



LISBON  
**SCHOOL OF  
ECONOMICS &  
MANAGEMENT**

UNIVERSIDADE DE LISBOA

**Business Law**

**Developed Summaries and Case Studies**

**David Falcão**

## **1<sup>st</sup> Lesson**

### **1. Object of Business Law. Companies - Concept and Types**

#### **1.1 Concept and object of Commercial/Business Law**

Commercial Law regulates all aspects of business, including advertising, marketing, operation of companies and corporations, competition, bankruptcy, industrial property, banking, contracts and trade in general.

It can be defined as the branch of Law that regulates the activity of the most important economic subjects of the market, the sole trader and commercial partnership companies, and every business that operationalize the economic activity of traders and all with that they are related to on the exercise of that activity and its object is the trade.

It is however to be noticed that the word trade is not always used in the same way, on one hand, there is the economic trade, being a set of mediation activities between production and consume. But this is not the trade meaning in commercial law way. This branch of law applies only to the activities described in article 230 of the Commercial Code (trade in legal sense). So a commercial company is the one that develops one or some of the activities provided in the article mentioned, namely:

- Transforming through manufacturing or factories raw materials, employing for this, or only workers or workers and machines;
- Provide, at different times, products, to persons or to the State by an agreed price;
- Agency business or auctions for others in an office open to the public, and by stipulated salary;
- Exploit any public spectacles;
- Edit, publish or sell any scientific, literary or artistic works, except if the author that edits, publishes or sells;
- Edify or build houses for anybody with materials provided by the edifier or the builder;

- Transport regularly and regularly, by water or by land, any persons, animals, tools or goods of others.

In turn, the Commercial Law does not regulate all economic activities, the article 230 excludes of the commercial activity the extractive industries, agriculture, the liberal professions and even artisans.

## **1.2 Commercial acts**

The article 1 of the Commercial Code establishes that the Commercial Law regulates the commercial acts whether are or not traders who intervene on them.

In order to understand what commercial act means we need to analyze the two parts of the article 2 of the Commercial Code:

The first part of the article states that "commercial acts will be considered, all those who are found especially set out in this Code." – Objective commercial acts

In this way, commercial acts are:

First, those who are regulated in the Commercial Code (for example, commercial buy and sell agreement, commercial mandate, commercial pledge, commercial deposit, commercial transportation, etc.) but also at some later legal documents published after the Commercial Code (1888) (for example the agency agreement - Decree Law n.º 178/86);

Secondly, certain acts simultaneously regulated in Civil Code and Code Commercial since they have specific commercial features. (For example, non-commercial buy and sell agreement, non-commercial mandate, non-commercial pledge they are civil non-commercial contracts. They will be commercial if they have some specific commercial features).

These are objective circumstances, which has nothing to do with the subjects who practice the act, so they are designated as objective commercial acts. They can be practiced by any individual, trader or not.

For example David, professor, buys a classic car for resale. He's practicing an objective commercial act because the buy-resell agreement is provided in

Commercial Code as a commercial contract and therefore a commercial objective act. If David was a trader the situation will be exactly the same.

In what concerns to the second part of the article 2 of the Commercial Code, are also considered as acts of commerce "all contracts and obligations of traders who are not exclusively of civil nature..." – Subjective commercial acts

It is therefore those acts that are commercial because they are practiced by a trader on his own activity. Hence they are called subjective acts: is the quality of the subject that practices them, which gives them commerciality. However it will not be a subjective act even if practiced by a trader if they are exclusively of civil nature, if they are not related to their commercial activity. For example, if a trader buys a mobile phone for personal use the act is not commercial, is merely civil, and is a civil buying and selling agreement provided in the Civil Code.

We can also distinguish bilateral commercial acts from unilaterally commercial acts if they have commercial nature for both sides or just for one of them, respectively.

For example if I apply for a loan to buy a house the act is commercial for the bank but not for me; But if a trader asks for a loan to buy goods for his company, the act is commercial for both parties

### **1.3 The concept of trader and their main obligations**

In accordance with article 13 of Commercial Code, traders are, on the one hand the commercial partnership companies and, on the other hand the individual person (natural person), which, having legal capacity, practices regularly and on his own name for profit, commercial acts, or performs a commercial activity.

In what concerns traders obligations the first one is to adopt a firm. The firm is one of the hallmarks of the traders, the name that he uses to identify itself in the exercise of the economic activity which must obey to the principles of truth (the elements of firms should be true and not misleading as to the identification, nature or activity of its holder), novelty (firms should be different and cannot be confused or mistaken with the registered or licensed in the same context of exclusivity) and exclusivity (after the final registration is granted the right to the exclusive use of firm in the territorial scope specially defined for the entity concerned).

