

# **INTRODUCTION TO BUSINESS LAW**

## INTRODUCTION TO BUSINESS LAW

Dr. Khouloud Alkhatib

Dr. Farid Abdallah

**First Edition 2017**

All rights reserved © 2017

No part of this book maybe reproduced or transmitted including printing, publishing, photocopying, or storing by any electronic or mechanical means without written permission from the publisher.



Beirut - Lebanon  
Tel: +961 1 823720  
Fax: +961 1 825815  
info@daralmoualef.com



المجموعة المطبعية  
Printing Group  
info@printinggroup.com

# INTRODUCTION TO BUSINESS LAW

Dr. Khouloud Al khatib

Dr. Farid Abdallah





# CONTENTS

## INTRODUCTION

### **PREFACE TO THE INSTRUCTORS .....13**

### PREFACE TO THE STUDENTS .....13

## CHAPTER ONE: INTRODUCTION TO LAW AND LEBANESE LEGAL SYSTEM

### 1.1 GENERAL DEFINITION OF LAW .....18

### 1.2 PURPOSES AND FUNCTIONS OF LAW .....19

#### 1.2.1 Prevention: .....19

#### 1.2.2 Precision (accuracy):.....19

#### 1.2.3 Correction .....19

### 1.3 CHARACTERISTICS OF LAW .....20

#### 1.3.1 General .....20

#### 1.3.2 Permanent .....20

#### 1.3.3 Binding .....21

#### 1.3.4 Written .....21

#### 1.3.5 Harmonious.....21

#### 1.3.6 Social .....21

#### 1.3.7 Evolutionary .....21

### 1.4 THE THREE AUTHORITIES IN LEBANON .....23

#### 1.4.1 Legislative Authority .....23

#### 1.4.2 Executive Authority .....23

#### 1.4.3 Judicial Authority (Courts) .....23

### 1.5 SOURCES OF LAW (Hierarchy of Laws) .....25

#### 1.5.1 Constitution.....26

#### 1.5.2 International Treaties .....26

#### 1.5.3 Law (Statutes) .....26

#### 1.5.4 Decrees .....27

#### 1.5.5 Ministerial Decisions .....27

1.5.6 Jurisprudence (Case-law).....	27
1.5.7 Custom and Usage .....	28
1.5.8 Legal Writings .....	28
1.6 CONFLICT OF LAWS .....	28
1.6.1 The Constitutional Council .....	29
1.6.2 The State Advisory Council .....	29
1.7 THE JUDICIAL PYRAMID .....	29
1.7.1 First Instance Court.....	30
1.7.2 Court of Appeal.....	31
1.7.3 The Supreme Court .....	31
1.8 CLASSIFICATION OF LAWS .....	32
1.8.1 Public Law .....	32
1.8.2 Private Law .....	32
Table of Concepts and Terminologies .....	34
<b>CHAPTER TWO: THE LAW OF CONTRACTS</b>	
2.1 DEFINITION AND CHARACTERISTICS OF CONTRACTS.....	39
2.1.1 Contract involves two or more parties .....	39
2.1.2 Legally Binding Agreement. ....	39
2.1.3 Relativity of Contracts .....	40
2.1.4 Obligations and Rights .....	40
2.1.5 Intention to be Bound.....	41
2.1.6 Meeting of minds .....	41
2.1.7 Contractual Freedom.....	42
2.2 TYPES OF CONTRACTS .....	43
2.2.1 Expressed and Implied Contract .....	43
2.2.2 Unilateral and Bilateral Contract .....	43
2.2.3 Remunerated and Non-Remunerated Contracts.....	44
2.2.4 Simple and Formal Contracts.....	44
2.2.5 Discussed and Submitted Contract .....	45
2.2.6 Collective and Individual Contract .....	45
2.2.7 Nominated and Non-Nominated Contracts.....	45
2.3 FORMATION OF CONTRACTS .....	46
2.3.1 The Object.....	47
2.3.2 The Cause.....	48
2.3.3 The Price .....	51
2.3.4 The Consent .....	52

2.4 INTERPRETATION OF CONTRACTS .....	62
2.5 EXECUTION OF CONTRACTS .....	63
2.6 TERMINATION OF CONTRACTS .....	65
2.6.1 The Normal Termination of Contracts .....	65
2.6.2 The Special Termination of Contracts .....	66
Table of Concepts and Terminologies .....	69
POINT EXAMPLES .....	71
<b>CHAPTER THREE: COMMERCIAL LAW AND MERCHANTS</b>	
PART I COMMERCIAL LAW .....	77
3.1 DEFINITION of COMMERCIAL LAW .....	77
3.1.1 Commerce .....	77
3.1.2 Commercial Enterprise .....	77
3.1.3 Business Establishment .....	78
3.1.4 Business Concern .....	78
3.1.5 Commercial Agent .....	78
3.2 SOURCES OF COMMERCIAL LAW .....	78
3.2.1 The Code of Commerce .....	79
3.2.2 Laws Complementary to the Code of Commerce .....	79
3.2.3 Civil Law .....	79
3.2.4 International Treaties .....	79
3.2.5 Usage of Trade .....	79
3.2.6 Jurisprudence .....	80
3.2.7 Agreement between the Parties .....	80
3.3 COMMERCIAL ACTIVITIES .....	80
3.3.1 Kinds of Commercial Activities .....	80
3.3.2 Kinds of Commercial Activities that are considered Commercial by Nature .....	81
3.3.3 Difference between commercial activities and civil activities .....	84
PART TWO MERCHANTS .....	86
3.4 DEFINITION of MERCHANT .....	86
3.4.1 Businessmen or Merchants .....	86
3.4.2 Company .....	86
3.4.3 Commercial Representative .....	86
3.4.4 Commission Agent .....	87
3.4.5 Broker .....	87
3.4.6 Those who carry Out Commercial Activities through Intermediaries .....	87
3.4.7 The Craftsman .....	87

3.4.8 Small Merchants .....	87
3.5 REQUIRED QUALIFICATIONS FOR MERCHHANTS.....	88
3.5.1 Age requirement .....	88
3.5.2 State of Minority Declared by court .....	88
3.6 OBLIGATIONS OF THE MERCHANT .....	89
3.6.1 The Trade Register (Commercial Register hereinafter C.R).....	89
3.6.2 Holding Commercial Books.....	95
3.7 FREEDOM OF TRADE .....	96
3.7.1 Unfair Competition .....	97
3.7.2 Restrictions Imposed by Law .....	98
Table of Concepts and Terminologies .....	99
Appendix .....	101
1. REGISTRATION OF THE COMPANIES OF PERSONS .....	101
Attached Documents and Places of Completion .....	101
Mechanism of File Procession .....	101
Duration of Completion .....	102
2. LICENSE OF LIMITED LIABILITY COMPANIES.....	102
Attached documents and places of completion .....	102
Mechanism of File Procession .....	102
Duration of Completion .....	103
3. LICENSE OF COMPANIES OF FUNDS .....	103
Attached documents and Places of Completion .....	103
Mechanism of File Procession .....	104
Duration of Completion One Day .....	104
SPECIMEN OF THE APPLICATION TO REGISTER A COMPANY.....	105
CERTIFICATE OF REGISTRATION OF A COMMERCIAL COMPANY .....	106
<b>CHAPTER FOUR: COMMERCIAL AGENCIES</b>	
4.1 GENERAL PROVISIONS .....	110
4.2 THE COMMISSION AGENT .....	110
4.3 THE BROKER .....	111
4.4 THE COMMERCIAL REPRESENTATIVE.....	113
4.4.1 Definition of a Commercial Representative.....	113
4.4.2 Nationality of the Commercial Representative .....	114
4.4.3 Characteristics of the Commercial Representation Contract .....	114
4.4.4 Validity and enforceability of the contract against third parties .....	115
4.4.5 Effects of the contract of Commercial Representation .....	116
4.4.6 Termination of the contract of commercial representation .....	116

4.4.7 Court Jurisdiction (conflict of laws and competing jurisdiction).....	120
Table of Concepts and Terminologies .....	121
<b>CHAPTER FIVE: NEGOTIABLE INSTRUMENTS- COMMERCIAL PAPERS</b>	
5.1 DEFINITIONS .....	126
5.2 BILL OF EXCHANGE (B.O.E.) .....	128
5.3 PROMISSORY NOTE .....	130
5.4 OTHER PROVISIONS RELATING TO BILL OF EXCHANGE AND PROMISSORY NOTE....	132
5.4.1 Endorsement.....	132
5.4.2 Acceptance .....	132
5.4.3 Protest for Non-Acceptance .....	133
5.4.4 Statute of Limitation .....	134
5.4.5 Guarantee by a Backer .....	135
5.4.6 Differences and Similarities between B.O.E. and Promissory Note .....	135
5.5 THE CHEQUE .....	136
5.5.1 Definition and Characteristics of a Cheque.....	136
5.5.2 Penalties for Issuing Cheques without Provision.....	138
5.5.3 Statute of Limitation for Cheques .....	139
5.5.4 Some kinds of Cheque .....	140
5.6 Banking Secrecy .....	142
5.6.1 The Lebanese Banking Secrecy of 1956 .....	142
5.6.2 Nature of Banking Secrecy .....	142
5.6.3 Who is subject to this law?.....	142
5.6.4 Prohibition.....	142
5.6.5 Exemption to the prohibition .....	142
5.6.6 Sanctions for the Violation of the Banking Secrecy Law .....	143
Table of Concepts and Terminologies .....	144
<b>CHAPTER SIX: THE BUSINESS CONCERN</b>	
6.1 Introducing the Business Concern.....	149
6.2 CONTRACTS RELEVANT TO A BUSINESS CONCERN .....	150
6.3 THE SALE OR TRANSFER OF A BUSINESS CONCERN .....	151
6.3.1 Terms and Conditions .....	151
6.3.2 Protection of Third-Party Creditors .....	152
6.4 TRANSFER OF THE LEASE CONTRACT WHEN SELLING OR TRANSFERRING A BUSINESS CONCERN .....	154
6.4.1 Preferential Right of the Landlord.....	155
6.5 CHATTEL MORTGAGE OF A BUSINESS CONCERN .....	157

6.5.1 Garnishment of a Business Concern .....	158
6.6 HIRING –BUSINESS MANAGERSHIP (FREE-MANAGERSHIP CONTRACT) .....	160
6.6.1 General Concept.....	160
6.6.2 Terms and Conditions .....	160
6.6.3 Effect of the Contract with Regards to the Landlord .....	161
6.6.4 Mutual Obligations of the Parties .....	161
6.6.5 Termination of the Free-Managership Contract .....	163
آلية سير الملف .....	165
<b>CHAPTER SEVEN: OVERVIEW OF PARTNERSHIPS AND CORPORATIONS</b>	
7.1 GENERAL PROVISIONS .....	173
7.2 TYPES OF COMMERCIAL PARTNERSHIPS AND CORPORATIONS.....	174
7.3 DIFFERENCE BETWEEN CIVIL COMPANIES AND COMMERCIAL COMPANIES ...	175
7.4 CORPORATE PERSONALITY .....	176
7.5 FORMATION OF COMPANIES.....	177
7.5.1 Substantive Rules.....	177
7.5.2 Rules Governing the Formation of the Contract.....	177
7.5.3 Rules peculiar to Contracts establishing Companies .....	177
7.5.4 Formal and Procedural Requirements .....	179
b. Procedural Requirements (Registration).....	179
7.5.5 Effects of the Breach of Rules (Nullity) .....	179
Table of Concepts and Terminologies .....	180
<b>CHAPTER EIGHT: UNLIMITED PARTNERSHIP</b>	
8.1 DEFINITION .....	184
8.2 GENERAL CHARACTERISTICS .....	184
8.3 FORMATION OF THE UNLIMITED PARTNERSHIP .....	184
8.3.1 Formal and Procedural requirements .....	185
8.3.2 Features of the Unlimited Partnership/ Substantive conditions .....	186
8.4 WINDING UP .....	188
8.4.1 Dissolution.....	188
8.4.2 Liquidation .....	190
Table of Concepts and Terminologies .....	192
<b>CHAPTER NINE: LIMITED PARTNERSHIP</b>	
9.1 DEFINITION OF THE LIMITED PARTNERSHIP .....	195
9.1.1 Types of Partners.....	195
9.2 FORMATION.....	195
9.2.1 Features of the Substantive Conditions .....	195

9.2.2 Formal Procedures of the Limited Partnership .....	197
9.3 Dissolution.....	197
9.4 COMPARISON BETWEEN THE ACTIVE AND THE SLEEPING PARTNER .....	198
<b>CHAPTER TEN: JOINT STOCK COMPANY</b>	
10.1 DEFINITION .....	209
10.2 GENERAL CHARACTERISTICS .....	209
10.3 FORMATION OF JOINT STOCK COMPANY .....	210
10.3.1 The Founders .....	210
10.3.2 Statute (Charter of the Company/)... ..	210
10.3.3 Registration of the Statute before a Notary Public .....	211
10.3.4 Publication in Newspaper .....	211
10.3.5 Subscriptions to Joint Stock Company Capital .....	211
10.3.6 Head Office of a Joint Stock Company .....	212
10.3.7 Nationality .....	212
10.4 CAPITAL.....	212
10.5 SHARES.....	213
10.5.1 Rights of Shareholders.....	213
10.5.2 Kinds of shares .....	214
10.6 SHAREHOLDER'S MEETINGS .....	215
10.6.1 Provisions Applied to All Meetings .....	215
10.6.2 The Constituent Meeting .....	216
10.6.3 Ordinary Meetings .....	217
10.6.4 Special (Extraordinary) Meetings.....	218
10.7 BOARD OF DIRECTORS (B.O.D).....	220
10.8 PUBLICATION.....	221
10.8.1 Publication upon Formation .....	221
10.8.2 Permanent Publication .....	222
10.8.3 Annual Publication.....	222
10.9 RESERVE FUNDS AND DISTRIBUTION OF DIVIDENDS .....	222
10.9.1 Reserve Funds .....	222
10.10 Dissolution.....	223
Table of Terminologies and Concepts .....	224
<b>CHAPTER ELEVEN: LIMITED LIABILITY COMPANY</b>	
11.1 DEFINITION .....	228
11.2 CHARACTERISTICS.....	228
11.2.1 Association of Persons .....	228

11.2.2 Association of Funds .....	228
11.3 FORMATION OF THE LIMITED LIABILITY COMPANY .....	229
11.4 PARTNERS' MEETINGS .....	232
11.4.1 Ordinary Meeting .....	232
11.4.2 Special or Extraordinary Meeting .....	232
11.5 MANAGEMENT .....	234
11.6 TRANSFORMATION .....	234
11.7 DISSOLUTION .....	235
POINT EXAMPLE .....	236
<b>CHAPTER TWELVE: OTHER FORMS OF PARTNERSHIPS AND CORPORATIONS</b>	
PART ONE: COPARTNERY .....	249
12.1 DEFINITION of COPARTNERY .....	249
12.2 CHARACTERISTICS OF COPARTNERY .....	249
12.3 MANAGEMENT OF COPARTNERY .....	250
PART TWO: HOLDING COMPANY .....	251
12.4 NAME OF HOLDING COMPANY .....	251
12.5 OBJECT OF HOLDING COMPANY .....	251
12.6 ESTABLISHING A HOLDING COMPANY .....	252
12.7 MANAGING THE HOLDING COMPANY .....	252
<b>BIBLIOGRAPHY .....</b>	<b>254</b>
<b>Internet resources .....</b>	<b>255</b>
<b>CASE STUDIES .....</b>	<b>256</b>

# INTRODUCTION

## PREFACE TO THE INSTRUCTORS

The study of the legal environment of business is of paramount importance due to its universal applicability. Students entering any field of business must have at least the minimal understanding of business law in order to function in the real world. Students preparing for a career in accounting, economics, or business administration, need to regularly deal with legal matters that require a deep understanding of laws. Whether they are managers, employers, employees, accountants, or even customers, the information they learn can be applied within business law. In fact, every individual throughout his or her lifetime can benefit from the knowledge in contracts, negotiable instruments, companies' law, and other legal topics.

It is evident that business students have been encountering difficulties comprehending the concepts of business law for years, since it is perceived as being beyond the context of the other business courses. Nevertheless, the laws are for integrating the various business functional areas. The purpose of this book is to provide business students with a clear understanding of the Lebanese business law.

Instructors rely on coverage, in depth knowledge, accuracy, and applicability of business law. This book is designed in a systematic, lucid, and illustrative manner, to ensure that it engages the students, solidifies their understanding of legal concepts, and uses suitable practical examples of different law cases to make the subject increasingly intelligible, interesting and authentic.

Many instructors use cases to illustrate how business law applies to business. It is apparent that at least one case in every chapter has been included to describe the facts, the issues, and the rationale.

## PREFACE TO THE STUDENTS

Welcome to the world of business. We are about to embark on the study of one of the most important topics that you can master in today's changing world. A solid understanding will assist you in comprehending the different legal issues in the world of business. Whether you

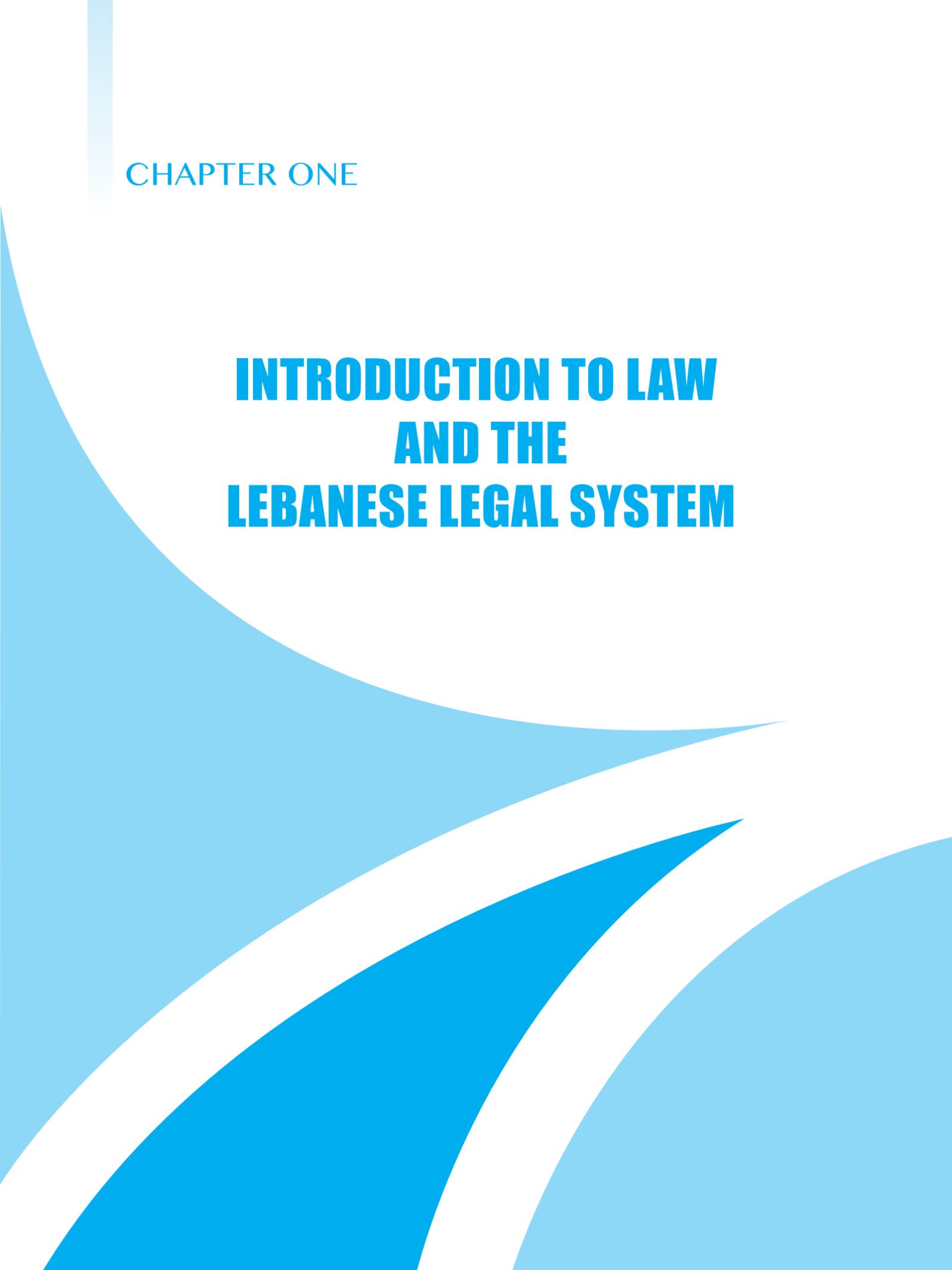
are managing, directing, working, buying a car, or renting a house, you need to know the basic rights and duties that help you manage your own affairs.

In order to make the course easier for students, several practical approaches have been taken, which takes the book briefly beyond the parameters of regular textbooks, however a step closer to students' understanding and comprehension.

The language has been simplified and the terminology unified to provide a clear and concise structure. In addition, most of the information has been referenced in accordance with academic standards.

**In practice, each chapter is structured as follows:**

- **Brief description** - presented at the start of every chapter to provide the reader with an overview, prior to the detailed readings.
- **Visual view** - through charts, tables and graphs that have been used to demonstrate complicated ideas and relationships.
- **Footnote** - through translation of several difficult terms into Arabic that helps the reader can instantly view the meaning the word without flipping pages.
- **Concept summary** - through table located at the end of every chapter that helps you review more effectively.
- **Point Example** - through short cases to ensure that the important legal concepts are recalled in every chapter.
- **Review questions** - through practical assignments provided at the end of the chapters, which are designed to help the students grasp and apply what has been earned.
- **Concept terminologies** - through illustration that helps simplify the legal terminologies.



CHAPTER ONE

**INTRODUCTION TO LAW  
AND THE  
LEBANESE LEGAL SYSTEM**

## CHAPTER ONE

# INTRODUCTION TO LAW AND THE LEBANESE LEGAL SYSTEM

The Lebanese legal system is based on and inspired by the French legal system, as France mandated Lebanon after the collapse of the Ottoman period until 1946<sup>(1)</sup>, and held an important role in the legislation<sup>(2)</sup>. Lebanon is considered a civil law country and possesses its own set of codes. Many different laws are applicable in different realms, but the most notable code is the “Code of Obligations and Contracts<sup>(3)</sup>” which was promulgated in 1932 during the French Mandate.

The purpose of this chapter is not to answer all the students’ questions but to generate questions. The goal of this chapter is to create awareness and appreciation for the effect that law has on everyone. This chapter aims to give students a general overview of law. It outlines the purposes and functions of law, the different characteristics of law, and the sources from which law emanates. It highlights the supremacy of laws in correlation to each other, and illustrates the consequences when legal rules conflict with one another. In addition, an overview of the three main authorities in Lebanon is presented (i.e. legislative, executive, and judicial)<sup>(4)</sup>, and the classification of laws into public and private law fields<sup>(5)</sup>.

---

(1) الانتداب الفرنسي في لبنان بعد انهيار السلطنة العثمانية

(2) التشريع

(3) قانون الموجبات والعقود

(4) السلطة التشريعية والتنفيذية والقضائية

(5) مجالات القانون العام والخاص

## CHAPTER ONE OUTLINE

### 1.1 GENERAL DEFINITION OF LAW

### 1.2 PURPOSES AND FUNCTIONS OF LAW

1.2.1 Prevention

1.2.2 Precision

1.2.3 Correction

### 1.3 CHARACTERISTICS OF LAW

1.3.1 General

1.3.2 Permanent

1.3.3 Binding

1.3.4 Written

1.3.5 Harmonious

1.3.6 Social

1.3.7 Evolutionary

### 1.4 THE THREE AUTHORITIES IN LEBANON

1.4.1 The Legislative Authority

1.4.2 The Executive Authority

1.4.3 The Judicial Authority

### 1.5 SOURCES OF LAW

1.5.1 Constitution

1.5.2 International Treaties

1.5.3 Law

1.5.4 Decree

1.5.5 Ministerial Decisions

1.5.6 Jurisprudence

1.5.7 Custom and Usage

1.5.8 Legal Writings

### 1.6 CONFLICT OF LAWS

1.6.1 The Constitutional Council

1.6.2 The State Advisory Council

### 1.7 THE JUDICIAL PYRAMID

1.7.1 The First Instance Court

1.7.2 The Court of Appeal

1.7.3 The Supreme Court

### 1.8 CLASSIFICATION OF LAW

1.8.1 Public Law

1.8.2 Private Law

## 1.1 GENERAL DEFINITION OF LAW

Law is a social phenomenon<sup>(1)</sup> that regulates the acts of human beings in the society.<sup>(2)</sup> It is a body of rules prescribing external conduct and considered justifiable.<sup>(3)</sup> It aims to provide justice and maintain<sup>(4)</sup> peace and order among the members of society through a cohesive<sup>(5)</sup> set of rules established by a country's authorities.



These rules of law are generally found in the constitution<sup>(6)</sup>, parliamentary legislation<sup>(7)</sup>, decrees<sup>(8)</sup>, ministerial decisions<sup>(9)</sup>, and court orders<sup>(10)</sup>. They are enforced by courts and public authorities.

In most cases, the court will impose penalties or sanctions<sup>(11)</sup> on persons who breach the law. These penalties can vary from imprisonment<sup>(12)</sup> to fines,<sup>(13)</sup> or other orders and restrictions. They will be imposed upon the offender by the public authorities that execute the order of the court.

In cases where the offence is considered trivial or insignificant, the public authorities may impose sanctions directly without the need for court orders. An example is speeding fines.

This body of laws aims to regulate the acts of human beings and their relationships among each other in the society. It regulates the various aspects of society, whether political, economic, social, financial, or religious. Main purpose is to provide justice and maintain peace and order in the society.

By analyzing the above definitions of law, we can observe law as a “body of rules that is

ظاهرة (1)

(2) See A. Marmor, *Interpretation and Legal Theory*, 2<sup>nd</sup> ed., Hart Publishing, Oxford 2005, p. 1.

(3) Hermann Kantorowicz, A.H. Campbell, A.L. *The Definition of Law*, Cambridge University Press, 2014. p. xxii.

(4) تحافظ على

(5) متماسك

(6) الدستور

(7) التشريع البرلماني (النيابي)

(8) مراسيم

(9) قرارات وزارية

(10) أحكام المحاكم

(11) عقوبات

(12) سجن

(13) غرامات مالية

recognized and maintained by the state to regulate the human behavior and conduct in a society.

Thus, law is a set of rules that has stability and uniformity, created and maintained by the state to regulate the human conduct backed by the forcible authority in which its violation leads to punishment.”

## 1.2 PURPOSES AND FUNCTIONS OF LAW

Law provides the basis of a stable society. Thus, it has the important functions of:

### 1.2.1 Prevention<sup>(1)</sup>:

Law prevents people from doing illegal actions. When a person knows that a certain act can lead to his/her punishment, s/he will refrain from conducting such an action. Hence, in order to enforce the rules, for every crime there must be a sanction codified by law. This means:

- There shall be no crime<sup>(2)</sup> without a written code.<sup>(3)</sup>
- There shall be no sanction<sup>(4)</sup> without a written code.

### 1.2.2 Precision<sup>(5)</sup> *accuracy*:

The rules of law should be clear, codified, precise, and written, so that people know what is allowed and what is not allowed in conduct.

### 1.2.3 Correction<sup>(6)</sup>

A person who breaches the law is subject to punishment and sanctions. The purpose of such punishment is not revenge. It aims to correct the wrongdoers, in order to understand that their actions were wrong, and prevent them from repeating the offence.

---

(1) المنع

(2) جريمة

(3) نص مكتوب

(4) عقوبة

(5) دقة

(6) تصحيح

<b>Prevention</b>	<ul style="list-style-type: none"> <li>• Prevents people from doing crimes by applying sanctions.</li> <li>• Crimes and sanctions do not exist without a written code (i.e No crime and no sanction without code).</li> </ul>
<b>Precision</b>	<ul style="list-style-type: none"> <li>• The rules of law should be clear, codified, precise, and written.</li> </ul>
<b>Correction</b>	<ul style="list-style-type: none"> <li>• Offenders are punished in order to understand that their actions were wrong, and that they should not be repeated</li> </ul>

Figure 1: The Purposes of Law

### 1.3 CHARACTERISTICS OF LAW

As we have seen in the above sections, law is related to the concept of ‘sovereignty’<sup>(1)</sup> of the state, expressing the people’s will to set the rules in action. Thus law, being prescribed as a “Rule of Action,” is characterized by many characteristics that are essential to achieve its purposes. Law cannot exhibit relativity as to time, person or place, and the Rule of Law is to be respected. The Rule of Law has the following characteristics:

#### 1.3.1 General

A rule of law applies to all people who have the same legal status, without any distinction among them. Such rule applies regardless of the color, gender, race, position, background, or social status of people.

**Example:** The Criminal Law rules which apply to a soldier in the Lebanese Armed Services are different from the rules that apply to a civilian. However, they are the same for all soldiers in the Lebanese Armed Services, without any distinction between them, because they all have the same legal status.

#### 1.3.2 Permanent<sup>(2)</sup>

A permanent law is one which neither changes with time, nor varies in its application over time. Nevertheless, this does not mean that it is eternal. It remains valid until it is cancelled or

---

(1) سيادة

(2) دائم

amended by another law, which is usually more modern, and is able to meet the requirements of the society.

### 1.3.3 Binding<sup>(1)</sup>

Obedying the law is not a voluntary action. Laws must be respected otherwise offenders will be subjected to sanctions enforced by public authorities. Hence, there is a difference between law and ethics:

- **Law:** must be respected, and wrong-doers are subjected to punishment.
- **Ethics:** must be respected, but wrongdoers are not punished. It is a moral obligation which cannot be enforced by public authorities.

### 1.3.4 Written

Law cannot be oral or implied. It must be codified and arranged in clear and consecutive clauses. It must be published in the Official Gazette<sup>(2)</sup> so that it may be read by anyone.

### 1.3.5 Harmonious<sup>(3)</sup>

All rules should be in harmony with each other. There should not be any contradiction between one law and another.

### 1.3.6 Social

The rules of law must be established for the specific requirements of the society. They should not contradict or ignore moral aspects of the society.

### 1.3.7 Evolutionary<sup>(4)</sup>

Law should always follow the evolution of the society. This means that law is variable in time and variable in space:

- **Variable in time:**<sup>(5)</sup> The laws applicable today differ from those considered valid years ago, and will probably vary in the future. As the society progresses, the law is amended to meet the new changes.

(1) ملزم

(2) الجريدة الرسمية

(3) متجانس

(4) متغير / متطور

(5) متغير في الزمان

- **Variable in space:**<sup>(1)</sup> What applies in a certain country does not necessarily apply in other countries, since every country has its own culture, traditions, rules, and customs.

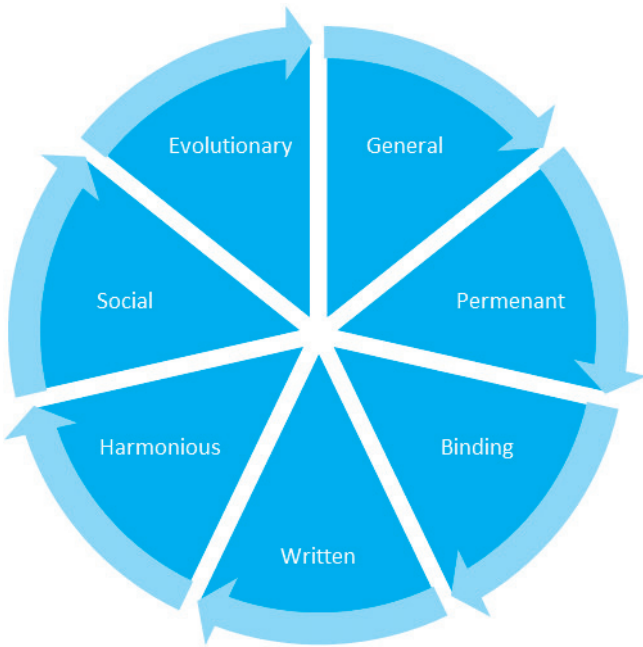


Figure 2: Characteristics of Law

1.4 THE THREE AUTHORITIES IN LEBANON

The principle of Separation of Powers guarantees the independency of the relation of the three authorities in Lebanon. The three authorities are:

The Authority	The Organ	The Function
Legislative Authority	Parliament	Legislates or sets the law
Executive Authority	President and the Council of Ministers	Executes the Law
Judicial Authority	Courts	Applies the law to settle disputes

Table 1: The Three Authorities in Lebanon

(1) متغير في المكان

### 1.4.1 Legislative Authority<sup>(1)</sup>

The legislative branch consists solely of the parliament and is in charge of legislation and the issuance of laws. The parliament convenes during two ordinary cycles (i.e. the first Tuesday after the 15<sup>th</sup> of March - 31<sup>st</sup> of May / the first Tuesday after the 15<sup>th</sup> of October - 31<sup>st</sup> of December). The majority of deputies must be present to secure a quorum for each session and decisions must be taken by 50%+1 of the votes.

### 1.4.2 Executive Authority<sup>(2)</sup>

The executive authority is responsible for executing the law. It is formed of:

- **President:** The head of the state, presides over the high Council for National Defence, and is the ultimate commander of the armed forces. The president is elected by a two-thirds majority of the deputies in the parliament.
- **Prime-Minister<sup>(3)</sup>:** The prime minister is the actual head of the executive branch; he/she presides over the cabinet and is the spokesman, and is responsible for the implementation of its policies. The prime minister is appointed by the president after consultation with the members of parliament. The prime minister, in collaboration with the president then appoints the ministers to form the council of ministers. This council must be approved by the parliament (i.e. a vote of confidence).
- **Council of Ministers<sup>(4)</sup>:** The council of ministers oversee the executive functions of the state. Among its powers are; setting policies, implementing rules and regulations, appointing public servants, dissolving the parliament based on the request of the president or in some other specific cases, setting the budget, and so forth.

### 1.4.3 Judicial Authority (Courts)<sup>(5)</sup>

The judicial authority in Lebanon is divided horizontally into four main court systems, each having a hierarchical structure. The systems are:

- The judicial court system known as kadaa' Adli.<sup>(6)</sup>

(1) السلطة التشريعية

(2) السلطة التنفيذية

(3) رئيس الوزراء

(4) مجلس الوزراء

(5) السلطة القضائية

(6) القضاء العدلي

- The administrative court system known as Majlis Al Shura.<sup>(1)</sup>
- The military court system.<sup>(2)</sup>
- The religious court system.<sup>(3)</sup>

These three authorities must respect the principle of “**Separation of Powers**”<sup>(4)</sup>. This means that each of the authorities should respect the rights and privileges of the others, and should not interfere in such privileges.

Note: In the figure below “Parliament must consent to the appointment of the Prime Minister.”

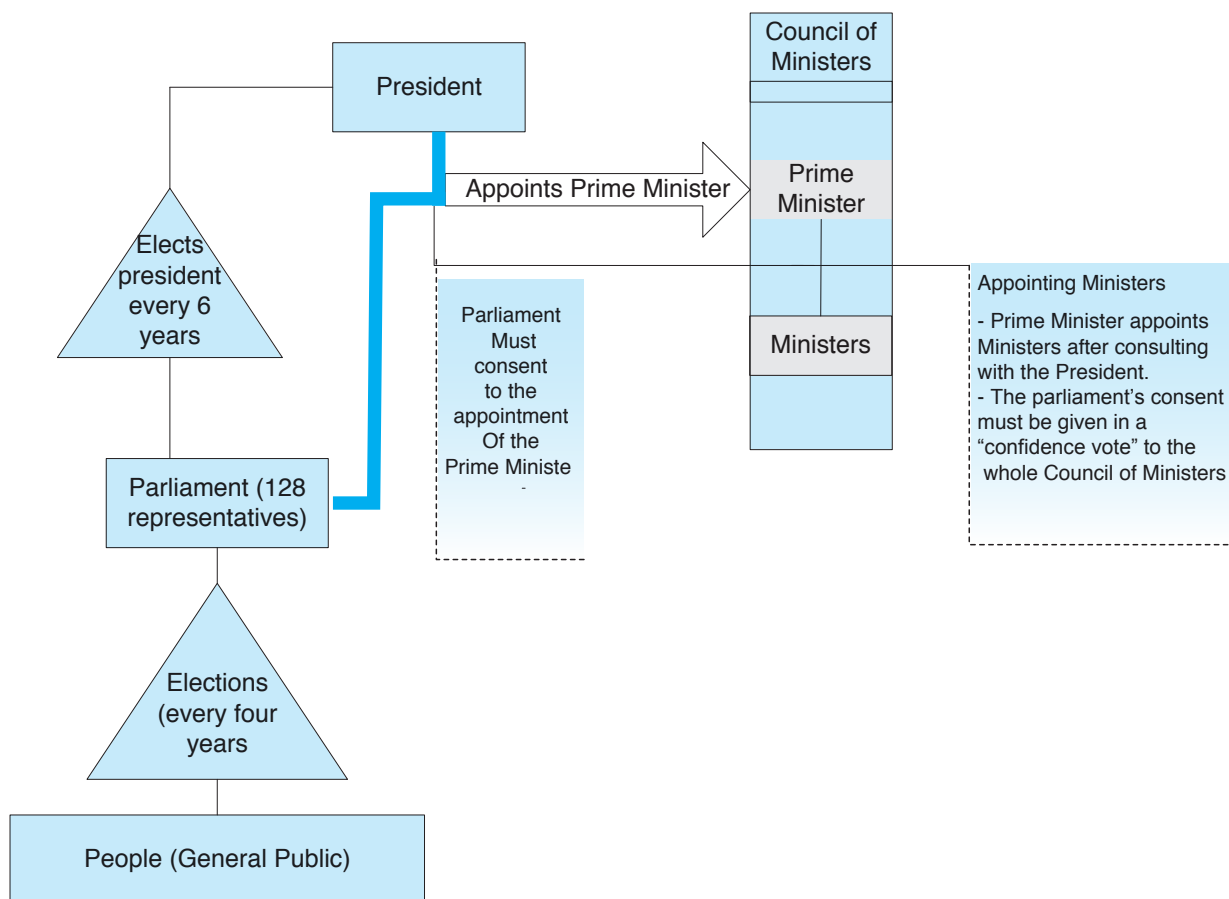


Figure 3: The Legislative and Executive Authorities

(1) مجلس شوري الدولة/القضاء الاداري

(2) المحكمة العسكرية

(3) المحاكم الشرعية/ الروحية

(4) فصل السلطات

## 1.5 SOURCES OF LAW (Hierarchy of Laws)<sup>(1)</sup>

The legal system of Lebanon is based on a combination of civil law, Islamic, and Ottoman legal principles, and the laws of the Lebanese legislature. Article 20 of the Lebanese Constitution guarantees that the judiciary is founded as an independent entity, subject only to the law.

The legal system is governed by a series of specialized codes of law. These include the Code of Obligations and contracts of 1932, which is the primary source for civil law; the Code of Civil Procedure, contained in Decree Law No. 90 of 1983; the Code of Commerce of 1942; the Penal Code, originally formulated in Decree Law No. 340 of 1943; and the Code of Criminal Procedure.

The Lebanese legal system recognizes eight main sources of law. The sources of law are arranged in a hierarchical order in what is called the “Kelsen Pyramid”, as follows:



Figure 4: The Hierarchy of the Sources of Law

(1) ترابعية القوانين

### 1.5.1 Constitution

According to the Constitution, which was amended on September 21, 1990 through the so-called “Taef Agreement,” Lebanon is an Arab country by allegiance and identity, a sovereign, free, and independent country. It is a final homeland for all its citizens. Lebanon is a founding member of the Arab League and a founding and active member of the United Nations and abides by its covenants and by the Universal Declaration of Human Rights. Lebanon is a parliamentary democratic Republic based on respect for public liberties, especially the freedom of opinions and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.<sup>(1)</sup> The main functions of the constitution can be listed as follows:

- Establishing the political and legal system and the identity of the state (i.e. sovereign, free, and independent country; Arab in its identity; Parliamentary Democratic Republic).<sup>(2)</sup>
- Identifying the organs of the state (i.e. president, parliament, and the government), and specifying the rights and duties of each of these organs.
- Regulating the function of the three authorities in accordance with the principle of separation of powers.
- Guaranteeing and protecting individual liberty, and providing for fundamental human rights, such as equality, freedom of belief, education, expression, and ownership rights.

### 1.5.2 International Treaties

The 1969 Vienna Convention on the Law of Treaties defines ‘treaty’ as an international agreement concluded between states in written form and governed by International Law. A state may be regarded as party to the treaty by signature followed by ratification by the competent authority of the state (i.e. usually the parliament). Once ratified, international treaties prevail in practice over the provisions of domestic law when their provisions conflict.

### 1.5.3 Law (Statutes)

- Law is the set of rules enacted by the parliament, co-signed by the president and by the prime minister, and carried out by the executive authorities.
- Every law must be published in the Official Gazette.<sup>(3)</sup>

(1) The Preamble of the Lebanese Constitution.

(2) The Lebanese Constitution, Preamble, sections a, b, and c respectively.

(3) الجريدة الرسمية

### 1.5.4 Decrees

The government has the power to issue decrees which should also be respected by everyone and applied by courts. There are two types of decrees:

**a. Ordinary Decree<sup>(1)</sup>:** An Ordinary Decree can either be issued by the council of ministers or by the president (i.e. presidential decree). It aims to enforce the law and guarantee its execution in accordance with the existing legal system. A decree is signed by the president, the prime minister, and the concerned minister, and must be published in the Official Gazette.

**b. Legislative Decree<sup>(2)</sup>:** A legislative decree has the same power as the law. Under certain circumstances, the parliament may delegate its powers to the government to enact laws on its behalf. However, such delegation is subject to two conditions:

- It should have a limited period of time;
- It should have a specified object which it cannot exceed

### 1.5.5 Ministerial Decisions

Ministerial decisions are decisions taken by a minister within his/her ministry. Ministerial decisions must be made in accordance with existing laws and decrees.

### 1.5.6 Jurisprudence (Case-law)<sup>(3)</sup>

The term jurisprudence is derived from the Latin word “Jurisprudencia” which means either “Knowledge of law” or “skill in law”. It is the opinion of a court on how the law must be interpreted. When a court faces a case on which the law is not very clear, it normally follows decisions made previously by courts of higher level, or of the same level.<sup>(4)</sup> Jurisprudence primarily lies in the field of interpreting law and not formulating new rules.

(1) مرسوم عادي

(2) مرسوم تشريعي

(3) الاجتهاد

(4) The three levels of courts in Lebanon are: 1st Degree court, Appeal Court, and the Supreme Court i.e. from lowest to highest.

### 1.5.7 Custom and Usage <sup>(1)</sup>

In certain domains, and in the absence or incompleteness of statutes and regulations, custom may develop to become a binding rule. A custom can be defined as a ‘common or general practice that has become compulsory and binding’. Thus, the definition comprises two elements:

- **Behavioural or objective:** requires consistent actions indicated through activities that are practiced through a long period of time without interruption.
- **Psychological or Subjective:** accepted by a large group of people that is considered to them as obligatory.

	Law	Custom
<b>Form</b>	Written	Develops through repetitive usage and practice
<b>Content</b>	Clear, precise, applies to everyone who is in the same legal status	Limited to activities within certain profession, domain or geographical area

Table 2: The Difference between Law and Custom

### 1.5.8 Legal Writings

Made by scholars and jurists within the various fields of law; although legal writings do not have a binding effect, they may influence judges’ decisions when interpreting the law, since they reflect the dominant legal opinions on controversial matters.

## 1.6 CONFLICT OF LAWS<sup>(2)</sup>

Arranging the sources of law in a hierarchical order implies that when a law of a lower order conflicts with a law of a higher order it must be cancelled or amended. Hence, if a statute<sup>(3)</sup> conflicts with the constitution, it must be changed or abolished. The same also applies if a normal decree conflicts with a statute or with a legislative decree, and so on. However, if both conflicting sources of law exist at the same time, then the source of a higher order prevails and must be applied.

(1) العرف

(2) تنازع القوانين

(3) An act of a legislature that declares, proscribes, or commands something; a specific law, expressed in writing; a statute is a written law passed by a legislature on the state.

The two main bodies responsible for determining if there is a conflict of laws are the Constitutional Council and the State Advisory Council.

### 1.6.1 The Constitutional Council<sup>(1)</sup>

The Constitutional Council is mandated to ensure that laws conform with the constitution, and to consider and rule upon any claims related to parliamentary or presidential elections. The Constitutional Council was established in the *Taef* Accord of 1990, for the purpose of ensuring that all laws (i.e. statutes) are in accordance with the Constitution. Any laws conflicting with the Constitution will be cancelled by the Constitutional Council and not by any other judicial or political body.

### 1.6.2 The State Advisory Council<sup>(2)</sup>

The highest administrative court is the Majlis Shoura Council or the State Advisory Council, which is mandated to assist in drafting and reviewing of the legislation to be promulgated by the Legislature, and to serve as the highest administrative Court in charge of reviewing the decisions of the lower first degree administrative courts.

Decrees or Ministerial Decisions which contradict with the law should be annulled by the State Advisory Council and not by the ordinary courts.

## 1.7 THE JUDICIAL PYRAMID<sup>(3)</sup>

The judiciary is comprised of ordinary and exceptional courts. The ordinary courts are arranged in a hierarchy, and they are subdivided into criminal and civil departments. At the base of the structure are the Courts of First Instance. These Courts are organized into chambers of three judges each, although a single judge may adjudicate civil cases of less value and minor criminal cases. Judgments from the Courts of First Instance can be appealed to the Courts of Appeal, which have both appellate and original jurisdictions over felonies. There are six Courts of Appeal, one located in each district (i.e. Mohafazat). They are presided over by a First President, or Chief Judge, with supervisory and administrative duties, and comprise a Public Prosecution Department headed by an attorney general. There are three levels of courts in Lebanon:

(1) المجلس الدستوري

(2) مجلس شورى الدولة

(3) الهرم القضائي

### 1.7.1 First Instance Court<sup>(1)</sup>

In any legal dispute, there are a minimum of two parties: the plaintiff (i.e. claimant), who makes the claim, and the defendant, who defends himself against the claim. The First Instance Court is the first place where the plaintiff makes his claim. This court is divided into two parts:

**a. The Single Judge:**<sup>(2)</sup> The plaintiff raises the claim in front of the Single Judge when the total amount of money claimed is less than 100 million LBP. The Single Judge is also responsible for deciding on Rent cases<sup>(3)</sup> and Urgent cases,<sup>(4)</sup> even if the amount claimed exceeds 100 million LBP.

**b. The Chamber:**<sup>(5)</sup> The plaintiff presents his claim at the Chamber when the amount claimed is equal to, or more than 100 million LBP.

