

الإجابة النموذجية

The model answer for the second semester exam, for the English language course

Master's Degree in Business Law – First Year (M1)

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The examination will take place on Sunday, June 1, 2025, at 11:30 AM in the faculty room opposite the Department of Private Law.

تاريخ الاضطلاع يوم الأحد 1 جوان 2025 على الساعة 11.30 صباحا في قاعة الأساتذة المقابلة لإدارة قسم القانون الخاص.

The legal framework governing the **criminal liability** of company managers is primarily outlined in **Article 811 of the Commercial Code**, which defines two main offenses: **the misuse of company funds or reputation** and the **abuse of authority or voting rights**. Both crimes require intent and bad faith, meaning that the manager must be fully aware that their actions are contrary to the company's interests. The first offense under paragraph 3 involves using company funds or reputation for personal benefit or to favor another company in a way that harms the company itself. The term "funds" includes all components of the balance sheet assets, whether tangible such as cash and property or intangible such as brand value and intellectual property. Unlike embezzlement, this crime does not require removing assets from the company but focuses on improper use while they remain within it, such as awarding excessive salaries or using company money to settle personal debts. The second offense under paragraph 4 concerns the misuse of managerial powers or voting rights granted to administrators for purposes that serve private interests rather than those of the company. This occurs when a manager intentionally uses their decision-making authority or voting privileges to favor another entity or act against the company's best interests. It should also be noted that the Commercial Code only punishes active behavior and does not consider non-action or failure to act as criminal unless it directly leads to harm

through negligence. Furthermore, although the company may suffer damage as a result of these crimes, it cannot itself be held criminally liable because it is considered a legal person. Criminal penalties apply only to individuals who have committed the act, such as the chairman of the board or general manager, unless others were directly involved. The law remains unclear regarding the liability of other members including board directors, auditors, or shareholders, leading to judicial debate over the scope of responsibility under Article 811. In addition to these criminal provisions, there are also civil liabilities that may affect company managers, particularly in cases of bankruptcy or financial shortfall. According to Article 578, paragraph 2 of the Algerian Commercial Code, in the event of company bankruptcy resulting in a financial shortfall, upon request of the judicial administrator, the directors may be held personally liable for the debts of the company, whether they are shareholders or not, provided that the shareholders involved actually participated in the company's management. While this provision is clear and precise for limited liability companies (SARL), the equivalent provision for joint-stock companies (SPA) lacks clarity (Article 715/27). However, this is considered strict civil liability based on presumed fault. Although this presumption is rebuttable.

Exercise 1:

1.Statement: The Algerian Commercial Code punishes non-action or failure to act even if it does not directly lead to harm.

Answer:  False

Explanation: According to the text, the Commercial Code only punishes active behavior , and does not consider non-action or failure to act as criminal unless it directly leads to harm through negligence .

2.Statement: A company can be held criminally liable for the actions of its managers.

Answer:  False

Explanation: The text clearly states that a company is considered a legal person and cannot be held criminally liable ; only individuals such as directors or managers can be held responsible.

3.Statement: Using company funds to settle personal debts constitutes misuse of company funds under Article 811, paragraph 3.

Answer:  True

Explanation: This is one of the examples given in the text of how a manager may misuse company funds, which falls under Article 811, paragraph 3 .

4.Statement: Both offenses described in Article 811 require proof of intent and bad faith.

Answer:  True

Explanation: The text emphasizes that both crimes — misuse of funds or reputation and abuse of authority or voting rights — must be committed intentionally , with bad faith .

5.Statement: The penalties under Article 811 include only fines and do not involve imprisonment.

Answer:  False

Explanation: The text mentions that penalties typically include fines and possible imprisonment , showing that imprisonment is also a potential consequence.

6.Statement: Only the chairman of the board or general manager can be held liable under Article 811.

Answer:  False

Explanation: While these individuals are usually the main offenders, others who were directly involved (such as board members or employees) may also be considered accomplices and face liability.

7.Statement: Civil liability may arise from the misuse of company funds or authority.

Answer:  True

Explanation: The text states that civil liability may also arise , requiring compensation for damages caused to the company.

8.Statement: Directors of limited liability companies (SARL) may be held personally liable for company debts in case of bankruptcy if they participated in management.

Answer:  True

Explanation: Article 578, paragraph 2 of the Algerian Commercial Code allows for this kind of personal liability if the director was involved in managing the company.

9.Statement: The equivalent provision for joint-stock companies (SPA) under Article 715/27 is clear and well-defined.

Answer:  False

Explanation: The text says that the provision for SPAs lacks clarity , unlike the clear rule for SARL.

10.Statement: Strict civil liability based on presumed fault cannot be challenged or proven otherwise.

Answer:  False

Explanation: The text clarifies that although there is a presumption of fault , it is rebuttable , meaning it can be challenged with evidence .

Exercise 2: Translate the following legal terms from English to Arabic

- Strict civil liability
→ مسؤولية مدنية موضوعية

- Bankruptcy
→ إفلاس
- Rebuttable
→ قابلة للدحض
- Financial shortfall
→ عجز مالي
- Civil liability
→ مسؤولية مدنية
- Presumed fault
→ خطأ مفترض
- Chairman of the board
→ رئيس مجلس الإدارة
- Shareholders
→ المساهمون
- Breach of Trust Offense
→ جريمة خيانة الأمانة