INTRODUCTION TO COMMERCIAL LAW

(*COMMERCIAL ACTS- MERCHANT- COMMERCIAL COMPANIES*)

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Preface

Commercial law is a mandatory course in most undergradu ate programs and is essential in almost every field related to fina nce. Legal contracts are prevalent in investment banking, from p itch book disclaimers to purchase and sale agreements (PSA). The law serves as the foundation for indenture contracts in debt capital markets, leveraged finance, and restructuring.

Strong legal frameworks are essential for a well-organized company environment. The law must be properly organized in order to reduce business frictions and resolve conflicts. The law must also be impartial and consistent in its enforcement (equality under the law) — there is no law if no one respects it or if it is selectively implemented.

The principal objective of this book is to provide a detailed analytical overview of the vast array of areas of commercial law and the policies that lie behind these areas of law. The book is divided into two main parts and has been written with the relevant policies in mind .

Part 1 of the book deals with one of the most traditional aspects of commercial law, the law of merchant. This part is divided into three chapters and provides a detailed review of the scope of the Commercial Law, the obligations of Law No. 17 of 1999 Promulgating Trade Law. The second part of the book deals with commercial companies of the commercial law syllabus, their rules.

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Contents

Introduction:

Commercial law originated from the pressure of the need for a law regulating economic transactions, and the practical necessities that required the existence of an independent law to subject a category of transactions (commercial transactions) and a category of persons (traders) to a special regulation consistent with the requirements of business. Therefore, these were the beginnings of the emergence of commercial law.

Legal rules are divided into two main branches: public law and private law, and commercial law belongs to private law by virtue of its subordination to civil law. It includes the legal rules applicable to trade and merchants. [1]

Therefore, it is narrower in scope than the civil law that governs the legal relations that take place between people, regardless of their origins, and the nature of those relations. In fact, there are some fundamental reasons behind this, the most important of which is the following:

The first reason: commercial businesses are characterized by speed more than simple civil works, which get to human beings at intervals, and need time to negotiate and to be erased. Unlike commercial ones, which are distinguished by speed, a great deal of flexibility, and certain conditions and requests. Hence, the law imposes special rules that prove transactions and facilitate some procedures for traders.

The second reason is that trust and credit are essential elements of business, and for this reason, traders have become united by a tangled relationship with credit. The trader is often a creditor and a debtor at the same time, thus the commercial law

[1] Dr. Mahmoud Samir El Sharkawy , Commercial Law , Part I - Dar Al Nahda, Egypt, Cairo, 1982, p 52.

is supported by increasing the guarantees of the commercial creditor, as the merchant's bankruptcy system.[1]

– The origin and historical development of commercial law:

There is no doubt that trade as a human activity began in the BC period. The need for trade exchange began using river transport and soon turned to sea transport. The Red Sea was one of the oldest trade routes in the world, and ships roamed the Mediterranean Sea for at least two thousand years BC. Therefore, trade has effectively contributed to the communication of ancient peoples' civilizations, despite the different nature of these civilizations.

However, there is no correlation between the emergence of trade and the emergence of commercial law as an independent law. It is certain that trade was known to many people whose transactions were governed by one law.

In fact, it is not easy to identify the initial origins of the emergence of commercial law, because it has been formed from a group of customs and norms that settled among the merchant class. Thus, its commencement was unwritten customary rules, unlike civil law, which has been made formally and left written traces**.**

Commercial law scholars have divided the history of commercial law into three eras: the Ancient Era, the Middle Ages, and the Modern Era.[2]

1. The Ancient Era:

[1] Dr. Tharwat Ali Abdel Rahim - Egyptian Commercial Law - Dar Al Nahda - First Edition, 1995, p 12

[2] Dr. Jamal al-Din Awad - Commercial Law - Dar Al Nahda - Not mentioned Post Date, p 32.

Historians and writers have not been able to confirm the existence of a distinct independent law governing commercial transactions. Yet, it is certain that the ancient peoples who practiced trade knew special rules and applied them to suit the needs of trade at that time.

In the era of the Babylonians, until 1950, several commercial legal rules appeared in the Code of Hammurabi, which regulated some commercial contracts, such as loans with interest, commercial deposits, agencies with commission, and companies. These rules were nothing but a codification of the customs that prevailed at the time.

As for the Phoenicians, they knew about maritime trade and invented a system of joint losses. The implication of this system is that if a ship was subjected to sinking and it was necessary to save it by throwing some goods into the sea, all the beneficiaries-the owner of the ship and the owners of the goods that were thrown into its rescue, participated in the loss resulting from the dumping of someone's goods into the sea.(1)

The Phoenicians followed the Greeks, who had the lead in inventing the rules of the marine loan contract-the serious risk loan. These rules were the benchmark of the idea of marine insurance. The marine insurance contract or the serious risk loan is a shipmaster's agreement with another person that the latter will lend him the necessary amounts for his voyage.

If the ship returned safely, the shipmaster would be obligated to repay the loan, in addition to its interest, which was high in most cases. But if the goods perished or the ship sank, it would not be required to pay the value of the loan, hence the name "grave risk loan".(2)

2. The Middle Ages:

(1) Dr. Zeid Radwan, the principles of commercial law, Dar Al Nahda, 1997, p. 14.
(2) Ibid

The Middle Ages began with the fall of the Roman Empire due to raids by the Germanics, who divided this empire into small states such as Venice, Genoa, Florence, and Pisa.

Moreover, the freedom of movement of individuals was eliminated, the restrictions of the feudal system prevailed, and commercial activity was reduced. The situation remained this way until the advent of the Christian religion, which placed restrictions on the practice of trade in order to prohibit dealing with usury.

This was followed by the Crusades, which contributed to achieving more trade exchange between the East and West. Trade flourished and periodic markets were established in Western European countries, such as the Frankfurt markets in Germany, Cannes, Lyon and Paris markets in France. Transactions were carried out in accordance with the customs and norms of the market, and these customs were given an international character.

The merchant sects established their own judiciary, to be taken over by the heads and sheikhs of these sects, called the consuls. They used to settle disputes according to what was settled by customs and mores among the members of the sect. The rulings issued by the consuls contributed to the emergence of commercial law.[1]

It is worth noting that Islamic Sharia knew some rules of commercial law, such as bankruptcy, partnerships, and dealing in bills of exchange. Although it did not distinguish between the rules of civil law and commercial law, its rules were generally applicable to merchants and non-merchants.

We conclude from the foregoing that the Middle Ages knew the distinction between commercial law and its independence with special provisions.

[1] Dr. Ali Zinni - Assets of Commercial Law, No. 2, Dar Al Nahda, 1945 , p 42.

Perhaps the reason for this is due to the political and social status that merchants enjoyed during this period of time. In addition to the increasing importance of trade as one of the aspects of human activity that some people engage in, there was an urgent need to set rules and provisions imposed by the requirements of this activity, and merchants were the most capable people to set these rules and provisions, which were inspired by the commercial environment itself.

Thus, the independence of commercial law from civil law was achieved; it was distinguished by its international character because the customary commercial rules were homogeneous by virtue of commercial relations regardless of the nationality of the parties. It was also distinguished by its personal character, as commercial law was a set of norms that only concerned the merchant community.[1]

3. The Modern Era:

The Ottoman Empire, which controlled most of Europe and Asia, marked the beginning of modern times. As a result, the commerce center shifted away from the Mediterranean basin and Italian cities towards the Atlantic Ocean and its neighboring countries (Spain-England-France).

As a result, commercial markets emerged in these countries, and economic activity became more significant. The discovery of the Cape of Good Hope and the discovery of the Americas aided these countries in their search for colonies to market their goods.

These discoveries influenced the flow of wealth from the discovered regions to European countries, particularly gold, resulting in the emergence of an interest in monetary issues and the establishment of institutions to conduct banking operations.

[1] Dr Samih Al-Qubyoubi - Commercial Law - Part 1 - Dar Al Nahda, 1981, p 11.

Following these discoveries, there was an immediate need for a pool of capital to exploit the new areas' natural resources. (1)

Therefore, significant colonial enterprises such as the East India Company and the Hudson's Bay Company were established. These companies were the core of the joint stock company.

The legislature was forced to interfere to limit these firms' operations because of their tremendous economic influence and their commission of numerous unethical acts in order to maximize profit. So, law-makers enacted the commercial laws necessary to regulate commercial activity.

Thus, commercial law lost its international character and became internal, and its provisions differ from one country to another as required by the commercial environment in each country. France had the lead in this regard, as Louis XIV issued a royal order in 1673 that included the rules regulating maritime trade affairs (companies-commercial papers-bankruptcy...).

After the outbreak of the French Revolution, a committee was assigned by the French National Assembly to develop a comprehensive legalization of commercial law. It was issued in 1807 and did not enter into force until 1808. This legalization included most of the provisions of the two royal orders of Louis XIV.

In Egypt, the provisions of Islamic Sharia have been applied since the Islamic conquest of it. When Muhammad Ali took over the rule of Egypt, he established the Royal High Council in 1819 to consider commercial issues. In the year 1837, Muhammad Ali issued a general law for the country and established the Khedive Court to adjudicate citizens’ disputes, including commercial disputes.

(1) Dr. Tharwat Ali Abdel Rahim, Egyptian Commercial Law , op cit, p 16

In the year 1844, the governor of Egypt established a council of merchants in Alexandria, and in Cairo a council of merchants was established similar to the Alexandria council. In 1856, the governor issued a regulation to organize litigation and how to resolve disputes.

In the year 1883, civil courts were established and their own legislation was drawn up. Thus, in addition to the mixed laws, there were groups of civil laws.(1)

It included the provisions contained in the two royal orders issued during the reign of Louis XIV. Work remained in Egypt with civil laws until they were abolished, and the Commercial Code No. 17 of 1999 was issued on May 17, 1999, and it did not enter into force until October 1, 1999.

** After the exposure of the historical development of commercial law, this book will analyze in detail the recent provisions of the Commercial Code No. 17 of 1999, in the following chapters.

(1) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 17.

Part1

COMMERCIAL ACTS- MERCHANT

This part will discuss the theory of commercial acts, including the foundation of commercial law, commercial acts, and rights and duties of merchants as following:

- **Chapter one: Basics Of Commercial Law**
- **Chapter two: The General Theory of Commercial Acts**
- **Chapter three: Merchant- Conditions, Terms, and Obligations**

Chapter one

BASICS OF COMMERCIAL LAW

▪ Definition of Commercial Law:

Before trying to define the concept of Commercial Law, we need to examine its content, and the part of legal reality which it regulates. First, we can say that Commercial Law deals with legal relationships between individuals and this is why it is included in Private Law.[(1)]

Taking this into account, the delimitation of commercial issues has a special meaning in Egyptian legislation because we have two different codes: the Commercial Code and the Civil Code, which include rules concerning Private Law.

This fact forces us to identify the scope of each one of them properly if we want to choose the right rule to be applied when dealing with relationships between individuals.

However, the distinction between civil and commercial issues is not easy, especially when we find that there are certain legal transactions and contracts, such as purchases, societies, deposits, etc., which are regulated in both codes.

It means that the content of each code cannot be used to delimit what is civil and what is a commercial issue. In order to make this distinction, we will have to study the historical evolution of Commercial Law so as to discover which parts of legal reality it regulates nowadays.

Jurisprudence has defined commercial law *as a set of legal rules regulating so-called commercial transactions, which are applied to a certain category of people called merchants* (traders).

(1) Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

This is what was enshrined in the first article of the Commercial Code No. 17 of 1999, which states that "the provisions of this law apply to commercial businesses and to every natural or juristic person for whom the status of a merchant is established."

It is clear from this text that the provisions of the Commercial Code apply to a certain group of businesses, which are commercial businesses, and to a certain category of people, who are merchants.

In fact, the legal meaning of the word commerce differs from its economic connotation. While the word commerce is intended from a legal point of view as the circulation and distribution of wealth, production and industrial processes, the economic connotation of the word commerce is limited to the circulation and distribution of wealth.[1]

Commercial law rules commercial activity solely as a result of economic realities and practical factors that necessitate the submission of a certain group of people (merchants) and a specific form of transaction (commercial). Commercial transactions are handled by a separate legal entity and are anchored on two major pillars: speed and credit.

▪ Characteristics of Commercial Law:

A. Rapidity:

Because goods, products, and services are either quickly perishable and their prices vary, or people may miss the opportunity to sell them, rapidity is one of the most essential advantages of commerce. Therefore, commercial law attempts to cope with these fast-paced operations. Consequently, commercial law adapts its norms to suit this rapidity to satisfy traders' need to exchange money and goods.

(1) Dr. Jamal al-Din Awad - Commercial Law, op cit, p 19.

Perhaps the principle of freedom of proof in commercial matters is one of the most important applications of speed in commercial law. While freedom of proof is severely restricted in civil and other matters, commercial matters are characterized by freedom of proof in general unless a contrary rule is stated (there are some exceptions).[1]

B. Credit:

Credit means that merchants feel confident in their commercial transactions. The merchant obtains the goods even without paying for them, and the seller gives him a deadline to pay his debts. Traders are usually keen on implementing their obligations on time in order to preserve this confidence and their commercial reputation.[2]

Due to the importance of credit, it must be effectively protected. The collapse of credit leads to the collapse of trade as a whole, because the failure of a merchant to implement his obligations may limit the implementation of his creditors' obligations.

Therefore, commercial law established two important rules for credit protection:

- The presumed solidarity principle in commercial matters, as opposed to civil matters.
- Bankruptcy rules in case the merchant stops paying his debts.

C. Protection of public economic order and the apparent situation in commercial transactions:

Although the original principle is freedom of industry and trade, the legislature seeks to regulate commercial transactions

(1) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 13.
(2) Ibid, op cit , p 15.

to establish a general economic system, such as regulating the establishment of companies, controlling the prices of some basic commodities, and governing the practice of some commercial activities, etc. Commercial law is generally concerned with the external aspects of commercial practices without delving into their innermost aspects in order to maintain the principles of rapidity and credit.[1]

▪ The scope of Commercial Law

The rules of commercial law have their own autonomy and independence, this is attributed to the nature of commercial transactions and what the commercial environment requires of these transactions to comply with special provisions other than those governing the transactions of ordinary individuals.

The question arises in this regard about the scope that determines the provisions of commercial law. In other words, when do the provisions of commercial law apply? Do its rules apply in every case in which there is a business, regardless of the capacity of the person doing it? Or do its provisions apply to merchants only in the context of their commercial craft?

In fact, defining the scope of commercial law application is contested by two theories: the objective theory and the personal theory. We will detail each of the two theories and then present the attitude of the Egyptian legislature in the Commercial Code No. 17 of 1999.

First-The Personal Theory:

Proponents of this theory claim that commercial law applies only to traders. Thus, the criterion for applying the provisions of commercial law is the person in charge of the business, which means that the commercial law does not apply to non-traders even if they do business.

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[1] Dr. Jamal al-Din Awad - Commercial Law, op cit, p 18.

The trader's transactions are subject to the provisions of commercial law even if they are originally civil transactions. Through this theory, a commercial act can be defined as that practiced by a trader. Although this theory is simple and easy to apply, it is not away from criticism.(1)

On the one hand, according to this theory, the question arises about the person acquiring the status of a merchant and how this can be done.

If the answer is that he/she is the one who conducts commerce, then the question comes back and asks itself again. When is business considered a commercial act? If it is done by a merchant, we go around in a vicious circle.

On the other hand, if the proponents of this theory define commercial acts, then this is arbitrary and does not take into account the developments in this field.

In addition, this theory expands the application of the provisions of commercial law, as it applies to all the work carried out by the merchant, even if it is a civil business, such as buying furniture for his home.

It also narrows the application of the provisions of commercial law when it does not allow the application of its provisions to non-merchants, even if they practice a business.(2)

Second-The Objective theory:

Proponents of this approach argue that commercial law applies to all commercial work, regardless of whether the person executing the work is a trader or a non-trader.

(1) Dr. Tharwat Ali Abdel Rahim, Egyptian Commercial Law , op cit, p 30

(2) Goode, Royston Miles, and Mc Kendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Although this theory is differentiated by the simplicity whereby the scope of commercial law can be defined, it has not been beyond criticism.

As the legislature determines the commercial acts to which the commercial law applies if they are practiced, this is done arbitrarily and does not help the commercial law provisions keep track of evolution.

This approach, on the other hand, limits the extent of application of commercial law rules, since there are rules for contracting that are conducted as a matter of professionalism, as well as specific rules for merchants, such as commercial registers. These provisions must be expressed and followed.

** It is obvious that both theories are unable to determine separately the scope of application of commercial law provisions, hence the jurisprudence emphasizes the importance of integrating the two theories to define the scope of commercial law provisions. Some believe that the study of commercial law should be based on commercial projects to avoid establishing a specific standard for business or a specific theory.

It should be an economic law that governs all aspects of economic activity, this law will include general principles that apply to all economic transactions.

- **The Repealed commercial law of 1883:**

The Egyptian Commercial Code (1883) and the French Commercial Code (1807) adopted the definition of the merchant in the first article as "the one who practices commercial business and takes it as his usual craft". As a result of the historical circumstances under which it was issued and the merchant sect's control, it can be said that the previous Egyptian

Commercial Code of 1883 was influenced by the personal theory than the objective theory.[1]

▪ The Egyptian Commercial Code No. 17 of 1999:

In Commercial Code No. 17 of 1999, the legislature avoided many of the drawbacks of the repealed Code. After listing examples of commercial businesses in Articles 4, 5, and 6, it was decided in Article 7 that examples are only for example.

Thus, it is a commercial activity "every work that can be compared to the works mentioned in the previous articles due to the similarity in characteristics and objectives."

Furthermore, the legislature explicitly stated, within the scope of commercial law implementation, the personal theory, as the first article of Commercial Code No. 17 of 1999 stated that "the provisions of this law shall be applicable to commercial businesses, and to every natural or juristic person for whom the status of a merchant is established."

It is evident that Commercial Code No. 17 of 1999 combined the objective and personal doctrines. By thoroughly considering its provisions, we find that it used samples of businesses as an example rather than a limitation. [2]

Additionally, the qualifications that a natural or juristic person must meet to obtain the status of a merchant and the obligations that the merchant must follow have been specified. The legal justification for this approach is to enable commercial law to catch up with modern developments and attain the required flexibility.

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(1) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 12.

(2) Dr. Tharwat Ali Abdel Rahim, Egyptian Commercial Law , op cit, p 33

▪ Sources of Commercial Law:

Article 2 of the Commercial Code No. 17 of 1999 stipulates that:

1. *The provisions of the agreement between the contracting parties shall apply to commercial matters. If there is no commercial custom or commercial custom, the provisions of Civil Law shall be applied.*
2. *It is not permissible to apply the agreements between the contracting parties, or the rules of commercial custom, or commercial customs whenever they conflict with public order in Egypt.*

It is clear from this text that the sources of commercial law are divided into two types: primary sources and secondary sources.(1)

A. The primary sources:

1. The statute:

The Egyptian Commercial Code, issued on May 17, 1999, is the first source of Egyptian commercial law. The judge must apply its provisions to commercial disputes, and individuals must know its provisions so that their agreements and obligations do not conflict with its peremptory norms.

The new Egyptian Commercial Code, No. 17, its first article stated that it would repeal the Commercial Code issued by the High Order on November 13, 1883, with the exception of the first chapter of Part Two, which dealt with private companies. Also, the statute of 1999 repealed Article 337 of the Penal Code in October 1, 2000, and any provision that contradicts the provisions of this new law.

(1) Dr. Jamal al-Din Awad - Commercial Law, op cit, p 25.

This Code has been promulgated in the Government Gazette and is enforced in October 1, 1999.

It was necessary for the Egyptian legislature to issue this new statute in order to keep pace with the developments in society in the field of economic reform, reconstruction, and development.[1]

In order to fit the prevailing political and economic reality in Egypt, especially after the issuance of the Maritime Trade Law No. 8 of 1990 and the Arbitration Law in Civil and Commercial Matters No. 27 of 1994, it was necessary for the Egyptian legislature to complete the reform of commercial legislation, which is one of the pillars of economic reform, by issuing Commercial Code No. 17 of 1999.

There is no doubt that the Egyptian economy has witnessed a major transformation in line with the international policies that are heading towards a market economy, and the consequent economic liberalization.

That resulted in doubling the volume of investments and doubling the volume of commercial transactions, whether between citizens within the state or between Egyptians and foreigners within the scope of international trade.

Therefore, it was necessary to deal with the great transformation that occurred in the Egyptian economy through legislative reform, which included many laws related to trade, in order to create the necessary economic climate, as it is inconceivable to attract capitals to the Egyptian market even without the presence of statutes that help in overcoming the challenges that arise.

Statute No. 17 of 1999 includes some provisions on some of the matters produced by development in general, whether

[1] Ofiicial Press, Egypt: Commercial Law. N.p., Rector Press, Limited, P 187.

scientific or economic, such as the technology transfer contract, the contract for the deposit of goods, and the supply contract, *inter alia*.

Because the framers of Commercial Code No. 17 of 1999 recognized the importance of credit, particularly in economic and commercial interactions, the legislature reformed some credit-related norms and principles.

Whereas the repealed commercial framers failed to legislate rules for bank operations, considering them commercial acts referred to in the second article.(1)

The Egyptian Commercial Code of 1999 contains 722 articles divided into five main sections as follows:

- **Commerce in General:**

This section deals with the theory of commerce and the merchant in terms of the conditions for acquiring the status of the merchant and his obligations, such as book-keeping and registration in the commercial register, then organizing the provisions of sales as well as regulating the general features of the stock market.

- **Obligations and Commercial Contracts:**

The legislature has drawn up articles entitled General Provisions, which include regulating and governing the general principles of commercial obligations. Then it dealt -in seven chapters- the most important commercial contracts, which are the technology transfer contract, the commercial sale contract, the commercial mortgage contract, the deposit contract in public warehouses, the commercial agency contract, the brokerage contract, and the transport contract.(2)

(1) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 22.
(2) Dr. Jamal al-Din Awad - Commercial Law, op cit, p 62.

- **Bank Transactions:**

The legislature has dealt with the operations that banks conduct with their customers, which are: money deposit, checks, safe-deposit box rental, mortgaging commercial papers, bank transfers, opening of credit, Letter of Credit (L/C) Documentary credit, discounting commercial papers, letter of guarantee, and current account.

- **Commercial Papers:**

This section is divided into four chapters, dealing with the provisions of the bill of exchange, promissory note, and check, and sets common provisions for commercial papers of all kinds.

- **Bankruptcy:**

This topic has been discussed in ten chapters, presenting the decree of bankruptcy, the people who manage the bankruptcy, and the effects of the bankruptcy, whether in relation to the debtor, the creditor, or the owners of secured debts, corporate bankruptcy, commercial rehabilitation, preventive composition, and bankruptcy crimes.

In terms of legislation that complements the Commercial Law, there are several legislations that were enacted after the former Commercial Code of 1883 and are still in force after the issuance of Commercial Law No. 17 of 1999, as long as they do not contradict its provisions.

Among the most prominent complementary legislations to Commercial Law No. 17 of 1999:[1]

- *Law No. 11 of 1940 on the Sale and Mortgage of Commercial Stores.*

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

- *Trade Names Law No. 55 of 1951.*
- *Accounting Documents Law No. 388 of 1953.*
- *Commercial Register Law No. 34 of 1976, as amended by Law No. 98 of 1996 .*
- *Law No. 159 of 1981 regarding joint-stock and limited liability companies and limited liability companies, as amended by Law No. 3 of 1998.*
- *Law No. 146 of 1988 regarding money transfer companies.*
- *Law No. 203 of 1991 regarding the public business sector.*
- *Law No. 95 of 1992 regarding the capital market.*
- *Law No. 95 of 1995 regarding financial leasing.*
- *Law No. 8 of 1997 regarding investment incentives.*
- *Intellectual Property Rights Protection Law No. 82 of 20.*

2. Commercial and trade customs:

Although commercial law has been codified, the commercial custom still has a complementary role in the commercial domain, as it fills the deficiencies in commercial legislation, besides its interpreting role of the provisions of commercial law.

Commercial custom is the set of provisions that merchants are used to applying to their transactions with their feeling of obligation.

It is a prerequisite to establish a Commercial Customary Rule to contain two elements (material element and moral element). The material element of a custom to be valid, it should be in continuous practice. It must have been practiced without any kind of interruption. Long intervals and disrupted practice of a custom raise doubts about the validity of this custom.

A custom must be exercised as a matter of obligation (moral element). In other words, one must believe that practicing this behavior is compulsory according to the law.[1]

The customary commercial rule that just comprises the material element without the moral element is commonly called a commercial habit.

It is what merchants are accustomed to do, and the application of the commercial habit is not prohibited unless expressly stated in the contract or one of the contracting parties is unaware of the nature of this habit.

Examples of commercial habits are the percentages of tolerance in case the quantity of the goods is less than what was agreed upon in the sales contract, packing or stacking the goods.

The application of a commercial custom by the court is subject to the control of the Court of Cassation. In other words the Court of Cassation can investigate whether the inferior court has correctly interpreted the trade custom or not.

.Prior to the enactment of Commercial Law No. 17 of 1999, a heated debate erupted in jurisprudence regarding the arrangement of the official commercial law sources. If there is a conflict between the provisions of civil law and commercial customs, or between the agreements of individuals and the rules of commercial law, whichever one shall apply.[2]

The Commercial Code No. 17 of 1999 resolved this matter, as it stipulated in its second article that "trade articles shall be subject to the provisions of the agreement between the contracting parties.

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(1) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 72.
(2) Dr. Jamal al-Din Awad - Commercial Law, op cit, p 53.

If this agreement does not exist, the provisions of this law or other laws relating to commercial materials, then the rules of commercial custom and commercial habits shall apply. If there is no commercial custom or commercial habit, the provisions of Civil Law shall be applied.

It is not permissible to apply agreements between the contracting parties, nor the rules commercial customs when they conflict with the public order in Egypt. "

It is clear from this that the peremptory norms related to public order in Egypt come at the top of the list of official sources of commercial law, whether these norms come from commercial law, complementary legislations, or civil law.

The agreements between the contracting parties that do not conflict with the public order in Egypt come in second place. The interpreted commercial rules, and commercial customs that do not conflict with the public order in Egypt. The interpreted civil texts come third, fourth, and fifth respectively.[1]

3. Parties' agreement (contract):

According to the text of Article 2 of the Commercial Code No. 17 of 1999, the above-mentioned, the parties' agreement is the main source of the Commercial Law.

This is an implementation of the rule that the contract is the law of parties (Article No. 147 of the Civil Code), given that the conclusion of contracts and deals is the external and main aspect of commercial activities.

It is stipulated for the implementation of the parties' agreement that it does not contradict the rules of public order and morals in Egypt. It is known that these rules aim to preserve the basic components of society, and it is not permissible for any

(1) Dr. Tharwat Ali Abdel Rahim, Egyptian Commercial Law , op cit, p 43.

individual, merchants or non-traders, to agree to anything that contradicts them.

Accordingly, when there is an agreement between the two parties that does not violate the rules of public order and morals in Egypt, the judge must pass the contract on the dispute before him.

There is no doubt that making the agreement of the contracting parties is the main source of the provisions of commercial law to raise the status of the will and to support the principle of its authority.[1]

4. Civil Law:

Civil law is the major branch of law that is contained in the Civil Code issued by Law No. 131 of 1948, which came into force on October 15, 1949, as well as its complementary legislations. It is known that the provisions of the Civil Code are the general Sharia for transactions, regardless of the nature of the transaction or the capacity of the conductor.

Hence, the provisions of the Civil Code are applied to civil and commercial transactions, whether the person involved is a merchant or not.

If, in relation to a commercial matter in dispute, there is lacuna in the contract or in the commercial legislations, and if there is no trade customs, the judge must apply the civil code, which is the general law with regard to all private transactions.[2]

The difficulty arises when there is a discrepancy between commercial law provisions and civil law provisions, and the matter is not devoid of one of the following assumptions:

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

[2] Dr. Jamal al-Din Awad - Commercial Law, op cit, p 36.

