



Department of Banking, ACC IT

College of Financial and Administrative Sciences

University of Cihan /Sulaimanyah campus

Subject: Commercial Law

Course Book – Year 2

Lecturer's name BSc, PGdip, MSc, PhD

Hiwa Ali Hussein/ MSc.

Academic Year: 2015/2016

Course Book

1. Course Name	Commercial Law
2. Lecturer in charge	Hiwa Ali Hussein
3. Department/ College	The College of Financial and Administrative Sciences
4. Contact	e-mail: hiwamercantile@gmail.com Tel: 07702212261
5. Time (in hours) per week	For example Theory: 2 Practical: none
6. Office hours :During Class	Availability of the lecturer during the week
7. Course code	LAW13102
8. Teacher's academic profile	E.g. Webpage, Blog, Model... or few paragraphs about not less than 100 words
9. Keywords	Commercial acts, merchant, firms law, negotiable instruments

10. Course overview:

(In this section the lecturer shall write an overview about the subject he/she is giving. The course overview must cover:

1-The importance of studying the subject

This could be stood for as the following:

1-Introducing the students to the commercial act and the notion of the "merchant" and their relevant theories. However this entails the students to know the basic tools that are inevitably necessary to the work of the merchant such as the trade marks, negotiable instruments, the recourse to credit and the commercial publicity and reputation.

2-Enabling the students to know the attributes of the commercial act, mainly in view of speediness, credit and trustworthiness of the merchant. All these are necessary for the completion of the notion of the commercial acts and merchant in the mind of the students.

3-Shedding the light on the fundamental role the commerce plays in the development of the national economy and the mutual relationship between them, bearing in mind the latest economic and financial crisis that undermined the economy of some largest economies, like the USA affected by the 2008 financial crisis. So, it turns important for the student to know the relation between the economy, including the commerce on the one side, and the law and legal regulation at the other side. Thus, the course at issue shows the guiding role of the law in the field of economy.

4-Having been taught the basic ideas and legal rules of commercial law, the students will be educated with the necessary knowledge to face up the daily necessities and needs that could encounter them at the future, with which they should deal and get experienced on how to consider, such as the notion of commercial contract, the obligations of the merchant, the necessary requirements for the trade-mark registration in the chamber of commerce. This implies that the more they get about commercial law, the more they can easily understand the working mechanism of trade and how to practically deal with it successfully.

2-Understanding of the fundamental concepts of the course

This course is undoubtedly resting on some fundamental points, topics, theories and legal rules that are all commonplace in the commercial life. The fundamental concepts of the current course are : the commercial acts, the commercial projects, the merchants, the corporations and firms and their

various organs such as their boards, the trade-marks, commercial brands, negotiable instruments: the check, the promissory note, bill of exchange, the legal system of commercial acts, insurance the banking or acts of bank. In this course these topics would be taught to the students, as they, together, shape the whole mechanism of the work of commercial law and the legal regulation of the trade in general. These syllabuses are the basic features of commercial law with which the students should be acquainted.

3- Principles and Theories of The Course

The course is dominated and overruled by some principles and theories which relate to the commercial acts and the merchant. They could be cited as :

- The principle of trust and confidence that are to be existent between the merchants
- The speediness and quickness in respect of the performance of the commercial acts.
- The means and methods of proof are to be compatible with the attributes the commercial acts are marked with. So the initial point is that the formality should be kept to the minimum lest it can obstacle the growth of the commerce in general.
- The theories of the distinction between the civil acts and the commercial acts like the SPECULATION THEORY, the objective and the subjective theories for the specification of the scope of commercial law, the formal and the objective theories for the distinction between the commercial and non-commercial firms and companies
- The norms and customs that are extant in the room of banking, and how the vast majorities of them took their ways to written law being codified.
- The formality that dominates the making of negotiable instruments, such as the use of written form by whatsoever device or handwriting.
- The aggravation in dealing with the debited who is to pay the sum of a negotiable instrument and non-allowance to grant him a judicial interval (period) so as to get rich and charge his financial duties and loads.
- The bankruptcy and its varying types and their applicable rules according to the Iraqi law of commerce No.30 of 1984.