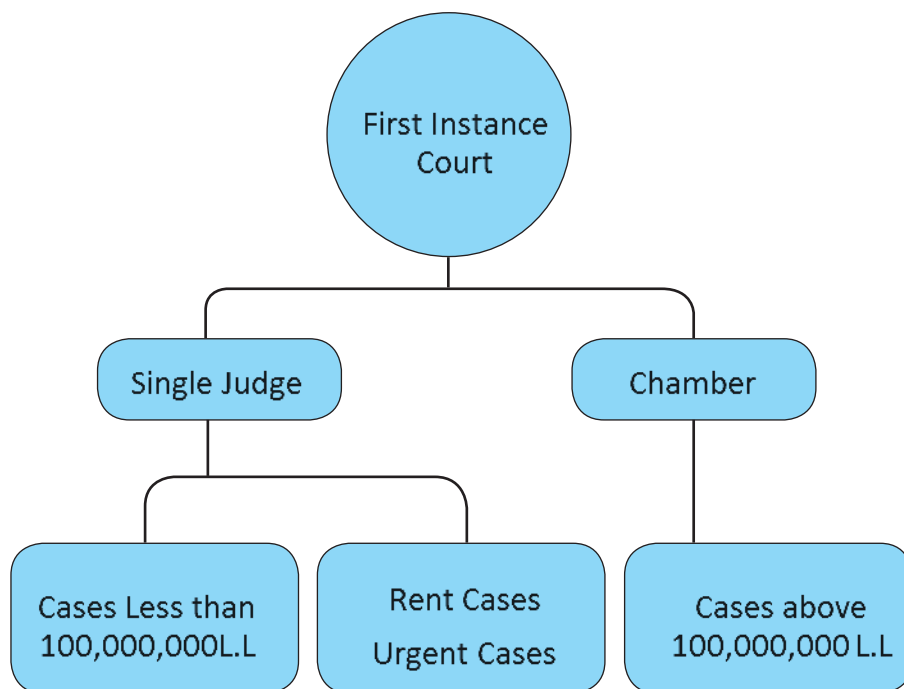


Figure 5: Jurisdiction of First Court

(1) محكمة الدرجة الأولى

(2) القاضي المنفرد

(3) قضايا الإيجار

(4) الأمور المستعجلة

(5) الغرفة

### 1.7.2 Court of Appeal<sup>(1)</sup>

The Court of Appeal is the second level of courts in the Lebanese judicial pyramid. After a case has been decided in the First Instance Court (i.e. Chambers or Single Judge) either of the conflicting parties may contest the judgment before the Court of Appeal. The Court then re-examines the cases and can either approve the judgement of the First Instance Court, or it may void it if it finds that it contains mistakes in the law or the form.

**Note:** There is one Court of Appeal in every district in Lebanon.

### 1.7.3 The Supreme Court<sup>(2)</sup>

Decisions of the Courts of Appeal may be appealed to the Court of Cassation, or Supreme Court which is the highest judicial authority. This body, situated in Beirut, is presided over by a First President and also comprises a Public Prosecution Department. In addition to hearing appeals from the lower courts, the Court of Cassation adjudicates disputes between exceptional and ordinary courts, or between two types of exceptional courts. The Supreme Court controls the application of law by the lower level courts and unifies the interpretation of law in the country. On the other hand, the Supreme Court may decide on the validity of judgments made by the Court of Appeal.

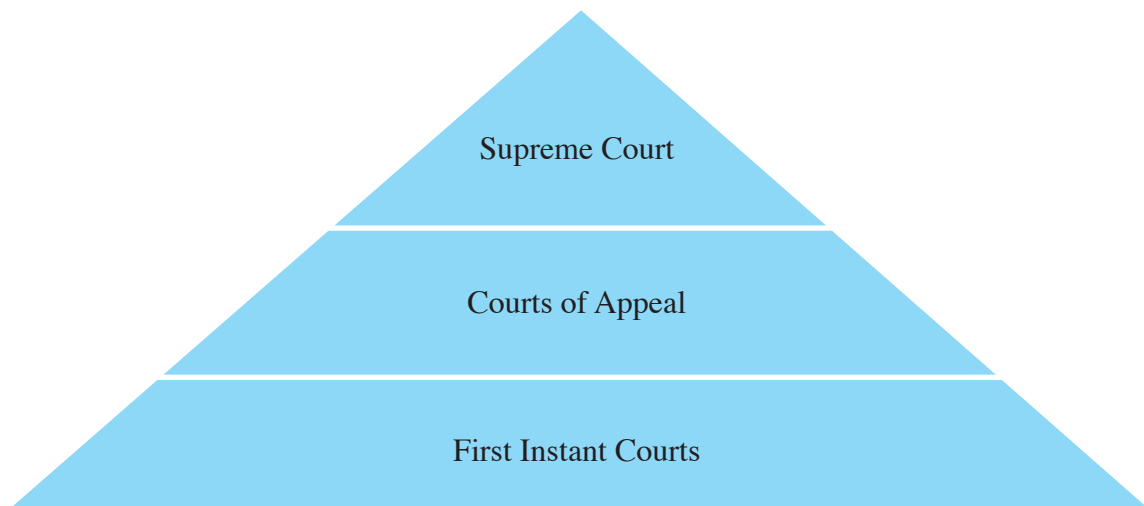


Figure 6: The Hierarchy of the degrees of the court

(1) محكمة الإستئناف

(2) محكمة التمييز

## 1.8 CLASSIFICATION OF LAWS

All areas of the law fall under one of two categories: Public Law or Private Law.

### 1.8.1 Public Law

It includes the body of rules that regulates the nature of the state, its different agencies, and its relationship with other states, international organizations, or individuals. Thus, the following fields of law may be classified under Public Law:

- **Constitutional Law:** It performs the following main functions:
  - Establishing the legal form and the political system of the state.
  - Determining the public authorities in the state (i.e. legislative, executive, judicial) and their roles.
  - Establishing the main public rights enjoyed by citizens of the state.
- **Administrative Law:** It contains rules that regulate the activities of the executive authorities.
- **Judicial Law:** It contains rules that determine the degrees and jurisdiction of the courts, as well as the appointment and promotion of judges.
- **Financial Law (Taxation):** It organizes the tax system, the government annual budget, and all financial issues related to the state.
- **Criminal Law:** It determines crimes and penalties.
- **Public International Law:** It regulates relationships between states.

### 1.8.2 Private Law

It regulates the different relationships between ordinary citizens. It includes the following branches:

- **Civil Law:** It regulates the rights and obligations of individuals in relation to contracts, property, and so forth. The most important code in this domain is the Code of Obligations and Contracts.

- **Law of Civil Procedure:** It governs the process of litigation and legal proceedings.
- **Commercial Law:** It contains the rules that apply to merchants and commercial activities.
- **Aviation Law:** It includes rules relating to aircraft (i.e. ownership, contracts, nationality, and so forth).
- **Maritime Law:** It includes rules relating to maritime transportation and the ownership of vessels.
- **Private International Law:** It regulates relationships between individuals belonging to different states.
- **Labor Law:** It regulates the relationship between the employer and employee at work.

Private Law	Private Law
Administrative	Civil Law
Judicial Law	Law of civil procedures
Financial Law	Commercial Law
Criminal Law	Aviation Law
Public International Law	Maritime Law
	Private International law
	Labor Law

Table 3: Classification of Law

## Table of Concepts and Terminologies

Key Terms	Arabic Translation
Administrative Law	القانون الاداري
Aviation Law	القانون الجوي
Cabinet	الحكومة
Civil Law	القانون المدني
Code of obligations and Contracts	قانون الموجبات والعقود
Commercial Law	القانون التجاري
Constitution	الدستور
Constitutional Council	المجلس الدستوري
Council of Ministers	مجلس الوزراء
Court	المحكمة
Court of Appeal	محكمة الاستئناف
Criminal Law	القانون الجزائي
Custom	العرف
Decree	المرسوم
Executive authority	السلطة التنفيذية
Financial Law	القانون المالي
First Instance Court	محكمة الدرجة الاولى
International Treaties	المعاهدات الدولية
Judicial Authority	السلطة القضائية
Jurisdiction	الاختصاص
Jurisprudence/ Precedents	الاجتهاد
Justice	العدالة
Labor Law	قانون العمل
Law	القانون

Law of Civil Procedures	أصول محاكمات مدنية
Law of Criminal Procedures	أصول محاكمات جزائية
Legislation	التشريع
Legislative Authority	السلطة التشريعية
Legislative Decree	المرسوم التشريعي
Maritime Law	القانون البحري
Ministerial Decisions	القرارات الوزارية
Ministers	الوزراء
Official Gazette	الجريدة الرسمية
Parliament	مجلس النواب
Permanent	دائم
Precision	الدقة
Prevention	منع
Prime Minister	رئيس مجلس الوزراء
Private International Law	القانون الدولي الخاص
Private Law	القانون الخاص
Public International Law	القانون الدولي العام
Public Law	القانون العام
Sanction	العقوبة
Separation of Power	فصل السلطات
Single Judge	القاضي المنفرد
Supreme Court	محكمة التمييز
The State Advisory (i.e. the Council of the State)	مجلس شورى الدولة

Table 4: Legal Concepts and Terminologies

The background features abstract, flowing shapes in two shades of blue (a light sky blue and a vibrant cerulean) against a white background. These shapes curve from the bottom and left sides towards the center, creating a sense of movement and depth. A thin, light blue vertical bar is positioned on the far left edge.

## CHAPTER TWO

# **THE LAW OF CONTRACTS**

## CHAPTER TWO

# THE LAW OF CONTRACTS

**Contracts** are the legal basis upon which most civil and commercial transactions are based. The law pertaining to the regulation of contracts and contractual relationships derives primarily from the Code of Obligation and Contracts (i.e. hereinafter referred to as C.o.C.).<sup>(1)</sup> The Code of Obligations and Contracts (1932) is the primary source for Lebanese civil law<sup>(2)</sup>.

The aim of this chapter is to help you understand the contract law. It presents the most important aspects of the topic and provides a clear concept regarding the basis upon which contracts are formed. It gives the student a precise understanding of the contractual process, types of contract, and how contracts are formed, interpreted, executed, and terminated<sup>(3)</sup>. Special attention is given to the vices of consent, which form the most common cause for terminating contracts.

The primary purpose of the law of contract, as discussed in this chapter, is to create certainty in commercial and other transactions. Contracts are the most significant part of commercial law as agreements constitute the main source of commercial transactions. Trade and commerce rely and prosper on agreements.

---

(1) Code of Obligation and Contracts C.O.C., of March 29, 1932.

(2) القانون المدني اللبناني

(3) تُفسر، تنفذ وتُتلغى

## CHAPTER TWO OUTLINE

### 2.1 DEFINITION AND CHARACTERISTICS OF CONTRACTS

- 2.1.1 The Contract involves two or more parties
- 2.1.2 Legally Binding Agreement
- 2.1.3 Relativity of Contract
- 2.1.4 Obligations and Rights
- 2.1.5 Intention to be Bound
- 2.1.6 Meeting of Minds
- 2.1.7 Contractual Freedom

### 2.2 TYPES OF CONTRACTS

- 2.2.1 Expressed and Implied
- 2.2.2 Unilateral and Bilateral
- 2.2.3 Remunerated and Non-Remunerated
- 2.2.4 Simple and Formal
- 2.2.5 Discussed and Submitted
- 2.2.6 Collective and Individual
- 2.2.7 Nominated and Non-Nominated

### 2.3 FORMATION OF CONTRACTS

- 2.3.1 The Object
- 2.3.2 The Cause
- 2.3.3 The Price
- 2.3.4 The Consent

### 2.4 INTERPRETATION

### 2.5 EXECUTION

### 2.6 TERMINATION

- 2.6.1 Normal Termination of Contracts
- 2.6.2 Special Termination of Contracts

## 2.1 DEFINITION AND CHARACTERISTICS OF CONTRACTS

The law of a contract is about the enforcement of promises. Not all promises are enforced by courts. To enforce a set of promises, or an agreement, courts look for the presence of certain elements. When these elements are present, a court will find that the agreement is a contract.<sup>(1)</sup>



The law of contracts is intended to ensure that what is expected shall come to pass; and that what has been promised shall be performed. As simply defined, “a contract is a legally binding agreement by which one or more persons bind themselves towards other persons to give, to do, or not to do something. It is a legal bond that creates rights and obligations for the contracting parties, which they must respect”. Such contractual rights and obligations are legally protected by law. The importance of contracts is evidenced by the fact that contracts have become an everyday routine part of the lives of individuals. For instance, when signing on a website, we accept the terms and conditions of the website, we enter into a contract with the proprietors of the website. Similarly, when we get a seat booked in a train, we enter in a contract with the railway authority. With such pervading presence of contracts in our lives, we cannot ignore the significance of the law of contracts.

Briefly stated, it is a legally enforceable agreement that is characterized by the following characteristics.

### 2.1.1 Contract involves two or more parties

In order to have a valid contract there must be two or more parties involved. Such parties can be physical or juristic persons, such as companies or other organizations.

### 2.1.2 Legally Binding Agreement.<sup>(2)</sup>

(1) Catherine MacMillan and Richard Stone, “Elements of the Law of Contract” University of London International Programmes, p. 14, 2012.

(2) عقد قانوني ملزم

A contract is not an engagement based on the moral sense of the obligor like a “gentleman’s agreement”. It is legally binding for the parties and enforceable by public authorities.<sup>(1)</sup> This means:

- It is binding for the parties, recognized by courts, and enforceable by public authorities;
- It is not based on a moral sense of obligation (i.e. such as promises and oaths);
- It must be valid. Agreements to carry out illegal acts are not valid (i.e. such as the sale of drugs);
- It is enforceable by a judicial decision, which is carried out by the public authorities;

For example, if the debtor in a contract refuses to execute its obligations willingly, the creditor may ask the judicial authorities to force the debtor to execute.

### 2.1.3 Relativity of Contracts<sup>(2)</sup>

The principle of relativity of contracts means that the contract is only binding for the parties who consented to the agreement. It can neither confer rights nor impose obligations upon a third party. That is why it is said that the contract is the law of the parties.

‘The Lebanese Code of Obligation and Contracts’ states in Article one that the conclusion of a contract requires a mutual expression of intent by the parties, and in Article 225 it declares that “Where the object has been delivered to the buyer prior to inspection, the sale is deemed to have been approved if the buyer neither declares that he rejects the object nor returns it within the agreed or customary time limit or, in the absence of any such time limit, immediately on demand by the seller”.

### 2.1.4 Obligations and Rights<sup>(3)</sup>

An obligation is a juridical necessity to determine what is to be or not to be completed. It is defined as: “A legal bond of necessity which makes one or more persons (i.e. whether physical or juristic<sup>(4)</sup>) liable towards other persons”.<sup>(5)</sup>

(1) Talal H. Jaber, Introduction to Business Law, 3rd edition, Beirut 2009.

(2) نسبية العقود

(3) الواجبات والحقوق

(4) شخص طبيعي او معنوي

(5) C.O.C. Art. 1.

Obligation gives the creditors or obligee a right under the law to enforce their performance in courts. The creditor or the obligee<sup>(1)</sup> is the person who is entitled to demand the fulfilment of the obligation while the debtor or the obligor<sup>(2)</sup> is the person who is bound to the fulfilment of the obligation. An obligation can be positive or negative.

- E.g. of positive obligations: delivering goods, paying money, or building a house.
- E.g. of negative obligations: not carrying out acts of unfair competition.

### 2.1.5 Intention to be bound <sup>(3)</sup>

A party does not enter into any agreement with another party unless there is an intention to carry it out to the latter in good spirit. Without the existence of an underlying assumption these promises will be impossible to maintain.

In order for a contract to be valid, a person must want to be bound. Although contracts do not always need to be written, but writing is significant evidence of the intention to be bound. There are also other methods of evidence that can prove such will, such as admission.<sup>(4)</sup>

In nearly all cases, the object of a contract is to impose binding obligations on the states who are parties to the agreement. *Pacta Sunt Servanda* <sup>(5)</sup> imposes an obligation to respect the agreements among parties of the contract; this is an absolute principle, unable to be denied.

### 2.1.6 Meeting of minds <sup>(6)</sup>

When negotiating the contract, there must be a meeting of minds upon the same object, and the same nature of contractual relationship. The contract may become void if it turns out that the parties were of a different understanding.

This means the contracting parties must not be speaking about two different objects (e.g. the buyer is talking about the seller's BMW, while the seller believes the sale is for his Mercedes), or two different kinds of contracts (e.g. one party believes that he is receiving the money as a donation, while the other party believes he is lending the money and expects to be paid interest).

(1) الدائن

(2) المدين

(3) نية الالتزام

(4) الإقرار (الاعتراف)

(5) Dionisio Anzilotti, Cours de Droit International, Volume I. Paris, 1929, p.44.

(6) تقابل الإرادات

### 2.1.7 Contractual Freedom<sup>(1)</sup>

Every person is able to form a contract, given they meet the following criteria:

- Age majority
- Sound mind
- Not disqualified under the Lebanese Law

Both individuals and companies having legal competency have the capacity to create a contract. People are free to form a contractual agreement as they determine applicable.<sup>(2)</sup> Nevertheless, a person signing a contract is bound by the document and must execute it as agreed.

Contractual freedom is also restricted by public policy and the general rules of law.<sup>(3)</sup> People cannot contract on anything that is harmful to society or that is prohibited by law, such as a contract to harm someone, or to disturb the public.

Minors and legally incapable people cannot conclude any contracts. Any contracts carried out by them are considered inexistent.

### Characteristics of Contract

- Legally Binding Agreement
- Principle of Relativity
- Obligations and Rights
- Intention to be Bound
- Meeting of Minds
- Contractual Freedom

Figure 7: Characteristics of a Contract

(1) حرية التعاقد

(2) C.O.C. Art. 166.

(3) C.O.C. Art. 166.

## 2.2 TYPES OF CONTRACTS

Contracts are to be classified into the following types.

### 2.2.1 Expressed<sup>(1)</sup> and Implied<sup>(2)</sup> Contract

**a. Expressed Contract:** In an expressed contract, the parties express the terms by using words and language. There is a definite written or oral offer that is accepted by the offeree<sup>(3)</sup> in a manner that explicitly demonstrates consent to its terms. They can either be:

- Written: such as a written agreement for the sale of a restaurant.
- Oral: such as the oral agreement with a builder to build a new brick fence in return for a specified sum of money; buying grocery from a supermarket.

**b. Implied Contract:** Implied contract is not expressed by the parties, but, rather suggested from facts and circumstances that indicate a mutual intention to contract. As for example, a person who parks his/her car in a public car park means that he/she has agreed to pay the fees for such parking. A person who rides a public bus also implies his/her consent to pay the fee for the ride.

### 2.2.2 Unilateral<sup>(4)</sup> and Bilateral<sup>(5)</sup> Contract

**a. Unilateral Contract:** It involves a promise that is made by only one party. For example, the offeror promises to complete a certain procedure if the offeree performs a requested act that he/she knows is the legal base of a lawfully enforceable contract. The performance constitutes an acceptance for the offer, and the contract then becomes executed. In brief, a contract by which only one party has an obligation towards the other parties, but not vice-versa such as a gift or donation.

**b. Bilateral Contract:** It is called the two-sided contract because of the two promises that constitute the agreement. It is a contract by which each party has an obligation towards the other, in accordance with the terms of their agreement. This means all the parties are

---

(1) العلنية

(2) الضمنية

(3) The person to whom the offer is made.

(4) غير المتبادلة

(5) المتبادلة

creditors and debtors.<sup>(1)</sup> For example, a sales contract in which the buyer must pay the price and the seller must deliver the goods.

### 2.2.3 Remunerated<sup>(2)</sup> and Non-Remunerated Contracts<sup>(3)</sup>

- a. A Remunerated contract is a contract in which all parties receive equitable advantages, such as sale, lease, and employment contracts.<sup>(4)</sup> Remunerated contracts are of two types:
  - Commutative contracts:<sup>(5)</sup> Are when the benefits of the contract are specified, so all the advantages and disadvantages are known at the time of the contract (e.g. sale or lease).
  - Aleatory (risky) contracts:<sup>(6)</sup> Are when some or all benefits of the contract are unclear, since they depend on a future uncertain event.<sup>(7)</sup> For example, car insurance contract.
- b. A **non-Remunerated contract** is a contract which benefits one party only, without the other party having some advantages in return.

### 2.2.4 Simple<sup>(8)</sup> and Formal Contracts<sup>(9)</sup>

- a. A **Simple contract** is the contract that does not need any special form, but is simply based on the contracting parties' consent.
- b. A **Formal contract** is the contract that depends in its formation on the completion of certain conditions imposed by law. For example, a contract that is being notarized by the Notary Public (i.e. a contract for the creation of a Joint Stock Company (JSC) or a Business Concern, or a marriage contract).<sup>(10)</sup>

(1) C.O.C., Art. 168

(2) عقود المعاوضة

(3) العقود المجانية

(4) C.O.C., Art. 169

(5) العقود المحددة

(6) عقود الغرر (المخاطرة)

(7) C.O.C., Art. 170

(8) عقود الرضى

(9) العقود الرسمية

C.O.C., Art. 171 (10)

### 2.2.5 Discussed<sup>(1)</sup> and Submitted Contract<sup>(2)</sup>

- a. **Discussed contract:** Is the contract in which the terms are freely discussed between all the parties after full negotiation for the terms of the contract.
- b. **A Submitted contract:** also called Adhesion contract, which is drafted by the party that has the greater bargaining advantage, providing the weaker party with the opportunity only to accept or reject the contract (i.e. take it or leave it). The terms of the contract are not discussed and the other party must either accept or reject the contract as it is (e.g. insurance contract, airline ticket, bank loans, and so forth).<sup>(3)</sup>

### 2.2.6 Collective<sup>(4)</sup> and Individual Contract<sup>(5)</sup>

- a. An **Individual contract** takes place when the consent of all the parties is required for the formation of the contract, even if it involves numerous people (e.g. forming an unlimited partnership).
- b. A **Collective contract** is when the consent of the majority overrides the consent of the minority (e.g. contracts made by the General Assembly of a JSC).<sup>(6)</sup>

### 2.2.7 Nominated<sup>(7)</sup> and Non-Nominated Contracts<sup>(8)</sup>

- a. **Nominated contracts** are regulated by special provisions in the Code of Obligations and Contracts (C.O.C.), such as sales, lease, and donation contracts.
- b. **Non-Nominated contracts** are subject to the general rules that apply to all contracts.<sup>(9)</sup>

---

(1) عقود التراضي

(2) عقود الموافقة (الإذعان)

C.O.C., Art. 172 (3)

(4) عقود الجماعة

(5) عقود الافراد

C.O.C., Art. 173 (6)

(7) العقود المسماة

(8) العقود غير المسماة

C.O.C., Art. 175 (9)

<b>Expressed and Implied Contracts</b>
<b>Unilateral and Bilateral Contracts</b>
<b>Remunerated and Non-Remunerated Contracts</b>
<b>Simple and Formal Contracts</b>
<b>Discussed and Submitted Contracts</b>
<b>Collective and Individual Contracts</b>
<b>Nominated and Non- Nominated</b>

Table 5: Types of Contracts

## 2.3 FORMATION OF CONTRACTS

A contract is formed by an agreement between two or more parties. This agreement must appear in their declarations. Every contract must include three main elements: object, cause, price in sale contract, and consent.<sup>(1)</sup>

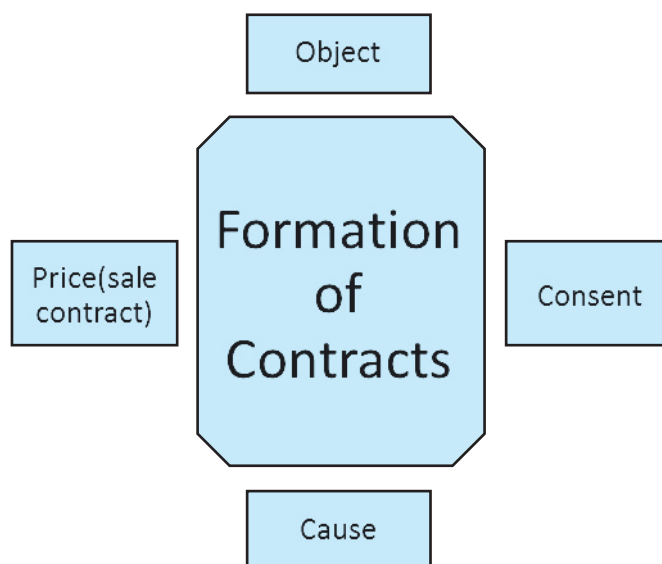


Figure 8: Formation of Contract

(1) *Ibid.*, Art. 177.

### 2.3.1 The Object<sup>(1)</sup>

The object is the main purpose of a contract. It is the performance required from the debtor in favor of the creditor. For example, in a sale contract, the object of the seller's obligation is to deliver the goods, and the object of the buyer's obligation is paying the price. The object is required to fulfil certain conditions.

a. The Object must ***exist***. This means two things:

The object must be *possible to perform*. A person who sells a building that was demolished at the time of the sale is impossible to perform. Similarly, a contract with a doctor who promises to make you live forever is also impossible. In such cases the object is inexistent (i.e. void with absolute nullity).<sup>(2)</sup>

b. The object must be ***determined*** <sup>(3)</sup> or ***possible to be determined***: <sup>(4)</sup>

*Determined* objects are objects that are clearly specified at the time of the contract, such as selling 800 square meters of land, in a specified area, with a specific land number, and so forth. Objects that are *possible to determine* means that there exist certain reliable criteria by which the object can be measured. The sale of 5 tons of good quality white sugar may be determined by the market standards for the sale of sugar. If the object is inexistent or impossible to determine it is deemed inexistent (i.e. void with absolute nullity).<sup>(5)</sup>

c. The Object must be ***Legal***

- The object must always be legal in order to have a valid contract.
- Illegal objects are the ones that are against laws and public policy. For instance, contracts for the sale of drugs, murder, prostitution, and any acts that are against the law are illegal. Such contracts are deemed inexistent.<sup>(6)</sup>
- In order to declare a contract illegal, the judge does not necessarily need to refer to written rules. He/ she can void the contract by referral to public policy.

(1) الموضوع

(2) عديم الوجود

(3) معين / محدد, C.O.C., Art. 189.

(4) قابل للتعين, *Ibid*.

(5) C.O.C., Art. 188.

(6) *Ibid.*, Art. 192.

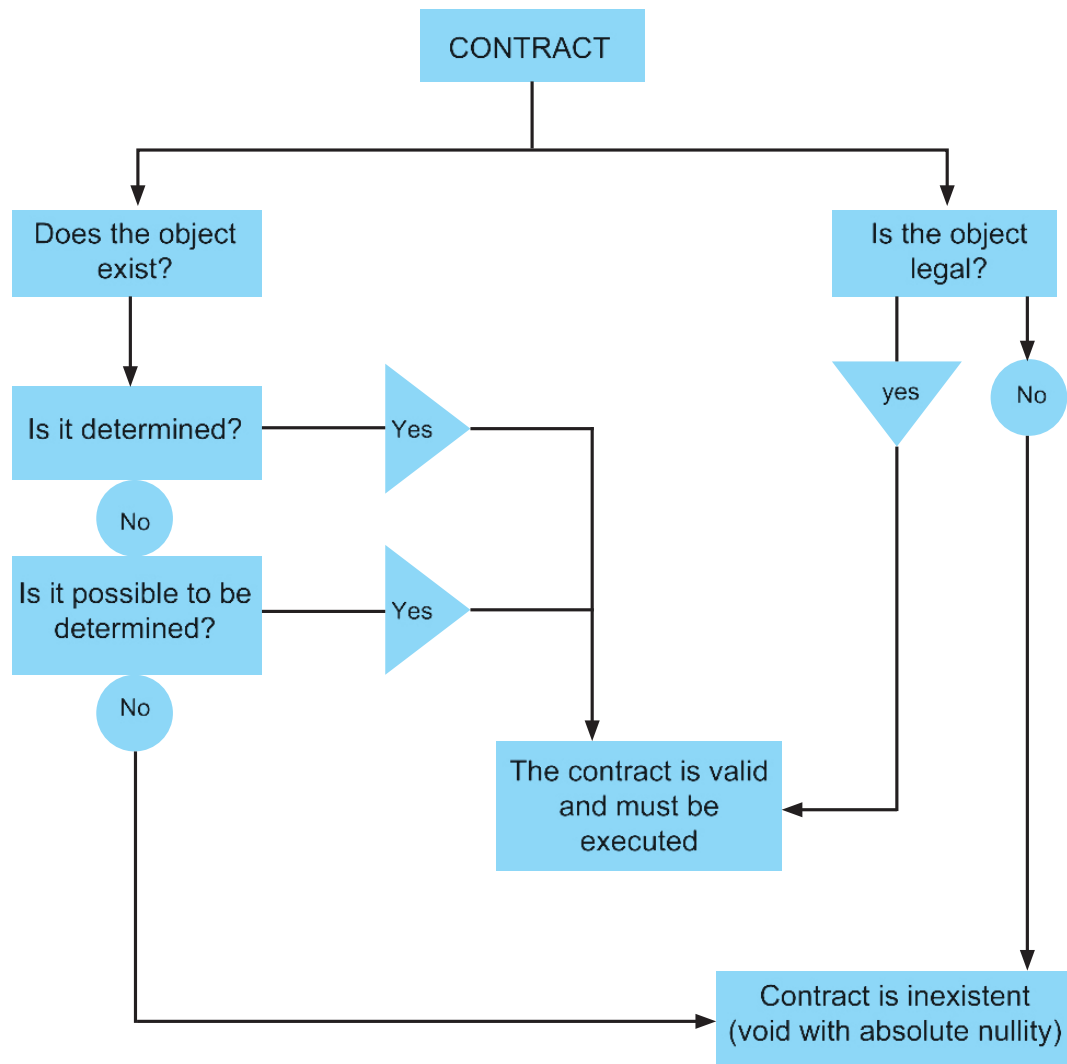


Figure 9: The existence and the Legality of objects of Contracts

### 2.3.2 The Cause <sup>(1)</sup>

- There is a difference between the cause of the contract and the cause of the obligation:<sup>(2)</sup>
  - a. Cause of the contract: It is the real reason why the parties have contracted. Such a reason is usually personal, such as buying a ring for your mother; or selling your car because you want to buy a new one.

(1) السبب

(2) *Ibid.*, Art. 194.

- b. Cause of the obligation: It is the direct result wanted from the contract. It is what you expect the other party in the contract to perform. In the examples above, the cause of the obligation for buying the ring is the desire to receive the ring; and the cause of obligation for selling the car is wanting to receive the price of the car.
- In bilateral contracts, the cause of obligation of one party is the object of obligation of the other party. For instance, if there was a sale contract between Rima (i.e. the seller) and Hana (i.e. the buyer) for the sale of a car, the object and cause of obligation for each party would be as follows:

	OBJECT OF OBLIGATION	CAUSE OF OBLIGATION
FOR RIMA	Delivering the car	Receiving the price
FOR HANA	Paying the price	Receiving the car

**Table 6: Distinction between the Object and the Cause**

- The cause of the contract and the cause of the obligation must exist.<sup>(1)</sup> If a person buys a house because he/she mistakenly thought it was by the beach, the cause would be false, and the contract is therefore inexistent.
- In donations, the cause of the contract is the desire to give or to be generous.
- The cause of the contract should be legal, within the limits of law and public policy.<sup>(2)</sup>
- If the cause of the contract is illegal or does not exist, the contract will be void with absolute nullity (i.e. inexistent).<sup>(3)</sup>

(1) C.O.C., Art. 196.

(2) *Ibid.*, Art. 198.

(3) *Ibid.*, Art. 196, 201.

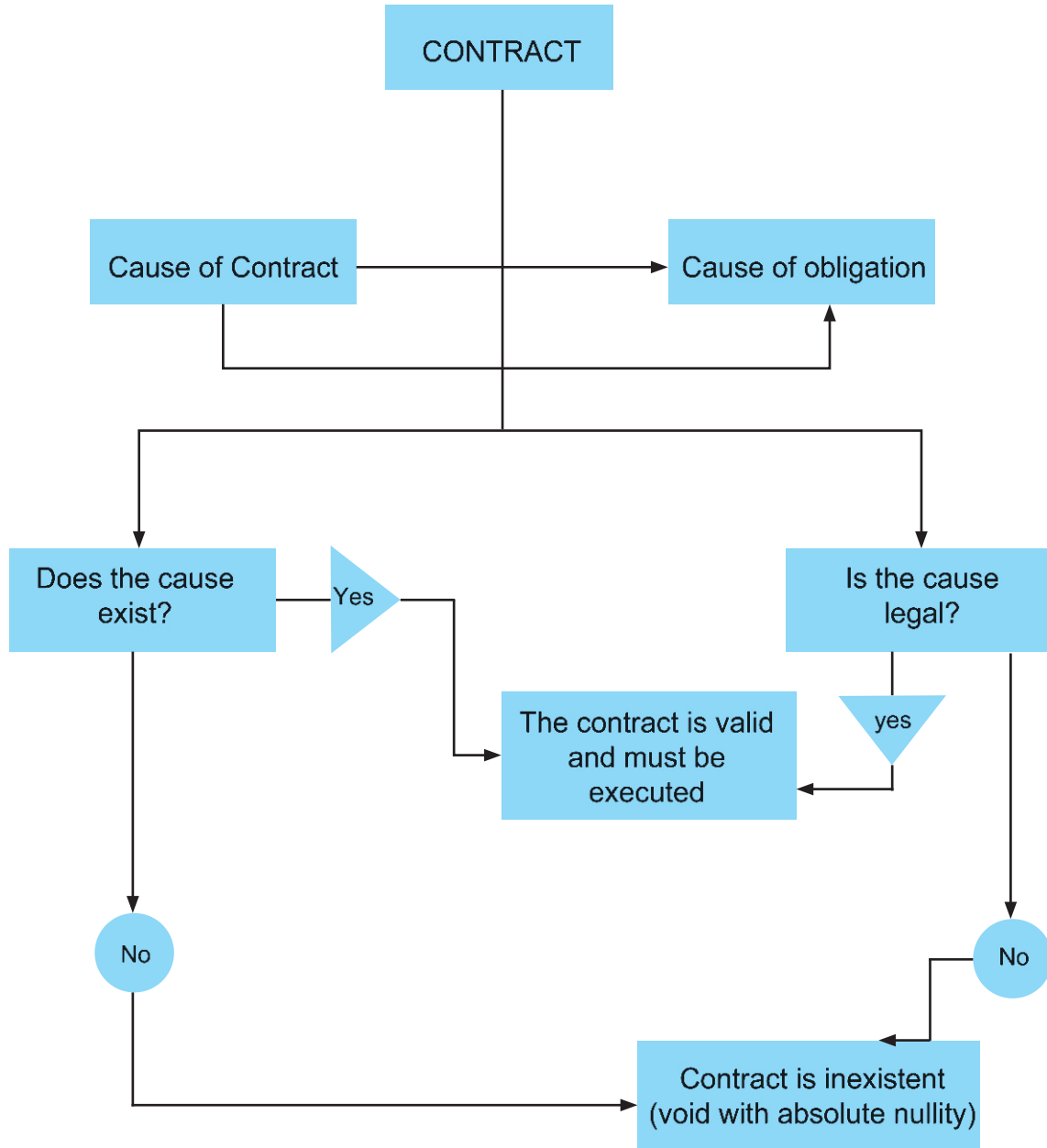


Figure 10: The Existence and the Legality of the Cause of the Contract

### Point Example

Matilda put an advertisement in the newspaper to sell her Samsung home theatre system that has a warranty and is slightly used; she invited the contractors to offer price-list. She gave a post office box number as her contact details. Jassi saw the advertisement and wrote to Matilda saying ‘she would take the home theatre system at the price \$3,000. Matilda received a number of other letters expressing interest but with lower prices. On 8 March she wrote to Jassi and told her that she would sell the home theatre system for \$3,500 and would keep her offer open for one week. Jassi received the letter on 9 March but didn’t reply back. On 17 March Matilda met her cousin Suzan who expressed her willingness to own Samsung home theater system for \$2,500 and offered to look after Matilda’s children on Saturday nights.

1. Was Jassi’s letter an acceptance? Was Matilda bound by this acceptance? Explain.
2. What do we call Suzan’s response to the offer ? Explain the new relation between Matilda and Suzan.
3. If the contract existed between Matilda and Suzan, what is the object of contract and the cause of obligation between them?

#### 2.3.3 The Price <sup>(1)</sup>

- The price is one of the major elements in sales contracts. It is considered as the cause of obligation for the seller and the object of obligation for the buyer (i.e. see Table 1).
- The price must be a sum of money, otherwise the contract will become an exchange contract, not a sales contract.
- In order for a valid contract, the price must either be determined or possible to determine:<sup>(2)</sup>
  - a. A *Determined* price is one that is fixed and clearly known at the date of the contract (e.g. sale of furniture for a sum \$4550).
  - b. Selling for a price that is *possible to determine* means that there must be at least one objective criterion in the contract, which would allow the contract to be later determined. Examples of such a criterion include the market price of the product, the price used

(1) الثمن

(2) C.O.C. Art. 386-387.

previously between the parties, or nominating a third party who will set the price.

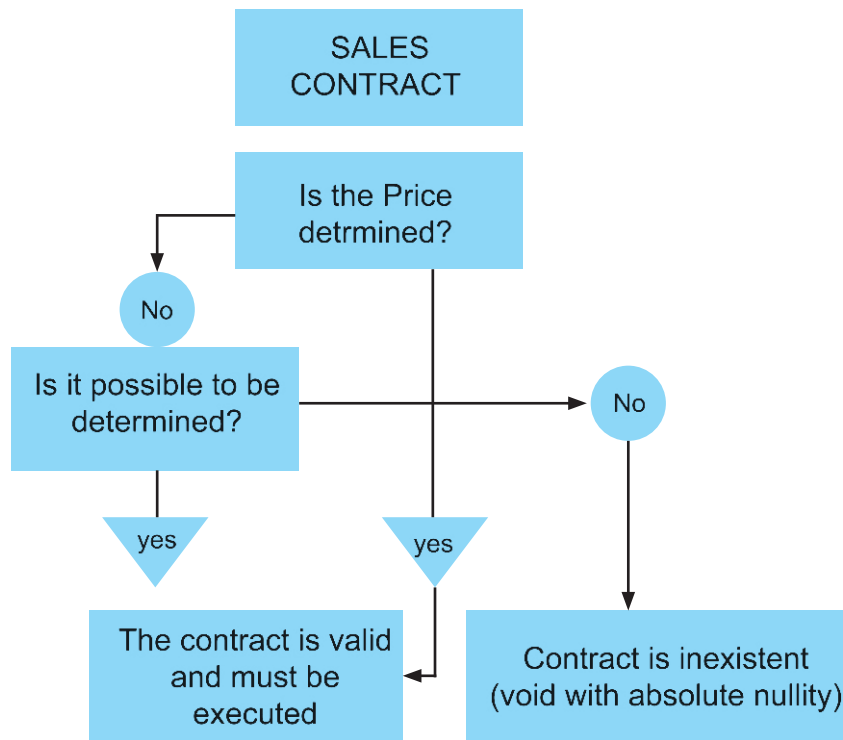


Figure 11: The Price in Sale Contract

### 2.3.4 The Consent<sup>(1)</sup>

Consent is the main element upon which a contract is based.<sup>(2)</sup> It is formed between two or more legal entities or persons with a legal capacity. It is the process by which the parties reach the meeting of minds. It takes place through one of two ways: negotiations or offer and acceptance, not voided by any vice of consent.

#### *a. Contractual Negotiations<sup>(3)</sup>*

Contractual Negotiations involve talks, discussions, and actions which eventually lead to the formation of the contract. The parties may negotiate any matter related to the contract, such as

(1) الرضى

(2) C.O.C., Art. 176, 178.

(3) المفاوضات التعاقدية

the price, the quantity and nature of the goods, delivering the goods, or methods of payments.

The process of offer and acceptance can also lead to negotiations if several offers and counter-offers are made.

### ***b. Offer and Acceptance<sup>(1)</sup>***

To say that we have a contract means that the parties have voluntarily assumed liabilities with regards to each other. The process of agreement begins with an offer. For the contract to be formed it must unconditionally be accepted.

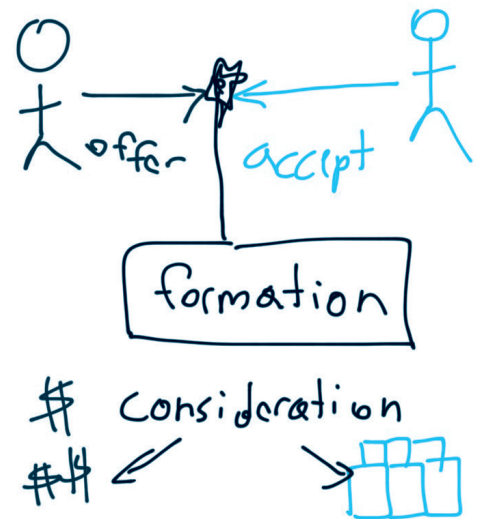
#### ***i. The Offer<sup>(2)</sup>***

An offer is an expression of willingness to contract on certain terms. It must be made with the intention that it will become binding upon acceptance. An offer is an expression by the “offeror”<sup>(3)</sup> of his/her willingness to make a contract.<sup>(4)</sup> It is made with the intention that it shall become binding as soon as it is accepted by the “offeree”.<sup>(5)</sup>

The offer can be oral, written, or through conduct, either expressed or implied:

- An *expressed* offer can be *written*, such as a letter, fax, email, or it can be *oral*, such as a face-to-face offer, over the telephone, or any other method of verbal communication.
- An *implied* offer is done through conduct. For instance, a bus driver stopping at a bus stop where people are gathered is usually an offer to transport them in return for a fixed fee.

The offer must be definite, complete, and precise:



(1) العرض والقبول

(2) العرض أو الإيجاب

(3) مقدّم العرض

(4) G.H. Treitel, The Law of Contract, 10<sup>th</sup> ed, p.8.

(5) Ibid, المعروض عليه.

- *Definite*, means that it does not last forever. It can either set: for a specified period of time, or it could be not specified as it ends by the death of either the offeror or the offeree or by the withdrawal of the offer by the offeror.
- *Complete*, means that the offeror cannot only offer to contract on some elements and leave the remaining element of the contract for negotiation. Hence, a person who offers to sell his/her car to another without setting the price would not be considered a legal offer.
- *Precise*, means that all the terms of the offer should be clear, without leaving any room for doubt.

The offer must include: the object of the contract, the price, and all the relevant details. Thus, it must be a final proposal. If the offer is for a limited time, the offeror cannot withdraw the agreement before the end of this period. Nevertheless, if the period ends without acceptance, the offer stops automatically.

The offer must be communicated to the offeree before it can be accepted. An offeree who rejects the offer must express his/her rejection clearly, or it may be considered as a counter-offer<sup>(1)</sup>. It must be distinguished from an invitation to negotiate (such as an advert in a newspaper inviting contractors to offer price-lists of their work).

The offer gets terminated by rejection, lapse of time, specified event, death, retraction or withdrawal of offer.

### *ii. The Acceptance*<sup>(2)</sup>

Acceptance is a final and unconditional expression of consent to the terms of an offer.<sup>(3)</sup> It can be oral, written or through a conduct, and must be communicated to the offeror. If the offer does not specify how the acceptance should be made, then it must be expressed in the same way as the offer was made.<sup>(4)</sup>

(1) العرض المقابل

(2) القبول

(3) G.H. Treitel, The Law of Contract, 10th ed, p.16.

(4) The acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.

### Point Example

Rami offered Tarek the purchase of 30 television units at the total price of \$12,000 to be paid all upon delivery.

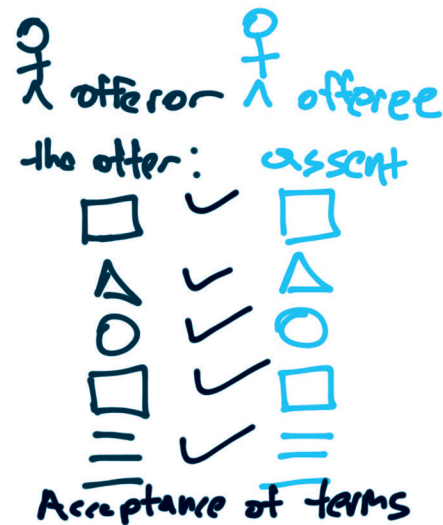
On Tuesday, Tarek replied that he accepts the offer but is willing to pay \$7,000 upon delivery and the rest to be paid after one month.

On Thursday Rami agreed and both parties signed the sale contract at the Notary Public on Friday.

1. What is the type(s) of contract that has taken place between Tarek and Rami?
2. Do you consider Tarek's reply on Tuesday as a valid acceptance to Rami's offer? why? What is it called? What are its effects?
3. On which day do you think the contract was established between Rami and Tarek? Was it on Thursday or on Friday? Justify your answer.

The acceptance must be absolute; thus the offeree must either accept the offer as a whole or reject it as a whole.<sup>(1)</sup> He/she cannot accept only part of the offer. When acceptance meets the offer, a legal relationship is created and not a social engagement such as an agreement to have lunch at a friend's place.

- In some occasions, the offeree might amend one or more of the terms of the offer before accepting the agreement. Such action is not considered an acceptance, but as a counter-offer.<sup>(2)</sup> In such case the original offeror becomes the offeree, and the original offeree becomes the offeror.<sup>(3)</sup>
- Acceptance has no legal effect unless it is communicated to the offeror. Once it is communicated, the contract is said to be complete. Only the offeree or his/her proxy<sup>(4)</sup> may accept the offer.



(1) C.O.C., Art. 180-182.

(2) عرض مقابل

(3) This is called "the battle of offer and acceptance".

(4) وكيل

- Silence does not normally constitute acceptance. However, the exception applies when there is a previous relationship that is similar between the parties, and when the usages and norms of the profession accept silence as a means of acceptance. For example, delivering medical supplies to hospitals on a weekly basis does not require expressed acceptance on a regular basis.

### Point Example

Samira is managing her own business of selling leather bags in Zalka. On September 27, a wholesale manufacturer of bags sent her an offer by mail to buy bags for a competitive price. The offer will last October 15, 2017. As the economic situation in Lebanon is unstable, she did not reply to the offer.

1. What are the different types, the sale contract falls into?
2. Consent consists of offer and acceptance. Discuss the offer and acceptance in this case. Is Silence considered as acceptance?
3. Unfortunately Samira had a car accident and lost her memory. What will happen to her business and why? Who will decide?

#### *c. Vices of Consent<sup>(1)</sup>*

- The contract may be complete, in the sense that it has a valid object, cause, and price (i.e. in sales), as well as the consent of both parties. However, the consent of one of the parties may suffer a “vice”, which makes the contract voidable.
- This means that if the victim asks the court to void the contract, his/her request may be accepted if he/she can prove the existence of such a vice. Nevertheless, only the victim of the vice of consent can ask the court to void the contract, or the victim’s legal representative if the victim is a minor.
- The nullity of this contract is called “relative nullity<sup>(2)</sup>”. It is motivated by the protection of the weak party. It is opposed to “absolute nullity<sup>(3)</sup>”, by which the judge may void the contract at any time, without awaiting the victim’s request.

(1) عيوب الرضى

(2) البطلان النسبي

(3) البطلان المطلق

	Relative Nullity	Absolute Nullity
1	Contract is «voidable».	Contract is «inexistent».
2	It is only declared void by the judge upon the request of the victim or his representative.	Anyone can ask the judge to void the contract. Not just the victim.
3	It occurs when there is a vice of consent.	It usually occurs when the cause or object is inexistent or illegal.
4	It aims to protect the weak party.	It is motivated by protecting the society as a whole.

