Penal Code - General Section

The General Theory of Crime - Parts One and Two

Second year - Bachelor of Arabic

the first lecturer

part One

The general theory of crime, Part One

The Penal Code and its scope of application

**Smoothing and partitioning:**

In this section, we examine the general provisions that govern the general section of the Penal Code, beginning with the written law, which is the only source.

Criminalization and punishment, which is expressed in the principle of criminal legitimacy, and the existence of criminalization and punishment texts will follow if we address the limits of their application in terms of time and place.

In light of the above, we decided to divide this section into two chapters:

**Chapter One:** Legitimacy of crimes and punishments.

**Chapter Two:** The scope of application of the Penal Code.

Chapter one

Legitimacy of crimes and punishments

**to divide:**

A general and fundamental principle prevails in contemporary criminal legislation, which is the principle of "no crime and no punishment except based on a text." This is what is called the principle of criminal legitimacy or the legitimacy of crimes and punishments. This principle requires limiting the sources of criminalization and punishment to written texts alone, which necessitates identifying the sources of these texts and the rules of their interpretation. Therefore, we divide the study in this chapter into three sections:

**The first topic:** the principle of criminal legitimacy.

**The second section:** The law is the source of criminalization and punishment.

**The third topic:** Interpretation of criminalization and punishment texts

The first topic

The principle of criminal legitimacy

**The historical origin of the principle:**

The eighteenth century was characterized by philosophical and revolutionary ideas that revealed the extent of...
The injustice inherent in the existing criminal systems then. The extreme cruelty of punishment aroused the feelings of many thinkers and philosophers, so they launched a fierce campaign in which they denied
The cruelty and gravity of punishments that are incompatible with human humanity, and they called for the punishment to be restored to principles and controls that prevent exaggeration and excess in its imposition. The families of these people had to
Thinkers and Philosophers The young Italian philosopher Shi Azri di Beccaria, who returns
He is credited with formulating the principle of the legality of penal crimes, after publishing his book on “Crimes and Punishments” pene delle e dellitti Dei, which caused a tremendous impact outside Italy.

The French Revolution recorded this important principle in Article 8 of the “Declaration of the Rights of Man and of the Citizen” issued on August 22, 1871.
By stating that “it is absolutely permissible to punish any person except on the basis of a law issued before
Committing a crime, and the law may only provide penalties that are strictly necessary
Confirmed.

This principle was also approved by the French Penal Code issued in 1811, which adopted the doctrine of Bakaria Kamal. Most penal legislation also adopted it. It was stipulated in the Universal Declaration of the Rights of Man and of the Citizen issued on December 11, 1197, where the second paragraph of Article 11 of it stipulates that: “No person shall be convicted for the performance of an act or omission, unless this is considered a crime according to national law or If an international crime was committed at the time of the commission, a more severe penalty shall not be imposed on him
Of those that were permissible to[1] sign at the time of committing the crime. (The constitutions made sure

[1] (For more details about this principle see: MERLE (R.) et VITU (A.): Traité de droit criminel, Tome II, edit.

The modern era stipulates the principle of legality in its articles as a guarantee of individual freedoms. (If the authority is arbitrary or exceeds it, the Egyptian legislator expressed this.[1]

The principle is in Article 6 of the Constitution of the Arab Republic of Egypt in 1123, Article 32 of the 1192 Constitution, Article 8 of the 1197 Constitution, and Article 29 of the 1129 Constitution and is currently stipulated in the second paragraph of Article 22 of the 1181 Constitution, which states: “There is no crime and no punishment except based on a law.

No penalty shall be imposed except by a judicial ruling, and no punishment shall be imposed except for acts subsequent to the date of entry into force of the law.”

**Criminalization and punishment in Islamic law:**

The strong Islamic Sharia confirmed the principle of legitimacy of crimes and punishments in the words[2] of God Almighty: **And We would not punish until We had sent a Messenger .**

And His saying, “Come.” **And your Lord will not destroy the towns until He sends to their towns a messenger to recite**

**Our signs are upon them, and We did not destroy the towns unless their people were wrongdoers...ÿ)** .)[3]

And the Almighty said: **So that people may no longer have an argument against God**

**The Messengersÿ( .)**[9]

These noble texts clearly indicate the necessity of warning before punishment.

Islamic criminal legislation also divides punishments into limits

Qisas and Ta'zir... He established the policy of criminalization and punishment on two important foundations:

---

Cujas, 3rd edition, Paris, 1979, no. 149 et SS, pp. 213 and SS.

Dr. Abdel-Ahad Gamal El-Din: Basic Principles of Criminal Law - Part One Crime - Dar Al-Fikr Al-Arabi, 1189, pp. 81 et seq.

(The principle of criminal legality was transferred to the French Constitution issued in 1811[1] ( (Articles Eight), and to the Constitution of 1813 (Article 19), and with the one issued in 1789, the Constitution of the Fourth Republic issued in 1192, and the Constitution of the Fifth Republic issued in 1197, the text of this was omitted. The principle is at its core. (Surat Al-Isra, verse: 219[2]( (Surat Al-Qasas verse: 91[3] ( (Surat An-Nisa, verse: 129[9] (

**The first:** Establishing fixed punishments that do not change with time and place, which are punishments for punishment, retaliation, and blood money. These punishments deal with specific crimes that are particularly dangerous for society and individuals... and therefore the determination of their criminalization or punishment should not be left to the guardian.

For hudud crimes, Islamic law has imposed a predetermined punishment that is a right due to God Almighty, in order to ward off corruption on behalf of the people, ensure their security, and preserve their safety. The meaning of the preordained punishment is that it is specifically determined and has neither a minimum nor an upper limit, and the meaning of it being a right for God is that it does not accept omission from either individuals or From the group, and it is not permissible to intercede for it after reaching the judge or guardian and proving it. However, before reaching the judge or guardian and proving it with him, intercession is permissible for punishment crimes when the person submits a case to the judge or guardian so that he can divorce him, because the existence of the punishment before that has not been proven, and the investigation is that punishments are prohibitions before the act and are prohibited after it, meaning that knowledge of their legality prevents the act and its perpetration. After that, it is forbidden to return to it, as it is one of the rights of God Almighty because It was legislated for the benefit of all people, so its original ruling was to abstain from what harms people and protect the House of Islam from corruption. ().[1] The crimes punished by hudud punishments are seven crimes: adultery, theft, slander, drinking alcohol, apostasy, banditry, and prostitution.

