



**MINISTRY OF HIGHER EDUCATION
AND SCIENTIFIC RESEARCH**



**University of Khenchela Abbas Laghrour
Faculty of Law and Political Science**

Courses of Commercial Law

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First Chapter: The Concept Of Commercial Law And Its Sources.

Commercial law is one of the most important branches of law that is of particular importance, because of its treatment of details related to commercial life and the associated rights determination and protection for customers in this field, which is characterized by rapid development in line with modern means of communication, based on the idea of mutual trust in order to facilitate trade in a manner consistent with the flexibility required by transactions, for that It was necessary to delve into the concept of commercial law and the sources on which it is based, according to the following detail:

First: The concept of commercial law.

The general meaning of commercial law presents some details that should be addressed, In terms of its definition, characteristics, as well as the historical aspect of its origin, and the extent of its connection to some other laws, according to the following:

1- Definition of commercial law.

There are many definitions regarding commercial law, which is a branch of private law that includes the legal rules that apply to commercial businesses and merchants .

Commercial law is considered a branch of private law, and it consists of a set of legal rules that apply to commercial businesses and regulate merchant .

Commercial law can be defined as a set of legal rules that govern commercial businesses and merchants. It is responsible for clarifying all the details of commercial businesses in terms of their provisions, types, and methods of proving them, as well as defining the category of merchants in terms of the conditions for their acquisition of this status, and the consequences and obligations that fall on them. Whether they are natural or legal persons .

Commercial legal thinking is inextricably linked to commercial concepts, which are the centralized expression of commercial thinking , From this standpoint, commercial law is considered a law of a special nature in terms of its interest in regulating the relationships of a specific category of persons, namely merchants, on the occasion of their carrying out a specific type of business, namely commercial business, Therefore, it is narrower in scope than civil law and more specialized than it, given that the latter is considered the general law of private law and is concerned with regulating relations between individuals in general, regardless of the nature of the actions and the description of those performing them.

2- Characteristics of commercial law.

Commercial law is characterized by a number of advantages over other branches of law, In order to perform the role assigned to it of organizing the merchant during the practice of commercial business, Hence, paying attention to all the details of commercial life, which requires a set of characteristics in line with trade in general ,The rules of civil law have proven their failure to keep pace with the development dictated by the economic and social conditions and the practical requirements of society, through the subjection of the category of merchants and commercial businesses to a law distinct from that which frames transactions of a civil nature. Therefore, commercial law requires the factors of speed and credit.

A- Commercial law requires speed.

One of the advantages of commercial business is that it moves quickly and responds to products that may be subject to damage or sudden changes in prices, in contrast to civil transactions that do not take effect and are implemented only after negotiations on the terms of the contract, this necessitated the departure of commercial businesses from the formalities required by civil law in order to facilitate the requirements and speed of commercial life .

This speed imposed the existence of special rules that differ from the rules of civil law, and this is evident through the rule of freedom of proof in commercial transactions in accordance with the text of Article 30 of the Commercial Code, which stipulates: “Every commercial contract is proven: 1- with official bonds, 2- with customary bonds, 3- with an acceptable invoice, 4- By letters, 5- By the books of both parties, 6- By proof or by any other means if the court deems it necessary to accept it.”, Contrary to the general rule in written evidence in civil matters, according to Article 333 of the Civil Code, which stipulates: “In matters other than commercial matters, if the legal transaction’s value exceeds 100,000 Algerian dinars Or if the value is not specified, it is not permissible to prove its existence or expiration with witnesses unless there is a text stating otherwise...”.

However, this remains relative because the speed of transactions has moved to the field of civil transactions, such as civil companies and free professions, In addition to the increase in formalism in the field of commercial law, especially the principle of freedom of proof in commercial transactions, which has become restricted in some details, such as commercial companies and contracts contained in commercial assets .

B- Commercial law requires trust and credit.

The civil and commercial law to protect the day of the credit of the unfolding, while the credit system in the law aims to establish a good business

environment, to achieve a harmonious relationship between persons and enterprises in the transaction.

The rules of commercial law are based on the principle of credit because of its essential role in developing trade. The aim of this is to protect the debtor's obligations towards others by granting him a deadline for payment, where the merchant resorts to credit in order to protect the goods he buys and cannot sell immediately, if his creditor refuses to grant him a grace period, he can resort to banks to obtain loans. This requires the existence of effective rules to protect commercial credit, such as the assumption of solidarity and declaring bankruptcy.

Forms of credit can appear in the commercial field by assuming the solidarity of debtors in the commercial obligation without the need for a legal text or agreement, in contrast to the civil law, which requires the existence of an explicit text or agreement, This is what Article 551 of the Commercial Code indicates when it states: "Joint partners have the status of a merchant and are responsible without limitation and jointly for the company's debts."

In addition to the merchant who stops paying his debts when they are due, he will be subject to the bankruptcy system, this is what Article 215 of the Commercial Code stated, stating: "Every merchant or legal person subject to private law, even if he is not a merchant, if he stops paying, must make a declaration within fifteen days in order to open judicial settlement or bankruptcy procedures.", bankruptcy results in the merchant being removed from managing his business and liquidating it collectively and distributing the proceeds among creditors, also depriving him of his political rights and some civil rights, and criminal prosecution in the event of fraudulent or negligent bankruptcy.

3- The emergence of commercial law.

Commercial law is not a product of the moment, but rather the product of successive historical stages, as persons have practiced trade since ancient times to manage their agricultural and industrial crops, especially on the shores of the Mediterranean Basin, the cradle of ancient civilizations, and persons at that time exchanged products and goods and achieved mutual benefit. The most important phases that commercial law has gone through throughout history can be explained according to the following details:

A- Commercial law in ancient times.

Agriculture was an honorable profession of great importance to the persons of ancient times, as it was an important source of livelihood, while trade was left to slaves and foreigners who were enemies, therefore, trade was left to them,

considering it a despicable or menial task, despite this, some of the rules of those eras are still in effect today .

The ancient Egyptians were interested in agriculture, leaving trade to foreigners, Jews, and Chaldeans; however, they had great trade with neighboring persons, as rules regulating interest-bearing loans were issued during the seventh century BC.

The Assyrians and Chaldeans also dealt with cash and lending and arranged interest rates and how to calculate them, they clarified the provisions of deposit and used some instruments that resemble a promissory note and a bill of exchange, the Code of Hammurabi included provisions related to interest-bearing loans, deposits, the company contract, and mediation contracts.

As for the Phoenicians, within the scope of maritime trade, they established the system of throwing into the sea, which is considered to establish the principle of general or shared loss. This system is based on the idea that if a shipper's goods are thrown into the sea to lighten the ship's load to avoid the risk of sinking, then it falls on the shipowner and the other shippers. Compensating the person harmed by sacrificing his goods with compensation that is appropriate to the loss he incurred .

The Greeks exploited maritime trade to implement a lump-sum loan contract, which was based on a person lending a sum of money to the shipowner to equip the ship or purchase goods. If the ship arrived safely at its intended destination, its owner had to pay the loan amount with high interest. However, if the ship was destroyed, the lender would lose his money, so he would bear the burden. Thus, navigation risks are the origin of the modern insurance system .

Contrary to what some believe, the Romans contributed to the emergence and development of commercial law, as they practiced agriculture and left trade to their slaves and followers, On this basis, the rules for the commercial representative and the followers of the merchants were established, In addition to some provisions related to maritime trade, such as the rules of maritime loans and maritime losses that they took from the Greeks and Phoenicians, in addition to the role of jurisprudence in establishing a Roman idea about the bankruptcy system, which revolves around the possibility of the creditor extending his hand to his debtor's money and liquidating it after the creditor had the right to seize the debtor's person. Slaving him, working him, and killing him if necessary in exchange for paying his debt .

By reviewing the development of commercial law during ancient times, it is clearly evident the extent to which persons contributed to establishing some

commercial rules and that they did not rise to the rank of law, as they were customary regulatory rules that were appropriate to the stage.

B- Commercial law in the middle Ages.

With the fall of the Roman Empire in the fifth century AD, trade activity declined due to the chaos that prevailed at this stage and the inability of the local authority to secure trade routes, A trade stagnation occurred, and trade did not revive until the outbreak of the Crusades, which led to a trade rapprochement between the East and the West .

Disputes arising between merchants were decided by a person called the consul, in light of the rules and customs agreed upon by the merchant class, he is chosen from among the members of the sect by election, and the judiciary of these consuls is considered the starting point in the emergence of the commercial judiciary. Then these customs were written down in the form of regulations, followed by the emergence of the merchant law derived from those regulations .

The Arabs also paid special attention to trade since the pre-Islamic era, Their activity extended from the Levant to Yemen, and the scope of these transactions expanded upon the establishment of the Islamic State, as Muslim jurists explained and analyzed the rules of transactions such as bankruptcy, the company contract, and some forms of commercial papers such as the promissory note, taking into account that Islamic law did not differentiate between civil and commercial transactions, but rather treated them in a general manner. As if it was devoid of the formalism that prevailed among the Romans, This is what the divine law adopted through the Allah saying: {...However, if you conduct an immediate transaction among yourselves, then there is no need for you to record it...}.

For European countries, the Church also contributed indirectly to the development of commercial law, by prohibiting the loan of money on interest, with the exception of the Lombard Jews, who are residents of Lombardy and most of whom are Italian. this prohibition was the reason for the innovation of the system of recommendation by capital owners, whereby capital provides money to the merchant in exchange for a portion, of profits within the limits of the money he provided, which is what the Church approved of the risks involved in money in this case.

Markets gradually spread in Europe, where merchants initially made group trips during the seasons, due to the difficulty of movement and lack of security, Then the markets settled in the major European cities, which developed to reach

global levels, and where the habits and customs used by merchants spread to become legal rules supported by the speed of commercial operations and credit.

C- Commercial law in the modern era.

At this stage, America was discovered and Constantinople was conquered, and Italy lost sovereignty over trade, which was transferred to other countries such as England, the Netherlands, and France. Large banks appeared, and with them new trade rules were enacted, including the method of transferring accounts and securities, because the state resorted to borrowing from banks.

France, England, and the Netherlands also established major capitalist companies, which are modern joint-stock companies, such as the Gulf of Suez Company and the Panama Canal Company, where, in light of the chaos arising from the multiplicity of customs in different cities, the need arose to unify legislative rules instead of customs. Ten committees of jurists met in France during the reign of Louis XIV, it culminated in the adoption of a law on land trade in 1673, and a law on maritime trade in 1681. Years later, the National Assembly recommended the establishment of trade regulation, which is what happened and the French trade law was issued in 1807, which had an impact on other countries, especially independent Algeria, which issued the commercial law on September 26th, 1975 in accordance with Order No. (75-59).

4- The scope of commercial law.

There was a difference between commercial law jurists regarding the scope of commercial law, this is due to the background of each group of them, as the difference centered on whether it is considered a law specific to merchants or a law concerned with commercial businesses. What contributed to the emergence of two theories: the objective theory and the subjective theory, and each theory was subjected to criticism, and the Algerian legislator was influenced by this in formulating his position and adopting an opinion between the two positions, which was reflected in the drafting of the articles of the Algerian commercial law, which will be explained according to the following:

A- Objective theory.

Those who advocate this theory believe that commercial law is concerned with regulating commercial businesses regardless of the profession of those carrying out these businesses. As long as the business is commercial in nature, it is subject to commercial law, whether carried out by a merchant or others. What matters is the subject of the activity practiced by the person, Even if he does it once, but if the person continues to practice the activity as a professional, he acquires the status of a merchant, which is a status that the law does not take into account according to this theory, except through the merchant being subject

to a set of obligations such as registration in the commercial registry, and submission to commercial taxes, Commercial bookkeeping and bankruptcy declaration.

The reason for the existence of this theory is due to a technical and political consideration. As for the technical aspect, it relates to what is included in French commercial law, regarding the jurisdiction of commercial courts in commercial disputes without exclusively specifying these transactions and their types. The interpretation of these texts, in the opinion of the proponents of this theory, suggests that commercial work is the determinant of the scope of commercial law.

As for the political consideration, it is the support that this theory provides for the idea of economic freedom, which eliminated the sect system that prevailed at that time, and hindered the prosperity and development of trade, because this system prevented non-merchants from practicing commercial business .

B- Personal theory.

Supporters of this theory believe that commercial law only applies to merchants, as the basis of commercial law is the merchant ,If a non-trader carries out commercial work, this work is not considered within the scope of commercial law, and the proponents of this theory relied on arguments including: a political argument based on the fact that the principle of equality before the law does not prevent the existence of laws of a professional nature, as long as joining professions is based on On freedom.

In addition to the historical argument that the theory of commercial action, from which some took the basis for commercial law, is nothing but a jurisprudential innovation during the 19th century and does not prove the intent of the legislator.

In addition to the legal argument that most of the provisions decided by the new codification have no justification except in the idea of the commercial profession, such as the special provisions regarding registration in the commercial registry and Commercial bookkeeping, and the difficulty lies in adapting the work if it is for the needs of trade or for the personal interest of the merchant, and the judiciary has established The French presumption is called the commercial presumption, which is based on the assumption that the work was done for the needs of the institution, and whoever claims the opposite must prove that.

C- Estimating the two theories.

Both theories have been subjected to criticism, as the objective theory is criticized for the fact that it is difficult to control business exclusively, mainly due to the rapidly increasing economic and social development.

As for the personal theory, it has in turn been subjected to criticism in that the merchant has his commercial and regular activities, so it is unreasonable to subject them all under the umbrella of commercial legislation, and it is difficult to define commercial professions exclusively .

D- The Algerian legislator's position on the two theories.

Referring to the approach of the Algerian legislator regarding the scope of application of commercial law, he adopted the idea of the personal theory, and this is proven through the first article of the commercial law, which stipulates: "Any natural or legal person who carries out a commercial business and adopts it as his usual profession is considered a merchant, unless the law stipulates otherwise," in addition to what was stated in Article Four, which referred to the concept of subsidiary commercial business, as it stipulated: "It is considered a commercial business by subordination, that The actions carried out by the merchant and related to the practice of his trade or the needs of his commercial asset, and the obligations between merchants."

On the other hand, the legislator did not remain on the same line, as he returned and took from the objective theory by stipulating a list of commercial businesses according to subject matter in Article Two, as well as commercial businesses according to form in Article Three of the Commercial Law.

It is clear that the legislator has combined the two theories in his approach, as he did not give priority to either theory over the other with the principles it contains and the criticisms it contains, in order to take a middle position between them, because each of them has advantages and disadvantages, and he did well so that the text of the commercial law is not objective or Absolutely personally.

5- The relationship of commercial law to other laws.

Studies involving non-law disciplines have highlighted the need for universities to consider commercial awareness more.

Despite the independence of commercial law from other laws, there are links that unite it with it, whereas commercial law is not isolated from the rest of the legislation that meets with it for the purpose of regulating commercial life, as commercial law is linked to the civil law under which it arose, as well as some other related laws.

A-The relationship of commercial law to civil law.

Civil and commercial law are not completely independent and unrelated to each other. The opposite is true. They are very closely related to each other. Both play a role in adjusting the economic relations of goods to adapt to economic development, maintaining the safe development of trade and improving economic security and stability.

Civil law is concerned with regulating the legal relationships that govern individuals in general, therefore, both civil and commercial law belong to private law. However, civil law remains public law in terms of applying its provisions to individuals regardless of their characteristics, while the application of commercial law is limited to commercial businesses and merchants; it is exceptional in its separation from civil law, whose rules no longer keep pace with the speed and developments of commercial transactions. Therefore, if the commercial law is silent about a specific issue, the judge is obliged to resort to the rules of civil law, provided that it does not conflict with the requirements of trade, which is what Article 1 bis of the commercial law indicates, by stipulating: “Commercial law applies to relations between merchants, and in the event of “There is no provision in it that applies civil law and professional customs when necessary.”

The rules of civil law must be applied if there is no explicit provision in commercial law, an example of this is the company contract, in which the articles of the civil law are detailed, as the general theory of obligations applies to all contracts, including commercial ones, so both laws affect the other. For example, the effect of the promissory note applies to all its signatories, whether they are merchants or otherwise .

On the other hand, if there is a conflict between the texts of the commercial law and the civil law regarding a specific issue, the commercial text is the one that is applied in accordance with the principle of the specific restricts the general, since the commercial law is specific and the civil law is the general law.

B- The relationship of commercial law to the penal law.

Commercial law is closely linked to the Penal Code, which is linked to various branches of laws that often set the objective framework for issues, leaving the matter of determining the penalty to the Penal Code, which is clearly evident through some crimes and violations that violate commercial legislation, such as fraudulent or negligent bankruptcy, according to the text of Article 383 of the Penal Code, which It stipulates: “Whoever is proven responsible for committing the crime of bankruptcy in the cases stipulated in the Commercial Code shall be punished: - For negligent bankruptcy with imprisonment from two

(2) months to two (2) years and a fine from 25,000 DZD to 200,000 DZD. - For fraudulent bankruptcy with imprisonment for one year (1) to five (5) years and a fine from 100,000 DZD to 500,000 DZD...” .

The law also punishes forgery in commercial documents in accordance with the text of Article 219 of the Penal Code, which stipulates: “Anyone who commits forgery in commercial or banking documents in one of the ways stipulated in Article 216 or attempts to do so shall be punished by imprisonment from one to five years and a fine of 500. "To 20,000 dinars" .

Due to the importance of dealing by check in the commercial field, the legislator was keen to protect credit, by punishing those who violate this principle, which is indicated in Article 16 bis 3 by stipulating: “He shall be punished by imprisonment from one (1) to five (5) years and a fine from 100,000 to 500,000 DZD.” Everyone who issued one or more checks and/or used a payment card despite being prohibited from doing so...”

It is clear from these penalties that were listed as an example the extent to which the penalties related to commercial life have been severed in support of the idea of credit in order to create a calm commercial life based on trust and legitimacy.

C- The relationship of commercial law to international law.

Commercial law is linked to public international law because of the state’s intervention in directing the economy and concluding international agreements in the commercial field. Commercial law is also linked to private international law, which regulates the commercial relationship when one of its parties is a foreigner, according to the differences in the internal commercial legal rules of the countries. To avoid the problem of conflict of laws, the state decided to unify Commercial law unifies the scope of international relations and concludes many agreements to regulate international trade .

D- The relationship of commercial law to the Consumer Protection and Fraud Suppression Law.

Commercial law is linked to some laws related to commercial life, which aim to protect all actors in it, especially the consumer, who is considered the last stop in the production cycle, which has a close relationship with the merchant, which the legislator was keen to secure through many guarantees that ensure his consumption of materials in a comfortable manner, far from undesirable effects resulting from infringement of the legal system, the merchant, as an intervenor in the consumer cycle, must respect hygiene conditions in order to ensure the arrival of The commodity is delivered to the consumer in the best conditions, which is indicated in Article 4 of the Consumer Protection and Fraud

Suppression Law, which stipulates: “Everyone involved in the process of placing foodstuffs for consumption must respect the obligation of the safety of these materials, and ensure that they do not harm the health of the consumer.”.

Provided that the merchant bears legal responsibility in the event of non-conformity of his product, in terms of expenses, in accordance with the text of Article 60 of the Consumer Protection and Fraud Suppression Law, which stipulates: “If it is proven that the product does not conform, the expenses resulting from the control operations, analyses, tests, or experiments shall be paid by the third party.” The negligent intervener.”

The merchant must also, under penalty of punishment, respect hygiene conditions in order to protect the consumer’s life, as indicated in Article 72 of the Consumer Protection and Fraud Suppression Law, which stipulates: “He shall be punished with a fine from fifty thousand (50,000 DZD) to one million dinars (1,000,000 DZD). “Everyone who violates the obligation of cleanliness and sanitation...”

Through these examples, it is clear how keen the legislator is to protect the consumer, who is the party that deals directly with the merchant, by enacting its own law, concerned with regulating consumption and punishing the merchant or anyone responsible for violating the general rules that would affect the lives of individuals in this regard.

E- The relationship of commercial law to the law relating to the conditions for practicing commercial activities.

The merchant must be subject to a set of conditions that determine his activity, in order to prevent chaos and randomness and deter some practitioners in this field, especially the necessity of registration in the commercial registry, which is the merchant’s identity card, and to protect consumers from fraud, as the merchant is obligated to register in the commercial registry in accordance with the text Article Four of the Law on Conditions for Practicing Commercial Activities stipulates: “Every natural or legal person who wishes to engage in a commercial activity is required to register in the commercial registry...” .

Failure to register in the commercial registry results in deterrent penalties against the fictitious merchant, as the legislator considered it a crime punishable by law in accordance with the text of Article 31 of the law regarding the conditions for practicing commercial activities, which stipulates: “The qualified agents mentioned in Article 30 above shall close the commercial Asset of every natural or A legal entity that carries out a permanent commercial activity without registering in the commercial registry until the perpetrator of the crime

settles his status. In addition to the closure procedure, the perpetrator of the crime shall be punished with a fine from 10,000 DZD to 100,000 DZD.”

