

Business law

Lecture 10

MGM412
Business law

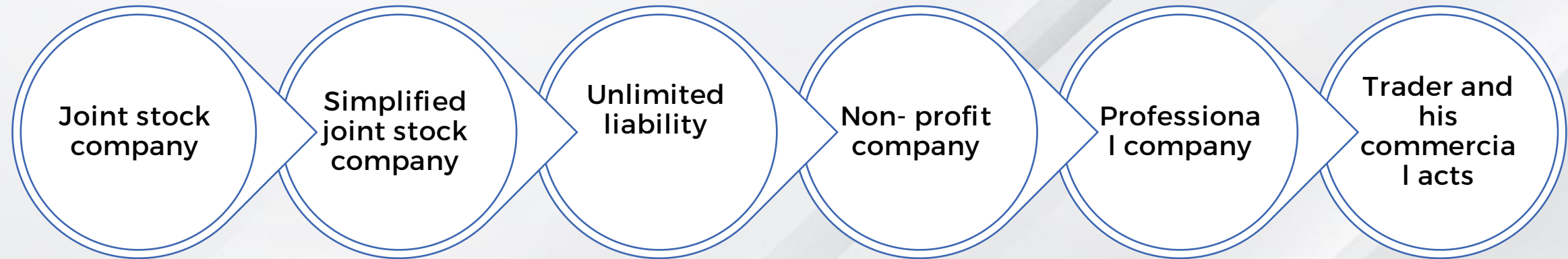
Prepared by
Dr. Fatma Abdalla

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



C- negotiable instruments

Part 6: intellectual property.

Part 7: antitrust acts.

Part 8: employment contract.

- **c- Negotiable instrument:**
- Definition of negotiable instruments: is a written document that can be used as a substitute for money or as a credit device, and may be transferred from one holder to another.
- Examples of negotiable instruments;
- check
- bills of exchange.



- 1- Characteristics of the negotiable instruments: Negotiable instruments have **conditions or characteristics** that must exist to be recognized by law as follows:
 - - Written form: The negotiable instruments must be in written to promote certainty and prevent fraud. Printing, typewriting, and handwriting are examples of the writing that recognized by law while there is no such thing as an oral note or check.
 - - Negotiability: Assignability (transferability) Capable of being transferred from one person to another.
 - - signature :The signature on the instrument must be signed by drawer (for bills of exchange and checks) or their authorized agents.
 - - unconditional promise or order to pay: it contains the word “pay” which is an unconditional request on the drawee by the drawer to pay a third party.

- - fixed amount of money: The payee must be able to compute this amount from the face of the instrument without reference to any external data.
- - Payable on demand or at a definite time:
 - To be negotiable, an instrument must be payable either on demand or at a definite time. 'Payable on demand' means payable at the time when the payee presents the instrument for payment to the person obligated to pay it (upon request). Generally if there is no time defined for such payment then it is payable on demand.



- 2- examples of negotiable instruments
- Bills of exchange (orders to pay)
- A bill of exchange is an **unconditional order in writing** addressed by one person (drawer), to another (drawee), signed by the person giving it (drawer), requiring the person to whom it is addressed (drawee) to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person (payee), or to bearer.
- So it is a commercial paper that comprises instruction from the Drawer to another person Drawee to pay the amount specified to third person Beneficiary upon sight, on the due date or fixable.