The first hypothesis: the conflict between the peremptory civil norm and the interpreting of commercial text. It is unavoidable in this case that the civil norm should prevail over the interpreted commercial norm.

The second hypothesis: the conflict is between a peremptory civil text and a peremptory commercial text, or an interpreting civil text, or an interpreting commercial text.

In this assumption, the commercial text is presented over the civil text. In the implementation of the rule that the specific rule restricts the general, and since the commercial text is a specific provision and the civil text is a general provision, the commercial text must be applied first. The same applies if the commercial text is later in its issuance than the civil text.

- ## The secondary sources:

Secondary sources are ones that a judge is not required to apply, unlike primary sources. However, the judge is free to use them, just to guide him to resolve and understand the case. These sources are represented in the judiciary and jurisprudence.

1. Decisions of the Judiciary:

The judiciary's decision is the set of rulings issued by the judges while they are in the process of adjudicating the disputes before them. The role of the judiciary in countries that adopt a dual judicial system (Statutory Law Countries) differs from that in countries that adopt a unified judicial system (Common Law Countries).

For Statutory Law Countries, the role of the judge is limited to interpreting the legal rules and applying them to the dispute before him/her. Since legislations and statutes prevail, the judiciary is not considered a source of law.(1)

As for Common Law countries, the judge has a creative role whereby he expands the scope of the application of the law. The judge issues rulings on new legal issues of special importance that have not been resolved in the law that is called judicial precedents. Courts are bound by these precedents in their judgments that may be issued in the future, provided that they are issued by higher courts or equal ones.(2)

2. Jurisprudence:

Jurisprudence means the writings and opinions of jurists specializing in studies of commercial law provisions. Through these studies, jurists can analyze and criticize legal articles.

Thus, lawmakers may take the scholars' opinions into account while they are in the process of enacting or amending commercial legislation.

No one can ignore the importance of jurisprudence in the evolution of commercial law rules and its follow-up to the continuous developments in commercial life. In spite of this, the opinions of jurists remain a source of interpretation of the law that the judge does not abide, if he/she wants to use them to understand and interpret the legislative texts.

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(1) Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 198.

(2) Dr. Ali Zinni - Assets of Commercial Law, op cit , p 36.

Chapter Two

THE GENERAL THEORY OF COMMERCIAL ACTS

Commercial Acts Distinction Standard:

It is possible to define the commercial act as the action related to mediation in the circulation of wealth aiming at speculation and realizing a profit on the condition that it takes the form of an enterprise when stipulated.[1]

In Article 6 of the Commercial Code, the legislature was satisfied with a legal census of commercial acts. This census was not exclusively, but rather for example. Examples of Commercial Acts were mentioned in arts 4,5,5,7 and 8.

Article 4 of the Commercial Code No. 17 of 1999 listed what is considered as a commercial Acts, stating that it is "The following works shall be considered commercial activities:

A. Purchase of movables whatever their kind with the aim of selling or leasing them as they are, or after shaping them in another form, and also selling or leasing these movables.
B. Renting movables with the aim of leasing them, and also leasing these movables.
C. Founding trading firms.

Article5: The following activities shall be considered trading works in case they are exercised by way of the profession:

1. Supply of goods and services;
2. Industry;
3. Land and inland water transport;
4. Trade agencies and brokerage whatever the nature of the operations exercised by the broker;
5. All kinds of insurance;
6. Bank and money exchange transactions;
7. Warehousing the goods, the means of transport, the crops, etc.

(1) Dr. Tharwat Ali Abdel Rahim, Egyptian Commercial Law , op cit, p 45.

8. Publishers houses and offices operating in the fields of publication, printing, photocopying, typewriting, etc, translation, broadcasting, televising, Journalism, news transmission, postal activities, and communications, as well as publicity and advertisement
9. Commercial exploitation of computer software, and space
10. transmission via satellites.,
11. Prospecting operations of natural resources, such as mines, quarries, oil and gas explorations, etc.
12. The poultry industry and livestock breeding and others, with the aim of setting them.
13. Building, construction, restoration, modification, demolition, or painting contracts and public works contracts.
14. Construction, purchase, or rental of realties with the aim of selling or leasing them complete or divided into apartments, rooms, or administrative or commercial units, whether furnished or unfurnished.
15. Tour and travel offices export and import offices, customs release offices, employment offices, and halls for public auction sales.
16. Hotels, restaurants, coffee shops and Coffee, acting and cinema works, circus works, and other public entertainment and amusement Sites.
17. Distribution of water, gas, electricity, and other energy sources.

Article 6: All works connected with maritime or air commercial navigation shall be considered a commercial activity, Particularly the following:

A. Building, repair, and maintenance of Ship or aircraft.

B. Buying, selling, leasing, or renting ships or aircraft.

C. Purchase of supplies, provisions, or equipment for ships or aircraft.

D. sea or Air transport.

E. Stevedoring, loading, or unloading operations.

F. employing navigators, pilots, or other workers on ships or aircraft.

Article7: All works can be compared analogously to the works in the foregoing articles due to likeness in qualities and purposes shall be considered commercial works.

Article 8:

1. Works that are carried out by the trader for business affairs connected with his trade shall be considered commercial works.
2. All work carried out by the trader shall be considered related to his trade, unless otherwise established.

By extrapolating previous legal texts, it is clear that the legislature has adopted a policy of listing commercial acts, as was the case under the repealed Code of 1883.

However, the new provision by the legislature in Commercial Code No. 17 of 1999 has resolved the dispute over the nature of the legislative census of commercial acts, whether this census has been mentioned, for example, or exclusively.

That is by approving it in accordance with Article 7 of the aforementioned Code - the possibility of adding other commercial acts if they are similar in the characteristics and objectives of the businesses included in the texts.

In addition, the legislature approved the theory of commercial acts by accessory in Article 8 of the Commercial Code No. 17 of 1999 after it has provoked a jurisprudential controversy for its lack of legislative support.

Based on the foregoing, this book will present the determination of the distinctive criterion for commercial work.

Based on the above, this research will analyze the definition of the distinctive standard of business. If we reached a determination of this standard, the results of the distinction between commercial and civil acts would be presented as follows:

Theories On Commercial Acts Distinction Standard:

Law-makers did not define what constitutes a commercial or civil work, instead citing a few examples of what he considered commercial work. As a result, we'll examine various approaches that have attempted to establish standards based on the distinction between commercial and civil work:

- **Speculation Theory:**

According to this theory, a work is considered commercial if it is intended for profit speculation. It is a commercial work if the purpose of the activity is to make a profit. If it isn't, the work is considered civil. Since there is no profit, voluntary works such as acts of charity and charity, as well as, are not regarded as commercial works.

What is inaccurate with this theory is that there are several commercial acts that aim to make a profit, despite being civil, such as the work of lawyers, engineers, doctors, and other professionals. Moreover, there are also commercial acts that do not aim to make a profit, despite being commercial, such as the operations of commercial papers.[(1)]

- **Trading Theory:**

According to this theory, it considers commercial act if it is related to the intermediary in the circulation of wealth from the

[(1)] Dr. Ali Hassan Younis, Commercial Law, Dar Al Fakrlabi, 1979, p 28.

time it leaves the hand of the producer to the wholesaler to the retailer down to the consumer.

Every action that aims to move wealth and helps activate its movement is a commercial business. As for businesses in which there is no circulation of wealth or mediation, they are not considered commercial businesses.

Consequently, consumer works are excluded from the framework of this theory and are therefore considered civil works because there is no hand-to-hand transmission in them.

However, it has been criticized as there are businesses that the opinion has settled as commercial, although there is no circulation of wealth, such as mines (extractive industries) and business offices (construction agencies).

- **Project theory:**

This theory is based on taking the character of the trade profession as a profession. It is a reference to the personal theory previously mentioned. However, it adds that any business that uses capital, machinery, and workers in the form of a project is considered a business because there is an element of repetition or professionalism in it.

What is inaccurate with this approach, however, is that there are activities that are recognized to be commercial, even if they occur individually, once, and without a planned aim, such as buying for the purpose of selling for a profit.[1]

The Legal Framework Of Commercial Transactions:

Business activity is based on the elements of credit and rapidity. In order to activate these two elements in commercial

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, Dar Al Nahda, 1986, p 14.

life, the legislature subjected commercial transactions to a special legal system that differs from that to which civil transactions are subject.[1]

We will address the legal rules aimed at activating the credit element and those aimed at activating the speed element, as follows:

A. Legal rules on the credit component:

The functioning of the credit element, which is the essence of commercial transactions and one of the pillars required by their nature, necessitated that the legislature lay down the regulations that would make agreements and implementation much simpler. This is by strengthening the creditor's guarantees and cruelty to the debtor who fails to implement his obligations at the time they are due.

These rules aimed at achieving the credit component are as follows:

1. Joint liability of debtors:

Joint liability of debtors means - in this regard - that if there are several debtors, the fulfillment of the debt by one of them entails the discharge of the remaining debtors. According to Article 281(1) of the Civil Code, in the event of joint debtors, the creditor may claim the debt jointly or severally. However, as against each other, the debtors have an obligation of contribution which enable the party who has paid to sue the others for payment of their shares in the debt.

According to art. 279 of the civil code, joint liability of debtors is not presumed. It can only exist by an explicit clause in a contract or by a provision of the law.

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

With regard to commercial debts the rule is quite different. According to art. 47 of the code of commerce, if there are two or more debtors of a commercial debt, they will be jointly liable for the payment of the debt, unless such joint liability is excluded by the contract or by the law. The same rule applies in case of multiple guarantors of a commercial debt.

Perhaps the prudence envisioned by the lawmakers in the principle of assuming joint liability among debtors of a commercial debt if they are several is to support credit. Its adoption ensures that creditors obtain their rights, and it benefits debtors by making things simpler to obtain what they seek.

2. Penalty interests (APR):

Article 226 " when the object of obligation is the payment of a sum of money of which the amount is known at the time when the claim is made, the debtor shall be bound to pay to the creditor as compensation for the delay interest of 4% in civil matters, and 5% in commercial matters.

Such interest shall run from the date of the judicial claim if the agreement or commercial custom does not specify another date for its validity, and this is all unless the law provides for another."

This article makes it evident that the interest determined in commercial cases differs from that determined in civil matters, whether in terms of the interest percentage or the date of the judicial claim.

Firstly: In terms of the interest percentage, there **are two types of interests:**

The first type: the legal interests, which are stipulated by the Civil Code which differ in price in commercial matters than in civil matters by 5% and 4% respectively. The reason for the difference in the interest rate is that investing money in

commercial matters achieves more profit than using it in civil matters.

The second type: It is the agreed interests, which are agreed upon by the two parties, and the legislation has left to their will the freedom to determine its price, provided that it does not exceed 7% (227 of the Civil Code), both in commercial and civil matters. If the agreement has violated this maximum percentage, the agreement would have been void and null, with the exception of issues related to banking transactions.

Secondly: In terms of the date of claiming interest, **interest in civil matters applies from the date of the judicial claim**, i.e. from the time the creditor files a lawsuit in which he demands a civil action to implement his obligations unless there is an agreement between the two parties or the custom is established to the contrary.

As for commercial matters, the interest applies from the time of the maturity of the debt or the date stipulated by the agreement or the law, according to Art 64 of the Commercial Code No. 17 of 1999, which states that “the return on delay in repaying commercial debts shall be due as soon as they become due unless the law stipulates or otherwise agreed…."

The general rules stipulate that in civil matters it is not permissible to charge interest on the suspended compound interest in excess of the capital (Art/232 of the Civil Code). On the contrary, in commercial matters, compound interest is permissible, and its total may exceed the capital, as long as commercial custom requires that (Art/64 of the Commercial Code).

3. Grace limit (grace period):[1]

[1]Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Grace period means granting the debtor judge a reasonable period or deadlines within which to carry out his obligation. The general rules stipulate that the judge may grant the debtor a term if he fails to pay his debt on its due date.

The judge may also grant him more for a term or order the installment of the debt on the debtor in civil matters. Provided that this period does not cause serious harm to the creditor of this postponement, or there is a provision in the law that prohibits the judge from granting the debtor this period (Art/346 of the Civil Code).

In contrast to the case for a debtor with a commercial debt, the judge is cannot give the debtor a period of time to pay it or in installments except when necessary and provided that no serious harm is caused to the creditor (Art/59 of the Commercial Code No. 17 of 1999).

For the same reason, the judge is prohibited from giving a grace period to pay the value of the commercial paper or to take any action related to it, except in the cases and within the limits stipulated by law (Art/547 of the Commercial Code No. 17 of 1999).

In general, the judge must consider this time limit in commercial cases. Perhaps the insight envisioned by the legislature is its desire to secure credit in the case of dealing with commercial papers, given what these papers require in terms of speed of circulation and speed of implementation of its obligations.

4. Bankruptcy:

Bankruptcy is a legal system that applies to a specific category of persons, namely, merchants. It is intended to collectively liquidate the funds of the debtor, the merchant who has stopped paying his commercial debts, with a view to

distributing them to the creditors as a division of debts. Article 550/1 of Code No. 17 of 1999 stipulates that:[1]

"It is considered in the event of bankruptcy that every merchant is obligated under the provisions of this law to keep commercial accounting documents if he stops paying his commercial debts due to the disruption of his financial business."

Given the seriousness and severity of the bankruptcy system, it is required certain conditions for the implementation of the bankruptcy system, namely to be a merchant, stopped paying his commercial debts, provided that this cessation foretells of a troubled financial position and severe distress with which the merchant's credit is shaken, endangering the rights of creditors.

Accordingly, the implementation of the bankruptcy system depends on the nature of the debt that the merchant stopped paying, as this debt is required to be commercial.

That highlights the importance of defining the commercial nature of the work on which the debt arose. In addition, bankruptcy does not apply only to the merchant, and the description of the merchant is linked in turn to the renewal of the nature of the works that the merchant conducts and the necessity of his professionalism for business.

Joint, penalty, grace, bankrupty,

B. Legal rules on the rapidity component:

We've already discussed how the Commercial Law includes provisions to ensure the implementation of the credit element, as well as other provisions targeted at attaining the element of rapidity. It is because the two significant elements of commercial activity are rapidity and credit.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Setting special rules for notice, jurisdiction, freedom of proof, expedited enforcement, possessory pledge, and prescription represents the implementation of the element of speed. (1)

1. The legal notice:

The notice is a formal written requirement that is intended for the creditor to warn the debtor to fulfill his position as a defaulter in fulfilling his obligation. The general principles require that the debtor be noticed by warning him to pay by County Court bailiff (court registry). (Art/219 of the Civil Code)

Otherwise, in commercial matters, the debtor shall be given an official notice or a registered letter with acknowledgment of receipt. In urgent cases, the notice or notice may be by telegram, telex, fax, or other quick means of communication. (Art / 58 of the Trade Law No. 17 of 1999.

The rationality of enabling the creditor to choose the method by which he notifies the debtor (formal warning - telex - fax.....) is what the nature of commercial transactions necessitates in terms of the speed with which they are completed.

2. Judicial jurisdiction:

With regard to determining the competent judicial authority to settle disputes within the scope of private law relations, countries are divided into two groups:

The first sect adopts **the dual judicial system**, and the second sect adopts **the unified judicial system**. The dual judicial system means that there are two types of courts, civil courts specialized in handling civil disputes and commercial

(1) Dr.. Hamdi Abdel Rahman and Dr. Khaled Hamdy - Proof of Compliance in Civil and Commercial Matters - Legal Library - 1996 - p 14.

courts specialized in handling commercial disputes. As for the unified judicial system, it means the existence of a single judicial body, which is the civil courts, which are competent to hear both civil and commercial disputes. [1]

The Egyptian legislature adopted the unified judicial system concerning commercial disputes, as there are no commercial courts in Egypt besides civil courts. There are civil and commercial Circuits within the civil courts, and this division is merely a distribution of administrative work within these courts.

Nevertheless, the Egyptian legislation has established two District Commercial Courts in Cairo and Alexandria, which are competent to consider commercial and partial disputes, while the other District courts, which are located in the rest of the governorates, are competent to hear civil and commercial disputes alike. In some cases, Economic Courts are competent to hear commercial cases for instance in technology transfer, commercial agency, banking operations, bankruptcy, and preventive composition cases.

With regard to local jurisdiction, the general rule in this regard is that the plaintiff seeks after the defendant. Accordingly, the court competent to hear the dispute is the court in whose jurisdiction the defendant’s domicile is located.

Conversely, in commercial matters, the defendant's court is the competent court. This court where the whole agreement was formed or part of it in its circuit, or the court where the agreement must be implemented has jurisdiction (Art/55 of the Civil and Commercial Procedures Law). Perhaps the purpose of allowing the plaintiff to select the court competent to hear the commercial dispute is to make the path of litigation easier for the latter.

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

3. Freedom of Evidence in Commercial Disputes:

The general rules of evidence stipulate that it is not permissible to prove actions whose value exceeds 1000 pounds, or actions whose value is not specified, except in writing. Similarly, except in writing, it is not permitted to prove anything that contradicts or exceeds what is included in written evidence.(1)

In contrast, in commercial matters, the rule is freedom of proof, meaning that proof is permissible by all legal methods, as the first and second paragraphs of Article 69 of the Commercial Code No. 17 of 1999 "stipulates that:

1- Commercial obligations, whatever their value, may be proven by all means of proof unless the law stipulates otherwise.

2-With the exception of cases in which the law requires evidence in writing in commercial articles, it is permissible in these articles to prove the opposite of what is contained in written evidence or prove what exceeds this evidence by all means."

Accordingly, it is permissible to prove business transactions using all means of proof (witness testimony - presumptions.....), and it is also permissible to use all means of proof to prove the contrary of what is included in written evidence or what surpasses it.

The determination of the rule of freedom of proof in commercial transactions finds its justification in the nature of these transactions and the speed they require in their completion. Furthermore, the merchant's enormous number of transactions makes it difficult for him to provide written proof every time the value of the transaction reaches 1000 LE.(2)

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(1) Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 141.

(2) Dr.. Hamdi Abdel Rahman and Dr. Khaled Hamdy - Proof of Compliance in Civil and Commercial Matters - Legal Library - 1996 - p 20.

In addition to the foregoing, Article 21 of Commercial Code No. 17 of 1999 required merchants whose capital invested in trade exceeded 20,000 pounds to follow Book-keeping Procedures that are required by the nature and importance of his trade, specifically the General Journal and the inventory book.

These books play a significant role in proving commercial transactions, as stated in Article 28: "The court may, upon request of the Litigant or on its own motion, force the merchant to submit his books to it in order to extract what is pertinent to the dispute before it. The court may review the books themselves or through an expert, it appoints for that purpose."

Transaction books are tool of evidence that the legislature has allowed the client to invoke against other merchants, as well as making these books a legal proof against them related to the date of the transaction, even if the date is not fixed.[1]

According to some, the use of commercial records to prove against the merchants is a breach of the general rules of proof. The general rules state that the person cannot create evidence for himself or against himself.

However, the rule of freedom of proof in commercial matters is not absolute.

The law required **writing** to prove some commercial contracts, such as the company contract, the ship purchase contract, the technology transfer contract, and the sale or mortgage contract of the commercial store. This is in addition to some commercial transactions that cannot be conducted without being written, such as commercial papers (bills, checks, promissory notes).

It should be noted that the origin is that the rules of evidence are not connected to public order. Thus, the parties

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

may expressly or implicitly agree that the proof in commercial articles should be in writing, in this case, the parties may not prove evidence other than in writing, such as the testimony of witnesses or presumptions.....etc unless there is an agreement or a provision in the law to the contrary. (Art/60 of the Evidence Code). In the absence of an express or implied agreement, both parties may prove a breach of writing in all manner of proof.

4. possessory pledge:

The pledge is commercial or civil depending on the nature of the debt guaranteed by the pledge. If the pledge is made as a security for commercial debt, it is a commercial pledge, and if the pledge is made as a security for a civil debt, then it is a civil pledge. However, it is agreed that the iv. the possessory pledge is always a commercial pledge, regardless of the nature of the debt it guarantees, i.e. it is equal to whether it is a civil or commercial debt. (1)

The possessory pledge means that pledge made as security for commercial debt, regardless of the capacity of the person who created it, i.e. whether he was a merchant or not a merchant. However, a commercial pledge is any pledge that is determined by movable money to secure a debt that is considered commercial to the debtor. Accordingly, the pledge is commercial if it is made as a security for a debt that is commercial for the debtor.

The commercial pledge is characterized by the simplicity of the execution procedures on the pledged money, which are completely different from those prescribed for the civil mortgage. The reason for this is due to considerations of the speed of commercial transactions.

Pledge procedures are summarized in the creditor Who fails to fulfill his debtor’s obligation on the due date by notifying

(1) Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 298.

him of payment and after five days from the date of the notification, submits a petition to judge of provisional matters in the court located in his circuit, asking him for permission to sell all or some of the pledged objects by public auction. This is in contrast to a civil pledge, where the creditor must obtain an enforceable final judgment in order to be able to execute on the pledged asset.

5. Expeditious execution:[1]

The general rules state that judgments issued in civil matters may not be executed until after they are final, that is after they have acquired the power of the res judicata (Art/287 of the Civil and Commercial Procedures Code).

On the contrary, in commercial matters, judgments are issued covered by expeditious execution, as Article 289 of the Civil and Commercial Procedures Code stipulates that “Expedited execution by force of the law of judgments issued in commercial matters, provided a guarantee is presented."

Expedited enforcement means the execution of the judgment despite its ability to be challenged by appeal or by protest despite the fact that an appeal has taken place in one of these two ways.

Perhaps the jurisprudence of the permissibility of implementing commercial judgments before they become final is what the nature of commercial transactions that requires flexibility and simplicity in order to achieve the rapidity, which requires ensuring the implementation of commercial judgments immediately after their issuance without procrastination.

6. Prescription :

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Prescription is a period determined by law, during which the creditor must claim his right. There is a conclusive legal presumption that the creditor is supposed to obtain his right as long as he does not claim it for the period specified by law. According to Article 374 of the Civil Code, a civil obligation is prescribed after fifteen years, unless the law stipulates otherwise.

As for the prescription of commercial obligations, Article 68 of the Commercial Code No. 17 of 1999 stipulates that “the lawsuits arising from the obligations of merchants towards each other and related to their commercial transactions are prescribed after seven years from the date of the date of fulfillment of the obligation unless the law stipulates otherwise, also after ten years starting from the final judgments issued in these cases."

It is clear from the foregoing that the prescription period for lawsuits arising from commercial obligations is shorter than similar lawsuits arising from civil obligations. According to the provision of the aforementioned Article 68, the prescription period for lawsuits arising from a commercial obligation are seven years and ten years in relation to the final judgments issued in those lawsuits.

The reason for the short period of prescription for cases arising from commercial obligations is the stability of legal centers in the commercial environment, as well as the requirements of speed imposed by the nature of commercial transactions.

Types Of Commercial Acts:

1. Single Commercial Acts:[1]

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Single Commercial acts are businesses that are considered commercial, even if they occur only once, regardless of the capacity of the person conducting them, whether a trader or not. These actions were mentioned in Articles 6 and 4 of the Commercial Code No. 17 of 1999.

Article 4 stipulates that:

The following works shall be considered commercial activities:

A. Purchase of movables whatever their kind with the aim of selling or leasing them as they are, or after shaping them in another form, and also selling or leasing these movables.

B. Renting movables with the aim of leasing them, and also leasing these movables.

C. Founding trading firms.

Article 6 of the same law stipulates that: "*All works connected with maritime or air commercial navigation*

shall be considered a commercial activity, Particularly the following:

A. Building, repair, and maintenance of Ship or aircraft.
B. Buying, selling, leasing, or renting ships or aircraft.
C. Purchase of supplies, provisions, or equipment for ships or aircraft.
D. sea or Air transport.
E. Stevedoring, loading, or unloading operations.
F. employing navigators, pilots, or other workers on ships or aircraft."

Based on the foregoing, the following businesses are considered sole commercial businesses:

A. Purchasing movables with the intention of selling or renting them and selling or leasing these movables.
B. Renting movables with the intention of leasing them, and also leasing these movables.
C. Incorporation of commercial companies
D. Works related to sea and air commercial navigation.

In the following section, we will analyze these elements :

A. Purchasing movables with the intention of selling or leasing them:[(1)]

It is clear from Art 4 of the Commercial Code that lawmakers have decided the commerciality of purchase with the intention of selling or leasing, and the commercial sale or lease subsequent to this purchase. It is logical, if the purchase, which is the means, is of a commercial nature, then it is not in any way imaginable that the sale, which is the end of a civil nature.

Accordingly, in order for the purchase with the intent of selling or leasing to be considered a commercial act, the following conditions must be met:

- There should be a purchase.
- The purchase is made on movable property.
- The purchase was made with the intention of selling or leasing.
- There is an intent to make a profit.

The First Condition: Purchase:

Purchasing means owning a thing for a consideration, whether it is in exchange for cash, any amount of money, or in-kind, any exchange of something for something else, which is what is called barter. If a person owns the thing for free, i.e. by

(1) Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

means of purchase such as a gift, will, or inheritance, and then sells it, then his work is considered civil because the sale was not preceded by a purchase.

Based on that, it is outside the scope of commercial business and is considered civil business because it is not preceded by purchase, the following businesses:

- **Agricultural production:**

Article 9 of Trade Law No. 17 of 1999 stipulates that:

"*It is not considered a commercial act for a farmer to sell the products of the land that he cultivates, whether he is the owner of it or merely a usufructuary."*

It is clear from this text that agriculture and all related activities are considered civil work, and it is equal in that the farmer owns this land or his right is limited to the mere use of it. The agricultural work includes all the work necessary for the exploitation of agricultural lands, such as purchasing seeds, fertilizers, plowing machines, irrigation ..... etc.

As for the work related to agriculture, it includes raising livestock that assists the farmer in agriculture or raising poultry, provided that these works are carried out in the context of agricultural activity, that is, they are attached to it and subordinate to it.

Some see that the exclusion of agricultural activity from the commercial law department finds its justification in historical reasons.

Agriculture, as is well known, is an ancient activity that was preceded by commercial law. In addition, Roman society was an

agricultural society, and the agricultural activity in that period of time was limited to the feudal class.[1]

Accordingly, selling agricultural crops, whether in their form or after some changes have been introduced, is not considered a commercial act, whether the land is owned by the farmer or if he is renting it, and regardless of whether it is a sale by practice or by public auction.

Agricultural work may be associated with purchases with the intention of selling, such as buying bags and empties to fill the crop in preparation for sale, or buying livestock to cooperate with the farmer in agriculture, and then reselling them. These acts are considered civil as long as they are carried out in the context of agricultural activity.

However, the agricultural activity may be linked to a commercial activity, and in this case, the matter depends on defining the main activity and the secondary activity. If the agricultural activity is the secondary activity and the commercial activity is the main activity, then it is given the commercial character.

For instance, when a farmer grows olives on lands he owns or rents for this purpose in order to extract the oil from it. Here, agriculture is in the service of a commercial activity, which is the extraction of oil from the olive crop.

Vice versa, If the agricultural activity is the main activity and the commercial activity is the secondary activity, then it is given the civil character. For example, buying and selling livestock in this case is a civil act.

The fact of the matter is that the exclusion of agricultural production operations and the activities associated with them from the scope of business, and that they are justified for small

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

and medium agricultural projects, the opposite is the case for large agricultural projects that use agricultural mechanization methods and resort to commercial methods in financing operations Agricultural production and marketing of its products.

- **Liberal professions:**

Liberal professions mean those professions that depend on the exploitation of talents and personal abilities. The French national union of liberal professions defines the self-employed as: “A person who is qualified in a specialty related to the provision of services, mainly characterized by its mental nature, with complete freedom to provide his advice to his clients whom he freely chooses, while bearing the responsibility arising from the exercise of his professional activity.”

