

Non-Original Commercial Activities under Algerian Legislation

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Abstract:

This research paper aims to diagnose and identify the various forms assumed by non-original commercial activities as provided for in Algerian legislation, whether they appear in form of commercial activities by form or commercial activities by dependency.

Furthermore, this research paper aims to provide a more comprehensive overview of transactions that fall within scope of commercial activities according to their form, both regular and irregular. Moreover, this paper seeks to highlight and clarify the conditions required to activate the theory of commercial activities by dependency and its application scope.

Keywords: Commercial activities by form; Commercial activities by dependency ; Contractual obligations; Exchange bill; Business assets.

1. INTRODUCTION

Humanity in ancient times did not distinguish between commercial and civil activities. However, with the tremendous development witnessed in recent times, which has affected various levels of life for individuals and societies, the majority of comparative legislations, including Algerian legislation, have been prompted to establish criteria for distinguishing between them. This is because the nature of civil transactions differs from commercial transactions in several respects, such as judicial jurisdiction, rules of evidence, consequences of obligations, and others. The matter did not stop at this point; some comparative legislations, including Algerian legislation, went further by classifying commercial activities themselves into original commercial activities (commercial activities by their subject matter) and non-original commercial activities, which are the subject of our study entitled "Non-Original Commercial Activities under Algerian Legislation".

The topic importance "Non-Original Commercial Activities under Algerian Legislation" lies in identifying the reality of these activities and their classifications, in addition to understanding the extent to which these classifications respond to requirements of current stage on one hand, and on the other hand, their adherence to the rules and principles governing commercial activities in general. The matter is not limited to this; this topic also holds economic importance as it alleviates concerns and fears among merchants customers, thereby enhancing and contributing to increasing volume of commercial exchanges and thus advancing the national economy. Furthermore, the importance of this topic from a legal perspective is evident in that it precisely clarifies the applicable law to this activity type and judicial authorities competent to adjudicate its disputes. Its importance also appears from a financial perspective as it benefits tax authorities in particular and the public treasury in general, as it provides them with a considerable financial resource resulting from the collection of tax duties imposed on this type of activity.

In addition, our study of this topic aims to diagnose and identify the forms taken by non-original commercial activities as provided for in Algerian legislation, as well as to identify the forms taken by commercial activities according to their form, and to identify the conditions required to apply the theory of commercial activities by dependency and its scope application. Generally, it can be said that the aim of this research paper is to thoroughly investigate the ability of legal rules governing these activities, as provided for in Algerian legislation, to guarantee the merchants interests and those dealing with them, in addition to guaranteeing the interests of tax authorities and public treasury.

In foregoing light, it can be said that this topic has recently become one of the most controversial legal topics, especially in light of the increasing and unprecedented demand for this activity type, the growing number of cases related to disputes arising from these activities before various judicial authorities, and need for Algerian legislation to reorganize these activities in line with their intended purpose. Furthermore, our study of this research topic would enhance legal culture and responsibility awareness among merchants themselves and those dealing with them. Moreover, Algerian legislation, like other comparative legislations, is not without certain deficiencies and legal gaps in provisions governing these activities. We will present and address them through this research paper, which revolves around a main issue that can be stated as follows: **What are the forms and manifestations assumed by non-original commercial activities under Algerian legislation?**

To answer this issue in depth and to achieve the desired objectives of this research paper and to present all related ideas, I have decided to divide this paper into two sections. In first section, I addressed commercial activities according to their form, while I dedicated second section to commercial activities by dependency. I concluded this research paper with a conclusion summarizing the most important findings, and I

also presented my proposals that may contribute to the proper practice and conduct of this activity types in accordance with legal requirements.

2. Section One: Commercial Activities According to Form

Discussing commercial activities according to their form leads us to discuss two main approaches. The first lies in irregular commercial activities, which we will analyze and detail in first subsection, while second approach lies in regular commercial activities according to their form, which we will address in second subsection.

2.1 Subsection One: Irregular Commercial Activities According to Form

First, it is important to point out that Algerian legislator limited irregular commercial activities according to their form to dealings in exchange bills between all persons (First Branch), operations relating to business assets (Second Branch), in addition to contracts relating to maritime or air commerce (Third Branch). This was expressly confirmed by Article 03 of Algerian Commercial Code. In contrast, French legislator limited them to dealings in exchange bills only¹.

