

Business law

Lecture 3

MGM412
Business law

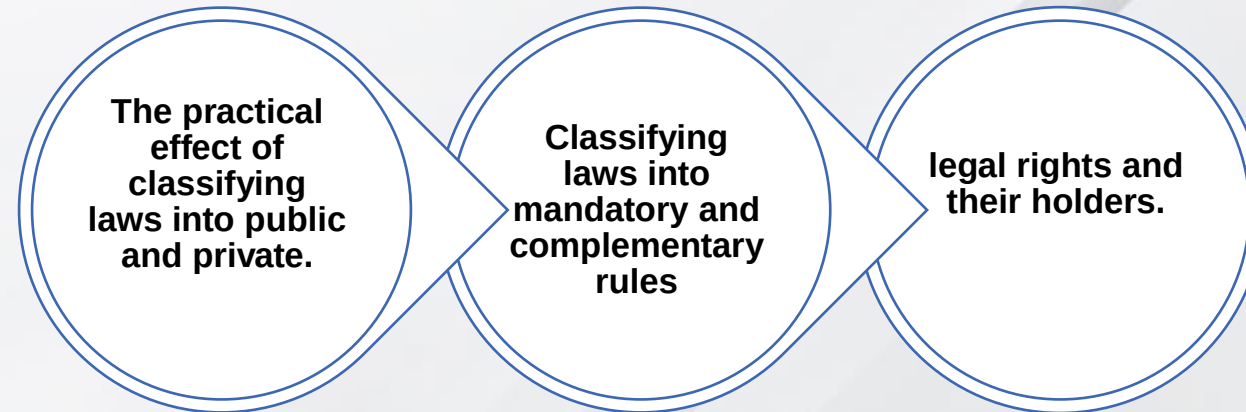
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Lecture goals

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



1- quick revision of the previous lecture



lecture

3

2- educational goal today



PART 3: legal rights and their holders.

3-A- features of natural person, and termination of his legal personality.)

3-B- juristic person, features and termination of his legal personality.

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.

- **The consequences of acquiring the natural legal personality:-**

- legal moral person enjoys several features of the natural persons such as:
 - I. capacity of natural person to make contracts : ([explained the previous lecture](#))
 - II. name of natural person.
 - III. patrimony of natural person
- We shall complete explaining the other features then explain cases of termination or end of natural legal personality in the following:



- **II- Different names of natural person:**

- *** The civil Name:**

- It is the means by which **a person is distinguished from others**. The name has two meanings: a narrow meaning, which refers to the personal name, and the second meaning, which refers to the title or family name.
- **How to acquire the civil name:**
- The natural way to acquire the **civil name is for the child to be attributed to his father** if the marriage is legitimate.
- However, after the death of the husband or divorce, the child's lineage is proven to be attributed to his father if he was born during the valid marriage contract or after its end before the expiration of the maximum pregnancy period, which is ten months, unless it is proven that it is impossible for the spouses to meet. The court may rule otherwise based on an approved medical report..

- There are other types of names that are protected by law if used continuously, and they are protected same as the civil name, including: the nickname name and the commercial name.
- * **The nickname:** It is the **person's fame among people** under a name other than the civil name.



- *** The commercial name:** The **trade name of the natural person (sole trader)**:
- It consists of an **innovative name**, a pseudonym, or a term derived from the nature of the trade he practices or deals with. Or from a name or a nickname or a combination of the above according to his choice, such as the name "The Green Salon".

- Commercial name is **considered an intangible asset owned by the person who created it** and used it in an actual and public manner as a commercial name for his shops or commercial activity as a whole, in the face of his competitors who practice a similar trade or industry, with the aim of distinguishing the commercial services he provides from their counterparts in the commercial markets. In other words, the trade name proves the identity of the merchant or producer with respect to the entirety of his business. This why it is **considered as a financial right that can be disposed of.**

- The acquisition of commercial name is **defined by priority of use**, not registration. Accordingly, the registration of commercial name in the commercial register is an announcement of holding such name and does not create it. The registration makes proof easier, but it is not the only means of proving the existence of such name.
- However, the right to own the **commercial name may be lost**, as well as the right to protect it, if it is merely registered without being used or invested in in any way, whether actual or public.



- **Name Protection:**
- The name enjoys legal **protection given for all types without discrimination.**
- Protection here is the demand to stop the attack and compensation if the real name holder suffered harm due to such attack.
- An example of that : a businessman with a distinguished civil name or nickname can prevent another person from using it as fake name if this generallyy leads to confusion between them while concluding commercial transactions.
- currently, this protection is specifically important in redressing violations and attacks on commercial names.