The activities of the self-employed are civil work, regardless of the remuneration they receive. Examples of these professions are medicine, engineering, accounting, and law. It is required to exclude liberal professions from the scope of commercial activities that depend mainly on mental work, i.e. they depend on mental knowledge and cultural experiences.[1]

The same applies to activities that stem from the human thought itself and are not preceded by purchase. In addition, what the self-employed are entitled to as honorary fees and rewards, and not as profits.

The activity of the self-employed shall remain a civil work even if he performs some business complementary to his basic profession, such as a doctor who sells medicines to his patients in remote places where there are no pharmacies.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

However, the owner of the liberal profession may engage in an activity that includes speculation on the work of others in order to achieve profit.

In this case, his activity is commercial, for example, the doctor establishing a private hospital and the assistance of a group of doctors in different specialties who receive their wages from him, as well as providing medicine and food to patients during treatment.

The criterion that can be relied upon to determine the extent of the commerciality of these works is a secondary criterion of the work in relation to the original work. If the author's activity is limited to speculating on the prices of paper and machinery, and on the work of other writers and editors, then the existence of a major commercial business alongside a civil one entails the commercial character of the work.

Vice versa, if the author's work is limited to mere authorship, then the presence of a major civil work next to a commercial work entails the civil character of the work.[1]

If the works related to mental production are civil works for their owners, then the matter is completely different with regard to mediators who mediate between the owner of a mental production and the public. Publishing houses buying the mental production of the author and reselling it to the public, aiming to make a profit, and following commercial methods in financing his activity and promoting his publications makes the work of publishing houses a commercial business. The legislature stipulates the commercialization of these businesses in Art 2 of Commercial Code No. 17 of 1999.

The Second Condition: The purchase is made on movable property.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

It is clear from Article 4 of the Commercial Law No. 17 of 1999 that for the purchase with the intention of selling or leasing to be considered a commercial business, it is required that the purchase be returned to movable property.

The law did not define movable, but defined real estate in Article 82 of the Civil Code by saying, “Everything that is stable in a fixed space in it cannot be moved from it without damage is real estate, and everything else is movable.” Therefore, the movable is something unstable with a fixed space in it and it can be moved from one place to another without being damaged or changing its features.

The movable may be tangible, such as cars, yarn, and merchandise. The movable may be intangible, such as commercial stores, literary and artistic property rights, and patents. It is no longer important that the mover was sold, leased, or modified before it was sold or leased. for example, grinding grain before selling it or ginning cotton before selling it. Likewise, it is not important to change the size of the movables subject of purchase before selling or renting them. It may be a radical change or just minor improvements before selling or renting them.[1]

The above entails the exclusion of real estate and related transactions from commercial business activities. If jurisprudence differentiates in this regard between real estate subject to contracts transferring ownership and real estate subject to other forms of dealing, the first is excluded from the scope of application of commercial law, while the second is subject to its provisions.

The Third Condition: Intent to Sell or Lease:

[1]Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

It is required that the purchase for the purpose of selling or leasing be considered a commercial business, in addition to the presence of the intention of selling or leasing.

It is stipulated that the intent to sell or rent be available at the time of the purchase itself so that if the buyer's intention was to buy the movable for personal use or consumption, and then the idea of selling occurred at a later time, the business is not considered commercial, even if it makes a large profit.

Vice versa, the business remains commercial as long as the buyer's intention was to buy the movable with the intention of reselling it, and this intention was present at the time of purchase, then the idea of keeping the movable that was purchased with the intention of personal use or consumption arose.

Accordingly, the business of buying does not depend on the actual occurrence of the sale, but rather depends on the psychological situation that accompanies the time of purchase.

The jurisprudence and the judiciary have settled on the commercialization of the sale or lease subsequent to the purchase. Because the intent of selling or renting is sufficient to give commercial character, it is a fortiori that this quality is given to the sale or lease subsequent to the purchase.

The burden of proving this by all means of proof falls on the claimant who argues the commerciality of the work.[1]

The courts seek the assistance of the courts in determining the commerciality of buying for the sake of selling or leasing the circumstances surrounding the purchase as if the purchased quantity far exceeds the need for personal consumption.

The Fourth Condition: The intention to make a profit:

[1] Dr.. Hamdi Abdel Rahman and Dr. Khaled Hamdy - Proof of Compliance in Civil and Commercial Matters - Legal Library - 1996 - p 42.

It is required to consider buying for sale or leasing as a business, the buyer's intention to make a profit even if the profit is not actually achieved due to the low prices of the commodity or the shift of the consumer's taste from it.

The Commercial Code No. 17 of 1999 did not include the provision of this requirement, which is necessary to state, as the motive for doing business transactions is profit.

All commercial transactions, however varied, aim to achieve profit. As a result, the works carried out by cooperative societies or professional syndicates in terms of purchasing goods that were sold to their members at the cost price are not considered commercial activities, even if they obtain some amounts to spend on the requirements of cooperative work.

On the contrary, the works carried out by these associations and unions are considered commercial businesses if they are not limited to selling goods to their members, but rather sell to non-members at the market price in order to make a profit.

B. Renting movables with the intention of leasing them, and also leasing these movables:

It is clear from the text of Article 4 that leasing a movable is a commercial business, as well as leasing a movable that was previously rented, provided that the intention of leasing coincides with the moment of renting.

If the intention of the lease is to use the movable for personal use, then the lessee amends and decides to lease it, then the work is not considered commercial.

Vice versa, renting of movable property is considered commercial if it is done with the intention of leasing, even if the lessee has modified and decided to use the movable for personal use. In addition to the necessity of having the intention

of leasing at the moment of renting, there must also be an intent to make a profit, even if the profit is not actually achieved.

Accordingly, if a person rents cars or machines with the intention of renting them, his work is considered a commercial act, even if it occurs only once. It is worth noting that the law has conferred the commercial character of the subsequent leasing process on leasing, and has already done so for the sale or leasing process that follows the purchase process.

C. Establishment of commercial companies:

The establishment of commercial companies is considered a commercial business, even if it occurs only once. Incorporation means the set of legal and material processes undertaken by the founding partners or shareholders in order to establish the company and acquire its legal personality.[1]

This includes concluding a company contract, submitting quotas, registration and publicity operations, etc. However, it is stipulated for commercial incorporation that the matter relates to the establishment of a commercial company and not a civil company.

In determining the company's commercial standard, the law relied on the form that the company takes regardless of the nature of the activity it engages in, as it is stated in Art 10 of Commercial Code No. 17 of 1999 that: "Any company that takes one of the forms stipulated in the laws related to companies, whatever the purpose for which the company was established."

The commercial companies are the General Partnership Company, the Limited Partnership Company, and Particular Partnership Company which are regulated by the first chapter of Chapter Two of the repealed Code, which was replaced by the

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Commercial Law No. 17 of 1999 according to the text of the first article of its promulgation.

As well as joint-stock companies, partnerships limited by shares, and limited liability companies, which are regulated by Law No. 159 of 1981. These forms are included exclusively, as it is not possible to establish a commercial company in another form that does not fall under these six forms.

D. Works related to the sea and air commercial navigation:

It is also considered a commercial business-according to Art 6 any work related to commercial navigation, whether sea or air and in particular the following:

A. Building, repair, and maintenance of Ship or aircraft.

B. Buying, selling, leasing, or renting ships or aircraft.

C. Purchase of supplies, provisions, or equipment for ships or aircraft.

D. sea or Air transport.

E. Stevedoring, loading, or unloading operations.

F. employing navigators, pilots, or other workers on ships or aircraft."

It is obvious that it is required for the commercial marine or air activity to be related to commercial navigation, to mention but a few. The legislature also did not include marine insurance because the text on commercial insurance of all kinds was mentioned in Article V of the Commercial Code No. 17 of 1999.

Commercial navigation means the exploitation of ships or aircraft to provide services to others for payment, in particular, transport service. As for the other uses of ships or aircraft, such

as picnics, fishing, scientific research, and sports, they are not considered commercial navigation and therefore not commercial businesses.[1]

Likewise, all forms of marine exploitation, with the exception of navigation, are not considered commercial businesses, unless they take the form of a commercial craft.

Some wonder about the legislature's intent of including maritime and air navigation-related businesses within the individual business, while the practical reality does not know the activities related to this type of navigation except through projects that are practiced as a matter of professionalism.[2]

In fact, lawmakers consider the hypothesis in which a project can carry out one of the activities of maritime or air navigation without being included in the aspects of its usual activity.

For example, a tourist company may have to rent a ship or plane to carry out the sea or air transport due to the difficulty of contracting with one of the carriers. In this assumption, the charter of the ship or plane is a sea or air trade business, and then it is considered a commercial business subject to the provisions of the commercial law.

In accordance with Article VI of the Trade Act No. 17 of 1999, the forms of commercial maritime and air navigation are as follows:

- **Building, repair, and maintenance of Ship or aircraft:**

[1] Goode, Royston Miles, and Mc Kendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.
[2] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

The ship is the gadget by which sea navigation is carried out. Airplanes are the means by which air navigation takes place.

The work of building, repairing, and maintaining ships or aircraft is a commercial business, whether it is done in the form of a single work or through a project that builds, repairs, and maintains, regardless of the capacity of the person in charge of it, whether he is a merchant or not.

If the repair and maintenance of ships or aircraft is a clear matter that does not need to be explained, the construction has three forms:

1. Direct or economic construction, in which the supplier himself carries out all the operations required for the construction of the ship, from purchasing tools and supplies to contracting with engineers, workers, and technicians.
2. A manufacturing contract, in which the person wishing to build provides the necessary things for construction, including equipment and machines, and pays the builder's wages, and the latter is obligated to provide his expertise.
3. Indirect construction or at an arbitrary price, in which the supplier contracts with the builder to build the ship in return for an arbitrary price, that is, the builder bears all the expenses from the purchase of equipment to the payment of the wages of engineers, workers, and technicians.

There is no difficulty in deciding the commercial work of construction, repair, and maintenance of ships or aircraft designated for the purposes of the sea and air commercial navigation for the builder, repairer, or maintenance operator, but the question arises about the extent of the commerciality of

these works for the applicant for construction, repair or maintenance, i.e. for the customer.[1]

The general rules related to determining the commerciality of the work stipulate that the construction, repair, or maintenance of ships or aircraft shall not be considered a commercial business for the customer unless the purpose is to use the ship or aircraft for the purposes of sea or air commercial navigation.

But if the purpose is to use the ship or aircraft in a civil activity, then the process of building, repairing, or maintaining the ship or aircraft is as civil for him as using the ship or aircraft for the purposes of picnic, search, or exploration.

- **Buying, selling, leasing, or renting ships or aircraft:**

A commercial business that buys, sells, leases, and charters ships or aircraft. **The purchase and sale of ships or aircraft** is a commercial business regardless of the activity of the parties to the transaction and regardless of its purpose. However, if it is possible to accept that with regard to selling, then the matter is different with regard to purchasing.

With regard to sale, the seller, whether he sells what he builds, buys, or inherits, his work is considered a commercial business, provided that the ship or plane is intended for the purposes of the sea and air commercial navigation. Yet, if it is intended for a civil purpose, then selling it to the heir is not considered a commercial act.

If the buyer of the ship or aircraft sells it, his business is considered a commercial business as a movable purchase with the intention of selling and not as a purchase of a ship or aircraft. As for the purchase, its commerciality depends on its purpose. If the purpose of purchasing a ship or aircraft is to use it for one of the purposes of maritime or air commercial navigation, such as

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

sea or air transport, for example, then the purchase is considered a commercial business. If the purpose of the purchase is to use it for a civil purpose such as a picnic or exploration, then the purchase is considered a civil act.

Renting and leasing of ships or aircraft is a commercial business regardless of the purpose of the chartering or chartering process. Whether the purpose of renting or renting a ship or aircraft is a commercial or a civil purpose, the business is considered a commercial business.[1]

Some differentiate between renting and leasing; renting is a permanent business for the rentee on the grounds that the latter uses the vessel and it is a commercial activity regardless of the purpose of the rent.

As for the latter, the criterion in determining the commercial work is the purpose of leasing the ship or plane. If the purpose is to use it for sea or air commercial navigation, such as transporting goods, for example, the work is commercial. If the purpose is to use it in a civil activity such as transporting personal effects, for example, the work is civil.

- **Purchase of supplies, provisions, or equipment for ships or aircraft**:

It is a commercial business to buy tools or supplies for ships or aircraft, including transportation necessary for commercial exploitation of the ship or aircraft, Without which the cruise or air trip cannot be completed. For example, fuel for the operation of a ship or plane, drinks, food, ropes, and lifeboats..... etc.

The purchase of equipment or supplies for ships or aircraft is a commercial business, regardless of its purpose. That is, it is

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

considered a commercial business, whether the ship or aircraft is used for the purposes of sea or air commercial navigation, or whether the purchase is for personal use or consumption.

There is no difficulty in determining the commerciality of these businesses for the buyer, even if he has no intention of selling these things. However, the question arises about the extent to which these businesses are commercial for the seller. Some stipulated that in order to give a commercial character to the process of selling tools or supplies for ships or aircraft, that it be preceded by purchase, in implementation of the text of Article 4 of the Commercial Code No. 17 of 1999.

While others did not require the commercialization of the sale process to be preceded by a purchase, and saying otherwise makes the text meaningless repetition.

I could argue that the second opinion on the basis that the shop is tools and materials for the commercial exploitation of the ship or aircraft, while article 4 of the Commerce Code mentions the word "movables" in absolute terms, but it is required for the commercialization of the sales process to aim at making a profit.

- **Maritime and air transport:**

Maritime transport and air transport are commercial activities, even if they occur only once. It is difficult to imagine in practice. Otherwise, land transport and inland water transport shall not be considered a commercial business unless it is professionally practiced.

There is no difficulty in the commercialization of sea and air transport for the sea or air carrier, but the question arises about the extent of the commerciality of the sea and air transport for the shipper of the goods or the passenger.[1]

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

If the transport contract is related to trade affairs, it is commercial. Otherwise, it is civil if it is intended to transport personal effects, for example, or travel for tourism.

- **Stevedoring, loading, or unloading operations:**

Loading and unloading operations are considered a commercial act, even if they happen only once. There is no difficulty in deciding the commercial operations of loading and unloading for the contractor.

But the question arises about the commerciality of shipping or unloading operations for the customer. If the customer is a merchant and these operations are related to his trade affairs, then they are considered a commercial business, otherwise, they are civil.

- **Employing navigators, pilots, or other workers on ships or aircraft:**

It is a commercial business to use navigators, pilots, or other workers in ships or aircraft provided that the ship or aircraft is intended for the purposes of the sea and air commercial navigation. If it is not, then these contracts are considered civil works.

Accordingly, the obligations arising from these contracts are commercial obligations for the operator of the aircraft or ship. As for the obligation of the navigator or pilot, some have gone to give a civil character to the work contract by applying the general rules that determine the city of the work contract for the worker. While others argued for the commercialization of the work contract, whether for the owner of the ship or aircraft or its supplier or for the navigator or pilot.

2. Professional Commercial Acts

Article 5 of the Commercial Code states that: "The following activities shall be considered trading works in case they are exercised by way of the profession:[1]

1. *Supply of goods and services; Industry;*
2. *Land and inland water transport;*
3. *Trade agencies and brokerage whatever the nature of the operations exercised by the broker;*
4. *All kinds of insurance;*
5. *Bank and money exchange transactions;*
6. *Warehousing the goods, the means of transport, the crops, etc.* ***"***
7. *Publishers houses and offices operating in the fields of publication, printing, photocopying, typewriting, etc, translation, broadcasting, televising, Journalism, news transmission, postal activities, and communications, as well as publicity and advertisement*
8. *Commercial exploitation of computer software, and space transmission via satellites.,*
9. *Prospecting operations of natural resources, such as mines, quarries, oil and gas explorations, etc.*
10. *The poultry industry and livestock breeding and others, with the aim of setting them.*
11. *Building construction, restoration, modification, demolition, or painting contracts and public works contracts.*
12. *Construction, purchase, or rental of realties with the aim of selling or leasing them complete or divided into apartments, rooms, or administrative or commercial units, whether furnished or unfurnished.*
13. *Tour and travel offices export and import offices, customs release offices, employment offices, and halls for public auction sales.*
14. *Hotels, restaurants, coffee shops and Coffee, acting and cinema works, circus works, and other public entertainment and amusement Sites.*

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

15. *Distribution of water, gas, electricity, and other energy sources.*

- **The supply of goods and services:**

Supply means the obligation to provide consumable things or provide services on a regular basis and within a specific period of time to be agreed upon in the supply contract. In order for the supply operations to be considered commercial, it is required that the person perform them as a matter of professionalism, because the commercialization is based on the person doing the supply operations and not on the nature of the work.(1)

Accordingly, it is a commercial act to supply goods such as supplying food to schools or hospitals, supplying clothes to the theater, and supplying services such as supplying gas and electricity. Supply is considered a commercial business, provided that it is practiced professionally. After that, the contractor provides the tools for sale or for rent, or whether he buys them or not buys them, but rather produces them as if the farmer pledges to supply agricultural crops or dairy products.

- **Industry**:

Industry means transforming raw materials into semi-manufactured materials or final products that satisfy human needs. An example of this is the spinning and weaving industry and the grain milling industry.....etc. The jurisprudence expands in defining the meaning of industry to include works that modify things or make improvements to them so that they achieve the desired benefit from them or increase their value. An example of this is the dyeing industry, ironing clothes, repairing and renewing cars, and others provided that there is an element of speculation in these works.

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, Dar Al Nahda, 1990 No. 33, p

The work in industry is considered a commercial business, provided that it is conducted in a professional manner, whether the manufacturer purchases the raw materials that are being converted, or provides them from him, or others provide them to him for conversion. For example, the owner of a sugar factory manufactures sugar from the cane produced by his land, and the owner of a grain mill grinds it for the public.[1]

As for the work of craftsmen, it is that which depends in its practice on his physical effort more than his reliance on capital and machinery, even if he used to practice his craft with a small number of workers or simple tools and machines as long as they do not include the element of speculation.

Commercial Code No. 17 of 1999 included a definition of the craftsman in Article 16/2 of it by saying that " A craftsman exercising a trade of insignificant costs to obtain an amount of income securing his daily sustenance shall be considered the owner of a small craft..".

On that, it is stipulated that for the person doing the work to be a master of small crafts, it is necessary that the craft is of low cost, and that the craftsman obtains from practicing his craft an amount of income that secures his daily living.

Accordingly, the works of craftsmen are not considered commercial businesses, such as the carpenter, the plumber, the blacksmith, the tailor...etc.

However, if there is an element of speculation on the work of others to achieve the greatest amount of profit, then the work of the craftsman is considered commercial. For example, the tailor buys fabrics to sell to his clients, and the carpenter buys timber to sell to his clients.

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

The reality is that the craftsman differs from both the worker and the merchant, even if both participate in doing the work together. In addition, the craftsman sells what he has made, unlike the worker who does not sell what he produces.[1]

The craftsman also differs from the merchant, as the craftsman depends for his main income and livelihood on his manual work, while the merchant speculates on the price differences of the goods he buys and then resells.

Article 16/1 of Commercial Code 17 of 1999 stipulates that "the provisions of the Commercial Law shall not apply to small

craftsman.." Accordingly, the craftsman does not acquire the status of a merchant and does not abide by the merchants' obligations.

- **Land and inland water transport:**

Transportation means changing the location of people or things. Transportation varies according to the geographical place of transportation and the means by which it is carried out. Transportation is by land if it is carried out on the surface of the land by cars, wagons, and railways. Transport is riverine if it takes place through internal watercourses such as canals, rivers, and canals by boats. Transport is by sea if it is carried out by sea by ship, and finally, by air, if it is carried out by air by plane.

A transportation business is considered a commercial business regardless of the capacity of the person carrying it out, i.e. it is equal to being a private law person or a public law person, regardless of the means of transportation or its location. Accordingly, it is considered a commercial act for the owner of a car to transport schoolchildren. It is also considered a commercial business for the railways to transport postal parcels

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

with the state or one of its public bodies acquiring the status of a merchant.

It is worth noting that the transport that is considered commercial is the one that targets profit, that is, that is done for a fee. As for the free transport, it is not considered a commercial business, because the donation business is excluded from the scope of commercial business.[1]

- **Commercial agency and brokerage:**

a.) The Commercial Agency:

A commercial agency in all its legal forms is considered a commercial business, provided that it is professionally practiced. Commercial agency means the professionalization of conducting commercial transactions for the account of others, in contrast to the civil agency, which is based on completing civil transactions.

An agent acquires the status of a merchant because he performs the business directly on behalf of the agent. He undertakes this as a matter of independence within the limits of the instructions he receives from his client, and he is entitled to his wages as soon as the transaction is completed.[2]

The commercial agent's work is to dispose of the merchant's products and merchandise and to mediate between him and other customers, merchants, or factory owners that are related to the nature of the trade he conducts. Usually, his work is not limited to a particular merchant but rather performs this task for several merchants.

Various types of commercial agency fall under the commercial agency, though they are mainly represented

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

[2] Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 141.

in **commission agency and contract agency**. Article 166/1 of Commercial Code No. 17 of 1999 defined agency by commission by saying: "A commission agency is a contract by virtue of which the agent undertakes to effect in his name a legal act for the account of the principal."

It is clear from this text that the commission agent contracts in his personal name and for the account of the principal, so he/she appears in the contract as a principal and does not appear as an agent. Therefore, he is exposed to special risks that made the law grant him special privileges to fulfill his rights before the client. Article 177 of the Commercial Code No. 17 of 1999 defines contract agency as: “Contracts agency is a contract under which a person undertakes on a permanent basis, and in a specific area of activity, promoting, negotiating and concluding transactions and deals in the name and for the account of the principal in return for payment. His assignment may also comprise executing the contracts in the flame and for the account of the principal."

The contract agent shall carry out his work independently and bear all the expenses of managing his activity. It is not permissible for him to be an agent for more than one facility that carries out the same activity in the same region unless otherwise agreed upon. Likewise, the principal may not assign more than one contract agent in one region and for one activity.

b.) The Brokerage:

Brokerage is considered a commercial business, provided that it is practiced in a professional manner, regardless of the nature of the operations practiced by the broker. Whether the broker mediates in concluding civil contracts or commercial deals, his activity is in all cases a commercial activity.

Article 192 of Commercial Code No. 17 of 1999 defines brokerage as “Brokerage is a contract under which the broker

undertakes to a person to look for a second party to conclude a specific contract and mediate for its conclusion."

It appears from the text that brokerage is mediation in a contract, that is, bringing two people together who want to conclude a contract.[1]

The broker's task is purely physical work, which is to search for a contractor for the client who assigned him the order or to engage in the necessary negotiations to conclude the contract. Accordingly, the role of the broker is limited to bridging the two contracting points of view and does not extend to the conclusion and implementation of the contract.

If the broker succeeds in carrying out his mission and the contract is concluded, he is entitled to a fee, usually a percentage of the value of the transaction.

There is no difficulty in deciding the business of brokerage for the broker, as it is always a business for him. However, the question arises about the extent of the commerciality of the brokerage for the broker's client. In fact, giving the commercial description of the brokerage for the broker's client depends on the nature of the transaction.[2]

If the transaction is commercial, such as meditating in the purchase of movables with the intent of selling them, then the brokerage is commercial, and it is also commercial if the customer is a trader, and the middle operation in it is related to his trade affairs. Otherwise, it is civil, such as meditating in the completion of the marriage.

- **Insurance:**

[1] Goode, Royston Miles, and Mc Kendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.
[2] Goode, Royston Miles, and Mc Kendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

The insurance business is a commercial business provided that it is practiced in a professional manner, that is, through an organized project that possesses the material and human tools necessary to carry out its activity, as well as the necessity of having the intention of making a profit.

The legislature has decided to commercialize the insurance business of all kinds, i.e., whether it is insurance on things (such as real estate insurance, insurance on movables, etc.) or insurance on people (such as life insurance and insurance against disability and old age .... etc.). Whether the insurance is marine-related to ships, air, or land.[1]

There is no difficulty in determining the commerciality of insurance for the insurer, but the question arises about the extent of the commercial insurance for the insured. The insurance shall be commercial if the insured is a merchant and the insurance is related to his trade affairs unless it is civil.

- **Banking and exchange transactions:**

Banking and money exchange operations are commercial businesses, provided that they are conducted in a professional manner, and these operations are always aimed at making a profit. **Bank transactions** mean the banking services that banks provide to their customers in return for a fee or commission. For example, current accounts, documentary credits, letters of guarantee, renting iron safes....etc.

As for **the exchange business**, it means exchanging money from one currency for money from another currency in return for a commission, and the exchange is of two types; the first: manual exchange means delivering money from a specific currency in return for receiving money from another currency in the same place in return for a commission. The second:

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

exchange withdrawn means the delivery of money from a specific currency in a place to be received in a foreign country.

There is no difficulty in deciding the commercial operations of the banks or the exchange business for the bank or the exchanger. Bank operations are always considered a commercial business for the bank, regardless of the nature of the transactions that are dealt with or the nature of the person who deals with them, that is, whether this transaction is civil or commercial, and whether the person dealing with it is a merchant or not.[1]

This was explicitly stated in Article 300/2 of Commercial Code No. 17 of 1999 by saying: “Subject to the provisions of the third clause of article 361 of this law, the provisions of this part shall apply to the transactions the banks conclude with its customers, whether or not they are traders, and whatever the nature of these transactions."

The question arises about the extent of the commercial operations of banks and money exchange business for the customer, which is considered commercial for the customer if he is a merchant, and these operations are related to his trade affairs, otherwise, they are civil.

- **Deposit of goods, means of transport, crops, and others:**[2]

Warehousing of goods means of transport, crops, and other things are considered a commercial business if it is carried out in a professional manner, in addition to the necessity of having the intention of making a profit. Article 130 of the Commercial Code defines the deposit contract in public

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.
[2] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

warehouses as “Depositing in general warehouses is a deed by virtue of which the warehouse investor undertakes to receive the goods to preserve them for the account of the depositor or the person to whom devolves the ownership or possession of the goods by virtue of the debentures representing them".

In order for the warehousing activity to be considered as a commercial business, in addition to the necessity to practice it in a professional manner, these public warehouses have the right to issue instruments representing the goods with the tradability of these instruments.

This matter can be deduced from the text of Article 130/2, which stipulates that “No a general warehouse shall have the right to issue debentures which represent the deposited goods are liable to circulation may not be established or invested except by license from the competent administrative Authority according to the conditions and situations to be issued by a decree therefrom."[(1)]

There is no difficulty in deciding the commerciality of goods warehousing for the investor, but the question arises about the extent of the commerciality of goods warehousing for the depositor. The deposit of goods is a commercial act for the depositor if he is a merchant and the deposit is related to his trade affairs, otherwise, it is a civil one.

- **The work of houses and offices that work in the fields of publishing, printing, photocopying, writing on typewriters, and others, translation, radio, television, the press, news transmission, mail, communications, and advertising:**

These businesses are considered commercial businesses, provided that they are conducted in a professional manner and

[(1)]Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

that these businesses aim at making a profit. The work of publishing houses includes publishing scientific, literary, and artistic works for the account of their owners for a specified fee. The printing business includes the printing of magazines, books, and newspapers.

As for the work of news reporting offices, it means what news agencies do in transferring news from one place to another in return for a fee. Communication includes communications via telephone, fax, telex, or the Internet.[1]

- **Commercial exploitation of computer software, and space transmission via satellites:**

Commercial exploitation of computer programs and satellite broadcasting via satellite is considered a commercial business if it is professionally practiced. It is worth noting that we differentiate in this regard between those who prepare computer programs, as their work is mental and is considered civil work and not a commercial one.

Moreover, the one who markets these programs and sells or rents them, as this is considered a “commercial exploitation” of these programs, which is a commercial business.

It is also a commercial act of commercial exploitation of satellite broadcasting. Contracts to purchase the right to broadcast certain programs are businesses for the seller and for the buyer.