The merchant is subject to a strict system that punishes him in the event of a violation of what he is obligated to do, so that commercial life is stable among all its actors and in implementation of the law against intruders.

F- The relationship of commercial law to the law related to electronic commerce.

E-commerce, as an Internet-centered online transaction model, is extremely convenient to use, and The Algerian legislator took into account the development taking place in the field of information technology, which has become an inevitability and not an option, especially with regard to electronic commercial Assetping, which has become the practice in Algeria in an unregulated manner that has led many times to the occurrence of victims, in the absence of legal guarantees and methods for recovering funds, especially if the The process is fraudulent, so the legislator intended to enact a law concerned with regulating and framing electronic commerce, as it set a number of conditions, especially registration in the commercial register, which is indicated in Article 8 of the law containing electronic commerce by stipulating: “Electronic commerce activity is subject to registration in the commercial register or in a registry. Traditional and craft industries, as the case may be, and to publish a website or electronic page on the Internet, hosted in Algeria with the extension “.com.dz,” the electronic supplier’s website must have means that allow it to be verified.” ,the legislator clarified the need for the electronic supplier (merchant) to be responsible before the consumer with the force of the law in accordance with the text of Article 18 of the Electronic Commerce Law, which stipulates: “After concluding the electronic contract, the electronic supplier becomes responsible with the force of the law before the electronic consumer for the proper implementation of the obligations resulting from this contract.”, The law also referred to a set of penalties affecting the merchant who violates electronic legislation in this regard.

G- The relationship of commercial law to the law related to combating illegal speculation.

Due to the growing illegal actions of some merchants, the Algerian legislator decided to enact a law that combats illegal speculation due to the many damages that affect the purchasing power of the consumer, in addition to damaging the national economy by weakening the policy of support that the state provides annually to groups that deserve it, Therefore, the state directly undertakes many measures in order to combat illegal speculation, which are truly linked to

commercial law, because speculation is considered an essential element in trade, but practicing it in an improper manner leads to damage to commercial activity, and Article Four of the law related to combating illegal speculation stated The legitimate set of measures taken by the state in this regard, as it stipulates: “The state takes necessary measures to limit illegal speculation, in particular - ensuring the availability of goods and merchandise in the markets, - adopting vigilance mechanisms to take measures with the aim of reducing the effects of scarcity, - encouraging Rational consumption, - taking the necessary measures to refute the spread of any rumors that are promoted for the purpose of causing market disturbance and raising prices in a random and sudden manner, - preventing any unjustified storage or withdrawal of goods and merchandise to create a state of scarcity for the purpose of raising prices.”

The legislator also addressed many violations and included severe penalties with the aim of controlling the market and reducing damage to the consumer, as penalties range from three to ten years for anyone who engages in illegal speculation, which is stipulated in Article 12 of the law related to combating illegal speculation : “Illegal speculation shall be punished by imprisonment from three (3) years to ten (10) years and a fine from 1,000,00 DZD to 2,000,000 DZD.” If the speculation is focused on materials vital to the consumer, the penalty shall be between ten to twenty years, and a fine. Between 2,000,000 DZD to 10,000,000 DZD according to Article 13 of the same law, and the penalty may become more severe if the speculation is carried out by an organized criminal group, reaching life imprisonment.

This law shows the care that the legislator has given to commercial life, in parallel with the objective rules included in the commercial law, in order to maintain economic stability, especially after the spread of the phenomenon of greed, which has begun to affect the state’s policy in establishing food security.

Second: Sources of commercial law.

Commercial law belongs to the category of private law, and on this basis it has sources referred to in Article 1 of the Civil Code in general, by stipulating: “The law applies to all issues that its texts address in their wording or content. If there is no legislative text, the judge ruled "In accordance with Islamic law, and if it does not exist, then in accordance with custom. If it does not exist, then in accordance with the principles of natural law and the rules of justice." .

From this standpoint, it can be said that commercial law has official and alternative sources, as is the case for the rest of the laws, taking into account the role that custom represents in the emergence of commercial law, and therefore custom occupies a high position among the official sources, in addition to the

role of Islamic law in legislation, considering Algeria is a Muslim country, taking into account the provisions of article 1 bis of the Commercial Code, which stipulates: “Commercial law applies to relations between merchants, and in the absence of a provision therein, civil law and professional customs shall apply when necessary.” Therefore, detail must be provided in the official and interpretive sources of commercial law, according to the following:

1- The original sources of commercial law.

What is meant by official sources are those that the judge must rely directly on the disputes before him, through their obligation, and the necessity of applying it if they are explicit and address the issue in dispute, and they include legislation, custom, as well as Islamic law.

A-Legislation as the original source of commercial law.

Legislation is the primary source of commercial law, and what is meant is the set of legal rules issued by the competent authority of the state, and the judge must rely on it as a primary source for deciding the dispute before him.

The first source is represented by the texts of the Algerian commercial codification itself, issued pursuant to Order No. 75-59 of September 26th, 1975, amended and supplemented. The commercial law is a set of codified texts that deal with various topics related to commercial life. It is noted that the Algerian legislator was influenced by the position of French legislation, and extended This is due to what French Judiciary and jurisprudence came up with, and took the objective and personal theories, and despite that, it was not able to establish a controlling standard for distinguishing between civil and commercial work, as it designated commercial business with three articles that clarify their types in terms of subject matter, form, and subordination.

Commercial law is divided into five books: The first book covers trade in general in four sections: commerce, commercial books, commercial registry, commercial contracts, as for the second book, it is devoted to the commercial establishment in two chapters: a chapter concerned with the sale of the commercial establishment and its mortgage, and a second chapter concerned with commercial leases, As for the third book, it is concerned with bankruptcy, judicial settlement, and commercial rehabilitation, and it is in two parts: the first is devoted to bankruptcy and judicial settlement, and the second is about commercial rehabilitation, while the fourth book included commercial bonds in four chapters: The first includes the bill of exchange and the promissory note, the second concerns the cheque, the third concerns the storage bill, the transport bill, and the invoice transfer contract, and the fourth concerns matters of payment methods, as for the fifth book, its subject is commercial companies,

and it includes an introductory chapter specializing in general provisions, a first chapter on the rules of operation of various commercial companies, and a second chapter specializing in penal provisions for commercial companies.

Commercial legislation is not limited to commercial law as the sole legislative source, but rather extends to civil law, as it is the general law of private law; Commercial law is considered one of its branches. Therefore, if a dispute occurs and it is presented to a judge, he resorts to the articles of commercial law. If he does not, he refers to the provisions of the Civil Code, in accordance with the provisions of its first article .

In the event that a conflict occurs between a civil text and a commercial one, the commercial text must be applied in line with the principle that stipulates that the specific restricts the general, as commercial law is the private law while the civil is considered the general law .

Commercial legislation extends to a number of international agreements concluded and ratified by the state, as well as executive decisions and orders, as well as some laws related to the commercial field, especially the Consumer Protection and Fraud Suppression Law, the law regulating electronic commerce, and others.

B- Commercial customs and habits as the original source of commercial law.

Custom is a set of rules arising from persons' habituation to customs that they inherit, and it results in a legal penalty like the law. The commercial law was amended pursuant to Order (96-27), especially Article 1 bis, explaining its place in commercial legislation, by prioritizing commercial custom over Islamic law, because the origin of commercial law is purely customary, after Islamic law was in second place under the first article of the civil law .

Custom arises due to long practical application associated with a specific type of activity , The judge resorts to custom in a way that the legislative text lacks, and therefore some jurists considered it similar to the written commercial text and even made it precede civil legislation in arranging the sources of commercial law, as the Algerian commercial law remained for a period of time purely customary .

The custom consists of two parts or corners. One is material and the other is moral; the material means the existence of an old, fixed general custom that does not violate the rules of public order and morals, while the moral means what distinguishes the rules of custom in terms of belief in its necessity as well as the law.

Because commercial custom and commercial legislation share in terms of obligation, the judge must be aware of it and not ask one of the parties to prove it. In order to investigate this evidence, he may rely on all means of proof related to commercial matters. Which is usually done by obtaining certificates from customs, commercial institutions, or from the country's consulates abroad.

Custom is distinguished from commercial habit in that merchants practice the latter without believing in the extent of its obligation and respecting its provisions, the reason it is not mandatory is the presence of a material element rather than a moral one, which does not give it binding force. Therefore, the judge can apply it only when the opponent adheres to it, because the judge is not supposed to know about it, the party who adheres to it has the right to prove its existence in all ways, and an example of it is agreeing to reduce the price of a specific product instead of terminating the contract, In the event that it becomes clear that the delivered goods are of lower quality than the type subject to the agreement, commercial habits may change to custom, if dealing with it is established, it will become more than an implicit agreement .

Examples of habit commercial rules include the rule of assuming solidarity between debtors in commercial transactions, the rule of not dividing the current account, and the rule of charging interest on frozen interest in bank accounts.

This raises a problem regarding the possibility of custom violating a written text, as it is agreed that commercial custom is not permissible to violate a commanding commercial text, Some jurists see the possibility of presenting custom over a civil text, not as a matter of custom violating legislation, but rather as an activation of the rule that civil law is not applied unless there is no special provision in commercial law, and the existence of a commercial custom means the existence of a special commercial legal hall.

On the other hand, some jurists believed that the civil text is stronger than custom, because the civil law is the general law and should rather be applied in the absence of a commercial text, and this opinion denies the legal character of custom.

Therefore, it is better to differentiate between the commanding civil text, which custom should not contravene because it relates to public order, and the only commanding civil text, which is not related to public order. In this case, custom can be applied instead of the civil text .

C- Islamic Sharia as the original source of commercial law.

Islamic law' covers all aspects of human behavior. It is much wider than the Western understanding of 'law', and governs 'the Muslim's way of life in literally every detail and, of course, it also regulates commercial transactions.

Islamic Sharia is considered an official source for governing relations between individuals according to the text of Article 1 of the Civil Code. Sharia includes the divine will through the texts of the Holy Qur'an, and the Sunnah of the Prophet, may God bless him and grant him peace, actual, verbal, and declarative, which came to interpret and clarify the general Quranic text, in addition to diligence and analogy .

2- Interpretive sources of commercial law.

What is meant by the interpretive or precautionary sources of commercial law are the sources that the judge has the freedom and choice to refer to to find the solution to the dispute before him, without being obligated to follow them, as they are optional and can be relied upon, and commercial jurisprudence has generally settled on considering the judiciary and jurisprudence as two interpretive sources of commercial law.

A- The judiciary as an interpretive source for commercial law.

Judiciary means the set of legal principles that are derived from the rulings and decisions of judicial authorities and the habit of following them and acting according to them. The judge uses them in his rulings to consider the disputes presented to him. Judicial precedent occupies a pivotal importance in the Anglo-Saxon system, as it is an official source of legislation. If a court of higher status issues a decisive ruling, it is the lower court must consider it in similar cases .

As for Algeria, and similar to the Arab countries that adopted the Latin system, judicial precedent is not binding on the judge, and although it is not binding, the interpretive role of the judiciary has not remained static, but rather has begun to play an important role in commercial life, as it changes according to the requirements of commercial and economic life, and the judiciary has contributed to the existence of ideas that have become At the core of commercial legislation, including the theory of unfair competition, the theory of actual companies, the theory of bankruptcy, and the regulation of the current account contract .

B- Jurisprudence as an interpretive source for commercial law.

What is meant by jurisprudence is what is issued by the opinions of commercial law jurists who are in the process of commenting on judicial rulings, interpreting and explaining legal texts, and pointing out deficiencies

and reconciliation in it, and they are considered not binding on the judge, so he can rely on it only, Jurisprudence plays a serious role in understanding texts, trying to suggest alternatives, and enlightening the legislator regarding making the necessary amendments regarding specific details that are lacking, Jurisprudence also collects the rulings of the courts and brings them together and the extent of their interconnectedness to conclude the general direction they are heading in, evaluates the various theories and indicates the extent to which they can be adopted or excluded according to the legislator's approach.

Second Chapter: The Commercial Buisness.

Commercial law, according to its definitions, is based on two important parts that are the basis of its creation: The matter concerns commercial buisness and merchants, as these works represent the objective part of commercial law that differs from civil works according to certain controls and standards determined by a number of theories, and also the emergence of the importance of distinguishing between civil and commercial work according to many details that show the existence of fundamental differences in terms of nature as well as The law that applies to each of them, as both commercial and civil law are applied according to the type of work, which will be discussed according to the following:

First: Controls and the importance of distinguishing between civil works and commercial buisness.

In order to distinguish between civil and commercial work, some aspects must be taken into account, as controlling commercial buisness in a legal text is difficult to achieve due to the continuous and rapid growth of commercial activities, and therefore a comprehensive standard should be adopted that would bring together the various commercial buisness and precisely define their meaning so as not to confuse them, and civil works.

1- Controls for distinguishing between civil works and commercial buisness.

Jurisprudence tried to reach it by developing a number of theories, which in turn were subject to criticism, which should be taken into consideration and an attempt to synthesize and reconcile them to reach a comprehensive standard for determining the excellence of civil and commercial work. These theories can be summarized in the theory of speculation, the theory of trading, and the theory of entrepreneurship, this is detailed as follows:

A- Speculation Theory:

Proponents of this theory believe that the basis of business is the speculation with the intention of achieving profit, as buying for the sake of selling includes this intention. However, the concept of profit involves an internal psychological factor that cannot be investigated. Therefore, this theory constitutes an important part of the objectives of commercial work, which is achieving profit. It is not possible to imagine the existence of a commercial business. Without seeking profit Therefore, economic operations that do not aim to achieve profit, such as free works that are incompatible with trade, are outside the scope of commercial law. Despite the insufficiency of this standard is for controlling commercial work, but that does not prevent it from being considered one of the essential elements in determining the character of commercial work .

As for what is taken into account in this standard, it is that it does not include within its scope the activities carried out directly by the state, while those carried out by the state indirectly in the form of an office, institution, or company aim to achieve profit and are therefore commercial.

Also, achieving profit remains a relative matter, as some professions, despite their owners' efforts to achieve profit, remain civil, such as the liberal professions such as the doctor, lawyer, and farmer .

In addition, the merchant may sometimes not aim to achieve profit, as he may sell his goods at cost price or less than that in the context of competition with another merchant.

B- Trading theory.

Trading means the group of actions related to mediation in the circulation of wealth from producer to consumer. This theory excludes agricultural operations, extractive industry, and consumer operations from its scope, due to the absence of the trading element in them .

This group of businesses is subject to civil law, and thus the production of goods is not considered a commercial activity, because the commodity has not yet entered the scope of circulation, and likewise the consumer's purchase of it is not considered commercial as long as the commodity is out of the scope of circulation.

Rather, circulation appears in the extended period in which the commodity leaves the hand of the producer and reaches the consumer, and makes these actions subject to commercial law, circulation means transportation and movement, in a more precise sense, every action that aims to transport a commodity and move it from the hand of the producer to the consumer is

considered commercial, and in the opposite sense, every action a commodity, before it leaves the hands of the producer and after it reaches the consumer, is in a state of stagnation and is therefore a civil work.

However, the trading standard is not considered sufficient to give the work a commercial character, whereas intermediation that does not aim to achieve profit is not a commercial work, an example of this is the activity of cooperative societies that purchase goods for reselling them to their members at cost price .

One of the drawbacks of this theory is its comprehensiveness and its inclusion of all work once it is subject to circulation, such as the work of the farmer, who remains civil even though he is the first to put the commodity into circulation , In addition to the expansion of the scope of businesses that are subject to circulation, which are the product of human development, an example of this is the movement of money that is subject to circulation. However, it cannot be considered commercial business for all those who participate in its circulation, as merchants and civilians may trade it.

C-Theory entrepreneurship.

Supporters of this theory believe that commercial work cannot be distinguished from civil work because of the nature or subject of the work, rather, from its practice in particular, that is, through its professionalism; Commercial work acquires this description if it is practiced as an entrepreneurship, that is, through repetition. According to this theory, the work is considered commercial if it is carried out in the form of a project, regardless of its nature or purpose, whether or not it achieves a profit .

However, this theory, like other theories, was in turn subject to criticism on the basis that it considered some businesses to be commercial even though they occurred individually and not repeatedly, in addition to the fact that there are some liberal professions that are practiced within the scope of the project, but that does not negate their civil character .

By presenting the points of view of each theory, it becomes clear that each theory alone does not represent a sufficient criterion for commercial work, and therefore they must be synthesized and combined on the basis of the contribution of each one of them in giving a concept, even partial, for commercial work.

Therefore, we can summarize the meaning of commercial work, which is work focused on mediation in the circulation of wealth and aims at speculation and achieving profit, if it is carried out in the form of entrepreneurship and repetition of some work.

The Algerian legislator worked to combine the various ideas brought by the three theories, in order to reach a comprehensive formulation of the meaning of commercial work in light of the difficulty of distinguishing between it and civil work, as well as the shortcomings of each theory alone and the calls of some for unification between the two works, this is evident through the listing of types of commercial business in Articles One through Four, where the legislator combined the objective and subjective doctrines with the aim of implementing a comprehensive survey of all spectrums of commercial business in order to achieve a commercial life subject to the law.

2- The importance of distinguishing between civil works and commercial business.

The difference between civil and commercial work appears clearly in many aspects, through which it is possible to distinguish between the two works, as commercial work is independent, with its flexibility and speed, from civil work, and therefore this difference must be detailed according to many aspects according to the following:

A- Judicial jurisdiction.

Judicial jurisdiction is among the most important points that must be taken into account to differentiate between civil and commercial work, this is because judicial jurisdiction is the mandate or authority of the judiciary to consider a specific dispute, taking into account its subject matter, as well as its geographical location, Jurisdiction is divided into Subject-Matter jurisdiction and territorial jurisdiction.

- Subject-Matter Jurisdiction

In many countries, there are courts specialized in hearing commercial cases, there are other courts specialized in civil cases. An example of these countries is France, which adopted the principle of privatization in 1807, By appointing a section to regulate the consular courts and determining their jurisdiction, and as a result, if a civil dispute is brought before a commercial court, It is permissible to plead lack of jurisdiction when ruled by these courts on their own initiative, on the basis that the rules of jurisdiction in this aspect are specific rules and are considered part of the public order .

As for Algeria, despite its adoption of civil and commercial legislation, it tended to adopt the unity of the judiciary instead of relying on the principle of privatization. Indeed, the jurisdiction of the courts is comprehensive for commercial and civil disputes, taking into account the application of civil law to civil disputes and the application of commercial law to commercial disputes, despite The independence of the commercial judiciary from the civil

judiciary within one judicial authority, but this has nothing to do with specific jurisdiction, which is the process of distributing work among the judges of one court. Therefore, if a commercial lawsuit is filed before the civil division, it is not permissible to plead lack of jurisdiction .

The judicial division between civil and commercial matters in Algeria is only a structural administrative division and not a qualitative judicial division, as a civil or commercial judge may decide on a commercial dispute, Or he may resort to referral to the competent judge, provided that he takes into account the application of the law to every dispute. The civil judge's decision to decide on a commercial dispute requires him to apply the commercial law, not the civil one, since the lack of jurisdiction of the civil authorities is not part of the public order, and the legislator has left many of these matters. Disputes are referred to civil departments, especially in courts in which there are no commercial departments, which is indicated in the fifth paragraph of Article 32 of the Civil and Administrative Procedures Law, which states: "However, in courts in which departments have not been established, the civil department remains the one that looks into all matters." Conflicts, excluding social issues .

However, by the year 2022, commercial courts were created in accordance with the amendment to the Code of Civil and Administrative Procedure, in accordance with Article 536 bis 2, that is, the specialized commercial court composed of a judge and four assistants who have a deliberative opinion and not only an advisory opinion, which is exclusively competent to decide on some disputes, some of which were previously included in Specialization of specialized electrodes. This concerns disputes between commercial companies, especially those related to partners, dissolution and liquidation of companies, bankruptcy and judicial settlement, disputes of banks and financial institutions with merchants, maritime disputes, air transport, insurance disputes related to commercial activity, as well as disputes related to international trade .

Under the new Article 536 bis of the Civil and Administrative Procedures Law, disputes in which banks and financial institutions are a party with merchants are solely within the jurisdiction of the Specialized Commercial Court. This excludes disputes of these institutions with non-merchants, which remain within the jurisdiction of the Commercial Section or the Civil Section of the Court. With regard to insurance disputes, and in application of the same article, the Specialized Commercial Court is competent only for insurances related to commercial activity, and as for other insurances that do not have a

commercial nature, such as vehicle insurance or insurance on persons and property, they remain under the jurisdiction of the civil section of the court.

