

Commercial law



The word " Commerce" means the exchange of goods, products or property of any kind. It includes: sale, purchase, exchange of merchandises. C.

Internal and International Commerce* Internal: it is the commerce carried on between individuals or corporations within the same country. International: it is the commerce carried on between individuals or corporations in states or nations foreign to each other. Commercial Establishment* It is the place where the merchandise and articles of trade are exchanged, bought and sold. E. Business Concern* It is a business enterprise formed of the business premises, goodwill, merchandise, trade name, lease right... II. Sources of Commercial Law *Written laws and regulations *Internal and International usage and custom of trade* Jurisprudence or courts' precedents. A. Code of Commerce. B. Special Laws which are complementary to the commercial code (and inserted in said cod): Legislative Decree nine of July 1 lath, 1967 governing the Business Concern.

Legislative Decree nine of August 5th, 1967 governing the Commercial representation. Legislative Decree nine of August 5th, 1967 governing Limited Liability Companies (S. A. R. L.). C. Code of Obligations and Contracts (as the general code applied on civil matters): Those articles of the Code which are related to commercial transactions and are not covered by the commercial code. D. International Treaties: The provisions of International Treaties, whenever ratified (I. E. : voted & signed), prevail over the internal Laws. The Warsaw Convention of 1929 standardizing some rules of International air transport, with its amendments.

The Brussels convention of 1924 governing the maritime transport. The United Nations Convention for the International Sales of goods enacted in

Vienna of April 1st, 1980. E. Usages and Norms of Trade: When written law is silent in respect to any particular mode of transactions, the Judge will deliver verdict according to norms and usages. For instance, if the contract does not specify a time limit to deliver the product sold, the Judge will consider the usages and norms adopted between the merchants in a certain region for this specific matter.

In fact, practices and norms play a crucial role in commerce and in particular in international commerce. F. Jurisprudence: In the absence of an applicable legal provision, the Judge can elaborate verdicts upon previous cases for guidance in this specific matter. G. Doctrine: It is the opinion of jurists and scholars/professors which can be of great help in the development of commercial law. H. Agreement between the parties: The contract is considered as the parties' law, governing their relations. III. Commercial Activities: A.

General Definition *The commercial activities are those which are carried out by any person (even if his person is not a merchant) with a view of profit.

*The law distinguishes between traders (merchants) and non-traders (non-merchants). The traders (merchants) are the persons who are engaged in trading transactions (commercial acts) as their "regular" occupation. As for the trader's characteristics: 1. They are subject to the commercial tribunals' competency, 2. They may be declared "bankrupt", and 3. They are considered jointly liable between each other for the obligations they have to execute by the same contract.

B. Examples *The Lebanese law does not grant a general definition about the commercial act, but it proceeds by the enumeration of 16 activities considered as commercial ones (in article 6 of code of commerce), of which, inter alia: 1. The purchase of goods or other movable property for the purpose of resale for profit, whether intended to be sold in original form or in different form after manufacture. 2. The purchase of goods or other movable property for the purpose of offering them for rent, or the rent of goods or other movable property for the purpose of sub-renting them. . Exchange and banking operations. 4. Manufacturing enterprises. 5. Land, sea and air transportation. 6. Commission and brokerage. 7. Insurance of all kinds. 8. Public show enterprises such as public playgrounds, cinemas, hotels, restaurants and places of public auction. 9. Publishing enterprises including printing, press, radio broadcasting, television and radio news agencies, advertising and the sale of books. 10. General agencies including commercial representation, travel, export and import offices. Other commercial acts: According to the code of commerce and in addition to the above mentioned, businesses relating to or facilitating the commercial activities aforementioned and all activities undertaken by a businessman for the requirements of his trade shall also be considered as commercial activities (for instance, the merchant who buys a car for the purpose of transporting the merchandise, is considered as commercial). IV. Merchants A. Definition: Merchants are those persons whose profession is to carry on commercial activities (their regular occupation).