4- A sound knowledge of the major areas of the subject

There are some areas of the topic that have a priority and should be somewhat focused on more than other areas of the course. This could be exemplified by the obligations of the merchant such as having the due trade activities log, and the registration of some fundamental information at the chamber of commerce and having a commercial brand. The topic of bankruptcy and its rules are another preferable topic. The same could be said to the trade marks, patent, the negotiable instruments and their function: to play the role of the money.

Sufficient knowledge and understanding to secure employment

Studying the topics and syllabuses of the current course will enhance the skills, qualification of the student and qualifies him

her to employ in both the governmental sector and the private sector as:

- He/ She would be of a good theoretical experience and knowledge to know in which mechanism the commercial acts work and the way they should be dealt with.
- He/ She would be able and well qualified to work in the field of contract and its conclusion, whether in the governmental sector or the private sector.
- She/ He will be able to know how is a contract legally concluded apart from the legal vices and defects as they are regulated in the civil law, such as error or exploitation.
- She/ He will be capable to get the notion of law and how it neutrally deals with all the people alike, away from any kind of distinguishing and bias against any person or party. Namely, how could to enforce and apply the law equally.
- She/ He will be to able and well qualified to take in her/ his mind the necessary procedures for the proof and how could a document be legally regulated as to yield all the legal effects between the contracting parties.
- She/He will be acquainted with an important fact in respect to some basic matters such as the commercial competition, the core of the commitments of the merchants, the protection of the commercial credit, the legal protection of the necessary tools for trade such as trade marks, commercials (advertisements), and negotiable instruments. In this respect she/he will be know the legal rules applicable thereon.

- She/ he will know how a trade activity could serve the whole economy.
- He/She will get the importance of the role of banking and the important roles of the banks and their part in financing the projects and the entrepreneurships. Thus the protection of the whole Kurdistan economy would be very clear and applicable practically.

This should be not less than 200 words

11. Course objective:

This should be not less than 100 words

The objective of this course could be abbreviated into the following :

- 1-To introduce the students to the notion of contract which is broadly adopted in the commercial setting and life.
- 2-To introduce the essence of commercial acts and how are they regulated by the Iraqi Law.
- 3-To introduce the notion of the merchant, and who and how one can become a merchant? If so, what shall he/she be bound with, i.e. what are the technical and legal obligations that he/she shall bear. Contextually, the student will know the punishment that is inflicted on the merchant when he/she did otherwise, namely he/she doesn't observe his/her obligations.
- 4-To introduce the students with the legal shortcomings and defects that dominate the Iraqi law and how to amend the relevant provisions and rule in Iraqi law of Commerce No.30 of 1984.
- 5- He/she should be educated on the traits and peculiarities of the commercial acts, and the basic principles and theories of commercial law and commercial acts.

12. Student's obligation

In this section the lecturer shall write the role of students and their obligations throughout the academic year, for example the attendance and completion of all tests, exams, assignments, reports , essays...etc

لئیرە مامۆستا بەرپرسیاریتی قوتابی خۆئیندکار ڕووندەکاتەوه سەبارەت بە کۆرسەکه بو نموونه ئامادهبوونی قوتابیان له وانهکاندا، له تاقیکردنەوهکاندا، راپۆرت و ووتار نووسین...هتد .

In this course, the students shall be bound with some fundamental duties that are necessary for the extant discipline imposed by the teacher:

- 1-He/She must not exceed the legally permissible rate of absence. So, he/she should be in a ceaseless course of attendance in the lecture room so that he/she can understand as far as possible of the topics taught.
- 2-The students shall actively take part in the lecture. This could be achieved by various comments, analysis, making the topic-related questions, making the necessary pursuit to what is elucidated and explained by the teacher in charge.
- 3-Preparing reports and papers that on specific commercial topics and subjects.
- 4-Making relevant presentations on specific commercial topics, prepared by the students.
- 5-The student shall be fully bound with keeping the silence and the regularity of the lecture room .No Noisy sounds or disturbances are allowed at it.
- 6-The student shall fully comply with the directives and instructions in force in the University of Cihan .

13. Forms of teaching

لیره ماموستا جۆری وانه ووتتهوه دهنووسیت، بۆ نمونه: داتاشۆ و پاوه ریپۆینت، سهه تهخته رهش، تهخته ی سپی، یان مهلهزمه... هتد

1-The teacher mainly uses the whiteboard to explain the lecture , using the erasable markers.