As for retaliation according to Islamic law, it is a punishment that is truly destined for individuals, that is, for the victims or blood relatives. What it means is that it is destined to have one limit. It has neither a minimum nor a maximum limit that varies between them, just like punishments. What it means is that it is a right for individuals and that the victim has the right to pardon it. If he wishes, the pardoned punishment will be dropped, and this is what distinguishes it from hudud punishments. According to the majority of jurists, the crimes of retaliation and blood money are five: premeditated , felony murder, semi-intentional murder, manslaughter, and intentionally committing a crime against oneself.

On what is below the soul is a mistake.

**second** in the crimes that Delegating the guardian to both criminalize and punish **The**

It falls within the scope of hudud crimes and retaliation...and this is an area left to the guardian

---

(Al-Bahr Al-Ra'iq Sharh Kanz Al-Daqa'iqa', vol. 9, p. 2[1] (

It is what is known in Islamic jurisprudence as the discretionary system, whereby the ruler guarantees sufficient flexibility to face all circumstances when criminalizing acts harmful to society and when deciding punishments for these acts.

It is an undeserved punishment Linguistically, ta'zir means discipline and reform, and legally speaking, it means discipline and reform [1] A right to God Almighty or to the individual in every sin for which there is no punishment or expiation.)

The noble Prophetic Sunnah is the legislative basis for the ta'zir system, which grants the ruler the authority to criminalize and punish in order to protect the interest of the group, and within the scope of the general principles that Islamic Sharia stipulates on some of them, such as insults, breach of trust, bribery, usury...etc.) [2]

**Content of the principle:**

The principle of legality is one of the pillars of criminal legislation. This principle means that only the legislator has the authority to criminalize and punish. The judge does not have the right to criminalize an act that the law has not criminalized, nor to impose a punishment other than what the law stipulates.

The principle of legitimacy in the criminal field has taken on three forms:

**A - Criminal legitimacy:**

(It is intended to express the famous criminal rule that says, [3] It is the Constitution of the Penal Code. "There is no crime and no punishment except as stipulated in the law." It is a translation

---

[1] (Ibn Taymiyyah: Sharia Policy, Cairo, edition 1181, p. 132

[2] (Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 33 and onwards

Then.

[3] (The principle of criminal legality appeared in Egyptian legislation in the Penal Code issued in 1997 1773, as it stipulated in its nineteenth article that punishment be for felonies and misdemeanors Violations are in accordance with the law in force at the time they were committed, and some of them were subsequently passed into law The Penal Code issued in 1119 and then to the current Penal Code issued in 1138, as it stipulated in its fifth article that: "Crimes shall be punished in accordance with the applicable law." This is if a more correct law is issued after the act occurred and before a final ruling is issued At the time of its commission and with the accused, he is the one to be followed and no one else..."; This was stipulated in the new French Penal Code Issued on July 22, 1112 on the principle of criminal legality, as Article 111-2 stipulates It states: "The law defines felonies and misdemeanors, and also determines the penalties imposed on them

The goal is Nullum crimena, nulla poena sine lege: Latin for expression

Among them is protecting people from the danger of criminalization and punishment other than by a legislative tool,

which is the law. The legislative authority alone has the jurisdiction to determine the acts that are considered crimes

Explaining its elements and specifying the penalties prescribed for them, whether in terms of their type or

amount[1], is one of the most basic guarantees for protecting individual freedom.)

**B- Procedural legitimacy:**

It governs the formal or procedural rules of criminal law, meaning

Ensure that the personal freedom of the accused is respected by requiring that the law be the same

The source of every criminal procedure, and the essence of this legitimacy is determined in the assumption of

the innocence of the accused () in every procedure taken before it - from the beginning of gathering inferences[2]

until the exhaustion of methods of appealing the rulings - in order to guarantee his freedom.

Personal[3]. Criminal proceedings must also be subject to judicial supervision.)

**C - The legality of implementing criminal penalties:**

---

The perpetrator. The regulations specify violations, and decide within the limits and in accordance with the rules established by the law

Penalties applied to the perpetrator"; Article 111-3 of the same law also stipulates that:

"No one shall be punished for a felony or misdemeanor unless its elements are determined in accordance with the law, or for a violation of

Unless its elements are specified in accordance with the regulations. No one shall be punished with a penalty not provided for by law

The crime was a felony or misdemeanor. Or not stipulated in the list if it is a crime

infringement".

) [1]( SALVAGE (Ph.): National Public Record, 3rd edition after the new national code, Paris

1994. No. 23, p. 20. (See Article 28 of the Egyptian Constitution,

which states: "The accused is innocent until proven guilty. [2](

In a legal trial in which he is guaranteed the guarantees of

defending himself." (Dr. Ahmed Fathi Sorour: Legitimacy and Criminal Procedures, Arab [3](

Nahda House, 1188, No. 28, p. 112, "The Mediator in the Code of Criminal Procedure."

Arab Nahda House, 1172, No. 23, p. 99; and see Dr. Ahmed Shawqi Omar Abu

Khatwa: Suit for Problems in Implementing Judgments. Criminal, an analytical study in Egyptian law

And the French, Dar Al-Nahda Al-Arabiyyah, 1178, No. 2, p. 12 et seq.

STEFANI (G.), LEVASSEUR (G.), BOULOC (B): Procedure Pénale Douziéme édition,

Dalloz, 1984, no. 10p. 10.