Likewise, licensing contracts to broadcast certain programs acquire commercial status because the licensee receives a fee from subscribers who contract with him to be able to watch programs that are often encrypted.[2]

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.
[2] Ibid, p 125.

- **Prospecting operations of natural resources, such as mines, quarries, oil and gas explorations, and others:**

Extractive operations for natural resources materials are considered commercial businesses when they are professionally practiced. The commercial description extends to include all operations related to extractive operations and necessary to complete them, such as purchasing equipment and machinery.

- **The poultry industry and livestock breeding and others, with the aim of setting them:**

Poultry, livestock, and fish farming projects for the purpose of selling them are considered commercial businesses when they are professionally practiced.

Accordingly, poultry and livestock farming that takes place in the context of agricultural activity is not considered a commercial business, even if it is done with the intention of selling. Because the main activity is agriculture, which is a civil work, and the subsidiary activity is poultry and livestock farming, so the work is civil, in application of the rule that the branch follows the origin.

On the contrary, raising poultry and livestock with the intention of selling them is considered a commercial business if the farmer allocates part of his land for raising them, as we are in the process of an independent activity that has taken the form of a project.

- **Building construction, restoration, modification, demolition, or painting contracts and public works contracts:**

Contracting for real estate construction, restoration, modification, demolition or painting, and public works contracting is commercial if they are professionally practiced.

Accordingly, real estate restoration operations, such as the restoration of mosques and archaeological properties, as

well as real estate modifications by heightening or addition, are considered commercial businesses.

Demolitions and removals, whether for the whole property or part of it or painting these properties are also considered commercial businesses.

In order for these businesses to be considered commercial, the contractor must provide the materials and machinery necessary for the project, as well as provide the workers necessary for implementation, as well as his role in direction, supervision, and control.

- **Construction, purchase, or rental of realties with the aim of selling or leasing them complete or divided into apartments, rooms, or administrative or commercial units, whether furnished or unfurnished:**

Building, buying, or renting real estate with the intention of selling it is a commercial act when it is professionally practiced.

After that, the person intends to sell, rent, or rent all or part of the property, such as selling or renting some apartments or rooms, regardless of the nature of the use of these properties or the units that form part of them. That is, whether they are administrative units such as clinics, commercial offices, or housing units and whether the sale or lease is furnished or unfurnished.[1]

- **Tour and travel offices export and import offices, customs release offices, employment offices, and halls for public auction sales:**

The activities of tourism offices, export and import offices, customs release, employment offices, and auction shops are

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

commercial when they are professionally practiced. It means the work of tourism offices and the work of offices specialized in providing tourism services of all kinds, such as booking tickets, renting hotels and cars needed for tourists, etc., in return for a fee.

As for the work of export and import offices, it means the work of offices specialized in exporting and importing goods or merchandise for the account of others in return for a fee, such as obtaining export and import permits from specialized authorities.

As well as the work of customs release offices, which means the work of offices specialized in completing the procedures for exiting goods or personal effects, whether for those coming to the country or leaving it, from the scope of the customs office attached to the airport of arrival.

Finally, the work of employment offices means the work of offices that are provided to the public for a fee, whether transportation services, mediation in finding job opportunities and jobs for the public, or mediation in concluding contracts, advertising offices, etc. There is no difficulty in deciding the commerciality of these works for the service provider when they are practiced in a professional manner, that is, through an organized project that has its legal, material, and human means that help it in carrying out its activity.

Regardless of the subject matter of these acts, they remain commercial businesses even if their subject matter is a civil business.[1]

But the question arises about the extent of the commerciality of these businesses for the recipients of the service, as it is required for the commerciality of these businesses that the person dealing with these offices be a

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

merchant and that these businesses relate to his trade affairs, otherwise the business of these offices is civil.

The reason for giving a commercial description to the work of these offices is to protect those dealing with these offices by subjecting their owners to the provisions of the commercial law, which are characterized by harshness and severity in the implementation of commercial obligations.

As for the works of the auction sales, it means the works of the halls specialized in displaying and selling movables by public auction for a fee. These businesses are considered commercial whenever they are professionally practiced and whether the movables sold by auction are owned by the owner of the hall or owned by others, whether they are new or used.

- **Hotels, restaurants, coffee shops and Coffee, acting and cinema works, circus works, and other public entertainment and amusement Sites:**

The business of hotels, restaurants, cafés, acting, cinema, circuses, and other public amusement parks are commercial businesses when they are practiced in a professional manner, and the purpose of their practice is speculation with the intention of making a profit.

Hotel business refers to the services provided by hotel management companies to their clients for a fee, for example, providing meals and drinks, preparing accommodation rooms and suites, and renting sports equipment to guests.[1]

And restaurant business means restaurant business of all kinds, floating or non-floating, which serve different meals, regardless of the location of these restaurants. The commercial

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

capacity also applies to the business of cafes that serve drinks of all kinds to the public for a fee.

By public amusement parks, he means projects aimed at entertaining the public in return for payment. For example, cinema, theater, acting, dance, music...etc.

It is worth noting that theatrical performances presented by schools or universities on various occasions, such as celebrations of the graduation day or the end of the school year, with the intent of entertaining their students and staff members, are not considered commercial businesses.

This is because it is not practiced as a professional. In addition, it does not involve speculating on the work of others to make a profit.

On the contrary, the business of hotels, restaurants, cafés, and public amusement parks is considered commercial business because it involves speculation on the business of its employees with the intention of making a profit. The commercial characteristic also applies to the works of cinemas and theaters, where their owners speculate on the work of authors and actors with the aim of making a profit, which is the difference between the purchase of copyright, the wages of the actors, and the price of tickets purchased by the audience.[1]

In fact, most of what cinema and theater owners offer involve buying or renting the movable material or moral, which is the movie or the play.

As for the contracts that authors and actors conclude with the owners of cinemas and theaters, they are considered civil for them, because the author or actor contracts to present his mental production, talents, and artistic or literary abilities.

[1] Dr Samih Al-Qubyoubi, Commercial Law , op cit, p 177.

- **Distribution of water, gas, electricity, and other energy sources:**

The distribution of water, gas, electricity, and other sources of energy whenever they are professionally practiced. Regardless of the capacity of the distributor, he may be a natural person or a juristic person such as the state or one of its public juristic persons, and regardless of the law to which he/she is subject, he may be subject to the provisions of public law or the provisions of private law.

However, if the state or one of its public juristic persons performs these actions, it does not acquire the status of a merchant, in accordance with the text of Article 20 of the Commercial Code. It states that" The quality of trader shall not be established to the State and other public law persons. However, the provisions of this law shall apply to the trading activities exercised by the State, excluding those excepted by special text."

3. Accessory Commercial Acts

The accessory commercial act is the commercial profession of the person practicing these acts, which affects their nature transforming them from civil acts to commercial ones if related to his profession. For example, a merchant buys a car to transport his goods or buys computers to use them in carrying out his commercial work...etc.

These acts may be carried out by a merchant or a non-trader alike. If it is carried out by someone other than the merchant, it remains civil and subject to the provisions of the civil law. But if the merchant does it for the need of his trade, it loses its civil character and acquires the commercial character

according to the craft of the person doing it and is thus subject to the provisions of the commercial law.[1]

▪ The legal basis of accessory Commercial Acts:

The Commercial Code No. 17 of 1999 devotes the theory of accessory, so Article 8 of the law stipulated:

" 1- Works that are carried out by the trader for business affairs connected with his trade shall be considered commercial works.

2- All work carried out by the trader shall be considered related to his trade unless otherwise established."

In the second paragraph of the aforementioned article, the law has established a presumption that every action the merchant does is related to his trade, although the merchant may prove otherwise and that the action he has done is civil. Accordingly, it is required to implement the theory of accessory the personality that there is a link between the business that the merchant does and his commercial activity.

It is no longer possible to apply business theory by objective subordination so that the character of a merchant can be attributed to what happens to a non-merchant on the occasion of his undertaking a commercial business. As soon as the work falls under the auspices of a commercial activity undertaken by a non-professional - that is, a non-trader - it is not sufficient to acquire a commercial status.[2]

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[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

[2] Dr Samih Al-Qubyoubi , Commercial Law , op cit, p 271.

▪ Scope Of Application Of The Accessory Theory:

1. Contractual obligations:

From this text of Article 8 of the Commercial Code, it is clear that the accessory theory applies to all contracts concluded by the merchant and related to his trade affairs.

Accordingly, the contract concluded by the merchant to purchase a vehicle to transport goods, loan contracts, insurance contracts, agency contracts...etc. Also, suretyship contracts, labor contracts, and real estate are contracts that are considered commercial if they result in personal obligations not related to the ownership or possession of the real estate or the determination of *jus in rem* over it.

As for the suretyship contract, it is considered a civil contract, whether one of its parties is a merchant or not, and regardless of the nature of the debt. The guarantee is considered civil, even if the guaranteed debt is commercial. Article 779/1 of the Civil Code explicitly states this;" suretyship may be entered into in respect of commercial debt is deemed to be a civil act, even if the surety is a trader."

However, this general principle has been violated and a suretyship contract has been given the commercial character in three cases stipulated in Article 48 of the Commercial Code by saying that " Guaranteeing the commercial debt shall not be considered a commercial transaction unless it is so prescribed in the law, or the warrantor is a bank or a trader that has an interest in the guaranteed debt."

Hence, the suretyship is considered a commercial act in three cases:[1]

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 62.

The first: the suretyship is Commercial in case of backup warranty.

The second: the suretyship is commercial if the person in charge of it is a bank, based on the commerciality of all bank operations, once they are professionally practiced.

The third: the suretyship is commercial if the person in charge of it is a merchant and has an interest in the guaranteed debt.

An example of this is the guarantee provided by a merchant in favor of a merchant because of common interests between them.

As for the work contract, a jurisprudential dispute occurred about it. Some argue that it is civil work, based on the special nature of the work contract.

Others went, and we tend to prefer that the work contract is civil work for the worker and is a commercial work by extension for the merchant. This is based on the availability of the conditions for applying this theory, which is the issuance of the work contract by a merchant and its connection to commercial affairs.

Finally, with regard to contracts on real estate, jurisprudence, and the judiciary have made a distinction between contracts that are received on real estate and the purpose of which is to transfer ownership or possession of real estate or to establish an original or dependent a jus in rem over it. These contracts are considered civil works and are subject to the provisions of civil law.

The contracts that come on real estate are intended to create personal obligations in the hands of the merchant and are related to his trade affairs. These contracts are considered commercial businesses in the application of the dependency

theory. An example of this is when the merchant concludes an insurance contract on the property in which he conducts his trade.

2. Non-contractual obligations:[1]

The scope of application of the accessory theory is not limited to contractual obligations only, but also extends to non-contractual obligations. The latter includes obligations arising from the wrongful act (harmful act), beneficial act (unjust enrichment), and *negotiorum gestio*.

Examples of legitimate acts (harmful acts) that a merchant may perform and that result in his obligation to compensate others for the damages arising therefrom is the merchant's obligation to indemnify another merchant for imitation of a trademark or patent, or everything related to acts of unfair competition.

The merchant's obligation to compensate in these cases is considered a commercial obligation because it arose on the occasion of the commencement of his trade.

An example of beneficial actions (unjust enrichment) is the merchant's obligation to compensate the engineer who developed designs for the decorations of his commercial store. His obligation to indemnify is considered a commercial act because it arose on the occasion of his commencement of his trade.

Finally, with regard to *negotiorum gestio*, which is one of the applications of the rule of unjust enrichment, the obligations of the merchant arising from it are commercial obligations in the application of the accessory theory, such as the commitment of

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

the merchant to reimburse the expenses he spent on extinguishing a fire that broke out in the merchant's stores.

4. Mixed Acts

A mixed act means a business that is considered commercial for one party to the contract and civil for the other party.

An example of this is when a farmer sells the crops produced by his land to a grain merchant with the intention of reselling them. The work is civil for the farmer and commercial for the merchant.

A mixed act is not a separate class of business that can be added to a single business, business contracting, and accessory commercial acts. Rather, it is a commercial business that falls under one of these types, in the case where the business is commercial for one party and civil for the other party.

The opinion has settled in jurisprudence and the judiciary that these actions are subject to commercial and civil laws, so that the commercial law is applied to those who consider the work commercial for him, and the civil law is applied to those who consider the work civil for him.(1)

This is confirmed by Article 3 of the Commercial Code No. 17 of 1999; " If the contract is commercial with regard to one of its parties, the provisions of the commercial law shall not be applicable except to the obligations of that party, exclusively; the provisions of the civil code shall apply to the obligations of the other party unless otherwise prescribed in the law."

Although it seems easy to apply the solution stipulated in Article 3 previously mentioned with regard to the problem of

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 79.

judicial jurisdiction and evidence. On the contrary, it is for the problem of interest and execution on the pledged money.[1]

- Judicial jurisdiction:

The problem of judicial jurisdiction arises in countries that adopt a dual judicial system. That is the existence of a civil judiciary and a commercial judiciary. As for countries that adopt a unified judicial system, the problem is mitigated to a large extent.

The Egyptian legislature has adopted the unified judicial system, as the civil judiciary is the holder of general jurisdiction, as it is competent to consider both civil and commercial disputes. This is with the exception of the jurisdiction of the two partial courts that were established in 1940 in Cairo and Alexandria.

Their jurisdiction over commercial disputes is related to public order so that it can be argued before it in the event that the dispute is civil due to lack of jurisdiction.

The general rule in the jurisdiction is to resort to the defendant's court. Accordingly, the court competent to hear the dispute arising from the mixed work is determined according to the nature of the work in relation to the defendant. If the work for the defendant is civil, then the plaintiff must file the lawsuit before the civil court, but if the work for the defendant is commercial, the plaintiff may file the lawsuit before the commercial or civil court.

Some believe that the reason for deviating from the general rule in determining jurisdiction according to the defendant’s capacity, according to which the civil plaintiff must file his case against the merchant before the Commercial Court is not to force a non-merchant to present his dispute to a

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

commercial court before which he is not accustomed to appearing.[1]

- **Rules of Evidence:**

The rules of evidence that must be invoked are determined in view of the nature of the work for the defendant. If he is a merchant or the work for him is commercial, the plaintiff may prove the dispute by all means of proof, in implementation of the principle of freedom of proof in commercial disputes.

Nonetheless, if the defendant is not a merchant or the work for him is civil, the plaintiff must prove the dispute in accordance with the civil rules of evidence. The proof must be made in writing if the value of the dispute exceeds 1000 pounds.

Determining the rules of evidence applicable to the dispute does not depend on the nature of the competent court. It is permissible to file the case before the civil courts and implement the rules of commercial evidence if the defendant is a merchant, as the plaintiff can prove the dispute with the testimony of witnesses, presumptions, and all other methods of proof, whatever the value of the dispute even if its value exceeded five hundred pounds. As for the defendant, who is the merchant, he must abide by the civil rules of evidence so that proof is required in writing if the value of the dispute exceeds 1000 pounds.

- **The interest rate:**

According to the text of Article 226 of the Civil Code, the legal interest rate in commercial matters is 5% and in civil matters it is 4%. With regard to mixed acts, a dispute arose between jurisprudence and the judiciary about the applicable interest rate. Is it a commercial interest rate or a civil interest rate?

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 106.

Judgments of the judiciary went to the application of the commercial interest rate, while jurisprudence goes to the necessity of looking at the nature of the debt in relation to the debtor.

If the debt is civil for the debtor, the civil rate of interest shall be applied, and if the debt is commercial for the debtor, the commercial rate of interest shall be applied.

- **Execution on the pledged object:**

Execution procedures on the pledged objects are subject to the general rules contained in the Civil and Commercial Procedures Law.[1]

If the pledge is commercial, it is subject to the provisions set forth in Chapter Three of Chapter Two of the Commercial Law No. 17 of 1999. The pledge is commercial if it is decided on a movable as security for a debt that is commercial for the debtor.

As the procedures for execution on the pledged objects differ according to whether the pledge is commercial or civil.

The question that arises is which one should be applied in the case of mixed business? Should the procedures for executing the commercial pledge be applied for the party for whom the pledge is considered commercial, and the procedures for executing the civil pledge for the party whom the mortgage is civil?

Article 119 of the Commercial Code, adopted a criterion according to which it is necessary to consider the character of the debt secured by a pledge for the debtor. If the debt secured by the pledge is civil for the debtor, the procedures for executing the civil mortgage must be applied. If the debt secured by the

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

pledge is commercial for the debtor, the procedures for executing the commercial pledge must be applied.

Chapter Three

MERCHANT- CONDITIONS, TERMS, and OBLIGATIONS

The status of a merchant is acquired only by those who practice business in a professional manner, and the commercial legislature stipulated in Commercial Code No. 17 of 1999 in Article 10 that a merchant shall be anyone who practices professionally in his name and for his account a commercial business.

The importance of this is due to the provisions and obligations that the merchant community is subject to, from keeping commercial books to registration in the commercial registry and publicizing their financial system. It also shows the importance of knowing the extent to which this person is subject to the bankruptcy regime.[1]

A. Standard Merchant Acquisition Conditions:

Accordingly, for a natural person to be considered a Merchant, the following three conditions are required:

1. The professionalism of a Commercial Business:

The Core condition for a natural person to acquire the status of a merchant is to conduct business as a professional work.

Professionalism in commerce means that a person engages in business on a continuous and frequent basis so that it can be considered the main profession from which he earns.

In the absence of a specific rule that can be relied upon to determine the idea of professionalism, the jurists went to different schools of thought to establish a rule for the idea of professionalism.[2]

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(1) Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 271.

(2) Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

Some went to the idea of speculation, therefore a person acquires the status of a merchant if he engages in business repeatedly with the aim of making a profit from it, and based on this rule, the judiciary recognized the character of a merchant for a person who specializes in speculative operations in the stock exchange

However, this criterion is taken that it is not sufficient as the intention of speculation It may be available to a person who conducts a single business casually and yet does not acquire the status of a merchant.

Others called for adopting the idea of a commercial project, as a person acquires the status of a merchant when he performs the work in the form of a project, as the existence of the project leads to the reflection of the commercial character on the craft of the person who begins to exploit the project and considers him a merchant.

Yet, it is not possible to take this opinion in its entirety, because there are many craftsmen who practice their activities through a project and yet they do not acquire the status of a merchant.

There are also a lot of street vendors who continue commercial work without the existence of a project, and yet they acquire the status of a merchant.

Accordingly, it can be said that professionalism is a realistic idea represented in a person doing business - individually or in the form of a project - in a regular and frequent manner so that it can be considered as his main source of livelihood.[1]

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 139.

A person acquires the status of a merchant if he is professional in the practice of commercial business, and this is the actual professionalism.

A person may acquire the status of a merchant if he claims this professionalism by announcing this in newspapers, publications, radio, television, or other means, this is apparent professionalism.

Professionalism in business is a matter of fact, and the judge of the matter is independent of its assessment of the person's acquiring the status of a merchant.

The burden of proving the professionalism of this business rests with the one who claims it, whether the merchant or a third party. It is not subject to the oversight of the Court of Cassation because it is a discretionary matter left to him.

As for determining the business as commercial or civil, it is a legal issue for the court, the judge is subject to the oversight of the Court of Cassation.

Determining the start and end of the professional business is also subject to the discretion of the trial judge, who determines the stage at which a person is considered to be practicing business repeatedly.

The judiciary has established that a person is considered a merchant until the moment of registration of his retirement from trade, and the practice of activity in a commercial store is not sufficient for him to acquire the status of a merchant, even if it is one of its most important manifestations.

2. Conducting a commercial business in his name and for his account:

In order to acquire the capacity of a merchant, one must conduct trade in his name and for his account. Jurisprudence

and the judiciary have added this condition, although under the repealed commercial code it was not stipulated. The Commercial Code No. 17 of 1999 came and explicitly stipulated this in Article 10 (1)" everyone who conducts a commercial business professionally in his name and for his account shall be a merchant".[1]

What is meant by this condition is that a person engages in commercial work independently of others. So that he has the ability to make decisions related to his business and bear the consequences of profit or loss, and granting a person credit to practice commercial life is given only to those who have confidence in his person. Therefore, a person must conduct business for himself.

If a person conducts trade in the name of a merchant, or for the account of others, he is not considered a trader, whether this third party is a natural or juristic person.

We will give examples of people who practice trade in the name of another trader or for the account of others.

1) Commercial company managers:

The manager of a joint-stock company and a limited liability company, as well as a manager who is not a partner in a general partnership company - a manager who does not have the status of a general partner - does not acquire the status of a merchant because he carries out commercial business in the name and account of the company.

As for the manager who is considered a general partner in a general partnership company, a simple partnership company, or a partnership limited by shares, he acquires the status of a

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

merchant not because he is a manager of this company, but because he is a general partner.

The general partners acquire the status of a merchant as soon as the company is formed because he conducts business in this company in his name and for his account and has unlimited liability, and the company's address must include the names of the joint partners.

2) Merchant workers and employees:

The merchant exercises his activity through workers and employees affiliated with him with a work contract, which gives the merchant employer the authority to supervise, control, and direct and makes the subordinate not independent in the practice of commercial work.[1]

These practices in the name and for the account of the subordinate merchant and are subject to his instructions, orders, and instructions, and therefore these employed workers do not reveal the character of the merchant, because they do not engage in commercial work with shares and for their own account, but rather they practice commercial work in the name of the account of the employer and under his authority and supervision.

3) Trade Representative:

The commercial representative is the person assigned by the merchant to carry out a business, whether it is in his shop or in another place, such as a person selling cars for a car company, selling spare parts for its account, or promoting goods or products to a merchant.

From this definition, it is clear that the commercial representative does not acquire the status of a merchant,

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 117.

whether the nature of his relationship with whom he delegates is adapted as a dependency relationship or an agency relationship, because in both cases he does not work in his name and for his account, but in the name and for the account of whom he delegates.

This is often under the supervision and control of the owner of the company, such as a sales representative. As for the commercial agent, he practices the agency's work independently without subordination or supervision, so his work is considered a business.[1]

4) Commission agent and broker:

Jurisprudence and the judiciary have established that the commission agent acquires the status of a merchant because he contracts in his own name and appears before others as if he is contracting for his own account and is obligated before others to implement the contract he concludes. It is not subject to anyone's subordination or supervision, but rather engages in brokerage work independently, so the work of a broker is considered a business.[2]

5) Store tenant:

The tenant of the commercial store acquires the capacity of a merchant if he carries out commercial business because he is not considered affiliated with the lessor, but rather practices the work in his own name and for his own account. His relationship with the lessor is governed by the lease contract, and he has no dependency arising from a work contract. He practices the commercial business in his name and for his account, all that is there is that he has rented the place in which he conducts the business.

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

[2] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 105.

It does not mean that the place is owned or not owned by the person. Rather, it is my right if there is no place in its origin, such as the traveling salesman. Rather, the lesson in acquiring the character of the merchant is to practice the business in his name and for his account.

6) Trade under a pseudonym or covert:

A person may practice business under a pseudonym for a person who does not exist, and in this case, the acquisition of the status of a merchant is limited to the actual existing person who conducts business under this name.

A person may practice business under the pseudonym of a person who actually exists, if other person knows that his name is used and that the trade is practiced in his name and agrees to that, then the two acquire the status of a merchant. However, if he does not know nor agree to this practice, he does not acquire the status of a merchant.

The merchant is only limited to the person who has practiced business under this pseudonym.

The reason behind that individuals may engage in trade concealed or hidden behind another person is that one may be prohibited from engaging in trade, or incompetent, or a merchant who has declared bankruptcy and afraid of seizing his new trade.[1]

In this case, the question arises as to who acquires the status of a merchant, is he the hidden person or the apparent person? The answer to this question was controversial in jurisprudence and the judiciary in light of the repealed commercial Code, as it did not include a text that puts a solution to this issue.

[1] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 169.

Some argued to give the character of the merchant to the hidden person because it is his money that is used in trade, while others went to limiting this capacity to the apparent person, in order to protect the apparent situation.

The predominant or the most cited opinion is to give the concealed person and the apparent person the character of a merchant. This opinion is codified by the commercial Code No. 17 of 1999, where Article 18 stipulates that the character of a merchant shall be established for anyone who trades under a pseudonym or hidden behind a person Last as well as proving it to the apparent person.[1]

3. Commercial capacity:

A person must have the commercial capacity in order to acquire the status of a merchant. Articles 14, 13, 11, 12 of the Commercial Code No. 17 of 1999 included the provisions of eligibility necessary to conduct business. These articles differentiated between the capacity of Egyptian citizens and the capacity of foreigners, as it established the capacity of a married woman, and we explain this in the following detail:

(I) The Commercial Capacity for nationals:

First: Full Capacity:

Article 11 of the Commercial Code stipulates that “the Egyptian who has reached the age of twenty-one years can be capable to engage in trade.” That is when he reaches the age of majority. This text is in consistent with the civil provisions in Article 44, which states that “every person who has reached the age of majority, possesses his mental faculties, and has not been interdicted, shall be fully capable to exercise his civil rights.”

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

Accordingly, a person who has reached twenty-one complete years of age has the right to engage in commerce, provided that he is not suffering from any impediments to legal competence that diminish his capacity, such as insanity or dementia, or eliminate it such as prodigal or dullness.[1]

Second: De-capacity:

Deficient in capacity is anyone who has reached the age of discretion - which is seven years - and has not reached the age of majority, which is twenty-one years, and everyone who has reached the age of majority and was afflicted with a condition that eliminating capacity as prodigal or dullness.

18-year-old minor: The Egyptian law, in Article 57 of the Law of Guardianship of Money issued in 1952, allows anyone who has reached eighteen years of age to engage in trade after obtaining permission from the court to do so. The competent authority to authorize him to engage in commercial business, and the judge is completely free, after studying the conditions of the minor, to accept or not accept this request.

Third: Incapacity and a minor who has not reached eighteen years of age:

It is not permissible for a discerning child who has reached the age of seven but has not reached the age of eighteen to engage in commercial business. If he does and performs these actions, his behavior is liable to invalidation for interest because it is one of the behaviors that flow between benefit and harm.

This minor does not acquire the status of a merchant, although a minor who has reached the age of sixteen is allowed to dispose of the money delivered to him as alimony or the

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 151.

money that he earns from his work, he is not allowed to trade in it.[1]

As for the incapable person, who is the child who has not reached seven years of age, and the insane and the crazy one, neither of them is allowed to receive his money to administer it all or part of it, and none of them can ask for permission to trade as a matter of priority.

If any of them engages in commercial activity, his actions are absolutely null and void, and he does not acquire the status of a merchant.

(II) The Commercial Capacity for Foreigners:

First: Full Capacity:

The Commercial Code No. 17 of 1999 stipulates in Article 11 that an Egyptian or a foreigner who has reached the age of twenty-one years shall be capable to engage in trade, even if the law of the country which he belongs by his nationality considers him a minor at this age.

Accordingly, a foreigner cannot practice trade in Egypt unless he reaches the age of twenty-one years, regardless of his personal status law, even if the law of his country considers him fully qualified before this year - 18 years for example - or puts the age of majority is more than that - 23 years for example.

The legislature aimed to unify the age of majority for Egyptians and foreigners and to remove the hardship for Egyptians dealing with foreigners from searching in their personal laws about the age of majority for them.[2]

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[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

[2] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 173.

Eighteen-year-old foreigner:

In this case, we differentiate between a foreigner who has reached the age of eighteen years and is considered by the law of his country to be a minor and a foreigner who has reached the age of eighteen and is considered by the law of his country to be of complete maturity.

1. **A foreigner who has reached the age of eighteen and is considered a minor by law:** This foreigner can practice trade in Egypt after fulfilling two conditions:

The first condition: he satisfies the conditions or restrictions set by his personal status law that restrict the minor's conduct of business, as he cannot engage in trade except within the limits of this law.

