servants who carry out the job of the state as a public power. Some countries changed the term from "civil servants" to "public employees" or public workers; Syria has changed the term to "public workers".

**Recruitment**: the process for joining the civil service.

**Promotion**: the upgrading in the civil service from a rank to a higher rank.

**Demotion**: down-grading in the rank of a civil servant or a public employee without reduction of the salary.

**Salary**: the regular payment to a civil servant on his duty, often on a monthly basis.

**Remuneration**: the money or benefits given to the civil servant because of the nature of his job or the accompanying circumstances of the job.

**Retirement**: the legal age of leaving the civil service. Normally is sixty years of the civil servant's age.

**Pension**: the money which is given to a retired person during the period of his retirement because of his services in the public service.

**Resignation**: leaving the civil service upon the will of the civil servant.

**Rewards**: some money or benefits are given by the administration of the organization because of the excellent performance of the work in the civil service.

**Leave**: the period of time given to the civil servant out of duty.

**Administrative Leave**: the days which a civil servant has the right to be out of his duty during a working year with full pay. These days revolve between 15 to 30 day a year, depending on the seniority of the civil servant in his job. A civil servant can use these days for his own work or for entertainment.

**Healthy Leave**: the days which are out of duty by a civil servant because of illness. Those days are paid completely or relatively or unpaid, it depends on the law of the country.

**Unpaid Leave**: any leave which is allowed legally to a civil servant with the permit of the administration without any payment.

**Other kinds of leave**: such as the leave for few days because of the death of one of civil servant's relatives who are defined by law like his parents, his wife, his children. Or the leave of

few weeks for performing the requirement of pilgrimage and the leave of women for birth.

**Professional Punishments**: punishments which are imposed on a civil servant by the administration or a tribunal when a civil servant commits mistakes, with adverse effect on the profession, during the performance of his duty or related to his job in the civil service.

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# 7
# Local Administration

Local administration is a developed form of decentralization, in which, local people manage their services and needs through local elected councils and authorities.

Syria experienced decentralization and local administration. The first law of local administration was law number /15/ of the year 1971. Today the country applies the law of Local Administration issued by the legislative decree number /107/ of the year 2011([32]). This law considered the defects of the previous law and the recent needs of the country in local administration. The law is really a new shift to democracy and further decentralization than before by the way of concentrating the process of local governing and responsibilities of providing local services in the hands of local people.

*The Aims of the Law of Local Administration*

The law of local administration of 2011 in Syria aims at the following:

1. The application of decentralized authorities and responsibilities and concentrating them in the hands of society as an application of the principle of democracy which makes people the source of each authority.
2. The foundation of administrative units able to do the process of planning, implementation and development

[32]. *The Law of Local Administration of* Syria issued by legislative decree no. /107/ in the year 2011.

plans for the local society, implement projects with effectiveness with a direct responsibility of administrative units, in all levels, for services, economy, culture, and all matters which are from the concern of citizens in these units whereby the central authorities function on planning, legislation, organization, bringing technical methods and implementing large-scale projects which the local administrative units cannot perform them.

3. The promotion of financial revenues for local administrative units to do its role in the raising of the living level for citizens and to serve for both services and development.
4. Improving the level of local society and making a balanced growth, equal opportunities between areas by making joint co-operation of the administrative units and establishing joint administrations.
5. Simplification of procedures to secure services for citizens by establishing "centers of citizen service" throughout the use of services of "electronic government".

Those aims are to be achieved by the application of the law of local administration.

The most important idea for students of local administration to know is that the system of local administration works within the framework of public policy of the country; it should not object the public policy of the state. Hence, the co-ordination between the central authorities and local authorities is very necessary and the central authorities must have some control on local authorities actions to make them respect law.

*Administrative Units*

The division of the local administrative units of the country in this law is of two main categories:

1. local administrative units enjoy the considerable legal personality and have their financial and administrative independence; those are four kinds:

   Governorate, city, town, municipality.

   - Governorate: it is a geographical space that includes a number of cities, towns and municipalities, villages and farms, and it is possible to be one city.
   - City: the centre of a governorate or a gathering of population, its people are more than 50,000 man.
   - Town: every centre of a township or a gathering of population between 10,001 to 50,000 man.
   - Municipality: every gathering of population or a number of gatherings between 5,001 to 10,000.
2. Local administrative units which do not enjoy considerable legal personality.

   Those are:

   Areas, Townships, Avenues.

*The High Council of Local Administration*

The High Council of Local Administration is presided by the prime minister and the minister of local administration is the vice of the president of the council. The following people are members of the High Council of Local Administration:

- the head of the international body of planning and cooperation,
- mayors,
- heads of local councils of governorates,

- head of the regional planning corporation, and
- the vice minister of local administration; a member and reporter.

This high council decides on the important national matters for local administration, the national plan for decentralization, co-ordination, suggestions for the development of local administration and its laws, the transferring of the jurisdictions from ministries to local administrative units after the co-ordination with the concerned ministers.

The High Council of Local Administration meets twice a year and also on need by a request of its head.

The Representation and Functioning of Local Administrative Units

Local administrative units have councils and these councils are elected by secret and direct ballot on equal bases for a period of four years and the representation of local people as the following([33]):

- for the council of governorate: a representative for each 10,000 of people and the number should not be less than 50 or more than 100 person,
- for the city council a representative for each 4,000 of people and the number should not be less than 25 or more than 50 person,
- for the town council a representative for each 2,000 of people and the number should not be less than 10 or more than 25 person,
- for the municipality the number of its council is 10 persons.

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[33]. See article 12 and 13 of *the Law of Local Administration* of Syria issued by legislative decree no. 107 on 23 August 2011.

Every elected member of local councils must do the oath before the start of its job. Notably members of local councils have immunity for their jobs but a member loses his or her membership in the council in two cases: a) if the member is deviated from the public policy of the state in the opinion of a number of citizens whom he represents or worked for personal interests ignoring the interests of people, then the council can decide on his or her membership; and b) if the member was absent for three sessions respectively and his or her absence was unjustified.

The functions of these councils are as follows:

Managing the affairs of local government within the scope of the public policy of the state for economic, social, cultural and constructive development of the governorate for permanent development in the fields of planning, industry, agriculture, economy, commerce, education, culture, tourist heritage, transport, high ways, irrigation, drinking water, sewage, electricity, health, social affairs, labour, services, utilities, sources of stones, mineral wealth, the administration of catastrophes, fire extinguishing, administrating and organizing traffic and the centers of driving licenses, environment, sports and youth and joint projects among administrative units.

These local councils are supported by "executive offices". One executive office for each local council consists of a number of members according to the law. The period of these executive offices is four years. The main function of these offices is to implement the decisions of local councils and control the functioning of local units, each office within its

legal boundaries. These executive offices are presided as the following([34]):

- the mayor presides the executive office of the governorate,
- the head of the city council presides the executive office of the city,
- the head of the town council presides the executive office of the town.

*Persons Play Important Role in Local Administration*

Those persons are: the Mayor, the General Secretary of the Governorate, the head of municipality, the manager of area, the manager of township, the mayor of village and the mayor of avenue.

[34]. See article /29/ of *the Law of Local Administration* of Syria issued on 23/8/2011.

# 8
# Arbitration

An arbitration is a legal manner of consent to restore disputes instead of the judicial way. This is the first phrase defining arbitration in the Syrian law of arbitration, law number /4/ issued in 25th March 2008. It contains 66 Articles on arbitration([35]). Arbitration can be in both levels; the national level and the international level.

*The National Level of Arbitration*

The agreement for an arbitration is possible to be: a) at the time of making the contract, prior to the dispute, either in the contract or in a separate agreement, for all the issues of the contract or some of them in a clear way, b) after the occurrence of the dispute, even if the dispute was a lawsuit in a court, the agreement in this case must define clearly the matters of arbitration.

