I. The Singularity of the Legal Rule

A. Necessity of law

Since we are social beings with different beliefs and behaviors we need common standards that organize the relationship between each other. Laws are created to protect people from being harmed by others. Without law the rule of the strong and violent over the weak and nonviolent will prevail. Society can only exist and prosper when its members are prepared to obey rules.

B. Definition of law

Law is a body of rules which governs and regulates the social conduct of people and is enforced by sanction. The legal doctrine defines the legal rule as follows:

1. The set of binding general rules governing the behavior of individuals in a specific state and at a specific time, which refers to the Egyptian Law, the Chinese Law and French Law.
2. The set of binding general rules governing the behavior of individuals in a specific state and at a specific time with relation to a certain type of legal liaison, which refers to the civil law, commercial law and criminal law.
3. The set of binding general rules governing the behavior of individuals in a specific state and at specific time with relation to a particular matter, which refers to the law on the regulation of universities.

C. Characteristics of Law

1. General and Abstract: General, as it is not related to certain facts or individuals. For example, the penalty for killing it will apply on any one that kills another human being regardless of his/her position in the society. This does not mean that rules which speak to a certain class of people are not a legal rule because they speak to the class in general and not to a certain individual in specific. For example, rules which speak to students (cheating in exams).

Abstract, the legal rule applies to the same facts and to individuals subject to the same circumstances. For example, killing for self-defence.

2. Governing the relationships between individuals within the society:

Law is created to govern the relationship between human beings. It is not created to govern the relationship between human beings and animals/plants/god. However, law may intervene if the individual exceeds his limits.

3. Law is compelling and accompanied by a sanction

Individuals are invited to obey law. If not, they are compelled to do so by mean of sanctions applied by the state.

A sanction is a device to induce the obedience of the law.

Sanctions differ between: Criminal such as death sentence, Administrative sanction such as dismissing an employee, or Civil such as payments of debtors.

D. Law vs. Right

In regulating human behavior, law recognizes rights and imposes duties or obligations. A right cannot be described as legal unless it is recognized and protected law.

Women rights: a woman may have the right for equality in salaries but without law this right will not be protected and enforced.
E. Law vs. Other Concepts

1. Law vs. Morality
Moral rules are principles which arise from the general opinion of the society as to what is right and what is wrong, what is good and to what is evil. Disobedience of moral rules is not sanctioned by the state through its agencies and courts. Its sanctions consist of social forces such as; censure, ridicule and contempt.
Moral is concerned with external internal affairs of individuals, whereas law is concerned with individuals’ external affairs only.
Examples:
   a. not helping the poor
   b. student appealing a bad mark that was deserved
   c. student appealing a bad mark that might have been deserved
   d. abortion: in France, it's immoral and in Egypt it's illegal

2. Law vs. Religion
Divine rules are principles which people believe to have been ordained by God and sanctioned by rewards and punishment in the present life or the life to come.
Law controls external actions of individuals. Religion and moral rules control external actions and internal thoughts and believes of individuals.
Examples:
   a. The state may forbid certain acts such as the planting of rice in Upper Egypt or driving motor cars on the left side of the road. Such forbidden acts are not regarded as wrong or sins by public sentiment or by religion.
   b. On the other hand, there are many rules of behavior imposed by religion and by morality which has not been found fit to be controlled by law and so remain outside its scope. Thus, charity and mercy are moral virtues by not enforced by the law.
   c. This that does not mean that rules of law and morality or religion are always contradicting. Many legal rules are based upon those of morality or religion and their strength is basically derived from the public sentiment of their morality.

II. Classification of Law

Public Law vs Private Law

1. Public Law: is a body of rules that regulate relations between individuals and the state, or the relations between different entities of the state.

   a. Constitutional law: defines the form of the state, sets out the fundamental principles according to which a state is governed, and defines the relationship between the various branches of government within the state. For example, it determines whether the state is a monarchy or republic.
The Constitutional Law is not an ordinary law, because it includes rules that guarantee and protect the fundamental rights and liberties such the freedom of speech and religion. If any law contradicts with the constitution, the constitution shall prevail over this law.

   b. Administrative Law: legal principles governing the administration and regulation of government agencies. It deals with the functions of public officers and employees and with the organization and functions of the administrative courts.

   c. Tax Law: It deals with the imposition and collection of taxes which constitute an essential part of the state revenue. There are many sorts of taxes such as land tax and income tax.
d. **Criminal Law:** it deals with crimes: murder, theft, arson and provides the punishment of convicted offenders: fine, detention, imprisonment, hard labor, death sentence.

