

## Determining Subject-matter Jurisdiction in Commercial Disputes

### تحديد الاختصاص القضائي النوعي في المنازعات التجارية

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Date of submission:08/09/2023 Date of final acceptance:20/06/2024 Date of publication :juine 2024

#### Abstract:

Determining the competent court in commercial cases, may be difficult, especially after the amendment of the Civil and Administrative Procedure Code. Therefore, this paper aims to address the problematic of determining the subject matter jurisdiction in commercial disputes, and to provide solutions to any subsidiary problems that may arise from the laws and judicial practice.

Using both descriptive and analytical approaches, it has been concluded that as a general rule, the commercial section of the tribunal is the common court for all commercial disputes. As an exception, the specialized commercial court has jurisdiction only over some important, commercial cases. Also, the practice and the law text may raise some unexpected problems.

**Keywords:** Commercial; Disputes; Courts; Subject-matter.

ملخص:

قد يشكل تحديد المحكمة المختصة في القضايا التجارية مسألة ليست بسيطة لرجل القانون، خاصة بعد تعديل قانون الإجراءات المدنية والإدارية بالقانون رقم 22/13. لذا تهدف هذه الورقة البحثية إلى معالجة إشكالية تحديد الاختصاص النوعي في المنازعات التجارية، وتقديم الحلول الممكنة لأية إشكالات فرعية قد تنشأ عن تطبيق النصوص القانونية التجارية وعن الممارسة القضائية.

و بإتباع المنهجين الوصفي والتحليلي، تم التوصل إلى أن القسم التجاري للمحكمة، كقاعدة عامة، هو الجهة القضائية المشتركة المختصة بجميع المنازعات التجارية؛ واستثناءً من ذلك، تتمتع المحكمة التجارية المتخصصة باختصاص النظر في بعض قضايا الأعمال المهمة، المحددة على سبيل الحصر. و علاوة على ذلك، هناك بعض النتائج الثانوية غير المتوقعة، الناتجة عن الممارسة والنصوص القانونية.

الكلمات المفتاحية: المنازعات؛ التجارية؛ المحاكم؛ الاختصاص؛ النوعي.

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**Introduction:**

The State has always confirmed its strategic choice, concerning the idea of following the liberal economic system; which is based on the freedom of trade and the entrepreneurial activities<sup>1</sup>, as an essential element of the national economy. This choice has appeared in terms of the multiple measures and legislations, as the Commercial Code and the Investment Code ..., especially in the Civil and Administrative Proceedings Code, which is considered as the main legal means for the protection of these economic activities. This strategic choice has been as a challenge that led the legislator to amend the legal rules, which are related to the jurisdictions and the proceedings of the commercial disputes in the Civil and Administrative Proceedings Code.

This is due to the fact that the efficiency of the judicial rules, in the business litigations requires specialized commercial courts, which must contain judges specialized in the business law, assisted by professional judges, who have a deep knowledge of all the secrets of the various difficult traders' litigations<sup>2</sup>; since, this type of legal relations is more technical than the civil obligations. Hence, the proceedings should be efficient and flexible<sup>3</sup>. However, in view of this amendment of the Civil and Administrative Proceedings Code by the Law No 22/13<sup>4</sup>, some difficulties which made this study important can be raised; because even if we are in the ordinary judicial organization, the legislator stipulates in this Code the subject-matter jurisdiction over some types of litigations, especially the commercial disputes, which are subject to the jurisdiction of the commercial section in the tribunal, and to the specialized commercial court, as the first degree of instance for litigation. Furthermore, in addition of the commercial courts, there are the labor section and the real estate section, which are also attributed to hear some of the traders' disputes. Besides, the subject-matter jurisdiction is a dangerous plea against the plaintiff.

Theoretically, in the legal studies, the subject-matter jurisdiction could be defined as: (the power of a court to adjudicate a particular type of matter and provide a remedy demanded<sup>5</sup>), it is the limited list of litigations that the legislator restraints to each court regarding to the subject of the dispute. Accordingly, if the plaintiff files his case before the wrong court, his case will be dismissed for lack of subject-matter jurisdiction; since, this is a rule of public order, it can be raised at any time of the proceedings, and it cannot be waived, it can even be raised by the judge himself<sup>6</sup>.

Studying all the recent researches on this topic, it became clear that they are only concerned with studying the specialized commercial court in general, without addressing the problems of its jurisdiction that may rise from the amending law (22/13) and in accordance with the commercial text laws; This importance led us to precise the borders of the subject matter-jurisdiction in the commercial disputes, between the specialized commercial court and the tribunal's sections, and its problems.

Thus, we may ask the following question: How is the subject matter jurisdiction determined in the commercial disputes? And what are the problems arising from it?

We can start from some hypotheses, related to the rules of the ordinary judicial organization, and from the Civil and Administrative Proceedings Code, recently amended in 2022; these in the rules that define the subject-matter jurisdiction of the Commercial Section and the Specialized Commercial Court, as they are courts of first degree of instance, this is in the face of the special laws of each type of business; then the hypothesis of the wording used in the legal texts, that limits the subject-matter jurisdiction in the Civil and Administrative Proceedings Code (amended).

In order to deal with this problematic, we tend to use the descriptive methodology, by defining the subject-matter jurisdiction of each court in the first degree (Tribunal's Sections and Specialized Commercial Court), in addition to using the analytical methodology of the legal rules

on our topic; thus, it is useful to start with the jurisdiction of the Tribunal in commercial disputes, then the subject-matter jurisdiction of the Specialized Commercial Court.

Section 1: Jurisdiction of the Tribunal in commercial disputes:

Section 2: Subject-matter jurisdiction of the Specialized Commercial Court:

### **Section I: Jurisdiction of the Tribunal in commercial disputes:**

The ordinary judicial organization consists of tribunals, in first degree of instance<sup>7</sup>; whose jurisdiction is defined by the Civil and Administrative Proceedings Code<sup>8</sup>, in which are the common court of first legal proceedings for all ordinary cases (civil, commercial and maritime, labor, real estate disputes, family affairs cases.) and each tribunal shall include different sections; each one is empowered to hear a type of cases aforementioned.

These jurisdictions of the sections can be merely internal administrative attributions, or they can be considered as a subject-matter jurisdiction. With regard to the commercial disputes in the tribunal, they have been exclusively allocated to the commercial section; and the other sections can also hear some of the trader's disputes, such as the labor section, the civil section, the real estate section, and the section of summary proceedings. Thus, it should be started with the commercial section, which has exclusive jurisdiction over commercial litigations (A), and then the other sections, which will hear certain cases of the traders (B).

#### **A) The subject-matter jurisdiction of the Commercial Section:**

The legislator provides in the Civil and Administrative Proceedings Code, that the Commercial Section of the Tribunal is the common court for all the commercial litigations<sup>9</sup>, which are raised between the traders or about the commercial acts; and before the amendment of the Civil and Administrative Proceedings Code by the Law No 22/13 (aforementioned), the commercial Section was not competent for the commercial litigations as subject-matter jurisdiction; its competence was considered only as an internal administrative process of the tribunal<sup>10</sup>; but after the Law No 22/13, amending the Article 531, whose title became: (Subdivision 01: on the Subject-matter Jurisdiction ), the commercial section became exclusively competent for the commercial disputes as its subject-matter jurisdiction. Then, this section could be the normal commercial section, or the commercial section for the summary proceedings.

#### **1 – Juisdiction of the normal Commercial Section:**

The Commercial Section in the normal proceedings is presided over by a single judge, assisted by a clerk; and according to the previous rules, before the amendment of the Civil and Administrative Proceedings Code in 2022, this section should have been composed of a panel of judges: presiding by a judge and two merchant assessors, who were elected by the traders, and the process of mediation was not mandatory; as well as, its jurisdiction was over all commercial and maritime disputes<sup>11</sup>. But now, the legislator has amended the process and the competence of the commercial section, since, it became composed only by a single judge and his clerk, and then the mediation procedure became mandatory<sup>12</sup>. As regard the competence of the commercial section, the legislator has established the specialized commercial court beside it, in the fourth chapter of the Civil and Administrative Proceedings Code, considering them courts of the commercial litigations.

In order to distribute the jurisdiction between the commercial section and the specialized commercial court on the in the commercial disputes, the legislator establishes the general rule and exception; by which the Civil and Administrative Proceedings Code has empowered the first court

to hear all commercial litigations, (Article 531), unless otherwise provided in other articles or laws. And it has stipulated the exceptions in the Article 536 bis, when it has listed the disputes that have been deemed as subject-matter jurisdiction of the second court<sup>13</sup>. Thus, all other commercial cases, that don't fall under the subject-matter jurisdiction of the special commercial court, they fall under the competence of the commercial section. Therefore, above of all, it is necessary to determine the content of the commercial disputes, then the problematic of the extent of commercial section competence to some other commercial disputes.

