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COMMERCIAL CONTRACTS IN IRAQI AND INTERNATIONAL LAWS AN EXPLORATORY STUDY IN ERBIL IRAQ

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İŞLETME BÖLÜMÜ

IRAK VE ULUSLARARASI HUKUKLARDA TİCARİ SÖZLEŞMELER, ERBİL IRAK'DA BİR ARAŞTIRMA ÇALIŞMASI

Hazırlayan

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YÜKSEK LİSANS TEZİ

Danışman

Doç. Dr. Sait PATIR

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İmza

Haval Nazhad Abbas AGHA

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THESIS ACCEPTANCE AND APPROVAL

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This thesis entitled **"COMMERCIAL CONTRACTS IN IRAQI AND INTERNATIONAL LAWS AN EXPLORATORY STUDY IN ERBIL IRAQ."** Prepared by Haval Nazhad Abbas AGHA was found to be successful as a result of the thesis defense examination held on the date of [/ /2018] and accepted by our juror as the master degree in the department of business administration.

THESIS JURY MEMBERS: Signature

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CONFIRMATION

This thesis accepted by the jury determined in the, / /2018 session of the board of directors of the sciences institute of Bingöl University.

Director of the Institute
Doç. Dr. Yaşar BAŞ

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ÖZET

IRAK VE ULUSLARARASI HUKUKLARDA TİCARİ SÖZLEŞMELER, ERBİL IRAK'DA BİR ARAŞTIRMA ÇALIŞMASI

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Bu çalışma Irak'ın Erbil kentindeki Irak ve uluslararası yasalardaki ticari sözleşmeleri incelemeyi kabul etti. Araştırmacı, veri toplamak için bir anket formu kullanmıştır. Bu nedenle, anket örneği Erbil'de farklı yargı bölümlerinden rastgele seçilen (107) hakimler, avukatlar, yargı yardımcıları ve hukukçulardan oluşmaktadır.

Çalışmada, yerel ve uluslararası aşamalardaki ticari sözleşmelerin, devletler arasındaki ticari faaliyetler üzerinde önemli etkileri olduğu öngörülebilir. Sonuçlar, genel anket örnekleminin, ticaretteki sözleşmelerin ekonomik faaliyetler için önemli ve gerekli olduğu konusunda hemfikir olduğunu ortaya koymuştur.

Ayrıca, yerel ve uluslararası ticari sözleşmelerin yanı sıra, ticari kuruluşların ticari faaliyetlerinin önündeki engelleri azaltmak ve ticarete girişmek için kendilerini entegre etmeleri gerekir. Irak ticaret kanunu 1984'te hareket ederken, genel olarak mevcut yerel ve uluslararası ticaret ortamları ile benimsenmesi için bir değişiklik yapılması gerekmektedir.

ANOVA testi, anket örnekleminin özelliklerine göre, katılımcıların Irak ve uluslararası yasalardaki ticari sözleşmelere yönelik yanıtları arasında önemli farklılıklar olmadığını ortaya koymuştur. Ancak, sonuçlar, Irak ve uluslararası yasalardaki ticari sözleşmeler arasında olumlu ve anlamlı bir ilişkinin olduğunu da gösterdi.

Anahtar sözcükler: Ticaret Hukuku, Uluslararası Ticaret Hukuku, Ticari Sözleşmeler, E-Ticaret ve Akıllı Sözleşmeler.

ABSTRACT

COMMERCIAL CONTRACTS IN IRAQI AND INTERNATIONAL LAWS AN EXPLORATORY STUDY IN ERBIL IRAQ

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This study conceded to examine the commercial contracts in Iraqi and international laws in Erbil city Iraq. The researcher used a survey questionnaire to collect data. So, the survey sample contains (107) judges, lawyers, judicial assistants, and jurists who were selected randomly from different judicial departments in Erbil.

The study found that it can be predicted the commercial contracts at the local and international stages exercises significant impacts on the trade activities between states, while the results revealed that the overall survey sample agreed that contracts in commerce are significant and necessary for the economic activities. Moreover, business organization's benefit, besides local and international commercial contracts must contiguous and integrate themselves to activate commerce and reduce obstacles in front of commercial activities. While, the Iraqi trade law act 1984, generally need an amendment to adopt it with current local and international trade environments.

The ANOVA test revealed that there aren't significant variances among respondents' replies toward commercial contracts in Iraqi and international laws, according to survey sample's characteristics. However, the results also showed that positive and significant relationship occurs between commercial contracts in Iraqi and international laws.

Keywords: Commercial Law, International Commercial Law, Commercial Contracts, E-commerce, and Smart Contracts.

DEDICATIONS

I dedicated this thesis study to my parents my father, and to my remarkable mother, your lessons and endless sustenance is continuously extraordinary.

Also dedicated to my lovely wife, you are the livelihood that I will endlessly lean on, this study would not have efficiently produced without your great support, love and persistence, thank you for your beautiful and gorgeous existence.

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LIST OF ABBREVIATIONS

Abbreviations	Explanation
ICC	Iraqi Civil Code
ITL	Iraqi Trade law
IWL	Iraqi Work Law
WTO	World Trade Organization
FCB	Free On Board
CIF	Cost Insurance Freight
Std.	Standard division
P-Value	Probability of value
DS	Descriptive Analysis
R	Correlation coefficient
ANOVA	Analysis of variance
SPSS	Statistical Package for the Social Sciences
DF	Degree of Freedom

INTRODUCTION

Iraq's businesses and trades always run in a bureaucratic, complex system of laws, rules, and guidelines since its fundamental shift from Ottoman Rule to modern Iraq. However, insecurity and political instability, tribalism and corruption led to even greater complications in directing the business environment.

According to (Rayis, 2005:2) the original civil code of 1953 verified workable and, when outcomes were not upsetting to the former Ba'ath regime, predictably enforceable. While, it profoundly influenced by Napoleonic, Egyptian and Shari’s religious doctrines. However, a new commercial code legislated in 1984 at the height of the Iran-Iraq war, and a company’s law adopted in 1997 at a time of economic deterioration. The new code set forth particular means to create business enterprises and expanded ownership rights of enterprises from Iraqis only to Arab league nationals.

However, the commercial contract plays an essential role in the exchange and circulation of wealth. So, this character plays a vital role in international contracts, which serve as a tool for the conduct of international trade and as a means of cross-border economic exchanges. Although, these contracts affect the balance of payments and the trade balance of countries as a result of the transfer of values and wealth and cross-border services. While Iraqi trades are very adept at the representation of foreign enterprises as agents or distributors, the civil code comprises agency provisions familiar and agreeable to any Western business group. For instance, an agent restricted in authority to that approved to it in the agency contract and may only exceed such authority on specific permitting of permission to do so by the principal.

Thus, increase in trade has grown especially after the signing of the GATT and the establishment of the World Trade Organization. If the contract in the past concluded merely and rapidly, where one of the parties direct a simple answer to the other party and then the latter to accept that particular contract takes place and ends, but the international trade contract is different in the stages of composition than the simple commercial contract.

Throughout history, trade has existed between different regions of the world. Through trading, humans had access to goods that could not produce in its area.

Focus and expertise in producing specific goods in a region allowed the producers of that region to produce the goods at a better quality and price. Because the request of other regions produces the goods produced in each region, the exchange of these goods while resolving the needs of these areas has led to economic boom and prosperity. The fact that most of the international commercial contracts are complex technically and technically and need to negotiate until reaching the final acceptance and the signing of the contract by the parties. The fact proved that the simple method of contracting was commensurate with the nature of transactions at the time where agriculture was the primary activity of society.

Therefore, the contracts were very few and straightforward, but this is no longer commensurate with the complex contracts that resulted from the modern methods of dealing, as the contract as a result of the economic and social environment in which it arises, it is always influenced by developments in the environment. It is natural that the decade will be affected by the developments in society in the modern era, which witnessed many great economic and technological developments, which significantly affected the structure of the contract.

In the international commercial, using of standard contracts and general terms became more critical day to day and increased in number, in a way that some writers have claimed that more than 90 percent of the concluded agreements done through the standard contracts (Slawson, 1971: 529).

Since there that the national legal systems do not have unifying principles, a single agreement may lead to laws, commitments and different results in different legal systems. International people in business have no interests to abandon their agreement's destination in a halo of obscureness; on the contrary, they intensely intend to specify their contractual rights and commitments in a specific way. The correct and logical process of economic activity, especially on an international level is dependent to prediction and planning ability that it will not result unless the sides would be able to anticipate the rights and commitments due to the agreements surely. Choosing the dominant rule of the agreement allows the sides to surely predict the effects of the agreement and prevent from happening unwanted and unexpected results.

However, large numbers of contracts have become sophisticated and complicated because they are responding to mega projects that are complex, full of

technical and legal complexities. Moreover, are highly valued and therefore very risky for their parties, so it is not possible to conclude such contracts quickly and, but it is necessary that it preceded by a stage of arduous negotiations, which often takes a long time that may extend for many years. Besides, requires considerable expenditure to discuss and define the terms of the contract, often performed by a team composed of members from various disciplines related to the technical, financial and legal aspects of the contract.

Furthermore, the lack of national legislation, including Iraqi legislation in addressing the problems it raises the subject matter of the study. Moreover, its association with contracts whose practical importance is growing and increasing day by day especially as Iraq is one of the most countries that linked to international trade contracts and is driven by the current reality to import technology. However, technical factors and progress of developed societies to advance its reality, especially for these contracts weight and importance in the movement of economic growth and its direct impact on the business activity of the country.

For all of the above, the subject of the obligations of the having modern commercial law that essential to organizing businesses in the country. Besides contracts in commerce are significant and necessary for the economic activities and business organization's benefit. While, Iraqi trade law act 1984, generally need an amendment to adopt it with current local and international trade environments as well as Iraqi commercial law not paid attention to the significance of the business commerce and serve new trade.

Moreover, this study structured into four chapters. Chapter one reviews the literature relevant to the definitions of commercial, the definition of contract, contract in Iraqi laws, and the contract in Iraqi code. Chapter two deliberate the literature connected to the international trade, international trade law, international, business law, international commercial law, sources of commercial international law, and international commercial trend. While, chapter three reveals the study the study materials and method, that comprises, The Study Method and Design, Study Population and Samplings, data Collection Technique, and The Study Limitation. Although, chapter four dedicated to the analysis and findings, the conclusions of the findings presented along with recommendations, the study contributes and suggestions

CHAPTER ONE
COMMERCIAL AND CONTRACT IN IRAQI LAWS

1.1. DEFINITIONS OF COMMERCIAL

It is buying and selling goods and services. As the dictionary Commercial says, commercial trading includes selling and buying stuff, service, and information (Commercial Dictionary, 2017). Another definition of commercial is A processor acting relating to selling, exchanging or buying goods through wholesaling or retailing. Business is also indicating using a lot of series of advertisement activities to persuade selling and buying goods. Business as the exchange is a set of things through trading based on selling and buying products or unique materials (Oxford Dictionaries, 2017)

Relating to the appearance of commerce as a particular economic activity in producing goods, along with expanding business in exchanging and appearing money, includes series of economics theories about commerce which is eager to explain the reasons of appearance and development of itself of both kinds, meaning internal and external business.

The role of commerce entirely in the economy of accounting through developing the level of products and efficiency in society is defined. However, the role and aim of commerce which is following achieving it among different societies, political philosophy and economically based on competition and advertisement in the capitalist economic system, and depends on presenting basic needs and planning in socialist economics (Altejarah, 2017)

In another word, commerce or trade are transferring the ownership of goods and services from a person or structure to the others in the exchange of receiving something from the buyer. Entirely any activity(measurable) the people pass to others in the exchange of goods or services and both sides are satisfied is commerce. Commerce divided into two parts: internal and external commerce. In traditional custom, it is exchanging goods and services and to make a better trade in limited and required time and to need information and managing data to reach the goal. Business is a mechanism that forms the core of capitalism.

1.1.1. Types of Commerce

As a Khalif, (1999) divided commerce into several types.

1. **Retail commerce**: It is the last step in delivering goods to the customers and includes commerce in all supplies from goods and services to the costumer's activities to buy them, but commerce based on retail is not just selling goods. It includes services and goods by agencies and selling sofa which like to present them to the costumes.

   This kind of commerce based on some shops.

   Specialized shops: shops which specialize in selling one kind of product or presenting fixed services like clothing stores, bookshops, jewelry and communication shops.

   Partitioned shops (various shops): Everyone is responsible for a group of work department, and each department sells a particular kind of products such as responsibility goods including food, and another department sells hardware, electronic and other departments.

   Central markets: Mega stores which have interest in selling foods in a wide range of chain stores: Stores of two or several mega stores like the drug stores.

   Retail offices: From the business offices, they accept the costumer's demands through the telephone.

   Portable stores: stores which sell fixed demands like foods. They rely on movement among different places.

2. **Free commerce**: it is an economic expression that is used to refer to use a new policy in selling and buying that it not limited versus people. This issue which is essential in some countries, it is not necessary for other countries, people do not have to buy local products. This commerce based on a theory which is known as the theory of free commerce, and it is necessary for all countries to accept it.
3. **International commerce**: Commerce based on exchanging goods and services among countries. It is also called external or universal commerce which is different from internal

4. commerce. International commerce lets governments produce products based on existing sources, so this kind of commerce is useful for governments, this encourages cheap products that help people to make benefit.
    a. In the early 1990 international commerce export was $3.5 trillion.
5. **Forbidden commerce**: It is forbidden which is often refers to products that use them forbidden in wars like weapons.
6. **Electronic commerce**: It is a kind of business using internet for business including all business among costumers, companion and also helps trades among people and supports all actions in selling and buying goods and services. This business includes a wide range, such as finance, marketing, finance, discussion, and production. Electronic business has a different aspect of comfort for customers through accessing a wide range of products and security actions which includes payment options.