However, the filing of the case shall precede the conciliation procedure by a request from one of the litigants, which is submitted to the president of the commercial court, who appoints a judge to conduct the conciliation within five days, according to an order on a petition, and who attempts to conciliate within three months. If this effort fails, the case is filed before the specialized commercial court. With a petition to open the case, under penalty of not accepting the case in form, with a report of non-conciliation, which is what Article 536 bis 4 of the Civil and Administrative Procedures Law indicates.

Also, the judgements issued by the commercial courts are subject to appeal before the Judicial Council, which is detailed in Article 536 bis 5, which states: “The case shall be decided before the Specialized Commercial Court with a petition to open the case in accordance with the rules stipulated in this law attached, under penalty of not accepting the case in form In the report of failure to reconcile.”

- Territorial jurisdiction.

The general principle in litigation regarding territorial jurisdiction requires, By filing the lawsuit before the court within whose jurisdiction the defendant’s domicile falls, which is what Article 37 of the Civil and Administrative Procedures Law stipulates: “Regional jurisdiction shall devolve on the judicial authority within whose jurisdiction the defendant’s domicile falls, If he does not have a known domicile, jurisdiction returns to the judicial authority in which his last domicile is located, and in the event that a domicile is chosen, territorial jurisdiction devolves to the judicial authority in which the chosen domicile is located, unless the law stipulates otherwise.”

This article represents the general framework for determining territorial jurisdiction in both civil and commercial matters. In a more precise sense, whoever claims in a civil dispute must take the initiative to file his claim before the court within whose jurisdiction the domicile of the defendant falls.

As for the commercial article, in addition to the possibility of applying Article 37 of the Civil and Administrative Procedures Law, it also has some exceptions that represent an option for the plaintiff in filing his lawsuit, which can be explained as follows:

*** The court of the defendant’s domicile.**

The place where a person practices trade is considered a home for businesses related to this trade, unless the matter is related to a bankruptcy

case, judicial settlement, or partner disputes, in accordance with the third paragraph of Article 40 of the Civil and Administrative Procedures Law, which stipulates: “In articles of bankruptcy or judicial settlement of companies, as well as lawsuits related to partners’ disputes, before the court within whose jurisdiction the place of commencement of bankruptcy or judicial settlement or the location of the company’s social headquarters is located,” or the company’s lawsuit in accordance with paragraph 4 of Article 39, “...and in lawsuits filed against a company, before the judicial authority in which it is located.” Within the jurisdiction of one of its branches, or the lawsuit related to the real estate in accordance with the first paragraph of Article 40 of the Civil and Administrative Procedures Law, which stipulates: “In real estate matters, or works related to the real estate, or rental lawsuits, including commercial ones related to real estate, and lawsuits related to public works, before the court in whose jurisdiction the real estate is located.” Or the court within whose jurisdiction the place of implementation of the works is located.

*** The court for concluding the contract and delivering the goods.**

It is required that the agreement or delivery take place within the court’s jurisdiction, and that all or part of the implementation has been completed. It is not sufficient for it to be agreed that implementation will take place within its jurisdiction, This is in line with the fourth paragraph of Article 39 of the Civil and Administrative Procedures Law, which stipulates: “In commercial matters, other than bankruptcy and judicial settlement, before the judicial authority within whose jurisdiction the promise or delivery of the goods occurred...”.

***The court of the place of payment.**

This means the place where payment was agreed upon between the two parties, in accordance with the fourth paragraph of Article 39 of the Civil and Administrative Procedures Law, which stipulates “...or before the judicial authority within whose jurisdiction one of its branches is located.”

It is clearly evident the extent of the diversity of options in the commercial matter in filing lawsuits and deviating from the general rule of the defendant’s domicile, compared to the civil matter, and the matter is natural and is mainly due to the necessity of taking into account the speed and flexibility that characterizes commercial work.

B- Proof.

As a general principle in commercial matter, proof is without restriction. Commercial legal transactions, regardless of their value, may be proven by all

means of proof, such as evidence, clues, commercial books, and correspondence, this is because commercial life requires speed in dealing and simplification of procedures in support of the trust that characterizes the lives of merchants, and article 30 of the Commercial Law referred to the freedom of proof in commercial matters by stipulating: “Every commercial contract shall be proven: 1- by official documents, 2- by customary documents, 3- by an accepted invoice, 4- by letters, 5- by the books of the two parties, 6- by proof, Or by any other means if the court deems it necessary to accept it.”

On the other hand, civil transactions are subject to formality restrictions, as they are subject to the principle of written proof in legal transactions whose value exceeds one hundred thousand Algerian dinars, this is what was adopted by Article 333 of the Civil Code, which states: “In matters other than commercial matters, if the value of the legal transaction exceeds 100,000 Algerian dinars or if the value is not specified, it is not permissible to prove by witnesses its existence or expiration unless there is a text stipulating otherwise...” In addition, there is the possibility of proof by electronic writing, which keeps pace with technological development, according to Article 323 bis 1 of the Civil Code, which stipulates: “Proof by writing in electronic form is considered the same as proof by writing on paper, provided that it is possible to verify the identity of the person who issued it and that it is prepared and commercial assetd in the Conditions that guarantee her safety.”

However, the issue of freedom of proof in commercial matter is not absolute, as evidenced by the fact that there are some commercial actions that require proof in writing, such as a commercial company contract, which is ruled absolutely invalid in the event of failure to write, this is what Article 418 of the Civil Code indicates when it stipulates: “The company contract must be in writing, otherwise it will be invalid. Likewise, all amendments to the contract will be invalid if it does not have the same form as that contract...”, In the same context, there are some actions that require formality within the scope of commercial law, the most eloquent example of which is the existence of a group of commercial businesses called commercial businesses according to form, and also some contracts such as the maritime transport contract and the marine insurance contract.

It is clear from the above the extent of the difference between proof in the civil field and in the commercial field, as the rules of proof in the commercial field are characterized by their ease and lack of complexity, in addition to their freedom, because trade is based on speed and the succession of

operations that prevent the merchant from being able to prepare documents of proof for each operation .

It is also permissible for merchants to agree to make proof between themselves in commercial transactions in writing, given that the rules of proof are not part of the public system, and therefore it is possible to agree to violate it. This is because they have accepted this restriction for themselves for what they deem necessary, to support credit, and to embody the trust on which commercial work is built.

C- Solidarity.

Solidarity in commercial matters is considered assumed between debtors if they are multiple without the need for an agreement or text in the law, which is what commercial custom takes. The aim of this is to document credit, ensure the fulfillment of commercial debts, and encourage loans between merchants in support of the prosperity and development of commercial life , This is what is indicated by Article 551 of the Commercial Code, which stipulates: “Joint partners have the status of a merchant and are responsible without limitation and jointly for the company’s debts.”

On the other hand, solidarity is not assumed in the civil article, but rather it must be based on an agreement or a text in the law, which is indicated in Article 217 of the Civil Code, which stipulates: “Solidarity between creditors or debtors is not assumed, but rather it is based on an agreement or a text in the law.”, although some jurists object to this consideration on the basis that the text of this article is absolute and there is no commercial legal text that restricts it, On the basis that some texts are specific to the solidarity of the partners of the solidarity company, Solidarity between the endorsers and the drawer is for the benefit of the bill holder in accordance with Article 426 of the Commercial Code.

D- Notification

The meaning of the Notification refers to the need for the creditor to alert his debtor to pay his debt after the deadline for payment has come, thereby registering his delay in payment, and thereby bearing the consequences of the delay .

In civil law, the notification must be made in an official document announced by judicial officers.

In commercial law, the Notification is made through a regular letter without the need for any judicial paper, in implementation of the speed characteristic of commercial transactions .

E- Bankruptcy.

The bankruptcy system is only applied to merchants who have stopped paying their commercial debts, as the commercial law has restricted merchants in order to protect creditors and support the credit on which commercial life is built, so the merchant's creditor must prove that the latter has failed to pay his debt by the due date .

On the other hand, the insolvency system is applied to the ordinary person other than the merchant, since in the event of his failure to pay his civil debts, he is not subject to the bankruptcy system, which is a special means of enforcement in commercial debts, so the merchant debtor's funds are collectively liquidated and the proceeds are distributed equally to his creditors, in addition to raising his hand. From managing and disposing of his money and appointing a bankruptcy agent, in addition to depriving him of his civil rights.

It becomes clear how strictly a merchant is treated compared to a civil person in the event of non-payment of debts, and this is due to the nature of commercial work, which requires supporting trust by all means, unlike the civil person who is not subject to such restrictions in accordance with Articles 188 to 202, which are considered flexible compared to the Commercial law.

F- Judicial deadline.

The general principle stipulates that if the debt has come due and the debtor is unable to pay, the judge may grant him a deadline to implement his obligation whenever possible, if this extension does not cause harm to the creditor. This is in the civil sphere, in accordance with Article 210 of the Civil Code, which stipulates: "If it becomes clear from the obligation that the debtor does not fulfill it, except when it is possible or convenient, the judge will set a suitable time for the due date, taking into account the debtor's current and future resources while stipulating the diligence of the man who is keen to fulfill his obligation."

As for the commercial matter, the judge cannot grant this period to the debtor merchant because when the debt comes due, this may cause him to miss the opportunity for profit, or it may be a reason for delay in repaying his commercial debts, which may expose him to bankruptcy .

G- Status of the merchant.

Professionalism in commercial business is considered a reason for earning the status of a merchant for the person who practices it, which is what was adopted by Article 1 of the Commercial Law by stipulating: "Any natural or legal person who carries out a commercial business and takes it as his usual

profession is considered a merchant, unless the law stipulates otherwise,” and this entails The status is the necessity of adhering to some of the obligations to which the merchant is subject, such as registration in the commercial registry, maintaining commercial books, as well as being subject to the bankruptcy system.

On the other hand, whoever carries out civil works does not acquire the status of a merchant, and is subject to the provisions of the Civil Code.

H- Expedited implementation.

In the civil sphere, judicial rulings cannot be implemented unless they have the validity of the ruling.

As for commercial transactions, they must be enforced with expedited implementation, whether the judgement is subject to opposition or appeal, provided that a guarantee is provided by the merchant In whose favor the judgement was issued, and the reason for the expedited implementation of commercial judgements is the speed that these transactions require in collecting rights.

I- Possessive mortgage.

If the civil creditor wants to enforce the mortgaged property, the judgement must be final, that is, he has an executive document according to which the mortgaged item can be seized and sold on the specified dates, which requires long and complex procedures.

As for commercial debt, it is subject to simplification of procedures, as the creditor does not need an executive document. This is because the commercial mortgage is for goods that are subject to price fluctuations or are perishable, which necessitates the need to expedite the implementation of the commercial mortgage , according to the text of Article 33 of the Commercial Law.

J- Limitation.

The Limitation appears in the civil matter due to the owner not claiming it for a period of fifteen years, in accordance with the text of Article 308 of the Civil Code, which stipulates: “The obligation shall expire after the expiration of fifteen (15) years, except in cases where a provision is stated...”.

However, the matter is different in commercial matter, as the statute of limitations is relatively short, an example of this is what is stipulated in Article 74 of the Commercial Code: “Every lawsuit arising from a contract for the transportation of persons or a contract for a commission for the transportation of persons is covered by the statute of limitations after a period of three years has passed from the date of the accident that resulted from it. The time limit within which a claim for recourse may be filed is set at three

months. This does not apply.” The period is only from the date of filing the lawsuit against the sponsored person.”, likewise, Article 527: “Claims of recourse by a bearer against the endorsers, the drawer, or other obligors shall expire after six months from the date of expiry of the period for presentation...and the claim of the bearer of the check against the drawee shall expire after three years from the date of expiry of the period for presenting it.”

Second: Types of commercial businesses.

It is clear from the above that there is no single, fixed standard that includes the types of commercial operations. However, commercial work should include the intention to achieve profit, speculation, and the circulation of wealth, as well as the entrepreneurial element in some commercial businesses.

The Algerian legislator detailed the types of commercial businesses, as the commercial law included commercial businesses by their nature through Article two, and commercial business according to the form through Article Three, as well as subsidiary commercial businesses under Article Four, in addition to another type. The matter concerns mixed commercial businesses where the business is commercial for one party and civil for the other party, and the types of commercial businesses can be detailed as follows:

1- Objective commercial business.

Business by object means business that is considered commercial regardless of who carries it out, it generally revolves around the trading of movables, such as food, goods, and securities, and aims to achieve profit. Some of these businesses are commercial if they are issued individually, and some are commercial if they are in the form of a contract, it can be detailed as follows:

A- Singular commercial businesses.

These are the works that the legislator stipulated to be considered commercial, regardless of whether they are part of a commercial craft, meaning more precisely, even if a person issued them for a single time without the owner's involvement in the market, the Algerian legislator addressed objective commercial businesses within the scope of Article Two of the Commercial Law, since it did not adopt a methodology for separating the arrangement of Singular Objective commercial businesses and those that are contract, so the text came to enumerate the Singular, then the contractual, then return again to talk about the Singular, and it would have been more appropriate to a specific methodology is followed by starting with the Singular, then the entrepreneurial, and not mixing them together.

Concern can be expressed regarding the narration of the objective commercial businesses, especially the Singular ones, as they came as examples or are limited to them, the nineteenth-century jurists saw it as an exclusive narrative, on the basis that commercial law is exceptional and its scope cannot be extended beyond the limits set by the law.

On the other hand, twentieth-century jurists saw that this narration of commercial businesses was an example, and modern businesses that fall within the scope of commercial law should be chosen, as the field is open to diligence and analogy to prove businesses that are considered commercial.

Referring to the approach of the Algerian legislator, it is clear that he considered this enumeration, for example, through the text of Article 2 of the Commercial Code ,this is what makes this standard flexible and keeps pace with the general principle of business that is based on speed and development. Evidence of this is the progress of the technological field and its reflection on electronic commerce, which did not exist during a not long ago period.

The Algerian legislator, through Article two, summarized individual substantive commercial businesses through the paragraphs of Article two, stipulating: “A commercial business is considered according to its subject: -every purchase of movables for resale or after their conversion and occupation, - every purchase of real estate for resale,... - Every banking, exchange, brokerage or commission operation, -Every mediation process for buying and selling real estate, commercial assets, or real estate values, Every purchase and sale of equipment or ship insurance..., - Every leasing, borrowing, or loan at sea by venture, - All insurance contracts and other contracts related to maritime trade, all agreements and deals related to crew wages and rent, - all sea voyages”.

Therefore, all of these works will be detailed as follows:

- Buying in order to sell.

Through Article two of the Commercial Law, which made the purchase of movables and real estate for the purpose of reselling them a commercial act in nature, With the need to take into account conditions that can be met in the purchasing process, that the purchase be focused on movable property or real estate, and that the purchase be with the intention of making a profit, which should be detailed as follows:

*** First condition: purchase.**

What is meant by purchasing is the process of obtaining something in return, whether it is cash or any other price, as is the case in barter, and thus excluding the ownership of the thing in a way other than purchase, such as a

gift or inheritance, even if it is sold and a profit is obtained. The purchasing element is essential for adapting the business commercially, and therefore The exploitation of natural resources and mental and physical effort do not fall within the scope of commercial operations because they are not preceded by the purchasing process, Commercial businesses in this context are excluded from agricultural businesses, liberal professions, and mental and artistic production:

+ Agriculture.

Agricultural businesses are not considered commercial businesses. The businesses carried out by the farmer are not commercial due to the absence of the purchase condition, as the farmer's sale of the crop of his land is considered civil, as are agricultural loans, However, the matter relates to small and medium enterprises, and does not apply to large agricultural projects, which is what the judiciary took, as agricultural work is considered commercial if it is in the form of an agricultural enterprise that uses machines and workers and speculates on them, and works with banks and has accounts, so it has an organization similar to a commercial enterprise, like a farmer who buys a mill in order to grind someone else's wheat and sell it as flour after turning it into bread, the work here is considered commercial and includes the status of a merchant if he takes it as his profession, and the same goes for the farmer who buys livestock with the intention of reselling them. If he raises them on his agricultural land, his work is not considered commercial, but if he does that on land that he rented from others and then sells it, then his work is not considered commercial, and it is not considered commercial. Fishing and exploitation of forests and mineral waters are businesses that have not been preceded by purchase .

+ Free professions.

These professions are not considered commercial businesses because their owners invest their intellectual property, knowledge, experience, and art in exchange for the services they provide. Therefore, the work of a doctor and a lawyer is considered a civil obligation , However, if the liberal professions are associated with some work, such as buying for the sake of selling, then they remain civil if they are necessary for the practice of the liberal profession. However, if they are not necessary for the practice of it, they are considered commercial, as a dentist's sale of necessary means to his patients is considered a civil work, while the profession of a pharmacist is, in the eyes of the French judiciary, a commercial work. Because the pharmacist buys the medicines and resells them .

+ Mental or artistic production.

What is meant by it is the totality of works that are the fruit of thought and art, such as the works of the composer in the various branches of knowledge, the painter through his paintings, the composer in his melodies, and the photographer in his pictures. All of them are civil works, even if the author buys the paper and spends for printing, because these costs remain secondary in view of the main activity of the author's work is in producing ideas, but as for the publisher's work, it is commercial because he buys the copyright, undertakes printing, bears its costs, publishing, and then sells with the aim of making a profit, the same principle applies to the film producer who speculates on the work of actors, as the work is considered civil for them because they exploit their talents and artistry, while he benefits from them by speculating on their efforts and work by displaying it to the public in exchange for the profit he makes from the difference between the cost of production and the price of selling the artistic production to the public.

*** The second condition: The purchase transaction includes movable or real estate property.**

In order for the purchase to be considered a commercial business, it must focus on real estate or a movable property, whether the money is material or intangible. Material movables are explicitly stipulated in the law. As for intangible movables, the judiciary considers them, just as physical movables, to be commercial business as well. An example of this is a patent, drawings, industrial models, and trademarks. So the purchase of intangible movables. With the intention of selling them, it is considered a commercial activity, and the same ruling applies to buying a house with the aim of selling it and selling its ruins, as well as buying trees with the intention of cutting them down or selling them as movable property, depending on the situation.

The Algerian legislator, in accordance with the second paragraph of Article two of the Commercial Code, considered the purchase of real estate and movables for resale to be a commercial business, and the intention of purchasing the property is to purchase the right of ownership, in contrast to some Arab legislation, such as Egypt, for example, which considers the purchase of real estate for the purpose of reselling it a civil act.

*** The third condition: the intention of selling and making a profit.**

There should be a connection between the purchase of real estate and movable property and the presence of the intention to sell it with the aim of making a profit. Therefore, purchasing for use or consumption is considered a civil act. What makes the work commercial is the presence of the intention to

make a profit, and the intention of the person performing the work is considered important in determining the nature of the work without delving into the material aspects. For sale, since the intention is considered a formal element, it is sufficient for it to be at the time of purchase, as the purchase process may be considered commercial even if the sale does not take place, and the sale may occur before the purchase, as is the case in the stock market in transactions with deadlines, where movable values can be sold and then bought.

The burden of proving the intention to sell falls on the person who claims it, and this is done by all means, and determining that is within the jurisdiction of the judge of the matter, and the evidence is easy for the merchant while practicing his trade, as there is simple evidence that all of the merchant's purchases contain the intention to sell, and this idea is difficult to determine when Change the merchant.

If there is no intention to sell and make a profit, the purchase is considered a civil act. If the intention to make a profit is achieved, it is not required that it actually be achieved in order for the business to be considered commercial. Therefore, sales activities that the state undertakes directly without the intention of making a profit are considered civil works. However, if they are carried out through institutions Independent, such as public economic agencies or institutions, they are commercial in nature.

- Exchange operations, Banking, brokerage, mediation and commission agency operations.

Within the scope of enumerating singular objective commercial businesses, Article two of the Commercial Law referred to a group of them, especially what was stated in Paragraph 13 by stipulating banking operations, exchange operations, brokerage, or commission, and Paragraph 14 of the same article added mediation in buying or selling. Real estate, commercial Assets, and real estate values, given that this is considered mediation in the circulation of some wealth, even if it comes individually, and this can be detailed as follows:

*** Banking operations.**

The banking industry plays a crucial role in developing the nation al economies in developing countries. Several studies have explored various employee-related aspects such as training, job satisfaction, commitment to work, and organizational commitment in different industries worldwide.

What is meant by banking operations is the sum of what banks do in terms of issuing securities and mediating between the public that acquires stocks

and bonds and the company or country issuing them in exchange for a commission for this mediation, Banks also work to mediate savings and investment in order to achieve profit by receiving cash deposits in exchange for small or no interest, and lending amounts to persons with higher interest, in addition to opening accounts, documentary credits, etc. These operations are considered commercial for the bank even if they occur Singular, and in return, they are civil. As for the other party dealing with it, unless a merchant for his trade affairs issues it, in this case it is commercial .

