

Business law

Lecture 4

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

2- educational goal today



PART 3: legal rights and their holders.
(remaining features: nationality, independent
patrimony, representation of juristic person, legal
capacity, and The extinction of the juristic personality).

Part 4: sources of obligation
introduction

PART 3: legal rights and their holders:

We have explained that the law grants the **legal personality** to two kinds of persons each of them may **acquire rights and bear obligations** and make contracts, they can sue others and be sued and enjoy different features of legal personality. These two persons are **natural** and **juristic persons**: they are called the holder of legal right.

- II - Nationality of the juristic person:
- The nationality is one of the important characteristics of a juristic person. The legal person has a nationality that is **completely independent** of the nationality of the persons who compose it.
- Determining the nationality of a company is very important for several reasons: as the nationality of the company determines the **applicable law** regarding the validity of its formation, capacity, management, termination and liquidation.
- The nationality of the juristic person is also necessary to determine the extent to which a particular juristic person enjoys **the rights that each country restricts to its nationals**, including the right to engage in certain activities and not others.

- The nationality of the juristic person is defined by the national laws:
- - Usually the nationality of companies is defined by country where its head office is positioned. Accordingly in the Egyptian law , a company considered Egyptian when its main head office is positioned in Egypt even if the partners or the owner of the company have another nationality.
- While in the Saudi companies law Article (14) stated that, Except for the Mohasa company, every company established in accordance with the provisions of this law shall have its main headquarters in the Saudi Kingdom, and this company shall have the Saudi nationality, but this nationality does not necessarily entail the company enjoying rights restricted to Saudis.

- An example of these restricted rights in the Saudi law, is what is stipulated in Article 1 of the Commercial Agencies Law, which states that the practice of commercial agencies is limited to Saudis and that **Saudi companies that carry out this work- commercial agencies-** must have entirely Saudi capital and that the members of their boards of directors and those authorized to sign on their behalf must be Saudis.

- In this law , the legislator did not suffice with the company being of Saudi nationality, but also required that all capital be Saudi and that the management be Saudi. And this is considered as **an exception to the general rule of separating the nationality of the company** from the nationality of the partners.

- III- Representation of juristic person

- The nature of the moral – juristic-personality such as company's personality is in fact a **fiction created by law** for the facilitation of legal dealing between this person and other persons in the society.
- The artificial nature of this personality means that it **can not have intent or express its will**.
- So, there is a real necessity to have **natural persons** to carry on the company's activities on its behalf. And express the its will through their different decision.

- For example: **The Board of Directors** of a joint stock company has the broadest powers in managing the company, as the Companies Law does not limit the Board's authority to carrying out specific tasks, but rather allows it to carry out all tasks required by management, and it is not restricted in except by what may be stipulated the company's contract, or the decisions of the general assembly in this regard.
- Among the powers stipulated by the law is representing the company in its relations with others and before the judiciary, as law entrusted this authority to the **Chairman of the Board of Directors, or his deputy** in the event of his absence, or the existence of an impediment.

- IV - Independent patrimony :
- patrimony means, the total financial rights and liabilities of a person. The principal is that every person whether natural or moral, has his or its own patrimony. A company for example, **being a moral person, acquires its patrimony completely independent from its partner's patrimonies.**



- There are certain consequences that arise as a result of the principle of independent patrimony as follows:
- A juristic person may **own the necessary assets to carry on its activities**. the assets that belong to the juristic person will not belong to the partners even if they are the providers of such assets.
- The personal creditors of the institutors of the juristic person such as the **creditors of any of the partners of certain company are not considered as creditors of the company** itself. And they may not claim their right from that juristic person.



- But what about the creditors of the company, can they claim their rights from its partners?
- There are **many forms of commercial companies** in the Kingdom of Saudi Arabia, and each of these forms has its own characteristics and conditions. The new Companies Law has determined the forms of companies that can be established in the Kingdom, namely the general partnership, the limited partnership, the joint stock company, and the limited liability company.
- Some of these forms has financial liability **independent of the financial liability of each partner**, and vice versa, there are other forms of companies in which the financial liability of the company is **not independent** of the financial liability of the partner in it.

- Therefore, in a **general partnership**, we find that the partners are personally liable with all their assets and jointly for the company's debts and obligations, meaning that the company's financial liability is not completely independent of the f patrimony of each partner in it.

- This is in contrast to a **limited liability company**, where its liability is independent from each partner in it or its owner, and the company alone is responsible for the debts and obligations incurred by it or arising from its activity, and its owner or partner in it is not responsible for these debts and obligations except to the extent of his share in the capital, and **likewise the joint stock company** is solely responsible for the debts and obligations incurred by it or arising from its activity, and the shareholder's liability is limited to paying the value of the shares he subscribed to.

