

Business law

Lecture 9

MGM412
Business law

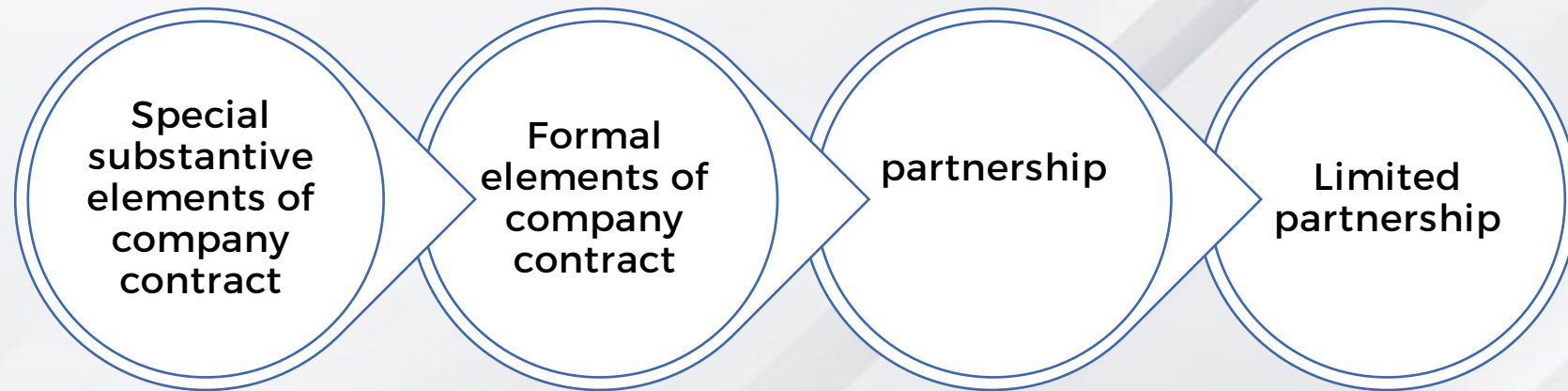
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Lecture goals

- 1- Quick revision of the previous lecture
- 2- Our educational goals today
- 3- Conclusion
- 4- References



1- quick revision of the previous lecture



2- educational goal today



PART 5: business acts.

A- Companies

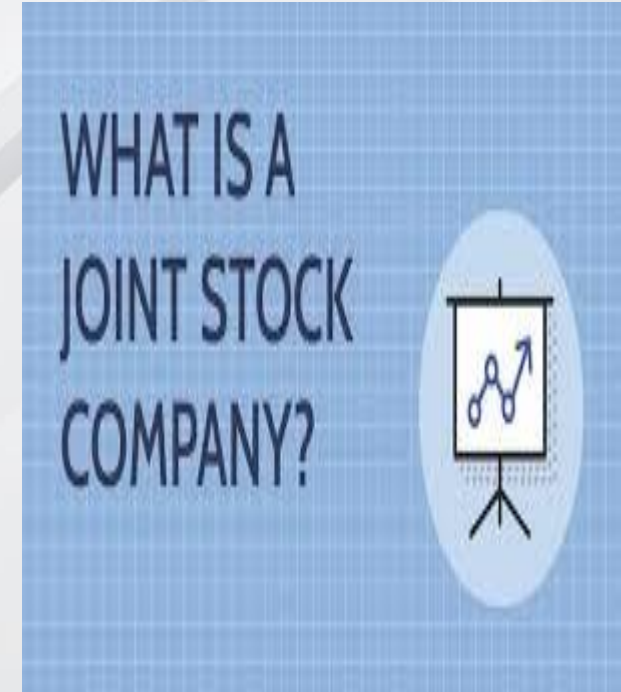
5- to continue kinds of companies according to the Saudi companies' law.

- Joint stock company
- Limited liability company.
- Non- profit company.
- Professional company

B-Trader and his commercial actions.

- III- Joint Stock Company

- a- Definition of the Joint Stock Company
- The Joint Stock Company is a business venture **established by one or more natural or legal persons**, and the capital of which is divided into **negotiable shares**. in addition, the Joint Stock Company shall be solely liable for the debts and obligations arising out of its business activities. The liability of the shareholder shall be limited to the payment of the value of the shares subscribed to.