- **III- patrimony of natural person:**

- 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.
- Elements of patrimony: it contains two basic elements:
 - **The positive element:** which is represented by the **rights that a person** has in the liability of others. It is a group of financial rights related to the person, whether these rights are real rights; such as the right of ownership and the personal rights of the person as a debt owed to him by another person.
 - **The negative element:** which is represented by **the obligations that a person** has in the liability of others. It is a group of financial obligations and debts owed by the person.

- The relationship between these two elements is strong; **the positive element ensures the fulfillment of the negative element**. The positive side represents the **general guarantee** of the person's debts. So creditors of certain person can claim their right from any of the positive side rights.
- For example if "A" borrowed certain amount of money from a friend to buy certain house. and is not able to pay back the debt.
- The creditor may claim his money from selling this house- through legal sale procedures- in addition he can claim his money from any other positive right included in "A" 's patrimony such as money in his bank accounts and any other asset that he owns.



- **V- End of natural person's legal personality:**

- **- Natural death:**

- The legal personality of a person **ends with his actual death**, and death is recorded in the records prepared for this purpose in accordance with the Civil Status Law.
- In accordance with the legal rule that there is **no inheritance except after paying debts**, the personality of a person extends after his death until his debts are settled.

- **-Legal or judicial death:**
- In this case the death is legal juridical and not confirmed, as for the missing person:
- **The missing person:** the missing person is not known with certainty whether he is alive or dead, as his news is cut off in a way that suggests his death.



- **The effects resulting from the ruling of death:**
- **- Regarding his money:**
- The missing person is considered dead after the ruling of his death, and **his money is distributed among the heirs** from the date of the ruling of death.
- **- Regarding the wife:**
- **She remains as his wife for observance period of death-** four month and ten days- from the date of ruling and may marry someone else after that.

- **B - Juristic person**

- It is a group of persons who **are joined to achieve certain aims** and the legislature give it the legal personality within the limits of that aim.
- **Kinds of juristic persons:**
- *** Private juristic person:** not managed or instituted by state agencies. **Instituted by private persons** and works to achieve specific goals determined by its founders, for example the companies, and universities, charity associations.
- Partners in companies are joined to achieve profit, instituters of associations are joined to achieve charity acts...etc.

- *** public juristic person:** which is represented by the group of persons and funds that fall under the control of the state. for example: the projects established by the state under its system, such as public sector institutions, public government agencies, local administration councils, municipalities, etc., and each of these legal entities has a specific goal that it works to achieve through the employees working in it.

- Juristic person acquire the **capacity to conclude contracts once constituted** without any other requirement.
- accordingly, juristic person is a new legal entity, that is artificial person created by law that can acquire rights and assume liabilities and granted the legal moral personality (juristic personality)



- **The commercial name of commercial juristic person (companies) :** it is the name under which a commercial project is invested. It is used by the partners to identify their project and distinguish it from others and to enable customers to recognize it, so that the trade name itself constitutes a means of attracting them.
- In companies of persons and partnerships the **name of the company is derived from the names of partners**
- In the joint stock companies the name of the company **derived from the activity of the company.**

- **The consequences of acquiring the moral personality:-**
- legal moral person enjoys several features of the juristic persons such as:
 - I. - distinctive name
 - II. - nationality of juristic person.
 - III. -Representation of the juristic person.
 - IV. - Independent patrimony
 - V. - Legal capacity
- We shall explain each of these features then explain cases of termination or end of such juristic legal personality in the following:

- **I- The name of the juristic person**

- the juristic person should be given **a name, so that it can be easily identified**. it should be noted that the name of the juristic person must not be identical or similar to that of another juristic person.
- For example: if the juristic person is a company. Its commercial name has to be shown as the letterhead of the company on all its documents and on its web site for electronic commerce purposes.

- **A distinction should be made between the commercial name of a company and trade mark:**
- **A commercial name of accompany:** is a name used to distinguish his commercial project or establishment from other similar establishments. Therefore, whenever a commercial establishment gains a commercial reputation, the reputation accompanies the trade name. The trade name is used on the establishment by placing it on papers, correspondence, invoices and advertisements. An example of that is the (Talaat foodies) as a commercial name for food manufacturing business.

- While a trademark may be one of the names that take a distinctive form or words, letters, numbers, drawings, symbols, pictures, and a group of colors that take a special and distinctive form, as well as any mixture of these elements, to indicate a specific good or service .
- For example : if the previous business (Talaat foodies) has five products they may be Falfala, fitnesses.....etc. each product has trademark.