Therefore, any person who carries on usual business transactions while he meets all the legal required qualifications and makes such transactions as

his regular occupation, is considered as merchant. Therefore, 1) The act itself should be considered commercial and, 2) The carrying on of such acts should be done regularly as a " profession" (not occasionally, when you are an engineer but you buy an apartment and sell it with profit). Is also considered merchant the " company": 1) which object is commercial or, 2) which is established in either of the following forms, whatsoever its object is (civil or commercial): 1. In Joint Stock Company form (socio@t@ anemone), or 2. In Limited Liability company (socio@t@ responsibility@ limit@e) 3. In Limited Partnership by shares Company's form (socio@t@ en commanding par actions). Is also considered merchant the person who carries on usually commercial activities wrought intermediaries or middlemen (not directly by him): A person is considered legally as a businessman or a merchant even though he is not accomplishing his business in person. A commercial representative is considered as a merchant if he is acting on this own name and for his own account.

A commission agent is considered as a merchant due to the fact that his business is to receive and sell goods for a commission, since he is being entrusted with the possession of the goods to be sold. The broker is considered as a merchant even though he is a middleman or negotiator between parties. His act is considered as commercial, especially because such mediation is his usual occupation. B. Required Qualifications related to the person of the trader: 1 . Age Requirement: The general principle stated in the C. O. C. s that " any person who has attained the age of 18 years is capable of binding himself if he is not declared incapable by a text of law (for instance the bankrupt, the insane...) . " Therefore, under the Lebanese law,

the legal age is 18 years (as per the c. O. C. Which is applicable since the code of commerce does not contain any particular stipulations in respect to the capacity): very person who is in full control of his mental capacity and is not incapacitated by law (see below), may become a merchant and may carry on commercial activities.

This rule applies for both the commercial matters as well as the civil ones. In reverse, minors, insane persons and prodigals are prohibited by law to carry on commercial activities: legally, they are not considered " adults with capacity". 2. Adult with no State of " minority" declared by the law/court: Insanity, Lunacy, Prodigality It is the case of the person who despite the fact of being 18 years or more, s considered as minor, and cannot be legally considered to be a merchant, because he is considered incapable of managing his own affairs.

A " curator" will be appointed to control and manage the assets and business of such incapable adult person. *The insane: The insanity is the lack of reason, memory and intelligence as it prevents a person from understanding the nature of his acts and the related consequences or it prevents the person from distinguishing between good and bad conduct. *The lunatic: Lunacy is the state of the person, who because of a sickness or an accident has lost his memory and understanding. The prodigal: The prodigality is the person of bad conduct, of extravagant habits (e. G. He spends his money in a very irresponsible way instead of executing his main obligations for his family).

Married Women: Before the law number 380 of November 4th, 1994, the married woman was not allowed to carry on commerce without her husband's authorization, therefore they were considered as incapable by law

unless they get their husband's prior authorization to do business. After such law, married women (above 18) are considered fully capable of carrying on commercial activities without any prior condition. C. Freedom in Trade:

Sacred principle with some limits 1.

Unfair competition: Despite the fact that the profession of merchant is a free profession, still the law forbids " unfair competition": The term of " unfair competition" is generally applied to all dishonest or fraudulent competition in trade. Sanction: Civil and criminal liabilities can be involved in case of "

unfair competition". 2. Restrictions Imposed by Law relating to the protection of public interest: a. Prohibition to negotiate and deal with certain products, e. G. : drugs. B. Prohibition of any commercial dealings with the enemy.

Incompatibility between the commercial profession and other professions, such as lawyers, notary publics, public sector employees. D. Requirement of a license in order to trade certain goods or products, such as weapons or explosives. E. A relative restriction, when the state reserves to itself the right of dealing exclusively with a certain product such as tobacco. D. The

professional Obligations of Merchants The legal requirements which must be observed by every merchant can be classified in 2 categories: First

Requirement: Publicity by the method of registration in the commercial registry:

Introduction& Purpose: each of the First instance Court exists a commercial register (C. R.). Any physical or Juristic person (like the company), Lebanese or foreign, who is engaged in commercial activities in Lebanon, either directly or through branch or an agent or in any other manner, is required by law to be registered in the general commercial register. Another register is

called " Special commercial register" is reserved for Business Concern. The commercial establishment or enterprise has several locations within the territory of several first instance courts, then it must apply for a secondary registration for each one.

