

The Juridical Personality of Companies in Bahraini Law.

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Abstract

Legal personality (also juristic personality and artificial personality) is the characteristic of a non-living entity regarded by law to have the status of personhood. It allows one or more natural persons to act as a single entity (a composite person) for legal purposes. Legal personality, in many jurisdiction, allows that composite to be considered under law separately from its individual members or shareholder. They may sue and be sued, enter contracts, incur debts, and own property. Entities with legal personality may also be subject to certain legal obligations, such as payment of taxes, and may shield their shareholders from personal liability.

This study explores the related concepts of corporate legal personality and limited liability In Bahraini Law of Companies, which are central to developing understanding of companies' law and are essential that one is devised to take time here to absorb these fundamental principles.

1. Introduction: The Concept of Juridical Personality

A juristic person ¹ is an artificial entity through which the law allows a group of individuals to act as if they were a single unite for certain purposes.² In other words, a group of individuals seek specific goals, or an amount devoted for certain purpose recognized by the law. Civil law systems may refer to such entities and companies as "moral persons".

This legal fiction should not be interpreted in a way to treat these entities as human beings, but rather, it means the law recognizes and allows them to act as individuals for some purposes, most commonly, lawsuits, property, ownership, and contracts.³

¹-A legal person (Latin: *persona ficta*) (also artificial person, juridical person, juristic person, legal entity and body corporate) has a legal name and certain rights, protections, privileges, responsibilities, and liabilities under law, similar to those of a natural person. The concept of a legal person is a fundamental legal fiction. It is pertinent to the philosophy of law, as it is essential to laws affecting a corporation (corporations' law) (the law of business associations). http://en.wikipedia.org/wiki/Legal_personality.

²-For more details see: Salem Gumed, "The Legal aspects of Public International Joint Ventures", (PhD thesis), Strathclyde University, Glasgow.1996, p.211. Fathi Abd- Alsabour, "Al-shakhasy'a Al-qanoony'a lel-Mashroa'at Ala'amah" (Legal Personality of Public Enterprises) Cairo 1975. Dr. Hassan Keera, "Al-madkhal Ela Al-qanoon" (Intro to Lega), (4th edition), para (315). Tusbar Kanti Saha, "Textbook on Legal Methods, Legal Systems & Research", Universal Law Publications, India, 2010, p79.

³-Samir Chopra & Laurence F. White, "A Legal Theory for Autonomous Artificial Agents", University of Michigan, USA, 2011. p.156.

In ordinary speech, we often use the word "person" to refer to an individual human being: a man, a woman or a child. But, legally, the word has more technical meaning i.e. a subject of rights and duties.⁴

Upon incorporation, companies and partnerships, save cooperation firm (association in participation), in most countries are juristic persons "legal entities" with corporate personality capable of assuming legal rights and obligations. They are distinct and separate from their members.⁵

Despite of having legal personality, companies can only act through their human agents, therefore, it, in theory, may be liable for wrongful acts as principal [i.e. direct liability] or vicariously [secondary liability] for the acts of its servants acting in the course of their employment. It was alleged that:

"A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who is really the directing mind and will of the corporation, the very ego and center of the personality of the corporation".⁶

2. Historical Overview

The word "corporation" was derived from the Latin *corpus* (body), representing a "body of people"; that is, a group of people authorized to act as an individual.⁷ Corporate legal personality arose from the activities of organizations such as religious orders and local authorities which were granted rights by the government to hold property and sue and be sued in their own right and not to have to rely on the rights of the members behind the organization. Over time, the concept began to be applied to commercial ventures with a public interest element such as rail building ventures and colonial trading businesses. However, modern companies' laws only began in the mid nineteenth century when a series of Companies Acts were passed allowing ordinary individuals to form registered companies with limited liability.⁸

⁴- L.S. Sealy, "Cases and Materials in Company Law", Butterworths, London, 5th edition 2008, p. 29.

⁵- As any other legal subjects, Companies enjoy rights similar to humans save those saved for natural persons. Article (8) of the Commercial Companies Law stipulates that: "Except for Associations of Participation and unless otherwise provided for in the law, all commercial companies acquire a corporate entity upon registration in the Commercial Registry".

⁶- Salem A. Gumed, "The Legal Aspects of International Public Joint Ventures", op.cit, p.215.

⁷- According to the Oxford English Dictionary. The word (universities) is also used to refer to a group of people, but, nowadays, it refers specifically to a group of scholars (see University). In the United Kingdom and Republic of Ireland. The term corporation was also used for the local government body in charge of a borough. However, in United Kingdom, this style was replaced in most cases with the term council in 1973, and in the Republic of Ireland in 2001. The sole exception is the Corporation of London which retains the title.

