

**Faculty of Economic, Commercial and  
Management Sciences  
– Sétif 1 University –**

# ***Commercial Law***

**موجهة لطلبة السنة الأولى من التعليم الأساسي**

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## Introduction

These lectures provide students with substantial theoretical knowledge in the field of Commercial Law—covering *commercial transactions*, *the trader*, and *the commercial establishment*. They also shed light on the essential characteristics of commercial activities, namely speed, simplicity, and trust in transactions, which necessitate subjecting such dealings to special legal rules designed to achieve these objectives. The legislator, therefore, enacted a distinct set of provisions applicable to relations between traders in the course of conducting commercial activities.

This booklet, which is intended for first-year undergraduate students, aims to examine these concepts through two main sections:

1. All matters relating to **commercial transactions** ; and
2. All matters concerning **the trader and the commercial establishment**.

## Chapter One : The Conceptual Framework of Commercial Law

Commercial Law refers to the body of legal rules governing **commercial transactions** and the **activities of traders** in the exercise of their profession, as well as the **commercial establishment**, **commercial obligations**, **banking operations**, **negotiable instruments**, **bankruptcy**, and other matters relevant to commerce.

## **Section One : The Origin and Sources of Commercial Law**

Commercial law began as a collection of **customs, usages, and traditions** developed among merchants. It is difficult to determine precisely when this branch of law first appeared, as many ancient civilizations engaged in trade without a distinct legal system for it. Commercial law only emerged as an independent field, separate from civil law, during the **Middle Ages** in the **Italian city-states**.

### **Subsection One : The Origin of Commercial Law**

#### **The First Branch:**

Trade first flourished around the **Mediterranean Basin**, where the peoples of the region were among the earliest to practice commerce due to their strategic geographical position.

Ancient Egyptians engaged in trade with neighboring countries such as **Yemen** and nearby regions; their commercial exchanges reached as far north as **the island of Crete**. The Egyptians organized certain aspects of trade by developing systems for **bookkeeping, accounting, contract writing, pledges, and interest-bearing loans**.

Similarly, the **Babylonians** were active traders. This is evident from the **Code of Hammurabi (circa 1750 B.C.)**, which contained detailed provisions on **loans with interest, partnerships, deposits, brokerage, and companies**. The **Phoenicians**, inheriting from the Babylonians, advanced maritime trade regulations and introduced the concept of “**general average**,” known in their time as the **Law of Jettison**.

Through their maritime voyages to European ports, the **Greeks** further developed trade, introducing the concept of **risk loans**—a financing system under which a lender provided funds to a shipowner at a high rate of interest, recoverable only if the vessel returned safely; otherwise, the lender bore part or all of the loss.

The **Romans**, however, paid little attention to commerce, which they left mainly to slaves and foreigners. As a result, the Roman Civil Law contained few provisions addressing commercial activities. Nevertheless, **Justinian's Compilation** incorporated several **Greek and Phoenician maritime and trade rules**, and the Romans are credited with introducing the **concept of bankruptcy** as an alternative to physical coercion.

### **The Second Branch : Commercial Law in the Middle Ages**

Following the fall of the **Roman Empire** and the ensuing chaos, independent city-states arose in its place—such as **Venice, Florence, Pisa, and Genoa**—collectively known as the **Italian Republics**. These cities came under the dominance of merchants, who organized themselves into **guilds**, each headed by an official known as a **consul**. The consuls adjudicated disputes among merchants according to established **customs and trade usages**, which eventually formed the foundation of a distinct body of commercial law.

The **Crusades** further stimulated trade between East and West, increasing the power and influence of merchant guilds, which began to control political authority. The **Church**, while forbidding loans with interest, indirectly contributed to the development of commercial law by encouraging

alternative mechanisms such as **limited partnerships** (*société en commandite*).

The **Arabs**, too, practiced trade long before Islam, notably through the **“Winter and Summer Journeys”** to Yemen and the Levant. With the advent of **Islam**, certain pre-Islamic trade customs were affirmed, while others—those inconsistent with Sharia principles—were abolished. Islamic jurisprudence produced a rich corpus of commercial principles governing **partnerships, bankruptcy, maritime losses**, and other fields derived from **Islamic law (Sharia)**. The Arabs also knew the **bill of exchange** (*sakk* or *suftaja*).

Consequently, the commercial law of the Islamic era achieved independence and distinctiveness. It can be said that **commercial law emerged as an autonomous branch of law** during the Middle Ages as a result of the growing political and economic power of the merchant class.

### **The Third Branch : Commercial Law in Modern Times**

At the close of the Middle Ages, **European nations** expanded their trade beyond the Mediterranean. The **discovery of America (1492)** led to a surge in commercial exchanges between Europe, the Americas, and Asia. The center of world trade shifted from the Mediterranean to **Atlantic nations** such as **Spain, Portugal, the Netherlands, England, and France**. The influx of precious metals caused currency devaluation and the rise of **banking institutions**.

Governments began intervening to regulate economic activity and protect national markets from foreign competition, leading to the issuance of numerous **royal ordinances and national trade laws**.

## **Subsection Two: Sources of Commercial Law**

The term “source” refers broadly to the origin or foundation of a rule. The law draws from multiple sources:

- **Material (or objective) source:** The social conditions from which the law arises.
- **Historical source:** The historical circumstances that shaped its development.
- **Formal source:** The authority from which the rule derives its binding force.
- **Interpretative source:** The non-binding references that guide judges in interpretation.

Here, we focus on the **formal** and **interpretative** sources of commercial law, namely: **legislation, custom, jurisprudence, and doctrine**, along with **the principles of Islamic Sharia**.

### **The First Branch : Legislation**

Legislation occupies the highest rank among legal sources. Judges must apply statutory provisions first, resorting to other sources only in the absence of an applicable legislative text.

Legislation serves as a source of commercial law in two main respects:

1. **The Commercial Code** — referring to the body of rules contained in the 1975 Commercial Law, supplemented by various statutes, including:

- Law 04-02 on the conditions of commercial activities;
- Laws on intellectual property, competition, investment, and monetary regulation;
- Decree 96-09 concerning financial leasing.

2. **The Civil Code** — enacted in 1975, containing general legal principles.

The general rule is that the **Commercial Code governs commercial matters primarily**, while the **Civil Code applies subsidiarily** in the absence of a specific commercial provision. In case of conflict, the **special (commercial) rule prevails** over the general (civil) one, provided both have equal legislative authority.

Some jurists maintain that applying civil law to commercial matters is permissible only when its provisions are consistent with the needs of commerce—namely, **speed and creditworthiness**. Thus, courts may disregard civil rules incompatible with commercial realities, such as the presumption of gratuitous surety in commercial debts.

### **The Second Branch : Custom**

Commercial custom consists of the practices habitually followed by merchants in regulating their trade, which acquire **binding legal force** among them, similar to written law.

- Unlike legislation, **custom is unwritten** and develops spontaneously rather than by deliberate enactment.
- It is **obligatory** so long as the contracting parties have not expressly excluded it—even if they were unaware of it—since its authority stems from general acceptance and recognition, much like legislation itself.

Despite the growing volume of statutory regulation, **custom retains great importance** in commercial law because this branch of law originally evolved from customary practices

before being codified

## **The Role and Importance of Custom in Commercial Law**

Custom occupies a prominent position within commercial law, despite the growing volume of statutory regulation. This is because commercial law itself originated as a body of customary practices and was not codified until much later than other branches of law.

### **Types of Custom:**

Commercial custom may be **general**, applied throughout the entire country, or **local**, limited to a specific region or trade.

### **Burden of Proof:**

The parties to a dispute bear the burden of proving the existence of a custom, which is often done by obtaining certificates from chambers of commerce confirming its recognition.

*Example:* The presumption of **joint liability (solidarity)** among multiple

debtors in a commercial debt—a rule contrary to the general principle of civil law, which holds that solidarity is not presumed.

Based on the above, when a commercial dispute is brought before an Algerian court, the judge must apply the following hierarchy of legal sources:

1. Mandatory provisions in the **Commercial Code**.
2. Mandatory provisions in the **Civil Code**.
3. Rules of **commercial custom**.
4. **Trade usages**.
5. Interpretative provisions in **commercial law**.
6. Interpretative provisions in **civil law**.

Any express agreement between the parties to the dispute prevails over legislative or customary rules, provided it does not contravene a mandatory legal norm.

### **The Third Branch : Interpretative Sources**

Interpretative sources of law refer to those which the judge may consult at his discretion to find a solution to a legal dispute but is **not bound** to follow. The two main interpretative sources in commercial law are **jurisprudence** and **doctrine**.

#### **1) Jurisprudence (Case Law)**

Jurisprudence refers to the body of **judicial decisions** rendered by courts in disputes submitted to them. It also refers to the **precedential authority** of such decisions, known as **judicial precedent**. Precedents are judicial rulings

issued in **novel or significant legal questions** not explicitly resolved by legislation.

In Algeria—as in most civil law jurisdictions where **legislation is the primary source of law**—the role of the judiciary is limited to **interpreting** legal provisions. Thus, judicial decisions do not constitute an independent or binding source of law as they do in **common law** systems. The Algerian judge's mission is to **apply existing law** to specific cases without creating binding legal rules.

Conversely, in **English and Anglo-Saxon legal systems**, the doctrine of **stare decisis** prevails, meaning that judicial precedents are binding on subsequent cases.

Nonetheless, jurisprudence has played an essential role in the **development of commercial law**, contributing to the formulation of principles concerning **banking operations**, the **theory of de facto companies**, and practical doctrines such as **commercial transactions** and **de facto bankruptcy**.

## **2) Doctrine (Legal Scholarship)**

Doctrine refers to the collective opinions of **legal scholars** on the interpretation of law. The prevailing view holds that doctrine is **not a formal source of law**. Its function is to analyze, interpret, and systematize legal provisions, derive general principles, and critically assess judicial and legislative solutions.

Although non-binding, legal scholarship has greatly contributed to the **evolution of commercial law**, through rigorous critique and refinement of both judicial and legislative frameworks.

## **Section Two : The Relationship Between Commercial Law and Other Law and sciences and Its Disciplines**

Commercial law was once an integral part of **civil law**. However, due to the **rapid evolution of commerce**, the importance of **credit and trust**, and the essential role of **money as a medium of exchange**, it became necessary to separate it into an autonomous field governed by its own rules—while still referring to civil law where no specific provision exists.

Commercial law thus encompasses the legal rules governing **commercial transactions, traders' activities, commercial establishments, banking operations, negotiable instruments, bankruptcy, and other matters relevant to trade**.

### **Subsection One : The Relationship Between Commercial Law and Other Law and science**

#### **The first Branch: The Relationship Between Commercial Law and Civil Law**

Commercial law, like civil law, is a branch of **private law**. The **civil law** regulates general relationships among individuals without distinction—it is the “common law” of private relations—whereas **commercial law** governs only **business relationships**.

The emergence of commercial law resulted from **economic and practical necessities** requiring that a specific category of persons (**traders**) and a specific type of transactions (**commercial acts**) be governed by specialized rules distinct from those of civil law. Civil law, characterized by **stability and deliberation**, proved inadequate for the **speed and trust-based nature** of commercial dealings.

Commercial contracts differ fundamentally from civil contracts. Traders engage in frequent, rapid transactions aimed at profit through resale, not personal use. Over time, **customs and practices** specific to merchants developed, diverging from civil law principles. Legislators eventually **codified these customs** into commercial codes, granting them autonomy.

Nevertheless, because civil law serves as the **general law**, the provisions of commercial law remain **exceptions** to that general framework. Hence, commercial law relies on civil law where no special rule applies—a principle reflected in both **French** and **Algerian** legislation. For instance, the **Commercial Code** addresses **sales** in a single article and refers the remainder of the subject to civil law provisions.

Commercial law, however, also **influences civil law**—for example, in classifying **commercial companies** as traders, regardless of their specific activity, as provided in **Article 549 of the Algerian Commercial Code**.

## **Doctrinal Approaches**

Two main doctrinal trends define the relationship between civil and commercial law:

## **1. The Unification Theory (Unity of Private Law):**

This school argues that both branches should be merged into a single code applicable to all individuals and transactions, eliminating distinctions between civil and commercial acts.

### **Justifications:**

- Extending the benefits of commercial law—speed, simplicity, and trust—to all transactions.
- The increasing number of non-merchants engaging in commercial activities (e.g., securities trading, bank accounts).

**Examples:** The **United States, England, Switzerland, and Italy** adopted this approach. Italy's **Civil Code of 1942** abolished the separate Commercial Code, merging its rules into the civil framework.

## **2. The Independence Theory:**

This view holds that commercial law must remain distinct because commercial transactions have their own characteristics—**speed, flexibility, and risk**—that differ from the stability of civil dealings.

### **Arguments:**

- Applying commercial principles to civil life would undermine stability and complicate litigation.
- Only traders are required to maintain accounting books.
- Imposing civil formalities on commercial contracts would hinder trade.
- Encouraging civilians to use commercial instruments (e.g., negotiable instruments) may expose them to undue risks.

Even in countries that adopted unification, **complete integration was never achieved**, as commercial matters still retained distinctive rules (e.g., bankruptcy, negotiable instruments, banking operations).

In conclusion, while civil and commercial law are interdependent, **commercial law exists because civil law was insufficient to meet the demands of commerce.**

## **The Second Branch : The Relationship Between Commercial Law and Economics**

A close relationship exists between **commercial law and economics**:

- **Economics** seeks to satisfy human needs through the allocation of resources.
- **Commercial law** regulates the legal and contractual mechanisms used to obtain and distribute those resources.
- Both aim to optimize resources for human welfare.

The evolution of commerce has led to the creation of new legal instruments—such as **insurance contracts** and **banking operations**—which now constitute the **legal framework of economic activity**.

## **The Third Branch : The Relationship Between Commercial Law and International Law**

Commercial law also interacts closely with **international law**, particularly **private international law**, which governs **cross-border commercial relations**.

This connection arises through **international trade agreements**, necessitating harmonization of commercial rules to resolve **conflicts of laws** and ensure legal predictability.

### **Efforts to Harmonize Commercial Law:**

- 1. Contractual (Non-legislative) Harmonization:** Merchants themselves develop **standardized international contract models**—such as **international sales agreements** or **import-export templates**—often issued by professional bodies like **chambers of commerce**.
- 2. Treaty-Based Harmonization:** States adopt **international conventions** establishing uniform commercial principles accepted by signatory nations (e.g., the **CISG** on international sales).

### **The fourth Branch: The Relationship Between Commercial and Criminal Law**

Commercial law maintains a strong link with **criminal law**, as the latter defines and sanctions offenses committed in the course of business.

Examples include:

- **Fraudulent or negligent bankruptcy**
- **Forgery or infringement of patents and trademarks**
- **Violation of intellectual property rights**
- **Issuing cheques without sufficient funds**

Thus, criminal law ensures compliance with commercial regulations by deterring misconduct in business practices.

## **Subsection two : The Scope of Application of Algerian Commercial Law**

### **The first Branch : The Objective Approach (Theory Commercial Acts)**

The second underlying rationale is of a **political nature**, reflected in the role played by the **objective theory** in promoting the **principle of economic freedom**. This principle seeks to abolish the **guild system** that prevailed in ancient times and hindered the growth of commerce by preventing non-guild members from engaging in trade.