The Law of Criminal Procedures: determines the methods which will be pursued by state in case a crime is committed. It defines the authorities charged with the investigation and prosecution against persons suspected and accused of a crime. It determines what procedures can be taken in the investigation, in arresting the accused, in bringing him/her before court and in passing judgment.

e. **Public International Law:** regulates the relations between states. The sources of public international law are treaties, international agreements, international customs, and the decisions of international courts. PIL is usually discussed within the context of Peace, War and Neutrality. It also deals with the formation and functions of international organizations (UN).

2. **Private Law:** regulates relationships between individuals.

a. **Civil Law:** regulates the rights and liabilities of individuals.
   - The Law of Persons or Family Law: deals with legal capacity, marriage and divorce, rights and duties of parents towards their children, guardianship and alimony.
   - Property Law: deals with ownership, obligations, and special contracts: sale, lease, insurance.

b. **Law of Civil and Commercial Procedures:** is generally considered a branch of private law, although from one point of view, it regulates a public authority: the judicial authority deals with actions by which rights can be enforced or defended before courts. It contains the rules which organize the courts, the conduct of the lawsuit and the methods of the execution of judgments.

c. **Commercial and Maritime Law:** deals with trade in general. It contains rules which regulate the relations among merchants such as: partnerships and companies, bills of exchange and bankruptcy. It complements the Civil Code with regard to commercial transactions.

   Commercial law governs only the relations of a special class: merchants.
   Maritime law contains rules relating to trade on the sea: ownership of ships, engagement of the crew, and maritime insurance.

d. **Private International Law:** (Conflict of Laws) governs the choice of law to apply when there are conflicts in the domestic law of different nations related to private transactions between those nations. Private international law deals with a variety of topics such as contracts, marriage and divorce, jurisdiction, recognition of judgments, child adoption and abduction, and the like.

   Example: If an English man buys a land in France belonging to an Egyptian. In case of conflict which law applies? Which court will have jurisdiction over the dispute?

e. **Labor Law**: regulates the relations between workers and employers. Such relations are often based on a contract of service. It deals with the formation, the validity of the contract of services. It regulates the obligations of both parties: the worker and employer.

### III. Historical Overview of the Egyptian legal system.

The Egyptian legal system was initially modelled on the French civil code system (code Napoléon). Napoleon Code, which was first introduced during Napoleon Bonaparte’s occupation of Egypt and the subsequent education and training of Egyptian jurists in France but later developed its own legal principles and structures by accommodating the French law to Shariah provisions.

The Egyptian legal system is the combination of Napoleonic Code Islamic (Shariah). The Egyptian legal system is a civil law system based upon a system of codified laws, with a written Constitution as the highest governing norm.

The country prides itself on a legal system that dates to the early 19th century. With respect to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code of 1948 which remains the main source of legal rules applicable. Much of the Egyptian Civil Code is based upon the French Civil Code and, to a lesser extent, upon various other European codes and upon Islamic (Shariah) law. It covers personal rights, law of contracts, obligations and element of tort law. This code is a reference not only civil matters but also in commercial and business matters.

The Egyptian Civil Code was considered a remarkable development of Egyptian law. It is one of the rare codes that have not been subject to frequent amendments and has widely influenced the codification of subsequent legislations in the Arab region. Some countries in the Middle East have adopted the Egyptian Civil Code. Such as United Arabs Emirates, Libya, etc.

The Egyptian legal system recognizes a distinction between public and private law, the consequences of which is a dual system that is divided into civil courts, with general jurisdiction over civil and commercial matters and an administrative Court system that decides over administrative matters.

It is worth noting that the classical contrast between public and private law has resulted in the crystallization of a separate set of legal rules applicable to transactions involving the State (or any of its institutions, subsidiaries, or state-owned enterprises) acting as a sovereign power. This entailed the establishment of the Egyptian Council of State (Conseil d’État), which are administrative courts vested with the power to decide over administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials. These courts apply administrative legal rules, which are not entirely codified.
IV. Sources of Law

A. Primary Sources of Law

Article 1 of the Egyptian Civil Code regulates the applicable sources of law in Egypt as follows: “In the absence of an applicable law provision, the Judge will decide according to custom and in the absence of custom in accordance with the principles of Islamic Shari'a. In the absence of such principles, the Judge will apply the principles of natural justice and the rules of equity”.

1. Constitution (Al Dustour)

The Egyptian Constitution is the supreme law of the land. Article 2 of the Constitution provides that Islam is the state religion and the principles of Islamic Shari'a are the main source of legislation. “Islam is the Religion of the State. Arabic is its official language and Islamic Shari'a principles are the main source of legislation.”

