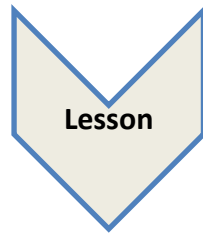
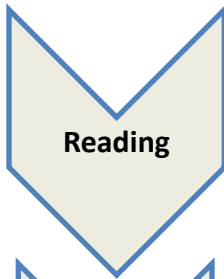


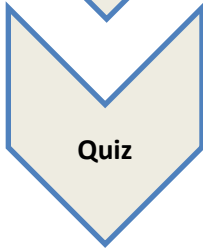
LESSON N°7



- 2.4. The application of law with regard to time
- 2.5. Glossary



- 2.6 Reading comprehension



- 2.7 (Miscellaneous questions)

2.4 The application of law with regard to time

(تطبيق القانون من حيث الزمان)

When a new law comes into force, the question that arises is: what will be the fate of legal situations that are already constituted according to the old law or are in the process of being constituted?

Which law applies the old or the new?

The application of the law to legal situations following its entry into force does not pose a problem, but what gives rise to a dilemma are the legal situations in the process of being constituted or extinguished: those that were in the process of being constituted or extinguished before the entry into force of the new law or those that were constituted in the old law but whose effects extend to the future. Which law do we apply, the new or the old!?

This question is called “conflict of Laws with regard to time¹”, and it is not the object of our lesson.

The objective of this lesson is to inform students about the principles of law application, their definitions, and some terms used in this field.

For the legal stability, certainty², public order and sometimes the interests of persons, the legislator could provide in the body of the text of the new law the terms of its application with regard to time and provides transitional measures.

There are also certain principles that manage this issue:

- ❑ Principle of the **immediate effect** of the new law
- ❑ Principle of **non-retroactivity** of laws

What do we mean by these two principles?

عندما يدخل قانون جديد حيز النفاذ، فإنه يطرح التساؤل التالي : ما الذي سيحدث للمراكز القانونية³ التي تشكلت بالفعل بموجب القانون القديم أو في طور التشكل ؟
ماهو القانون الذي يطبق القديم او الجديد ؟
إن تطبيق القانون على المراكز القانونية بعد دخوله حيز التنفيذ لا يطرح مشكلة.

¹ Ger J. Traynor, Conflict of Laws in Time: The Sweep of New Rules in Criminal Law , 4 DUKE L. J. 713 (1967). Available at: http://repository.uchastings.edu/traynor_scholarship_pub/29

² Certainty :the principle requires that the law be clear, precise, and unambiguous, and its legal implications be foreseeable. ويتطلب هذا المبدأ أن يكون القانون واضحاً ودقيقاً ولا لبس فيه، وأن تكون آثاره القانونية متوقعة.

³ الوضعية القانونية التي يكون عليها الشخص اتجاه القانون مثلاً : مالك ، مستأجر، الخ. وهذه المراكز هي مراكز قانونية شخصية، تعبر عن ما يكتسبه الشخص من حقوق أو ما يتحمله من التزامات في زمن معين.

ما يثير معضلة هو المراكز القانونية التي كانت في طور التكون أو الإنقضاء، أي تلك التي كانت في طور التكون أو الإنقضاء قبل بدء نفاذ القانون الجديد أو تلك التي تم تكوينها في ظل القانون القديم ولكن آثارها تمتد إلى المستقبل.

هذه المسألة تسمى "تنازع القوانين من حيث الزمن"، وهي ليست موضوع درسنا. الهدف من هذا الدرس هو تعريف الطالب بمبادئ تطبيق القانون وتعريفها وكذلك بعض المصطلحات المستخدمة في هذا المجال.

ما يجب الإشارة إليه هنا هو أنه من أجل الاستقرار و الأمن القانونيين، يمكن للمشرع أنه ينص في القانون الجديد على شروط تطبيقه من حيث الزمان وينص على تدابير انتقالية، كذلك هناك مبادئ تسيير هذه المسألة وهي :

□ مبدأ الأثر الفوري للقانون

□ مبدأ عدم رجعية القوانين

مذا نقصد بها:

2.4.1 The principle of the immediate effect of the new law

When the law enters into force, it becomes applicable to legal situations that follow its entry into force; this is what is called "the immediate effect of the law"⁴.

عندما يدخل القانون حيز التنفيذ ، يصبح ساريًا على المراكز القانونية التي تلي سريانه، وهذا ما يسمى "الأثر الفوري" للقانون " اي يطبق على المراكز القانونية التي نشأت ابتداء من سريانه.

2.4.2 The principle of non-retroactivity of law مبدأ عدم رجعية القوانين

The law in principle does not have retroactive effects, which means that a new law does not apply to old legal situations whose effects were fully consummated⁵ under the old law.

⁴

⁵"To consummate an agreement is to carry it out completely, as in a consummated sale. It is to bring to completion on whatever was either intended or undertaken to be done"., <https://legal-dictionary.thefreedictionary.com/Consummate>

This was explicitly stipulated by the Algerian legislator in Article 2 of the Civil Code: "The law applies only to what happens in the future, and does not have a retroactive effect."

However, there are some exceptions to this principle.