- As for if we look at a **simple limited partnership**, we find that it consists of **two teams of partners**, a team that includes at least one partner from individuals or establishments who is personally liable with all his assets and jointly for the company's debts and obligations, and another team that includes at least one partner from individuals or establishments who is a limited partner who is not responsible for the company's debts and obligations except to the extent of his share in the company's capital.

- The company's financial year:
- According to Article 16 of the new Saudi Companies Law states that the company's financial year in Saudi Arabia is **twelve months**, as determined in its establishment agreement. However, the company's **first financial year** in the Kingdom of Saudi Arabia may be determined to be not less than six months and not more than eighteen months, starting from the date of the company's registration in the commercial register.



- Accounting Records and Financial Statements for Companies:
- According to the new Saudi Companies Law, companies must **keep accounting records and supporting documents** to clarify its business, contracts and financial statements at the company's main office or in any other place specified by the company's director or board of directors.

- The company is also committed to preparing its **financial statements at the end of each financial year** in accordance with the accounting standards approved in the said Kingdom, and to depositing these statements within six months from the end of the company's financial year in the Saudi Center for Economic Business through the electronic deposit program for financial statements

- V - Legal capacity of juristic person:
- capacity of juristic person is limited, he is only able to conclude contracts within the aim of such juristic person
- This is confirmed by Article 18 of the Saudi civil transactions law which states that “ A legal person shall enjoy all rights except those inherent in the characteristics of a natural person, within the limits prescribed by the statutory texts. A legal person shall have...B- Capacity within the limits specified by its founding document or determined by the statutory texts.”

- It can obtain rights and be bound by obligations within the limits necessary to fulfill its purpose of business. So, companies that have capacity for conducting construction activities, cant conclude contracts for producing and selling agriculture products.
- having a legal capacity, a company can be a party to a judicial action, whether as a claimant or as a defendant, i.e. It can sue and be sued. Also a company can be liable in contract and penally convicted by the court. Penalty may be fine or detention of its representative.

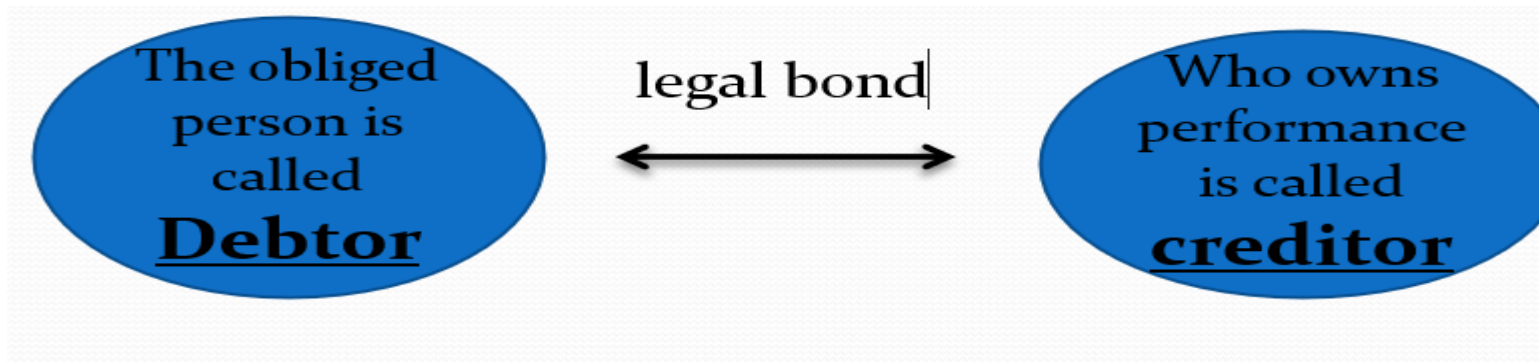
- VI- The extinction of the juristic personality:
- Happens in the following cases:
- 1- the expiration of the **term fixed** for the juristic person.
- 2- the fulfillment of the **purpose** for which the juristic person was constituted.
- 3- the **common consent** of the members of the juristic person.
- 4- the **dissolution** of the juristic person by a court order or by administrative act for reasons provided in the law.

PART 4 : sources of pecuniary obligation

- A- Definition Of Obligation:
- Pecuniary obligation that you can enforce by court is your personal pecuniary right against other persons in the society.
- This because a creating a personal right for a person in the society will simultaneously create a corresponding obligation on another person in the society.
- For example if "A" borrowed 10 pounds from "B" then "A" has a legal obligation to pay back the 10 pounds to "B" , simultaneously that means that "B" has a legal personal right to get his money back.