Table 7: Difference between Relative Nullity and Absolute Nullity

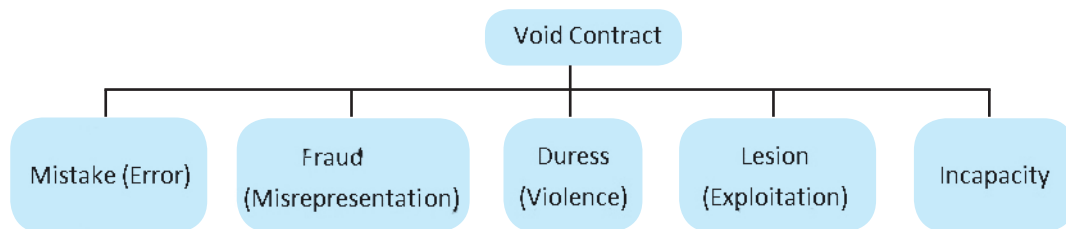


Figure 12: The Vices of Consent

The vices of consent<sup>(1)</sup> are:

- i. Mistake (or error)
- ii. Fraud (or misrepresentation)
- iii. Duress (or violence)
- iv. Lesion (or exploitation)
- v. Incapacity.

*i. Mistake (or Error)*<sup>(2)</sup>

(1) C.O.C., Art. 202.

الغلط (2)

A contractual mistake can either be related to the substance of the object or to the identity of the person:

- a. Mistakes related to the **substance of the object**: occur when the mistake is related to some qualities which the parties regard essential.<sup>(1)</sup> For instance, a person who is interested in buying antiques may mistakenly purchase something with the belief that it is old, and discover that it was not. Similarly, a mistake might occur in a contract for the sale of wood, if the buyer can prove for example that he was interested in Timber, while the wood delivered was oak. In order to be a vice of consent, the mistake must be made by both contracting parties.<sup>(2)</sup>
- b. Mistakes related to the **identity of the person**: occur when one party mistakenly contracts with another, believing he/she was someone else. The importance of such mistakes is minimal in sales contracts, but is very important when personal features are involved.<sup>(3)</sup> For instance, if a person mistakenly contracted with a design artist, believing he/she was someone else, or a donation was made to someone other than the person intended, the contract would be voidable.

The mistake must be essential for the consent of the victim, in the sense that without this mistake, he/she would not have contracted<sup>(4)</sup>.

Mistakes do not make the contract voidable, but **inexistent**.

- The existence of the object, such as buying a horse with the belief that it exists at the time of the contract, but in fact it had died before the contract was made.<sup>(5)</sup>
- The nature of the contract, such as believing that the contract being signed is a sales contract, when in fact it is a lease contract.<sup>(6)</sup>

---

(1) C.O.C., Art. 204 1.

(2) *Ibid.*, Art. 207.

(3) *Ibid.*, Art. 204 2.

(4) *Ibid.*, Art. 205.

(5) C.O.C., Art. 203.

(6) *Ibid.*

### Point Example

Kareem lives with his grandfather who decided to donate him a building in Hamra, evaluated for 900.000.000 LBP (nine hundred million LBP). Kareem's uncle named Waleed decided to sue Kareem in court to get the building back.

After Kareem acquired the building, he heard from his friends that there is a well known Lawyer called Hani who is looking for an apartment. Few days later, Hani came to Kareem requesting to rent the apartment. Kareem thought that Hani is the lawyer- he heard about- and according to his good reputation he agreed to let him live in an apartment for 3 years; in return Hani should pay 30.000.000 (Thirty millions L.L.) per year.

Three years later, Kareem asked Hani to pay him the money on which they agreed. After calculation the amount of debts was 90.000.000 LBP (Ninety millions LBP). Hani refused to pay his debts and Kareem discovered that Hani is not the lawyer so he decided to sue him in court.

1. How many contract(s) is/are there in this case, name them by showing the parties? And under which type(s) it/they could be classified? Explain
2. Which court has jurisdiction if Waleed want to sue Kareem, and if Kareem wants to sue Hani? Explain
3. Is there any vice(s) in the contract(s)? If yes what can victim claim? explain

#### *ii. Fraud (or Misrepresentation)<sup>(1)</sup>*

Fraud can be defined as the conduct of intentionally provoking the mistake to the other party. It is an alteration of the truth made with the intention of obtaining unfair advantages for one party, or causing loss to another.

- Fraud could be related to the object (i.e. painting a metal ring with golden color and selling it as gold), or to the identity of the person (i.e. pretending to be a doctor).
- It must include actions or words with the intention to mislead the other person.
- It must be essential to the consent of the victim (i.e. if the other party knew about the fraud he/she would not have contracted).
- If the fraud was not essential to the victim's consent, the contract would not be voidable, but the other party would have to pay damages to the victim for any loss.

(1) الغش أو الخداع

### Point Example

Walid, who is a civil engineer, visited the motor showroom of Kareem, who is a car dealer, with the intention of buying a new car. After explaining to Kareem exactly what he wanted, the latter offered Walid a white Mercedes which he said was brand new and had not been owned by anyone before, for a sum of 20,000 dollars. Walid accepted and paid the amount in full. One week later the car broke down, and Walid was informed by his mechanic that the car's engine was badly damaged due to an accident which the car had been through around 6 months ago. Walid sued Kareem claiming for his money back.

#### Questions

1. Is Walid's claim valid? What can he legally base his claim on? Explain.
2. What was the object of obligation, and cause of obligation for each of the contracting parties?
3. What can Walid claim for if he would not have stated that he wanted a new car (i.e. the novelty of the car was not determinant to the conclusion of the contract)?

#### iii. Duress (*violence*)<sup>(1)</sup>

Duress occurs when one of the parties contracted under reasonable fear imposed upon him/her by the other party or by a third party.<sup>(2)</sup>

- When determining if the fear was "reasonable", the personal circumstances of the victim must be taken into consideration, such as age, health, and gender.<sup>(3)</sup>
- The victim must believe that a serious and imminent danger will happen to him/her, or to people whom he/she cares for, or to his/her honor, reputation, or property.
- Violence does not need to be directly executed. The threat of violence is enough for duress. For example, threatening a CEO to sign a contract otherwise his/her house may be burned down.
- Duress is different from a situation in which the victim was physically obliged to sign a contract. In this case, the contract is considered inexistent, because there was no consent at all. For example, using physical force to imprint a person's fingerprint on a contract.

(1) الإكراه أو الخوف

(2) C.O.C., Art. 210.

(3) الجنس (ذكر أو أنثى) Ibid., Art. 211

***iv. Lesion (exploitation)***<sup>(1)</sup>

It is disequilibrium between the obligations of the parties, in the sense that the obligations of one party are not equivalent with the benefits he/she received from the contract. The law differentiates between cases where the victim is a minor (i.e. below 18) or an adult (i.e. over 18):<sup>(2)</sup>

- a. If the victim is below 18 years old, any difference between the real price and the chosen price makes the contract voidable. The victim's parent/guardian<sup>(3)</sup> may ask the court to void the contract, or the victim can personally ask the court to void it, after reaching the age of 18.
- b. If the victim is 18 years old or over, three conditions must be available for lesion to take place:
  - The objective element: There must be a major disequilibrium between the obligations of the parties (i.e. the price must be more than double the market price, if the victim is the buyer or less than half the market price if the victim is the seller).
  - The subjective element: The weakness of the victim, due to inexperience, stupidity, poverty,<sup>(4)</sup> and so forth.
  - The exploitation<sup>(5)</sup> of this weakness by the other party (i.e. he/she must know about the exploitation).

As a result of lesion, the victim can either ask the court to void the contract, or to order the other party to pay the difference in price.

***v. Incapacity***<sup>(6)</sup>

Every person who reaches the age of 18 is considered capable of concluding legal acts, unless he/she was declared incapable by law (e.g. voting rights in Lebanon).

---

(1) الغبن

(2) C.O.C. Art. 214.

(3) وصي

(4) فقر

(5) استغلال

(6) عدم الأهلية

There are three types of incapable people:

- People who are totally unable to distinguish (i.e. below the age of 16): contracts signed by them are considered inexistent. Such inexistence can be invoked by the victim himself/herself after reaching the age of 18, or by his/her parent/guardian.
- People who are able to distinguish (i.e. between the ages of 16 and 18): contracts signed by them are deemed voidable only if they prove that lesion has occurred. In such case, any difference in price is enough. Nullity can only be invoked by the victim himself/herself, by his/her legal representative, or by his/her heirs.
- People who are declared insane,<sup>(1)</sup> prodigal,<sup>(2)</sup> lunatic,<sup>(3)</sup> or drunkard,<sup>(4)</sup> by court. Nullity can be invoked by any of their parents, guardians, or any person who is affected by the contract.<sup>(5)</sup>

### 2.4 INTERPRETATION OF CONTRACTS<sup>(6)</sup>

Valid contract requires consent of its parties with their intention to be bound. Therefore, when the judge is interpreting the contract he/she must follow the real intention of the parties<sup>(7)</sup> and analyze the different signs of the contract. These include:

- The contract itself, by looking at:
  - Words used in the preamble (i.e. introductory part) of the contract.
  - General spirit of the contract (i.e. French or Islamic laws, and so forth).
  - Order of the clauses.
  - Language used (i.e. technical, commercial, and so forth).
  - Party who drafted the contract.
- The judge could also refer to the *relationship and previous dealings* between the parties.

(1) مجنون

(2) سفيه

(3) معتوه

(4) سكير

(5) C.O.C., Art. 218.

(6) تفسير العقود

(7) C.O.C., Art. 366.

- The judge may look at the *customs and norms* of the area or of the profession.
- The judge can also use *rational relationships* (e.g. selling cars without delivering the spare wheels).

In Lebanon, the law requires the judge to interpret the contract in favor of the debtor or the weak party. It is not interpreted against the party who drafted the contract.

## 2.5 EXECUTION OF CONTRACTS<sup>(1)</sup>

The final step in contract formation is its performance. The legal value of the contract is based on its execution. This must be supported by enforcement measures applied by the court in the event of one party failing to carry out its obligations under the contract. Hence, when one party does not perform its contractual obligations the other party has three options:

- He/she can ask the judge to terminate the contract and force the other party to pay damages.<sup>(2)</sup>
- He/she can refrain from carrying out his/her own obligations. This falls under the principle that a party who has not performed his/her obligations cannot request the other party to perform his/her obligations.
- He/she could ask the judge to order the other party to perform his/her obligations and pay damages for any delay in execution. In this case a distinction must be drawn between “obligations to give” and “obligations to do”:

***Obligation to give:*** It is usually easy to perform, because the debtor does not need any personal skills or efforts.

- If the debtor does not perform his/her obligations, the judge can order the public authorities to seize some of his/her assets and sell them in a public auction to pay off his/her debts.
- If the issue relates to delivering goods, the judge can order the authorities to seize the goods and transfer them to the buyer.

(1) تنفيذ العقود

(2) دفع التعويض

**Obligation to do:** It cannot be enforced by simple execution. Hence, a singer cannot be physically forced to perform on stage in accordance with his/her contract; and a lecturer cannot be forced to teach lessons in accordance with his/her contract. In this case, if one party does not execute its obligation, the judge can:

- Order him/her to pay damages to the other party as compensation for not performing his/her obligations.
- Order him/her to perform his/her obligations, with the threat of periodical penalty (i.e. daily, weekly, and so forth). Consequently, if he/she has not executed his/her obligations, then he/she must keep paying the penalty.

The execution of the contract cannot be enforced if deemed impossible due to:

- The disappearance of the object of the contract (e.g. a contractor cannot paint a house that has been demolished). In this case any money paid must be returned.
- The existence of a force majeure (i.e. strong event),<sup>(1)</sup> which is defined as unpredictable and an event that is beyond the control of the parties that makes an obligation impossible to perform.

The force majeure<sup>(2)</sup> can either be: permanent or temporary:

- *Permanent:* Such as an artist who injured his hand and can no longer perform drawings as a result. In such case the injured party has no right to claim damages.<sup>(3)</sup>
- *Temporary:* Such as a weather-storm which prevents the supplier from delivering the goods on time. In such case, the supplier must perform his obligations as soon as the force majeure has ended.

(1) قوّة قاهرة

(2) القوّة القاهرة

(3) C.O.C., Art. 244.

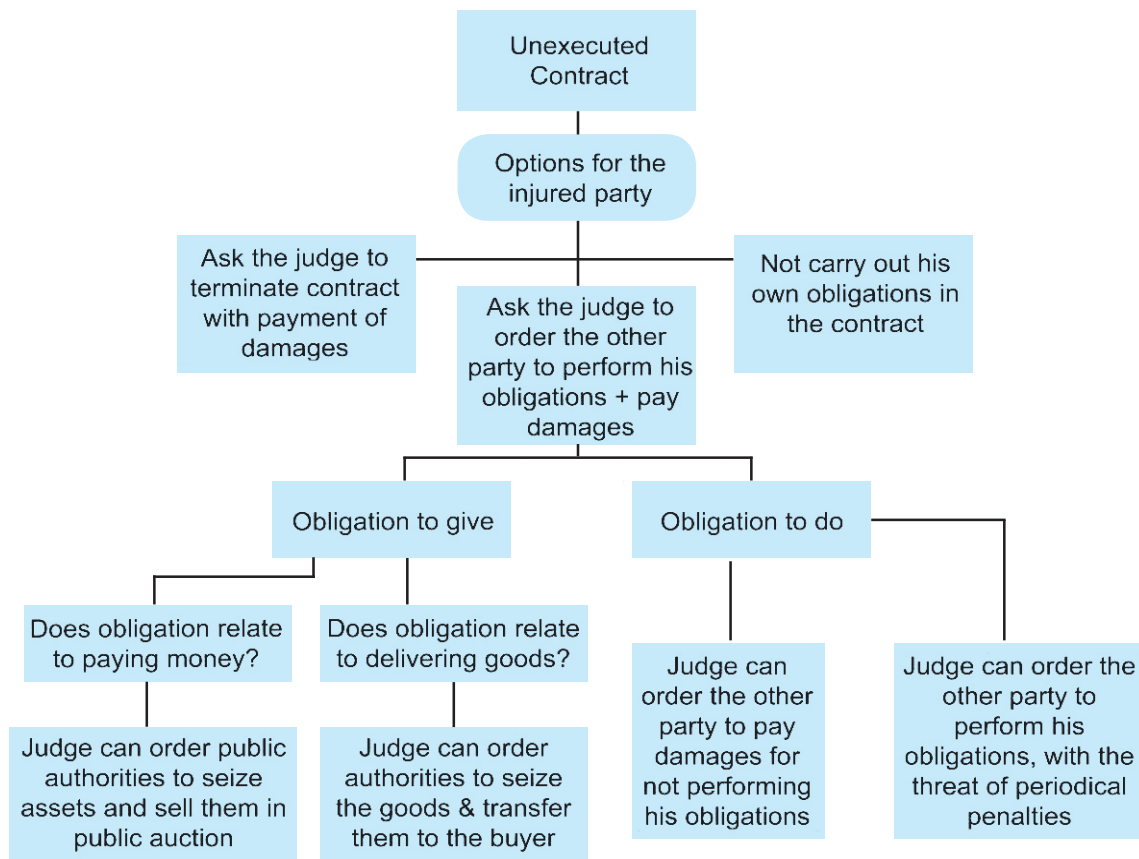


Figure 13: Execution of Contracts

## 2.6 TERMINATION OF CONTRACTS<sup>(1)</sup>

There are two main streams for terminating contracts: the normal stream and the special stream.

### 2.6.1 The Normal Termination of Contracts

Normal Termination could be done either by:

- a. The full performance of the obligations by the parties (e.g. sales contract by which one party paid the price and the other party delivered the goods).
- b. The end of a fixed term contract (e.g. end of a fixed term employment contract).

(1) إنهاء العقود

### 2.6.2 The Special Termination of Contracts

Termination applies to contracts that were formed correctly (i.e. availability of consent, object, cause, and price in sales). It does not apply to contracts that have an inexistent or illegal object or cause, whereby the contract is deemed void with absolute nullity.

Termination can be done by 3 ways: Voidance, resolution, or resiliation of the contract:

#### *a. Voidance of Contracts<sup>(1)</sup>*

- A contract is declared void due to an original vice that *came with the birth of the contract* but did not lead to automatic voidance, which is equivalent to inexistence.<sup>(2)</sup>
- Voidance is covered by the principle of relative nullity, and applies primarily to contracts suffering vices of consent.
- Voidance cannot be exercised if the vice has been accepted by the injured party. Such acceptance is known as confirmation.<sup>(3)</sup>
- Voidance only takes effect once it has been declared by the court, upon request of the victim. The benefiting party cannot request a contract to be made void.<sup>(4)</sup>
- Voidance has a retroactive effect.<sup>(5)</sup> This means that it erases the contract from the beginning, and in principle, things should be returned as they were before the contract was made.<sup>(6)</sup>

#### *b. Resolution of Contracts<sup>(7)</sup>*

“Resolution” is the dissolution of a contract for events taking place after its formation. It has a retroactive effect, similar to that of voidance.<sup>(8)</sup> Resolution takes place in all unexecuted contracts, without the need for a court decision. However, this does not happen automatically. The injured party can also ask the court to force the other party to execute his obligations, or to cancel the contract with the payment of damages. Reasons leading to the resolution of contracts include:

---

(1) إبطال العقود

(2) C.O.C., Art. 233.

(3) C.O.C., Art. 236, 237.

(4) *Ibid.*, Art. 234.

(5) مفعول رجعي

(6) C.O.C., Art. 233.

(7) إلغاء العقود

(8) C.O.C., Art. 240.

- Subsequent condition
- Free will of the parties
- External event (e.g. force majeure).

**The Subsequent condition:**

- It is a clause in the contract that allows the automatic resolution of the contract, if a specific uncertainty in an event occurs.
- a. **Example 1:** a contract for the sale of land, which includes a condition that if the seller does not obtain an immigration visa to Canada by December 12, 2014 the contract will be automatically resolved.
- b. **Example 2:** a donation contract by which a father donates a car to his/her son, with a condition that if the son does not obtain a first-class degree at university by the end of July 2014, the contract will be resolved and the car must be returned.

A subsequent condition is different from a precedent condition, which is a clause in the contract that allows the contract to be “activated” when a specific uncertainty in an event occurs.

- c. **Example 1:** selling the land, but stating that the sale will only be activated when the seller obtains a visa to Canada.
- d. **Example 2:** donating the car, but stating that the donation contract becomes effective once the son obtains a first-class degree.

**Free Will of the Parties:** The parties can willfully decide at any time to resolve the contract and erase all its legal effects.<sup>(1)</sup>

**External Events:** Permanent *force majeure*, that prevents a party from carrying out his/her obligations, will lead to the resolution of the contract.<sup>(2)</sup> However, in such case, the injured party cannot claim for damages and must suffer the loss.<sup>(3)</sup>

---

(1) *Ibid.*, Art. 241.

(2) *Ibid.*, Art. 243.

(3) *Ibid.*, Art. 244.

*c. Resiliation of Contracts<sup>(1)</sup>*

It is the termination of the contract for the future. It has no retroactive effect. In principle, resiliation happens with the consent of all the parties. Resiliation may occur in one of the following ways:

- A clause in the contract which allows one party to end the contract alone (e.g. a clause in an employment contract which allows the employer to end the contract whenever he/she wants).
- Contracts with undetermined duration. In such contracts, either party can decide to terminate the contract, without the consent of the other party.
- Agreement of the parties to end the contract.

	VOIDANCE	RESOLUTION	RESILIATION
1.	Vice comes with the birth of the contract.	Dissolution of contracts for events taking place AFTER their formation.	Termination of the contract for future.
2.	Has a retroactive effect.	Has a retroactive effect.	Does not have retroactive effect.
3.	It occurs when there is a vice of consent.	It occurs by: <ul style="list-style-type: none"> <li>● A subsequent condition;</li> <li>● The free will of the parties;</li> <li>● External event (force majeure).</li> </ul>	It occurs by: <ul style="list-style-type: none"> <li>● A clause in the contract allowing one party to terminate alone;</li> <li>● Contracts with undetermined duration;</li> <li>● Agreement of the parties.</li> </ul>
4.	Must be declared by court.	It occurs automatically, without a court decision.	It does not need a court decision.

Table 8: Termination of Contracts

(1) فسخ العقود

## Table of Concepts and Terminologies

Key Terms	Arabic Translation
Absolute nullity	البطلان المطلق
Acceptance	القبول
Aleatory contracts	عقود المخاطرة
Cause	السبب
Collective contract	العقد الجماعي
Commutative contracts	العقد المحددة
Competency	الصلاحية
Contract	العقد
Contractual Freedom	حرية التعاقد
Discussed contract	عقد التراضي
Duress	العنف
Execution of Contracts	تنفيذ العقود
Exploitation	الاستغلال
Expressed contract	العقد الصريح
Force majeure	القوة القاهرة
Fraud	الخداع
Implied contract	العقد الضمني
Incapacity	عدم الأهلية
Insane	المجنون
Intention to be Bound	نية الالتزام
Interpretation of contracts	تفسير العقود
Juristic person	الشخص المعنوي
Legally binding agreement	اتفاق قانوني ملزم
Lesion	الغبن
Lunatic	المعتوه
Meeting of Minds	تقابل الارادات

Minor	القاصر
Mistake	الغلط
Mutual	متبادل
Nominated contracts	العقود المسماة
Non-remunerated contracts	العقود المجانية
Notary Public	الكاتب العدل
Object	الموضوع
Offer	العرض
Offeree	العارض
Offeror	المعروض عليه
Physical Person	الشخص الطبيعي
Preamble	المقدمة
Prodigal	السفيه
Proxy	الوكالة
Public Policy	النظام العام
Relative nullity	البطلان النسبي
Relativity of contracts	نسبية العقود
Remunerated contract	عقود المعاوضة
Resiliation	الفسخ
Resolution	الإلغاء
Retroactive effect	مفعول رجعي
Rights and Obligations	الحقوق والواجبات
Simple	عادي
Submitted contract	عقد إذعان
Vice of consent	عيب الرضى
Victim	الضحية
Voidance	الابطال

Table 9: Table of Concepts and Terminologies

## POINT EXAMPLES

### Sample Examination Questions <sup>(1)</sup>

#### Question 1

Alice wrote to Bill offering to sell him a block of shares in Utopia Ltd. In her letter, which arrived on Tuesday, Alice asked Bill to 'let me know by next Saturday'. On Thursday Bill posted a reply accepting the offer. At 6pm on Friday he changed his mind and telephoned Alice. Alice was not there but her telephone answering machine recorded Bill's message stating that he wished to withdraw his acceptance.

On Monday Alice opened Bill's letter, which arrived that morning, and then played back the message on the machine.

#### Advise Alice.

The issues are:

- a. What is the effect of Alice writing to Bill to offer to sell him shares?
- b. What is the effect of Alice's stipulation as to the time the offer is open?
- c. What is the effect of Bill's posting a reply?
- d. What is the effect of Bill's change of mind? Is there effective communication when a message is left on an answering machine?

#### Advice on Question I

It is important to break the question down into its constituent issues. You are considering each of these issues with a view to determine whether or not a contract has been formed. Bill will argue that he is not obliged to purchase the shares because no contract has been formed. When the issues are listed in this form it is apparent that the biggest issue is whether or not a contract has been formed. This is dependent upon whether Alice's offer has been accepted. This, in turn, depends upon whether Bill has communicated his acceptance or his rejection. Alice's designation of an 'offer' in a problem question or in everyday life turns out not to be an offer in the legal sense.

(1) Elements of the Contract, International Programmes, University of London, p. 126.

Alice's stipulation that the offer is open for one week is not binding unless there is a separate binding contract to hold the offer open. There does not appear to be such a separate binding agreement.

Because Bill posts his letter of acceptance, we need to consider whether or not the postal acceptance rules apply. Alice has initiated communications by post and thus probably contemplates that Bill will respond by post. In these circumstances, the acceptance is good when Bill posts the letter – it is at this point that a contract is formed. It does not matter that the letter does not arrive until Monday, at which point the offer will have expired, given Alice's stipulation as to the time. A possible counter argument to this is that Alice asked Bill to let her know by Saturday – and this 'let me know' means that there must be actual knowledge of his acceptance – that it must really be communicated. This necessity for actual communication means that Bill's acceptance is not good until Monday when Alice actually opens the letter. One might also note that since that decision, courts are reluctant to extend the ambit of the postal acceptance rule.

Bill changes his mind. Here there is no authority as to the effect of his change of mind. In addition, given the two possible positions in point (c) above, two possible outcomes exist. If the postal acceptance rules apply, then a contract has been formed and Bill's later change of mind cannot upset this arrangement. However, this seems a somewhat absurd result since Alice learns almost simultaneously of the acceptance and the rejection. Bill has attempted to reject the offer by a quicker form of communication than the post. In these circumstances, you could state that no contract has been formed between the parties.

In addition, it seems improbable that a court would rely upon the postal acceptance rule, an unpopular exception to the necessity for communication, to produce an absurd result. The second possible outcome here is that the postal acceptance rules never applied and no contract could be formed until Alice opened the letter. Since she received the rejection at almost the same time, she is no worse off (i.e. see reasoning above) by not having a contract.

## **Question 2**

Cyril, a stamp dealer, had a rare Peruvian five cent blue for sale. He wrote to Davina, a collector who specializes in Peruvian stamps, asking whether she would be interested in purchasing the stamp. Davina wrote in reply, 'I am willing to pay \$500 for the "blue"; I will consider it mine at that price unless I hear to the contrary from you and will collect it from your shop on Friday next week.'

**Advise Davina as to the legal position**

- a. If Cyril disregarded Davina's letter and sold the stamp to Eric for \$600.
- b. If Cyril put the stamp on one side in an envelope marked 'Sold to Davina' but Davina decided that she no longer wished to buy it.

**Advice on Question 2**

Note at the outset that in two-part questions such as this you must answer both parts, unless clearly instructed that candidates are to answer either a or b.

Again, your approach should be to break down the question into its constituent parts:

- The effect of Cyril's letter – is it an offer or an invitation to treat?
- The effect of Davina's letter – is it an acceptance? Does the postal acceptance rule apply? Is Davina's letter considered as a statement of intention?
- Is Davina's letter considered as an offer? Can she waive the necessity for the communication of the acceptance?

By considering these issues, you can determine whether a contract has been formed or not. With respect to part (a), if a contract has been formed, then Cyril is in breach of this contract when he sells the stamp to Eric. You need to consider whether Cyril has made an offer – has he exhibited a willingness to commit or is his communication an invitation to treat or a step in the negotiation of a contract? If his letter is an offer, it seems reasonable that he expects an acceptance by post and the postal acceptance rules will apply:

On balance, it seems unlikely that his letter is an offer – it is phrased in terms that seek to elicit information and not to be binding upon further correspondence from Davina. Davina may have made an offer and waived the necessity for further interaction. It is, however, possible that either Davina never made an offer to buy the stamp (i.e. she was merely giving an indication of her top price) or that Cyril never accepted the offer. In these circumstances, no contract has been formed with Davina and Cyril is free to sell the stamp.

With regard to part (b), if Davina has made an offer, given the law in this area, then Cyril has (if possible) accepted the offer when he takes the step of setting aside the stamp. In these circumstances, a contract has been formed and Davina is obliged to buy the stamp. There are, however, significant weaknesses in reaching this conclusion – primarily that she seems to be indicating the top price she would pay for the stamp and that she cannot waive the necessity for communication of the acceptance.

The background features abstract, flowing shapes in two shades of blue (a light sky blue and a vibrant cerulean blue) against a white background. These shapes curve from the bottom and left sides towards the center, creating a sense of movement and depth. A thin, light blue vertical bar is positioned on the far left edge.

## CHAPTER THREE

# **COMMERCIAL LAW AND MERCHANTS**

## CHAPTER THREE

# COMMERCIAL LAW AND MERCHANTS

**Commercial** law provides the rules that merchants and others involved in commerce must follow as they conduct business amongst themselves and with consumers. It governs the sales of goods and services, negotiable instruments, security interests, leases, principal and agent relationships, partnerships and companies, and substantially more. In a broad sense, commercial law also encompasses related issues like business bankruptcy and tax planning.

Because various legal issues may be included or excluded from the subject of commercial law depending upon how expansively it is defined, it may be more helpful to consider the matter in terms of general information that are required for the students to build a solid background about commercial law.

This chapter is designated to discuss commercial law as being the main set of rules that regulate the relationships among people. It is important for business students to be aware of the codes that are applicable in the field of commerce, the main players in this field, and the rules that govern this arena.

This chapter will be divided into two main parts. The first part will deal with commercial law in general, its sources, commercial activities, and how they differ from civil acts. The second part will deal with the definition of merchants, their qualifications, obligations, as well as the freedom of trade in Lebanon and its restrictions. They will be outlined as follows:

## CHAPTER THREE OUTLINE

**Part One 3.1 DEFINITION OF COMMERCIAL LAW**

- 3.1.1 Commerce
- 3.1.2 Commercial Enterprise
- 3.1.3 Business Establishment
- 3.1.4 Business Concern
- 3.1.5 Commercial Agent

**3.2 SOURCES OF COMMERCIAL LAW**

- 3.2.1 Code of Commerce
- 3.2.2 Laws Complementary to the Code of Commerce
- 3.2.3 Civil Law
- 3.2.4 International Treaties
- 3.2.5 Usage of Trade
- 3.2.6 Jurisprudence
- 3.2.7 Agreement between the Parties

**3.3 COMMERCIAL ACTIVITIES**

- 3.3.1 Kinds of Commercial Activities
- 3.3.2 Kinds of Commercial Activities that are considered civil by nature
- 3.3.3 Difference between commercial acts and civil acts

The second part will deal with Merchants, as being the main personnel in the field of business, their definition, qualifications, and legal obligations. This part will also cover restrictions on the Freedom of Trade for business in Lebanon. It will be outlined as follows:

**Part Two 3.4 DEFINITION OF MERCHANTS**

- 3.4.1 Businessmen or merchants
- 3.4.2 Company
- 3.4.3 Commercial Representative
- 3.4.4 Commission agent
- 3.4.5 Broker
- 3.4.6 Those who carry commercial activities through intermediaries
- 3.4.7 The Craftsman
- 3.4.8 Small Merchants

**3.5 REQUIRED QUALIFICATIONS OF MERCHANTS**

- 3.5.1 Age Requirement
- 3.5.2 State of Minority Declared by Court

**3.6 OBLIGATIONS OF MERCHANTS**

- 3.6.1 The Trade Register- Commercial Register
- 3.6.2 Holding Commercial Books

**3.7 FREEDOM OF TRADE**

- 3.7.1 UNFAIR COMPETITION
- 3.7.2 RESTRICTIONS IMPOSED BY LAW

Appendix: **REGISTRATION OF COMPANIES OF PERSONS**

## PART I COMMERCIAL LAW

The Lebanese Code of Commerce is set by the Legislative decree number 304 of December 1942.

### 3.1 DEFINITION of COMMERCIAL LAW

Commercial law is the legal term used to indicate the rules and regulations applicable to the rights and obligations of persons engaged in commerce or commercial profession. The following are definitions of the key terms used in the present chapter and subsequent chapters:

#### 3.1.1 Commerce

It includes actions such as:

- Exchange of goods, products, or property of any kind, such as goods for money, goods for goods, money for money, and so forth<sup>(1)</sup>;
- Purchase, sale, and exchange of commodities (merchandise);
- Commercial papers by which commerce is promoted (i.e. cheques, promissory notes, and bills of exchange);
- Transportation of persons and goods by land, sea, and air.

Commerce could be:

- a. *Internal Commerce*<sup>(2)</sup>: Carried out between individuals or companies within the same country.
- b. *International Commerce*<sup>(3)</sup>: Carried out between individuals or companies in states which are foreign to each other (i.e. outside the borders of Lebanon).

#### 3.1.2 Commercial Enterprise<sup>(4)</sup>

(1) البيع، المقايضة، أو الصيرفة

(2) التجارة الداخلية (داخل البلد نفسه)

(3) التجارة الخارجية/الدولية

(4) المشروع التجاري

Continuous commercial activities mainly taking place in a well-known establishment.

### 3.1.3 Business Establishment

Place where commodities (merchandise) are exchanged, bought or sold.

### 3.1.4 Business Concern<sup>(1)</sup>

A business enterprise to which is linked the goodwill element and other elements such as a trade name, lease right, location and so forth; it does not have a separate legal personality.

### 3.1.5 Commercial Agent<sup>(2)</sup>

A commercial agent is a person who may be physical or juristic, holds a habitual and independent profession, carries out negotiations and commercial activities, and provides services in the name and accounts of other manufacturers or merchants.

Commercial agents are: the commercial agent, the broker, and the commercial representative.

## 3.2 SOURCES OF COMMERCIAL LAW<sup>(3)</sup>

Code of Commerce

Laws Complementary to the Code of Commerce

Civil Law

International Treaties

Usage of Trade

Jurisprudence

Agreement between the parties

Figure 14: Sources of Commercial Law

(1) المؤسسة التجارية

(2) الوكيل بالعمولة

(3) مصادر قانون التجارة

Commercial Law derives primarily from the following sources:

### **3.2.1 The Code of Commerce<sup>(1)</sup>**

The Lebanese Commercial Law remains very similar to the French Commercial Code in most of its provisions.

### **3.2.2 Laws Complementary to the Code of Commerce<sup>(2)</sup>**

Legislative decrees governing Business Concern, Stock Exchange, Commercial Representative, and Limited Liability Company<sup>(3)</sup>.

### **3.2.3 Civil Law**

Governed mainly by the Lebanese Code of obligations and contracts.

### **3.2.4 International Treaties**

Provisions of international treaties, whenever ratified, prevail over the provisions of internal law. Examples of the most important treaties:

- Berne Convention 1890, for the transport of merchandise and persons by railway.
- Warsaw Convention 1929 related to international air transport.
- Brussels Convention 1924 governing the maritime transport.
- The United Nations Convention for the international sales of goods enacted in Vienna April 11, 1980.

### **3.2.5 Usage of Trade<sup>(4)</sup>**

In case of absence of legal rules governing a certain transaction, the judge should adjudicate according to the customs and usages. For example:

---

(1) Promulgated by Legislative Decree No. 304 of December 24, 1942.

(2) Legislative decree n° 304 of 24 December 1942: Article two: Unless otherwise specified in the present code, common law provisions shall apply. In commercial matters, only in so far as they are reconcilable with the principles proper to the commercial law.

(3) شركة محدودة المسؤولية ش م م

(4) *Ibid*, Article 4: In his assessment of the effects of a commercial operation, the judge shall apply well established usages, unless it becomes apparent that the parties had. agreed to derogate them, and unless such usages run counter to imperative legal provisions. Special or local usages are presumed to override general usages.

- Time limit to deliver the products sold if the contract does not specify the time.
- Decrease in price in case the quality of the products is not very good.

Note: Local norms prevail over general norms.

### 3.2.6 Jurisprudence<sup>(1)</sup>

In case of the absence of a legal rule, the judge should adjudicate according to previous cases or case law precedents or upon commercial equity.

### 3.2.7 Agreement between the Parties

The contract is the law that governs the relationships between parties. It should not be against law or public policy, otherwise it will be null and void.

## 3.3 COMMERCIAL ACTIVITIES

### 3.3.1 Kinds of Commercial Activities

Commercial activities can be classified into commercial activities by nature, civil activities by nature, but are considered commercial under certain conditions, and mixed activities.

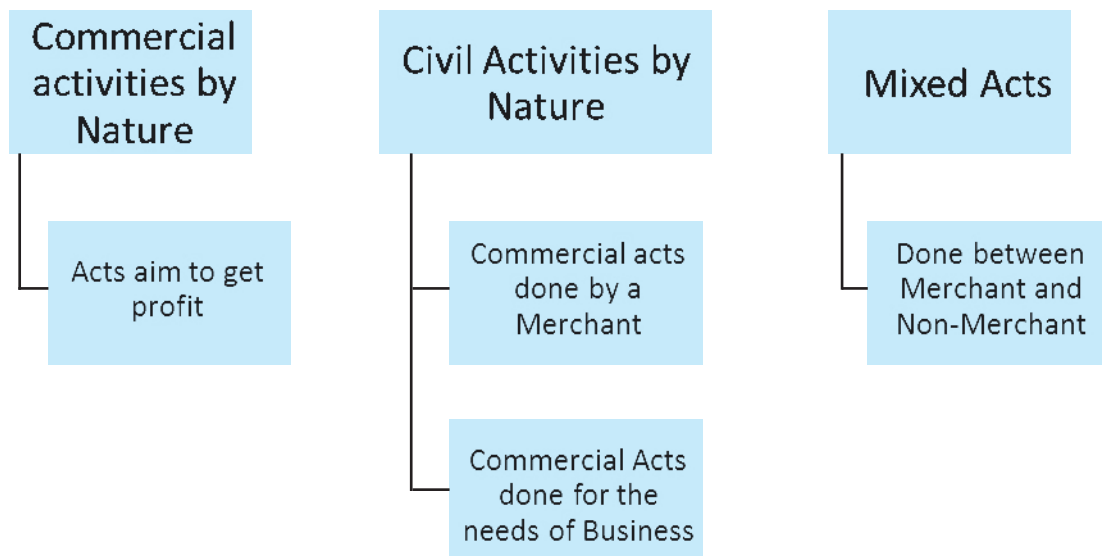


Figure 15: Kinds of Commercial Activities

(1) الاجتهاد

### *a. Commercial Activities by Nature<sup>(1)</sup>*

Some activities are considered commercial by nature, for example buying and selling with the expectation of making profit even if the person is not a merchant. These activities once carried out are considered as commercial (i.e. considered commercial by nature) and are distinguished from civil acts which do not aim to have profits.

### *b. Civil Activities by Nature*

Some transactions are civil in nature but are considered as commercial when satisfying two conditions:

- If they are carried out by a merchant.
- If they are done for the needs of his/her commerce.

For example, buying a car for the merchant's private use. This act is civil, but if the person who buys the car is a merchant, and he/she bought the car for delivering products to his/her business, then this act is deemed commercial.

### *c. Mixed Activities*

Mixed activities are done between a merchant and a non-merchant. They are considered as commercial for one party and civil for the other. For example, X is a merchant (seller) and Y is a non-merchant (buyer). If Y buys goods from X, this transaction is commercial to X and civil to Y. But if Y buys the goods for resale, this transaction is commercial to both.

## **3.3.2 Kinds of Commercial Activities that are considered Commercial by Nature**

Article 6 in the Code of Commerce stipulated the acts that are considered commercial.<sup>(2)</sup> These acts are enumerated as follows:

### *a. Purchase of Goods for the Purpose of Resale at Profit*

(1) أعمال تجارية بطبيعتها

(2) Are considered land trade acts by their own nature such acts are hereinafter listed, as well as those which, by their apparently identical characters and the identical purpose they pursue, could be likened thereto. The purchase of goods or other movables, corporeal and incorporeal, with a view to re-sale at a profit, either in a state of nature or after they have been fashioned or transformed, and so forth.

Whether intended to be sold in the original form or after manufacturing or offering them for hire. For example, if we buy wood and resell it whether in its original form or after manufacturing it, this act is commercial.

***b. Exchange and Banking Operations<sup>(1)</sup>***

- Exchange: When we exchange national currency for a foreign one.
- Banking: Banks take money from customers and give long term loans for a higher interest.

***c. Contracts for Supply of Goods<sup>(2)</sup>***

These contracts are arranged by merchants who supply goods to businesses or other institutes on a regular basis, such as supplying medicine to hospitals, or supplying wood to factories on a regular basis.

***d. Manufacturing Enterprise<sup>(3)</sup>***

Manufacturing should be done in an enterprise (continuous activities); it excludes the case when transformation is achieved through manual work, such as changing cotton to dresses.

Land, Sea, and Air transportation.<sup>(4)</sup>

This should be done through an enterprise and not alone.

***e. Commission and Broker<sup>(5)</sup>***

- Commission Agents are persons who conclude contracts and sell merchandise in their own name but for the account of their principals.
- A Broker is a person who brings two parties together to facilitate the development of contracts (i.e. negotiator between parties).

---

(1) والبنك الصرافة

(2) مشروع تقديم المواد

(3) مشروع المصانع وان يكن مقتربا باستثمار زراعي إلا اذا كان تحويل المواد يتم بعمل يدوي بسيط

(4) مشروع النقل البري والبحري والجوي

(5) مشروع السمسرة والعمالة

***f. Insurance***

Insurance in all its kinds such as car, home, and life insurance is deemed to be a commercial act.

***g. Public Shows Enterprise<sup>(1)</sup>***

It includes enterprises which provide a gathering place for the public, such as public playgrounds, cinemas, restaurants and places of public auction.

***h. Publishing Enterprises<sup>(2)</sup>***

Businesses that deal with printing, press, radio broadcasting, radio news, agencies, sale of books, and advertising, should be done through an enterprise.

***i. Bonded Warehouse Enterprises<sup>(3)</sup>***

They include stores and warehouses where merchants place their goods or merchandise in return for a sum of money.

***j. Exploitation of Minerals, Oil, and Natural Resources<sup>(4)</sup>******k. Real estate enterprises<sup>(5)</sup>***

Such as construction, repair, demolition of buildings, and so forth.

***l. Purchase of Real Estate Property<sup>(6)</sup>******m. General Agencies<sup>(7)</sup>***

Commercial agencies include commercial representation, travel agencies, export, and import offices. The contracts made by a businessman are considered of a commercial nature, unless he/she proves that they relate to civil transactions.

---

(1) المشاهد العامة

(2) مشاريع الطباعة والنشر (التزام الطبع)

(3) مشاريع المخازن العامة

(4) مشروع المناجم والبترو

(5) المشاريع العقارية

(6) الملكية العقارية

(7) الوكالات العامة

*Acts that are not considered commercial*

- The making by an artist of artistic work and the sale of such work is not considered a commercial activity.
- The action of an author who prints and sells his/her work is also not commercial.
- The farmer's sale of agricultural products is not considered commercial, even if the products are transformed by means used in the agricultural industry (e.g. olive-oil). Nevertheless, if the farmer opens a store or a factory for the permanent sale of his/her products, it shall be deemed as a commercial activity.

**3.3.3 Difference between commercial activities and civil activities**

	COMMERCIAL ACTIVITIES	CIVIL ACTIVITIES
<b>Court Jurisdiction<sup>(1)</sup></b>	<p>If the defendant is a merchant, then the other party (plaintiff<sup>(2)</sup>) has three options to sue the merchant:</p> <p><b>a- Court of the real or elected domicile of the defendant<sup>(3)</sup>:</b></p> <ul style="list-style-type: none"> <li>● Real domicile: Place where the person practices his business.</li> <li>● Elected domicile: The place chosen by the defendant in order to be notified (e.g. lawyer's office).</li> </ul> <p><b>b- Place where the contract is concluded:<sup>(4)</sup></b> At least one of the principal obligations in the contract is executed there.</p> <p><b>c- Place where the contract is executed.<sup>(5)</sup></b></p>	<p>Only the Court of the real or elected domicile of the defendant.</p>

(1) اختصاص المحكمة

(2) المدعي

(3) محل الإقامة الحقيقي او المختار

(4) محل تنظيم العقد

(5) محمل تنفيذ العقد

<b>Evidence<sup>(1)</sup></b>	Evidence is unrestricted in commercial cases. It can be established by all means of proof (e.g. witnesses, recordings, and commercial books).	Evidence is restricted by specific rules of evidence (e.g. written evidence, signature before a Notary public, and so forth).
<b>Co- Debtors Obligations<sup>(2)</sup></b>	In commercial obligations, co-debtors are jointly and severally liable for their debts.	In civil obligations, each debtor is responsible for his or her own debts.
<b>Price</b>	Commercial activities are not presumed to be free. Therefore, there is a presumption that nothing is free of charge, unless proven otherwise.	Transactions can be free of charge.
<b>Granting time for Payment of Debts</b>	The judge cannot grant the debtor a long period for paying his or her debts, since commerce is a cycle: everyone is a debtor & a creditor at the same time.	The judge can grant a longer period of time for payment.
<b>Interest Rate</b>	It is 9%, and the agreement to have a different rate is allowed.	It is 9%, and the agreement to have a different rate is NOT allowed.
<b>Bankruptcy<sup>(3)</sup></b>	Merchants can be declared bankrupt by the court.	There is no bankruptcy in civil acts.
<b>Obligations<sup>(4)</sup></b>	Merchants are obliged to register in the Commercial Register and keep commercial books.	No obligation is required, thus non-merchants do not need to register in the Commercial Register or keep commercial books.

Table 10: Difference between Civil Acts and Commercial Acts

(1) الإثبات

(2) تضامن المدينين

(3) الإفلاس

(4) الواجبات

## PART 2 MERCHANTS

Article 9 in the Code of Commerce states that traders are those whose profession are to transact acts of trade, or companies whose object is commercial. Those whose object is civil, but which have assumed the form of joint-stock companies or of partnership companies limited by shares shall be submitted to all the merchant's obligation.

Merchants are persons who are engaged in commercial professions and carry out business activities as their professions. Merchant should have certain qualifications, and respect their obligations as imposed by law.

### 3.4 DEFINITION of MERCHANT <sup>(1)</sup>

Merchants are engaged in business as their profession and can be one of the followings:

#### 3.4.1 Businessmen or Merchants

Businessmen or Merchants are legally capable persons who carry out commercial activities as a profession. They consider commerce as their regular occupation. They could be foreign or Lebanese, juristic or physical persons.

#### 3.4.2 Company

The criterion for a company to be commercial is its object; a company whose object is commercial and carries out commercial activities (e.g. banking) is considered to be a merchant. If it carries out civil transactions, it is not considered as a merchant.

#### 3.4.3 Commercial Representative

The Commercial Representative carries out activities in the name of his/her manufacturers or merchants but for their own account. It could also be the merchant who, for his/her own account, sells what he/she buys on the basis of a contract which confers upon him/her the capacity of an exclusive distributor.

---

(1) *Ibid*, Article 9: Traders are 1 - Those whose profession is to transact acts of trade; 2 - Companies whose object is commercial. Those whose object is civil, but which have assumed the form of joint-stock companies or of partnership companies limited by shares, shall be submitted to all the merchant's obligations

### 3.4.4 Commission Agent<sup>(1)</sup>

The Commission agent receives and sells goods for a specified commission; he/she possesses the goods to be sold, and sells them in his/her own name, but for the account of his/her principal.

### 3.4.5 Broker

The Broker is a negotiator or middleman between parties especially when such mediation is his/her usual occupation.

### 3.4.6 Those who carry out Commercial Activities through Intermediaries<sup>(2)</sup>

A merchant who carries out business through intermediaries remain to be merchants. However, an employee -even though a manager- shall not be considered as a merchant.

### 3.4.7 The Craftsman<sup>(3)</sup>

The Craftsman is a person whose occupation requires skills and training, particularly manual skills and knowledge of the principles of the craft. Craftsmen are not considered merchants unless the number of craftsmen working together is not more than 15 persons.