- b- Joint Stock Company's Capital
- The Joint Stock Company's capital shall not be less than [five hundred thousand] riyals, and the paid-up amount thereof may not, upon incorporation, be less than one quarter of the value thereof.



- c- Data of the Company's Articles of Association:
 - 1. The Articles of Association of the Joint Stock Company shall, in particular, include the following details:
 - a. Name of the company;
 - b. Headquarters of the company;
 - c. The Company's objects;
 - d. The company's authorized capital - if any - and the issued and paid-up amount thereof;
 - e. The number, classes and nominal value of shares as well as the rights relating to each class;
 - f. The company's term, if any.
 - g. The management of the company and the number of board members;
 - h. Details of commencement and end dates of the fiscal year; and
 - i. Any other shareholders agree to.

- 2. The following details shall be contained in the Articles of Association upon submitting an application for incorporation of the company:
 - a. The founders' names, addresses and nationalities;
 - b. Details of the expected activities and expenses for the incorporation of the company;
 - c. An admission by the founders confirming that they have subscribed to all the issued shares of the company, and the value of the paid-up capital;
 - d. A certificate of crediting the paid-up amount of the issued capital with a bank duly licensed in the Kingdom;
 - e. A founders' resolution appointing both the members of the first Board of Directors.
 - f. An admission by the founders to comply with all the legal requirements relating to the company's incorporation; and
 - g. A report drawn up by one or more accredited valuers, indicating the fair value of the in-kind contributions, if any, as well as a declaration by the remaining founders approving the value of such contribution.

- d-Subscription For Shares:
- If, during the incorporation stage, the founders do not announce that the subscription for all shares is restricted to themselves, they shall **offer the unsubscribed shares for subscription** in accordance with the Capital Market Law.



- e-Candidacy for Board Membership:
- The Joint Stock Company shall be **managed by a Board of Directors** comprising at least [three] members.
- Each shareholder may either run as a candidate or nominate one or more shareholders or third parties for the membership of the Board of Directors of the Joint Stock Company.
- The **Ordinary General Assembly shall elect the members of the company's Board of Directors**. In all cases, the members of the Board of Directors shall be natural persons.
- Term of office of the board membership shall be specified in the Company's Association deed, **but may not exceed [four] years**. Members of the Board of Directors may be re-elected, unless the company's Articles of Association provide otherwise.

- f- the General Assembly of Shareholders
- Each shareholder shall have the right to attend the General Assembly Meeting even if the company's Articles of Association provide otherwise. In addition, the shareholder may delegate any other person, who is not a board member, to attend the General Assembly Meeting.
- The General Assembly of Shareholders shall be chaired by the chairman of the Board of Directors, the Deputy Chairman in case the chairman is absent, or any board member to be chosen by the Board in the event that the chairman and deputy chairman of the Board are both absent. Failing which, the General Assembly shall be chaired by the board members or third parties to be chosen by the shareholders by voting.
- The General Assembly Meeting may be held and the shareholder may get involved in their deliberations and voting on their resolutions through the means of modern technology. A

- g-Representation of the Company:
- 1.the **Chairman of board of directors shall represent the Joint Stock Company before the judiciary,** arbitration tribunals and third parties. In addition, the Articles of Association of the Joint Stock Company may provide that its Managing Director or CEO shall act as the representative of the Company, and either of them may authorize any third party to represent the Company.
- 2. The Board **Chairman of the Joint Stock Company may delegate** – based on a written resolution - any of his powers to other members of the Board or to third parties to carry out certain action or businesses activity, unless the company's Articles of Association provide otherwise.
- 3. The **Deputy Chairman shall replace the Chairman** when the latter is absent in cases where the Company has a Deputy Chairman

- h- how is the CEO of the company:
- The managing director is a chief executive officer (CEO) appointed by the board of directors to act as the executive arm of the company. He is responsible for implementing the policies decided by the board of directors, and managing the daily operations of the company efficiently and effectively.
- In reality, the person who manages the activity of the joint-stock company is the CEO, not the Chairman of the Board of Directors. The executive management is the one who is connected to reality and activates the company's activity.

- i- Joint Stock One Person Company:
- If a joint stock company is established by one person, or if all of its shares are transferred to a single person, **the latter shall have the powers and authorities of the general assembly of shareholders**, and his decisions shall be issued in writing, with no need to invite the general assembly.