### **The Second Branch: The Personal Approach (Theory of the Trader)**

Proponents of this theory argue that **commercial law applies exclusively to traders**, meaning that the **personal status** of the individual performing the act determines the law's applicability. Consequently, commercial law does **not apply to non-traders**, even if they perform acts of a commercial nature. Conversely, the trader remains subject to **commercial law** even when performing acts that are, in essence, civil in nature.

Despite its clarity and ease of application, this approach has faced significant criticism:

- 1. The circularity problem:** If one defines a trader as a person engaged in commercial activities, the question then arises—how can we

determine which activities are “commercial” unless we already know who a trader is? This creates a logical circle.

2. **The definitional issue:** Attempts to define what constitutes a commercial act lead to rigid and outdated classifications that fail to reflect the evolution of commerce.
3. **Overextension and limitation:** This theory expands commercial law too broadly—applying it to all acts of a trader, even purely civil ones (e.g., purchasing household furniture)—while simultaneously narrowing it, excluding non-traders who engage in genuinely commercial acts.

## **Chapter Two : The Nature of Commercial Transactions**

This chapter examines the **criteria distinguishing civil from commercial acts**, the **practical importance** of this distinction, and the **classification of commercial acts** under Algerian legislation.

### **Section One : Distinguishing Between Civil and Commercial Acts and Its Legal Consequences**

#### **Subsection One : Criteria for Differentiating Civil and Commercial Acts**

Before analyzing the nature of commercial acts, it is necessary to establish a clear **demarcation line** between them and civil acts. As previously discussed, commercial law differs from civil law in both its **scope of application** and **sources of authority**.

Most commercial legislations, including Algerian law, merely **list examples** of commercial acts rather than providing an **exhaustive definition** or a universal criterion. Legal scholars, therefore, have proposed several tests:

### **The first Branch : The Profit and Speculation Criterion**

According to one school of thought, an activity is commercial only if it aims to **generate profit**—that is, if it involves an element of **speculation** designed to achieve a material gain. Thus, an act is deemed commercial when performed with the **intention of profit-making**, either through **buying and reselling goods at a higher price** or through **processing raw materials for resale**.

For example, the **operation of a newspaper** is:

- **Civil** if it serves a scientific, literary, or ideological purpose (e.g., promoting culture or ideas).
- **Commercial** if it is conducted for profit, such as speculating on advertising or paper costs.

However, this test is insufficient because **most human activities**, whether civil or commercial, aim at profit. Professions such as **law, medicine, engineering, and accounting** generate income but are **civil** in nature.

Conversely, some activities are commercial even **without profit intent**—for example, selling goods below cost to stimulate business.

## **The Second Branch : The Circulation Criterion (Mouvement of Wealth)**

Another theory holds that an act is commercial if it contributes to the **circulation and distribution of wealth**. Every activity that moves goods from producers to consumers—transforming wealth from a **static** to a **dynamic** state—is commercial.

Examples include **buying for resale, banking, brokerage, commission agency, and manufacturing for sale**.

However, this test also has limitations: the **circulation of goods** without profit motive does not necessarily create a commercial act. **Cooperative associations**, for instance, distribute goods among members **without profit**, yet their operations are **civil** in nature.

## **The Third Branch : The Organization Criterion (Enterprise / Undertaking)**

This approach defines a commercial act as one conducted **within the framework of an organized business or enterprise** (mouassassa / entreprise). The essential elements are **repetition and regularity**, forming a structured and ongoing project.

Under this criterion, commercial law applies only to **professionally and systematically conducted** enterprises. Activities performed **once or sporadically** fall outside the commercial domain.

Critics argue that this test is too restrictive:

- Some acts are commercial **even if performed only once** (e.g., a one-time speculative purchase for resale).
- Conversely, it would incorrectly classify **professions like law, medicine, or accounting**—which are organized and profitable—as commercial, despite being traditionally civil.
- It also extends commercial status to **agricultural enterprises**, historically considered civil in most jurisdictions.

### **The Fourth Branch : The Motive Criterion**

Advanced by the scholar **Riperan**, this theory focuses on the **underlying motive or purpose** (le mobile) behind an act. An act is commercial if driven by a **commercial intent** and civil if motivated by a **personal or social purpose**.

This test, however, is criticized as **subjective and impractical**, since intent is an **internal element** that is difficult to ascertain at the time of contracting. Moreover, the legislature has designated certain acts as **commercial by nature**, regardless of the actor's intent (e.g., **negotiable instruments**).

### **Synthesis**

It is clear that **no single criterion** can effectively distinguish civil from commercial acts. Each test is inherently limited. Therefore, modern legal systems—including Algeria's—adopt a **hybrid approach**, combining the elements of **profit, circulation, and enterprise**.

This is reflected in **Articles 2, 3, and 4** of the Algerian Commercial Code, which classify commercial acts based on their **nature, form, and relation to traders**.

## **Subsection Two: The Importance of the Distinction Between Civil and Commercial Acts**

Commercial transactions are governed by rules designed to promote **speed, trust, and credit**, while civil transactions emphasize **formality and caution**. Hence, distinguishing between the two has significant **practical consequences**, particularly in:

- **Evidence (proof)**
- **Jurisdiction**
- **Solidarity among debtors**
- **Formal notice requirements**
- **Payment terms and grace periods**
- **Assignment of rights**
- **Bankruptcy and insolvency**
- **Trader status**
- **Legal interest rates**
- **Immediate enforceability of judgments**

### **The First Branch : Rules of Evidence**

In **civil matters**, evidence is subject to **strict formal requirements**:

- Written evidence is required for transactions exceeding **100,000 Algerian Dinars**, under **Article 333 of the Civil Code**.
- Testimony is not admissible against or beyond the contents of a written contract (**Article 334 Civil Code**).
- Private documents are binding on third parties only when formally **date-certified (Article 326 Civil Code)**.

In contrast, **commercial law** allows **freedom of proof**—by witnesses, presumptions, or any other means—regardless of the transaction’s value. Parties may also rely on entries in each other’s **accounting books** as evidence.

This **flexibility**, enshrined in **Article 34 of the Commercial Code**, reflects the need for **speed, trust, and informality** in business dealings.

However, this rule is not absolute. Two main exceptions apply:

1. **Contracts requiring written form** — Certain commercial contracts must be in writing, such as:

- Sale or pledge of a commercial establishment
- Technology transfer agreements
- Company formation contracts
- Ship sales, etc.

The rationale is that these contracts are complex and long-term, making written evidence prudent and efficient.

2. **Contractual agreement on proof** — Parties may agree to require written proof of their commercial dealings. Since rules of evidence are not of public order, such stipulations are valid.

## **The Second Branch : Determination of Comptent Jurisdiction**

Many countries have established **specialized commercial courts** to adjudicate business disputes efficiently.

In **Algeria**, however, there is **no separate commercial judiciary**. Jurisdiction over commercial matters lies with **ordinary courts**, which hear both civil and commercial cases. In practice, **special commercial sections** exist within these courts, presided over by judges with expertise in commerce, but this does not amount to a distinct judicial system.

According to **Article 44 of the Code of Civil and Administrative Procedure**, jurisdiction is allocated as follows:

- **Real estate and lease disputes**, even if commercial, are heard by the court where the property is located.
- **Bankruptcy and judicial settlement cases** are heard by the court in whose district the bankruptcy was initiated.
- **Company disputes** are handled by the court of the company's **registered headquarters**.
- **Seizure proceedings** fall under the jurisdiction of the court where the seizure took place.

This structure ensures that, although Algeria lacks a specialized commercial court system, **commercial litigation** remains subject to courts with **general jurisdiction** and **internal specialization**

### **The Third Branch: The Principle of Solidarity**

**Solidarity** means that when multiple debtors or creditors exist, the obligation is **indivisible**—each debtor is liable for the **entire debt**, and the creditor may demand full payment from any one of them.

In civil law, solidarity **is not presumed** and must be expressly stipulated. In contrast, in **commercial law**, solidarity among co-debtors is **presumed by custom and jurisprudence**, reinforcing **trust and creditworthiness** in business dealings.

This presumption reflects the dynamic nature of commerce, where transactions rely on **speed, confidence, and shared financial responsibility**.

In civil transactions, the rule of solidarity (joint liability) applies only when expressly provided by law or by agreement. Solidarity is **not presumed** under civil law, in accordance with Article 219 of the Civil Code.

In commercial matters, however, the principle of solidarity may be **excluded** in any transaction unless a mandatory provision expressly requires it between debtors. This is confirmed by **Article 549 of the Commercial Code**, as well as in the case of **solidarity among the signatories of a bill of exchange** toward its holder — a concept known as *commercial solidarity*.

The commercial legislator thus establishes a **presumption of solidarity among debtors** in commercial obligations. As for the details and implementation of this rule, they are governed by the relevant provisions of the Civil Code. The Algerian Commercial Code merely presumes solidarity among **debtors**, not among **creditors**. Consequently, the principle under civil law remains: solidarity between creditors is not presumed and exists only if expressly provided by law or agreement.

Therefore, a debtor cannot treat multiple creditors as jointly entitled to the same debt. The debtor must perform payment only to the creditor holding the right, and what one creditor receives belongs solely to that creditor without affecting the rights of the others. Moreover, the debtor may raise defenses only against the creditor concerned, and not against the other creditors.

### **The Fourth Branch: Formal Notice (*Interpellation*)**

When a creditor notifies the debtor upon the due date of payment and records the debtor's delay in performance, this constitutes a **formal notice (interpellation)**. The purpose of this procedure is to make the debtor liable for the consequences of the delay, including any resulting damages.

In **civil transactions**, such notice must be made **through an official document** served by judicial officers. In **commercial matters**, however, customary practice allows **a simple written notice** (such as a letter) without the need for a formal judicial document — reflecting the flexibility and speed required in commercial dealings.

## **The fifth Branch : Payment Deadlines (*Grace Periods*)**

Under **Article 244 of the Civil Code**, if a civil debtor is unable to pay at maturity, the court may grant a reasonable grace period or multiple installments, provided this does not harm the creditor.

Conversely, **commercial law does not grant judges such discretion**, given that commercial activities are founded on **speed and creditworthiness**. A merchant must settle his debts on time; failure to do so may constitute grounds for **bankruptcy**.

## **The Sixth Branch: Transfer of Rights (*Assignment of Credit*)**

According to **Article 241 of the Civil Code**, an assignment of rights is not enforceable against the debtor unless the debtor consents to it, and such consent must bear a legally established date to be effective against third parties.

In **commercial law**, none of these formalities are required. Rights embodied in commercial instruments may be transferred simply by **endorsement or delivery**, signifying the transfer of ownership. Hence, **bills of exchange, promissory notes, and cheques** may be negotiated by mere endorsement or even delivery if payable to bearer.

## **The Seventh Branch : The Bankruptcy System**

A **merchant's bankruptcy** may only be declared when they cease paying **commercial debts**. If the unpaid debt is civil in nature, bankruptcy cannot

be declared. Even if a civil creditor petitions for bankruptcy, they must prove the debtor's inability to pay a **commercial obligation**.

Once bankruptcy is declared, the debtor loses control over the administration and disposition of their assets. All creditors are grouped in what is known as the **body of creditors**, and a **trustee** is appointed to liquidate the bankrupt's assets and distribute the proceeds proportionally among the creditors — thereby ensuring equality among them.

Ordinary (non-merchant) debtors, however, are subject to the **Civil Code provisions (Articles 299–301)** governing *insolvency*, a far less stringent system than bankruptcy. In civil insolvency, the debtor retains control over their property, and there is no collective liquidation or distribution procedure.

### **The Eight Branch : The Nature of the Trader's Status**

A trader is any person who engages in a commercial activity and adopts it as a permanent profession. This is stipulated under Article 4 of the Commercial Code.

Anyone who acquires the status of a trader becomes subject to the obligations and formalities imposed upon traders, most notably registration in the Commercial Register and the obligation to maintain commercial accounting records. Furthermore, such a person is also subject to the bankruptcy regime.

### **The Ninth Branch : Interest Arising from Delay (Legal Interest)**

In cases where the debtor fails to fulfil their obligations within the prescribed time, legal interest begins to accrue as compensation for the

delay. The trader-debtor, therefore, bears responsibility for compensating the creditor for losses resulting from such delay, which typically represents the loss of a profit opportunity for the creditor-trader.

The rate of legal interest differs between civil and commercial matters: it is **4% in civil obligations and 5% in commercial obligations**. This distinction is justified by the fact that money circulates and generates profits more rapidly in commercial dealings, leading to greater potential losses when payments are delayed.

As a general rule, compound interest (interest on interest) is prohibited, and the total amount of interest may not exceed the principal debt. However, in commercial transactions, it is permissible to charge interest on accrued interest, and the total interest may exceed the principal sum. In civil matters, interest begins to accrue from the date of judicial demand, whereas in commercial matters, it accrues from the date established by custom or specific legislative provisions. In Algeria, however, the legislator has **prohibited the charging of interest altogether**, as it is deemed *usurious (riba)* and thus contrary to Islamic law, given that Islam is the official religion of the State

## **The Tenth Branch : Immediate Enforcement of Judgments (Provisional Execution)**

Immediate enforcement refers to the execution of a judicial decision despite the possibility of appeal or while an appeal is still pending. The general rule provides that judgments are not enforceable until they become final—meaning they have acquired the force of *res judicata*.

However, in commercial matters, judgments are **always enforceable provisionally**, even if they are subject to appeal or opposition. In other words, commercial judgments may be executed before they become final, in order to preserve the speed and efficiency that characterize commercial relations.

## **Section Two: Classification of Commercial Acts under Algerian Legislation**

The Algerian legislator has enumerated commercial acts in Articles 2 to 4 of the Commercial Code. This enumeration means that these acts have been definitively classified as commercial by express legislative provision, leaving no room for doubt as to their nature. Individuals may not alter this legal characterization, as the legislator has expressly subjected these acts to the *commercial legal regime*—and thus they cannot be governed by another legal system. The determination of whether an act is commercial or civil, and the resulting legal consequences, constitute a matter of law subject to the supervision of the Supreme Court (*Cour de Cassation*).

Nevertheless, it should be noted that the Algerian legislator did not adopt a single criterion in listing these acts. In some instances, an act is deemed commercial even if performed only once, while in others, it must be conducted on a continuous or professional basis (as an enterprise or undertaking) to be classified as commercial.

Accordingly, the acts listed in the Commercial Code should be viewed as **illustrative rather than exhaustive**. This is evident from the wording of Article 2, which states:

“An act shall be deemed commercial by its nature...”

Had the legislator intended the list to be exhaustive, the provision would have read:

“The acts that are commercial by their nature are...”

Thus, the prevailing opinion in legal doctrine supports the principle of analogy, allowing new activities to be classified as commercial by comparison with those expressly listed.

Commercial acts are therefore divided into three categories:

1. **Commercial acts by nature (objective criterion)** – Article 2
2. **Commercial acts by form (formal criterion)** – Article 3
3. **Commercial acts by accessory or connection (subjective criterion)**  
– Article 4

## **Section One : Commercial Acts by Nature**

These are acts that are considered commercial regardless of the status of the person performing them.

