

Business law

Lecture 2

MGM412
Business law

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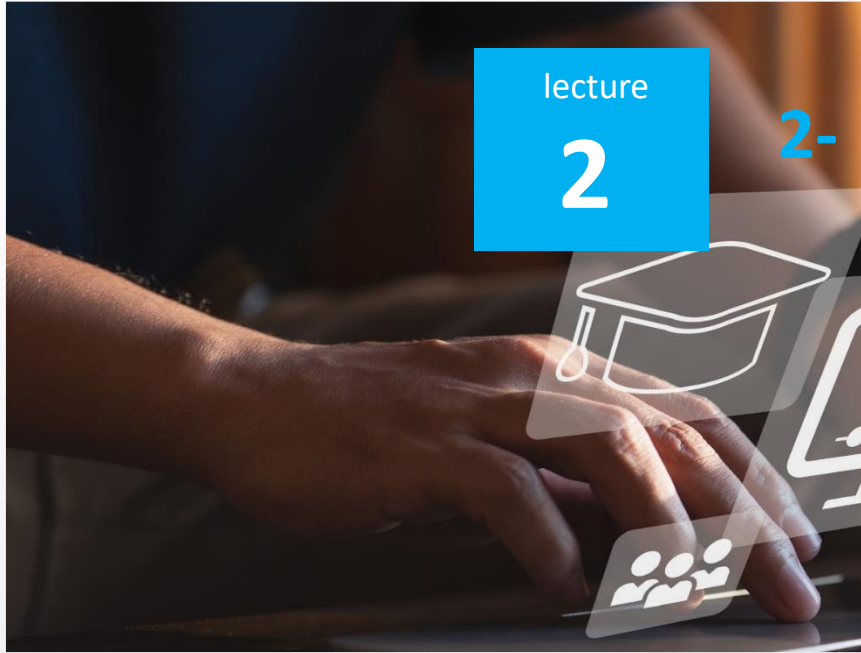
Lecture goals

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

lecture

2

2- educational goal today



PART 2: classifying laws:

(1- The practical effect of classifying laws into public and private.

2- Classifying laws into mandatory and complementary rules)

PART 3: legal rights and their holders.

PART 2: 1- Classifying laws into public and private law: E-The practical effect of classifying laws into public and private:

- You should differentiate between your relation with public persons and your relations with private persons
- To know the next :
- I- The **title of the law** governing this relationship and accordingly be able to define your rights and duties.
- II-The **kind of court** you may resort to in case of dispute. (defining competent court)
- The discussion of this part will be Postponed to next lecture.

Public Law



- Government-Citizen Relations
- Societal Impact Focus
- Constitutional Regulation
- Criminal and Administrative Laws

Private Law



- Private Party Relations
- Individual Rights Defined
- Common Law Application
- Contracts, Property, Family Regulation

- I– defining the **name of the law governing my relationship:**
- Defining the law governing your relationship, searching for it on the internet then read it is the way to define rules governing such relationship to define rights and obligations resulting thereof.
- As we said there is no specific law titled as “ private law” or “ public law” this is only an **initial step** to define the broad classification of the law governing the relation in hand. i.e., to define whether your legal relation is **public or private**.
- The **second step** to define the governing law is to choose a subcategory or a branch.
- The main branches of private law are: civil law, commercial law, labor law, transportation laws, private international law.
- The main branches of public law are: constitutional law, administrative law, criminal law, tax law, public international law.