⁸-The way in which corporate personality and limited liability link together is best expressed by examining the key cases. Read more:

However, in colloquial usage "corporation" usually refers to a commercial entity set up in accordance with a governmental framework.⁹ Traditionally, only a person could sue or be sued. This was not a problem in the Industrial Revolution's pre-era, when the typical business venture was either a sole proprietorship or partnership, where the owners were simply liable for the debts of the business. A feature of the corporation, however, is that the owners or shareholders enjoyed limited Liability, and were not liable for the debts of the company. Thus, when a corporation breached a contract or broke a law, there was no remedy as limited liability protected the owners and the corporation wasn't a legal person to be a subject to the law. There was no accountability for corporate wrong-doing.¹⁰

To resolve the issue, legal scholars proposed that a corporation could be considered a person, and could, therefore, be recognized and held subject to the law. English courts adopted this legal fiction, calling corporations artificial persons.¹¹ As early as the 16th century, the United States Supreme Court first acknowledged the concept of corporation in *Trustees of Dartmouth College v. Woodward* (1819). In that case, Justice Story wrote that a corporation is, in short, an artificial person, existing in contemplation of law, and endowed with certain powers and franchises which, though they must be exercised through the medium of its natural members, are yet considered as subsisting in the corporation itself, as distinctly as if it were a real personage.¹²

This ensured that creditors would be able to seek relief in the courts should the corporation default on its obligations, encouraging banks to extend credit to the corporation. This simple fiction enabled corporations to acquire wealth, expand their activities, and become the preferred organizational form for businesses of all sizes.

The leading case in corporate legal personality, in UK, is known as *Salomon V Salomon*.¹³ It was fairly clear that the mid-nineteenth century; Companies Acts intended the virtues of corporate personality and limited liability to be conferred on medium to large commercial ventures. To ensure this was the case, there was a requirement that there be, at least, seven members of the

<http://www.lawteacher.net/company-law/essays/when-company-becomes-registered-it-becomes-separate-legal-entity-company-law-nessay.php#ixzz2Hs2suVF2>.

⁹-Urbanization, Resource Exploitation and Environmental Stability in Nigeria: Book of Proceedings of the 49th Annual Conference of the Association of Nigerian Geographers (ANG): Department of Geography, University of Abuja, 5th-19th October 2007, p213.

¹⁰-George F. Deiser, "The Juristic Person," *University of Pennsylvania Law Review and American Law Register*, Vol. 57, No. a, Volume 48 New Series. (Dec., 1908), pp. 131-142.

¹¹-The legal personality of a corporation was established to include five legal rights:

- the right to a common treasury or chest (including, the right to own property),
- the right to a corporate seal (i.e., the right to make and sign contracts),
- the right to sue and be sued (to enforce contracts),
- the right to hire agents (employees) and
- the right to make by-laws (self-governance).

George F. Deiser, *op.cit*, pp. 131-142. Also you may refer to: "Legal Personality", http://en.wikipedia.org/wiki/Legal_personality.

¹²-Thomas G. Walker & Lee Epstein, "Constitutional law for a changing America: Institutional powers and constraints", CQ Press 2006.

¹³- *Salomon v Salomon & Co. [1897] AC 22*.

company. This was thought to exclude sole traders and small partnerships from utilizing corporate personality. However, as, will be seen below in the case of *Salomon v Salomon & Co*, this assumption proved to be mistaken.

Mr. Aron Salomon made leather boots and shoes in a large White Chapel High Street establishment. He ran his business for 30 years and he might fairly have counted upon retiring with at least £10,000 in his pocket. His sons wanted to become business partners, so he turned the business into a limited company. His wife and five eldest children became subscribers and two eldest sons also directors. Mr. Salomon took 20,001 of the company's 20,007 shares.¹⁴ The price fixed by the contract for the sale of the business to the company was £39,000.¹⁵

Soon after Mr. Salomon incorporated his business a series of strikes in the shoe industry led the government, Salomon's main customer, to split its contracts among more firms (the government wanted to diversify its supply base to avoid the risk of its few suppliers being crippled by strikes). His warehouse was full of unsold stock. He and his wife lent the company money. He cancelled his debentures. But the company needed more money, and they sought £5,000 from Mr. Edmund Broderip. He assigned Mr. Broderip his debenture, the loan with 10% interest and secured by a floating charge. But Salomon's business still failed, and he could not keep up with the interest payments. In October 1893, Mr. Broderip sued Mr. Solomon to enforce his security. The company was put into liquidation. Broderip was repaid his £5,000, and then the debenture was reassigned to Salomon, who retained the floating charge over the company.¹⁶