The Egyptian Constitution recognizes the “Separation of Powers” principle which refers to the division of the political authority of the state into the legislative, executive and judicial powers:

a. The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
b. The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
c. The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

These three powers must be separate and acting independently to most effectively promote liberty. However, these branches are interrelated. They cooperate with one another and also prevent one another from attempting to assume too much power. This relationship is described as one of the checks and balances, where the functions of one branch serve to contain and modify the power of another.

Example: The legislative branch (the Parliament) limits the powers of the Executive branch (Minister) by enacting laws that restrict its powers.

2. Legislations (Al Tashreaat)

The People’s Assembly (the House of Representatives) passes laws and the President approves those laws. All laws must adhere to constitutional provisions and Islamic Shari’a. The Supreme Constitutional Court has the right to review the constitutionality of laws.
Legislations are classified as follows:

a. Treaties and International Agreements
   They become laws when they are signed and ratified by the executive branch and approved by the People’s Assembly.

b. Presidential decrees
   They have the force of law; however, they still need the approval of the People’s Assembly. The President has the authority to issue a presidential decree to dissolve the Parliament.

c. Prime Ministerial Resolutions (Qrarrat Ra’ais Al Wzaraza’a)
   The office of the Prime Minister issues prime ministerial resolutions to coordinate among ministries and enforce the agenda of the President.

d. Ministerial Resolutions (Al Qrarrat Al Wazarih)
   Ministerial Resolutions establish procedures to facilitate the execution of recently enacted laws. These resolutions usually deal with issues pertaining to the ministry’s jurisdiction.

3. Customs

Customs are widely accepted expectations of behaviour that are particular to a specific place, time, or society. Customs are established patterns of behaviour among people in a society or group. Customs vary depending on the culture, religion and history of a group of people, society or country. For example, in Egypt it is customary for a man to shake hands when greeting a friend, whereas in Europe this greeting may be in the form of a kiss on each cheek. Where a custom is followed by most of the population over time, it may become part of the laws of that society. Because of differences between societies, not all customs become law.

Differences between Law and Customs

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<thead>
<tr>
<th>Custom</th>
<th>Law</th>
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<td>Custom develops over a long period of time. Custom does not attend to the society's needs since it creates rules gradually and over time. Custom may not change quickly in accordance with the sudden changes of the society.</td>
<td>Law is flexible and adaptable. Law can readily adjust itself to changing conditions.</td>
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<tr>
<td>The impact of custom is limited. Custom differs from one region to another within the same state.</td>
<td>Legislation achieves the unification of law in a state, as law is created by a public authority that is entitled to enforce it in all regions of such state.</td>
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<tr>
<td>Custom may be obscure and ambiguous.</td>
<td>Law is specific, definite and clear. The legislature determines the content of the rule, its definition and the scope of its enforcement.</td>
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4. Principles of Islamic Sharia

The Islamic religion does not only regulate what may be called purely religious duties such as prayers and fasting, but it also includes rules regulating the social relations between people such as marriage, inheritance, contracts, and the punishment of crimes. In Egypt, the principles of Islamic Sharia are a formal source of law. In absence of a provision of a legislation and customary rule, the judge will render his judgment according to the principles of Islamic Sharia.

5. Principles of Natural Law and Rules of Equity

In cases where the legislation, custom and principles of Islamic Sharia are silent with regard to a particular matter the judge shall apply the principles of natural law and rule of equity. Natural law and rules of equity are ideals rules which can be known only by REASON.
B. Secondary Sources (Persuasive)

1. Judicial Precedents

The role of courts is to implement the law not to make it, and therefore court decisions do not create law. The judge in rendering his decision does not legislate or make a new law, but simply applies the principles of law created before his judgment. A court decision is only binding to parties subject to it but it has no effect on other cases. However, courts usually take precedents into consideration, and adversaries generally invoke them to support their claims, especially when such precedents are rendered by a higher court. In Common Law countries precedents are binding.

2. Legal Doctrine

Law is not interpreted only by courts, but it is also analysed by jurists and law professors. Although the interpretations of jurists and law professors are not binding their opinions may be persuasive to the courts. They may be used as guide for courts to implement law correctly.

V. The Judicial Branch

Introduction:
The Judicial Branch is independent from the State and the judges enjoy immunity; thus, they cannot be dismissed by the Executive Branch.
The Judicial System in Egypt is divided into the Ordinary Branch and Administrative Branch. Whilst courts of ordinary jurisdiction are concerned with the settlement of civil, criminal, commercial and personal status matters, administrative courts are concerned with the settlement of administrative or public law matters.

A. Ordinary Judiciary Branch

The Egyptian ordinary judicial system is composed of three tiers of courts as follows: Courts of First Instance, Court of Appeal and Court of Cassation.

