Lecture 3

AUXILIARIES AND AGENTS

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Commercial employees

Arts 28-32 of the Com. C

They are employees (such as salesman, secretary, guardianship, accountant, inspector, director) of the trader who are governed by the contract of employment, i.e. the labor law.

They are not traders.

Managers

Arts 33-36 of the Com. C

A manager is a person who has been authorized, expressly or tacitly, to carry out ***acts of management*** and to sign in the name of the trader.

Acts of management are defined under Art. 2204 of the civil code.

A manager is not a trader.

All traders need to have a manager.

He has to be registered in the commercial register.

Commercial travelers and representatives

A commercial traveler is a person, *domiciled* at the place where the head office of the business is situate and bound to a trader by a contract of employment, who is entrusted by the trader with *visiting* clients and *offering* to them goods or services in the name and on behalf of the trader.

The contract he conclude has to be confirmed by the trader; otherwise it has no effect. They may agree otherwise.

He is not a trader.

A commercial representative is a person, *not domiciled* at the place where the head office of the business is situate and hound to a trader by a contract of employment, who is entrusted by the trader with *visiting* clients in a specified area and *offering* to them goods or services in the name and on behalf of the trader.

[Contracts he concluded will be effective without confirmation by the trader. They may agree otherwise.]

He is not a trader.

commercial representative

Commercial Registration and Business Licensing Proclamation No 686/2010 has another definition of commercial representative.

According to Art. 8 it is *"any person who is **not domiciled** at the country where the head office of the business organization or business person he represents is situate, bound to such business organization or business person by a contract of employment, and entrusted with the carrying out of **any trade promotion activities** on behalf and in the name of the business organization or the business person he represents without being a trader himself."*

In addition, according to this proclamation it cannot enter in to any contract.

commercial representative

Questions:

Outline the differences between the two laws?

Which law prevails?

Commercial agents

Arts 44-55

A commercial agent is a *person* or *business organization*, not bound to a trader by a contract of employment and carrying out *independent activities*, who is entrusted by a trader with representing him permanently in a specified area and dealing or making agreements in the name and on behalf of the trader.

The contract s/he/it deals are effective without the need to confirmation by the trader. They may agree otherwise.

He is a trader.

Commercial agents

Unless otherwise provided in the agency agreement, a commercial agent shall be the ***exclusive agent*** of the principal in the area specified in the agreement. (Art. 45)

A commercial agent may not assign the agency agreement and *may not substitute a third party for himself*, as an agency agreement is made on the basis of the ***personal qualifications*** of the agent. (Art. 51)

Commercial brokers

Arts 56-59

A commercial broker is a person or business organization who, *independently*, *professionally* and *for gain*, brings parties together for the purpose of their entering into an agreement such as a contract of sale, lease, insurance or carriage.

He is a trader, regardless of the parties he brings together and of the nature and object of the contract for the completion of which he acts as an intermediary.

Commission agents

Arts 60-62

A commission agent is a person or business organization who, *independently*, *professionally* and *for gain*, undertakes to *buy* or to *sell* in his name, but *on behalf of the principal*, goods, movables or any other thing of a similar nature, or to enter in his name but on behalf of the principal into a *contract of carriage* of goods.

He is a trader regardless of the parties and of the nature and object of the contract.

Commission agents

Question:

What are the similarities and differences between the commission agent provisions of the commercial code and the civil code (2234-2252)?

For next session…

- **Read: Duties of traders**
  - Art. 63-85 of the Comm. Code
  - Commercial Registration and Business Licensing Procln No. 686/10. Issues concerning:
    - Commercial registration
    - Trade name
    - Business license