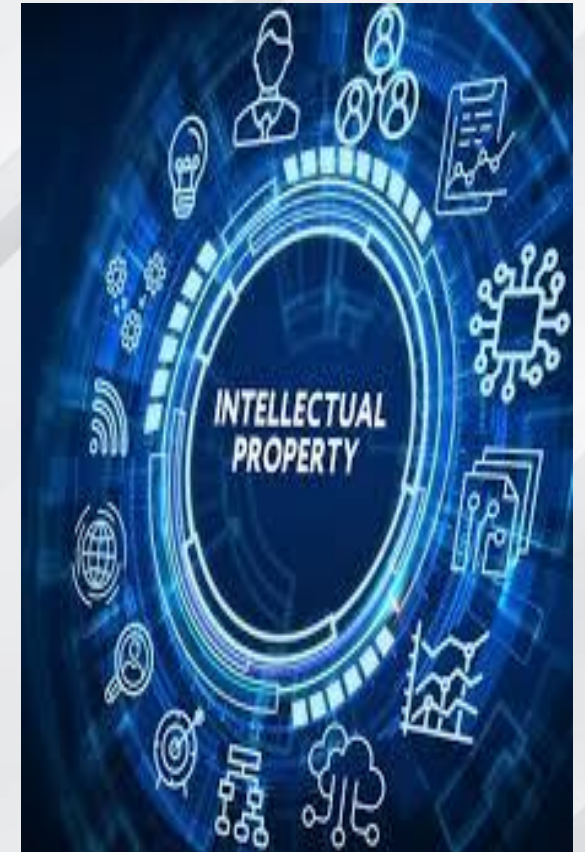


- Cheque:
- A Cheque is a bill of exchange drawn on a banker . It is an unconditional order in writing addressed by the drawer of the cheque to the banker, directing him to pay certain sum to the person named on the face of the cheque or to its bearer.
- The Cheque has acquired in the current years great importance as a method of financing both business and consumer transactions.



PART 6 : intellectual property

- WHAT IS INTELLECTUAL PROPERTY?
- better known as IP, refer to **creations of the mind**: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:
- 1-Literary and artistic property rights. Known as copy right.
- 2- Industrial Property right.



- firstly: copyright:
- Copyright is the right under which the author's work is **protected against unauthorized copying or modification**.
- The copy right extends to any created literary, artistic or scientific product, whatever its type, mode of expression, significance or purpose of its creation and it shall enjoy the creative nature that confers originality on the work.
- What are the conditions for protecting my copyright?
- 1- The condition necessary for protecting copyrights **is the existence of the creative nature** that confers originality on the work created by the author.
- 2- The work should have **physical existence**. I.e., to be expressed through evidencable form such as being written or expressed in a verbal sound track.
- The copy right grants its holder two categories of rights **moral and financial** as follows

- What are the moral right?
- Such rights shall include the following:
 - 1. The right to make the work **available to the public for the first time**.
 - 2. The right to **claim authorship**;
 - 3. The right to **prevent any modification** considered by the author as distortion or mutilation of the work. Modification in the course of translation shall not be considered as an infringement unless the translator fails to indicate deletion or changes or if he causes prejudice to the reputation and status of the author.

- What are the economic rights of the author?
- As for the economic rights, the author shall enjoy the following rights as stipulated by the law:
- A. The author shall have the right to transfer to a third party all or some of his economic rights stated in competent Law. Such a transfer shall be certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of the transfer in addition to the duration and place of exploitation
- B. The author shall have the right to receive monetary or symbolic return, as he deems fair, for transmitting any of his rights to another party for exploiting the work financially.

- How long does my copyright protection last?
- the copyright is protected for the **lifetime of the author and fifty years after his/her death**. It is worth mentioning that the economic rights relating to works of a joint authorship shall be protected throughout the lives of all co-authors in addition to 50 years from the death of the last survivor.
- What actions are considered an infringement of copyrights?
- 1. **Selling, renting or putting in circulation under any form**, a work, a sound recording or a broadcast program protected under this Law, without a prior written authorization from the author or the owner of the related right;
- 2. Knowingly **imitating, selling, or offering for sale**, circulation or rental; a work, a sound recording or a broadcast program;
- 3. Knowingly **imitating within the country**, selling, offering for sale or circulation, renting or exporting to a foreign country a work, a sound recording or a broadcast program published in a foreign country;

- 4. Disseminating through computer networks, Internet, information networks, communication networks and other means of technology a work, a sound recording, a broadcast program or a performance protected under this Law, without a prior written authorization from the author or the owner of the related right;
- 5. Infringing any of the moral or economic copyrights or related rights provided for in this Law



- What is a related right?
- Related rights (also called neighboring rights) protect the rights of performers, producers of phonograms (sound recordings), and broadcasting organizations.