Legally, the agreement of the arbitration must be written, otherwise the arbitration is void([36]).

*Who has the right to make an agreement for arbitration*: both normal persons who have the capacity to manage their rights and considerable persons (public organizations, companies and private organizations).

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35. Since 25 March 2008 there is a separate law for arbitration in civil, economic and commercial disputes in Syria was published in the Syrian official gazette no. 15 on 2 April 2008, p. 637 and after, applies from the beginning of April 2008. Prior to that date, the rules of arbitration in the law of trial procedures were applied.

36. Article /8/ of the law of arbitration in Syria of the year 2008.

*Matters out of the agreement of arbitration*: all agreements against the public order, matters out of conciliation by law, matters related to nationality and matters of personal status, except its financial consequences, are illegal for making arbitration on these matters([37]).

When a dispute is submitted to a court and this case contains an agreement of arbitration, the court should not go ahead with the case if any of the disputing parties raised the condition of arbitration at the beginning of the trial. Because this arbitration becomes a right to both parties of the agreement([38]).

*The International Level Arbitration*

International practice has long included negotiation and mediation as informal methods of settling disputes. Treaties on arbitration establish a machinery for peaceful settlement to resolve disputes between states, either by arbitration or conciliation.

Conciliation has a semi-judicial aspect, since the commission of persons empowered has to elucidate the facts, may hear the parties and must make proposals for a settlement which do not bind the parties.

For an arbitration the main convention is the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907 and Bryan treaties 1913 and 1914. The differences between judicial settlement and the arbitration is that the variation of arbitral procedures and the agreement on arbitration would be more likely to allow

[37]. Article /9/ of *the Law of Arbitration* in Syria of the year 2008.
[38]. Article /10/ of *the Law of Arbitration* in Syria of the year 2008.

disagreement on extra-legal principles. It is like the difference between a legal dispute and a political dispute. That is, an arbitration takes the form of political dispute([39]). Knowingly, the first international court of arbitration was the Permanent Court of Arbitration between the years 1900 and 1920. It was the major organization for arbitration, which was set up under the Hague Conventions for the Pacific Settlement of International Disputes of 1899. Since that time the rules of arbitration and organizations for arbitration have been evolving. The alternative way of arbitration and conciliation in Public International Law is the judicial settlement in international courts.

[39]. Ian Brownlie, 1966, *Principles of Public International Law*, PP.543 – 544.

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# 9
# The Sovereignty of State

Students of the constitutional law and the public international law are familiar with the sovereignty of the state. It is one of three elements of the state because the formation of a state needs three elements and these elements are: a) land (territory), b) people, in that, a considerable number of people are enough to constitute a state and, c) sovereignty. Here we will explain sovereignty and correlated matters.

The basic doctrine in public international law is the sovereignty and equality of states. The doctrine of sovereignty and equality of states produces three things:

i) a jurisdiction, *prima facia,* exclusive over a territory and the permanent population living there, ii) a duty of non-intervention in the area of exclusive jurisdiction of other states, and iii) obligations arising from treaties and customary international law depending on the consent of the obligor state, even jurisdiction of international courts and tribunals depends on the consent of the parties who are states that enjoy sovereignty.

Indeed, the whole of public international law could be expressed in terms of sovereignty; therefore, states can limit the territorial sea next to its territory, decide for necessity for action in self-defence and confer nationality for national purposes. If a state enjoys sovereignty can *inter alia* as follows:

1. Enjoy a legal personality and thereby becomes on equal bases with states on the international scene.

2. Describe the legal competence; this means its competence to have a legislative power over its territory, an executive power choosing the ways of managing public services and a judicial power, judicial power include courts exercise jurisdiction over the whole territory of the state. Powers and privileges resting on customary international law.
3. Join the membership of international and regional organizations.
4. Choose the way in settling its disputes with other international persons.

   International persons = states and international organizations.

5. Decide the territorial sea of the state which is customarily about twelve miles start from its land.
6. Prevent other countries to use its territory, including the territorial waters and its aero-space.
7. The right of each sovereign state to use the high seas, whether it was a coastal state or non-coastal state. By high seas is meant the water of seas which does not belong to any state, that is seas out of the territorial sea. The right of the high seas comprises the following:

   i) Freedom of navigation,
   ii) Freedom of fishing,
   iii) Freedom to lay submarine cables, and
   iv) Freedom to fly over the high seas.

   These freedoms and others which are recognized by the general principles of the public international law shall be exercised, taking into account the interests of other states.

8. States have the right to make conventions for the protection of high seas from piracy, insurgency and other illegal acts.

   Piracy stands for any act of violence or detention committed by a crew, passengers of a private ship or aircraft and directed on the high seas against a ship, aircraft, persons or property on board of such ship or aircraft including participation in the operation and inciting, for private ends to destroy or take the property of others([40]).

   Insurgency = the control on a ship by insurgents for certain purposes.

9. A sovereign state can engage and sign bilateral and multilateral treaties and conventions with other international persons.

   Bilateral treaty = a treaty between two states or two international persons.

   Multilateral treaty = a treaty between three states or more, between three international persons or more.

   International person = a state or an international organization.

10. A sovereign state can exchange diplomatic representatives with other states on equal bases to look after its interests in the other states.

11. A sovereign state decides on the extradition of criminals.

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[40]. See Ian Brownlie, 1966, *Principles of Public International Law*, pp. 213, 215.

The emergence of a sovereign state requires recognition by other states of the new international entity. Recognition is two kinds; explicit and implicit.

An explicit recognition: can be by declarations that acknowledge the new state issue from the recognizing state.

An implicit recognition: usually by actions which imply that the new state is acknowledged by another state like the deal with it by accepting its diplomatic mission.

International treaty: an agreement between two states or international persons or more, creates mutual relations and duties and rights on international law bases.

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# 10
# The Constitution of the Syrian Arab Republic

We are going to study two constitutions of Syria, the permanent constitution of 1973 and the constitution of 2012. Both are the latest ones of the country's constitutions. The constitutions from the time of independence until 1973 constitution are left out in this study.

## The Syrian Arab Constitution of 1973

The importance of studying the Syrian Arab constitution of 1973 comes from:

a) the long period of time that the constitution was applied, from 13 March of 1973 to 28 February of 2012, b) the Constitution was for a socialist state led by the Socialist Arab Ba'ath Party prior to the political changes in the constitution of 2012.

The People's Council of the Syrian Arab Republic completed the permanent constitution of Syria in 31 January 1973 and was put for referendum on 12 March of the same year. Both the People's Council and the electorate agreed on the constitution with an overwhelming majority. This constitution had become applicable in Syria since 13 March 1973 and minor amendments had occurred ([41]).

The characteristics of the Syrian Arab Constitution of 1973 are the following:

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[41]. Legislative Decree number /208/ issued on 13 March 1973 contains *the Permanent Constitution of the Syrian Arab Republic*.

- The Syrian constitution of 1973 has a democratic character, I. e.; the sovereignty is the right of people and people councils in Syria are democratic elected institutions. Citizens exercise their rights throughout those institutions to administer the state and lead society. From the democratic character of the Syrian constitution is that the President of the Republic should be a nominated candidate by the People's Council and takes his position by a referendum.

  **Election** is the choice between two people or more to elect one candidate or more from the candidates.

  **Referendum** is the voting "yes" or "no" for a suggested candidate or a suggested matter.

- The national character: the constitution of Syria of 1973 had begun with a text that Syria is part of the Arab nation and must struggle to achieve the Arab unity, prohibiting any giving up of any part of Syria's territory. With dependence on the national heritage, the Constitution considered Islamic religion a basic source of legislation.
- The Socialist character: the 1973 constitution of the Syrian Arab Republic regarded Syria as a Socialist state that has a planned economy to put an end to all exploitation forms, which constitute unfair economic activities.
- The Syrian constitution of 1973 defined the rights and duties of citizens, such as the right of work and the right of education, and from the duties paying taxes and the defence for the homeland.
- Public liberties, such as the right for personal freedom and the right for having security were mentioned...etc.