It is the third form of criminal legitimacy that dominates the stage of punitive implementation. It means that the

implementing authority is committed to implementing the criminal judgment against the convict, within the limits of the law, in the

manner stipulated by it, and in the places

designated for this purpose).[1]

The principle of criminal legitimacy. And it has extension of the law The principle of legality of implementation is nothing but a natural

This was confirmed by the Four International Conference on Penal Law, which was held in Paris in 2017

1183, where it was decided in the first recommendation that the principle of legality as such is fundamental to the law

To the implementation law. It requires the intervention of the judicial authority Criminal must be the basis

In implementing penalties and precautionary measures).[2]

In fact, what concerns us here is the first form of criminal legitimacy, which is the legitimacy of crimes and punishments.)

[3]

**Content of the principle of legitimacy of crimes and punishments and its consequences:**

The principle of criminal legality is one of the pillars of criminal legislation. This principle means that only the street has

the authority to criminalize and punish. The judge does not have the right to criminalize an act that the law does not criminalize, nor

to impose a punishment other than what is stipulated by it.

the law.

An act or omission may not be considered a crime, unless there is a provision in the law prior to its commission. Likewise,

a penalty may not be imposed unless it is specific and in quantity, by a provision in the law, as a punishment for committing the

crime. And the wisdom of Kind of in advance

Legislating this principle is to ensure individual freedoms in the field of punishment. That

---

(1) (Dr. Muhammad Mohieddin Awad: Towards unifying criminal laws in the Arab countries - Journal of Cairo University in Khartoum - Issue 5, 1189, p. 7

**BOGDAN ZLATARIC:** The evolution of ideas and practices in the world of sanctions criminelles, University of Cairo, 1954, p. 4.

( 2) **ACTES:** from Ive Congeres International to write on December 26-31 July 1937.

(3) (Dr. Ahmed Shawqi Omar Abu Khatwa, Explanation of Ahkam, previous reference, p. 32 And beyond.

Freedoms that were completely wasted in the past, when the determination of crimes and their punishment was left to the tyranny of the rulers and the arbitrariness of the judges. After a long human struggle against this tyranny and arbitrariness, this principle came to make the power of criminalization and punishment exclusive to the legislator alone, without interference from the judicial authority. The judge's work is therefore limited to applying the law And its interpretation and interpretation. Accordingly, the principle of legality imposes certain obligations on the judge, the most important of which are:

when 1- The judge must refrain from applying the criminal law retroactively, as this constitutes an attack on the freedom of individuals and an infringement on their acquired rights without warning. prior. The criminalization text applies only to the facts following its entry into force, and does not apply to What happened before that. The text that must be applied to the crime is the text that exists and is in effect at the time it is committed, and not the text in force at the time of trial The perpetrators.

2 - The criminal judge must adhere to the penalties prescribed for crimes in the criminal texts that stipulate them in terms of type and quantity. He is prohibited from imposing a penalty that is not mentioned in these texts, or imposing a penalty that differs in type from that stipulated, or applying a penalty whose amount is more or less than the limits stated therein.

3- Just as the criminal judge may not use analogy in determining punishments, he should not use interpretation by analogy. par interpretation'L analogie loi In a case before him, the legislator was silent about stating the penalty imposed on it, so he applies the ruling of another text, claiming that they are united in the cause. This is because the use of analogy opens the door wide for judges to control their rulings, which consequently leads to wasting and violating the principle of equality of citizens before the criminal law.

It is worth noting that imposing the principle of legality on the courts requires them not to try anyone except in accordance with the rules imposed on all litigants. This means that the Egyptian Penal Code, when it adopted the principle of criminal legality, implicitly approved the principle Equality in criminal law. This is because the principle of criminal legitimacy emerges from a concept

The generality and abstractness of the law. This concept indicates that the principle of equality reveals generality

The legality of penalties, and abstractness in the law means excluding violations of equality.

The generality of the Egyptian Penal Code appears clear when it decides

Article 71 "D": "Any Egyptian who intentionally broadcasts false or tendentious news, statements, or rumors abroad

about the internal situation of the country shall be punished." In Article 88 "A": "...Any Egyptian who joins in any way the

armed forces of a country shall be punished in the event of

the war") .)[1]

**Estimating the value of the principle of legitimacy:**

There is no doubt that the principle of legality represents an important guarantee of individual freedom in the

field of criminalization and punishment, freedoms that were completely wasted in the past, when the matter of

with determining crimes and their punishment was left to the tyranny of the rulers and the arbitrariness of the judiciary.

However, this has been subjected to some criticisms, the most important of which can be summarized as follows: )[2]

1- Some have criticized this principle by saying that it stands as an obstacle to the progress of society through actions

that are harmful to society's fundamental interests and development. When the legislator criminalizes, he keeps in

the interests that actually exist at the time of legislation. However, these interests are inherently susceptible to

development, and this development may reveal actions that the judge must be punished for his security and order,

and therefore he cannot Danger:

The legislator had not initially warned of its criminalization, so the judge's adherence to the principle of legality

leads to many acts harmful to the interests of society escaping all punishment because there is no text criminalizing

them.

---

(Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 37 and onwards[1] (

Then.

(Dr. Mahmoud Naguib Hosni: Explanation of the Penal Code - General Section - Dar Al-Nahda Al-Arabiya,[2] (

Fifth Edition, 1172, No. 28, p. 89; Dr. Ahmed Fathi Sorour: Mediator in the Penal Code -

General Section - Part One, Dar Al-Nahda Al-Arabiyyah, 1179, No. 11

p. 31; Dr. Mamoun Salama: Penal Code - General Section - Fourth Edition, 1173

-, 1179, Dar Al-Fikr Al-Arabi, pp. 29 et seq.

Adhering to this principle also facilitates the opportunity for evildoers to circumvent the law And escaping it, by committing harmful and immoral acts, remains unpunished because there are no texts criminalizing it, for example seizing the property of others through a contract contrary to what is stipulated in the crime of breach of trust (Article 391 of the Egyptian Penal Code).

2 - Others have criticized this principle by saying that it does not keep pace with modern criminal trends in individualizing punishment, as it ignores the entire personality of the offender. The legislator determines the punishment - according to this principle - according to the seriousness of the crime, and it is not in his power to make the punishment appropriate to the circumstances of its perpetrators, since it is not He can predict that modern criminal trends require individualizing punishment according to their circumstances. Depending on the personality of each criminal and his degree of danger, not according to the gravity of his crime. The supporters of the positivist school affirmed the principle of individualization when they demanded that punishment should be imposed according to the extent of the criminal, not according to the extent of the crime.