First Branch: Dealing in Exchange Bills between All Persons

Based on Algerian Commercial Code, we find that legislator did not provide a definition for exchange bills, unlike some comparative legislations, contenting himself with enumerating the mandatory data required in an exchange bill as a negotiable commercial instrument that is transferable by commercial methods. Among its characteristics is that it is a credit instrument, as it grants the debtor time to fulfill payment, and at the same time a payment instrument, as it contains a specified amount of money payable on maturity date².

Drawing, acceptance, guarantee, payment, and endorsement operations are considered commercial activities by their form, regardless of person capacity performing them, whether merchant or non-merchant. This was affirmed by Articles 03 and 389 of Algerian Commercial Code. However, the legislator established two exceptions to this rule. First exception is contained in second dash of Article 396 of same law, which considers an exchange bill containing phrase "not to order" or any equivalent phrase inserted by the drawer to be non-negotiable by commercial methods, with transfer in such cases being limited to form and effects of ordinary assignment. Dealing in exchange bills as a commercial activity by form is confined to three original

¹ Based on official French legal text provided in search results, here is paragraph translation 10 of Article L110-1 of French Commercial Code, as amended by Order No. 2021-1192 of September 15, 2021.

² " The exchange bill is considered both a payment instrument and a credit instrument at the same time, similar to a promissory note, which is also a payment and credit instrument. This is contrary to cheque, which is merely a payment instrument and is always payable immediately upon presentation.

parties only: drawer, and payee. Any subsequent dealing is subject to provisions of Civil Code, as it represents an ordinary assignment establishing a civil debt¹.

The second exception was established by Algerian legislator in first dash of Article 393 of Commercial Code, which considers exchange bills signed by minors who are not merchants to be void with respect to them, without prejudice to rights of each party under Article 191 of Algerian Civil Code. In this regard², it is important to point out that Algerian legislator erred when it referred us to Article 191 of Civil Code instead of referring us to second dash of Article 103 of same law, which regulates the nullity effect of a minor's obligation.

Finally, it can be said that provision contained in first dash of Article 03 of Algerian Commercial Code is exhaustive, not illustrative. Accordingly, drawing operations, accepting, guaranteeing, endorsing, or paying value of exchange bills are commercial activities according to their form and relate to exchange bills only, not to other commercial instruments such as cheques and promissory notes, the dealing of which is civil when related to a civil transaction and commercial when related to a commercial transaction. Moreover, judges are not permitted to analogize or expand upon the provisions of this dash³.

The Algerian legislator, as previously mentioned, did not limit irregular commercial activities according to their form to dealings in exchange bills only; he expanded them to include operations relating to business assets, which we will analyze and detail in the following branch.

Second Branch: Operations Relating to Business assets

Similar to exchange bills, the Algerian legislator did not define the commercial establishment, contenting himself with enumerating its constituent elements, as affirmed by Article 78 of Commercial Code. To fill this legal void, some jurists attempted to define commercial establishment as "a set of movable assets, whether material or immaterial, dedicated to practice of a commercial activity," provided that immaterial elements include customer connection and commercial goodwill, which legislator

¹ عبد القادر البقيرات، القانون التجاري الجزائري، السندات التجارية، السفتجة، السند لأمر، الشيك، سند الحزن، سند النقل، عقد تحويل الفاتورة، ديوان المطبوعات الجامعية، الجزائر، الطبعة 2، 2012، ص45.

-راشد راشد، الأوراق التجارية الإفلاس والتسوية القضائية في القانون التجاري الجزائري، ديوان المطبوعات الجامعية، الجزائر، الطبعة 09، 2019، ص34.

² نادية فضيل، القانون التجاري الجزائري، الأعمال التجارية، التاجر، محل التجاري، ديوان المطبوعات الجامعية، الجزائر، الطبعة 12، 2016، ص.ص127-128.