- The constitution mentioned the right of people to establish popular organizations and co-operative assemblies whereby it can manage their interests in the sectors of activities which members of these associations belong to.
- The Syrian constitution of 1973 included the following principles: the political, economic, and educational principles of the state. The coming explanations illustrate some of these principles.
- The governance of the leading party: the Syrian constitution of 1973 pointed out that:([42]) "the Socialist Arab Ba'ath Party is the leading party in the society and state, it leads a progressive national front which works to unify the people's power for serving the aims of the Arab nation". Notably, the Syrian political system today contains many political parties which are represented in the state policy-making. These political parties formed a progressive national front under the lead of "the Socialist Arab Ba'ath Party". It is the leading party but not the only political party in Syria. This means there is a political pluralism in Syria that recognized in the constitution.
- The constitution of 1973 contained the political job and the administrative job. Political jobs such as jobs in the Socialist Arab Ba'ath Party, in the Council of People (the people's assembly) and the position of the President of the Republic. Administrative jobs are usually managed by the cabinet. Constitutionally, the cabinet in Syria is "the upper executive and administrative body of the state"([43]). With regard to political responsibility, the prime minister and ministers are responsible before the president of the

[42]. Article 8 of the Syrian Arab Constitution of 1973.

[43]. Article /115/ of the constitution of the Syrian Arab Republic issued in 13/ 3/ 1973.

republic and before the council of people. Ministers are nominated by a decree from the President of the Republic. In the constitution, both the President of the Republic and the Council of People can put an end to the continuity of a minister in his job or to the continuity of the rest of the cabinet in office.

A withdrawal of trust in a minister by the People's Council requires the minister to resign. Similarly, a withdrawal of trust in the rest of ministry requires all ministers and the prime minister to resign too. It is noted, however, that there is some mixture between political and administrative jobs because ministers exercise political and administrative jobs, but their responsibility is a political one. Vice-ministers are responsible politically as the same as ministers.

a) Popular control: the Syrian constitution of 1973 adopted the popular control as a phase of democracy and socialism. This control can be exercised on the machinery of government and administration throughout the people's associations.

b) In the economic principles, the Syrian constitution divided ownership in general to three types: first, the people's ownership such as public bodies and public institutions as long as those are for public benefit. Second, collective ownership which is the property of popular and professional organizations like the Bar Association, syndicates of teachers and trade unions, and; thirdly, individual ownership which is the private property of individuals.

c) In the educational and cultural principles of the permanent constitution the state encouraged science and scientific research.

d) Powers of the state in the Syrian constitution are three: a) the "legislative power" which is represented in the People' Council, b) the "executive power" which is led by the president of the republic, and the cabinet which plays an important role in managing the work of the executive power carried out by civil servants (state workers) and, c) the "judicial power", which is the machinery of justice, including courts and judicial jobs.

The constitution has organized these powers of the state in a way to make each of them independent from the other two powers. Nonetheless, there is within the constitution some considerable co-operation between those powers, in particular, between the legislative power and the executive power. Herein some explanation of those two powers.

i) The Legislative Power

The work of the legislative power in Syria is carried out by the Council of People (the People's Council). These two terms are used interchangeably. In other countries, instead of the Council, the term Assembly may be used. Members of the Council of People are elected by a secret ballot and those members represent the whole society of Syria in the form of two sectors: the first sector is the workers and farmers in a percentage of %50 at least of the Council's seats, unnecessarily to be distributed equally between

constituencies. The second sector represents the other sects of the society.

Electors are citizens who completed eighteen years of their age at least. Comparatively, women have the right to elect the same as men, but army members, as a general idea in the world, do not have the right to elect as long as they are in the army; for keeping them out of politics, it helps for political stability. Every constituency elects a certain number of candidates equal to the specified seats for it in the Council of People.

A candidate for the Council of People should have completed, at least, twenty five years of age and should know to read and write (note the difference between the age of electors and the age of candidates to the Council of People. Electors have to be eighteen years of age at least and candidates twenty five years at least). The period for persons who won the elections to the People's Council is four years and their function is to represent the people in the People's Council; each winner can renew his candidature, at the end of the period for a new term, more than once.

The People's Council works mainly on the following functions: First, making-laws that is deciding legislation in a form of statutes. Second, the discussion of government policy. Third, ratification of; the public budget, development plans, treaties with other countries or organizations. Fourth, accepting or rejecting the resignation of the Council's members. Fifth; distrusting a minister or the rest of ministers (the ministry) including the prime minister, in this case, ministers who are distrusted in the People's

Council must resign. If the distrust is for the ministry as a whole, then the whole ministry definitely must resign.

ii) The Executive Power

The executive power in Syria in the constitution of 1973 is led by the President of the Republic and managed by the cabinet. The cabinet consists of the prime minister and ministers and those are the government of the country. We can have an idea on the President of the Republic and the cabinet.

a) The President

The president of the Syrian Arab Republic must be a Syrian Arab enjoying his civil and political rights and has completed at least thirty four years of the age (the age was to be forty years prior to the amendment in the year 2000). The President is to be nominated by the territorial leadership of the Socialist Arab Ba'ath Party and the candidature will be shown to the public by the Council of People, represented in his head, to do a referendum by the public. Eventually, the candidate becomes a president by winning the votes of the majority of citizens who attended the ballot.

The President of the Republic presides the executive power for seven years, a term which can be renewed, more than once, in the same way of the first nomination and referendum. Constitutionally, the President can nominate one vice or more to exercise some of the President's functions which he can delegate to them.

The primary functions of the President of the Republic in Syria are: to keep respect of the constitution, to guarantee

the regular functioning of public powers, to guarantee the survival of the state, taking quick measures in case of dangerous circumstances, making treaties, international conventions, making the public policy with the consultation of the cabinet and is authorized by the constitution to make legislation in the form of decrees (named legislative decrees), in particular, out of the sessions of the People's Council. In this meaning, this kind of legislation is in the standard of the statutes issued by the People's Council. It is a constitutional authorization by the constitution and not a legislative authorization by the legislative power.

b) The Cabinet

The cabinet (the council of ministers) in Syria is the higher executive and administrative body of the state([44] ). It consists of the prime minister, his vices and ministers. The cabinet works primarily on the following duties; supervises for the right application of laws and regulations, controls the state's apparatus and public institutions, and the co-ordination between each ministry and another. But the supervision of the ministers work is the duty of the prime minister.

Significantly, the cabinet is consulted by the President of the Republic for making the public policy, which happens at the time of the completion of forming the ministry. This with the functions of the cabinet make the cabinet responsible for the implementation of public policy.

Every minister is the administrative head of his ministry. It is also possible for a minister in Syria to be,

[44] . Article /115/ of the Syrian Arab Constitution issued in 1973.

simultaneously, a member in the Council of People([45]). This explanation was about the legislative and executive powers of the state and the co-operation between both constitutionally in Syria.

The High Constitutional Court:

The constitution of Syria of 1973 has established the high constitutional court to see and determine the constitutionality of laws. That is to say, the Court decides if a law is coherent with the constitution of Syria or not. It is formed from a head and four members for a period of four years of each and that can be renewed. They are appointed by a decree of the President of the Republic. Those members had immunity for exercising their functions. They can be eliminated also from their position only by a decree from the President of the Republic. Upon a detailed decision from the board of the Court, a decision which must assure that member had lost the requirements of fulfilling the position.

The High constitutional Court analyzes the constitutionality of a law upon a request of the President of the Republic or a quarter of the members of the People's Council.

This is an idea of the permanent Syrian constitution of 1973. But the most important is the study of the present Syrian constitution that was issued in the year 2012.

[45]. Article /125/ of the permanent constitution of Syria issued in 1973.