The company's liquidator met Broderip's claim with a counter claim, joining Salomon as a defendant that the debentures were invalid for being issued as fraud. The liquidator claimed all the money back that was transferred when the company was started: rescission of the agreement for the business transfer itself, cancellation of the debentures and repayment of the balance of the purchase money.¹⁷

The judge Vaughan Williams said: Mr. Broderip's claim was valid. It was undisputed that the 20,000 shares were fully paid up. He said the company had a right of indemnity against Mr. Salomon. He said the signatories of the memorandum were mere dummies; the company was just

¹⁴- *Mr. Salomon's wife and five of his children held one share each in that company to satisfy the law requirement because the Companies Act required, at that time, that there be seven shareholders. Mr. Salomon also at this point paid off all the sole trading business creditors in full. Thus he held 20,001 shares in the company, with his family holding the six remaining shares.*

¹⁵-*According to the court, this was "extravagant" and not "anything that can be called a business like or reasonable estimate of value." Transfer of the business took place on June 1, 1892. The purchase money the company paid to Mr. Salomon for the business was £20,000. The company also gave Mr. Salomon £10,000 in debentures (i.e., Salomon gave the company a £10,000 loan, secured by a charge over the assets of the company). The balance paid went to extinguish the business's debts (£1,000 of which was cash to Salomon).*

¹⁶-*Ibid.*

¹⁷-*Ibid.*

Mr. Salomon in another form, an alias, his agent. Therefore, it was entitled to indemnity from the principal. The liquidator amended the counter claim, and an award was made for indemnity.¹⁸

The Court of Appeal confirmed Vaughan Williams J's decision against Mr. Salomon, though on the grounds that Mr. Salomon had abused the privileges of incorporation and limited liability, which Parliament had intended only to confer on "independent bona fide shareholders, who had a mind and will of their own and were not mere puppets"¹⁹ Linddley LJ²⁰ (an expert on partnership law) held that the company was a trustee for Mr. Salomon, and as such was bound to indemnify the company's debts.²¹

The liquidator alleged that the company was but a shame and a mere 'alias' or agent for Mr. Salomon and that Mr. Salomon was therefore personally liable for the debts of the company.²² The Court of Appeal agreed, finding that the shareholders had to be a *bona fide* association who intended to go into business and not just hold shares to comply with the Companies Acts. The House of Lords disagreed and found that:

- a. the fact that some of the shareholders hold shares as a technicality was irrelevant; the registration procedure could be used by an individual to carry on what was in effect a one-man business,
- b. company formed in compliance with the regulations of the Companies' acts is a separate person and not the agent or trustee of its controller. As a result, the debts of the company were its own and not those of the members. The members' liability was limited to the amount prescribed in the Companies Act – i.e. the amount they invested.

The decision also confirmed that the use of debentures instead of shares can further protect investors.²³

¹⁸-*Ibid* .

¹⁹-*The case was held by House of Lords HL, the Judges were: Lord Halsbury L.C., Lord Watson., Lord Herschel, Lord McNaughton, Lord Morris and Lord Davey. See: David Kershaw, "Company Law in Context: Text and Materials", Oxford University Press, UK, 2012, p. 64.*

²⁰-*Lindley LJ was the leading expert on partnerships and company law.*

²¹- *Salomon v Salomon & Co. [1897] AC 22.*

²²-*The House of Lords unanimously overturned this decision, rejecting the arguments from agency and fraud. They held that there was nothing in the Act about whether the subscribers (i.e., the shareholders) should be independent of the majority shareholder. The company was duly constituted in law and it was not the function of judges to read into the statute limitations they themselves considered expedient. Lord Halsbury. LC stated that the statute "enacts nothing as to the extent or degree of interest which may be held by each of the seven [shareholders] or as to the proportion of interest or influence possessed by one or the majority over the others." His judgment continued.*

²³-*The principle in Salomon is best illustrated by examining some of the key cases that followed after. In Macaura v Northern Assurance Co. [1925] AC 619 Mr. Macaura owned an estate and some timber. He agreed to sell all the timber on the estate in return for the entire issued share capital of Irish Canadian Saw Mills Ltd. The timber, which amounted to almost the entire assets of the company, was then stored on the estate. On 6 February 1922 Mr. Macaura insured the timber in his own name. Two weeks later a fire destroyed all the timber on the estate. Mr. Macaura tried to claim under the insurance policy. The insurance company refused to pay out*