Most of these activities involve the **circulation of movable property**, such as goods, foodstuffs, or securities, undertaken with the intent to make a profit. Some, however, are deemed commercial even without involving the circulation of wealth.

Moreover, certain acts are commercial even if carried out only once,

whereas others acquire commercial character only when performed habitually or in the form of a structured enterprise (*entreprise*).

**Although some of these activities are not directly related to the circulation of wealth**, certain acts are still considered commercial even if carried out only once, while others acquire a commercial character only when conducted as an organized business or enterprise (*entreprise*).

Below, we shall examine **commercial acts by their nature** under Algerian commercial law, whether performed as **isolated acts** or **within the framework of a structured business undertaking**.

### **The first Branch : Isolated Commercial Acts**

Isolated commercial acts refer to transactions that are deemed commercial **even if performed only once**, regardless of the trader status of the person engaging in them.

These include, in particular, the following categories:

#### **1. Acquisition and Leasing of Movable Property for the Purpose of Sale or Rent**

The **acquisition or leasing of movable property**, of whatever kind, for the purpose of resale or subleasing—either in its original state or after modification—is considered a **commercial activity**. Such an operation represents one of the principal and classical forms of commercial activity and is classified as a **commercial act by nature**, even

if conducted only once or incidentally, regardless of whether it is performed by a trader or a non-trader.

Article 2 of the Algerian Commercial Code establishes **four cumulative criteria** for considering such acts as commercial:

1. **Existence of an acquisition or lease (a transaction for consideration);**
2. **The subject matter must be movable property;**
3. **The acquisition or lease must be accompanied by the intent to sell or rent;**
4. **The ultimate purpose must be to realize a profit.**

All four conditions must coexist for the act to be characterized as commercial. The criteria can be detailed as follows:

#### **A. Acquisition or Lease for Consideration**

The transaction qualifies as a commercial act only if it involves **consideration**, whether monetary (payment of a price) or in kind (exchange or barter).

Acquisition here means obtaining ownership or the right of use of an item by paying a price, while leasing involves the use of an item for a specific period in return for a known rent.

Thus, acquisitions through **gifts or inheritance** fall outside the scope of Article 2 and are not considered commercial.

This requirement of acquisition for consideration also excludes certain essential activities from the domain of commercial law.

For example, a **farmer's sale of crops** grown on their own or leased land is not a commercial act, as agricultural production is governed by civil law.

Likewise, **liberal professions** such as physicians, lawyers, and accountants are not considered commercial, since their activities depend on personal skill, professional competence, and intellectual expertise rather than capital investment or speculation.

## **B. Agricultural Activities and the Sale of Produce**

Under Article 2 of the Commercial Code, the sale by a farmer of produce from their own land, whether owned or leased, is not deemed a commercial act.

This exclusion is historical in origin—since **civil law**, which governed agricultural societies in ancient Rome, traditionally covered such transactions.

Accordingly, agriculture and all related activities (e.g., purchasing seeds, fertilizers, and tools; harvesting; hiring laborers; or breeding livestock for farm use) are **civil in nature**.

However, the legal characterization may change if the farmer engages in **speculative activity** beyond mere production:

- If a farmer **purchases crops from other farmers** for the purpose of resale and profit, this constitutes a **commercial act**, particularly when performed regularly or on a large scale.

- If a farmer **buys livestock or poultry** to raise and resell them as a regular business activity, this also qualifies as commercial speculation.
- Similarly, when a farmer **transforms agricultural products** (e.g., turning wheat into flour) using machinery or employing numerous workers, the operation becomes **industrial** and thus **commercial** in character.

In contrast, if the processing remains **secondary** to the main agricultural activity, it retains its **civil nature**.

But if the industrial aspect **dominates**—for instance, a sugar company cultivating sugarcane solely to supply its factory—then the overall enterprise is deemed **commercial**.

## 2. Liberal Professions (Non-Commercial Occupations)

The term *liberal professions* refers to occupations that serve the public by relying primarily on the individual's **intellectual, scientific, or artistic skills** rather than capital investment. The professional receives remuneration in the form of **fees** rather than profit.

Professions such as **physicians, lawyers, accountants, artists, and athletes** are considered **civil in nature**, even if they occasionally engage in activities that may seem commercial (e.g., selling equipment or materials necessary for their practice).

These are viewed as **incidental acts** to their primary professional activities, not as independent commercial operations.

## For example:

- A doctor who sells medicine to patients in remote areas, or a dentist who sells prosthetic teeth to clients, does not become a trader.
- However, if the professional **expands their activity**—for example, a physician who establishes a private hospital, employs other doctors, and manages staff and facilities—then their enterprise becomes **commercial**, since it involves **speculation on capital, labor, and equipment**.
- The same reasoning applies to an architect who not only designs buildings but also undertakes construction work, thereby engaging in **commercial contracting**.
- Likewise, owners of **private schools** are considered traders because, although teaching itself is a civil profession, the operation of a school involves **management of staff, facilities, and financial speculation** for profit.

The status of **pharmacists** has been debated extensively.

While their profession appears at first to resemble a liberal activity (relying on scientific expertise), modern jurisprudence and doctrine have classified **pharmacy as a commercial activity**.

This is due to the **industrialized nature** of pharmaceutical practice today, where pharmacists mainly **purchase medicines from suppliers and resell them**—with minimal intellectual creation—making their activity essentially **commercial speculation**.

## 3. Intellectual and Artistic Creations

Intellectual or artistic activities, such as the work of **authors, painters, sculptors, and musicians**, are generally **civil in nature** because they are inseparable from the creator's personal skills and creativity.

If an author sells a manuscript to a publishing house, the act is **civil for the author** but **commercial for the publisher**, since the publisher purchases the work for the purpose of **commercial distribution and resale**.

Thus, while intellectual creators operate in a civil sphere, the **commercial exploitation** of their work (by publishers, producers, or distributors) constitutes a **commercial act by nature**.

### **C. The Requirement that the Subject Be Movable Property**

The purchased or leased item must be **movable**, whether tangible (goods, machinery) or intangible (trademarks, patents, goodwill, copyrights).

Transactions involving **immovable property (real estate)** are generally excluded from commercial law, based on the traditional notion that real estate cannot be the object of rapid commercial turnover.

However, modern developments in **real estate speculation** have weakened this rationale.

Consequently, transactions involving real estate may now be classified as **commercial**, provided they are **conducted professionally and continuously**.

An isolated real estate transaction, on the other hand, remains **civil in nature**.

### **D. The Requirement of Intent to Sell or Lease**

The intent to sell or lease must exist **at the time of acquisition**.

For instance, if a person purchases a car for personal use and later decides to sell it, the act is civil.

Conversely, if the car was purchased **with the intention to resell**, the transaction is commercial—even if the resale never occurs—since the determining factor is the **intent at the moment of purchase**, not the outcome.

Sometimes, **the sale may precede the purchase**, as in cases where a trader agrees to deliver goods not yet in stock and later purchases them to fulfill the order.

In such cases, the activity remains commercial because the **intention to sell** existed prior to the purchase.

Determining intent is a **factual matter**, assessed by the trial court based on circumstances such as the buyer's profession, the quantity of goods purchased, and the overall context of the transaction.

## **E. The Requirement of Intent to Realize Profit**

A key element of a commercial act is **the intention to make a profit**, even if no actual profit is realized.

Thus, activities of **cooperatives, associations, or unions** are not considered commercial if their primary purpose is to serve their members rather than generate income.

For example, a **student union** that purchases and resells textbooks at cost price performs a **civil act**, since there is no intent to profit.

## 4. Banking, Exchange, and Brokerage Operations

Banking institutions are central financial entities whose principal role is to **receive deposits and provide credit**.

They also engage in numerous ancillary operations, such as **discounting commercial papers, managing securities, renting safe deposit boxes**, and facilitating financial transactions.

Banks, by their nature, are **capitalistic enterprises** aimed at **profit and financial speculation**, and thus their activities are **commercial acts by nature**.

**For this reason**, and in accordance with **Articles 23 and 24 of the Algerian Commercial Code (C.C.)**, **banking activities** are classified as *commercial acts*. These activities encompass a wide range of financial operations performed by banks, such as the **issuance of commercial papers**, acting as intermediaries between the public subscribing to **shares and bonds** and the state or issuing companies (in exchange for a commission), as well as **promoting saving and investment** for profit.

Banks receive deposits from individuals—sometimes with or without interest—and reinvest these funds by lending to others. They also engage in **current accounts, letters of credit, leasing**, and many other financial services.

All such operations are considered **commercial for the bank**, even if performed only once. However, the nature of the same act for the client

may be **civil or commercial**, depending on their professional status and the purpose of the transaction.

### **A. Brokerage (Al-Samsara)**

A **brokerage contract** is an agreement by which a **broker** undertakes, for remuneration, to find a counterparty willing to enter into a specific contract and to mediate between the parties to facilitate its conclusion.

If there is no agreement or customary rule determining the broker's commission, the **judge** will fix it in light of the **effort** and **time** expended by the broker.

The broker earns his fee **only if his mediation leads to the conclusion of the deal**. However, if the transaction fails due to the unjustified refusal of the principal who hired him, the court may grant the broker **compensation** for the efforts undertaken. Once the contract is concluded, the broker becomes entitled to his commission, even if the transaction is not executed thereafter.

In some cases, the broker may be authorized to **conclude the contract himself** on behalf of the client. In such situations, he combines the roles of **broker** and **agent**, and the law treats him accordingly.

The Algerian legislator expressly recognized **brokerage as a commercial activity** under **paragraph 24 of Article 4 of the Commercial Code**, without distinguishing whether the underlying contracts are civil or commercial. For the other contracting parties, however, the classification of

the transaction depends on the **nature of their business** and **their professional status**.

## **B. Foreign Exchange Operations**

**Foreign exchange operations** involve the **exchange of one currency for another**—national or foreign—usually in return for a commission and profit from the **difference in exchange rates**. There are two main types:

1. **Manual (spot) exchange** – The currencies are exchanged and delivered immediately between the parties.
2. **Drawn (deferred) exchange** – The exchanger receives the money and undertakes to deliver an equivalent amount of national currency to the client in another country or at a future date.

Such operations are **commercial by nature** for the **bank or money exchanger**, but for the **client**, they are considered **commercial only** if conducted by a **trader** and related to their **business activity**.

## **C. Agency Contracts**

A **commercial agency** refers to any **commercial activity** conducted by one person (the agent) on behalf of another person or entity (the principal), in return for a **commission or profit margin**.

In commercial law, including Algerian law, **agency** is generally divided into two main forms:

### **1. Commission Agency**

A **commission agency** is a contract under which the **commission agent** carries out a legal transaction **in their own name but on behalf of a principal**.

Thus, the commission agent appears as the **contracting party** before third parties and assumes all rights and obligations arising from the contract. Their role typically involves **purchasing, selling, or transporting goods**, following the principal's instructions and exercising the diligence of a prudent professional.

## 2. Commercial Agency

A **commercial agency**, in most legal systems, is an agreement whereby the **agent** undertakes to **conclude contracts in the name and on behalf of the principal**.

The two forms differ as follows:

Aspect	Commission Agent	Commercial Agent
<b>Contracting Capacity</b>	Contracts <b>in their own name</b> , for the principal's account.	Contracts <b>in the name and for the account</b> of the principal.
<b>Remuneration</b>	Determined per transaction, independent of its value.	Usually a <b>percentage</b> of the contract's value.
<b>Legal Guarantees</b>	Enjoys a <b>special privilege (lien)</b> for recovery of commission.	No equivalent legal guarantee.

## **D. Other Commercial Activities Added by Legislation**

The Algerian legislator expanded the scope of commercial acts through **Legislative Decree No. 43/43 on Real Estate Activities**, particularly **Article 44**, which regulates such operations.

Further, **Ordinance No. 19/46 of July 2, 1996**, amending and supplementing the Commercial Code, added several new **commercial activities**, including:

### **4. Purchase and Sale of Ship Equipment and Provisions**

The **purchase or sale of equipment and provisions** required for the operation of a ship—fuel, supplies, and navigational tools—is a **commercial act**, given its direct connection to maritime exploitation.

### **5. Chartering or Maritime Loans on Risk**

This includes cases where a **shipowner leases their vessel** to another party for a specified voyage or time period, in exchange for a fee.

Such **chartering**—whether for transporting passengers or goods—is a **commercial act by nature**.

Similarly, **maritime loans on risk** are commercial acts. In this contract, the **lender** advances funds to the **shipowner** for equipping the ship or purchasing goods for transport, on the condition that repayment (with a premium) depends on the safe arrival of the ship.

If the ship is lost, the **lender bears the loss**; if it returns safely, the **lender receives repayment plus a significant profit**.

## 6. Marine Insurance and Related Contracts

**Marine insurance** is a contract by which the **insurer** undertakes to indemnify the **insured** for losses or damages resulting from **maritime risks**, in exchange for a **premium**.

This form of insurance is indispensable in maritime commerce—virtually no ship sails without it—as it provides financial protection against perils at sea.

Marine insurance constitutes a **real right accessory** to the ship, extending to all its essential components and applies to **all types of vessels**, whether used for **transport, fishing, or leisure**.

## 7. Agreements Concerning Crew Wages and Employment

The **crew** provides services aboard the ship in exchange for wages paid by the **shipowner**.

If not specified in the contract, wages are determined according to **customary maritime practice**, but in all cases must respect **statutory minimums under labor law**.

Remuneration may be calculated **daily, weekly, monthly, per voyage**, or as a **percentage of profits**.

Leasing crew members to another vessel, including to **foreign ports**, is also a **commercial activity**.

## 8. Maritime Voyages

A **voyage** undertaken by a shipowner or charterer for the **transport of goods or passengers** is considered a **commercial act by nature**, under the **1996 amendment** to the Commercial Code.

## **The Second Branch : Commercial Acts Conducted as Enterprises**

Commercial acts by way of **enterprise** (*mouqawala*) refer to activities considered **commercial only when conducted professionally and systematically**, as part of an organized economic project.

An enterprise thus involves both **material (capital)** and **human (labor)** resources managed in an organized structure, with the goal of **profit-making through speculation**.

If these two elements—**professional repetition** and **speculation for profit**—are absent, the activity is not considered a commercial enterprise but merely a **craft or manual trade**.

The main components of a commercial enterprise are:

1. **Capital** – Used for acquiring machinery, equipment, and premises; it must be substantial enough to indicate a speculative business rather than a small manual craft.
2. **Labor** – The entrepreneur employs workers whose efforts are more significant than their own personal labor.
3. **Organization and Management** – The coordination of capital and labor toward production and profit.

Under **Article 41 of the Commercial Code**, activities that acquire commercial status only when conducted as enterprises include:

### **1. Leasing Enterprises (Movable or Immovable Property)**

The **leasing of movables or immovables** is commercial when performed **habitually and within an organized business structure**.

This applies equally to **car rental companies or property rentals** for medical (private hospitals) or educational (private schools) purposes.

Those engaged in such leasing are regarded as **traders**, subject to obligations such as **commercial bookkeeping, registration in the commercial registry, and taxation on industrial and commercial profits**.

### **2. Industrial Enterprises (Production, Transformation, or Repair)**

Industrial enterprises engaged in **production, processing, or repair**—such as sugar refining, oil extraction, textile and furniture manufacturing, and machinery production—are **commercial**.