### **1-1- Content of the commercial disputes:**

With regard to the Civil and Administrative Proceedings Code in Article 531, the legislator has empowered the Commercial Section to hear only commercial disputes, and the term “commercial disputes” takes the forms of commercial acts<sup>14</sup>, which are listed in the Articles 2 - 3 and 4 of the Commercial Code, and in the other complementary laws; they can be classified into three types of acts<sup>15</sup>.

The first type, is the objective commercial acts, which are listed in the 2<sup>nd</sup> Article of the Commercial Code, e.g., all purchases of movable or immovable property for the purpose of resale them, all brokering activity, and all types of enterprises. The second type is commercial acts by its form, (Article 3) e.g. all disputes on the bills of exchange between all persons even by non-traders, all legal operations on the goodwill (the shop), commercial companies; these last acts are considered commercial acts even if the parties are not traders<sup>16</sup>. Also, there are agencies, business offices, and the maritime and air trade.). Then, the third type is the accessory commercial acts, mentioned in the fourth Article, they are all the acts done by the trader<sup>17</sup>, related to his business or to his goodwill, and all the obligations between the traders<sup>18</sup>.

Here, the full commercial dispute will exist if it is related to the commercial act by its form, (mentioned above in Article 3) whatever the nature of its parties, traders or not; also, the dispute will be commercial if the two parties are both traders, based on the rule of the accessory commercial acts<sup>19</sup>; but in the objective commercial acts, even if they are commercial acts regarding to the person who performs them, they must be commercial act also as regards to the adversary party<sup>20</sup>. So the objective commercial acts lonely that are not enough for the existence of the full commercial disputes, as stipulated in the Article 531 of the Civil and Administrative Proceedings Code.

### **1-2- Some problematics concerning the competence of the Commercial Section:**

Some problems can be raised, with regard to the mixed acts, and with the other specific competence of other sections that have the competence over some commercial conflicts.

First, this research paper tends to discuss the mixed acts, whether they can be subject to the jurisdiction of the Commercial Section or not. Although the legislator has recently amended the Civil and Administrative Proceedings Code and the Commercial Code in 2022, he has kept silent about the mixed acts. And in contrary to the legislation, the legal jurisprudence defines them: as the legal relation between the trader as a party against the non-trader party.<sup>21</sup> I.e. The same legal relation is considered as a commercial act for one party and at the same time as a civil act for the adversary party. Regarding the jurisprudence, the dispute can be subject to the commercial jurisdiction, if the non trader as plaintiff has chosen to sue before it, but if the trader who is the plaintiff, he shall sue before only the civil section, because the dispute isn't completely commercial<sup>22</sup>, it is a mixture of the commercial act and the civil act. Thus, based on the Article 531 that stipulates “...commercial disputes...”, vice versa, the mixed acts will be brought to the civil section, and cannot be subject to the jurisdiction of the commercial section; also as long as the commercial rules are the exception of the general rules that are the civil rules, and based on the rule

“the exception cannot be measured or expanded upon”<sup>23</sup> the mixed acts are not subject to the jurisdiction of the commercial section, this is according to the wording of the article 531.

Second, when the Civil and Administrative Proceedings Code was promulgated in 2008<sup>24</sup>, it had empowered the real estate section to hear all disputes related to the real estate (immovable), as well as, the real estate development activity<sup>25</sup>, which is practiced by developers<sup>26</sup>; it can be a commercial dispute according to the Article 531 of the same code. But according to the Article 512, even if the dispute is between the real estate developer as a trader and another trader, about the real estate business, i.e. a commercial dispute, their litigation is still under the competence of the real estate section. Here an issue could be raised after the promulgation of the Law No 22/13 amending the Civil and Administrative Proceedings Code, especially in the new Article 531, which empowers the commercial section to hear the commercial disputes, as its subject-matter jurisdiction. The same of this sub-problem, they can be raised other problems, which are being discussed in the second sub-section.

## **2- Commercial Section for Summary Proceedings:**

According to the Article 536 of the Civil and Administrative Proceedings Code, the legislator empowers the presiding judge of the commercial section, to perform the role of the standard section for the summary proceedings. He is allowed to take provisional measures in order to preserve the rights of the plaintiff, or to prevent an imminent harm; with respect to the conditions of his subject-matter jurisdiction as commercial section for the summary proceedings. These conditions are: - The dispute must be of a commercial nature - the demand cannot affect the core of the right, and - the Urgent situation<sup>27</sup>. Then, these proceedings shall be conducted according to the normal summary proceedings, after an adversarial trial<sup>28</sup>, and the case must be concluded in brief deadlines by the issuing of a judicial injunction, which is binding in spite of using the ordinary means of review<sup>29</sup>. Furthermore, in cases of extreme urgency, the trial can be done according to the summary proceedings “from hour to hour”<sup>30</sup>.

### **B) Other sections competent for some disputes of traders:**

Under this title, we touch the other sections of the tribunal, which are competent to hear some disputes of the traders; there are sections that have its subject-matter jurisdiction, while others do not have it; they have an internal administrative attribution; because there is difference between the two situations, in the obligatory of the rules, and in the effects<sup>31</sup>.

#### **1- Sections that have the subject-matter jurisdiction:**

They are the labor section and the summary proceedings section.

##### **1-1- Subject-matter jurisdiction of the Labor Section:**

In the Algerian law, the labor section is called the Social Section, because its attributions are related to the issues of the fragile class in the society, it is the working class, that is protected by the legislator and in international treaties against the abuses of the employers<sup>32</sup>; but it is preferred to use the term (Labor Section) that is used in the majority of the legislations<sup>33</sup>. In this paper it is studied as a specific court that is competent for the disputes between the employee against his entity employer, which is generally a trader, commercial companies or natural person businessmen<sup>34</sup>. And like the commercial section, there is the normal labor section and the labor section for the summary proceedings.

### **1-1-1- Normal Labor Section:**

The labor section in the tribunal is specialized in labor and social security disputes<sup>35</sup>; it is formed by a presiding judge and two assessors, one is elected by the representatives of the employees and the other is elected by the representatives of the employers<sup>36</sup>. Before introducing the case, the conflict shall be brought to the inspector of employment, who refers the litigants to the obligatory conciliation, tried by the labor office of conciliation<sup>37</sup>. Then, the process before the labor section shall be adversarial, with written proceedings.

With regard to the subject-matter jurisdiction of the labor section, it is determined in the article 20 of the Law No 90/04<sup>38</sup> and in the Article 500 of the Civil and Administrative Proceedings Code, under the title (First division: subject-matter jurisdiction), this material competence is about the disputes related to:

-Evidence of the employment contracts or of the training or apprenticeship relationship between the employer and the employee.

- The enforcement, termination, or suspension of employment, training or apprenticeship contracts.

- To have the right to organize.

-Disputes of staff representatives' elections.

-Conflicts raisings due to the exercise of the right to strike.

-Social security and retirement litigations.

-Litigations concerning collective labor agreements and conventions.

The legislator lists these disputes as subject-matter jurisdiction of the ordinary labor section, as regard the legal relationship is between the trader as employer and the employee. But sometimes the legal relation can be between the trader employer and the establishments of social security for the employees or for the liberal professions; here, even if they are public establishments of the private law<sup>39</sup>, and the litigation is of a social insurance nature, this section is competent<sup>40</sup>. Moreover, there are some other disputes that are truly commercial, and they are subject to the jurisdiction of the labor section. Such as the conflict between the managers or the directors of the commercial companies and the company for their dismissal or the cases of compensation for abusive dismissal; here even if the decision of the dismissal of the manager is considered as a commercial act, but if there is an employment contract under the form of (employment contact of the Executive Managers),<sup>41</sup> the legal relation will be subject to the applying of the labor law (Executive Decree No 90/290<sup>42</sup>) and its contentious will be subject to the jurisdiction of the labor section<sup>43</sup>; however, if the Executive Manager is appointed without this form of employment contract, the legal relation will still be commercial and will be subject to the jurisdiction of the commercial court<sup>44</sup> ( specialized commercial court). Also the labor section is competent to hear the dispute relating to the Unfair Competition Action, which is between the enterprise and his unfair employee when he violates the condition of non-competition stipulated in the employment contract.

