

Lecture No. 3 in the "Commercial Law" course, second semester 2025/2026

Chapter Two: Commercial Activities and Their Types

(Continued) Section Three: Types of Commercial Activities

Although there is no precise definition of the term "commercial activities", it is understood to mean all the activities that a person does in order to earn a living and make a profit. These works are divided according to their purpose into commercial works by subject (first requirement), commercial works by form (second requirement), commercial works by association (third requirement), and mixed commercial works (fourth requirement). **First requirement: Commercial activities according to the subject**

The Algerian legislator allocated Article 2 of the Commercial Code to list these acts and make some of them commercial, even if the person does them only once, and these are the individual commercial acts (first branch), while the others are done in the form of an enterprise and are called commercial acts in the form of an enterprise (second branch).

First branch: Sole commercial businesses

This type of work is considered a commercial act, even if it is done only once, regardless of whether the person performing it is a merchant or not. It is as follows:

First: Buying for the purpose of reselling

Any purchase of movable property for resale, whether in its original form or after conversion or use, is considered a commercial transaction, as is any purchase of real estate for resale. The legislator explicitly stipulates three conditions for this purchase to be considered a commercial transaction: the purchase must be completed, the purchase must involve movable or immovable property, and the intention behind the purchase must be resale for profit.

Secondly: Banking operations

This refers to the actions banks take to open commercial accounts and receive cash deposits from savers in exchange for a certain interest rate, then re-lend them at a higher interest rate. Banks thus earn their profits from the difference between the interest paid to savers and the interest charged to borrowers.

Third: Exchange operations

Currency exchange means the exchange of one currency for another. Currency exchange in this sense is done in two ways: manual currency exchange, which is the exchange of money for money of another currency through direct and immediate delivery in the same place, and calculated currency exchange, in which money is delivered in a specific place and its equivalent in foreign currency is received in another place.

Currency exchange generates profits for exchange bureaus and banks, due to the difference in exchange rates between buying and selling currencies. For example, a bank might buy 1 Euro for 151 Algerian dinars (DZD) and sell it for 160 DZD. This difference in value constitutes speculation, and the bank earns its profits from it.

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Fourth: Brokerage or mediation activities

Brokerage or mediation is the evaluation or reconciliation between the two parties to a contract, in exchange for a specific fee, usually a percentage of the value of the transaction. This work is considered commercial because the broker or mediator contributes to the circulation of wealth with the intention of making a profit. It should be noted that brokerage is always considered a commercial act for the person performing it, unlike the parties to the contract between whom he mediates.

Among the brokerage activities, we can mention the work of real estate agents. And, (agents immobiliers) Those who act as intermediaries between those wishing to buy, sell or rent real estate, and take in return a percentage of the value of the transaction.

Fifth: Commission-related work

It is a type of intermediary work in completing deals, and it consists of a person called a "commission agent" carrying out legal transactions in his own name but on behalf of others in return for a fee that is usually a percentage called the commission. and (Commission) Therefore, an agency agreement on commission is considered a commercial transaction, even if it is conducted individually, regardless of the nature of the transaction concluded by the commission agent.

However, for the principal, it is not considered a commercial transaction unless the principal is a merchant or the transaction subject to the agency agreement is related to their business. In addition to the five individual commercial activities mentioned previously, and included in Article 2 of the Commercial Law, Article 4 of the decree concerning real estate activity issued in 1993 added other commercial activities, namely:

- All activities of acquiring or preparing real estate assets for the purpose of selling or renting them.
- Businesses of mediating in the sale and rental of real estate.
- Real estate management and administration work on behalf of others. **The**

second branch: Commercial activities in the form of a business.

In addition to individual commercial activities, the Algerian legislator considered activities carried out in the form of an enterprise as commercial activities. By commercial activities in the form of an enterprise, we mean those projects that require a degree of organization to carry out economic activities. The activity of the enterprise can be of a commercial, agricultural, or service nature, with the combination of material and human elements. This organization requires the availability of the element of professionalism and civilization. Commercial activities in the form of a business venture are:

First: Contracting for the rental of movable and immovable property

It is required that the contracting company be established for the purpose of repeatedly engaging in the leasing process for the purpose of speculation. **Secondly:**

Production, conversion and repair enterprise

A production enterprise is defined as the production of semi-finished or finished goods intended to meet the needs of the population. A transformation enterprise focuses on converting raw materials into semi-finished goods or consumer goods. A repair or maintenance enterprise, on the other hand, undertakes...