## The New Constitution of the Syrian Arab Republic of 2012

On 28 February of the year 2012 Syria issued its new constitution by the legislative decree number /94/ which is in performance since 27 February of 2012. This constitution replaced the constitution of 1973. It is the most modern constitution of the country and a comprehensive one in the principles including a wide range of rights and liberties.

### *The main characteristics of the modern Syrian constitution of 2012*:

The constitution contains an introduction and 157 article and is divided into: political principles in articles from 1 to 12, economic principles in articles from 13 to 18, social principles in articles from 19 to 27, educational and cultural principles in articles from 28 to 32, rights and liberties and the sovereignty of law in articles from 33 to 54, the powers of the state; legislative, executive and judicial powers in articles from 55 to 139, the high constitutional court in articles from 140 to 149, the amendment of the constitution in article 150, general and transitional rules in articles from 151 to 157. The following sections contain and explain the contents of this new constitution.

*The Introduction*

The introduction of the constitution of the Syrian Arab Republic contains the following:

- Description of the role of the Arab culture as part of the world heritage and how this culture was a subject of colonial changes.
- The Syrian Arab Republic is part of the Arab nation, its belonging is embodied in its sub-national and national

enterprise. It promotes the Arabic co-operation for the unity of the Arab nation.

- The Syrian Arab Republic works for international peace and security, the right and justice.
- Mentioning the Syrian Arab role on the regional and international levels in the past decades, the aspirations of people and the confrontation with the Zionist enemy, the Syrian Arab Army is the protector of home sovereignty, stability and the unity of land and full cooperation ought to be promoted between the people of Syria and its army to liberate its occupied land.
- The Syrian society in all its components has made effective cultural contributions in the human culture and must keep always this role.
- Syria has faced either as a people or as institutions the challenge of development and modernity within difficult regional and international circumstances targeting its national sovereignty.
- All of the above was the base to create this new constitution to be the crown of the people's struggle on the way of freedom and democracy.

*a) in the political principles*

- The democratic character: that is the state is a democratic one that has a full sovereignty on its land and the people of Syria is the source of sovereignty (Article 1 and 2).
- Syria and its people are part of the Arab nation and the formal language is Arabic (Articles 1 and 4).
- The political system is based on political pluralism and this is exercised by voting. Notably, political pluralism means two

or more of political parties are authorized to participate in the political life of the country.

- Popular organizations, professional syndicates and authorized assemblies work for the development of society.
- Citizens exercise their role in sovereignty, constructing the state and leading the society throughout councils which are elected by a democratic way.

*b) in the economic principles*

- The national economy has two sectors; public and private, aiming to upraise the level of living for individuals and secure opportunities of jobs.
- The economic policy of the state aims at securing the basic needs of society and individuals for a comprehensive, balanced and permanent progress.
- The state prevents monopoly in all economic aspects, protects producers and consumers.
- The protection of private ownership, collective and individual ownership, in that; no general confiscation of property, private ownership can be under acquisition by legal ways and with fair compensation.
- Law determines the maximum property and investment of agricultural land.
- Taxes must be based on fair grounds and imposed only by law.

*c) in the social principles*

- family is the core of society that must be protected by law and marriage should be encouraged, motherhood and childhood should be protected.
- The state guarantees the relatives of martyrs.
- The state protects the health of citizens and guarantees the means of treatment and care, every citizen is also guaranteed in case of emergencies, sickness, old age, and orphanage.
- The state works for securing opportunities for women to contribute in the political, economic, social and cultural aspects of the society.
- Citizens are equal in getting public jobs on legal bases if they have the conditions of the public job.

*d) in the educational and cultural principles*

- Education is a right guaranteed by the state. It is free in all stages and the law organizes the cases when education is paid in universities and government institutes. It is also compulsory in the basic stage and the state supervises private education.
- Education must link between the needs of society and requirements of development.
- The state encourages sport to prepare a strong generation physically, morally and mentally.
- Support for scientific research and encouraging innovations by the state.

*e) rights and freedoms*

- Freedom is a sacred right.
- Dignity and security of individuals.
- Emphasis on citizenship, in that citizenship implies rights and duties.
- Equality between citizens in the rights and duties and no discrimination based on sex, origin, language, religion or creed.
- The state guarantees equal opportunities between citizens.
- Every citizen has the right to participate in the political, economic, social and cultural life of the country.
- Protection of the private life by law and no inspection of homes without a command of the judiciary according to law.
- Correspondence and communications are secret.
- A citizen should not be expelled from homeland or prevented to return to homeland.
- A citizen should not be given to a foreign body or organization.
- The right of moving and travelling within the country and abroad unless there is a prevention by the competent judiciary or the prosecution or for the implementation of health and safety laws.
- Political refugees are not a subject of extradition because of their principles or their defense of freedom.
- Work is a right for each citizen and a duty on him and the state works to create jobs.

- Wages must be fair and should not be below the minimum level of the requirements of living and its changes.
- Paying taxes, tariffs and public duties is a legal duty.
- The state guarantees the social and health security for workers.
- The freedom of creed.
- The freedom of the press, print and mass media according to law.
- The right of assembling, peaceful demonstrating and strike for job within the framework of the constitution and law organizes these rights.
- The right for establishing assemblies and syndicates on national bases, legitimate purposes and peaceful means.
- Compulsory military service is a sacred duty and the defence for homeland safety and keeping the secrets of the state are a duty on each citizen.
- Election and referendum are a right for citizens and a duty on them.

*f) in the sovereignty of law*

- Law is the base of governing in the state. This implies the adoption of the principle of "the legal state".
- Punishment is personal, no crime and no punishment without a legal text.
- Every accused is innocent until he is condemned by an everlasting judicial decision in a fair trial.
- The right of adjudication, the ways to review judgments and defense before the judiciary are guaranteed by law, and

those who are unable to pay for judicial services will have judicial help legally by the state.

- It is forbidden in laws to make administrative actions and decisions immune from the control of the judiciary. This means the courts can abolish these decisions and make a stop of these actions when they are illegal with adequate compensation.
- No retro-active laws in penal matters. This means penal laws are not applied on crimes before the date they issued.
- Nobody is detected or detained without a command or decision from a competent judicial body and this also can be in a witnessed crime.
- No torture on anybody and the law determines the punishment of the actors of torture.
- Every detained person should know the reasons of his detention and no continuity in his detention without a command from the competent judicial authority.
- Everybody who is condemned by an everlasting sentence and implemented the sentence, thereafter the sentence was wrong, has the right to get damages from the state because of the tort happened to him.
- Any infringement on personal freedom or private life or other rights and public liberties which are guaranteed by the constitution is a crime punished by law.

The Authorities of the State

The present constitution of the Syrian Arab Republic which issued in February 2012 made a separation between the three powers of the state; the legislative, the executive and the

judicial with cooperation between the legislative and the executive powers.

*a) The Legislative Power*

The legislative power in Syria is exercised by the People's Council([46]) (the Council of People) which is elected for a period of four years, by a secret and direct election, and every member of the Council represents the people at large. Members of the People's council are elected by citizens who completed eighteen years of age at least. Half of the People's Council members must be from workers and farmers. The Council meets in three ordinary sessions and can meet in exceptional sessions upon a request from the president of the republic or from the third of the Council members or from the office of the Council.

Contested elections about the members of the Council are seen by the high constitutional court which should be introduced within three days of announcing the results and judged within seven days of the time ended to contest for elections, with everlasting judgments (Article no. 66). Members of the People's Council must do the constitutional oath in article 7 of the constitution before they start their job, which is the following:

> "I swear by almighty God to respect the constitution of the country, its laws and republican system, to care for the interests of people and their freedoms, to be keen for the sovereignty of homeland, its independence, its freedom and the defence for the safety of homeland, and to work for achieving

[46]. Articles nos. 55-82 of the Syrian constitution of 2012 deal with the legislative power.

social justice and the unity of the Arab nation".