1.1.1.1. External Commerce

External commerce is exchanging goods and services having value outside international borders which in many countries indicates the amount of Gross National Product (GNP). Appearing international or external commerce is the result of human is trying to making better lives and living. Then it became a science for countries and people that they were doing commerce. Salim Yassin defines external commerce as it is a branch of the economy that currently the specialist in financial trading studies inside the national does it (Yassin, 1970:12).

In fact, international commerce or commercial relationship means exporting and importing goods and services among different countries all over the world. As no countries can found that can provide all needs without having a commercial relationship well, necessary to remove its needs, should have commercial relations with other countries. So international commerce is the result of the relation between supply and demand for goods and services among different countries in the world due to profitability. Today, international commerce is the most modern than before, and facilities for the commercial relationship among countries have existed that these facilities and developed technologies have speeded up the effect in the part of supply and demand and demanding goods in the level of world markets that some examples of these facilities can present.

1.1.1.2. The Deference Between International Trade and Foreign Trade

International trade, Is the exchange of goods and services across countries borders and regions, and constitute a significant share of local product in different countries. Foreign trade, Is the movement of goods and services and the transfer of capital between different countries of the world and related to this transition across the border from possible commercial operations such as transport, insurance, and other additional services.

1.1.2. Definition of Contract

Iraqi Civil Code has defined contract as follow'' contract is a certain relation written by one side, and the other side is committed to accepting it (Iraqi Civil Code art 73). The contract is a practicable legal promise. The promise may do something or not do something. Preparing a contract needs an agreement between two or more people. One suggests, and the other accepts. If one side cannot make the promise, he does not have legal priority. Law asks these questions: "Is there a contract? What does it mean? Is the contract broken? Moreover, what fine can give to them?'' https://www.britannica.com/topic/contract-law)

The contract is a legal action which based on the agreement. A representative of two sides to reach a goal and agree on a standard way to access it. This agreement is called contract. So in a contract two resolution is required to access a collective determination and also there are two clauses. First, the resolutions should be sufficient. For example, in a trade, Hassan resolves to own a farm and Hossein resolves to sell it. The result of this contract is to own a farm instead of price. The second clause is that none of the sides must be able to cancel the contract. In other words, the contract is an agreement that is supported by law. Contract means that two sides have a contract. An agreement is not legal, so no sides of the agreement have any responsibilities instead of the other one who breaks the agreement.

In the wiki, the contract has explained: Contract is one of the nine notions of financial service data model. This notion shows a potential or defacto agreement between two or several legal or real people or an organization that determines and confirm the laws and commitments related to exchanging goods and services.

Financial contracts manage the activities of presenting, buying, selling services and goods and resources by financial institutions and other people.

Some contracts present and explain a sample of products which have been sold by financial institutions. For example, one of the reliable customers applies for a loan from a financial institution. Loan contract is a kind of sold products, and it has the quality and clauses of the product. The customer and the financial institution can agree on individual clauses of the loan contract like the amount of loan, interest, security, way and due to repayment.

In the documents of the registered contract which signing turns out to issue one or several contracts, the commitments between the customers and the financial institution shown.

The notion of the contract data presents all financial institution agreement with costumes, staffs, sellers, massive financial product provider and people with different responsibilities. Also, in some cases, financial institutions want to record and keep contract data between people who directly aren't with the institution. For example, a significant successful internal company which is explicitly survived by an opponent important financial institution may want to keep the details about the contract of the opponent or company to use it in the future opportunities. Data relating to the contract between essential people out of the institution also saved in the notion data. (http://abnaa.com/wiki/index.php?title)

1.1.3. Concepts of Contracts

The contract at first glance brings up a document that has been signed by the parties and contains essential issues, such as a letter of credit or a lease that done in business transactions with a lot of debates and bargaining, the presence of the witness and money exchange.

While the concept of many contracts is much more comprehensive to be limited to items such as a letter of credit or leases, nowadays, few people can found that does not conclude some contracts on a daily basis. Buying bread, milk, yogurt, fruit, bus ticket, pencil, pen, mobile charge, sandwich and other necessities are examples of contracts that people make in their daily life. Those who provide these goods and services, also have to conclude contracts for being able to supply bread, yogurt, milk and other necessities for sale. In short, through the contract, the goods and services are produced, put into production and supply cycle, and eventually gets to the consumers. (Abdulhossien, 2017:9).

1.1.4. Historical Importance of Contract

The law of contract is the product of trade civilization. It does not exist in non-trade societies. Most of the primitive societies have other ways to perform people's commitments, for example, through relative relationship or religion power. In an economy based on exchange, most of the trades are self-supporting because trade is completed in that time by two sides.

Maybe some problems arise. The goods may be defective; these problems not solved legally. (http://britannica.com/topic/contract-law-arthurtaylor). In the early credit trade, relative relationship provided debts. Another way was to mortgage a piece of land or a person as a slave. Some of the credit duties are more independent, for example, building a hut, cleaning a square or making a boat was a form of payment. However, it still based on the notion of ownership. In other words, payment is not base on trade or promise. When the workers wanted their salary, they were willing to discuss having right on the product of their work.

A real law of contrast means practicable promises, and it is a symbol of commitment that isn't different from the time, ownership notions are enough and if none of the sides does it, performing the agreement is canceled.

1.1.5. Parts of Contract

Satisfaction: The essential part of a contract is satisfaction accepted by two sides. The elements of satisfaction are positive acceptance and acceptable from positive disadvantaged: mistake, cheat, obligation and exploitation.

Store: The second part of the contract includes two parts:

Convention: It is a legal process that the two parties have agreed on such as sale, please contact. Reason: It is the third part of a contract.

1.1.6. Civil and Commercial Contract

In some countries, the system of written rights (Roman-Germanic) France, for example, contracts are divided to two categories of civil and commercial, each under a separate legal regime. At these countries, economic relationships, commercial, and private-law exchanges of civil rights of civil rights divided into civil and trading, and each reflected in its law.

Some of the principles governing commercial contracts are as followed. Business contracts obey the principle of speed and conclusion of these contracts contains the least formalities, and the stability of the commercial contracts between traders is possible in any conventional ways. In commercial contracts, the principle is no the guarantee of the committees. While in civil contracts guarantee needs legal or contractual specification. The subject of commercial contracts is basically about goods and general services and less deal with ‘’ascertained object’’. In civil contracts, if the committee cannot perform its commitment, the court can pay a due date, while the commercial contracts of the court cannot give the debtor a time because it disrupts the trading system. Also reviewing time in commercial contracts is less that reviewing time in civil contracts and the trader cannot document on insolvency and must demand bankruptcy.

From three aspects a contract can be considered as a commercial contract.

First, in commercial law, the name of the contract must have been mentioned, like dealing contracts, work fees contract, transportation contract and leniency contract.

Second, the subject of the contract must be commercial acts; such as buying or gaining any movable property for selling or renting, surgery operations, bank and currency exchange operations, enterprising exhibitions, brocade deals, insurance and ship sales.

Third, one of the parties must be a businessman and conclude contracts for his own needs.

In Iran’s laws obeying from some European countries and their contracts has been raised in both civil and commercial laws. More than the particular laws that have raised in commercial law, a legislator in the second clause of that law has presented a list of ‘’commercial deals’’. In commercial law general rules have not been explained for commercial deals or commercial contracts and so mentioned general rules in civil laws to the extent that is not opposite to the special rules and regulations mentioned in the commercial law, also are applied towards the commercial contracts. So, underlying conditions of validation of the contract that mentioned in clause number 190 of civil law also applied to commercial contracts.

Nowadays in many countries instead of dividing contracts into civil and commercial, contracts are divided into two groups of ‘’business contracts’’ and

‘’consuming contracts’’. Based on this division, consuming contracts are called the contracts that done for resolving personal needs, such as buying goods or services and other necessities for resolving personal needs which contain needs of the buyer, his family, and his relatives. However, if the goods or services dealt for reselling, producing other goods or services or generally used for making money and future profits, are categorized under the general title of business contracts. Consuming contracts are under legal supports that adjusted for supporting consumers. In these laws, some supportive conditions are considered obligatory in each consuming contract (proper implied condition), and sellers are not allowed to adjust opposite of it in their contracts. Also, terms and conditions stipulated in consuming contract from the aspect of being fair or unfair contained confronting rules with unfair and exorbitant conditions that might lead to adjusting the mentioned conditions or cancellation of them while business contracts can preserve themselves. (Abdolhossein, 2002:43).

1.2. CONTRACT IN IRAQI LAWS

1.2.1. Iraqi Work-Law in 1987

One of Iraqi law which somewhat sets business work is work-law (Iraqi work-law art 71,1987). This law cannot be just a business law because it involves the right and salary of employees instead of business. The second clause of Iraqi work law 1987 explains this subject. This law guarantees the work right for every citizen without discrimination sex, race, language, and religion.

This law lets every citizen work in any professional activities determined by the government. (second clause of Iraqi work law 1987). However, because workers and staff of business projects are considered the necessary part of the trade, this law has an essential role in trade. Contract-law has many definitions, but here it can be defined as follow: It is a collection of legal rules which observes the individual and public relation between the employers and workers and is a change of their rights and salaries. (Softobia, 1970:12).

1.2.2. The History of Work-Law and its Development

As Iraq was an Islamic country, before making a particular law named work-law and to adjust work, and worker and staff rights, it used Islamic religion and Islamic culture instead of work-law and contract (employed contract).

In 1877, Ottoman government published justice magazine and created a solution for work and workers in clauses number 421 and 422 referred to it. Clause number 421 said,'' First the goal of the lease contract, second the place of the lease contract. (Aldeen Zaki, 1956: 10). At that time Iraq was a part of Ottoman government. After forming Iraq country, Ottoman government justice magazine until 1951 used and after that Iraq made a law named law number 40 as civil law. Of course, Iraq effort to work-law had been before making civil law. After 1932 Iraq became a member of Work International Organization and was developed seriously in this matter. In 1936, Iraq made laws named Iraqi profession law, number 21 in 936 and worker law, number 72 in 1936 (Alabed and Alyas, 2011:23)

In 1937, Iraqi accepted and signed the international work convention in 1925 to exchange workers. In 1938 it signed the convention number 58, 1936 which was about the age of workers. In 1939 it signed the convention number 42, 1934 which was about the sickness of the workers. In 1940, it signed the convention which was specified internal and external workers. In 1942 it made law number 36 and corrected the deficiencies of previous laws (Alabed and Alyas, 2011:24)

After changing the time and world economic system and finishing world war II and changing the Iraqi government political system from kingdom to republic, in 958, Iraq made law number 1, named work-law which was an advanced law at that time in 1959. The law was changed into the law number 83 in 1958 into number 1. (Alabed and Alyas, 2011:26).

1.2.3. Iraqi Civil Code

Iraqi civil code number 40 which made in 8/9/1951, is considered one of Iraqi code that is about business and trade contract, including 1383 clauses. Before, Iraqi trade law number 30 in 1984 had more role in making legal business terms. Later, when Iraqi trade law number 30 in 1984 made, it did not lose its effect while in trade law there wasn't any subject about business.

Civil code was the reference. As in the second paragraph of the fourth clause of Iraqi trade law has been mentioned,'' Civil code covers all issues which there isn't any particular sentence in this law or others. (Iraqi commercial law art 4,2). Don Estigle who is an American lawyer has an article about Iraqi civil code. Here are some essential points of his article (Stigall, 2006).

1.2.4. The Contract in Iraqi Code

In clause number 73 of Iraqi civil code, the contract has defined in this way,'' Contract is a 21 confirmed term, issued by one of promiser or receptionist which the promise can prove in the contract. (Iraqi civil code art,73). In clause number 75 there is a condition so that it should not be against the law or forbidden according to Iraqi laws. The contract may cover any other matters which aren't forbidden legally or aren't against common discipline or morality. (Iraqi civil code art,75).

1.2.4.1. Obligations in General Contracts

An area of the Iraqi Civil Code which represents a marked departure from earlier Iraqi law is that of obligations (Zuhair E. Jwaideh, The New Civil Code of Iraq, supra note 45, at 183). As Jwaideh notes: The general theory of obligations is considered to be the foundation of civil law. Since it is concerned with individual rights, it becomes essential in other branches of private and public law wherever an individual right is involved.

The area of its influence is quite large, and no legal system can discard it without serious trouble. As this theory is unknown in the modern sense to the Mejelle, its adoption in the Iraqi Civil Code was an actual achievement (Zuhair E. Jwaideh, The New Civil Code of Iraq, supra note 45, at 183).

1.2.4.2. The Nature of a Contract

The Iraqi Civil Code defines a contract as the union of an offer made between two parties to effect a specified object (Iraqi Civil code art.73). An Iraqi contract consists of three main elements: consent, a valid object, and a lawful cause. A valid contract is one that is lawful, concluded by parties with full capacity, free of defects, has a lawful cause, and has a right object (Iraqi Civil code art.133). It can be

made for sale, gifts, loans, rent, or for a specific act or service (Iraqi Civil code art.74).

Further, a contract considered valid so long as its object is not forbidden by law, to the prejudice of public order, or against morals (Iraqi Civil code art.75). The Iraqi Civil Code states that the terms offer and acceptance are used to denote the creation of a contract—the first expression of a will to contract being considered the offer and the second being considered the acceptance (Iraqi Civil code art.77).