The sole trader must adopt one firm made up of its civil name, full or abbreviated as necessary to identify the person, and can add a nickname or an expression alluding to the activity.

The commercial partnership companies firm can be constituted by the name of some or all of the partners, the mention of the object of the activity or be mixed but in the end should be adopted the initials Lda. in Private Limited Companies and SA in Anonymous Corporations.

The second trader's obligation is bookkeeping. The bookkeeping consists of recording the facts that can influence the operations and financial position of the traders, comprising also the registration of internal deliberations of companies.

The third is to register the facts subject to it. Registration, has the task of publicizing the situation of sole trader, corporations, individual establishments of limited liability, civil law partnership companies in commercial form and given the certainty of transactions. The registration condition is the material effectiveness against third parties, but effectiveness may be dependent on publication. Registration is also a condition of existence and acquisition of legal personality by the corporations.

And fourth, accounting that consists on the synthesis of trader assets and liabilities.

#### **1.4 The concept of company and company types**

In a broad sense we can define company as an autonomous organization of human and material resources (people, goods and services), carried out by the businessman, for the pursuit of economic activity directed at the market.

Any company is engaged in the practice of a certain economic activity. Will be commercial or non-commercial companies, respectively, if economic activity is regulated or not by commercial law. Companies, commercial or non-commercial, may be a natural (individual) person or a legal person (collective person). As an example of non-commercial individual person company we can mention the farmer or artisan. As to non-commercial legal person companies concerned, we have, among other examples, cooperatives and civil law partnership companies in commercial form. In the case of individual commercial

companies we can distinguish two figures: the sole trader without limitation of liability and the (EIRL) - individual establishment of limited liability. As for the collective commercial companies we can distinguish the most common: commercial partnership companies, in Portugal the most important are the Private Limited Company/*Sociedade por Quotas* (Ltd./Lda.) and Anonymous Corporation or Public Limited Company/*Sociedade Anónima* (PLC/SA).

### **1.5 The commercial establishment**

The commercial establishment is a set of goods, affected to the exercise of an economic activity organized and unified by the same function and respective holder.

The commercial establishment transmission *inter vivos* may be temporary or permanent. If temporary is called assignment of contractual position whereby the establishment holder provides to another the commercial exploitation of his establishment temporarily for cash. If permanent is named trespass and consists of the agreement by which it is transmitted the establishment as a unit.

### **Case studies**

- 1- "A", holder of a commercial establishment that is dedicated to the sale of mobile phones, has acquired two mobile phones, the first with the intention of using at the service of his company, and the second with the intention to offer to a friend. Qualify, in a commercial point of view, the purchase of the two phones.**

On the first purchase, we are facing subjective commercial act because they it is practiced by a trader in his own activity. Is the quality of the subject that practices it, which gives it commerciality. However it will not be a subjective act even if practiced by a trader if it is exclusively of civil nature, if it is not related to their commercial activity so the second act is merely civil, non-commercial because it nothing has to do with the business activities of "A".

**2- "B", farmer sold a plot of land that he owned and where he pursued his agricultural activity, to "C", which will use it as a dump trucks of its transportation industry.**

**a) Is "B" a trader?**

The article 230 of the Commercial Code, excludes of the commercial activity the agriculture, as well as the sales that the farmer does of products of his property. So "B" is not a trader because he doesn't develop a commercial activity.

**b) Is "C" a trader?**

In accordance with article 13 of Commercial Code, traders are, on the one hand the commercial partnership companies and, on the other hand the individual person (natural person), which, having legal capacity, practices regularly and in his own name for profit, commercial acts, or performs a commercial activity. In this particular case the transport activity so he is a trader.

**3- "D" and "E" are intended to constitute among themselves a commercial partnership company whose object is the sale of footwear. They intend to adopt as a firm "Zé Manel – Comércio de Bicicletas, Lda.". Can they do it?**

The firm is one of the hallmarks of the traders, the name that he uses to identify itself in the exercise of the economic activity which must obey to the principles of truth (the elements of firms should be true and not mislead the consumers into error about the identification, nature or activity of its holder), novelty (firms should be different and cannot be confused or mistaken with the registered or licensed in the same context of exclusivity) and exclusivity (after the final registration is granted the right to the exclusive use of firm in the territorial scope specially defined for the entity

concerned). So, the firm violates the principle of truth and cannot be adopted.

**4- Noémia Nunes wants to open a fruit store and plans to adopt as a firm "Oscar Osvaldo – Fruta Fresca". Can she adopt it?**

First, The sole trader must adopt one firm made up of its civil name, full or abbreviated as necessary to identify the person, and can add a nickname or an expression alluding to the activity. Second, the firm violates the principle truth because it misleads as to the identification of the trader. So, she can't adopt that firm.