The second condition: that he obtain permission from the competent Egyptian court.[1]

2. **The foreigner who has reached the age of eighteen and is considered by law to be of full maturity:**

If the eighteen-year-old foreigner is considered by the law of his country to be of sound mind, even though he is still a minor in the eyes of Egyptian law, he cannot practice trade in Egypt except after obtaining permission from the competent court, and the court has absolute authority to issue or prevent this permission.

A foreigner who has not reached eighteen years of age:

A foreigner who is less than eighteen years old may not engage in trade in Egypt, even if the law of the countries to which he relinquishes his nationality considers him an adult at this age or permits him to trade.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

(III) The Commercial Capacity for a married woman:

Article 14 of Commercial Code No. 17 of 1999 stipulates that the eligibility of a married woman to engage in trade shall be regulated by the law of the country to which she belongs by her nationality. This provision governs both Egyptian and foreign women.

First: the Egyptian married woman:

The Egyptian married woman is subject to the practice of commerce under Egyptian law, and therefore she can engage in commerce if she reaches the age of maturity, which is twenty-one years without being affected by any of any impediments to legal competence. If she reaches the age of eighteen, she can engage in commerce after obtaining permission from the court.(1)

The aforementioned reference, which applies to Egyptians, and therefore if the Egyptian woman engages in trade as a professional, she acquires the status of a merchant and is subject to all the obligations of merchants, as men.

Second: the foreign married woman:

If a foreign woman is married and wants to engage in trade in Egypt, she must refer to her personal status law, to find out whether this law restricts her right to trade by obtaining permission from the husband or not, the limits of this permission, how to object to it and withdraw it.

However, the Egyptian law, in its tenet to ease the burden on Egyptians who deal with foreigners, established a legal presumption according to which a foreign wife who

(1) Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

professionally trades is supposed to practice it with the This presumption is conclusive and cannot be proven otherwise.

Nonetheless, the law considered into account the interests of the foreign husband, who might want to object to his wife's professionalization of trade, out of his desire to preserve family ties, then it gives the husband the right to object to his wife's occupation of trade or to withdraw his previous permission.

However, this objection or permission was to be entered in the commercial register and published in the register newspaper. This objection or withdrawal of permission shall have no effect except the date of completion of publication so that others who wish to deal with this woman can be aware of this objection or withdrawal of permission.(1)

The objection or the withdrawal of permission does not affect the rights acquired by third parties in good faith, which we see that the entry of objection and withdrawal of permission in the commercial registry is a presumption with the knowledge of the third party and assumes that it is in bad faith, but this presumption may be proven by others.(2)

B. Merchant's Legal Obligations

1. Book-keeping:

Commercial books are an obligation imposed by the law on the merchant to indicate his financial position, his money, rights, and debts related to his trade.

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 146.
(2) Dr Samih Al-Qubyoubi, Commercial Law , op cit, p 131.

Importance of Book-keeping:

There is no doubt that commercial books are of great importance, especially with the great transformation in the Egyptian economic system, and the comprehensive economic reform that followed. The importance of commercial books can be summarized as follows:[1]

1- The importance of commercial books appears in enabling the state and its various agencies to control aspects of different economic activities, to see how consistent they are with the economic goals specified in the state's plan.

2-The importance of commercial books for the trader is that they enable him to determine the reality of his financial position and know the extent of his success in conducting business and the weaknesses or defects until they are fixed.

3- Commercial books play an important role as a means of proof before the courts.

4- Commercial books are a means of facilitating credit, as it is assumed that the books kept by the merchant should be expressive of his financial conditions, even if they are truthful in disclosing his operations.

5- If the books are regular, the merchant is exempted from the penalty of bankruptcy by default or fraud, because through it he can prove his good faith and that the bankruptcy was the result of a circumstance in which his will is not involved.

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

6- The organized commercial books benefit the tax authority, through which the tax base of the merchant is estimated. Elements of the merchant's business activity.

The Commercial Law No. 17 of 1999 No. 17 of 1999 established the provisions of commercial books in Articles 21 to 29. These articles specify those who are obligated to keep commercial books, the types of these books, how to keep them, and record data therein. The organizational rules for these books, how to submit them to the court or review them, and the penalty for violating these rules.[1]

Transaction illustrated :

A transaction is an action between two or more persons or accounts bringing about the movement of value from one to another.

Example: Mohamed sells goods to Ahmed. This action of selling brings about the movement of the value of the goods from Mohamed's stock to Ahmed's stock. Mohamed, therefore, has given the value of the goods while Ahmed has received this value. This is a transaction.

Ahmed has received goods without giving anything in exchange. Therefore, we say that he is the debtor of Mohamed for this amount, that he owes this amount to Mohamed who is his receiving, or two parties: "Creditor" and "Debtor". It must be written briefly in the books by making a note called "Entry".

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

- **System of book-keeping:**

1. Single entry:

It is a method of book-keeping under which only personal accounts, i.e., accounts concerning only debtors and creditors.

A single-entry accounting system is centered on the results of a business that are reported within the income statement.

Suitable fields for Single entry Bookkeeping System:

Characteristics of organizations that keep accounts under single entry systems are:

1. Small businesses that are not financially well-off.
2. Businesses with a small amount of capital.
3. Those with a low level of business continuity and stability.
4. Cash transactions outnumber loan transactions.
5. In preserving business transactions, there is no accountability.
6. There is no legal requirement to keep records.
7. Businesses that are under the direct control of the owner.
8. Transactions are possible when relying on memory power.
9. Where there is a lack of general education and accounting knowledge.[1]

Disadvantages of a single entry:

Single entry has the following disadvantages :

A. Under this method, the record of transactions is incomplete. Every transaction affects two accounts, and

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

these accounts are sometimes personal and sometimes impersonal. Hence, if only personal accounts are kept, the record of transactions is only partial, and therefore. Incomplete

B. No information can be derived from the books respecting the property of the business.

C. No information can be derived from the books concerning the gains or losses.

2. Double entry:

Double-entry bookkeeping is an accounting system where every transaction is recorded in two accounts: a debit to one account and a credit to another.

For example, a copywriter buys a new laptop computer for her business for $1000. She credits her technology expense account $1000 and debits her cash account $1000. This is because her technology expense assets are now worth $1000 more and she has $1000 less in cash.

Suitable fields for Double-entry Bookkeeping System:[1]

Public companies must use the double-entry bookkeeping system by law. The Financial Accounting Standards Board (FASB), a non-governmental body, decides on the generally accepted accounting principles (GAAP). Public companies have to follow any rules and methods outlined by GAAP.

Small businesses with more than one employee or looking to apply for a loan should also use double-entry bookkeeping.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

This system is a more accurate and complete way to keep track of the financial situation of a company and how fast it's growing.

Examples

1-A merchant sells goods to a customer who does not pay for them immediately (i.e., the goods are sold credit). For this transaction, the merchant makes an entry in his books to subtract the amount from the value of his goods and another entry to remind him that the customer owes him the money (i.e., that customer is his debtor).

2. A merchant sells goods and receives money for them. He has given goods and received the money. he must make an entry in his books to subtract the amount from the value of his goods and another entry to add the amount to his money.[1]

3. A merchant buys furniture from Smith. Furniture account receives and Smith gives. The merchant must make an entry in his book to add the amount of the furniture to the furniture account and another entry to remind him that Smith is his Creditor.

4. A merchant pays some money to his employees for their services. He must make an entry in his books to subtract from his money the amount paid, and another entry to show that he has paid the wages of his employees.

Hence, to have a complete record of each transaction there must be a double entry. Each transaction has, therefore, to be booked up twice, an entry is made in the receiving account, and a similar entry in the giving account.

Thus, we see that each transaction involves two entries in the same set of books: a debit entry and a credit entry and that

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

every debit must, therefore, have a corresponding credit and vice versa.

Advantages of double-entry :

Double-entry has the following advantages.

a. It provides a complete record of each transaction. In double-entry not only are personal accounts kept but impersonal accounts are also opened.

b. full information concerning the business is the property and assets of the business and supplied by the books. Information concerning various gains and losses can be derived from the books.

c. The clerical work can be checked. Since every debit has a corresponding credit, the total debits must at any time equal the total credits.

Acquiring An account is a ledger record, in a summarized form, of all the transactions that have taken place with the particular person or thing specific; e.g., Ahmed's account, furniture, Wages account. [1]

A/c, a/c, or Acc., are abbreviations for accounts.

There are three main divisions of accounts :

1. **Personal accounts**: These include accounts of debtors and creditors. Debtors are people who owe money, e.g., persons to whom the firm has sold goods. Creditors are people to whom money is owing, e.g., persons from whom the firm has bought goods.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

2. **Real or property accounts**: These accounts refer to assets, such as stock, furniture, plant, and machinery, etc.

3. **Nominal accounts**: These accounts relate to gains and losses, such as wages, Rent, discounts, taxes, sales, purchases, rates, etc.

Remarks

1. Some accounts through impersonal in the name are personal. Capital account and drawings accounting are examples.

2. For real accounts: debit the account of the thing received, credit the account of the thing given.

3. For nominal accounts debit losses, credit gains.

The account is divided into two equal divisions. The left-hand division is headed, at the extreme left, Dr. meaning debtor; the right-hand division is headed, at the extreme right, Cr., meaning creditor.

Columns are provided in both Dr. & Cr. sides for:

1. The date: column is divided into two columns: one for the month which must be abbreviated whenever possible. The same month not be repeated on successive lines, but the ditto sign (") should be used. The other column is reserved 4or the day of the month. The year should be written at the top of the date column.[1]

2. The particulars: a very brief description of the nature of the entry is shown in this column.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

For example, if merchant Mohamed sells goods to Ahmed, Mohamed must write the amount on the Dr. side of the account of Ahmed with the particulars "to sales", because the value has been received by Ahmed in goods. But if Ahmed gives cash to merchant Mohamed. This amount must be written on the Cr. Side of the account with the particulars "By Cash".

3. The Folio All transactions are first entered in the books of first entry, the pages of which are numbered. The entries are posted to the accounts. The folio column is used to show the number of the page in the books of first-entry where the original entry can be found.

4. The amount: If it is in Egyptian money, it must be entered in two columns: L.E. for pounds and mills. For milliemes; but, if it is in English money, L for it must be entered in three columns pounds, S. for shillings and D. for pence.

Balance:

The balance of an account is the difference between the sum of credits. When the debits exceed the credits, the account is said to have a debit balance. When the credits the debits the account is said to have a credit balance. When the sums of the debits and credits are equal the account is said to be "in balance".

- ## Books Used in Book-keeping:

According to the text of Article 21 of the Commercial Code No. 17 of 1999, every merchant must keep the books that are required by the nature and importance of his trade, in a way that ensures his financial position, money, rights, and obligations,

and in particular, he must keep the journal entry and inventory books.[1]

Accordingly, we find that the Egyptian legislature has left to the merchant the freedom to keep books that are commensurate with the nature and importance of his activity, provided that these books are not less than two books, the journal entry and the inventory book.

1. The original journal entry:

All commercial transactions conducted by the merchant, as well as his personal withdrawals are entered in the journal. (Article 22, Commercial Code). It is clear from that article that there are two types of entries that the merchant must record in the original journal:

The first type of entries: it is the entry of all commercial transactions conducted by the merchant, whether these operations are selling, buying, fulfilling, or collecting debts, and operations of loans and commercial papers that the merchant withdraws, withdraws, or shows, and other transactions. This type of entries are should be receded day by day in detail.

The second type of entry: the merchant's personal withdrawals, which mean the money that the merchant withdraws to spend on his person, his family, or his relatives, and the personal withdrawals he pays for zakat, donations, gifts, and so on. The prudence of obligating the merchant to record his personal withdrawals is to know whether the merchant in bankruptcy has harmed his creditors or not.

Accordingly, if it is proven that he has harmed the creditors and has withdrawn funds to spend his private life extravagantly and unnecessarily, he can be considered bankrupt

[1] Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

by Defaulting. Thus, such a merchant is deprived of the possibility of reconciliation with the creditors.

2. The auxiliary journal entry:

The law gave the merchant the freedom to use auxiliary commercial journals to prove the details of the different types of operations, as it is often impossible to record all transactions in detail in the original journal.

The merchant may keep an auxiliary journal for purchases, another for sales, or commercial papers, or loans, etc. In this case, the law is satisfied with entering the total of these operations in the original journal books at regular intervals. If this total entry is not made at regular intervals, each auxiliary book is considered an original book.(1)

3. The inventory book:

Article 23 of Commercial Law No. 17 of 1999 stipulates that "the inventory book shall include the details of the goods in the merchant's possession at the end of his financial year or a total statement about them if their details are contained in separate books or lists. In this case, these books or lists are considered an integral part of the original inventory book A copy of the annual balance sheet and profit and loss account shall be entered in the inventory book." It is clear from this that there are two types of entries that the merchant must enter in the inventory book

The first type of entries: A detail of the goods in the merchant's possession at the end of his financial year, it is noted that the inventory book includes only the details of the goods, without any other rights due to the merchant with third parties or

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 205.

debts owed by him to others. It also does not include movable or real property owned by the merchant.[1]

If it is not possible to indicate the details of the goods in the inventory book, a total can be indicated by mentioning the details in a separate book or separate lists, and in this case, these separate books and lists are considered an integral part of the original inventory book.

The second type of entries: A copy of the balance sheet and profit and loss account is also recorded in the original inventory book so that it can be matched with the statement of the goods at the end of the financial year, and to know the nature of the merchant's transactions; because this budget is the true expression of the merchant's financial position, whether it is in terms of liabilities, and it is called the negative side, or in terms of assets, and it is called the positive side.

4. Other optional commercial books:

The original journal and inventory book are the minimum numbers of books that every merchant whose capital invested in commercial trade exceeds twenty thousand pounds (according to the provisions of the Commercial Code) must keep them.

However, this does not prevent the merchant from keeping other books that are required by the nature and volume of his trade. Examples of these books are the ledger to which all transactions recorded in other books are carried forward, the warehouse ledger, which shows the movement of goods in and out of it, and the treasury book which shows the amounts entering and leaving them, and the settlement book, in which the merchant records the data in pencil immediately upon completion of the transaction. Then, it reposts this data to the original journal.

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[1]Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

- **Duration of book- keeping:**[1]

It has been stipulated in Article 26 of the Commercial Code No. 17 of 1999 that “The merchant or his heirs must keep the commercial books and documents supporting the restrictions contained therein for a period of five years starting from the date on which the books are marked as expiring or closing. He must also keep copies of correspondence, telegrams, etc., for a period of five years from the date of sending or receiving them."

The legislature considered the lapse of five years from the date of marking the end of the book or locking it as a sign of the merchant’s destruction of these books. However, this rule is a rebuttable statutory presumption, as it is permissible for the merchant’s opponent to prove that the merchant still keeps his books despite the lapse of the period prescribed for keeping them. If the merchant refrains, without an acceptable excuse, from submitting his books for inspection before or after the expiry of this period, when the opponent proves that the books are in the hands of the merchant, the court may consider this as a presumption of the correctness of the facts required to be proven from the books.

Sanctions:

Any violation of the provisions of commercial books is punishable by a fine of no less than one hundred pounds and not more than one thousand pounds (Article 29 Commercial Code), in addition to the fact that the data contained in the books that do not require the provisions of the law shall not be an argument for the owner of these books against his opponent.

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

3. Registration in the commercial register:

The commercial registry is a book prepared by the competent authority, in which the names of merchants are recorded, whether they are individuals or companies. This record aims to enumerate the number of people engaged in trade in the country, whether individuals or companies, to find out the progress of economic matters in it.(1)

Functions of the commercial registry perform an informational function by giving those who deal with the merchant accurate information about his financial and commercial situation. The commercial registry also plays a statistical role, through which the state can determine the number of merchants, the size of their commercial activities, and the data related to them.

It also performs an economic function because the state can direct economic activity through it.

Finally, the commercial registry performs a legal function, as the entry in the commercial registry is a presumption of acquiring the capacity of the merchant, and the company acquires the legal personality from the date of its registration in the commercial registry per Article 22 of Law No 159, and the data included in it is an argument against third parties from Registered date.

- **Those who are committed to the commercial register:**

Article 30/2 of the Commercial Code stipulates that “regarding the appointment of those who are subject to the duty

(1) Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

of registration in the Commercial Register, laws and decisions related to this shall apply." [1]

That is, it is necessary to refer to Law 24 of 1976 to indicate those who are committed to be registered in the commercial registry. This law requires whoever is registered in the commercial registry to be one of the persons listed in Article Two of it, to be an Egyptian, obtaining a license to practice merchants from the competent Chamber of Commerce, or to be a foreigner, but under special conditions and cases.

This means that Law 34 of 1976 requires the following conditions for those registered in the commercial registry:

First: To be one of the entities stipulated in Article 2 of Law 34 of 1976:

Concerning Article Two of Law 34 of 1976, We find that We find that it has been decided that the following persons shall be subject to the commercial registry:

1. **Individuals who want to engage in trade in a commercial store:**

This means that it is not permissible to engage in trade in a commercial store except for those who are registered in the commercial register in which the commercial store is located. Consequently, street vendors are not obligated to be registered in the commercial register, as well as a broker who does not conduct his business in a commercial store.

Individuals who practice their activities in a commercial place are also obligated to be registered in the commercial registry, even if the person's capital is less than twenty thousand pounds because this right is related to commercial books, not

[1] Goode, Royston Miles, and McKendrick, Ewan. Goode on Commercial Law. United Kingdom, Penguin Books, Limited, 2017.

registration in the commercial registry. Therefore, a person whose capital invested in trade is less than twenty thousand pounds is entitled to register his name in the commercial registry, as long as he exercises his activity in a commercial place.

2. Partnerships, joint-stock companies, limited partnerships with shares, and limited liability companies, whatever their purposes:

The Commercial Registry Law No. 34 of 1976, in its second article, obligates the partnership companies, which are the general partnership, the limited partnership company, the joint-stock company, the partnership limited by shares, and the company with limited liability, to be registered in the commercial registry.(1)

This was confirmed by Trade Law No. 17 of 1999 in Article 10 of it when it stipulates that every company that takes one of the forms stipulated in the laws related to companies, whatever the purpose for which it was established, be a merchant, and therefore these companies that are considered a trader must be registered in the Register commercial.

3. Public juristic persons whom themselves carry out a commercial activity, which is meant by public bodies and public business sector companies:

Law 203 of 1991 on public business sector companies stipulated in its second article that the articles of association of each of the holding companies and subsidiaries at their expense shall be published in the Egyptian Gazette and entered in the commercial registry.

(1) Braud, Alexandre. Droit commercial: Actes de commerce, commerçants, fonds de commerce, consommation, concurrence. France, Gualino, 2013.

Although the law of public persons does not acquire the status of a merchant, following provisions, this does not prevent the Commercial Code No. 17 of 1999 from applying its provisions to the business that they engage in. It is not prevented from registering it in the commercial register when it engages in commercial activity to know the type and size of this activity, and so that individuals who deal with common law persons can ascertain the truth of their matter.

4. Cooperative societies that conduct commercial activities on their own:

Although cooperative societies are usually formed to serve their members and do not aim to make a profit, and therefore their activity is considered civil.

Therefore, they are not subject to registration in the commercial register, but there is nothing to prevent these associations from being registered in the commercial register when they go outside these limits and sometimes engage in a commercial activity aimed at making a profit.

5. Natural and juristic persons who practice commercial agencies of all kinds for foreign establishments:

This means that every commercial agent, whether an individual or a company, who engages in commercial agency business on behalf of foreign facilities, is obligated to be registered in the Commercial Register, in addition to registering his name in the commercial agents and intermediaries register prepared for this.

Second: To be an Egyptian, holding a license to practice commerce from the competent Chamber of Commerce:

Article 3 of the Commercial Register Law No. 34 of 1976 stipulates that whoever is registered in the Commercial Register must have Egyptian nationality and hold a license to practice

trade from the competent Chamber of Commerce. Obtaining a license from the Chamber of Commerce to achieve a kind of previous control over those who wish to engage in commerce.[1]

Exceptional cases in which a foreigner has the right to practice trade and be registered in the commercial register:

The legislature wanted to encourage Arab and foreign capital to invest in Egypt, especially in light of the present time in which the country is witnessing a comprehensive renaissance in various fields. Therefore, foreigners were allowed to engage in trade in Egypt, and consequently, their registration in the commercial registry in certain cases stipulated in Article 4 of Law 14 of 1976 are as follows:

1-The approval of the General Investment Authority on projects established under Code No. 8 of 1997 issuing the Investment Guarantees and Incentives Law.

2- The foreigner should be a partner in a company of persons, provided that at least one of the general partners is Egyptian and that the Egyptian general partner has the right to manage and sign, and that the share of the Egyptian partners is at least 51% of the company's capital.

3- Every company - whatever its legal form - has its head office or management center abroad if it conducts commercial, financial, or industrial activities in Egypt or carries out a contracting operation, subject to the approval of the Investment Authority.

4-Foreigners practicing the export activity and within the limits of this activity, whether they are individuals or partners in a company of persons or funds, whatever their shares in the capital. At the time of enforcement of the provisions of this law, the practice of trade as long as it is restricted for the same type of trade is allowed .[2]

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 121.
(2) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 135.

Third: The Commercial Capacity:

The commercial capacity of those registered in the commercial registry must be full. The rules of capacity must be respected and from peremptory norms. In another way, it must not be violated by any means.

3. The Publicity of Marriage financial system

Egyptian legislation adopts the system of separation of the financial responsibility of the spouses, as well as the Islamic countries, and therefore the marriage does not have any effect about the rights of each of the spouses over his money, as the financial liability of each of them remains separate from the responsibility of the other.

However, most Western legislations adopt the unity of the financial responsibility of the spouses, i.e. the system of mixing the spouses' money, where the husband manages and disposes of it to one degree or another as long as the marital bond remains.[1]

Hence the importance of declaring the financial system of marriage so that others know whether the spouses' money is the same or separate, and thus knows the limits of their dealings.

The new Egyptian commercial law assumed in the foreign trader wife that she married according to the system of separation of funds - as the origin according to Islamic law - unless the financial condition between the spouses stipulates otherwise - that is, stipulating the mixing of the spouses' funds - and the partnership was declared by registration in the register and published its summary in the Register newspaper

In the event of neglecting to declare the financial partnership between the spouses, a third party may prove that the marriage took place by a financial system that is more suitable for his interest than the system of separation of funds. What is meant by the system that is most suitable for his interest

[1] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

is the system of mixing the spouses' funds (Article 15 of the Commercial Law No. 17 of 1999).

As the Commercial Law No. 17 of 1999 added in Article 15, the ruling issued outside Egypt for the separation of funds between spouses is not invoked against others except the date of its registration in the Commercial Register and the publication of its summary in the newspaper of this register,

That is, if the foreigners publicize their financial marriage system based on mixing the spouses' money in the commercial register, they are not allowed after that to protest against others that there is a ruling issued abroad requiring the separation of funds between spouses except after entering this ruling in the commercial registry.

Commercial Agency

1. Agency Agreements regulations:

In Egypt, commercial agency contracts are governed by Law No. 120/1982 (the "Commercial Agency Law") as well as Law No. 17/1999 (the "Commercial Law"), which regulate the commercial agency business and the commercial mediation activities. They define the main rights and obligations of an agent and of the company/person represented by the agent.

In addition, to the extent that it does not contain specific provisions, Law No. 131/1948 (the Egyptian "Civil Code") applies, in cases where there are no clear provisions in the afore-mentioned laws. Furthermore, the Civil Code provides specific regulations for contracts in which standard terms and conditions are used. There are some general provisions which regulate the relationship between the parties in the different contracts.

Article 1 of the Commercial Agency Law defines the commercial agent as follows: "For the purposes of this law a commercial agent shall mean any natural or juridical person who ordinarily, without being bound by an employment contract or service - rendering contract, offers bids, concludes purchase sale or lease

or renders services in the name and for the account of producers, merchants, distributors or in his own name but for the account of any of these people .

The commercial mediator shall mean, for the purposes of this law, the person whose activity shall be confined-even if he executed only one transaction, to looking for a contractor or negotiating with such a contractor to convince him to conclude a contract and also any person who shall carry out an operation of commercial mediation agency even if he is not accustomed to such operations and only carrying it for once or if this person has concluded an employment contract with the manufacturer, the merchant or the distributor".

2. Defining Commercial Agency:

The Commercial Agencies Law (Art. 1) defines a "commercial agent" as any natural or juristic person who, without being engaged under an employment contract, habitually undertakes "to submit bids or conclude purchasing, selling or leasing operations or to provide services in the name and account of producers, merchants or distributors, or in its own name but for the account of any of these parties".

Although this definition is broad, the parties to a commercial agency agreement may restrict the authority granted to the commercial agent under their agreement.

3. Differences between commercial agency and other intermediaries:

Based on this definition, we will differentiate between the following: agents and distributors. It is important at the outset to understand the basic differences between them. The most fundamental distinction lies in the fact, that an agent arranges sales for the manufacturer to the customer, but never takes title to the goods; title passes directly from the manufacturer to the customer. On the other hand, a distributor buys goods from the manufacturer. After that, he resells them to the customer. This divergence in the structure of the transactions makes a difference in how each sort of representative is paid, in addition

to, essentially, the legal governing framework and the consequences thereof .

A. Employed sales representative:

The employed sales representative receives instructions concerning working hours, itinerary, and customer visits. As an employee, he brings or closes business deals on behalf of his employer. In contrast to an agent, he cannot decide freely over his working hours and his activity. As remuneration, he usually earns a fixed wage which is often supplemented by a success-based commission. The Commercial Agency Law then applies to the part of the commission of his remuneration accordingly .

B. Commercial broker:

The commercial broker professionally closes business deals on behalf of someone else. In contrast to the agent, however, without being permanently and contractually entrusted with it. He does not have a permanent contract with an employer and thus, he is not obliged to constant customer care and to arrange business deals. Art. 206 of the Trade Law stipulates that the broker must record all the transactions concluded in his pursuit in his books as well as keep them from the documents related to them. He is also obliged to give them true copies when requested from these books the provisions of the commercial books .

C. Commission agent:

In this sort of agency, the agent undertakes to conduct an act on behalf of the principal by selling goods on his behalf but at his own account.

D. Distributor:

The distributor typically buys goods based on a contract with a manufacturer/supplier and then resells them on his own behalf and on his own account. If the distributor has similar rights and obligations as the agent and he is integrated into the sales organization of the manufacturer or supplier, commercial agency law can partly apply correspondingly, for example, regarding the

justification of the distributor's claims for compensation (see Commercial Law).

E. Franchisee:

An existent long-term agreement insures extensive mutual rights and obligations between franchisor and franchisee. The franchisor usually provides the franchisee with a business concept of distributing goods or services under a consistent business name and often with further specifications relating to corporate identity, for which the franchisee must pay a franchise fee.

The franchisee, in contrast to the agent, however, acts on his own behalf and on his own account. There is no specific law on franchise. The applicable law, however, is usually the law that has the closest relationship to the provisions of the franchise agreement, which is generally the Commercial Law or the Commercial Agency Law.

4. The appointment of a commercial agent:

Recording in the register of commercial agents and mediators shall not be affected except after fulfilling the following conditions:

Natural Persons:

a) He shall be of Egyptian Nationality. If he has acquired the Egyptian nationality, a period of at least ten years shall have elapsed as of the date he acquired the Egyptian Nationality.

b) He shall be fully qualified.

c) He shall be of good reputation, not sentenced in connection with a felony or was liable to a freedom restricting penalty because of a crime of dishonor, dishonesty or any of the crimes stipulated in the present law or in the laws of importation, exportation, foreign exchange, customs, taxes, supply, companies or trade unless he has been rehabilitated .

d) He shall not have been declared bankrupt, unless he has been rehabilitated .

e) He shall not be a civil servant nor works in any of the local government units, public organizations or the public sector companies and units. As sector companies and units. As regards to the former officials of such organs, two years at least shall have elapsed after quitting service due either resignation of any disciplinary reason .

f) He shall not be a member of the People's Assembly, the Shura Council or any Municipal Councils nor shall be dedicated to political work. Such prohibition shall be valid during the period of his membership or dedication unless he has been practicing such activity before his membership or dedication.

g) He shall not be a relative of first degree to a person occupying a political position or a person of the categories stipulated in the preceding item .

h) He shall not be a first degree relative to any of the principal officials of the State occupying the post of director general or those of higher portions, or those occupying the same positions from among the members of purchase, sale and adjudication committees or in any of the bodies referred to in item (E) above.