Even small-scale industries like **auto repair shops** and **tailoring workshops** qualify as commercial when they involve **substantial machinery and hired labor**.

If, however, the activity relies primarily on **personal manual skill** rather than **organized capital and workforce**, it remains **civil**, as in the case of **carpenters, blacksmiths, tailors, and artisans**.

### **3. Craftsmen (Distinction between Artisan and Trader)**

An artisan is an **independent worker** who practices a **manual craft** as a small-scale personal occupation.

He differs from:

- **An employee**, because he is not under subordination and sells his own products.
- **A trader**, because he works primarily by his own labor and skill rather than by employing others' labor or speculating on capital.

Thus, when a person's production depends mainly on **personal craftsmanship**—even with minimal machinery—their activity is **civil**, not commercial.

**Nevertheless**, if an artisan begins **purchasing large quantities of raw materials** used in their craft — for example, a tailor buying fabrics and offering them for sale either in their original form or after tailoring — their activity becomes **commercial**. This classification is based on the **principle of purchase with intent to resell** combined with **a speculative purpose**; in such cases, trading becomes the artisan's primary occupation, while the manual craft itself becomes merely a **secondary element**.

#### **4. Construction, Excavation, and Land Development Enterprises**

The legislator has classified **construction, excavation, and land development enterprises** as **commercial activities**, regardless of the size or nature of the works involved.

This includes the construction of **bridges, buildings, roads, tunnels,**

**airports, and the digging of canals and dams, as well as renovation and demolition works.**

To qualify as a commercial act, the contractor must supply the **tools, materials, and equipment** necessary for the job, as in this case, they **speculate on the use of such equipment** for profit.

However, judicial interpretation extends this principle further: even if the contractor provides only **labor** (without materials), their work remains **commercial**, as they **speculate on the labor of their workers** in the same way as on equipment.

Thus, a contractor who merely supplies **labor services** for real estate development is considered to be engaged in a **commercial activity**, whether or not they supply materials.

Conversely, if a contractor's role is limited to **supervising the workers** provided by others, their work is deemed **civil**, as it relies on personal expertise or intellectual contribution rather than commercial speculation

## **5. Supply and Service Enterprises**

A **supply enterprise** involves a person undertaking to deliver **specific quantities of goods** to another person **regularly and continuously** in exchange for payment.

Examples include the **supply of food to hospitals, schools, or the army, coal to factories, or costumes to theaters.**

Likewise, **service enterprises**, such as operating **baths, cafés, hotels, and clubs**, fall under the same category.

Such activities are **commercial** when conducted **professionally**, regardless of whether the supplier **purchases the goods beforehand** or not.

## **6. Mining, Quarrying, and Extraction Enterprises**

The legislator has classified all forms of **primary natural resource exploitation** as **commercial activities**, provided they are carried out through an **organized enterprise**.

This includes the extraction of **minerals** (such as petroleum, coal, iron, or mercury) and the **cutting of stone and marble** from quarries.

These activities are considered commercial **whether or not** the operator owns the source of production (for example, a concessionaire operating under a license).

The commercial nature extends to **related operations**, such as **purchasing drilling equipment, chemical materials, and safety tools**.

Moreover, **processing activities** associated with extraction (e.g., cutting and polishing marble for construction or decoration) are also **commercial**, even when independent from the extraction itself.

Exploiting other **natural resources** is also deemed **commercial**—for example, bottling and selling **mineral water**, establishing a **hotel or restaurant** near a spring, or using a **lake for fish farming**.

This approach aligns with modern French law, which recognizes the **commercial nature** of such activities, contrasting with traditional doctrine that classified them as **civil acts**, even when pursued for profit.

## 7. Transport and Transit Enterprises

The **operation of transport or transit enterprises** is inherently **commercial**.

“Transport” refers to **the movement of goods**, while “transit” relates to **the movement of persons** using various modes of transportation.

Under **Article 41 of the Commercial Code**, transport operations are considered **commercial only when conducted professionally**.

Thus, if an individual occasionally uses their car to transport friends or family, their act remains **civil**, even if they receive payment.

**Professionalism** is the determining factor that gives **transport operations a commercial character**, as it involves **speculation on labor and means of transport** for profit.

Transport enterprises are commercial **regardless of the mode of transport** (land, sea, or air) or the **nature of the goods or persons carried**.

While transport is **always commercial for the carrier**, its nature for the **client** depends on the client’s status:

- If the client is a **trader**, and the transport is **related to their business**, it is commercial by extension.
- Otherwise, it remains a **civil act**.

## 8. Entertainment and Intellectual Production Enterprises

Article 41 of the Commercial Code designates **entertainment enterprises** established to **amuse the public for profit** as **commercial enterprises**.

This includes the operation of **cinemas, theaters, circuses, concert halls, music shows, and horse races**.

Such activities are commercial **by virtue of being conducted professionally**, not by their intrinsic nature.

For instance, **school or university performances** organized for recreation are **civil acts**, even if modest entry fees are charged, because they lack a **profit-making intent**.

Owners of entertainment venues engage in **speculation** on the work of **actors, musicians, and technical staff**, as well as on **intellectual property** (films, scripts, or music).

The contracts they conclude are **commercial for the owner** but **civil for the artist**, whose work remains intellectual in nature.

If a performer (e.g., a pianist or singer) performs **their own work personally** without speculating on others' efforts, their activity is **civil**. However, if the same performer **hires other artists** to contribute to the production, it becomes **commercial**, since it involves **speculation on others' labor**.

Similarly, the **exploitation of intellectual creations** is commercial when organized as a **publishing enterprise**—for instance, when a **publisher** purchases copyrights to publish and sell a literary or artistic work for profit.

## 9. Insurance Enterprises

**Insurance** is defined as a contract whereby one party (**the insured**) receives compensation or a payment from another (**the insurer**) upon the occurrence of a specific **risk**, in return for a **premium**.

Its core function is to **distribute potential losses** among a group of participants, thereby reducing the impact on any one individual.

Under **Article 41 of the Commercial Code**, all **insurance enterprises** are **commercial by nature**, regardless of type—marine, fire, theft, health, or accident insurance.

This classification applies to **all projects** engaged in insurance operations, given their organizational, financial, and speculative characteristics.

However, **mutual insurance associations**, formed by individuals exposed to similar risks (e.g., farmers), are **not commercial**, since they lack **profit motives**.

Likewise, **social insurance schemes**, whether **mandatory or voluntary**, imposed by the state for social protection, are **civil** for the same reason.

In summary, all insurance enterprises **except mutual and social insurance** are **commercial**.

For the **insurer**, the activity is always commercial; for the **insured**, it is **civil**, unless the insurance is directly connected to their **commercial operations** (e.g., insuring merchandise against theft or transport risk).

## **10. Public Warehousing Enterprises**

These enterprises are **commercial** under **Article 41 of the Commercial Code**, as **public warehouses** play a crucial role in commercial life.

They provide **storage facilities** for merchants' goods for a fee until sale or retrieval.

The depositor receives a **warehouse receipt** ("warrant"), representing ownership of the stored goods.

This warrant can be **transferred or pledged** without moving the goods themselves.

Public warehouses often include **auction halls**, where goods are sold if the depositor defaults on a debt secured by the warrant.

## **11. Auction Enterprises for Wholesale and Retail Goods**

Under **Article 41 of the Commercial Code**, enterprises dealing in **wholesale auctions of new goods** or **retail auctions of used goods** are **commercial**.

The rationale is to **protect the public** interacting with such establishments by subjecting them to commercial regulations, even if individual sales are civil in nature.

To qualify as commercial, **auction activities** must be conducted **professionally and as an organized business**.

The auction operator's activity is **commercial**, while the **buyer's act** remains **civil**, unless the buyer is a **trader** purchasing goods **for resale**, in which case the act becomes **commercial** by extension.

## Subsection One: Commercial Acts by Form (Formal Commercial Acts)

These acts are detailed in Article 3 of the Commercial Code.

### The first Branch : Dealing in Bills of Exchange (Safa'ij)

The Bill of Exchange (السفتحة, *Safa'ij*) is a commercial instrument (negotiable instrument) that contains an order from one person, called the "**Drawer**" (الساحب), to another person, called the "**Drawee**" (المسحوب عليه), to pay a specific sum of money on a certain date to a third person, the "**Payee**" or "**Beneficiary**" (المستفيد).

- **Circulation:** The Payee usually does not hold the Bill of Exchange until its due date; instead, it is circulated through **endorsement** (النظام). The person to whom the right fixed in the Bill of Exchange is transferred is called the **Holder** (الحامل). This Holder, in turn, may assign the instrument until it rests in the hands of the **Final Holder**, who presents it to the Drawee for payment.
- **Acceptance:** The Payee or the subsequent Holders often do not wait until the due date to present the Bill of Exchange to the Drawee for payment. The Holder may present it to the Drawee **before the due date** for the Drawee to sign their **acceptance** (القبول). By this acceptance, the Drawer and all subsequent Holders commit to the Final Holder to guarantee **acceptance** on the one hand, and guarantee **payment** on the due date on the other.
- **Role of Negotiable Instruments:** Negotiable instruments play a vital role in commercial life. They contribute to facilitating transactions

between individuals and stimulating the movement of wealth. In addition to their traditional function as a **tool that obviates the need to transfer money** from one place to another, they are also considered a **payment tool** that reduces the use and circulation of hard currency. Furthermore, if the instrument includes a term (أجل) for payment, it fulfills an important additional function as a **credit tool**.

- **Underlying Relationships:** The three parties in the Bill of Exchange (Drawer, Drawee, and Payee) are connected by prior legal relationships.
  - The Drawer draws the Bill on the Drawee because the Drawer is the Drawee's creditor for an amount equal to the value of the Bill (which may represent the price of goods or a loan amount). This right that the Drawer has against the Drawee is called the **"Consideration for Payment"** (مقابل الوفاء).
  - There is another relationship between the Drawer and the Payee where the Drawer is indebted to the Payee (e.g., the Drawer purchases goods and draws a Bill to pay the price).
- **Commercial Status:** The undertaking of everyone who signs the Bill of Exchange as a Drawer, Endorser, Guarantor, or Drawee is considered a **commercial act**. In other words, the Bill of Exchange is considered a commercial instrument **by form in all cases**, regardless of the status of the parties involved (traders or non-traders) and whatever the purpose for which it was drawn (whether for a civil or a commercial transaction).

- **Mandatory Data:** Article 390 of the Commercial Code mandates that the Bill of Exchange must include a set of compulsory data, which includes: the designation "Bill of Exchange" (سند تجاري), an unconditional order to pay a specific sum, the name of the Drawee, the due date and place of payment, the name of the Payee, the date and place of issue, and the signature of the Drawer.
- **Related Acts:** It should be noted that once the Bill of Exchange is drawn (which is a commercial act), all other acts related to it—namely, **acceptance, endorsement, guarantee reserve (aval), and payment**—also become commercial acts.

### **The Second Branch :Commercial Companies (Societies)**

A company is a contract by which two or more persons undertake to contribute to a financial project by providing a share of labor or capital, for the purpose of sharing any profits or losses that may arise from that project.

- **Commercial Status:** Commercial companies are considered **commercial acts by form** according to Article 42 of the Commercial Code. The legislator has settled the dispute regarding the nature of subscribing to the shares of joint-stock companies or the actions undertaken by a partner or shareholder, especially when they do not hold the status of a trader or when their liability is limited.
- **Conclusion:** *Accordingly, the text of Article 42 clearly affirms the commercial nature of everything related to commercial company contracts absolutely (with the exception of the Société en Participation,*

*which is only considered commercial if it undertakes a commercial act).*

## **The Third Branch: Agencies and Business Offices, Regardless of Their Purpose**

These activities are classified as **commercial acts by form**. They refer to offices that provide a service to the public in exchange for a fixed fee or a specific percentage of the value of the deal they intermediate.

- **Diverse Services:** The services provided by these offices are diverse, including: advertising, tourism, news, debt collection, obtaining export licenses, customs clearance for goods, marriage brokerage, and others.
- **Nature of Activity:** In nature, these activities represent the **sale of services or efforts and expertise** exerted by the office owner and their employees with the aim of profit, and they are not necessarily related to the circulation of wealth.
- **Acquiring Commercial Status :** The commercial nature of these offices' activities is acquired due to the **form of organization** through which their work is conducted, even if the service itself is civil (such as marriage brokerage or tourism). However, when this activity is practiced professionally, and an office is opened to conduct it with the intent of speculation and earning, the act is considered commercial.
- **Legislative Viewpoint:** In fact, the Algerian legislator did not focus as much on the nature of the activity of these offices as on the fact that their owners enter into **extensive relationships with the public**. Therefore, the legislator deemed it necessary to protect the transacting

public by subjecting them to the commercial legal regime in terms of jurisdiction, evidence, and the application of the bankruptcy system, in addition to obliging the owners to keep commercial books that serve as proof.

## **The fourth Branch : Operations Related to Commercial Establishments (Commercial Premises/Business Assets)**

Algerian law has deemed operations related to commercial establishments as **commercial acts by form**.

- **Definition of Commercial Establishment:** A commercial establishment (المحل التجاري) is a collection of tangible and intangible assets that form an independent legal unit and are prepared for commercial exploitation. The establishment includes: goods, furniture, machinery, the trade name, goodwill, the clientele element, trademarks, patents, and other items used by the trader in the practice of their profession.
- **Commercial Status of Transactions:** Based on the provisions of the Algerian Commercial Code, **every transaction related to commercial establishments is considered a commercial act**, whether it is the sale or purchase of the entire commercial establishment with all its components (tangible or intangible), whether the transaction involves only one component of the establishment (such as selling goods or mortgaging a trademark) or the entire establishment, and **regardless of whether the transferring party or the transferee is a trader or a non-trader**.

## **The fifth Branch : Every Commercial Contract Related to Maritime and Air Trade**

Under the provisions of **Article 42 of the Commercial Code**, all **contracts connected with maritime and air commerce** are deemed **commercial**. Accordingly, the following activities are classified as **commercial acts**:

- The **establishment, purchase, or sale** of ships and aircraft,
- The **voyages and operations** they undertake,
- The **sale or purchase of tools, equipment, and supplies** related to ships or aircraft,
- The **leasing or chartering** of ships and aircraft,
- **Maritime and air loans**, and
- **Insurance contracts** against maritime and air risks, along with all other contracts associated with **maritime and air trade**.

### **Sebsection Two : Commercial Acts by Accessory (Incidental Commercial Acts)**

**Article 44** of the Algerian Commercial Code provides that **acts which are civil in origin** may become **commercial by accessory** when **performed by a trader** in connection with their trade.

This concept, known as the **theory of incidental commercial acts**, represents an application of the **personal theory** in commercial law: it is the **status of the person performing the act** (the trader) — not the nature of the act itself — that subjects it to the rules of commercial law.

In addition to purely civil acts related to the trader's private life (such as purchasing clothing, food, or marriage expenses), there are other civil acts **connected to the trader's business** which acquire a **commercial character** by association.

**Examples include:**

- Renting a commercial premise,
- Purchasing machinery, furniture, and tools for trade,
- Supplying the business with utilities such as electricity and water, and
- Purchasing vehicles to transport goods or workers.