³ In this regard, it is important to point out that Mauritanian legislator has expanded on this matter compared to Algerian legislator, as Mauritanian legislator considered commercial activities according to their form to include dealings in exchange bills and promissory notes, even if signed by non-merchants, provided that they arise from a commercial transaction. This was expressly affirmed by first paragraph of Article 07 of Mauritanian Commercial Code.

requires to be present in every commercial establishment. If either or both are lacking, there is no question of a commercial establishment. A commercial establishment cannot be conceived without at least these two elements. The presence or absence of remaining elements, whether material or immaterial, does not affect qualification of a commercial establishment.

The Algerian legislator has considered operations relating to business assets such as sale, purchase, mortgage, and lease as commercial activities according to their form, regardless of person performing them, whether merchant or non-merchant. This is contained in fourth dash of Article 03 of Commercial Code. Accordingly, a person who sells a commercial establishment that came into their ownership through inheritance, gift, or bequest is engaging in a commercial activity according to form, subject to provisions and rules of commercial law, regardless of that person's capacity as merchant or non-merchant. The commercial nature follows transaction relating to commercial establishment itself and does not follow person performing it.

Operations relating to business assets considered commercial activities according to their form are not limited to what we mentioned in preceding dash. The Algerian legislator has recognized other transactions that take the same ruling as the sale of a commercial establishment, such as a promise to sell it, contributing it to a company capital, or in the case of transferring ownership of a commercial establishment by partition or auction. More generally, any disposal of a commercial establishment, even if conditional or issued under a contract of another type, is covered. This was expressly affirmed by Article 79 of the Algerian Commercial Code.

The Algerian legislator also did not limit irregular commercial activities according to their form to dealings in exchange bills and operations relating to business assets only; he expanded them to include contracts relating to maritime or air commerce, which we will analyze and detail in the following branch.

Third Branch: Contracts Relating to Maritime or Air Commerce

The legislator considered contracts relating to maritime or air commerce as commercial activities according to their form, as affirmed by fifth dash of Article 03 of Algerian Commercial Code¹. However, this dash contains a serious error in its Arabic version. The legislator began it with the phrase "Any commercial contract", whereas the term "commercial" does not appear in the French version². By adding the word

¹ عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص34.
-عمار عموره، شرح القانون التجاري الجزائري، الأعمال التجارية، التاجر، الشركات التجارية، دار المعرفة، الجزائر، طبعة منقحة ومصححة، 2010، ص76.

² For reminder, the fifth dash of Article 03 of Algerian Commercial Code was mentioned in French version as follows:

« Tout contrat concernant le commerce par mer et par air »

"commercial," the legislator has distorted dash meaning. A commercial contract does not require additional criteria to be classified as commercial; furthermore, a commercial contract acquires commercial character before being associated with maritime or air commerce.

Moreover, the provision contained in fifth dash of Article 03 mentioned above resembles and coincides with eighteenth dash of Article 02 of the Commercial Code, which addresses commercial activities according to their subject matter, stipulating that "all insurance contracts and other contracts relating to maritime commerce" are considered commercial activities according to subject matter. The content of this latter dash is illustrative, not exhaustive, allowing for analogy and expansion, unlike the contracts relating to maritime commerce in fifth dash of Article 03, which are exhaustive, making analogy or expansion impermissible¹.

Finally, it can be said that Algerian legislator did not limit commercial activities according to their form to irregular commercial activities only, but went beyond that to include regular commercial activities according to their form, which we will analyze and detail in following subsection.

2.2 Subsection Two: Regular Commercial Activities According to Form

Discussing regular commercial activities according to their form requires us to address, firstly, commercial companies, and secondly, agencies and business offices, in line with the order adopted by Algerian legislator in Article 03 mentioned above.

First Branch: Commercial Companies

First, it is important to point out that regular commercial activities according to their form require a certain degree of regularity and continuity for their practice, closely resembling what is required for commercial enterprises classified within the scope of original commercial activities that do not require a specific form for their practice but are associated with and connected to the nature of work itself².