Members of the People's Council are irresponsible in both sides, the criminal and civil for the facts they show or opinions and vote in the sessions either publicly or secretly. They are also irresponsible for the actions of committees. Members of the People's Council enjoy immunity during the period for the People's Council. Therefore, penal procedures could not be done against them without a permit from the Council, except in a witnessed offence.

The main function of the People's Council is making laws which are written laws; those are called *statutes*. Once we say a statute it means a written law issued from a parliament. The second function is asking ministers questions on matters of the government work and policy. Also the People's Council works on the following functions:

1) Passing laws,
2) discussing the policy of the ministry,
3) obscure trust against the whole ministry or one of the ministers,
4) passing the public budget and the final calculation of public budget,
5) passing plans of development,
6) passing international treaties and conventions which are related to the safety of the state and those are conciliation and allying treaties and all treaties which are related to sovereignty or conventions which grant privileges to establishments and foreign companies, also treaties and conventions which make the state's budget bear expenses out of the public budget or

related to contracting of loans and those which are against valid laws or its carrying out needs a new legislation,

7) passing "Amnesty" and,
8) accepting the resignation of any of the People's Council members or rejecting it.

The Prime Minister must present the manifest of the ministry to the People's Council for discussion, within thirty days of forming the ministry; however, the ministry is responsible to the People's Council for the implementation of its manifest.

Obscuring trust against a minister or the ministry happens after interrogatory and upon a suggestion from fifth of the Council's members at least. Obscuring trust happens by the majority of the People's Council members. In case of obscuring trust against the ministry, the Prime Minister must present the resignation of the ministry to the president of the republic and if obscuring trust was against a minister the minister then must present his resignation.

The People's Council votes on the public budget and every financial year has one budget. The law defines the beginning of the financial year. Notably, the plan of the public budget must be introduced to the People's Council two months, at least, prior to the start of the financial year. Even the final calculations of the financial year ought to be introduced to the People's Council within a year of the end of the financial year.

*b) The Executive Power*

The executive power in Syria is exercised by the president of the republic and the council of ministers on behalf of the

people and within the limits of the constitution. The councils of local administration have a considerable part in managing the local interests([47]). The president of the republic is on the top of the executive power. We can study the authorities of the president, the authorities of the council of ministers and the councils of local administration.

**The President of the Republic**

A candidate for the presidency of the republic in Syria, according to the constitution of 2012, must fulfill the following conditions:

1. have completed forty years of age,
2. enjoys the Syrian Arab nationality by birth, from fathers who enjoy the Syrian Arab nationality by birth,
3. enjoys civil and political rights, not condemned with heinous offence,
4. should be not married from non-Syrian woman, and
5. should be staying in the Syrian Arab Republic not less than ten years of permanent and continuous residence when the application of candidature is submitted.

The president is elected by the people directly and gets the position by the absolute majority of those who participate in the election. If no body of the candidates obtain the majority, then the election must be repeated, within two weeks, between the two candidates who had got the great number of votes. Eventually, the head of the legislative power announces the results of the election.

The period of presidency is seven years and can be renewed once by a re-election. For the president of this time

[47]. Articles 83 to 131 of the constitution of Syria of 2012 deal with the executive power.

has the right of candidature twice starting from the coming elections of presidency([48]), which actually occurred in June 2014. The High Constitutional Court can see any claim against elections within three days of the results and its everlasting judgments must be within seven days, starting from the end of the three days([49]).

The President of the Republic does the constitutional oath of article seven in the Constitution before the People's Council, prior to exercising his functions. The constitutional oath is:

> "I swear by almighty God to respect the constitution of the country, its laws and its republican system, and to work for the interests of the people and its liberties, secure the sovereignty of the homeland, its independence, its freedom and defending its land, and to work for achieving social justice and the unity of the Arab nation".

The President is entitled to appoint a vice or more and delegate them some of his powers([50]). Those vices must swear the constitutional oath in article seven of the constitution before the president of the Republic prior to exercising their functions.

The functions of the President of the Republic are:

1) Works on the respect of the constitution and the regular work of the public authorities, the protection of national unity and maintenance of the state.

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[48]. See articles 88 and 155 of the constitution of Syria of 2012.

[49]. Article 89 of the Constitution of Syria of 2012.

[50]. Article 91 of the Constitution of Syria of 2012.

2) Nominates the prime minister, his vices, the ministers and their vices, accepting their resignation and freeing them from their position.
3) Makes the public policy in a meeting with the council of ministers, presided by him and supervises the implementation of public policy.
4) The president can call the council of ministers (the cabinet) for meeting and heads them, can ask reports from the premier and ministers as well.
5) Issues statutes which are made by the People's Council and can object by a reasoned decision within a month of receiving the statute in the presidency of the republic. If it is voted on it for the second time, by a majority of two thirds by the People's Council, then the president has to issue the statute.
6) Issues decrees, decisions and commands according to law.
7) Announces war, general mobilization and contract conciliation after the consent of the People's Council.
8) Announces the state of emergency and cancels it by a decree that is made in the cabinet, in a session presided by him. This needs two thirds of the cabinet ministers to agree, providing that the decree will be submitted to the People's Council in its first meeting and the law should contain the provisions on these matters.
9) Accepts the heads of diplomatic missions to foreign countries and accepts the heads of foreign diplomatic missions to the Syrian Arab Republic.
10) The president of the Republic is the highest leader of the army and armed forces issues all

necessary decisions and orders for exercising this power and can delegate some of this power.

11) The president of the Republic appoints civil and military officers and terminates their services according to law.

12) Signs international treaties and conventions and abolishes them according to the provisions of the constitution and the norms of the international law.

13) Grants grace and has the right to rollback prestige.

14) Has the right to confer decorations.

15) The president can address the People's Council by letters and has the right to say declarations before the Council.

16) The president of the Republic can decide dissolving the People's Council by a reasoned resolution, then the elections for a new council must be held within sixty days of the dissolving; however, the dissolving can be done only once for the same cause([51]).

17) The president has the right to prepare projects of laws and transfer them to the People's Council to decide for passing them.

18) The president of the Republic has the power of legislation in three cases; out of the sessions of the People's Council meetings, during the sessions meetings if the hard necessity required that and during the period in which the Council is dissolved([52]). These legislations are submitted to the People's Council

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[51]. Article 111 of the constitution of Syria issued in 2012.

[52]. Article no. 113 of the constitution of Syria issued in 2012.

within fifteen days of its first meeting. Eventually, the Council has the right to abolish or amend those legislations by a statute, by two thirds majority of the present members in the meeting and this number should not be less than the absolute majority of the whole members of the Council. Significantly, this amendment or abolishment has no retroactive effect, but if the Council does not amend or abolish them, they should be considered approved.

19) If enormous and immediate danger happened threatening the national unity or the safety and independence of the homeland or deter the establishments of the state to work on its constitutional functions, the president of the Republic can decide speedy measures to confront the danger([53]).

20) The president of the Republic can form bodies, councils and special committees, determining their functions and jurisdictions in the decisions of their formation.

21) The president has the right to decide on a referendum of people on the important matters which are connected with the high interests of the country; the result of the referendum is binding and in effect from the date of announcing. The president publishes them too.

22) The president is irresponsible for his actions in exercising his functions, only in the case of the high treason. Questioning the accusation is by a decision from the People's Council, by explicit voting and a two

[53]. See article no. 114 of the constitution of Syria issued in 2012.

thirds majority. In a private and secret session, this depends on a suggestion from one third at least of the People's Council and the trial is in the high constitutional court.

**The Council of Ministers**

The council of ministers is the high executive and administrative body of the state. It consists of the prime minister, his vices and ministers. It supervises the implementation of laws and orders, and controls the work of the state's machinery and its establishments. The prime minister (the premier), at the same time, supervises the actions of his vices and ministers([54]). The prime minister, his vices and ministers do the oath in accordance with article seven of the constitution before the president of the republic at the time when the ministry is composed and prior to their start of their work, but in the amendment of the ministry only the new ministers do the oath. With regard to the responsibility, the prime minister, his vices and ministers are liable to the president of the Republic and the People's Council([55]).