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Its activity is in repairing machines, engines... on a frequent basis such as the work of mechanical warehouses, repairing television sets... **Third:**

Construction, excavation, or land preparation contracting

This activity involves the restoration of buildings and the construction of new buildings, similar to what real estate cooperatives do. Les promotions (immobilières) The height of bridges, the excavation of tunnels and water channels.

Fourth: Supply and Services Contracting

A supply contract is a contract whereby one person undertakes to provide goods on a regular and continuous basis to another person, such as a contract between a food store and another person. (superette) With a dairy intended to supply it regularly with milk and its derivatives. As for service contracting, it refers to those shops and offices that provide services to the public in exchange for payment of a certain amount, such as the maintenance of public baths, halls and playgrounds. games rooms or a, (manèges pour enfants) For hotels...

Fifth: Contracting for the exploitation of mines, surface mines, or stone quarries and other earth products

Mining refers to the process of extracting minerals from the earth's interior or surface, whether it be oil, gas, gold... As for stone quarries, their work is to transform stones into marble or sand used in construction, and practicing these works repeatedly is considered a commercial activity.

Sixth: Transport Contracting

This includes companies specializing in the transport of people, goods, or livestock. Establishing a company for this purpose is considered a commercial activity because it involves the element of profit generation.

Seventh: The undertaking of exploiting public entertainment venues or intellectual property production

The exploitation of public entertainment venues refers to the activity of exploiting public spaces such as amusement parks and cinemas, provided that this activity is carried out as a profession. The exploitation of intellectual property, on the other hand, refers to the exploitation of the work of a thinker or artist in the form of a business, such as publishing houses and film or tape production studios.

Eighth: Insurance Contracting

It is the activity carried out by a person called a believer. a (assureur) The one who makes a promise to the believer (assuré) By repairing the damages that may befall him, in exchange for paying an advance grant, and the work of the insurance contracting business is considered commercial because it is based on speculation and making a profit, so the insurance company does everything in its power to avoid compensating amounts greater than those it earns when concluding insurance contracts.

Ninth: Public Warehouse Exploitation Contract

This activity refers to opening warehouses and cold storage rooms for the purpose of storing goods belonging to other people in exchange for a fee.

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Tenth: Contracting for the sale of new goods through public auction.

It is considered a commercial activity because the act of mediating and bringing together those who wish to sell and those who wish to buy is done with the intention of making a profit, and it is required that this be done in the form of an undertaking and practiced on a recurring basis.

In addition to these actions, Order No.27-96 AFor the issuer in09 DDecember1996 andThe Commercial Law modifies some commercial activities in the form of a contract, which are activities related to maritime navigation.

The second requirement: Commercial activities according to form

The Algerian legislator granted commercial status to another category of activities that take a specific form, regardless of their subject matter. These activities primarily consist of commercial papers and commercial companies, as stipulated in Article3From commercial legislation, which are as follows:

First branch: Commercial papers

Mentioning the bill of exchange does not mean excluding other commercial papers, but the legislator was content with mentioning the original and left the details to later texts. **First: Dealing with each other through bills of exchange**(letter of change)

A bill of exchange is a commercial paper drawn up in accordance with the legal form, and it is considered a deferred payment order. It is a three-party document that includes an order issued by a person calling the drawer to another person, who is the drawee, to pay a third person, who is the beneficiary, a specific sum of money, either on demand or at a specified time. The Algerian legislator considered dealing with a bill of exchange to be a commercial act, and therefore all operations related to it, such as drawing, endorsement, payment, or guarantee, are considered commercial acts even if they were not issued by a merchant.

A bill of exchange is a tool for organizing debts between several people without the need to pay money immediately. Usually, the bank does not intervene unless one of the parties wants to use it as an intermediary, such as collecting it via check, discounting it before the due date, or depositing it in a specific bank. **Secondly: The document for the order**Billet à Ordre

It is a commercial paper that includes two parties and is considered a promise to pay, in which a person called the writer promises to pay a certain amount of money on a specific date or upon presentation to another person called the beneficiary or to his order.

