

Definition of commercial law:

1- Commercial law is the set of legal rules that apply to business and regulate the craft of trade. This means that commercial law only regulates certain relationships that arise as a result of carrying out certain actions, which are commercial businesses, and it also regulates the activity of a specific sect, which is the merchant sect. From a legal standpoint, the word trade includes a broader meaning than it does from an economic standpoint, as the latter means everything related to the circulation and distribution of wealth. As for the legal aspect: trade includes, in addition to that, production operations. The manufacturer in the legal meaning that we will discuss in this regard is nothing but a merchant.

The relationship of commercial law to civil law and branches of law

2 - Commercial law, according to the previous definition, is only a branch of private law, like civil law, along with other branches such as labor law and family law. If civil law basically regulates all relations between different individuals without distinguishing between the type of conduct or the character of the person performing it, that is, legally In general, commercial law regulates only certain relationships, which are commercial relationships. This type of legal rule has led to the emergence of economic conditions and practical necessities that necessitated the submission of a specific group of people, namely merchants, and a specific type of transaction, namely commercial business, to a legal regulation that is distinct from that applied to civil transactions. Civil rules were unable to regulate commercial transactions, which were based on speed on the one hand, and trust and credit on the other hand.

Nota bene that civil transactions always characterized by stability and prudence.

3 - In contrast to this, the commercial environment, which requires speed and confidence at the same time, the nature of the contracts that are concluded in the field of commerce is completely different from those that are concluded in the civil environment, because the deals concluded by the merchant are not for personal use or for the purpose of keeping them, but rather for resale. Profit from price differences. Such deals are concluded repeatedly every day for every trader, and he concludes them in a quick manner.

Certain customs and traditions have actually emerged that a group of merchants adhered to in their commercial transactions, different from those rules that regulate civil transactions, and the legislator was forced to codify these commercial customs into groups specific to trade and merchants, and these new rules continued to increase little by little until

they became an independent entity.

4 - However, since the civil law is the general law for all individuals and all actions, the provisions and rules of the commercial law are nothing but an exception to a general principle that must be referred to in every case not governed by a special text. This close connection between civil and commercial law appears clearly in most legislation. In French law, as well as in Algerian law, we find the commercial group does not talk about selling except in one article, and for the rest of the provisions it resorts to the general rules of civil law.

5 - However, we find, on the other hand, that commercial law has had an impact on civil law, which is represented in several cases, including considering companies that take a commercial form as commercial companies subject to commercial law, regardless of the subject of their activity. The legislator may also decide that the company acquires the status of a merchant, regardless of the nature of its activity, whether it is The subject of its activity is commercial or civil. Examples of stock companies are always commercial, depending on the form, whether the subject of their activity is commercial or civil. The Algerian commercial legislation issued in 1975, Article 544 of which stipulates that companies are considered because of their form, regardless of their subject, joint stock companies, limited liability companies, and joint liability companies.

6 - Calling for the unity of private law:

In view of the close connection between the provisions of the commercial and civil laws, a trend has emerged in legal jurisprudence that calls for their merging together into one law that applies to all individuals and in all transactions without distinction between a civil or commercial act or between a merchant and a non-trader, by imposing access to what is called the unity of private law.

7 - The supporters of this opinion demand that the rules of commercial law apply quickly and simply in procedures based on the rules of civil law whenever necessary so that the merchant and non-trader benefit from this. Likewise, if the procedures of civil law have some restrictions and formalities in certain actions or special contracts due to their importance These restrictions and formalities can be imposed on important commercial actions until disputes are settled.

Supporters of this opinion believe that commercial law, as business law in our time, actually includes the general theory of money and obligations that applies to all transactions that take place between ordinary individuals and those who contribute to economic life in general.

8 - Some countries have actually taken this direction, as is the case in the

United States, England, Switzerland, and Italy, where most of these countries were able to introduce the commercial elements and characteristics of civil law. An example of this is the Italian Civil Code issued in 1942, which returned commercial law to the fold of civil law, abolishing the commercial law group and merging it. Its topics are in the civil law group.

9 - The necessity of independence of commercial law:

The idea of calling for the unification of the provisions of commercial law with civil law, although it is considered logical on its face, is in essence contrary to the reality of the conditions and practical necessities. There is no doubt that commercial transactions have what distinguishes them from civil transactions, which necessitates the development of a special system for them, as the nature of commercial transactions requires speed and ease of procedures. .

It is not useful for these facilities to be transferred to civilian life, which is characterized by stability and deliberation, because generalizing this speed in procedures would increase disputes, instability of dealings between civilians, and difficulty of proof before the judiciary, especially since bookkeeping is something that only merchants are obligated to do, and the call for the transfer of some The formalities and civil formalities associated with commercial contracts actually lead to the obstruction of trade, no matter how much.