These acts, although civil in nature, **become commercial** when carried out **by a trader** for purposes **necessary, complementary, or useful** to their trade.

## **1. The Theoretical Basis of the Doctrine**

The **theory of incidental commercial acts** rests upon **two foundations: logical and legal.**

### **A. The Logical Basis**

From a legal logic perspective, **the trader's commercial activities form a unified whole** that must be governed by **one coherent legal system**.

It would be illogical to apply **commercial law** to part of the trader's operations and **civil law** to another, since all these acts—whether commercial or civil in nature—serve the **same commercial purpose**.

This theory also corrects the **limitations of the exhaustive listing method** of commercial acts, which might overlook certain auxiliary or complementary activities.

Therefore, the **trader's status** — not the nature of the act — determines its commercial classification.

A **single isolated commercial act** performed by a non-trader **cannot** render related civil acts commercial.

**Example:**

If an ordinary person purchases goods for resale (a commercial act) and then insures them, the insurance contract remains **civil**, because the person is **not a trader**.

## **B. The Legal Basis**

The doctrine's **legal foundation** lies in **Article 44 of the Algerian Commercial Code**, which states:

1. Acts performed by a trader in connection with the **practice of their trade or needs of their establishment** are considered **commercial by accessory**.
2. Obligations **between traders** are also regarded as **commercial by accessory**.

Doctrine and jurisprudence agree that **it suffices for one party to be a trader** for the contract to be **commercial from their side**, while remaining **civil for the other**.

Courts further presume that **all acts of a trader relate to their business**

unless proven otherwise; thus, the default assumption is that **the trader's acts are commercial**.

## **2. Conditions for Applying the Doctrine**

Two essential conditions must be met for a civil act to become **commercial by accessory**:

### **A. The Person Performing the Act Must Be a Trader**

A **trader** is any individual who **professionally and independently engages** in commercial activities **in their own name and for their own account**.

This definition also extends to **companies** established in one of the recognized **commercial forms**, regardless of their purpose.

Hence, even **civil acts** performed by such companies are **commercial** if connected with their business.

However, if the same acts are carried out by a **non-trader**, they remain **civil**.

### **B. The Act Must Relate to the Trader's Business**

The act must be **related, useful, or complementary** to the trader's professional activity.

**Examples of contractual (transactional) acts include:**

- Purchasing vehicles for business use or transport of goods,
- Buying office furniture,

- Installing utilities (electricity, water, gas) for the business,
- Insurance contracts covering merchandise or premises.

### **Scope of obligations:**

The theory extends to **all obligations**, whether **contractual or non-contractual**, provided they are **connected with the trader's business**.

## **3. Scope of Application**

The doctrine applies to **all obligations** of the trader related to their trade, whether contractual or otherwise.

### **A. Contractual Obligations**

#### **General Rule:**

All contracts concluded by a trader **for business purposes** (even if civil by nature) **become commercial** by application of this theory — for example: contracts for purchasing office space, insuring the shop or employees, transportation agreements, or business-related loans.

#### **Exception:**

Certain contracts remain civil despite their connection to commercial matters — particularly the **suretyship (guarantee)** contract.

A suretyship remains **civil** even if the guaranteed debt is commercial or one of the parties is a trader, **unless**:

- the surety is a **bank**,
- the guarantee secures a **signature on a commercial instrument**, or
- the trader provides the guarantee **for purposes of their business**.

## B. Non-Contractual Obligations

The theory also applies to **obligations arising from non-contractual sources**, including:

- **Tort liability**: a trader's obligation to compensate for harm caused by themselves, their employees, or their property (such as machinery) during the course of business;
- **Unfair competition**: liability for damages resulting from acts such as imitation of patents or trademarks;
- **Unjust enrichment**: e.g., where a customer overpays a trader by mistake, provided the enrichment is related to the business;
- **Agency of necessity (negotiorum gestio)**: obligations arising when another person acts on behalf of a trader and confers a benefit.

## Section Three : Mixed Acts

**Mixed acts** are legal transactions that are **commercial for one party** and **civil for the other**.

They are not a separate category of commercial acts, which is why many jurists discourage using the term “**mixed commercial acts**.”

**Examples include:**

- A trader or manufacturer purchasing **agricultural products** from a farmer;
- A publisher acquiring **literary or artistic works** from authors or artists;

- A private person buying goods from a trader **for personal use**.

These acts pose a challenge because they cannot be uniformly governed by either civil or commercial law.

Doctrine and jurisprudence have resolved this by applying the **legal system corresponding to the debtor's status** in the dispute, while seeking balance between both regimes.

## 1. Applicable Law

Commercial rules (e.g., **solidarity, bankruptcy, shorter limitation periods**) apply to the **party for whom the act is commercial**, while **civil law** applies to the **party for whom the act is civil**.

## 2. Jurisdiction

1. If the act is **commercial for the defendant** but **civil for the plaintiff**, the **plaintiff** may choose to bring the action **before either the commercial or civil court**.
  - *Example:* a farmer suing a trader for the unpaid price of crops.
2. If the act is **civil for the defendant** but **commercial for the plaintiff**, the **plaintiff (trader)** must bring the case **before the civil court**.
  - *Example:* a trader suing a consumer for non-payment of goods bought for personal use.

## 3. Rules of Evidence

Each party follows the evidentiary rules corresponding to **their own legal status**:

- The party for whom the act is **commercial** may use **free commercial proof** (e.g., oral or written evidence).
- The party for whom the act is **civil** must comply with **civil proof restrictions** (e.g., written contracts for amounts above a threshold).

### Examples:

- A **farmer (civil)** suing a **trader (commercial)** can use **commercial methods of proof** (witnesses, presumptions).
- A **trader (commercial)** suing a **farmer (civil)** must use **civil proof methods**.

## 4. Immediate Enforcement of Judgments

In commercial matters, judgments are **immediately enforceable** despite appeal, unlike in civil matters.

Given the impossibility of dual enforcement systems, a **single rule** applies:

- If the judgment arises from a **commercial matter**, it is **immediately enforceable**.
- If it arises from a **civil matter**, it is **not enforceable** unless expressly authorized by law.

For **mixed acts**, the prevailing doctrinal view is that the **debtor's status** determines the judgment's nature:

if the act is **civil for the debtor**, the judgment is **civil** and **not subject to immediate enforcement**, since the rationale behind strict commercial enforcement (speed and certainty in business) does not apply.

## 5. Pledges Securing Debts from Mixed Acts

A pledge (mortgage or lien) securing a debt from a mixed act cannot be divided into civil and commercial parts.

A unified legal regime must apply.

According to prevailing opinion, if the **debt is commercial for either party, the pledge itself is commercial**.

Thus, a pledge securing a loan granted by a **bank (commercial lender)** to a **farmer (civil debtor)** is deemed a **commercial pledge**, subject to **commercial pledge rules** for both parties, even though the underlying debt is commercial **only for the lender**.

## Chapter Tree : The Trader

Under **Article 1 of the Commercial Code**, a **trader** is defined as “*any person who habitually engages in commercial acts and makes them their profession.*”

This definition makes it clear that **the trader's status depends on the activity performed**, not on membership in any particular class or organization.

Thus, **habitual engagement in commercial activity** is the cornerstone of acquiring **trader status**.

## Section One : Conditions for Acquiring Trader Status

According to statutory, doctrinal, and judicial interpretation, a person must meet the following **conditions** to be recognized as a trader:

1. Engage in **commercial acts habitually (professionally)**;
2. Perform such acts **in their own name and for their own account** (a doctrinally added condition);
3. Possess the **legal capacity** required to engage in commerce.

### **Subsection One : Meaning of Professional Commercial Activity**

To practice **commerce professionally** means that a person engages in **commercial acts regularly and continuously** so that such activity becomes their **main occupation and primary source of livelihood**.

Because there is **no fixed legal criterion** for determining professionalism (”الاحتراف“), jurists have proposed several approaches:

#### **1. The Speculative Purpose Theory (فكرة المضاربة):**

A person is considered a trader if they engage in commercial acts **for profit and livelihood** (for example, stock trading).

**Criticism:** This view is too broad — a person may act speculatively in a single or occasional commercial transaction without becoming a trader.

#### **2. The Commercial Enterprise Theory (فكرة المشروع التجاري):**

A person acquires trader status if they conduct their activities in the form of an **organized commercial enterprise**.

**Criticism:** This view is too narrow — many artisans operate through a “project” without being traders, while itinerant vendors may conduct continuous trading without an organized enterprise but still qualify as traders.

## Conclusion:

Professionalism is a **factual condition**, determined by whether a person conducts commercial acts — whether isolated or through an organized business — **habitually, continuously, and as their main livelihood**.

## Subsection Two: Difference Between Habit and Profession

Concept	Definition	Legal Effect
<b>Profession</b> (الاحتراف)	Engaging in commercial acts <b>regularly and as the main means of livelihood</b> .	Confers trader status.
<b>Habit</b> (الاعتياد)	Performing acts occasionally or from time to time <b>without regularity or livelihood dependence</b> .	Does <b>not</b> confer trader status.

## Example:

- A person who frequently buys books for their personal library is **habitual but not professional**.
- A landlord who regularly draws bills of exchange for rent payments is not a trader either.

The **degree of repetition** must be such that the activity constitutes the person's **principal occupation**.

Determining whether the conduct amounts to **habit or profession** is a **question of fact** left to the **trial court**, whereas the question of whether trader status has been **legally acquired** is subject to **cassation review** as a question of law.

It is also important to note that **professionalism applies only to:**

- Acts that are **commercial by nature** (Article 41 C.C.), and
- Acts that are **commercial by form** (Article 42 C.C.).

By contrast, acts **commercial by accessory** are **excluded**, since they presuppose an already existing trader status.

### **Subsection Three : Multiple Professions and Persons Prohibited from Trading**

#### **1. Multiple Professions**

A person may combine **more than one profession** (e.g., trade and agriculture).

Having several occupations **does not prevent** acquiring trader status, **so long as** the legal requirements are met.

However, the distinction must be **genuine** — each profession must be **independent** of the other.

- A **farmer** who breeds cattle for sale as part of their farming activity is **not a trader**.
- But a **sugar factory owner** who cultivates sugarcane to supply their industrial plant **is a trader**, since the agricultural activity is merely **subsidiary** to their industrial-commercial activity.

#### **2. Persons Prohibited from Trading**

Certain professionals (such as **doctors, lawyers, engineers, university professors**) are **legally barred** from engaging in trade under the statutes governing their professions.

However, if they **nonetheless engage in trade continuously**, they **acquire trader status** and become **subject to commercial obligations**.

The rationale is to **protect third parties** who rely on appearances and to **prevent offenders from benefiting** from their own illegality by claiming exemption from trader liabilities (e.g., commercial bookkeeping, bankruptcy rules).

Nonetheless, acquiring trader status does **not prevent disciplinary or penal sanctions** under professional regulations.

## **Section Two : Conducting Commercial Acts for One's Own Account**

To acquire trader status, a person must engage in commercial acts **professionally and for their own account** — meaning they act **independently**, bear the **risks and losses**, and enjoy the **profits**.

Independence is therefore an **essential condition** for being a trader.

### **The first Branch: Persons Who Do Not Acquire Trader Status**

- **Employees and managers** who buy or sell on behalf of others, such as:  
shop workers, purchasing or sales managers, and non-partner directors of companies.

- The **employer** or **legal entity** they represent — not they themselves — is the trader.
- **Agents** acting in the name and for the account of a trader, such as a **commercial agent** selling vehicles or spare parts for a manufacturer, do **not** acquire trader status.

## **The Second Branch : Use of Fictitious or Borrowed Names**

### **1. Use of a Non-Existent (Fictitious) Name**

If a person conducts business under an **invented name**, only the **real person behind the activity** acquires trader status.

### **2. Use of Another Person's Real Name**

- If the **name owner consents** to its use and to the business, **both persons** acquire trader status.
- If the name owner **does not consent** (or was unaware), only the **actual operator** of the business is deemed a trader.

### **3. Concealed or Disguised Trading (“Front Trading”)**

Occurs when a person **prohibited from trade** (e.g., bankrupt, incompetent, or a regulated professional) **conducts business under another's name** (“the front person”).

## 4. Trader Status in Cases of Concealed Trading

**Concealed or front trading** (التسתר التجاري) arises when a **prohibited or incapacitated person** operates a business **in another's name**, using the “front person” as a façade.

### Scholarly Opinions on Who Is the Trader:

#### 1. Only the concealed trader (المتسّر):

Because the business capital and profits belong to them.

#### 2. Only the front person (الظاهر):

To protect third parties who relied on appearances in good faith.

#### 3. The prevailing opinion (both):

- The **concealed trader** is a trader because they actually conduct business for their own benefit.
- The **front person** is also deemed a trader under the **doctrine of apparent authority**, protecting third parties and ensuring the application of commercial obligations (especially bankruptcy).

## The Third Branch :Capacity of Commercial Companies

Commercial companies acquire trader status in one of two ways:

### 1. By Form (بحسب الشكل)

Any company organized in one of the **commercial forms** provided by law (e.g., **joint-stock company**, **limited liability company**) is **commercial by law**, even if its purpose is civil.

This is implied in **Article 144 of the Commercial Code**.

## 2. By Object (حسب الموضوع)

If a company does not take a commercial form, its status depends on its **purpose or object** as defined in its **founding contract** (which must be notarized and registered).

- If the **main object** is **commercial**, the company is **commercial**, even if it carries out incidental civil acts.
- If the **main object** is **civil** (e.g., agriculture), the company remains **civil**, even if it performs occasional commercial acts.

## Section Three : Commercial Capacity (for Natural Persons)

To acquire trader status, a person must have the **legal capacity** to practice commerce, since commercial acts are **acts of disposition**.

### The first Branch : Capacity of Adults

- **Age of Majority:**

A person must be at least **19 years old** (Article 40 of the Civil Code).

- **Mental Soundness:**

The person must not be affected by a **mental incapacity** (e.g., insanity, idiocy, prodigality, or negligence).

- **Foreign Nationals:**

Under **Article 6 of the Commercial Code**, foreigners are **equal to Algerians** — an adult foreigner (19+) may engage in trade even if their personal law considers them underage, to protect Algerian citizens dealing with them.

## **(القاصر المرشد) The Second Branch : Capacity of an Emancipated Minor**

Normally, a **minor aged 18** cannot engage in commerce.

However, **Article 51** of the Commercial Code allows it under strict conditions:

- Written Prior Authorization:**

Must be granted by the **father, mother, or family council approved by the court** (if parents are deceased or absent).

- Registration in the Commercial Register:**

The written authorization must accompany the registration request.

### **Effects of Authorization:**

1. The minor becomes **fully capable** for all commercial acts within the scope of the authorization.
2. The minor **acquires trader status** and becomes subject to trader obligations.
3. The minor's **liability** is limited to the **funds allocated to the business**, if the authorization specifies such limits — an exception to the **unity of patrimony** principle.
4. The minor **cannot** mortgage or dispose of their **real estate**, except through formal judicial procedures for minors (Article 52).

### **Revocation of Authorization:**

Although not explicitly stated, authorization may be **revoked** when required for the minor's interest (e.g., wasteful behavior), by **analogy to the rule of revocation by equivalent form** (نوازي الأشكال).