- What rights do related rights give me?
- Performers: are granted a wide range of exclusive economic rights, namely; the right to:
- i) **communicate their performance to the public** and to authorize the making available to the public, or the renting or lending of the original fixation or copies of their performances;
- ii) **to prevent any exploitation of their performances**, in any manner, without their prior written authorization;
- iii) **to rent or lend the original or copies of their performances** for the purpose of achieving direct or indirect commercial profit, regardless of the ownership of the original or rented copies; and
- iv) **to make available to the public a recorded performance through broadcasting** or via computers or other methods in such a way to enable reception by the individual at any time or place.

- Producers of phonograms (sound recordings): are granted a variety of exclusive economic rights that include
- 1-their right to prevent, without their prior written authorization, any exploitation of their recordings in any manner.
- 2-Prohibited activities of exploitation include, in particular, the reproduction, renting, or broadcasting of such recordings, or the act of making them available via computers or any other means.
- Producers of sound recording also enjoy the right to make a sound recording available to the public via wired or wireless means or via computers or any other means.

- Broadcasting organizations: are granted the following exclusive economic rights: i)
- 1-The right to authorize the exploitation of their recordings; and ii)
- 2- The right to prevent any communication to the public, without their prior written authorization, of the television recordings of their programs.
- The acts of recording these programs, making copies, selling, renting, rebroadcasting or communicating them to the public through any means, including the removal or destruction of any technical protection of such programs by coding or other means shall in particular be considered a prohibited exploitation.



- How long does my related rights protection last?
- Performers: the protection of performers' rights will last until the end of a term of **50 years calculated from the date on which the performance or the recording took place**, as may be the case.
- Producers of sound recordings (phonograms): the term of protection for producers of sound recordings is to last for a period of **50 years calculated from the date on which the recording was made or was made public**, whichever is longer.
- Broadcasting organizations: According to Article (168) of the Egyptian IPRs Law, the broadcasting organizations will enjoy an exclusive economic right to exploit their programs, **for a period of 20 years calculated from the date the program was broadcasted for the first time.**

- secondly: Industrial property
- includes mainly:
 - 1- patents for inventions.
 - 2- trade secrets.
 - 3- trademarks.
 - 4- industrial designs.
 - 5-geographical indications. We shall explain the main three acts in the following:

- 1- patents for inventions.

- It is a government grant of **exclusive rights (period monopoly) on an invention** for a limited period.
- What are the conditions for patentability? A patent shall be granted, if it meets the following conditions:
 - 1. If the invention is **industrially applicable**.
 - 2. The invention must be **documented accurately** and in detail, including a detailed description of the idea, the technology used, and the method of implementation.
 - 3. If it involves an **inventive step**, whether connected with new industrial products, new industrial processes, or a new application of known industrial processes.
- What rights do patents give? the patentee is granted exclusive rights to exploit the invention by any means.

- What actions are considered an infringement of patents?
- 1. The **imitation for commercial purposes**, of the subject matter of an invention for which a patent has been granted in accordance with the provisions of the Egyptian IPRs Law;
- 2. The **sale, offer for sale or circulation, importation or possession with the intention to trade**, of products known to that party as imitations, where the patent for the invention for such products is granted and valid in Egypt;
- 3. The **unlawful use, of products, advertisements, trademarks**, packaging or others, of indications that may lead to believe that such a party has obtained a patent for an invention.

- How can I protect my patents?
- Registration is required before the Patent Office for protection of your invention as a patent.
- The patent application shall be accompanied by a detailed description of the invention, including a full statement of the subject matter and of the best way to enable experts to execute it, and of each product or method for which protection is sought.
- The description shall also include in a clear manner the new elements for which the applicant seeks protection accompanied, where necessary, by an illustrative drawing of the invention.
- How long does my patent protection last?
- The protection period of a patent shall extend to “20 years” as of the date of filing the application.