If the office is transferred to the territory of another tribunal, a new registration must be done. The termination of a commercial activity should also be registered in the C. R. For the third party's information. *Credibility and transparency being the basis of commerce, it is consequently necessary that third parties be accurately informed about the real status (previous & current) of a merchant in order to measure the degree of his credibility: for instance, the nature of his commercial activities, the patents & trademarks he owns and uses in his commerce, his date of establishment... All information should be mentioned in the C.

R. (See below " Information to be recorded"). In fact, the C. R. Will enable the public to gather complete & sufficient information regarding any merchant and all commercial establishments operating in Lebanon: The C. R. Is considered by law as method of publication. *Any person may ask the chief clerk of the C. R. To deliver to him a true copy of the entries of the C. R. Related to any company or merchant. *The registration number in the C. R. Must appear on each letter heads, invoices, price lists, pamphlet and other printing used by the merchant for his business: the usual abbreviation is " C. R. NO" followed by the city in which the registration took place (Beirut/ Baaed...). Information to be recorded in the C. R. All elements constituting the merchant's business must be recorded in the C. R. Mainly and for

instance: 1. Merchant's full name, and in case of partnership, the names of the partners. 2. His domicile address, 3. His place and date of birth, 4. The commercial name under which he is carrying on his business, 5. His original nationality and any other nationality he may acquire subsequently along with the date and means of acquisition, 6. The object of the business, 7. The head office address, 8. Addresses of the subsidiaries or branches in Lebanon, 9. Full name, nationality, place and date of birth of all persons authorized to represent the merchant in his business (for instance, manager with authorized signature). All changes and modifications of the above facts as well as patents and trademarks used by the merchant, all judgments and decisions affecting the business... Should also be registered in the C. R. Failure of registration and misrepresentation of recorded facts *Since the saturation in the C.

R. Is a simple presumption that the concerned person is a merchant; therefore, the merchant who fails to register shall lose all the benefits of the privileges given to him by law: he will not be entitled to benefit from the "merchant" status: For instance, the merchant in failure will not benefit from the privilege of the composition with his creditors prior to the declaration of bankruptcy: this procedure means a settlement whereby the creditors of a merchant about to enter bankruptcy, agree to accept partial payment instead of full settlement of the due debts. Edition to the loss of the benefits abovementioned, failure to carry out the registration within the specified period subjects the merchant to a fine as sanction, as well as an adjudication to register within a certain period; otherwise the fine shall be doubled. *Any false or incorrect information intentionally submitted for registration subjects

the merchant author of such misrepresentation to pay a fine and/or to imprisonment and the court giving such Judgment shall order the correction of the misrepresented facts.

Second Requirement: To keep particular commercial books & correspondences: The merchant shall keep such commercial in order to clearly indicate his exact financial status and the results thereof. He should keep at least the following obligatory books: 1) Commercial Books: *Journal or a day-book: in which shall be recorded day by day all transactions and operations relating to his commercial enterprise. *An inventory book: in which he shall record the annual inventory of all the elements constituting his enterprise and all his accounts in order to establish an annual balance-sheet and a profit and loss account at the end of each financial year.

Commercial books should be kept in chronological order, numbered, marked by a notary public or by the president of the first instance court. The commercial books should be free from blank spaces, writing in margins & erasures. The merchant should keep these books and the supporting documents for a period of 10 years from the date of closing his business. 2) Correspondences: The merchant should also keep copies of all his outgoing and incoming correspondences, telegrams, invoices and other documents pertaining to his business as much as they will constitute supporting evidence to the entries made in his commercial books.