The Algerian legislator, like some comparative legislations, has been concerned with regulating all stages that commercial companies undergo, from their establishment and commencement of activity until their dissolution, liquidation, and assets distribution. He devoted Articles 544 to 840 of Commercial Code to them, in addition to

¹ الأزهري لعبيدي، شرح القانون التجاري الجزائري، الأعمال التجارية، التاجر، المحل التجاري، مطبعة منصور الوادي، الجزائر، 2022، ص74.

- In this connection, it must be noted that neither French legislator nor its Mauritanian counterpart have classified contracts pertaining to maritime or air commerce under heading of commercial activities by form, a position similarly upheld by Moroccan and Libyan legislators.

² رزق الله انطاكي، نهاد السباعي، الوسيط في الحقوق التجارية البرية، الجزء الأول، مطبعة الداودي دمشق، سوريا، 1985-1986، ص.ص102-103.

- محمد حسن قاسم، محمد السيد الفقهي، أساسيات القانون، منشورات الحلبي الحقوقية، لبنان، 2003، ص66.

some regulatory texts¹. Despite vast number of these legal provisions, he did not provide a definition for them. In parallel, company contract is defined in Article 416 of Civil Code as "a contract whereby two or more natural or legal persons undertake to participate in a joint activity by contributing a work share, property, or money, with aim of sharing the profit that may result or achieving savings or reaching a common economic objective, and they also bear the losses that may arise therefrom".

Companies, according to jurists consensus, are divided by their subject matter into civil companies when their activity is civil in nature, such as education, medicine, law, engineering, etc., and commercial companies when their activity is commercial. However, Algerian legislator did not rely solely on substantive criterion to determine commercial character of a company; he also adopted formal criterion. Pursuant to the first dash of Article 544 of the Commercial Code, the commercial character of a company is determined either by its form or subject matter².

In contrast, second dash of same article affirms that general partnerships, limited partnerships of both types, limited liability companies, and joint-stock companies of both types are commercial companies by their form, regardless of their subject matter, whether civil or commercial. The legislator reinforced this position with second dash of Article 03 of Commercial Code, which considers any activity, whether civil or commercial, exercised in one form of companies mentioned in second dash of Article 544 above as a commercial activity according to form, subject to the provisions and rules of commercial law³.

The Algerian legislator did not limit regular commercial activities according to their form to commercial companies only, as established by French legislator, but expanded them to include agencies and business offices, whatever their purpose, which we will analyze and detail in the following branch.

Second Branch: Agencies and Business Offices, Whatever Their Purpose

Alongside commercial companies, the Algerian legislator, in third dash of Article 03 of Commercial Code, considered services provided by agencies and business offices, whatever their purpose, as commercial activities by their form. The wisdom intended by legislator behind this is to protect clients of these agencies, which provide diverse services covering various fields such as tourism and travel, advertising and publicity, news, employment, marriage, etc., provided that these services are not free but are

¹ Executive Decree No. 95-438 of December 23, 1995, concerning provisions application of Commercial Code relating to joint-stock companies and groupings.

² عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، الحل التجاري، الشركات التجارية، مرجع سابق، ص115.

³ In this connection, it should be observed that joint-account companies are commercial when their object is commercial, and civil when their object is civil, given that provisions of Articles 03 and 544 of Algerian Commercial Code are exhaustive rather than illustrative; accordingly, neither analogy nor extensive interpretation thereof is permissible.

provided for consideration, whether a pre-agreed amount or a percentage of value of transaction mediated¹.

The legislator conferred commercial character on the services provided by these agencies and business offices according to formal criterion, regardless of nature of their activity, whether it speculating consists on the others business or mediating in transactions completion. The matter does not stop at this point but goes beyond to include even the civil activity of these agencies. Through this approach, he seeks to provide better protection for the clients of these agencies by subjecting their transactions to the provisions of commercial law, thereby subjecting them to the bankruptcy system, whose rules are characterized by severity and strictness, in addition to subjecting them to the rules of judicial jurisdiction of both types and the rules of evidence that apply exclusively to commercial transactions².

However, it is noteworthy that the services provided by agencies and business offices closely resemble brokerage and commission agency operations, which the legislator classified as commercial activities according to subject matter (isolated commercial activities) in dash 13 of Article 02 of Commercial Code³. Nevertheless, the Algerian legislator's classification of these services as commercial activities according to their form does not pose any legal issue or lead to contradiction, as both are considered commercial activities, although we prefer their classification as commercial activities according to their subject matter, as established by French legislator, as previously mentioned.