2-The main points of the topic are to be explained both in writing and verbally by the teacher, doing the best to enable the students fully get his explanation and clarification.

3-Meanwhile the teacher shall prompt the students to get engaged in a collective discussion on the topics at issue .

14. Assessment scheme

Breakdown of overall assessment and examination

دهنووسیت بۆ نمونه (تاقیکردنهوهکان یان نهزمونهکان) لیره ماموستا جۆری ههسهنگاندن ، راپۆرت نووسین، ووتار (پریزنهتایشن) ، کویزهکان، بیرکردنهوهی رهخنهگرانه تاقیکردنهوهی مانگانه و ماموستا چۆن ئامانه چهند نمره ی لهسه ده بییت . هتد... نووسین یان ئاماده نه بوونی خویندکار له پۆلدا نمرهکان دابه شه کات؟

Within the course the teacher has the discretionary authority on (10 Marks).The exam is evaluated on 30, in addition to these ten marks. The latter could be distributed as the following :

1-some 3 marks on the rate of attendance and the non-absence.

2- Writing the papers and reports or presentations on specific commercial acts.

3-The intelligence of the students is to be taken into account, i.e. how smart and clever he or she is?

4- The effective and active discussion made by the students, namely, having the pierced views on commercial topics.

15. Student learning outcome:

پیرکردنهوهی ئهم خانه یه زۆر گرنگه، ماموستا ده ره نه انجامه کانی فیر بوون دهنووسیت. بۆ نمونه: روونی ئامانجه سهه که کانی کۆرسه که (بابه ته که) بۆ خویندکار گونجاندنی ناوه رۆکی کۆرسه که به پیوستی ده ره وه و بازاری کار قوتابی چی نوی فیر ده بییت له ریگه ی پیدان ئهم کۆرسه وه؟

This should be not less than 100 words

The main objective of the course could be abridged as following:

1- How we can imagine the commercial acts? How had they been regulated by the Iraqi law of commerce?

2-Enabling the student to catch the flaws and defects that he see in the work of the commercial projects and the job of the merchant in practical life.

3- Getting the great role of the banks and banking, and the role of finance that it provides to the commercial projects.

4-It will be clear to the students, through the topics taught, how important is the role of the straightforward and honest practices of trade and how they can positively affect on the whole economy of a country. Contextually he would be capable to catch the positive role of these practices on the growth and deployment of trade and economy, meanwhile it will be gotten through that how could the bad and dishonest practices can lead to whole economic failure and financial crisis. So it will be possible for such a kind of trading to be a helpful factor to prevent the occurrence of financial problems and crisis. The fine practices and behavior of commerce will be having a good impact on the national economy.

5-The study of trade and commercial acts will help understanding the new development on the international scale and knowing the mutual impact between the national and international trade and economic system.

6- How could the national experiment get benefited from the international economy and that of leading economies, in particular how to employ the technology for the overall developing of trade and economy? This may be achieved by observing and watching the leading economies.

7- Perceiving the necessities and needs of sound and well-planned commercial policies and strategies.

16. Course Reading List and References:

▪ Key references:

- 1-د.ياسم محمد صالح : القانون التجاري(العراقي / النظرية العامة للعقود التجارية والتاجر، العاتك لصناع الكتاب.
- 2-د.فائق الشماع ود.ياسم محمد صالح، القانون التجاري.
- 3- مصطفى كمال طه : أساسيات القانون التجاري، منشورات الحلبي الحقوقية، بيروت، لبنان، 2006.
- 4-د.أكرم ياملكي : القانون التجاري، منشورات جامعة جيهان، أربيل ، إقليم كردستان العراق، 2014.
- 5- د .عزيز الكيلي : القانون التجاري، النظرية العامة للأعمال التجارية والتاجر، دار الثقافة للنشر والتوزيع، عمان ، الأردن، 2005.
- 6-د.ياسم محمد صالح، الشركات التجارية، بغداد، العراق.
- 7-د.حسين توفيق فيض الله :مستجدات قانون الشركات العراقي، مكتبة التفسير اربيل، 2005.
- 8-د.عزيز العكلي :الأوراق التجارية ، دار الثقافة للنشر والتوزيع، عمان الأردن، 2006.
- 9-د. اكرم ياملكي:الأوراق التجارية /منشورات جامعة جيهان ، أربيل، إقليم كردستان العراق، 2014.
- 10-د.سميحة القليوبي، الأوراق التجارية، مصر.
- 11- قانون التجارة العراقي رقم 30 لسنة 1984 وقانون التجارية العراقي رقم 149 لسنة 1970 والقوانين المكملة أو ذات الصلة به.