Despite the criticisms directed at the principle of legitimacy, they were unable to undermine it due to the strength of the pillars on which it is based:

1 - The statement that this principle restricts the judge's powers in a way that deprives society of the protection it deserves against acts that are immoral or harmful to it is refuted by the fact that the legislator can always intervene by criminalizing these acts, and he can also, when setting criminalization texts, use phrases whose interpretation allows achieving a balance between Maintaining the principle of legality and the specific texts it requires, and highlighting the need to enable the judge to protect society against acts harmful to it, so the phrases should not be It is narrow and limits the judge's task to its literal application, and is not broad Which results in a threat to the freedoms of individuals and a waste of their rights. Adhering to the principle of legality is much better than seeking to protect some social interests if this is achieved by setting broad, loose texts that do not restrict the powers of the criminal judge.

2 - As for the claim that the principle of legality is unable to keep pace with modern criminal trends in individualizing punishment, it is refuted by the fact that many criminal legislations have set the punishment in many cases with two limits: a maximum and a minimum so that it is possible The criminal judge may determine its amount to suit the circumstances of each criminal individually. It stipulates an optional punishment for some crimes, adopts a system of suspension of execution and release under condition, and also empowers the head of state to pardon all or part of the punishment. All of this would enable the judge to take into consideration the person of the offender and the appropriate punishment for him. This means that there is no conflict between the principle of the legitimacy of crimes and punishments and taking into account the requirements of individualizing punishment. The discretionary authority enjoyed by the judge is the principle of the legitimacy of crimes and punishments, as long as criminal law does not, therefore, conflict with He who organizes it, sets its limits, and determines its rules.)[1]

The bottom line is that the criticisms directed at the principle of legality have not succeeded in undermining it, and this is only because it is considered a guarantee of individual freedom and a basis for legal consistency and stability. This is what prompted legislation that had moved away from it to return to it. The principle of legality returned to the German Penal Code after the end of...

The Nazi regime, as the Soviet legislator returned, stipulated this principle in Article Three of the new Russian Penal Code of 1121 AD.

The discussions that took place in international conferences also resulted in the need to emphasize the principle of the legitimacy of crimes and punishments, as it is one of the pillars of criminal legislation that is based on respect for the rights and freedoms of individuals.)[2]

The second topic

The law is the source of criminalization and punishment

---

(1) (Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 91 et se.) Then.

(2) (See the reports of the International Conference on Penal Law, held in Paris in 1138, and the Second International Conference on Comparative Law, held in The Hague in 1138. Rev. sc. Crim., 1967, p. 750-755.

**Limiting the sources of criminalization and punishment in written law:**

The principle of legality of crimes and punishments requires that the written law be
The only source of criminalization and punishment (). It follows[1] that if there is no written text that explains the criminal act and specifies the punishment prescribed for it, the criminal judge must rule to acquit the accused, no matter how serious the act is in his view, deserving of criminalization (). This means that it is forbidden for the judge to Criminal: Convicting the accused of a crime or imposing a penalty unless[2] legislation has issued it.

Legislation means a set of written texts that have binding force and are issued[3] by one of the public authorities in the state within the limits of its jurisdiction and in accordance with the conditions established by law.

The principle is that legislation is issued by the legislative authority in the state in accordance with the conditions set forth in the constitution. Therefore, the legislative authority becomes the primary authority competent to define crimes and state penalties. However, in certain circumstances and under special conditions[9], it is permissible to grant the executive authority limited legislative jurisdiction.)

---

(Dr. Mahmoud Mahmoud Mustafa: Explanation of the Penal Code - General Section - Edition [1] ( Tenth, Cairo, 1173, No. 33, p. 23, Dr. Mahmoud Najibi Hosni: Ibid., No. 83. 79 - Dr. Muhammad Eid Al-Gharib: Explanation of the Penal Code, General Section, Part One, The General Theory of Crime, 1119 edition, No. 33, p. 91. (In this, he differs from the civil judge, who must decide the dispute before him. If he does not find a [2] ( legislative text to apply, he must rule according to custom, and if he does not find one, then according to the principles of Sharia. If it does not exist, then according to the principles of natural law And the rules of justice (see Article 1 of the Egyptian Civil Code). (Legislative texts are distinguished by two things: Firstly, they establish general and abstract rules that do not include [3] ( individual administrative decisions that face specific specific situations. Secondly, they are issued by an authority competent to do so in accordance with the Constitution.

() It should be noted that international treaties have the force of law after they are concluded by the President of the [9] Republic, ratified and published in accordance with the conditions stipulated in “Article 191 of the Constitution”. However, if the international treaty leaves the task of determining the conditions of criminalization and punishment to the states parties, internal legislation must be issued in implementation. For the treaty, see Dr. Theory of Crime, Abdel Azim Morsi Wazir: Explanation of the Penal Code, General Section, Part One, The General

Therefore, the constitutional legislator did not stipulate in Article 22 that “there is neither crime nor punishment except by law.” Rather, he decided that “there is no crime nor punishment except according to the law.” The legislator thus intended to grant the executive authority the authority to issue regulations to be a source of crimes and penalties within certain limits, given that the regulations are issued “based on the law” .) [1]

The legislation issued by the executive authority is called the exception of “substantive laws” [2] and includes:

**First: Decisions by laws:**

It is issued by the President of the Republic, who has the right to issue decisions that have the force of law and are issued based on a mandate from the People’s Assembly. It gave Article 117 From the Egyptian Constitution to the President of the Republic when necessary and in exceptional cases

---

Arab Renaissance, 1117, No. 17, p. 91; It is worth noting that the provisions included in international treaties in France have a force that, by virtue of Article 99 of the French Constitution and its approval by Parliament, is superior to domestic legislation. These treaties may be considered a source of penal law, at least with regard to criminalization... As for determining penalties, it is left to the state parties because it relates to their sovereignty, which requires the issuance of internal legislation in this regard.