- The function of a trade name differs from the functions of a trademark, as while a trademark is used to indicate a good or service to distinguish it from other similar goods or services and is used in advertising and to attract consumers, a commercial name is used to distinguish the establishment itself. An **establishment with a trade name can own several trademarks**.
- Though, the business owner may choose to **use his commercial name as a trademark** for his product if it is unique and distinctive.

- **Name Protection:**
- All legal systems impose different means of protection for both the commercial name of companies, and its trademarks.
- It is to be noted that one of the steps of initiating a new company or register a new trademark is to make sure that it is new, distinctive and not repeated.



- **But what are the means of protecting the commercial name?**
- The attack on the trade name can be redressed through the following two lawsuits:
- **The first:** is filing a lawsuit for **unfair competition**
- **The second:** is filing a lawsuit for usurpation of the trade name or what is called trademark **infringement claim**.
- Each of these two cases has different conditions. We shall explain each in the following:



- * **a- The unfair competition is:**
- The act constituting unfair competition is any act that violates the customs and principles observed in commercial transactions, it includes, **in particular, the attack on the trademarks of others or their commercial name....** The effect of this is that the legislator granted legal protection when attacking any of the aforementioned elements, and permitted the owner of the right that was attacked to file a lawsuit for unfair competition against the attacker, requesting a ruling **to compensate for the damage**, in addition to a ruling to remove this damage to **prevent the attack** on him, in addition to **publishing the ruling** in one of the daily newspapers at the expense of the attacker.

- *** The conditions of unfair competition lawsuit are:**
- **The first condition:** is that the aggressor commits an act of unfair competition, and this act includes two elements:
- a material element, which is the **use of the name for his commercial activity** in a manner that is not consistent with commercial and ethical norms and good dealings between merchants,
- and a moral element, which is **attracting the customers** of others and gaining undue profits at the expense of the owner of the commercial name.

- **The second condition:** There is a state of **competition between the two parties** to the dispute, and this assumes the unity or **similarity of the commercial activity**.
- Accordingly, if “ company A” is a partnership that works in manufacturing stationary tools and holds specific name for example “ A& M” and another company which works in cosmetics labeled itself with same name overthought it is not its formal name in the commercial registry this will not be considered as unfair coemption act.
- **The third condition:** The occurrence of **damage to the interests** of others or damage that is likely to occur in the future.

- It is clear from the above that accepting a civil lawsuit for unfair competition **does not require the presence of bad faith** on the part of the person against whom the aforementioned lawsuit is directed.
- The violation of unfair competition is completed as soon as a merchant or another company proceeds to use a trade name owned by another, regardless of whether this use was done in good faith or in bad faith.

- It is to be noted that unfair competition claim, protects both the commercial name and trade mark.
- It is to be noted that the aim of unfair competition claim is to redress the attack by stopping the illegal use of the commercial name, in addition it enables the real name holder to claim compensation from the other party to cover any harm sustained due to such attack. But it is doesn't – as a principle-enforce criminal sanction of the aggressor.

- ***b- Trademark infringement or usurpation claim :**
- The crime includes all forms of assault on the trademark in an attempt by the legislator to achieve several goals, including protecting the consumer from falling prey to deception and fraud, and protecting the merchant from competing with him from dishonest merchants.
- These infringement forms include:
- First: The crime of imitating a registered trademark according to the law.
- Second: The crime of using a counterfeit trademark.
- Fourth: The crime of selling, offering for sale, trading, or possessing for the purpose of selling counterfeit, imitated products.

- ***conditions of infringement or usurpation claim :**
- **First:** committing **any infringement on another person's trade mark** including all the previously mentioned forms. Accordingly, it includes Any act of imitation, forgery, or use of a trademark or placing it on products in bad faith or selling or offering them for sale with this imitated or forged trademark on them.
- **Second:** some infringements such as placing the imitated trademark on products **the aggressor should have bad faith** so the aggressor's intention to be directed towards creating confusion in the mind of the average cautious consumer in order to benefit from the fame of the usurped trade name. It is to be noted that this intention is generally presumed unless proven otherwise.

- **It is to be noted that:**
- * the aim of such lawsuit is not only to stop the attack on trademark and compensating the harm sustained, in addition it enforces **criminal punishment of the aggressor**.
- * though this claim intended to protect trademark, but it may be used to protect the commercial name if unified.
- * A distinction must be made between the unfair competition claim and the trade name infringement claim, which aims to protect this name from any imitation or usurpation, **considering it an intellectual property right worthy of legal protection**, regardless of the unity of the subject matter or commercial activity, and without the need to prove that a harm has befallen the owner of the trade name.