❑ **Exceptions to the principle of non-retroactivity of law** استثناءات للمبدأ عدم رجعية القوانين

- The legislator can break this principle by enacting an expressly retroactive law, if necessary
- The case of an interpretative law: Some consider that the new law is one with the old law, and therefore it has a retroactive effect from the date of entry into force of the old law, although some others retort by confirming that the interpretative law cannot be retroactive, because for them it only clarifies and explains the ambiguous and contested meaning of a text, and therefore it must apply only to new legal situations and those that were in the process of being constituted or extinguished when the new law has entered into force. What must be applied is the immediate effect of the new law, they assert.

القانون من حيث المبدأ ليس له أثر رجعي، مما يعني أن القانون الجديد لا يسري على المراكز القانونية القديمة التي اكتملت آثارها بالكامل في ظل القانون القديم.

وهذا ما نص عليه المشرع الجزائري صراحة في المادة 2 من القانون المدني: "لا يسري القانون إلا على ما يحدث في المستقبل، وليس له أثر رجعي."⁶
ومع ذلك، هناك بعض الاستثناءات لهذا المبدأ:

- **يجوز للمشرع خرق هذا المبدأ من خلال سن قانون بأثر رجعي** بعبارة صريحة ، إذا لزم الأمر

- **حالة القانون الجديد التفسيري لقانون قديم** : هناك من يعتبر أن القانون الجديد يشكل قانون واحد مع القديم وبالتالي يكون له أثر رجعي منذ تاريخ بدء نفاذ القانون القديم ، وهناك من يعترض ويؤكد أن القانون التفسيري ليس له أثر رجعي ، لذلك يجب أن يطبق فقط على المراكز القانونية الجديدة

⁶"القانون المدني" باللغة العربية، المرجع السابق، ص.1.

أو تلك التي في طريقها لتكون أو الانقضاء أثناء صدور القانون الجديد، أي تطبيق مبدأ "الأثر الفوري" للقانون⁷.

2.5 Glossary

Terms	
المصطلح بالعربية	المصطلح بالإنجليزية
تطبيق القانون من حيث الزمن	Application of law with regard to time
قانون جديد	New law
قانون قديم	Old law
مركز قانوني	Legal situation
تكون	Constituted
في طريقه (أ) الى التكون	In the process of being constituted
إنقضى	Extinguished
في طريقه (أ) إلى الإنقضاء	In the process of being extinguished
آثار	Effects
تنازع القوانين	Conflict of laws
مبادئ القانون	Principles of law
الإستقرار والأمن القانونيين	Legal stability and certainty
تدابير إنتقالية	Transitional measures
أثر فوري للقانون	Immediate effect of the new law
عدم رجعية القوانين	Non-retroactivity of laws
قانون بأثر رجعي	Retroactive law
قانون تفسيري	Interpretative law

⁷ محمدي فريدة، المرجع السابق، ص. 109.

2.6 Reading comprehension

Text

The principle of legal certainty is a fundamental principle of law. Citizens, taxpayers, should in general be allowed to rely on the legislation in force to plan their conduct and transactions. The government, including the legislator, should respect the principle of legal certainty. However, it is beyond discussion that the legislator should be able to change its legislation, including tax legislation. There are various justified reasons to change tax legislation, such as a change of tax policy and social and technical developments. A change in legislation could, however, infringe taxpayers' expectations raised by the existing legislation. This could especially be the case if the legislator decides that the amended legislation is applicable to past tax periods (the change has 'retroactive effect'). But also if the amended legislation has 'immediate effect' and therefore only applies to future taxable events or tax periods, taxpayers' expectations could be at stake. This would be the case if the legislator does not provide for grandfathering⁸. Then, the changed legislation also applies to future effects of a situation that arose under the old legislation⁹.

QUESTIONS

1. Give a title to this text.
2. What can we understand from the expression amended legislation?
3. What can justify the tax legislation change?
3. Why the principle of legal certainty is a fundamental?
4. Which term could replace "legislation is applicable to past tax periods"?
5. Give a case of legal uncertainty cited in the text.

Answers

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⁸ This means that an old rule continues to apply to some existing situations, while a new rule will apply to all future cases (acquired rights).

⁹ Hans Gribnau and Melvin Pauwels (eds.), *Retroactivity of Tax Legislation*, Amsterdam: EATLP / IBFD, pp. 95-116, 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713427

2.7 QUIZ

Question 1:

When the law enters into force, it becomes applicable to legal situations that follow its entry into force; this is what is called “non-retroactivity principale.”.

☐ True ☐ False

Question 2:

Fill in the blanks by choosing the missing terms in the following paragraph from the list below.

“ Interpretative law; old law; retroactive”

Concerning the interpretative law: Some consider that the new law is one with the old law, and therefore it has a effect from the date of entry into force of the , although some others retort by confirming that the cannot be retroactive, because for them, it only clarifies and explains the ambiguous and contested meaning of a text, and therefore it must apply only to new legal situations and those that were in the process of being constituted or extinguished when the new law has entered into force. What must be applied is the immediate effect of the new law, they assert.

Question 3:

The judge can break the principle of non-retroactivity of law by enacting an expressly retroactive law, if necessary

☐ True ☐ False

Question 4:

The new law does not apply to old legal situations whose effects were fully consummated; this is the definition of the principle of the immediate effect of the new law.

☐ True ☐ False

Question 5:

Fill in the blanks by choosing the missing terms in the following paragraph from the list below:

“future; constituted; new law; extinguished; old law”

What gives rise to a dilemma are the legal situations in the process of being constituted or extinguished: those that were in the process of being or before the entry into force of the or those that were constituted in the but whose effects extend to the . Which law do we apply—the new or the old?