For more details see:

SALVAGE (HP): op. Cit., no. 40, p. 23.

(Article 111-2 of the new French Penal Code states: “The law determines [1] ( Felonies and misdemeanors, and also specifies the penalties imposed on their perpetrators. The regulations specify the violations and also indicate the penalties imposed on their perpetrators, within the limits and in accordance with the rules established by the law.” This new text came in implementation of Articles 39 and 38 of the French Constitution issued in 1197, where Article 39 makes determining serious crimes, namely felonies and misdemeanors, and the penalties imposed on their perpetrators within the jurisdiction of the legislative authority. As for Article 38 of the Constitution, it makes it the responsibility of the executive authority to determine the violations and penalties prescribed for them.

See this:

PRADEL (J): New code penal Francais, RDPC, 1993, p. 933 et 934.

(Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 93 onwards [2] ( Then.

Based on a mandate from the People's Assembly by a two-thirds majority of its members, it may issue decisions that have the force of law. The authorization must be for a limited period and must specify topics. These decisions and the foundations upon which they are based must be presented to the People's Assembly in the first session after the end of the "authorization" period.

If it is not presented, or if it is not presented and the Council does not approve of it, its force of law will cease."

The President of the Republic also issues decrees and laws based on a state of necessity between sessions of the People's Assembly. Article 198 of the Constitution stipulates that: "If something happens in the absence of the People's Assembly that necessitates the rapid adoption of measures that cannot be delayed, the President of the Republic may issue decisions in this regard that have force."

the law. These decisions must be presented to the People's Assembly within fifteen days

days from the date of its issuance if the Council is in session and it is presented at its first meeting in the event will be lost retroactively of dissolution or suspension of its sessions. If it is not presented, its force of law without the need to issue a decision to that effect. If it is presented and the Council does not approve of it, its force will be lost. The law, if the Council deems it appropriate, will enter into force within the period Retroactively exercising the precedent or settling its consequences in another way."

In addition, the President of the Republic or his representative may issue orders that have the force of law when declaring a state of emergency in implementation of Article Five of the Code.

"with Law No. 122 of 1197 regarding the state of emergency, which stipulates that: Without prejudice to any more severe punishment stipulated in applicable laws, anyone who violates orders issued by the President of the Republic or his representative shall be punished with the penalties stipulated in those orders, provided that this punishment does not exceed hard labor. Temporary suspension and a fine of four thousand pounds. If those orders do not specify the penalty for violating their provisions, then violating them shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds, or by one of these two penalties." This article came in implementation of the text of Article 198 of the Constitution, which stipulates: "The President of the Republic declares a state of emergency in the manner specified in the law.

This declaration must be presented to the People's Assembly within the next fifteen days, whatever it deems appropriate regarding it. If the Assembly is dissolved, the matter shall be presented to the new Assembly at its first meeting. In all cases, the declaration of a state of emergency shall be for a limited period.

It may not be extended except with the approval of the People's Assembly."[1]

**Second: Executive regulations:**

These are the regulations issued by the executive authority to implement the laws, and therefore they are considered provisions contained therein. Article 199 of the Constitution stipulates it, supplementing these laws and detailing what it says: "The President of the Republic shall issue the necessary regulations to implement the laws in a manner that does not amend or suspend them or exempt them from their implementation, and he may authorize others to issue them." The law may designate those who issue the necessary decisions for its implementation."

If the principle is that criminalization can only be by law issued by the legislative authority, the Egyptian legislator in the field of economic crimes has departed from this principle.

It suffices to issue blank texts specifying the applicable penalties, and leaves it to the executive authority to determine the elements of criminalization. In the field of protecting the market system, Article 4 bis of Law No. 123 was mandated

For the year 1191 regarding forced pricing and profit determination affairs, Minister of Commerce

And the industry in determining the necessary means to prevent manipulation of the prices of goods and materials subject to this law and specifying their specifications.

In implementation of this, Ministerial Resolutions No. 223 of 272 of 1179 were issued

Regarding determining the selling prices of some imported and local goods...such as authorizing the Minister of Health to determine the coloring or preservative substances that may be added to foods in accordance with the text of Article 10 of Law No. 11 of 1122 issued regarding food control and regulation of their circulation.

---

(Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 99 onwards ( [1]
Then.

In implementation of this, Minister of Health Decision No. 371 of 1172 and No. 132 was issued For the year 1173 regarding the materials that may be added and the food commodities to which coloring materials are permitted.

Indeed, the legislator may often resort to using general definitions with broad, flexible formulas in criminalizing the economic field and texts, especially in cases of manipulation of the market system, as these cases may create Monopoly conditions or lead to restricting competition, raising prices, or affecting the law of supply and demand. An example of this is Articles 2, 8, 1, and 13 of Law No. 12 of 1199, amended by Law No. 132 of 1197.

There is no doubt that resorting to general formulas in the Penal Code Economic and business crimes undermine the protection provided by the principle of legitimacy against control and tyranny... The principle of legitimacy does not only require that the legislative authority be It is the source of criminalization and punishment, but its legislation should be issued clearly and specifically, far from ambiguity and lack of specificity. This clarity is considered a guarantee of individual freedoms and a basis for legal consistency and stability.)[1]

**Third: Control regulations:**

Article 192 of the Constitution stipulates the regulatory regulations by saying: “The President of the Republic shall issue the necessary decisions to establish and organize public facilities and interests.” Article 199 of the Constitution also stipulates that: “The President of the Republic shall issue control regulations.” Article 371 of the Constitution referred to the regulatory regulations. The Penal Code was amended by Law No. 121 of 1171, which gave the executive authority the right to issue control regulations with the aim of preserving public order and public morals. It stipulates that: “Whoever violates the provisions of general or local regulations issued by public or local administration bodies shall be punished with the penalties stipulated in those regulations.”

Provided that it does not exceed fifty pounds, if the penalty stipulated in the regulations is excessive

---

[1] (For more details, see: Dr. Ahmed Shawqi Omar Abu Khatwa: Equality in the Law Criminal, previously mentioned, p. 233 et seq.