*** Exchange operations.**

Exchange is the exchange of one currency for another, such as converting national money into foreign money or gold money into silver money. This exchange takes place by direct delivery and is called local exchange, or it may be that the money is delivered in one place and the withdrawal of other money in another place for its value is called withdrawn exchange.

Both types of exchange are considered a commercial business, if the person who carries out it achieves a profit represented by a commission or a certain percentage of the exchange amount, or benefits from the differences between currency rates depending on time and place, and exchange is considered a commercial act even if it occurs alone, whether it is carried out by a natural or legal person or a bank, whenever the goal behind the transaction is speculation and making a profit, However, if the intention is not to speculate and make a profit, the commercial character is lost, such as if someone returns from a foreign country and wants to get rid of his currency and gives it to another person at the market price and without a commission, or two persons exchange their currencies with the aim of each one of them undertaking tourism in the other's country, then in this case the commercial character is gone.

*** Brokerage and mediation operations.**

Brokerage is considered a contract whereby a broker brings together the points of view between two parties who do not know each other in order to conclude a specific contract in exchange for a fee usually determined by a percentage of the value of the deal, The broker is merely an intermediary who brings the point of view between the seller and the buyer, the lessor and the tenant. He is not a party to the contract and is not an agent either, meaning the contract is not concluded in the name of either party to the contract and for his account. Therefore, he is not responsible for the obligations arising from the contracts, neither in his personal capacity nor in his capacity as a guarantor.

However, the broker is not entitled to the commission unless the two parties reach a contract, and therefore Article Two of the Commercial Code included brokerage within the framework of substantive commercial work, even if he carried out it alone, regardless of the subject matter of the brokerage, whether civil or commercial.

On the other hand, the work is considered commercial for the commercial party, that is, a merchant who carries it out for the purposes of his trade, and civil for the party that aspires to achieve a civil work, and this is what Article Two also indicated through mediation in the sale and purchase of real estate, commercial assets, and movable property .

*** Commission agency.**

In the eyes of the Algerian legislator, commission agency is considered a commercial act even if it occurs alone. This is clear from the text of Article 2, paragraph 13, of the Commercial Law, in contrast to some legislation such as the Egyptian and French, which consider it commercial whenever it is in the form of a contract. Whoever carries out commission agency is called a commission agent. His job appears to be carrying out legal work in his own name and for the principal's account in exchange for a commission .

Commission agency is similar to brokerage in that it is a commercial business regardless of the nature of the deal concluded by the agent, whether commercial or civil. However, the commission agent concludes the deal in his name and for the account of his client in exchange for a commission, and therefore he is responsible for implementing the obligations stipulated in the contract, unlike the broker who does, not he is asked because he is an intermediary between the two parties to the contract.

Also, the commission agent differs from the ordinary agent in that the latter concludes the contract in the name and for the account of the principal, so his name does not appear in the contract, while the commission agent contracts in his own name, Therefore, the contracting party with the commission agent has no direct claim against the principal, nor does the principal have a direct claim against the commission agent, whether commercial or civil, As for the principal, the work is either civil or commercial, depending on the nature of the original work in which the agency is based. An automaker's authorization of a currency agent to sell a car is considered commercial for both of them, while a farmer's authorization of a commission agent to sell his crop is considered commercial for the commission agent and remains civil for the farmer .

- Maritime commercial business.

The Algerian legislator, in accordance with the amendment that affected the commercial law in accordance with ordinance No. (96-27), especially Article 2, added another type of substantive commercial business, which included commercial business related to navigation and maritime trade and can be detailed as follows:

*** Buying and selling of ship equipment or supplies.**

Every purchase or sale of ship equipment, fuel supplies, and tools necessary for its navigation is considered a commercial activity.

*** Leasing, borrowing or loan by sea adventure.**

The ship may be chartered for a voyage or entirely for the purpose of transporting goods or persons, which is considered a commercial business. The same ruling applies to the contract concluded around a loan or borrowing by adventure, where the lender gives money to the shipowner for the purpose of equipping the ship or purchasing goods to deliver it to a specific destination, and this contract is considered contingent, because in the event that the ship is exposed to the danger of rain or wind and is destroyed, the lender bears the amount of money that he lost, and in the event that it arrives safely, the shipowner would have to pay the lender. Money and high interest, and therefore this contract has a number of characteristics that appear in that it is a participation contract, given that the lender contributes as is the case with a silent partner, and it is also considered a loan, in addition to being considered insurance for the shipowner's receipt of money to protect against the danger of the sea route.

*** Insurance contracts and other contracts related to maritime trade.**

Ship insurance is considered necessary on every trip, which is a real right that arises over the ship and includes all the necessary ramifications for its investment. Insurance is applied to all types of ships regardless of the purpose for which they are designated, whether for transportation, fishing, or tourism.

*** Agreements related to crew wages and rent.**

The ship's crew receives a fee for the service performed on board, and the ship's operator is obligated to pay it, provided that this is agreed upon in the contract or in compliance with custom, taking into account that this fee should not be less than the limits imposed by labor laws because it is part of the public system, and it is determined according to Agreement on a daily, weekly, or monthly basis or a specific percentage of the voyage's profits. This agreement is considered a commercial business according to the text of the

article. It is also considered commercial to rent the crew to another ship or between ports that exceed the borders of the state.

*** All cruises.**

Any voyage undertaken by the shipowner with the aim of transporting goods or persons for the purpose of speculation or not is considered a commercial business, as is the case with pleasure navigation, given that the text of the article was generalized for all sea voyages, without distinguishing between commercial and pleasure voyages, as in pleasure voyages as well. The shipowner reaps a significant share of the profit .

B- Objective business activities on the face of entreprise.

These businesses appear as commercial in the form of an entreprise, not on the basis of the work itself or the character of the person, but rather derive their commercial character from the form of organization on which they are based, as the entreprise is the professional repetition of commercial activities within the framework of a professional organization .

It is clear from this definition that entreprise is based on two elements:

- The element of repetition: Since single work is not sufficient for entreprise activity, the work that is the subject of entreprise should be repeated and not limited to doing it singly.

-The element of professional organization: It aims at continuous work, including all the material and human means to achieve the desired goal of establishing the entreprise .

Referring to the Commercial Law, it stipulates a number of contracts through Article 2, indicating 11 types that are considered an example but not limited to, because the commercial nature includes every activity that takes the form of a contract and it is not a condition that it be of what was mentioned in the context of the article, and each can be detailed. In each type of entreprise mentioned in the text of Article Two of the Commercial Law, according to the following details:

*** Entreprise for leasing movables and real estate.**

If the process of renting movables and real estate is carried out in the form of a contract and on a recurring basis, it has a commercial character, because its goal is to achieve profit and speculation, as a person renting cars or a house in the form of a hotel, clinic, or place of education has a commercial character, and whoever practices such activities is obligated to What merchants are committed to .

*** Production, transformation or repair enterprise.**

The Algerian legislator gave commercial status to projects for producing, transforming, or repairing materials, whether the production process aims to reach a final commodity that aims to satisfy the needs of individuals, such as clothing, or the manufacture of furniture from wood, or the production and manufacture of raw materials, such as extracting iron or gold, and manufacturing cars.

The process of production, conversion, or repair is considered commercial, whether the materials were purchased in advance or were owned by the manufacturer or someone else who was authorized to manufacture them.

The wording of the law came in general, without distinguishing between industrial and agricultural production, such as extracting iron in order to manufacture and sell it in the form of machines, or growing roses to resell its water in the form of perfume, provided that human factors, including workers and technicians, and material factors should be used in this activity on a frequent and regular basis. For the purpose of speculation and making a profit.

According to this detail, the work of the craftsmen falls outside the commercial scope, because it does not have the foundations on which the project or contract is built, as the craftsman carries out his craft alone or with the help of his family members, which results in the work of the craftsman being considered a type of selling production or personal skill. It is not speculation, and craftsmen such as the tailor, the plumber, the barber, the carpenter, and others fall within this framework.

However, if it is proven that the craftsman practices another activity related to his craft for the purpose of speculation and making a profit, then he is considered a merchant. An example of this is the barber who buys toiletry tools and shaving machines for the purpose of selling them. The same ruling applies to the tailor who buys fabric and sells it or turns it into ready-made clothes, so the craftsman moves in These cases lead to commercial activity and the resulting legal obligations.

*** Construction, excavation, or ground paving' enterprises.**

Entreprise for construction, excavation, or land preparation work has a commercial character, as this entreprise includes the restoration of buildings, paving roads, constructing bridges, and working on airports and tunnels.

In order for this activity to be considered commercial, its owner must undertake to supply the necessary materials for construction, especially the raw materials, as well as the human side, including workers and employees, as the merchant-contractor mediates and speculates on his goods or the work

of the workers. However, if his work is limited to developing designs and drawings and following up on completion, then the work is considered civil on the basis of He provides civilian work for a fee.

The contractor must also carry out his work in a professional manner, as performing occasional work such as constructing buildings is not considered a type of trade, as pledging to provide the necessary materials or work for construction in a professional manner is considered a type of commercial enterprise .

*** Entreprise for supply or services.**

A supply is a contract under which a person undertakes to provide a good or service periodically and regularly during a specific period of time for another person in exchange for a specific amount, Such as a supplier's pledge to supply food to a school, university, or hospital, and it may be focused on owning things for the recipient, Or in a bare form, that is, with the intention of leasing the benefit and then returning it to the supplier, such as supplying clothes for a theatrical troupe. The supply can also include services such as cleaning offices and homes, etc., and the supply contract is not just a purchase for the sake of sale because it assumes successive sales that are carried out on regular, periodic dates in the future, In most cases, the supplier sells the goods in advance, which he later purchases in order to supply them on the specified periodic dates. This does not prevent the supply from being considered a commercial activity. If the supply is limited to what the supplier produces, as is the case with a farmer who supplies his crop, then his activity is not considered commercial, without the legislator's requirement that the supply process be preceded by a purchase. In accordance with paragraph 6 of Article two .

*** Entreprise for the exploitation of mines, stone quarries and earth products.**

All minerals are considered gold, silver, petroleum, iron, etc., or any exploitation of mines or products that were on the surface or underground of the earth, such as quarrying stones and preparing them for construction, or fishing and preserving them, provided that these operations are carried out in a regular and continuous manner, that is, in the form of a entreprise business that works on speculation. With the aim of achieving profit, according to the text of Article Two, paragraph seven.

*** Transport and transportation entreprise.**

According to the eighth paragraph of Article Two of the Commercial Law, every entreprise for transport or transportation is considered a commercial

business, as transport is the carrying of goods or animals, while transportation is the carrying of humans by various means of transport, provided that it is carried out by land, sea, air or river, and by any means.

In order for this operation to be considered a commercial operation, the transportation must be in the form of a contract. Therefore, individual transportation operations are not considered a type of commercial work, such as the owner of a taxi that he drives himself or the one who transports the goods himself. In them there is no element of speculation on the work of others, and their activity is not limited to Project elements.

Transport enterprise is also considered commercial, as for the carrier, whether natural or moral, as for the person dealing with him, according to his capacity. If he is a civilian, the work is civil for him, but if he is a merchant because he practices his trade, the work is commercial for him.

*** Enterprise for the exploitation of public amusement parks or intellectual production.**

What is meant by public amusement parks is amusement houses that deal with the public in exchange for a fee, such as cinemas, theaters, and other facilities that are interested in providing entertainment programs to the public in exchange for a fee. This work is considered commercial for the owners of the amusement parks who operate according to the form of a contractual profession. If a play is presented on a national occasion or with the intention of making a donation, This is not professionalism, as the commercial nature of this work is based on professionalism and speculation on the work of others for the purpose of achieving profit .

The work is considered commercial for amusement park owners because it exploits the efforts of others, such as actors or playwrights, and speculates on it, with the aim of achieving profit by obtaining the compensation that the audience pays for entertainment.

As for those with intellectual or artistic effort who exploit their personal talents to earn money, the work for them is civil because they did not obtain it through the process of purchase or speculation, but rather their own effort stems from personal talent.

*** Insurance enterprise.**

Insurance is the pledge of a person called the insurer to pay a sum of money to another person, the insured, in the event of an accident or the insured risk materializes, in exchange for a premium paid by the insured to the insurer, The legislator did not distinguish between ordinary insurance and cooperative insurance, especially if it was carried out as a contract and

professionally, and according to paragraph 10 of Article 2 of the Commercial Law, its text applies to land, sea and air insurance.

Insurance with fixed premiums is carried out by a commercial finance company in which it pledges to the insured, within the limits agreed upon between them, to compensate for damage resulting from an accident such as fire, theft, or other things. The insurer is considered an intermediary between insured persons in order to achieve profit, so compensation is not paid from his own funds, but from premiums collected from the insured, these premiums exceed the amount of compensation paid by the company, and insurance with fixed premiums is considered a commercial activity for the insured because of his speculation on the difference between premiums and compensation. As for the insured, the work is different as it is civil or commercial. If a person insures his life, the work is civil, but merchants insure their goods business.

Cooperative or mutual insurance also appears through an agreement between persons exposed to the same risks to compensate for the damage that may befall one of them when the risk occurs from the total contributions paid annually, which are in the form of a guarantee fund. Each of these persons is insure, insured and the beneficiary at the same time. There is no Mediation between the insurer and the insured, as is the case in insurance with fixed installments. On this basis, French jurisprudence considered mutual insurance civil and not commercial, in contrast to the Algerian text's comprehensiveness for both, in line with modern jurisprudence, which considers ordinary and mutual insurance to be a commercial activity according to the subject matter .

*** Entreprise for the exploitation of public warehouses.**

Public warehouses are large commercial assets that receive goods deposited by their owners in exchange for a fee. These commercial assets preserve them in exchange for a fee and issue instruments called a storage bond, which represent the deposited goods. These instruments can be transferred to others, and the goods can be sold or mortgaged without the need to transport them. Public warehouses are considered a entreprise company. It is a commercial business, as its main activity focuses on the concept of a paid deposit, as its commercialism is linked to it being one of the basic systems in modern-day trade ,And its inclusion in the text of Article 2 in Paragraph 11.

*** Entreprise for the wholesale sale of new goods at public auction or used retail.**

The legislator worked to protect those dealing with commercial assets that sell new goods wholesale at public auction or used retail goods by subjecting

them to the provisions to which merchants are subject, even if the sales are civil, and the process of selling at public auction is carried out in a project form, that is, it is done repeatedly, and in a professional manner.

However, a public auction is a sale that everyone can attend, even if it is limited to specific persons and the winner is awarded to the one who submitted the highest bid, so the legislator gave it a commercial character in order to subject the merchant to the strict provisions of the commercial law, by submitting to the bankruptcy system, and the buyer remains in debt, unless he is a merchant. He buys wholesale to sell retail, so the business is considered commercial for him.

*** Entreprise for the manufacture, purchase, sale or resale of ships for maritime navigation.**

Every action on the ship, whether making, buying, selling or reselling, is considered to be in the form of an entreprise , meaning that it is regular and repetitive and falls within the scope of commercial business on the basis that it is based on speculation and making a profit in maritime navigation.

2- Commercial business according to form (formality).

Commercial business according to form means those for which the law requires that, in order to acquire commercial status, they must be completed in a specific and precise form according to the legal text, It was referred to in Article Three of the Commercial Law, It stipulates: “It is considered a commercial business according to its form: - Dealing by bill between all persons, - Commercial companies, - Business agencies and offices regardless of their purpose, - Operations related to commercial assets, - Every commercial contract related to maritime and air trade.”

It is clear from this article that the Algerian legislator has also taken the formal standard as well as the objective standard in order to cover the largest possible amount of businesses that are considered commercial to protect those dealing with merchants, as well as relying on the merits of each direction without exclusion.

These types, which were listed in the context of Article Three of the Commercial Law, can be detailed according to the following details:

A- Dealing with a bill between all persons.

The origin of the word “saftajah” (bill) is Persian, as it was called the word “siftah” meaning a tight thing. After that, the Arabs and Muslims transmitted it from the Persians and slightly modified its name to “saftajah.” They used to describe books as “saftajah” if they became popular. The “saftajah” is a three-sided piece of paper that includes an order from a person called the drawer to

a person. Another person, called the drawee, pays to the order of a third person, the beneficiary or bearer, a certain amount of money upon sight or within a specific or determinable period.

The bill of exchange is considered a credit instrument, and therefore the beneficiary cannot keep it until its maturity date, but rather endorse it until it settles in the hands of the last bearer, who presents it to the drawee, With the exception of the minor merchant, whom the legislator protected from the strict rules of commercial law, which is indicated in Article 393 of the Commercial Code by stipulating: “The bill of exchange signed by minors who are not merchants shall be invalid as regards them without prejudice to the rights to which each of the two parties is entitled.”

Both the promissory note (for an order) and the check may fall within the scope of the promissory note, which will be detailed as follows:

- Promissory note (for an order or draft).

A promissory note is issued in the form specified by law, whereby a person called the maker or pledger pledges to pay a sum of money on a specific date for the permission of a person called the beneficiary, It is a commercial paper written in accordance with rules specified by the law under Article 465 of the Algerian Commercial Code. The difference between a bill and a promissory note can be noted in that it includes two persons: the maker, who is the debtor, and the beneficiary, who is the creditor. The right of the beneficiary is transferred from the maker to another person by endorsing the paper, Until the deadline for the paper comes, the promissory note is considered a commercial act if the merchant issues it, even for a civil work. However, if a person who is not a merchant issues it, it is civil for him, unless he issues it for a commercial work. A farmer who buys seeds to plant them and signs a promissory note for that, is considered a civil work, However, if the farmer buys a commodity for the purpose of selling it and signs a promissory note, that is a commercial act, and the significance of the promissory note is when it is created in relation to its issuer, and when the promissory note is considered commercial at the time of its creation, it remains so after its endorsement, whatever the nature of the business.

- The check.

A commercial paper written in accordance with the rules specified by Article 472 of the Algerian Commercial Code, It is a three-sided paper that includes an order from a person called the drawer to the drawee to pay, as soon as he sees it, an amount of money for the benefit of a third person, namely the beneficiary, his permission, or the bearer of the paper. The check

is considered an instrument of fulfillment, not credit, as it is payable immediately upon viewing it, The drawee is usually a bank, and is distinguished from a bill of exchange in that the drawee is a bank or something that takes its place, It is not considered a commercial act in the form of a bill of exchange in absolute terms. It is not considered commercial unless a commercial act is signed, regardless of whether the drawer is a merchant or not .

B- Commercial companies.

The Algerian legislator, like the French legislator, considered that there are certain forms of companies that are commercial because of the form, regardless of the purpose that the company aspires to achieve, whether commercial or civil. The aim of this is to subject it to the provisions of the commercial law, especially with regard to the bankruptcy system, in order to provide protection that is more effective. For those who deal with it, which is included in Article Three of the Commercial Law, as everything related to companies, from establishing and exercising their activities, disputes between partners, and liquidating and dividing their funds after liquidation, is considered commercial business according to the form, according to the text of Article 544 of the Commercial Code, which stipulates: “Guardty companies, limited liability companies, limited liability companies, and joint stock companies are considered commercial by virtue of their form and regardless of their subject matter”.

C- Business agencies and offices, whatever their purpose.

It means offices that provide services to the public in exchange for a certain fee or a certain percentage of the value of the deal they mediate. However, these offices provide various services such as advertisements, tourism, news, debt collection, clearing goods from customs, patent registration, and marriage mediation, these businesses are the sale of services provided by the office for the purpose of making a profit, in addition to being considered a circulation of wealth and do not deviate from the fact that they are a sale or rental of efforts and experience. They acquire a commercial character due to the form or organization to which they are subject. The legislator has subjected them to the provisions of the commercial law to protect those dealing with them and preserve their rights , this is what the legislator indicated in the third paragraph of Article 3 of the Commercial Law.

D- Operations related to commercial assets.

Through the fourth paragraph of Article Three of the Commercial Law, the Algerian legislator indicated that all operations related to a commercial asset, such as buying, selling, renting, and mortgaging, are considered commercial operations according to the form, without regard to the person conducting them. It is noted that the text came in absolute terms, and therefore, the sale of a person to a commercial asset that he acquired. Purchasing through an inheritance, will, or gift is considered a commercial activity, even if the seller is not a merchant .

E- Commercial contracts relating to sea and air trade.

The fifth paragraph of Article Three of the Commercial Law indicated that every contract related to maritime and air trade is considered a commercial act according to the form. The legislator added a commercial character to the contract, which is considered one of the sources of obligation. According to jurisprudence, this is not limited to the contract only, but extends to other obligations arising from the conduct. Legal or physical act

Rather, the Algerian text is limited to maritime and air contracts, without other obligations, and in order for the work to be considered commercial in this scope, the work must be a contract in form and substance, and the contract must relate to maritime or air trade with the intention of speculation and making a profit.

