

First Lecture: Sources of Law/مصادر القانون

Introduction

Opening:

Good morning everyone! Welcome to today's lecture.

Before we begin, let me ask you a question:

Why do we study law?

Answer: “We study law because it organizes our society, it protects our rights, it defines our obligations, and it creates order in our relationships with others and with the state.”

Course Overview:

Today, we begin a series of lectures that will cover fundamental concepts in law. Over the next 3 to 4 sessions, we will cover:

Session 1 (Today): Sources of Law - Where does law come from?

Session 2: Branches of Law - How is law classified?

Session 3: Rights, Duties, and Obligations

Each session will include:

- * Theoretical explanation
- * Practical examples from Algerian law
- * Exercises to test your understanding

Today's Objectives:

By the end of today's lecture, you should be able to:

- Define what we mean by "sources of law"
- Identify the different sources in Algerian legal system
- Understand the hierarchy of these sources
- Distinguish between primary and secondary sources
- Apply this knowledge to practical situations

Why This Topic Matters:

Imagine you're a lawyer and a client comes to you with a problem. The first question you must ask yourself is: *"What law applies to this situation?"*

To answer this, you need to know:

- Where does this law come from?
- Is it in the Constitution? In a code? In a decree?
- Which source is stronger if there's a conflict?

This is why understanding "sources of law" is fundamental to everything else you will study.



Part One: Definition / Sources of Law

What Are Sources of Law?

⇒ Let me give you a simple definition: *"Sources of law are the origins from which legal rules derive their binding force and authority."*

In simpler terms: Where do legal rules come from? What gives them power to bind us?

Think of it like this: If someone tells you "You must do this," you naturally ask: "Says who? What gives you the authority?"

The same applies to law. When a law says "You must do X" or "You cannot do Y," we ask: What is the source of this rule? What gives it authority?

Example:

-Let's take a practical example:

Someone tells you: "You must attend 75% of your classes."

You might ask: "Why? Where is this rule written? Who decided this?"

The answer might be:

- It's in the **university regulation** ← This is a source of law
- Which is based on **higher education law** ← Another source
- Which must respect the **Constitution** ← The highest source

⇒ So you see, legal rules come from specific sources, and these sources have different levels of authority.

Part Two: Hierarchy التسلسل الهرمي of Sources

Now, let's talk about the most important thing:

Not all sources of law are equal.



There is a **hierarchy** - like a **pyramid**. Some sources are at the top, very powerful. Others are at the bottom, less powerful.

The golden rule is: **A lower source cannot contradict a higher source.**

Let me show you the pyramid of Algerian legal sources:

Level 1: The Constitution / الدستور

-At the very top of the pyramid is the **Constitution**.

The Constitution is:

- **The supreme law** of Algeria
- The foundation of all other laws
- Adopted by the people through referendum
- The current one is from **2020**

Why is it supreme?

Because it defines:

- The structure of the state
- The fundamental rights of citizens
- The powers of different state organs
- The basic principles of Algerian society

Example from Algerian Constitution:

Article 34: "The State guarantees **the right to education**."

This means: No other law can deny you the right to education. If a law says "Some citizens cannot go to school," that law is **unconstitutional** and can be annulled.

Important point:

The Constitutional Council / المجلس الدستوري examines whether laws conform to the Constitution. If a law contradicts the Constitution, it's declared **unconstitutional** and cannot be applied.

Level 2: International Treaties/ المعاهدات الدولية

After the Constitution, we have **international treaties** that Algeria has signed and **ratified**.

According to **Article 150** of the Constitution:

"Treaties ratified by the President of the Republic, in the conditions fixed by the Constitution, **are superior to law.**"

What does this mean?



When Algeria signs and ratifies an international treaty (for example, human rights conventions), that treaty becomes part of Algerian law and is **stronger than ordinary legislation**.

Example:

-Algeria ratified the **International Covenant on Civil and Political Rights**

This treaty protects freedom of expression

If an Algerian law restricts freedom of expression too much, judges can apply the treaty instead

But remember: Treaties are still **below the Constitution**. No treaty can contradict the Algerian Constitution.

Level 3: Organic Laws/ القوانين العضوية

-Next, we have **organic laws**

What makes them special?