### **1-1-2-Labor Section for Summary Proceedings:**

This section is presided over by a labor judge alone; it has exclusive jurisdiction only over urgent labor cases; and according to the provision of Article 506 of the Civil and Administrative

Proceedings Code, the labor judge is authorized to issue urgent orders, provided, that they do not affect the subject matter of rights<sup>45</sup>. E.g. the judge can order protective summary measures, or other urgent provisional measures, to prevent any infringement that would affect directly the freedom of work. e.g. Ordering the employees to temporarily open the gate of the factory until the end of the main trial, in order to preserve dangerous products.

### **1-2- Normal Section for Summary Proceedings:**

Both the Organic Law No 22/10 of the Judicial Organization, and the Civil and Administrative Proceedings Code, have provided that, the tribunal shall contain a normal section for Summary Proceedings, which is authorized, as a common court of summary proceedings, to hear all emergency cases, that cannot go with the ordinary processes of trial; because they require speedy measures to protect rights. However, not all emergency cases can be brought to this section, because the legislator determines its material competence, either in the general rules or in the specific rules<sup>46</sup>. In the general rules, the summary case must have two conditions, a summary state and the claim cannot affect the subject matter of the dispute or the core of the rights<sup>47</sup>. Then, in the specific rules, the legislator has authorized the judge this competence in other articles of laws, e.g. The appointment of the a judicial protector when the owners partner of property disagree on its management (sequestration) (Article 299 of the Civil and Administrative Proceedings Code), the imposition of fines or monetary penalties on the defendant who refuses to execute the final judgment (Article 305 of the Civil and Administrative Proceedings Code) and the problems of the execution proceedings (Article 631 of the Civil and Administrative Proceedings Code.), the seizure of the defendant's properties (Article 636 of the Civil and Administrative Proceedings Code.). Then, the orders made by this section are immediately enforceable, even if they could be reviewed by the means of ordinary reviews<sup>48</sup>.

Within the context of our paper, the cases that are brought to the section for summary proceedings can be between two traders; for instance, the urgent case related to real estate development as a claim against the developer who has cut off the power to the shops lessees, also the case between traders and non-traders, as the mixed acts, or between non-trader parties. However, if the dispute is related to the subject-matter jurisdiction of the social section or the commercial section, the action will be dismissed for lack of material competence.

### **2- Sections without the subject-matter jurisdiction:**

Some litigation of traders may be subject to the competence of other sections of the tribunal, which don't have the subject-matter jurisdiction; they are the real estate section and the civil section, in condition, the cases are not related to the commercial section or the labor section.

#### **2-1- Jurisdiction of the Real Estate Section on some traders' disputes:**

In the ordinary judicial organization, the real estate section of the tribunal, which is presided over by a single judge is specializes in all real estate cases<sup>49</sup>; it is empowered by the legislator in the Articles (from 511 to 517 of the Civil and Administrative Proceedings Code.) to hear the disputes concerning the immovable properties, whether their parties are traders or not. But unlike the commercial section and the labor section, the legislator doesn't deem the competence of the real estate section as a subject-matter jurisdiction, it is only an internal administrative proceeding of the tribunals<sup>50</sup>; because he stipulates in the title of the Article 511: (First Division: The attributions of the real estate section) and not (subject-matter jurisdiction of the real estate section). Thus, if the case has been enrolled wrongly before this section, instead of another competent section, the judge doesn't dismiss it for lack of subject-matter jurisdiction, but according to the Article 32-4 of the same code, he shall order to refer the file to the competent section, unless the case is subject to the

material competence of the commercial section or the labor section; in which case the judge shall dismiss the action for the lack of subject-matter jurisdiction.

The disputes, which are attributed to the section of real estate to hear, are all cases related to the immovable properties, (Article 511) especially those disputes listed in the Article 512, such as: - Ownership of immovable property, the other real rights on immovable property, - the right of usufruct, the rights of use of the real estate, its exploitation and its habitation.-Real estate development activity, (by developers.) -Right of Pre-emption “Chefaa”.<sup>51</sup> - Residential or professional leases...)

Thus, all the contentious whose subject is an immovable property or just any right over an immovable, they are subject to the attribution of the real estate section. Sometimes, even if the case is between traders about commercial acts, such as the contentious of trader developers, who act in real estate development activity, or disputes between two traders about a real estate, this section has jurisdiction; but the problem can be raised about the commercial leases between traders, after the Law 22/13, if they are still be subject to the jurisdiction of the real estate section, or to the commercial section that it is competent with as its subject matter jurisdiction. In addition, like the commercial section and the labor section, there is a real estate section for summary proceedings<sup>52</sup>.

### **2-2- Jurisdiction of the Civil Section over some disputes of traders:**

The civil section, presided over by a single judge is the main section of the tribunal. At first, it was the common court of all the ordinary cases of the tribunal; especially in the civil disputes, real states, and the commercial disputes,...; but after the Law No 90/04 (afore mentioned), the labor disputes were excluded, then the Law No 08/09 (relating to the Civil and Administrative Proceedings Code.), which disposed that each section had its attributions, and then the Law No 22/13, which has set the subject-matter jurisdiction of the commercial courts.

Thus, the attribution of the civil section is all the ordinary cases that are not subject to the labor section or to the commercial section, to the special commercial court, to the summary proceedings section, to the real estate section and to the family affairs section. Thus, it is competent to hear all the disputes related to the movable properties, or to the mixed acts, disputes of the personal rights, like the case in which the subject is the enforcement, the termination of loan contract, or the tort liability action and other legal obligations...). However, this section even if its attributions aren't as the subject matter jurisdiction, the judge shall dismiss the case for lack of subject-matter jurisdiction if the case is subject to the jurisdiction of the commercial section, labor section, summary proceedings section, commercial court; but concerning the other disputes, which are related to the real estate section and family affairs section, the judge shall order to refer the file to the section competent with according to the Article 34 of the Civil and Administrative Proceedings Code.

### **Section II: Subject-matter Jurisdiction of the Specialized Commercial Court:**

Historically, traders preferred to submit their disputes to the independent competent courts<sup>53</sup>; this is what exists in the countries that follow the market economy system, for the reasons mentioned above in the introduction. In this context, the Algerian legislator, like the other legislators has amended the competence of the commercial section, with the introduction beside it, of the specialized Commercial Court, as it is a special court of first degree of instance to hear certain important and difficult types of business cases. However, since, there are only 12 twelve specialized commercial courts in the whole country, the territorial competence of each one is extended to all area of the court of appeal attached to it<sup>54</sup>. Then, its trial is composed by the panel of judges, containing the presiding judge and four professional assessors selected from the traders



(Article 536 bis 2 of the Civil and Administrative Proceedings Code.). Moreover, it is characterized by the obligatory judicial conciliation before the introduction of the lawsuit<sup>55</sup>.

Consequently, concerning the subject-matter jurisdiction of the specialized commercial court, it shall assume power, only over the claims that are authorized to hear in accordance with the Article 536 bis, under the title ( Sub-division 1: In Subject-matter Jurisdiction); and they are provided with explicit words: ( The specialized commercial court shall be competent to deal with the disputes mentioned below:

- Intellectual property disputes.
- Commercial company disputes; especially, conflicts among the partners, and the dissolution and winding-up of companies.
- Judicial settlement and bankruptcy.
- Disputes of banks and financial institutions with traders.
- Maritime disputes, air transport disputes and insurance disputes related to commercial activity.
- International trade disputes. )

Concerning this paper, we have to analyze each type of these business cases above, and we have to clear any problems with this wording. Because here, unlike the subject matter jurisdiction of the commercial section, the legislator empowers the specialized commercial court to hear certain cases as they are, without regarding to the notion of the general commercial disputes. And for the balance of the plan, we have divided this section into two sub-sections, according to the similar types of those disputes. Thus, there are disputes related to the own (internal) situation of the enterprise (A), then the disputes of the enterprise with the other third party, about their dealings, (B).

### **A) Disputes related to the own (internal) situation of the enterprise:**

These kinds of cases concern any own situations of the enterprise, i.e. its legal, financial or commercial characteristics, also, in this sub-section, as we will see, it does not matter whether the dispute is between two traders, or between a trader and a non-trader.

#### **1- Intellectual Property disputes:**

The subject matter of the dispute must be related to the intellectual property rights; this last term (I.P. Intellectual Property) means all the creations of the mind that have monetary value<sup>56</sup>, they are used by enterprises for their own commercial activity practicing. In Algerian law they are protected by special laws that define them, and distinguish them from the other rights. And for more analyzing these disputes, first it must be enumerated and defined all types of intellectual properties, either the industrial property rights or the copy rights; then, discussing about the wording of the Article 536 bis 1<sup>st</sup> paragraph, if it covers all the same interesting types of these disputes or not.