- Accordingly pecuniary obligation has the same definition of pecuniary personal right which is “ a legal bond between two persons according to which one of them has the right to oblige the other to do something, or to refrain from doing something. “

- Another example will be the agreement between “A” and “B” according to which “A” will donate 1000 dollars to “B”. This agreement will grant “B” a personal right to claim the donated money.
- And “A” will be obliged to pay. So this agreement created a personal right to “B” and simultaneously created an obligation on “A”.



- If the creditor is claiming his right before the court he will be called **claimant** while the debtor is **defendant or respondent**.

- **B- Classification of obligations as to result :**
- Not all the legal pecuniary obligation enforce the debtor to achieve specific result.
- This because legal pecuniary obligations are classified into two kinds as to enforcing the desired final result: obligations are classified into obligation of result and obligation of means.

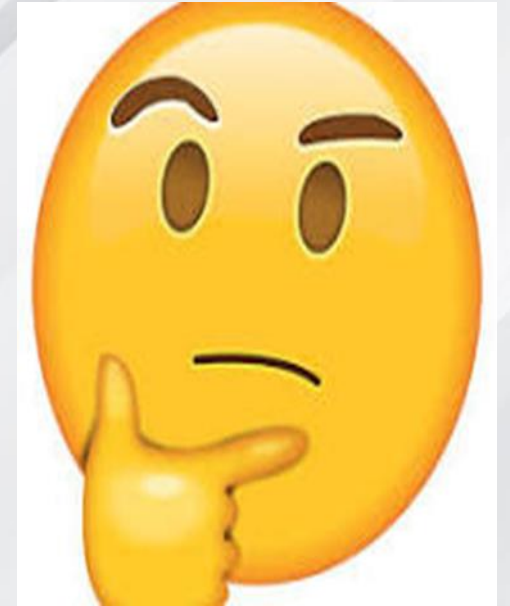
- 1- Obligation of result:
- It is the obligation which imposes on the debtor to achieve certain result.
- If he failed to achieve it, this failure will be considered as a fault enabling creditor to ask damages regardless the efforts exerted by the debtor.
- For example: the obligation of purchaser to pay the price at certain date is an obligation of result .
- so if the purchaser exerted huge effort to collect the price, then send it to a wrong bank account not to the account of the seller. All this effort is not an excuse that release him from paying the price or compensation for late payment.

- 2- Obligations of means:
- The debtor is **not obliged to achieve certain result he is only obliged to act with due care towards the achievement of such result.**
- In measuring whether the debtor acted with due care or not, the judge uses **the objective criterion** so the debtor will be considered as performed his obligation if he acted with due care normally given by reasonable person in the same circumstances even if e did not achieve the result.

- For example: the **obligation of the lawyer** to assume the defense in certain case, does not mean that he is obliged to win the case (though wining the case is the result aimed from initiating the case) , he is only obliged to act with due care of reasonable lawyer in the same circumstances while assuming defense.
- While the **accountant obligation** to prepare the financial transactions of the company is an obligation of result, so he is liable for any fault in recording these statements disregard the extent of care he exerted

What about the obligation of **company director** towards its partners to achieve profit while administrating the company activities?

His obligation is **obligation of means** he is liable to exert due care in administrating the company, but he is not obliged to achieve profit as a final definite result.



- 3- Criteria of differentiating between the obligation of result and that of means:
- There are some criteria which may help in defining the nature of obligation:
- - If the debtor is obliged with **material obligation**: such as paying the price it will be an obligation of result.
- - If the debtor is obliged with **intellectual obligation** such as the obligation of the lawyer it is an obligation of means.

- - finally if the obligation **depends on different eventualities** ,which are not under the control of debtor, it will be an obligation of means, an example of this is the obligation of doctors towards their patients, because their obligation depend on a lot of factors some of them are intellectual, some are material, others depending on the health state of the patient...etc.

- It is to be noted that
- it is to be noted that the obligation not to do is always an obligation of result while the obligation to do may be an obligation of result or an obligation of means.
- so if the agreement between a purchaser and the seller of well known restaurant that the price will be high on condition that the seller will not open another restaurant in the same city, as a guarantee that the purchaser will benefit from his current clients and will not be switch to the new restaurant. This obligation not to do will always be an obligation of result and may never be an obligation of means.