Furthermore, Algerian legislator did not rely solely on formal criterion to determine non-original commercial activities but also adopted a mixed criterion combining both personal and objective criteria, relying on person capacity performing activity (the merchant) on one hand, and on association and connection of this activity with the merchant's business or the needs of his establishment on other. We will address this activity type in detail in following section.

3. Section Two: Commercial Activities by Dependency

To elaborate further on commercial activities by dependency, it is necessary first to address content of theory of commercial activities by dependency (Subsection One). Furthermore, necessity demands, for a thorough understanding of this topic, to address the scope and application field of commercial activities by dependency (Subsection

¹ نادية فضيل، القانون التجاري الجزائري، الأعمال التجارية، التاجر، المحل التجاري، مرجع سابق، ص133.

-Agencies and business offices of various activities have experienced an unprecedented influx and unmatched increase in client demand for their services, driven by cultural awareness and sense of responsibility that have recently permeated society, thereby prompting these agencies to endeavor to offer enhanced services at competitive rates .

² عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص34.

³ الأزهر لعبيدي، مرجع سابق، ص80

Two).

3.1 Subsection One: Conditions Required for Theory Application.

To understand content of theory of commercial activities by dependency, we must first address basis upon which it was built (First Branch), and secondly its two conditions: first condition of merchant's capacity in person performing the activity (Second Branch), and second condition of connection of this activity with the merchant's business or needs of his establishment (Third Branch).

First Branch: The Theory Basis.

The theory of commercial activities by dependency is based on two foundations. One is logical, requiring that commercial character be conferred upon all activities related to merchant's business, so that commercial life is an indivisible unit in which both principal and accessory activities are subject to a single legal system, whether in terms of judicial jurisdiction or applicable law, in line with general principle that "the accessory follows the principal in judgment"¹.

In addition, there is a legal basis found in Article 04 of Algerian Commercial Code, which states: "The following are considered commercial activities by dependency: - Activities performed by the merchant relating to practice of his commerce or needs of his establishment- Obligations between merchants."

Upon scrutiny and examination of this article content, it becomes clear that for an activity to be considered commercial by dependency, it requires that the person performing it be a merchant, that it relates to practice of his commerce or needs of his establishment, or that it arises from obligations between merchants. The latter suggests that obligations must be between two merchants. However, the prevailing opinion in jurisprudence and case law in both Egypt and France holds that it is sufficient for one of them to be a merchant, regardless of whether the other party is a merchant or not. Once one of parties to obligation is a merchant, it is sufficient to activate the theory of commercial activities by dependency.

Second Branch: The Merchant's Capacity in Person Performing the Activity

First, Algerian legislator defined merchant in Article 01 of Commercial Code as: "Any natural or legal person who practices a commercial activity and takes it as a habitual profession, unless the law provides otherwise".

¹ عبد القادر البقيرات، مبادئ القانون التجاري، الاعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص35.

-عمار عموره، شرح القانون التجاري الجزائري، الاعمال التجارية، التاجر، الشركات التجارية، مرجع سابق، ص.ص78-79

-It should be emphasized that commercial activities by dependency are inherently civil in nature and fall outside statutory enumeration of activities set forth in Article 02 of Algerian Commercial Code, which lists original commercial activities. Consequently, when such activities are carried out by a person who is not a merchant, they retain their strictly civil status.

From the preceding dash, it is understood that acquiring the status of a merchant requires a conditions set. For example, a natural person must practice commercial activities in their own name and for their own account, in addition to possessing commercial capacity or being registered in commercial register pursuant to Article 21 of same law. Registration in commercial register is a conclusive presumption of acquiring merchant status, not admitting proof to contrary. If it is a legal person, such as commercial companies, it acquires commercial status from its registration date in commercial register, as affirmed by Article 549 of the same law¹.