Examples of such contracts include maritime transport contracts, maritime guarantee contracts, maritime insurance contracts, or any contract related to maritime trade, as well as contracts for constructing, purchasing, selling, or leasing ships as long as they are prepared for commercial navigation in an effort to achieve profit.

It is also noted that the legal text, especially Article Two of the Commercial Law, included all contracts related to maritime trade within the scope of substantive works, and that Article Three, which listed commercial business according to form, also included these works, and therefore it would have been more beneficial for the legislator to settle the matter in order to avoid any confusion .

3-Subordinate commercial business.

The legislator gave a commercial character to a group of businesses, which are those that the merchant carries out for the needs of his trade, regardless of their intrinsic nature, in view of the profession of the person who carries them out, so he gave them the same characteristic belonging to this profession, and they represent commercial businesses by subordination.

From this standpoint, jurisprudence has tried to establish the principle that the work carried out by the merchant is presumed to be commercial, and is accordingly considered commercial by subordination until there is evidence to the contrary, the merchant must prove the civil nature of the business he has undertaken. Whenever a merchant performs business related to his trade, it is considered commercial as well. Therefore, business that is not related to the merchant's commercial needs should be excluded. Therefore, purchasing furniture for the business, purchasing cars to transport goods, and contracting with advertising companies for advertising are considered commercial. Advertising the merchant's activity, contracting to supply fuel, etc.

On the other hand, not all of the work carried out by the merchant is commercial, especially if the merchant is a natural person, as he has some work that he carries out within the scope of his normal life, including: buying furniture for personal use, buying his family's supplies of food, drinks, clothing, medicines, and other actions that It has nothing to do with trade .

The Algerian legislator referred to subordinate commercial activities through Article 4 of the Commercial Code, which stipulates: "A subordinate business is considered: - the actions carried out by the merchant and related to the practice of his trade or the needs of his commercial Asset, - the obligations between merchants," and according to that, the conditions for establishing The theory of business subordinate, the basis on which it is based, as well as the scope of its application, as well as its proof according to the following:

A- Conditions for subordinate commercial business.

Referring to the content of Article Four of the Commercial Law, two conditions are required for the establishment of a subordinate commercial business: the status of the merchant, and the fact that the business is related to his trade, or arises from obligations between merchants.

- Merchant status condition.

The Algerian legislator referred to the definition of the merchant through Article 1 of the Commercial Law, and also stipulated that the merchant must have commercial Eligibility, and this is clear in Articles 5 to 8, with the necessity of adhering to the obligations imposed by the law, such as registration in the commercial registry and keeping commercial books, Getting used to doing these works and making them his craft, whether he is a natural or legal person.

- The condition that the work is related to the practice of trade or arises from obligations between merchants.

A work cannot acquire a commercial character by subordination unless it is related to trade, regardless of whether the goal is speculation and making a profit or not. Rather, what matters is the connection that exists between the work and commercial activity. If this connection does not exist, the work remains civil, and it is not required that the relationship be direct. Between the work and the professional activity of the merchant. Rather, it is sufficient for the work to occur because of the merchant's activity, as Article Four expands on giving it a commercial character, whether its parties are merchants or the other party is a civilian, such as a merchant dealing with a civilian person for his business affairs. Although the work is considered civil for the latter, it is considered commercial. For the merchant.

B- The basis of business theory by subordination.

The theory of commercial business is based on foundations that make its existence a realistic and logical issue that must be addressed in accordance with the legal text that establishes its existence as a type of commercial business, these businesses are based on a logical and a legal basis.

-Logic basis

Logic requires that all work related to the trade profession be subject to commercial nature, considering commercial life as an indivisible unit by placing the original and subsidiary work under one legal system on the basis of the subordination of the branch to the original in judgement, On this logical basis, those dealing with merchants have certain protection, especially with regard to the judicial aspect, which should be characterized by flexibility that mimics the application of commercial legislation instead of going into the details of applying commercial law sometimes and civil law other times ,Therefore, generalizing the application of commercial law is more logical and addresses the disputes that plague commercial life.

- Legal basis.

It is mainly represented in the content of Article Four of the Commercial Law, which indicates that the work is to be considered Subordinate commercial, it should be done between two merchants, but the jurisprudence and the judiciary in both Egypt and France have settled on considering it as such whenever one of the parties is a merchant, so that the business is considered commercial for him, while the other party maintains his civil capacity .

C- Applications of business theory by subordination.

The scope of Subordinate commercial business is considered more expansive than objective and formal commercial business, as it is not limited to contracts only, but rather includes all of the merchant's obligations, whether they originate in the contract or otherwise, and this can be detailed as follows:

- Subordination theory based on contractual obligations.

Article Four of the Commercial Law indicates that contracts concluded by a merchant for the needs of his trade are considered commercial, but there are some contracts that require detail according to the following:

*** Guarantorship contract.**

Guarantorship is a civil contract of donation, through it, the guarantor intends to provide a service to the debtor without receiving a fee, and it remains civil even if the guaranteed debt is commercial or the guarantor is a merchant as long as it is free of charge, although it may acquire a commercial character if it comes to the bill of exchange because it is a commercial act according to the form, and the guarantee is considered commercial if it is issued by a bank for one of its clients because it is a banking business.

Guarantorship is also considered an accessory commercial act if it is carried out by the merchant sponsor for a commercial interest, such as if the merchant guarantees one of his merchant clients in order to protect him from bankruptcy and retain him as a customer.

*** Contracts contained on the property.**

Contracts on real estate are considered civil acts. However, if they are in the form of a commercial contract, they are considered a commercial act. If they are in a separate form on real estate, such as purchasing for the purpose of selling and making a profit, then they are commercial, as indicated in the second paragraph of Article 2 of the Commercial Law. However, purchasing Real estate for personal use is a civil act, and a merchant can buy a property for the needs of his commercial asset, and then a distinction must be made between the contract that was concluded on ownership of the property and it is considered civil. However, if the contract is focused on the property for the purpose of practicing trade or the merchant contracts with a contractor to renovate the commercial asset, Here, the merchant is considered committed within the scope of his trade, which makes his business a Subordinate business. The same applies if the merchant commits to insuring the property against the risks to which the property is exposed, or with a contractor to

renovate the property in which he carries out his commercial activity, then it is a Subordinate commercial business.

*** Job contract.**

It is a contract under which one of the contractors commits to working in the service and under the supervision of another contractor in exchange for a wage. Accordingly, the contract that brings together the merchant and those who work for his business is considered civil in relation to the workers. as for the merchant, jurisprudence has been divided into those who consider it civil in relation to the employer, since the legal relations between the two parties are subject to legal systems independent of commercial law, and those who give the employment contract a commercial character in accordance with the idea of the commercial theory of dependency .

*** Loan contract.**

The loan is considered a civil act for the lender or borrower, but the loan is considered a commercial work for the bank in accordance with Article Two of the Commercial Law, which defines the Subordinate commercial business. However, it may be considered commercial by Subordination if the merchant has borrowed money for the needs of his business, or the borrower is a civilian and borrowed money to carry out a business such as speculation in the stock market .

- Subordination theory based on non-contractual obligations.

The application of the theory of commercial business by Subordination can be extended to the non-contractual obligations of the merchant, as the text of Article Four of the Commercial Law was absolute and comprehensive, indicating that all actions between merchants are considered the subject of the theory of Subordination, and on this basis it is considered a commercial business by Subordination, the obligation whose source is something follows:

***Enrichment without reason.**

If there is a relationship between the enrichment and the merchant's commercial activity, the merchant is obligated to return what he enriched at the expense of others, such as the transportation company's obligation to return the increase it received on the prescribed transportation tariff.

*** Tort liability.**

If the merchant commits an illegal act while practicing trade, he must compensate for the damage caused to others. An example of this is what results from unfair competition, such as counterfeiting trademarks registered in the name of others. In addition, the merchant is considered a commercial liability for accidents that occur by his employees while performing their jobs

or because of them. Of the things he uses in his trade, whether living or inanimate, such as causing damage to others with his car that he drives to deliver goods to his customers, this damage that requires compensation is considered a commercial obligation by Subordination .

*** Legal obligations (social security contributions and taxes).**

The application of the theory of Subordinate business extends to legal obligations and this is demonstrated through the payment of social security contributions because this is related to the merchant's work as an employer. However, paying taxes is not considered a Subordinate business because that concerns all citizens equally without distinction between a merchant and a non-trader. The merchant may be declared bankrupt due to his failure to pay debts to the state treasury .

4- Mixed businesses.

Mixed commercial businesses are not a new type of commercial business, but rather one of the forms of other commercial businesses. They are considered mixed because they combine a civil and commercial part. They are commercial for one of the two parties to the commercial relationship, and their concept and legal system can be explained according to the following:

A- Definition of mixed business.

If the commercial business takes place between two parties, the matter does not pose a problem if it is commercial for both of them; an example of this is when a retailer deals with a wholesaler. The work is considered commercial for both of them. However, the matter requires detail if the work is commercial for one party in the relationship, and civil for the other party , an example of this is the merchant's dealings with the consumer. In this case, the description of mixed commercial business is given, which is commercial business that is nothing more than original or subordinate business.

On this basis, mixed commercial businesses can be defined as businesses that represent a civil business for one party and a commercial business for the other party, regardless of the status of those conducting them.

B- The legal system for mixed businesses.

The nature of the legal system for mixed commercial work requires detailing what relates to it, because it is not subject to a legal system unified on the basis that it includes the civil part and the commercial part, On this basis, the one for whom the work is considered commercial must be subject to commercial law, and the same applies to the party for whom the work is considered civil by applying civil law to him, and this can be addressed through the following details:

- Jurisdiction.

The problem of Subject-Matter jurisdiction does not arise in Algeria on the basis that the judicial system does not exist a commercial judiciary independent of the civil judiciary, in contrast to some systems that differentiate between them, as is the case with France.

As for territorial jurisdiction, in accordance with the general principle, the territorially competent court is the court within whose jurisdiction the defendant's domicile is located, and therefore the court's jurisdiction is determined with regard to mixed commercial activities for the defendant.

If the work for him is civil, the plaintiff must sue him before the civil court as it is the defendant's court. However, if the work is commercial for the defendant, the civil party may choose between filing his lawsuit before the civil or commercial authority, this choice is because the commercial judiciary is an exceptional judiciary, the aim of this is to spare the civil party from having to face a judiciary that it is not familiar with, However, this is not part of the public order, and therefore the civil party can waive it and file its claim before one of the two courts permanently, Therefore, the merchant cannot sue the farmer except before the civil court. As for the farmer, he can file his lawsuit before the civil or commercial court, and he has the option to do so .

- Proof.

The commercial rules of evidence apply to the person for whom the work is considered commercial, and the civil rules of evidence apply to the person, for whom the work is considered civil , As was previously explained, proof in the commercial matter occurs by all means of proof, while in the civil matter it is restricted to writing. If the merchant claims that he did not receive the crop from the farmer, he must prove this in writing on the basis that the work is civil for the farmer.

However, if the farmer claims that he did not receive the price of the crop that he delivered to the merchant, then he must prove this by all means, such as evidence or presumption, given that the work is commercial for the merchant.

- Mortgage and interest.

It is difficult to separate the commercial and civil aspects of business

Mixed in a contract of possessive mortgage, since it has a commercial and a civil side, it is not possible to divide a single work into two parts, each of which is subject to different legal rules, on this basis, one legal system must be applied, either civil or commercial, and the point is in the application and not in the capacity of the person performing the work. If the debt secured by

the mortgage for the debtor is commercial, the mortgage is considered commercial and the rules of commercial law apply to it, and if the mortgage for the debtor is civil, the provisions of the civil law are applied to it.

The same applies to interest, as it relates to whether the debt is civil or commercial, so it would be better to apply one law to the interest system. If the debt is commercial for the debtor, the provisions of commercial law apply to it, and if the debt is civil for the debtor, the provisions of civil law apply to it.

- Capacity rules.

Commercial eligibility is required for the party for whom the work is considered commercial, while for the party for whom the work is considered civil, civil eligibility is required.

- Implementation procedures.

The presence of uncertainty in default rules does not lead to the same outcome as in the case of mandatory rules because there is no obligation to obey default rules.

If the commercial party does not repay his debt, the civil party can request a declaration of bankruptcy. However, the commercial party cannot request the declaration of bankruptcy of his civil opponent, but must adhere to the implementation rules for civil debts.

Third Chapter: The Merchant.

The definition of the merchant raises controversy because of its connection to commercial work, which is not defined by the Algerian legislator. However, jurisprudence was unable to establish a standard for it, even though modern jurisprudence had taken into account the idea of expanding the meaning of commercial work to include economic work, that is, the merchant's practice of his profession within the scope of the institution, and excluding the narrow meaning of it. In any case, the merchant can be defined as a person who practices commercial work in a professional manner. In his name and for his account, and to have commercial capacity.

The Algerian legislator referred to the concept of the merchant through Article one of the Commercial Code, which stipulates: "Any natural or legal person who carries out a commercial business and uses it as his usual profession is considered a merchant, unless the law requires otherwise." It is noted from this definition that it included natural and legal persons. If he commits to practicing the profession within the scope of what is imposed by the applicable legislation.

From the extrapolation of the aforementioned article, it can be understood that engaging in the field of trade is not open to everyone, as evidenced by the fact that the legal text has specified the conditions that must be met in order to acquire the status of a merchant, regardless of whether he is a natural or legal person, with the necessity of taking into account submission to the law in everything it imposes on Merchants not only through the articles of the Commercial Code, but this extends to all legislation that regulates the merchant's relationship with the commercial profession.

First: Conditions for acquiring merchant status.

Article one of the Commercial Law is considered the general framework that specifies the conditions for acquiring the status of a merchant, in terms of the necessity of practicing commercial activities, as well as the necessity of having the commercial capacity referred to in Articles 5 and 6 of the Commercial Law, However, what matters in acquiring this characteristic is the actual practice and not merely by registration in the commercial registry or by describing the merchant himself or by describing others.

In order to acquire the status of a merchant, the following conditions are required: 1- Professionalism in commercial activities, 2- Commercial capacity, which will be detailed as follows:

1- Carrying out commercial work in a professional manner.

Article 1 of the Commercial Law indicates that in order to acquire the status of a merchant, commercial work must be practiced as a profession, by a natural or legal person, and this is done as a professional. Therefore, some terms related to the status of a merchant must be detailed.

A- Definition of the profession and professionalism.

The commercial field is linked to the necessity of whoever practices this work being a merchant, as he should devote himself entirely to trade and make it his profession and no other, through professionalism. Therefore, the meaning of profession and professionalism must be scrutinized.

- Definition of the profession.

Defining the concept of profession is somewhat difficult, as its concept has a social meaning more than a legal one. What is meant by it may be that it is the practice of a specific activity on a regular basis for the purpose of making a profit. A person can also define it as the repeated occurrence of commercial work in a regular manner and it is a source of his livelihood through exploitation. And for his own account.

- Definition of professionalism.

What is meant by professionalism in business is to direct human activity to practice business, on a regular and continuous basis, and which is derived from specific facts.

However, a distinction must be made between professionalism and habituality, because professionalism is carrying out commercial work on a regular and continuous basis, and the purpose of that is to make a living and gain, even if it is not the only way to earn, while habituality is the repetition of doing the work from time to time, without it being continuous and regular, because mere habit does not make one gain the status of a merchant, but rather it must be done in the name of the merchant and for his own account .

B- Conditions for professional trading.

A person must carry out commercial activities of all kinds, whether they are by nature, that is, according to the subject alone or in the form of a contract, or according to the form, or by subordination, or mixed, if some conditions must be observed in order to become professional in commercial work, which are:

- Doing business on a frequent and regular basis.

In order for a person to acquire the status of a merchant, he must practice commercial work in a professional manner on a regular basis, and make this work a means of living, and making a living, provided that the profession includes practicing commercial work in a repeated, continuous and regular manner, as mere habit does not amount to professionalism, but rather habituation should be a craft and a means of living and making a living, In other words, making a living in business is a permanent livelihood. It is also not required that practicing trade be the only activity for a person. Rather, many activities can be practiced, despite the prohibition of some groups from practicing trade in addition to their main activity, such as the doctor, lawyer, judge, and employee, and those who they are subject to criminal punishment as merchants.

- Practicing commercial business for the private merchant.

A business professional must undertake it on his own account, without the requirement that he undertake it personally and directly, where the merchant can appoint someone to act on his behalf to manage his trade affairs, This worker is not considered a merchant as long as the employer is the one who bears the profits and losses, as he is subject to the directives of the trader who bears the risks of these businesses, while the commission agent may acquire

the status of a trader even if his business is for the account of others if he does so professionally .

- Professionalism, whether real or hidden.

Sometimes a person practices trade while hiding behind another one, such as if this person is prohibited by legislation from practicing trade as an employee, doctor, or anyone else. To circumvent this prohibition, he seeks the help of another person who practices business in his own name as if he were working for himself and appears before others as a real merchant. In this context, there are two persons: a hidden one who supplies the commercial activity, and a visible person in the dealings.

In this context, a jurisprudential disagreement emerged regarding granting the status of a merchant to the person who is apparent in the transaction or the person who is hidden; A first opinion went to consider the hidden person to be the merchant, since the exploitation takes place on his account and under his supervision and with his money, A second opinion went to consider the apparent person in the transaction to be the merchant by virtue of the fact that he works himself and is the apparent person in dealings with others to protect the element of credit, which is considered one of the pillars of commercial law, unlike the hidden person who has no relation to it, while a third opinion, which is more correct, considered each of them to be a merchant , The hidden merchant who works under supervision and for his account, while the person who appears to be a merchant in order to support the confidence of others dealing with him. On this basis, each of them is subject to the bankruptcy system and the consequent submission to the rules of commercial law.

- Legitimacy of commercial work.

One of the most important conditions that must be taken into account in the commercial work that grants persons the status of a merchant is that it be legitimate, in accordance with the rules that regulate public order and public morals, as professionalizing an illegal activity such as trafficking in weapons or drugs is not considered to earn the status of a merchant even if it is done on a private basis. The way of professionalism is to undermine the principles of society, this is what Article one of the Commercial Law indicated by stipulating: “Unless the law requires otherwise,” the activity must be in line with what the law requires, since prohibiting it by text prevents it from being made a place for dealing in it in any way.

C- Subject of professionalism

The professionalism or profession should be business-oriented in nature,

If a person practices civil work, he must also practice original commercial work; the commercial work should be intended for its own sake, as some commercial business are not in themselves a subject of professionalism, such as commercial papers. An example of this is a farmer's habit of paying his agricultural debts by drawing commercial papers on his debtor. Drawing these papers is considered a commercial act in the form but is not suitable as a subject of professionalism, because the farmer does not make a living from commercial papers .

Likewise, a natural person can practice whatever commercial business he wants, and on the contrary, a legal person's activity remains limited except within the limits of the purpose allocated to him in his founding contract, and the activity can only be changed by changing the contract, with the necessity of the subject of professionalization being legitimate.

D- Proving the professionalism of trade and its end.

In order for the commercial nature of the merchant's work to be considered, it must be proven, however, it is subject to reasons that end with it, and therefore its owner no longer has the status of a merchant.

- Proof of professionalism.

Proving the status of a merchant is of particular importance in determining the legal system to which he is subject. It is a status that is not presumed, but requires proof, and the burden of this falls on the one who claims it, The description of the person himself as a merchant, or his registration in the commercial registry, does not count because that is merely a simple presumption that accepts proof to the contrary, which became a conclusive presumption after the 1996 amendment, It is also not required to prove a person's commercial status that he has a commercial place, as he can practice trade itinerant or on the public road, and proving the merchant's status for commercial work falls within the jurisdiction of the judge of the matter, and the Supreme Court has no oversight over it, If the trial court had the elements of professionalism, it had to draw the conclusions it reached, provided that it had also examined the subject of the professionalism and its legitimacy, since in drawing it, it was practicing a legal act subject to the supervision of the Supreme Court. If the elements of professionalism were present and the subject matter was legitimate, and the status of a merchant was not added to this The person's ruling was wrong and the Supreme Court should overturn it.

- The end of professionalism.

It should be noted that the end of professionalism is linked to the merchant's cessation of activity, through many reasons such as the liquidation

of his business, or the loss of his money and his not practicing the activity again, in addition to death, provided that the status of the merchant is not transferred to the heirs, who, in the event of their desire to continue in the business. The commercial activity that has been transferred to them, they acquire the status of a merchant, not based on inheritance, On the basis of professionalism, likewise if they were used businesses or persons with experience in the activity, because the work is done for themselves.

2- Commercial eligibility.