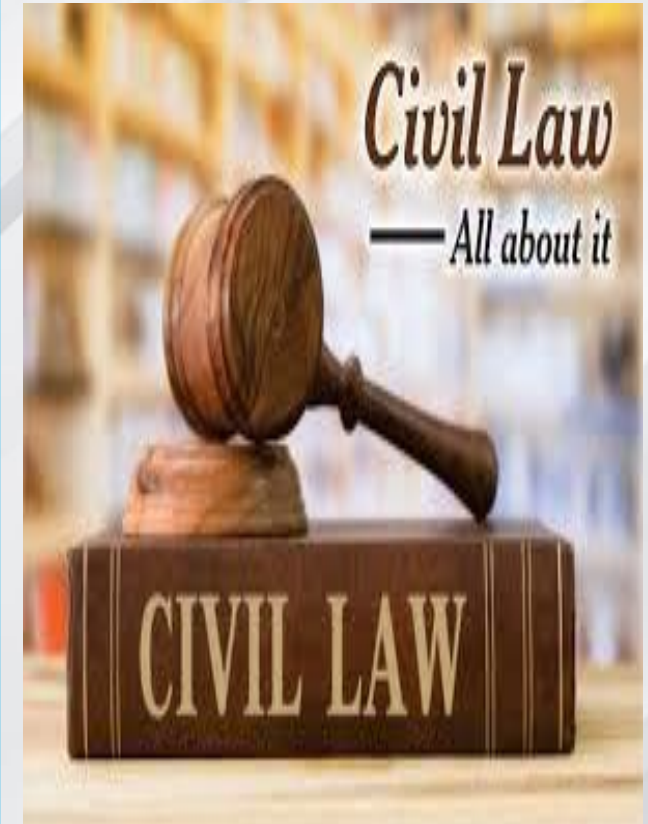


- In 2-2-2023 “A” concluded a land purchase contract from “B” and [they both humans](#). According to contract price should be paid on installments. But A is not able to pay the next installment he needs to know the legal consequences of late payment of this installment ,apply the previous steps to define such legal consequences?
- 1- This relationship is a [private law](#) relationship, because there is no public person – governmental entity- involved as a party in that contract. So, the governing law is one of the private law branches.
- 2- since this is a non- commercial financial relationship it will be governed by the civil law. Accordingly, “A” needs to read the [Saudi civil transactions law](#).



Article 171 of Saudi civil transactions law.

- “If the debtor delays in implementing his obligation, he **must compensate the creditor for any damage** he suffers due to the delay.
- Unless it is proven that the delay in payment is due to a reason beyond his control.”
- According to this rule the late non- payment of the installment will be punished by the **general rules of compensation (damages)** in the civil punishment.
- Accordingly, the judge should ascertain the existence of harm sustained by “b” that is directly caused by the fault- the late payment – of “ A” to enforce him to pay compensation that cover the harm sustained.
- If the late performance didn’t cause this direct harm. “A” mayn’t be enforced to compensation to “B”.



- In 2-2-2023 “A” concluded a land purchase contract from “a governmental entity” . According to contract price should be paid on installments. But A is not able to pay the next installment he needs to know the legal consequences of late payment of this installment ,apply the previous steps to define such legal consequences?
- 1- This relationship is a public law relationship, because there is governmental entity involved as a party in that contract. So, the governing law is one of the public law branches.
- 2- since this is a non- commercial financial relationship it will be governed by the administrative law. Accordingly, “A” needs to read the Saudi Government procurement law.



- Saudi Government procurement law. Article 72
- “If the contractor is late in implementing the contract beyond the specified date; He shall be subject to a **delay fine** not exceeding (6%) of the value of the supply contract, and **not exceeding (20%) of the value of other contracts**. These percentages may be increased with the prior approval of the Minister, provided that this increase is explained to the competitors before submitting their offers.”
- So if this contract is concluded with the government “A” will pay the governmental entity up to 20% of the value of the contract **disregard the existence of harm sustained by this governmental entity**.

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II - defining court you may resort to in case of dispute (**defining competent court**) :

There are two main kinds of courts in addition to arbitration:

a- the ordinary courts:

It represents the general rule and the **judiciary with original jurisdiction to settle individual disputes**. Ordinary Courts that govern the civil, commercial, family, and labor disputes...etc. between individuals in the society they apply regular civil, commercial, labor, and family laws.

It is to be noted that Ordinary courts also includes criminal courts which use criminal law to punish criminals.

laws applied by ordinary courts are characterized by equality between parties.

Ordinary judiciary is divided into **two levels in addition to Supreme Court and execution courts**:



*** levels of ordinary courts:**

Level one: Courts of first instance:

Courts of first instance are divided into: general courts, criminal courts, labor courts, commercial courts, and personal status courts.

Level two: Courts of appeal:

Which **review rulings issued by courts of first instance**.