### 3.4.8 Small Merchants

Article 10 in the Code of Commerce is applicable to those who carry on small businesses, with minimal overheads. These include:

- **A Peddler<sup>(4)</sup>** is a person who sells goods in small quantities and moves from one place to another.
- **A Retailer<sup>(5)</sup>** is a person who buys single articles in small quantities and sells them for profit.

(1) الوكيل بالعمولة

(2) وسطاء

(3) الحرفي

(4) البائع المتجول

(5) البائع الصغير

- A person who undertakes **small transport operations** by land or by water, such as a taxi driver or a small boat operator who transports people for a fee.

These persons are exempted from the legal obligations of keeping commercial books and registering in the commercial register.

### 3.5 REQUIRED QUALIFICATIONS FOR MERCHANTS<sup>(1)</sup>

The merchant shall attain the required age and have a full state of majority in mind.

#### 3.5.1 Age requirement

The Code of Commerce does not contain special provisions concerning this point. In spite of this absence, the Code of Obligations and Contracts prevails:

**Article 215:** “Any person who has attained the age of 18 is capable of binding himself / herself if he/she is not declared incapable by a text of law”.

**Article 217:** states that the person under 18 is treated as if he/she has reached 18 if he/she is permitted to undergo commercial activities. This permission is given by the person’s parent or guardian, or by the judge through a court permission.

Minors under 16 years old cannot practice business at all, even with the permission of the minor’s parent/guardian, and all his/her actions to this effect are considered void.

#### 3.5.2 State of Minority Declared by court<sup>(2)</sup>

Some people over the age of 18 may suffer a mental disability which prevents them from managing their own affairs. In such case, the person will be declared “incapable” by a court order, which officially confers upon him/her a “state of minority” which prevents him/her from carrying out trade and certain other activities. A guardian<sup>(3)</sup> is then appointed by the court to manage the incapable person’s affairs. These persons are:

(1) *Ibid*, Article 11 is cancelled: The married woman, whatever the provisions of her personal status, is legally qualified for trading only in so far as she obtains her husband’s express or tacit agreement. Tacit agreement is presumed granted when trade is public and manifest, and is carried on without the husband’s opposition.

(2) حالة عدم الأهلية

(3) الوصي

- **The Insane:**<sup>(1)</sup> A person who suffers from lack of reason, memory and intelligence. He/she cannot distinguish between good and bad, due to a mental disability occurring by birth.
- **The Lunatic:**<sup>(2)</sup> A person who suffers from loss of memory and understanding due to a mental disability occurring as a result of sickness or accident.
- **The Prodigal:**<sup>(3)</sup> A person who spends money in an irresponsible way.

### Point Example

Ahmed, who is a 17 year-old, started developing hearing-aids in his workshop in Saida and selling them all over the country. Nabil, a 60 year-old farmer from Zahle, heard about Ahmed's products and called him requesting to purchase a hearing-aid as he has hearing difficulties. Both parties met in Beirut and Nabil explained to Ahmed about his hearing problem, and informed him that he does not know anything about the use or prices of such products. Ahmed sold Nabil a special hearing-aid for one million LBP. Two weeks later Nabil called Ahmed requesting the cancellation of the sale, as similar products were being sold by other merchants for a sum of 300,000 LBP. Ahmed refused to cancel the sale, and Nabil wants to sue him in Court due to a vice of consent in the contract.

1. Can Ahmed be legally considered to be a Merchant, considering that he is less than 18 years-old? Does he need any special permission to carry out trade?
2. Does it make any difference if Ahmed was 14 years old?
3. In which court can Nabil file his law suit (which district)?

## 3.6 OBLIGATIONS OF THE MERCHANT<sup>(4)</sup>

Every merchant is required by law to make the necessary publication formalities at the Commercial Register and to keep proper Commercial Books.

### 3.6.1 The Trade Register (Commercial Register C.R. hereinafter)

As stipulated in Article 22 in the Code of Commerce, the Commercial Register enables the public to collect information regarding all the business houses operating in the countries.

(1) المجنون

(2) المعتوه

(3) السفیه

(4) واجبات التجار

### *a. The Importance of Registration*

#### *Why do merchants need to register? (Reasons for Registration)*

- The C.R. is considered as an instrument of **publication**<sup>(1)</sup> since merchants are obliged to register all the necessary information needed to be disclosed to the public related to their businesses, and designed to use the entries against third parties.
- The Commercial Register is considered as an instrument of **inquiry**.<sup>(2)</sup> It allows the public to collect complete information about any merchant.

Every trader requires the Court Clerk in whose district his main establishment lies, to list him on the register within one calendar month of the opening or the acquisition if the stock is in trade. Any person may request the Chief Clerk of the C.R. to deliver to him or her a true copy of the entries of the C.R. related to any merchant or company.

### *b. (Place of Registration)*

#### *Where is the C.R located?*

A register is kept in the district of each court of primary jurisdiction. There is a Commercial Register in each First Instance Court of the initial six districts of Lebanon.

### *c. Persons who should be Registered*

#### *Who must register in the C.R.?*

- Any person, whether physical or juristic (company), and whether domestic (Lebanese) or foreign, who carries out commercial activities in Lebanon, either directly or through intermediaries (e.g. commercial representative) or a branch or an agent or in any other manner, should register in the Commercial Register.
- Civil companies taking the shape of a Joint Stock Company should be registered in the C.R. for the welfare of persons dealing with this company.
- Small merchants are exempted from registering in the C.R.

(1) وسيلة إعلام

(2) وسيلة إستعلام

- A Copartnery is exempted from registering in the C.R.

#### ***d. Operation of Registration***

##### ***How registration operates?***

The registration number must appear on all letter heads, invoices, price lists, and other printings. Its abbreviation is “C.R. No.” followed by the city in which registration takes place, e.g. C.R. No. 123456 Beirut.

#### ***e. Date of Registration***

##### ***When to register in the C.R?***

Registration in the C.R. must be done within one month of the starting date of merchant’s operations or from his/her acquisition of a new commercial establishment.

#### ***f. District of Registration***

##### ***Which C.R. must the merchant register in?***

- The merchant must register in the C.R. of the district where his/her original place of business (head office), or a branch for doing business is located.
- If the commercial enterprise has several locations within the same tribunal territory, then every additional location should be registered.
- If the commercial enterprise has different branches falling within the districts of several First Instance tribunals, the merchant must apply for registration in each one of them.
- If the office is transferred to the territory of another tribunal, a new registration must be made within one month of transfer.

#### ***g. Contents of Registration***

##### ***What must the registration include?***

The applicant for registration remits the Clerk a declaration, in duplicate, duly signed by him; the declaration indicates:

- The trader’s surname and first name.

- The name under which he carries on his trade, if need be, his nickname and borrowed name.
- The date and place of birth.
- His/her original nationality the event of his acquiring a new nationality, the date and the process by which such nationality was acquired.
- The object of the trade.
- The place of the branches or agencies.
- The sign or “style” of the establishment.
- Any changes or modifications.
- The patent on the manufacturing or trademarks employed by the merchant.
- Closure date.

### **In case of companies or partnerships then:**

- The surnames.
- Commercial name of the business.
- The surnames and names of the partners other than shareholders.
- Date and place of birth and nationality of the partners.
- The style of the company.
- The object of the company.
- The places where the company operates branches or agencies either in Lebanon or abroad.
- Name of the authorized manager or representative and his/her powers.
- All information that bind the merchant, the partner or the company that may be of interest to the third parties.
- Capital.

Why to Register	• Importance of Registration
Where to Register	• Place of Registration
Who Should Register	• Merchants who should be Registered
When Should be Registered	• Date of Registration
How Should Registration Operates	• Operation of Registration
Which CR	• District of Registration
What Must be registered	• Content of Registration

Figure 16: Commercial Register Registration Process

### Point Example

Sarah established in 2010 a business concern to sell accessories on the premises of the landlord Samir, in Hamra street close where she was domiciled (Hamra as well). She named the shop “Easy hold”. In 2011, she opened a branch in Saida. In 2013, she took a loan from the Bank to import a container of bags from China. In 2014, she planned to sublease the business of Hamra to Walid.

List six elements needed for her registration at the commercial register and name the commercial register where she registered the shop and the branch.

#### *h. Effects of Failing to Register in the Commercial Register*

Any merchant who does not carry out within the prescribed time - the compulsory and the necessary references on the letters, invoices, or other printed matters is subjected to penalty (i.e. civil and criminal penalties).

##### *i. Civil Penalties*

A merchant who fails to make the required registration at the C.R. loses all the merchants' privileges given to him/her by law. The following are examples.

- He/she is not entitled to benefit from his/ her capacity as a merchant in using commercial books as a way of evidence.
- He/she cannot call a composition (conciliation) for settlement when the creditors are about to enter bankruptcy procedures. Composition for settlement offers creditors partial settlement instead of the full payment of their debts.
- The fine is inflicted by the court of primary jurisdiction.

### *ii. Criminal Penalties*

Failure to carry out registration within the specified period subjects the person responsible to a fine. The court orders him/her to register within 15 days or the fine would be doubled.

Giving false information subjects the person to a higher fine and to imprisonment from one to six months or one of these two penalties. The Court can order him/her to correct the information.

Note: Being registered in the C.R. is not proof that a person is a real merchant; and not being registered is not proof that he/she is not a merchant. The burden of proof that a person is a merchant falls on the party that alleges proof. Such proof may be established by all means, including witnesses.

### **Point Example**

Maya is the owner and manager of a shop that operates in buying and selling electrical appliances located in Beirut since 2/5/2013. She opened another branch in Saida in 5/8/2013 that is managed by Samir for a fixed salary. The business was registered at the Commercial Register of Beirut on 2/11/2013.

1. Was there any illegalities in the place and date of registration made by Maya? What are these illegalities? And what kind of sanctions will be imposed in such a case?
2. What are the contents of registration?
3. Who is considered as a merchant? Maya or Samir? Justify your answer by stating the conditions required by Law to classify a person as a trader.

### 3.6.2 Holding Commercial Books<sup>(1)</sup>

Article 16 (as modified by the Law promulgated by Decree N° 9800 of (4 May 1968) states that any natural or juridical person duly qualified as a trader is required to keep a ledger on which he/she shall record, day by day, all the operation concerning, under whatever title this may be, his commercial enterprise and, at the least, whenever he is prevented from doing so by the very nature of his work in the enterprise, relate month by month, the results of these operations, on the condition that he should keep all the documents which make possible the checking of the regularity of these operations, day after day.<sup>(2)</sup>

#### *a. The importance of keeping Commercial Books*

Each merchant should keep such commercial books consistent with the nature of his/her business to indicate his/her exact financial standing, and to indicate his/her loss and credit accounts.

#### *b. Who should keep commercial books*

- Merchant: Whether physical or juristic;
- Civil companies taking the shape of Joint Stock Company;
- Small merchants, civil companies and Copartnery partnerships are exempted from keeping commercial books.

#### *c. Kinds of Commercial Books*

##### **Journal/Day Book<sup>(3)</sup>**

Every merchant should record, day by day, all operations concerning his/her commercial enterprise. If his/her work does not permit such recording, then he/she should do so month by month as a result of daily operations in order to check regularity of these operations.

(1) مسك الدفاتر التجارية

(2) He must equally draw up an annual inventory of all the elements of his enterprise and all the accounts thereof in order to strike the Balance Sheet and the Profit and Loss Account and to record, at the very least, the Balance Sheet and the Profit and Loss Account in the inventory book. If this book does not comprise the detailed elements of the inventory, the supporting documents must be filed and kept throughout the period referred to in article 19 of the Code of Commerce.

(3) دفتر اليومية

**Inventory Book<sup>(1)</sup>**

Every merchant should enter the annual inventory of all elements of the enterprise in the inventory book, for the purpose of verifying the profit and loss accounts on an annual basis.

Compulsory commercial books are kept by calendar order, without spacing, gaps, marginal annotations, interlinear spacing or erasures. Thus, the Inventory Book should be kept in chronological order, free from blank spaces, free from any writing in margins,<sup>(2)</sup> and from erosion or insertions between entries.

**Correspondences<sup>(3)</sup>**

A merchant should keep copies of all his/her outgoing and incoming correspondences, emails, telegrams, invoices and other documents relating to his/her business.

**Other provisions**

- Commercial books should be kept by merchants or their heirs for ten years after their closure. They are not required to show their books after this period.
- If properly maintained, commercial books can be used as evidence by the merchant or by his/her opponent.
- If not properly maintained, commercial books cannot be used as evidence by the merchant, but can still be used against him/her.

**3.7 FREEDOM OF TRADE**

As stated in the preamble of the Lebanese Constitution “Lebanon is a parliamentary democratic republic based on the respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.” In addition, “The economic system is free and ensures private initiative and the right of private property.”<sup>(4)</sup>

The Lebanese legal framework is open and provides a favorable environment for free economy and foreign investment. The economy is free and guarantees the free movement in and out of

---

(1) دفتر الجرد

(2) هوامش

(3) المراسلات

(4) Lebanese Constitution preamble paragraph C and F.

the country<sup>(1)</sup>. In fact, despite substantial efforts and initiatives of the relevant Ministries, a lot of factors retarded freedom of trade in Lebanon. For example, the political environment, the need for administrative reform, corruption, the judicial system is overloaded<sup>(2)</sup>, the commercial and business laws are old and are no longer adapted to the needs of doing business with legislative gaps in different vital areas.

Although the Lebanese system is based on the freedom of trade, yet this freedom is not absolute. There are restrictions on the Freedom of Trade. Such restrictions may take the form of unfair competition, or other restrictions imposed by law.

### 3.7.1 Unfair Competition<sup>(3)</sup>

Acts of unfair competition include:

- a. Dishonest or fraudulent rivalry<sup>(4)</sup> in trade and commerce;
- b. Selling products or goods in the market, by means of imitating<sup>(5)</sup> or counterfeiting<sup>(6)</sup> the name, size, shape, color, or distinctive features (i.e. the general appearance of the package), of another merchant who has an established reputation and extensive sales.

This imitation should be enough to mislead the general public or deceive an unwary purchaser. The test for knowing if unfair competition has taken place is not whether the distinction between two competing products can be recognized when placed alongside one another, but when the products are not viewed together. For example, a purchaser of ordinary prudence would be led to mistake one product for another as a result of the strong resemblance between them. The perpetrator is subjected to civil and/or criminal liability. However, the latter is only applicable if fraudulent intent can be established.

(1) The Investment Law 360/2001: established IDAL and provides important tax exemptions, incentives or reductions and administrative support to specific sectors of the economy.

(2) Limited number of judges, poor enforcement of exchange and closure deadline, training not channeled towards specialization, and so forth.

(3) المنافسة غير المشروعة

(4) منافسة

(5) تقليد

(6) تزيف

### 3.7.2 Restrictions Imposed by Law

Restrictions imposed by law can be absolute, relative, or other restrictions:

#### a. Absolute restrictions

Absolute restrictions apply to acts of commerce forbidden because they contradict public policy and order. Examples of such restrictions include trading with drugs, weapons and human trafficking.

#### b. Relative restrictions

The state reserves for itself the right to deal with some products (e.g. dealing with tobacco).

#### c. Other restrictions

Some professions need, by law, a special diploma or degree of higher education in order to be practiced, such as the sale of optical glasses, selling pharmaceutical products, and so forth.

Some professions are incompatible with the commercial nature, such as that of lawyers, physicians, and clerics, judges, and personnel of the police and armed forces.

Foreigners cannot be engaged in some professions, such as commission agencies, brokerage, and exchange.

**Note:** These restrictions are applied in case of professions but not if these trade acts are done alone.

## Table of Concepts and Terminologies

Key Terms	Arabic Translation
Absolute Nullity	البطلان المطلق
Bankruptcy	الافلاس
Bounded warehouse enterprise	مشروع المخازن العمومية
Brokerage	السمسة
Civil activities by nature	اعمال مدنية بطبيعتها
Code of Commerce	قانون التجارة
Co-debtors	تضامن المدينين
Commercial activities by nature	اعمال تجارية بطبيعتها
Commercial agent	الوكيل التجاري
Commercial Books	الدفاتر التجارية
Commercial establishment	المحل التجاري
Commercial Profession	المهنة التجارية
Commercial Register	السجل التجاري
Commission	العمولة
Commodities	البضائع
Complementary laws	القوانين المكّمة
Correspondences	المراسلات
Craftsman	الحرفي
Defendant	المدعى عليه
District	المحافظة
Domicile	محل الإقامة
Exchange	الصيرفة
Exploitation of Mineral and Oil	مشروع المناجم والبتترول
Fine	الغرامة

<b>General Agencies</b>	الوكلاء
<b>Internal commerce</b>	التجارة الداخلية
<b>International Commerce</b>	التجارة الخارجية
<b>Inventory Book</b>	دفتر الجرد
<b>Journal book</b>	دفتر اليومية
<b>Manufacturing enterprise</b>	مشروع المصانع
<b>Mixed activities</b>	اعمال مختلطة
<b>Peddler</b>	البائع الجوال
<b>Plaintiff</b>	المدعي
<b>Proof of Evidence</b>	وسيلة الاثبات
<b>Public Shows enterprise</b>	مشروع المشاهد العامة
<b>Publishing enterprise</b>	مشروع الطباعة والنشر
<b>Real Estate enterprise</b>	المشاريع العقارية
<b>Reciprocity</b>	المعاملة بالمثل
<b>Relative Nullity</b>	البطلان النسبي
<b>Retailer</b>	المياوم
<b>Statute of Limitation</b>	مرور الزمن
<b>Supply of Goods</b>	مشروع تقديم المواد
<b>Unfair Competition</b>	منافسة غير مشروعة

Table 11: Table of Concepts and Terminologies

## Appendix

### 1. REGISTRATION OF THE COMPANIES OF PERSONS<sup>(1)</sup>

#### Attached Documents and Places of Completion

- Application presented by the concerned party or his representative to the secretariat of the Commercial register to register the establishment.
- A copy of the ID card or the individual abstract of civil status to applicants of the permit.
- The fulfilment of an application form to register the new company (i.e. a declaration of the administration of the central census) and a sample of a computer form.
- The articles of association of the company signed before the notary public or before the secretary of the commercial register.

In case of granting the license to the companies of persons, the financial fee should be paid within five days following the signature of the articles of association before the notary public or else a fine amounting to ten times the value of the license fee will be imposed on the concerned party.

#### Mechanism of File Proccession

- The application should be presented to the secretary of the commercial register in Beirut or to the trustees of the commercial register in the provinces according to where the company's head office is located.
- After that the concerned party heads to the Ministry of Finance or to the financial department of the provinces to pay the due fees.
- Back from the Ministry of Finance, the applicant fulfils a form (i.e. a declaration of the administration of central statistics and a sample of the computer form).
- The formality will be done at the department and signed by the president (judge) supervising the commercial register and then by the secretary of the commercial register.

---

(1) <http://www.justice.gov.lb/CP/viewpage.aspx?id=589&language=2>

**Duration of Completion<sup>(1)</sup>:** One day

## 2. LICENSE OF LIMITED LIABILITY COMPANIES

### Attached documents and places of completion

- Application is to be presented by the concerned party or his attorney, to the secretariat of the Commercial register in order to register the company.
- Copy of the ID card or the individual abstract of civil status for the persons requesting the license.
- Fulfilment of sample form of registration of a new company (declaration of the administration of the central statistics) and a computer sample form.
- Articles of association of the company signed at the office of the notary public or before the secretary of the commercial register.
- Deposition of an amount equal to the capital before the bank.

### Remarks:

In case of the license granted to the company of persons, the financial fee shall be paid within five days as of the date of signature of the articles of association before the notary public or else a fine amounting to ten times the value of the license is imposed.

### Mechanism of File Proccession

- The application should be presented to the secretary of the commercial register in Beirut or to the trustees of the commercial register in the provinces according to the belongingness of the company head office.

(1) Due Fee

- License fee of 750000 LBP.
- Fee of 3/1000 of the company capital to be paid before the Ministry of Finance Department of Indirect Tax.
- Judges' Collaboration fee of 375000 LBP and 1.5/1000 of the company capital to be paid in favor of the judges' Collaboration Fund.
- 1/1000 to the Bar Association out of the capital of the company.
- Fiscal stamp of 2000 LBP affixed on the application
- Judicial stamp of 1000 LBP affixed on the application
- Bar Association stamp of 1000 LBP if the application is presented by an attorney.
- Fee for the true copy of the documents.

- After that the concerned party heads to the Ministry of Finance or to the financial department of the provinces to pay the due fees.
- Back from the Ministry of Finance, the applicant fulfils a form (declaration of the administration of central statistics and a sample of the computer form).
- The formality will be done at the department and signed by the president (judge) supervising the commercial register and then by the secretary of the commercial register.

#### **Duration of Completion<sup>(1)</sup>**

One day

### **3. LICENSE OF COMPANIES OF FUNDS**

#### **Attached documents and Places of Completion**

- Application is presented by the concerned party to the secretariat of the commercial register in order to register the company, and in case of Holding and Offshore companies, the literal text should be observed of the company object, and the holding and offshore companies should be registered exclusively in Beirut.
- Copy of the ID card or individual abstract of civil status of the persons requesting the license.
- Fulfilment of the sample of registration form for the new company (i.e. declaration of the administration of central statistic) and a computer form.
- Articles of association of the company signed before the notary public acting in the region where the company is making its business or before the secretary of the commercial register.

---

#### **(1) Due Fee**

- License fee of 750000 LBP.
- Fee of 3/1000 of the company capital to be paid before the Ministry of Finance Department of Indirect Tax.
- Judges' Collaboration fee of 375000 LBP and 1.5/1000 of the company capital to be paid in favor of the judges' Collaboration Fund.
- 1/1000 to the Bar Association out of the capital of the company.
- Fiscal stamp of 2000 LBP affixed on the application.
- Judicial stamp of 1000 LBP affixed on the application.
- Bar Association stamp of 1000 LBP if the application is presented by an attorney.
- Fee for the true copy of the documents.

- Minutes of the constitutive meeting
- Commercial circular.
- Minutes of the Board of Directors in which the president will be elected and signed by the founders.
- Deposition of an amount equal to the value of the company capital at a bank.
- In addition to the abovementioned documents, a bank guarantee of 100 thousand Lebanese pounds should be deposited for the offshore companies.

### Remarks

- In case of the license granted to the company of funds, the financial fee shall be paid within five days as of the date of signature of the articles of association before the notary public or else a fine amounting to ten times the value of the license is imposed, which means that the amount will reach ten million Lebanese pounds instead of one million.
- The articles of associations should be signed before the notary public of the region in which the company is electing its head office.

### Mechanism of File Procession

- The application should be presented to the secretary of the commercial register in Beirut (i.e. the holding and offshore companies are only registered in Beirut).
- After that the concerned party heads to the Ministry of Finance or to the financial department of the provinces to pay the due fees.
- Back from the Ministry of Finance, the applicant fulfils a form (i.e. a declaration of the administration of central statistics and a sample of the computer form).
- The formality will be done at the department and signed by the president (judge) supervising the commercial register and then by the secretary of the commercial register.

### Duration of Completion<sup>(1)</sup> One Day

#### (1) Due Fee

- License fee of one million Lebanese pounds paid as per a receipt at the Ministry of Finance – Department of Income Tax.
- Fee of 500000 LBP to the judges' Collaboration Fund paid before the Ministry of Justice.
- Fee of 5.5/1000 of the company capital.
- Fiscal stamp of 2000 LBP affixed on the application.
- Judicial stamp of 1000 LBP affixed on the application.
- Stamp of the Bar Association of 1000 LBP on the application in case it is presented by the attorney.
- Fee for a true copy of the documents.

## SPECIMEN OF THE APPLICATION TO REGISTER A COMPANY

### **Presidency of Mount Lebanon Commercial Court (Commercial register Section)**

**Mr. President,**  
Registration Applicant:

Is soliciting the deposition of the articles of association and the registration of the Company known under the name during the month that follows its foundation per article 26 joined to articles 48 and 49 of the code of commerce.

This is a summary of the deed of the association drafted in two copies:

1. Full name of the associates, their nationalities, their place and date of birth, and place of residence.
2. Name and address of the company.
3. Object of the company.
4. Form of company.
5. Its headquarters, and the places where there are branches or agencies in Lebanon or abroad.
6. Names of the associates or the persons authorized to sign on behalf of the company.
7. Capital of the company and the value attributed to the company contributions.
8. Date of constitution.
9. Date of deposit.
10. Duration of the company.

**Sincerely yours,**  
**Republic of Lebanon**  
**Ministry of Justice**

-----  
Number .....

## CERTIFICATE OF REGISTRATION OF A COMMERCIAL COMPANY

The Head Clerk of the First Instance Civil Court in ..... (Commercial register) confirms that the commercial company known as ..... was registered on.....with the ad-hoc commercial register under No..... R.C. according to articles 24 and 49 of the Code of Commerce.

In witness whereof this certificate was delivered upon the request of Mr. .... to be used in accordance with the laws.

Beirut on .....

Seen

Beirut on .....

**Supervising Judge**

## CHAPTER FOUR

# COMMERCIAL AGENCIES <sup>(1)</sup>

(1) الوكالات التجارية

## CHAPTER FOUR

# COMMERCIAL AGENCIES <sup>(1)</sup>

**Businesses** frequently expand to the extent where their owners can no longer continue alone, as they need the services of other people. Those people either become employees of the owner or they become agents with independent establishments who cooperate with the owner in return for certain remuneration or commission.

Agents play a vital role in commercial activity. Many commercial transactions in the field of commerce are conducted through agents who act as intermediaries and represent the interests of their principals in the conduct of the principal's business. Commercial agents, commission agents, brokers, and factors, are just a few of the many people described as agents who may act on the behalf of people in the ordinary course of life. The essential point to be born in mind is that the relationship between agent and principal is essentially a binding contractual one which imposes upon both parties' rights, duties and obligations. Agents "are to be found in all advanced societies and... [Their] activities are an inevitable feature of a developed economy."<sup>(2)</sup>

Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other called the principal, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts". In other words, Agency, which is the fiduciary relation that results from the manifestation of consent by one person to another that the other will act on his behalf and subject to his control, and consent by the other so to act.<sup>(3)</sup>

Lebanese laws recognize several types of agents. The main distinction lies between commission agents, who undertake dealings in their own name, but for the account of the principals and the commercial representative who conclude a contract for the account of the principal. Commercial agencies must be either a person of a Lebanese nationality or a Lebanese legal entity. They must be registered at the Lebanese Commercial Agencies.

---

(1) الوكالات التجارية

(2) <http://www.lawteacher.net/free-law-essays/commercial-law/agents-play-a-vital-role.php>

(3) Bertam Harnett, Responsibilities of Insurance Agents and Brokers, Matthew Bender & Company, 2016.

## CHAPTER FOUR OUTLINE

### 4.1 GENERAL PROVISIONS

### 4.2 THE COMMISSION AGENT

### 4.3 THE BROKER

### 4.4 THE COMMERCIAL REPRESENTATIVE

#### 4.4.1 Definition of Commercial Representative

#### 4.4.2 Nationality of Commercial Representative

#### 4.4.3 Characteristics of Commercial Representation Contract

#### 4.4.4 Validity and enforceability of the Contract against third parties

#### 4.4.5 Effects of the Contracts of Commercial Representation

#### 4.4.6 Termination of the Contract of Commercial Representation

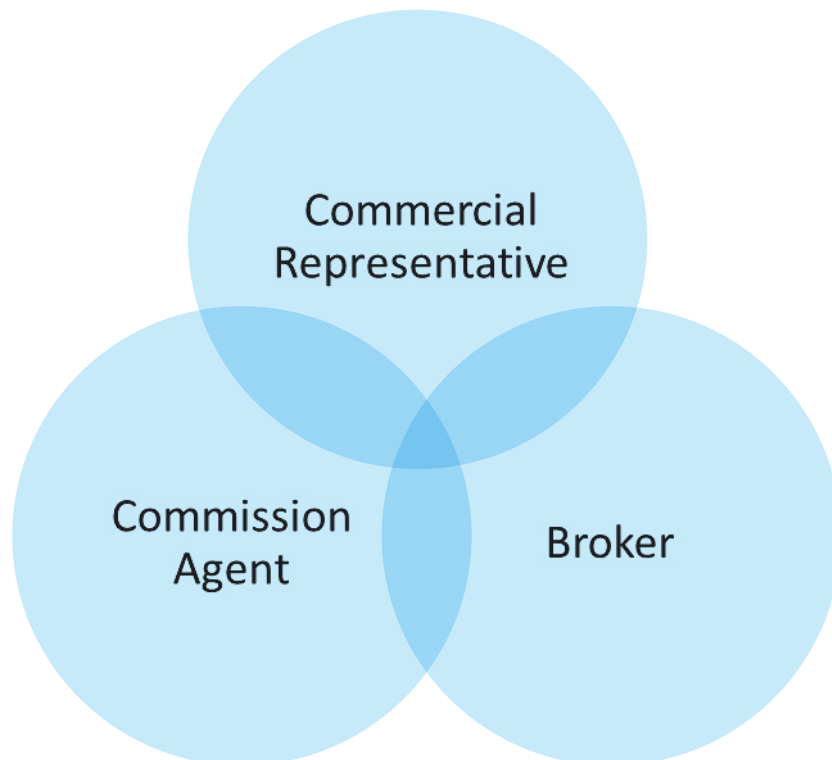


Figure 17: Commercial Agencies

**4.1 GENERAL PROVISIONS**

This commercial agency or representation is a bilateral contract based on the acceptance of the principal and agent or the representative. Each party must fulfil his/her obligations towards the other party.

The basic principle of commercial agency is that the agent, in fulfilling his/her obligation, concludes legal transactions on the part of his principal. When these transactions result from the authorized legal acts of the agent, the result is that only the principal is bound by them. The competent agent himself/herself remains outside the contractual relations with the third party (i.e. compare “undisclosed agency” above) provided he/she has not also contracted for himself/herself at the same time. For example, when the third party is not content with the principal’s credit and insists upon having the agent’s liability in addition to the principal’s; in such a case, the agent binds both his principal and himself/herself.

In case of litigation between the principal and the agent or representative, the court of the domicile of the defendant shall have jurisdiction.

The contract shall be terminated:

- At expiry date unless it is renewed (i.e. tacitly or explicitly).<sup>(1)</sup>
- Mutual consent (permission) of two parties<sup>(2)</sup>.
- Abusive termination gives right for compensation<sup>(3)</sup>.

**4.2 THE COMMISSION AGENT**

Commission agent or factor is the person who acts within the scope of an agency conferred by the principal, and binds the principal in the obligations he/ she creates against third parties. The agent concludes contracts and sells the merchandise in his/her own name but for the account of the principal.

The principal grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with third parties.

---

(1) انتهاء المدة

(2) القبول المتبادل

(3) الانهاء التعسفي

In order to facilitate the performance of the contract, the commission agent:

- Receives merchandise in consignment and at remuneration with a commission in proportion to the dimension of the transaction. If there is no agreement as to remuneration, which as a matter of good practice there should be, the agent is entitled to remuneration customarily allowed to agents for the type of goods involved in the area where the agent carries on his/her activities. If there is no such customary practice, the agent is entitled to reasonable remuneration.<sup>(1)</sup>
- Receives payment for all expenses incurred in the transaction.
- Acts for several principals even if the products are in competition, unless there is an agreement forbidding such a performance.
- The commission agent who guarantees his/her principal shall be entitled to a special commission called «Guarantee commission» which if not agreed upon, shall be fixed according to usages and custom.
- Has a lien upon the goods for his/her charges, advances and commission.

For example, a manager of a branch shop of a firm, sufficiently wide powers are vested in him to affect the business deals, enter into trade bargains, to make purchases and also payments of the purchases, to receive money on behalf of his principal.

This implies that the principle must pay commission to his agent amount of commission agreed upon the employment if the agent has acted within the scope of the actual authority given to the agent by principal during the course of the relationship until the agent is terminated. There will be no obligation for principal toward the action of agent who acted beyond the authority given or against the legal requirements.

### 4.3 THE BROKER<sup>(2)</sup>

The broker is usually a licensed professional in the field where specialized knowledge is required such as real estate. The rate of compensation (i.e. called brokerage or commission) is determined according to custom of the particular trade or by law, and is computed commonly either as a fixed percentage of the value of the transaction.

(1) <http://www.lawteacher.net/free-law-essays/commercial-law/the-principals-obligation-to-pay-commission-to-his-agent-commercial-law-essay.php>

السمسار (2)

In brief, the Broker is a middleman or negotiator between the parties. A broker has the following characteristics:

- His/her activity is limited to bringing two parties together and thus facilitating the development of the contract, at the responsibility of the two parties.
- He/she is a middleman<sup>(1)</sup> or a negotiator<sup>(2)</sup> between the parties.
- Unless agreed upon by the parties, the broker's commission is fixed by usages and customs.
- If the commission is not proportional with the case, the judge may reduce it to a just remuneration proportional to the case.
- This commission is only due if the negotiations reach the conclusion of the contract between the parties. Nevertheless, if it has been agreed upon between the parties, the expenses incurred by the broker are refunded to him/him.
- If the contract is concluded with a suspensive condition<sup>(3)</sup> (i.e. a condition depending on future and an uncertain event) the commission shall be only due if the condition has been fulfilled.

Commission Agent	Broker
Has possession and control of the goods.	He/she is only an intermediary, without control or possession of the goods.
Buys and sells in his/her own name, but for the account of the principal.	Cannot buy or sell in his/her own name.
Has a lien upon the goods for his/her charges.	Has no lien upon the goods.

Table 12: Difference between commission agent and the broker.

(1) وسيط

(2) مفاوض

(3) شرط مؤجل الحصول

### Point Example

Amal is searching for a restaurant to buy. Mazen put her in contact with Michel, an owner of a restaurant who is willing to sell it. Michel as part of his profession arrange a meeting for Amal and Mazen to meet, and to facilitate the negotiations.

Questions:

1. What is the profession of Mazen? Is he doing it for free? Is he going to get a commission if Amal and Mazen did not agree to conclude the sale contract?

## 4.4 THE COMMERCIAL REPRESENTATIVE

The Lebanese Law, as regards to commercial presentation, presents a particular interest to foreign businesses or companies since most of such agreements of commercial representations are concluded between foreign companies acting as ‘principals’ and ‘Lebanese traders’. The subject of commercial representation was introduced by the promulgation of Decree No. 34 of August 5, 1967, amended by Decree No. 9639 of February 6, 1975 and Decree No. 73/83 of September 9, 1983.

### 4.4.1 Definition of a Commercial Representative

The commercial representative is defined by the above decree, as an agent, who, by virtue of his/her usual and independent profession, undertakes negotiations for the conclusion of operations of sale, purchase, lease or performance of services, and if necessary, carries on such activity in the name of the represented parties and for their accounts.

The decree recognizes as a commercial representative any person or entity who sells for his/ her own account merchandise which he/she has bought relative to a contract appointing an exclusive representative or distributor. As such, the commission agent differs from the commercial representative in that the former acts in his/her own name and for the account of the actual purchaser, in consideration for a commission.

In this sense, the commercial representative is an agent who carries out negotiations for concluding transactions of sale, purchase or lease or performing services as his/her normal independent profession; he/she is not bounded by an employment contract, instead he/she sells what he/she buys on the basis of a contract which bestows on him/her the capacity of a representative or sole or exclusive distributor.

#### 4.4.2 Nationality of the Commercial Representative

The nationality of a commercial representative is regulated by Legislative Decree 34, of February 6, 1975. In principle, the commercial representative must be of Lebanese nationality. This provision has no retroactive effect, and therefore, does not apply to commercial representatives appointed before February 1975. Decree No. 34 stipulates that, subject to the principles of reciprocity which a foreign agent must show, in order to benefit from the legislation, the commercial representative must be a Lebanese nationality and must have the commercial premise in Lebanon. This law exempts from the Nationality condition those representatives whose countries allow the appointment of Lebanese commercial representatives in their territories. The commercial representative must necessarily have a commercial establishment in Lebanon.<sup>(1)</sup>

- If the commercial representative is an Unlimited Partnership or a Limited Liability Company, the following conditions must apply:
  - a. The majority of the partners must be of Lebanese nationality;
  - b. The majority of the capital must be owned by Lebanese persons;
  - c. Partnership's manager must be of Lebanese nationality.
- If the commercial representative is a Joint Stock Company the following conditions must apply:
  - a. All of its shares should be registered (nominated) shares;
  - b. The majority of its capital must be owned by Lebanese persons;
  - c. Two thirds of the members of its board of directors and its managers must be of Lebanese nationality.
  - d. The general manager or the person delegated by the board's chairperson must be Lebanese national.

#### 4.4.3 Characteristics of the Commercial Representation Contract

The exercise of the representation on a professional basis is one of the principal aspects that

---

(1) Business Laws of the Middle East: Lebanon, edited by Nady Tyan, Mohamad Y. Alem, Kluwer Law, International.

distinguish the contract of the commercial representation from the one of ordinary commission. The commission agent acts in the name and for the account of the principle for a certain activity. The commercial representative should be engaged in commercial activities on a regular basis. In addition, he/she can have several representations as long as no conflict of interest arises and provided that no competitive goods are involved.

The contract of representation also includes an exclusivity clause in favor of either the representative or the principal or both. The Lebanese courts ruled that the exclusivity clause<sup>(1)</sup> in the commercial representation agreement shall apply to both parties. This means:

- The supplier shall not sell the same products to another merchant in the same territory;
- The distributor shall not buy similar products from another supplier to sell them in the same territory.

However, based on the agreement, the distributor can deal with several suppliers of similar products, unless the contract stipulates otherwise. This means that there will be no compensation for the distributor who deals with several suppliers, and no suffering for any damage for the distributor who deals with other distributors in the same territory.

Moreover, the commercial representation cannot be bound by an employment contract with the principal. He/she can designate his own representative, hire employees, and set commissions or remunerations. As such the trade representative is independent in the organization of the activities pertaining to his/ her representation. He/she is only required to advise his principal of the results of the operations he/she concludes. However, the principal may give the representative simple instructions and guidelines. This will, in no way, deprive the contract of its characters of the commercial representation.

#### **4.4.4 Validity and enforceability of the contract against third parties**

The contract of the commercial representation must be in writing. The contract must be either notarized or a simple agreement. The Decree also requires that it should be registered in the Commercial Register. Any merchant who deals with the same products in the territory in which a sole distributor operates will be liable for unfair competition, as long as the contract was registered in the Commercial Register.<sup>(2)</sup>

(1) بند الحصرية

(2) Article 2 of the Legislative Decree 34 stipulated that: "The provision restricting the representation shall not apply third parties unless the agent concerned publicizes it by registering it in the Commercial Register."

Thus, each person intending to act as a commercial representative shall have to register himself/herself in the Commercial Register and at the Special Register in the Ministry of Economy and Trade. This is considered by law as publication binding third parties. A special sheet shall be reserved for each commercial representation including:

- The commercial representation contract;
- Any court case raised concerning Legislative Decree 34;
- The unexecuted final judgment;

The commercial representative can represent his/her principal in front of the court; he/she shall have the option within a time limit of three months as from the date of issuance of the final judgment to:

- Execute the final judgment on the behalf of his/her principal reserving his rights against the latter;
- Cancel the commercial representation contract.

### **4.4.5 Effects of the contract of Commercial Representation**

The representative is entitled to a remuneration which often takes the form of a commission. The representative has the right to such compensation regardless of whether the contract concluded with third parties under the commercial representation contract performed, unless there is lawful reason for cancellation. On the other hand, the commercial representative is required to comply by all the provisions of the contract. This obligation should not be incompatible with the representation in carrying out his/her representation. The principal is required to pay the remuneration agreed upon as well as the fees, delivery, transportation, and other fees incurred by the representative. The principal must also provide the agent with all the necessary information relating to the representation.

### **4.4.6 Termination of the contract of commercial representation**

The commercial representation contract is terminated on death of the agent, impossibility of carrying on the purposes of the contract for a reason beyond the control of the contracting parties, change in the status of either the agent or the principal such as bankruptcy. Cancellation of the contract is done by either the agent or the principal.

In addition, there are some lawful and unlawful reasons for the cancellation of the contract. Any cancellation of the contract by the principal without any fault from the Commercial Representative or for any unlawful reason, entitles the representative to claim compensation.

*a. Lawful Reason for Cancellation*

- Failure of the commercial representative to import the quantity of products explicitly defined in the contract.
- Any critical financial situation of the commercial representative leading first to his/her bankruptcy or composition instead of bankruptcy.
- Transfer by the commercial representative of his/her contract to a third party (i.e. the personality of the commercial representative is taken into consideration).
- Changing the organization of the commercial representative into partnership when the partners are not acceptable by the supplier.
- Non-compliance (breach) of the commercial representative with the provisions of the contract.

*b. Unlawful reasons for Cancellation*

When the principal unilaterally terminates the contract he/she should pay an amount of compensation that corresponds to the damage suffered and the profit lost by the representative. The right of compensation is a public policy and thus any agreement to the contrary between the parties is null and void. This compensation is equal to the **damage sustained and to the profit lost**, in spite of any contrary agreement.

- When the supplier reorganizes his/her activities in the foreign market, and cancels the commercial representative's contract with no reason relating to the reorganization.
- Reduction in the productivity of the commercial representative for reasons beyond his/her control resulting from the economic conditions in the country.

### Point Example

In August 2004, Dalco SARL signed a five-year commercial representation contract with Kenwood, to become its exclusive distributor in Lebanon for the sale of Kenwood's electric products. The contract stated that the distributor should buy at least 1,000,000 item electronic products from Kenwood every year. The contract was duly registered in the Ministry of Economy and Trade and in the Commercial Register.

After three years, Dalco SARL discovered that another company, MAF Group, was selling Kenwood Products in Lebanon. When contacting Kenwood to inquire about the problem, Dalco SARL was notified by Kenwood that the contract has been terminated, since the distributor was not buying the agreed number of electronics. Dalco SARL argued that the reason for the reduction in the quantity imported was the Lebanese war that exploded in Lebanon in 2006 and affected all the sales.

Dalco SARL is now claiming in court for compensation from Kenwood and wants MAF Group to stop selling the same products and pay it compensation.

1. Does Kenwood have a lawful reason for terminating the contract? How? Explain.
2. Does Dalco SARL have a legal claim against MAF? How? What can it claim for?
3. How can the compensation claimed against Kenwood be calculated? Explain the process.

#### *c. Non-Renewal of the Contract*

##### **Compensation for Non-renewal of the Commercial Representation Contract**

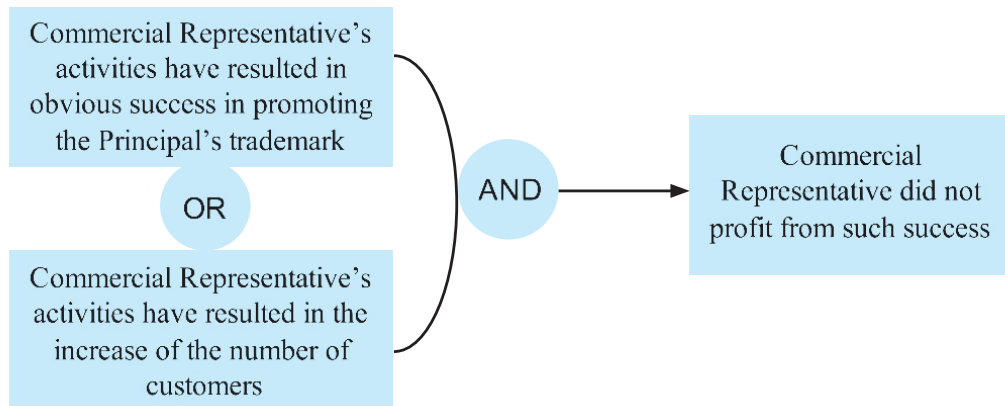
In the case of the principal's refusal to renew the contract, the principal will be liable for payment of compensation to the representative when the latter's activities have resulted in a measurable success in promoting the business of his/her principal or in increasing the number of customers.

The compensation determined by the court would cover the profit the representative would have made from promoting the principal's trademark or from increasing the customer. This is a matter of public policy and covers both the material and the mental damage.

In case of non-renewal of the agreement, the commercial representative can claim compensation, which is assessed by the court, when:

- a. His/her activities have resulted in obvious success in promoting the principal's trademark;

- b. His/her activities have resulted in the increase of the number of customers;
- c. He/she did not profit from such success due to the refusal of the principal to renew the representation contract.



**Figure 18: Commercial Representative – Non-renewal of Contracts**

The commercial representative can claim compensation which is equal to the damage sustained and to the profit lost. Nevertheless, the compensation and the period of the contract should be taken into consideration, whilst leaving such matter to the discretion of the court.

The court will, in principle, take into consideration, the average of the annual net profit<sup>(1)</sup> of the last three years preceding the date of the cancellation. The compensation may vary from one to five times the average of the annual net profit, depending on:

- a. The period of the representation,
- b. The activity of the representative, and
- c. The standard of the market.

In addition, the commercial Representative is entitled to the end of service indemnity<sup>(2)</sup> due to his/her employees whose contracts were terminated because of the cancellation of the agreement.

Thus, we can deduce that in the event of the non-renewal of the agreement, the representative will be entitled to claim compensation only for his/her activities in the promotion of the

(1) متوسط الربح السنوي الصافي

(2) تعويض نهاية الخدمة

supplier's products from which he/she is no more gaining any benefit.

Note: The assessment of the compensation includes any loss sustained by the Commercial Representative even in the markets outside Lebanon, if they are included within the affairs of the Commercial Representative.

### **4.4.7 Court Jurisdiction<sup>(1)</sup> (conflict of laws and competing jurisdiction)**

Conflict of laws is very important in this field because of the international nature of the commercial representation which is concluded with foreign merchants and manufacturers, and hence rises the applicability of different laws to this contract.

The principle of private international law accepted in contractual matters is to apply the law chosen by the parties of the contract except in the event of public policy directly applicable to the contractual situation.

The applicability of Lebanese law in the area of commercial representation is accompanied by the competency of Lebanese courts. Such jurisdiction is expressly provided from article 5 of Decree No. 34 which stipulates that, notwithstanding any agreement to the contrary, the courts of the district in which the commercial representative exercises are competent to adjudicate disputes arising from the contract of commercial representation.

As a result, only Lebanese courts are competent to look after cases from contracts concluded with agents engaged in commercial activities in Lebanon.

Courts where the commercial representative carries out his/her activities shall have jurisdiction in disputes arising from the commercial representation contract, in spite of any contract. This rule is related to public policy.