These limits must inevitably be lowered to them. If the regulation does not stipulate a penalty, anyone who violates its provisions will be punished by paying a fine not exceeding twenty-five.

Pounds.

**Judicial oversight of the constitutionality of laws:**

The current constitution issued in 1181 entrusted the Supreme Constitutional Court exclusively with judicial oversight of the constitutionality of laws and regulations and the interpretation of legislative texts ("Article 189 of the Constitution"). Law No. 97 of 1191 was issued

By issuing the Supreme Constitutional Court law, which assumed the task of regulating the jurisdictions This court. The powers of this court to monitor the constitutionality of laws include all laws issued by the legislative authority, and regulatory legislation issued by the executive authority within the limits of its constitutional jurisdiction.

Regulations are ordinary regulations or regulations that have the force of law and the Constitutional Court undertakes oversight

Judicial proceedings on the constitutionality of laws and regulations through two

means: **A - Referral:**

If, during the examination of a case, it appears to one of the courts or bodies with judicial jurisdiction that a provision in a law or regulation required for adjudication is unconstitutional.

In the event of a dispute, the lawsuit shall be stopped and the papers shall be referred, free of charge, to the Supreme Constitutional Court To decide on the constitutional issue (M/21 1), if it becomes clear to the criminal court hearing the case that a text of the criminal or procedural law is required of it.

Implementing it is contrary to the Constitution because it violates the principle of equality before the law. I stopped adjudicating The lawsuit, on its own initiative, referred the papers to the Supreme Constitutional Court to decide on the constitutionality

of this text.)[1]

**B - Sub-payment:**

If one of the opponents makes a claim while the case is being considered before a court or authority

And art Having jurisdiction over the unconstitutionality of a text in a law or regulation

---

(Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 98 onwards[1] ( Then.

If the court or body considers that the defense is serious, this court or body should postpone consideration of the case and set a period not exceeding three months for the party who raised the defense in which he may resort to During which the Supreme Constitutional Court may file a lawsuit after the constitutional one, so that if it is not filed The lawsuit is considered within the deadline as if it did not exist “M2/21”. The rulings of the Supreme Constitutional Court in constitutional cases are binding on all state authorities and everyone. This means that these rulings have absolute authority, so that their effect is not limited to

Litigants in the lawsuits in which they were issued, but this effect extends to everyone

State authorities, whether these provisions have concluded that the constitutionality of the contested legislative text is unconstitutional, or that it is unconstitutional and the case is rejected.

This is the basis.

A ruling that a text in a law or regulation is unconstitutional results in its impermissibility

It applies from the day following the publication of the ruling. If the ruling of unconstitutionality is related to a criminal text, the conviction rulings issued based on that text are considered as if they were not “Article 91”.

It should be noted that the jurisdiction of the Supreme Constitutional Court to monitor the constitutionality of laws and regulations does not confiscate the right of ordinary courts to exercise this oversight and refrain from implementing the law that violates the constitution or the principle of legality. The text is:

The Supreme Constitutional Court shall be solely responsible for monitoring the constitutionality of laws

The regulations “Article 29 of the Law Establishing the Supreme Constitutional Court and Article 198 of the 1181 Constitution” do not mean that they are exclusive to all types of legitimate constitutional oversight, but rather that they are alone in monitoring abolition. Its jurisdiction is limited to monitoring the repeal of texts that violate the constitution, without monitoring refraining from implementing them. So that's censorship

Refraining from application is owned by every judge in any legislation that respects the principle of legality.

**The role of custom in criminal law:**

If the written law is the only source of criminalization and punishment according to what it dictates

The principle of legitimacy of crimes and punishments stipulated in Article 22 of the Egyptian Constitution, custom is not a source of criminalization and punishment. However, it is permissible

Referring to it in certain cases is:

**First: Cases of excluding punishment as reasons for its permissibility:**

There is nothing to prevent reference to custom and other sources of law

It is not written in determining the reasons that prevent punishment or its reduction.

This is because the basic principle regarding things is permissibility, so if one wants to deviate from this basic principle, the written text is required. However, if one wants to return to this basic principle, by permitting the act after criminalizing it, it is possible to rely on custom as an unwritten source.

The most important examples of this are cases of permissibility that are due to custom: the permissibility of acts of beating or wounding resulting from playing sports, the right of parents to discipline their children, the permissibility of criticism, and the lack of punishment for the crime of the indecent act of someone who appears in a swimsuit on the beaches.

The principle of legality and referring to custom in such cases does not conflict with

It does not lead to criminalizing acts or imposing penalties without a text.

**Second: Cases of identifying elements of criminality:**

If the principle of legality prohibits referring to an unwritten source in criminalization and punishment, then referring to these sources does not conflict with the purpose of identifying the elements of some of the acts that the legislator has criminalized in a written text.

Therefore,[1] the crime of theft consists of embezzling property transferred to someone other than the perpetrator.

The subject of the crime must be a movable property and its ownership must be proven by someone other than the perpetrator, which is...

It is necessary to refer to the rules of civil law to determine the meaning and conditions for verifying ownership

Other than money.

(Where it requires the existence of a[2] In the crime of breach of trust) The same is true as well contract of trust, such as a deposit, leave, mortgage, free-of-use, or agency.

---

(Article 311 of Egyptian Penal Code.[1] (

(Article 391 of Egyptian Penal Code.[2] (

Verifying its availability requires referring to the rules of civil law that

[1]
The elements of these contracts are determined and their provisions are explained.)

It is also possible to refer to unwritten sources in order to determine the elements of some crimes, as

if these elements were based on controls derived from custom. Thus, the “crime of a public indecent act”

requires the commission of an “act of immorality” (), so it is necessary to refer to the prevailing custom in the

region where the act occurred to define the concept of acts immoral. [2]

The same applies to matters that necessitate “a person’s contempt before the people of his country,”

[3]
which the crime of slander is attributed to a person.)