## **If the conditions of Article 51 are not met:**

The minor's acts are **civil** and governed by **civil law on minors**, not commercial law.

## **Third – Capacity of the Married Woman**

The Algerian Commercial Code adopts the principle of **financial independence between spouses** (Article 52 C.C.).

Accordingly, if a **married woman** engages in **commercial activities on a professional and independent basis** (Article 55 C.C.), she **acquires the status of a trader** and becomes **subject to all the obligations** incumbent upon traders.

## **Chapter Four : Obligations of Traders**

Once a person acquires **the status of trader**, they enjoy a special **legal position** that imposes certain **duties** and grants specific **rights** (such as broader evidentiary privileges).

The most significant obligations are:

- 1. Keeping commercial books, and**
- 2. Registration in the commercial register.**

### **Section One : The Obligation to Keep Commercial Books**

#### **Sebsetion one : Persons Required to Keep Commercial Books**

Every person **having trader status**—whether a **natural or legal person (company)**, national or foreign—engaged in commerce on Algerian

territory is required to maintain proper accounting records (Article 48 C.C.).

- **General Partner:**

A general partner in a partnership (general or limited partnership) is **not required** to keep separate books apart from those of the company, since the company itself maintains records reflecting partners' rights and obligations.

The partner is obliged to keep books **only** if they conduct **independent trading activities** outside the company.

- **Exception:**

The Algerian legislator **exempts small traders** with limited capital from this requirement, as reflected in the phrase "*operations of an enterprise*" in Article 48 C.C.

## **Section Two :Importance of Commercial Books**

1. **For the State:** They enable oversight of economic activities and monitoring of compliance with national economic objectives.
2. **For the Trader:** They allow accurate assessment of financial position and identification of profits, losses, and operational weaknesses.
3. **For the Judiciary (Evidence):** They serve as probative documents admissible before courts and third parties.
4. **For Credit Relations:** They help creditors evaluate the trader's financial standing.
5. **For Bankruptcy Proceedings:** Properly maintained books can exempt the trader from charges of negligent or fraudulent bankruptcy.

6. **For Taxation:** They facilitate the accurate calculation of taxable income and ensure fair tax assessment.

### **Sebsetion Three : Types of Commercial Books**

#### **(a) Mandatory Books (Articles 9 and 10 C.C.)**

Every trader must maintain at least **two compulsory books**:

##### **1. The Journal (دفتر اليومية):**

All business transactions—sales, purchases, loans, payments, receipts—must be entered **daily**, or at least summarized monthly, with supporting documents retained.

##### **2. The Inventory Book (دفتر الجرد):**

A **yearly inventory** of assets and liabilities must be taken, accompanied by a **balance sheet and income statement**, both transcribed in the inventory book.

#### **(b) Optional Books**

Depending on the size and nature of the enterprise, the trader may maintain additional **voluntary books**, such as:

- The **ledger (دفتر الأستاذ)** for posting transactions,
- The **warehouse book (دفتر المخزن)**,
- The **cash book (دفتر الخزينة)**, and
- The **rough book (دفتر المسودة)**.

These books need not satisfy formal requirements but must be **kept carefully and preserved.**

### **(c) Electronic Books**

Under the **E-Commerce Law**, traders may now use **electronic accounting systems** to record entries on **numbered, tamper-proof pages**, ensuring reliability and authenticity of digital records.

## **Section Four : Organization and Regulation of Commercial Books**

To ensure accuracy and prevent manipulation, traders must comply with the following (Article 11 C.C.):

1. **No blanks, erasures, or overwriting** are permitted.
2. **Numbering and authentication** : The journal and inventory books must be **numbered and stamped** by the **competent court** before use to prevent alteration or substitution.
3. **Retention Period:** All books, documents, incoming correspondence, and copies of outgoing letters must be **kept for ten years** (Article 12 C.C.).

## **Section Five : Sanctions for Failure to Keep Books or for Irregularity**

Failure to maintain proper books, or keeping them irregularly, entails both **civil** and **criminal** sanctions.

### **A. Civil Sanctions**

1. The trader loses the right to rely on their irregular books as evidence in their favor.
2. Tax authorities may impose **arbitrary assessments**, often unfavorable to the trader.
3. The trader becomes **ineligible for judicial reorganization**, which would otherwise allow them to resume commercial activity.

## **B. Criminal Sanctions (Bankruptcy Offenses)**

### **1. Simple Bankruptcy (التفليس بالتقدير):**

A trader who fails to keep proper accounts, or whose accounts are incomplete or irregular, commits this offense upon cessation of payments (Articles 370 et seq. C.C.).

### **2. Fraudulent Bankruptcy (التفليس بالتدليس):**

A trader who conceals accounts, dissipates assets, or falsifies debts is guilty of fraudulent bankruptcy.

## **Section Six : Production and Examination of Commercial Books**

Commercial books may be reviewed in two ways :

### **A. Presentation (Partial Inspection):**

1. The **court** may review the trader's books itself or through an expert, without allowing the opposing party to see them (to protect trade secrets).
2. The review is limited to information **relevant to the dispute**.

3. Examination takes place **in the trader's presence or at their business premises** if distant from the court.

## **B. Full Disclosure (Total Inspection):**

1. The trader is compelled to **hand over the books entirely** for examination by the opposing party.
2. This measure is exceptional due to its **risk of disclosing commercial secrets**.
3. Permitted **only in specific cases** (Article 15 C.C.): inheritance disputes, company liquidation, and bankruptcy proceedings.

## **Section Seven : Evidentiary Value of Commercial Books**

### **(A) As Evidence for the Trader Against Another Trader**

1. Properly kept books may serve as **full evidence** between traders for commercial transactions (Article 13 C.C.).
2. Conditions: both parties must be traders, the dispute must concern a commercial matter, and the books must be properly kept.
3. The court retains **discretion** to evaluate their probative force, and the opposing trader may rebut them by any means (freedom of proof in commercial matters).

### **(B) As Evidence for the Trader Against a Non-Trader**

1. General rule: A person **cannot create evidence for themselves**; thus, a trader's books **are not binding** on non-traders (Article 330 C.C.).

2. Exception: Entries in the trader's books may justify the court in directing a **supplementary oath** (يمين متنامية) to either party where testimonial evidence is admissible.

### **(C) As Evidence Against the Trader**

1. Commercial books, whether regular or irregular, may serve as **complete evidence against the trader**, as they constitute an **admission**.
2. **Indivisibility Rule:** The opposing party cannot accept favorable parts while rejecting unfavorable ones.
3. **Exception:** If the books are irregular, the court may **split entries** and evaluate their credibility freely.
4. The trader may always **prove the contrary by any means**.

### **(D) Evidentiary Weight of Irregular Books**

1. General rule: Only **regular books** are admissible as evidence (Article 13 C.C.).
2. Exceptions:
  - They may serve as **evidence against** the trader who kept them.
  - They may serve as **simple presumptions in favor** of the trader in disputes between traders, at the court's discretion, with preference given to the more regular set of books.

## **Section Two : Registration in the Commercial Register**

### **Subsection One : Definition and Objectives**

#### **Definition:**

The **Commercial Register** is an official record maintained by a competent authority in which the names of all traders—individuals and companies—are inscribed.

Each trader is assigned a **dedicated page** containing all relevant data about their business.

#### **Objectives:**

- 1. Economic Census:** To quantify and monitor commercial activity across the country.
- 2. Protection of Third Parties:** To inform those dealing with a trader of their **true legal and financial status**.

#### **Electronic Modernization:**

Under Algeria's **E-Commerce legislation**, commercial extracts are now **issued electronically** with an **encoded digital identifier (QR or barcode)**—the **Electronic Commercial Register**—which securely replaces traditional paper extracts.

### **Subsection Two : Functions of the Commercial Register**

The register fulfills **four primary functions**:

## **1. Informational Function:**

It provides business partners and the public with **accurate and updated information** on a trader's commercial and financial situation.

## **2. Statistical Function:**

It allows the State to **analyze trade activity**, the number of registered traders, and the general dynamics of the national market

## **Subsection Three : The Economic Function**

The Commercial Register also serves an **economic purpose**, enabling the State to **guide and regulate national economic activity**.

## **Subsection Four : The Legal Function**

The Register performs several legal roles :

- It serves as a **simple presumption** of the trader's status (rebuttable by contrary evidence).
- A **commercial company** acquires **legal personality** from the date of its registration (Article 549 C.C.).
- The data recorded in the register is **binding on third parties** from the date of its entry.

## **Subsection Five : Conditions and Procedures for Registration in the Commercial Register**

### **1. Persons Subject to Registration and Required Conditions**

According to Articles 18 and 24 of the Commercial Code, the requirements for registration are:

1. The applicant must be a **trader**.
2. The applicant must have a **commercial establishment located in Algeria**.

## **2. Registration Deadlines and Required Documents**

<b>Category of Applicant</b>	<b>Registration Deadline</b>	<b>Essential Documents Required</b>
<b>Natural person (fixed activity)</b>	Within <b>two months</b> of opening or acquiring the business.	Proof of qualified premises (ownership title, lease contract, or allocation decision) + copy of residence card (for foreigners).
<b>Natural person (non-fixed activity)</b>	Upon commencement of the activity.	Allocation decision within a prepared space (issued by local authorities) + vehicle registration card + proof of habitual residence.
<b>Legal person (local company)</b>	Upon incorporation.	Copy of the company's articles of association + proof of publication + proof of suitable commercial premises.
<b>Foreign branches or agencies</b>	Upon establishment.	Proof of premises in Algeria + certified and translated copy of parent company's articles of

<b>Category of Applicant</b>	<b>Registration Deadline</b>	<b>Essential Documents Required</b>
		association + certified and translated copy of the minutes authorizing the branch opening.

## **Obligation to Display Registration Details**

Every registered trader or company must **include on all invoices, orders, correspondence, and advertising materials:**

- The **name of the court** where they are registered, and
- The **registration number** assigned to them.

## **3. Amendments and Deletions in the Register**

Traders or their heirs must **request the registration of any modification** affecting their legal or commercial status, or **request deletion** in the event of ceasing business or upon death.

1. The request for modification or deletion must be submitted by the **interested party, their heirs, or any person with a legitimate interest** if the trader fails to act.
2. Failure to record such changes results in **inability to oppose them against third parties or public authorities.**

## **4. Legal Effects of Registration**

## **1. Acquisition of Trader Status:**

Registration constitutes a **rebuttable presumption** of trader status. It is not a condition for acquiring that status but rather a **formal confirmation** of it (Article 26 of Law 04/08).

## **2. Right to Engage in Commerce:**

Registration grants the trader the **right to freely conduct commercial activities** (Article 26/04 of Law 04/08).

- **Exception:** For **regulated professions**, additional authorization or licensing is required besides registration.

## **3. Acquisition of Legal Personality by Companies:**

A company acquires **juridical personality** only **from the date of its registration**.

- Commitments made before registration are **personally binding** on the founders **jointly and severally**, unless ratified by the company after incorporation.

## **4. Evidentiary Value of Registered Data:**

Entries in the register are **binding on third parties** from their registration date.

## **5. Electoral Rights:**

Registered traders are entitled to **vote and stand for election** in chambers of commerce and similar professional bodies.

## **5. Evaluation of the Algerian Commercial Register System**

The Algerian legislator has drawn heavily from the **French Commercial Code**, placing Algeria's system midway between:

1. An **administrative system**, serving as a **statistical and economic monitoring tool**, and
2. A **legal publicity system**, ensuring **transparency of business information** and conferring **legal effect and date of legal personality** upon registration.

Nevertheless, the **Commercial Register is not the sole instrument** ensuring full publicity of business-related data in Algeria.

## **Section Four: Sanctions for Breach of Registration Rules**

Violations of registration obligations result in **civil** and **criminal** sanctions.

### **A. Civil Sanctions**

These relate to the consequences of **failure to register or update information**, as they affect dealings with third parties and public authorities:

#### **1. Inability to Claim Trader Status:**

Persons required to register who fail to do so within two months **cannot claim trader status** before third parties or public authorities until registration is completed.

#### **2. Prevention of Evasion of Obligations:**

Such persons **cannot rely on their failure to register** to escape responsibilities or obligations arising from trader status.

#### **3. Lack of Evidentiary Value for Unregistered Data:**

Data that should have been registered or amended **cannot be invoked**

**against third parties or public authorities** (Article 18 C.C.), unless the trader proves that the third party had **actual knowledge** of the facts at the time of contracting.

#### 4. Continuing Liability:

A trader remains **liable for obligations** even after ceasing or transferring business activity until the **amendment or deletion** is registered in the commercial register.

### B. Criminal Sanctions

The Algerian Commercial Code provides for **fines and imprisonment** for violations of publicity and registration rules:

Type of Violation	Legal Reference	Penalty
Failure to mention registration data in correspondence	Art. 19 C.C.	Fine between <b>200 and 300 Algerian Dinars</b>
Failure to request supplemental, amendment, or deletion entry	Art. 26 C.C.	Fine between <b>400 and 10,000 Algerian Dinars</b> , with a court order to complete registration or deletion at the offender's expense
Providing false or incomplete information in bad faith	Art. 27 C.C.	Fine between <b>100 and 10,000 Algerian Dinars</b> and/or <b>imprisonment from 20 days to 6 months</b>

## **Chapter Four : The Commercial Establishment (Business Premises)**

Although the **commercial establishment** consists of **tangible (goods, equipment)** and **intangible (trade name, goodwill, lease rights, clientele)** elements, it possesses an **independent economic value** distinct from the intrinsic worth of its individual components.

It is thus regarded as a **unitary, incorporeal entity** governed by **specific legal rules**.

### **Section One : Components and Legal Nature of the Commercial Establishment**

#### **Subsection One : Components of the Commercial Establishment**

According to **Article 78 of the Commercial Code**, the commercial establishment includes **all movable property necessary for its operation**, which may be **tangible or intangible**, depending on the nature of the trade.

While these elements vary in importance, Algerian law emphasizes **clientele and goodwill** as the core elements.

Article 78 explicitly lists them as **mandatory**, alongside other assets such as the **business name, trade name, lease rights, equipment, inventory, and industrial property rights**.

##### **A. Tangible Elements**

###### **1. Goods (Merchandise):**

- All items available in the establishment for sale, whether finished products or raw materials.
- They must be **owned by the trader** operating the establishment to be considered part of it.

## 2. Equipment and Fixtures:

- Movable assets used to facilitate operations and prepare the business for its intended purpose.
- Examples include **production machinery, computers, office furniture, and vehicles** serving business purposes.

## B. Intangible Elements

These are **incorporeal movable rights** essential to the legal existence of the establishment.

### 1. Clientele and Goodwill:

- **Clientele** represents the continuing relationship between the trader and their customers—the **core essence** of the business.
- **Goodwill** refers to the **ability to attract customers**, depending on tangible factors such as **location, display, and store appearance**.
- **Distinction:** Clientele relates to **regular customers**, while goodwill reflects the **ability to draw occasional ones**.
- Both are **valuable proprietary rights** protected under **unfair competition law**.

### 2. Trade Name:

- The official name adopted by a trader to distinguish their business from others, often comprising their **personal or family name**.