---

(1) صلاحية المحكمة

## Table of Concepts and Terminologies

Key Terms	Arabic Translation
Abusive termination	الانتهاء التعسفي
Agent	الوكيل
Average of annual net profit	متوسط الربح السنوي العادي
Broker	السمسار
Commercial agents	الوكلاء التجاريون
Commercial representative	الممثل التجاري
Commission agent	الوكيل بالعمولة
Compensation	التعويض
Compliance	التنفيذ
Consignment	الامانة
Court jurisdiction	اختصاص المحكمة
Custom	العرف
Exclusivity	الحصرية
Execution	الحجز
Expiry date	انتهاء الصلاحية
Explicitly	صراحة
Intermediaries	الوسطاء
Legal transactions	المعاملات القانونية
Lien right	حق الحجز

Litigation	الادعاء
Lost profit	الربح الفائت
Majority	الاكثرية
Mutual consent	القبول المتبادل
Nationality	الجنسية
Non-renewal	عدم التجديد
Notarized contract	العقد الرسمي ( المصادق عليه من الكاتب العدل )
Principal	الموكل
Prosperity	الازدهار
Remuneration	التعويض
Service indemnity	تعويض نهاية الخدمة
Share	السهم
Suspensive condition	شرط معلق
Sustained damage	الضرر اللاحق
Tacitly	ضمنا
Trade mark	العلامة التجارية

## CHAPTER FIVE

# NEGOTIABLE INSTRUMENTS COMMERCIAL PAPERS <sup>(1)</sup>

---

(1) الأوراق التجارية

## CHAPTER FIVE

# NEGOTIABLE INSTRUMENTS COMMERCIAL PAPERS <sup>(1)</sup>

The history of a business transaction refers back to the simple business contract of exchange. Commercial papers contribute to any business deals and contracts. Take for example a simple business trade of buying a merchandise, as the buyer would pay a cheque drawn from his/her checking account. A huge trust given by the seller is an automatic binding agreement whereby failure of the buyer to supply the equal amount of money written in the negotiable instrument is subject to legal argument.

Furthermore, importance of a commercial paper relates to the contract's importance equivalent to a monetary standard. By law, a commercial paper is as good as payment for any good sold in any given public market. In addition, international law and commerce are collaborating commercial paper formats to simplify the trade transactions in terms of international business. Uniformity of commercial codes is the fundamental key to realize a global realization of international law and commerce.<sup>(2)</sup>

Negotiable Instrument is moreover a document of title which clearly explains the rights towards the payment of money or a security for money which is transferable by delivery either by custom or by legislation.

The nature of a negotiable instrument is an area of law which has major influence on any person in his professional field. Negotiable instrument plays a major role in different parts of the world in raising the economy. "Negotiable instruments are critical to our economy. They allow people to do business and to be certain that they will receive money for their services or goods without the actual transfer of cash."<sup>(3)</sup>

Given the importance of negotiable instruments, it is important for all parties to understand how to enforce a negotiable instrument and to make sure that their rights are protected. This chapter provides an overview of the three most common commercial papers or negotiable instruments used by businessmen and merchants: The Bill of Exchange, the Promissory Note, and the Cheque. Definitions of each of the mentioned instruments is provided, together with the main provisions relating to the transfer, liabilities, and deadlines for taking court action for the non-payment of each instrument under consideration.

(1) الأوراق التجارية

(2) <http://ryansinnovativeideas.blogspot.com/>

(3) <http://resources.lawinfo.com/business-law/what-are-negotiable-instruments.html>

## CHAPTER FIVE OUTLINE

### 5.1 DEFINITIONS

### 5.2 BILL OF EXCHANGE

### 5.3 PROMISSORY NOTE

### 5.4 OTHER PROVISIONS RELATING TO THE BILL OF EXCHANGE AND THE PROMISSORY Note

#### 5.4.1 Endorsement

#### 5.4.2 Acceptance

#### 5.4.3 Protest for the Non- Acceptance

#### 5.4.4 Statute of Limitation

#### 5.4.5 Guarantee by Backer

#### 5.4.6 Difference and similarities between the Bill of Exchange and the Promissory Note

### 5.5 THE CHEQUE

#### 5.5.1 Definition and Characteristics of the cheque

#### 5.5.2 Penalties for Issuing a Cheque without a Provision

#### 5.5.3 Statute of Limitation of the cheque

#### 5.5.4 Some kind of a cheque

### 5.6 BANKING SECRECY

#### 5.6.1 The Lebanese banking Secrecy od 1956

#### 5.6.2 Nature of Banking Secrecy

#### 5.6.3 Who is subject to this law

#### 5.6.4 Prohibition

#### 5.6.5 Exemption to the Prohibition

#### 5.6.6 Sanction for the Violation of Banking Secrecy Law

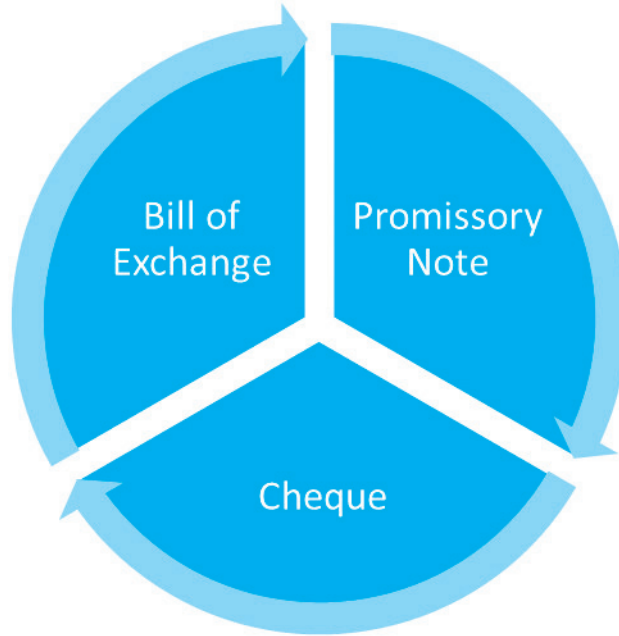


Figure 19: Negotiable Instruments

## 5.1 DEFINITIONS

A “**commercial paper**” or “**Negotiable Instrument**”<sup>(1)</sup> represents an acknowledgment of debt that must be paid at sight,<sup>(2)</sup> or at a number of days after sight (e.g. after 30 days from sight), or at a specified date. It is a special type of a contract for the payment of money that is unconditional and capable of transfer by negotiations. Common examples include the Bill of Exchange, the Promissory Note and the Cheque.

The holder of such a paper can usually receive the amount of his/her debt as stated in the paper, directly from the maker or the bank. Therefore, monetary papers<sup>(3)</sup> such as shares and bonds which are issued by companies or public institutions are not considered as commercial papers.

Commercial papers are transferrable from one party to another by the process of endorsement.<sup>(4)</sup> This entails that the debt acknowledged in such papers may be freely transferred between creditors.

(1) إقرار / اعتراف

(2) لدى الإطلاع

(3) الأوراق المالية

(4) التجيير (إمضاء ظهر السند)

**The following terms below are common, and therefore must be highlighted:**

**“Drawer”**, means a person who signs or is identified in a draft as a person ordering payment. He/she<sup>(1)</sup> is the person who makes the commercial paper. He/she is the debtor, and is the one whose money will be paid. The drawer is also referred to as the **“maker”**.

**“Beneficiary”**,<sup>(2)</sup> is the person who must receive the money. He/she is a creditor, and is referred to as the **“holder”**. He/she receives the paper from the drawer directly or from an endorser.

**“Drawee”**,<sup>(3)</sup> means a person ordered in a draft to make payment. He/ she is the party who holds the money, and pays it to the beneficiary upon the drawer’s request. At most times, the drawee is a **Bank or a Financial Institute**. But this is not always the case, as the drawee might be a third person.

**“Endorser”** is a “holder/beneficiary” who transfers the paper, together with the rights therein to a third party by signing his/her name on the back of the paper. In this case, the original holder becomes an “endorser” and the third person becomes the holder”. Only the person who holds the paper at the time of maturity is called a “beneficiary”.

**“Order”** means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or alternatively but not in succession.

**“Party”** means a party to an instrument.

**“Promise”** means a written responsibility to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

**The negotiable instruments could be payable:**

**“At sight”**, means that the paper must be paid as soon as the holder presents it to the drawee (B.O.E. or Cheque), or to the drawer (Promissory note).

**“A number of days after sight”** means that the paper must be paid after presenting it to the

---

(1) الساحب

(2) المستفيد

(3) المسحوب عليه (مثل البنك)

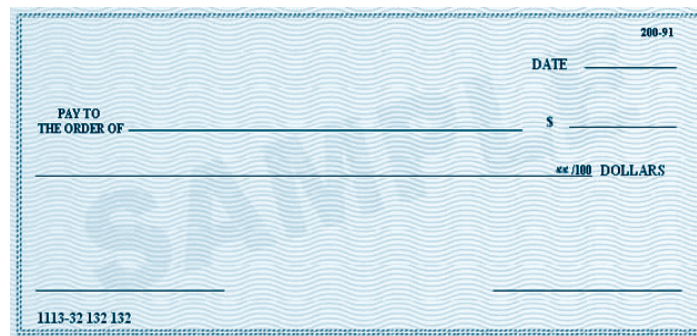
Drawee or Drawer by a specified number of days (e.g. 10 days after presentation).

“**Specified date**” means that the paper must be paid at the date specified in it (e.g. payable on January 31, 2016).

“**Maturity date**”<sup>(1)</sup> is the date when the value of the paper must be paid.

“**Statute of Limitation**”,<sup>(2)</sup> is the deadline by which a holder or endorser of a commercial paper wishes to claim in court for the non-payment of the value of the paper, otherwise the paper becomes without any legal value. It is also known as “**prescription period**”.

## 5.2 BILL OF EXCHANGE (B.O.E.)<sup>(3)</sup>



A bill of exchange is an unconditional order made in writing addressed by one person (i.e. the drawer) to another person (i.e. the drawee). The bill is signed by the person giving it, requiring the person to whom it is addressed to pay at sight (i.e. on demand), or at fixed or determinable future time (i.e. certain number of days after sight, or at a specified period of time), a certain amount of money to a third person (i.e. the beneficiary). In short, the Bill of exchange is an order made by one person to another to pay money to a third person.<sup>(4)</sup>



Figure 20: Parties to Bill of Exchange

(1) تاريخ الإستحقاق

(2) مهلة مرور الزمن (التقادم)

(3) سند السحب

(4) Lebanese Code of Commerce, Promulgated by the Legislative Decree No. 304 of December 24, 1942, Art. 315.

The instrument to be a bill of exchange has to fulfil certain requisites.

The B.O.E. must include the following information:

- The statement “Bill of Exchange” should be written.
- The unconditional order given by the drawer to the drawee should be written and it should include print.
- The drawer should sign the instrument personally or to his agent. If the instrument is copied and if the drawer is arguable, then the instrument cannot be treated as the bills of exchange. The instrument can be treated as bills of exchange if it is addressed by one person to another.
- The name of the drawer and the payee should be clearly mentioned and in addition, who are the parties.
- “The instrument should contain the exact amount payable in it to be a bill of exchange. If the amount is mentioned as *up to* or not exceeding or *at least*”, then it cannot be a bill of exchange.
- The instrument should be drawn at a fixed time or at ascertainable future time if is drawn on a demand.

To enforce the bill and to claim payment from the drawer and endorser, the holder has to follow a number of duties which are as follows:

- “A duty to present the bill for acceptance.
- A duty to give notice of dishonor by non-acceptance or non-payment to the drawer and prior endorser.
- A duty to protect a foreign bill if dishonored for non-acceptance or non-payment.”

If the holder fails with these duties, he/she will release the drawer and endorser from their liability on the bill. If any of the above information is missing from the instrument, it cannot be considered as a B.O.E.,<sup>(1)</sup> with the following three exceptions:

- If the date of payment is not specified, then the B.O.E. is deemed payable upon sight.<sup>(2)</sup>

---

(1) *Ibid.*, Art. 316.

(2) *Ibid.*

- If the place of payment is not specified, then the Drawee's main address is considered a place of payment.<sup>(1)</sup>
- If the place where the B.O.E. is made is not mentioned, then this place shall be the place of the maker's domicile.

AB.O.E. can be drawn to the drawer's own order, i.e. the drawer also becomes the beneficiary.<sup>(2)</sup> The drawee in the B.O.E. can be the drawer himself/herself (i.e. he/she pays the money directly to the beneficiary).<sup>(3)</sup>

### 5.3 PROMISSORY NOTE<sup>(4)</sup>

A promissory note is an unconditional promise made in writing, by one party (i.e. the drawer/maker) to pay a specified amount of money, at a specified time, at sight (on demand), or at a certain number of days after sight, to another person (beneficiary), or to his/her order.



Figure 21: Parties to Promissory Note

The Promissory Note must include the following information:

- The statement “Promissory Note” should be written.
- The explicit and unconditional promise to pay a specified amount of money.
- The date of payment.
- The place of payment.
- The name of the person who must receive the money (i.e. the beneficiary).
- The place and date where the Promissory Note was made.
- The name and signature of the person who made the Promissory Note.<sup>(5)</sup>

(1) *Ibid.*

(2) *Ibid.*, Art. 317.

(3) *Ibid.*

(5) *Lebanese Code of Commerce*, Art. 403.

(4) السند لأمر

If any of the above information is missing from the instrument, it cannot be considered as a Promissory Note,<sup>(1)</sup> with the following three exceptions:

- If the date of payment is not specified, then the Promissory Note is deemed payable upon sight.<sup>(2)</sup>
- If the place of payment is not specified, then the place where the Note is made is considered to be a place of payment.<sup>(3)</sup>
- If the place where the Promissory Note is made is not mentioned, then this place shall be the place of the maker's domicile.<sup>(4)</sup>

PROMISSORY NOTE TEMPLATE	
Amount: _____	Date: _____
Place: _____	
<p>I Mr. ABC, make commitment to pay XYZ Company, the Sum of \$ _____. Repayment is to be made in the form of 200 equal payments at the interest rate of 7.2% of \$ _____ payable on the 10th of each month, beginning 10/01/2011 until the total amount of debt is paid.</p>	
<p>IN WITNESS WHEREOF, I set my hand under seal this ____ [the day] of _____ [month], 20____ and I acknowledge receipt of a completed copy of this instrument.</p>	
Sign: [Signature of borrower]	Notary Public - SEAL
Name & Address: [Party name]	My Commission Expire _____/_____/_____

Promissory Note: NO: _____	
Tender in terms of the Bill of Exchange Act 1909 Part IV Sections 89 to 95	
This Promissory NOTE was issued at:	AMOUNT: _____ (in numbers)
_____ (Place)	AMOUNT: _____ (written)
Date: _____	
This certifies that	
I, _____, ID Number: _____	
Hereby promise to pay _____ (HOLDER) the full amount specified, on this NOTE, for value received.	
<b>Terms &amp; Conditions</b>	
<p>The payment will be made in monthly instalments of \$AU500 (five hundred Australian Dollars) per month, on the 7<sup>th</sup> (seventh) day of every consecutive month until the obligation has been fulfilled. The payment can be obtained by the HOLDER at _____. I hereby give permission to the HOLDER and/or the HOLDER IN DUE COURSE of this Promissory Note, to use this NOTE in any way necessary as a negotiable instrument to be financially traded on; whereas such trade shall terminate the obligation herein.</p>	
Date _____	Signature _____

Figure 22: Sample of Promissory Note

(1) *Ibid.*, Art. 404.

(2) *Ibid.*

(3) *Ibid.*

(4) *Ibid.*, Art. 404.

A Promissory Note is transferrable by endorsement<sup>(1)</sup>, and the endorser becomes a party to the instrument and is jointly and severally liable with the drawer and the previous endorsers, for its payment. All the remaining rules relating to endorsement, maturity, protest, statute of limitations and legal proceedings are common between the B.O.E. and the Promissory Note.

## 5.4 OTHER PROVISIONS RELATING TO BILL OF EXCHANGE AND PROMISSORY NOTE

### 5.4.1 Endorsement<sup>(2)</sup>

A promissory note and a bill of exchange are transferrable by “endorsement”. Endorsement is the act of a holder, signing his/her name on the back of the instrument,<sup>(3)</sup> or on an attached paper, whereby the value of the instrument is transferred to a third party.<sup>(4)</sup>

- The maker is free to specify the beneficiary’s name at endorsement, or to merely sign his/her name without specifying any beneficiary.<sup>(5)</sup>
- The endorser becomes a party to the instrument and is jointly and severally liable with the drawer and the previous endorsers, for its payment, if the drawer fails to pay the value of the paper at maturity or becomes bankrupt.<sup>(6)</sup>
- Endorsement transfers all the endorser’s right in the paper to the new holder. This allows the holder to re-endorse it to a third party as it is, or to specify a beneficiary’s name on it before re-endorsement.<sup>(7)</sup>

### 5.4.2 Acceptance

The holder of a paper can present it to the maker (Promissory Note) or Drawee (B.O.E.) for acceptance<sup>(8)</sup> at his/her domicile at any time within the presentation period.<sup>(9)</sup> The presentation period is any time between the date of drawing the instrument and the maturity date:

(1) التظهير او التجيير

(2) تجيير (تظهير)

(3) الوثيقة

(4) *Ibid.*, Art. 325, 327.

(5) *Ibid.*, Art. 327.

(6) *Ibid.*, Art. 365.

(7) *Ibid.*

(8) Presenting the Paper for acceptance does not mean that it must be paid immediately. It merely indicates that the drawer acknowledges that the instrument was drawn by himself/herself, and that he/she is willing to pay it upon maturity.

(9) Lebanese Code of Commerce Art. 336.

- For papers drawn to be “paid at a specific date”, the maturity date is the specified date of payment.
- Papers drawn to be paid “at sight” or a “number of dates after sight” must be presented for payment within one year from the date they were drawn. However, the drawer is free to specify any other deadline (i.e. longer or shorter than one year) by which the paper must be presented.<sup>(1)</sup>

Acceptance takes place when the paper is signed by the drawee (B.O.E.) or the drawer (Promissory Note), followed by the word “accepted”. If the paper was drawn for a “number of days after sight”, the date of acceptance must also be written.<sup>(2)</sup>

- If the date is not written, the drawee or drawer refused to sign the paper, and therefore the holder can prove his/her right by “protest”.<sup>(3)</sup>
- When the Drawee or Drawer accepts the paper, he/she is obliged to pay the sum of money included therein to the holder, otherwise he/she can be directly sued by the holder.<sup>(4)</sup>

#### 5.4.3 Protest for Non-Acceptance

Non-Acceptance or non-payment of a B.O.E. or a Promissory Note is attested by “**protest**”.<sup>(5)</sup>

- A protest is a formal statement written by the Notary Public, at the request of the holder of a bill of exchange or a promissory note; it includes all the terms as shown in the paper, the acceptance, the endorsement, and stating the reasons for refusal.<sup>(6)</sup>
- Protest for non-acceptance of the instrument can be made any time before the maturity date. If presentation for acceptance is made on maturity date, then the protest must be made on the following day.<sup>(7)</sup>
- If the instrument is drawn to be paid “at a specified date” there is no need for protest.<sup>(8)</sup>

---

(1) *Ibid.*, Art. 338.

(2) *Ibid.*, Art. 340.

(3) *Ibid.*

(4) *Ibid.*, Art. 343.

(5) *Ibid.*, Art. 366.

(6) *Ibid.*, Art. 377, 378.

(7) *Ibid.* Art. 366.

(8) *Ibid.*, Art. 367.

- In this statement the holder of the instrument protests against all parties to such instrument, and declares that they will be held responsible for all loss or damage.<sup>(1)</sup>
- The holder can claim the amount and the interest mentioned in the instrument, additional interests, and other expenses incurred in connection with the claim, such as protest, notices, court fees, and so forth).<sup>(2)</sup>

#### 5.4.4 Statute of Limitation

- Claims made against the maker or endorsers of a commercial paper must be made within a specified time period, called “**prescription period**”, otherwise his/her right to claim is lost.<sup>(3)</sup>
- All legal actions by which the *holder* may claim against the *maker(s)* of the promissory note shall be barred by the statute of limitation which is three years after the maturity date.<sup>(4)</sup>

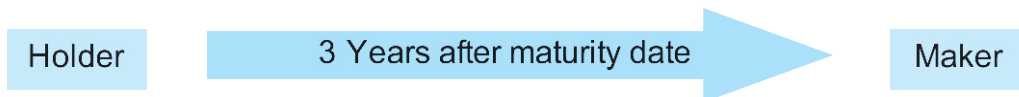


Figure 23: Statute of Limitation Holder vs. Maker

- On the other hand, all legal actions in which the holder can claim against the endorsers as well as the beneficiary shall be barred at the end of one year as of the date of the protest submitted within the legal time-limit, or one year after the maturity date if the instrument mentions the possibility of recourse without protest.<sup>(5)</sup>

The acts of the endorsers among themselves shall be barred at the end of six months from the date of the payment made by the endorser who raised the court action, or from the date the court action was raised against him/her.<sup>(6)</sup>

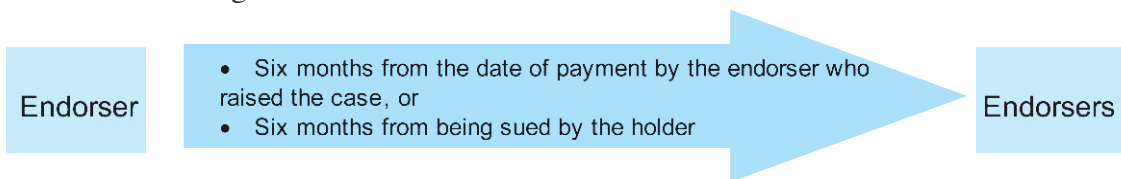


Figure 24: Statute of Limitations Endorser vs. Endorser

(1) *Ibid.*, Art. 369.

(2) *Ibid.*, Art. 370.

(3) Exceeding such time-limits prohibits the holder from claiming for the non-payment of a commercial paper, but does not prevent him/her from claiming for his/her original debt. The paper would then be used merely as evidence of the debt.

(4) *Ibid.*, Art. 398.

(5) *Ibid.*

(6) *Ibid.*

- For the calculation of the period during which the legal proceedings can be instituted, the day of the maturity shall not be included (i.e., the period shall run from the following day).<sup>(1)</sup>
- Whenever the maturity day falls on a holiday, then the maturity shall be delayed to the next working day, and payment shall be legally due on the following working day.<sup>(2)</sup>

#### 5.4.5 Guarantee by a Backer

Contrary to endorsement, which takes place by the endorser writing his/her name on the back of the instrument, the guarantee made by a “backer” takes place by the backer writing his/her name and signature at the bottom of the instrument or on a separately attached document, together with the statement “good for guarantee”.<sup>(3)</sup>

- The backer’s guarantee can be for the full amount of the instrument’s value.
- The backer shall be liable in the same manner as the guaranteed person.
- A backer who pays the amount of money in the instrument will obtain the rights of the guaranteed person and of those who are liable towards him/her.

#### 5.4.6 Differences and Similarities between B.O.E. and Promissory Note

Bill of Exchange	Promissory Note
Involves a third party other than the drawer and the beneficiary: the drawee.	Involves only two main parties: the drawer and the beneficiary.
The drawee commits himself/herself by accepting the bill of exchange by signing on the front of the instrument.	There is no drawee.
It can be drawn to the drawer’s own order and the drawee can be the drawer himself/herself.	Cannot be drawn to the endorser’s order, and there is no drawee.

Endorsement, maturity, protest, statute of limitations, and legal action are the same in the Bill of Exchange & Promissory note.

**Table 13: Difference between Bill of Exchange and promissory Note**

(1) *Ibid.*, Art. 400.

(2) *Ibid.*, Art. 401.

(3) *Lebanese Code of Commerce*, Art. 346.

## 5.5 THE CHEQUE

The nature of the cheque is that when it is presented, the payment is almost immediately made. The cheque can be paid only to the named payee or his/her endorsee. It may be considered as a debit instrument. For the payment, the cheque must be presented to the paying bank (i.e. the bank where the drawer keeps his account). The cheque when it is presented for payment goes through a clearing system where the collecting bank is entrusted to collect the amount of the cheque on behalf of the customer and later credits it to his/her own account. Cheques play a fundamental part in the banking field.

0001

INSERT NAME  
ADDRESS  
CITY, STATE, ZIP CODE

PAY  
TO THE  
ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

INSERT Bank Name (example: Bank of 5th Grade)

FOR \_\_\_\_\_

012345678910 012345678910 0001

NOT A LEGAL CHECK  
FOR TEACHING USE ONLY

Figure 25: Cheque Sample

### 5.5.1 Definition and Characteristics of a Cheque

Cheque is considered as an important negotiable instrument. It is primarily a payment direction and plays an important role in the mechanism of banking. It is an order for payment of money. This order is made upon a bank and is paid from a deposit of funds intended for payment at the request of the drawer.<sup>(1)</sup>

In the cheque the drawer requests the bank to pay at all events a specified sum of money to a specified person (i.e. the payee) or to his order, or to the bearer, or to the drawer himself/herself.<sup>(2)</sup> This sum is payable instantly on demand.

The Lebanese Law does not give a definition of the cheque but describes it as including the following stipulations:

- The word “cheque”, written on the front of the instrument.

(1) Lebanese Code of Commerce, Art. 411.

(2) *Ibid.*, Art. 413.

- The unconditional order to pay a specified amount of money.
- The name of the party which must pay the money (i.e. the drawee/the bank).
- The place where the payment shall be made.
- The date and the place where the cheque is made.
- The signature of the cheque maker.<sup>(1)</sup>

If any of the above information is missing from the instrument, it cannot be considered as a cheque, with the following two exceptions:

- If the place where the payment shall be made is not mentioned in the cheque, then the drawee's main domicile is considered a place of payment.<sup>(2)</sup>
- If the place where the cheque is made is not mentioned, then it is deemed made at the drawer's domicile.<sup>(3)</sup>

If the cheque includes a clause referring to the payment of interest, such clause is deemed invalid.<sup>(4)</sup>

The cheque is transferrable by endorsement and the endorser becomes jointly and severally liable with the maker for the full amount. However, unlike other commercial instruments, endorsement cannot be made for part of the sum; it must be made for the whole value of the cheque.<sup>(5)</sup>

The cheque is payable upon presentation regardless of the day of payment mentioned therein.<sup>(6)</sup>

- Presentation must be made within:
  - Eight days, if the cheque was issued in Lebanon;

---

(1) *Ibid.*, Art. 409.

(2) *Ibid.*, Art. 410.

(3) *Ibid.*

(4) *Ibid.*, Art. 415.

(5) *Ibid.*, Art. 420, 436.

(6) *Ibid.*, Art. 425.

- 20 days, if it was issued in nearby countries;
- 70 days, if it was issued in remote countries.<sup>(1)</sup>

Protest for non-payment of the cheque must be made within the presentation period (i.e. eight days), or if the cheque is presented on the eighth day, then the protest can be made on the following working day.<sup>(2)</sup>

Once the cheque is issued, the maker (drawer) shall not be entitled to object to its payment except in two cases:

- If the cheque is lost or stolen.
- If the holder goes bankrupt.<sup>(3)</sup>

The cheque-holder can claim for:

- The value of the cheque;
- Interest for the period from when the cheque was presented until the judgment, calculated at the national interest rate.

Other expenses incurred in connection with the claim, such as protest, notices, court fees, and so forth.<sup>(4)</sup>

### 5.5.2 Penalties for Issuing Cheques without Provision

Persons who issue cheques without provisions, or with insufficient provision, or who withdraw part or all of the provision after issuing the cheque, or who order non-payment of a cheque for a cause other than loss of cheque or bankruptcy of holder are liable to a penalty *from three months to three years prison, and to a fine* (i.e. value of the cheque plus damages).<sup>(5)</sup>

Whoever accepts a cheque knowing that it is without a provision is liable to the same liability.

---

(1) *Ibid.*, Art. 426.

(2) *Ibid.*, Art. 437.

(3) *Ibid.*, Art. 426, amended according to Code no. 30, of 16/05/1967.

(4) *Ibid.*, Art. 438.

(5) Lebanese Criminal Code, Art. 666; *Ibid.*, Art. 448, 449

Due to the banking secrecy law, the bank usually stamps the cheque with the phrase “refer to the drawer”, without mentioning that the drawer has no provisions.

### 5.5.3 Statute of Limitation for Cheques

- The holder of the cheque is restricted by a prescription period for making claims against the drawer or endorsers. However, since issuing cheques without provision is a criminal act, a distinction must be made drawn between the prescription period for taking criminal action and the prescription period for taking civil action.
- For criminal cases, the holder must make his/her claim against the drawer or endorsers within three years starting from maturity date.

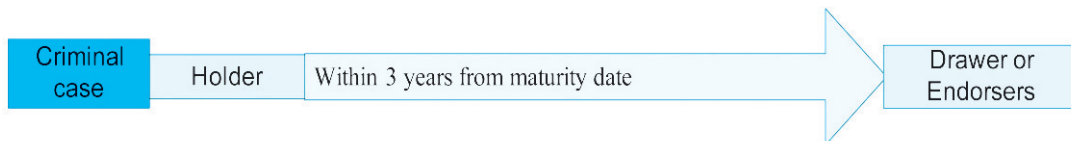


Figure 26: Statute for Limitation for Criminal cases

- For civil cases, the holder must make his/her claim against the drawer or endorsers within six months after the expiry of the presentation period (i.e. at the end of the eight-day period).

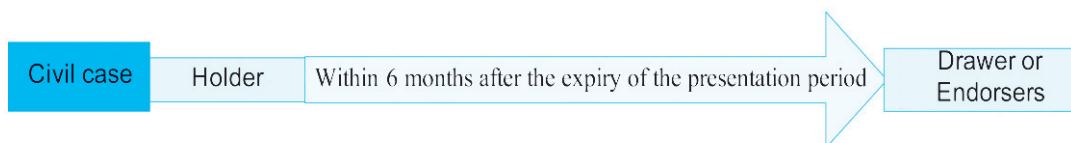


Figure 27: Cheques- Statute of Limitations Holder vs. Drawer/ endorser

- Civil claims made by the cheque-holder against the drawee (the bank) must be made within three years starting from the expiry of the presentation period.

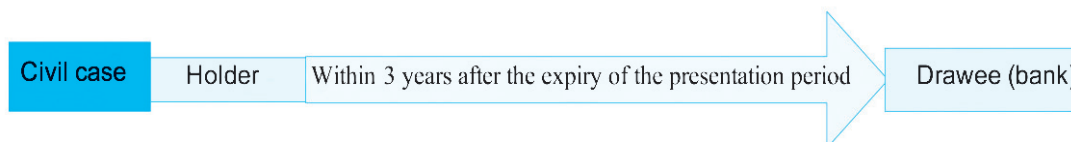


Figure 28: Cheques- Statute of Limitation Holder vs. Drawee

- For civil claims by one endorser against another endorser, the same period as that applicable to the B.O.E. applies.

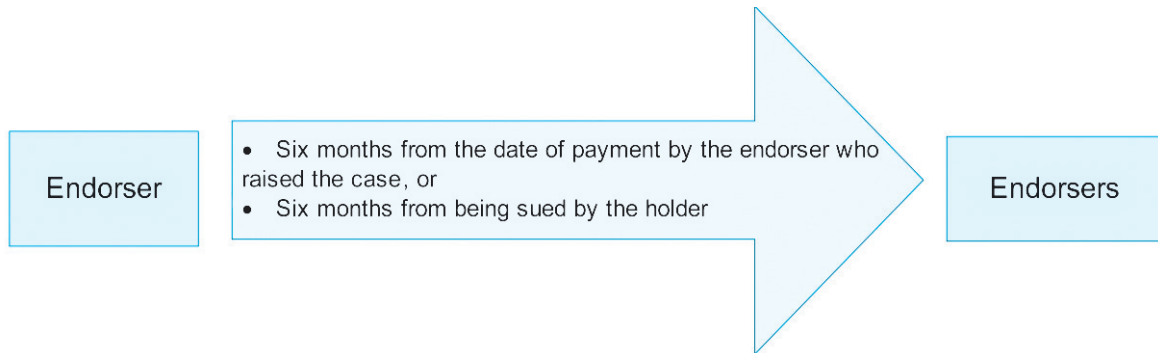


Figure 29: Cheques –Statute of Limitations Endorsers vs. Endorsers

#### 5.5.4 Type of Cheques

##### *Cashier's Cheque*

A cashier's cheque or a certified cheque is issued by an authorized bank officer, directed to another person, evidencing that the payee is authorized to demand and receive upon representation from the bank the amount of money represented by the cheque.

##### *Crossed Cheque*

A crossed cheque is a cheque crossed with two lines. The banker upon whom it is drawn must not pay the money for the cheque except to another bank or to the bank's client.<sup>(1)</sup>

(1) *Ibid.*, Art. 434.

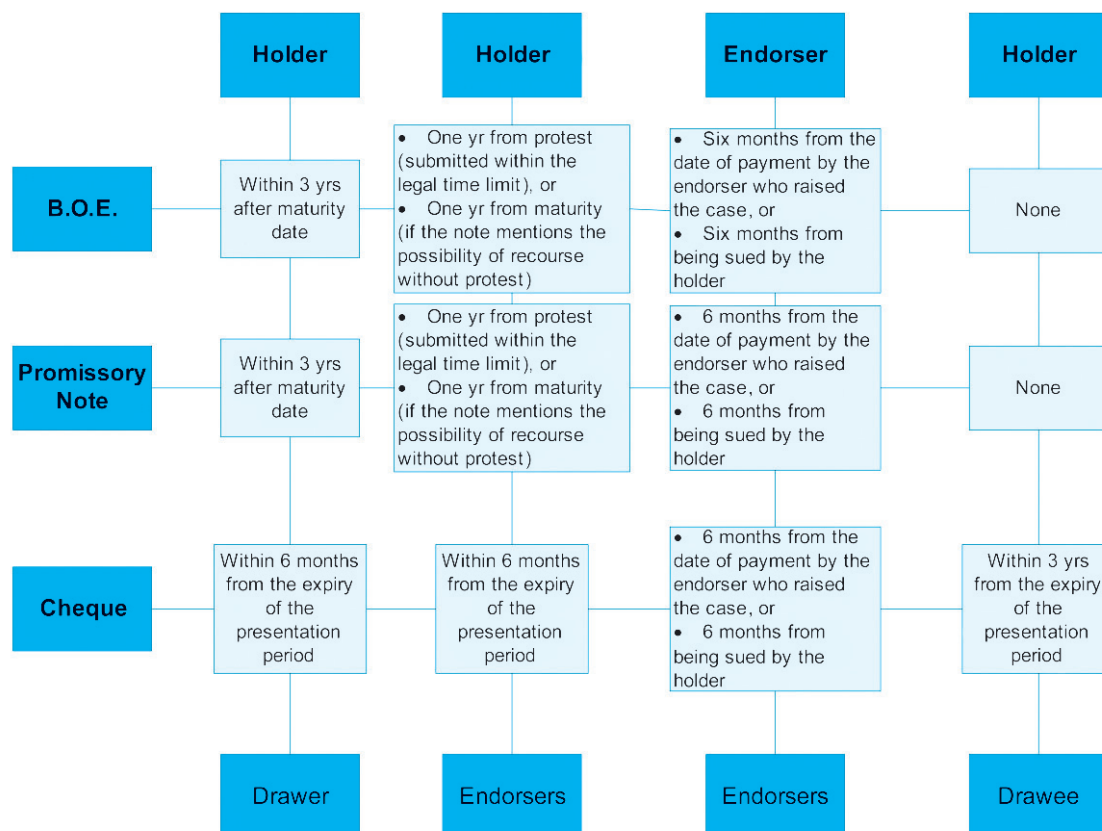


Figure 30: General Table for the Statute of Limitations

Points	Cheque	Bill of Exchange
<b>Drawee</b>	A cheque is always drawn on a bank.	A bill can be drawn on any person including a bank.
<b>Acceptance</b>	A cheque does not require acceptance of the drawee.	A bill must be accepted by the drawee.
<b>Payment</b>	A cheque is always payable on demand.	A bill is payable on demand or after the expiry of a fixed period.
<b>Stamp</b>	The cheque does not require any stamp.	A bill must be properly stamped.
<b>Crossing</b>	The cheque can be crossed.	The bill cannot be crossed.

Table 14: Points of difference between the cheque and the Bill of exchange

## 5.6 Banking Secrecy<sup>(1)</sup>

### 5.6.1 The Lebanese Banking Secrecy of 1956

On September 3, 1956, the Lebanese Secrecy Law was promulgated. This law constituted a major achievement towards increasing the confidence in the Lebanese Banking System and encouraging the foreign capital to invest in Lebanon.

### 5.6.2 Nature of Banking Secrecy

Banking Secrecy Law is an obligation on the banks that interests the public and adds to the benefit of the banking professionalism. By this law anonymity is secured, a code number deposit account can be opened for a client and a safe can be leased for a client.

### 5.6.3 Who is subject to this law?

Article 1 states that “All the banks in operation in Lebanon, whether Lebanese or branches of foreign banks.”

Article 2 states that “Directors and employees of these banks, and any person who, by virtue of his job, has knowledge of any information, concerning the bank’s books, transactions or correspondences.”

### 5.6.4 Prohibition

All the persons referred to in Article 2 are prohibited from revealing any information concerning the names of clients, their funds, and related matters to any persons or authorities.

### 5.6.5 Exemption to the prohibition

Information concerning names of clients, their funds and related matters may be revealed in cases of:

- A written permission by the condemned client of his/her heirs.
- A person declares bankruptcy.

---

(1) <https://sites.google.com/site/walidabdulrahim/home/my-miscellaneous-studies-in-english/4-the-lebanese-banking-secrecy-law-of-1956>

- A legal action between a bank and its client.
- An exchange of information concerning indebted accounts between banks for reason of securing their investments.
- Actions of illegal enrichment upon the request of the judicial authorities.

#### **5.6.6 Sanctions for the Violation of the Banking Secrecy Law**

Violation of banking secrecy is considered as a misdemeanor punished under the Criminal Code by three months to one-year imprisonment.

A person charged for this violation is prohibited from performing the profession of a banker or being a bank's employee. This prohibition applies to both intentional and unintentional violation of banking secrecy. Intentional violation is a criminal infraction and unintentional is sanctioned under common law. It is permanent and does not stop in case of rehabilitation nor does it disappear by a lapse of time.

## Table of Concepts and Terminologies

Key terms	Arabic Translation
Acknowledged	اعتراف
Banking secrecy	السرية المصرفية
Bearer	حامله
Beneficiary	المستفيد
Bill of Exchange	سند الامر
Bond	السند
Cheque	الشك
Commercial papers	الأوراق التجارية
Contravention	مخالفة
Court fee	رسوم المحكمة
Crossed cheque	الشك المشطوب
Deposit	الإيداع
Drawee	المسحوب عليه
Drawer	الساحب
Economy	الاقتصاد
Endorsement	التجيير، التظهير
Endorser	المجّير
Felony	جناية
Funds	الاموال
Heirs	الورثة
Jointly committed	بالتكافل والتضامن
Judicial authorities	السلطات القضائية
Liability	المسؤولية
Misdemeanor	الجنحة

<b>Negotiable instruments</b>	الاوراق التجارية
<b>Order</b>	الأمر
<b>Party</b>	طرف
<b>Penalties</b>	العقوبة
<b>Promise</b>	التعهد
<b>Promissory Note</b>	سند السحب
<b>Protest</b>	الاحتجاج
<b>Share</b>	السهم
<b>Sight</b>	الإطلاع
<b>Statute of limitation</b>	مرور الزمن

Table 15: Table of Concepts and Terminologies

## CHAPTER SIX

# THE BUSINESS CONCERN <sup>(1)</sup>

---

(1) المؤسسة التجارية

## CHAPTER SIX

# THE BUSINESS CONCERN <sup>(1)</sup>

**The** purpose of this chapter is to shed light on one of the common mechanisms through which many merchants conduct their business in Lebanon, namely, the business concern.

Hence by the end of the chapter, students will have a clear idea about the definition and elements of a business concern, the terms and conditions for its sale or transfer, how third-party creditors are protected by law, and the preferential right of the landlord to buy the business concern. Other concepts that are made clear include how a business concern can be mortgaged, and how its elements may be garnished.

Further focus has been given to the Hiring-Business (Managership) contracts, which will clarify the nature of such an agreement, the obligations of the parties and their relationship with the landlord, and finally how it is terminated.

---

(1) المؤسسة التجارية

## CHAPTER SIX OUTLINE

### 6.1 INTRODUCING THE BUSINESS CONCERN

### 6.2 CONTRACTS RELEVANT TO A BUSINESS CONCERN

### 6.3 THE SALE OR TRANSFER OF BUSINESS CONCERN

#### 6.3.1 Terms and Conditions

#### 6.3.2 Protection of the Third Party Creditors

### 6.4 TRANSFERRING OF THE LEASE CONTRACT WHEN SELLING OR TRANSFERRING A BUSINESS CONCERN

#### 6.4.1 Preferential Right of the Landlord

### 6.5 CHATTEL MORTGAGE OF A BUSINESS CONCERN

#### 6.5.1 Garnishment of a Business Concern

### 6.6 HIRING BUSINESS MANAGERSHIP- FREE MANAGERSHIP

#### 6.6.1 General Concept

#### 6.6.2 Terms and Conditions

#### 6.6.3 Effects of the Contract with Regards to the Landlord

#### 6.6.4 Mutual Obligations of the parties

#### 6.6.5 Termination of the Free Managership Contract

## 6.1 Introducing the Business Concern

The Business Concern was primarily regulated by Articles 40 and 41 of the Lebanese Code of Commerce. However, due to the insufficient information provided in such Articles, they were later replaced by Legislative Decree no. 11 of July 11, 1967.

A business concern is a business enterprise which does not have a separate legal personality. It is established for the purpose of carrying out private commercial activities. It consists of the business premises and the rights relating thereto, together with the goodwill.<sup>(1)</sup>

Thus, it can be concluded that a business concern consists of two types of elements: Corporeal and Incorporeal:

a. The **corporeal** elements<sup>(2)</sup> include:

- The goods:<sup>(3)</sup> e.g. foodstuffs, sand, tiles, electrical goods, and so forth.
- The business equipment:<sup>(4)</sup> tools, machines, and furniture.

b. The **incorporeal** elements<sup>(5)</sup> include:

- Location<sup>(6)</sup> and Goodwill. The goodwill consists of the reputation<sup>(7)</sup> and the customers;
- Other incorporeal<sup>(8)</sup> elements: Trade name,<sup>(9)</sup> trademarks,<sup>(10)</sup> signboard,<sup>(11)</sup> lease rights,<sup>(12)</sup>

(1) Legislative Decree (L.D.) no. 11, of July 11, 1967, Art. 1.

(2) العناصر المادية

(3) البضاعة

(4) المعدات المخصصة للعمل

(5) العناصر المعنوية

(6) الموقع

(7) السمعة التجارية

(8) غير ملموس / معنوي

(9) الاسم التجاري

(10) العلامات التجارية

(11) لوحة الإعلانات

(12) حقوق الإيجار

copyrights,<sup>(1)</sup> patents,<sup>(2)</sup> and licenses.<sup>(3)</sup> However, it does not include receivable accounts.

The most important of all the corporeal and incorporeal elements is the goodwill.

In addition, since the business concern has no separate legal personality, all contracts are signed in the name of the owner of the business concern. Furthermore, the business concern cannot sue or be sued in its own name, nor can it have declared bankrupt. Such actions must be taken against the owners themselves.

The difference between the business concern and the business enterprise<sup>(4)</sup> is that there is no business concern without a business enterprise, but a business enterprise may exist without a business concern. For instance, a commission agent who carries out his profession without having fixed premises or a trade name, a small internet café, or a family-run cleaning business operated from home are all examples of business enterprises not commenced through a business concern.

## 6.2 CONTRACTS RELEVANT TO A BUSINESS CONCERN

Contracts signed by the owner of the business concern for the purpose of managing the business can be limitless, and most of which are subject to the rules found in the Code of Obligation and Contracts.

However, there are a few contracts relating to the direct operation or use of the business concern, and are therefore subject to special rules. Such contracts include:

The sale or transfer of a business concern;

Chattel mortgage of a business concern;<sup>(5)</sup>

Garnishment of a business concern;<sup>(6)</sup> and

Hiring-Business Managership contract.<sup>(7)</sup>

(1) حقوق النشر

(2) براءات الاختراع

(3) التراخيص

(4) المشروع التجاري

(5) رهن المؤسسة التجارية

(6) الحجز التنفيذي على المؤسسة التجارية

(7) عقد التأجير والإدارة الحرة

## 6.3 THE SALE OR TRANSFER OF A BUSINESS CONCERN

### 6.3.1 Terms and Conditions<sup>(1)</sup>

The sale of a business concern must be in writing. It must take the form of an official instrument,<sup>(2)</sup> in the form of a deed of sale,<sup>(3)</sup> duly registered at the Special Commercial Register (Special C.R.). This register is located together with the General Commercial Register in the First Instance Court of every district in Lebanon.<sup>(4)</sup>

If the sale is not registered in the Special C.R., it shall have no effect towards third parties. The following example illustrates this point:

Hadi owns a business concern that deals with the sale of grains. Every week Walid delivers two tons of rice to Hadi's store, and collects the price once every eight weeks in cash. When Walid came to collect his money, Hadi informed him that he had sold his store six weeks ago.

In this case, if Hadi had not registered the sale of the B.C. in the Special C.R. he remains liable for the price of the rice. If he has registered, then the new buyer is liable for the price.

The sale may include all the elements of the business concern or only part of them.

If the deed of sale does not mention which elements are included, then the sale shall only include: the signboard, trade name, lease rights, location, and goodwill (incorporeal elements).<sup>(5)</sup> Debts payable and debts receivable are not considered to be included in the sale unless there is a specific clause to that effect.<sup>(6)</sup>

However, the elements that must be mentioned in the deed at all times are: a) the price, and b) the business concern's stock turnover, and c) profits for the last three years. If these are not mentioned then the deed will be considered invalid.<sup>(7)</sup>

(1) Under this title, all referral to the term "sale" means "sale or transfer". However, only the term "sale" will be used, for simplicity purposes.

(2) وثيقة قانونية

(3) صك البيع

(4) L.D. no. 11, July 11, 1967, Art. 4.

(5) *Ibid.*, Art.5.

(6) *Ibid.* Art. 6.

(7) باطل \ غير صالح

### 6.3.2 Protection of Third-Party Creditors

- In order to protect third party creditors, the law stipulated that all contracts relating to the business concern, including the sale or transfer of the business concern, must be registered at the Special Commercial Register.
- The sale or transfer must be registered under the names of both the seller and the buyer.
- An abstract of the deed of sale<sup>(1)</sup> must also be published in the Official Gazette<sup>(2)</sup> and in a local newspaper in the district where the business concern is located.<sup>(3)</sup>
- The abstract should include the following information:
  - a) Date of contract;
  - b) Name and specifications of the business concern;
  - c) The price;
  - d) The full names and addresses of the buyer and seller;
  - e) Elected domicile of the buyer and seller must be in the same district as the business concern.<sup>(4)</sup>
- If the sale also includes branches of the business concern, then it must also be published in a local newspaper in the district where each branch is located.<sup>(5)</sup>
- The publication is made by the Chief Clerk of the First Instance Court,<sup>(6)</sup> responsible for the Special Commercial Register, within 15 days from the date of sale.
- The same publication should be made again on the same day of the next week.
- If the sale of the business concern includes the transfer of the lease, then the landlord must be notified of the sale.
- The purpose of the publication is to let the sale be known to all creditors, to enable them to object to it if they consider that it will prejudice their interests.

---

(1) خلاصة سند البيع

(2) الجريدة الرسمية

(3) L.D. no. 11, July 11, 1967, Art. 12 (amended by L.D. no. 97, of June 30, 1977).