2- trade secret

- Trade Secrets which are also referred to as “undisclosed information” shall be interpreted broadly to include all kinds of data, such as “formulas, patterns, methods, techniques or processes, protection should extend generally to the knowledge itself, In other words, any type of information that is related to trade in its broadest meaning can be protected as undisclosed information so long as the legal requirements are fulfilled.
- It is to be noted that Trade secrets in the Saudi system should not be viewed as intellectual rights more than as a right derived from the law that guarantees that others will not infringe on the right of the secret holder.
- How long does trade secret protection last? until it is no longer confidential, or for a period not exceeding five years, whichever comes first”.



- conditions to protect a trade secret
- - it is **not usually known in its final form**, or in any of its precise components, and it is difficult to obtain among those who usually deal with this type of information
- - it has real or potential **commercial value** due to its being secret
- - the right holder subjects it to **reasonable measures to maintain its confidentiality**.



- What actions are considered an infringement of trade secrets?
- The following acts shall be deemed, in particular, to be contrary to fair commercial practices, and to constitute acts of unfair competition:
 - 1. Bribery to **acquire the information from employees** working at the establishment which owns the information.
 - 2. **Incitement of employees to disclose information** acquired by virtue of their employment.
 - 3. **Disclosure by a party in “confidential information contracts”** of information thus acquired.
 - 4. **Acquisition of information, from the place where it is preserved, through illicit means**, such as theft, espionage or the like.
 - 5. Acquisition of information through **fraudulent means**.
 - 6. **Use of information acquired by any of the previous means** by a third party aware of its being confidential and that it was acquired by one of the above means.

- 3-Trademarks

- A trademark is **any visually perceptible sign distinguishing goods**, whether products or services.
- How long does my trademark protection last?
- The period of protection conferred by the **registration of the mark is 10 years, renewable** for an identical period or periods upon the request of its owner and every time within the last year of the protection period, against payment of the fees.

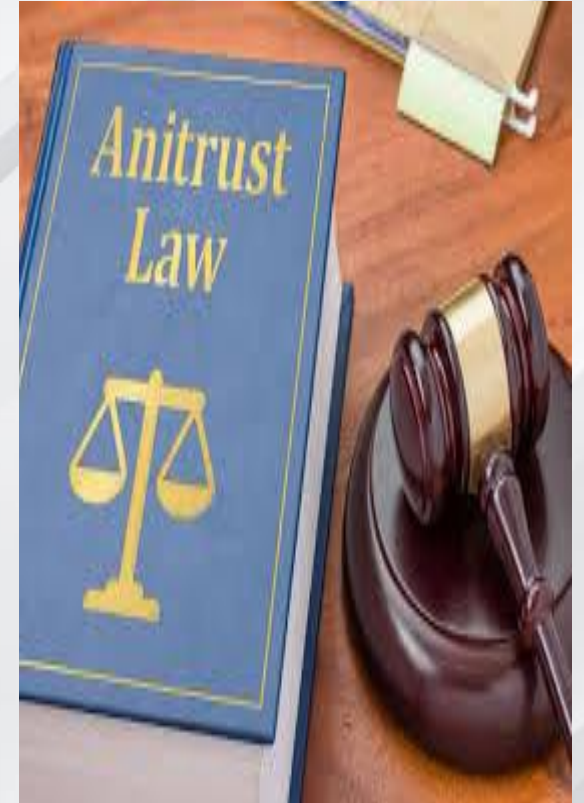


- Examples of infringement on trademarks:
- 1. **Counterfeiting a trademark** registered in accordance with the law, or imitating it in a manner which is likely to mislead the public;
- 2. **Fraudulently using counterfeit or imitated trademarks;**
- 3. Fraudulently affixing to her/his products a **trademark that belongs to a third party;**
- 4. Knowingly selling, offering for sale or distribute, or acquiring for the purpose of sale, **products bearing a counterfeit or imitated mark**, or on which the mark was unlawfully affixed