Companies:

a) The Company's head office shall be in Egypt.

b) Acting as an agent or carrying out commercial mediation operations shall, according to the company's articles of incorporation or statutes, be among its purposes .

c) The company's capital shall be completely owned by Egyptian partners provided that ten years shall have elapsed, in case they have acquired the Egyptian nationality.

d) In case the partner is a juridical person, it shall be of an Egyptian nationality and most of its capital shall be owned by Egyptians, otherwise ten years at least shall have elapsed since they acquired the Egyptian nationality.

e) All partners, managers or members of the board of directors of joint stock companies, as the case may be, must

fulfill the same conditions as stipulated in the item “Natural Persons ."

f) The capital in case of partnerships shall not be less than twenty thousand pounds(LE. 20,000) and this shall be proven by the last balance sheet submitted by the firm to the Taxation Authority for the previous financial year, or the firm may otherwise submit a certificate issued by one of the accredited banks proving the deposit of the said amount in case the company has already started its activity .

The Public sector companies shall be exempted from the provisions stipulated in items (c.) and (d.) above in case the importation operation shall be related to their activity. Limited liability companies shall, in the application of the provisions of the present law, be treated in the same way as partnerships .

The following procedures shall be adopted regarding recording in the register of commercial agents and mediators (art. 4) :

- The contract of commercial agency or mediation, as the case may be, shall be submitted, provided such contract shall detail the nature of the work of the agent or mediator, the responsibility of the contracting parties, , the percentage of commission agreed upon, and the conditions of its payment, in particular the currency for payment .

- As regards the foreign companies or the bodies issuing the agency, the contract shall, in addition to the preceding conditions, be notarized by the concerned chamber of commerce or the official body replacing such chamber and shall be ratified by the competent Egyptian consulate. The contract shall also stipulate an obligation on part of the foreign company or body to provide such consulate with every agreement including any amendment to the contracts data .

- The foreign company or body shall not have as a trade agent one of the companies belonging to the public sector unless such agency contract has not yet terminated .

- The Commercial Agencies Law requires that all commercial agency agreements be registered in the Commercial Agents Register. However, unlike the commercial agency laws in some Middle Eastern countries, the Egyptian Law does not explicitly state that unregistered agreements will be considered null and void or unenforceable.

5. Applicable law to agency contracts:

Nothing in the Commercial Agency Law or the Trade Law prevents the parties from applying foreign Law to the agency contract. Article 19 of the Civil Code states the following :

"The contractual obligations are governed by the domestic law if the domicile is the same for both parties, and, if there is no common domicile, by the law of the country where the contract is concluded. This rule is not applicable if the parties have agreed on another applicable law or that another applicable law results from the circumstances".

Therefore, the parties may agree on foreign law; however, such law should not contradict Egyptian public order (ordre public) and the parties should note that the compensation of the contract's agent, due to an unjustified termination by the (foreign) principal, is of public order. In addition, the parties shall abide by the registration requirements stated in the Commercial Agency Law, otherwise, the agent may be subject to penalties as stipulated in the mentioned law.

6. Disputes resolutions clauses in agency agreements:

Art. 1 of the Egyptian Arbitration Law (Law No. 27/1994) provides: "Without prejudice to the provisions of international agreements in force in the Arab Republic of Egypt, the provisions of this shall apply to all arbitration between parties from public law persons or private law, regardless of this legal relationship around which the dispute revolves, if this arbitration is taking place in Egypt or it is an international commercial arbitration conducted in Abroad and its parties agreed to subject it to law, regardless of this legal relationship around which the

dispute revolves, if this arbitration is taking place in Egypt or it is an international commercial arbitration conducted in Abroad and its parties agreed to subject it to the provisions of this law ".

Accordingly, the parties may agree to choose international arbitration. The arbitration tribunal may not render an award violating the Egyptian public order. Otherwise, the award may be nullified by the Egyptian court of appeal.

7- The termination of agency contracts:

Pursuant to Article 714 Civil Code, unless the parties have agreed otherwise, the agency agreement comes to an end by the completion of the work or by the expiration of the period for which it was given or by the death of the agent or of the principal.

Indefinite Term:

Pursuant to Article 163 Trade Law either party to the commercial agency agreement may always terminate. If the agency agreement is for an indefinite period, the principal shall not end it without the occurrence of a fault by the agent, otherwise, he shall compensate him for the harm caused to him as a result of such removal. All agreements to the contrary of that shall be invalid. The agent shall compensate the principal for the damage/harm caused to him if he relinquishes the agency at an unsuitable time and without an acceptable excuse. (Art. 188 Commercial Law).

Definite Term:

If the deed is for a definite term, and the Principle decides not to renew it at the expiry of its term, renew it at the expiry of its term, the agent shall have the right to receive a compensation to be determined by the judge, even if there is an agreement to the contrary .

For such compensation to be payable, the following is stipulated:

a) The agent shall not have committed an error or deficiency in the course of executing the deed.

b) The activity of the agent shall have led to evident success in promoting the sales of the commodity or increasing the number of customers.

"In estimating the compensation due consideration shall be given to the harm and damage caused to the agent and the degree of the benefit accruing to the principal from the agent's efforts in promoting the sales of the commodity and increasing the number of customers." (Art. 189 Commercial Law(

Like the Commercial Law, Article no.13 Bis-3 of the Executive Regulations No. 362/2005 of the Commercial Agency Law stipulates :

"In the event of the principal declining to renew the definite agency contract with no error or default having occurred on the part of the agent in the course of performing the agency contract, the principal shall be obligated to compensate the agent for the damage suffered thereby as a result of this, if the agent's activity had led to obvious success in promoting the commodity or in increasing the number of customers."

8-Termination indemnity for agency contracts:

If either party terminated a commercial agency agreement according to Art. 13 Commercial Law, then "no compensation shall be payable unless the termination of the contract occurs without prior notice or at an inconvenient time. If the contract is for a definite period, its termination must be based on a serious and acceptable reason, otherwise, compensation shall be payable ".

The amount of compensation may either be agreed upon the parties or, in case of dispute, will be estimated by the courts:

"The judge will fix the amount of damage if it has not been fixed in the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, if they are the normal result of the failure to perform the obligation or of delay in such performance" .

These losses shall be a "normal result" if the creditor is not able to avoid them by making a reasonable effort.

When, however, the obligation arises from contract, a debtor who has not been guilty of fraud or gross negligence will not be held liable for damages greater than those which could have normally been foreseen at the time of entering into the contract.“ (Article 221 Civil Code).

Moreover, the judge has to consider the harm and damage caused to the agent and the degree of the benefit accruing to the principal from the agent's efforts in promoting the sales of the goods and increasing the number of customers as per Article 189 Trade Law and Articles 13 (Bis-3) of the Executive Regulations No. 362/2005 of the Commercial Agency Law as mentioned above.

part II

COMMERCIAL COMPANIES

Chapter one: Sole Proprietorship

Chapter two: Partnership (companies of persons

Chapter three: corporations (capital companies

Introduction:

Commercial companies and their accompanying activities play an important and prominent role in the development of countries economically, socially, and politically, as the activities that companies do cannot be dispensed with by any society, with some variation and gradation between this activity or that from one country to another according to the difference Regulations that govern companies in each country.[1]

A company is a grouping of partners with the intention of creating a joint financial project and sharing what may result in profit or loss. The civil code defined it in Article 505 of it, which states: “The partnership is a contract whereby two or more persons bind themselves contribute to a financial project by providing a share of Money or work to share the profit or loss that may arise from this project."

Companies are one of the systems that are of great importance in the scope of legal studies at the present time. Because of the vastness and diversity of commercial and industrial projects that a single individual is not able to carry out because of what they need from the concerted efforts and unification of the people and to be able to carry out the large productive projects that individuals are unable to do on their own no matter how long they are, and no matter how rich they are, because that is beyond their abilities and energies.

This is in contrast to companies, which achieve stability for projects that individuals cannot achieve, no matter how much they unite their efforts, because the company is considered as a juristic person completely independent of the partners' persons, and it has a self-existence and an independent financial entity.

[1] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

For all of the above and with what we see of the role played by companies and their control over the important aspect of economic activity and the imposition of monopoly in many countries.(1)

Hence, its impact on the interests of citizens and the national economy. The legislature intervenes in many countries to regulate the establishment of companies, and to monitor their activities so that they do not become a tool for social exploitation or political control. Therefore, the law pursues them with its laws, regulations, and decisions that ensure the protection of citizens' interests and the national economy.

The commercial companies mentioned in the Egyptian legislation are divided into two main types; **Partnerships** and **corporations**.

Before the discussion of the main types of Companies, We have to give a glance on **Sole Proprietorships.**

Forms and types of commercial companies:

The forms of commercial companies are determined by the law, in a limitative way. A commercial company should take one of these forms determined by the law.

There are three forms of companies of persons:

A-The partnership:

This is the ideal type of companies of persons. In this company, all the partners are jointly and personally liable for all the debts of the company. Every member is considered a merchant.

B-The limited partnership:

In this company there are two categories of partners. There are

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 123.

the general partners who are personally and jointly liable for all the debts of the limited partnership. There are also the limited partners who have a limited liability for the debts of the company.

To these two companies, we should add a third type of companies of persons.

C-The mohassa company or the silent partnership:

This company is called in France société en participation. This company is not registered and has no legal personality and hence cannot be considered a company having a distinct form. It has purely contractual nature. It exists when two or more persons bring together capital, and service, with a view to carrying on a common activity, and sharing profits and losses.

The existence of the company is not revealed vis à vis third parties; it is only the manager, representing the company vis à vis third parties, who is liable for all the debts of the company .
However , if the existence of the company is revealed with the agreement of the partners, the company will be considered a de facto partnership.." société de fait"; then each partner will be jointly liable for all its debts.

There are three different types or forms of capital companies.

A-The company limited by shares or the joint stock company:

The joint stock company is defined as the company whose capital is divided into shares of equal value and where the shareholders are liable for the losses of the company to the extend of their contribution to the share capital.

The shares issued by this company are negotiable, which means that the shareholder has the right to withdraw from the company at any time.

b- The limited partnership by shares :

This company has two categories of members: the partners who are jointly liable for all the debts of the company, and the shareholders whose liability is limited to the value of their shares. The company is managed by a manager who is chosen among the partners.

c- The company with limited liability, la société à responsabilité limitée :

This company is created by a limited number of members. This number cannot exceed fifty. The liability of the members is limited to the extend of their contribution to the capital of the company.

Contributions to the capital are not represented by shares, but by interests. The transfer of these interests is restricted.

Chapter one

Sole Proprietorships

Sole proprietorships are newly introduced to the Egyptian market (Law No. 4 of 2018 amending the Companies Law).

1. Formation:

A sole proprietor (or sole trader) is a natural person, who engages in a commercial activity for his or her own account.

To be licensed as a sole proprietor, the person should apply to the competent Commercial Registration Office for registration in the Commercial Register. The important requirements for this registration are:[(1)]

1. The applicant should be of at least 21 years old.

2. The applicant should be of Egyptian nationality unless he or she will carry out his or her activity under the Investment Law (at present law no. 8 of 1997), or will engage in exporting activity.

3. The applicant should use his or her own name as a trade name. This trade name should appear on his or her business firm or shop and its branches (if any), and in all his or her business

correspondence.

4. The applicant should provide the Commercial Registration Office with other relevant important data such as the nature of his or her trade or business, the trade capital (no minimum capital is required), the addresses of the main

[(1)] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

firm, shop or branches (if any)and details of trademarks or copyrights (if any).

2. Financial Requirements:

The Law of Commerce requires from the sole proprietor whose trade capital is L.E.20,000 or more to keep proper accounting books, foreigners cannot establish a sole proprietorship except under the law no. 8 of 1997 with a minimum capital equals to L.E. 250,000.

The annual profit (taxable profit) of the sole proprietor, together with any other taxable incomes he or she may have from other sources, shall be subject to the income tax:

- - The first L.E. 5,000 ……..0%
- - More than L.E. 5,000 up to 20,000 ……...10%
- - More than L.E. 20,000 up to 40,000 ……15%.
- - More than L.E 40,000 ……....20%.

Chapter 2

Partnership (companies of persons)

Partnerships (companies of persons) are characterized by being based on personal consideration and mutual trust between partners. Because the number of partners in it is limited and there is a kinship or friendship relationship between them. Persons companies include three types:

1. General Partnership.
2. Limited Partnership.
3. Particular Partnership Company.

General Partnership

A general partnership is the shared ownership of a business by two or more people. Like a sole proprietorship, there is no legal separation between the business and the individual partners. Although general partnerships are relatively easy to form, the simplicity of their structure often comes at the cost of a significant amount of risk.

A general partnership is one of the oldest and most widespread types of companies in working life. This is because the number of partners is few, in addition to its suitability for small and medium businesses. This company was known to the Romans a long time ago. Some believe that it was found in the Italian republics during the Middle Ages.(1)

Article 20 of the commercial code defines a general partnership as "a company formed by two or more persons with a view to undertake commercial business under a name composed of the names of the partners".

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 276.

This definition was criticized as being general and did not mention explicitly the general partnership, but rather it states the trading intention, which must be existed in all commercial companies.

We can define the General Partnership as the company that is established between two or more people with the intention of commercial exploitation and has a specific title bearing the name of one or some of the partners. The partners shall be personally liable for all their money and jointly with the company for its debts.

A general partnership allows each partner to act independently, pool resources, avoid high startup costs and avoid large amounts of formalities. However, the partners must be able to accept potentially unequal contributions of time and resources, fully trust the business judgment of every other partner, and be willing to take on the risk of being fully and personally responsible for the business's debts and liabilities.

Also, each person should bear in mind that there is no default structure for the resolution of partner conflicts. That is, no one individual's decisions govern any of the other partners unless a customized partnership agreement says so. Additionally, any partner can enter into a binding contract on behalf of every other partner; therefore it is critical to establish a strong decision-making policy within the organization.

1. formation:[(1)]

For the formation of the general partnership - like all types of companies - it is necessary to have the general objective elements, the substantive elements, and the formal elements.

[(1)]Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 175.

The general substantive pillars required by the law in all types of contracts must be fulfilled in the general partnership contract, which is satisfaction, object, reason, and capacity.

satisfaction is the meeting of the offer and acceptance of the parties to the company's contract since its conclusion. This satisfaction is required to be sound free from defects such as error, coercion, fraud, and exploitation. The satisfaction should be focused on all the conditions of the contract, which are the company's capital, purpose, and term...etc.

It is also required that the subject of the company's contract be legitimate, that is, not contrary to public order and morals, and that the motive for forming the company is also legitimate. In addition, the capacity condition necessary for the partner to be professional in business must be met.

It also participates in the formation of the general partnership, the availability of the specific objective elements necessary for the contract of the company in general, which are the multiplicity of partners, the presentation of quotas, the intention to participate, and the sharing of profits and losses.

The minimum number of partners in the general partnership is at least two partners. It is equal in that whether they are natural persons or juristic persons. The law has not set a maximum number of partners in the general partnership. Each partner must also provide a financial share, whether it is cash, in-kind, or a work share.(1)

The cash share is a sum of money, and the in-kind share may be movable (physical or moral) or real estate. It is also permissible for a partner to provide a share of work, and what is meant by the work that is suitable to be a share in the company is the technical work that contributes to achieving the purpose of the company. In addition, the partners must have the intention to

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 289.

participate, and they must agree to share the profits and losses resulting from commercial exploitation among them.

Finally, the general partnership contract must be in writing and published in accordance with the procedures stipulated by the law. The failure of one of the pillars of the aforementioned joint partnership contract results in the nullity of the company as absolute, relative, or special, according to the type of element that is not available in the contract.

Since the general partnership is subject to its own legal publicity procedures, which are represented in the legal disclosure and the publicity in the commercial registry, we will discuss the details of these procedures.[1]

A. Legal publicity procedures in the court:

In accordance with Article 48, the summary of the company's deed is delivered to the clerk's office of the court of first instance where the partnership head office is located or branch is located, to be recorded in the court's registry. Thus, others who wish to deal with the company can view the summary of the company's deed or obtain a copy of it.

The summary of the company's deed is affixed to the board prepared for judicial notices, within three months. Article 49 of the law requires the publication of a summary of the company's deed in one of the newspapers printed at the company's center and prepared for publishing judicial notices, or in two newspapers printed in another city.

These data are the minimum that must be available in the summary of the company's deed, where the partners may add other data such as the company's capital, and the share of each partner in the capital .... etc. The amendments that occur to the

[1] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

statements that have been published must be disclosed so that the companies registry always reflects the reality and updates of the company. Failure to comply with one of the statements that must be made public that contained in Article 50 of the Law shall result in the invalidity of the company's deed. This is what was decided by Article 51 of the law. These procedures must be completed within fifteen days from the date of placing the signature on the agreement, otherwise, the company will be void.[1]

B. The publicity in the commercial registry:

Commercial Registry Law No. 43 of 1986 obliges managers of commercial companies to register them in the Commercial Registry within one month of the establishment of the company (Art/2 of the law).

Failure to do so will result in the imposition of the criminal penalty stipulated in Articles 19 and 18 of the same law, without affecting the legitimacy of the company's formation.

In accordance with Article 15 of the Executive Regulations of Commercial Registry Law No. 43 of 1976, the registration application must include the type of company, its title or name, its purpose, its general center address, the addresses of branches and agencies, whether in Egypt or abroad, and the amount of capital and amounts paid, the amounts pledged by the partners to pay them and the value of the in-kind shares if any.

The company's start and end date, the names of the jointly liable partners, and the names of the managers. The notation must also be requested of any modification to these data.

2. The characteristics of the general partnership:

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 173.

Since the general Partnership, as the ideal model for partnerships of persons, is based on personal consideration, it has been characterized by the following characteristics:

It is not permissible to trade the partner's share: The general partnership company is based on personal consideration among all its partners, the personality of the partner played a key role in the formation of this company and the continuation of its life. The company is formed only between people who know each of them.

In order to preserve this personal consideration and to strengthen the mutual trust between the partners, the law has prohibited any partner from assigning his share to others, whether with or without charge.

This avoids the entry of a foreign person whom the remaining partners do not know and who does not give him the same trust that they previously granted to the assigning partner.

If the assignment of the share is prohibited to the partner during his life, then it is not permissible to transfer it to his heirs, in the event of his death, as well.

However, the rule prohibiting a partner from assigning his share to others is not related to public order. Hence, it is permissible for the partners to agree in the company's contract that the share may be assigned to others under certain conditions and restrictions aimed at preserving the personal consideration upon which the company is based. It enhances mutual trust between them.(1)

Examples of those conditions that may be included in the company's founding deed are the requirement to obtain the consent of the partners or the majority of them on the assignee, or the requirement to offer the share to the rest of the partners to

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 299.

buy it...etc. It is also permissible to agree, in the event of the death of a partner, that the share of the deceased partner may be transferred to his heirs.

If the company's deed is silent about setting conditions and restrictions on transferring the ownership of the share to third parties, or if it fails to regulate this. The rule is that a partner may not waive his share except after the approval of all the partners, as this is considered an amendment to the company's deed that is required for it to obtain the approval of all the partners.

The question arises in this regard about the case on a partner's assignment of his share to others without following the restrictions and conditions stipulated in the company's deed or despite the opposition of the rest of the partners. [1]

This agreement shall be valid and productive in the relationship between the assigning partner and the non-assignee. However, it does not produce any effect against the company and the rest of the partners.

This assignee remains a foreigner from the company, and there is no direct relationship between him and the company, so he cannot claim from it, for example, the profits of the share or look at the company's books...etc.

However, there is an indirect relationship between the third-party assignee and the company. Each of them can use the indirect lawsuit against the other.

Accordingly, third parties can claim the company's profits from the share, as it is not invoked against the company or the partners directly. The company can also claim the rest of the share owed to it by the assigning partner.

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[1] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

However, if the partner may not assign his share to others without restriction or condition, he may pledge it in accordance with the general rules established for pledging rights.

A- Personal Liability in a Partnership:

The partners in the partnership company are personally and jointly responsible for the company's debts. In other words, he may be asked for the company's debts in his own money as if it were his own debts.[1]

However, for the company's creditor to return to any partner in order to fulfill his right to it, two conditions must be met:

1. The creditor claims the company's right to it, by notifying it to pay.
2. To obtain a court ruling for the debt against the company.

Whenever one of the partners pays the entire debt, he may have recourse against the company for what he paid, and he may also ask the rest of the partners, each according to his share in the debt (Art/297 of the Civil Code). The question arises in this regard as to the extent of the liability of the partner withdrawing from the company or joining it for the company's debts. To what extent is the partner who assigns his share to others and the assignee responsible for the company's debts?

As for the withdrawing partner, he remains personally and jointly responsible for the company's debts and obligations that took place in the period prior to his exit from the company. He is not responsible for the company's debts subsequent to his withdrawal, provided that this withdrawal is announced and that the name of the partner who withdrew from the company is

[1]Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 123.

deleted from the company's title if his name appears in this name.[1]

B-The general partnership's name:

The name of the general partnership consists of the names of all the partners or only one partner and the phrase “and his partners” if the number of partners is large. The name of the general partnership is its trade name (Art/5 of the Trade Names Law). It enables the public to identify the personality of the partners in the company who are questioning personal and joint responsibility.[2]

Moreover, it can determine the volume of his dealings with this company. The name of the general partnership must include the names of the general partners only. It is not permissible to add the name of a person who is not a partner to the name of the company so that others do not assume that this person is a partner in the company and grants his credit to the company on this basis.

If the company’s name includes the name of a person who is not a partner with his knowledge and does not object, he shall be asked about the company’s debts, a personal and joint responsibility. The name of the joint liability company must match the truth. If one of the partners dies or withdraws from the company, his name must be removed from the partnership's name.

However, in the event of the death of a partner - if the company's conditions permit its continuation - to keep his name in the company's title, provided that the phrase "successors of Mr/Mrs..." is added.

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[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 236.

[2] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

The company's undertakings are signed under its title so that the effects of the disposal are transferred directly to the company.

C. The Acquisition of merchant status:

The general partner acquires the status of a merchant as soon as he enters the company, even if he did not have this capacity before. If the company conducts business as a professional, the partner is responsible for every commercial act carried out by the company, and this responsibility puts him in a position similar to that of the one who does this business.

In addition, the company's undertakings are signed under his name, and his name is included in the company's title. The signature in the title of the company is considered as a signature issued by each partner separately. Hence, when the partner signs in his personal name only, he is personally obligated to act. Also, If he started the business by himself as a professional as the company, so he would acquire the status of a merchant.

The joint partner must have commercial capacity. Then, he must be of twenty-one years of age, have not been affected by any obstacle or barriers to capacity, or he is eighteen years of age, provided that permission is obtained from the Court of First Instance.[1]

Likewise, those who are prohibited from practicing commerce may not be partners in the general liability company. However, violating the ban does not lead to not acquiring the status of a merchant. As a result of the general partner acquiring the status of a merchant, the bankruptcy of the general partnership as a company entails the publicity of bankruptcy of all partners in the company.

[1] Dr. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 69.

This is because the financial capacity of each partner is considered a guarantee for the company's debts. Thus, the failure of one partner to pay his debts is considered an automatic bankruptcy of all partners.

Otherwise, the publicity of bankruptcy of the joint partner for a personal debt does not entail declaring the company's bankruptcy, because the company's financial liability is not a guarantee of the partner's personal debts.

Likewise, when the joint partner acquires the status of a merchant, he will be bound by the obligations imposed by law on merchants. He must publish the financial capacity and keep commercial books, but he is not obligated to register in the commercial register. It is sufficient to register the company, as the data related to it includes the names of the partners in it.

3. Management:

It has already been mentioned that companies are a separate personality from the partners, and this personality can only appear to the actual and material existence by natural persons who carry out the work for which the company was established and manage its activity to achieve the desired goal.

Therefore, it was stipulated in Article 553 of the Commercial Code, through which it is clear that the least in management of the general partnership company belongs to all partners so that they are all considered agents of each other in managing the company's business.

This is based on the fact that each partner is authorized by others to manage the company's business. Hence, each partner authorized by others has the right to manage the company without referring to others, but this right is restricted; each

partner can object to any work that another partner wants to accomplish.[1]

In this case, the matter is presented to all the partners for decision, and the majority has the right to object(Art 431 Commercial Code).

The partners agree in the partnership deed to appoint the manager, whether he is one of the partners or a third party. If it is specified in the partnership deed, in this case, he is called the agreement manager. The jurisprudence sees that the managing director when he is a partner is considered a member of the company's body as a juristic person.

It is not required that the manager be appointed in the partnership deed. The partners may, upon formation of the company or afterward, appoint him in a contract or agreement independent of its partnership deed. In this case, the manager is called the non-agreement manager.

The principle is that the appointment of the manager is with the approval of all the partners unless it has been stipulated in the partnership deed. The partners may decide to include a condition in the partnership deed by which the majority necessary to appoint the manager is determined by the majority of the shares or any other.[2]

The provisions of the partnership deed usually specify the extent of the manager's authority and the work to be undertaken. If the company’s contract does not renew the manager’s authority, he may perform all management and disposal actions that are consistent with the nature of the purpose for which the company was established.

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(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 352.

(2) Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

The manager's actions and transactions obligate the company as a juristic person and all partners, provided that they are free of fraud (Art 554 of Commercial Code).

On this basis, the manager has the right to rent the real estate necessary for the company's activity, to employ and fire workers, to secure the company's funds, and purchase the goods necessary to achieve its activity....etc.

He also has the right to borrow within the limits necessary to achieve the company's purpose, and he has the right to represent the company as a juristic person before the courts and to require the partners to fulfill their obligations by providing their quotas in the company's capital.

He may not donate the company’s money with general proceeds, noting that the company, as a juristic person, is bound by the actions of the manager that fall into the realization of the company’s purpose before third parties, even if there is a condition in the memorandum of association that determines the manager’s authority. This condition does not apply except in the relationship Between the manager and the partners (Art 551 of Commercial Code).[1]

In the event that the company is managed by more than one manager, in this case, the memorandum of association stipulates that the directors of the partners shall jointly manage the juristic person.

The partnership deed may specify a specific competence, and the founding contract may be sufficient to appoint more than one director without specifying a specific competence for each director. In the first case, it is necessary for the company's management to take collective decisions, and these decisions are taken by consensus or by the majority.

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 120.

However, it is not permissible to deviate from the rule that the manager manages the company on its own without referring to other company managers, unless there is an urgent matter that results in its strengthening a huge loss that the company was able to identify, so one of the managers may, for example, sell the exposed goods or impose a penalty for determining a mortgage entry in favor of the company before the date is over Renewal to other used things.[1]

However, in the event that the partnership deed specified the competence of a manager, one of whom was specialized in buying and the other in selling and remuneration for appointing workers, then each manager must work within the limits of his authority.

In the event that the partnership deed does not specify the competence of each of the managers and does not provide for a unilateral dialogue work from them in the management of the company, each manager may carry out any of various management activities of the company that falls within the realization of the company's offer.

Also, each of the company's other managers has the right to object to the manager's work before conducting the management's work. If one of the managers performs an administrative act or legal act without the objection of his colleagues, they all become responsible for this action.[2]

The manager may deal with the name of the company, but if the manager signs in his own name one of the contracts without indicating the name of the company, then this contract is considered for his own account of the private manager until evidence to the contrary is provided.

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[1] Dr. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 170.