- They organize constitutional institutions
- They require a **special majority** in Parliament to pass
- They're stronger than ordinary laws

Examples:

- Law on elections
- Law on political parties
- Law on organization of judiciary

These laws are about the **fundamental structure** of the state, so they need special protection.

Level 4: Ordinary Legislation / القوانين العادية

-Now we come to **ordinary laws** – these are laws passed by **Parliament** in the normal way.

Examples:

- Civil Code / القانون المدني Ordinance 75-58
- Criminal Code ((قانونالعقوبات))
- Commercial Code / القانون التجاري
- Family Code / قانون الاسرة

These codes contain most of the rules that govern our daily lives:

- How contracts work
- What is a crime and its punishment
- How businesses operate
- Marriage, divorce, inheritance

Important: Parliament is the main legislative body. It represents the people, so laws passed by Parliament have strong legitimacy.

Level 5: Regulations / الأنظمة واللوائح

At the bottom of the pyramid, we have **regulations** - these are rules made by the **executive branch** (not Parliament).

Different types:

A) **Presidential Decrees** / المراسيم الرئاسية

- Issued by the President
- Execute laws passed by Parliament

Example: Decree organizing public administration

B) **Executive Decrees** / المراسيم التنفيذية

-Issued by Prime Minister

-Implement laws in detail

Example: Decree setting minimum wage

C) **Ministerial Orders** / القرارات الوزارية

-Issued by Ministers

-For their specific sector

Example: Ministry of Education order on exam dates

D) **Local Regulations** / القرارات المحلية

-Issued by Wali (Governor), Mayor

-For local matters

Example: Mayor's order on market hours

Key Point:

All these regulations must:

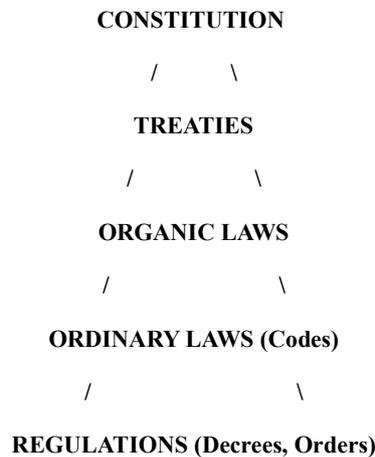
-Have a **legal basis** (based on a law)

-**Not contradict** any higher source

-Stay within their **authorized scope**

-If a ministerial order contradicts a law, the law wins. If it contradicts the Constitution, it's invalid.

Visual Summary - The Pyramid:



Remember: Higher beats lower. **Always.**

Part Three: Primary vs Secondary Sources / المصادر الأساسية والثانوية

Now, there's another way to classify sources of law:

Primary (Official) Sources - مصادر رسمية

Secondary (Interpretive) Sources - مصادر ثانوية / مصادر تفسيرية

Let me explain the difference:

A*Primary Sources / مصادر رسمية

These are **official, binding** sources. They create law directly.

In Algeria, primary sources are:

1. Constitution
2. Legislation (laws, decrees, orders)
3. Islamic Sharia - but with a special note:



Islamic Sharia in Algeria:

According to **Article 2** of the Constitution: "Islam is the religion of the State."

And **Article 222**: "Provisions relating to ... personal status are derived from Islamic Sharia."

What does this mean practically?

Islamic Sharia is applied mainly in family matters:

- Marriage
- Divorce
- Inheritance
- Child custody

Example:

The Algerian Family Code is based on Islamic principles. For instance, inheritance shares are calculated according to Islamic rules.

But note: This is within the constitutional framework. The Constitution itself is the supreme source.

B*Secondary Sources/ مصادر تفسيرية

These sources **don't create law** directly, but they *help interpret and supplement law*.

They're used when:

- There's a gap in written law
- The law is unclear
- We need guidance on interpretation

The main secondary sources are:

1*Custom / العرف

Definition: Repeated practices that people accept as binding over time.

Two elements needed:

- 1. **Material element:** العنصر / الركن المادي Practice repeated for long time
- 2. **Psychological element:** العنصر / الركن المعنوي People believe it's obligatory

Example in Algeria:

In some rural areas, there are traditional practices for:

- Water sharing among farmers
- Land boundaries
- Wedding customs that affect property

Important limitations:

Custom **cannot contradict** written law
Custom **cannot contradict** public order
Custom is used mainly when law is silent

Article 1 of Civil Code says:

"In the absence of a legislative text, the judge decides according to the principles of Islamic Sharia, and failing that, according to custom."