▪ Useful references:

1- القانون المدني العراقي رقم 40 لسنة 1951.

2- مؤلفات الدكتور عبد الرزاق السنهوري: نظرية العقد، نظرية الحق في الفقه الإسلامي، الوسيط في شرح القانون المدني بأجزائه المختلفة.
 3- النظرية العامة للإلتزام في القانون المدني العراقي: د. عبد المجيد الحكيم والأستاذ محمد طه البشير، العاتك لصناعة الكتاب، مصر.

▪ Magazines and review (internet):

- 1- مجلة القضاء
- 2- مجلة القانون والسياسة الصادرة عن كلية قانون جامعة بغداد
- 3- مجلة العلوم القانونية والسياسية الصادرة عن كلية قانون جامعة السليمانية
- 4- مجلة الرافدين للحقوق الصادرة عن كلية قانون جامعة الموصل
- 5- مجلة ياسا ورامباري الصادرة عن كلية قانون جامعة صلاح الدين

Lecturer's name	17. The Topics:
Lecturer's name ex: (2 hrs) ex: 14/10/2015	In this section The lecturer shall write titles of all topics he/she is going to give during the term. This also include a brief description of the objectives of each topic, date and time of the lecture Each term should include not less than 16 weeks
	18. Practical Topics (If any)
Lecturer's name Hiwa Ali Hussein	In this section The lecturer shall write titles of all practical topics he/she is going to give during the term. This also include a brief description of the objectives of each topic, date and time of the lecture 1-,Preceded by a general overview on the commercial act, its nature, its requirements: the meaning of commercial law, its sources: commercial legislation, civil law, commercial norms (practices of merchants) and the contract, supplemented by the judicial interpretation By this subject the student will have the due knowledge on "what is the commercial law"?, how will it be applied on commercial disputes viewed by the courts ,and what are the sources of the legal commercial rules applicable on the case at issue. 2-The scope of commercial law and the relevant theories, the situation in Iraqi law of commerce no. 30 of 1984.How the commercial acts are regulated in Iraqi law? How can we distinguish the commercial act from the other non-commercial acts, like civil ones? The legal

theories offered for that purpose, in detail taking into account the pros and cons of each of them.

Here the student will be enabled to easily distinguish the commercial acts from other ones, and get acquainted with their legal regulation in Iraqi law, in addition to examine the insufficiency and shortcomings of the legal regulation in this respect.

3-The legal status of the commercial acts, i.e. the harmonious set of rules applicable exclusively on the commercial acts in some fields like: the legal jurisdiction, bankruptcy, commercial interests, the judicial jurisdiction and so on.

Here the student will know the peculiarity (specialty) of the commercial act and its legal system.

4- The Classifications and sub-classification of the Commercial acts .The detailed study of each of them separately.

By this the nature of each of the classified commercial acts will be known by the student and explained to her/him.

5- The complement of the kinds of commercial acts in general.

By this the student will get the knowledge on each act specifically, and denoted to the most modern and fashionable practices on it , such as the patents taken on pharmaceutical products, and the technological development in the room of industry, Genetically modified food, intellectual property and its trade related aspects ,microbiological inventions....etc.

6- The notion of the (MERCHANT) that is to be deemed as a merchant? The individual merchant and the commercial firms, the conditions and criterion for acquiring the description of a merchant in commercial law generally and according to Iraqi law of commerce particularly. This includes the professionalism, the commercial capacity, and the personal performance of the acts.

Through this the student will be how far one could be practically a merchant.

7-The Professionalism and the personal performance to the acts

This makes clear how far is important for the act to be done or performed by the person not as an agent.