1.2.4.3. Forming an Iraqi Contract

For an Iraqi contract to concluded, the acceptance must conform to the terms of the offer (Iraqi Civil code art.85). Acceptance conforms to the offer when both parties agree to all of the essential elements of the agreement. (Iraqi Civil code art.86). Agreement to some, but not all, of the essential elements of the agreement is insufficient to form a contract (Iraqi Civil code art.86).

However, where both parties agree on all the essential terms of a contract and reserve negotiation of secondary matters for a later date (without stipulating that a contract shall not be formed until an agreement on those secondary matters. Then the contract will be considered to have been formed upon agreement to the essential terms (Iraqi Civil code art.86-2).

If a dispute later arises regarding an agreement to those previously unresolved secondary terms, then a court may decide the terms of the contract by looking to the subject matter of the contract, provisions of law, common usage, and equity (Iraqi Civil code art.86-2). The Iraqi Code's emphasis on the need for an offer and acceptance to form a contract should underscore. The Iraqi articles make it clear that a single expression of one's will is generally not binding absent some provision to the contrary (Iraqi Civil code art.184).

Those situations appear limited to circumstances in which a person has offered consideration to whoever performs a particular act (Iraqi Civil code art.185). Parties may enter into a preliminary agreement wherein they stipulate that they will enter into a contract if certain circumstances exist within a specified period (Iraqi Civil code art.91). Where the law prescribes a particular form for a contract, the preliminary agreement must also adhere to that form (Iraqi Civil code art.91-2).

Offer and acceptance may be oral, written, or by some sign which in common usage indicates a desire to contract (Iraqi Civil code art.79).

Likewise, a contract can form by engaging in an exchange which indicates mutual acceptance and which conducted in such a way that the circumstances make the desire to contract evident (Iraqi Civil code art.79). The parties need not both be present to form a contract.184 A contract may be formed over the telephone or similar means of communication. (Iraqi Civil code art.87). The contract will be deemed concluded in the place and at the time that the offer or becomes aware of the acceptance.186 The display of goods along with their price is considered an offer (Iraqi Civil code art.88). However, the publishing, listing, or advertising of current dealings is not.188 Contracts may also be concluded at auctions, wherein a bid (acceptance) can vitiate by a higher bid (Iraqi Civil code art.87).

Silence can be considered acceptance in situations in which there is a need for expression (Iraqi Civil code art.80). Silence is expressly deemed to be acceptable in situations in which a purchaser receives goods and remains silent or in which there have been past dealings between parties and the offer was related to those past dealings or was to the benefit of the person to whom it addressed (Iraqi Civil code art.89). The offeror can withdraw the offer before acceptance has expressed (Iraqi Civil code art.81).

1.2.4.4. Effects of a Contract

It is a clear rule of law, under the provisions of the Iraqi Civil Code, that contracting parties must fulfill their obligations according to the contract. (Iraqi Civil code art.145) Under Iraqi law, contracts are binding on the contracting parties and their universal successors unless the contract states otherwise (Iraqi Civil code art.142). When a contract relates to a specific thing which subsequently transferred to a singular successor, the rights, and obligations with which the thing endowed will also transfer (Iraqi Civil code art.142). When a contract lawfully concluded, it is legally binding, and neither party can revoke or amend it except when expressly allowed by the law or by mutual consent (Iraqi Civil code art.146-1).

However, a court may amend a contract when extraordinary events have rendered an obligation so onerous that, by the principle of equity, the obligation must lessen (Iraqi Civil code art.150). Contracts must be performed according to its terms

and must perform in good faith (Iraqi Civil code art.150). Parties are bound not only by the express requirements of the contract, but also those provisions imposed by law, custom, and equity (Iraqi Civil code art.150). A secret contract is binding on the contracting parties and their universal successors (Iraqi Civil code art.148). A fictitious contract does not affect. (Iraqi Civil code art.148) Where a fictitious contract has veiled a real contract, the real contract is given effect—so long as it complies with legal requirements for validity. (Iraqi Civil code art.148).

Even so, alienations of real property made under a fictitious contract may not contest after they have entered in the registers of the Real Estate Registration Department (Iraqi Civil code art.149). A person who, in a contract, promises to procure a third party to perform an obligation does not thereby bind that third party (Iraqi Civil code art.151). If he or she fails to procure the third party to perform an obligation, then he or she must either compensate the other party or perform the obligation that the third party was to perform (Iraqi Civil code art.151). A person may contract to take on an obligation for the benefit of a third party if, in such an undertaking, he or she has a personal, moral, or material interest (Iraqi Civil code art.152).

This third party may be a future person or institution or a person or party not yet designated at the time of the contract, so long as that person is identifiable at the time the effects of the contract are to be produced (Iraqi Civil code art.154). Such a contract vests in that third party a direct right against the oblige for the performance of the obligation (Iraqi Civil code art.152). The oblige may invoke against the third party any defense he or she may have for nonperformance of the contract (Iraqi Civil code art.152).

Likewise, the person who contracted for the benefit of the third party may also claim performance (Iraqi Civil code art.152). The person contracting for the benefit of a third party may revoke the stipulation before the beneficiary accepts it, except when the revocation is contrary to the terms of the contract. (Iraqi Civil code art.153) This revocation may take the form of subrogation of another beneficiary for the initially intended beneficiary and may even change the contract so that the benefit inures to the stipulator (Iraqi Civil code art.153). The revocation shall not relieve the oblige of any obligation owed to the person who made the stipulation for the third

party (Iraqi Civil code art.153). The creditors or heirs of the stipulator may not revoke the stipulation in such a manner (Iraqi Civil code art.1).

1.2.4.5. Interpretation of Contracts

The Iraqi Civil Code notes that contracts are to interpreted by the intention of the parties and not merely the words of the agreement (Iraqi Civil code art.155). Literal interpretations must give way to customary meanings (Iraqi Civil code art.156). It preferred that the words be construed to make sense of the terms of the contract, but the language of the agreement can disregard where it denotes an impossibility or where the literal meaning would lead to an absurdity (Iraqi Civil code art.158). It preferred that words in a contract be construed rather than disregarded, but they may disregard in such cases (Iraqi Civil code art.158).

General terms are to generally construed unless there is express or implied proof that they should be construed in a more limited fashion (Iraqi Civil code art.160). Any doubt in a contract is to construed in favor of the debtor (Iraqi Civil code art.166). When a portion of an indivisible thing mentioned in a contract, it shall be interpreted as referring to the whole of the thing (Iraqi Civil code art.159). The Iraqi Code gives a special place to custom in the interpretation of contracts. Custom can be operative in a contract when it is a continuous, widespread practice (Iraqi Civil code art.165). Contracts are to be interpreted in light of prevailing customs and customs and implied terms of a contract treated like express stipulations to a contract (Iraqi Civil code art.163-1).

The explanation to Article 163 gives the example of a boy who goes to train with a weaver (Iraqi Civil code art.163). If a person sends his son to train as a weaver but neither party stipulates a fee for this training, then the weaver makes a claim for the training and the boy's father makes a claim for wages, then the court may look to the custom in the village to see how such arrangements are customarily organized and remunerated (Iraqi Civil code art.163).

1.2.4.6. Capacity to Contract

As Oussama Arabi, the legal regime regarding the insane and Article 94 of the Iraqi Civil Code is of particular note as it represents a departure from modern civil law and the incorporation of traditional Islamic notions of insanity. In contrast

to the Egyptian and Syrian codes of the same period, the Iraqi Civil Code eschews European code provisions in favor of classical Islamic law (Arabi, 2004).

The Iraqi Civil Code states that every person is considered to have the capacity to enter into contracts unless the law states otherwise. (Iraqi Civil code art.93) Examples of those deemed to be without legal capacity to contract are minors and insane people (Iraqi Civil code art.94). The rash or imprudent and the mentally disabled must also interdict by the courts (Iraqi Civil code art.95).

Likewise, deaf and dumb persons, blind and deaf persons, or blind and dumb persons who, because of their handicaps, are unable to express themselves or their intentions may have guardians appointed for them (Iraqi Civil code art.104). The significance of the Iraqi code provisions is that they, on their face, obviate the need for judicial interdiction of the mad person and adopt the Islamic rule of de facto interdiction of the mad person. However, in practical terms, the Iraqi judge will still be called upon to determine whether or not a person is insane.

Egyptian or Iraqi models, in this context it is the judge who, in both systems, has to determine the veracity of the allegations regarding the mental health of the subject and, consequently, the validity of the legal acts in question. In these cases, the judge has to establish legal capacity de jure, using the modern methods of procedure and evidence. (Arabi, 2004).

The age of majority under the Iraqi Code is eighteen full years. (Iraqi Civil code art.106) Anyone who has not yet attained the age of eighteen is considered a minor. Among minors, the Iraqi Civil Code further distinguishes between rational and irrational minors—a rational minor being one who has attained the age of seven full years (Iraqi Civil code art.97).

A mentally disabled person has the same status in Iraqi law as a rational minor (Iraqi Civil code art.107). An utterly insane person has the status of an irrational minor (Iraqi Civil code art.108). The Iraqi Civil Code allows for the interdiction of an imprudent person who squanders and spends his or her money in ways that demonstrate poor judgment (Iraqi Civil code art.109). Interdicted imprudent people have the status of a rational minor (Iraqi Civil code art.109). However, the will of an imprudent person divesting a third of his property will be considered valid (Iraqi Civil code art.109-2). If the imprudent person is deemed to

have become prudent again, his or her interdiction revoked (Iraqi Civil code art.109-3).

These same rules apply to the mentally retarded (Iraqi Civil code art.110). The natural guardian of a minor is his father. (Iraqi Civil code art.102) If the father has a guardian, then that guardian is the guardian of the minor as well (Iraqi Civil code art.102). If the minor has no father (nor a father's guardian), then the minor's grandfather is his or her guardian (Iraqi Civil code art.102). If the grandfather has a guardian, then that guardian is the guardian of the minor as well (Iraqi Civil code art.102). If the minor has neither father nor grandfather, then the court—or a selected guardian appointed by the court— becomes the minor's guardian (Iraqi Civil code art.102).

Legal acts and dispositions of a rational minor deemed valid if they are total to the minor's benefit, even if the minor's guardian has not sanctioned the act. (Iraqi Civil code art.97). Such acts by minors which are both beneficial and detrimental are valid only if sanctioned by the minor's guardian. (Iraqi Civil code art.97). If the act or disposition is wholly detrimental to the minor, it is invalid even if sanctioned by the guardian (Iraqi Civil code art.97). Legal acts of an irrational minor considered null and void even when such acts sanctioned by his or her guardian (Iraqi Civil code art.96). Guardians may, with a court's authority, hand over to a rational minor who has attained the age of fifteen, a portion of the minor's money and give him or her permission to use it in trading to test his or her ability to trade (Iraqi Civil code art.98). This permission can be limited or unlimited (Iraqi Civil code art.98). In such circumstances, the minor is treated by the law as one who has reached the age of majority so long as he or she is performing within the scope of the permission granted (Iraqi Civil code art.99).

A guardian may move to interdict a minor who has been given such permission and revoke that permission (Iraqi Civil code art.100). A guardian's permission is not affected by the death or discharge of the guardian. (Iraqi Civil code art.98-2) Even where a guardian refrains from granting such permission, a court may grant the minor permission to use his money (Iraqi Civil code art.101-1). When the permission obtained from a court rather than the guardian, then the guardian may not revoke it or interdict the minor (Iraqi Civil code art.101-1).

1.2.5. Iraqi Commercial Law in 1984

Central law to issue trade affairs in Iraq and Kurdistan of Iraq is the Iraqi commercial law number 30, in 1984. This law is the main idea of this thesis. So, that is why I explain it more than both Iraqi civil code number 40, 1951 and work-law number 71,1987. Iraqi commercial law in clause number 1 is defined based on:

1. Setting economic activities in socialist parts, mixture and private according to development plot.
2. Building the role of the mixture and private parts, completing socialist activities part.
3. Preferring determination element and legal relationship in a contract relationship. (Iraqi commercial law art,1).

1.2.6. Trade Activities

Iraqi commercial law knows a commercial activity as a trade if there is profit for its subject and in clause number 5, commercial activities defined as 16 types and any activities should based on it. The following acts are commercial if they are profitable. Moreover, this is the aim unless it proved another way:

- First: Buying or renting or selling estates.
- Second: Supplying goods and services.
- Third: Importing and exporting goods and doing office works of importing and exporting.
- Fourth: Industry and mining raw materials.
- Fifth: Publications, printing, photography, destruction, repairers, and keeping.
- Seventh: Tourist hotels, restaurant, movie theater stadium services.
- Eighth: Selling on sale shops.
- Ninth: Transferring things to people.
- Tenth: Transportation, load or unloading goods.
- Eleventh: Commitment to presenting concert necessities and other social events.
- Twelfth: Saving goods in public warehouses.
- Thirteenth: Bank operations.
- Fourteenth: Insurance.

- Fifteenth: Buying and selling stocks company debentures.

Sixteenth: Marketing agency and commission and transportation agency. (Iraqi commercial law, art 5).

Also in clause 6, trade has been mentioned as '' Creating commercial paper money and the operations related to it, without considering their status and resolutions. (Iraqi commercial law, art 6).

1.3. THE CONTRACT IN IRAQI COMMERCIAL LAW

Iraqi commercial law has divided contracts into two parts: Internal commercial contracts and international commercial contracts. Part 4 of this law is about private commercial contracts called commercial contracts and bank operations and part 5 is about international commercial contracts called international sale.