### 3. Commercial (Fictitious) Name:

- A distinctive, often **invented or attractive title** chosen to identify a business (e.g., “*Hilton*,” “*The Little Queen*”).
- **Relation to the Trade Name:** Both serve to differentiate the establishment.
- **Differences:**
  - A business may have **multiple commercial names** but only **one trade name**.
  - The **trade name is mandatory** by law, while the **commercial name is optional**.
  - The **commercial name must be original**, whereas the trade name may simply consist of the trader's personal name.

## Fourth: Other Intangible Elements

These include the **leasehold right** (the right to remain in the leased premises), **industrial property rights** (such as trademarks, patents, industrial designs, and models), and **licenses and permits**.

### 1. Intangible Elements

#### A. The Leasehold Right:

This refers to the right of the owner of a commercial establishment to

continue the lease contract as a tenant and to enjoy the benefits of the leased premises.

### **B. Importance:**

This right becomes particularly significant when the establishment is located in a prime area—such as one known for a specific industry or close to markets—making it easier to attract customers.

### **C. Transfer upon Disposal:**

When a commercial establishment is sold, the transfer includes the leasehold right, which passes to the buyer. The buyer may rely on the rights previously acquired by the seller to complete the remaining term of the lease (Article 183 of the Commercial Code).

### **D. Eviction Compensation:**

The landlord (property owner) may refuse to renew the lease, but in most cases, they are obliged to pay the departing tenant compensation known as *eviction compensation*, equivalent to the loss suffered due to non-renewal (Article 197 of the Commercial Code).

## **2. Industrial Property Rights**

These are part of **intellectual (or moral) property** and are divided into two main types:

### **A. Industrial and Commercial Property:**

This includes industrial designs and models, trademarks, and patents. These

are intangible rights with financial value that may be transferred, and they form part of the commercial establishment's assets.

### **B. Literary and Artistic Property:**

This covers copyrights and related rights.

### **3. Licenses and Permits**

These are authorizations issued by administrative authorities to engage in specific commercial activities (e.g., licenses to open a café or cinema).

Licenses and permits are not considered inherent elements of a commercial establishment unless the license is granted based on objective conditions unrelated to the person who obtained it. In such cases, the license has financial value and may be transferred with the establishment.

## **Subsection Two : The Legal Nature of the Commercial Establishment**

Jurists have long debated the legal characterization of the commercial establishment due to its special legal features. Three main theories have emerged:

### **First Branch : The Independent Financial Estate Theory (or Legal Aggregate Theory)**

#### **1. Essence of the Theory :**

It views the commercial establishment as an independent financial estate separate from the merchant's personal assets, possessing its own rights and obligations.

## **2. Consequence:**

The creditors of the commercial establishment have priority to execute against its assets without competition from the merchant's personal creditors (e.g., a doctor's debt).

## **3. Acceptance:**

This theory is not adopted in Algerian, Egyptian, or French law but is established in German legal doctrine.

# **Second Branch : The Factual Aggregate Theory**

## **1. Essence of the Theory :**

It holds that the commercial establishment is not a legal entity with its own rights and obligations, but rather a factual combination of elements grouped together for commercial exploitation, without creating a separate legal or financial existence.

## **2. Consequence:**

The transfer of a commercial establishment does not automatically include the transfer of related rights and obligations unless explicitly agreed upon.

## **3. Criticism:**

This theory is criticized for the vagueness of the term "factual aggregate," which lacks a precise legal meaning and fails to clarify whether the merchant's assets form one comprehensive estate or separate ones.

## **Third Branch : The Theory of Intangible Property**

### **1. Essence of the Theory:**

It distinguishes between the establishment as an independent unit and its constituent elements. The merchant's right in the establishment is considered an *intangible property right* over non-material assets, similar to industrial property rights.

### **2. Consequence:**

The merchant enjoys an exclusive right over the establishment and may assert it against all others. This right is protected through the legal action for *unfair competition*.

### **3. Preference:**

Most scholars favor this theory because it provides a coherent and logical explanation of the legal nature of the commercial establishment.

## **Subsection Three : Characteristics and Protection of the Commercial Establishment**

### **First Branch : Characteristics**

#### **1. Movable Property:**

The commercial establishment consists of movable elements—both tangible and intangible—and is therefore not governed by real estate law.

#### **2. Intangible Property:**

Although it includes tangible and intangible components, it is itself an

intangible asset that represents the whole group as a distinct and independent unit.

### **3. Commercial Nature:**

The establishment must be operated for *commercial purposes*. If it is used for non-commercial (civil) purposes, it is not legally regarded as a commercial establishment.

## **Second Branch : Protection of the Commercial Establishment**

The commercial establishment is primarily protected through prohibiting certain forms of **competition**.

### **A. Statutory Prohibition of Competition:**

This occurs when the legislator restricts competition to protect the public interest or consumers, such as:

1. Requiring specific qualifications for professions like pharmacy.
2. Imposing standards or weights for certain goods.
3. Granting legal monopolies to public service concessionaires.

### **B. Contractual Prohibition of Competition:**

This arises from the will of contracting parties:

#### **1. Landlord's Non-Competition Agreement:**

If a tenant requires the landlord not to rent part of the property to another person operating a similar business, the landlord is contractually bound by this clause.

## 2. Non-Competition Clause in a Sale Contract:

When selling a commercial establishment, the seller is automatically bound not to start a competing business—this is implied as part of the buyer's right to quiet enjoyment. Breach of this obligation constitutes contractual liability.

## 3. Agreements Between Producers and Traders:

For example, a merchant agreeing to buy goods exclusively from one manufacturer, or a manufacturer agreeing not to sell to others. These are valid as long as they are limited in time and geography to avoid monopolistic effects.

# C. Further Contractual Restrictions:

## 1. Employee Non-Competition Clause:

An employment contract may prohibit an employee from engaging in or joining a competing business after termination.

- *Limitations:* Because such clauses restrict freedom of work, courts (especially in France) require them to be limited in duration, geography, and scope of business.

## 2. Agreements Among Factories to Regulate Production:

Manufacturers may agree to regulate production or pricing.

- *Validity:* These agreements are lawful if their purpose is merely organizational. If they aim to create monopolies or significantly raise prices, they are void for violating public policy and consumer interests.

## **D. Unfair Competition**

Unfair competition occurs between two persons engaged in similar or comparable businesses and requires a wrongful act. It is defined as using unlawful, dishonest, or unethical means to harm a competitor or gain unfair commercial advantage.

- **Fault Requirement:**

Intent or bad faith is not required; it suffices that the conduct deviates from what an ordinary prudent person would do.

- **Legal Basis:**

The action for unfair competition is grounded in *tort liability* (Article 124 of the Civil Code).

### **Examples of Fault in Unfair Competition:**

- Defaming a competitor's reputation by spreading false rumors of bankruptcy or liquidation.
- Using a confusingly similar trade name or business title.
- Counterfeiting or imitating trademarks.
- Misleading advertising, such as falsely claiming certifications or awards.
- Copying a competitor's advertising or sales methods.
- Poaching a competitor's employees or inducing strikes.
- Sustained price-cutting campaigns aimed at destroying competitors, including selling below agreed minimum prices.

### **Damage and Liability:**

- *Compensable Damage*: The damage must be actual and certain, whether already incurred or inevitably impending.
- Hypothetical damage is not compensable unless it materializes.

- **Filing the Lawsuit**

The action is brought against the competitor who committed the wrongful act and anyone who participated with them. The lawsuit may also be filed against a legal entity, which bears civil liability from its own assets.

- **Liability of the Legal Entity**

The legal entity may be held liable indirectly, based on the principle of *vicarious liability* for acts committed by its representatives or subordinates. It may also be held directly liable if the act was carried out pursuant to a decision issued by one of its governing bodies (such as the Board of Directors).

- **The Claimant for Compensation**

Only the injured party or their legal representative may bring the action for damages.

## **C. Judgment for Compensation**

- The court may award **monetary damages** to compensate only for the actual harm suffered by the injured party.

- The judge determines the form of compensation according to the circumstances and may order **specific performance** if possible, though it is not mandatory.

## **Section Two : Transactions Involving the Commercial Establishment**

Numerous legal transactions may affect the commercial establishment, the most important being **sale, lease, and mortgage**.

### **Subsection One : The Sale of the Commercial Establishment**

The sale of a commercial establishment is one of the most significant and common transactions in commercial practice.

#### **• Legal Nature of the Sale**

- It is considered a **commercial transaction by accession** (*acte de commerce par accessoire*) for both the seller (as it concludes their commercial activity) and the buyer (if they intend to operate the establishment).
- It **loses its commercial character** if it is performed by heirs who do not continue the business, or by a person who purchases the establishment merely to dismantle it and use its elements individually.

#### **• Special Legal Provisions**

Because of its importance and its nature as **intangible movable property**, the Algerian legislator has established **special rules** for the sale of a commercial establishment (Articles 79 et seq. of the Commercial Code).

These provisions differ from the general civil law rules and resemble those governing the sale of real estate.

## **First Branch : Substantive Elements of the Sale**

The Algerian Commercial Code does not specify special substantive elements for this type of sale; therefore, the general provisions of the **Civil Code** apply.

The essential elements for validity are: **consent, capacity, subject matter, and cause.**

### **1. Consent**

1. Consent is the **agreement of offer and acceptance** on all essential elements (nature of the contract, the subject matter, and the price).
2. Consent must be **free from defects** such as coercion, mistake, exploitation, or fraud; otherwise, the contract may be annulled.

### **2. Capacity**

Both parties must possess full and valid **legal capacity** to perform juridical acts, particularly those of mixed benefit and detriment.

- **Total incapacity** (e.g., insanity or idiocy) renders the contract void due to lack of consent.
- **Partial incapacity** (e.g., prodigality or inexperience) makes the contract **voidable** in favor of the incapacitated person.

### **3. The Subject Matter**

The subject of the contract is the **commercial establishment** itself and the **monetary price**.

1. The seller's obligation: to transfer ownership of the establishment to the buyer.
2. The buyer's obligation: to pay the agreed price.
3. The general civil law rules govern both obligations.
4. **Mandatory elements:** The sale must include **the customer base (goodwill)** and **the trade reputation**, as these are the essential components without which no commercial establishment can exist.
  - A sale lacking these elements is considered a sale of **separate assets**, not a sale of the establishment.
5. If the parties do not specify which elements are included but merely state that the sale concerns a “commercial establishment,” their **intention** must be interpreted.
  - The sale cannot concern the customer base alone; it must include at least one other component (Article 78, paragraph 2, of the Commercial Code).

#### **4. The Price**

1. **Definition and Conditions:** The **price** is a sum of money that the buyer undertakes to pay in exchange for the transfer of ownership (Article 351 Civil Code). It is an essential element without which the sale is void.

2. Payment Methods: The price may be paid **immediately, deferred, or in installments** (the buyer may issue promissory notes known as “shop notes”), or it may take the form of a **life annuity** for the seller.

## **Second Branch : Formal Requirements for the Sale**

The Algerian legislator imposes **specific formalities** for the sale of a commercial establishment, departing from the general principles of consensual contracts.

These requirements aim to:

- Protect **creditors** from fraudulent dispositions by the seller.
- Protect the **seller** by ensuring recovery of deferred payments.
- Protect the **buyer** from fraud or misrepresentation.

### **1. Official Written Form (Authentic Instrument Requirement)**

1. Although commercial contracts are generally **consensual** and subject to **freedom of proof** (Article 30 Commercial Code), the law requires that the sale of a commercial establishment be executed in an **authentic notarial deed**, given its high value similar to real property.
2. Article 79 mandates that all acts relating to a commercial establishment be proven by an official deed; otherwise, they are **null and void**.

### **2. Public Notice (Publication Requirement)**

1. The sale must be **publicly announced** within **15 days** from its conclusion, at the buyer's initiative (Article 119).

2. The notice is published in the **Official Gazette for Legal Announcements** and a **local legal advertisement newspaper** within the district or province where the establishment operates.
3. The notice must be **preceded by registration** of the sale contract, or it will be void.

### **Mandatory information in the summary notice (under penalty of nullity)**

Dates, amounts, and numbers of collections

**Purpose**  
Specify place and timing of registration and collection procedures.

Date of the contract, names, addresses of seller and buyer, type and location of the establishment

Identify parties, subject, and transaction details.

Sale price, charges, and valuation methods used

Determine the deal's value and tax basis.

Period allowed for objections

Allow creditors to oppose payment of the price.

4. The **sale contract** must also contain certain information to protect the buyer (Article 79 paragraph 2):
  - Name of the previous owner and details of acquisition (type and date of deed): to confirm the seller's legal title.
  - List of **privileges and liens** affecting the establishment: to clarify existing debts.

- **Turnover figures** for the past three fiscal years: for economic and tax evaluation.
- **Lease details** (date, duration, name of lessor): to reveal whether the seller is a tenant or owner and the lease's remaining term.

## **Third Branch : Obligations of the Parties**

### **1. Seller's Obligations**

#### **A. Delivery of the Establishment:**

- The sale becomes effective upon signature of the notarized deed.
- The seller must deliver **tangible elements** (by granting possession) and **intangible elements** (as appropriate).
- The seller must provide all necessary information enabling the buyer to contact **customers and suppliers**.
- The seller is not required to hand over the **accounting books**, but must make them available for consultation for **three years** from the transfer date, including signatures on all accounting records of the preceding three years.

#### **B. Warranty Against Hidden Defects:**

- The seller guarantees against defects affecting the buyer's right to retain customers or goodwill (e.g., if the seller retains a competing nearby business).

#### **C. Warranty Against Eviction:**

- **Legal eviction:** The seller guarantees against any disturbance of title by themselves (e.g., double sale) or by third parties claiming a real right.
- **Material eviction:** The seller guarantees only their own acts (e.g., opening a competing business nearby).

## 2. Buyer's Obligations

### A. Taking Possession:

- The buyer must take possession at the time and under the conditions agreed.
- If the buyer refuses, the seller may seek **specific performance** or **termination with damages**.

### B. Paying the Price:

- Payment must occur at the agreed time and place.
- If the price is deferred, the buyer may issue “shop notes” (*sûretés mobilières*).
- The seller enjoys a **preferential creditor right** if the sale is notarized and registered (Article 118).
  - This privilege applies to the items listed in the contract or, if unspecified, to the **mandatory intangible elements** (business name, trade name, lease right, clientele, goodwill).
- **Allocation of partial payments (mandatory rule):** When the price is paid in installments, payments are first applied to **goods**, then

**equipment**, and finally to **intangible assets** (Article 118 paragraph 2).

- The purpose of this rule is to release the seller's privilege on the tangible items, allowing the buyer greater freedom to deal with their own creditors.

### **C. Payment of Contract Costs and Sale Expenses:**

- The buyer bears the **costs of the contract and related fees**.

### **3. Obligation to Pay Contract and Sale Expenses**

- The buyer is required to bear all **contractual expenses** (such as drafting, notarization, publication, and registration fees) as well as **sale-related costs** (such as applicable taxes and maintenance fees) in accordance with Article 393 of the Civil Code.

### **4. Seller's Privilege over the Commercial Establishment**

- This is a **legal guarantee mechanism** protecting the seller's claim in the event of the buyer's bankruptcy or insolvency, granting the seller **priority over ordinary creditors** of the buyer.
- **Right of pursuit (droit de suite):** The privilege grants the seller the right to **trace and recover** any intangible component of the establishment if the buyer transfers it to a third party, even if that third party acted in good faith.