8-The commercial capacity and its different cases as regulated by the civil law

Here different cases of capacity would be made clear so that the student know those who lack the legal commercial capacity to do commercial acts and become a merchant

9-The exception of some people who are not deemed a merchant.

This explains why they are legally not deemed as a merchant.

10-The duties of the Merchant :1- the registration of trade-related information in chamber of commerce 2- putting 1 commercial brand 3-Avoiding the illegal commercial competition

Starting with the first duty (registration)

The registrable information for the individual merchant
the registrable information for the commercial companies (firms)

11-The effects of registration and the penalties sanctioned for the failure in registration

This is useful for transparency and public access.

12-Trade Marks, Brands, commercial designs and industrial portrait

This is useful for the publicity and reputation of the traders.

13-Putting and practically using a brand by a merchant. Its importance lies in distinction between different kinds of entrepreneurships and their being preferable by the public.

14- The definition and importance of commercial companies in trade and economy and the general conditions for setting up a company.

This explains the importance of companies in the whole national economy and the commercial developments.

15-The Corporate Personality of the company in Iraqi Law and the legal consequences of it.

This is mainly the result of the legal personality of the

corporation and its legal system, according to each kind of the companies.

16-The Partnership الشركة التضامنية-

its meaning, establishment, the legal system

17-The Contributory company (Share-holding)

Its nature, establishment, bodies, and the legal sides of its work.

18-The banking and acts of banks, including credit and these topics:

First-Money Depository الوديعة النقدية

second -current Account الحساب الجاري

19-Third-Letter of guarantee خطاب الضمان

Fourth-Documentary letter of Credit الإ اعتماد المستندي

20-sixth-Bank-granting loan القرض المصرفي

seventh The Simple credit الأ اعتماد البسيط

Generally these topics would be explained to render the student know what each of them is and how can it create legal contractual relations within the commercial setting.

19. Examinations:

1. Compositional: In this type of exam the questions usually starts with Explain how, What are the reasons for...?, Why...?, How....?

With their typical answers

Examples should be provided

أولاً/السؤال /من بين النظريات التي طرحت لتمييز الأعمال التجارية عن غيرها نظرية المضاربة ، ما هو مضمون هذه النظرية وماذا نقصد بها؟

الجواب/ نقصد بالمضاربة اي نشاط او عمل يكون مقصودا به الربح . والمضاربة تتضمن : 1- المخاطرة والمجازفة ، بمعنى ان النشاط يجب ان يقترن بمخاطر السوق وإحتمال الخسارة ، بحيث يمكن للعمل ان يحقق الربح ويمكن أن ييؤء بخسارة.وأي عمل يكون ربحه مضموناً ، مثل مال يحصل عليه الشخص عن طريق الهبة لايعتبر مضاربة لأنتفاء عنصر المخاطرة فيه. 2- السعي نحو تحقيق الربح، أي أن يحاول الشخص ان يحصل على ربح حتى وان لم يستطع الحصول عليه فعلياً، أو تكبد خسارة من اجل الحصول على الربح عن طريق توسيع شهرته وسمعته التجارية.

وهكذا نرى ان اهم عنصر في نظرية المضاربة هو السعي للحصول على الربح وتعظيمه ، بشرط ان يقترن ذلك بأحتمال الربح والخسارة في السوق.

ثانياً/السؤال/ ماذا نقصد بالنظام القانوني للعمل التجاري ؟ وم هي الجوانب التي تتضح فيها خصوصية العمل التجاري؟

نقصد بالنظام القانوني للعمل التجاري القواعد القانونية التي تطبق على العمل التجاري والتاجر بحيث لاتطبق تلك القواعد على غيرها من الأعمال او على غير التاجر.وتتضح خصوصية العمل التجاري من هذه النواحي:

- 1- من حيث إكتساب صفة التاجر
- 2- من حيث الأختصاص القانوني
- 3- من حيث الأفلاس كنظام تجاري
- 4- من حيث الفوائد
- 5- من حيث النفاذ المعجل
- 6- من حيث التنفيذ المباشر
- 7- من حيث الإستعجال
- 8- من حيث الإختصاص القضائي

ثالثاً/السؤال/ميز بين العمل المدني والتجاري من ناحية الفوائد .
الجواب/ لايجيز القانون المدني أن يتجاوز مجموع الفوائد التي يتقاضاها الدائن أكثر من راس المال بالنسبة للعمل المدني، في حين يجوز ذلك بالنسبة للعمل التجاري إذا كان العرف التجاري يقضي بذلك او يجري به.
كما أن الفائدة المركبة لايسمح به في إطار العمل المدني ولكن بالنسبة للعمل التجاري يكون مسموحا به اذا قضت به العادات والأعراف التجارية.