1.3.1. Internal Commercial Contracts

According to Iraqi commercial law and other laws related to trade; you can contract many types of commercial contracts and several contracts of each type. For example, you can have several contracts with the industry and raw materials. Internal commercial contracts are extensive and lot.

In part 4 from art 186 till art 294 is about private commercial contracts. The first season is about commercial contracts and the second season is about bank activities and their commercial contracts. Here we explain merely about these two seasons and their definitions. First season: commercial contract. This season has divided into three para ts.

First part: commercial mortgage contracts in art 186 say,'' The regulations for a mortgage determined in this par. Transferable money from debt by a commercial activity to both debtor and creditor or one of them made. In next arts, these conditions and special rules for a commercial mortgage has defined. (Iraqi commercial law, art 186).

Part two: it is about the deposit in a public warehouse, in art 202, commercial law has defined as follow,'' First, a depositor in public warehouses who can be a real person or legal person, commits to keep and save the goods for the owner''.

Second, the place from which the goods accepted.

Third, a warehouse may found or invested. The third part has determined for checking account. Art 217 has defined checking account as follow: <<a checking account is a contract that two people agree that to deposit money for debts for trades between them through transferring money or paper money. Moreover, these debts replaced by paying separately to balance the account when it closed. (Iraqi commercial law, art 217).

Second Season: Bank Opeth rations

This season is about commercial contracts which have been determined for bank operations in six separate parts the first part of the deposit, a second part for renting treasuries, the third part of bank transfer and the fourth part of the loan contract.

First part; deposited money is a commercial contract and in art 239 has been defined as follow,'' Deposited money is a contract which according to it, the bank has the right to have the deposited money and based on its professional activities and commitment repay the money to the depositor. (Iraqi commercial law, art 239).

Second parts; Renting treasuries in commercial law, art 248 has defined as follow,'' Renting it, bank commits to giving it to the leaser for a special occasion for a limited period. (Iraqi commercial law, art 248).

Third part; Bank transfer is explained in art 258 in this way,'' First, bank transfer is a process that bank transfers a specified amount of money from an account to another according to the instructions. Second, in this process, the following items may be done.

a. Transferring a specified amount of money from one person to another who has an account in the same or different bank.
b. A specified amount of money from an account transferred to another one according to the order of transferring to the same bank or different one.

Third, the contract between the bank and transfer order should set the condition of the issue. Otherwise, the transfer order may not do. (Iraqi commercial law, art 258).

Fourth part: loan contract is explained in art 269 as follow,'' It is a contract that banks under legal conditions can get them annually. (Iraqi commercial law, art 269-2).

Fifth part: Letter of credit contract; according to art 273, letter of credit contract has defined as follow,'' First, a contract which according to it bank commits to pay the credit for the second person based on applying. Second, the letter of credit is independent of a contract which opened credit, and the bank is out of this contract. (Iraqi commercial law, art 273).

Sixth part; Discount: a Discount contract in art 282 has defined as follow,'' According to discount contract, bank commits not to paying any paper money or other documents to the beneficiary instead of transferring the ownership to the bank, the beneficiary should commit to repay in the same value. Otherwise, it paid by the real debtor.''

1.3.2. External Contracts

The fifth section of Iraqi commercial law is for external sale. We can call them an external contract because external sale without a contract and foreign and international sides cannot come into reality. Also in the first season of this section in art 294 says,'' International sale is a sale which it aims to transport goods between two countries. (Iraqi commercial law, art 294).

Here we discuss external sale contracts briefly, and we define them. In the second season of this section, the first type of external sale contracts which called FCB contracts defined. This word is the abbreviation of '' Free On Board''. It is a sale in the condition of delivering in the port on the ship or selling in the condition of delivering in the transportation port on the ship. (Iraqi commercial law, art 298).

In this commercial law contract, there are lots of conditions for sellers and buyers that the contracts should be under these conditions.

The third season is about CIF, the abbreviation of Cost Insurance Freight, which is defined in art 301 as'' CIF is a kind of sale that the seller commits to transfer the goods from a transportation port to an offloading port and to ensure the goods against the risk of transportation on the ship. (Iraqi commercial law, art 301).

The fourth season is about C&F contract, the abbreviation of Cost and Freight, which means to transfer the goods without insurance. In part 307 it is

defined as ’Sale on the condition of transportation without insurance that the seller commits to transfer the goods from transportation part to arrival port without insurance contact against the risk of transportation.’’

The fifth season is about FAS contract, the abbreviation of Free Along Side, which means delivery on the ship. Iraqi commercial law, art 309 has defined it as’’ The seller commits to delivering the goods to the specified ship which has been determined by the buyer in transportation port.

The sixth season is about delivering the goods in the place of production. It defined in art 313,’’ Selling the goods in the place of production like factories, stocks, farms. (Iraqi commercial law, art 313).

The seventh season is about airport FOB, which has defined in the second season for ships, but there it is defined for airports. Iraqi commercial law, art 316 has defined this contract as follow,’’ It is delivering the goods in the specified airport to export. (Iraqi commercial law, art 316).

The eighth season is about the commercial contract of sale on the condition of offloading from trains. Commercial law, art 319 has defined it as follow,’’ It is a sale on the condition of delivering in the train or any other vehicles’’. (Iraqi commercial law, art 319).

Ninth season is about the sale on the condition of arriving the goods safely. It has been defined in art 322 as follow,’’ It is a sale on the condition of arriving safely and the goods delivered in an unspecified ship.’’ (Iraqi commercial law, art 322).

1.3.3. Commercial Contracts

Any commercial trade is a list of two sides, the buyer, and the seller. Making any international commercial trade without problem needs making several independent contracts meanwhile related which each one has its role. The most important contracts are a contract of sale, contract of carriage and contract of insurance.

1.3.3.1. Contract of Sale

Contract of sale is a contract that determines the primary condition of trade including two sides agreement about trade, the subject of trade and the cost. In another word, it is a contract that determines the right and commitments of the two

sides. The contract may be in the form of writing or oral. The following example shows making a contract for a trade directly.

A person (buyer) asks a store (seller) a kilo of goods and tells the buyer the cost of it. The buyer pays the cost of the goods and receives the goods (date and place of doing commitment) and carries the good to home personally.

When a trade made internationally, it is not as simple as above, and it is so complicated that must consider in the contract. Contract of sale, in addition to the above cases, determines the total condition of the trade. The main cases are:

- Date of fulfillment which is the date of carrying the goods.
- Place of fulfillment which it may be the start point of carrying the goods.
- Evidence of fulfillment that can a signed letter.
- Evidence of compliance that is usually the same as a commercial invoice.

Other cases which included in a contract of sale are:

- Specifications of the trade goods such as technical specifications and the quality of the goods.
- How to solve differences, law, and court when there is a difference.
- The condition of delivery.
- How to pay the cost of trade and the condition?
- How to get a guarantee if necessary?
- How to inspect the quality and the quantity of the goods?
- How to end the contract?

1.3.3.2. Contract of Carriage

It is a contract that determines how to carry the goods, and in cases which the seller is responsible for, on the condition of contract of sale, a contract made between the seller and the carrier that the goods must deliver to the buyer in a specified place, and the carriage is done by the buyer or the seller, in other words, which one should make the contract of carriage.

In A Contract of Carriage, the Following Items Included

- The specifications of the two sides of the contract.
- The subject of the contract including the transportation of the goods by naming the specification of it.

- The carrier's commitment.
- The owner of the goods' commitment.
- Determination of the scheduled including dating and the direction of the carriage.
- How to pay the cost of contract?
- How to carry the goods carried in several items and from one vehicle to another?
- Guaranty of contract fulfillment and another guaranty if necessary.
- Types of insurance and the expense of it.
- Other conditions like how to solve differences, etc.
- Duration of contract fulfillment.

1.3.3.3. Contract of Insurance

In a contract of insurance, how to ensure against the risk is determined. In this case, also the responsibility of making contract depends on shopping conditions.

1.3.3.3.1. Commercial Terms

As it mentioned, making a contract of sale needs to determine the condition of buying. In the past, these conditions determined according to local traditions. Developing international commerce required special conditions.

International commercial room in 1936 codified this issue, and it was called International Commercial Terms (Incoterm). In the last edition was done in 2000 and it used nowadays. The purposes of Incoterms:

1) The primary purpose of the Incoterms is to create series of rules connected to terms used in the international commercial so that there is a specific meaning for each term.
2) Differences in interpreting used terms in international commerce in different countries and commercial systems has always been a cause of the difference between the businessmen.
3) Internationally. Incoterms rules with standard and similar definitions have achieved one of its primary purposes, and that is standardizing the terms internationally.
4) The problems that exports and imports faced with these three categories:

- The rules of which countries dominate the differences?
- The problem arises out of different interpretations use of used terms.

1.3.3.3.2. The Importance of Using Incoterms for Trade Sides

1. Sameness: Using Incoterms rules, the sides accept sameness rules and with different interpretations do not consider their local rights.
2. Assurance: The sides with complete assurance that the other side has commitments make the trade. It also clarified that each side must prepare what documents and receive what documents.
3. Flexibility: Incoterms always revised as the telecommunications and transportations are developing.
4. Determining rights and responsibilities of trade sides: Using Incoterms as the ways of good delivery, the point of transition risk, distribution of expenses and goods carriage are determined, and the two sides are precisely aware of their duties.

CHAPTER TWO
INTERNATIONAL TRADE AND COMMERCIAL CONTRACT IN INTRERNATIONAL LAW

2.1. INTERNATIONAL TRADE

Goods exchange beyond the borders goes back to 2500 years BCE. Archaeologists have realized that the Sumerian in Mesopotamia had prosperity through maritime commerce of cloths and metals (Belay, 2009:1). Significant parts of the world have been discovered by traders and people in business who were after finding new commercial and business opportunities. Although at that time finding new commercial opportunities have come with many dangers, its potential benefits have had worth the risk. Human quickly realized that the facilities in a region did not allow him to produce his own needs and he had to trade with others for access to the goods of others.

Drawing the national boundaries cannot ignore the profits in business, because it is not possible to produce all goods and services inside a country, and even if possible, is not economically feasible. For a better understanding of the issues of international trade law, it is appropriate, as an introduction to the economic reasons for international trade, to explain the interdependence of countries and types of economic trade activities (Dunn et al., 2004: 1).

2.1.1. The Reasons of International Trade

Throughout history, trade has existed between different regions of the world. Through trading, humans had access to goods that could not produce in its area. Focus and expertise in producing specific goods in a region allowed the producers of that region to produce the goods at a better quality and price. Because of the request of other regions produces the goods produced in each region, the exchange of these goods while resolving the needs of these areas has led to economic boom and prosperity.

The school of Mercantilism, the economic significance of trade, was based on the amount of gold that would provide to a country in this way. Adam Smith, The Absolute Advantage Theory and David Riccardo put the comparative advantage as

the basis for the scientific justification of international trade, which is explored in this speech.

2.1.1.1. The School of Mercantilism

Between the ages of 15 and 18, writers in Europe believed that a country's strong economy depended on the amount of gold and silver in it, and consequently the acquisition and preservation of gold and silver was the primary goal in determining the economic policies of a country, especially in foreign trades. According to the mercantilism of European countries, the European countries tried to increase exports and reduce imports, in order to increase national wealth. And to increase gold and silver exports, believing that more exports and reduction of imports of gold and silver would flow to the country (Jackson et al., 1986:8).

In this school, international trade was encouraged to the extent that it brought more gold and silver to the country and believed that the government should interfere in trade and maintain a definite trade-off between export and import with the rules and regulations of supportive trade. The views of the school have led European countries to wage war and violence to gain more markets for their products. (Douglas, 1991).

2.1.1.2. Absolute Advantage

In the 18th century, thoughts of the School of mercantilism vigorously attacked, the global economy was not a tiny gobbet of the countries that should fight each other to bite it, and if someone bites it, others would deprive of it. Adam Smith, in the Wealth of Nations, published in 1776, argued that the global economy has no particular limits, and countries can become wealthier by focusing on industries and products that have an absolute advantage in their production. Adam Smith believed that every country in the production of some commodities has an absolute advantage and efficiency, which may be beneficial for natural or acquired reasons, such as access to large quantities of raw materials, land, climate, technology and knowledge, production and industry and so on. If any country produces those products that are more efficient, then they will be specializing in the production of those goods, and this will generate an additional surplus on domestic consumption. Surplus production on domestic consumption of such commodities offers the possibility of exchanging

them with other goods that are produced in other countries and do not have the advantage of being their revenues. Such commodities offer the possibility of exchanging them with other goods that are produced in other countries and do not have the advantage of being their revenues.

In short, what Adam Smith Believed was that each country in the production of each or several goods has advantages and skills that other countries do not have such advantages in the production of such goods. The lack of government intervention in the economy, including in international trade, is the best way to increase the wealth of nations and create global economic richness. According to the school, specialization in production has led to lower production costs and cheaper finished products, and each country is required to import goods cheaper than other countries and export goods cheaper than themselves to other countries (Jackson et al., 1986:9).

2.1.1.3. Comparative Advantage

According to Adam Smith, when countries benefit from international trade, at least in one commodity the cost of production is lower than that of other countries. Indeed, this part covers a small fraction of economic activity and does not include products that are not fully productive in the country or whose production from other countries is not cheaper. David Riccardo completed Adam Smith's view and argued that countries that have at least comparative advantage in producing some commodities will also benefit from international trade. Accordingly, even countries that do not have the absolute benefit in the production of both goods also benefit from their trade.