This understanding wasn't just adopted by the courts; it was also adopted by legislatures. Thus, legislators intentionally used the word "person" to include both natural persons and juristic persons. This understanding has more or less continued, and was reaffirmed by the U.S. Supreme Court as recently as 2003 in *Cook County, Ill. v. U.S. ex rel. Chandler*.²⁴

The law typically views a corporation as a fictional person, a legal person, or a moral person is brought into being by legislation and registration procedures laid down by the Commercial Companies' Act. The creation of such an entity is evidenced by the certificate of incorporation issued by the commercial registrar (as opposed to a natural person). Juristic person (Which is a legal fiction) is different altogether from the partners constitute it. It is a creation of law and, mostly pointed to as an artificial person.

3. Legal Personality of Companies in Bahrain

According to the Bahraini Commercial Companies' Law, companies established in Bahrain, except co-operation firm, acquire the legal personality with all its attributes. Article (8) states that:

"Save for the Co- operation firm, and unless otherwise provided for in the law, all commercial companies acquire a legal personality upon registration in the Commercial Registry."

arguing that he had no insurable interest in the timber as the timber belonged to the company. Allegations of fraud were also made against Mr. Macaura but never proven. Eventually in 1925 the issue arrived before the House of Lords who found that:

- *-the timber belonged to the company and not Mr. Macaura*
- *Mr. Macaura, even though he owned all the shares in the company, had no insurable interest in the property of the company*
- *Just as corporate personality facilitates limited liability by having the debts belong to the corporation and not the members, it also means that the company's assets belong to it and not to the shareholders.*
- *More modern examples of the Salomon principle and the Macura problem can be seen in cases such as Barings Plc (In Liquidation) v Coopers & Lybrand (No.4) [2002] 2 BCLC 364. In that case a loss suffered by a parent company as a result of a loss at its subsidiary (a company in which it held all the shares) was not actionable by the parent – the subsidiary was the proper plaintiff. In essence you can't have it both ways – limited liability has huge advantages for shareholders but it also means that the company is a separate legal entity with its own property, rights and obligations. (See also Giles v Rhind [2003] 2 WLR 237 and Shaker v Al-Bedrawi [2003] 2 WLR 922).*

²⁴- See as an example: "the U.S. Supreme Court as recently as 2003 in: *Cook County, Ill. v. U.S. ex rel. Chandler*. (01-1572) 538 U.S. 119 (2003) 277 F. ad 969.
<http://www.law.cornell.edu/supct/html/01-1572.ZO.html>.

No doubt that, vis-a-vis its members, a company acquires juristic personality once the procedures of formation are finished and certificate of incorporation is issued. However, the legal personality does not affect the third party unless the company's documents are published.²⁵

4. Consequences of Company's Legal Personality

Due to devoid of natural existence, it is unnecessary and illogical to assume that the consequences attributed to the juristic personality are identical to those of the human beings. Company enjoys many rights and assumes many obligations similar to those of individual, such as, ability to own property, sign binding contracts, have name and domicile, nationality, power to sue and be sued.²⁶ However, in most jurisdictions, companies do not possess the rights appertaining to humans; for example, a corporation cannot vote.

Nonetheless, according to the civil law system, a company should have name, patrimony, domicile, legal capacity, nationality as will be discussed in the following paragraphs.²⁷

4.1. Naming

The company, as a trader, should have a name. Generally, any name may be selected, even though, a company cannot be registered by a prohibited name, either absolutely or conditionally. Therefore, incorporators or promoters should choose a distinctive name to their entity. Names of partnerships are usually composed of one or more joint partners' names with the word (& partners or co) if there is any. However, using more than two names is not preferable. This part of the name should be followed by the objectives of the company and its type.

In fact, name of the company is of great importance in identifying the company as a juristic person, therefore, the Commercial Companies' Act provides for the name of a company must be clearly stated in the memorandum and articles of association, on company's seal, on business letters and on orders' forms; in addition, it must be affixed at the entrance of the business place.²⁸

It should be noted that names of silent or limited partners should not be used in the name of the partnership. If such names are used with their awareness or consent, the limited partner will be deemed jointly liable.²⁹ (Article (53) stated that:

"The name of the limited partnership company shall only include the names of the joint partners. If there is only one partner who is liable in all his property, the word (& Co.) shall be added to his name. The name of the limited partner shall not be included in the name of the company. If it is included with his knowledge, he shall be liable as a joint partner towards third parties acting in good faith."