A minister is the high administrative head of his ministry and implements the public policy of the state which is related to his ministry. Ministers are forbidden, as long as they are ministers, to be members in a council of administration to a private company or to be an agent works on behalf of the company. They are forbidden also to exercise directly or indirectly any commercial work or free profession. In the responsibility of ministers, the prime minister, his vices and

[54]. See article 118 of the constitution of Syria issued in 2012.
[55]. See articles 120-121 of the constitution of Syria issued in 2012.

ministers have civil and penal liability according to law. However, the president of the Republic has the right to introduce them to a trial for crimes they commit during their work or because of it. This means that the prime minister and ministers and their vices have immunity as long as they exercise their job.

The ministry is considered resigned in the following cases([56]):

a) when the term of the president of the republic is over,

b) when a new People's Council is elected, and

c) if the majority of ministers resigned.

In this case the whole ministry continues to manage works until a decree nominates the new ministry.

It is possible, at the same time, for ministers and the prime minister to be members in the People's Council and all of the legal rules which are applied on ministers are applied on their vices([57]).

The council of ministers exercises the following jurisdictions([58]):

1. making executive plans of the state's public policy,
2. directing the actions of ministries and other public organizations,
3. making the project of public budget,
4. preparing laws projects,
5. preparing plans of development, plans for developing production and the investment of national wealth, as well

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[56]. This is explained in article 125 of the constitution of Syria issued in 2012.

[57]. See articles nos. 126-127 of the constitution of Syria issued in 2012.

[58]. These powers are listed in article no. 128 of the constitution of Syria issued in 2012.

on everything that can promote and develop economy and increase national income,

6. making contracts of loans and granting loans according to the constitution,
7. contracting on conventions and treaties according to the provisions of the constitution,
8. pursuing the application of laws, caring about the interests of the state and its security and the protection of freedoms and rights of citizens,
9. making administrative decisions according to laws and orders with a control on its implementation.

The prime minister and ministers exercise also the other granted jurisdictions in the valid legislation if those jurisdictions do not object the jurisdictions of the other powers in the constitution, in addition to the other jurisdictions in the constitutions.

**Councils of Local Administration**

The Syrian Arab Republic consists of administrative units and the law determines its number, boundaries and competence, also if it enjoys a legal personality or not and its financial and administrative independence. Organizing local administrative units is based on the application of the principle of decentralized powers and responsibilities. Those units have elected councils by secret, direct and equal elections. The law states the relationship between those units and the central authority, also the control on its actions([59]).

[59]. Articles nos. 130-131 of the Syrian constitution issued in 2012.

*c) The Judicial Power*

The judicial power is independent and the president of the Republic guarantees this independence. Meanwhile, the High Judicial Council cooperates with the president of the Republic to help in this independence. The High Judicial Council is presided by the president of the Republic and the law determines its composition and the way it works. Importantly, the High Judicial Council secures the necessary guarantees to protect the independence of the judicial power([60] .

Judges are independent and there is no authority on them during their judicial work except the authority of law. Meanwhile, the honor of judges, their conscience, and abstraction is the guarantee of the people rights and freedoms. For judicial judgments must issue in the name of the Arab people of Syria. The abstention to implement judicial judgments or to deter their application is an offence punished by law([61]).

There is an administrative judiciary composed of the Council of State as an independent judicial and advisory body. This kind of judiciary is for administrative affairs. It deals with the legality of decisions of the administration and gives consultations on important administrative actions and matters.

The High Constitutional Court

The High Constitutional Court is an independent judicial body. Its location is in the city of Damascus. It is composed of seven members at least; one of them is the head of the court.

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[60]. See articles nos. 132-133 of the Syrian constitution issued in 2012.

[61]. See articles nos. 134 and 138 of the Syrian constitution issued in 2012.

They are nominated in a decree by the president of the Republic([62]). Members of the High Constitutional Court cannot hold the position of the ministry or be a member of the People's Council and the law defines the other works which are prohibited to the members of the court. The length of membership in the High Constitutional Court is four years and can be renewed, notably they enjoy immunity([63]).

The head of the High Constitutional Court and its members do the oath before the President of the Republic in a presence of the head of the People's Council, prior to the start of their function. The oath is the following:

> "I swear by my almighty God to respect the constitution and laws of the country and to do my duty in impartial way and trust"([64]).

The High Constitutional Court works on the following functions:

1. controlling the constitutionality of statutes, legislative decrees and orders,
2. giving an opinion upon a request and,
3. judging on contest of elections for the members of the People's Council and the President of the Republic.

The Amendment of the Constitution

The constitution may be amended by a suggestion of the president of the Republic or a third of the members of the People's Council. This suggestion however, should include the

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[62]. See articles nos. 140-141 of the constitution of Syria issued in 2012.
[63]. See articles nos. 142-144 of the constitution of Syria issued in 2012.
[64]. See article no. 145 of the constitution of Syria issued in 2012.

articles for amendment and the reasons behind that. Immediately, the Council of People constitutes an *ad hoc* committee to study the submitted suggestion. Thereafter, the Council argues the suggestion and pass it when three quarters of its members as a whole agree and the head of the Republic agrees also. However, the amendment must not be prior to passing eighteen months starting from the date of the performance of the constitution.

General and Transitional Rules

The constitution of the Syrian Arab Republic of 2012 included in the final part (articles nos. 151- 157) general and transitional rules. The most important of them are as follows([65]):

- The introduction of this constitution is an inseparable part of the constitution.
- Persons who enjoy another nationality with the nationality of the Syrian Arab Republic cannot hold the following positions: position of the president of the Republic or his vice, the position of the premier or his vices, the position of minister, the membership of the People's Council and the membership of the High Constitutional Court.
- Legislations which were issued prior to the constitution of 2012 and are valid remain in performance until those are modified according to its content, but this modification should be done within three years maximum.

[65]. See articles nos. 151-154 of the constitution of Syria in 2012.

*A Comparison and Contrast between the Tow Syrian Constitutions*

Analyzing the two constitutions of 1973 and 2012 in Syria shows the similarities and the differences.

*a) the most important similarities are as follows:*

- Both constitutions, the constitution of 1973 and the constitution of 2012 confirmed that Syria is part of the Arab nation and the unity of Syria.
- Both constitutions consider Islamic jurisprudence a source of legislation.
- Both constitutions contain the rights and liberties of citizens.
- Both constitutions adopt the principle of the separation of powers, political participation in elections, and give importance to popular organizations and syndicates for participating in the process of development.

*b) the most important differences are as follows:*

- The socialist character was clear in the constitution of 1973 and the lead of the state was in the hands of the Arab Ba'ath Socialist Party. In the constitution of 2012 other political parties may lead the state; it depends on the result of elections.
- There is emphasis on citizenship in the constitution of 2012. Citizenship contains rights and duties to each citizen according to law.

- In the constitution of 2012, laws must not immune any administrative action or administrative decision from the control of the judiciary.
- In the constitution of 2012, every person who had everlasting sentence and implemented the sentence, then it was confirmed that the sentence was wrong, he/she has the right to ask the state for getting the damages of tort. It is a compensation for wrong decisions of courts that a Syrian constitution never had before.
- The constitution of 2012 allows the president of the Republic to remain only two periods in office starting from the first election under this constitution.
- In the constitution of 2012, people who have another nationality with the Syrian nationality are prevented to hold certain political jobs. It is a provision that was not in the 1973 constitution.