According to Ricardo, for the exchange of goods between countries, a relative difference in production costs is sufficient, which creates the necessary incentive for business. According to this theory, even if a country has a lack of absolute advantage in the production of both goods in comparison with another country, a deal with mutual interests for both parties can take place. A country that benefits less from commodity production must move towards the production and export of goods that have a comparative advantage and, in other words, to import goods that do not have a comparative advantage in their production. (Dunn, Jr, op, cit, p.19.)

In short, based on the comparative advantage theory, investment in surplus production on domestic consumption of commodities in which a country has comparative benefit and performance. And exchange with other goods produced in other countries, and those countries have a comparative advantage in the production of them, they cause increasing global production, reducing costs and, consequently, increasing consumption and prosperity. The government's involvement in the free export and import process and the creation of barriers will ultimately lead to a reduction in global economic interests, and all countries will suffer. According to this view, the World Trade Organization is trying to facilitate the free flow and export of goods and services between countries.

2.1.2. Types of Trade Activities

Trade has traditionally included import and export of goods, but with increasing volume of economic activity after the Second World War, business activities have enjoyed unprecedented levels of diversification. In Article 2 of the International Commercial Arbitration Rules, international trade relations are referred to as various activities, including the purchase and sale of goods and services, transport, insurance, finance, consulting services, investments, and similar activities.

Business activities can divide into six major groups. The first is the buy and sale of goods, which may be done directly or through a branch or agency. Issues related to agency, commercial agency and distribution are in this group. The second group concerns the purchase and sale of services through which technical and non-technical services are bought and sold at the international level. The activities related to a presentation of counseling, contracting, commercial and legal services are in this group. The third group concerns transportation and insurance. The fourth group is related to financial activities such as the opening of documental credits, bank guarantees, and financing. The fifth group includes the exploitation, assignment, and award of intellectual property rights such as trademarks, technology, and technical knowledge. The sixth category concerns investment and the formation of partnerships and economic and technical cooperation.

2.2. INTERNATIONAL TRADE LAW

In the legal literature, various terms and expressions have been used to represent a branch of rights that are supervised by international trade and commerce. The most important and commonly used of them are international business law and transnational commercial law.

Due to the lack of fixed meanings for these phrases and their overlap in their content, many of these terms have been used instead of each other. Nevertheless, there is a mixture of conceptual and content understandings, being aware of them leads to a better understanding of the issues of international business law.

2.2.1. International Business Law

In the United Nations Secretary-General's 1996 report, International Business Law refers to a set of rules and regulations that governs trade relationships that are at the same time have a private nature and is related to different countries. (United Nations, 1966.)

According to this definition, the main topics of this field are as follows: International buy and sale of goods, including the issues of the formation of contracts, agency agreements and other exclusive selling arrangements, transferable documents and commercial credits of banks. Laws related to business activities related to international trade, insurance, transportation involving the carriage of goods by sea by air and road, industrial property and copyright, international commercial arbitration. The same notion of international trade law is expressed in the writings of Professor Schmitt Hoff, (1990) from this definition two essential notes can be understood:

One is that international business law is when trade relations go beyond national boundaries and therefore involve more than one country, so trade and trade relations within the boundaries of national borders are outside the scope and scope of international trade law, even if these business relations did between different states of a country.

Second, the international business law includes issues that have a private legal nature. Issues that have a general legal nature, but at the same time observe the international commercial relationships, is discussed separately as international economic rights and is considered as a subset of public rights.

In most of the legal Writings that have published in the past three decades ‘’ international business law’’ has been closer to the more general meaning of ‘’ international trader law’’.

2.2.2. International Commercial law

International Commercial Law is another term that is used extensively in legal writings. The international commercial law refers to a set of general rules, international treaties and conventions, internal regulations, conventions and commercial procedures that regulate international trade relations.

Today, many books and articles of international business law and international trade law are meant to be used in a single unit and used in place of each other. The international commercial law seems to have a broader meaning that international trade law. (John, 2003: 21). The international commercial law contains two groups of general issues:

First, it involves topics mainly contractual that traders and business companies engage in business activities, and relates to cross-border trade-related issues. Sale of goods and services, presenting provision of exploitation licenses, the lease on condition of purchase, agencies, investment partnership agreements and settlement of disputes on such issues.

The second category is the guidance and intervention of the government in commercial and economic exchanges, which are primarily related to the issues of public international trade law. Supporting foreign investment, supporting domestic industry, liberalizing trade in goods and services, fighting the creation of monopolies and controlling the entry and exit of currency are among the things that the government takes to control trade.

From the scientific standpoint of private individuals, they can do business within the limits of international trade rules. No sales contract ca make without regard to export and import restrictions; no currency payment can make without regard to the regulations for entering and leaving the currency. Any decision to invest in a foreign country cannot take without regard to the rules of encouragement and protection of capitalization and other commercial restrictions. For this reason, the issues of international trade law cannot be one-dimensional. Accordingly, in most

of the articles published under the title of International Commercial Law or International Trade Law, private discussions are discussed along with public debate.

2.2.3. Sources of Commercial international law

In the domestic law, the sources of law are specific, which are mainly constitutional, ordinary laws and judicial procedures, which are supplemented by the law and the theory of law scholars. In international trade, the sources of rights are different, and the scope and legitimacy of some of them are controversial. The most important source of international trade law is bilateral and multilateral treaties. After the reciprocity, the international trading procedure forms the general principles of the law and the customary rights of commercial sources of international trade law.

2.3. TREATIES

2.3.1. The Concept of a Treaty

In international relations, various agreements concluded. Those groups of international agreements which concluded between the governments or a government and an international organization called (treaty). The first article of the second art of Vein Convention 1969 about treaties, has defined "treaty" as "Treaty is an international agreement which is concluded written between countries and includes international laws." (Vein Convention 1969 about treaties) This definition does not have coordination with today's international organizations which are becoming more essential days after days, because it sees the treaty just between the relations of governments.

Thus, in commercial and trade relations signing treaties with international commercial and economic organizations such as; the International Fund, World Trade Organization, World Bank, and European Union are very important. Of course, concluded agreements between a government and other governments or international organizations which are concluded to do commercial and trade affairs are out of treaties because the governments act like a merchant and these kinds of agreements and contracts are not included in international laws. Treaty may include specified commitments and definite liability laws for the members such as "convention" (In Persian convention has been translated as treaty, agreement, and contracts), "charter", "protocol" and "code" or it shows the general framework of

members' commitments like "Framework convention" or just it expresses the viewpoint of the two sides about an individual subject or it reflects their moral commitments. (Abdolhossein, 2017: 34-35).

2.3.2. Categorizing Treaties

Treaties, in a general category, are divided into, reciprocal and multilateral treaties. Reciprocal treaties are just concluded between two countries or a country and an international organization, while in multilateral treaties, the number of the countries are more than two. Reciprocal treaties have significant roles in international commerce, and every country has lots of these kinds of treaties with other countries. These treaties are mainly related to trade facilities, supporting investment avoiding double taxation. Reciprocal treaties about trade facility between two countries are called "friendly treaties, navigation, and trade" which has a long background among countries. In these treaties, both sides give each other some privileges about exportation, importation, customs duties, economic activities, transportation, and trade right through the sea. Citizens of each side of the treaty can privilege written in the treaty.

"Reciprocal treaty to support foreign investment" is another treaty which is widely prevalent among countries worldwide. According to published statistics in 2006 by Ancad, more than 2500 reciprocal agreements have been concluded among countries to encourage and support foreign investment. (Abdulhossien, 2017: 36).

"Reciprocal treaty to avoid double taxation" is another treaty which effects on ultra-border economic activities. If a person or company is doing economic activities and earns money, this includes taxable income in that country, and the tax should pay. When the mentioned income reaches to its country, it includes taxable income again. To reduce the amount of tax in ultra-border commercial activities, countries through reciprocal treaties and to avoid double taxation determine that; first, just in one country tax should be paid for income, and second, they determine that in which country, tax for income should pay.

When more than two countries sign a treaty, it is called "Multilateral treaty." In some multilateral treaties, it is possible for the countries which haven't signed the treaty, to be able to join them, as the United Nations convention about international goods trade approved in 1980. In some multilateral treaties, only particular countries

and under particular conditions can join them. The aim of concluding multilateral treaties may be unifying and coordinating between the law of country members about an international commercial issue. Through, accepting such treaties and conventions, part of national rules of country members about the subject of the convention is unified and coordinated. Maybe the aim of concluding a multilateral treaty is to found an international organization and to give power to it to set commercial, economic and financial relations between the members.

Organizations and institutions such as; World Trade Organization (WTO), International Fund, World Bank, OECP (Organization for Economic Cooperation and Development) through signing, approving and acceding treaties and conventions have created. Also, multilateral treaties may lead to creating free zone customs, economic amalgamation or economic unions. For example, Roman Treaty led to form EEC (European Economic Community) and the North American Free Trade Agreement so-called (NAFTA). Forming (ASEAN) (Association of South East Asian Nations) or Economic Cooperation Organization (ECO) also can be attended from this angle.

2.3.3. Ratification and Fulfilling Treaties

The first step to conclude a treaty (convention) is negotiations between related countries. These negotiations may be done under the observation of an international organization and may last several years. Negotiating countries must ratify final treaty content. After final confirmation of the text, the representatives of negotiating countries must sign it. This signature does not make any commitment to the governments by itself, but regarding international morality and courtesy they must try to confirm the treaty by law authorities, and they should not do a behavior against the treaty. After signing, treaties must ratify by the officials of signing countries whose process and references are different in different countries based on their constitution. If a country does not include signing countries, it should accede treaty or convention.

An acceding convention like ratifying must go through formality based on the constitution. In due course of a treaty or convention and how to effect on the country, members usually mentioned in the text of the treaty. Some of the conventions are irrevocable only after ratifying and acceding by at least some specific countries. A

treaty directly creates commitments and rights for governments and merchants and companies in that country and can use the benefits of it. So, based on this, if a country violates the content of a convention, they can object to convention violation through their own countries.

2.3.4. International Commercial Trend

The international commercial trend applied to functions and the norm which has been created between merchants and commercial companies and somewhat it has obligatory power. Obligatory in commercial trend has been legitimized based on two theories.

First theory: the international commercial trend is a kind of international common law which based on article 2, art 38 of the constitution of international court justice, is a resource of international laws. In principle, for a commercial trend to count as an obligatory international common law, it needs two pre-conditions. First, that function and behavior must frequently do between merchants and commercial companies. Second, the function of merchants and commercial companies should not be just for courtesy and advisability, but because they consider this behavior as an obligation. (Roy, 1997:7)

Second theory: International commercial trend, in reality, is mentioned as an implicit condition in international contracts, and its reliability and obligatory comes from an implicit agreement between two sides. This implicit agreement comes from this fact that those who are into this work, must be at least aware of this kind of trend, and if they do not do anything against it, it means that they have accepted it in their relations. About this case, in article 2, art 205, American Commercial Code says," Commercial trend applied to any functions or behavior styles which frequently considered in a place, profession or commerce and it is expected to considered in any contracts and trades."

Article 2, art 9, in International Goods Convention presents the same interpretation but more clearly about the international trend. Unless they had agreed on other ways and it received that both sides have accepted an implicit trend that they have been aware of it and of course provided that the mentioned trend is considered widely in international trade and frequently is known by both sides. International trends like the international common law in international law regarding region and

clarity are different. For example, a commercial trend may be related to a special geographical region or a specified profession or commerce or may be common in a particular market. One of the problems related to the commercial trend is how to prove and determine the exact content of it. When there is a difference, the exact content of a commercial trend which you can solve the differences based on isn't so simple. Nowadays, the commercial trend is written in two ways: Firstly, commercial trends are prepared such as international documents and they used by all sides, and they have binding contracts.

In a second way, the best solutions and values based on written international principle, rules, common law, and trend are gotten and concluded, and they published a set of rules. For example, "The International Institute for the Unification of Private Law" in 1994 published a set of rules so-called "The Principle of International Commercial Contracts" which was the result of many years' studies and comparative researchers in different law systems, ordinary laws, and commercial trends. This set reformed in 20074. Even though, at first, these rules cannot be considered as a commercial trend. When these rules are referred by judges to solve problems, they are written and used widely by merchants in contracts.

2.3.5. World Trade Organization (WTO)

World Trade Organization (WTO), was officially founded from the beginning of 1995. This organization was indeed a replacement and an extender of the tasks which GATT (General Agreement on Tariffs and Trade) was responsible. The primary aim of GATT and World Trade Organization (WTO), is development and improvement of international economic cooperation, support the global economy, create economic stability, growth, and development through free and fair trade between countries.

World Trade Organization (WTO) is a place for member countries to discuss their commercial problems and to find the solution. When countries face commercial blocks in other countries, the organization is an appropriate place to negotiate the problems and to solve the problems before getting pervasive. These negotiations may lead to new agreement negotiation or to decrease commercial blocks and tariffs.

World Trade Organization's (WTO) agreements is a set of principles and manuals which the member countries have to set their commercial politics inside

these frames. The member countries are supposed to publish their legs, manuals, and commercial politics clearly and to give their authority to the public.