²⁵-To read more about creation of legal personality of juristic persons, see: Salem A. Gumed, "Introduction to Bahraini Law, Theory of law and theory of right according to Bahraini Law", University of Bahrain, (1st ed), 2012, p.423 et seq.

²⁶-Salem Gumed, *op.cit*, p. 425.

²⁷-Article (18) of the Bahraini Civil Code.

²⁸-Mosleh A. At'tarawaneh, *Introduction to the Law of Commercial Companies in the State of Qatar*, College of Law, University of Qatar, 2010,, p.385.

²⁹-Mads Tønnesson Andenæs, "European Comparative Company Law", Cambridge University Press, Cambridge & New York, 2009, p. 157.

In addition, names of corporations must not, in principle, include names or surnames of natural person except in conditions mentioned in law, and must end with suffix indicating the type of the company such as WLL for With Limited Liability Company.³⁰ y. Article (27) of the commercial Act stated that:

"The name of a general partnership company shall consist of the names of all partners or the name of one or more of them accompanied by (& Co.) or by a similar word giving the same meaning. The name of the company, wherever mentioned, shall be followed by (A Bahraini Partnership Company); and shall always conform to its current status"

Similarly, Article (66 of the companies' law) in respect of Joint Stock Company (BJSC),³¹ stipulated that:

"Every Joint Stock Company shall have a special commercial name indicating Its objectives. Such name shall not be derived from the name of a natural person unless the objective of the company is to invest a patent registered in the name of that person, or unless the company acquires, upon its incorporation or thereafter, another commercial establishment and uses the name of such establishment as its own. The name of the company shall – whenever mentioned – be followed by the phrase (A Bahraini Joint-Stock Company)".

There are some statutory restrictions on freedom of choice. Firstly, the chosen name should be different from and must be not identical or similar to any other existing registered company as to be confusing or misleading. Secondly, it should not be offensive or constitute a criminal offence. Finally, it must be socially accepted.³²

4.2. Legal Capacity

As a legal person, the capacity of a company entails its capability of being a subject of rights and obligations within limits of the objects listed in the memorandum. It was previously indicated that companies are not allowed to carry on activities rather than those stated in their memorandums. Save some specific matters, the company, as a juristic person, has the same legal capacity as human being, but in order to protect its shareholders and dealers, the company is not allowed to carry on only those activities that it was created for together with anything incidental thereto. Other activities rather than those are considered, *ultra vires* and void.³³

As a result of the juristic personality of companies, decisions and actions should be taken by natural persons (managers or agents). Hence, the mental state of these people who are the directing mind and will of a company may attribute to the company itself. So, the company may hold civil or

³⁰-Mosleh A'atarawneh, *op.cit*, p.444. Salem Gumed, "Introduction to Bahraini Law", *op.cit*, p. 427.

³¹-Mosleh A'atarawneh, *op.cit*, p.403.Salem Gumed, *op.cit*, p.427.

³²-Names of companies can be changed by an application signed by the authorized person to directorate of companies attached with a completed and signed company's name form, Extraordinary general assembly minutes of meeting, a amended draft of the company's memorandum and articles of association and the latest audited financial statement (if the company was registered before one year).

³³-Salem Gumed, *op.cit*, p. 348.

criminal liable for its agents act which have been committed on behalf of the company. It can also be liable in tort. However, agents and managers are not allowed legally to commit such an act, therefore the company shall not be liable for such an act.³⁴

4.3. Domicile

The company, as a juristic person, should have its own domicile which is distinct from those of its members.³⁵ The domicile of a company is the location of its management's headquarters which is called the main seat of management. Consequently, the domicile of a partnership is the place where the manager performs his activities, while the domicile of corporation is the place where the board of directors and the general assembly convene.³⁶

It is very important not to confuse the headquarters of the company with the place of its business activities. However, usually companies have their domicile in the place of their registration. And retain that domicile throughout their existence. Therefore, the companies which are established and registered in Bahrain shall, by virtue of article 4/3 take Bahrain as their domicile. The foresaid article states that:

"Any company incorporated in Bahrain shall be domiciled therein, and shall be of Bahraini Nationality without necessarily being entitled to the rights exclusive to Bahrainis".³⁷

A Foreign company established outside the kingdom of Bahrain but performs business in the state shall have Bahrain as a domicile for that business.