(4) *Ibid.*

(5) *Ibid.*

(6) رئيس قلم المحكمة

- For this reason, the purchaser must not pay the price until after the expiry of the 10<sup>th</sup> day as from completing the publication formalities.<sup>(1)</sup>
- If the purchaser pays the price before the 10-day limit, he will be liable towards third parties who object to the sale for the claimed sum.<sup>(2)</sup>

#### STEP 1- Draft and Sign the Deed of Sale

- The Deed of sale is an official instrument and must be in writing
- The following elements must be included in the sale:
  - 1- The price of sale
  - 2- The Business Concern's stock turnover and profits for the last 3 years
- If the deed of sale does not mention which elements are included, then the sale shall only include: the signboard, trade name, lease rights, location, and goodwill

#### STEP 2- Register the Deed of Sale in the Special Commercial Register

- The SCR is located together with the General Commercial Register in the First Instance Court of every district in Lebanon.
- The sale or transfer must be registered under the names of both the seller and the buyer.
- If the sale is not registered in the Special C.R., it shall have no effect towards third parties.

#### STEP3- Publishing in Newspapers

- An abstract of the deed of sale must also be published in the Official Gazette and in a local newspaper in the district where the business concern is located.
- The publication is made by the Chief Clerk of the First Instance Court, responsible for the Special Commercial Register, within 15 days from the date of sale.
- The same publication should be made again on the same day of the next week.

#### STEP 4-Notifying 3rd Party Creditors

- The purpose of the publication is to let the sale be known to all creditors, to enable them to object to it if they consider that it will prejudice their interests.
- The purchaser must not pay the price until after the expiry of the 10<sup>th</sup> day as from completing the publication formalities
- If the purchaser pays the price before the 10 day limit, he will be liable towards 3<sup>rd</sup> parties who object to the sale for the claimed sum

Figure 31: the sale Process of Business Concern

(1) معاملات النشر

(2) *Ibid.*, Art. 13.

## 6.4 TRANSFER OF THE LEASE CONTRACT WHEN SELLING OR TRANSFERRING A BUSINESS CONCERN

At many instances, a business concern may be formed and located in rented premises. So, if the owner sells the business concern, how can the buyer operate in the premises when there is no lease contract between him/her and the landlord (i.e. the owner of the premises)?

As a general rule, leased premises can be subleased by the lessee to third party, unless there is a clause in the contract forbidding sub-lease. If such a clause exists then the premises cannot be subleased.

Nevertheless, in the case of a business concern, the law exceptionally allows the transfer of the lease contract, even if such clause exists.

Therefore, when the business concern is sold, the lease contract between the owner and the seller is automatically transferred to the buyer, regardless of any clause in the contract prohibiting such transfer.

However, the law puts two restrictions on the buyer:

- The nature of the previous business must not be changed.
- All the obligations resulting from the original lease contract must be respected.<sup>(1)</sup>

If the landlord believes that the rent in the transferred lease is no longer suitable, he/she may petition the judge to fix a fair rent.<sup>(2)</sup>

### Point Example

On June 2015, Rami rented out the business concern to Khalil for a period of 2 years and for the sum of \$40,000, although the lease contract between Ahmad and Rami states that the latter cannot rent the business concern without the prior consent of Ahmad. After 5 months of trading with cosmetic goods, Khalil changed the nature of the business from dealing with cosmetic goods to the dealing with chemical goods.

1. Is the lease between Rami and khalil valid? Justify your answer.
2. Does the change of the nature of the business have an effect on the lease contract? How?
3. What elements does a business concern consist of?

(1) L.D. no. 11, July 11, 1967, Art.9.

(2) *Ibid.*

### Point Example

Sarah established in 2010 a business concern to sell accessories on the premises of the landlord Samir, which is located in Hamra street close where she was domiciled (Hamra as well). She named the shop “Easy hold”. In 2011, she opened a branch in Saida. In 2013, she took a loan from the Bank to import a container of bags from China. In 2014, she planned to sublease the business of Hamra to Walid.

1. What are three necessary elements that the business concern should consist of?
2. What kind of contract exists between Sarah and Samir? Can she sublease the business concern without the approval of Samir? Why?

#### 6.4.1 Preferential Right of the Landlord

- The landlord enjoys a preferential right to acquire the business concern at the price set down in the deed of sale, unless the sale has occurred through public auction.<sup>(1)</sup>
- This right must be exercised by the landlord within 10 days of the date on which he was notified of the sale or transfer.<sup>(2)</sup>
- To exercise this right, the landlord must submit a petition, together with a bank guarantee covering the price as stated in the deed of sale.<sup>(3)</sup>
- If the price is contested by the landlord or by a creditor, the contesting party may request the court to determine the actual price.

---

(1) *Ibid.*, Art. 10.

(2) *Ibid.*, Art. 10, 12.

(3) *Ibid.*, Art. 10.

### Point Example

Mazen owns a well-known Business concern that had been operating in a store. He has rented from Jasmine since 1/5/2010 in Nabatieh city. The period of the lease contract signed between Jasmine (Landlord/ the owner of the real estate) and Mazen is 7 consecutive years ending on 1/5/ 2017. The Business concern started its activities on 1/8/ 2010; it deals with ticketing under the name of: “World Travel”.

Mazen decided to continue his Master Studies and registered at the Lebanese university. For this purpose he decided to sell the Business concern to Mona on 4/1/2013. The sale contract was concluded at the Notary Public and it mentioned:

- The profits and the losses of the Business concern for 2013.
- The elements of the Business concern being sold.
- The price of the Business concern.
- An abstract of the sale contract was published twice in a local daily newspaper:

Mona was not very lucky in conducting her business and she got several loans:

- Bank Byblos had lent her \$ 150,000 and registered a mortgage on the business concern on 21/5/2015.
- Walid also had lent her \$5,000 and had registered a mortgage on 14/2/2015.

Later on, Mona was not able to pay any of these debts.

1. Indicate the legal defects seen in the establishment and publication of the sale contract of the Business concern and correct them.
2. What are the two rights that are granted by law to Jasmine (the landlord) in such a case?
3. What are the rights of Walid and Bank Byblos? What can they do? Who will receive his debts first and why?

### Point Example

Firas owns a business concern which deals with electronic goods. The business is located on the ground floor of a building owned by Salim (the landlord). The lease contract stipulates that Firas cannot transfer the lease to third party.

Four years later, Firas sold the business concern to Hani on November 15, 2013. On the same date Hani paid the price to Firas. The next day, they registered the sale contract in the Commercial Register and notified Salim (the landlord) about the sale on the same date.

On November 22, Rami, who was dealing with Firas, claimed the sum of \$2,000 because he is a creditor for Firas.

On November 29, Salim the landlord, expressed his intention to buy the business concern arguing that he is the landlord and the law confers him a preferential right to acquire the business concern.

1. Does Rami have the right to claim the amount of \$2,000 from Hani? Explain.
2. Is the request of Salim (the landlord) right? Explain.
3. Does the lease contract between Firas (the owner) and Salim (the landlord) can be transferred to Hani (the buyer)? And what are his obligations toward the landlord?

## 6.5 CHATTEL MORTGAGE OF A BUSINESS CONCERN<sup>(1)</sup>

A business concern is a movable property which may be mortgaged. Normally in a movable property (chattel),<sup>(2)</sup> the procedure is that the possession of the mortgaged<sup>(3)</sup> property moves from the mortgagor<sup>(4)</sup> to the mortgagee<sup>(5)</sup>.

(1) رهن المؤسسة التجارية

(2) منقولات

(3) مرهون

(4) الراهن (صاحب المُلْك)

(5) المرتهن (الدائن)

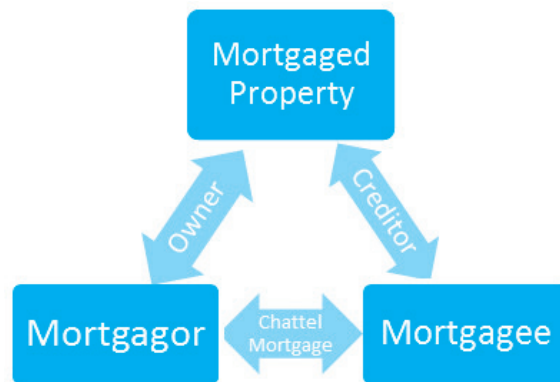


Figure 32: Process of Chattel Mortgage

- In land and fixed property, on the other hand, the property stays with the mortgagor.
- However, in some cases, the law applies the rule applicable on fixed property to chattels, such as mortgages on cars and other motor vehicles. This also applies to the business concern.
- In order to give the owner of the business concern a chance to make profits and pay off his/her debts, the law applies the rules of chattel mortgage in which the property stays with the mortgagor, and therefore, the merchant is not deprived from his business concern like other movable property.
- This mortgage only takes effect by registering it in the Special C.R. Once registered the mortgagee gets a preferential claim over the business concern.<sup>(1)</sup> This allows the mortgagee to claim against the business concern even if it has been transferred to a different owner.
- Several mortgages can be placed on the same business concern. Starting by the date of the first mortgage and moving downwards, every mortgagee has the right to claim over the business concern for the full amount of his debt, before other mortgagees who registered at a later date. Creditors registered at the same date have equal rights.

#### 6.5.1 Garnishment of a Business Concern<sup>(2)</sup>

- A mortgage placed on a business concern does not give the mortgagee a direct right to own the business concern if the owner does not pay him/her his/her debts.<sup>(3)</sup> So what can a creditor do when his debts are not paid off?

(1) L.D. no. 11, July 11, 1967, Art. 24.

(2) الحجز التنفيذي على المؤسسة التجارية

(3) *Ibid.*, Art. 29.

- A creditor can request a garnishee order against the business concern. This gives him/her a right to resort to the court, which can then sell its elements in public auction, thus allowing the creditor to claim the value of his debts.<sup>(1)</sup>
- Since the business concern does not have a separate legal personality, creditors cannot request a garnishee order<sup>(2)</sup> against it as a whole. Only the corporeal elements of a business concern can be garnished. Incorporeal elements cannot be garnished, namely, the goodwill, trade name, signboard, lease rights, trademarks, copyrights and licenses.
- If the garnished elements are not sufficient for paying off the debts, the creditors or mortgagees can initiate bankruptcy procedures against him, after giving him/her an eight-day notice to pay the required debts.<sup>(3)</sup>

### Point Example

Sami owns a business concern which deals with home furniture. It is located on the ground floor of a building owned by the landlord Kareem.

After several unsuccessful transactions, the business concern got big losses and its financial situation became critical. Sami decided to ask his friends for financial help. He asked his friend Ziad for 5 million LBP and proposed to place a mortgage on the business concern for the interest of Ziad. The latter agreed. On 01/04/2013 they registered the mortgage in the Special Commercial Register at 9:00 am.

The sum was not enough to face the critical situation, so Sami decided to ask his other friend Walid and proposed the same contract as for Ziad for the same amount (5 million LBP) Walid also agreed and they registered the contract on the same day (01/04/2013) at 12:00 pm.

Few months later his financial situation became worse, and Sami couldn't pay his debts for Ziad and Walid. Walid decided to sue Sami in the court. Finally the business concern was sold for the amount of 8 million LBP.

1. Can Walid sell the business concern directly, if not what shall he do? Does he have the right to request before Ziad who registered his contract at 9:00 am?
2. Does Kareem the landlord have a preferential right to buy the business concern? Explain in light of the first question.

Waleed requested in his claim a garnishee order against the business concern with all its elements (corporeal and incorporeal) because he needs to get back the rest of his debt.

3. Is his request valid? Explain. What can he do to get the rest of his debt?

(1) Lebanese *Code of Commerce*, Promulgated by the Legislative Decree no 304 of December 24, 1942, Art. 315.

(2) أمر حجز تنفيذي

(3) L.D. no. 11, July 11, 1967, Art. 31.

**6.6 HIRING-BUSINESS MANAGERSHIP (FREE-MANAGERSHIP CONTRACT)<sup>(1)</sup>****6.6.1 General Concept**

- The hiring-business managership contract applies when the owner of a business concern hires out (leases) the management of his business concern to another person called the free-manager or lessee manager.
- In such case, the ownership of the business concern remains with the owner, but the management and all liabilities are transferred to the free-manager, in return for an agreed remuneration paid to the owner.<sup>(2)</sup>

**6.6.2 Terms and Conditions**

- The owner must declare that the management is transferred to the free-manager and at the free-manager's responsibility.
- The object of the contract must consist of a business concern already operating, and having at least the goodwill element.<sup>(3)</sup>
- The Lebanese law stipulates that the deed of sale or transfer must mention the turnover and profits of the business concern during the last three years.<sup>(4)</sup> This means the business concern must have been in operation for three years before a free-managership contract can be made (i.e. it needs at least three years for the goodwill element to materialize).
- The free-managership contract must be published within fifteen days of its formation in the following ways:
  - a. Publication in the Official Gazette and in a local daily newspaper;<sup>(5)</sup>
  - b. Registration at the Special Commercial Register and in the General Commercial Register under the name of the owner of the business concern (i.e. if he/she is still a merchant), and under the name of the lessee manager (i.e. he/she must be a merchant).

---

(1) عقد الإدارة الحرة

(2) *Ibid.*, Art. 38.

(3) Min. Dec. no. 705 of April 23, 2003 "Application of the Provisions of Statute no. 379, of 14/12/2001 on Free Managership Contracts, Lebanese Ministry of Finance, available at <http://www.finance.gov.lb/ar-LB/taxation/Businesses/VAT/Documents/Instructions/705.pdf>.

(4) *Ibid.*, Art. 11.

(5) *Ibid.*, Art. 39.

- c. The free-manager must show his/her registration details on all his letterheads and documents viewed by third parties.<sup>(1)</sup>
- The owner and the free-manager of a business concern who fail to publish the contract will be subjected to a fine set by the court, to be paid within fifteen days. If the fine is not paid, a higher fine will be set by the court.<sup>(2)</sup>
- In addition to the fine, a free-managership contract that is not published will have no effect towards third parties.

### 6.6.3 Effect of the Contract with Regards to the Landlord

- The free-managership contract entails hiring the “management” of the business concern, and not the property itself. Therefore, such contract does not create any direct relationship between the free-manager and the landlord.
- Since the free-manager is not the owner of the business concern, he/she cannot request the renewal of the lease contract, nor benefit from the provisions of the old rent law with regards to extending the lease.<sup>(3)</sup>
- Therefore, if the free-manager fails to carry of any of the provisions stipulated<sup>(4)</sup> in the original lease contract, he/she shall be liable towards the owner, who in turn is liable towards the landlord.
- The same also applies to all matters related to the cancellation, termination, or renewal of the lease contract.

### 6.6.4 Mutual Obligations of the Parties

#### *Obligations of the Owner*

- The owner must deliver the business concern to the free-manager, together with all the elements agreed upon in the contract, especially the goodwill element.
- The owner must not carry out any competitive activity against the business concern.

---

(1) *Ibid.*, Art. 44.

(2) *Ibid.*, Art. 40.

(3) As per statute no. 160 of July 22, 1992.

(4) منصوص عنها

- The owner's creditors, whose debts are not due, can claim their debts immediately, through a petition submitted to the court.
- The owner remains jointly and severally liable with the free-manager for all debts resulting from the operations of the business concern during the period which falls between the date of signing the contract and the completion of the publication formalities.<sup>(1)</sup>

### *Obligations of the Free-Manager*

- The free-manager must pay the remuneration<sup>(2)</sup> agreed upon in the contract. Such remuneration may either be an annual rent fare<sup>(3)</sup>, or a percentage of the profit.
- The free-manager must operate the business in good faith,<sup>(4)</sup> as if he/she were the owner of the business concern, in order to maintain its value. If he/she does not do that, the business might lose customers and reputation, which will reduce its value.
- The free-manager must not carry out unfair competition against the owner, even after the contract ends.
- The free-manager must not divert the customers of the business concern to another business which he owns or aims to own in the future.
- The free-manager must not change the nature of the business without the permission of the owner.
- When the contract expires, the free-manager must return the business concern in the same state as he received it from the owner. This does not apply if the business depreciated as a result of normal business operations or force majeure. However, he also cannot claim for compensation if the value of the business concern increased.
- The free-manager will be liable for all debts resulting from his business operations.
- The free-manager shall be jointly and severally liable with the owner during the fifteen days after the day in which he publishes the termination of the contract.

(1) L.D. no. 11, July 11, 1967, Art. 41.

(2) بدل

(3) بدل إيجار سنوي

(4) حسن نية

- The free-manager should not sign any contracts which extend beyond the date of the free-managership contract. Any contracts with third parties that are still ongoing when the free-managership contract ends will remain to be the liability of the free-manager.

### Point Example

“Stay in touch” is a shop owned by Mahmoud, selling mobile phones of different international famous brands and all related accessories like Apple, Samsung, Nokia.... Mahmoud’s shop is located in Seven Stars Center owned by Tala. The contract concluded between Mahmoud and Tala mentioned in clause no. 6: “Mahmoud has no right to sublease the business to a third party.”

After four years of its opening, Mahmoud decided to agree with Layal to manage the business on her own responsibility for a period of three years and in return of paying to Mahmoud 10 % of the annual profit.

1. List the elements that constitute the business of Mahmoud and group them into two categories.
2. Name the contract between Mahmoud and Tala. Is the clause no 6. a valid clause? Explain.
3. What is the nature of the contract between Mahmoud and Layal? Discuss
4. Set the formalities needed for the contract between Mahmoud and Layal.

#### 6.6.5 Termination of the Free-Managership Contract

- The free-managership contract shall terminate like any other contract by:
  - a. Expiry date of the contract;
  - b. Consent of the parties;
  - c. Impossibility of its performance;
  - d. Death, incapacity, or bankruptcy of the lessee-manager.
- The termination of the contract must be published through the same methods of publication used during formation (i.e. C.R., Special C.R., Official Gazette, and daily newspaper), and within the same time periods.<sup>(1)</sup>

(1) *Ibid.*, Art. 42.

### Point Example

Rawad owns a business concern that deals with the sale of flowers and decorations in Zahle. On March 1, 2013, Rawad signed a five-year free-Managership contract with Samer, and transferred the management of his business concern to Samer in return for a sum of \$10.000 to be paid annually.

After three years from signing the contract Rawad sued Samer in court, requesting the termination of the contract and payment of damages. The reason for his claim is that he discovered that Samer had not registered the free-Managership contract anywhere. In addition:

- a) Samer had changed the nature of the business concern from a flower and decorations shop to a shop that sells evening dresses.
- b) Samer had opened another flower and decorations business, and he was diverting all the business concern's customers towards his own business;
- c) The premises appeared to be in a very bad state, as Samer had demolished some walls to make more space for the dresses.

Samer argued that the depreciation in the value of the premises was due to normal business operations.

1. Should the Free-Managership contract have been published and registered? Where, when, and how?
2. Does Samer have a right to:
  - a) Change the nature of the business concern from the sale of flowers and decorations to evening dresses?
  - b) Divert the customers to his own business? Explain
3. Does Rawad have a rightful claim in requesting compensation for the depreciation of his business concern? Explain

## المؤسسة التجارية - آلية تسجيل المؤسسة التجارية<sup>(1)</sup>

### المستندات المرفقة وأماكن إنجازها

- طلب يقدم من قبل صاحب العلاقة أو من وكيله، الى امانة السجل التجاري لتسجيل المؤسسة.
- صورة عن بطاقة هوية أو إخراج قيد إفرادي.
- تعبئة نموذج تصريح لإدارة الإحصاء المركزي ونموذج استثمار كمبيوتر.
- سند إيجار يحدد موضوع التجارة أو سند ملكية.
- إفادة عقارية تبين أن مقدم الطلب ما يزال هو المالك، أما بالنسبة للمستأجر فيجب ذكر أن المالك ما يزال هو ذاته محرر الإيجار.
- براءة ذمة من الصندوق الوطني للضمان الاجتماعي تكون صالحة لتسجيل مؤسسة تجارية.
- سجل تجاري (تاجر)
- وكالة من كاتب عدل في حال لم يكن مقدم الطلب هو صاحب العلاقة.

### آلية سير الملف:

- يقدم الطلب والمستندات المرفقة الى قلم السجل التجاري في المنطقة التابع لها المحل التجاري
- يعرض على القاضي المشرف.
- إذا كانت المستندات كاملة يتخذ القاضي المشرف قراراً بإجراء الكشف على المؤسسة.
- يتم الكشف حسب اتفاق مسبق مع الموظف المكلف حيث يضع هذا الأخير تقريراً بواقع الحال ويأخذ صور فوتوغرافية للمكان.
- يعرض هذا التقرير على القاضي المشرف مجدداً لاتخاذ القرار المناسب بالرفض أو بتسجيل المؤسسة وإصدار شهادة التسجيل.

(1) [http://cr.justice.gov.lb/com/com\\_1.aspx](http://cr.justice.gov.lb/com/com_1.aspx) (last update on September 2016)

### مدة إنجاز المعاملة

أربعة أيام كحدّ أقصى، وحسب الاتفاق مع صاحب العلاقة على موعد الكشف.

### الرسوم المتوجبة:

- رسم الكشف 75000 ل.ل.
- رسم رخصة 1250000 ل.ل. ويمكن شرح هذه القيمة على الشكل التالي: - رسم رخصة تأسيس مؤسسة 750000 ل.ل. تدفع لدى دائرة الضرائب غير المباشرة في وزارة المالية. - رسم مقطوع 375000 ل.ل. + نصف رسم التسجيل أي 1000 ل.ل. = مجموع رسوم التعاضد.
- طابع أميري بـ 1000 ل.ل. على كل صورة مستند.
- رسم تسجيل 2000 + 250 ل.ل. رسم قيدية على كل مستند بموجب أمر قبض يدفع لدى صندوق المالية في وزارة العدل.
- رسم صورة طبق الاصل حسب عدد الصور بحيث يفرض 2000 ل.ل. لكل صورة.

تصريح وفقا للمادة 24 من ق.ت.

## جانب محكمة بداية صيدا الموقرة (قسم السجل التجاري)

حضرة الرئيس ،

يلتمس المستدعي ..... طلب تسجيل اسمه في سجل التجارة وفقا للمادة 24 من قانون التجارة وهي تقدم تصريحاً على نسختين كما يلي:

1 - إسم التاجر وشهرته :

-----

2 - إسمه التجاري الذي يمارس تجارته - وعند الاقتضاء - كنيته واسمه المستعار:  
“ ----- ”

3 - تاريخ ولادته ومحلها وجنسيته:

لبناني تولد عام \_\_\_\_\_ سجل رقم ---- /

4 - موضوع التجارة:

الاستيراد والتصدير لكافة انواع السلع المباحة قانوناً والتجارة العامة والتعهدات على انواعها وتحديداً تعهدات التنظيفات مع المؤسسات العامة والخاصة واستقدام الاجانب والتعاقد مع العمال اللبنانية والأجانب بخصوص تنفيذ اعمال التنظيفات على اختلافها واستيراد وتصدير معدات التنظيف والمواد الكيماوية التابعة لها ولوازمها والتزام رش المبيدات وصيانة الحداثق ومعالجة الآفات والقوارض واستيراد وتجارة السيارات والآليات والمعدات وقطع الاكسسوار على اختلاف انواعها والاشتراك بالمناقصات العامة والخاصة كما والاشتراك بالمزايدات وتخليص المعاملات وتجارة العطورات والخدمات السياحية على انواعها والعمولة والسمسرة والوساطة وبيع وشراء العقارات وكل ما يتعلق او يتفرغ عن هذه الاعمال ويكملها في لبنان والخارج.

والأماكن الموجودة فيها فروع المحل التجاري أو وكالاته في لبنان أو سوريا:

القسم رقم // من العقار رقم ----- / منطقة - العقارية

6 - العنوان والاسم التجاري للمؤسسة:

“ ----- ”

7 - اسماء المفوضين وشهرتهم وتاريخ ولادتهم ومحلها وجنسياتهم:

واقبلوا الاحترام

سجل تجاري رقم / / عام

## إذاعة تجاريه

حضرات السادة المحترمين

نشرف بإعلامكم أننا قد أسسنا في منطقة \_\_\_\_\_ محلاً تجاري يتعاطى الاستيراد والتصدير لكافة أنواع السلع المباحة قانوناً والتجارة العامة والتعهدات على أنواعها وتحديداً تعهدات التنظيفات مع المؤسسات العامة والخاصة واستقدام الاجانب والتعاقد مع العمال اللبنانية والأجانب بخصوص تنفيذ اعمال التنظيفات على اختلافها واستيراد وتصدير معدات التنظيف والمواد الكيماوية التابعة لها ولوازمها والتزام رش المبيدات وصيانة الحدائق ومعالجة الآفات والقوارض واستيراد وتجارة السيارات والآليات والمعدات وقطع الاكسسوار على اختلاف انواعها والاشتراك بالمناقصات العامة والخاصة كما والاشتراك بالمزايدات وتخليص المعاملات وتجارة العطورات والخدمات السياحية على انواعها والعمولة والسمسرة والوساطة وبيع وشراء العقارات وكل ما يتعلق او يتفرغ عن هذه الاعمال ويكملها في لبنان والخارج.

تحت تسمية تجاريه :

“ \_\_\_\_\_ ”

مع العلم بأن هذا المحل قد سجل أصولاً في السجل التجاري في صيدا بتاريخ / /

تحت رقم / / عام .

وإن المفوض بالتوقيع عنه مناط بصاحبها السيد ----- .

فالرجاء أن تمنحوه ثقتكم الغالية .

المستدعي

ان السيد ----- يوقع هكذا

The background features abstract, flowing shapes in various shades of blue and white. A vertical light blue bar is on the left. Large, sweeping curves in medium and bright blue sweep across the bottom and right sides, creating a dynamic, modern feel.

## CHAPTER SEVEN

# **OVERVIEW OF PARTNERSHIPS AND CORPORATIONS**

## CHAPTER SEVEN

# OVERVIEW OF PARTNERSHIPS AND CORPORATIONS

**Most** of the activities in the world are done by the businesses. A person forms a business with the intention of making a profit, and the type of business the person forms may affect profits. The type of business formed may determine the amount of money the business owner pays in taxes and whether the business owner will lose his/her personal assets to business debts.

In Lebanon, the free enterprise system is opened to foreign trade and absence of restrictions on capital movement. Such system safeguards private ownership of all forms of assets, and subjects local and foreign investors to the same code of laws and regulations.

The chapter aims to give the students a general overview about partnerships and corporations, their formation and the characteristics which differentiate each one of these companies. It gives comparative description of various forms of partnerships and corporations.

There are several types of partnerships and corporations that a person should consider when forming a business. Generally, all companies in Lebanon are governed by the Lebanese Code of Commerce, and by a set of rules of the Code of Obligations and Contracts. The government encourages cooperation between foreign and Lebanese companies. However, the nature of business varies between partnerships and corporations; article 844 of the C.O.C. states that “a partnership is a contract between two or more persons who pool their contributions with a view of sharing the profit”.

The difference in nature of the business structure between partnerships and corporations, the mandatory<sup>(1)</sup> rules and the improvement needed for various aspects in the corporate law

---

(1) إلزامي

have led many modern writers to differentiate between the contractual nature of the contracts and that of the institution. In general, the contract is applied on partnerships and the institution on companies.

The contract is based on the agreement of two or more parties established by their mutual consent, whereas the institution is governed by mandatory legal rules and provisions and not only by mutual consent. For example, the legislator decides the minimum capital for a limited liability company - S.A.R.L by 5,000,000 LBP, Joint Stock Company – S.A.L by 30,000,000 LBP, while it refers to the consent of the two parties to decide in the unlimited or limited partnership.

In order to verify the above, a definition of partnerships and corporations is provided, naming their main types, distinguishing between the civil and commercial companies, how they acquire the corporate personality, as well as the procedures needed for their formation.

## CHAPTER SEVEN OUTLINE

### 7.1 GENERAL PROVISIONS

### 7.2 TYPES OF PARTNERSHIPS AND CORPORATIONS

### 7.3 DIFFERENCE BETWEEN THE CIVIL ACTS AND THE COMMERCIAL COMPANIES

### 7.4 CORPORATE PERSONALITY

### 7.5 FORMATION OF COMPANIES

#### 7.5.1 Substantive Rules

#### 7.5.2 Rules Governing the Formation of Contracts

#### 7.5.3 Rules peculiar to Contracts Establishing Companies

#### 7.5.4 Effects of the Breach of Rules (Nullity)

## 7.1 GENERAL PROVISIONS

Business partnerships and companies are commercial organizations with statute divided into parts (contributions) or shares of founders whose main aim is to make a profit. Business partnerships and companies may be established as general partnerships, limited liability companies, or joint stock companies. Banks, insurance, investment companies and funds and other similar organizations, the activities of which are based on attracting capital and other property from people who are not founders of the partnerships or company, are founded and act as a business company according to special legislative acts.

**“Partnership”**<sup>(1)</sup> is a business association of a limited number of persons (i.e. less than five); its trade name consists of the individual names of the partners in succession, or formed of one or more names of the partners followed by “and Co”.

**“Corporation”** or **“Company”**<sup>(2)</sup> is a business association of funds comprising a larger number of persons (i.e. a minimum of three); its trade name is a commercial name which does not necessarily include the names of the individuals.

	Corporation	Partnership
<b>Definition</b>	A legal entity which is separate from its owners.	A legal entity with individuals who share the risks and benefits of the business.
<b>Ownerships</b>	Shareholders	Partners
<b>Formation</b>	An agreement between partners with the Article of Corporation.	Agreement between partners
<b>Prototype</b>	Joint Stock Company	Unlimited Partnership
<b>Management</b>	Run by Board of Directors	Run by Partners
<b>Structure</b>	Members of the corporation act in accordance with the company’s charter, which is structured. It is easy to transfer the shares.	Partners have to adhere to the partnership’s agreement. Parts are transferred with consent of the partners.
<b>Raising money</b>	By sale of shares and bonds.	From current partners’ assets.

(1) شركة أشخاص

(2) شركة أموال

<b>Liability</b>	The shareholders' liability is determined by the amount of shares they own.	Partners are directly responsible; sometimes with unlimited liability.
------------------	---	--

Table 16: Comparison Among the types of Partnerships and Corporations

## 7.2 TYPES OF COMMERCIAL PARTNERSHIPS AND CORPORATIONS

Many types of commercial partnerships and corporations are stated under the Code of Commerce, namely:

1. The Unlimited Partnership<sup>(1)</sup>
2. The Limited Partnership (Partnership in Commendam)<sup>(2)</sup>
3. The Joint Stock Company S.A.L<sup>(3)</sup>
4. The Limited Liability Company S.A.R.L<sup>(4)</sup>
5. The Limited Partnership by Shares<sup>(5)</sup>

Other forms:

6. The Copartnery<sup>(6)</sup>
7. The Holding Company<sup>(7)</sup>
8. The Off-Shore Company<sup>(8)</sup>
9. Companies with Variable Capital<sup>(9)</sup>
10. Foreign Companies

(1) شركة التضامن

(2) شركة التوصية البسيطة

(3) شركة مساهمة لبنانية

(4) شركة محدودة المسؤولية

(5) شركة توصية بالأسهم

(6) المحاصة

(7) الشركة القابضة

(8) شركة اوف شور

(9) الشركة ذات رأس المال المتغير

### 7.3 DIFFERENCE BETWEEN CIVIL COMPANIES AND COMMERCIAL COMPANIES

Before examining partnerships and corporations, it is necessary to draw a difference between Civil and the Commercial companies. The table below highlights the main differences between both types of companies.<sup>(1)</sup>

	Civil Companies	Commercial Companies
<b>The code applicable</b>	Regulated by the Code of Obligations and Contracts.	Regulated by the Code of Commerce.
<b>The Object</b>	The object is usually performed in the fields of civil, agricultural and intellectual professions. For example, association of accountants, lawyers, agriculture, and so forth. It is very frequently used to manage immovable assets in the form of a real-estate company constituted under civil companies.	The object is commercial; it aims to perform commercial activities enumerated in articles 6, 7 and 8 in the Code of Commerce, such as insurance, brokerage, exchange, and so forth.
<b>Formation</b>	The formation is formed by simple agreement without the need for any formalities; it does not need any registration in the Commercial Register or any other publication.	The formation is subjected to all the obligation of merchants, thus commercial companies have an obligation to keep commercial books, to register in the Commercial Register, and subjected to all the bankruptcy settlements.
<b>Personality</b>	A civil company is an artificial legal person distinct from the persons composing it. This means that the company has its own name, it can sue and be sued, it can own property and it can enter into transactions.	A commercial company is of similar nature as the civil company; thus, it has a legal personality distinct from the persons composing it.
<b>Liability</b>	<p>The liability of members composing the civil company is proportional to their percentage in the capital.</p> <p>Thus, if X has 40%, Y has 35%, and Z has 25%, then each one is liable according to this percentage without excess.</p>	Members are jointly and severally liable <sup>(1)</sup> for their debts. Thus, if X has 40%, Y has 35%, and Z has 25%, the creditor can claim the full amount from any one of the partners, and the one who pays refers back to other partners each according to his/her percentage. <sup>(2)</sup>

(1) بالتكافل والتضامن

(1) This liability encourages the creditors in their relation with the co-debtors so they are not concerned with the percentage of each one.

<b>Personality of partners</b>	The civil company is based on the personal status of the partners composing it.	The personality is taken into consideration as in the Unlimited Partnership.
--------------------------------	---	--

Table 17: Distinction between Civil and Commercial Companies

**Note:** The law did not decide the shape of a civil company, it can take any shape; however, if a civil company takes any commercial form, it does not change its nature since the object is taken into consideration. If it takes the shape of the joint stock company, it will be subjected to merchants' obligations, registered in the Commercial Register and keep commercial books, but it is not considered as a merchant.

## 7.4 CORPORATE PERSONALITY<sup>(1)</sup>

The concept of corporate personality has long been a significant issue in the study of corporate law and commercial systems in general. Corporate personality refers to the fact that a company's personality really exists apart and different from its members. As a result of this, a company can sue and be sued<sup>(2)</sup> in its own name, hold its own property and essentially be liable for its own debts. However, corporate existence is not invoked against third parties unless publicity requirements are accomplished.

In other words, when a company is registered it obtains a legal personality and has almost the same rights and powers as a human being. This implies that it has the following components and features:

- *A name:* The company carries a name distinct from the name of the members composing it. While in the partnership it carries a collective name consisting of or several partners;
- The *capacity* to own property and assets, to buy and sell, to enter into transactions, and to sue or be sued;
- *A legal Domicile:* which is the address of the main office or branch where the commercial activities take place;
- A nationality;
- *A bank account;*
- *Liability for taxes;*

(1) الشخصية المعنوية

(2) تدعى ويدعى عليها

- *Raising loans;*
- *Incurring liabilities;*
- *Entering into contracts.*

## 7.5 FORMATION OF COMPANIES

Many rules govern the formation of companies; these rules are either substantive or formal and procedural.

### 7.5.1 Substantive Rules

The rules governing the formation of companies are the same as those pertaining to the formation of contracts.

### 7.5.2 Rules Governing the Formation of the Contract

The contract establishing a company must satisfy the essential conditions of the formation of a valid contract.

- a. *Mutual Consent*<sup>(1)</sup>:** Agreement of two parties on the object, capital, and management, and so forth. The consent should not be subject to a vice, such as mistake, fraud, lesion, incapacity or duress, otherwise the contract will be void.
- b. *Capacity*<sup>(2)</sup>:** Partners must be fully capable (i.e. above 18 years old, and not suffering any state of mental incapacity).
- c. *Object*<sup>(3)</sup>:** The object must not be against ethics, law or public policy, otherwise it would be void with absolute nullity.
- d. *Cause*<sup>(4)</sup>:** It is the main reason why the parties have contracted, which in commercial companies and partnerships is the gain of profit. In associations, the object and cause are the same since there is no profit.

### 7.5.3 Rules peculiar to Contracts establishing Companies

The company has four main characteristics:

(1) الرضى المتبادل

(2) الأهلية

(3) الموضوع

(4) السبب

**a. Association of persons<sup>(1)</sup>:** Partnerships are composed of two or more partners; while the minimum number to form companies such as Limited Liability Company or Joint Stock Company is three. The company cannot have a corporate personality without the association of persons.

**b. Contribution<sup>(2)</sup>:** The contributions provided by the partners/shareholders to the company's capital are materialized in shares or parts. Members can contribute in:

- *Money*; or
- *Kind*: Chattels (i.e. tools, furniture) and fixtures (i.e. land, building); or
- *Services*: in partnerships, partners can contribute their own service such as the work of the engineers; they are not considered as employees; they share in the profit and loss of the company. However, services cannot be contributed in corporations such as a Joint Stock Company.

Capital is the total amount of assets which can be garnished except contribution in services; it informs us about the real financial position of the company. Members cannot take their profit from the capital and cannot minimize or increase the capital except by certain required legal procedures.

**c. The right of members to take part in management;** it differs according to the type of company.

**d. View of Profit and Loss<sup>(3)</sup>**

**a. View of profit:** The object of the company is to acquire profits that will be divided between its members. It should add monetary value to each member's assets. This distinguishes the company from civil associations which do not aim for profit.

**b. View of Loss:** All members should bear the loss in accordance with their contributions to the capital.

- No member should bear the responsibility alone for the entire loss. Any term in a contract that places the full liability on one or more members, but not on others is called a "Lion Clause".<sup>(4)</sup> Lion clauses are void with absolute nullity.
- For example, a clause in a contract providing for one of the members to take all the profit, or to get a fixed percentage of profit regardless of the company's loss, renders the contract void with absolute nullity.

(1) تَجْمَع الأشخاص

(2) المساهمة / الحصص

(3) تَوْقَع الربح وتحْمَل الخسارة

(4) شرط الأسد

### 7.5.4 Formal and Procedural Requirements

#### *a. Formal Requirements*

- A civil company is established by the mutual consent of two or more parties. If the company deals with real estate, the contract should be written and registered in the Land Registry.<sup>(1)</sup> All commercial companies (i.e. except for the Copartnery) must be evidenced in writing.
- Writing takes the form of a simple or notarized deed (i.e. a contract organized in front of the Notary Public).<sup>(2)</sup> This aims to provide a basis to which partners can refer in case of disputes arising among them, and to allow third parties who have dealings with the company to know the legal basis upon which it has been formed.
- The statute of the company must contain certain provisions established by law. Among such provisions are the name of the company, its legal form, its object, its duration, its capital, and the names of the managers.

#### *b. Procedural Requirements (Registration)*

After signing the contract, it should be registered in the Commercial Register. All the commercial companies except for the Copartnery must satisfy the registration requirements.

### 7.5.5 Effects of the Breach of Rules (Nullity)<sup>(3)</sup>

- If a member is a minor, or his/her consent was not given freely, only this minor has the right to request nullity. This action must be brought within ten years from attaining the maturity age. This is a relative nullity.<sup>(4)</sup>
- If the object of the company is illegal or immoral; any person who has legitimate interest can invoke nullity. This is an absolute nullity.<sup>(5)</sup>
- If there is a Lion Clause, then a company is void with absolute nullity.
- If the company did not complete the procedural requirements, then the sanction is the nullity of the company. Nevertheless, corrective action can be taken at any time.

(1) السجل العقاري

(2) الكاتب العدل

(3) البطلان

(4) بطلان نسبي

(5) بطلان مطلق

## Table of Concepts and Terminologies

Key Term	Arabic Translation
Absolute Nullity	بطلان مطلق
Association of Persons	تجمع اشخاص
Breach	انتهاك
Capacity	الاهلية
Civil Company	الشركة المدنية
Commercial Company	الشركة التجارية
Company	شركة أشخاص
Company with Variable Capital	الشركة ذات الرأسمال المتغير
Contribution	المساهمة
Copartnery	المحاصة
Corporate Personality	الشخصية المعنوية
Formal Requirements	الاجراءات الشكلية
Founder	المؤسس
Holding Company	الشركة القابضة
Joint Stock Company	شركة مساهمة لبنانية
Limited Liability Company	شركة محدودة المسؤولية
Limited partnership	شركة توصية بسيطة
Limited partnership by Shares	شركة توصية بالسهم
Mutual Consent	الرضا المتبادل

<b>Partner</b>	الشريك
<b>Partnership</b>	شركة أموال
<b>Prototype</b>	نموذج
<b>Relative Nullity</b>	بطلان نسبي
<b>Shareholder</b>	المساهم
<b>Statute</b>	نظام الشركة
<b>Substantive Rules</b>	قواعد الاساس
<b>Succession</b>	تتابع
<b>Trade name</b>	الاسم التجاري
<b>Unlimited Partnership</b>	شركة التضامن
<b>View of Profit and Loss</b>	توقع الربح والخسارة

## CHAPTER EIGHT

# UNLIMITED PARTNERSHIP <sup>(1)</sup>

---

(1) شركة التضامن

## CHAPTER EIGHT

# UNLIMITED PARTNERSHIP <sup>(1)</sup>

**The** Unlimited partnership involves two or more individuals with the legal capacity to undertake commercial transactions for profit. All the partners invest their money, work, and skills, or any part in the partnership, and share all the profits and losses according to the percentages agreed on.

### CHAPTER EIGHT OUTLINE

#### 8.1 DEFINITION of UNLIMITED PARTNERSHIP

#### 8.2 GENERAL CHARACTERISTICS

#### 8.3 FORMATION OF UNLIMITED PARTNERSHIP

8.3.1 Formal and procedural requirements/ Publication of the Unlimited Partnership

8.3.2 Features of the Unlimited Partnership/ Substantive conditions

#### 8.4 WINDING UP

8.4.1 Dissolution

8.4.2 Liquidation

(1) شركة التضامن

## **8.1 DEFINITION**

The Unlimited Partnership is an association of two or more persons carrying on a lawful commerce for profit.

- The partners provide their money, skills, and labour in return for “parts” in the partnership. They share the profit and bear the loss in certain proportions.
- Article 46 of the Commercial Code states: “Unlimited Partnership is a company carrying on business under a collective name and formed by two or more persons who are jointly and severally liable for the company’s debts and obligations”.

## **8.2 GENERAL CHARACTERISTICS**

- Partners are individually liable (i.e. jointly and severally)<sup>(1)</sup> for all the debts of the Unlimited Partnership;
- All the assets of the Unlimited Partnership may be executed against;
- Each partner is considered by law a merchant;
- The status of a merchant will disappear upon dissolution of the partnership;
- Partners share the profit and bear the loss according to their agreements;
- Unlimited Partnership should work under a collective name that is composed of all the names of the partners, or part of them followed by “& Co”;
- All partners participate in management;
- Partners’ parts may not be transferred to third parties except by the agreement of all partners.<sup>(2)</sup>

## **8.3 FORMATION OF THE UNLIMITED PARTNERSHIP**

The Unlimited Partnership requires formal and procedural requirements for formation as well as substantive conditions.

---

(1) مسؤولين شخصيا بالتكافل والتضامن  
(2) لا تنتقل الحصص إلا برضا كافة الشركاء

### 8.3.1 Formal and Procedural requirements<sup>(1)</sup>

The Unlimited Partnership is evidenced in writing (contract). The partnership's statute is written either in the form of a notarized deed (Notary Public)<sup>(2)</sup> or by a simple form (i.e. privately signed).

The Unlimited Partnership should be registered in the Commercial Register with the court of first instance with the jurisdiction of which the partnership operates within one month from the set of the partnership. Any amendment to the partnership agreement must be published as well. An unlimited partnership is drafted as an official or ordinary document and is not invoked towards third parties unless written. The partnership's contract must contain all information that is of interest to third parties, in particular:

- The name, nationality and the domicile of each of the partners;
- The name of the Unlimited Partnership;
- The object of the Unlimited Partnership;
- The legal form of the partnership (Unlimited Partnership);<sup>(3)</sup>
- The address of the head office and the branches, if any;
- The domicile;
- The Capital;
- The contributions made by each of the partners;
- The date of formation of the Unlimited Partnership and its duration;
- Any alteration or amendment of the contract should be registered in the Commercial Register, otherwise it will have no effect towards third parties.<sup>(4)</sup>

Failing to comply with these requirements leads to the annulment of the Unlimited Partnership, and the partners will be held liable towards third parties for any damage caused.

(1) اجراءات شكلية واجرائية

(2) سند رسمي موقع من قبل الكاتب العدل

(3) شكل الشركة

(4) اي تغيير او تعديل على النظام الاساسي للشركة لا يسري على الغير الا من تاريخ تسجيله في السجل التجاري

### 8.3.2 Features of the Unlimited Partnership/ Substantive conditions<sup>(1)</sup>

Many important conditions are peculiar to the Unlimited Partnership such as the name, status of the partners, partners' liabilities, transfer of parts, and management.

#### *a. Name of the Unlimited Partnership*

The Unlimited Partnership cooperates under a trade name that made of the partners' names respectively, and if some names are not mentioned then it will be followed with "and associates". Therefore, the Unlimited Partnership carries on business under a collective name which consists of:

- The name of all the partners composing the Unlimited Partnership; or
- The name of one or more partners, followed by "& Co".

The name should not be misleading thus it should consist exclusively of the partners composing the Unlimited Partnership. Any change among the partners should be revealed in the name of the Unlimited Partnership. Any third person who allows his/her name to appear in the collective name is liable for the debts and obligations of the Unlimited Partnership towards third parties.

#### *b. Status of the Partners*

The partners in the Unlimited Partnership are considered to be merchants by law and have the legal capacity to perform business. This implies that the partners have the following attributes:

- Are considered merchants;
- Have their names included in the title;
- Should not be minors or legally incapable;
- Should take part in management;
- Are liable for all the debts of the partnership with unlimited liability; this explains why their personality is taken into consideration.

As a result, the bankruptcy of the partnership leads to the bankruptcy of the partners.

---

(1) شروط في الاساس

### *c. Partners' Liability*

Partners in the Unlimited Partnership are personally liable for the partnership's debts. This liability is unlimited. This means that:

- Every partner in the Unlimited Partnership is jointly and severally liable for all the debts of the partnership with unlimited liability.
- Such liability is enforced against the Unlimited Partnership's assets, and if these assets are insufficient, then the liability is enforced on the private property of every partner.
- Partners are only liable for the Partnership's obligations for the period in which they were partners: Therefore:
  - The incoming partner is liable for the obligations incurred after he/she joined the partnership;
  - The outgoing partner is responsible for the obligations incurred while he/she was a partner.
  - The withdrawing partner is not liable for the debts after his/her withdrawal.
  - The manager who is not a partner does not incur any such liability unless he/she exceeds the authority given to him/her.
- Creditors of the Unlimited Partnership have two rights:
  - They may seek satisfaction for their claim from the partnership's assets.
  - They may seek satisfaction from the private property of the partners.

Partners who settle partnership's debts may recover their payment from the partnerships assets. They may also claim from other partners the amount of debt they are responsible for.

### *d. Transfer of Parts*

Partners' in Unlimited Partnership cannot transfer their parts to a third party without prior consent of all the partners, unless the Partnership's contract allows for such transfers.<sup>(1)</sup> This implies:

---

(1) This is unlike Joint Stock Companies, in which shares can be freely transferred.

- Any transfer for the parts requires the consent of all the partners<sup>(1)</sup>;
- Any transfer that is done without the consent of all partners is ineffective towards the partnership and third parties.
- The transfer requires the fulfilment of registration procedures.