The bank usually does not intervene in the payment of the promissory note, and the bank may appear voluntarily in cases such as the beneficiary depositing the note with the bank for collection, or if the bank discounted the note before maturity for a commission, or if payment was made through a bank account.

Third: The checkChèque

It is a commercial paper and is considered an instrument of immediate payment, as it includes an order from a person called the drawer to a bank (the drawee) to pay, upon presentation, a certain sum of money to a third person called the beneficiary or to its bearer.

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The second branch: Commercial companies

A company is a contract between two or more persons for the purpose of undertaking a joint venture and sharing the resulting profit or loss. The Algerian legislator considers the work of commercial companies to be commercial in form, given the activities these companies undertake and the rights and obligations arising from them. Therefore, it is necessary to distinguish between commercial companies and civil companies.

The article specified^{2/544}From the Commercial Law: Commercial Companies in a Joint Stock Company(SPA)Limited Liability Company (SARL)Solidarity Company(SNC)Before the legislative decree is added^{08-93 A}The amendment and supplement to the Commercial Law includes the limited partnership and the joint venture. These are the same types found in comparative Arab or Western legislation.

The Algerian legislator addressed the provisions governing commercial companies in the Commercial Code, specifically in Articles 544 and subsequent articles. Article 544/2 states: "Partnerships, limited partnerships, limited liability companies, and joint-stock companies are considered commercial by virtue of their form, regardless of their purpose." This means that the general rule in Algerian legislation is that commercial companies are classified according to their form, with classification according to purpose being the exception. The joint venture company is the sole exception, as it is classified according to its nature. Legal jurisprudence generally divides companies into three main categories:

First: Partnerships

This type of company is based primarily on personal considerations, that is, on the personalities of its partners and the mutual trust between them. Therefore, in principle, no partner may dispose of their share of the company without the consent of their partners. Any change in the personality, eligibility, or solvency of one of the partners leads to the modification or dissolution of the company. This type of company includes the following:

1- Solidarity Company:andIt is considered one of the most common types of commercial companies in practical life because it consists of a small number of partners, often members of the same family or friends, to ensure familiarity among them. The Algerian legislator regulated it in Articles 551 to 563, without providing a definition, but rather addressed its characteristics, which can be summarized as follows:

- The partner acquires the status of a merchant as soon as he enters into the partnership company.

The partners' liability therein is joint and several and unlimited.

- The shares therein are non-transferable and cannot be transferred except with the consent of all partners.

2- Simple Recommendation CompanySociété in simple command

The Algerian Commercial Code addressed this type of company in Articles 563 to 563 bis 10, but did not define it. Article 563 bis 1 merely stipulated the nature of the partners in such a company. Nevertheless, it can be defined as:

"A company that is formed between one or more partners who are jointly liable without limiting their assets, and one or more partners who are owners of assets in it, who are limited and non-jointly liable, outside of management, and are called limited partners."

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This definition makes it clear that a limited partnership consists of two types of partners:

A- Joint Partners: And One or more of them enjoy the same legal status as joint partners. **b) Partners in trust:** And

One or more individuals are responsible to the extent of their contribution.

Given that a limited partnership is a personal partnership based on personal consideration, no partner may assign their share to a third party except with the consent of all partners as a general rule.

3- Joint Venture Company: It is the only exception among the types of commercial companies that are classified on the basis of the subject (activity), that is, if its activity is commercial, it is called a commercial company, and if it is civil, it is called a civil company.

It is a contract concluded by two or more persons with the aim of carrying out commercial transactions, in which each partner commits to providing a share of money or work to achieve these transactions, and to share any profit or loss that may arise from them, without these shares constituting capital for the company. It does not have a legal personality and is not intended for disclosure to others, nor is it subject to the publication procedures imposed on other commercial companies. The activity of this company is carried out by one of the partners in his own name in the face of others.

The Algerian Commercial Code has addressed its provisions in Articles 795 bis 1 to 795 bis 9, and Article 795 bis 2 stipulates the nature of this company, which differs from other companies in its hidden nature and in its lack of legal personality.