- Part 7 : antitrust acts

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- Antitrust laws are statutes developed by governments to and ensure fair competition between different businesses in the economy. According to the antitrust Saudi act there are two categories of forbidden practices :



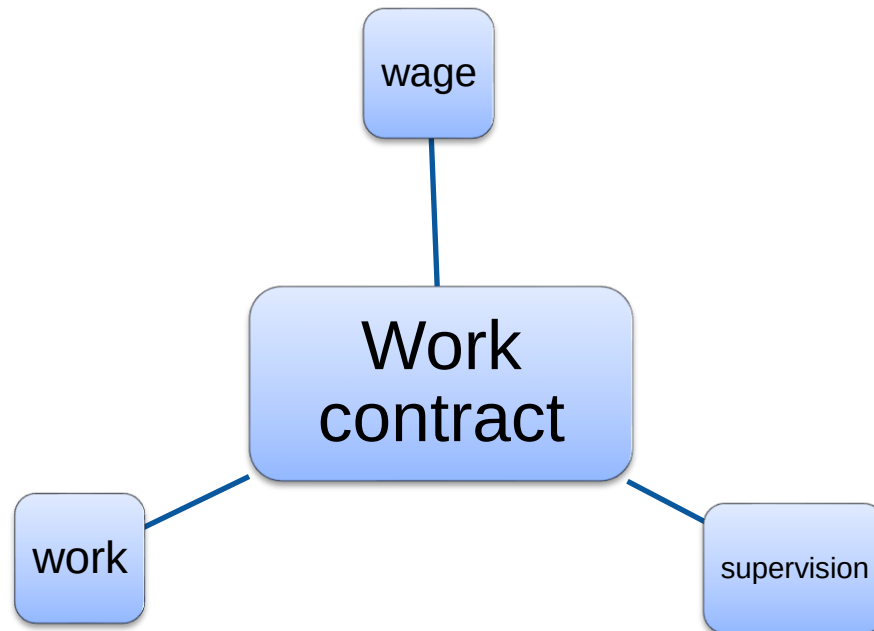
- First category: forbidden practices disregard the size of acting business:
- - Practices including agreements or contracts between establishments, whether written or oral, explicit or implicit - are prohibited if their purpose or resulting effect is to **disrupt competition**, especially the following:
- 1- Determining **prices** for goods and services, terms of sale or purchase, and the like.
- 2- Determining **the sizes, weights, or quantities** of goods or services.
- 3- **Restricting the freedom of flow of goods and services** to markets, or removing them from them completely or partially, by hiding them, storing them without right, or refraining from dealing in them.
- 4- Any behavior that leads to obstructing an establishment's entry into the market or excluding it from it.
- 5- **Withholding goods and services** available in the market completely or partially from a specific establishment or establishments.

- 6- **Dividing markets** for selling or buying goods and services, or allocating them according to any criterion, especially the following criteria:
 - A- Geographical areas. B- Distribution centers. C- Customer type. D- Seasons and time periods.
- 7- **Freezing or limiting manufacturing, development**, distribution, marketing and all other investment operations.
- 8- Collusion or coordination in bids or offers in government auctions and competitions or others in a manner that prejudices competition.

- Second category: practices prohibited if exercised by dominant business:
- to abuse this position to prejudice or limit competition, including the following:
- 1- Selling the commodity or service at a **price lower than the total cost**; to remove establishments from the market or expose them to significant losses, or to hinder the entry of potential establishments.
- 2- Determining or **imposing prices or conditions for reselling** goods or services.
- 3- **Reducing or increasing the available quantities** of products; in order to control prices and create an unreal abundance or deficit.