To get to know the World Trade Organization (WTO) and its enterprises its necessary to explain a brief history of the formation of GATT and the replacement World Trade Organization. The goals of this organization, general principles of it and its signed agreements are studied. In the next part, organization's formations and the way of joining this organization discussed shortly. (Abdulhossien, 2017: 89)

2.3.5.1. History and Goals of World Trade Organization

During the 19th century and the beginnings of 20th century, about 65 percent of world trade done between European countries and their colonies. In the endings of the 19th century, existing natural and governmental blocks on world trade development were noticeably wasted in a way that during 1860-1920 countries experienced comparative free trading. 1930s downturn made most of the countries to take action about the adoption of particular supporting politics such as increasing importing tariffs, prejudice between trading party countries and emerging other trading blocks that not only solved the downturn but fastened it.

These countries, United States of America and England especially, attempted to support private industries by regulatory importations and overlooking competitions and to prevent from closing their workshops and labors unemployment. These politics led to positive effects on national economy for a short time, but soon it turned to a universal crisis because all oeuvre industrial countries made similar limitative and supportive manuals to limit import and support inner productions and industries. Circulation of such methods in international level and somehow in a reprise of limitative manuals of other countries led countries imports to severe problems and countries cannot import their goods. Countries which realized that their goods would not get to other countries' markets or in case of entering goods were prejudiced towards other goods in those markets, in the reprise, they ordained the same limitation manuals against other country's goods. Limitation methods like these made the number of international trades to decrease intensely, and they happened to worsen the economic status. (Anderson, 1996: 3-5)

Adoption of these reprisal and imitative methods happened to support this theory that is essential for countries to ally to solve the existing commercial blocks,

they set multilateral agreements. On the other side, emerging of the world war, II amplified the sentiment that the mutual dependency between countries would decrease the war motivation. As a result, immediately after world war II, to prevent from asperity, to recover the war demolitions, to set international commercial relationships based on assuring an intense competition and commercial freedom. The commercial wholesaler countries agreed along with the cooperation of International Bank for Reconstruction and Development (World Bank) with International Monetary Fund (IMF) to form International Trade Organization (ITO) as a specialized institution dependent to United Nations.

The International trade organization charter was aspiring, and it went beyond the frame of trading and contained subjects like employment, contracts of buying and selling goods, exclusive trade comportments, international investment, and services. Formation of this organization was supposed to pass in Trading and Employment United Nations Conference which held at Havana, Cuba in 1947. Contemporaneous, 15 countries started negotiations to decrease industrial tariffs and adjustment of existing supportive politics. In the first round of negotiations,23 countries approved to decrease some segments of their commercial tariffs and to agree on a bunch of commercial principles and manuals. As a result, General Agreement on Tariffs and Trade (GATT) signed between 23 countries on October 30th, 1947. (Abdulhossien, 2000:7)

These 23 countries were members of a more significant group of countries which were pursuing International Trading Organization Charter. In the 29th clause of GATT was forecasted that in case of the foundation of the organization mentioned above, some parts of the GATT's commitments are abeyant and the member countries are pledged to obey a considerable part of principles of organization's charter. These countries also expected that the organization mentioned above might not found and in that case, they did not want to risk their success in signing GATT.

Havana negotiations conference on November 21st, 1947, which started in less than a month after signing GATT and the International Trading Organization Charter was signed in March 1948. Some countries such as America had problems about approving the charter through its legal references and the United States Congress considered joining this organization as flawing America's autonomy right and didn't show any interests to approve it and announced that it would not send the

organization's charter to the Congress. With disapproval of the United States Congress, International Trading Organization which were to handle and set the members trading politics as an international trading organization and literally, it did not come to exist (Jackson et al., 1986).

With the death of the International Trading Organization (ITO), GATT was only a multilateral spectator agreement on international trading relationships. The United States government had no need to give GATT for approval of the Congress because based on a statutory in the United States from 1934, the president of the country was allowed to negotiate with other countries to decrease mutual custom tariffs, and this law in 1945 held over again, and its coverage range developed. Based on this law, the president of America signed the GATT, and there was no need for the approval of the Congress.

From 1948, General agreement on tariffs and GATT trade was indispensable between committed countries. With the death of the International Trading Organization on one side and maintaining GATT on the other side, it managed to gradually set up a small secretariat with some crews to undertake the delegated tasks to International Trading Organization however in a limited and faulty way. Despite the fact that GATT was only a multilateral agreement, it developed faulty foundation and organization tasks inside itself, and in function, it undertook duties of an international trading organization. (Dillon, Thomas, the World Trade Organization: a new legal order for world trade? 1995, 16 Michigan Journal of International law, p352).

GATT during the 48 years of its durability, continued just as the same as it was in 1948 and in the 1960s some segments added to it. Although in 1970s several agreements were added to GATT, these agreements were only obligatory for members who accepted it and this fact caused that except the manuals epenthetic in the GATT, other agreements which were essential for developing trading and resolving blocks, weren't indispensable for member countries. GATT during its vita had eight negotiation settings as explained in a table (1.1) that except approval of corrigendum and agreements, had impressive success in lowering the costume tariffs. Inexistence of spillover in supplementary agreements GATT to all members, departmental and structural weaknesses of GATT, inexistence of a practical solution method for problems, incognizant of essential matters in trades like trade in services,

intellectual property, and agriculture provided needs to found a coherent organization with a description of appropriate tasks and structures.

Table 1: GATT Negotiation Settings

Year	Location	Negotiation's Subject	Members
1947	Genève	Tariff Lawrence	23
1949	Annecy	Tariff Lawrence	13
1951	Torque	Tariff Lawrence	38
1956	Genève	Tariff Lawrence	26
1960-61	Dillon round	Tariff Lawrence	26
1964-67	Kandy round	Tariff Lawrence, Anti-dumping actions	62
1973-79	Tokyo round	Tariff Lawrence, non-tariff actions, agreements	102
1986-94	Uruguay round	Tariff Lawrence, non-tariff actions, services, intellectual property, solving disagreements, the formation of the international trading organization, textiles, agriculture.	123

Source: By the researcher based on the literature above

At the last round of GATT negotiations which is known by Uruguay round and continued for eight years (1986-1994), countries agreed on founding the World Trade Organization (WTO), and this organization officially created on January 1st, 1995. 1947 GATT went back to its real position as an agreement concerning manuals spectating, and like the title, GATT 1994 became a part of documents and agreements of International Trading Organization. In other words, with the foundation of the International Trading Organization, GATT's essential and departmental duties were delegated to this organization and general tariff and trading agreement named GATT which was a multilateral agreement, it became one of the essential agreements of the International Trading Organization at 1994.

At the introduction of founding the International Trading Organization agreement, the organization's purposes have illustrated as written: amending life's level, assuring total employment, large volume and permanent increasing of real income and practical demands, developing and extending of production and trading in services and goods, optimized usage of existing universal resources. According to straight developing goals, protection and preservation of environment and attempt for increasing the shares of developing countries especially countries with low benefits of development with considering their needs to develop.

During the GATT's nearly 50 years of lifetime, evolutions have happened on an international level that has impressed general viewpoints to an international trading organization. These evolutions which indicated in the agreement establishing the World Trade Organization consists of (McGovern, 1995: 7):

1. Paying attention to trade in services along with goods trading,
2. Paying attention to intellectual property aspects which are active on fair trading.
3. Paying attention to developing countries' needs and accept they are rightful in achieving economic development.
4. Global attempt for preserving and protecting the environment and strengthen its necessary instruments considering the different economic levels of countries.

2.3.5.2. Dominant Principles of World Trade Organization

World Trade Organization agreements are complicated and copious which cover different matters such as goods and trade in services, agriculture, textiles, banking and transmission, governmental purchases, international standards and religious possessions. In different agreements of the organization, manuals and basics represented that a short glimpse of them would help to get a clear understanding of the organization. In the introduction of the agreement of founding the World Trading Organization, membered countries announced their willing for realizing organization's goals through mutual agreements based on considerable decreasing of customs tariffs, resolving other trading blocks and revocation of all discriminatory actions in international trading relationships. These manuals and basics which represented in multilateral agreements are:

2.3.5.2.1. Assurance of Trade Freedom Between Members

One of the dominant principles of World Trade Organization is to assure trade freedom among members. The principle of trade freedom based on that the global economy all in all takes more benefits from trade freedom than making trading limitations. Since in every country, production of some specific goods in comparison to production of the same goods in other countries have relative profits, trade freedom allows countries to use their relative profits in the best way and be able

to focus on producing the goods and offering them to international level, and to import the goods that they have low relative profits in producing them. Because the cost of production of goods in countries which have good relative profits is lower than other countries that they do not. Countries can focus on production and exportation of those sort of goods and services that have more profits to achieve a valid currency and to proceed to import goods and services that they have no relative profits. Exchanging these goods would help countries to access their needful goods and services with a lower cost. Increase in production, optimal use of economic resources, utilizing the potential economic facilities of countries and increasing employment opportunities are results of trade freedom and the possibility of free goods and trade in services between countries.

World trade is not only an instrument to make useful goods and services that produced in other parts of the world available, but is a way to move needs of a country to another one (Jackson et al., 1969:54).

Therefore, the principal intention of World Trade Organization was to resolve the existing trading blocks on an international level. So World Trade Organization has forbidden setting any sort of trading block except setting costume tariffs. Based on the 11th clause of GATT 1994, members have no rights to set more limitations into importation and exportation goods except for costume tariffs, even if these limitations based on applying apportionment methods for importation and exportation, complete or non-complete importation or exportation forbiddance and setting justification imitation method.

2.3.5.2.2. The Decrease of the Costume Tariffs

Although in World Trade Organization setting trading block is forbidden, setting costume tariffs is not forbidden. Since the member countries may affect trade freedom by creating a system of costume tariffs and influence the enfranchisement of trading, all countries are obliged to lower their costume tariffs considerably. Along with this general commitment, member countries are always in mutual and multilateral are about to decrease their costume tariffs. During more than 50 years of GATT lifetime and World Trade Organization, these negotiations have achieved desired results, and the volume of costume tariffs have been lowering day to day. (Trebilcock et al., 1995). As the result of these negotiations, commercial tariffs of

industrial goods end to have lowered to under 4 percent in the middle of 1990s. (WTO, 2008: 11).

Every country that becomes a member of the World Trade Organization moreover insertion to multilateral agreements of it enters to bilateral or multilateral negotiations with other countries and while a decrease of its costume tariffs, to agree on its tariffs end top with other members. The maximum amount of a tariff that a country may set for a good, will be mentioned in the country's tariff table and that country will not have permission to increase the mentioned tariffs. Based on this, countries enter negotiations and mutually decrease their costume tariffs according to other goods.

For instance, the A country which is the producer of meat negotiates with the B country which is a clothing producer, and both sides would commit to decreasing meat and clothing tariff costumes by 10 percent. This decrease would undoubtedly consist of tertiary members that are producers of meat and clothing. For the reason that the tertiary members will not impact the decrease of the mentioned tariffs without giving the prominence, A and B countries negotiated with other meat or clothing producer member countries and applied that instead of this decrease, to lower their goods' tariffs. This procedure may take years and also lead to decreasing tariffs on a significant scale towards various goods.

2.3.5.2.3. Revocation of all Commercial Discriminations

Another significant and axial principles of World Trade Organization is the revocation of all economic discriminations. These discriminations might happen in two general aspects. The first aspect is that encountering with imported goods from other diverse countries would be different, in a way that with the similar goods towards that from which country they have imported, a different encounter must do. For instance, if a country significate the costume tariff of the importing calf meat from European Union 20 percent and from Australia 25 percent, this is a discriminated action. This affair which is known by the principium of Most Favored Nation (MFN), in the first clause of general agreement on tariffs and trade (GATT) 1994 and the second clause of the general agreement related to services trade (GATS) and the fourth clause of the agreement related to Trade-Related Aspects of Intellectual Property Rights (TRIPS) has been directly predicted. These clauses with

different terms adjudge that the imported goods and services from member countries must consist an equivalent and similar action and not because of that the mentioned goods or services are imported from this or that country, have different prominences, enfranchisements, and assistance.

Nevertheless, this principle is not without exception. The countries are starting founding free custom unions, like European Union, can adopt discriminatory actions according to resultant agreements towards imported goods and services from other members of the union. Alternatively, the countries can set prominences for imported goods and services from developing countries. Also, member countries can have a different reaction towards the products which are imported unfairly (from the dispensation of subsidy or dumping).

The second aspect of discriminatory actions is that the goods and services of internal production have more proper prominences and assistance than the imported goods and services. This sort of discrimination has been forbidden based on the third clause of General Agreement on Tariffs and Trade (GATT) 1994 and the 17th clause of the general agreement related to trade in services (GATS) and the 3rd clause of Trade-Related Aspects of Intellectual Property Rights (TRIPS). These clauses with various terms assign that encountering with imported goods and services when they entered a country, must not be different with other internal goods and products. Therefore, member countries must not adopt politics that gives prominences to the internal made products and that the imported products would bereave of it. For instance, sales tax of internal products would be half of the similar imported goods. According to the third clause of GATT, member countries are supposed to make sure that the prominences and assistance given to imported goods are not lower than the prominences and assistance were given to interior built goods.

2.3.5.2.4. Clarifying Trade Principles

Another reflected principles of numerous agreements of World Trade Organization is that the members are supposed to publish related commercial principles clearly and brightly and exhibit them to the public.

Politics and contraptions that are adopted by the member countries and affect trade should publish suitably. According to the 10th clause of General Agreement on Tariffs and Trade (GATT) 1994, all principles and manuals, juridical decisions and

departmental instructions which are set by each member country and somehow to be useful in selling, distribution, transportation, insurance, storekeeping, product montage and so like should be published. Clarity in principles of the thi[rd] clause of general agreement related to trade in service is also obligated.