**1-1- Industrial property rights:** They are used by the enterprise in its industrial, traditional craft or trading activity, which are:

**1-1-1-Trademarks:** They are protected by the Ordinance No 03/06 on the Protection of Trademarks,<sup>57</sup> and are defined in the second Article, as they are: all symbols, marks, signs, lines,... that are used to distinguish the goods and services of the trader, from the other ones in the markets, and to consider them as protected intellectual property, they must contain their conditions; especially they must be registered at the Algerian National Institute of Industrial Property (INAPI)<sup>58</sup> except in cases of special exceptions, such as well-known trademarks.

**1-1-2-Patents:** Patent is a certificate granted by the competent authority to the person who invents any invention; its conditions are stipulated in the Ordinance No 03/07 on Patents,<sup>59</sup> which must be an invention, resulting from the inventive activity, and the novelty, it must be applicable in the industrial activity, and it must be registered at the Algerian National Institute of Industrial Property<sup>60</sup>, with some exceptions. Then, its owner has rights to it, he can use it in the industrial activity or he can authorize another person to use it; and if another person infringes it, the owner can file a lawsuit before the specialized commercial court to protect it, and to seize all the fake copies.

**1-1-3- Industrial Designs:** The word “ Designs” is an American term, which refers to protect all rights on the ornamental and the aesthetic detailing of an article (the product)<sup>61</sup>, however, in Algerian law, the legislator uses the term “ Drawings and Models” in Ordinance No 66/86 (relating to drawings and models)<sup>62</sup> which are defined in the first Article. Both models and drawings, to protect them as property, they must fulfill the following conditions: existence, novelty, innovation, industrial exploitability, not violating the public order, and they must be registered at the Algerian National Institute of Industrial Property. Then, their owners have monopolistic rights to use them, such as in the manufacture of the cloth looks, the forms of furniture, cars...).

**1-1-4- Label of Origin:** There is another American term called “Geographical Indication”.<sup>63</sup> They are defined in the Algerian Ordinance No 76/65 in the first Article; they are just names borrowed from the geographical indications names, like: the names of the towers, the famous geographical zones, as the mountains,...) and it is necessary, for the geographical indications to be popular for the specific link, between the product and the original place where it is made,<sup>64</sup> for example (water of Djurjura, dates of Tolga's Deglat Nour...) also to be protected as a Label of origin, they must be registered.

### **1-2- Some new types of Industrial Properties Rights:**

Recently, the legislator has established special laws, to protect some contemporary creations of the mind, which have financial value, and which are similar to the patents; they are used in the economic activities. They are: the property of Vegetable Germoplasm<sup>65</sup> Right, in the Law No 05/03,<sup>66</sup> and the Integrated Circuits Property, in the Law No 03/08.<sup>67</sup> Thus, as long as these new types of intellectual property are protected by special laws, and can be sold or authorized to use alone independently of the goodwill (the shop), they are considered the same as intellectual property, and they can be protected against any counterfeiting, before the specialized commercial court.

**1-3- Copyrights and neighboring rights:** The legislator protects the copyrights and the neighboring rights under the Ordinance No 03/05, on Copyrights and Neighboring Rights<sup>68</sup>; they are all intellectual oeuvres created by a person, provided that they are fixed in a tangible form of expression<sup>69</sup>, their owner is called the author. They can take the form of stories, drawings, computer programs, and photographs ... (Article 03). All these oeuvres are classified as original works of authorship, also the oeuvres derivative regularly from other original oeuvres can be protected (Article 05) e.g. translations of books. Moreover, the Neighboring Rights are protected in the Ordinance No 03/05, they are not copyrights, but they are used to help them in their embodiment

and exploitation<sup>70</sup>, such as the rights of publishing and distribution houses, artistic production companies of films, and the performing artists.

Therefore, even if sometimes the owner of the copyrights doesn't have the trader's status, his dispute regarding his copyright must be heard by the Specialized Commercial Court, as aforementioned. The question that can be asked is, if the specialized commercial court is competent about the disputes of copyrights between two parties non-traders; because the paragraph one of the Article 536 bis stipulates "1- Intellectual property disputes..." without requiring the commercial nature of the dispute.

#### **1-4- Problems with other types of similar rights:**

Regarding the wording of the Article 536 bis 1<sup>st</sup> paragraph, of the Civil and Administrative Proceedings Code, the legislator only stipulates for the rights that take the form of intellectual property; but the other rights that don't take this form, are not considered as it; such as the trade names, the trade logos, the domain names system (DNS)...which are used in the goodwill to identify the trader from other traders<sup>71</sup>; they are moral component of the goodwill (business property), and they are not protected by special laws, as well as they cannot be sold lonely. And the same problem about the industrial secret and knowhow; it is true that they are used in the industrial activity, and they are the result of intellectual creation; but they are not protected as intellectual property rights because there are no special laws for them, and they cannot be the subject of property by themselves<sup>72</sup>. Therefore, their protection depends on the enterprise or on the goodwill of the trader; and the same judgment regarding the professional ideas, and the scientific discoveries. Furthermore, the other names that are similar to the Appellations of Origin, they couldn't be intellectual property such as (Country of Origin)<sup>73</sup>, and the mark of (Algerian Conformity مطابقة جزائرية م.ج.)<sup>74</sup> because they are not intellectual property, they are public (governmental) marks.

In these last situations, the specialized commercial court doesn't have jurisdiction to hear their disputes; therefore, if they are commercial acts or the dispute is between traders, the case must be submitted to the commercial section, as the common court of commercial disputes. And they would be protected under the Unfair Competition Action<sup>75</sup>, which is not mentioned in the list of subject-matter jurisdiction of the specialized commercial court. Moreover, regarding the infringement of (Country of Origin), and the mark of (Algerian Conformity), the victim can sue through the penal proceedings for the crime of falsification, in which the misdemeanor section of the tribunal is competent with them.

**2- Commercial company disputes:** in accordance with Article 536 bis, 2<sup>nd</sup> paragraph of the Civil and Administrative Proceedings Code, which provides: "... - Commercial company disputes; especially, the conflicts among the partners, and the dissolution and winding-up of companies. ...." the legislator has used constricted wording, in the term "commercial companies" because as it's clear, the company could be defined as a legal entity, founded by its members, by participating on the common economic activity, in order to share the profits and losses<sup>76</sup>. It can be a civil company if it uses to do the civil acts, and it can be a commercial company, if it takes one of the legal forms of the commercial companies<sup>77</sup>, or if it practices the commercial acts (Articles 2-3 Commercial Code). Thus, only the disputes related to the commercial companies that are subject to the specialized commercial court; on the contrary, the disputes related to the civil companies or to other commercial entities (Industrial and Commercial Public Establishment) they aren't subject to this competence. Furthermore, in this type of cases, if the commercial company is the plaintiff, it must be registered at the National Center of the Commercial Register<sup>78</sup>.

Company disputes are all conflicts arising between partners, even if they are not traders, or between a partner and his company, and between a company and another company over company

regulations law. I.e. only the litigations related to the application of the Fifth Book of the Commercial Code<sup>79</sup> that are considered as commercial company disputes. such as: All litigations concerning the establishment of a company, its nullity, its administration and management, its internal control, as the disputes between the company and its auditor even if he is not a trader, all objections to the decisions of the general meeting, the transfer of shares, also disputes concerning its liquidation, the merger and the demerger, disputes of the group of companies, and disputes between trader memberships in joint venture, even if it has no legal personality on one hand.

On the other hand, all the other disputes that, they are related to the performance or the termination of commercial contracts with others, or to the liability in tort; even if they can be between commercial companies (according to the wording of the Article 536 bis paragraph 2), they cannot be subject to the specialized commercial court; because the subject matter of the disputes does not relate to the commercial company regulations law, mentioned above. Thus, they are subject to the jurisdiction of the commercial section of the tribunal, as common commercial court.<sup>80</sup> Here, the legislator did better, because it is impossible for the specialized commercial court to hear all these different litigations, especially since there are twelve courts in the whole country. In addition, the same problem that has been raised in the above-mentioned in subject matter jurisdiction of labor section, concerning disputes over the dismissal of the directors of the commercial companies, and claims for compensation for it; the Specialized Commercial Court has jurisdiction over them if the legal relationship isn't embodied under the form of an employment contract of the executive managers, according to the Executive Decree No 90/290<sup>81</sup>; but in the opposite situation, the labor section which is competent<sup>82</sup>.