The third topic

Interpretation of criminal texts

**Interpretation concept:**

Interpretation is extracting the meaning intended by the legislator from the legal text to make it

applicable to the facts presented before the judiciary.

Interpretation is a mental process aimed at extracting the content of the criminal text. So

If the legal text is clear and must be applied, but if it is ambiguous and creates confusion in application, it is

[9]
necessary to resort to interpretation to determine what the legislator means by it.)

**Sources of interpretation:**

The interpretation is divided according to its source into legislative, judicial and jurisprudential

interpretation in the following detail:

**First: Legislative interpretation:**

It is what the legislator himself does in the form of legal texts that he issues to clarify the meaning he

(And legislative interpretation [1] intended from other previous texts.

---

(For more details, see: Dr. Ahmed Shawqi Omar Abu Khatwa, Special Section of [1] (
the Penal Code, 1117 Edition.)

Article 287, Egyptian Penal Code. [2] (

(Article 312 Egyptian Penal Code, Dr. Ahmed Shawqi Omar Abu Khatwa, [3] (
Explanation of Provisions, op.

cit., p. 91 ( 4) MERLE (R.) et VITU (A.): op. Cit., no. 165 p. 234.

It is sometimes called the official interpretation, which includes legal rules that are binding on all, just like the original legislation.

If the purpose of the interpreted legislation is to remove ambiguity or doubt about a previous law, it applies to the facts prior to its issuance, as long as it was not issued.

There is a final ruling. This is because the subsequent interpreted legislation clarifies the content of the law .)[2] The former combines with it without creating new rules)

**Second: Judicial interpretation:**

It is what is issued by the criminal judge in the process of adjudicating presented facts. (This type of interpretation does not have a general[3] He must apply the law to her.) mandatory character, as its effect is limited to the case in which it was issued. Therefore, it is not binding on the judiciary that issued it or another judiciary of a lower rank.

However, the legislator in Egypt departed from this principle, as it delegated the authority to the Supreme Constitutional Court to interpret legislative texts. Article 189 states:

The Egyptian Constitution stipulates that “the Supreme Constitutional Court shall assume exclusive jurisdiction

---

[1] ( Examples of legislative interpretation in Egypt include the Penal Code’s definition of the phrase “the country” in Article 79 “A” thereof, the interpretation of what is meant by “explosives” in Article 112 “A” and the interpretation of what is meant by “public funds” in Article 111 of the Penal Code. The phrase “premeditation” in Article 231; An example of legislative interpretation in France is the French Penal Code’s definition of the phrase “inhabited house or residential property” in Article 311 thereof. (See

[2] ( Dr. Yusr Anwar on: Explanation of the Penal Code - General Theory - Book One, 1178 Dar Al Nahda Al Arabiya, p. 112, Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh Al-Ahkam, previous reference, p. 93

[3] ( (See Dr. Mahmoud Naguib Hosni: previous reference, No. 88, p. 77

Interpretation is necessary for the judiciary in performing its mission, but there is an aspect of jurisprudence And with The thinkers denied Al-Fadi the right to interpret criminal texts on the basis that the function of the judiciary is nothing but the literal application of the text of the law. Bakaria said: “Criminal judges do not have the right to interpret the penal code because they are not the jurists.” Look:

BECCARIA: The délits and the peines, the collection champs-53-

Fammarion, Paris, 1979, p. 68.

Judicial oversight of the constitutionality of laws and regulations, and the interpretation of legislative texts, all in the manner specified in the law."

Article 22 of the Supreme Constitutional Court Law No. 97 of 1181 stipulates that "it is responsible for interpreting the texts of laws issued by the legislative authority and decisions on laws issued by the President of the Republic in accordance with the provisions of the Constitution, if they raise a dispute in application and are of such importance that it is necessary to unify their interpretation."

1/97 of this law stipulates that "the court rulings in Subject It also stipulates that constitutional lawsuits and their decisions on interpretation are binding on all state authorities and everyone.

It is clear from all of this that the judicial interpretation of the texts issued by this court is an interpretation binding on all courts.)[1]

**Third: Jurisprudential interpretation:**

It is undertaken by jurists and commentators of criminal law to clarify the meaning of the legal text.

What helps the judiciary to implement the provisions of the law, as well Mostly jurisprudential interpretation The legislator may point out its shortcomings and seek to complete and clear up its ambiguity.

**Means of interpretation:**

There are two methods: linguistic interpretation and logical interpretation.

**A - Linguistic interpretation:**

It is the first thing that the interpreter should resort to in order to reach the legislator's intent regarding the wording of the text, since language is the means of expressing the will. If it is a clear and clear formula that makes clear what the legislator intends from it, then there is no room for diligence, and the preparatory work must be taken by the criminal judge, even if it does not agree with the law or its title, since they do not have the force of an explicit text.)[2]

---

(Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 99 onwards [1] (

Then.

Because of the confusion that the title of the law raises, the title of the law (He ruled that "whenever the text is explicit [2] (

It does not have the force of its explicit text, and what is required by the operative words of this text is the annulling of June 19 of the year

The will of the legislator, so it is necessary always However, linguistic interpretation is not sufficient

The criminal judge must resort to logical explanation.

**B - Logical explanation:**

It is the search for the true intent of the legislator from the text by researching its historical source, and referring to the preparatory work for it, whether they are explanatory memorandums, parliamentary discussions, public discussions, or the minutes of the technical committees that developed the text, and being guided by the circumstances that inspired it, whether social, political, or economic. , and extracting the reason for the text. Likewise, comparing the text to be interpreted with other texts related to it, or referring to other foreign legislation within the same legal system.

**Interpretation results:**

**A - The decided**

**interpretation:** The interpretation is decided when the text statement is clear in its meaning

The legislator intended. It is not permissible to deviate from the action when its meaning is clear and clear in indicating what is intended from it under the pretext of being guided by the wisdom that dictated it, because Absolutely Research into the wisdom of legislation and its reasons only occurs when the text is ambiguous or there is confusion in it; Legal rulings revolve around their cause, not their wisdom, and there is no place for ijtihad regarding the .) [1] frankness of the text of the law that must be applied.)