Damascus University

Questions:

1. Can you state the meaning of the term "right"?.
2. What is meant by a legal wrong?.
3. Contrast the following:
   a) legal rights and moral rights,
   b) national and international rights,
   c) political rights and economic rights,
4. What is meant by custom and principles of equity in the sources of rights?.
5. What is the difference between a precedent and jurisprudence?.
6. Choose two political rights and explain them.
7. What is more important; the right of life or the right of expression? Why?.
8. Is individual self-determination different from group self-determination and self-determination for states as a political unit.
9. What are the functions of penal courts and civil courts?.
10. Draw a diagram for the division of penal courts and the division of civil courts.
11. What are the matters that come under the jurisdiction of the personal status courts?.
12. Is the function of the cassation court similar to the function of the appeal court?.
13. What is the role of the judge of investigation in criminal cases?.
14. Mention two exceptional courts in Syria and explain one of them.

15. Put (F) for false answers: a court is
    a) a place to claim the rights infringed on,
    b) everybody has the right to claim to a court,
    c) the place to restore rights of people,
    d) a place for adjudication,
    e) headed by a judge.
16. Put (F) for false answers: claim in criminal matters;
    a) is made by the public prosecutor,
    b) in many cases the injured person must claim and continue in his claim; if he does not do so, the public prosecutor is not entitled to claim,
    c) is made to civil courts,
    d) is made to the public prosecution or to a penal court,
    e) is against the criminal,
    f) helps in protecting the interests of the society.
17. What are the conditions of a claim to civilian or penal courts?.
18. What is meant by the likely interest for accepting a claim to a court?.
19. When a person or more of a village is allowed to claim to a court if there were rights to the people of the village, according to the law of trials procedures in Syria?.
20. After making a claim to a court by the plaintiff what happens?.
21. Is a heir entitled to claim for the protection of the inheritance? What age he should be?.
22. When people do have the right of reversal for judgments?.

23. Discuss in pairs the period of appeal in penal judgments and civil judgments.
24. Explain the difference between original appeal and junior appeal.
25. When does objection happens on penal and civil judgments?.
26. How a person is entitled by law to make a cassation of a judgment? State all the conditions of cassation.
27. Did you hear about the right of re-trial? In what cases people can use it?.
28. What does the word "lawyer" imply to you?.
29. There are some requirements in your country for a person to become a lawyer. Account for these requirements.
30. Who are the exempted people from the training to become an advocate?.
31. In the oath of the Bar profession, what does a lawyer undertake?.
32. What are the duties of a lawyer?.
33. In a consultation a lawyer gives a legal advice, in what matters a lawyer gives a legal advice and where?.
34. Name three kinds of contract the lawyer can make?.
35. Is a lawyer entitled to represent people in court? What is meant here by representation.
36. What does a procuracy entitle an advocate and from whom does it come?.
37. The main work of a lawyer in court is pleading. What does pleading include?.

38. What are the duties of a client to his lawyer and is a lawyer free to engage in a legal case or not?.
39. Is the relationship between an attorney at law and his client contractual or non-contractual relationship and do big mistakes of the attorney at law, during the performance of his professional work, make him responsible to his client.
40. What do you understand from the term "the civil service"?.
41. Enumerate five rules for the appointment in the civil service?.
42. Make a distinction between the public service and the civil service.
43. Give the meaning of the following: recruitment, planning, control, supervision, promotion, administrative leave.
44. What are the aims of local administration in Syria?.
45. For how long do members of local councils remain in the local administration?.
46. What are the administrative units which enjoy considerable legal personality?.
47. Name ten functions of local administrative councils.
48. Give a definition of arbitration.
49. Name the two levels of arbitration.
50. In what time the agreement of arbitration can happen?.
51. There are some matters out of arbitration by law. What are these matters?.
52. What is the difference between judicial settlement and arbitration?.

53. What are the elements of the state?.
54. The doctrine of sovereignty and equality in public international law produces three things. What are these three things?.
55. Explain five things that the sovereign state can do.
56. Give the meaning of the following: piracy, insurgency, bilateral treaty, multilateral treaty, explicit recognition and implicit recognition.
57. What are the characteristics of 1973 constitution in Syria?.
58. Explain the political principles of 2012 constitution in the Syrian Arab Republic.
59. How the public policy is made according to the new constitution of the Syrian Arab Republic?.
60. Is the president of the republic in Syria empowered by the constitution of 2012 to dissolve the Council of People and how?.
61. What are the jurisdictions of the council of ministers in the Syrian constitution of 2012?.
62. What is the role of the councils of local administration in Syria in its new constitution?.
63. Explain the most important similarities between the two constitutions of Syria; the constitution of 1973 and the constitution of 2012.
64. Explain the most important differences between the two constitutions of Syria; the constitution of 1973 and the constitution of 2012.

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Table of Vocabularies:

| | |
|---|---|
| Abettor | محرض |
| Abuse of right | التعسف في استخدام الحق |
| Accusation | اتهام |
| Accused | متهم، اتهم |
| Acquisition | اكتساب الملكية |
| *Ad hoc* committee | اللجنة المتخصصة |
| Adjudication | المقاضاة |
| Administration | إدارة |
| Administrative apparatus | الجهاز الإداري |
| Administrative Law | القانون الإداري |
| Administrative leave | إجازة إدارية |
| Administrative process | العملية الإدارية |
| Advocate | محامي |
| Aggravating circumstances | الظروف المشددة |
| Alternatives | البدائل |
| Amendment | تعديل |
| Amnesty | العفو العام |
| Appeal | استئناف |
| Appellant | المستأنف |
| Bilateral treaty | معاهدة ثنائية |
| Bureau | مكتب |
| Bureaucracy | البيروقراطية |
| Bureaucrat | موظف |
| Burglar | اللص الذي يسطو ليلا |

| | |
|---|---|
| Burglary | السطو ليلا |
| Cabinet | مجلس الوزراء |
| Candidature | الترشح لمنصب |
| Capacity | الأهلية |
| Cassation court | محكمة النقض |
| Causation | العلاقة السببية |
| Citizenship | المواطنة |
| Civil action | الدعوى المدنية |
| Civil Service | الوظيفة المدنية، الخدمة المدنية |
| Civilized | متمدن |
| Classification | تصنيف |
| client | موكل، زبون |
| Clue | الدليل |
| Coalition | ائتلاف |
| Company | شركة |
| Comparative Law | القانون المقارن |
| Comparative politics | السياسة المقارنة |
| Comparison | المقارنة |
| Compensation | تعويض |
| Compulsory | إجباري |
| Conciliation courts | محاكم الصلح |
| Condemned | محكوم عليه |
| Confession | اعتراف |
| Confiscation | مصادرة |
| Consideration | مقابل الوفاء، العوض في العقود |

| | |
|---|---|
| Constitution | دستور |
| Constitutional rights | الحقوق الدستورية |
| Consul | قنصل |
| Consular | قنصلي، متعلق بالشؤون القنصلية |
| Consultation | استشارة |
| Contract | عقد |
| Contractual responsibility | المسؤولية العقدية |
| Contrast | مقارنة الاختلافات |
| Control | الرقابة |
| Conviction | إدانة، تجريم |
| Coordination | تنسيق |
| Counselor (Consultant) | مستشار |
| Court | محكمة |
| Creed | عقيدة |
| Criminal action | الدعوى الجزائية |
| Criminal liability | المسؤولية الجزائية |
| Customary International Law | القانون الدولي العرفي |
| Damages | تعويضات عن الأضرار – أضرار |
| Defects | النواقص |
| Defendant | المدعى عليه |
| Demoted | نزلت درجته |
| Dignity | الكرامة |
| Diplomatic immunity | الحصانة الدبلوماسية |
| Diplomatic rights | الحقوق الدبلوماسية |
| Diplomats | الدبلوماسيين |