### **3- Disputes of judicial settlement and bankruptcy:**

Judicial settlement and the bankruptcy are called the collective procedures<sup>83</sup>, stipulated in the Commercial Code (Third Book), which are applied to all the traders and to the legal entity even if it is not a trader, when they are in a suspension of payment situation<sup>84</sup>; also, the law obliges the trader in this situation, to declare his financial difficulty within 15 days before the specialized commercial court, in order to issue the judicial settlement procedures or to publish his bankruptcy<sup>85</sup>. Here, this court has the choice between two procedural systems; which are different in the severity towards the debtor and in their conditions, then in their effects<sup>86</sup>. And like the previous types of disputes, the case can be between the debtor trader and other creditors non traders, such as their employees; because in these procedures every creditor can join the mass of the creditors, regardless of the nature of his debt (commercial or not) (Article 215 of the Commercial Code). Also the dispute can be between a civil legal person, as defendant and other non-traders, as plaintiffs.

However, the court may be fall in contradiction made between the Article 537 of the civil and administrative proceedings code, which obliges the judge to start with a conciliation hearing before it, and the Article 247 of the Commercial Code, which prevents the debtor, who is in a state of suspension of payments, from making a first conciliation with his creditors before publishing his bankruptcy<sup>87</sup>. The raisons that it is possible to there are other creditors outside the case procedures; here the principle of equality among all the creditors may be deprived<sup>88</sup>. Thus, the court shouldn't oblige the first obligatory conciliation, basing on the rule “*lex specialis derogate legi generali*”. In addition the conciliation proceeding could take a long time, and the debtor could flee and hide his assets<sup>89</sup>; otherwise, this article should be amended according to this specific contentious.

### **B) Disputes between the enterprise (trader) and the other party:**

All types of these cases are resulted to the conflicts between the enterprise and other independent enterprises, about certain transactions or about a legal obligation between them. Also,

unlike the previous types of disputes, in these cases the legislator requires that the conflict must be related to the commercial activity.

### **1- Disputes of banks and financial institutions with traders:**

First of all, it is necessary to analyze the formulation of the sentence in the Article 536 bis, 4<sup>th</sup> paragraph "... - Disputes of banks and financial institutions with the traders ..." here the legislator limits the subject of the disputes, that are their parties only the banks or financial institutions as party with trader as another party, about banking operations<sup>90</sup>. And in order to determine this dispute, the Law No23/09 on the Monetary and Credit,<sup>91</sup> has limited the conditions and the functions of the two terms "Bank and financial institutions"<sup>92</sup>. Conversely, the disputes between the banks or financial institutions with the non-traders are not subject to the jurisdiction of the special commercial court. In addition the subject matter of the dispute must be related to the banking operation, and if the case is related to other commercial contracts, such as the contract of sale of furniture to the bank...the commercial court is not competent.

Moreover, in contrast to the bank and the financial institutions, all the other financial entities that don't have the form of (Bank or Financial Institution) they are not subject to the fourth paragraph of the Article 536 bis, even if the dispute with the trader is about financial operations; such as, public financial establishments, as: (National Fund of Investment), (Credit Guarantee Fund of Small and Medium Enterprises...). Furthermore, the Law No 23/09 authorizes some banking operations to some persons that are: Exchange Offices, Independent Brokers, Payment Service Providers,<sup>93</sup> and even if these legal professions are subject to licensing and authorization, they have not the form of the bank or financial institution. Therefore, the Article 536 bis is not applied to them; and, their disputes with the trader are not subject to the exclusive jurisdiction of the specialized commercial court. Here, it should be unified the subject matter jurisdiction to include all the disputes on all the banking or exchange operations, between the financial entities and the traders.

### **2- Maritime disputes, air transport disputes and insurance disputes related to commercial activity:**

According to the fifth paragraph of Article 536 bis of the civil and administrative proceedings code, which states: "-Maritime disputes, air transport and insurance disputes relating to commercial activity,..." its wording seems somewhat ambiguous, because it is open to two interpretations; in the first, the legislator could mean that all the maritime disputes and the air transport disputes and the insurance disputes, are all of them must be related to the commercial activity. In contrast, in the second interpretation, the legislator may mean in the fifth paragraph only the disputes of the insurance litigations, which must be related to the commercial activity, but the maritime and air transport disputes not necessary be related to the commercial activity. Here in my opinion the legislator means the first interpretation, which excludes the mixed acts from this subject matter jurisdiction. It is the interpretation which is in accordance with the intention of the legislator, expressed by the minister of justice when he was explaining this amendment bill in the session of the national popular council<sup>94</sup>. Thus, it should be starting with analyzing the sentences of maritime disputes, then the air transport conflicts, and then the insurance disputes.

**2-1-Maritime disputes:** According to the wording of the Article 536 bis paragraph 5 of the civil and administrative proceedings code "...-Maritime disputes ..... related to commercial activity.", the legislator uses in this type of disputes an extensive formulation, he means all the litigations relating to the maritime law. I.e., the maritime rules related to the commercial exploitation of the sea through the use of the vessel, and the dependent activities<sup>95</sup>, the rules stipulated in the Ordinance No 76/80 including the Maritime Code,<sup>96</sup> (Amended and completed),

and in the complementary laws and in the international maritime conventions. Consequently, the private maritime disputes can be raised from contractual relationships, such as, a carriage of goods by sea, as claims for damages to goods, a chartering of the vessel,...; also there are the maritime disputes, whose source is not contractual relationship, either by the law directly, as the privileges, the general average, the seizure of the vessel...; or, their source is the tortuous liability, e.g., the maritime collision, and the salvage...).

However, the other maritime disputes between a ship owner and the sailors, even if, their rules are stipulated in the Maritime Code<sup>97</sup>, they are not subject to the jurisdiction of the specialized commercial court; because of the legal relationship nature of the contract between the parties; it's a labor contract<sup>98</sup>, which is subject to the labor law (the Law No 90/11 on the Individual Labor Relations). Thus, all the disputes related to the enforcement, termination, of these labor contracts return to the subject-matter jurisdiction of the labor section of the Tribunal; also, about the social security disputes of the sailors, and about their work injury cases ...). And exceptionally, the contract that binds the ship captain (the master of the ship) to the ship-owner is still a maritime contract, whose litigation is subject to jurisdiction of the specialized commercial court<sup>99</sup>, unless otherwise, the legal relationship between them is embodied under the form of (an employment contract of the executive managers), which is subject to the labor law (Executive Decree No 90/290, aforementioned) and to the jurisdiction of the labor section.

## **2-2- Air transportation disputes:**

In Article 536 bis, fifth paragraph, the legislator uses the wording: "...air transportation disputes ... related to the commercial activity". Here, this sentence means the conflicts related only to the transportation activity by air, and the same analysis before, the legislator means only the air transport conflicts that are related to the commercial activity, and he excludes the mixed acts in air transport disputes.

The air transport obligations are regulated by the Law No 98/06 on Civil Aviation (amended and completed),<sup>100</sup> and other aviation treaties; it is a commercial activity, it can be a public transportation by using aircrafts, or transportation of private passengers by using small aircrafts, and the legal relations that can arise from this activity, can be contractual or non-contractual. The contractual relations can result from the contract of air transportation of goods or passengers, or mail<sup>101</sup>. Also, the air transportation disputes can arise from non-contractual obligations, such as tort liability that results directly from the transportation operations. However, the other types of air transportation disputes aren't subject to the jurisdiction of the special commercial court, if they depend to the public law, as the transportation of passengers by the air forces planes. Also the disputes raised from the other air activities, which don't related to the air transportation, they aren't subject to the specialized commercial court, such as the disputes of Air sports, and the use of aircraft in agricultural activity or for pleasure.

The question that may arise concerns other commercial air disputes, which are indirectly linked to air transport activity, if or not they are subject to the jurisdiction of the specialized commercial court; such as conflicts related to the purchase of transport aircraft, the chartering of transport aircraft, the agency contract on transport aircraft or on transported goods, air insurance on aircraft or on goods, and to seizure procedures on transport aircraft, aircraft maintenance and airport exploitation... Following the extensive interpretation of the wording (air disputes relating to transport) in Article 536 bis, these latter disputes because they relate to air traffic even if indirectly, they are subject to the jurisdiction of the specialized commercial court.