- j-Financial Statements and Report on the Company's Business:
- 1. The Board of Directors shall, **at the end of each financial year of the Company, prepare the Company's financial statements** and a report on its business activities and financial position for the fiscal year ended. Such a report shall include the proposed method for distribution of profits. The Board shall put such documents at the disposal of the auditor, if any, at least forty-five [45] days before the date set for the Ordinary General Assembly Meeting.
- 2. **The Company's Board Chairman, CEO and CFO, if any, shall all sign the company's financial statements**, and copies of the same shall be kept within the Company's headquarters and shall be put at the shareholders' disposal.

- K –simplified joint stock company:
- A simplified joint stock company is the same definition as a joint stock company. It is established by one or more persons with a natural or legal capacity, and its capital is divided into tradable shares. The company alone is responsible for the debts and obligations resulting from it or arising from its activity.
- It also necessitates same data of joint stock in the association deed.
- It is also generally governed by the same rules of joint stock with few exceptions.



- The most prominent advantages of the simplified joint stock company introduced by the Saudi system.
- * Capital of Simple Joint Stock Company
- 1. The company's Association deed shall determine the amount of its issued capital and the paid-up amount thereof, and it may stipulate that the company shall have an authorized capital.
- 2. The minimum capital requirement applicable to the joint stock company shall not apply to the simple joint stock company.

- The possibility of agreeing on the method of managing the company by one or more managers, a board of directors, or otherwise.
- There is **no requirement for the existence of general assemblies**, so that the shareholders are responsible for exercising these powers and they have the right to determine who will assume them
- It is a better choice as a family business entity.
- It will be a suitable option for individual companies as well.
- It will be the best entity for entrepreneurs.

IV- Limited Liability Company

- a- Definition of Limited Liability Company:
- It is a company established by **one or more persons of natural or legal status**, and its liability is independent of the financial liability of each partner or owner. The company alone shall be responsible for the debts and obligations incurred by it - or arising from its activity, and neither the owner nor the partner shall be responsible for these debts and obligations except to the extent of his share in the capital

- b-Appointment of the Company's Manger:
- The Limited Liability Company shall be managed by one or more Managers from among the partners or third parties. The **partners shall appoint the Manager[s]** under the company's Memorandum of Association or under an independent contract for a fixed or indefinite period of time.
- Under a resolution of the partners, a Board of Managers may be formed if there are several Managers of the company.

- c-Representation of the Company and its Liability for Manager's Acts:
- 1. The company's Manager shall **represent the Limited Liability Company before the judiciary,** arbitration tribunals and third parties, and may authorize any third party to perform a particular task[s].
- 2. Any resolution issued to appoint or replace the Manager or to limit his powers shall be applicable to third parties only after being recorded in the commercial register.
- 3. The company shall be **liable for the Manager's acts that fall within the scope of the company's objects.**

- d-The general assembly:
- The Limited Liability Company shall have a **General Assembly comprising all the partners thereof.**
- Issuance of Partners' Resolutions 1. Partners' resolutions shall be issued during the General Assembly Meeting. However, partners' resolutions **may be issued by circulation on partners with no need for the General Assembly to convene.** In such a case, the Manager of the company shall send to each partner the proposed resolutions and relevant documents for the partner to vote thereon in writing.

- e- Limited Liability Company by One Person:
- If a limited liability company is established by one person, or if all of its shares are transferred to one person, the following shall result:
- A- This person shall have the powers and authorities of the director, the board of directors of the company, and the general assembly of partners, and his decisions shall be issued in writing and recorded in a special register with the company.
- B- This person may appoint one or more managers who will represent the company before the judiciary, arbitration bodies and others, and will be responsible for its management before the partner who owns the company's shares.

- f- Extending the company's term:
- 1- **The company's term may be extended** if it has a fixed term before its expiry for another period by a decision issued by the general assembly of partners from any number of partners who own half of the shares representing the capital; unless the company's articles of association stipulate a greater majority.
- 2- **If no decision** is issued to extend the company's term and it continues to perform its work, its term **shall be extended for a similar period** under the same conditions stated in its articles of association. The partner who does not wish to continue in the company may withdraw from it.

- 3- The partner who does not wish to continue in the company **may withdraw from it.**
- The extension shall not be implemented except after selling this partner's share to the partners or others, as the case may be, and paying its value to him, unless the withdrawing partner agrees otherwise with the remaining partners.