**B - The narrow interpretation:**

When it exceeds the intended meaning of a phrase Or restricted The interpretation is narrow

The text is intended by the law, so the interpreter must narrow it down and limit it to limits

What I want with it.

---

1121 Collection of Cassation Rulings, vol. 11, p. 928; If the legislator mentions a specific term in a text for a specific For language meaning, he changes it to its meaning in every other text in which it appears, and that is unified.

Because of the clarity of his speech to everyone For confusion in his understanding and ambiguity in his wisdom and investigation The law and prohibition

"Cassation of May 18, 1122, Collection of Cassation Rulings, vol. 8, p. 919." (Cassation of

June 22, 1189, Collection of Cassation Rulings, Part 22, No. 123, p. 927 [1] (

**C - Expanded interpretation:**

When the linguistic meaning derived from a phrase The interpretation is expanded

From the investigation of the law, the interpreter must expand this meaning For short text, it [a]

extends the application of the text to what I want with it. An example of a broad interpretation is what jurisprudence and

jurisprudence have established regarding Article 311 of the Egyptian Penal Code, which states:

term “movable property” For someone else, he is a thief Anyone who embezzles a owned property. The

mentioned in this article includes electrical current, given that it is energy that can be obtained and transferred from one

place to another. The embezzler shall be punished as a thief.

Traditional jurisprudence may tend toward the necessity of adhering to a narrow interpretation of criminal texts

for fear of wasting the principle of legality and extending the criminal text to acts that the legislator has not stoned or

decided upon as punishment.

[1]

However, this opinion is incorrect (), because the goal of interpretation in the different way is to reveal the

truth of what the Lawgiver intended from the text. If the interpreter adheres to the principles and rules of interpretation

and then is convinced that what he says matches that intent, then it is of no importance after that that this interpretation

came Whether the text is narrow or broad, it does not constitute criminalization

The principle of legitimacy. Unless the legislator intends to criminalize it and therefore does not

conflict with **the analogy in criminal matters:**

Analogy is the extension of the rule of one case stipulated in the law to another case

It is not stipulated therein because there is a similarity between the two cases or their unity in the cause.)

[2]

---

(1) (See Dr. Mahmoud Naguib Hosni: Explanation of the Penal Code - General Section - Edition Fifth, 1172, Dar Al Nahda Al Arabiya, No. 71, pp. 13 et seq. Dr. Ahmed Fathi Sorour: Mediator in the Penal Code - General Section - Part One - Publisher Arab Renaissance, 1179, no. 39, p. 12; Dr. Awad Muhammad Penal Code General Section - 1173, No. 7, pp. 1 et seq.

( 2 ) LUIS JIMENES DI AUSA: The analogue in penal, Rev. Sc Crim, 1949, p. 189.
MERLE AND VITU: op. Cit., no. 169, pp. 239, 240.

This becomes clear that the analogy assumes that there is no provision in the texts of the law for the incident presented to the judge, and that this ruling was made in relation to another incident Similar to it being united in cause.

**Prohibition of analogy in interpreting criminal texts:**

What is meant by analogy in criminalization texts is to attach an act for which there is no text to be criminalized to an act for which there is a text to criminalize by sharing in the reason for the criminalization. This analogy is the principle of legality, which is prohibited in criminal legislation [1] () because it explicitly contradicts what stipulates that there is no crime and no punishment except by a text. Therefore, the criminal judge may not measure an act for which there is no text criminalizing an act for which there is a text criminalizing, and extend the ruling for the second over the first, even if the two acts are similar. Or they are united in the cause, because it will lead to creation

---

[1] ( (Including that the Egyptian legislator did not punish eating food in public places or... Occupying a room in a hotel or renting a car prepared for rent and escape without paying the price or the fare. In view of this, the judiciary was unable to subject these cases to punishment by analogy to the rules of theft or fraud. Which forced the legislator to intervene by stipulating the criminalization of these cases in Article 329 bis of the penalties added by Law No. 132 of 1192, which states: “Anyone who consumes food or drink in the A place prepared for that purpose, even if he resides there, or occupies one or more rooms in a hotel or the like, or rents a car prepared for rent, knowing that it is impossible for him to pay the price or rent, or unjustifiably refuses to pay what is due, or flees without paying.” See Article 319 of the Federal Penal Code No. 3 of 1178; Likewise, before the year 1138, the Egyptian Penal Code did not include a provision for punishment for the act of giving a check without balance. Therefore, the Court of Cassation ruled against punishment

On this verb as an accusative case and not by analogy with the accusative case. Because it is nothing more than a lie In writing, the lie that the person who tells it is supported by a book issued by him cannot be compared to the lie that is supported by a book issued by someone else, until the legislator established the text of Article 338 to punish the crime of issuing a check without a balance.

The principle of the legitimacy of crimes is crimes and punishments without a text, which explicitly contradicts the[1] punishments, so it is not permissible to resort to this analogy in the field of criminalization.)

**Permissibility of analogy in permissibility texts:** If the prohibited analogy in criminal matters is analogy in criminalization and punishment texts, given that these criminal rules alone are subject to the principle of legality, then analogy is with regard to the exempted rules that determine reasons for permissibility, abstention from liability, abstention from punishment, or impediments to filing a lawsuit. Criminal does not conflict This[2] principle)

First lecture questions

**Q:1 Discuss the principle of criminal legitimacy**

**Q:2 He spoke about the law being the source of criminalization and punishment**

(1 (The Four International Conference on Criminal Law, held in Paris in 1138, affirmed the prohibition of analogy in the field of criminalization. It decided that "the principle of the legitimacy of crimes and punishments is a fundamental guarantee of individual freedom and it inevitably requires the exclusion of analogy in criminalization texts." See the text of the resolution:

Rev. Sc. Crim., 1937, p. 750.

(2 (See Dr. Mahmoud Naguib Hosni: previous reference, No. 72, p. 19, Dr. Ahmed Shawqi Omar Abu Khatwa, Sharh al-Ahkam, previous reference, p. 99 et seq.

**Q:3 Discuss the interpretation of criminal texts.**