### 2-3-Insurance disputes:

The legislator defines the insurance contract in the Article 02 of the Ordinance No 95/07 on the Insurances (emended and completed)<sup>102</sup>. And with regard to the wording of Article 536 bis fifth paragraph: (...and insurance disputes related to commercial activity.) the legislator means only those disputes that arise between insurance companies as party and traders as adversary, about insurance conflict. i.e. Any conflict between the insured and the insurer, if the insured risk is related to the commercial activity of the insured. And vice versa, if the litigation is between an insurance company and a non-trader, or if the subject of the dispute is not related to the commercial activity, here the case won't be subject to the jurisdiction of the specialized commercial court, even if the parties are an insurer and a trader. Moreover, the case that is subject to the specialized commercial court, must be between the insurance company and the insured trader, as the main parties of the case; because if the case is between a trader and a non-trader, with the appearance of the insurer as the guarantor of the trader, the specialized commercial court doesn't have jurisdiction here; because the other main party of the litigation is not a trader.

Also, the problem that appears in this case is when the dispute is between: insured trader (the defendant) against other trader (the plaintiff) for any commercial obligation (e.g. the tort liability,) with the appearance of the insurer (as the defendant guarantor); here the main element of the dispute isn't the execution of the insurance contract, it is the commercial obligation between the two trader parties, and the insurance dispute is merely accessory of the main dispute. In my opinion, as in the previous example, this type of case can't be subject to the application of the Article 536 bis, fifth paragraph of the civil and administrative procedures code. Therefore, it is subject to the jurisdiction of the commercial section of the tribunal.

### 3- Disputes related to the international trade:

First, it is necessary to define the legal meaning of the international trade<sup>103</sup>; because the legal relationship should be adapted first, if it is related to the international trade or if it is only a domiciliary trade. Then, if the adaptation of the commercial contract is easy<sup>104</sup>, the determination of the international relationship was being subject to a divergence among jurisprudence<sup>105</sup>, which adopted two different criteria<sup>106</sup>. In fact, most of the legislations and courts adopted constrict legal criterion and the economic criterion<sup>107</sup>; and the same judgment in the Algerian legislation, especially in the Civil and Administrative Procedures Code, when it defined the international arbitration<sup>108</sup>. i.e. To consider any legal relationship as international trade, it must affect the economic or commercial interests of at least two different countries, for example the sale of goods beyond the borders of countries.

However, the other disputes, related to foreign direct investment, even if they are related to the international economic interests, they won't be considered as international trade, because there is a difference between the two concepts in the business law<sup>109</sup>. In Algerian law, each domain has its own law<sup>110</sup>; also, in general, the litigations of both are presented to the international arbitration commission. And if any litigation that can happen between the foreign investor and the local collaborator could be subject to the special commercial court, not because of the international trade disputes, but because of the obligation arising from the commercial company in which the foreign investor and the local investor are partners<sup>111</sup>.

As a result, according to the disputes subject to the jurisdiction of the specialized commercial court, in the Article 536 bis, which are the complicated and difficult cases that require specialized judges, the legislator did not provide the other technical commercial disputes in the Article 536 bis; for example: The disputes related to the Competition Law, Ordinance No 03/03, which regulates the fair and free competition in the market, against the Anti-competitive practices. Also the disputes

related to the stock exchange law (as transactions on movable values, disputes among brokers of the stock exchange that aren't related to the bank disputes). Despite these contentious are more complicated, they are not provided in the Article 536 bis; therefore, they are not subject to the jurisdiction of the specialized commercial court.

### **Conclusion:**

Finally, at the end of our survey, it seems that the legislator did well when he modified the proceedings and the competence rules of the commercial courts; he has set a specialized commercial court with the commercial section of tribunal, and considering them as specific courts over the commercial disputes. Hence, the results that had been achieved are:

-In the tribunal, the Commercial Section is the common court of the commercial disputes.

-The specialized Commercial Court has exclusive jurisdiction over certain complicated business cases in accordance with Article 536 bis.

-The two commercial courts are competent, as subject matter jurisdiction.

-The other sections, such as the real estate section and the labor section, are competent to hear some trader disputes.

- According to the wording of the Article 536 bis, the mixed acts are not stipulated in the competence of the commercial section of the tribunal.

-The specialized commercial court is competent according to the certain types of business cases, and not according to the commercial disputes nature, and the mixed acts in certain cases (maritime, air transport, and insurance disputes,) are not subject to the competence of the specialized commercial court; that is in contrast to the rules of the mixed act, which protects the non-professional litigant in choosing the competent court. And on the other hand in the intellectual property disputes, the cases must be brought to the specialized commercial court even if in the mixed acts, or in the civil acts.

-There are some interesting and difficult cases that are not included in the Article 536 bis, as the anti-competition practices in the market, and the litigations related to the stock exchange law.

- In the application of the subject matter jurisdiction of the specialized commercial court, some difficulties could be rise, because of the wording of the article; such as the disputes about the other commercial air activity (other than air transport) and the other banking operations.

-Any kind of dispute can see some problems, when we go deeper into the details of the trade about it, and its parts.

Therefore, in view of the results obtained, and the necessity of having a specialized judiciary in the commercial disputes and because of the subject matter jurisdiction is a dangerous plea in the process, and the necessity of speed in commercial relations, we will present some suggestions:

-It is necessary to determine the competent court for the mixed acts, according to the commercial jurisprudence.

-Given that, the legislator has empowered specialized commercial courts, for the commercial disputes, it is necessary to clarify whether real estate business disputes are subject to the commercial judiciary or to the real estate section, for example: the commercial leases.



-It is better to take into account the law specific to each business, and its types of litigations, when stipulating the rules of subject matter jurisdiction of the specialized commercial court; for example, the problem of the bankruptcy disputes and the obligatory of the first conciliation, also, unifying the subject matter jurisdiction of the banking operations and the air commercial activities.

- It is necessary to stipulate in the article 336 bis the other interesting disputes, such as cases related to competition law and stock exchange law.

-The last and not the least is that, it is better to authorize the commercial courts firstly to decide with a preliminary order about the subject-matter jurisdiction of the case, and then submitting the dispute to mediation or conciliation; because often the parties have to pay the expenses of the mediator, then the expert...and in the end the cases may be dismissed for the lack of subject matter jurisdiction, which will have a negative impact on the speed of settling commercial disputes.

Here, this study seems to be practical because it combines the theoretical side with the practical side of the problem, and it shows the difficulties, which can arise from the formulation of procedural rules with the application of the specific laws to each dispute. But this paper research is just a legal study, which could be subject to the other different point of views. Also there isn't enough jurisprudence of the Supreme Court, on the subject matter jurisdiction of the commercial courts after the law 22/13.

This leaves the door open for other scientific researches, for subsequent research studies that could focus on the subject-matter jurisdiction of the specialized commercial court over each commercial dispute individually; and on the commercial section.

### **Citations:**

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<sup>1</sup>Article 61 of the Constitution of 2020.

<sup>2</sup> Michel Pédamen et Hugues Kenfack, *Droit commercial*, 4<sup>ème</sup> éd. Dalloz, France, 2015, p. 2.

<sup>3</sup>Jean-Bernard Blaise et Richard Desgorces, *Droit des Affaires-Commerçants-Concurrence-Distribution*, 8<sup>ème</sup> éd., LGDJ, Paris, 2015, p. 106.

<sup>4</sup>The Law No 22/13 of July 12, 2022 amends and completes the Law No 08/09 including the Civil and Administrative Procedures Code, Official Gazette, No 44, for the year 2022.

<sup>5</sup> Corner law school, in LII legal information institute in site web:

(<https://www.law.cornell.edu/wex>) (consulted on 14/07/2023 at 17:20.)

<sup>6</sup> بربارة عبد الرحمان، شرح قانون الإجراءات المدنية و الإدارية، ط.2، دار بغدادي للطباعة و النشر و التوزيع، الجزائر، 2009، ص. 74.

<sup>7</sup>In addition to the courts of the first degree of instance, there are the Courts of Appeals, as courts of review in second degree, and then the Supreme Court, as high court to reviewing the application of the law by the courts of first degree of instance and the courts of appeals. The Organic Law No 22/11 of June 9, 2022, related to the judicial Organization, Official Gazette, No. 41, for the year 2022, p. 6.

<sup>8</sup> Article 32 of the Civil and Administrative Proceedings Code.

<sup>9</sup>Article 531 of the Civil and Administrative Proceedings Code.

<sup>10</sup> Before the amending of the Code of Civil and Administrative Proceedings , the title of the first division on the Article 531 was:(First Division: the attributions of commercial section) with regard to the Article 32.

<sup>11</sup>Article 531, before amendment.