[2] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

The dismissal of the manager depends on the method of his appointment. This is evident from the text of Article 559 of the Commercial Code

If the appointment of the manager or managers is in the partnership deed, then his dismissal or removal can only be done through the unanimous consent of the partners.

This dismissal resulted in the dissolution of the company unless the partnership deed stipulates its continuation or the remaining partners decide to dissolve the company. The partner manager may withdraw from the company and may request the fulfillment of his rights, whose value is estimated on the day of the dismissal decision, by an accredited expert appointed by the parties.

However, if there is disagreement about the appointment of the expert, the competent court to consider the appointment of an expert. If the agreement manager acts simultaneously as a partner, he may not retire from the management business except with the approval of all the partners, unless immediate reasons justify his resignation, such as illness or disability.

Each partner has the right to judicially dismiss the manager if he finds a legal and serious insult, such as the manager's inability to run the company's management, or his exploitation of the company's activity for his own benefit, or the commission of a bodily mistake that caused damage to the interests of the company and partners. The interim relief judge has the discretion to evaluate the reasons and evidence that lead to the dismissal of the director without being subject to the oversight of the Court of Cassation.[1]

When the seriousness of the reasons was established, the court may rule to dismiss the director without him having the right to claim compensation for the dismissal.

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 156.

If the non-agreement manager is a partner, he may be dismissed according to what is included in the company's deed.

This manager may also resign from management in accordance with the provisions of the agency, provided that this is done in an appropriate manner, otherwise, he will be considered in breach of his obligations and he is obligated to compensate the company for the damages he sustained as a result of his resignation.

The dismiss of the non-agreement partner does not lead to the dissolution of the company, but if the non-agreement manager is a foreigner from the partners, he is dismissed in accordance with the legal provisions in Art 559/4 of the Commercial Code.

If the non-partner manager was appointed in an agreement independent of the company's deed, then this agreement determines the form of the relationship that binds him to this company. Whatever the method of his appointment, if he is dismissed for an illegal reason, this dismissal is compensation for the damage incurred (Art 559/3 of the Commercial Code).

Limited Partnership

The historical origins of this company can be traced back to the so-called "Great Risk Loan" system, which the Greeks knew in the sixth century BC. This system spread in the field of maritime trade.

Under this system, the owner of the money loaned the owner of the ship the money he needed to equip the ship and buy the goods. If the ship arrived safely, the borrower has the right to recover the loan amount, in addition to its interest, which

is a high percentage of profits. [1]If the ship sank, the lender would not get anything and his money would be lost on him.

This contract resulted in the so-called "Kumanda contract", meaning trust, this contract spread in the Middle Ages. According to this contract, the owners of the capital provided money to the merchants in order to carry out trade, and it was agreed to share the profits and losses in proportions to be determined in the contract, provided that the loss of the owner of the money did not exceed the amount of money he provided, or the merchant is asked for all losses.

The motive behind the emergence of this contract was to circumvent the prohibition of usury. After the church recognized the legitimacy of this contract on the basis that these loans are productive and not consumer, major companies began to form that include owners of capital and merchants, and the former receives a share of the profits and are asked about the company's debts within the limits of their quotas. As for the latter, they are responsible for all the debts of the company absolutely and jointly. These companies were called the "Recommendation Company" and have retained this designation to this day.

Definition of the limited partnership:

Article 23 of the Commercial Companies Code defines A limited partnership company as: "a company that is concluded between one or more partners who are responsible and jointly liable and between one or more partners who are owners of funds and who are outside management and are called limited partners".[2]

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[1]Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 154.

[2] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

It is clear from this definition that the simple partnership company includes two teams of partners.

The First category: **General partners** who have the same legal status as the general partners in the General Partnership. They are asked about the company's debts as a personal and joint responsibility, and they acquire the description of the merchant as soon as they enter the company, even if they did not have this description before. Finally, they are not allowed – as a general rule – to assign their quotas to others. In general, all the aforementioned provisions apply to the general partners in the general partnership.

The second category: limited partners who are asked about the company's debts within the limits of the quotas provided by them in the company's capital and do not exceed them to their own money.

They do not acquire the description of a merchant, and they may not - as a general rule - assign their quotas to others. In addition, the limited partners do not interfere in the management of the company.

Finally, they are not declared bankrupt according to the publicity of bankruptcy of the company. The Limited partnership company consists of one or more general partners and one or more limited partners. The limited partnership company is considered one of the persons companies, as it is based on the personal consideration that must be available in the general partners and the limited partners alike.[(1)]

Formation of the limited partnership:

The formation of a limited partnership company is subject to the general rules that govern all the previously mentioned

[(1)] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

companies. Therefore, for the formation of a limited partnership company, the general objective pillars must be available, as well as the special objective pillars, and the formal pillars.

- **General substantive pillars:** The contract of the limited partnership company must meet the general objective pillars, which are the presence of satisfaction and the object in which it is required to be possible and legitimate, and finally the reason that is required to be legitimate as well.

It is worth noting that with regard to the capacity of the partners in the limited partnership company, the law has stipulated that the general partner should be full capacity. As for the limited partner, he may be a minor. The reason for this is that the recommended partner is asked about the company's debts within the limits of the share submitted by him, and he does not acquire the description of the merchant, and he is also prohibited from interfering in the management of the company, and finally, he may not declare bankrupt according to the publicity of bankruptcy of the company.

- **Special substantive pillars:** The contract of the limited partnership company must meet the special objective elements, which are the multiplicity of partners, the provision of quotas, the sharing of profits and losses, and the intention to participate.

With regard to multiple partners, it is required for the formation of a limited partnership company that the minimum number of partners be at least two, and there is no maximum number of partners. So that, the limited partnership must have one general partner. It is not required that the number of the general partners be equal to the number of the limited partners.

It is permissible to be more than one general partner with one limited partner or vice versa.[1]

The presence of two types of partners in the limited partnership company does not mean the existence of a general partnership company that includes the general partners and the limited partnership company that includes the limited partners. Rather, it is only one company, even though the legal system governing each type of partner is different.

As for the provision of quotas, the joint partner and the silent partner may each provide a financial share, whether in cash or in kind. As for the share of the work, if it is permissible to submit it by the joint partner, this is not allowed to the limited partner.

The reason for this is due to the historical establishment of the limited partnership company. We have previously explained that this company was established to circumvent the prohibition of usury.

Therefore the owners of the money would give their money to the merchants to invest it, provided that they remain hidden, and only the partner in the business appears in front of others. Hence the rule of preventing the recommended partner from interfering in the management of the company, which means that the recommended partner may not provide a work share, but his share must be cash or in kind.

Also, all partners must share profits and losses from the exploitation of the quotas provided by them, and all of them must have joint and limited partners with the intention of participating.[2]

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[1] Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

[2] Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 49.

Formal pillars: the limited partnership is subject to the same formal elements that apply to the partnership company, which we have previously explained. It is necessary to write the company's deed and publishing its summary by depositing it in the clerk's office of the court of first instance in which the company's headquarters or one of its branches is located and pasting this summary on the judicial notice board prepared for that for a period of three months.

In addition, it must be published in a newspaper printed in the company's headquarters or in two newspapers printed in another city. However, the deed of the limited partnership company is subject to special rules that differ from those to which a general partnership is subject. These rules are that it is not required to publish the company's deed in the commercial register to mention the names of the silent partners. Rather, it is sufficient that the summary of the company contract includes the names of the general partners.(1)

In addition, the invalidity of the company due to lack of legal publicity does not entail changing the type of the company and considering it a general partnership and changing the status of the silent partner, and considering it a general partner.

This is confirmed by Article 55 of the Commercial Companies Code, which stipulates that: The cancellation of the company does not result in the partners being considered the owners of the funds in the limited partnership and the owners of the quotas in the joint-stock company as being jointly committed to something.

It follows from this that the company's creditors may not demand the silent partners to pay the company's debts out of their own money based on the invalidity of the company's deed due to the delay in the publicity. However, it is necessary to mention the amount of the quotas of the silent partners and the

(1) Dr. Ali Hassan Younis, Commercial Law, op cit, p 472.

amount of the sums that have been collected or need to be collected.[1]

Characteristics of the limited partnership:

The limited partnership - as a partnership of persons - is based on the personal consideration of all its partners, both general and silent partners. The limited partnership company is characterized by the following characteristics:

1. It is not permissible to trade in a partner's share:

The partners in the limited partnership may not assign their quotas to others, the same applies to the general partners and the silent partners. However, the company's contract may stipulate that the share may be assigned with restrictions and conditions that preserve the personal consideration on which the limited partnership is based.

Likewise, the death of the limited partner does not result in the transfer of his share to his heirs. Rather, his death results in the dissolution of the company. However, the company's deed may provide that the share of the deceased partner may be transferred to his heirs, and thus the company does not expire.

2. The company name:

Article 24 of the Commercial Companies Law states that the company shall have the management of this company (the limited partnership company) with a name, and this title must be the name of one or more of the general partners.

Likewise, Article 26 of the Commercial Companies Law stipulates that it is not permissible to enter in the title of the company the name of one of the limited partners, i.e. the owners of money who are out of management.

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(1) Dr Samih Al-Qubyoubi, Commercial Law , op cit, p 331.

By examining the previous legal texts, it becomes clear that the name of the limited partnership consists of the names of all the general partners or from the name of only one partner among them, with the addition of evidence indicating the existence of a company such as a phrase “and his partners” or “partner”. Accordingly, it is not permissible to enter the name of the silent partner in the company’s name, because he is responsible for the company’s debts within the limits of the share provided by him in the company’s capital. If his name is included in the company’s title, others may assume that he is a joint partner, and he will be assured of this and take up dealing with the company based on this illusion. (1)

Then it turns out that the partner is not a joint partner, but rather a limited, and his liability is limited. In this regard, the question arises about results from the appearance of the name of the silent partner in the company’s name.

To answer this question, we differentiate - in this regard - between two hypotheses:

The first hypothesis: including the name of the limited partner in the company’s name at the partner’s request or with his knowledge of that and without objection from him. The limited partner - in all the previous cases - is responsible for the company's debts before third parties as if he were a joint partner, i.e. he is personally and jointly liable.

The company's creditors may have recourse against him for his own funds. This is what Article 29 of the Commercial Companies Law states: If one of the silent partners permits his name to be entered in the company’s name, contrary to what is stipulated in Article 26, then he shall be jointly liable for all the debts and pledges of the company before third parties.

(1) Furmston, M. P.. Principles of Commercial Law 2/e. United Kingdom, Taylor & Francis, 2001.

The second hypothesis: including the name of the limited partner in the company's name without his knowledge or despite his objection, in this case, he remains conservative in his capacity as a limited partner, whether in the face of others or in relation to the partners. The limited partner bears the burden of proving that he was not aware of the presence of his name in the company's title or his objection.(1)

The limited partner may request the joint partners to compensate for the damages he incurred as a result of entering his name in the company's title. In addition, if the general partners intended that by including the name of the limited partner in the title of the company to create an apparent credit for the company, they shall be held criminally responsible for a fraud offense if its elements are present.

3. The silent partner does not acquire the capacity of a merchant:

We above -mentioned that the joint partner acquires the status of a merchant as soon as he enters the company, even if he did not have this description before.

Otherwise, the silent partner does not acquire the status of a merchant by mere entry into the company, unless he previously had this capacity. The silent partner does not carry out this continuing business in his name, unlike the general partners who carry out this business with the title of the company, which includes all of their names or something to that effect.(2)

As a consequence of the silent partner not acquiring the status of a trader, if the company goes bankrupt, the trusted

(1) Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

(2) Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 67.

partner is not declared bankrupt accordingly, and the limited partner is not bound by the merchants' obligations to keep commercial books or register in the commercial registry. Finally, those who are prohibited from practicing trade -because of their professions, or because they are minors- may be limited partners in a limited partnership company.

4. Limited liability of the limited partner:

We have seen - in the above - that the general partners are responsible for the company's debts and are jointly and personally liable. Otherwise, the limited partner shall be asked for the company's debts within the limits of the share he provided in the company's capital.

This is what Article 27 of the Commercial Companies Law stipulates, saying, "The silent partners are not obligated from the loss that occurs except to the extent of the money they paid or that they were obligated to pay to the company."

Accordingly, if the limited partner fulfills the share he pledged to give, he is discharged of all obligations and the company or its creditors may not recourse against him for any claim after that. However, if the silent partner has not paid all or part of the share, the company manager may demand it from him. The company's creditors may also, through an indirect lawsuit, ask him to provide the share that he has pledged to provide.

In view of the risks surrounding the indirect lawsuit that the creditor is exposed to, the judiciary and the jurisprudence have settled that the company's creditor may resort to a direct lawsuit against the silent partner to demand that he provide the share that he was obligated to provide.

The basis for this respective is that the share of the limited partner is considered part of the company's capital, which is the general guarantee on which the company's creditors depend, so

it is their right to work on completing it. In the sense that recognizing them with a direct right over the recommended partner does not go beyond being a sound application of the principle of capital stability.

Limited partnership management:[1]

The management of a limited partnership company is subject to the same rules that regulate the management of the general partnership, which we have already presented in terms of appointing the manager, dismissing him, his wage, his powers, the company's responsibility for his actions and his responsibilities in the face of the company.

Accordingly, the management of the limited partnership company is undertaken by a manager. It may be a specific agreement in the company's founding deed, or a specific agreement in an independent contract, whether it is a partner or not.

However, if it is possible to appoint the general partner as a manager of the company, the matter is different for the silent partner, who may not interfere in the management of the company.

The rule prohibiting the interference of the limited partner in the management of the company was stated in Article 28 of the Commercial Code, provided that the limited partners may not do work related to the management of the company, even on the basis of a power of attorney.

Accordingly, the company must be managed by either a general partner or a person foreign to the company. In the event that a manager of the company is not appointed, the

[1] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

management shall be for the general partners alone, without the silent partners.

The jurists differed about determining the reason for the rule prohibiting the involvement of the silent partner in the business of managing the company.

Some have argued preventing the limited partner from interfering in the company's management is to protect the third party dealing with the company from being deceived in the reality of the status of the silent partner, and believing that he is a joint partner with personal and joint responsibility for the company's debts.(1)

Therefore, the law prohibited the limited partner from interfering in the management of the company in order to ward off this mistake that third parties make.

Others say that the prudence of prohibiting the intervention of the limited partner in the title of the company is to protect others and the company. I am on the belief that it seems illogical to forbid the limited partner to interfere in the management of the company while allowing a person who is not a partner to run the limited partnership company, and who is not responsible for its debts at all. If it is permissible, is it not better to grant the limited partner the right to manage the company?

The fact that the rule prohibiting the involvement of the limited partner in the management business is due to the historical considerations of the establishment of the limited partnership company.

If the limited partner takes the role of a lender with interest, he works in secret and does not appear in front of others, and does not enter into transactions with him. This is a circumvention

(1) Dr. Ali Hassan Younis, Commercial Law, op cit, p 429.

of the Church's prohibition of interest-bearing loans, as we have already explained.

Since the reason for prohibiting the intervention of the limited partner in the company's management business is to protect others, the opinion has been settled in jurisprudence and the judiciary of the distinction between two types of management actions: external management work and internal management work.[1]

External management works are those that require representing the company before others. For example, if the limited partner buys from a third party for the company's account, or borrows from him for its account…etc.

The limited partner does the have the right to represent the company before the courts or to participate with the real manager in signing a legal transaction with third parties.

In general, the limited partner is prohibited from interfering in any of the external management's work, whether in an original capacity or based on a power of attorney issued by the manager or partners.

As for the internal management work, it means the work that does not require representing the company before others but rather is related to the company's internal affairs. Therefore, it is the right of the limited partner to do these works because they represent the minimum set for each partner, regardless of his responsibility for the company's debts, that is, even if his responsibility for it is limited to the extent of his share in the capital.

For example, if the recommended partner participates in amending the company's deed, advising the manager, and reviewing the company's books and documents….etc.

[1] Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 76.

Joint Venture

Definition of a joint venture:

According to the text of Article 59, a joint venture is defined as a company consisting of two or more partners, each of whom participates in a financial project with the intention of sharing the profit or loss that may arise from this project, and the project activity is undertaken by one of the partners in his own name.

Article 60 of the Commercial Companies Law stipulates that Joint Ventures are these companies that specialize in one or more commercial businesses.[1]

Accordingly, this company is held between its partners to do one project or a number of projects so that it takes only a limited time to do it, so some called it the temporary company. For example, buying the fruits of a garden or the ruins of a house, selling them, and sharing the profit or loss that results from them.

However, this does not prevent the joint venture from undertaking large or long-term business. For example, you are exploiting production factories or a theater that needs to be exploited for a long time.

Joint Venture Formation:

The formation of the joint venture is subject to the general rules that all other companies are subject to. In its contract, the general objective elements must be present, which are represented in satisfaction, place, reason, and capacity, as well as the special objective elements represented in the multiplicity

[1] Dr. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 95.

of partners, the presentation of quotas, the intention to participate, and the sharing of profits and losses.[1]

However, the joint venture differs from the rest of the companies in that it does not require the availability of the formal elements of writing and publicizing the company's contract. In this regard, Article 64 of the Commercial Companies Law states that it is not necessary for a joint venture company to follow the procedures established in other companies.

Accordingly, it is not required that the joint venture contract is in writing. However, this provision stipulated in the aforementioned Article 64 contradicts Article 507 of the Civil Code, which stipulates that the company's contract must be in writing, otherwise it is void. In order to remove the contradiction between the two articles, the most common opinion is that this text does not apply to joint venture companies, so it is not required that the company contract is in writing. As for civil joint-stock companies, their contract must be in writing.

I argue that the requirement that the company contract is written is limited to companies that have a legal personality and which cannot be invoked against others unless the company contract is written as the deed establishing the legal personality. As for the joint venture, it is a company that does not exist in relation to others and is established only between partners.

As for the provision of shares in a joint venture, it is subject to special provisions as follows:[2]

Ownership of Shares: The partner is obligated to provide the share agreed upon in the company's contract. It shall be cash or in-kind share or by work. This is so that these shares can be invested in a financial project and the resulting profits or losses

[1] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

[2] Dr. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 28.

can be shared among the partners. In this regard, the joint venture company is similar to all other companies, so it is not possible to imagine the existence of a company without capital. However, it differs from the rest of the companies in that it is not considered a juristic person, and therefore it does not have a financial liability independent of the liabilities of its partners.

The question arises - in this regard - about the financial disclosure to which the ownership of the shares submitted by the partners will be transferred. As in other companies that have a legal personality, the ownership of the shares is transferred to the company's financial assets.

The rules of the transfer of ownership of the shares are subject to the agreement of the partners, and this agreement does not depart from one of the three assumptions:

The first hypothesis: that each partner retains ownership of his share, provided that he invests it in the purpose for which the company was established, and then shares with the rest of the partners the resulting profits or losses.

The second hypothesis: that the partners transfer the ownership of the shares to one of them and he is called the joint manager, provided that he invests these shares in the purpose for which the company was formed, and then divides the resulting profits and losses between him and the other partners.[1]

After transferring the ownership of the shares to the joint manager, a fictitious transfer of ownership aims only to facilitate the matter for the joint manager so that he can invest the shares provided by the partners in accordance with the purpose of the company.

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 327.

Therefore, it is necessary to prove the fictitiousness of the contract of transferring the ownership of the shares to the director of the joint venture by all means of proof.

The third hypothesis: that the partners agree that their shares and the resulting investment of funds owned by them shall be considered in common in proportion to their shares. This agreement must be explicit, because the joint venture does not, by its nature, lead to commonality. If the partners do not agree on the method by which the ownership of the shares is transferred. The rule is that each partner retains ownership of his share.(1)

Proof of a joint venture: Article 63 of the Commercial Companies Code stipulates that "joint ventures may be established by presenting books and letters." It is clear from this text that it is permissible to prove a joint venture company by all means of proof. Writing is not required to prove the existence of this company. Some believe that this is logical because the proof is linked to the form, so as long as the writing is not a requirement for the holding of the joint venture, it is natural for it to be proven by other than writing.

This is what the authors of the law actually did when it allowed proving the existence of the joint venture by showing the books and letters. However, this must not be understood that the proof of the joint venture is limited only to these two ways, but rather mentioning them as an example and not as a limitation. The existence of the company may be proven by all means of proof, including evidence and presumptions. As for the civil joint-stock company, writing is not a cornerstone for its holding. Therefore, writing is not required for proof unless the subject

(1) Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 267.

matter of the dispute exceeds the quorum of proof with evidence.[1]

Characteristics of the joint venture:

The joint venture company is distinguished from other companies in that it is a hidden and hidden company that is established only between the partners and no one else knows anything about it. Therefore, it is not necessary to hold writing for a month, as we explained above. Moreover, this company does not enjoy a legal personality independent of the personality of the partners that make up it, whether among the partners or in relation to others. It follows that the company has no name, independent financial disclosure, domicile, or nationality. Based on the foregoing, the joint venture is characterized by the following characteristics:

First: The joint venture is one of persons partnerships: the joint venture company, like the rest of the partnerships of persons, takes into account a relationship of friendship or kinship that knows and trusts each other. Since the personality of the partner is taken into consideration by the rest of the partners, it follows that the estranged partner may not assign his share to others unless the rest of the partners agree. In addition, the company ends with the death, bankruptcy, insolvency, or interdiction of one of the partners unless the partners agree in the company's contract that the company will continue among the rest of the partners.

Second - The joint venture is a disguised company: Since the law does not require the formation of the joint venture company, the presence of the formality element that must be met in the company's contract or the publicity procedures that it requires in other companies, so the joint venture is a hidden and

[1] Dr.. Hamdi Abdel Rahman and Dr. Khaled Hamdy - Proof of Compliance in Civil and Commercial Matters - Legal Library - 1996 - p 56.

hidden company that no one knows about, even if it is present among its parties.

The joint venture does not have a name, and the actions undertaken by one of the partners are in his own name and he is solely responsible before third parties for the implementation of the obligations arising from these actions. However, the covert nature of this company does not mean that it is necessary for the partners to succeed in concealing their partnership.

Rather, it means that the partnership in itself must be legally disguised, and it remains so as long as the partners do not perform any act of the nature of revealing and revealing the company. In front of others as a juristic person independent of them by registering it in the commercial registry or completing the procedures for publicizing it. If the concealment of the joint venture is removed, then it loses its nature as a joint venture and is considered a partnership company. (1)

However, it will be invalid due to the lack of the formal conditions necessary for its formation, which are writing and publicity, or for it to be a limited partnership if the liability of one of the partners in it is limited, but it is void. The emergence of the joint venture entails that it enjoys a legal personality and has a financial liability independent of the partners, name, nationality, domicile, and capacity. The concealment of the actual company shall not be removed if one of the partners announces its existence to third parties without the other partners wishing to do so.

Third - The joint venture does not have a legal personality: The covert character that characterizes the joint venture leads to the absence of the legal personality of this company, its legal existence in practical life. The lack of legal personality of the joint venture has several consequences, including:

(1) Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 301.

1. It does not have a financial liability independent of the receivables of its partners, as the financial liability needs a personality to live in, and this personality does not exist, so there is no independent financial liability. It follows from this that the total shares of the partners in the joint venture company is not an independent capital or independent financial disclosure, and therefore there is no general guarantee for the creditors in this company, and their guarantee is limited to the financial liability of the joint partner who deals with them.(1)
2. It does not have a trading name that distinguishes it from other companies and deals with it with others. The joint partner contracts in his own name and appears in front of others as if he is contracting for his own account, because there is no independent juristic person contracting in his name and for his account, and the effects of the disposal go to him. This results in the non-compliance of the rest of the partners with the actions of the shareholder in the face of others, even if the shareholder may have recourse to them under the company contract concluded between them.
3. It does not have a domicile independent of the domicile of the partners. The domicile that is considered when forming the joint venture is the domicile of the joint manager or the partner who contracts with others.
4. She does not have the capacity to litigate, so she may not be a plaintiff or defendant. Rather, the partner who has dealt with others in his own name is the one who can sue in his name and cases may be brought against him when a dispute arises regarding the actions he entered into with third parties.(2)

(1) Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

(2) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 268.

Fourth: The commerciality of the joint venture:

Article 60 of the Commercial Companies Law stipulates that these companies specialize in one or more commercial businesses. In spite of this, it is decided that the joint venture company may also be civil, according to the offer that the company has made in order to achieve it. The question arises - in this regard - who acquires the status of a merchant if the joint venture company conducts business, is it the joint partner who deals with others in his own name, or all the partners in the company?

Some have argued that the only partner who deals with others is the one who acquires the description of the merchant because he is the one who deals with others in his own name and appears before him as if he is dealing for his own account. The rest of the partners do not acquire the description of the merchant unless they conduct business in a professional manner.(1)

Others believe that all partners in a joint venture acquire the description of a merchant, including the joint partner who deals with others. This is because he conducts commercial business for the account of all partners, even if he deals in his personal name and appears to others as if he is contracting for his own account.(2)

The Management of the joint venture:

We have previously clarified that the joint venture does not have a legal personality, it follows that it does not have a manager who represents it before others and deals in the name and account of the company. Therefore, the management of the joint venture is subject to the agreement concluded between the

(1) Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 319.
(2) Dr Samih Al-Qubyoubi - Commercial Law , op cit, p 231.

partners in the company's contract, and the matter is not devoid of one of three assumptions:

The first hypothesis: the partners agree that each partner is responsible for managing part of the company's business, then each of them submits an account for this business in order to share the resulting profit or loss. In this case, each partner shall be asked about his dealings with others, since this deal is done in the name of the private partner, then he shall transfer the effects of this behavior to the rest of the partners in the company as stipulated in the company's contract.

The second hypothesis: that the partners entrust the company's management work to one of them, and he is called the "manager of the shares". In this case, the joint manager performs the management activities in his own name and then presents to the partners an account for these works in order to divide the profit or loss that resulted from them, according to the conditions agreed upon between them in the company's contract.

The third hypothesis: that the partners agree among themselves that they all carry out the business of managing the company. In this case, they all sign all actions and are jointly responsible for them before others, and this is considered an application of the general rules in assuming solidarity in business.(1)

The Results of the joint venture management:

1. The company's relationship with others: The covertness characteristic of the joint venture leads to two things:

    - **The first matter**: that the joint venture does not exist vis-à-vis third parties, this company is established only between the partners, and the third party knows nothing

(1) Dr Samih Al-Qubyoubi - Commercial Law -, op cit, p 241.

about it. Confronting others, even if the latter is aware of the company's existence. Rather, even if the contracting partner showed him what proves the existence of the company so that he gives others credit and a guarantee that encourages him to deal with him because the mere knowledge of others about the existence of the company is not enough to hold another partner accountable.[1]

- **The second matter**: As a result of the concealment of the joint venture company and the lack of knowledge of others of the existence of the company, it is not permissible for the creditor of the managing partner to be executed on the money of the remaining partners, because he has no guarantee other than the responsibility of the managing partner with whom he dealt. It is worth noting that the shareholder who deals with others in his own name is considered responsible for all his money before this third party, even if it was agreed between him and the partners in the company contract to determine his responsibility because the company contract is not invoked against third parties. If more than one partner contracts with a third party, they shall be jointly questioned before the latter, due to the absence of a legal personality for the company.

2. The relationship of the partners among themselves: the relationship between the partners is regulated by the contract concluded between them. The partner who deals with third parties has a direct claim against the rest of the partners for what he may have incurred as a result of his contract and his actions.

[1] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

Chapter Three

Stock Corporations (Capital Companies)

stock corporations are divided into joint stock companies, partnership limited by shares, and Limited Liability Company (L.L.C). Law No. 159 of 1981 was issued regulating the provisions of these companies, then Law No. 3 of 1998 was issued to amend some of its provisions.

Joint Stock Company (J.S.C)

The definition of the joint-stock company:

Article (2) of Law No. 159 of 1981 defines a joint-stock company as “a company whose capital is divided into shares of equal value that can be traded in the manner specified in the law. This definition leads to the fact that the joint-stock company is one of the money companies whose capital is divided into shares of equal value, negotiable, in which the responsibility of each shareholder is multiplied according to the value of the shares he has subscribed for, with the necessity of taking the joint-stock company as a trading name for it.