*** Supreme Court :**

The Supreme Court is ranked at the top of the judicial system as a complaint body against the court that issued the contested ruling and **not a body to resolve the dispute**. It judges **the ruling in terms of the correctness of the application of Sharia and legal rules** without having anything to do with assessing evidence or facts.



*** Execution courts :**

shall adjudicate on execution disputes regardless of their value. and have the authority to enforce and supervise compulsory execution. The Execution Court shall be competent to enforce the following documents:

- * Judgments, decisions and orders issued by the courts
- Arbitrators' awards appended with an execution order in accordance with the Arbitration law.
- Reconciliation transcripts issued by the authorized authorities
- Commercial papers
- Authenticated contracts and documents.



- Does it mean that if I have an authenticated – formal- contract indicating my right to certain debt from the other contracting party. I can directly execute my right by force?
- Actually, you need to go to the execution court first to take an order of compulsory execution.



b- administrative courts

(council of state in Egypt and The Board of Grievances in Saudi Arabia)

It includes courts that govern **all financial and work relations concluded by the governmental entities**, these courts **uses administrative laws** to govern disputes before it .

The administrative law is characterized by admitting the extraordinary powers of the state justified by the public benefit principle.



3- Arbitration:

In addition, in Egypt and in Saudi Arabia recognize **arbitration as a contractual method of settling disputes** :

Arbitration is a **private judiciary through an agreement between parties** to refer all or some of the disputes that have arisen or may arise between them regarding a specific legal relationship, to one or more neutral individuals called “arbitrators”, to decide on the aforementioned dispute by issuing a ruling.

An arbitration award that is binding and enforceable rather than decided by a court. The parties’ agreement to arbitration shall be in the form of an arbitration clause contained in a contract, or in the form of an independent arbitration agreement after the dispute arises.

Arbitration saves time and flexible regarding the agreement on any law to be applied by the parties.



One of the most important Arab arbitration panels is [the Saudi Center for Commercial Arbitration](#) is a [non-profit facility](#) established by a decision of the Saudi Council of Ministers in April 2014. It is affiliated with the Council of Chambers of Commerce and Industry.

It supervises arbitration procedures in relevant [commercial and civil disputes](#) whose parties agree to settle them arbitrarily with the Center. It does not specialize in disputes related to personal status, Administrative and penal issues.



Electronic judicial services:

1- Electronic lawsuit application form: Through it, you can [file a lawsuit by entering the data](#) of the plaintiffs, defendants, their agents or lawyers, recording the subject of the lawsuit, its type, the requirements of the case and its grounds, and choosing the competent court.

2- Electronic litigation: The [parties to the lawsuit and their representatives can plead electronically](#) through the Najiz portal, and they can respond to the department's requests without the need to visit the court in cases of remote litigation.



3-Electronic Execution: An electronic service provided by the Ministry of Justice that enables the beneficiary to fill in the data of the execution applicant and the person against whom execution is being carried out, and the data of the executive instrument, its number, date, source and type.

4- Tardi – Reconciliation- Platform: A platform that aims to facilitate the reconciliation process between the parties and motivate them by bringing viewpoints closer together to reach an agreement that is satisfactory to all parties.

5- electronic arbitration: the Saudi Center for Commercial Arbitration has launched the advanced version of the electronic arbitration service, which provides a virtual alternative with the best procedures and latest technologies for settling small-scale commercial disputes through arbitration, in a flexible manner that ensures the dispute is settled in the shortest period and at the lowest costs.



2- classifying laws into mandatory and complementary rules:

- When the legislature enacted laws it differentiated between the important things that are related to the **general interest of society** and the things that are not so important to the society they are only related to the **private interest** of the persons governed by the law.
- The first called **imperative** rules such as the rule prohibiting killing and the second called **complementary** rules such as the major part of the commercial law.
- We shall know the difference between the two parts in the following:

Mandatory Rules,
Permissive Rules...

A- imperative or mandatory rules:

- They are rules related to the **general interest of the society**, and called rules of public policy or public order. Without respecting them the society will be extremely damaged.
- They **can not be violated by the contrary private agreements** between individuals , so courts will apply them despite any contrary will of the interested persons.
- Ex: Most of criminal, tax, administrative , constitutional rules and some of civil, commercial laws.