<sup>12</sup> Article 534 of the Civil and Administrative Proceedings Code.

<sup>13</sup> They are: (-Intellectual property disputes. -Commercial company disputes –Judicial settlement and bankruptcy. - Disputes of banks and financial institutions with traders. – Maritime disputes, air transport disputes and insurance disputes related to commercial activity. -International trade disputes)

<sup>14</sup> According to the subject matters of the commercial law; which are traders and commercial acts. (Objective and subjective theories)

Jean-Bernard Blaise et Richard Desgorces, op. cit., p.70.

<sup>15</sup> فرحة زراوي صالح، الكامل في القانون التجاري، الأعمال التجارية، التاجر، الحرفي، نشر و توزيع ابن خلدون، وهران، 2003، ص. 78.

<sup>16</sup> Jean-Bernard Blaise et Richard Desgorces, op.cit. p. 129.

<sup>17</sup> The first article of the Commercial code has defined the status of the trader as a natural or a legal person, which practices commercial acts, and makes them as his usual profession.

<sup>18</sup> Georges Ripert et René Roblot, *Traité élémentaire de droit commercial*, LGDJ, T.1, 16<sup>ème</sup> éd., Paris, 1996, p. 201.

<sup>19</sup> Article 4 of the Commercial code.

<sup>20</sup> Jean-Bernard BLAISE et Richard DESGORCES, op.cit. p. 129.

<sup>21</sup> Michel Pédamen et Hugues Kenfack, op.cit. p. 218.

<sup>22</sup> فرحة زراوي صالح، المرجع السابق، ص. 146.  
<sup>23</sup> أنور العمروسي، الموسوعة الوافية في شرح القانون المدني، بمذاهب الفقه و أحكام القضاء، ج. 5، ط.5، دار العدالة، القاهرة، 2012، ص. 204.

<sup>24</sup> Law No 08/09 of February 25, 2008, includes the civil and administrative procedures code, Official Gazette, No 21, 2008. ( amended and completed )

<sup>25</sup> Article 512 of the Civil and Administrative Proceedings Code

<sup>26</sup> This activity is deemed a commercial act, and the developer is a trader, according to Article 19 of Law No 11/04 of February 17, 2011, which regulates real estate development activity, and Article 2 of the Commercial Code.

<sup>27</sup> Article 536 that refers to the Articles: 299 and 303 of the Civil and Administrative Proceedings Code.

<sup>28</sup> After notification of summons by the public officer ( bailiff)

<sup>29</sup> Article 303 of the Civil and Administrative Proceedings Code

<sup>30</sup> Article 301 of the Civil and Administrative Proceedings Code

<sup>31</sup> Article 36 of the Civil and Administrative Proceedings Code.

<sup>32</sup> خليفي عبد الرحمان، القضاء الاجتماعي في الجزائر، دار العثمانية، الجزائر، 2016، ص. 37.

<sup>33</sup> In the United States, they use the term labor court, and in France it is translated under the term labor court, see: Loïc CADIET, *Introduction to French Civil Justice System and Civil Procedural Law*, *Ritsumeikan Law Review*, Paris, No. 28, 2011, p. 331.

<sup>34</sup> Unlike the dispute between the public officer or agents and the public administration, that is subject to the jurisdiction of the Administrative Tribunal, according to Article 800 of the Civil and Administrative Proceedings Code.

<sup>35</sup> أحمية سليمان، آليات تسوية منازعات العمل و الضمان الاجتماعي في القانون الجزائري، د.م.ج.، الجزائر، 2005، ص. 29.

<sup>36</sup> Law No 90/04 of February 6, 1990, on the settlement of individual labor disputes, Official Gazette, No 06, 1990.

<sup>37</sup> Article 19 of the Law No 90/04.

<sup>38</sup> The Law No 90/04 op. cit.

<sup>39</sup> ( National Social Insurance Fund for employees, and National Social Security Fund for the Self-Employed: they are industrial and commercial public establishments, which are subject to the jurisdiction of the ordinary judicial system as general rule, unless there are other exceptions)

<sup>40</sup> خليفي عبد الرحمان، المرجع السابق، ص. 54.

<sup>41</sup>خليفة عبد الرحمان، الإطار القانوني للإطارات المسيرة في قانون العمل الجزائري، المجلة الجزائرية للعلوم القانونية و السياسية، حجم 50، رقم 4، سنة 2013، ص. 503-475.

<sup>42</sup>Executive Decree NO 90/290 of September 26, 1990, relating to special system of labor relations of enterprises' executive directors, Official Gazette, No 42 for the year 1990.

<sup>43</sup> Supreme Court, Labor Chamber, Decision, No 125854, of September 14, 2017, in website: [www.coursupreme.dz/العلياالمحكمة](http://www.coursupreme.dz/العلياالمحكمة) (consulted on 10/07/2023 at 14:20.)

Here the Supreme Court has considered that the legal relation, between the commercial company and its manager, as long as it had been drafted under the form of a labor contract of the executive directors, the dispute raised was subject to the labor jurisdiction.

<sup>44</sup>Supreme Court, Labor Chamber, Decision, No 0964798, of October 8, 2015, in website: [www.coursupreme.dz/العلياالمحكمة](http://www.coursupreme.dz/العلياالمحكمة) (consulted on 10/07/2023 at 14:10.)

Here the Supreme Court has considered that the legal relation between the enterprise and its director, if it hadn't been drafted under the form of a labor contract of the executive directors, the dispute raised wasn't subject to the labor court.

<sup>45</sup>خليفة عبد الرحمان، القضاء الاجتماعي في الجزائر، المرجع السابق، ص. 409.  
<sup>46</sup>سعودي زوهير، القضاء الاستعجالي العادي، مجلة صوت القانون، الجزائر، مجلد 7، عدد 1، ماي 2020.

<sup>47</sup>Articles 299 and 303 of the Civil and Administrative Proceedings Code.

<sup>48</sup>Article 303 of the Civil and Administrative Proceedings Code.

<sup>49</sup> Because, if the real estate case is between public legal persons, or between an individual and a public legal person, the conflict will be subject to the jurisdiction of the Administrative Tribunal according to the article 800 of the Civil and Administrative Procedures Code.

<sup>50</sup>بربارة عبد الرحمان، المرجع السابق، ص. 76.

<sup>51</sup>Pre-emption (Chafaa Right) حق الشفعة: It is a right, provided in the Articles 774-775 of the Civil Code, which allows certain persons to substitute the buyer in the purchase of real state, if they fulfill its conditions.

<sup>52</sup> Articles: 521-522-523 of the Civil and Administrative Proceedings Code.

<sup>53</sup>Michel Pédamen et Hugues Kenfack, op.cit. p. 4.

<sup>54</sup> Executive Decree No 23/53 of January 14, 2023, defines the jurisdictions of the special commercial court, Official Gazette, No 02 for the year 2023.

<sup>55</sup> Article 536 bis 4.

<sup>56</sup>فرحة زراوي صالح، الكامل في القانون التجاري الجزائري، حقوق الملكية الفكرية، ابن خلدون للنشر و التوزيع، وهران، 2006، ص.1.

<sup>57</sup> Ordinance No 03/06 of July 23, 2003, relating to trade marks, Official Gazette, No 44 for the year 2003.( amended)

<sup>58</sup>Article 06.

<sup>59</sup> Ordinance No 03/07 of July 23, 2003, relating to patents, Official Gazette, No 44 for the year 2003.

<sup>60</sup> Third article of the Ordinance No 03/07.

<sup>61</sup> United States Code/ Title 35/ Part 2/Chapter 16/§ 171. Patent for designs; GRAEME B. DINWOODIE, the protection of designs under U.S law, IPRinfo 4/2008. In sit web: <https://ipruc.fi/uploads>(consulted on 20/08/2023 at 13:00.)

<sup>62</sup> Ordinance No 66/86 of April 28, 1966, relating to drawings and models, Official Gazette, No 35 for the year 1966.

<sup>63</sup> In the site web: [wipo.int/geo-indication](http://wipo.int/geo-indication). (consulted on 21/08/2023 at 14:00)

<sup>64</sup> ( ...all qualities of the product that are affected by different factors: human, natural, climate, soil quality...) فرحة زراوي صالح، حقوق الملكية الفكرية، المرجع السابق، ص.367.

<sup>65</sup> The legal meaning of this term in web site of Law Insider:

<https://www.lawinsider.com/dictionary/germplasm>

<sup>66</sup> Law No 05/03 of February 6, 2005 relating to the Seeds, Seedlings And Plant Germoplasm Protection, Official Gazette, No 11 for the year 2005.