Clarity in principles and manuals will cause that the businessmen and trading companies make sure about the business conditions and act towards investigating. Stability and being predictable are two essential principles in commercial development and growth of a country and based on this two principles, the investigation done, and employment opportunities created. Naturally, the adopted principles and manuals and commercial politics, must not be in comparison with organization's agreements and also the amount of the customs tariffs of each country must not go beyond the country's authorized top.

On the other side, clarity of principles has an essential role in the realization of World Trade Organization goals, because the assurance of performing the principles of that organization mainly based on the adoption of retaliatory actions by other countries and this performing assurance is only practical when other countries are aware of existing principles clearly and the adopted politics.

Some agreements of the organization oblige members to set their principles clearly and to announce agreement's texts for public awareness and send a prescription of it to the organization. Also, disciplined surveillance on commercial politics of members which done by studying the commercial politics of organization's mechanism also leads to supply the clarity of principles and manuals and retail politics in internal and international level.

2.3.5.2.5. Development and Reformation of Economic

Almost three-quarter of World Trade Organization's members formed of developing countries and countries in transition to market economics. From the very beginning in GATT, particular principles have been predicted for helping developing countries, and special prominences and exemptions have given to these countries. From the Uruguay round, the role of these countries has considerably increased. Although organization's commitment towards the developing countries and developed countries done singly, opportunities are given to developing countries and exceptionally less developed countries so that they can act to economic reformations

towards a transitional period and adjust themselves with firm commitments of the organization. On the other side, developed countries were required to open their markets to generative products of less developed countries and give technical help to these countries.

One of the epenthetic matters in Doha's round negotiations work plan is to pay attention to needs and benefits of developing countries. This plan is about to solve the inexistence of balance in the international trading system of developing and developed countries. After more than 11 years since the beginning of the Doha's round negotiations, yet there is not a bright horizon for agreement towards a comprehensive agreement concerning the developing countries.

2.3.5.3. Fundamental Agreements of World Trade Organization

As mentioned before, one reason of formation of World Trade Organization, was to consolidate the multilateral agreements that were indispensable only in relationships of the countries that had joined those agreements. One of the Uruguay round's results was that all multilateral agreements of the organization presented in a package form to countries that based on it, countries were obliged to accept the whole package or to give up the membership in the organization.

So, any country that tends to join the organization must accept all multilateral agreements of organization which was negotiated in Uruguay Round and has no rights to join some or refusing others or using the reservation option towards any parts of the agreement. Nevertheless, according to 3rd paragraph of the second clause of the agreement establishing the World Trade Organization, acceptance of the four agreements has no essential aspects, and members can join the agreements by their own decision. These four agreements titled ''Plurilateral Trade Agreements'' and is obliged towards the countries that have joined them.

Agreement establishing the World Trade Organization agreement is the basis for World Trade Organization agreements that the other agreements have attached to it. Here the most significant and fundamental agreements of the World Trade Organization will be mentioned.

2.3.5.4. Agreement Establishing the World Trade Organization

Agreement establishing the World Trade Organization which formed of 16 clauses, does not consist of segregating or innate principles about the commitments of members but assigns the general structure and governing principles of the organization and is considered as the organization's charter.

This agreement by expressing the establishing of World Trade Organization, also explains operation zone and organization of it, its relationship with other international organizations, the way of decision making in the organization, the method in reviewing organization's principles, membership and quitting from World Trade Organization. So, agreement establishing the World Trade Organization has been the charter of the organization which explains the general principles related to the organization and entering or exiting from the organization and the method of handling and decision making of it.

Almost 60 agreements that adjust the different aspects of trade between members and assign members' segregating commitments in different parts have been attached to the agreement establishing the Organization. Agreement establishing of the organization and the attached agreements all in all form a single collection that except the four plurilateral trade agreement, the rest must be approved without any changes and the member countries also can't make an exception in their commitment to any parts of its conditions.

2.3.5.5. General Agreements on Tariffs and Trade (GATT)

General Agreement on Tariffs and Trade 1994, explains general principles of sound trade and basically is the same GATT 1947 agreement which is attached to the Agreement Establishing the World Trade Organization named as GATT 1994. This agreement has a great significance, and the most important commitments of member countries has been stated in it about trade in goods, for instance, the principle of indiscrimination in encountering other members, resolving of non-tariff commercial blocks, commitment to decrease the custom tariffs, establishing fair trade and clarify related national principles to trade.

2.3.5.6. The General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS) which is a result of Uruguay round, is devoted to trade in services. Until before 1995, GATT's principles were specified to trade in goods but with approving this agreement trade in services also was taken under control of World Trade Organization. This agreement attempts to contaminate the GATT's principles to trade in services and to assure trade freedom in this part. Inevitably trade in services has its own unique features, and the existing block in its enfranchisement is different with trade block in trade in services. Trade in services basically needs transmission of manpower and capital from a country to another which has its own particular sensitivities in national systems; such as banking, insurance, transportation, providing health services, juridical and consultative and so on. These sections are basically under surveillance, and original manuals of countries and countries pay too much attention to it, or they may have no interest, to allow other countries to enter these sections. The General Agreement on Trade in Services is a legal frame for trade in services freedom assurance by accepting the maxim of trade in services freedom, resolving existing blocks, settlement of prejudiced actions and clarifying social principles.

According to GATS, trade in services is made in four modes. Mode 1, is the Cross-border Supply, based on it the company settled in the A country gives services to persons and companies of the B country, without being present in B country, such as giving transmission services from A country to persons or companies of B country. Mode 2, is Consumption Abroad, based on it persons or companies of the B country use the given services in the A country, like B countries' tourists that use the given services in A country. Mode 3, is Commercial Presence by establishing a section or trade agency in the B country, like the presentation of banking services, insurance, instruction and etc. In B country by establishing a section or an agency in B country. Mode 4, is Presence of Natural Persons in the B country, based on it services such as instruction or consultation are given to persons who travel to B country.

GATS consists of 3 parts. 1. It shows the principal text of commitments and the governing principles of trade in services, for instance, observation of most favored principle, indiscrimination or lack of transparency in manuals and principles. 2. Attachments about the observing manuals and principles on particular sections of

services like displacement of the workforce, representation of financial services, telecommunication services, aerial transportation. 3. Specific commitments of each country that is about enfranchising of particular services.

2.3.5.7. Understanding on Rules and Procedures Governing the Settlement of Disputes

One of the deficiencies of GATT 1947 was in existence of a consistent method in legal and juridical settlement of disputes. This deficiency was almost resolved in Uruguay round, and a practical and comprehensive method was settled for settlement of the disputes by an independent juridical board. The need to create an independent juridical inquest became significant since the new matters like trade in services and spiritual property were considered as part of World Trade Organization. Understanding on Rules and Procedures Governing the Settlement of Disputes has an axial role in settlement of the disputes coming from the agreements of World Trade Organization. Agreement on settlement of disputes has fundamental differences with GATT's 1947 principles of resolving disputes that an example of it is the way of the inquest, development of necessary items of juridical settlement and emphases on setting reprisal politics. The explained disputes based on the mentioned agreement is resolved by the WTO's Disputes Settlement Body (DSB).

When a country adopts trade politics or certain proceedings that other countries consider it a breach of the organization's commitments, disagreement happens. The member countries have accepted that, if a disagreement happens about the politics, about the decisions and the trade actions of a country or if there would be disagreement towards the interpretation of organization's agreement, countries must use the settlement mechanism of the organization to resolve disagreements and avoid using other methods.

If disagreement happened, related countries must follow the disagreement's subject by negotiations and attempt to resolve the disagreement in a peaceful manner. They can also ask the secretary general of the organization to help them as a mediator in reaching an agreement. If no agreements happen in 60 days between countries, the complainant country can demand the formation of a specialized board to investigate the disagreement, and that board must be established in 45 days. The mentioned board has 6 months to present its conciliar opinion, and its

recommendation to the settlement of disputes organization and that organization by consensus can refuse the board's recommendation. Each side of the disagreement can demand a reconsideration. Reconsideration is only possible for legal issues and interpretation of principles and manuals and is not possible to investigate the subject again in reconsideration. The settlement of disputes organization has the right by consensus to refuse the board's reconsideration.

2.3.5.8. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the aspiring attempts of Uruguay round to observation of minimal rights of intellectual property in a global level that has not happened in GATT. This agreement is consisting of matters which are related to intellectual property like the author's right and industrial property, and despite its title, it's not limited to aspects of intellectual property which is directly related to trade. Fitting this agreement in World Trade Organization has been based on this idea that most aspects of intellectual property rights will affect the fair trade procedures and disobedience of intellectual property will cause unfair competition.

This agreement consists of formal principles in explaining the tasks of World Trade Organization's members to observe and assure the intellectual property right in their own country and sometimes by deducting punitive laws. Insist on fitting this agreement in World Trade Organization was begun by the United States of America and was supported by an economic community of Europe, Japan, and Switzerland. These countries believed that inexistence of support or inadequate support from intellectual property rights in some member countries, has been like other commercial barriers and the World Trade Organization must take care of it and find a solution for it. Industrial countries' logic was based on that the religious property right of these countries on their production and industrial innovations must be ensured. So firstly, they could reach to the markets of developing countries and secondly, to prevent from exporting goods that are produced by breaching others intellectual property. Despite the disagreements of some developing countries, especially India, the mentioned agreement became a part of necessary documents of the World Trade Organization. Finally, developing countries assented fitting the

agreement hoping to absorb overseas capitals, to develop and to stay safe from retaliatory politics (Demaret, 1995: 140).

Five axes are covered by TRIPS, described as followed. First, members' manners must be without any prejudice towards the matter of intellectual property of imported products of all member countries and different encounters must not happen towards the imported products of different member countries. Also, there must not be any discrimination between interior products and imported external products.

Second, in all member countries, standard supports from intellectual properties should be established. In this case, the member countries were obliged to join the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. Even in cases that the mentioned conventions had deficiency or ambiguity, such as supporting the computer programs, renting the products of intellectual property matter and recording of live shows, supplemental manuals were predicted in TRIPS.

Third, manuals related to the cognizance of intellectual property must be executed. Here of TRIPS assigns that the member countries must set assurance of performances and set enough and appropriate penalties so that they could effectively prevent from contravention of intellectual property. Access to legal references for complaints of intellectual property contravention and the manner of verifying must be fair, unbiased, cheap and straightforward. That's why in TRIPS details of verifying complaints, education, temporary proceedings, agreements and instructions, damages and punishments are stated. Also, it has been stated in TRIPS that forging trademarks or intentional contravening of copyright in a first trading scale, must be considered as a crime.

2.3.6. Agreement on Trade-related Investment Measures

Agreement on Trade-related Investment Measures (TRIMs), also is a result of Uruguay round and was discussed for the first time at multilateral negotiations under the surveillance of GATT. This agreement is not about to directly instate a workable system for external investment or to support it. This agreement is actually related to commercial barriers that an external investigator is facing in the target country, like that the target country imposes commitments to the external investigator, and provide

some of its necessary goods from inside sources or to use interior made goods and substances in producing its own products.

Based on this agreement, the member countries of World Trade Organization must not adopt contraptions towards external investment that leads to discriminatory manner between interior goods and produced goods in external investment projects. In attachments of this agreement, items have been listed that from agreement's point of view, has been forbidden and considered to be a discriminatory manner; such as requirement of an external investigator to buy internal products, limiting the external investigator in buying imported goods, obligation of using internal goods in producing goods and making limitations in exporting produced goods. It should be explained that this agreement is about the contraptions having an adverse effect on external investment and basically it's not pointing out contraptions that attract and encourage external investment (Neal, 1996: 165).

2.3.6.1. Anti-Dumping Agreement

Genuine of free trade expresses that the member countries of World Trade Organization are supposed to, furthermore creating proper juridical and economic structures for the realization of free trading between member countries, supposed to prevent from performing proceedings breaching the above-mentioned genuine. Among criminal proceedings that damages competitiveness genuine in international trading relationships, dumping and dispensation of subsidies by governments to support exporting that can lead to damage industries of the importer country.

2.3.6.2. The Agreement on Subsidies and Countervailing Measures

Granting exporting subsidies causes lowering the price of exporting goods of one country in other countries and this decrease of price causes that the internal productions of importer country can't compete for the internal productions and it will afoul impact. Naturally, after a while, interior industries of the importer country involve severe and irrecoverable damages, and the internal producers will be removed from the market. Also, this decrease in price will cause other exporters to lose their own markets and can't compete for subsidy goods.

Because of the importance of subsidies and its negative role on free and fair trade, the matter of subsidy payment was first anticipated at the 16th clause of GATT.

Subsequently, in 1955, the above-mentioned 16th clause was reformed and based on it subsidies code was approved in Tokyo round negotiations. A lot of the member countries refused from accepting the 1995's corrigendum and subsidies code. In Uruguay round that led to establishing of World Trade Organization, the subject of subsidies was one of the controversial matters that finally industrial subsidies (non-agricultural) was fitted in the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and dispensation of industrial subsidies was fitted in Agreement on agriculture. These two agreements were considered as two essential agreements of the organization, and all members of the organization were obliged to observe its contents and match their manuals and politics according to the mentioned manuals and principles.

The subsidy is predicated on governmental financial supports that transmits a profit to its receiver. Based on this, exported subsidies are called as supports, rewards, and insults that are paid by the government or dependent organizations to the government for encouraging exportation or developing exporting markets to exporters specific products has been paid.