In order for a person to acquire the status of a trader, he must, in addition to the requirement of professionalism, be qualified to trade, Whereas if this is not achieved, he is not considered a merchant even if he engages in commercial activities and takes it as his profession. However, the lack of qualification should not be confused with the prohibition from practicing trade on some groups who may have the qualifications, such as the employee, the doctor, and the lawyer .

Commercial capacity can be defined as the ability of a person to carry out legal actions by being responsible for the actions he undertakes, and the Commercial Law did not clarify the eligibility for trade, despite its reference to the idea of the eligibility of a rationalized minor, as well as the eligibility of a married woman. This can be clarified according to the following details:

A- The commercial eligibility of an adult.

It was also previously noted that the Commercial Law did not clarify the sufficiency of the eligibility that must be provided by an adult person who wishes to practice trade and acquire the status of a merchant, and on this basis, the provisions of the Civil Code, which is considered the general law, must be implemented, and which referred to the enjoyment of eligibility in accordance with Article 40, which stipulates: "Every person who has reached the age of majority and enjoys his mental faculties, and has not been under interdiction, is fully competent to exercise his civil rights. The age of majority is nineteen (19) full years." On this basis, when a person reaches the legal age of majority, he is not under interdiction and enjoys his full mental faculties. He can practice commercial activity in Algeria.

However, if he reaches the age of majority without being an adult, that is, he has one of the symptoms of legal eligibility, such as insanity, foolishness, or negligence ,the matter is related to the casualty, so his eligibility is lacking due to insanity or imbecility, and thus his business is considered absolutely invalid and he cannot practice trade. However, if his eligibility is lacking due to foolishness and negligence, his actions are voidable in his favor, as the

foolish or negligent person can request permission from the court to manage all or some of his money. If he obtains permission, he has the right to practice trade within the limits of that permission, just like a fully qualified person, and accordingly he is considered a merchant and can be declared bankrupt.

However, there are some persons who are adults and yet they cannot practice trade because of the prohibition imposed on them by legislation as a result of their jobs as a doctor, lawyer, or employee, taking into account that this prohibition may be absolute or relative, with them being exposed to disciplinary penalties in the event of a violation, without neglecting the validity of their commercial actions .

B- The commercial eligibility of the minor.

The Commercial Law indicated what must be taken into account in the practice of trade by a minor through Article Five, which stipulates: "It is not permissible for a rationalized minor, male or female, who has reached the age of eighteen full years and who wants to practice trade, to begin commercial operations, nor can he be considered An adult with regard to the undertakings he concludes regarding commercial activities: - If he has not previously obtained permission from his father or mother or a decision from the family council approved by the court, whether his father is dead or absent or his parental authority has been lost or it is impossible for him to exercise it, or In the event of the absence of the father and mother. This written permission must be submitted in support of the application for registration in the commercial registry", however, a minor cannot engage in commercial business and obtain the status of a merchant except by observing the following conditions:

- The minor reaches the age of eighteen full years.
- The minor obtains prior permission from his father or mother or a family council decision approved by the court.
- Submitting written permission in support of the application for registration in the Commercial Register.

It is not possible for a minor to work in commerce legally unless he obtains permission from his father if he is alive and not absent and his parental authority has not been forfeited or he is afflicted with any of the symptoms of legal capacity, or an impediment such as imprisonment, or permission from the mother or the family council, with the need for this permission to be authenticated by The court, and this permission must be submitted in the file to obtain the commercial register.

The aim of these procedures is to protect the minor's money from mismanagement, as the permission may be absolute to practice trade or it may be restricted to a specific type, which is consistent with the text of Article 6, which stipulates: "Underage merchants are permitted in accordance with the provisions contained in Article 5, to arrange a commitment or mortgage on their real estate. However, the disposal of these funds, whether voluntary or compulsory, cannot be done by following the forms of procedures related to the sale of the funds of minors or incapable persons."

The amounts that a minor can trade may be determined, as a kind of experiment for him, as his actions are considered valid and he acquires the status of a merchant in this scope, that is, within the limits of permission, through his keeping commercial books and registration in the commercial registry and declaring his bankruptcy in the event that he stops paying his debts. If he goes beyond the scope of this permission, his actions will be considered invalid relative to his interest, if a minor practices trade without permission, he is not considered a merchant and cannot be declared bankrupt. If the minor insists on the invalidity of his actions, he must return to the other party the benefit he has gained in accordance with the text of Article 103 of the Civil Code in its second paragraph, which stipulates: "However, a person with limited capacity, if the contract is invalidated due to his lack of capacity, is not obligated except to return what he has gained from it, a benefit due to the implementation of the contract." However, according to Article Six of the Commercial Law, the prohibition of disposal of real estate funds shall be taken into account except by following the forms of procedures related to the sale of the property of a minor or incapacitated person, as they may arrange a commitment or mortgage on their real estate without selling it.

C- The commercial eligibility of the foreign person.

A foreigner who meets the conditions for commercial eligibility can practice commercial work in Algeria even if he lacks it in his home country, as the aim of this is equality between all persons and not to grant special protection to foreigners who are under the age of nineteen years, in accordance with the provisions of the Algerian Civil Code and no Especially Article 6 of it, which stipulates: "The laws relating to eligibility apply to all persons who meet the stipulated conditions," and also Article 9, which stipulates: "Algerian law shall be the reference in adapting the relationships whose type must be determined in the event of a conflict of laws in order to know the law to be applied" .

The Algerian legislator also aims to protect Algerians in their dealings with foreigners, through the second paragraph of Article 10 of the Civil Code by stipulating: "However, in financial transactions that are concluded in Algeria and have their effects there if one of the parties is a foreigner lacking legal capacity, his lack of legal capacity was due to a hidden reason that is not easy to explain to the other party, as this reason does not affect his legal capacity or the validity of the transaction". An Algerian dealing with an insane foreigner in Algeria is correct behavior and produces an effect .

D- The commercial eligibility of married women.

Islamic shariaa does not distinguish between men and women regarding eligibility, especially if they are married , On the other hand, some Latin legislation does not allow a married woman to practice trade except after obtaining her husband's permission. As for the Algerian commercial law, it indicates the possibility of her practicing trade and bearing the responsibilities assigned to her as a trader, just like a man, without the need for his permission, which is what Article Eight indicates. From the Commercial Law, which stipulates: "A woman merchant is personally committed to the work she undertakes for the needs of her trade. Contracts for consideration pursuant to which she disposes of her personal funds for the needs of her trade shall have full effect with respect to others.", also, her assistance to her husband with retail sales does not earn her the status of a merchant, by virtue of the marital bond, which is indicated in Article Seven of the Commercial Law, which stipulates: "The husband of a merchant is not considered a merchant if he practices a commercial activity affiliated with his wife's activity. He is not considered a merchant unless he practices "A separate commercial activity," since the husband's practice of an activity subordinate to his wife's activity is not independent in this activity alone, so he is not considered a merchant by law unless he practices it independently and separately from him .

Second: The merchant's obligations.

Acquiring the status of a merchant imposes legal obligations that the merchant must submit to, in order to protect those dealing with him and the desire of the legislator to surround commercial life with a kind of rigor that reflects the basis of commercial law on trust between dealers. Therefore, according to Algerian legislation, the merchant is obligated to keep commercial books and be registered in the commercial registry. This will be dealt with according to the following details:

1- Commercial bookkeeping.

The merchant must commit to keeping commercial books in line with legal obligations, and in order to organize his trade to use them in the event of a dispute and recourse to the judiciary. Therefore, they are important, making them an obligation that benefits the merchant.

A- Definition of commercial books and their importance.

In order for the merchant to ensure a comfortable situation for managing his trade, and to be in a legal position before the regulatory and judicial authorities, he must keep commercial books, which are important in the field of trade.

- Definition of commercial books.

Commercial books are registers in which the merchant registers all his commercial operations, including rights and obligations, if a commitment is made to register them in the regular and legally prescribed manner, and by following the recognized accounting principles. They are an accurate statement of all the merchant's transactions and correspondences.

- The importance of commercial books.

Although commercial books are an obligation that the merchant must submit to, their importance is often in his favor, and the extent of their importance can be demonstrated as follows:

- * A means of showing the merchant's financial position in terms of his rights and obligations, in order to take a view of the profits achieved and the losses incurred.
- * Commercial books are considered a means of proof before the judiciary and between merchants and others in disputes that arise because of transactions.
- * Commercial books are extremely important in estimating and collecting taxes on commercial and industrial profits.
- * In the event of a merchant's bankruptcy, regular commercial books are considered evidence of his good faith, especially if his bankruptcy is simple and he can benefit from a protective settlement. Conversely, if the merchant's books are irregular, he is considered bankrupt through fraud or negligence, which exposes him to criminal penalties.

In view of the importance of commercial books in the midst of commercial life, they received great attention from the Algerian legislator, and this was evident by devoting the second chapter of the first book of the Commercial Law to talk about them, and the matter relates to Articles Nine to Eighteen, where reference was made to their details. In terms of the persons obligated to keep it, its types and method of organizing it, the penalty resulting from

failure to keep it, its evidentiary validity and its submission to the judiciary as a means of proof.

B- Persons obligated to keep commercial books.

Article Nine of the Commercial Law stipulates the following: "Every natural or legal person who has the status of a merchant is obligated to keep a daily book in which he registers business operations day by day, or at least reviews the results of these operations monthly, provided that in this case he keeps all documents with which these operations can be reviewed daily".

Also, the partners of the joint-liability company, although they have acquired the status of a merchant because they are members of the company, are not obligated to keep commercial books. Rather, the company's books are sufficient, as obliging the partners to keep books is considered a repetition of the company's books, given that the joint-venture partners practice trade through a person. The company, however, in the event that one of the joint partners practices a commercial activity independently in addition to being a partner in the company, in this case he must maintain the commercial books for his trade.

C- Types of commercial books.

There are some books that the legislator has made obligatory for the merchant and must be kept, and there are others that remain permissible for the merchant to keep, as this depends on the desire of the merchant, in line with the volume of his trade and the intensity of his dealings, provided that keeping them better organizes his activity, and therefore the commercial books are divided into Mandatory commercial books and optional commercial books.

- Mandatory commercial books.

Referring to the Algerian commercial law, it specifies the commercial books that must be kept by the merchant, including the inventory book and the daily book, where Article Nine refers to the daily book, and Article Ten refers to the inventory book.

*** Journal.**

It is a book in which all-financial transactions carried out by the merchant are registered and his personal withdrawals are also recorded on a daily basis , According to what was indicated in Article Nine of the Commercial Law, which stipulates: "Every natural or legal person who has the status of a merchant is obliged to keep a journal in which he records business operations day by day, or to at least review the results of these operations monthly, provided that in this case he keeps all the documents that can be With it, he

reviews these operations daily.” However, it is permissible to record the results of some of the operations he performs monthly, if the documents are kept for a period of ten years to verify the authenticity of these actions by reference.

*** Inventory book.**

It is a book in which all the elements of the commercial project are recorded, and it includes the merchant’s fixed and movable funds and rights with others, and in return the liabilities, which are the merchant’s debts owed by others, In addition to recording the goods that the merchant has in his commercial Asset and commercial assets, the inventory is conducted annually and the annual budget is stated, which reflects the financial position of the merchant, which means that making the annual budget is obligatory for every merchant by entering it in the inventory book .

- Optional commercial books.

In addition to the obligatory books represented by the daily book and the inventory book, the merchant can support the organization of his trade by keeping books that are optional, meaning that he is not legally obligated to keep them, but they are useful in the life of the merchant, so that he can be aware of all the details of his financial situation regarding his trade, which include:

*** Commercial papers book.**

In it, the merchant records the movement of commercial securities withdrawn from or from the merchant and their due dates .

*** The draft book.**

A notebook in which the trader records all transactions as they occur, devoid of any specific rules for doing so, which are often unorganized, and later transfers them to the journal on a regular basis.

*** Fund book.**

A book in which the movement of money is recorded through its entry and exit, and the differences in amounts that reflect this .

*** Ledger.**

It is considered an important book as it is a main book into which all the sub-books flow and through which the results of the components that make up the commercial project appear. It is kept in accordance with accounting rules, and through it the merchant extracts the reality of the annual budget .

*** Documents and correspondence book.**

The merchant must keep the documents and files related to his trade, whether issued by him or others, and be careful to arrange them in

chronological order, or according to the completion number of the transaction, if they are organized and not ambiguous so that they can be relied upon for proof.

*** Commercial asset notebook.**

A book in which the merchant records the entry and exit of goods in accordance with the buying and selling process .

D- Penalties resulting from breach of commercial bookkeeping.

The legislator referred to the penalties incurred by the merchant because of his failure to keep commercial books by not keeping them at all, or keeping them in an irregular manner, as the legislation stipulated civil and penal penalties for this.

- Civil penalties.

If the merchant's commercial books are irregular, they are not considered reliable before the judiciary in proving his favor, so their legal value is lost and they become without authority, since by neglecting these books, the merchant has lost the advantage of relying on them in his disputes with others, especially if he is also a merchant, as It facilitates comparison between the two books, so the irregularity of the books becomes an unfavorable presumption.

In addition, one of the results of regular commercial books is the facilitation of estimating the tax imposed on the merchant's profits. In the opposite sense, if they are not regular, this exposes the merchant to being subjected to an arbitrary system that is often not in the merchant's favor .

- Criminal penalties.

The Algerian legislator indicated, through the Commercial Code, that the merchant is considered bankrupt due to negligence, Through Article 370, which mentioned the cases of this, including stopping payment while not keeping accounts consistent with the customs of the profession, which is what the article stipulates in its sixth paragraph according to the following: "Every merchant who stops paying is considered to have committed bankruptcy by negligence if he is in one of the cases." The following:... 6- If he has not maintained any accounts consistent with the custom of the profession due to the importance of his trade."

Article 371 also indicates that a merchant is considered bankrupt by negligence if he stops paying, and his accounts are incomplete or not maintained regularly in accordance with the text of the article in its fifth paragraph, where it stipulates: "Every merchant may be considered to have committed bankruptcy by negligence if he is in a state of cessation of

payment that exists in one of the cases.” The following:...5- If his accounts are incomplete or not maintained regularly.”

Article 374 of the Commercial Code included talk about considering every fraudulently bankrupt merchant who stopped paying, hid his accounts, squandered, or embezzled all or some of his assets, Or he acknowledged his indebtedness in sums that he did not owe, in official documents, customary undertakings, or in his budget, which stipulated: “Any merchant who, in the event of a cessation of payment, has concealed his accounts, squandered or embezzled all or some of his assets, or who, through fraud, has committed He acknowledged his indebtedness for sums that he did not owe, whether this was in his official documents, customary pledges, or in his budget”.

It is clear from commercial legislation that there is suspicion of bankruptcy due to negligence or fraud in a merchant who did not organize, concealed, or executed his commercial books, with the referral of Article 369 of the Commercial Code to the Penal Code, which established criminal penalties against the bankrupt merchant due to negligence or fraud, according to the text of Article 383 of the Penal Code, which stipulates: “Whoever is proven responsible for committing the crime of bankruptcy in the cases stipulated in the Commercial Code shall be punished: - for negligent bankruptcy with imprisonment from two (2) months to two (2) years and a fine from 25,000 DZD to 200,000 DZD.” .

- For fraudulent bankruptcy, imprisonment from one (1) to five (5) years and a fine from 100,000 DZD to 500,000 DZD. In addition, the fraudulent bankrupt may be ordered to be deprived of one or more of the rights mentioned in Article 9 bis 1 of this law for a period of at least one (1) year and a maximum of five (5) years.”

E-How to keep commercial books.

The Algerian legislator indicated the necessity of following a specific method through which commercial books are kept so that the merchant can ensure accurate control of his financial position. These details were referred to in Article 11 of the Commercial Code, which stipulates: “The journal and inventory book shall be kept according to the date and without leaving any blank or changing the date.” Any type or transfer to the margin. The pages of both notebooks are numbered and signed by the court judge according to the usual procedure. What must be taken into account regarding the organization of these notebooks can be stated as follows:

- Numbering the pages of the journal and inventory books before using them, and having them signed by the competent court within whose jurisdiction the merchant's activity falls.
- The journal and inventory books do not contain any space, writing in the margin, or padding. The court aims to prevent the merchant from amending his information according to what his interest dictates. In the event of an error, the merchant cannot erase it or correct it with a new entry dated since Error detection .

F- The period of keeping commercial books.

The merchant cannot keep commercial books for an indefinite period, but rather they are legally limited in accordance with what is indicated in Article 12 of the Commercial Law, which stipulates: “The books and documents referred to in Articles 9 and 10 must be kept for a period of ten years. Incoming correspondence and copies of sent messages must also be arranged and preserved for the same period.”, Whereas, through the text of the article, the merchant must keep his commercial books for a period of ten years starting from the date of their closure, in addition to the documents and correspondence that must be kept for the same period, and he may destroy them after the expiration of this period, and he is not obligated to submit them before the court after the expiry of this period because there is a legal presumption that delete them, but it can be proven otherwise, so in this case the merchant is obligated to present them, and in the interest of the merchant, he must keep them for the longest period until all rights attached to their expire .

G- The role of commercial books in proof.

Proof in commercial matter is done by all means, especially by relying on commercial books, which are considered an effective means that is resorted to in the event of a dispute between merchants among themselves, or between merchants and non-merchants, and it is in the interest of the merchant or against him, and therefore this should be detailed by highlighting the extent of its validity.

However, the acceptance of commercial books before the judiciary is a permissible issue in accordance with the text of Article Fourteen, which came in the form of permissibility, as it stipulates: “The books that individuals are obligated to keep and in which the conditions stipulated above are not taken into account cannot be presented to the judiciary and do not have the force of proof before it in favor of whoever.” They hold it, without prejudice to what was stated in the text regarding it in the Bankruptcy.”, Likewise, Article

Sixteen stipulates: “The judge may order, even on his own initiative, the submission of commercial books during a dispute, for the purpose of extracting from them what is relevant to the dispute.”, The judge has the discretion to take them or not as a means of proof, even if they are regular, he may also give complete authority to the data contained in the books or consider them incomplete evidence as evidence, He may also not give them any evidentiary value, and for the judge to consider commercial books as a means of proof, the following conditions must be observed:

- The commercial books must be regular, as indicated in Article 13 of the Commercial Law, because their irregularity is not considered an excuse for their owner, as their regularity gives reassurance to what they contain, Especially since its submission by the merchant himself is considered an exception to the rule which stipulates that a person may not fabricate evidence against himself, Taking into account that the legal text does not differentiate between compulsory or optional books, As long as they are organized, they are authoritative, although irregular books may be useful before the judiciary.

Where it may give it a degree of authenticity, it is suitable to be evidence to help the judge, along with other evidence, to form a conviction.

It is not required that it be drawn up in the merchant’s handwriting, but rather it may be drawn up by someone else.

- The parties to the dispute should be merchants in order to prove commercial activities, on the basis that merchants are obligated alone to keep regular commercial books, and they are valid between them even if one of them quits trading at the time of the dispute, because what matters is the time of keeping them, not the time of the dispute and resorting to the judiciary .

- The dispute should not relate to an act for which the law requires writing or formality, such as a commercial company contract, as it is not possible to rely on commercial books, no matter how regular they are, out of respect for the extent of the imperativeness of the legal rule in this regard. Commercial books are not considered customary documents because they lack the signature of the debtor. Rather, it is not considered a principle proven by writing because the person against whom it is intended to be used as evidence did not issue it.

H- Cases of using commercial books as evidence.

Commercial books can be authoritative in proving in favor of or against the merchant according to the following details:

-The authoritative of commercial books as evidence in favor of the merchant.

In principle, it is not permissible for a person to create evidence for himself, but the exception came within the scope of commercial law, especially Article 13, which stipulates: “The judge may accept regular commercial books as proof between merchants regarding commercial activities.” Cases where the books are in the merchant’s interest can be limited, as follows:

*** Merchant’s claim against merchant.**

This situation applies in the event that a dispute arose between two merchants over a commercial business, this means that the work is recorded in each of them’s books if they are regular, Once the conditions for their adoption as evidence before the judiciary are met, the court can rely on these books as complete evidence,By comparing them to arrive at complete evidence, it is assumed that they are regular so that the judge can rely on them to form his conviction regarding the resolution of the dispute. However, if it becomes clear that one book is regular at the expense of the other, the judge may favor the regular book, and in the event that both are not regular, it is wise to Do not take both and ask for other evidence, as these books are nothing more than evidence of the validity of the new evidence.

*** A merchant’s claim against a non-merchant.**

If a merchant makes a claim against a person who is not a merchant, he cannot rely on his commercial books, and his opponent, the non-merchant, for whom the business is considered civil, may rely on all methods of proof,Since persons other than merchants are not concerned with keeping commercial books, therefore, if the merchant were allowed to rely on his commercial books to fabricate evidence, this would encourage him to register rights in them against others in a malicious way.