<sup>67</sup> Ordinance No 03/08 of July 19, 2003, relating to the Integrated Circuits Property, Official Gazette, No 44 for the year 2003.

<sup>68</sup> Ordinance No03/05,of July 19, 2003, relating to Copyrights and neighboring rights, Official Gazette, No 44 for the year 2003.

<sup>69</sup>Article 03of the Ordinance 03/05.

<sup>70</sup> Articles: from 107 to 123 of the Ordinance 03/05.

<sup>71</sup>مصطفى كمال طه، أساسيات القانون التجاري-دراسة مقارنة-، منشورات حلبي الحقوقية، ط. 2، بيروت، 2012، ص. 687.  
Laporte Legeaism, Droit des marques et noms de domaines, LGDJ, Paris, 2005, p. 28.

<sup>72</sup>Le Tourneau Phillip, La valeur de la faute dans la responsabilité civile, Revue Trimestrielle du Droit civil, Paris, 1988 , p.505.

<sup>73</sup> International Convention of Lisbon of October 31, 1958 for the protection of appellations of origin, that provided their differences.

<sup>74</sup>Executive Decree NO 17/62 of February7, 2017, relating to the conditions and characteristics of affixing markings conforming to technical regulations as well as conformity certification procedures, Official Gazette, No 9 for the year 2017.

<sup>75</sup>Articles 26 and 27 of the Law No 04/02 of June 23, 2004, relating to the rules applicable to the commercial practices, Official Gazette, for the year 2004,( Amended and completed)  
-Joseph Bauer, A Federal Law of Unfair Competition: What Should Be the Reach of Section 43(a) of the Lanham Act?, 31 UCLA L. Rev.671 (1983-1984).  
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<sup>76</sup> Article 416 of the Civil Code.

<sup>77</sup> Article 544 of the Commercial code.

<sup>78</sup>Articles 22 and 549 of the commercial code

<sup>79</sup> Articles: from 544 to 800.

<sup>80</sup> Such as disputes that arise from agency contract or franchising convention, distribution contracts..., and other tort liability cases, as Unfair Competition Action.

<sup>81</sup>Supreme Court, Labor Chamber, Decision, No 0964798, of October 8, 2015, (aforementioned)

<sup>82</sup>Supreme Court, Labor Chamber, Decision, No 125854, of September14, 2017, (aforementioned)

<sup>83</sup> In French law (Book No 5 of French commercial code), in USA (they are regulated in the title 11 of U.S. Code, in: <https://www.law.cornell.edu/uscode/text/11> ( consulted on 15/08/2023 at 15:05)

<sup>84</sup> راشد راشد، الأوراق التجارية، الإفلاس و التسوية القضائية، د.م.ج.، الجزائر، 2001، ص. 260.  
<sup>85</sup> Article 215 of the commercial code.

<sup>86</sup>In brief, regarding the book number three of the commercial code, the bankruptcy proceedings, must be done by judgment, after hearing the debtor trader, and being sure about his suspension of payment situation (Article 222), in which all assets of the debtor are seized, and he is prohibited from depositing of them (Article 244), and from managing his enterprise. The assets and the business are then managed by a judicial administrator (Article 268.). After the debts be investigated by the committed judge, and be proven in the debt investigation session (Article 314), the bankrupt's assets could be sold to pay all the debts. In the other hand, the judicial settlement procedures are applied to a bona fide debtor (debtor with good faith),( Article 226/1) and even if the commercial court seizes the debtor's assets, and prohibits him to dispose of them, it authorizes him to manage his enterprise, he can manage it with the assistance of a judicial administrator (Articles 273- 277), also he could benefit from judicial reconciliation procedures (Article 317), and the enterprise can be saved with paying the debts.

<sup>87</sup> About non-enforceability of the dispositions held during the period of doubt.

<sup>88</sup> راشد راشد، المرجع السابق، ص. 284.  
<sup>89</sup>Article 374 of the commercial code, relating to the Fraud Bankruptcy offence.

<sup>90</sup> The Law No 23/09 related to the Monetary and Credit enumerates them in the first and second chapters of the fifth book, in articles 68-69-70-71 – 79-80-81 as the ordinary activities of the bank, which are:

1. banking operations:

-Receiving of deposits from public ( in order to return them back)

- All kinds of credit operations.

- All banking operations related to the Islamic Banking.

- Placing the payment systems at the disposal of the public, and managing them.

2. Exchange operation is the changing of a formal currency against another formal currency.)

3. In addition to all operations related to brokerage, management, and providing advice... regarding trading and investing in securities (Stocks and Bonds....) Articles: 79-80-81.

<sup>91</sup> Law No 23/09 of June 21, 2023, relating to Monetary and Credit, Official Gazette No 43, 2023

<sup>92</sup> According to the Article 75 of the law No 23/09, the Bank could be defined as (a financial entity, established under joint-stock company, it is licensed and approved by the Monetary and Credit Council, to carry out on a regular basis all the banking and exchange operations, specified in the Monetary and Credit law. In the other hand, the financial institution shall be subject to the same definition of the bank, and its regular functions are the banking and exchange operations, except for the receiving of deposits from the public, and providing payment systems at the disposal of the public, and managing them. ( Article 78)

<sup>93</sup> Article 76 of the Law No 23/09.

<sup>94</sup> Also in the website of the Ministry of Justice when this amendment was promulgated

<https://www.mjustice.dz> ( consulted on 12/06/2023)

<sup>95</sup> مصطفى كمال طه، مبادئ القانون البحري، ط. 03، القاهرة، 1989، ص. 6.

<sup>96</sup> Ordinance No 76/80 of October 23, 1976 containing the maritime code, Official Gazette No 29, 1976, ( Amended and completed)

<sup>97</sup> Articles from 384 to 567 of the Maritime Code.

<sup>98</sup> دناي نور الدين، عقد العمل البحري، المجلة الجزائرية للقانون البحري و النقل، مجلد 4، عدد 2، جامعة تلمسان، سنة 2017.

<sup>99</sup> The captain of the ship is not an employee and is not considered as a seafarer in the maritime code, his status is regulated by the third book in the exploitation of the ship, with the ship-owner and the assisting maritime agents; also in France, his litigations are subject to the commercial court.

مصطفى كمال طه، المرجع السابق، ص. 206.

<sup>100</sup> Law No 98/06 of June 27, 1998, relating to the civil aviation, ( Amended and completed)

<sup>101</sup> (It is an agreement to which the natural or legal person, who offers or operates airlines to transport passengers, mail, goods, or any of them, in exchange for a fee.)

علي غسان أحمد، القانون الواجب التطبيق على عقد النقل الجوي- دراسة مقارنة- مجلة الدراسات حول فعالية القاعدة القانونية، مجلد 3، عدد 2، العراق، 2019، ص. 2596.

<sup>102</sup> (An insurance contract is a contract, under which the insurer is obliged to pay to the insured or to the beneficiary a sum of money or any other payment, if the risk subject of the insurance contract occurs; and the insured is obliged to pay the insurance premiums.) article 2; it can be the insurance contract on the civil liability of the trader, the insurance contract on the goods, such as the insurance on the transported goods, or the insurance on the goodwill...

<sup>103</sup> "...international trade is the sale and purchase of goods and services across international borders." Erik Jensen, International Trade Law, Stanford Law School, American University of Iraq, 2016, p. 3. in: <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Intl-Trade-2016.pdf> ( consulted on 19/08/2023 at 10:00)

<sup>104</sup> It links two traders or more about business.

<sup>105</sup> عبد القادر تجيني، معايير تدويل عقود التجارة الدولية، مجلة العلوم القانونية و السياسية، مجلد 13، عدد 2، جامعة الوادي، 2022، ص. 111.

<sup>106</sup> The first, is traditional legal criterion, it is extended, based on any foreign element in the legal relationship; then the second criterion is the strict legal criterion, which focuses on the influential foreign element in the relationship; the third criterion is purely economic, which focuses on the extent to which the relationship is related to the interests of international trade.

<sup>107</sup> عبد القادر تجيني، المرجع السابق، ص. 118.

<sup>108</sup> Article 1039 of the Civil and Administrative Proceedings Code.

<sup>109</sup> International trade is the exchange of goods and services across the borders of different countries; Foreign Direct Investment is the placement of foreign capital in another country in order to establish or expand domestic industries or services.

<sup>110</sup> The Law No 22/18 relating to investment.

<sup>111</sup> All strategic foreign direct investment shall be made under commercial company form, (according to the complementary law of the finance, 2020, Article 49.)

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