- 4- Discrimination in dealing between establishments in similar contracts with regard to the prices of goods and the service fee or the conditions for their sale and purchase.
- 5- Refusal to deal with another establishment without objective reason, in order to limit its entry into the market.
- 6- Stipulating that an establishment refrain from dealing with another establishment.
- 7- Suspending the sale of a commodity or provision of a service on condition of assuming obligations or accepting goods or services that are by their nature, or by virtue of commercial use, not related to the commodity or service subject to the original contract or transaction

- **Part 8 : employment contract**
- **A- elements of work contract:**



- 1- Wage: is not only monetary. It includes **all kinds of pecuniary benefits** given to the employee in exchange of his work. It includes monthly payment as defined sum of money, commission defined as some of money or by percentage, it also includes any in kind benefits given to the employee.
- 2-Work duties: are usually defined by the parties in the contract otherwise it will be according to work of similar nature or according to custom.
- 3-Supervision element: means that **the employee is follower of the employer**. The management and the supervision of the employer over his employee is the main element to distinguish work contract from other contract related to work such as the agency contract.
- In the work contract the **employee is not independent to do the work assigned to him as he wants**, instead he always do his work under the supervision of the employer and according to his instructions.

- Supervision element means obeying all the instructions of the employer as long as they are related to the work
- either they are related to the **administrative organization** of the work such as the place of the work, its period and uniform so on.
- Or **technical supervision** related to the techniques of know how to do the assumed work.
- It is enough that the employer exercise one kind of supervision to state that employer has supervision and management over the employee.

- B- obligations imposed on the employee.
- The obligations imposed on employee according to the Egyptian work law are the obligation to **perform the agreed work**, the obligation to **obey the employee instructions**, the obligation **not to disclose work secrets**, the obligation **not to compete** his employer. We shall explain each in the following:



- 1- The obligation to perform the agreed work.
- employee has the obligation to **perform the work assigned to him by himself** unless they agreed that the employee may delegate his work to someone else or there is a custom that the worker in certain work may delegate part of his work to someone else.
- An example of this custom : employee whose duty is to make the custom clearance of the employer imported goods and transfer them to the employer stores has the right by Way of custom to hire men to upload and down load goods on lorries to transfer them.
- He also has to act with accuracy and honesty and exert the due care of reasonable man in doing this work. Unless agreed on another level of care of supposed implicitly from the circumstances of contracting.

- 2- The worker has to obey the employer instructions:
- This obligation to obey the instruction will remain **as long as these instructions are not contrary to their contract, the law, public morality**, or endangering the employer health.
- If the employer didn't obey employer's instruction, he will be **liable for the mere fact of non obedience** even if such non obedience lead to more profit or productivity.

- 3- The obligation not to disclose work secrets
- the employee should **maintain the secrets of work, and divulge no information connected with the work** once it is treated as confidential by nature or according to the written instructions issued
- the employee obligation to “ keep the industrial or commercial secrets of the work, even after the end of the contract”
- So the obligation of the employee to keep work secrets and not to disclose them to others stays **even after the termination** of work contract as long as they remain secret.

- 4- The obligation not compete:
- -while executing work contract: The general rule is that the employee is not allowed to work in a second work especially if that work allows the disclose of the first work secrets or affect the quality of first badly.
- -After termination of work contract: the general rule that employee is free to work for any one as he wishes unless he accepted anon compete clause in his terminated work contract. A non-competition agreement : in the Saudi labor system is an agreement concluded between the worker and the employer, through which the employer stipulates that the worker shall not compete with him in the activity he performs during a specific period of time and in a specific place, provided that this period does not exceed two years from the date of termination of the relationship between the two parties.
- this agreement is valid with the following conditions :
 - The existence of serious interest such as knowing the employer secrets.
 - Relativity of limitation as to time and place and object. It may not be unlimited or will be void.