Mandatory Rules,
Permissive Rules...

B - facultative and complementary rules:

They are rules for the **private interest of the individuals governed by the rule**, it is not related to the public interest of society and society will not be harmed if those rules were contradicted.

- They **could be violated by contrary agreement of individuals** , so courts will not apply those rules unless there is no contrary agreement.
- If we can derogate from default rules by agreeing otherwise, **why do they exist?** The purpose of default rules is to fill in any loophole. They are essential because they apply if parties did not agree on a certain matter or omitted to agree thereon

Mandatory Rules,
Permissive Rules...

- An Example of complementary rules : the Egyptian civil rule which state “ that the price should be paid at the place and time of delivering the sold thing [unless the parties agreed otherwise](#)” is a facultative rule and parties of contract can agree on its contrary.
- Accordingly, they may agree on paying the price on a latter day after delivering the sold thing or agree that the price will be paid on installments.
- If such agreement exists the judge will apply their agreement not the facultative rule.
- If not then price should be paid immediately on the deliverance of the sold thing.

Mandatory Rules,
Permissive Rules...

According to article 317 of the Saudi law:

- 1- The price in a sale is due immediately **unless there is an agreement** that it be deferred or paid in installments for a known period.
- 2- If the price is deferred or paid in installments, the period begins from the date of the contract, **unless otherwise agreed**.

According to this article: if the purchase contract is concluded in 1-10 -2024 and the sold thing to be delivered in 2-2-2025. according to the contract price to be paid on two installments the first after three month and the second to be paid after 6 months.

The period of paying the first installment to be counted from the date of contract conclusion , unless the parties expressly agreed on another date for example the date of deliverance.

Mandatory Rules,
Permissive Rules...

C- distinguishing between mandatory and default rules:

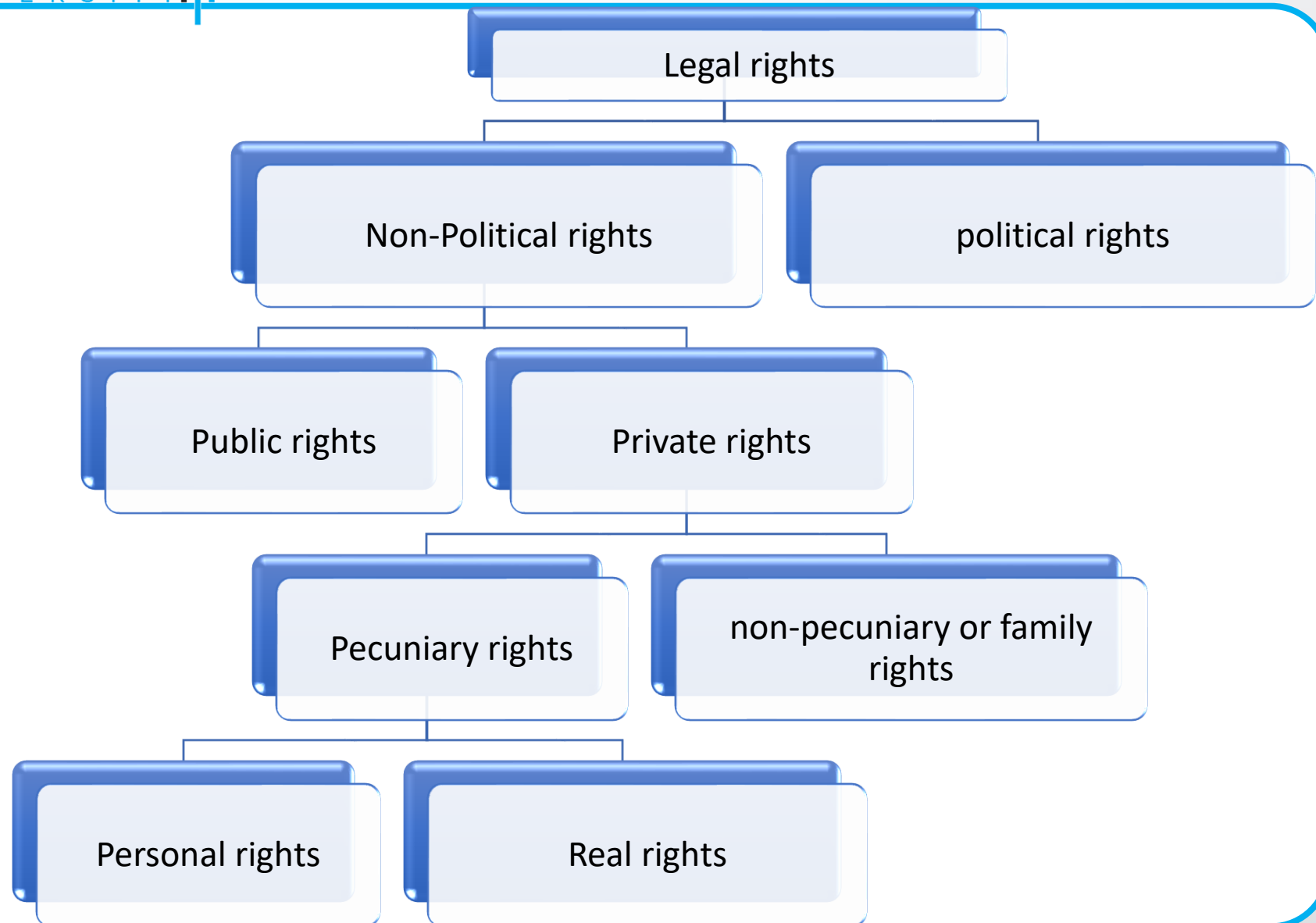
- * the following wordings indicate that the rule is mandatory:
 - - The legal rule may provide that any contrary agreement will be null and void.
 - For example : The ECC states that “any agreement made with regard to the succession of a living person is void even if the living person consents to such agreement”.
 - - The legal rule may include a penal sanction for any breach of its provisions. Such stating penal punishment for committing crimes.
 - - The legal rule may contain words of a commanding or a prohibiting purport.
 - For example : “The interest rate should not exceed seven percent (7%). If the parties agree to a rate exceeding seven percent, the rate shall be reduced to seven percent and any surplus that has been paid shall be refunded.