- **Characteristics of a Joint Stock Company:**

From the definition of Article (2) of the Companies Law, several characteristics crystalize the joint-stock company as follows:[1]

First- Joint Stock Company is a Corporation from the Capital Companies:

Since the joint-stock company is the ideal and only model for capital companies, it is based on the financial consideration in which the personal character disappears and is replaced by

[1] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 376.

the financial character, and the shareholder hides behind the stock. Therefore, the capital is divided into shares to be subscribed in which there are a large number of partners, who are the shareholders;

The company offers its shares to the public. Hence, every person who applies to subscribe for shares is considered a partner, which leads to a large number of shareholders in the company, so that no shareholder means that he is aware of the other shareholders.

Those who are only motivated by the desire to obtain profit, and it follows that the joint-stock company is considered a capital company, that the shareholder person has no place, nor a lesson in his identity. Therefore the death, bankruptcy, or insolvency of one of the shareholders does not affect the survival of the corporation.

The company is an economic edifice that aims to accumulate the capital needed to exploit its subject matter, and its survival depends on its continuation as an existing economic entity, regardless of the shareholders in it. Usually, the capital is divided into shares of equal value, which are traded by commercial methods, although the method of trading depends on the type of share. Nominal shares are traded by the entry in the company's books, then by delivery for the shareholder, and by endorsement when it is nominal.[1]

It is not an exaggeration to say that the main feature of a joint-stock company is the ability of shares to be traded, which is what distinguishes a share in a joint-stock company from a share in a private company. Therefore, every condition in the company's system that states that the shareholder is not entitled to assign his shares to others is considered null and void, as this deprives the shareholder of selling his shares.

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 325.

However, this view is not absolute, as the company's statute may include some restrictions or conditions, which limit the shareholder's freedom to relinquish his shares. The reason for that may be for the corporate desire to prevent the assignment of these shares to undesirable persons as shareholders, or to protect the company from the control of competitors.

Among these restrictions is the need for the company's board of directors to agree to the assignment of shares, or the priority of the partners in purchasing the shares subject of the assignment and other restrictions.[1]

Second-Shareholder's liability:

Article 2/2 of Companies Law No. 159 of 1981 stipulates that a shareholder's liability is limited to the value of the shares he has subscribed to, and he is not liable for the company's debts except to the extent of the shares he has subscribed.

The result of this is that the responsibility of the shareholder is limited and does not exceed the value of his shares in the company's capital. The rule for determining the liability of the shareholder according to his shares is part of the public system, therefore it is not permissible to agree on anything contrary to it.

Determining the liability of the partner in the joint-stock company follows that it does not confer on him the description of a merchant, unlike the joint partner in the partnership and limited partnership companies. Thus, the joint-stock partner is not required to be qualified to be professional in the business.

Accordingly, the publicity of bankruptcy of the joint-stock company does not lead to the declaration of bankruptcy of the

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 393.

shareholder, even if he is a merchant before joining the joint-stock company.[1]

Third - The name of the company:

Article 3/2 of Law No.159 mentioned that " It is not permissible for the company to take the names of the partners or the name of one of them as its title".

The general rule in a joint-stock company requires every company to take a commercial name that derives from the purpose of its establishment, and therefore it is not permissible for it to take a title that derives from the name or more of the shareholders in it, or any other identical or similar to the name of another existing company, or any name that would cause confusion about the type and nature of the company as a joint-stock company.

Usually, the joint-stock company takes a name that stems from its purposes, such as Misr Insurance Company, Misr Iron and Steel, Food Company, or Misr Spinning and Weaving, Or a Portland Cement Company, ... and so on, provided that the company name includes evidence that it is a joint-stock company. The reason for this tenet is that the appearance of the name or more of the shareholders in the company's address would lead to third parties believing that he is a joint partner, who is responsible for all the company's debts in his own money.

However, the question is, what would be the decision if a joint-stock company includes the name of the general partner in its title. In this case, the company turns into a partnership limited by shares that includes two types of partners: joint partners and shareholders partners.[2]

(1) Dr Samih Al-Qubyoubi - Commercial Law -, op cit, p 121.
(2) Dr Samih Al-Qubyoubi, Commercial Law , op cit, p 111.

However, it has been settled on the permissibility of naming the company in the name of a person, in the event that a sole proprietorship or a partnership limited by shares turns into a joint-stock company, and the title of the company includes the name of one of the old partners, in this case, the joint-stock company may keep the name of the person in its title, provided that the phrase “Joint Company” is added beside the name with a clear and legible phrase to protect others who deal with the company, so that he is aware of his matter, and is not deceived by the appearance of the company.

In the French Companies Law, the name of the joint-stock company may be derived from the name of one of the partners, provided that the term joint-stock company is added to it with an indication of the amount of the capital, in Article (70) of the Companies Law. In confirmation of the foregoing, Article (6) of the Companies Law, No. 159 of 1981 stipulates that the company’s publications and advertisements must bear the company’s type, whether before or after the name, in clear and legible letters with a statement of the company’s head office and a statement of the issued capital.

Every act in the name of the company is done without observing the foregoing, the person who interferes in his own money is asked about all the obligations arising from these actions.

There is nothing to prevent the joint-stock company from adopting an innovative name to attract customers, such as the “Golden Star Food” company or the “Pearl Jewelry Company” Or “Misr Smart Perfumes Company” or “Hayyak Communications Company” or “Beauty Cosmetics Company” ... etc. [1]

Fourth - Dividing the capital into shares:

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 376.

Since the joint-stock company is the ideal model for capital companies, its capital is divided into shares of equal value, and the shareholder has the right to dispose of them freely and without restrictions except within certain limits, as we shall see. Following Article (31) of Companies Law No. 159 of 1981, the value of the share must not be less than one pound and not more than one thousand pounds.

Shares are accepted for trading by commercial methods, and if the company needs more funds, it has to borrow by issuing instruments called bonds. It puts them up for public offering, and they are like debt instruments that give their owner the right to receive a fixed interest from the company, regardless of whether the company has achieved a profit or a loss.[1]

Fifth- Formation of the company's capital:

Since the company's capital is the only guarantee for the company's creditors, hence, the Companies Law has protected the company's capital. It is not permissible to touch it during the life of the company. [2]

The company's capital must be sufficient to achieve the purposes for which it was established, therefore the law has set a minimum that must be met without setting a maximum.

In light of the repealed Companies Law No. 29 of 1954, the legislature restricted the founders with two rules:

- that the company's capital be sufficient to achieve its purposes,
- that the paid-up of the capital at the company's incorporation should not be less than 20,000 pounds, and this amount was considered the minimum capital of a joint-stock company.

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(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 349.

(2) Dr Samih Al-Qubyoubi - Commercial Law -, op cit, p 111.

As for Companies Law No. 159 of 1981, it created an important distinction between what is known as authorized capital and issued capital.

A. **Issued capital:** it is the capital that is determined for the joint-stock company when it is established. It consists of the sum of the nominal values of the various types of shares issued by the company. It must be fully subscribed. The issued capital of the company's founders should not be less than half or an amount equal to 10% of the authorized capital, whichever is greater**.**

In compliance with Article (32) of Law No. 1998, it is sufficient to pay only 10% of the nominal value of the cash shares upon the incorporation of the company, which increases to reach 20% of the issued capital within a period not exceed three months from the date of incorporation of the company. Provided that the value of the shares is paid within a period not exceeding five years from the date of the company's incorporation.[(1)]

The issued capital must be mentioned according to its value in the last balance sheet in all papers issued by the company in its trade name and its advertisements. If there is an exaggeration in the capital listed in the statement, a third party may demand the person who intervenes in the name of the company in any transaction for the difference between the real value of the capital and the estimate contained in the statement.

Minimum issued capital: As long as the company's capital is the only guarantee for its creditors, it is natural for modern comparative laws to set a minimum capital for a joint-stock company so that small and medium-sized enterprises do not risk and dare to experiment in large and large projects.

[(1)] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

The Companies Law No. 159 of 1981 did not set a minimum capital for a joint-stock company but rather referred the matter to the executive regulations of the law.

Article 6 of the Executive Regulation states that the issued capital may not be less than five hundred thousand pounds. The amount paid from it upon incorporation shall be less than a quarter.

With the issuance of the Capital Market Law No. 95 of 1992, this limit was raised under Article (41) of the executive regulations of the aforementioned law to one million pounds, provided that what the founders subscribe to is not less than half of the issued capital. [1]

If the company's objectives include participating in the establishment of financial companies, increasing their capital, dealing in securities, regulating the issuance and marketing of such securities, and ensuring coverage of what has not been subscribed for, then in all the previous assumptions, the issued capital must not be less than five million pounds.

It is not permissible for the amount paid from it to be less than one-quarter at the time of incorporation. It is stipulated that the side of the shares offered for public offering should not be less than 25% of the total cash shares.

B. Authorized capital: Lawmakers have wanted to increase the joint-stock company flexibility. Thus, it is legal to define the authorized capital no more than the issued capital 10 times. Therefore, the joint-stock company may increase its capital without the need to take procedures for amending its system, which requires the approval of the extraordinary general assembly of shareholders. The validity of its meeting it is required to issue its decision by a majority that

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 218.

may not be readily available, as long as the desired increase is within the authorized percentage limits.[1]

If the company finds that it needs to increase the authorized capital itself, then in this case the company has no choice but to amend its bylaws and the approval of the extraordinary general assembly. This means that the company may have an authorized capital that is specified in its system, and its amount is higher than the value of the issued capital, but it is not valid for it to exceed ten times the issued capital.

C. **Paid-in capital:** The project did not require the payment of the nominal value of the issued cash shares in full upon subscription, but it sufficed with paying 10% of their value immediately, and the percentage increases to 20% within a period not exceeding three months from the date of the company's incorporation. Provided that the remaining value is paid in full within a period not exceeding five years from the date of incorporation of the company. This means that the paid-in capital is the part that has been paid out of the nominal value of the shares issued.

Sixth- Commerciality of the Joint-stock company:

Before the issuance of the new Commercial code No. 17 of 1999, the joint-stock company was considered commercial or civil, depending on the purpose for which it was established for him. It is considered commercial if its purpose is to engage in a business for profit, such as industrial and transportation operations. [2]

But if its objective is civil, such as liberal professions, agriculture, and other civil professions, then the joint-stock

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[1] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 289.

[2] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

company is considered civil, so it is subject to the provisions of the civil law.

Then, after the new commercial law came out of the light in 1999, and after the Egyptian legislature adopted the formal criterion, following the example of the French law, it is considered the joint-stock company is commercial, regardless of the nature of its purpose or the purpose for which it was established. Article (10/2) stipulates that every company that takes one of the forms stipulated in the laws related to companies, and among these forms is a joint-stock company, must be a commercial.(1)

It is obvious that the commercial description is only conferred on the company without the shareholders who remain with limited liability, they do not acquire a description of a merchant. They do not abide by the duties of the merchants, and they are not published bankrupt due to the bankruptcy of the company.

In brief, the joint-stock company is a capital company that enjoys a legal personality independent of the persons of its shareholders. Its capital is divided into shares of equal value, which are accepted for trading by commercial means while specifying the liability of each shareholder for debts. The company's share in the capital.

Seventh- Public Offering to the capital (IPO):

Definition of IPO and its legal nature: IPO is defined as a declaration of the will and desire to participate in the project that the company is promoting, with a pledge to provide a share in the capital represented by a certain number of shares. IPO, then, is the process by which to finance the necessary capital for the establishment of the company. It leads to grant the subscriber the description of a shareholder in the company.

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 311.

However, the jurisprudence differed about the legal nature of the IPO. Some argue it is unilateral action on the part of the subscriber, as the latter announced his desire to participate and contribute to the company's project, and this desire obligates the owner to direct it to the founders.

Another opinion said that the IPO is like a contract between the subscriber and the founders, in which the subscriber undertakes to provide a financial share and abide by the company's system, and the company is required to allocate a number of shares to the subscriber as much as he has subscribed.

However, this opinion would deprive the company, after its incorporation, of the right to demand the subscriber for the remainder of the value of the shares he has subscribed to.

The subscriber and the company under incorporation, represented by the founders, and there is no dispute about the position of the company under incorporation. IPO is considered a commercial business for the subscriber because the liability of the shareholder is limited to the value of the shares he subscribes to the company.(1)

1. *Methods of IPO:*

Article (10) of the Executive Regulations of the Companies Law No. 159 of 1981 stipulates that the shares shall be offered for public subscription in the event that unspecified persons are invited in advance to subscribe to those shares, or if the number of subscribers in the company exceeds one hundred.

This text leads to the fact that the subscription is considered public in two cases, **the first** is to invite unspecified persons in advance to subscribe to the company's capital, and then invite the public of savers to buy the company's shares. It

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 352.

does not affect that if the invitation is sent to people of certain categories, or residents of a certain area, as long as they do not have a specific relationship with the founders, and as long as the opportunity to subscribe is available to all those to whom the subscription has been directed.

The law adopted this criterion regardless of the number or value of the shares offered for public subscription and did not put an end to that process. It follows that if the invitation to subscribe is directed to specific persons and they are related to the founders by kinship or acquaintance, then the subscription becomes closed and not public.[1]

The second; if the number of subscribers to the company's shares exceeds one hundred subscribers. In this case, the IPO is considered public, regardless of whether those subscribers are not predetermined or predetermined by their persons or selves, and special invitations have been sent to them, so what matters is that the number of subscribers exceeded one hundred subscribers.

However, this numerical criterion was a subject of controversy and confusion between IPO and the closed one, because according to this criterion after the IPO in general as soon as the number of subscribers exceeds one hundred subscribers, even if the invitation was sent to specific persons in advance, who have a personal relationship with the founders. We think he wants to. Therefore, Article 40 of the Capital Market Regulations pursuant to Ministerial Resolution No. 130 of 1993 states that shares shall not be offered for a public subscription unless unspecified persons are invited in advance to subscribe to those shares, and no minimum number or value of shares law required.

[1]Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

It was put up for a public subscription, and then the legislature dispensed with the numerical criterion for the number of subscribers was satisfied with the case of unspecified persons claiming an advance, regardless of the number of shares offered or their value. It follows from this that if the subscription to the company's capital is limited to the founders only, or other predetermined persons, then the subscription will be closed.

2. *Conditions for the validity of the IPO:*[(1)]

The validity of the IPO in the shares of a joint-stock company requires several conditions that were disclosed by the articles of the Companies Law and its Executive Regulations as follows:

A. <u>The subscription must be complete</u>: the subscription to the issued capital must be complete, i.e. it must cover all the shares of the company that represents the issued capital, which is what was disclosed in Article 32/2 companies; Where it stipulates that the issued capital must be fully subscribed. Then, the partial subscription in the capital of the company invalidating the subscription**.**

The company depends on the availability of sufficient money for its advancement and the guarantor for its success. IPO must take place within the specified period, which is a period of no less than ten days and not exceeding two months starting from the date of opening the subscription door. During the aforementioned periods, what this means is the failure of the company's project, and the procedures that have taken place are canceled.

However, Article 39/3 of the Companies Code states that if the subscription is not covered within the specified periods, banks and companies may Invest money that works in the field of securities to cover part of the depression, and it may re-offer

(1) Dr. Ali Hassan Younis, Commercial Law, op cit, p 429.

what it has subscribed to the public without complying with the stock trading procedures and restrictions stipulated in Articles 37, 45, 46 companies. It is an attempt to avoid the failure of the company's project.

Yet, if this attempt does not succeed- the capital was not given in full- This leads to the failure of the company's project. With the consequences that this has, perhaps the most important of which is the failure to proceed with completing the incorporation procedures, and the commitment of the bank that received the subscription amounts to return it in full. (1)

The subscription may exceed the number of shares that have been offered, and in this case, the shares must be distributed among the subscribers in the manner determined by the company's system. If the latter neglects this determination, a number of shares will be allocated to each subscriber on the basis of the ratio of the number of shares offered to the number of shares written therein.

B. **The subscription must be final:** it is also necessary that the subscription be final and irrevocable, not dependent on a suspensive or rescinding condition or added to a term. As this would prevent the subscription to the capital from being completed. It follows from this that it is not right for one of the subscribers to suspend his subscription on the condition of his appointment as a member of the board of directors in the company, or that he receives a percentage of the profits.

C. The subscription must be serious: it means that the subscriber intends to commit to joining the company and bear the resulting burdens.

This is to protect the public of subscribers, indicating that the subscription is not fictitious or unreal. In consequence, it is not permissible for individuals to subscribe to the founders with

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 382.

the intent of deceiving and deceiving that they have fully subscribed to the entire capital.

D. <u>The subscription should be issued by three subscribers:</u> Article1 of the Companies Law states that the number of founders in a joint-stock company must not be less than three, and this condition is a condition for the existence and continuity of the company. Thus, if the number of founders is less than three, the company will be invalid.

E. **<u>The payment of the specified percentage of subscription:</u>** The subscriber must pay 10% of the nominal value of the cash shares, in which he subscribed, which increases to 25% within a period not exceeding three months from the date of the company's incorporation, but the rest of the value must be paid within a period not exceeding five years from the date of incorporation of the company. [1]

<u>Management:</u>

Joint-stock companies are managed by a board of directors that is entrusted with the day-to-day operations of the company. In this respect, they have full authority to represent the company vis-à-vis third parties. Its authority, however, excludes those matters explicitly reserved by law or the company's constitutive documents for the general assembly. The board of directors shall be headed by a chairman who shall be appointed by and from amongst its directors. The board of directors must have a minimum of three members at all times. There are no nationality requirements for board members.

There must be a means of employee participation in management, either through board membership, share ownership, or the establishment of an administrative committee from among the employees. In practice, this can raise some issues in labor-intensive companies.

[1] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 393.

Profits

A joint-stock company's after-tax earnings for each fiscal year, as increased or reduced by any profit or loss that is carried forward from previous years, shall be available for distribution in accordance with the requirements of Egyptian law and the joint-stock company's statutes, as follows:[1]

1. A joint-stock company is required to establish, and must always maintain, a legal reserve equal to at least 5% of its issued capital funding until it reaches 50% of capital.
2. After funding its legal reserve (if required) the balance of its after-tax earnings is considered the joint-stock company's distributable profits and may be distributed pursuant to a resolution of the general assembly.
3. A joint-stock company is required to allocate employee bonuses equivalent to a minimum of 10% of its distributable profits (if any) with a maximum equivalent to the aggregate annual payroll. Allocation of such amounts shall be determined by a board of directors' resolution.
4. Distributable profits shall be distributed in order of priority, as follows:
5. An initial amount equivalent to a minimum of 5% of the distributable profits shall be distributed to shareholders as dividends and the employees as bonuses.
6. An amount of up to 10% of the distributable profits may be paid to members of the board of directors as remuneration. However, the shareholders can decide not to distribute any dividends to the board of directors.
7. The balance of the distributable profits may be paid to the shareholders as additional dividends and the employees as additional bonuses. It may also be carried forward to the following year as retained earnings or allocated to fund a special reserve to be used as determined by the general assembly upon a recommendation of the board of directors.

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 387.

So that shareholders receive their dividends, they should deposit their shares with the Central Depository (if the shares are in dematerialized form) or surrender the coupons attached to the share certificates (if the shares are in documentary form and the company issued the final share certificates). Dividends approved for distribution that are not claimed within five years from the date they are payable shall be subject to the statute of limitations and be paid to the State Treasury. Shareholders may decide at an ordinary general assembly to distribute all or part of the dividends as per the audited financial statements of the company so long as such distribution will not impact the company's financial obligation vis-a-vis third parties or impact on its business.[1]

Stock Exchange Registration :

Registration on the Stock Exchange is obligatory within one year of formation in the case of a company offering its shares to the public, otherwise, the company may register its shares after the third year's published profitable accounts.

Staffing:

Joint-stock companies may not employ more than 10% of their workforce as foreigners or pay them more than 20% of the total payroll, except foreigners serving on the board of directors. Foreign employees working for a joint-stock company must have obtained work and residence permits prior to commencing work in Egypt.

Taxation & Social Insurance:

A joint-stock company is subject to corporate income tax at the rate of 22.5% of its net profits. Employees shall be subject to Egyptian salary tax and the company must make the necessary monthly tax withholdings. Social Insurance contributions are

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 356.

required for Egyptian employees from both the employers and employees.

Books & Records:

Joint-stock companies must maintain financial books and records and submit annual audited tax returns.

Compliance with Egyptian Laws [1]

Joint-stock companies must comply with Egyptian laws, including those governing companies, taxation, labor, and social insurance, while particularly noting the following:

(i) The joint-stock company must have an Egyptian auditor;

(ii) The following must be submitted annually to the Companies Department:

- a copy of the balance sheet, the profit and loss account, and the auditor's report;
- the names, positions, and nationalities of the board members;
- details of all personnel and the salaries paid to the Egyptian employees; and
- details of profits and the proportion of those profits distributed over the employees.

[1] Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 68.

Limited Partnership by shares or Commandité Company Limited by Shares (C.C.L.S)

Formation

The limited partnership by shares, or the "Societe en commandite par actions" as called in France, is similar to the joint-stock company with the exception that at least one of the founders has unlimited liability in meeting the company's financial liabilities. The company is prohibited from conducting the business of insurance, banking, or savings or investing funds on other people's behalf (Article 3 & 5 of the Companies Law).[1]

Management

The company is managed by the founder(s) of unlimited liability without any direct participation from the other founders or ordinary shareholders of limited liability. The founder(s) of unlimited liability who is managing the company is called the "manager", but his or her legal status is similar to the director of the joint-stock company and the provisions applicable to these directors apply as well to the managers of limited partnerships by shares. The name and scope of such partner manager's authority must be specified in the Memorandum of Association (Article 111 of the Companies Law).

The company must have a Supervisory Board made up of at least three persons, whose purpose is to supervise the actions of the manager(s). As such, this Supervisory Board may not be chosen from the partner manager(s). (Article 112 of the Companies Law).

Thus, each manager should allocate part of his or her shares of no less than L.E. 5000 for good management, and these shares should be deposited at one of the accredited banks in Egypt, and cannot be disposed of as long as the unlimited

(1) Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 385.

founder is a manager of the company. The remuneration of the manager (excluding the dividends on his or her shares) after certain deductions or reliefs is subject to salary tax at the same rate as applicable to sole proprietors. In the limited partnership by shares, there should be a supervisory board composed of at least three shareholders or outsiders who are chosen by the shareholders.

The supervisory board will monitor the actions of the manager(s) in running the company. In this respect, the supervisory board will have the right to ask the manager(s) to provide it with management reports, and it can review the company's accounting records, and count the cash, the inventories, and other company assets.

The supervisory board will also give an opinion regarding matters that the manager(s) may seek the board's opinion on. In addition, the general meeting of shareholders cannot amend the company's deed without the approval of the manager(s), unless the deed stipulates differently.

In case of the manager's death, the company will dissolve, unless the company deed stipulates that it will continue.

Apart from the above differences, the provisions related to joint-stock companies will apply to limited partnerships by shares.[1]

Financial Requirements:

The minimum share capital required of a limited partnership by shares is LE 250,000. The capital is divided into two categories: (1) shares owned by founder partners, and (2) shares of equal value belonging to shareholders. The founder partners have unlimited liability while the shareholders' liability is

[1] Dr. Ali Hassan Younis, Commercial Law, op cit, p 431.

limited to the value of their respective shares (Article 3 of the Companies Law).

Limited Liability Company (L.L.C)

Formation:

The Egyptian limited liability company is a closed company where the liability of each of its partners is limited to the value of his or her shares (called quotas) in the company. The number of partners of a limited liability company cannot be less than two persons and cannot exceed fifty. The shares or quotas of the limited liability company cannot be traded in the stock exchange. The trade name of the limited liability company is usually derived from its object but may also include the name(s) of one or more of its partners. Additionally, the words "Limited Liability Company" must be included in the name (Article 61of Ministerial Decision Implementing the Commercial Companies Law).

The founding shareholders of the company must submit an application requesting permission to incorporate a limited liability company. The ministerial decision implementing the Commercial Companies Law outlines the mandatory provisions that must be included in the Memorandum of Association.

The company is incorporated once it is registered in the Commercial Register.[1]

The company must also maintain a Register of Partners in its head office, which must contain the names, nationalities, domiciles, and occupations of the partners; the number of shares owned by each partner; the sum paid by each; and the assignment or transfer of shares and related relevant information (Article 275 of the Executive Regulation of the Companies Law).

[1] Dr . Mustafa Kamal Taha, Al Wagez in Commercial Law, op cit, p 399.

Limited liability companies cannot raise funds (as capital or as a loan) through a public offering. Also, such companies may conduct a variety of business activities, except insurance, banking, savings, receiving deposits, or investing funds on behalf of others. (Article 5 of the Companies Law).

Management:

The management of a limited liability company may be assigned to one or more managers. At least one manager must be of Egyptian nationality (Article 281 of the ministerial decision implementing the Companies Law).

The manager(s) must be named in the Memorandum of Association but need not be a shareholder(s). The manager(s) may be appointed for a definite term (which must be specified in the Memorandum of Association) or for an indefinite term. The manager(s) shall have full authority to represent the company; unless such authority is limited by the Memorandum of Association.[1]

The manager of the limited liability company has the same legal status as the director of the joint-stock company. The remuneration of the manager, after certain deductions, is subject to a salary at rates 10% and 2%.

If the number of partners of a limited liability company exceeds ten, the partners should form a supervisory board consisting of at least three of them. The supervisory board has the right to check the accounting records of the company, ask the managers to provide reports upon request, count the company's cash and other assets, and review the company's financial statements before being submitted to the partners' general meeting.

[1] Ballot-Léna, Aurélie, and Decocq, Georges. Droit commercial. France, Dalloz, 2020.

Apart from the above, the provisions related to joint-stock companies apply to limited liability companies.

Financial Requirements:

The minimum equity capital of a limited liability company is L.E. 50,000. The equity capital should be fully paid upon the foundation. The nominal value of the share or quota cannot be less than L.E. 100.

The quotas cannot be traded in the stock exchange, however, any partner can sell his or her quotas to outsiders, given that he has already offered them to the other partners and they declined to buy them.

Foreigners can own 100% of the equity capital of a limited liability company, but they have to pay the value of their shares in foreign convertible currencies.[1]

If a foreign partner(s) in a limited liability company wishes to repatriate his or her capital out of Egypt, he or she has to sell his or her quotas or liquidate the company (if he or she actually owns all or most of it), deposit the proceeds of sale or liquidation in an account at one of the accredited banks in Egypt, and the bank will realize the required repatriation of the funds, free of any taxes or duties.

A limited liability company that has a share-capital equal to or exceeding the minimum share-capital of a closed joint-stock company (i.e. LE 250 000) has to allocate at least 10% of the profit to be distributed among its partners to its employees as profit-sharing, but with a maximum of 100% of their annual salaries.[2]

Transfer of Shares:

[1] Dr. Ali Al Baroudi, Lessons in Commercial Law, op cit, p 314.
[2] Dr. Ali Hassan Younis, Commercial Law, op cit, p 28.

Quotas can only be transferred after first being tendered to existing shareholders which shall be effected by either an official or non-official agreement as prescribed in the statutes. Existing Shareholders shall have one month within which to purchase such shares on a pro-rata basis. The statutes of a limited liability company may prohibit any transfer of shares unless the approval of the other shareholders has been obtained.

Profits:

The rules governing the distribution of profits are the same as those that apply to joint-stock companies, except that profits are required to be distributed to the employees only as and when the capital reaches LE 250,000.

Staffing:

A limited liability company may not employ more than 10% of its workforce as foreigners or pay them more than 20% of the total payroll except foreigners employed as managers.[1]

[1] Dr.. Hussein Al-Mahi, Commercial Companies, Fifth Edition, Dar Al-Nahda Al-Arabiya, 2006, p 163.

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