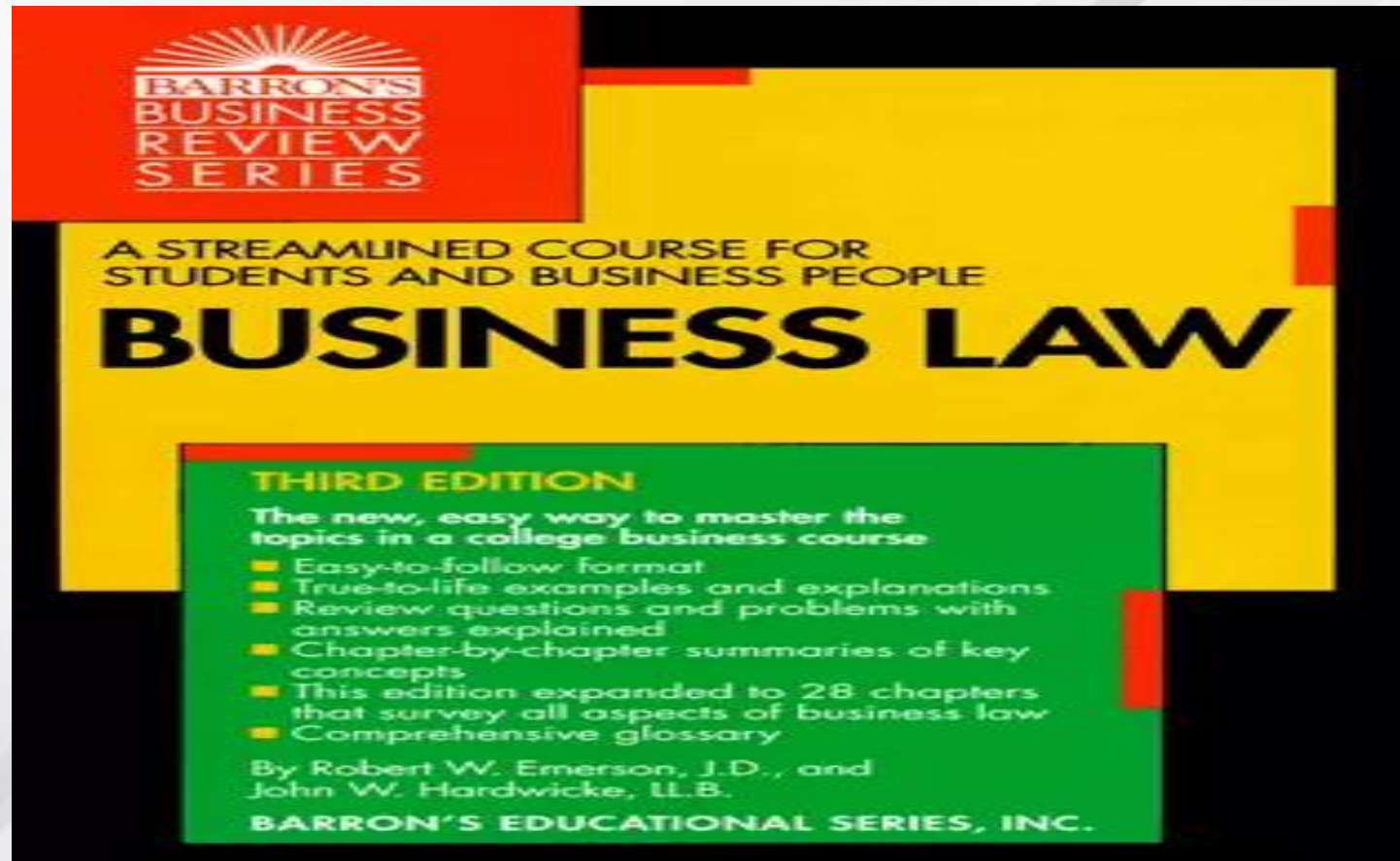
- C - obligations of employer
- According to the Egyptian employment law the employer shall have the next obligations disregard the kind of the work contract concluded between him and his employee, namely:
 -
 - - paying the wage of the employee.
 - - respecting the law regulation for work hours.
 - - allowing the employee to have vacations specified by law.
 - - providing the health and social services for his employees.
 - - providing occupational safety.

3- Conclusion Á



4- References

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





Thank You