- i- Cases of Termination:
- A limited liability company shall not expire upon the death of one of the partners, nor upon his being placed under guardianship, nor upon the opening of any liquidation procedures against him in accordance with the bankruptcy system, nor upon his insolvency, nor upon his withdrawal, unless the company's articles of association stipulate otherwise.

- v- Non-profit company

- Non- profit companies are of two kinds:
- 1- A public non-profit company:
- is a company that **takes the form of a joint-stock company** and may not take any other form, and spends the profits achieved from practicing its activity in any of the **public non-profit fields that aim exclusively to serve the community in general.**
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- 2 - Private non-profit company:
- A company that takes the **form of a limited liability company, a joint-stock company, or a simplified joint-stock company** and may not take any other form, and spends the profits achieved from practicing its activity in any of the non-profit fields. A non-profit company is prohibited from offering its shares for public subscription. - The provisions of the form of the company it takes shall apply to the non-profit company in matters not regulated specifically in the law, and in a manner that does not conflict with its nature.



- Non-profit company fields:
- 1 - To approve the establishment of a public non-profit company, its articles of association must stipulate the public non-profit fields.
- 2 - Subject to the relevant regulations, the non-profit company may obtain cash or in-kind returns in exchange for its work, products and services, and may practice any legitimate activity that enables it to achieve profits that it spends on the banks and fields stipulated in its articles of association or bylaws.



- VI- Professional company

- a- Definition:
- A professional company is a company established by one or more persons who are legally licensed to practice one or more free professions, or by them with others, and its purpose is to practice those professions.



- b- Form of the Professional Company:
- The professional company shall take any of the forms of companies mentioned in law and governed by this form legal provisions provided that they do not conflict with its nature.
- The partner or shareholder in the professional company - regardless of its form - shall not acquire the status of a merchant by virtue of his partnership or ownership of shares or stocks in the company

- B-Trader and his commercial actions.
- 1- who is the trader:
- According to the Saudi commercial law “A merchant is one who engages in commercial transactions and takes them as a profession.”
- Accordingly, There are three requirements for acquiring the title of trader:
- 1- To be engaged in commercial business
- 2- Becoming professional
- 3- Must carry out the commercial business for his account.
- Everyone who has reached the age of majority has the right to engage in the profession of trade in all its forms.

- Acquiring the title of trader is important due to the responsibilities on the trader and the particular rules which not to be applied on others such as:
- 1- Entry in the commercial registry
- 2- keeping commercial Book
- 3- The right of membership and voting at commercial chamber
- 4- The trader is subject to bankruptcy code in case suspend to pay his debts
- 5- Tax of commercial and industry profits shall be applied on the traders

- Every merchant is responsible for his actions, the regularity of his books, and the actions of his employees in matters that result in a commercial penalty. The merchant is considered an accomplice to any employee who commits such a penalty unless his innocence is clearly demonstrated.



- The following are considered commercial activities:
- A- Any purchase of goods or food items and others for the purpose of selling them as they are or after manufacturing and working on them.
- As a general rule: requirements to consider the work as commercial business
 - - There must exist a purchase for sale - There must exist purpose or intent to purchase for the sake of selling
 - - The purpose or intent to make profit must exist.

- Accordingly the Saudi commercial law expressly states that: “If the owner of the land or the farmer sells what he produces, or the owner of the property sells his property or someone buys a property or anything **not with intent to resell it or rent but for his use**, then none of that is considered a commercial act, and real estate claims and rents are not considered commercial acts.”

- B- Any contract or undertaking to supply things or work **related to commission trade or transportation** by land or sea or related to **shops, commercial offices and sales shops by auction**.
- C- Everything related to **transfer bonds** of all kinds or to exchange and **brokerage**.
- D- All contracts and undertakings between merchants, brokers, money changers and agents of all kinds, and all contracts related to the construction of buildings and the like Whenever the contractor is committed to supplying the necessary supplies and tools for them.

- Examples of civil acts
- So A farmer who **sells the harvest** of his land production and purchases seeds and fertilizers for the crop production is conducting civil acts not commercial.
- Also the father who **gave by will a car** to his son then the son sold the car and made profit out of it. It is a civil act because the son inherited it not purchased it before he sell it.
- Same as if a person sold things which he **received free of charge by testament**, donation or inheritance.
- a person wrote **his life story and published then sold it** to people. the artistic and intellectual production deemed civil work and accordingly shall not be considered commercial business because it is not preceded by purchase.