1. The Court of Cassation

The Court of Cassation established in 1931 and it is situated on the top of the ordinary courts hierarchy. There is only one Court of Cassation in Egypt which is located in Cairo. The Court of Cassation considers challenges brought to it by either adversary or by public prosecution. It also examines requests of reparations for all violated verdicts. It is a court of law and not a trial court, as it is competent to review claims that challenge the application of law, and to provide a comprehensive and uniform interpretation of legal texts. However, the Court of Cassation only examines the merits of lawsuits that arose from a judge’s action. The decisions of the Court of Cassation are final, binding and not subject to further appeals. The court issues an annual collection of its decisions, entitled Rulings and Principles of the Court of Cassation.

2. The Court of Appeal

The second-tier court is the Courts of Appeals. They are situated in the major cities in Egypt. Their role is to review decisions rendered by the Courts of First Instance on criminal and civil matters. The Courts of Appeals review claims on the merits and the application of the law.

3. The Courts of First Instance

The Courts of First Instance are the first-degree courts. The Courts of First Instance have the jurisdiction to consider lawsuits only if they fall under their jurisdiction and their rulings are, generally, subject to appeal. The law established the jurisdictions of value and amount, as well as the territorial jurisdiction of each court.

4. The Courts of Special Jurisdiction

In addition to the three-tiered system described above, the Egyptian judicial branch consists of different types of courts with specialized jurisdiction such as:

a. Family Courts.
Family Courts adjudicate disputes pertaining to tutelage, divorce, alimony, and custody. These courts apply Islamic Shari’a in disputes involving Muslims, and to married Christian couples who belong to different Christian sects and in matters of inheritance.

b. Economic Courts
The Economic Courts have a jurisdiction over criminal cases arisen from investment operations, laws on consumer protection, and commercial and banking transactions.

c. Military Courts
The Military Courts consider lawsuits pertaining to military personnel and civilians implicated in crimes related to terrorism and national security. The rulings of the Military Courts can only be appealed through the High Military Appeals Court. Only the President of the Republic can overturn rulings rendered by the Military Appeal Court.

B. Administrative Courts
Administrative courts are collectively known as the State Council (Magles el-Dawla or Conseil d’Etat). The classical dichotomy of public and private law has resulted in the establishment of the Council of State (Conseil d’Etat), which are administrative courts vested with the power to decide over administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials and ministries. The State Council is regulated under law No. 47 of 1972 and has the jurisdiction to hear disputes to which the government is a party, where the government has acted in its capacity as an administrative authority. The jurisdiction of the State Council therefore excludes commercial contracts where the government does not act in its administrative capacity.

The State Council comprises three levels of administrative courts:

1. The lower level is the Administrative Judiciary Courts.

2. The second level of courts comprises the Administrative Courts which are competent to consider lawsuits involving employment matters for government officials.

3. The highest appellate court for administrative disputes is the Supreme Administrative Court.

An opinions and legislation department is located within the State Council to advise government ministries and authorities on public law matters such as tenders, administrative contracts, and official decrees. Although opinions issued by the advisory department are generally advisory and incapable of binding the government, these opinions still carry considerable weight. It is worth noting that State Council consultation is mandatory with respect to government contracts with a value above EGP 5,000.

In addition to the advisory departments, each governmental authority has an in-house member of the State Council who has an advisory role in relation to administrative law matters within the authority.

Administrative law is generally not codified, which places significant emphasis on the role of precedents in the administrative judiciary. This contrasts with the ordinary litigation system where judges are not bound by precedents.
C. The Supreme Constitutional Court

The Supreme Constitutional Court is the highest judicial power in Egypt. It is at the top of both the administrative and ordinary civil court systems. It was established in 1969 and has exclusive jurisdiction to decide questions regarding the constitutionality of laws and regulations as well as negative and positive conflict of jurisdiction. The Supreme Constitutional Court is an independent body in the Arab Republic of Egypt. It is currently located in the Cairo suburb of Maadi. By virtue of Article (25) of the Supreme Constitutional Court’s Law No.48 of the Year 1979, this Court is empowered to:

1. it settles competence disputes which arise between the administrative and ordinary court systems.
2. it determines issues of constitutionality of laws and regulations.
3. It interprets the laws issued by the Legislative Authority and the decrees issued by the Head of the State in case of any divergence with respect to their implementation.
4. It settles jurisdictional disputes between judicial bodies, or authorities which enjoy judicial competence by virtue of a special law.
5. it decides on the disputes that might take place as a result of enforcing two final contradictory rulings issued by two different judicial entities.