- * **the following wordings indicate that the rule is complementary:**
- On contrary, the wording of a default rule contain formulations that indicates to its elective nature:
- ***Example of Supplementary legal rules:***
- We usually find in its provision “**unless otherwise is agreed**” or “**if there is no agreement**”.
- Example of these wordings are the following:
- The ECC which states that “the price of a sold thing should be paid at the same place where the delivery of the sold thing is made, unless otherwise is agreed as may be required by custom”.

Mandatory Rules,
Permissive Rules...

- **Part 3: definition, kinds, and holders of legal rights:**
- **1- Definition of legal right :** it is an interest or power **recognized and protected by law.**
- What about this statement “I have the right to be rich as long as I work hard” ?
- this is not a legal right, because law doesn't recognize or protect such interest.





**2- different kinds
of legal right**

- Accordingly, legal Rights could be classified into political and non- political rights :
- A - **political rights:** those which enable their holders to participate in the administration of the country so enjoyed only by citizens, for ex: the right to vote in public elections, the right to be a candidate for elections in national legislative body.
- B- **non- political rights:** (or civil rights) are those not related to the administration of state, they are divided into public and private rights.
- **a-public rights:** those enjoyed by all persons existing in the society even foreigners called also “public freedoms”: such as the right of privacy, freedom of opinion, freedom of religion.
- **b- private rights:** those enjoyed by specific persons in the society, they are divided into pecuniary and non-pecuniary rights



- **Private rights are divided into:**
- **I- non- pecuniary or family rights :** are those rights which cannot be evaluated by money and arising **between family members** such as the right of co-inhabitation, the right of The right of lineage between father and daughter.
- **II- pecuniary rights:** are those rights acquired by certain individuals and **could be evaluated by money**, these rights are divided into real and personal rights.