#### *e. Management*

All the partners are legally responsible for the operations of the partnership. Managers can be appointed or nominated from within or outside the partnership, with the approval of all the partners.

Managers, whether nominated or appointed, cannot conclude with the partnership any deal in which he/she may have a direct or indirect interest, unless he/she is expressly authorized by the partners to do so. Managers cannot manage a similar project unless they obtain a special authorization from all other partners, renewable on yearly basis.

## 8.4 WINDING UP<sup>(2)</sup>

Winding up is the process by which the Unlimited Partnership's existence is brought to an end. This process passes through two stages:

### 7.4.1 Dissolution<sup>(3)</sup>

### 7.4.2 Liquidation<sup>(4)</sup>

#### 8.4.1 Dissolution

##### *a. Causes of Dissolution Common to all Partnerships and Corporations*

The partnership is ended by the following reasons:

- Expiry date of the partnership as stated in the contract;<sup>(5)</sup>
- Partners agreeing to end the partnership.

(1) أي انتقال للحصص يتطلب موافقة جميع الشركاء

(2) إنهاء الشركة

(3) الحل

(4) التصفية

(5) انتهاء المدة المحددة

- Termination or accomplishment of the project (i.e. the purpose for which the partnership was made);<sup>(1)</sup>
- Disappearance of the object of the enterprise (impossibility to continue);
- Loss of Company's capital;
- A court order.<sup>(2)</sup>

***b. Causes of Dissolution only applicable to Unlimited Partnerships***

Unlike other partnerships and companies, an Unlimited Partnership can be dissolved in one of the following ways:

- a. The decision of one of the partners to withdraw from the partnership, if it has been set up for an un-definite period of time. Such withdrawal must be completed at least three months prior to the end of the financial year of the partnership. In the event that the duration of the company is definite, a partner may not withdraw before the end of the duration as determined in the contract.<sup>(3)</sup>
- b. The incapability of one or more partners; such as the existence of a mental incapability or court order declaring the person as being unable to manage his/her affairs and doing business.
- c. The bankruptcy of one or more partners by virtue of a legal decision; this leads to the dissolution of the partnership but does not necessary entail its bankruptcy.
- d. The disappearance of a partner for a minimum period of five years if declared by a court. Such absence is equivalent to presumption of death.
- e. The Death of any of the partner with no spouse or descendants to whom rights may be transferred, the partnership may continue with the living partners (there should be at least two surviving partners). In case of the death of a partner with a spouse or a descendant, the partnership continues with one of these and becomes a limited partnership where the spouse and the descendant of the dead partner are sleeping partners. In case the partnership consists of two persons and one of them died with no spouses or descendants, it will be legally dissolved.

(1) انتهاء او تنفيذ موضوع الشركة

(2) قرار او حكم المحكمة

(3) الانسحاب الارادي من الشركة غير محددة المدة

Any change in persons concerning the partnership should be registered in the Commercial Register within one month of dissolution.

### Point Example

Three partners agreed to form an unlimited partnership for the purchase and sale of tropical drinks, with a capital of 100 Million LBP. The partnership consists of three partners: Mona, who owns 60%, Maya, who owns 10%, and Malek, who owns 30% of the parts. The partnership was duly registered in the Commercial Register, and commenced business on March 01, 2010.

After two years of doing business, Malek died leaving only one son, Hani, who is a civil engineer. Hani stated that he does not want to take part in the management of the partnership or carry responsibility for its activities, due to his work commitments. A few months later, Mona got married and has mentioned that she might soon transfer her parts to her husband.

Due to intense market competition, profits declined and the partnership fell under heavy debts of about 150 Million LBP. One of the partnership's creditors, Bank Audi, and other creditors are also threatening to take legal action for the value of their debts.

#### Questions

1. Can the partnership continue after Malek's death? How? Verify your answer.
2. Against whom can Bank Audi and other creditors claim for the value of their debts? Explain.
3. Can Mona transfer her parts to her husband? How?

### 8.4.2 Liquidation

Liquidation follows dissolution; it includes all the operations needed to wind up. Liquidation includes the following:

- Completing all the current transactions;
- Collecting all the assets. An unlimited partnership is drafted as an official or ordinary document and is not invoked towards third parties unless written;
- Satisfying creditors' claims;

- Converting the goods to money to be distributed among the partners;
- Redistributing the assets among the partners based on their contribution in the partnership.

The legal personality of the partnership remains for winding up the affairs. If the statute of the Unlimited Partnership does not appoint a liquidator, the court in which the jurisdiction the partnership falls appoints one or more liquidators.

The liquidator shall represent the manager, complete all publishing requirements, and represents the Unlimited Partnership for winding up. The partnership will keep its legal entity and trade name in the “liquidation process”. The end of the liquidation of the partnership means the end of the legal entity.

## Table of Concepts and Terminologies

Key Terms	Arabic Translation
Amendment	تعديل
Collective name	الاسم الجماعي
Court order	قرار المحكمة
Dissolution	الحل
Expiry date	انتهاء المدة
Incapability	عدم الاهلية
Individually liable	مسؤولون شخصيا بالتكافل والتضامن
Lawful commerce	تجارة مشروعة
Liquidation	التصفية
Management	الادارة
Notarized Contract	عقد رسمي ( موقع من الكاتب العدل)
Profit	الربح
Termination	الانتهاء
Transactions	المعاملات
Transfer of parts	انتقال الحصص
Winding up	الانتهاء
Withdrawal	الانسحاب

## CHAPTER NINE

# **LIMITED PARTNERSHIP (Partnership in Commendam) <sup>(1)</sup>**

---

(1) شركة التوصية البسيطة

## CHAPTER NINE

# LIMITED PARTNERSHIP (Partnership in Commendam) <sup>(1)</sup>

The Limited Partnership is a form of partnership that has two classes of partners (i.e. the active partner and the sleeping partner).

### CHAPTER NINE OUTLINE

#### 9.1 DEFINITION OF THE LIMITED PARTNERSHIP

##### 9.1.1 Types of Partners

#### 9.2 FORMATION of the Limited Partnership

##### 9.2.1 Features of the Substantive Conditions

##### 9.2.2 Formal Procedures of the Limited partnership

#### 9.4 DISSOLUTION

#### 9.5 COMPARISON BETWEEN THE ACTIVE PARTNER AND THE SLEEPING PARTNER

(1) شركة التوصية البسيطة

## 9.1 DEFINITION OF THE LIMITED PARTNERSHIP

The Limited Partnership is an association of persons that has similar characteristics to the Unlimited Partnership but is formed of two categories of partners: The active partners (the general partners)<sup>(1)</sup> who have the management control and have unlimited liabilities for the debts of the partnership, and the sleeping partners (the limited partners)<sup>(2)</sup> who are only liable to the extent of their parts, and do not acquire the status of the merchant.

### 9.1.1 Types of Partners

#### *a. The Active Partners (the general)*

The active partners or general partners have the same status as the partners in the Unlimited Partnership and thus are characterized by the following:

- Every active partner is considered a merchant;
- Only the active partners have the right to manage the partnership;
- Every active partner is individually liable (i.e. jointly and severally) for all the debts and obligations of the partnership with unlimited liability.

#### *b. The Sleeping Partners (the limited)*

- The sleeping partners, on the other hand, are characterized by the following:
- The sleeping partners provide funds for the business but are not entitled to take part in management.

The sleeping partners are not liable for the debts of the partnership beyond their contribution which may be in cash or kind.

## 9.2 FORMATION

### 9.2.1 Features of the Substantive Conditions

#### *a. Name of the Limited Partnership*

---

(1) الشريك المفوض

(2) الشريك الموصي

The limited partnership exists under a trade name consisting only of all or part of the names of the active partners. This implies:

- Only the active partners' names must appear in the company's title (i.e. name followed by "& Co");
- The sleeping partner is not allowed to have his/her name appear in the title; otherwise he/she will be liable for the debts and losses of the partnership with unlimited liability.
- The name should not include the name of the sleeping partner for two reasons:
- Since the sleeping partner has limited liability, he/she does not interfere in management which lies at the responsibility of the general partner.
- Protection of third parties who believe that only general partners whose names appear in the title of the partnership, are liable for the debts with unlimited liability.

#### ***b. Status of the Partners***

- Only an active partner is considered a merchant.
- A sleeping partner does not have the status of a merchant. Persons who are not legally allowed to carry on business activities can be sleeping partners.
- If the partnership goes into liquidation, then the active partner will lose the status of being a merchant.
- The active partner can be in cash, kind or service, while the sleeping partner cannot contribute except in cash or kind. Contribution in service or skills for the sleeping partner is not allowed.
- The bankruptcy of the Limited Partnership leads to the bankruptcy of the active, where the sleeping is not affected.

#### ***c. Partners' Liability***

The active or the general partner is responsible in the same extent as the partner in the Unlimited Partnership. The sleeping partner cannot participate in management directly or indirectly. When he/she participate, the limited partner becomes liable towards third parties as the general partner.

#### *d. Management*

The management belongs to the active partners only in the Limited Partnership. The sleeping partners are not allowed to interfere in the management of the partnership or enter into transactions with third parties.

When a limited partner takes part in management, he/she becomes liable for the obligations and debts of the Limited Partnership as if he/she was an active partner. In this case, the extent of the sleeping partner's liability depends on the level of his/her involvement in the partnership's management. Such liability will be limited to the outcome of the activities carried out or for the entire debts of the partnership.

#### *Sleeping partner's activities*

The sleeping partner is sometimes entitled to exercise some control over the management of the business. The following acts are not considered as acts of interference, and can therefore be practiced by the sleeping partner:

- Supervision over the manager's operations.
- Giving advice and direction to the manager on certain matters.
- Authorizing the manager to carry on business transactions in excess of his/her powers outside the scope of his/her duties.
- Inspection of the partnership's books and accounts.

### **9.2.2 Formal Procedures of the Limited Partnership**

The formation of the Limited Partnership is subjected to the same rules as the Unlimited Partnership: a written statute signed by all the partners defining dividends for the active and the sleeping partners. Thus, the formation, publication and liquidation are subjected to the same rules.

## **9.3 Dissolution**

Ending a Limited Partnership is subject to the same rules applicable to an Unlimited Partnership. The death of the active partner or his/her bankruptcy or incapacity, leads to the liquidation of the partnership. In case of more than one active partner, the death or the incapacity does not lead to the dissolution of the partnership

## 9.4 COMPARISON BETWEEN THE ACTIVE AND THE SLEEPING PARTNER

	Active (General) Partner	Sleeping (Limited) Partner
<b>The Status of partners</b>	Trader or merchant; the minor and incapable cannot be a partner even with the permission from his/her parent or guardian.	Is not a merchant; the minor can be a merchant with the permission from his/her parent or guardian.
<b>Liability</b>	Individually liable for all the debts of the Limited Partnership with unlimited liability.	Only liable for the debts to the extent of his/her parts in the partnership's capital.
<b>Management</b>	Responsible for the management.	Does not take part in management. May only inspect books and accounts and may advise the general partners on certain matters.
<b>Transfer of Parts</b>	Parts are not transferrable.	Parts are not transferrable
<b>Qualification of Merchant</b>	Only the person who is qualified to be a merchant can be a partner.	Anyone can be a partner.
<b>Number of Partners</b>	Minimum of one partner.	Minimum of one partner.
<b>Dissolution</b>	In case of death or bankruptcy, the partnership will dissolve.	In case of death or bankruptcy, the partnership will not dissolve.
<b>Title</b>	His/her name appears in partnership's title.	His/her name does not appear in partnership's title.
<b>Contribution</b>	Contribution could be in cash, kind, or service.	Contribution could be in cash or kind; service or skills are not allowed.

Table 18: Comparison between the Active and the Sleeping Partner

(تصريح وفقا للمادة 62 من ق.ت.)

## جانب محكمة بداية \_\_\_\_\_ الموقرة

(قسم السجل التجاري)

حضرة الرئيس،

طالباً التسجيل: \_\_\_\_\_

يلتمس المستدعيان ايداع صك تأسيس وتسجيل الشركة المعروفة باسم:

”شركة \_\_\_\_\_ للتجارة العامة \_\_\_\_\_ وشريكته“

في خلال الشهر الذي يلي تأسيسها وفقاً للمادة 62 المعطوفة على المادتين 84 و 94 من قانون التجارة، وهذه خلاصة لصك التأسيس مكتوبة على نسختين:

1 - اسم وشهرة كل من الشركاء وجنسيته وتاريخ ولادته ومحل اقامته:

\_\_\_\_\_ اللبناني مواليد \_\_\_\_\_ سجل \_\_\_\_\_/\_\_\_\_\_

/المقيم في \_\_\_\_\_ (شريك مفوض)

\_\_\_\_\_ اللبنانية مواليد \_\_\_\_\_ والدتها \_\_\_\_\_

/والمقيمة في \_\_\_\_\_ (شريكة موصية)

2 - إسم الشركة التجاري وعنوانها:

”شركة \_\_\_\_\_ وشريكته“

3 - موضوع الشركة:

تتعاطى الشركة التمثيل التجاري والتجارة العامة على انواعها ومن ضمنها على سبيل المثال لا الحصر تجارة المفروشات على اختلاف انواعها وتوابعها وكل ما له علاقة بها.

4 - شكل الشركة:

شركة توصية بسيطة

- 5 - المركز الرئيسي والأماكن الموجودة فيها للشركة فروع أو وكالات سواء كانت في لبنان أو في الخارج:  
 \_\_\_\_\_ وتحديدًا في العقار رقم ----- / منطقة \_\_\_\_\_ العقارية
- 6 - أسماء الشركاء أو الأشخاص المفوضين بالتوقيع عن الشركة:  
 - الشريك المفوض ----- منفرداً.
- 7 - رأسمال الشركة والقيمة المنسوبة الى مقدمات الشركة:  
 / 5,000,000 ل.ل خمسة ملايين ليرة لبنانية
- 8 - تاريخ التأسيس: 2016/7/25
- 9 - تاريخ الايداع: 2016/7/25
- 10 - مدة الشركة: خمسون سنة.

واقبلوا الاحترام

شركة ----- وشريكته

سجل تجاري رقم / / عام

## إذاعة تجاريه

حضرات السادة المحترمين

نتشرف بإعلامكم أننا قد أسسنا في منطقة \_\_\_\_\_ شركة تجارية تتعاطى التمثيل التجاري والتجارة العامة على انواعها ومن ضمنها على سبيل المثال لا الحصر تجارة المفروشات على اختلاف انواعها وتوابعها وكل ما له علاقة بها. تحت تسمية تجاريه :

”شركة ----- وشريكته“

مع العلم بأن هذه الشركة قد سجلت أصولاً في السجل التجاري في صيدا بتاريخ / / تحت رقم / عام .

وإن المفوض بالتوقيع عن هذه الشركة مناط بالشريك المفوض: ----- منفرداً

فالرجاء أن تمنحوها ثقتكم الغالية .

المستدعي

ان السيد ----- يوقع هكذا

## النظام التأسيسي

### لشركة للتجارة العامة ----- وشريكته

فيما بين الموقعين أدناه:

- الفريق الأول: ----- اللبناني مواليد ----- سجل ----- /

/المقيم في -----  
(شريك مفوض)

- الفريق الثاني: ----- اللبنانية مواليد ----- والدتها

/والمقيمة في ----- (شريكة موصية)

- المقدمة:

لما كان الفريقين يرغبان في تأسيس شركة لتكون الاطار القانوني لنشاط تجاري مشترك يجمعهما، ولما كان التوافق قد تم بين الفريقين على أن تكون هذه الشركة من نوع التوصية البسيطة، لذلك، ووفقاً لأحكام القوانين المرعية الاجراء لا سيما قانون الموجبات والعقود وقانون التجارة، فقد تم التوافق على أن يكون هذا النظام بمثابة دستور للشركة المنوي تأسيسها منظماً لإطار العمل فيها على الشكل التالي:

- المادة الأولى:

- تعتبر المقدمة الواردة أعلاه جزء لا يتجزأ من هذا العقد.

- المادة الثانية: اسم الشركة:

- توافق الفرقاء على تسمية الشركة باسم:

”شركة ----- وشريكته“

– المادة الثالثة: مركز الشركة:

– توافق الفريقين على أن يكون مركز الشركة في \_\_\_\_\_ وتحديدًا في العقار رقم ----- / منطقة \_\_\_\_\_ العقارية، كما ويحق للشركة فتح فروع أخرى في كافة المناطق اللبنانية.

– المادة الرابعة: موضوع الشركة:

– تتعاطى الشركة التمثيل التجاري والتجارة العامة على انواعها ومن ضمنها على سبيل المثال لا الحصر تجارة المفروشات على اختلاف انواعها وتوابعها وكل ما له علاقة بها.

– المادة الخامسة: مدة الشركة:

– اتفق الفريقان على تحديد مدة عمل الشركة بخمسين سنة اعتباراً من تاريخ تسجيلها في السجل التجاري، إلا أنه يمكن حلها قبل أوانها بقرار يتخذه أحد الشركاء.

– المادة السادسة: رأس مال الشركة:

– حدد رأس مال الشركة من أجل البدء بالعمل بخمسة ملايين ليرة لبنانية / 5,000,000 / ل.ل. خمسة ملايين ليرة وقد ساهم كل فريق في رأس المال كما يلي:

– الفريق الأول 50 %

– الفريق الثاني 50 %

وقد جرى الاكتتاب بالحصص وتوزيعها على الشكل الآتي:

يوزع رأس المال البالغ خمسة ملايين ليرة لبنانية على الف حصة قيمة كل حصة / 5000 / ل.ل. خمسة آلاف ليرة لبنانية، يصيب الفريق الاول / 500 / حصة خمسمائة حصة والفريق الثاني / 500 / حصة خمسمائة.

– المادة السابعة: ادارة الشركة:

– تناط ادارة الشركة بالفريق الأول منفرداً بوصفه الشريك المفوض وذلك لمدة غير محددة، ويعطى في هذا السبيل كافة الصلاحيات المطلقة للقيام بإدارة الشركة وتمثيلها لدى كافة المراجع وإجراء كافة العقود والالتزامات والمعاملات المطلوبة للشركة. كما وله حق سحب وإيداع الأموال بالغاً ما بلغت وفتح الحسابات باسم الشركة لدى المصارف في لبنان وفي خارجه، كما له حق القبض والصرف والصلح والإسقاط والإبراء والتنازل والبراء والبيع لمصلحة الشركة. كما له الحق المطلق في توكيل وتقويض من يشاء بهذه الصلاحيات بشكل كلي أو جزئي، كما له الحق في تعيين الموظفين وصرفهم وتحديد أجورهم وعلاواتهم وتعويضاتهم.

– المادة الثامنة: الانسحاب والتنازل:

لا يحق لأي من الشريكين الانسحاب من الشركة قبل نهاية مدتها أو أي مدة محددة ولا أن يبيع حصته فيها أو أن يتنازل عنها أو عن جزء منها إلى الغير حتى إلى أقرب المقربين إليه إلا بموافقة الشريك الآخر الخطية والصريحة.

وفي حال وفاة أحد الشركاء أو فقدان أهليته يكون للشريك الآخر حق الخيار بين اعتبار الشركة منحلة من تلقاء نفسها أو اعتبارها مستمرة بينه وبين ورثة الشريك المتوفي وممثليه القانونيين وذلك بعد أن تتحول حقوقهم وصفاتهم إلى شركاء موصيين.

– المادة التاسعة: في الأرباح والخسائر:

تتكون الأرباح بعد حساب الرصيد وحسم المصاريف العمومية والرسوم والأعباء والنفقات المختلفة والاستهلاكات واحتياطي المخاطر والطوارئ والتكاليف الأخرى والموجبات المترتبة على الشركة وما تقرر حسمه على سبيل الاستهلاك.

وفي حال وجود خسارة في ميزانية إحدى السنين ترحل للسنة التي تليها ولا توزع الأرباح إلا بعد تغطية السنة السابقة.

– المادة العاشرة: الصندوق:

يتولى الفريق الأول صندوق الشركة من قبض وصرف يومي ويحق له أيداع جميع المبالغ المقبوضة في أحد المصارف التي تتعامل الشركة معها ويحق له سحب المبالغ بموجب شيكات تحمل اسم الشركة وموقعة من الفريق الأول منفرداً.

– المادة الحادية عشر: الحسابات:

تمسك دفاتر تجارية منظمة لحسابات الشركة يرصد فيها رأس المال كما تدون جميع المصاريف والإيرادات وغيرها حسب الأصول.

– المادة الثانية عشر: السنة المالية:

تبدأ السنة المالية للشركة في الأول من كانون الثاني من كل عام وتنتهي في 31 كانون أول من العام نفسه وفي نهاية كل سنة مالية تجرد أصول الشركة وخصومها وحساب الأرباح والخسائر وتنظم ميزانية عمومية يحتج بها على الشريكين بمجرد توقيعهما أو بعد مضي خمسة عشر يوماً من تاريخ إرسال صورة عنها لكل منهما بموجب كتاب مضمون مع إشعار بالوصول.

ويكون من حق كل شريك أن يطلع في أي وقت يشاء على دفاتر الشركة ورصيدها وطريقة سير أعمالها.

– المادة الثالثة عشر: حل الشركة وتصفيتها:

يمكن ان تحل الشركة قبل نهاية مدتها بناء لطلب احد الشركاء.

وعند حل الشركة اياً كان سبب هذا الحل تبدأ التصفية في اليوم الذي كفت فيه الشركة عن العمل وتتم التصفية بواسطة الشريكين، وبحال عدم موافقتهم على القيام بأنفسهما بأعمال التصفية يسمي كل شريك مصف يقوم مقامه في اعمال التصفية وإذا اختلفا على اختيار المصفين تعود صلاحية تعيينهم لقاضي الامور المستعجلة في صيدا ويكون للمصفي مطلق الصلاحيات والسلطات التي يمكن لمصنف ان يحوزها وفقاً لأحكام قانون التجارة اللبناني.

– المادة الرابعة عشر: سريان الشراكة

يعتبر عقد الشراكة نافذاً منذ تاريخ التوقيع وإيداع صك التأسيس قلم المحكمة التجارية وتسجيله وفقاً للأصول.

– المادة الخامسة عشر:

كل نزاع ينشأ بين الشركاء حول تفسير او تنفيذ هذا العقد يكون الفصل فيه للمحاكم المختصة في صيدا.

– المادة السادسة عشر:

حرر هذا العقد على نسخة اصلية موقعة من الفريقين وتعهدا بتسجيلها لدى امانة السجل التجاري في \_\_\_\_\_، وببند كل فريق نسخة ليعمل بها عند الاقتضاء.

في 2017/7/25 \_\_\_\_\_

الفريق الثاني

الفريق الأول

## CHAPTER TEN

# THE JOINT STOCK COMPANY [S.A.L.] <sup>(1)</sup>

---

(1) الشركة المساهمة اللبنانية / المغفلة

## CHAPTER TEN

# THE JOINT STOCK COMPANY (S.A.L)<sup>(1)</sup>

The letters “S.A.L” following the trade name of a Joint Stock Company are the initials symbolizing in French “Societe Anonyme Libanaise” and indicate in presence of an anonymous company.

---

(1) الشركة المساهمة اللبنانية / المغفلة

## CHAPTER TEN OUTLINE

### 10.1 Definition

### 10.2 general Characteristics

### 10.3 formation of the Joint Stock Company

#### 10.3.1 The Founders

#### 10.3.2 The Statute (Charter of the Company)

#### 10.3.3 Registration of the Statute before a Notary Public

#### 10.3.4 Publication in News Paper

#### 10.3.5 Subscription to the Joint Stock Company Capital

### 10.4 CAPITAL

### 10.5 SHARES

#### 10.5.1 Rights of Shareholders

#### 10.5.2 Kinds of Shares

### 10.6 SHAREHOLDERS MEETINGS

#### 10.6.1 Provisions applied to all Meetings

#### 10.6.2 The Constituent Meeting

#### 10.6.3 Ordinary Meeting

#### 10.6.4 Special- Extra Ordinary Meeting

### 10.7 BOARD OF DIRECTORS

### 10.8 PUBLICATION

#### 10.8.1 Publication Upon Formation

#### 10.8.2 Permanent Publication

#### 10.8.3 Annual Publication

### 10.9 RESERVE FUNDS AND DISTRIBUTION OF DIVIDENDS

#### 10.9.1 Reserve Funds

### 10.10 DISSOLUTION

## 10.1 DEFINITION

A Joint Stock Company is an association of funds contributed by three or more persons owning shares of stock in the company. The company's capital is made up of the monetary and in kind offering of the partners. The shareholders contribute for the purpose of making profit. The capital is contributed in cash or kind only; contribution in service is not accepted.

## 10.2 GENERAL CHARACTERISTICS

Contrary to the partnership, a Joint Stock Company has capital and is considered as a prototype for the capital companies. The capital is divided into shares and the shareholders own one or more shares and are free to transfer their ownership interest at any time. In addition, the limit of the shareholder's liability is limited to the value of the shares only.

The Joint Stock Company is characterized by the following characteristics:

- It is an Association of Funds;
- It is considered as the prototype<sup>(1)</sup> of companies of capital;
- Its Commercial Name is always followed by the initials "S.A.L";
- The minimum number of members composing it is three;
- Members are called shareholders, and are not necessarily known to each other;
- It has a legal entity separate from its shareholders;
- Shares are transferrable;
- Shareholder's liability is limited to the value of shares they hold;
- Creditors cannot claim against any shareholder for payment of a debts exceeding the value of his/her shares;
- It is of commercial nature even if it carries out civil activities; thus, it should be registered in the Commercial Register and keep Commercial Books;
- It is governed by commercial laws and usages;
- Shareholders are not considered as merchants.

---

(1) نموذج

### 10.3 FORMATION OF JOINT STOCK COMPANY

Preliminary formalities<sup>(1)</sup> are needed for the formation of Joint Stock Company. These formalities are summarized as follows:

- The Founders
- The Statute<sup>(2)</sup>
- Registration of the Statute before the Notary Public
- Publication in Newspapers
- Subscription<sup>(3)</sup>

#### 10.3.1 The Founders

The number of founders in the Joint Stock Company shall be less than three. The individual who is bankrupt or has been convicted in Lebanon or abroad since less than ten years for having committed or tried to commit a felony, or fraud, or to write cheques with insufficient funds, may not contribute to a Joint Stock Company<sup>(4)</sup>.

#### 10.3.2 Statute (Charter of the Company/)

The first act to be done by the founders is to draft a company's statute. The law does not specify specific clauses to be included in the statute. However, they must include items that are contained within the statute stipulated in the Commercial Law and involving the shareholder. Such items are considered as the charter of the company and are of interests for the subscribers especially: the company's name, purpose, object, duration, head office, capital, number of shares, value, and type of shares, profit distribution and management, members of the board and their duties.

(1) اجراءات أولية

(2) النظام الأساسي

(3) الاكتتاب

(4) As stipulated in Article 79 in the Code of Commerce; i.e. declared insolvent and has not been rehabilitated, convicted within last ten years for swindling of funds or securities, unfunded check, etc....)

### 10.3.3 Registration of the Statute before a Notary Public

The founders of a Joint Stock Company should directly start the formation process by depositing and registering the statute before the Notary Public.<sup>(1)</sup>

### 10.3.4 Publication in Newspaper

The founders decide to notify the public of the possibility of subscription to the company's capital; they must first publish such notification in the official gazette, local daily general circulation newspaper, and economic newspaper.

Noting that this announcement should include the following:

- The signatures and the addresses of the founders;
- The name of the company and its head office, object, duration, and capital;
- The number and value of the shares;
- The initial down payment of each share;
- The mode of distribution of dividends (i.e. the methods and conditions);
- The number of directors, their contributions in kind, and their allocated remunerations;
- Profits distribution;
- The directors' powers.

### 10.3.5 Subscriptions to Joint Stock Company Capital

Subscription to a Joint Stock Company is effected by a written undertaking <sup>(2)</sup>by which a person called the subscriber engages himself/herself to buy a certain number of shares forming the capital of the company and to pay their value as required by the provisions of the statute.

- At least a quarter of the value of each share is paid upon subscription.

---

(1) The Registration of a Joint Stock Company was subjected to important amendment in 1977; before 1977, the Code of Commerce stated that the Joint Stock Company was formed by a governmental authorization issued by presidential decree (i.e. Article 80 of the Code of Commerce). No more need for governmental authorization.

(2) تعهد خطي

- The fundamental duty of the founders is to find the necessary number of subscribers to complete the subscription to the whole capital of the company; this means that if the company is not formed, then the founders must return to each subscriber the amount advanced or paid by him/her.

### **10.3.6 Head Office of a Joint Stock Company**

The Joint Stock Companies must have a head office on the Lebanese territories.

### **10.3.7 Nationality**

A Joint Stock Company formed and duly registered in Lebanon is considered –by law- of a Lebanese nationality even if the majority of the shareholders are of foreign nationalities.

However, if the object of Joint Stock Company relates to “management concession of public service” or a “real estate enterprise”, the law requires special proportion of the capital to be owned by Lebanese shareholders.

## **10.4 CAPITAL**

- The minimum capital of Joint Stock Company is thirty million Lebanese pounds (30,000,000 LBP);
- The capital is divided into equal shares;
- The minimum value of the share is one thousand Lebanese pounds (1000 LBP). The balance of the value of each share shall be paid on dates as fixed by the Board of Directors. There is a difference between the “nominal value” and the “market value” of a share. For example, if the nominal value is 10,000 LBP then, the market value may be less or more according to the competition in the stock market;
- The company’s capital should be subscribed in full; at least one fourth (quarter) of the nominal value of each share shall be paid upon subscription. The Board of Directors shall state the date to pay the balance of the value of each share;
- Down payment can only take place when the value of the shares is paid in cash. If the contribution is “in kind”, then the full value of the share must be paid;
- The above provisions for minimum capital and down payments do not apply if the object of the company is insurance or banking. These are governed by special provisions;

- Money paid by subscribers shall be deposited in an approved bank in the name of the company under a special account bearing the name of the company, followed by the term “under formation/ establishment”<sup>(1)</sup>. These amounts must be saved in the bank until the final formation of the company (i.e. after registering the company in the Commercial Register).
- Contributions “in kind” are subjected to evaluation by an expert duly appointed by the court.
- After payment of the original capital in full, the shareholders may, at a special (extraordinary meeting), increase the capital of the company by issuing new shares, each of the same nominal value as the old share. If the new shares are issued for a value exceeding such minimal value, then the difference shall go to the company’s reserve.
- The shareholders may also decide at a special meeting, to decrease the capital as long as this resolution does not prejudice third parties’ rights.
- The decision must be published in the Official Gazette to enable third parties to submit objection within three months starting from the date of publication.

## 10.5 SHARES

The share is a movable corporeal property representing a portion of the company’s capital and can be circulated. The capital of the Joint Stock Company is divided into equal value shares. This signifies equal rights offered by share, equal liability for the company’s debts, and vote equality in meetings.

### 10.5.1 Rights of Shareholders

The ownership of shares entitles the shareholders to the following rights:

- The right to be a member of the company;
- The right to participate in the management of the company;
- The right to vote in a general meeting; each share is entitled to one vote;
- The priority in subscription when capital is increased;

---

(1) قيد التأسيس

- The right to receive dividends;
- The right to transfer and negotiate the shares;
  - The shareholder may transfer his/her own share to any other person;
  - The transfer of the nominal share shall be entered in the shareholder's register;
  - The deed of transfer shall be signed by the transferor and the transferee;
  - Shares that are not fully paid shall not be negotiable or transferred unless all calls on capital by the Board of Directors have been paid;
  - Shares representing contributions "in kind" shall not be transferrable or negotiable before a period of two years from the date of approval of the company's second financial year.

### 10.5.2 Kinds of shares

The Code of Commerce recognized two kinds of shares:

- A category based on the nature of contributions by shareholders and representing in kind or monetary shares offered by the shareholders.
- A category based on the type of shares: nominal, to the order of, and to the bearer.
  - Nominal shares which are registered in the company's shareholder's book under the name of shareholders where the name of the shareholder will be listed on the share itself;
  - Shares made to the order of a named shareholder: are registered in the company's shareholder's book;
  - Shares to the bearer: They do not include the name of the shareholder, but they have a serial number for the bearer of the share. And their owner is not necessarily known to the company.

*Shares Remain Nominal in the following cases:*

- If their nominal value has not been paid in full.
- If they are shares owned by the board members and deposited with the company to guarantee the management.

- If they represent in kind contribution.
- If they are shares that must be owned by Lebanese by virtue of the law or the company's articles of association.

### ***Preferential Shares***

The shareholders in the company enjoy the same rights and share the same benefits. In all cases where the article of association of the company does not list otherwise, preferential shares can be created by virtue of a decision of an extraordinary general meeting. Such shares give their owners preferential rights over material benefits only. They may be created at the formation of the company or during its life.

## **10.6 SHAREHOLDER'S MEETINGS**

### **10.6.1 Provisions Applied to All Meetings**

- A meeting which has been duly constituted shall be deemed to represent all shareholders whether present or not.
- Resolutions adopted in the presence of a quorum, by the majority required for such meetings, shall be binding on all shareholders including those absent.
- An attendance sheet shall be made, and shall include:
  - The names and domiciles of the shareholders present in person;
  - The number of shares each of them holds;
  - The number of votes relating to those shares;
- Shareholders meetings shall be presided by the Chairman of the Board of Directors;
- In each shareholders meeting, the shareholders elect from among the two scrutineers. They also need to elect a secretary for the meeting (i.e. he/she does not need to be a shareholder);
- The shareholders shall not discuss matters which are not on the agenda;
- Every shareholder shall have as many votes as the number of shares he/she holds or represents;

Three main meetings should be held and represent the shareholders whether they are presented or not. These meetings are:

- Constituent Meeting<sup>(1)</sup>
- Ordinary Meeting<sup>(2)</sup>
- Special or Extra ordinary meeting<sup>(3)</sup>

### 10.6.2 The Constituent Meeting

Once the capital is fully subscribed, the founders will have to convene to the constituent meeting. The notice must include the agenda of the meeting, which the founders must send to each shareholder.

#### *a. The Quorum*<sup>(4)</sup>

- The quorum in the first meeting of a Constituent meeting consists of at least **two thirds** of the shares representing the capital stock of the company.
- Unless a higher quorum is provided for in the company's statute, the quorum in the second meeting is **fifty percent** of the capital;
- The quorum is **one third** in the third meeting and the subsequent meetings (i.e. if there are any).

Once the quorum is present, the shareholders elect from among them:

- A chairman to preside over the meeting;
- Two scrutineers<sup>(5)</sup> from among the shareholders to check that the required formalities for the formation of the company have been duly affected. This procedure is usually followed, although it is not provided for by the law.
- A secretary for the meeting. The secretary need not be a shareholder.

(1) الجمعية التأسيسية

(2) الجمعية العادية

(3) الجمعية غير العادية

(4) النصاب

(5) محققين

The presence of the quorum is attested by attendance sheet signed by each shareholder present or represented.

#### *b. The Agenda*

The **agenda (purpose)** of the meeting shall consist mainly of:

- Examination of the acts carried out by the founders for the formation of the company.
- Election of the first directors if they are not appointed by the statute;
- Appointment of the company's auditors;

The minutes of the meeting must be signed by the chairman, the scrutineers and the secretary.

#### *c. Resolutions*

**Resolutions** at constituent meetings are adopted by a majority of two thirds of the shares which are present or represented.

### **10.6.3 Ordinary Meetings**

#### *a. The Quorum*

- The meeting cannot be held unless the holders of **one third** or more of the company's capital is present or represented.
- If the quorum is not attained, the second meeting will be held with **unlimited quorum**, whatever the number of shares is, unless the company's statute provides otherwise.

Ordinary meetings are convened annually, within six months from the end of the financial year.

#### *b. The purpose*

- to approve the company's accounts;
- to distribute dividends (i.e. if there are any);
- to elect new directors in case of vacancy;

- to appoint the company's auditors.

*c. The Resolution*

Resolutions at ordinary meetings are adopted by a simple majority of shares present or represented.

**10.6.4 Special (Extraordinary) Meetings**

*a. Quorum*

- For resolutions involving the modification of the company's object or form the quorum must be at least three quarters of the company's capital.
- Other changes require a quorum of at least **two thirds** of the company's capital.
- If this quorum is not attained at the first meeting, then a quorum of at least **half** of the capital is needed in the second meeting.
- If this quorum is not attained at the second meeting, then **one third** of the capital is accepted.

The above provisions apply unless a higher quorum is required by the company's statute.

*b. Purpose*

Special meetings are convened for the purpose of modifying the statutes.

*c. Resolutions*

**Resolutions** at special meetings should be adopted by a majority of at least two thirds of shares present or represented.

	Constituent Meeting	Ordinary Meeting	Extraordinary Meeting
<b>PURPOSE</b>	<p><b>a.</b> Examining the acts of the founders for the formation of the company.</p> <p><b>b.</b> Electing of the first directors if they are not appointed by the stature;</p> <p><b>c.</b> Appointing the company's auditors.</p>	<p><b>a.</b> Approving the company's accounts;</p> <p><b>b.</b> Distributing dividends;</p> <p><b>c.</b> Electing new directors in case of vacancy;</p> <p><b>d.</b> Appointing the company's auditors.</p>	Modifying the company's statute.
<b>QUORUM</b>	<p><b><u>1<sup>st</sup> Meeting:</u></b> Two thirds of company's capital present or represented.</p> <p><b><u>2<sup>nd</sup> meeting:</u></b> 50% of a company's capital.</p> <p><b><u>Other meetings:</u></b> One third of capital.</p>	<p><b><u>1<sup>st</sup> Meeting:</u></b> One third of a company's capital present or represented.</p> <p><b><u>2<sup>nd</sup> meeting:</u></b> Unlimited quorum.</p>	<p><b><u>1<sup>st</sup> meeting:</u></b> <b>Modifying object:</b> Three quarters of company's capital.</p> <p><b>Other changes:</b> two thirds of company's capital.</p> <p><b><u>2<sup>nd</sup> meeting:</u></b> 50% of company's capital.</p> <p><b><u>Other meetings:</u></b> One third of capital.</p>
<b>RESOLUTION</b>	Two thirds of shares present or represented.	Simple majority of shares present or represented.	At least two thirds of shares present or represented.

Table 19: Meetings in the Joint Stock Company

### Point Example

In 2005, a Joint Stock Company was formed between the founders: Fadi, Samer, Nada, and Tamer, with a capital of 250 million LBP. The nominal value of the share was 500 LBP. The company issued two kinds of shares: registered shares and shares to the order. The contribution of Fadi, Samer, and Nada was in cash. Their total contribution was 100 million LBP. However, Tamer's contribution was in kind. His contribution to the company's capital was evaluated by the founders and was estimated by 50 million LBP.

The founders called the public to subscribe to the company's capital, and a notice was advertised in the Official Gazette and in an economic magazine to that effect. Accordingly, the company's capital was subscribed in full.

In a meeting Fadi and Samer were elected as members of the Board of Directors. Fadi's shares are divided between registered shares and shares to the order, while Samer owns only registered shares. After three weeks, another meeting was held to elect the chair of the company.

In 2010 a meeting was held to change the object of the company.

Last year, and in the event of a loss of the company's capital, the Board of Directors called for a meeting to decrease the capital.

#### Questions

1. Point out the meetings in this case. What is the type of each meeting?
2. Which meetings need publication, why and where?
3. There are several defects in this case. Can you identify and correct these defects?

## 10.7 BOARD OF DIRECTORS (B.O.D)<sup>(1)</sup>

- The Board of Directors can be appointed by the statute, and then its maximum period is five years. Alternatively, if its members can be elected by the Constituent Meeting, then its period is three years;
- The Board of Directors, whether appointed or elected, shall meet to elect the chairman and shall fix its powers;
- Board of Directors shall be composed of not less than three and not more than twelve members as determined in the shareholders annual meeting;

(1) مجلس الإدارة

- Members of the Board of Directors shall be elected at the ordinary meeting among the shareholders owning a minimum number of registered (nominative shares) provided for in the company's statute.
- The above-mentioned shares are deposited in escrow with the company as a security to guarantee that directors manage the company well. These shares are not negotiable. They remain as such, deposited and not negotiated, during the whole period of the office of the directors and until they are discharged of liability. Such discharge happens upon the approval of the balance sheet of the last financial year in which they held office.
- The majority of the members of the Board of Directors shall be of Lebanese Nationality.
- If in between two annual shareholders meetings the number of directors becomes less than half, then the remaining directors shall convene a shareholder's meeting to elect directors to fill the vacant positions.
- Directors shall not take part in management of similar companies, unless they have obtained a special authorization at the shareholders annual meeting; such authorization must be renewed annually.
- The Board of Director may appoint a general manager, on condition that the appointed manager carries out his or her own duties under the supervision of the chairperson of the board, who also carries personal responsibilities for such management.

## 10.8 PUBLICATION

### 10.8.1 Publication upon Formation

The first task of the Board of Directors is to register in the Commercial Register the following information:

- The minutes of the constituent meeting.
- The attendance sheet of the constituent meeting.
- The minutes of the first meeting of the board appointing its chairman and setting his/her powers.
- The company's statute duly authenticated by a Notary Public.

Once the publication is completed, the company shall be considered as duly formed.

### 10.8.2 Permanent Publication

The company shall be subject to permanent publication as follows:

- The company's statute must be affixed on a board in the company's offices.
- Any person is entitled to obtain a certified copy of the company's statutes from the Commercial Register.
- All the company's letterheads and other printed matters should mention the company's name with the initials S.A.L, the capital amount, and the number of the company in the Commercial Register.
- Any modification of the articles of association must be published.

### 10.8.3 Annual Publication

- The accounts and balance sheet of the company shall be published annually. This is done within two months following the approval of the accounts at the annual shareholders meeting.
- The publication shall be done in the Official Gazette, in a daily newspaper, and in an economic magazine.
- The publication must include the names of the members of the Board of Directors and the company's auditors.

## 10.9 RESERVE FUNDS AND DISTRIBUTION OF DIVIDENDS<sup>(1)</sup>

### 10.9.1 Reserve Funds

Could be statutory or special

#### *a. Statutory Reserve Funds<sup>(2)</sup>*

The Board of Directors must set aside ten percent of the net profit of the company to create a statutory fund until it reaches 30% of the capital.

#### *b. Special Reserve Fund*

---

(1) احتياط الاموال وتوزيع الارباح

(2) الاحتياط الالزامي

In addition to the statutory, the Board of Directors may set aside one or more special funds depending on the company's needs.

*c. Distribution of Dividends*

After the deduction of all the expenses and the reserves, there shall be a distribution of the net, profit dividends as determined in the annual shareholder's meeting.

## **10.10 Dissolution**

The Joint Stock Company is dissolved in accordance with the general rules governing corporations:

- By expiry date of its duration as fixed in the statute;
- By the termination of the project or through impossibility to continue;
- By resolution taken by shareholders in a special meeting; at least three quarters of the company's capital and the resolution is adopted by, at least, two thirds of the votes of shareholders present or represented;
- In the event of loss of three quarters of the company's capital, provided the capital was fully paid; in this case the Board of Directors convenes shareholders to a special meeting which will decide the dissolution or decrease of the capital.

## Table of Terminologies and Concepts

Key Term	Arabic Terminology
Agenda	جدول الأعمال
Audit	مدقق الحسابات
Board of Directors	مجلس الإدارة
Capital	رأسمال
Chairperson	رئيس مجلس الإدارة
Constituent Meeting	الجمعية التأسيسية
Deed of sale	سند البيع
Dividends	الأرباح
Founders	المؤسسون
Nominative shares	الأسهم الاسمية
Official Gazette	الجريدة الرسمية
Ordinary Meeting	الجمعية العادية
Preliminary formalities	الإجراءات الأولية
Quorum	النصاب
Reserve Fund	احتياط الأموال
Resolutions	القرارات
Scrutineer	مدقق الإجراءات
Secretary	أمين السر
Shares to the bearer	اسهم لحاملها

Special- extra ordinary meeting	الجمعية غير العادية
Statute	النظام الاساسي
Statutory Reserve Fund	احتياط الاموال الالزامي
Subscribers	المكتتبون
Subscription	الاكتتاب
Under formation or establishment	قيد التأسيس

## CHAPTER ELEVEN

# LIMITED LIABILITY COMPANY S.A.R.L <sup>(1)</sup>

---

(1) Limited Liability Company was introduced for the first time in Lebanon by  
Legislative decree number 35 of August 5, 1967.

## CHAPTER ELEVEN

# LIMITED LIABILITY COMPANY S.A.R.L <sup>(1)</sup>

The Limited Liability Company is a mixture of association of persons and funds that has the same system applied on all its partners.

### CHAPTER ELEVEN OUTLINE

#### 11.1 DEFINITION

#### 11.2 CHARACTERISTICS

##### 11.2.1 Association of Persons

##### 11.2.2 Association of Funds

#### 11.3 FORMATION OF THE LIMITED LIABILITY COMPANY

#### 11.4 PARTNERS' MEETINGS

##### 11.4.1 Ordinary Meeting

##### 11.4.2 Special or Extra Ordinary Meeting

#### 11.5 MANAGEMENT

#### 11.6 TRANSFORMATION

#### 11.7 DISSOLUTION

(1) Limited Liability Company was introduced for the first time in Lebanon by Legislative decree number 35 of August 5, 1967.

## 11.1 DEFINITION

The Limited Liability Company combines the partnerships and Joint Stock Companies. Limited Liability Company is derived from the French name *Societe a Responsibilite Limitee* (S.A.R.L.).

## 11.2 CHARACTERISTICS

It is a mixture of an association of persons and an association of funds or a hybridity of partnerships and corporations.

### 11.2.1 Association of Persons

The Limited Liability Company resembles partnership as it is based on personal considerations. It is characterized by the following:

- The personality of the partners in the Limited Liability Company is taken into consideration; thus, the company is based on the specific character of the partner;
- The directors are called “managers”; the shares are called “parts”;
- The company cannot issue shares, debentures or bonds;
- The company cannot make any call or invitation to the public to subscribe for any part.
- The minimum number is three, and the maximum number is twenty. In case of death, the heirs may become partners but the maximum number should not exceed thirty. Once the number exceeds thirty, the company must be transformed into Joint Stock Company or a Limited Liability by shares, within a period of two years or otherwise it will dissolve.
- The trade name must be always followed with the initials S.A.R.L.; it could be anonymous or include the names of the partners;
- Parts are not transferrable to third parties without the approval of 75% of the capital. The transfer among the partners is not restricted.

### 11.2.2 Association of Funds

- The partners who established the Limited Liability Company are those who offer funds in cash or kind, whereas service is not considered.