- Examples of trade acts

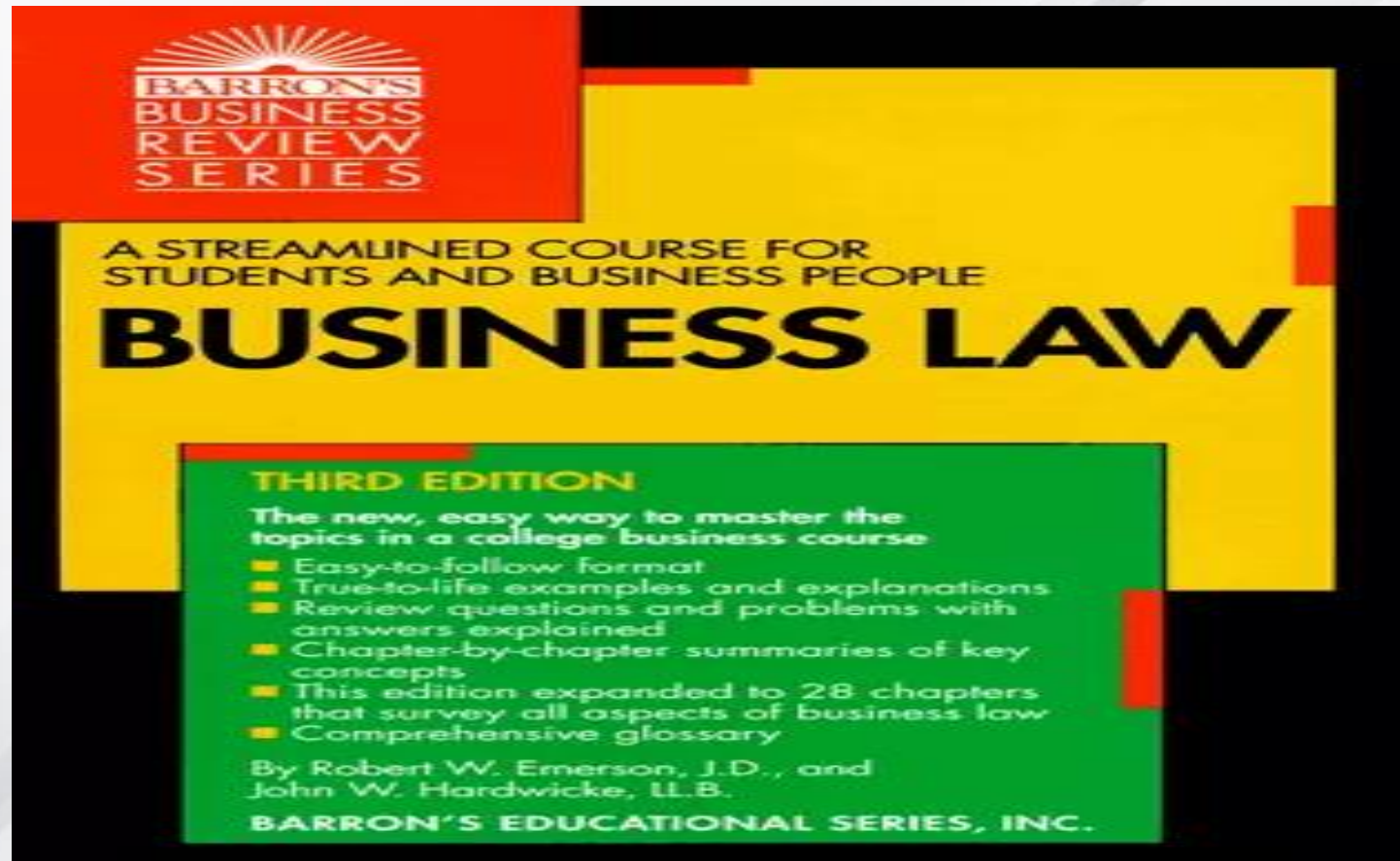
- It is a trade act if a person purchased a house with the aim of demolish and selling it rubble then rebuild another building and sell its apartments.
- it is also a trade act if a quantity of goods in order to sell it. trader purchased a

3- Conclusion Á



4- References

Business Law (Barron's
Business Review) by
Robert W. Emerson J.D.





Thank You