2. True or false type of exams:

In this type of exam a short sentence about a specific subject will be provided, and then students will comment on the trueness or falseness of this particular sentence.

Examples should be provided

س/ قِيم مدى صحة هذه العبارات وما إذا كانت صحيحة ام خاطئة وبين السبب في إجابتك

1- ان العمل المدني يحتاج الى عنصرى السرعة والإئتمان ولايقوم بدونهما.
الجواب/ ان العمل التجاري هو الذي يحتاج الى عنصرى السرعة والأئتمان ولايقوم بدونهما وبالتالي فان التاجر لابد ان يراعي عنصر السرعة والأئتمان في عمله ويقدم له القانون التسهيلات اللازمة لذلك وينظمها .

2- ان قانون التجارة العراقي قد إكتفى بالاخذ بالنظرية الذاتية في تحديد نطاق قانون التجارة فقط.

جواب/ خطأ. إن قانون التجارة العراقي قد أخذ بالنظرية الموضوعية بالدرجة الأساس وهو ما يتبين من عبارة المادة الرابعة من قانون التجارة (يسري هذا القانون على النشاط الاقتصادي..). والنشاط الإقتصادي يعني العمل التجاري والعمل التجاري يعكس مضمون النظرية الموضوعية التي ترى ان قانون التجارة هو قانون العمل التجاري. ولكن قانون التجارة العراقي قد اخذ بصورة ثانوية بالنظرية الذاتية أيضاً وهو ما يتبين من تعريف التاجر من أنه هو الشخص الذي يحترف التجارة ويمارس عملاً تجارياً بإسمه ولحسابه الخاص. وهذا إنعكاس لمنطق النظرية الذاتية التي ترى ان قانون التجارة و قانون التاجر ولا يطبق الا على التاجر.

3. Multiple choices:

In this type of exam there will be a number of phrases next or below a statement, students will match the correct phrase.

Examples should be provided.

20. Extra notes:

Here the lecturer shall write any note or comment that is not covered in this template and he/she wishes to enrich the course book with his/her valuable remarks.

يجب أن يكون من بين الأسئلة التي يوردها الأستاذ أسئلة تتسم بطابع فكري ودقة نسبية من خلالها يتمكن من تحديد قدرة الطالب وما إذا كانت قدراته محصورة في الأسترجاع والأستذكار وسطحياً فقط أم انه يحلل المعلومات ويدقق فيها ويكون فهمه للمادة دقيقاً وعميقاً و علمياً وبذكاء.
من أمثلة ذلك :

س/ما هي اهمية السمعة التجارية في حياة التاجر؟

الجواب/ تتمحور التجارة حول الثقة والأنتمان وعندما يثق التجار ببعضهم البعض تستقيم الحياة التجارية وتنمو العلاقات التجارية بينهم جميعاً وتنشأ للتاجر سمعة تجارية وشهرة من خلالها يستطيع ان يطور تجارته ويؤمن لها الأزدهار. ويجب أن يحرص عليهاالتاجر فلا يؤدي عملا يضر بسمعته التجارية كأن يتخلف عن اداء ديونه التجارية في مواعيد أستحقاقها لأن ذلك يستتبع إشهار إفلاسه وهو ما يؤدي به إلى إنهيار سمعته وبين التجار وفي تعامله مع المستهلك. لذلك يكون شرطا قانوني ضروريا لعمل التاجر وإزدهار تجارته و يجب ان يحرص عليه التاجر في جميع اعماله.

21. Peer review

This course book has to be reviewed and signed by a peer. The peer approves the contents of your course book by writing few sentences in this section.

(A peer is person who has enough knowledge about the subject you are teaching, he/she has to be a professor, assistant professor a lecturer or an expert in the field of your subject).