4.4. Nationality

As other juridical persons, companies enjoy all of the recognized rights except those concerning human beings. Among those is the nationality. In Bahrain, the question of companies' nationality does not arise.³⁸

³⁴-Mosleh A'atrawneh, *op.cit*, p. 345.

³⁵-Domicile is a legal term the purpose of which is to connect an individual to a territory that has a distinct system of law. It is also defined as: The place where a person has fixed his ordinary dwelling, without a present intention of removal. See Salem Gumed, "Introduction to law", *op.cit*, p. 383.

³⁶ - For more details about the domicile of juristic person see: A'az Al-Addain Abd-Allah," *Al-qanoon Al-dawli Al-khass" (Private International Law)*(text in Arabic), published by: Dar Al-Nahadhah Al-A'araby'a, Cairo, 1977. Vol. (1), para 168.

³⁷ - For more details about the domicile of juristic person see: A'az Al-Addain Abd-Allah," *Al-qanoon Al-dawli Al-khass" (Private International Law)*,(text in Arabic), published by: Dar Al-Nahadhah Al-A'araby'a, Cairo, 1977. Vol. (1), para 168.

³⁸ - Martin Wolff, "Private International Law", Oxford University Press, Oxford, UK, 1962. p. 308.

The concept of domicile is a possible alternative to the nationality as the criterion of the personal law. Although the domicile is an important basis of jurisdiction in civil and commercial matters, under Bahraini law, as in many other countries, the domicile does not have the same importance as in English law; it does not indicate the civil status and it does not provide the law by which the personal rights and obligations are determined. Under the Bahraini law the

However, it arises in respect of foreign rules on the conflict of laws,³⁹ and where a foreign conflict rule is to be applied by a court, it follows that the court becomes concerned with the problem of the legal person's nationality.⁴⁰ According to Heinrich Kronstein: "Only for the determination of conflict of laws problems did it seem essential to establish the nationality of a corporation, and for that purpose classic corporate theory seemed adequate."⁴¹

It is usual to speak of the nationality of juridical persons, and thus to import something that is predicated upon natural persons into an area in which it can be applied by analogy only. The concept of a corporation's nationality cannot be dispensed with. Most countries usually do not impose any restrictions on aliens.⁴²

The test of nationality is further important in public international law. A state can extend diplomatic protection only to its own nationals, whether they are natural or juridical. In *The Barcelona Traction, Light and Power Co. Ltd. Case*,⁴³ Judge Bustamante said:

domicile of a company is simply the place where it is formed and consequently where it can be sued.

In Bahrain, as in many other countries including EC countries except UK, nationality is the criterion of the personal law of companies but, to determine nationality most of legal systems including EC countries except the UK and Netherlands say that it is not enough to look to the place of incorporation.

See for further study: Anton A.E. and Beaumont P.R., "Private International Law", 2nd ed, W. Green, Edinburgh 1990, pp 702 et seq; North P.M & Fawcett J.J., "Cheshire and North's Private International Law", 12th edition, Butterworths, London, Dublin, Edinburgh, UK, 1992, p. 138 et seq.

³⁹ - *Under the Liberal economic philosophy of the beginning of this century, business had no nationality. The language of the Privy Council in UK is indicative:*

"Unlike an individual, a company has an economic existence only. No activities other than the making and spending of money are open to it. When a company in any particular year derives the major portion of its income from a country it is a legitimate conclusion that this company has rooted itself there for that year. Wallace Bros, & Co. Ltd. v Commissioner of Income Tax, 11 FED. L.J. IND. 32, 36 (P.C. 1948).

⁴⁰ - *Wolff M., op cit, p. 308. The test of the nationality of the corporation according to the English law is the country of incorporation; see Janson .v. Driefontein Consolidated Mines Ltd [1902] AC 484 at 497,498.*

⁴¹ - *Kronstein H., "The Nationality of International Enterprise", L11 (52) Col.L.R., Vol. 1952 p.986.*

⁴² - *In some countries, many restrictions are imposed on aliens. For example, In Bahrain aliens are not allowed to acquire land or any other immovable property only in some places as AL Juffair and Refa'a Vewus and Bsetain.*

⁴³ - *In The Barcelona Traction, Light and Power Co. Ltd. Case43, Judge Bustamante said:*

"...the two parties have shown that they agree on the fact that a general rule of international law exists with regard to the diplomatic and judicial protection of commercial limited liability companies which have been injured by the state in which they conduct their business, this rule being that the exercise of the right of protection belongs preferentially to the national State of the

"...the two parties have shown that they agree on the fact that a general rule of international law exists with regard to the diplomatic and judicial protection of commercial limited liability companies which have been injured by the state in which they conduct their business, this rule being that the exercise of the right of protection belongs preferentially to the national State of the company. Since in the present case Barcelona Traction is a company incorporated under Canadian law, its protection ought in principle to be exercised by the State of Canada".