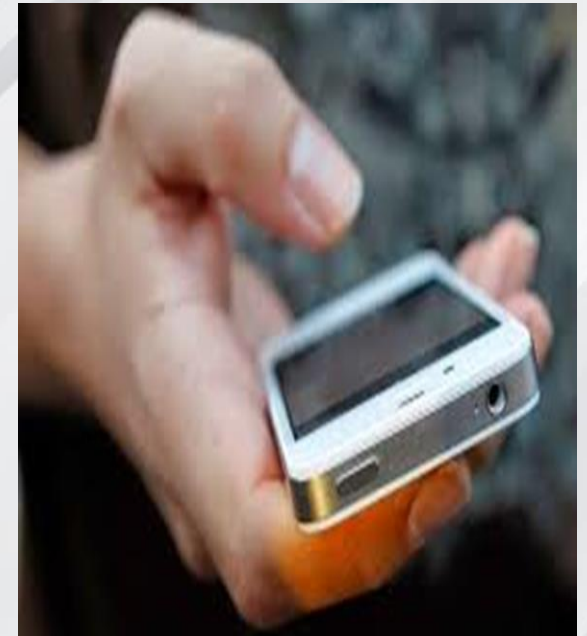
- Kinds of pecuniary rights:
- * **the personal rights:** which is a legal relation between two persons according to which one of them is obliged to do something or not to do something to the other party. Protected against the obliged person only.
- in personal rights, the obliged person is called the debtor and the other is called the creditor.
- **Personal right** equals what is called the **obligation** because each personal right for the creditor creates an obligation on the debtor.



- **- the obligation to do:** is the obligation to **do certain work** : such as repairing certain machine, working in a certain job, drawing a picture....etc..
- **- The obligation not to:** the obligation **not to do certain act which the obliged legally has the right to do if there is no such obligation.**
- This obligation finds the great part of its examples in the commercial field:
- Such as the obligation of a vendor not to compete the buyer by not opening a shop of the same kind of the sold shop in the same city, and the obligation of former workers not to declare or use the commercial secrets of his employer



- *** real rights:** it is a relation between a person and a thing according to which a certain power is given for certain person over certain thing.
Protected against all person in the society.
- Ex: **ownership** as a real right it give its holder three powers
- - **enjoyment**: to use the owned thing .
- - **exploitation** : to get the benefit of that things (fruits of agricultural land, rent of apartment).
- - **disposition**: to sell it.



- **3- Holders of rights (person):**

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.



- **A - The natural person:**

- Natural persons are the ordinary individuals. Natural person enjoy **unlimited legal capacity to conclude contracts**. Which means if the natural person attained majority (**21 years in Egypt- 18 years in Saudi Arabia**) with a sound mind (no mental defect) he can make any kind of contracts and accordingly bears all kinds of obligations and acquire all kinds of rights .
- Natural person enjoys wide range of features: such as legal capacity, domicile, right to patrimony...etc. we shall explain legal capacity in this lecture leaving the other feature to the next lecture:



- **capacity of natural person to make contracts :**
- **people under majority age are called minors : capacity of minors are divided into two levels**
- **From birth to 7 years:** (no discretion) can only receive rights but have no capacity to make contracts.
- **From 7 to 21:** (lack of discretion):- can make **totally beneficial** contracts(such as receiving donations)... only minors' beneficial contracts are **valid**
- - cant make **totally detrimental** contracts (such as giving donations) otherwise the contract would be **void**.
- According to Article 50 of Saudi civil transactions law:
- "1- If the actions of a discerning minor are purely beneficial, they are valid, and if they are purely harmful, they are in valid."



- - as to the contracts which are **detrimental and profitable** in the same time (such as sale contract)... his contract will be **voidable** which mean it will exist and produce all their legal effect unless the minor required their annulment.
- According to Article 50 of Saudi civil transactions law:
- “the actions of a discerning minor are between beneficial and harmful, they are **valid**, and his guardian, trustee, or the minor after reaching the age of majority **may request the annulment** of the action.”