Referring to the text of Article 330 of the Civil Code, which stipulates: “The books of merchants shall not be used as evidence against non-merchant, However, when the books contain data relating to supplies made by merchants, the judge may direct the complementary oath to one of the parties, provided that it is proven by evidence. The merchants' books are proof against these merchants. but if these books are in order, it is not permissible for anyone who wants to extract evidence for himself to fragment what is contained in them and exclude from it what is contradictory to his claim.”, Through this article, it is clear that it departs from the general rule in terms of the judge returning to the merchant’s books to derive evidence within the

limits within which it is permissible to prove it with evidence. The legislator considered it the beginning of written proof, which the judge may complete by directing the completed oath to one of the two parties, taking into account some conditions:

- + The subject of the obligation must be supplies made by the plaintiff merchant to someone other than the defendant merchant.
- + The value of these supplies must not exceed the quorum of evidence, that is, not exceed the amount of 100 thousand Algerian dinars in accordance with the text of Article 333 of the Civil Code.
- + Relying on the books for proof and supplementing it with directing the oath is within the judge's powers, and none of the opponents has the right to ask the judge to direct it to his opponent, or to request it from the opponent himself.
- + The judge cannot complete the evidence extracted from the merchant's books except by taking an oath. He cannot complete the evidence with the testimony of witnesses or evidence, for example .

- The authoritative of commercial books in proving against the merchant's interest.

Commercial books can be an argument against the merchant, regardless of whether his opponent is a merchant or not, whether the debt is commercial or civil. The books are not required to be regular, as the information contained in them is considered a written declaration issued by the merchant personally, and therefore the acknowledgment cannot be divided whenever the books are regular, the opposing merchant must take it in its entirety or reject it. It is not possible for anyone who wants to extract evidence from it for himself to take from it what is useful to him and exclude what is contradictory to his claim. If the merchant records, for example, that he sold goods to a person and that he did not receive the price, the buyer is not permitted to rely on the ledger to prove it. The sale takes place and the booklet itself is rejected because it indicates that he did not pay the price .

However, if the books are irregular, the judge may estimate their content without being bound by the rule that evidence is not permissible to be divided ,This is what Article 330 adopted in its second paragraph by stating: "The merchants' books shall be evidence against these merchants. However, if these books are in order, it is not permissible for anyone who wants to extract evidence for himself to fragment what is contained in them and exclude from it what is contradictory to his claim."

I- Methods of submitting commercial books to the judiciary.

If the judge gives importance to commercial books as evidence, one of two methods must be adhered to in presenting them before him.

- Submission.

This method is referred to in Article 16 of the Commercial Law, which states: “The judge may order, even on his own initiative, the submission of commercial books during the dispute, for the purpose of extracting from them what is relevant to the dispute.” The judge may order on his own initiative, without a request from the opponents, to review these documents. The books himself or referring them to an expert, Or place it in the registry for examination, provided that this is done in the presence and supervision of the merchant who owns the book, and in the event that he refuses to submit it, a presumption is drawn for his opponent and an oath is given to him that completes the quorum ,the merchant can be obligated to submit his commercial books under penalty of a threatening fine, Provided that it is deposited in the hands of the judge or the appointed expert, and is not notified to the opponent. This case does not apply to mandatory books, but rather to optional ones, because they do not pose a threat to the merchant’s secrets contained in his books.

- Examining.

Through this method, the court orders the merchant to hand over his commercial books to it or to the opponent for review, which leads to revealing his secrets. Therefore, commercial law has restricted the adoption of this method , through the text of Article 15, which states: “It is not permissible to order the submission of books and inventories lists to the judiciary except in cases of inheritance, division of the company, and in the event of bankruptcy,” and these cases can be explained as follows:

*** Inheritance issues.**

In the event of the death of the merchant and his commercial books were with one of the heirs, and a dispute arose between the heirs, the heirs had the right or the other legatees may ask the court to review the books of their legatee, to find out their share, without this right extending to the creditors of the deceased merchant .

*** Division of the company.**

If the company expires and is during the liquidation period, each partner has the right to view its books to review him or her and estimate his share of them .

*** Bankruptcy.**

The bankruptcy agent appointed by the court can review the books of the bankrupt merchant, and the creditor in his personal capacity cannot request access to them, unless the creditors appoint bankruptcy monitors, as they have the right to review them by virtue of their job, according to article 241 of commercial law.

2- Registration in the commercial register.

The merchant must commit to registering himself in the commercial registry, which is the merchant's identification card and proof of his status before others and regulatory authorities. Therefore, detail should be given regarding this document of great importance in commercial life.

A- Definition of the commercial registry and its importance.

The commercial register is a common term in the commercial community, and therefore its meaning and the importance it represents must be clarified as follows:

- Definition of the commercial registry.

The commercial registry is a book dedicated to recording the names of merchants and commercial companies and everything related to their commercial activity, so that others can know the truth about their financial position, and follow up on any changes that occur in this position during the practice of trade.

- The importance of the commercial registry.

The importance of the commercial registry appears in supporting commercial credit, and this can only be achieved by registering the legal status of the merchant and the elements of his commercial activity, which are a source of trust and confidence in the souls of those dealing with the merchant and to facilitate his commercial work. Therefore, the commercial registry system was adopted .

B- The development of legislation related to the commercial registry in Algeria.

The commercial registry system in Algeria before independence was subject to French legislation, and the application of these laws remained in effect until 1975, the date of the issuance of the Commercial Law. After that, many legislations were issued, such as Decree No. 79-15 , Including the organization of the commercial registry, and Decree No. 83-258 ,Related to the commercial register, and Decree No. 88-229 ,Which includes easing the conditions for registration in the commercial registry, and Law No 90-22,Related to the commercial registry, and Law No. 91-14 ,Amending

and supplementing the Commercial Registry Law, as well as ordinance No. 96-07, amending and supplementing the Commercial Registry Law, in addition to Executive Decree No. 06-222, Which specifies the form and content of the commercial registry extract, in addition to the decision that specifies the form and features of the commercial registry extract, as well as Executive Decree No 15-111, Which determines the methods of registration, amendment and deletion in the commercial registry. The Algerian legislator crowned all of this legislation by issuing Executive Decree No. 18-112 , Which specifies the form of the commercial registry extract issued through an electronic procedure, as this is considered to keep pace with digitization and to prevent forgery, knowing that the Ministry of Commerce has set the last deadline for converting to the electronic commercial registry on April 11, 2019, and then the deadline was extended until December 31, 2019 ,Then it was extended to June 30, 2022 , It is replaced by merchants communicating with commercial registry centers across the states. However, in the event that the classic commercial registry is not replaced, the merchant is considered not in possession of the commercial registry document that allows him to practice his commercial activity.

In any case, the development of legislation related to the commercial registry in Algeria can be evaluated as it passes through two stages:

- **The first stage:** It extended from the 1975 law until the 1990 law.

The position of the Algerian legislator was a compromise between legislation that considered the commercial registry an administrative function, as is the case with French legislation, and legislation that considered it an advertising function supervised by a specialized judge, as is the case with German legislation.

- **The second stage:** It extended from the 1990 law to the present day.

The legislation regarding the commercial registry in Algeria has tended to adopt German legislation in terms of the supervision of the judge, and this registry publishes the law based on a simple presumption that can be proven to the contrary.

C- Persons required to be registered in the commercial registry.

Article 19 of the Commercial Law stipulates: “It is obligatory to register in the commercial registry. 1- Every natural person who has the status of a merchant in the Algerian law and carries out his commercial activities within the Algerian country. 2- Every legal person who is a trader in form, or whose subject is commercial, and whose headquarters are in Algeria, or has an office, branch, or any institution whatsoever.” Article 20 of the Commercial

Code also stipulates: “This obligation applies in particular to: 1- Every merchant, whether a natural or legal person. 2- Every commercial enterprise whose headquarters are abroad.” An agency, branch, or any other institution shall be opened in Algeria. 3- Every foreign commercial representation that practices commercial activity on the national territory.

Article 6 of the law relating to the conditions for practicing commercial activities also stipulates: “...every institution that carries out its activity in Algeria, in the name of a commercial company whose headquarters are abroad, must register in the commercial registry.”

By listing these articles, it can be shown that registration in the commercial register is related to a number of conditions:

- Characteristics of the merchant.

Only the merchant, whether a natural or legal person, Algerian or foreigner, should be registered in the commercial registry, this condition applies to everyone who uses commercial business as his usual profession, as well as commercial companies recognized by law, which are the solidarity company, and the joint stock company, the limited liability company, the limited company, Therefore, registration in the commercial register is obligatory for every individual merchant or commercial company, in addition to civil companies and public institutions that are in the form of a joint-stock company or limited liability company.

- Practicing commercial activity in Algeria.

Algerian legislation requires, for registration in the commercial registry, that the merchant must have an office, branch, agency, or any other institution on the national territory, as what is meant by commercial asset is the place that the merchant takes to conduct his commercial business if he is a natural person, As for the branch or agency, what is meant is every fixed center in which the merchant carries out a commercial activity independent of the activity of the main center. As for the company’s center, it is the location where the company’s main management headquarters is located if it is a legal person. However, if the company’s main headquarters is outside Algeria and this company opens a branch in Algeria had to be registered in the commercial registry.

- The merchant is not prohibited from doing business.

Article 13 of the Commercial Registry Law stipulates that the merchant must be subject to what is required by law and commercial custom, and that he is not prohibited from practicing the activity under any measure. If he is a natural person, he must respect the principle of inconsistency, meaning that

some persons should not practice trade, such as a doctor, a lawyer, or an employee, this is what was stated in Article Nine of the law related to the practice of commercial activities, which stipulates: “It is not permissible for anyone to practice a commercial activity if it is subject to a special system that stipulates a state of conflict.”, the amended Article Eight of the same law also lists some of those prohibited from practicing trade due to being convicted of felonies and misdemeanors, They were not rehabilitated, as it included the text: “Convicted persons who have not been rehabilitated for committing felonies and misdemeanors in the field of: - Capital movement to and from abroad, - Production and/ Or marketing counterfeit and adulterated products intended for consumption, - bankruptcy, - bribery, - imitation and/or infringement of copyright and related rights, drug trafficking.”

D- Procedures for registration in the commercial registry.

Some procedures must be taken into account for registration in the commercial registry, and it is necessary to take into account the difference between a natural or legal person.

- The natural person.

The natural person who wants to practice trade must have civil capacity and civil rights, which is indicated in Article 13 of the Commercial Registry Law, which stipulates: “Every natural person who has civil capacity and national rights and wants to practice an activity subject to commercial law must declare this to the public officer who is legally qualified under this law, clearly and frankly states that he wants to practice this activity in accordance with the law and according to customs and that he has not been the subject of any measure preventing him from practicing that activity or profession. The Commercial Law specifies the conditions for acquiring the status of a sole merchant and the forms of proving it.”, this must take into account the conditions that must be met by the commercial activity and the place of practicing the activity , Taking into account the forms that the commercial registry contains, according to us, as required by law as indicated in Article 2 of Executive Decree No. 06-222, which specifies the form and content of the commercial registry extract.

-Legal person.

Each member of the company, if he enjoys his civil rights, can request registration in the commercial registry of the commercial company for which he works as a legal representative , In order for the registration process to be completed, he must submit the company’s basic law and the deliberations of the founding general assembly, in accordance with the text of Article 10, its

second paragraph, of the Commercial Registry Law, which stipulates: “He must also submit for this purpose the basic law of the company and the deliberations of the general assembly or constituent general assemblies, And a proceeding Election of administrative and management bodies and a statement of the recognized powers of managers and all contracts expressly stipulated in applicable legislation.”, With the necessity of carrying out legal advertising in accordance with the text of Article 11 of the law related to the practice of commercial activities, which stipulates: “Every commercial company or any institution subject to registration in the commercial registry must carry out the legal advertising stipulated in the legislation and regulation in force,” and the provisions of the two articles should also be taken into account. 10 and 11 of the Commercial Registry Law.

E- Amending the commercial registry data.

Every change or amendment that occurs to the merchant’s activity must be marked in the commercial registry, and it must be deleted if he ceases his activity. This is what was stated in Article 14 of Executive Decree 15-111, which specifies the methods of registration, amendment and cancellation in the commercial registry, It stipulates: “The commercial registry shall be amended according to the case, by adding, correcting, or deleting data from the commercial registry or renewing the validity period, when necessary.” The merchant who moves his headquarters or changes the type of his activity must note that, and this is not limited to the merchant, but also every interested party, if the interested party does not do so.

The amendment shall be based on a signed and written request on forms delivered by the National Center for Commercial Registry attached to the original extract of the commercial registry, and proof of the existence of a place qualified to receive a commercial activity in accordance with what was stipulated in Article 15 of Executive Decree 15-111, which specifies the methods of registration, amendment and deletion in the commercial registry, and shall apply. The same matter, in addition to some details regarding the legal person in accordance with Article 16.

As for delisting, it occurs in cases specified in Article 20 of the same decree, where it occurs in the event of a final cessation of activity, the death of the merchant, the dissolution of the commercial company, the issuance of a judicial ruling delisting, or the practice of a commercial activity with an expired register, deletion for a natural merchant is based on the following: A signed and written application on forms delivered by the National Center for Commercial Registry, taking into account the cases of cancellation request

and the subsequent submission of documents in accordance with the text of Article 22 for the natural person and Article 23 for the legal person of Decree 15-111.

In the event of the death of the merchant, the heirs must submit a request for cancellation during the event that requires cancellation within two months ,If the heirs do not do so during this period, the public officer supervising the commercial registry shall erase the registration on his own upon the expiration of one year from the date of death, unless the heirs or those with rights want to continue exploiting the project on a common basis, they submit a request to amend the commercial register and extend it from year to year, in accordance with the text of Article 33 of the Commercial Law.

F- Effects of registration in the commercial registry.

Registration in the commercial registry produces important results that can be explained as follows:

- Acquiring the status of a merchant.

Article 21 of the law clarifies the acquisition of the status of a merchant on the occasion of registration in the commercial register, as it stipulates: “Every natural or legal person registered in the commercial register is considered to have acquired the status of a merchant in light of the laws in force and is subject to all the consequences resulting from this status,” and the acquisition of this status is equal. The capacity is a natural or legal person, unless proven otherwise. The article indicates a simple presumption that the merchant’s capacity is proven, the opposite of which can be proven, and it became conclusive after the amendment of the Commercial Code in 1996 ,For example, the opponent of the person who registered himself in the commercial registry proves that he is not a merchant and does not practice trade. Rather, his goal in registering himself was to obtain goods that the government will distribute to those registered in the commercial registry at subsidized prices so that they can be sold to the public at reasonable prices, so he does this to sell them on the black market.

However, failure to register the persons obligated to do so in the commercial registry deprives them of the rights and benefits enjoyed by merchants without reducing the obligations of merchants to them. If a person practices trade for a certain period and does not take the initiative to register in the commercial registry, and a dispute occurs between him and one of the merchants, he cannot do so. The situation is that his commercial books are used as proof before the court, in addition to his inability to evade the taxes imposed on him during the period of his illegal activity, despite his not being

registered in the commercial registry, It is one of the most important contents of Article 22 of the Commercial Law, which stipulates: “Natural or legal persons subject to registration in the Commercial Register and who have not taken the initiative to register themselves upon the expiry of the two-month period may not cling to their status as merchants, with third parties or with public administrations, except after Register them, However, they cannot rely on their failure to be registered in the register with the intention of evading the responsibilities and duties inherent in this capacity.”

Note.

It is noted that according to Article 19 of the Commercial Law, it made the status of a merchant a condition for registration in the commercial register, as it stipulated: Registration in the commercial register is required. 1- Every natural person has the status of a merchant in the eyes of Algerian law...”, while Article 21 of the same law made acquiring the status of a merchant an effect of registration in the commercial registry, however, Article 22 clarified the matter by considering him a merchant practicing commercial activity even without Registration in the commercial registry as evidence that he was given two months to settle his situation.

- The company acquires a legal personality.

Registration in the commercial registry grants the company a legal personality, thus making it a legal person with rights and obligations, this is what Article 549 of the Commercial Code indicates: “The company does not enjoy a legal personality except from the date of its registration in the commercial register. Before completing this procedure, the persons who pledged in the name of the company and for its account shall be jointly liable, without specifying their funds, unless the company accepts, after its legal establishment, it must take upon itself the pledges taken. The pledges are considered to be the company’s pledges since its founding.” This restriction leads to an advertising function for the company, As a condition for protesting against others regarding any amendment to the company’s contract, in accordance with the text of Article 548 of the Commercial Code, which stipulates: “The founding contracts and amended contracts for commercial companies must be filed with the National Center for Commercial Registry and published according to the conditions specific to each form of company, otherwise they will be invalid.”

- The merchant's responsibility for commercial obligations in the event of transferring the commercial premises to others.

If a merchant registered in the commercial registry assigns his business to others for sale, rent, or a share in the company, this does not absolve him of the business's debts, as he remains responsible for his obligations until his name is erased or amended in the commercial registry, According to the text of Article 23 of the Commercial Law, which stipulates: "Without prejudice to the application of Article 209 related to leasing commercial assets on a free-run basis, a registered merchant who assigns his commercial asset or leases it cannot exploit the management lease. To invoke the termination of his commercial activity in order to evade carrying out the responsibility he bears as a result of the obligations undertaken by his successor in exploiting the commercial asset, except starting from the day on which either the deletion occurred, or the corresponding sign, or the sign that includes placing the commercial asset as a management lease."

- Protesting against others by registering in the commercial registry.

The merchant cannot use some data necessary to practice trade with others if it is not recorded unless it is proven that the third party is aware of it , It is not permissible to protest against others regarding the merchant's capacity or commercial status except after the registration procedures. If that is not done, his right to do so will be forfeited and his civil liability will arise, These details were referred to in Articles 24 and 25, where Article 24 of the Commercial Law stipulates: "Natural or legal persons subject to registration in the Commercial Register cannot claim against third parties who contract with them because of their commercial activity or before public administrations the facts that are the subject of the aforementioned reference." In Article 25 et seq, unless these facts had become public before the date of the contract by virtue of a reference entered in the register, unless they prove by acceptable means of evidence in a commercial matter that at the time of concluding the agreement, third parties concerned were personally aware of the aforementioned facts.", Also, Article 25 stipulates: "The provisions of the previous article apply even if the facts are the subject of another legal publication, and that is: 1 - In the event of reversing the rationalization of the minor merchant in application of the provisions of the legislation pertaining to the family and when canceling the permission given to a minor to practice trade, 2- In the event that final rulings are issued requiring the seizure of a merchant and the appointment of either a judicial guardian or administrator of his funds, 3- In the event that final rulings are issued ruling that a commercial

company is invalid or dissolved, 4- In the event of the termination or abolition of the powers of every person with a capacity of responsibility of a trader, company or socialist institution, 5- In the event that a decision is issued by a general assembly of a joint-stock company or a limited liability company that includes the matter of taking a decision by the general assembly in the event of a loss of 4/3 of the company's finances.

G- Penalties imposed for violating the dispositions of the commercial registry.

Registration in the commercial registry is considered a necessary legal procedure for the merchant in order for it to have consequences, such as acquiring the status of a merchant, acquiring the legal personality of the company, in addition to protesting the data contained in the registry against others. Therefore, failure to register in it leads to exposure to civil and criminal penalties.

- Civil penalties resulting from violating the provisions of the commercial registry.

Failure to register in the commercial registry may result in some civil penalties, including:

* Anyone who has not registered himself in the commercial registry cannot claim his capacity as a merchant before others or public administrations, and he does not have the right to claim merchant rights, in accordance with the text of Article 22 of the Commercial Law.

* In the event of non-registration in the commercial registry for evading responsibilities, this status cannot be adhered to or disavowed as required by private interest.

* Data recorded in the commercial registry may not be invoked against others except after they have been published in the form required by law, in the official bulletin for legal announcements. However, third parties may invoke these data even if they are not published, because non-publication does not exempt the merchant from his commercial responsibilities .

* If damage results due to failure to register in the commercial registry or giving incorrect data, the affected person may be awarded compensation, as the merchant's obligation to compensate is considered a commercial act in consequence of his committing the error for a reason related to his trade.

- **Criminal penalties resulting from violating the provisions of the commercial register.**

Penal penalties result from violating the provisions of the commercial registry, especially non-registration, as the provisions of commercial

legislation deterred such violations, which would affect the factor of trust between dealers in the commercial field. Article 26 of the Commercial Registry Law stipulated monitoring the penalty for non-registration in the commercial registry. In the event of recidivism, the penalty shall be doubled, as follows: "Failure to register in the commercial registry shall be punished with a fine ranging from 5,000 to 20,000 DZD. In the event of recidivism, the fine stipulated in the first paragraph above shall be doubled and accompanied by imprisonment for a period ranging from ten days." In addition, six months. In addition, the judge may take additional measures that prevent the practice of trade."