The acquirer cannot invoke the principle of “possession equals

ownership” (*possession vaut titre*) because it applies only to **tangible movable property**, not to intangible assets.

## **Subsection Two : Lease of the Commercial Establishment**

Leasing a commercial establishment is a significant transaction since the **right to remain in the premises** ensures continuity of the **customer base**. The lease is concluded for **investment purposes**, and the owner is **not liable for operational outcomes**.

The lease of a commercial establishment may take two principal forms:

### **1. Management on behalf of the owner:**

The owner entrusts another person to manage or operate the business **on the owner's behalf**, not on their own account.

This arrangement is often used when the owner is ill or when the establishment passes to heirs who do not wish to engage in trade.

In this case, the owner remains **liable** for the acts of the manager.

### **2. Lease under independent management (free management – *gérance libre*):**

This is the most common and legally regulated form, detailed below.

## **First Branch : Free Management (*Gérance Libre*)**

### **1. Definition and Legal Nature**

#### **1. Definition:**

A free management contract is “any agreement by which the owner or operator of a commercial establishment grants another person (the

manager) the right to operate the establishment **at their own risk and responsibility.**”

## 2. Legal Nature:

It is a **true lease contract** concerning an **intangible movable asset** (the commercial establishment with all its elements).

Given its special nature, the Algerian legislator has regulated it specifically in **Articles 209–220 of the Commercial Code.**

## 3. Manager's Independence:

The manager operates the establishment **in their own name and on their own account**, independently.

The manager acquires the **status of trader** and must comply with all related obligations (including registration in the Commercial Register).

The lessor (owner), however, **is not considered a trader**, although they must also register the lease for **public notice** purposes.

## 2. Conditions of the Free Management Contract

The general conditions of lease contracts under the **Civil Code** apply, along with special conditions under the **Commercial Code**:

Condition	Legal Requirement	Purpose
<b>Commercial Activity by the Lessor</b>	The lessor must have engaged in trade or practiced a profession for at least <b>five years</b> , or operated the leased	To ensure the existence of a genuine, established commercial business with a real clientele before

Condition	Legal Requirement	Purpose
	establishment for at least <b>two years</b> (Art. 209 C.C.).	leasing (guaranteeing the substance of the establishment).
<b>Official Form</b>	The contract must be drawn up <b>in authentic form</b> (notarial deed) under penalty of nullity (Art. 209 bis 2 Civil Code & Art. 211 C.C.).	To enhance contractual security given the importance and potential risks of the transaction.
<b>Publication and Public Notice</b>	The contract must be published <b>within 21 days in the Official Gazette for Legal Announcements</b> and a <b>national newspaper</b> (Art. 212 C.C.).	To inform third parties that the establishment is now managed by a lessee and no longer by the owner, thereby protecting creditors.
<b>Mandatory Manager Information</b>	The manager must indicate on all documents and invoices their <b>commercial registration number</b> , as well as the <b>name, title, address, and registration number</b> of the owner (Art. 212 bis 1 C.C.).	To ensure transparency and protect parties dealing with the manager.

Condition	Legal Requirement	Purpose
<b>Leased Premises</b>	The lease must concern a <b>fully constituted commercial establishment</b> , including the <b>customer base and goodwill</b> , operated for at least <b>two years</b> .	To prevent speculative trading in commercial establishments.

## Second Branch : Legal Effects of the Lease under Free Management

The free management contract creates legal consequences for the **lessor (owner)**, the **manager (lessee)**, and **third parties** (creditors and landlords).

### 1. Effects Concerning the Owner (Lessor)

Obligation	Details
<b>Delivery of the Establishment</b>	The lessor must deliver the establishment with all <b>material and immaterial components</b> necessary for its proper operation (goods, tools, accessories) and ensure they are in usable condition.
<b>Maintenance</b>	The lessor is responsible for <b>major repairs and renovations</b> , while the manager handles <b>routine maintenance</b> .
<b>Warranty Against Disturbance</b>	The lessor guarantees that the establishment is free from hidden defects and must <b>not compete</b> with the

<b>Obligation</b>	<b>Details</b>
<b>Commercial Registration</b>	<p>manager by opening a similar business nearby or interfering with their operations.</p> <p>The lessor must be <b>registered in the Commercial Register</b> or, if already registered, must <b>update their registration</b> to record the lease transaction within <b>15 days</b> of its commencement.</p>

## 2. Effects Concerning the Manager (Lessee)

<b>Obligation</b>	<b>Details</b>
<b>Operation and Management</b>	<p>The manager must operate the establishment diligently and in accordance with commercial customs to maintain its value and clientele. They may not change the business activity or open new branches without the owner's consent.</p>
<b>Non-Competition</b>	<p>The manager must not divert the establishment's clientele to another business of their own, nor may they sell, mortgage, or dispose of the establishment's assets.</p>
<b>Payment of Rent</b>	<p>The rent (consideration) is freely determined—usually periodic or based on profit percentage.</p>
<b>Termination</b>	<p>If the manager delays payment, the lessor may terminate the contract after a <b>formal notice</b> that remains unheeded for <b>one month</b>.</p>

### 3. Effects Concerning Third Parties

Third Party	Legal Consequences
<b>Creditors of the Lessor</b>	Debts incurred <b>before</b> the lease remain payable by the lessor. However, if the court deems that the lease threatens debt recovery, such debts become <b>immediately due</b> (Art. 213 C.C.). Creditors must file suit within <b>three months</b> from publication.
<b>Creditors of the Manager</b>	During the <b>first two months</b> following publication, the lessor is <b>jointly liable</b> with the manager for debts arising from the operation of the establishment (since third parties might still believe the lessor operates it). After two months, only the <b>manager</b> is personally liable. When the lease ends, all debts become <b>immediately payable</b> to protect creditors (Art. 220 C.C.).
<b>Landlord of the Premises</b>	There is <b>no direct legal relationship</b> between the property owner (landlord) and the manager. The manager is <b>not considered a subtenant</b> , and thus has <b>no right to lease renewal or compensation for eviction</b> . These rights belong exclusively to the <b>commercial lessor</b> (the original tenant).

### Third Branch : Termination of the Lease

#### 1. Expiration of the Agreed Term:

The lease ends upon expiry of its fixed term. However, under Article

193 C.C., commercial leases may only end upon a **notice of termination** served at least **six months** before expiry.

## 2. Termination for Non-Performance:

- Due to the lessee's breach (e.g., insufficient operation of the establishment). Such breach may be invoked only if it continues **for more than one month** after formal notice from the lessor (Art. 199 C.C.).
- By **judicial termination**, upon request of either party.

## Third – Destruction of the Commercial Establishment

The contract is **terminated by operation of law** if the establishment is destroyed **materially** (e.g., by fire) or **legally** (e.g., by an administrative decision ordering its closure).

## Fourth – Death of the Manager

The lease-by-management contract (*gérance libre*) **terminates upon the manager's death**, since it is based on **personal consideration** of the lessee's identity and qualifications. Consequently, the manager's heirs have **no right to continue operating** the establishment, contrary to the general rules applicable to ordinary leases.

## Subsection Three : Pledge of the Commercial Establishment

### First Branch : Substantive Conditions of the Pledge

The pledge of a commercial establishment is subject to the **general contractual conditions** (consent, lawful object, lawful cause, and

capacity), in addition to **special requirements** concerning the pledgor, the pledgee, and the pledged object.

## **1. Conditions Relating to the Pledgor (Debtor)**

### **1. Ownership and Power of Disposal:**

The pledgor must be the **owner** of the establishment and have full legal capacity to dispose of it.

### **2. Exception – Lessee's Right:**

As an exception to general principles, the law permits a **lessee** who holds the right to operate a commercial establishment under a lease contract to **pledge the establishment**.

### **3. Suspect Period:**

The pledge must not be concluded during the **suspect period** (the time immediately preceding a declaration of bankruptcy); otherwise, the pledge is **void**, either absolutely or relatively, depending on the circumstances.

## **2. Conditions Relating to the Pledgee (Creditor)**

- Restriction and Designation:**

The legislator restricts the status of pledgee to **specific financial or banking institutions** designated by the competent minister.

- Purpose:**

This limitation constitutes an exception to the principle of freedom to choose one's creditor and aims to **protect the debtor** from

exploitation by usurers and to **safeguard the interests of legitimate financial institutions and large capital enterprises.**

### **3. Object of the Pledge**

#### **1. Retention of Possession:**

The pledge of a commercial establishment is a **possessory pledge without dispossession**, meaning the establishment remains in the pledgor's possession—an exception to the general rule of pledges over movable property—allowing the trader to continue operating the business.

#### **2. Pledged Elements:**

The pledge extends to the elements **essential to the nature of the commercial activity**. Article 224 of the Commercial Code expressly **excludes goods and merchandise** from the pledge.

- If the contract specifies the elements, the pledge applies to **all items explicitly included**.
- If the contract is silent, the pledge **automatically covers** the following: **the trade name, business name, leasehold right, customer base, and goodwill** (Art. 224 C.C.).

#### **3. Excluded Elements:**

The pledge does **not extend** to debts and personal rights arising from operation, immovable property, or accounting books.

## **Second Branch : Formal Conditions of the Pledge**

To eliminate ambiguity arising from the pledgor's retention of possession, the legislator has imposed **strict formal requirements** to protect third parties.

### **1. Written Form (Authentic Instrument)**

#### **1. Form Requirement:**

The pledge must be established by an **authentic notarial deed** (Art. 214 C.C.).

The written form is a **substantive element** of the contract, not merely a means of proof.

#### **2. Exception:**

Under the **Monetary and Credit Law No. 90-10**, a pledge of a commercial establishment in favor of a **bank or financial institution** may be made by a **private agreement**, duly registered and accompanied by **certified signatures**.

### **2. Registration and Publication**

#### **1. Filing:**

The pledge must be **registered** in a **special register** maintained by the National Center of the Commercial Register within whose jurisdiction the establishment is located. This registration **substitutes for physical delivery**.

## 2. Time Limit:

Registration must be effected **within thirty (30) days** of the date of the constitutive deed, **under penalty of nullity** (Art. 217 C.C.).

## 3. Ranking:

Registration determines the **priority order** among pledgees based on the chronological order of their registrations.

## 4. Effects:

- The pledge is **effective against third parties** only after registration and publication, enabling them to ascertain that the establishment is encumbered even though the trader continues to operate it.
- If the pledge includes **industrial property rights** (patents, trademarks, etc.), it becomes **opposable to third parties** only after completion of the corresponding registration procedures with the **National Institute of Industrial Property**.

## Third Branch : Legal Effects of the Pledge

The pledge produces legal consequences for the **pledgor**, the **pledgee**, and **third parties**.

### 1. Effects Concerning the Pledgor (Debtor)

#### 1. Possession and Operation:

The pledgor retains possession of the establishment and may continue to operate it.

## 2. Preservation Duty:

The pledgor must preserve the pledged elements—especially the **customer base, goodwill, and leasehold right**—failing which the creditor may demand **immediate payment** of the secured debt.

## 3. Freedom of Disposition:

The pledge does not prevent the pledgor from disposing of the establishment in any manner, since the pledgee retains a **right of pursuit** (*droit de suite*).

## 2. Effects Concerning the Pledgee (Creditor)

### 1. Real Right and Priority:

The pledge confers a **real right** over the pledged establishment, granting the creditor **priority of payment** from the sale proceeds, subject to valid registration and publication.

### 2. Right of Pursuit:

The pledgee may pursue the establishment in **whosoever's hands it may be found**, since the rule “possession equals ownership” does not apply to intangible property.

### 3. Enforcement:

The pledgee may obtain a **judicial order to sell** the pledged establishment **thirty days** after a formal demand for payment has been served upon the debtor (Art. 216 C.C.).

## 3. Effects Concerning Third Parties (Ordinary Creditors)

## 1. Opposability:

Once registered, the pledge is **effective against third parties**, and the pledgee enjoys **priority over unsecured creditors**.

## 2. Acceleration of Prior Debts:

Article 213(5) C.C. allows ordinary creditors whose debts **arose before the pledge** and are **related to the operation of the establishment** to demand **immediate payment** if the pledge jeopardizes their recovery (e.g., when the pledged debt exhausts the establishment's value and the trader has no other assets). This is an **exception to general principles**.

## Fourth Branch : Termination of the Pledge

The Commercial Code does not provide specific rules for the termination of a pledge; therefore, the **general rules of the Civil Code** apply:

1. **Extinction of the Debt:** The pledge terminates upon extinguishment of the secured debt (through payment, remission, set-off, etc.).
2. **Execution and Sale:** It ends with **judicial enforcement and sale** of the pledged establishment by public auction in case of non-payment.
3. **Expiry of the Term:** The pledgee's privilege over the establishment expires after **ten years**, renewable once (Art. 243 C.C.).
4. **Renunciation by the Pledgee:** The pledge lapses if the creditor **explicitly or implicitly waives** the security right.
5. **Transfer of Ownership to the Pledgee:** For instance, when the pledgee acquires ownership of the establishment by **purchase** or **inheritance**.

**6. Total Destruction of the Pledged Property:** The pledge is extinguished if the commercial establishment is completely destroyed

## Conclusion

Following this comprehensive study of **commercial law**, encompassing four main chapters—the conceptual framework, the nature of commercial acts, the trader, and the commercial establishment—we may conclude that **commercial law** represents a **dynamic and vital branch of private law**, designed to regulate economic activity and ensure flexibility and efficiency in commercial transactions.

### I. Main Findings

#### 1. Dual Nature of Commercial Acts:

The distinction between **civil and commercial acts** remains essential, as it affects rules of **evidence, jurisdiction, and solidarity**, reflecting the unique features of commercial law.

#### 2. Central Role of the Trader:

The study revealed that the acquisition of trader status imposes specific obligations—most notably **registration in the Commercial Register and keeping commercial books**—to ensure transparency and protect third parties.

#### 3. Legal Nature of the Commercial Establishment:

The research confirmed that the commercial establishment constitutes an **aggregate of intangible assets**—a distinct patrimonial entity essential for wealth circulation and deserving of special protection in legal transactions such as **sale, lease, and pledge**.

#### 4. Integration of Objective and Personal Scope:

Although Algerian legislation adopts the **objective theory of**

**commercial acts**, the **personal element of the trader** remains crucial in determining the applicability of commercial law.

## **II. Recommendations**

### **1. Legislative Modernization:**

Update and refine legal provisions related to **electronic and modern commercial activities**, ensuring that commercial law keeps pace with **digital transformation**.

### **2. Simplification of Registration Procedures:**

Simplify the formalities of registration in the Commercial Register and encourage **individual traders and start-ups** to comply with legal frameworks.

### **3. Enhancement of Legal Awareness:**

Increase awareness among traders and **SME owners** about the importance of maintaining commercial records and their role in protecting rights before the courts.

### **4. Strengthening of Commercial Judiciary:**

Develop specialized and efficient **commercial courts** to ensure swift resolution of commercial disputes, thereby reinforcing **confidence in business relations**.

In conclusion, **commercial law remains the cornerstone of national economic development**. Its vitality and effectiveness depend on the continued collaboration of **legislators, judges, scholars, and business practitioners** to preserve its dynamic role in promoting growth and legal security in commercial life

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