- **Exception of the previous rule :**
- According to article 51 of Saudi civil transactions law:
- If the minor reaches the age of (fifteen), **his guardian or trustee** may hand over to the minor an amount of his money and authorize him to make financial transactions.
- The court may authorize him to make transactions if his guardian or trustee refuses to give permission.
- A discriminating minor who is authorized - in accordance with the provisions of paragraph (1) of this article - is considered to have reached the age of majority in the **transactions for which he has been authorized.**

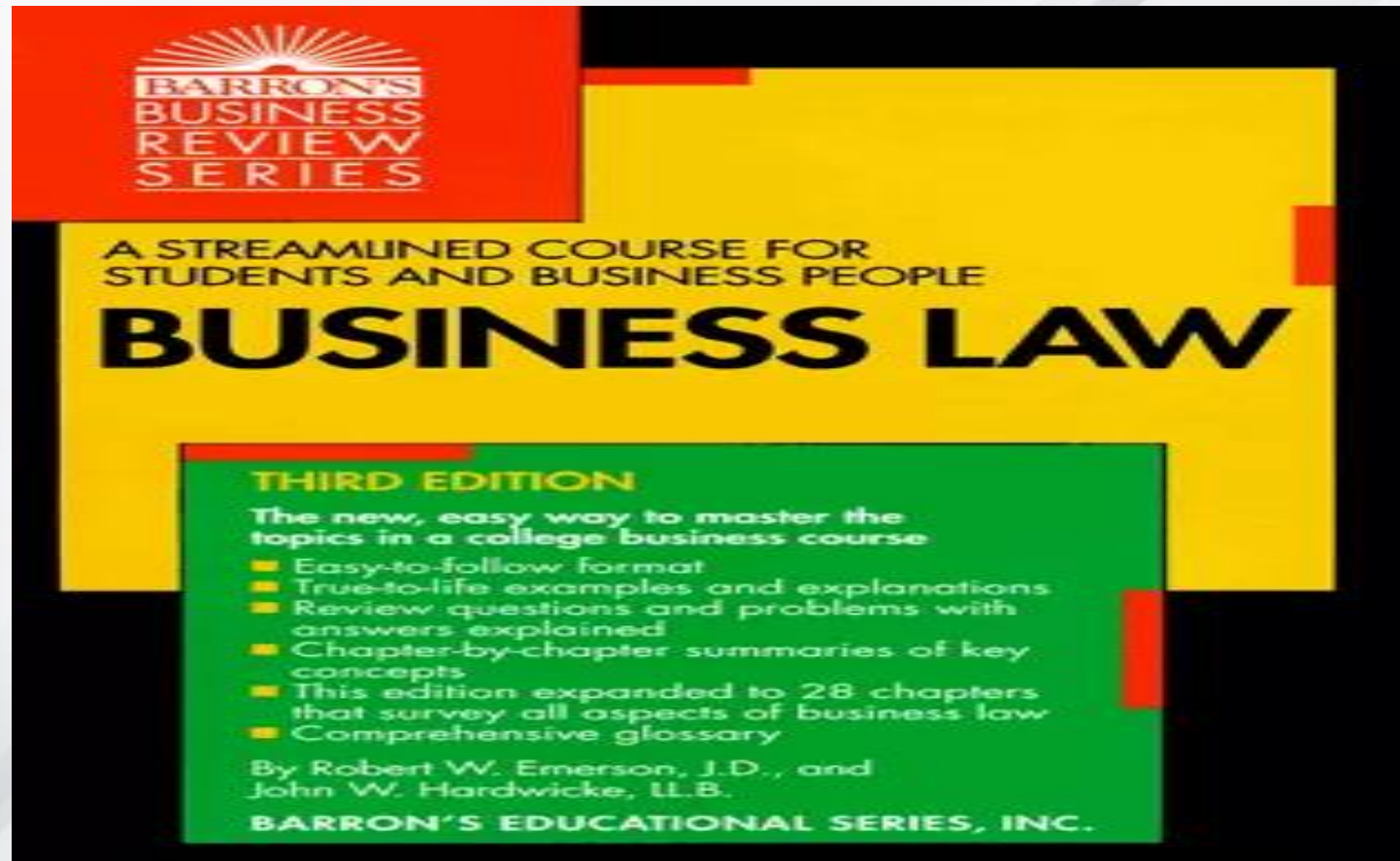


3- Conclusion



4- References

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





Thank You