The idea of a duty to perform in good faith in commercial transactions has traditionally faced a number of objections. It is too abstract and uncertain, too difficult to enforce, it requires the court, rather than the parties, to set commercial standards.

Article 27 of the Commercial Registry Law stipulates the punishment for anyone who deliberately, in bad faith, provides false information for the purpose of registration in the Commercial Register, by stipulating: "He shall be punished with a fine ranging from 5,000 to 20,000 DZD and imprisonment for a period ranging from ten days to six months, or one of these two penalties." Every person who deliberately, in bad faith, submits incorrect declarations or gives incomplete data for the purpose of registration in the Commercial Register. In the event of a recurrence, the aforementioned penalties shall be doubled, and the judge in charge of the Commercial Register shall automatically, and at the expense of the violator, order that these penalties be recorded in the margin of the Commercial Registry and published in the official notice bulletin Legal".

Article 28 of the Commercial Registry Law also stipulates a specific penalty for those who forge registration certificates in the commercial registry, stipulating: "Anyone who forges or falsifies registration certificates in the registry shall be punished by imprisonment for a period ranging from six months to three years and a fine ranging from 10,000 to 30,000 DZD." Commercial or any document related to it for the purpose of acquiring a right or capacity."

In addition to these penalties, the Commercial Activities Law included a package of penalties that fall within the context of deterring violators of the provisions of the commercial registry. Failure to register in the commercial registry was considered a crime punishable by law. Article 31 of it stipulated: "The qualified agents mentioned in Article 30 above shall close The place of

every natural or legal person who practices a permanent commercial activity without registering in the commercial registry until the perpetrator of the crime settles his situation. In addition to the closure procedure, the perpetrator of the crime shall be punished with a fine from 10,000 DZD to 100,000 DZD.”

The law also punishes anyone who forges the commercial registry and its related documents, as indicated in Article 34 of the Law on the Practice of Commercial Activities, which stipulates: “Anyone who imitates or forges an extract from the commercial registry or documents related to it shall be punished with a penalty of imprisonment of six months.” 6) Months to one (1) year and a fine from 100,000 DZD to 1,000,000 DZD.”

Anyone who practices trade with an expired commercial registry shall be punished in accordance with the text of Article 31 bis of the Law on the Practice of Commercial Activities, which stipulates: “Practicing a commercial activity with an expired commercial registry extract shall be punished with a fine from ten thousand dinars (10,000 DZD) to five hundred thousand dinars.” 500,000 DZD). In addition, the governor issues a decision to administratively close the commercial asset. In the event that a settlement is not made within a period of three (3) months starting from the date of noticing the crime, the judge shall order removal from the commercial registry.”

Fourth Chapter: The Commercial Asset.

In the past, what was meant by a commercial asset was limited to the place where goods were displayed, in addition to the material contents it contained, such as goods, furniture, and machinery, As merchants considered these essential elements in commercial exploitation, the maturation of the idea of the commercial asset in its modern sense was delayed due to the lack of attention to the moral elements. This is due to a social reason that merchants believed for a long time that the value of the commercial asset was tied to the person of the merchant, that is, his work and reputation. If he died or he quit trading, the components of the commercial Asset were sold as abstract material values, However, the idea of the commercial asset as an independent entity and as a unit independent of the person of the merchant did not appear until the end of the nineteenth century, and did not receive legislative attention until the beginning of the twentieth century.

Another reason appears to be the delay in modern inventions that are based significantly on the intangible elements of the commercial asset, such as trademarks, industrial models, and patents. after the prosperity of trade and the development of means of transportation and inventions, the importance of

the intangible elements of the commercial asset, such as contact with customers and the trade name, emerged and they became more important than material elements, due to the importance of the commercial asset in the field of trade, it will be addressed by focusing on its definition, clarifying its legal nature, and defining its components, In addition to clarifying the transactions involving it, such as sale, lease, and pledge, and the extent of legislative treatment. according to the following detail:

First: Definition of the commercial asset.

The Algerian commercial law did not address the definition of a commercial asset, despite the reference to its provisions in the core legal texts from Articles 78 to 214, the sale and mortgage of the commercial asset was explained in the first chapter, In the second chapter, organization was mentioned commercial Asset rent, whereas the Algerian legislator did not give a specific definition of the commercial asset, while Article 78 of the Commercial Code clarified its most important contents.

There have been many definitions regarding the commercial asset, as it is defined as a sum of material and moral funds allocated to the practice of the commercial profession, where it is called a commercial asset, factory, etc .

A commercial asset can also be defined as intangible movable property that includes the merchant's contact with his customers and their habit of frequenting the commercial asset due to the exploitation of its elements. Likewise, a commercial asset is intangible movable property that involves the practice of a specific and legitimate commercial activity, without this extending to civil activities based primarily on communication with customers .

The commercial asset is the external legal aspect of the merchant's professionalism, and it is independent of his person, because commercial reputation is the merchant's fame and the market's recognition of his capacity, the idea of the commercial asset as a financial unit in terms of its subjection to commercial law and its reliance on commercial reputation is in fact a practical and logical application of the idea of professionalism and the resulting legal consequence .

Second: The legal nature of the commercial asset.

The nature of the commercial asset is of prominent importance, and the legislator allocated it through the commercial law with articles to regulate its provisions, and jurists worked hard to clarify its legal nature among those who saw it as a legal collection of funds, In the sense that it is considered a financial liability independent of the merchant's liability, and among those

who saw it as a realistic sum, allocated for a specific purpose, which is exploitation, a third opinion went to adopt the idea of moral ownership, and each opinion will be detailed according to the following:

1- The theory of legal totality or independent liability.

German jurists came up with this theory, as it considers that a commercial asset is a legal sum of money that includes the rights and debts resulting from commercial exploitation, It is a financial liability independent of the merchant's liability, and this consideration results in the fact that its debts are linked to the commercial asset, and the rights included in it are a guarantor of the debts. Therefore, the creditors of the commercial asset have the right to enforce against it without competing with the merchant's other creditors. That is, in the event of the commercial asset's bankruptcy, its creditors have no choice but to enforce the money it contains without this extending to the money of the merchant who owns the commercial Asset.

However, adopting this theory clashes with legislation based on the unity of liability, including the Algerian legislator, who considers that all of the debtor's assets are a guarantee for the fulfillment of his debts , according to the text of Article 188 of the Civil Code, which stipulates: "All of the debtor's assets are a guarantee for the fulfillment of his debts," and a commercial asset is not a legal person, but rather is linked to the person of its owner.

2- The theory of the actual or real patrimony.

According to this theory, a commercial asset is a real sum of funds arising from the gathering of certain elements for commercial exploitation, without this entailing a financial liability independent of that of its owner. If the commercial asset is relinquished, the rights and obligations related to the commercial asset will not be transferred unless this is agreed upon honestly, according to this theory, by bringing together the elements of a commercial asset, money of a special nature is produced, separate and independent from the elements of which it is composed. This money is among the intangible movables, and the view on the combined elements that make up this money is different from that of each independent element. This is called the real total, and it is therefore subject to special provisions. Different from the provisions to which each item is subject. In selling or pawning a commercial asset, rules are applied that differ from those applied in selling or pawning an item, such as a patent .

However, this theory is criticized for its use of this term, as it has no legal meaning, as the total amount of money, if it exists, has only a legal existence,

the law also recognizes it as a legal personality that enjoys financial liability and legal capacity, and this does not exist in the commercial asset .

3- The Theory of moral ownership.

The elements that make up the commercial asset retain their characteristics and are subject to a special legal system. Therefore, the commercial asset as a unit must be separated from the elements that make up it, The merchant's right over the commercial asset is considered a moral property right that appears in revenues on intangible things, just like industrial, literary, and artistic property rights. The commercial asset can only be intangible property, which is commercial ownership, meaning contact with customers, which is the element that must be present in the commercial asset according to Article 78 of the Commercial Code .

With this theory, he took modern jurisprudence and preferred it due to its correct approach to the true meaning of the commercial establishment, where it received significant support .

Third: Elements of the commercial asset.

Article 78 of the Commercial Law includes the elements of a commercial establishment, as this enumeration came as an example and is not limited to it. It stipulates: "Movable funds allocated for carrying on a commercial activity are considered part of a commercial establishment. The commercial establishment must necessarily include its customers and its reputation. It also includes all other funds necessary for the exploitation of the commercial asset, such as the commercial asset address, the trade name, the right to rent, equipment, machinery, goods, and the right to industrial and commercial ownership, all of that, unless the law stipulates otherwise." It is clear that the article included material and other moral components, with emphasis on the necessity of including Elements for customers and the reputation of the commercial asset, in addition to the problems that the real estate poses as it is one of the elements that make up the commercial asset or not, and each element can be detailed as follows:

1- The physical elements of the commercial asset.

Referring to the text of Article 78 of the Commercial Law, it referred to the material elements that a commercial place should include, so it included material elements such as goods, equipment, and machinery. It is noted that it did not refer to real estate, and therefore this should be clarified according to the following:

A- Goods.

Goods are movable goods or things that are being dealt with ,that is, the total amount of goods that the merchant sells, such as shoes, clothes, etc., and sometimes the goods may be mixed with equipment if the purpose is to operate the commercial asset and manufacture materials, As in the case of coal or oil in factory machines, but if the merchant wants to sell it, it is considered a commodity, and the same ruling applies to animals, which are considered equipment in some cases and goods in other cases, Cattle that are used in a dairy commercial Asset through their milk are considered equipment, while those that are sold are considered merchandise , However, the goods may not be considered an essential element in some commercial activities, as is the case for banks and service provision offices.

B- Equipment and machines.

Equipment and machines mean those movables used in the exploitation of a commercial asset without being intended for sale. Rather, they are used to manufacture or repair products, such as cars used for transportation, offices, chairs, and cabinets, as well as fuel if they are for the purpose of operating machinery, taking into account that if the merchant practices his trade in a property owned by him and designated for trade, such as a factory, bank, or hotel, then the machinery used in exploiting the business is considered real estate by designation, provided that this does not prevent these movables from being kept as movable property and included in the elements of the commercial asset, and they may be It is included in the commercial mortgage, provided that it is separated from the real estate .

C- The real estate.

Jurisprudence differed as to whether or not a real estate is considered a component of a commercial Asset, especially if it is owned by the merchant and the business is disposed of without the contracting parties specifying the elements involved in the disposition, However, the prevailing opinion excludes the real estate from the components of the commercial asset, even if the two parties agree otherwise, given that the commercial asset is a collection of movable real estate. If an agreement is made to transfer ownership of the real estate to the buyer, it must be independently evaluated and the sale registered, and publicity regarding the sale does not suffice, the commercial asset requires this registration .

However, a commercial asset whose activity revolves around purchasing real estate for the purpose of reselling it in accordance with the second paragraph of Article 2 of the Commercial Law is considered a commercial

business according to the subject matter, and therefore it includes among its material elements the real estate that it owns with the intention of selling it, just like the goods that are purchased. With the intention of selling it, and on this basis, the ownership of the commercial asset is transferred through sale, it is possible to agree to transfer ownership of the real estate within the scope of its trade from the date of sale, and to adhere to registration procedures .

2- The moral elements of the commercial asset.

The moral elements are considered the main pillar of the business, and although they are not material, their financial value appears mainly in the value they add to the business as a whole, in addition to the value of each element independently .

Article 78 of the Commercial Code referred to these elements in general, but that does not mean it is necessary to bring in all the intangible elements in the commercial asset, except for the element of contact with customers, which remains necessary and obligatory in all commercial activities, regardless of their diversity, according to the text of the article, and the moral elements of the commercial asset can be specified. In detail as follows:

A- Contacting customers.

Customers mean persons who frequent the commercial asset in order to obtain their needs in a regular or occasional manner. The merchant works to maintain and develop his relationship with the customers by all legitimate means. In contrast, the merchant does not have any ownership rights over his customers, as there is nothing obligating them to deal with him, and this element has economic importance. This should be taken into account when evaluating a commercial asset, considering that it is one of its most important elements, and perhaps even the most important of them, is that there are those who consider it the commercial asset itself, and the rest of the elements are secondary that help in sustaining communication with customers, Therefore, the legislator devoted specific attention to it through Article 78 of the Commercial Law, which stipulates: “A commercial asset must necessarily include its customers and its reputation.”

B- Commercial reputation.

Goodwill or commercial reputation means the ability of a commercial asset to attract customers thanks to its distinction with a certain characteristic, Such as location, appearance, organization, and method of display, which is one of the elements required by the Algerian legislator, and is considered related to the commercial asset itself and not to the person of the merchant, as is the case with regard to communication with customers, and some

jurisprudence has gone to distinguish between the two elements of customers and commercial reputation, as it is difficult to distinguish between them, especially if the reputation of the commercial asset is primarily due to the person of the merchant, with his good qualities, and the location of the commercial asset, its good appearance, and the quality of its organization. The reality requires that there is no need to separate them, as no legal benefit results from the distinction between contact with customers and the commercial reputation of the commercial asset .

C- Trade name.

It is the designation that the merchant gives to the commercial activity that he practices. The commercial name for the sole merchant may be his civil name or it may be something else, on the basis that the person of the merchant is of great importance in assessing his credit with his clients and merchants. However, the name of companies is governed by special rules, and If the commercial name is united with the civil name of the merchant, it acquires an independent commercial character as soon as it is commercially exploited. It acquires financial value and can be disposed of as an element of the commercial asset. Whoever buys the commercial asset and the name must add to it something that shows the difference in the personality of the owner .

D- Commercial address.

The commercial address means the innovative designation or every symbol chosen by the merchant to distinguish his commercial asset from the rest of the commercial assets. This may be a shape or picture placed on the walls of the commercial asset and has a relationship to the activity. The commercial address may be the trade name or the symbol of the commercial address, and it has a role in distributing goods through contracts exemption , provided that it is not derived from the merchant's personal name, it is important in attracting customers because of the impact it has on the hearts of customers, especially if the name is innovative and visible.

E- Industrial property rights.

What is meant by industrial property is the sum of the rights contained in new innovations, such as patents, industrial models, and trademarks. They are, in their entirety, moral rights subject to special regulation. Accordingly, their owner can exploit them and be protected by that law, and he may dispose of them as well, and if they are elements of a commercial asset, it is included in them. The behavior that affected the commercial asset, However, the state grants the inventor a patent certificate, according to which his invention can be exploited in many ways, including:

- Industrial drawings and models.

Industrial drawings mean the lines that give the commodity a distinctive character, such as engraving on textiles, wax drawing, and drawing on pottery and glass. As for models, what is meant is the distinctive external shape of the commodity and nothing else, Such as clothing models and car designs.

- Commercial or industrial trademarks.

What is meant by it is the distinctive mark that the merchant places on the products of his commercial asset. It is thus considered a trademark, or the manufacturer on the products that he manufactures. It is a factory mark, and its purpose is to distinguish it from other similar products offered in the market. It is also known as the mark that an institution uses to provide The services provided are a service mark, and the Algerian legislator indicated everything related to them regarding the right to ownership, deposit, registration, publication and transfer of marks, their invalidity, and the ensuing penalties in the event of imitation or fraud .

- Literary and artistic property rights.

They are the rights of authors over their literary efforts, and the rights of artists over their artistic production. If these rights exist in a commercial asset, they are considered an important element in it. An example of this is a publishing house, where the merchant or the exploiter of the commercial asset may purchase literary or artistic rights , However, this element may not be necessary in some cases, as this depends on the type of exploitation carried out by the merchant.

- Licenses and authorisations.

What is meant by it is the licenses granted by the administration to trade in a specific commodity, or to open specific commercial assets such as cafes and hotels, and jurisprudence hesitates to consider it as an element of a commercial asset, Some persons said that they are nothing more than personal rights, as is the case with rights, debts, contracts, and deals, because they are linked to the person of the licensee, and therefore they are not among the elements of a commercial asset, However, there are exceptions related to the connection of some personal rights to the exploitation of a commercial establishment, such as permits for establishment or transfer, expansion of trade, and public transportation cards. Jurisprudence has suggested that licenses are considered an element of the commercial asset and are transferred with its relocation, and an exception can be made if they are excluded by agreement or the license is personal , excluding personal rights and debts

arising from the exploitation of the commercial premises from its components .

F-The right to rent.

The right to rent is considered an important element of the commercial asset, if the merchant is a tenant of the place in which he practices his trade ,What is meant by the rental right is that the merchant remains in the real estate in which he carries out his trade, Waiving this right to others in the case of disposing of a commercial asset, Because of its importance, the Algerian legislator provided it with legislative treatment through Articles 169 and the following, where the legislator granted specific protection to the tenant merchant through the right to compensation from the lessor who refuses to renew the rent at the end of its term, this compensation includes an estimate of the commercial value of the commercial asset, which is determined according to the custom of the profession, with the calculation of transportation and installation expenses, and the costs and rights of transfer that must be paid to a commercial asset of the same value, in accordance with the text of Article 176 of the Commercial Law, which stipulates: “The lessor may refuse to renew the lease, However, he must make an exceptions provided In Article 177 and the following, it must pay the evicted tenant the compensation called compensation by right, which must be equal to the damage caused as a result of non-renewal, In particular, the compensation referred to in the first paragraph of this article includes the commercial value of the commercial asset, which is determined according to the custom of the profession, with what may be added to it in terms of normal transportation and re-assembly expenses, as well as the transfer expenses and rights that must be paid to a commercial asset of the same value, unless it is proven. The owner believes that the damage is less than that.”

The importance of the rental element varies according to the type of commercial activity, from very important, such as a café in the city center, to less or sometimes non-existent importance, as is the case with a street merchant .

The person who rents a place to the tenant merchant, before he wishes not to renew the lease, must give him an eviction notice at least six months before the end of the lease contract, According to the text of Article 173, which stipulates: “The rent of the commercial Assets subject to these provisions shall not end except with the effect of an eviction notice.”, According to local customs, at least six months before the deadline.

The lessor can also not renew his contract with the tenant merchant If his refusal is justified and substantial, such as an error in executing the lease contract, such as a delay in paying rent installments, or ceasing to exploit the commercial premises for more than one month, or problems between the lessor and the tenant such as a quarrel, as well as the unsuitability of the place or its danger for practicing trade, Therefore, he does not bear the consequences of that according to Article 177 of the Commercial Code, which stipulates in its first paragraph: “The lessor may refuse to renew the lease without being obligated to pay any compensation, if he proves a serious and legitimate reason towards the tenant who is vacating the premises.”

By clarifying the elements of the commercial asset, it becomes clear how important the intangible elements that make it up are, as it is considered an entity independent of each element, and by meeting them as a whole, a financial unit is formed whose goal is to exploit the commercial asset, since if any circumstance occurs to one of them, this does not affect the commercial asset as a unit, which is distinguished by a number of characteristics are:

*** The commercial asset is movable property.**

Jurisprudence and judiciary consider that a commercial asset is movable property because it consists of material, movable and intangible property, Such as goods and contact with customers; the commercial asset does not have the qualities of stability that characterize real estate. Rather, the commercial asset is subject to the legal system related to movable property, If a person bequeaths a commercial asset to another, it falls within the scope of bequeathed movable property, despite the fact that the commercial asset is subject to some real estate provisions, such as the rules regarding the seller’s lien and mortgage of the commercial asset. This does not affect its consideration as movable property .

*** The commercial asset is intangible property.**

The commercial asset is intangible property, not material property. Despite its composition of material elements such as goods and equipment, it is composed of more effective intangible elements. As a unit independent of its constituent elements, it represents intangible property to which the rules of material property do not apply, such as the rule of ownership of movable property, the title deed, on the basis that this rule applies to material property and not to intangible property, Also, selling a commercial asset is different from selling one of its elements, as it maintains its entity inside it, and its disposal is subject to its own provisions, and the lessor of the real estate that occupies the commercial asset is not granted the privilege that the lessor

enjoys over the movables located inside the rented real estate, because this privilege is specific to material movables without moral.

*** The commercial nature of the commercial asset.**

Some activities may focus on contacting clients, such as lawyers' offices and doctors' clinics, and these businesses do not constitute a commercial asset due to the nature of their civil activity, as the activity must be commercial in the commercial asset, as the legislator indicated that operations related to the commercial asset are considered commercial activities according to the form.

By enumerating the characteristics that distinguish a commercial asset, which make it an important part of the scope of commercial dealings, the legislator allocated it with specific care, which was evident in enriching the legal texts for the various transactions related to it, including sale, rent, and mortgage, with the aim of protecting merchants and those dealing with them, in order to preserve the stability of commercial transactions and preserve the principle of credit On which business life is built.