Third Branch: Activity Connection with Merchant's Business

Upon scrutiny of first dash of Article 04 of the Commercial Code, it becomes clear that performance of an activity by the merchant alone is not sufficient for it to be considered a commercial activity by dependency; it must also relate to his commerce practice or the needs of his establishment. If one of two conditions is lacking, the theory of commercial activities by dependency cannot be applied, and the performed activity retains its civil character. It is sufficient that the activity occurs in connection with the merchant's practice of his business, even if there is no direct relationship between the performed activity and merchant's business².

The connection of activity with merchant's business is not necessarily associated with profit-making, according to what Belgian case law has established, which has been subject to severe criticism from near and far. Belgian jurisprudence strongly criticized the case law on the basis that making the connection of the activity with the merchant's business dependent on profit-making would empty the theory of commercial activities by dependency of its content and render it useless. The French and Egyptian jurisprudence and case law did well when they established that the mere existence of a connection between the activity and the merchant's business is sufficient to fulfill the second condition, without associating it with profit-making³.

This is the same approach adopted by Algerian legislator in Article 04 mentioned above, which we have appreciated and approved. However, we have criticized his use of the phrase "relating to the practice of his commerce" and would prefer to replace it with "relating to the practice of his activity" so that it applies to the merchant as a natural or

¹ عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص 101.

- عمار عموره، شرح القانون التجاري الجزائري، الأعمال التجارية، التاجر، الشركات التجارية، مرجع سابق، ص 149.

² الأزهر لعبيدي، مرجع سابق، ص 83-84.

³ مصطفى كمال طه، وائل أنور بندق، أصول القانون التجاري، دار الفكر الجامعي، الإسكندرية، مصر، 2013، ص 110.

- محمد السيد الفقي، مبادئ القانون التجاري، منشورات الحلبي الحقوقية، بيروت - لبنان، 2002، ص 127.

- In this connection, it is worth noting that Tunisian legislator, under Article 04 of Commercial Code, has subjected all legal acts and activities incidental to trade exercise to provisions and rules of Tunisian Commercial Code, deeming all acts and activities carried out by a merchant to be incidental to his trade practice, absent evidence to contrary.

legal person. The companies mentioned in Article 544 of the Commercial Code have their commercial character determined by their form, regardless of their subject matter; in other words, they are considered commercial even if their activity is civil, as they acquire commercial character from their form, according to second dash of Article 03 of same law.

Unlike commercial activities according to form, which are enumerated exhaustively, the legislator did not enumerate commercial activities by dependency exhaustively or illustratively, contenting himself with addressing the conditions for their application, which opens the door for analogy to determine whether activities fulfill these conditions and thus whether they fall within the scope of commercial activities by dependency or not.

As for application scope of this theory, Algerian legislator limited it to obligations arising between merchants, which we will analyze and detail in following subsection.

3.2 Subsection Two: Application Scope of Theory

Discussing the application scope of theory of commercial activities by dependency leads us to discuss two main approaches. The first approach lies in contractual obligations, which we will analyze and detail in First Branch, while the second approach lies in exchange bill, which we will analyze and detail in Second Branch.

First Branch: Contractual Obligations

Merchants sometimes conclude contracts relating to their commercial activity or the needs of their establishment, such as purchasing furniture and office equipment for their premises, in addition to concluding insurance contracts, lease contracts, renovation and redevelopment contracts, etc. However, some contracts have a special status, such as suretyship contracts, employment contracts, and contracts for sale of a commercial establishment. Jurisprudence has been diverse and conflicting regarding these contracts.

For example, a suretyship contract is a gratuitous contract and is a civil contract even if its subject is the suretyship of a commercial debt, and even if the surety is a merchant. This was expressly affirmed by Article 651 of Algerian Civil Code. However, suretyship arising from the guarantee of a exchange bill as a collateral guarantee or from its endorsement constitutes a commercial activity according to form, as affirmed by first dash of Article 03 of Commercial Code. In this regard, it is worth noting that in second dash of Article 651 mentioned above, the Algerian legislator used the phrase "commercial instruments", which is misplaced and does not align with content of Article 03 of Commercial Code. We hope that he will replace it with the term "exchange

bills"¹.