- * The crime of infringement trademark does not require matching between the imitated and imitating trademarks , it is **sufficient to be nearly similar in the general appearance of the two marks** to the extent that mislead the ordinary consumer without taking into account the partial differences between the two marks.

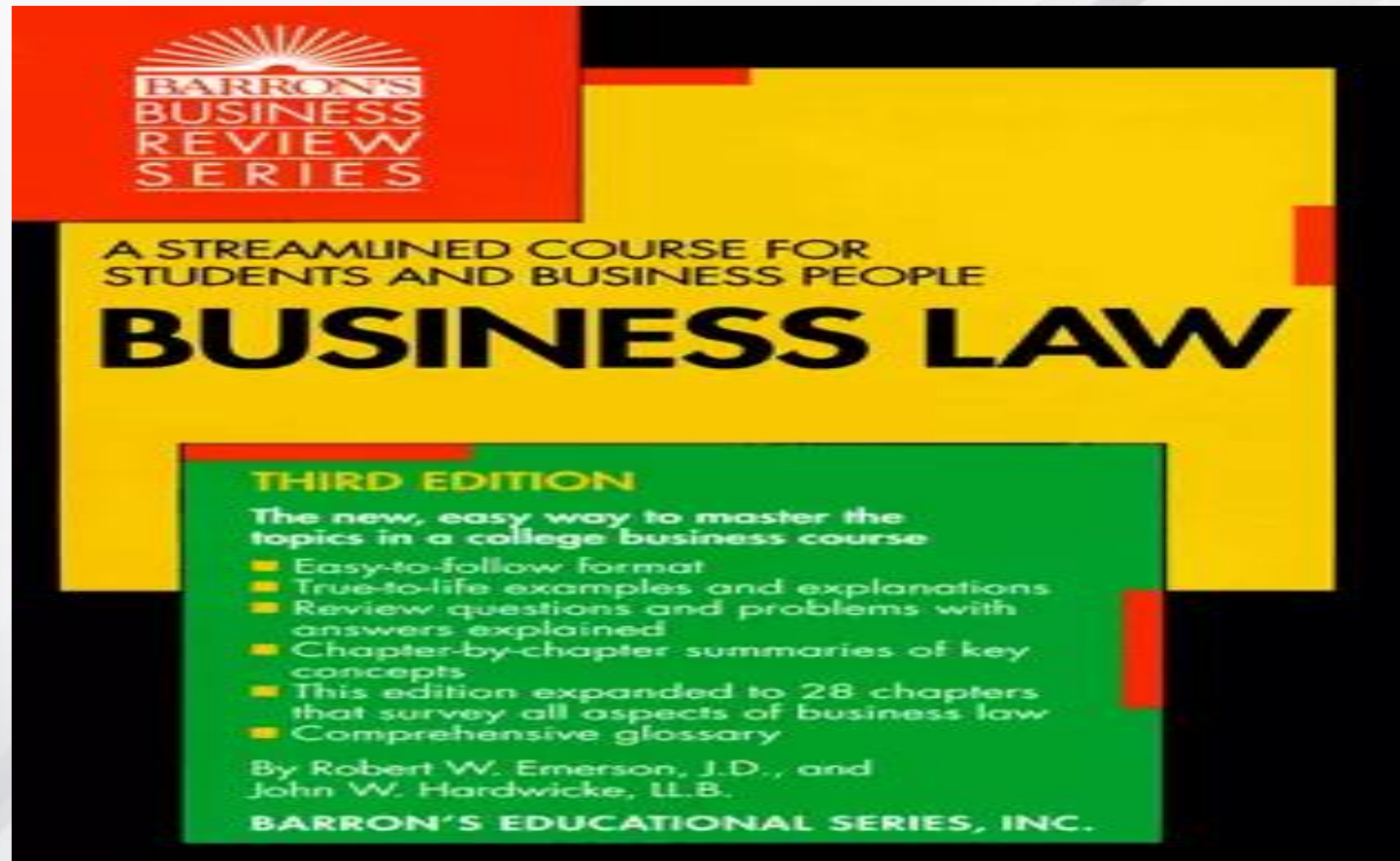
- by that we have finished explaining name of the juristic person and we will complete the remaining features then explain cases of termination or end of such juristic legal personality the next lecture.

3- Conclusion



4- References

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





Thank You