Generally, a company as a legal person shall have its own nationality. It can be said that legislations provide that companies which are established under their provisions be granted nationality of the state. Nationality of a company is usually determined by the place of registration and retains nationality throughout its existence.

According to the article (4/3) of the Bahraini company law any company established and registered in Bahrain shall enjoy Bahraini nationality. But this does not entitle the company to the constitutional rights and privileges exclusive to Bahrainis.

4.5. Separate legal status (patrimony)

Patrimony can be defined as the total pecuniary assets and liabilities of a person in a specific time. It contains the property of the person whether under his disposal or credits and total of his pecuniary obligation such as debts.⁴⁴

Hence, the capital is a part of the company's property. Neither the partners nor their creditors may claim a part of the capital. In addition, the capital cannot be used only for the purposes was created for. So, it cannot be resituated by partners or dividend among them.⁴⁵

Partners, initially, are not responsible for debts of the company. However, a distinction should be made between partnerships and corporations. In respect of partnerships; Members of General partnership and joint partners of limited partnerships usually have unlimited liability, that means they are severely and jointly liable for the obligations and commitments of the company to the

company. Since in the present case Barcelona Traction is a company incorporated under Canadian law, its protection ought in principle to be exercised by the State of Canada". ICJ Report [1964], p.83

⁴⁴Patrimony may refer to:

- *Property or other legal entitlements inherited from (or through) one's father, especially if it has been handed down through generations in the same family, birthright.*
- *In civil law systems, the total of all personal and real entitlements, including movable and immovable property, belonging to a real person or a juristic person; in some respects similar to the common-law concept of a person's estate*
- *Patrimony of affectation, in civil law, a legal entitlement that can be divided for a purpose, as distinct from the general patrimony of the person; in some respects similar to a common-law trust*

Family patrimony, a type of civil law patrimony that is created by marriage or civil union, similar to the common-law concept of community property. -

⁴⁵-Khaled Jamal Hassan, *op.cit*, p. 407. Hassan Keera, *op.cit*, 661.p.

extent of their property.⁴⁶ While shareholders of corporations such as joint stock company are only liable to the extent of their contributions to the capital.⁴⁷

Personal creditors of partners or shareholders are not entitled to seek payment of their debt out of the partners' contributions in the company's capital. But they may seek payment out of the debtor's shares in the profits allotted to him in accordance with the company's balance sheet.⁴⁸

The legal personality has two economic implications. First it grants creditors priority over the corporate assets upon liquidation. Second, corporate assets cannot be withdrawn by its shareholders, nor can the assets of the firm be taken by personal creditors of its shareholders.⁴⁹

4.6. Limited Liability

As we showed above, separate legal personality and limited liability are not the same thing. Limited liability is the logical consequence of the separate personality. The legal existence of a company (corporation) means it can be responsible for its own debts. Shareholders will lose their initial investment in the company, but they will not be responsible for the debts of the company. Just as humans can have restrictions imposed on their legal personality (as in the case of children) a company can have legal personality without limited liability if that is how it is conferred by the statute. For example, a company may still be formed today without limited liability as a registered unlimited Company.

5. The Legal Personality of Partnership

5.1. The Trend of Bahraini Law

Although the Bahraini Law of Commercial companies granted partnerships, save the joint venture, a legal personality, but this legal personality is not obvious, because partnerships are deeply affected by the status of members as they are fully liable for all its transactions, which means there is a sort of overlapping between partnerships and partners.

It is true that the characteristics of legal personality seem evident in the partnership such as transacting with third parties, but still affected by the personal consideration, as any joint partner may obliged the partnership and other partners. In addition, third party may claim his rights from any partner for they are jointly liable.