Moreover, a suretyship issued by a bank for one of its clients is, for bank, a commercial activity according to subject matter (an isolated commercial activity). However, if a merchant guarantees another merchant who is one of his clients, the suretyship in this case is a commercial activity by dependency. Accordingly, it can be said that suretyship is a civil contract as a general rule and exceptionally a commercial contract in three cases mentioned exhaustively.

Furthermore, an employment contract concluded between a merchant and one of his employees retains its civil character for employee and is considered a commercial activity by dependency for merchant. In contrast, a contract for the sale or purchase of a commercial establishment is a commercial activity according to form for both parties, whether they are merchants or not. This was expressly affirmed by fourth dash of Article 03 of Commercial Code. In addition, a contract for sale of a commercial establishment can be an isolated commercial activity (according to subject matter) when conditions for purchasing movables for resale are met, on basis that a commercial establishment is an intangible movable asset².

However, it is noteworthy that scope application of theory of commercial activities by dependency is not limited to contractual obligations but extends to exchange bill, which we will analyze and detail in following branch.

Second Branch: Non- Contractual Obligations

The application scope of theory of commercial activities by dependency extends to exchange bill. An obligation arising from the merchant's tortious liability, whether due to unfair competition, misappropriation of a trade name belonging to another merchant, or imitation of a trademark owned by another, in such cases his tortious liability arises, and he is obligated to pay compensation, and this obligation is considered a commercial activity by dependency. Moreover, the merchant's obligation to pay compensation

¹ عبد القادر البقيرات، مبادئ القانون التجاري، الاعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص.36-37

-عمار عموره، شرح القانون التجاري الجزائري، الاعمال التجارية، التاجر، الشركات التجارية، دار المعرفة، الجزائر، طبعة منقحة ومصححة، 2010، ص80

- نادية فضيل، القانون التجاري الجزائري، الاعمال التجارية، التاجر، المحل التجاري، مرجع سابق، ص.118-119.

- In this connection, it is worth pointing out that Mauritanian legislator, under Article 05 of Commercial Code, has established a presumption that all acts carried out by a merchant, regardless of their nature, are deemed to be for his trade benefit.

² عبد القادر البقيرات، مبادئ القانون التجاري، الاعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص.37.

-عمار عموره، شرح القانون التجاري الجزائري، الاعمال التجارية، التاجر، الشركات التجارية، دار المعرفة، الجزائر، طبعة منقحة ومصححة، 2010، ص80

- نادية فضيل، القانون التجاري الجزائري، الاعمال التجارية، التاجر، المحل التجاري، مرجع سابق، ص.119.

arising from his liability for harmful acts arising from things, means, and equipment used in his business is also considered a commercial activity by dependency¹.

Furthermore, the merchant's obligation arising from unjust enrichment is considered a commercial activity by dependency, provided that this enrichment is connected to merchant's business². The same ruling applies to merchant's obligation to pay social security contributions, whether to the social security fund for wage-earning or non-wage-earning workers. However, his obligation to pay tax debts is not considered a commercial activity by dependency, and he cannot be declared bankrupt for failing to pay them. This is because obligation to pay taxes to state treasury is an obligation imposed on all citizens, whether merchants or non-merchants. This is what Algerian case law has established and adopted.

After all foregoing, we can conclude that application scope of theory of commercial activities by dependency is not limited to contractual obligations but extends to exchange bill. Furthermore, the criterion adopted by Algerian legislator in classifying commercial activities by dependency is a mixed criterion combining both purely personal character (merchant status) and objective character represented by activity connection with merchant's business and needs of his establishment.

4- Conclusion

The topic of non-original commercial activities under Algerian legislation is of great importance at present time, especially in light of increasing and unprecedented demand for this activity type, whether traditional or electronic, and in light of the need for Algerian legislation to reorganize them in line with requirements of prevailing commercial environment in the country and the requirements of the current stage. In this light, I have addressed this topic by dividing it into two sections, in which I attempted to shed light on the forms and manifestations of non-original commercial activities as provided for in Algerian legislation.

¹ عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص.37-38.

-عمار عموره، شرح القانون التجاري الجزائري، الأعمال التجارية، التاجر، الشركات التجارية، دار المعرفة، الجزائر، طبعة منقحة ومصححة، 2010، ص.81-82.