- It is to be noted also that the nature of obligation may be changed by agreement.
- So the clients can agree with their lawyer that he will only take fees if achieves the desired result and wins the case. So if he lost the case he will not take such fees disregard how huge the effort he exerted. But this will not raise his liability to pay compensation for the mere reason of losing the case.
- Same rule may be applied on doctors.

- C- sources of obligation:
- If you go to the court and claimed that another person is obliged to do certain act to you, the first thing that you need to present before the judge is the source of such obligation.
- Sources of obligation is defined exclusively in the law, so you must state one of the following sources:

**Exclusive sources
of pecuniary
obligation**

**Voluntary
sources**

contract

Unilateral act

**Involuntary
sources**

tort

**Unjust
enrichment**

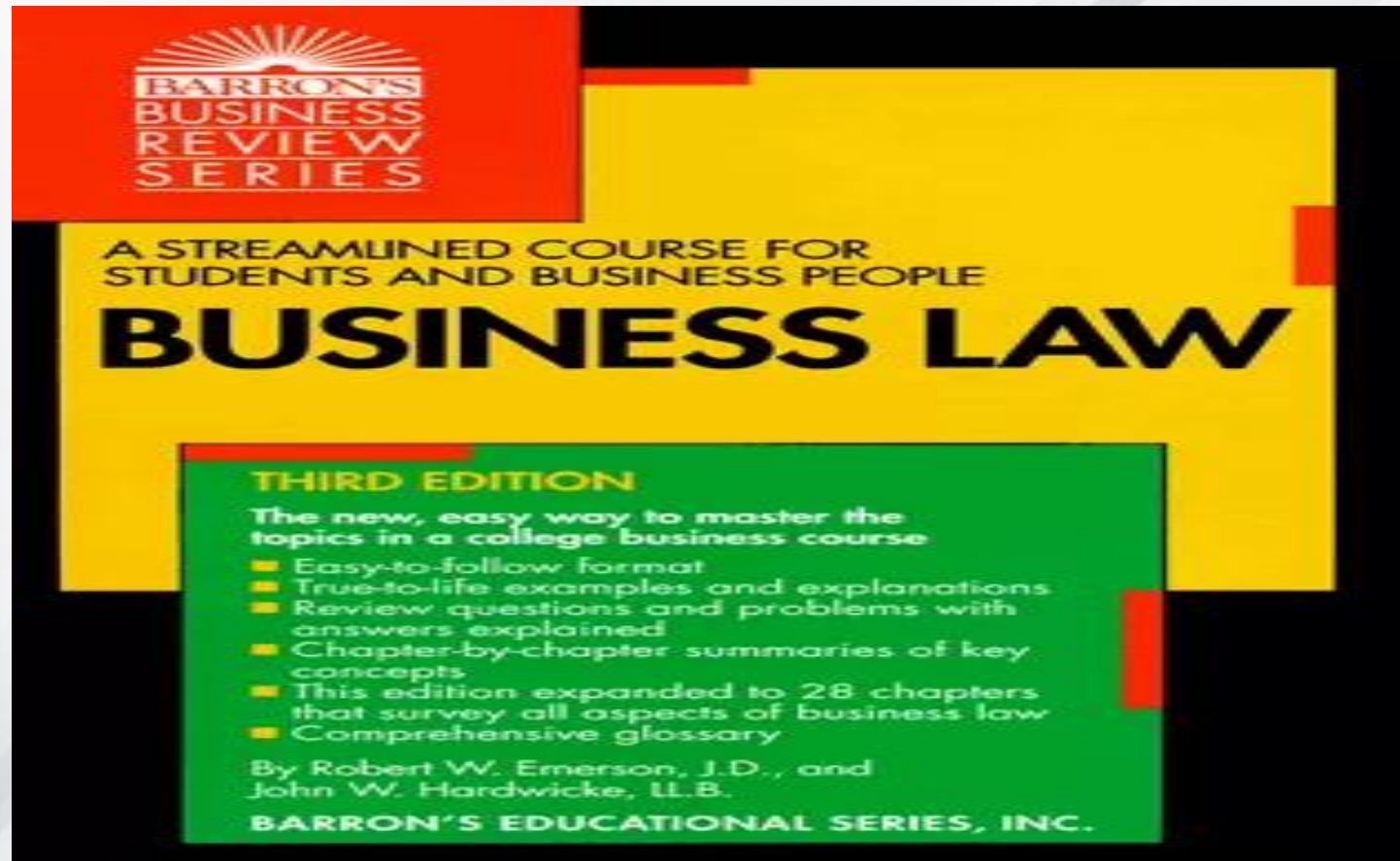
**Law as a
direct source**

3- Conclusion À



4- References

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





Thank You