- The capital of a limited liability company is provided by the founding partners. The capital can be contributed in cash or kind. The contribution in service is not accepted and cannot be considered as payment for the value of “parts”;
- The minimum capital is 5 million LBP (i.e. since 9-3 1992?? March 3, 1992);
- The capital is divided into equal parts. Each partner possesses one or more of these “parts”;
- The capital must be fully paid and appears on all the letter heads of the company and printed matters;
- If the capital becomes less than five million LBP the company must be transformed into an Unlimited Partnership or Limited Partnership within a period of two years or otherwise it will dissolve.
- Like the Joint Stock Company, partners are not considered as merchants, and the liability of each partner is limited to the value of “parts” he/she owns; the partner is not asked to pay more than the value of his/her “parts”.
- The bankruptcy or incapacity of the partners does not lead to the dissolution of the company; thus, if the partner becomes bankrupt or incapable, the company is not dissolved.
- Like the Joint Stock Company, the Limited Liability Company is considered of commercial nature, regardless of its object.
- The company’s reserve fund should reach 50% of the capital; thus, it differs from the Joint Stock Company where it should reach 30% of the capital.

### 11.3 FORMATION OF THE LIMITED LIABILITY COMPANY

- The company is formed by mutual consent of the partners who must sign the “Memorandum of Association”.
- The Memorandum or Article includes: the company’s name, object, head office, capital in kind and in cash, the name of the director or administrations, and the conditions agreed upon by the partners, in addition to the contribution of the partners and their payment in full and deposits in the bank.

- All the partners should participate in the formation of the company, and must sign the Memorandum of Association. Therefore, there is no need for the constituent meetings, since the partners know each other.
- The object must be mentioned in the Memorandum of Association. However, Limited Liability Company is restricted from certain activities; its object cannot be “insurance”, “banking”, and “finance operations”;
- The partners in the Limited Liability Company can be juristic persons;
- The capital must be fully deposited in an approved bank in the name of the company under a special account which bears the name of the company followed by “under formation”. The capital amount must be held in custody at the bank, pending the company’s final establishment after the registration procedures at the Commercial Register are completed.
- The amount paid shall be blocked at the bank, until the final formation of the company, after the completion of the registration of the company at the Commercial Register;
- The contributions are in cash or kind only; the contributions in kind are effected once they have been evaluated by an expert appointed by the Commercial Court;
- Partners may be all of a foreign nationality; if a foreign manager is to be appointed, he/she must obtain a Lebanese work permit.

### Point Example

Diana (Jordanian nationality); Dany and Hadi (Lebanese Nationality) signed a contract for establishing a limited liability company to undertake buying and selling General Electricity in Beirut. The contract was drawn in a simple form and registered at the Ministry of Economy and Trade. The Memorandum of the company mentioned the following provisions:

- Trade name of the company: “General Elegance”
- Capital of the company is 3,000,000 LBP divided into 10 parts that are distributed among partners according to their contributions as follows:
- Diana owns 6 parts
- Hadi owns 3 parts.
- Dany owns 1 part.
- All partners are considered jointly and severally liable for the debts of the company and creditors can execute on their personal assets.
- The company must maintain a legal reserve by deducting 10% of its net profit to reach third of capital.
- Manager of the company is: Hadi.
- The duration of the company is 15 years.
- Any modifications to the Memorandum of the company must be decided in ordinary partners meeting that should be held annually.

Diana sold one of her part to Dany without getting the approval of the other partner. Hadi (objected on the sale).

Note that Hadi owns a repair store for the General Electrics. He signed a contract by the name of the company, stating that any repair for the electronics will be done though the business he owns exclusively.

1. Identify and explain the defects made in the formation and in the statutes of the company
  - a. Was the sale legal? Justify
  - b. If the seller is not a partner would it make any difference?
2. Can Hadi sign such a contract that gives him the right for repair?
3. What is the nationality of the Limited Liability Company?

## 11.4 PARTNERS' MEETINGS

There are two meetings:

- Ordinary Meeting
- Special or Extraordinary Meeting

### 11.4.1 Ordinary Meeting

- The meeting is convened annually within a period of six month as of the closure of the financial year.
- Ordinary meeting can especially be convened for urgent matters such as the revocation or appointment of the manager, or the appointments of the auditors.
- In principle, the manager convenes the ordinary meeting; if there are several managers, then each one of them is qualified to convene. If they fail, then the auditors must convene. If the auditors do not exist or fail to convene, then it can be convened by one or more partners representing minimum 25% of the capital, depending on the provisions of the Memorandum of Association.
- The convening is made through publication in newspaper or registered letters. However, the partners can waive their rights to such formality.
- The ordinary annual meeting is convened, in principle, for the purpose of approving the accounts.
- The quorum for an ordinary meeting is 50% of the capital, which must be present or represented.
- Resolutions at ordinary meetings are adopted by simple majority of the 'parts' present or represented.

### 11.4.2 Special or Extraordinary Meeting

A Special Meeting is convened for the purpose of modifying the Memorandum of Association such as:

- Increasing or decreasing the capital;
- Transformation of the company into another type;
- Dissolution of the company for losing  $\frac{3}{4}$  of the capital;

- Changing the company's nationality;
- Increasing the contribution in kind;
- Increasing the partners' obligations.

The increase or decrease of the capital needs a quorum of at least  $\frac{3}{4}$  of the capital present or represented. While another modification in the Memorandum of Association needs a quorum of 100% of the capital.

Resolutions in special meetings are adopted by  $\frac{3}{4}$  of the "parts" present or presented, when related to increase or decrease of the capital.

### Point Example

Fast & Speed Communications S.A.R.L is a limited liability company that was established in 2005; the memorandum of association was registered under N° 34823 Beirut C.R. The partners (Najib, Samira, Walid, Munir and Fares) agreed in some articles of the memorandum of association that states as follows:

- Capital needed is 15,000 000 LBP.
  - Walid and Samira are the managers.
  - Ordinary meetings shall be held every two years.
  - In case of changes in the memorandum, ordinary meetings will be held.
  - All partners are merchants according to the law.
  - The company can issue shares and debentures whenever it is needed.
  - The liability of the partners is limited according to the contribution to the capital.
  - The bankruptcy of the partner will lead to the dissolution of the company.
  - The contribution of each partner can be in cash, in kind and in services.
1. In the memorandum of association, several mistakes were corrected before the registration at the commercial register in articles
  2. 'Jammal clothing company' who has debts problem with Munir private business. Jammal presented a case against 'Fast & Speed Communications S.A.R.L.' to seek settlement of Munir debts'.
  3. Can 'Jammal clothing company' do that? And why?

In 2010, and for the purpose of opening branches abroad, 'Fast & Speed Communications S.A.R.L.' decided to transform it to another type in order to work with bigger capital, the Joint Stock Company.

4. Very briefly what are the changes needed to the memorandum regarding: trade name, liabilities of shareholders, capital, contributions, rights of shareholder and management.

## **11.5 MANAGEMENT**

- The rules applied to the management of a SARL are the same as those applied to an Unlimited Partnership;
- The partner-manager of a SARL shall not acquire the status of a merchant;
- The management of a SARL belongs to all the partners. Nevertheless, it can be conferred upon one or more persons;
- A partner may be appointed as manager by the Memorandum of Association or by a separate resolution adopted at a partners' meeting;
- Appointment of the managers and their powers must be registered in the Commercial Register;
- A manager's appointment can be revoked by a resolution adopted at a partners meeting, regardless of the way the manager is appointed, and regardless of any provision in the Memorandum of Association;
- The manager cannot conclude with the company any deal in which he/she has a direct or indirect interest, unless he/she has an express authorization by the partners to that effect.
- The requirements imposed by law on the Board of Directors in a Joint Stock Company apply to managers in a SARL. This means that managers are subject to the same liabilities and penalties for mismanagement.

## **11.6 TRANSFORMATION**

- The limited liability company is converted into an Unlimited Partnership, a Limited Partnership, a Partnership Limited by Shares or a Joint Stock Company in the following cases:
- The SARL must be transformed into a Joint Stock Company or a Partnership Limited by Shares if the number of partners becomes more than 30. This must take place within two years, otherwise it must be dissolved.
- The SARL must be transformed into an Unlimited Partnership or a Limited Partnership if the number of partners becomes less than three, or if its capital becomes less than five Million LBP. Otherwise it must be dissolved.

## 11.7 DISSOLUTION

The causes of dissolution of a Limited Liability Company are:

- The expiry of its duration as fixed in the Memorandum of Association.
- The termination of the contemplated project for which it was formed, or impossibility of continuing, or disappearance of its object.
- If the number of partners becomes less than three or more than thirty, or the capital becomes less than five million LBP and the company is not transformed into another type of corporation or partnership within the specified period.
- It can be dissolved at any time by a unanimous partner's resolution.
- Contrary to an Unlimited Partnership, the bankruptcy of a partner is not a cause for dissolution.
- A Limited Liability Company does not expire following the death of one of the partners, but rather the parts of the deceased are transferred to his/her heirs.

### Point Example

Samar, Ziad, and Lama are three capable partners who established a Limited Liability company in Beirut city on February 2010 for a period of 10 years whose object is transportation services.

The contract of establishment (Memorandum of association) was signed by Ziad since he owns the greatest amount of shares. The below information are its main provisions:

- The Capital of the company is 8 million LBP divided into 100 parts as follows:
  - Samar    **15 parts**
  - Ziad      **80 parts**
  - Lama     **5 parts**
- Management of the company is done by a Board of Directors composed of Samar and Ziad jointly.
- The partners agreed in the contract to exempt Lama from any losses the company may incur.
- The partners must meet every 3 years to approve on the balance sheet and the accounts of the company.

At the commercial Register, the Chief Clerk notified Ziad that necessary changes must be made in the establishment of the company in order to become in compliance with the legal rules of Limited Liability Companies.

1. Can you identify and correct the faults seen in the formation of this company?
2. Suggest a Legal trade name for such type of company.

In 2008, Lama sold her parts to Samar but Ziad objected this transfer stating that it requires his previous approval; However Samar denied such objection and insisted on the legality of sale.

3. Is the sale contract between Lama and Samar legitimate ? Justify your answer.
4. Can the remaining partners continue with the company in the same form? Why or why not? In case it cannot keep the same form, what type(s) of company it has to be transformed to? What is the time-limit?

	Unlimited Partnership	Limited Partnership	Joint Stock Company S.A.L	Limited Liability Company S.A.R.L
Company type	Association of persons	Association of Persons	Association of Funds	Mixture of Association of Persons and of Funds
Minimum Number of persons	Two or more.	Two or more.	Three or more.	Between three and twenty.
Person	Partner same status	Two kinds of Partners: Active and Sleeping.	Shareholder	Partner/Member
Status of persons	Merchant	Active partner is a merchant. Sleeping partner is non-merchant.	Shareholders are non-merchants.	Partners are not merchants.
Management	Belongs to all partners or authorized managers.	Belongs to active partners.	Board of Directors i.e. 3-12 persons.	Managers
Contribution	Cash, Kind or Service.	Active (i.e. cash, kind or service) Sleeping (i.e. case or kind).	Cash or Kind.	Cash or Kind.
Capital	No minimum capital	No Minimum Capital	Minimum capital is 30 million LBP	Minimum capital is five million LBP.
Name	Collective name of all the partners, or one or more partners followed by "& Co".	Name of the Active partners only.	Anonymous name followed by the initials S.A.L.	Anonymous or trade name of the partners followed by S.A.R.L.
Liability	Partners are individually liable with unlimited liability i.e. even from their private properties.	Active partner is liable with unlimited liability; Sleeping partner liable according to percentage.	According to the shares.	According to the percentage of the partners.
Publication Formalities	Registration in the Commercial Register.	Registration in the Commercial Register.	Registered in the C.R. and published in: Official Gazette, local newspaper, and economic newspaper.	Registered in the Commercial Register.
Lawyer	No	No	Yes	Yes

Auditor	No	No	One or more appointed by the company and an external Auditor appointed by the Commercial Court.	A partner or more representing 1/15 of the capital at least ask for the appointment of the auditor
Transfer of Parts	Needs approval of all partners consensus.	Needs approval of all partners.	Shares can be easily transferred.	Parts needs approval of 75% to be transferred.

## النظام التأسيسي

لشركة ----- ش.م.م.

----- COMPANY-S.A.R.L( )

فيما بين الموقعين أدناه:

- الفريق الأول: ----- اللبناني مواليد -----

/ والمقيم في -----

- الفريق الثاني: ----- اللبنانية مواليد ----- سجل رقم -----

/ -----

/ والمقيمة -----

- الفريق الثالث: ----- من التابعة ----- مواليد -----

/ والمقيم في -----

لما كان الفرقاء الثلاثة يرغبون في تأسيس شركة لتكون الاطار القانوني لنشاط تجاري مشترك  
يجمعهم،

ولما كان التوافق قد تم بين الفرقاء الثلاثة على أن تكون هذه الشركة من نوع محدودة المسؤولية،  
لذلك، ووفقاً لأحكام القوانين المرعية الاجراء لا سيما القانون رقم 67/35 وقانون الموجبات والعقود  
وقانون التجارة، فقد تم التوافق على أن يكون هذا النظام بمثابة دستور للشركة المنوي تأسيسها منظماً  
لإطار العمل فيها على الشكل التالي:

- المادة الأولى:

- تعتبر المقدمة الواردة أعلاه جزء لا يتجزأ من هذا العقد.

- المادة الثانية: اسم الشركة:

- توافق الفرقاء على تسمية الشركة باسم:

شركة ----- ش.م.م.

**Trading Company S.A.R.L**

وشعارها:

- المادة الثالثة: مركز الشركة:

- توافق الفرقاء على أن يكون مركز الشركة في القسم رقم \_\_\_\_\_ من العقار رقم ----/منطقة العقارية. كما ويحق للشركة فتح فروع أخرى في كافة المناطق اللبنانية وخارج الأراضي اللبنانية.

- المادة الرابعة: موضوع الشركة:

- تتعاطى الشركة التجارة العامة والصناعة العامة والاستيراد والتصدير لكافة البضائع والمواد ومن ضمنها كافة انواع المواد الغذائية والنشاء وغيرها.

- المادة الخامسة: مدة الشركة:

- اتفق الفرقاء على تحديد مدة عمل الشركة بتسعة وتسعين سنة اعتباراً من تاريخ تسجيلها في السجل التجاري، إلا أنه يمكن حلها قبل أوانها بقرار يتخذه الأكثرية الممثلة لثلاثة أرباع رأس المال.

- المادة السادسة: رأس مال الشركة:

- حدد رأس مال الشركة من أجل البدء بالعمل بخمسة ملايين ليرة لبنانية / 5,000,000 / ل.ل. وقد ساهم كل فريق في رأس المال كما يلي:

- الفريق الأول 50 %

- الفريق الثاني 25 %

- الفريق الثالث 25 %

وقد جرى الاكتتاب بالحصص وتوزيعها على الشكل الآتي:

يوزع رأس المال البالغ خمسة ملايين ليرة لبنانية على الف حصة قيمة كل حصة / 5000 / ل.ل. خمسة آلاف ليرة لبنانية، يصيب الفريق الأول / 500 / حصة خمسمائة حصة، ويصيب الفريق الثاني / 250 / حصة مائتان وخمسين حصة، ويصيب الفريق الثالث / 250 / حصة مائتان وخمسين حصة.

وقد أودعت المبالغ المذكورة لدى بنك فينيسيا عملاً بنص المادة الثالثة من المرسوم الاشتراعي رقم 67/35

#### – المادة السابعة: ادارة الشركة:

– تناط ادارة الشركة بالفريق الاول وحده، ويعطى في هذا السبيل الصلاحيات المطلقة للقيام بإدارة الشركة وتمثيلها لدى كافة المراجع الرسمية والخاصة والقضائية وإجراء كافة العقود والالتزامات والمعاملات المطلوبة للشركة. كما وله حق سحب وإيداع الأموال بالغاً ما بلغت وفتح الحسابات باسم الشركة لدى المصارف في لبنان وفي خارجه وتوقيع السندات وعقود الرهن والأوراق المالية وتظهيرها وقبضها والاستدانة من المصارف او من المؤسسات المالية او القيد باسم الشركة وإبرام عقود القروض وتوقيعها وإعطاء الكفالات والتأمينات والرهنونات والضمانات المختلفة على اموال الشركة المنقولة وغير المنقولة لا سيما العقارية منها، كما له ايضاً حق القبض والصرف والصلح والإسقاط والإبراء والتنازل والشراء والبيع وتعيين الموظفين وصرفهم وتحديد أجورهم وعلاواتهم وتعويضاتهم.

#### – المادة الثامنة: التفرغ عن الحصص:

يحق لكل شريك التفرغ عن حصصه بكاملها أو بجزء منها لشريك آخر دون قيد أو شرط، أما التفرغ لأجنبي فهو مرتبط بموافقة شركاء يمثلون ثلاثة أرباع رأس المال على الأقل، ويعود للشركة حق الأولوية في تملك الحصص المتفرغ عنها لأجنبي وذلك عن طريق دفع ثمنها من المال الاحتياطي الخاص وعليها استعمال هذا الحق ضمن مهلة خمسة عشر يوماً من تاريخ ابلاغها سند البيع بموجب كتاب مضمون مع اشعار بالوصول ومن بعد الشركة يعود للشركاء حق الأولوية في تملك الحصص المعروضة للبيع لشخص أجنبي وذلك بنسبة ما يملك كل منهم من حصص في الشركة ضمن مهلة ثلاثين يوماً من تاريخ تبلغه السند بموجب كتاب مضمون مع اشعار بالوصول.

#### – المادة التاسعة: الجمعية العمومية:

يجتمع الشركاء اما بجمعية عادية وأما بجمعية غير عادية، ولكل من الجمعيتين صفة تمثيل جميع الشركاء تجاه الشركة، تنعقد الجمعية العادية للشركاء دورياً بنهاية الستة أشهر من اقفال حسابات السنة ويحق لها ان تنعقد عدة مرات في السنة وفقاً للضرورة وبطلب من المدير العام، ولكل شريك أن يشترك في الجمعيات العمومية بعدد الأصوات يعادل عدد الحصص التي يملكها أو يمثلها، ويمكن لأي شريك أن يوكل أي شخص يمثله من غير الشركاء في الجمعيات العمومية، في الجمعيات العامة والاستشارات الخطية تتخذ القرارات من الشركاء يمثلون ثلاث أرباع رأس المال على الأقل، وإذا لم تتحقق هذه الأكثرية يدعى الشركاء والمستشارون مرة ثانية بالأكثرية مهما كان مقدار رأس المال الذي تمثله.

### – المادة العاشرة: الجردة والحساب:

ينظم المدير في نهاية كل سنة تقريراً بأعمال الشركة وجردة حساب للاستثمار العام وحساب للأرباح والخسائر وموازنة يبلغها للشركاء ولمفوضي المراقبة اذا وجدوا ويودعه مركز الشركة مع كافة الوثائق والمستندات وذلك خلال عشرين يوماً على الأقل من تاريخ انعقاد جمعية الشركاء العادية لمناقشة هذه الحسابات والتصديق عليها وإبراء ذمة الادارة.

ويتعين على الادارة نشر موازنة السنة المالية خلال شهرين من تاريخ مصادقة الجمعية العمومية على الحسابات.

### – المادة الحادية عشرة : في الارباح والاقتطاع السنوي:

تتكون الارباح بعد حساب الرصيد وحسم المصاريف العمومية والرسوم والأعباء والنفقات المختلفة والاستهلاكات واحتياطي المخاطر والطوارئ والتكاليف الاخرى والموجبات المترتبة على الشركة وما تقرر حسمه على سبيل الاستهلاك.

وتقتطع الادارة نسبة 10 % عشرة بالمائة من الارباح الصافية لتكوين مال احتياطي يعادل 05% من رأسمال الشركة ويوزع ما تبقى من الارباح الصافية على الحصص بالتساوي فيما بين الشركاء وبالنسبة للحصص التي يملكونها.

### – المادة الثانية عشرة : مفوضو المراقبة:

يعود الحق في تعيين مراقب او اكثر لجمعية الشركاء العادية بأكثرية تمثل نصف رأس المال في الجلسة الاولى، وبالأكثرية المطلقة للحاضرين والمتخلفين في الجلسة الثانية مع تحديد رواتبهم ومخصصاتهم.

### – المادة الثالثة عشرة: حل الشركة:

في حال وجود اسباب موجبة لحل الشركة تحل بإحدى الطريقتين التاليتين:

- 1 - بقرار من جمعية الشركاء غير العادية وبأكثرية تمثل ثلاثة ارباع رأس المال على الأقل.
- 2 - بقرار قضائي بناء على طلب احد الشركاء أو اكثر، ويقوم بتصفية الشركة عند حلها المدير والفريق الثالث وفقاً للأصول القانونية.

### – المادة الرابعة عشرة: سرية الشراكة

يعتبر عقد الشراكة نافذاً من تاريخ التوقيع وإيداع صك التأسيس قلم المحكمة التجارية وتسجيله وفقاً للأصول.

– المادة الخامسة عشرة:

توافق الفرقاء على تعيين المحامي----- مستشاراً قانونياً للشركة ووكيلاً عنها وأوكل له مهمة تسجيل الشركة لدى المراجع المختصة.

الفريق الثالث

الفريق الثاني

الفريق الأول

سجل تجاري رقم / / عام

شركة ---- للتجارة العامة ش.م.م.

----- GENERAL TRADING COMPANY-S.A.R.L ( )

حضرات السادة المحترمين

نتشرف بإعلامكم أننا قد أسسنا في القسم \_\_\_\_\_ من العقار رقم --- /منطقة  
العقارية شركة تجارية تتعاطى : التجارة العامة والصناعة العامة  
والاستيراد والتصدير لكافة انواع البضائع والمواد ومن ضمنها كافة انواع المواد الغذائية والنشاء  
وغيرها. تحت تسمية تجاريه :

شركة ----- للتجارة العامة ش.م.م.

----- GENERAL TRADING COMPANY-S.A.R.L ( )

شعارها:

مع العلم بأن هذه الشركة قد سجلت أصولاً في السجل التجاري في جبل لبنان بتاريخ / /  
تحت رقم / / عام .

وإن المفوض بالتوقيع عن هذه الشركة مناط بالشريك:

-----

فالرجاء أن تمنحوها ثقتكم الغالية .

المستدعية

ان السيد ----- يوقع هكذا

سجل تجاري رقم / / عام

شركة ---- للتجارة العامة ش.م.م.

----- GENERAL TRADING COMPANY-S.A.R.L ( )

حضرة الرئيس ،

طالبوا التسجيل: -----

يلتمس المستدعون ايداع صك تأسيس وتسجيل الشركة المعروفة باسم:

شركة ----- للتجارة العامة ش.م.م.

----- TRADING COMPANY-S.A.R.L

في خلال الشهر الذي يلي تأسيسها وفقا للمادة 26 المعطوفة على المادتين 48 و 49 من قانون التجارة، وهذه خلاصة لصك التأسيس مكتوبة على نسختين:

**1 - إسم وشهرة كل من الشركاء وجنسيته وتاريخ ولادته ومحل اقامته:**

----- اللبناني مواليد / والمقيم في

----- اللبنانية مواليد سجل رقم /---

----- من التابعة ----- مواليد / والمقيم في

**2 - إسمه الشركة التجاري وعنوانها:**

لشركة ----- للتجارة العامة ش.م.م.

----- TRADING COMPANY-S.A.R.L ( )

شعارها:

**3- موضوع الشركة:**

- تتعاطى الشركة التجارة العامة والصناعة العامة والاستيراد والتصدير لكافة أنواع البضائع والمواد ومن ضمنها كافة أنواع المواد الغذائية والنشاء وغيرها.

4 - شكل الشركة: شركة محدودة المسؤولية

5 - المركز الرئيسي والأماكن الموجودة فيها للشركة فروع أو وكالات سواء كانت في لبنان أو في الخارج: في القسم ----- من العقار رقم \_\_\_\_\_ /منطقة \_\_\_\_\_ العقارية

6 - أسماء الشركاء أو الأشخاص المفوضين بالتوقيع عن الشركة:

-----

7 - رأسمال الشركة والقيمة المنسوبة الى مقدمات الشركة:

/5,000,000 / ل.ل خمسة ملايين ليرة لبنانية

8 - تاريخ التأسيس:

9 - تاريخ الايداع:

10 - مدة الشركة:

## CHAPTER TWELVE

# OTHER FORMS OF PARTNERSHPS and COMPANIES <sup>(1)</sup>

---

(1) Companies in Lebanon, Chamber of Commerce Industry and Agriculture of Beirut and Mount Lebanon.

## CHAPTER TWELVE

# OTHER FORMS OF PARTNERSHIPS and COMPANIES <sup>(1)</sup>

### CHAPTER TWELVE OUTLINE

- 12.1 DEFINITION OF COPARTNERY
- 12.2 CHARACTERISTICS OF COPARTNERY
- 12.3 MANAGEMENT OF COPARTNERY
- 12.4 NAME OF HOLDING COMPANY
- 12.5 OBJECT OF HOLDING COMPANY
- 12.6 ESTABLISHING A HOLDING COMPANY
- 12.7 MANAGING THE HOLDING COMPANY

---

(1) Companies in Lebanon, Chamber of Commerce Industry and Agriculture of Beirut and Mount Lebanon.

## PART ONE: COPARTNERY

**The Copartnery or the ‘undeclared partnership’ is different from other partnerships since its entity is limited to the contracting parties and is not intended for third parties to know. The contract signed between the parties sets their mutual rights and duties and sharing of profits and losses. The Copartnery contract can be proved through all the ways of evidence accepted in the commercial articles.**

### 12.1 DEFINITION OF COPARTNERY

A Copartnery is an association of one or more persons carrying on business with the view of profit and loss. Partners conclude a contract between each other, and each partner deals with third parties by his/her own name.

### 12.2 CHARACTERISTICS OF COPARTNERY

A Copartnery enjoys some characteristics that differentiate it from other partnerships:

- A Copartnery exists among the partners only and is not intended to be known by third parties;
- The agreement that regulates the relationship between the partners is a private arrangement and is not disclosed to outsiders;
- It is formed to carry on operations for a short duration; once these operations have been completed, the Copartnery is dissolved;
- Partners agree to share the profit and loss arising from the object of the contract among them;
- Partners can be either physical or juristic persons;
- Contributions can be either in cash or kind or service. Nevertheless, these assets do not belong to the Copartnery;
- It has no legal personality;

- It has no name, no domicile, no registered office, and no nationality;
- The Copartnery contract is usually a simple contract which freely sets down the rights and obligations of the parties towards each other and determines how the profit and loss is divided;
- Profit and loss is shared among the partners according to the provisions of the agreement; in case the agreement does not contain any legal provisions, profit and loss is shared according to their contribution;
- The Copartnery does not need any formalities in registration or publication that are imposed on other partnership and corporations. Thus, it does not need to be registered in the Commercial Register and not intended to be known by others;
- The partners in the Copartnery may deal with others in their personal capacity, and others deal with partners on the same basis, and not with the Copartnery as an entity;
- If a Copartnery reveals itself to others and acts as an entity, contrary to its nature, it shall be considered as a *de facto* partnership in relation to them and shall be liable as such.
- A Copartnery is not necessarily of a commercial nature even though it was provided for in the commercial code. It may carry civil activities. Even when the object of the Copartnery is commercial, it shall not be subject to the obligations of merchants not to the bankruptcy procedures.

### **12.3 MANAGEMENT OF COPARTNERY**

Partners agree among themselves to appoint an individual who will manage the partnership. A manager deals with others without stating the partners' names. In the event that the partners do not appoint a manager, each partner will deal with others on his/her own behalf but in the interest of the partnership.

Those who enter into contract with the manager or a partner will not have a legal bond except with the partner with whom they entered into the contract. Managers will be accountable for their management to the company.

## PART TWO: HOLDING COMPANY \_\_\_\_\_

**The Lebanese Law does not include any definition for Holding Companies. The Holding Company was introduced in Lebanon by the legislative decree no. 45 on June 24, 1983, and was amended by the legislative decree on November 11, 2006.**

### 12.4 NAME OF HOLDING COMPANY

Like any Joint Stock Company, a holding company must have a name that differentiates it and constitutes an element of its legal characters. The expression 'Holding Company' must be specified next to the company's name. in all its documents, letter heads, notices and other publications of the company.

### 12.5 OBJECT OF HOLDING COMPANY

The object of Holding Company is limited to the following:

- a. Owning shares in an existing Lebanese Joint Stock Company or a limited liability company or participating in its establishment. A Holding Company may not own more than forty percent in more than two companies working in the same industrial, commercial, or non-commercial sector in Lebanon that constitutes a monopoly.
- b. Managing companies in which it owns partnership or shareholding assets.
- c. Giving loans to companies in which it owns partnership or shareholding assets and offering them to guarantees against third parties. For such purposes, the A Holding Company may borrow money from banks and issue bonds pursuant to the Code of Commerce, provided the total value of the issue does not exceed, at any given time, an amount that is five times the among of its stated capital. However, the Holding Company may not grant loans to companies carrying out business in Lebanon if it owns less than 20% of the capital of such company.<sup>(1)</sup>
- d. Owning patent, discoveries, trademarks and other reserved rights, and leasing them to companies inside Lebanon and abroad.

---

(1) Talal Jaber, Introduction to Business Law, third ed., Beirut 2009, p. 123.

- e. Owning personal and real properties provided the exclusive use of the Holding Company on such properties.<sup>(1)</sup>

## 12.6 ESTABLISHING A HOLDING COMPANY

Holding Companies are established in the form of a Joint Stock Company, and are subjected to the same regulation of the Joint Stock Company with the following exceptions.

- a. The Capital of the Company must be specified in a foreign currency, accounting and budgets may be prepared in the currency specified in the capital.
- b. the company's main head office must be located in Lebanon, where legal books and documents are kept.
- c. A register shall be kept at the court of the first instance in Beirut for holding companies, and will include all the data and the information legally required to be published by the Joint Stock Company. When the company is registered, it must submit its lease contract or property deed of the chosen location in Lebanon with a written approval of the natural person or legal entity that provided the location.
- d. The Holding Company may only publish the fiscal year budget and the names of the members of the board of directors and auditors in the commercial register of holding companies.
- e. A Holding Company must keep, prepare annual financial data, submit statement, pay due taxes at the income tax department by virtue of the corporate legal provisions in manner that does not conflict with the provisions of the of the legislative decree 45/83.<sup>(2)</sup>

## 12.7 MANAGING THE HOLDING COMPANY

- a. A Holding Company is subjected to a system that guarantees the good organization of its business. The legislator has exempted Holding Companies from the obligation of having Lebanese pounds or entities on the Board of directors.

---

(1) The provisions of the Lebanese Law pertain to the acquisition by non-Lebanese nationals of real estates in all its kinds. The law on property ownership of foreigners in Lebanon stipulates the exemption of non-Lebanese legal entities from obtaining a permit to wish to own built property with a surface area not exceeding three thousand square meters.

(2) A penalty of fifty thousand Lebanese pounds shall be imposed on the holding company that does not submit its legal statement in a timely manner. This is in addition to the tax due.

- b. The chairman of the board is exempted from obtaining a work permit if he/she is a non-Lebanese residing abroad.
- c. The Board of Directors and general assemblies may convene outside Lebanon if the company's articles stipulates this. However, the annual ordinary general meeting must always be convened in Lebanon with a maximum time of five months after the end of the fiscal year.
- d. The Holding company may only publish the fiscal year budget and the names of the members of the board of directors and auditors in the commercial register of Holding companies.

## BIBLIOGRAPHY

- Abu Eid Elias, *The Commercial Representation*, 1st edition, Beirut, 1991.
- Anzilotti, **Dionisio Cours de Droit International**, Volume I. Paris, 1929.
- Harnett Bertam, **Responsibilities of Insurance Agents and Brokers**, Matthew Bender & Company, 2016.
- Jaber, Talal H. **Introduction to Business Law**, 3<sup>rd</sup> ed., Beirut 2009.
- Kantorowicz, Hermann A.H. Campbell, A.L. **The Definition of Law**, Cambridge University Press, 2014.
- Karkabi Marwan, **Nominated Contracts**, 3<sup>rd</sup> edition, Beirut, 1998.
- Lee, David, **The Law of the sea Convention and Third States**, 77 AJIL, 1983.
- MacMillan Catherine and Stone Richard, **Elements of the Law of Contract** University of London International Programmes, 2012.
- Marmor, Andrei, **Interpretation and Legal Theory** 2<sup>nd</sup> ed., Hart Publishing, Oxford 2005.
- Nasr Kamal, *Business Laws and Taxation in Lebanon*, Beirut, 1996.
- Schwarenburger, **the Principles and the Standards of International Economic Law**, RCADI, 1966.
- Taha Mostapha Kamal, **The Principles of Commercial Law**, Al Dar Aljameya.
- Treitel, G.H. **The Law of Contract**, 10<sup>th</sup> ed.
- Tyan Nady, **Business Laws of the Middle East: Lebanon**, edited by Nady Tyan, Mohamad Y.Alem and Associates, Kluwer Law International.
- *Elements of the Contract*, International Programmes, University of London.

## Internet resources

- [www.justice.gov.lb/CP/viewpage.aspx?id=589&language=2](http://www.justice.gov.lb/CP/viewpage.aspx?id=589&language=2)
- [www.lawteacher.net/free-law-essays/commercial-law/agents-play-a-vital-role.php](http://www.lawteacher.net/free-law-essays/commercial-law/agents-play-a-vital-role.php)
- [www.lawteacher.net/free-law-essays/commercial-law/the-principals-obligation-to-pay-commission-to-his-agent-commercial-law-essay.php](http://www.lawteacher.net/free-law-essays/commercial-law/the-principals-obligation-to-pay-commission-to-his-agent-commercial-law-essay.php)
- [http://cr.justice.gov.lb/com/com\\_1.aspx](http://cr.justice.gov.lb/com/com_1.aspx)

# CASE STUDIES

The background features abstract, flowing shapes in two shades of blue (a light sky blue and a vibrant cerulean) against a white background. These shapes curve upwards from the bottom left and bottom right corners, meeting towards the center, creating a sense of movement and depth.

## CHAPTER TWO

# THE LAW OF CONTRACTS

Name:.....

### CASE STUDY 1

Peter's profession is to collect antiques. He met with Talal (19 years old), who told him that he and his brothers Jamil and Sami had inherited some antiques from their grandfather, and they are willing to sell them.

Peter met the three brothers and bought three antique items from them:

- 1) An Ottoman lamp from Jamil (14 years old), for the price of \$10;
- 2) An antique hand-clock from Sami (17 years old) for the price of \$100;
- 3) An old German hand-gun, from Talal for the price of \$500.

After one week, the father of Talal, Jamil, and Sami, sued Peter in court, claiming that each of the sale contracts was void, and requested Peter to return the antiques. He argued that both Jamil and Sami were minors (below 18). In addition, the real price of the antique hand clock is around \$700 and the real price of the hand-gun is around \$3000.

#### Questions

1. Are the following sale contracts valid?
  - a. The sale contract between Peter and Jamil (lamp).
  - b. The sale contract between Peter and Sami (hand-clock).

Justify your answer.

2. Does the sale contract between Peter and Talal include a vice of consent? If so, what is it? Explain.

#### Answer

---

---

---

---

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

Name:.....

**CASE STUDY 2**

Cathy is a British citizen who lives in Beirut and works as an art teacher in a British school. She teaches paintings and crafts. Last year, she invited some friends to her apartment and showed them many of her paintings. Maya (a merchant who owns a gallery that sells furniture and art paintings) liked her work and agreed to buy all of the collection of her gallery. After many negotiations, she succeeded to buy all of Cathy's paintings at an excellent price. Maya and Cathy signed the sale contract at the Notary public.

1. Is the sale of the paintings classified as a commercial act with respect to Maya? Why? Justify your answer.
2. The contract of sale concluded between Cathy and Maya can be classified into many types. List 4 types that are applicable to this contract.

Cathy decided to sell her land; on Monday August 2, she sent Nader an e-mail stating that she is offering him the purchase of her Land located in Saida (with a complete description of the land in terms of space, conditions, location... ) at the price of \$500,000 and she mentioned that this offer is valid for 6 days only.

On Friday August 6, Nader sent her an e-mail accepting the offer with all its details. However, Cathy replied that she sold the office to another person at a better price. Nader decided to take legal actions against Cathy at the Lebanese court.

3. Is Cathy allowed to refuse selling her office to Nader and to withdraw her offer? Explain and Justify.
4. In which case(s) is Cathy legally allowed to withdraw her offer? List at least 2 cases.
5. What is the court jurisdiction applicable in this case? Is it Saida court or Beirut court? In front of the chamber or at the single judge? Explain.

**Answer**


---

---

---

---

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER THREE

# COMMERCIAL LAW AND MERCHANTS

Name:.....

### CASE STUDY 1

Maya is the owner and manager of a shop that operates in buying and selling electrical appliances located in Beirut since May 2, 2013. She opened another branch in Saida in August 5, 2013 that is managed by Samir for a fixed salary. The business was registered at the commercial register of Beirut on November 2, 2013 and she mentioned that she also owns another branch managed by Samir.

Lately, she decided to renew the decoration of her shops, so therefore she called Maher (i.e. a craftsman that makes furniture and wooden equipment) and offered him \$2000 for the purchase of 10 wooden shelves and she asked him to reply before January 18, 2015.

On January 15, 2015, Maher agreed to sell her the shelves and requested an additional fee of \$150.

The next day both parties met and signed a contract with the presence of two witnesses.

#### Questions:

- Were there any illegalities in the place and date of registration made by Maya? What are these illegalities and what kind of sanctions will be imposed in such a case?
- Is the offer made by Maya a firm offer? Can Maya withdraw or modify it? Why? Explain.
- Was Maher's replying an acceptance to the offer? Why? What is it considered?
- The sale contract between Maya and Maher can be classified into many categories or classifications. List four classifications.
- Among those three persons (i.e. Maya, Samir, and Maher) who is classified to be a Merchant? Justify your answer by stating the conditions required by Law to classify a person as a trader.

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

Name:.....

**CASE STUDY 2**

Tarek who is 33 years old is an employee at a private corporation. He leaves the corporation's office at 3:00 p.m. He also owns a shop that sells a selection of kids clothing. The shop has been open since 2008 and Tarek succeeded by having a good reputation in the market. Tarek opens the shop every day in the afternoon and works in it with the assistance of his wife.

On March 15, 2014, Tarek decided to change the decoration of his shop, and therefore asked Mira (i.e. an interior designer) to prepare sketches and drawings for the new décor for the cost of three million LBP. Mira agreed and they signed a contract at the Notary public. Tarek paid instantly the sum of money. In the contract, it was mentioned that the sketches for the new decoration should be completed and submitted by maximum May, 5, 2014. However, Mira did not complete the work on the agreed timing and Tarek decided to sue her at the court.

**Questions**

- Is Tarek classified as a Merchant? What are the conditions that classify a person as a merchant? Does Fadi fulfil these conditions? Explain clearly your answer. Is Mira's work classified as a commercial act?
- At which court should Tarek sue Mira? The chamber or the single judge? Why?

**Answer**


---

---

---

---

---

---

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER FOUR

# COMMERCIAL AGENCIES

Name:.....

### CASE STUDY 1

Salim owns a commercial establishment in Lebanon. The object of his establishment is the marketing and sale of cosmetic products in Lebanon. Salim concluded a commercial representation contract with Beautico, a Canadian company, to sell its new Shampoo product. The contract stipulated that Salim was the sole representative of Beautico in the district of Mount Lebanon for five years. The contract was not registered in the Commercial Register but the parties carried out their obligations as agreed. After two years of the contract, Salim discovered that Beautico was selling the same shampoo to two other commercial representatives: Mona, who was selling the product in Beirut, and Jad, who was selling the product in Mount Lebanon. Salim initiated law suits against each of Mona, Jad, and Beautico.

#### Questions

1. a) What can Salim claim for in his law suit against Beautico?  
b) What can he claim for against each of Jad and Mona?  
c) What can he base each claim on?
2. Does it make any difference if Salim had registered his contract with Beautico in the Commercial register? Explain.
3. Where can Salim initiate his claim against each of Beautico, Jad, and Mona? Which district court(s) have jurisdiction?

#### Answer

---

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER SIX

# THE BUSINESS CONCERN

Name:.....

### CASE STUDY 1

Sami owns a business concern which is located on the premises of Kareem in the city of Tripoli, and deals with the sale of textiles. The lease contract between Sami and Kareem (i.e. the landlord) is for a duration of five years and expires on December 31, 2011. On January 1, 2010 Sami hired out the manager-ship of his business concern to Wajdi for a 10-year duration, and for a remuneration sum of 30 million LBP per year. The contract was published on October 10, 2010. Two days after publication, Jamil, who is a creditor to the business concern, initiated a law suit claiming his money back. Sami refused to pay the money, stating that Jamil's debt was not due until after three months. After six months of trading, Kareem changed the nature of the business to the import and sale of furniture. On November 31, 2011, the Landlord, Kareem, gave Wajdi a one-month-notice to vacate the premises as the lease contract was about to expire. Wajdi rejected the notice, saying that he benefited from the provisions of the rent law, and could therefore extend the lease.

#### Questions:

1. Does Jamil, under the above circumstances, have a rightful claim in demanding the payment of his debt, although his debt was not yet due?
2. Is Kareem's notice to vacate the premises valid? Is Wajdi required to leave the premises? What is the effect of the free-managership contract with regard to the landlord?
3. Can Kareem rightfully change the nature of the business? What are his obligations, as a free-manager towards the owner?
4. What are the publication requirements for a free-managership contract?

#### Answer

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

Name:.....

## CASE STUDY 2

Firas owns a business concern located on the real estate of Nabil. The business concern, which deals with the sale and purchase of electric goods, is registered in the Commercial Register in accordance with the legal requirements.

On November 10, 2014 Firas let (rented out) the business concern to Majed for a period of three years and for the sum of 30,000 dollars, although the lease contract between Nabil and Firas states that the latter cannot let the business concern without the prior consent of Nabil. After six months of trading with electrical goods, Majed changed the nature of the business from dealing with electric goods to that dealing with chemical goods.

## Questions

1. Is the lease contract between Firas and Majed valid? Justify your answer.
2. Does the change of the nature of the business have an effect on the lease contract? How?
3. What elements does a business concern consist of?

**Answer**

[illegible]

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER SEVEN

# OVERVIEW OF PARTNERSHIPS AND CORPORATIONS

Name:.....

### CASE STUDY 1

Hanadi, Hala, Hisham, and Hamad are four Lebanese adults who started an unlimited partnership in which all the partners have equal parts. The partnership was called “Hanadi and Co.” and its object was the transportation of tourists in private busses. Hisham was appointed as Manager. In order to buy its busses, the partnership borrowed the sum of 200 million LBP from IBL Bank. All publication requirements were duly carried out, and the business started its operations on June 1, 2012.

Hisham wants to conclude a contract with another partnership called “Cheap Fuel Station” in which he is a major partner. The contract states that “Hanadi and Co” must buy all fuel for its busses from “Cheap Fuel station”. Hisham has not informed his partners about this contract.

On October 1, 2012 Hamad died leaving a wife and one daughter, Mona. Mona insisted to have her name included in the partnership’s trading name.

On June 1, 2013 IBL Bank claimed that “Hanadi and Co.” failed to pay its debts. It wants to take legal action against the partnership. The partnership’s assets are now valued at 150 million LBP.

The bank claimed that Hala was jointly and severally liable with the active partners because she interfered in the management of the partnership by giving advice and guidance to the manager.

### QUESTIONS

1. Can Hisham legally conclude the contract with “Cheap Fuel station”? Why? Explain.
2. a) Can the partnership continue after Hamad’s death? How? Explain.  
b) What are the legal implications if the Partners agreed to include Mona’s name in the Partnership’s trading name?
3. Who can the bank claim against, in order to retrieve its debts? What options does it have?
4. Can the bank retrieve its debts from Hala’s personal assets? Explain.

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER NINE

**LIMITED PARTNERSHIP (Partnership in Commendam)**

Name:.....

**CASE STUDY 1**

Three university students (Fadi /19 years old, Nabil /21 years old, and Jihad/17 years old), are willing to organize tours for university students on regular basis to different Lebanese locations. After few meetings, they decided to form a company under the above mentioned objective.

They agreed on contributing each as follows:

- Fadi: A mini-van that he inherited from his dad.
- Jihad: 1,000,000 LBP from his saving account.
- Nabil: is the only one having a driving license, will drive the van.

They went to the court and informed the commercial register that they have established a company named FNJ with a capital of 1,000,000 LBP situated in Beirut and that they have agreed on splitting the profits between Fadi and Jihad, while Nabil gets 100,000 LBP for each tour. The van was totally damaged after a major accident; Fadi asked both Nabil and Jihad to re-compensate him for the loss of the van by paying 2,000,000 LBP each.

**Questions**

1. Are the above mentioned actions enough to form a company? Correct their mistakes if any.
2. What kind of companies can they form? Enumerate them.
3. Is the claim of Fadi legal? Why?
4. Supposing that their company is legal, what will happen to the capital (i.e. the 1,000,000 LBP) if they agreed to terminate the company?

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER TEN

# THE JOINT STOCK COMPANY (S.A.L)

Name:.....

### CASE STUDY 1

Waleed and Hani have agreed to form a Joint stock company in Lebanon, and they have determined its object to work in the “Real estate enterprise”. The name of the company is WH S.A.R.L. They formed a board of Directors and they elected Waleed as President (chairman) and Hani as vice president.

The capital of the company is equal to 25 Million LBP. Waleed contributed in cash and paid the amount of 15 Million LBP, while Hani is a civil engineering so he decided to contribute by offering his skills and expertise. The value of the share was fixed at 800 LBP.

Kareem has heard about the subscription and bought 1000 shares. He paid in Kind equipments. One year later he decided to transfer his shares to his son.

1. What are the steps of forming a Joint stock company? List and explain briefly.  
Can both Waleed and Hani be foreigners?

2. There are several defects in this case. Find and correct them.

The equipment offered by Kareem was evaluated at 2,000,000 LBP and Kareem claimed that this is enough to pay the down payment of his shares (one quarter).

3. Who should evaluate the equipment of Kareem? Is his claim right?

### Answer

---

---

---

---

---

---

---

---

---

---

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

## CHAPTER ELEVEN

## LIMITED LIABILITY COMPANY S.A.R.L

Name:.....

## CASE STUDY 1

Cheap Parking S.A.R.L.” is a limited liability company which owns several car parks in Beirut, and offers car parking services to the general public for a nominated fee. The company originally consisted of ten founding partners, who contributed land and money towards the capital.

Walid, who is an Iraqi national, is the manager of the company. He is also a major shareholder in “Speed Taxis Ltd”. Without consulting the partners, Walid concluded a deal with “Speed Taxis Ltd”, by which taxis of the company can park for a cheaper rate than other cars.

Sami, who is one of the founding partners, transferred some of his shares in the company to his son Majed, who is also a partner in the company, and transferred his remaining shares to his son Kareem, who is not a partner. In order to do so, Sami obtained the approval of partners in the company who own 60% of the capital.

Due to continuous conflicts between the partners, the company sold most of its car parks, and advertised the remaining ones for sale. This led to a sharp decrease in the company’s capital

**Questions**

1. Can Walid legally be the manager? Is his contract with “Speed Taxis Ltd” valid? Explain
2. Does such increase in the number of partners affect the status of the company? Are there any legal requirements if the number of partners continues growing until it becomes 32?
3. Is Sami’s transfer to each of his sons valid? Explain.
4. What are the legal requirements if the company’s capital continues decreasing until it becomes less than five million LBP?

**Answer**

**Answer**

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

-----

### Answer