- نادية فضيل، القانون التجاري الجزائري، الأعمال التجارية، التاجر، المحل التجاري، مرجع سابق، ص.121.

- In this connection, it is noteworthy that Egyptian and French case law initially showed reluctance to apply theory of commercial activities by dependency beyond contracts realm, as the link between non-contractual obligations and trade exercise is less apparent than that of contractual obligations. Nevertheless, courts in both countries ultimately settled on applying theory of commercial activities by dependency to non-contractual obligations as well.

² عبد القادر البقيرات، مبادئ القانون التجاري، الأعمال التجارية، نظرية التاجر، المحل التجاري، الشركات التجارية، مرجع سابق، ص.38.

I have concluded with several findings, which I present as follows:

- First, I found that the Algerian legislator relied on two criteria to determine non-original commercial activities: the formal criterion (commercial activities according to form) and the mixed criterion combining both personal and objective criteria (commercial activities by dependency).

- I also found that commercial activities according to form are enumerated exhaustively, not illustratively. In contrast, Algerian legislator did not enumerate commercial activities by dependency exhaustively or illustratively, contenting himself with conditions for their application, which opened the door for analogy and expansion.

- Among my findings is also that Algerian legislator has expanded commercial activities according to form compared to his French counterpart, who limited them to dealings in bills of exchange and commercial companies.

- I also found that the reference contained in Article 393 of Algerian Commercial Code is incorrect. When the legislator referred us to Article 191 of Civil Code, he erred. The correct reference is second dash of Article 103 of same law.

- I also found that Algerian legislator classified dealings in exchange bills among commercial activities according to form between persons, whether merchants or non-merchants. However, this ruling is confined to exchange bills only, not to other commercial instruments such as cheques and promissory notes.

- Among my findings is also that the commercial character follows the transaction relating to commercial establishment itself and does not follow the person performing it. Moreover, operations relating to business assets that are considered commercial activities according to their form are not limited to sales, purchases, mortgages, and leases only, but extend to other transactions that take the same ruling as sale of a commercial establishment, such as a promise to sell it, contributing it to the capital of a company, or transferring ownership of a commercial establishment by partition or auction.

- I also found that fifth dash of Article 03 of Algerian Commercial Code contains a serious error in its Arabic version. This error consists of the addition of the word "commercial", which distorted dash meaning.

- I also found that commercial activities by dependency are based on two foundations, one logical and other legal.

- I also found that the phrase "obligations between merchants" contained in last dash of Article 04 of Algerian Commercial Code suggests, from a first and superficial reading, that required obligations must be between two merchants. However, the logical and correct interpretation of this phrase requires that one of them be a merchant, regardless of whether the other party is a merchant or not.

- Among my findings is also that Algerian legislator considered the mere connection and association of the performed activity with merchant's commercial activity sufficient to fulfill the second condition required for application of theory of commercial activities by dependency, regardless of whether this activity is associated with profit-making or not. We have appreciated and approved this position. However, we have criticized the legislator's phrase use "relating to practice of his commerce" in first dash of Article 04 of Commercial Code, and we would prefer to replace it with "relating to the practice of his activity" to include all merchants, whether natural or legal persons.

- I also found that suretyship is a civil contract as a general rule and exceptionally a commercial contract in only three cases enumerated exhaustively.

- I also found that the scope of application of commercial activities by dependency includes contractual and bill of exchange.

- Among my findings is also that the merchant's obligation to pay tax debts is not considered a commercial activity by dependency, and therefore he cannot be declared bankrupt merely for failing to pay them.

Based on foregoing and in light of findings reached, I have decided to present my proposals as follows:

- Algerian legislator should reduce the scope of commercial activities according to form to include dealings in exchange bills, commercial companies, and operations relating to business assets only.

- Algerian legislator should correct the error in the reference contained in Article 393 of Commercial Code.

- Algerian legislator should delete the word "commercial" from fifth dash of Article 03 of same law in its Arabic version.

- The Algerian legislator should replace phrase "relating to the practice of his commerce" in first dash of Article 04 of Commercial Code with phrase "relating to the practice of his activity".

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