There is another default as the partnership may negatively affected by death, insanity, bankruptcy of any partner, as the partnership will be dissolved. These features may stimulate a question about the advantages of this legal personality.⁵⁰

⁴⁶-Mosleh A. *At'tarawaneh, op cit, p. 383.*

⁴⁷- *op.cit, p. 402 et seq.*

⁴⁸- *op.cit, p. 385.*

⁴⁹ - *Ibid.*

⁵⁰ - *Nevertheless, Partnerships, in most of Arab countries, enjoy legal personality and have the same provision as those in Bahrain For example, In Libya, the general partnership gains the legal personality once it is registered in the Commercial Registrar, See Fatooh Domah, "Explanation of the Libyan Commercial Law"(text in Arabic), Al Maktabah Alwatanyah, Benghazi- Libya , 1973, p. 241 The same provisions are found in the Egyptian law, See Mohammed Helalya, Principles of commercial companies, Dar Al Nahdhah Al Arabia, Cairo, (dateless), p. 59..*

5.2. Critical Point of View

In the commercial and legal parlance of most countries, partnership refers to an association of persons with the following major features:

- i. Created by agreement.
- ii. Formed by at least two or more, some of them joint persons
- iii. The joint owners are all personally liable for any legal actions and debts the partnership may face

It is an association in which joint partners share equally in both responsibility and liability.

Partnerships have certain default characteristics relating to both

- (a) the relationship between the individual partners and
- (b) the relationship between the partnership and the outside world.

The former can generally be overridden by agreement between the partners, whereas the latter generally cannot be done.

The assets of the business are owned on behalf of the other partners, and they are each personally liable, jointly and severally, for business debts. For example, if a partnership defaults on a payment to a creditor, the partners' personal assets are subject to attachment and liquidation to pay the creditor.

By default, profits are shared equally amongst the partners. However, a partnership agreement will almost invariably expressly provide for the manner in which profits and losses are to be shared.⁵¹

Each joint partner is deemed the agent of the partnership. Therefore, if that partner is apparently carrying on partnership business, all joint partners can be held liable for his dealings with third persons.

By default, a partnership will terminate upon the death, disability, or even withdrawal of any partner. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.⁵²

By default, each general partner has an equal right to participate in the management and control of the business. Disagreements in the ordinary course of partnership business are decided by a majority of the partners, and disagreements of extraordinary matters and amendments to the partnership agreement require the consent of all partners.⁵³ However, in a partnership of any size, the partnership agreement will provide for certain election to manage the partnership along the lines of a company board.⁵⁴

⁵¹-International Business Publications, "Italy Company Laws and Regulations Handbook", USA, 2012 p. 90. "International Business Publications", "French Company Laws and Regulations Handbook", USA, 2012 p. 63.

⁵²-Ibid

⁵³- Barry S. Roberts & Richard A. Mann, "Smith and Roberson's Business Law". 14th edition, South Western Cengage learning, USA, 2009. P. 617.

⁵⁴-http://en.wikipedia.org/wiki/General_partnership.

Unless otherwise provided in the partnership agreement, no one can become a member of the partnership without the consent of other partners, though a partner may assign his share of the profits and losses and right to receive distributions ("transferable interest"). A partner's creditor may obtain an order charging the partner's "transferable interest" to satisfy a judgment.

There has been considerable debate in most countries as to whether a partnership should remain aggregate or be allowed to become a business entity with a separate legal personality. For Example, in the United States, section 201 of the Revised Uniform Partnership Act (RUPA) of 1994 provides that "A partnership is an entity distinct from its partners".⁵⁵ In England and Wales, a partnership does not have separate legal personality.⁵⁶ Although the English & Welsh Law Commission proposed to amend the law to create separate personality for all general partnerships, the British government decided not to implement the proposals relating to general partnerships. In Scotland partnerships do have some degree of legal personality.⁵⁷

The two main consequences of allowing separate personality are that one partnership will be able to become a partner in another partnership in the same way that a registered company can, and a partnership will not be bound by the doctrine of *ultra vires* but will have unlimited legal capacity like any other natural person.

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⁵⁵ -Erik M. Vermilion, "The Evolution of Legal Business Forms in Europe and the United States", published by Kluwer Law International, the Netherlands, 2008, p. 113.

⁵⁶-The reasons for this are historical, reflecting the common law's separate development from the law merchant applicable in continental Europe and in Scotland: see: Holdsworth, "A History of English Law", Vol V, p 84, Vol VIII, pp 194-8.

⁵⁷-http://en.wikipedia.org/wiki/General_partnership. While France, Luxembourg, Norway and Sweden also grant some degree of legal personality to business partnerships, other countries such as Belgium, Germany, Italy, Switzerland and Poland do not allow partnerships to acquire a separate legal personality, but permit partnerships the rights to sue and be sued, to hold property, and to postpone a creditor's lawsuit against the partners until he or she has exhausted all remedies against the partnership assets. In December 2002 the Netherlands proposed to replace their general partnership, which does not have legal personality, with a public partnership which allows the partners to claim for legal personality.

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