2*Judicial Precedent/ سابقة قضائية

Definition: Previous court decisions that guide future similar cases.

Important note about Algeria:

Algeria follows the **civil law system** (like France, not like UK or USA). This means:

- Judges are **not bound** by previous decisions
- But judges **do consider** previous decisions, especially from Supreme Court
- Supreme Court decisions have **persuasive authority** (not binding)

Why look at precedents?

- Consistency in application of law
- Guidance on interpretation
- Legal certainty

Example:

If the Supreme Court ruled that "employer cannot fire pregnant employee," lower courts will likely follow this interpretation, even though they're not formally bound to do so.

3*Legal Doctrine / الفقه القانوني

Definition: Writings and opinions of legal scholars, professors, and jurists.

Examples:

- Books by law professors
- Legal commentary on codes
- Journal articles analyzing laws
- Academic studies

Role:/ الدور

- Helps judges understand complex legal issues
- Clarifies ambiguous provisions
- Proposes reforms
- Compares different legal systems

But remember: Doctrine is **not binding**. A judge can read a professor's opinion and disagree completely.

Doctrine influences law indirectly:

- Parliament may be influenced by scholarly proposals when making new laws
- Judges may find scholarly analysis helpful
- Lawyers use doctrine to support their arguments

Summary –Primary Vs Secondary

Primary Sources	Secondary Sources
Create law	Interpret law
Binding	Persuasive only
Official	Informal
Examples: Constitution, Laws, decree	Examples: Custom, precedents, doctrine
Must be applied	May be considered

Part Four: Practical Applications

Now, let's see how this works in practice. I'll give you some real scenarios:

Scenario 1: Conflict of Sources

Situation:

A ministerial order says: "University students can only appeal exam results within 3 days."

But the university law says: "Students have 15 days to appeal."

Question: Which applies?

Analysis:

- Ministerial order = regulation (low in hierarchy)
- University law = ordinary legislation (higher than regulation)

Answer: The law wins. Students have 15 days.

Scenario 2: Using Secondary Sources

Situation:

A judge faces a case about online commerce fraud. There's no specific law about this new type of fraud in the Criminal Code (because internet is new).

What can the judge do?

1. First, look at general fraud provisions in Criminal Code
2. Consider how Supreme Court handled similar cases (precedent)
3. Look at legal scholars' writings on cybercrime (doctrine)
4. Consider if there's any commercial custom in e-commerce

Apply general principles of law

The judge **cannot** say "There's no law, so I won't decide." The judge must find a solution using all available sources.

Scenario 3: Constitutional Review

Situation:

Parliament passes a new law: "All university students must wear specific uniform."

Some students challenge this law, saying it violates:

***Article 36** Constitution: "Freedom of expression"

***Article 52:** "Personal freedoms are guaranteed"

What happens?

The Constitutional Council reviews the law:

- Is uniforms requirement proportionate?
- Does it violate fundamental freedoms?
- Is there a legitimate state interest?

⇒ If the Council finds it unconstitutional, the law **cannot** enter into force.

This shows: Constitution is supreme. Even Parliament cannot violate it.

Part Five: [Practical Tips](#)

Let me give you some practical advice for your legal studies and future practice:

When Analyzing Any Legal Problem, always follow this order:

1. Check the Constitution first: Is there a constitutional right or principle involved?
2. Look for applicable legislation: -Which code? Which law?
-When was it adopted? (make sure it's current)
3. Check for implementing regulations: Decrees, ministerial orders
4. Consider secondary sources: -Relevant precedents?
-Scholarly commentary?
-Custom?
5. Remember the hierarchy: If there's conflict, which source wins?

Common Mistakes to Avoid:

- ✗ Mistake 1: Thinking all laws are equal
✓ Remember: There's a hierarchy!
- ✗ Mistake 2: Ignoring the Constitution
✓ Remember: Everything must conform to Constitution
- ✗ Mistake 3: Treating precedent as binding (in Algeria)
✓ Remember: We're civil law, not common law
- ✗ Mistake 4: Thinking custom can override legislation
✓ Remember: Custom is only when law is silent
- ✗ Mistake 5: Confusing international treaties with domestic law
✓ Remember: Treaties need ratification to apply