Secondly: Capital companies

These are companies whose formation is based primarily on financial considerations, i.e., on the amount contributed by each partner and not on the partner's status. They are a group of funds in which the partner's personality is irrelevant. Consequently, any change in the personality, eligibility, or solvency of a partner has no effect on the company's continuation and survival. This type of company includes the following:

1- Joint-stock company: SPA

It is considered a model of capital companies, and it can be defined as a company in which the partners' share, called shareholders, is represented by securities of equal value and tradable through commercial means, "shares," and their liability is determined by the value of their contribution to its capital. The most important characteristics of this type of company are:

Its capital is divided into shares of equal value.

- Its shares are tradable through commercial methods, unlike the shares of partners in partnerships, which are not tradable as a general rule.

The partner's liability is determined by the extent of his contribution, and he is not responsible for the company's debts from his own funds.

2- Share Recommendation Company:

Article 3/715 defines it as: a company whose capital is divided into shares between one or more general partners who are merchants and responsible parties.

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Permanently and jointly liable for the company's debts and those of the limited partners, they bear losses only to the extent of their shares. Based on the preceding definition, a limited partnership by shares comprises two classes of partners:

- **The first group:** The partners are jointly and severally liable for the company's debts among themselves and not limited to the shares they have contributed.
- **The second group:** Shareholders are responsible for the company's debts only to the extent of their capital contribution, excluding their personal funds and without joint liability among themselves if there are multiple shareholders.

Third: Mixed companies

These are companies that combine the characteristics of both partnerships and corporations, and include two types of companies.

1- Limited Liability Companies: SARL

It can be defined, based on the text of Article 564 of the Algerian Commercial Code, as: "A commercial company made up of partners who bear losses only to the extent of their contributions, and whose number cannot exceed twenty, and whose capital is not divided into shares."

The most important characteristics of this company are as follows:

The liability of a partner in it is determined by the extent of his share in the capital, and without joint liability with the rest of the partners. This determination is the basis for the name of the company.

- The partners in it do not acquire the status of a merchant.
- This company is not permitted to issue bonds or shares, whether registered or bearer, that are tradable through commercial means.

2- The sole proprietorship with limited liability: EURL

The Algerian legislator adopted this type of company in 1996 under Order No. 96-27. It is a type of limited liability company consisting of one partner, and it results either from the formation of this establishment by one person directly or from the consolidation of all the shares of an ordinary company in the hands of one partner.

Fourth: Other special forms of companies

Finally, it should be noted that in addition to the three basic types of companies mentioned above, there are two other types of companies, which relate primarily to the legal form of newly established companies at their inception:

1- Simple Joint Stock Company: SAS

It was introduced by the amendment of Commercial Law No. 22-09 as a new form of company, and it was considered the most suitable formula for emerging companies.

Legal scholars described it as the ideal form for containing emerging companies due to the ease of establishment and management and the contractual nature, as well as its attraction to investors and financing funds.

2- Simple joint-stock company with a single owner:SASU

It is the same company as before, but it is owned by only one partner, and he alone has the authority to make decisions. He can later bring in partners and transform it into a simple joint-stock company.

Third branch: Business agencies and offices, whatever their purpose

Business agencies and offices provide services to the public for a fixed fee, which is determined either in advance or as a percentage of the transaction value. These agencies offer a variety of services, including travel and tourism agencies and construction consulting firms.

The Algerian legislator's designation of these offices and agencies as commercial entities was based on the form or organization in which they conduct their business.

Fourth branch: All operations related to the commercial establishment

A commercial establishment is defined as a collection of tangible and intangible assets such as merchandise, trade name, and commercial reputation. This is in accordance with what the legislator stipulated in Article [number missing].⁷⁹ According to commercial law, any transaction that occurs with respect to the commercial establishment, whether it be sale, lease, or mortgage, is considered a commercial act, whether the transaction occurs with respect to the entire establishment or with respect to one of its constituent elements.

Fifth Branch: Commercial Contracts Related to Maritime or Air Trade

The article states^{5/3}The Commercial Code states: "Any commercial contract relating to maritime or air trade is considered a commercial act by its form." Therefore, the Algerian legislator has conferred commercial status upon all contracts relating to maritime or air trade, provided two conditions are met:

- The work should be done in the form of a contract.
- The subject of the contract must be related to maritime or air trade.