

CHAPTER 6 :

APPLICATION OF THE LAW IN TERMS OF PEOPLE

The application of the law in terms of individuals is related to the principle of the inadmissibility of an excuse for ignorance of the law. Once the law is published in the Official Gazette, it becomes effective against all persons addressed by it, as it is not acceptable to invoke ignorance of the law to exclude its application.

- ✚ **The rule of inadmissibility of apology due to ignorance of the law.**
- ✚ **Exceptions.**

1. The rule of inadmissibility of apology due to ignorance of the law :

The rule “ignorance of the law is no excuse” really means that people can't defend their actions by claiming they didn't know the law. The maxim's apparent premise is that people should know (and abide by) the law.

a. The concept of the rule of inadmissibility of apology due to ignorance of the law :

This principle means that it is not acceptable for any person to claim that he is not aware of the legal rule to exclude the application of its provisions.^[1]

The adoption of this principle is justified by the following:

- Achieving justice and equality in society.^[2]
- The social necessity of the principle.^[3]
- Citing ignorance of the law and ruling out its application will result in a lack of confidence in the effectiveness of the law.
- Ignorance of national law is completely inexcusable.^[4]

b. Field of application of the principle :

This principle applies to all laws,^[5] Whatever its source (legislation, principles of Islamic law, custom, principles of natural law and rules of justice), and Whatever its nature (command or complementary rule), and Whatever the classification of the law (private law or public law).^[6]

2. Exceptions :

The possibility of exceptions must be studied in the light of the considerations underlying the maxim.

a. The Majeure Force :

Force majeure is a clause that is included in contracts to remove liability for unforeseeable and unavoidable catastrophes that interrupt the expected course of events and prevent participants from fulfilling obligations. These clauses generally cover both natural disasters and catastrophes created by humans.

1- شفيق محسن، مدخل إلى علم الحقوق، دار ومكتبة الهلال، بيروت، 2010، ص 10.

2- سمير سيد تناغو، النظرية العامة للقانون، منشأة المعارف، الإسكندرية، مصر، 1986، ص 608.

3- جعفر محمد سعيد، مدخل إلى العلوم القانونية -الوجيز في نظرية القانون، دار هومة، الجزائر، 2002، ص 220.

4- سمير سيد تناغو، المرجع السابق، ص 210.

5- محمدي فريدة -زواوي-، المرجع السابق، ص 122.

6- محمدي فريدة -زواوي-، المرجع السابق، ص 122.

Something that is unexpected and cannot be prevented, which directly leads to damage.^[1] An example of this is wars, earthquakes and volcanoes, and the Covid-19 pandemic. Here, people may claim ignorance of the law and not apply it until the cause of force majeure has disappeared and the Official Gazette has arrived in the relevant region.

b. Mistake of Law :

Mistake of law is a legal principle referring to one or more errors that were made by a person in understanding how the applicable law applied to their past activity that is under analysis by a court.

An example of this is the case of the death of a wife without children, and her husband mistakenly believes that his inheritance is a quarter, so he disposes of it, while Article 144 of the Algerian family law, the husband's inheritance is half from his wife, provided that she has no children.

c. Common Mistake :

Common mistake (where the mistake is shared by both parties, is fundamental and directly affects the basic definition of what the parties are contracting for). The mistake will render the contract void if it robs it of all substance, Mutual mistake.

That is, the physical appearance can make the false belief in the existence of truth Recognized by law.^[2]

d. Ignorance of Law, Criminal Culpability :

The comparative analysis suggests that the ignorance of law rule, while still applicable, has been whittled by several exceptions, the broad thrust of which is that a person who is reasonably ignorant of the law is in fact morally innocent and not deserving of criminal punishment.

Criminal liability may be dismissed due to ignorance of a civil rule, and the French judiciary considered this to negate criminal intent, and thus the absence of criminal liability.^[3]

e. The foreign person's ignorance of the national penal law

A person from abroad who commits an act punishable by national law is not criminalized if the act is not punishable in his country, and he commits it within seven (07) days from the date of his arrival.^[1]

1- محمد عبد القادر الحاج، مسؤولية المنتج والموزع، دراسة مقارنة، دار النهضة العربية، القاهرة، مصر، 1983، ص 296.

2- نجوان عبد الستار علي مبارك، الوضع الظاهر في القانون المدني مصدر جديد من مصادر الالتزام غير الإرادية -دراسة تحليلية تأصيلية تطبيقية، الطبعة الأولى، دار الجامعة الجديدة، الإسكندرية-مصر، 2015، ص 35.

3- محمدي فريدة -زاوي-، المرجع السابق، ص 124.

المصطلحات بالعربية	English terms
جهل القانون	ignorance of the law
القوة القاهرة	The majeure force
الغلط في القانون	Mistake of law
الغلط الشائع	Common mistake
دفع المسؤولية الجنائية بسبب الجهل بقوانين غير جنائية	Ignorance of Law, Criminal Culpability
جهل الأجنبي بقانون العقوبات الوطني	The foreign person's ignorance of the national penal law

1- انظر المادة 2/37 من قانون العقوبات العراقي، والمادة 223 من قانون العقوبات اللبناني.