| | |
|---|---|
| Disprove | يبرهن العكس، يدحض |
| Divorce | طلاق |
| Doctrine | نظرية |
| Document | وثيقة |
| Domestic affairs | القضايا الداخلية |
| Draconian measures | إجراءات صارمة |
| Elections | انتخابات |
| Electorate | هيئة الناخبين |
| Enrichment | الإثراء |
| Enterprise | مشروع |
| Era | حقبة زمنية |
| Estate | عقار |
| Estate in lands | الحقوق العينية |
| Evidence | الدليل |
| Expert opinion | رأي الخبير، رأي الخبرة |
| Explicit | علني |
| Ex-post facto laws | قوانين ذات مفعول رجعي |
| External affairs | القضايا الخارجية |
| Felony | جناية |
| Forbidden | محظور |
| Formal sources of law | المصادر الرسمية للقانون |
| Grace | العفو الخاص |
| Grading | التدرج |
| Grievous | خطير |
| Guarantees | الضمانات |

| | |
|---|---|
| Guardian | وصي |
| Guilty | مذنب |
| Harassment | مضايقة |
| Heir | وريث، الوارث |
| Hierarchical | تسلسلي /هرمي/ |
| Hierarchy | التسلسلية /هرمية/ |
| Homeland | الوطن، أرض الوطن |
| Illegal | غير قانوني |
| Implicit | ضمني |
| Imprisonment | عقوبة السجن |
| *In absentia* | غيابيا |
| Incitement | التحريض |
| Indictment | اتهام، لائحة اتهام |
| Infringe | ينتهك، يخرق |
| Infringement | انتهاك، خرق |
| Inheritance | الميراث |
| Innocent | بريء |
| Insanity | الجنون |
| Intent | القصد، النية |
| Intervention | التدخل |
| Investigation judge | قاضي التحقيق |
| Irresponsibility | اللامسؤولية |
| Judge | قاض |
| Judicial | قضائي |
| Judiciary | الجهاز القضائي |

| | |
|---|---|
| Junior appeal | الاستئناف التبعي |
| Jurisdiction | الصلاحية، الولاية |
| Jurisprudence | الفقه القضائي |
| Kidnapping | خطف الأشخاص طمعا بفدية أو شيء |
| Lawful | قانوني، متوافق مع القانون |
| Lawsuit | دعوى مدنية |
| Leave | إجازة |
| Legal | قانوني |
| Legal procedures | إجراءات قانونية |
| Legislation | تشريع |
| Legislative power | السلطة التشريعية |
| Legislator | الشخص المشرع |
| Legislature | المشرع |
| Liability | المسؤولية |
| Liable | مسؤول |
| Litigation | التقاضي |
| Majority | الأكثرية |
| Manslaughter | القتل غير العمد |
| Marriage contract | عقد زواج |
| Material sources of law | المصادر المادية للقانون |
| *Mens rea* | النية الجرمية |
| Ministerial responsibility | المسؤولية الوزارية |
| Minor | قاصر |
| Minority | الأقلية |
| Mitigating circumstances | الظروف المخففة |

| | |
|---|---|
| Moral rights | الحقوق المعنوية |
| Motives | الدوافع، البواعث |
| Multilateral treaty | معاهدة جماعية |
| Murder | القتل العمد |
| Mutual relations | العلاقات المتبادلة |
| Nationalization | التأميم |
| Negligence | الإهمال |
| Non-retroactive law | قانون ليس له مفعول رجعي |
| Norms of law | القواعد المعيارية للقانون |
| Notification | ابلاغ، اشعار |
| Objection | اعتراض |
| Offer | العرض، الإيجاب في العقد |
| Offeree | الشخص الموجه إليه الإيجاب |
| Offeror | الشخص الذي يصدر عنه الإيجاب |
| Original appeal | الاستئناف الأصلي |
| Overwhelming majority | الأكثرية الساحقة |
| Parliament | البرلمان |
| Partial insanity | العته (الجنون الجزئي) |
| Parties coalition | ائتلاف الأحزاب |
| Pension | المعاش |
| Perception | الإدراك |
| Performance | التنفيذ |
| Perpetrated | اقترف |
| Personal status | الحالة الشخصية |
| Plaintiff | المدعي في دعوى |

| Planning | التخطيط |
|---|---|
| Plea | جواب المتهم في الاستجواب أمام المحكمة |
| Pleading | المرافعة في القضايا أمام المحاكم |
| Pluralism | التعددية |
| Political attitudes | المواقف السياسية |
| Political coalition | الائتلاف السياسي |
| Political parties | الأحزاب السياسية |
| Political pluralism | التعددية السياسية |
| Political pressure | الضغط السياسي |
| Political process | العملية السياسية |
| Politics | السياسة |
| Populace | الشعب |
| Poverty | الفقر المدقع |
| Precedent | سابقة قضائية |
| Preliminary | أولي، تمهيدي |
| Prime minister (Premier) | رئيس الوزراء |
| Prescription | التقادم |
| Presumption | قرينة (إحدى الأدلة في الجرائم) |
| Primary courts | محاكم البداية |
| Principles of law | مبادئ القانون |
| Prison | السجن |
| Prisoner | السجين |
| Privatization | الخصخصة |
| Procedure | إجراء |
| Procuracy | وكالة |

| | |
|---|---|
| Profession | مهنة |
| Professional | مهني |
| Promotion | الترقية |
| Prosecution | النيابة العامة (جهة الإدعاء في الجرائم) |
| Prosecutor | النائب العام (المدعي العام) |
| Prove | يبرهن، يقيم الدليل على صحة شيء |
| Public Administration | الإدارة العامة |
| Public expenditure | الإنفاق العام |
| Public International Law | القانون الدولي العام |
| Public liberties | الحريات العامة |
| Public order | النظام العام |
| Public policy | السياسة العامة |
| Public Service | الوظيفة العامة |
| Punishable | معاقب عليه |
| Race | عرق، سلالة |
| Reasons of justification | أسباب التبرير |
| Rebut | يدحض (يبرهن عكس دليل خصمه) |
| Recidivism | اعتياد الإجرام |
| Recruitment | التعيين في الوظيفة |
| Referendum | استفتاء |
| Refugees | لاجئين |
| Regime of the sea | نظام البحر |
| Administrative Regulations | أنظمة إدارية |
| Rehearing | إعادة سماع الدعوى |
| Resignation | الاستقالة |

| | |
|---|---|
| Retirement | التقاعد |
| Retroactive laws | قوانين ذات مفعول رجعي |
| Revenues | العائدات المالية |
| Rules of law | قواعد القانون |
| Salary | الراتب |
| Secret ballot | الاقتراع السري |
| Self-determination | تقرير المصير |
| Seniority | الأقدمية |
| Sentence | عقوبة |
| Socialism | الاشتراكية |
| Sophisticated | معقد |
| Sources of law | مصادر القانون |
| Sovereign state | دولة ذات سيادة |
| Sovereignty | السيادة |
| Speedy measures | إجراءات سريعة |
| Status | الوضع القانوني |
| Sub-committee | اللجنة المصغرة |
| Subordination | التبعية الوظيفية |
| Substitutes | البدائل |
| Supervision | إشراف |
| Syndicate | نقابة |
| Termination | إنهاء |
| Territorial waters | المياه الإقليمية |
| Testimony | شهادة الشهود |
| The freedom of high seas | حرية أعالي البحار |

| | |
|---|---|
| The People's Council | مجلس الشعب |
| The vast majority | الأكثرية الساحقة |
| Theory | نظرية |
| Passing of laws | إقرار القوانين |
| Tort | الضرر، الأذى |
| Transformation judge | قاضي الإحالة |
| Treaty | معاهدة |
| Tribunal | محكمة لغرض معين متخصصة |
| Trivial | زهيد، تافه |
| Trust | أمانة |
| Uncivilized | غير متمدن |
| Unlawful | مخالف للقانون |
| Valid | نافذ-شرعي |
| Validity | سريان المفعول – شرعية |
| Vice president | نائب الرئيس |
| Voluntary | اختياري |
| Ward | الموصى به |
| Will | وصية، إرادة |
| Witness | شاهد |

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