2.3.6.3. Drafting International Agreements

One of the most critical topics in international trade is setting and drafting international agreements. International trade agreements include three expressions of international, trade and agreement (Richard, 2004).

The agreement is called a concord that sets the relationships between two or more sides. These relationships can be in the fields of selling, renting, mortgaging, assurance and dispensation of financial facilities. Trade agreements are known as those concordats which are set for business goals and resolving trade needs. Those agreements which are set for personal needs are called consumer agreements, and it's out here's subject. It needs to be mentioned that here trade agreements are not against civil agreements -in a way that it had a disparity in some legal systems like France- so if the agreement is not for personal or familial consumptions and the purpose of setting is business, education or income, it's considered as trade agreements. Stipulation of 'international' speaks of the fact that the sides deal together beyond the borders and or the agreement is supposed to be executed beyond the borders.

An agreement which is set and executed in the frame of a country is known as private agreement and is out of here's topic. International trade agreements are varied that selling and buying goods and services is on the top side of it; which according to it substances, tools, equipment, machinery, technical and engineering services and etc. are bought and sold.

Transportation agreements, insurance, presentation of financial facilities, the dispensation of trade agency, international distribution, presentation of utilizing authorization (license), technical and generative cooperation, communion in investment, construction, utilization, and assignation, different mutual trade methods are from other critical international agreements which are used extensively in international trade. International agreements are different from various aspects with internal agreements. The most important international agreements' relationships are with more than one a national system.

Unlike the internal agreements which are adjusted and executed in the frame of a national legal system, in international agreements, at least two national systems are considered. In the first speech, the relationship of international agreements with legal systems is different, and its impact on the method of setting of the agreement is discussed. In the second speech, a method of using the standard contracts and general terms in adjusting international agreements are specified. In the third speech, some essential points that must be considered in adjusting international agreements, are explored.

2.3.7. Governing Law on Agreement

2.3.7.1. Opposition to Rules

International agreements, unlike internal agreements, is related to more than one national legal system. When an agreement, between an English and a French country based on building a joint project in Iraqi Kurdistan, is adjusted in Switzerland; the adjusted agreement of Brittan and French legal systems put through as one of the partnership sides wanted the law. The mentioned agreement also relates to Iraqi Kurdistan and Switzerland's legal system, because Switzerland is the place of agreement's conclusion and Iran is the place of performing the agreement. From there that each of these systems knows its national laws as the governing law of the agreement and the single agreement can't also be under the sovereignty of more than

a national system, in this case, laws' opposition happens. National legal systems for contracting the mentioned opposition and choosing the best law, have adjusted manuals that are famous for opposition solving manuals (Abdulhossien, 2017).

When the differences due to an agreement are introduced to a national court, the national court first attempts to adjust the governing law of the agreement. For this reason, the court recourses to opposition solving manuals of its obeyed legal system and adjusts the governing law. Since there that the opposition solving manuals are not the same in different systems, naturally the result of consulting to opposition solving manuals is not also the same. For more clarity on the subject, suppose that in the above-mentioned example, Belgium's laws are chosen as the governing law of the agreement by the sides. If the agreements' differences are referred to Brittan, Iraqi Kurdistan, Switzerland or France's courts, it's not determinable that these governments respect the sides' wills based on the selection of Belgium's law and accept it without shackles.

While the governing law is not selected by the sides, disagreements of different legal systems would be more. (Convention relating to a Uniform Law on the International sale and Goods, The Hague, 1964) If opposition solving manuals of countries are identical, the dominant rule of the agreement can be chosen merely, or in case of silence, it would be clear that which law is dominant to the agreement.

In international level has been tried to assimilate the opposition solving manuals. Here three examples of the international attempts for unifying opposition solving manuals. The first example which is the most successful in its own type is, ''convention on the law applicable to contractual obligations'', that is known as Rome 1980 convention. (Convention on The Law Applicable to Contractual Obligations, Rome 1980) The second attempt is a convention on the law applicable to good international selling, which is known as 1955 convention of The Hague. (Convention on The Law Applicable to International sale and Goods, The Hague, 1955) A proper reception did not happen for this convention, and so its 1985 version was prepared, that this correctional version also didn't receive attention. The third attempt,'' the Inter-American Convention on Conflicts of Laws concerning Checks'', known as a convention of Panama 1975. (Inter- American Convention on Conflict of Laws Concerning Cheeks, Panama 1975)

The second activity is unifying the dominant substantial manuals on matters related to international trade. When the principles and manuals of countries about a matter are the same, it doesn't make a difference that which country is dominant to the agreement. For example, when 78 countries join the United Nation's convention related to international good selling agreements (Vienna, 1980), in range of convention rules related to forming and concluding, laws and commitments of sides and assurance performances of not obeying commitments of good international selling in these countries will be identical, and there will be no more important than the dominant rule on the agreement is rule of which country. The way of realization principles and manuals equalization of different countries are explained in details which conventions and principles are the most important of them.

2.3.7.2. Determination of Governing Law

Since there that the national legal systems basically don't have unifying principles, a single agreement may lead to laws, commitments and different results in different legal systems. International businessmen basically have no interests to abandon their agreement's destination in a halo of obscureness; on the contrary, they intensely intend to specify their contractual rights and commitments in a specific way. The correct and logical process of economic activity, especially on an international level is dependent to prediction and planning ability that it won't result unless the sides would be able to anticipate the rights and commitments due to the agreements surely. Choosing the dominant rule of the agreement allows the sides to surely predict the effects of the agreement and prevent from happening unwanted and unexpected results.

In relation to this trade need and because of forgathering more confidant conditions for doing contractual freedom principle treatments as a basic rule has been accepted by most of the national systems. Since there that most of the primary national legal systems, have officially recognized and confirmed the determination of dominant rule by sides, sides of the contract agree towards the determination of rule. Some of the national legal systems still set limitations for determining dominant rule by the sides of the agreement, like that the chosen rule must have a relationship with the agreement or the sides must be foreigners, and when a disagreement is referred to that country's court, they apply the mentioned limitations. In the event, that

contractual disagreements are referred to judgment and sides have agreed on the dominant rule, jurors recognize this agreement officially and solve the mentioned disagreements based on the chosen dominant rule of the sides. Jurors in applying the chosen rule, usually don't apply the adjusted limitations in opposition solving rules and solve the disagreement based on the chosen rule. (Giesela, 2007: 155).

Nevertheless, businessmen and jurists involved in setting international agreements have understood by experience that spends time choosing the governing law on the agreement is not always and in all cases enough for commercial needs. Because firstly, some of the national systems have created limitations in choosing the governing law. So in these national systems the sides of agreement are not wholly free to adjust any rules that they think is proper as the governing law of the agreement, but for instance they must choose a rule that in a way relates to the agreement or this freedom is known officially in occasions that the sides of the agreement are both foreign citizens.

Secondly, in most of the cases, the sides of the agreement can't agree on the governing law of the agreement, especially when the suggested law is the favorite law of one side. This is in the case that agreement on the law of a tertiary country may also lead to the choice of law that the sides don't have the required awareness. Thirdly, the chosen law may not be enough developed to be able to answer the needs and expectations of commercial and complicated international sides of agreements. Although courts still are insistent on that the agreement can't be set without the effect an influx of a national juridical system and they believe that the agreement must be adjusted in the frames of a national juridical system and it must have impressed and can't be executed or coagulated in vacuity, judgeship has reached the belief that the agreement sides can choose the general juridical principles or common commercial laws which don't belong to any national juridical system as the governing law on the agreement. (Abdulhossien, 2017: 150)

If the judgeship has been specified as the as the disagreements solving authority, sides of agreement can detect any proper law with peace of mind as the governing law on the agreement and be sure that this selection won't face problems. Even sides can instead of selecting a country's law, agree on general juridical principles or common commercial laws as the governing law of the agreement.

If the court is the reference of solving disagreements, or there's a probability that the disagreement might be mentioned in a national court, in this case, the sides by reliance on two accepted principles in most juridical systems which are ''contractual freedom principle and loyalty to the contract, have proceeded towards specification of contract's effects and previously determine the rights and commitments of each side.

Contractual freedom principle, allows the sides to proceed the contract according to their needs and wills; and from this way, to decrease the effect of governing law on the agreement and to limit the background for using and emerging the governing law. The ''loyalty to the contract'' principle also notifies the sides that the agreed items must be observed and the other side can't refuse to perform them or ask for reconsideration of them. Based on the above-mentioned subjects, it's specified that setting an agreement is so much important because the subjects that sides have agreed on and inserted in their agreement are obligatory for them and shows their rights and commitments.

Nevertheless, in many cases, the sides of agreement don't have enough facilities or needed proficiencies for setting expanded agreements that cover all basic notes and significant probabilities and set a comprehensive agreement for each item. International businessmen have adopted an effective method which is using pre-made agreements and general terms in which the rights and commitments of sides have been widely anticipated. The basis of using standard contracts and general terms, contractual freedom principle and loyalty principle is that has been officially known by different national systems and allows the sides to determine contents of the agreement and the way of distributing rights and commitments between itself.

2.3.8. Standard Contracts and General Terms

Nowadays it's common to use standard contracts or example agreements in international trade. Most of the trade companies instead of setting an agreement with each of their business parties, they use pre-made agreements in which rights and commitments of sides are clearly pre-written. In internal trade, companies that have services and goods exposition in monopoly, use a similar mechanism.

These companies usually suggest pre-made example agreements to their customers that the customers have to accept the whole agreement or refuse it. In

these types of agreement (known as Adjoining contracts) customers mainly need the goods or services and have to accept the presented agreement although they are not able to negotiate for changing the agreement's contents.

2.3.8.1. Standard Contracts, General Terms, and Standard Terms

A standard contract is a pre-made text that rights and commitments of sides, violation and warranty items of executing it, the way of solving disagreements, governing law and other important details are pre-written; and by filling the blank spaces of the form, the mentioned text will become a complete agreement. The blank spaces are mostly related to sides' names, agreement's subject and the price of the agreement that according to each specific item has been agreed and fulfilled.

Here it's necessary that the standard contracts be separated from the two similar categories, means ''general terms'' and '' standard terms''. General terms are made of a set of general manuals that if it's attached to an agreement or referred to it in an agreement, has a similar role to national law for the agreement. In many of the cases, international businessmen confine to writing brief agreements and attach certain general terms. In this case, the effects of the agreement are determined in the direction of the general terms and will be interpreted and completed. If an affair has been left unsaid in the agreement, for the fulfillment of the agreement, first it will be referred to the attached general terms. For example, if in an international agreement the clauses of 183 to 300 of Iran's civil law are referenced or are attached to the agreement, this clauses are considered as the general terms and the agreement based on these clauses will be interpreted and fulfilled, even if Iran's law hasn't been selected as the governing law of the agreement, because these clauses as the general terms are parts of the agreement and are prior to the governing law to the extent that it won't be opposed to the general arrangement and ordered rules won't be the governing law. So at the same time that ''general terms'' act a similar role to a ''law'', standard contracts are represented as written and complete agreements that special general terms might have been attached to it.

''Standard contracts'' is different from ''standard contracts''. In international trade, a lot of items can be found that uniformly manuals and conditions have been prepared about a specific aspect of the agreement to be used in trade agreements. Sides of the agreement by fitting these unified and pre-made conditions, benefit from

privileges of agreement of trivial standardizing. In this method sides of the agreement act to edit the agreement and instead of adjusting some of the agreement's details, from standard terms is being used that previously has been prepared accurately. For example, the sides instead of discussing and dealing about transporting time of the good to the customer, delivering costs of goods, place of delivering or similar items, by fitting FOB Incoterms 2010 in the agreement show that the agreement must be interpreted based on the conditions represented in International Chamber of Commerce (Incoterms 2010). Although ''general terms'' and standard terms are also considered as a kind of standardizing the agreements.

2.3.8.2. Type of Standard Contracts

Standard contracts may be adjusted and edited by the presenter himself. Big trade companies which have a powerful juridical section and have enough skilled employees usually according to the needs and the sort of goods and services that they offer, act to set this type of agreements. By this method, these big corporations would be able to set their own acceptable agreements and use it in similar cases or for different trade companies and there won't be any needs for setting a new agreement for each item. Sometimes the smaller corporations because of some reasons can't set their own standard contracts, so they imitate the standard contracts of bigger corporations and are used exactly with the minimum changes.

A lot of standard contracts and general terms are adjusted by trading guild communities. These trade communities which are a buildup of a group of businessmen and trade companies which are activating in a particular trade, act to gather norms and common laws existing in that trade by presenting services to members and interchanging information and experiences and presented them in the form of a standard contract.

These type of agreements are significant and used widely because they don't include the benefits of a specific corporation and are edited by those who have had an effective role in trade of that goods or services and the contents of the agreements are adjusted by having cognition about the needs, problems and common laws existing in that profession. For example, nourishment and grain trade association, Liverpool's cotton association, refined sugar association are examples of trading

guild associations that acted to set standard contracts in their profession so to be used by those wanting to have activity in that trade.

More than trading associations, transnational organizations also acted to prepare standard contracts that day to day its importance is increasing. These regional and international organizations for its own goals and responsibilities and for simplifying and evening the international trade agreements have acted to adjust standard contracts and suggest the businessmen and trade corporations use them in their relationships. These agreements are so much important to businessman because they are the results of extended researchers and professional experiences in that type of trade and have been fairly adjusted.

According to the fact that in adjusting these agreements, has been tried to create a relative balance between mutual rights and commitments of sides not to be mainly the preserve of guild benefits of importer and exporter, so it has been favored at the worldwide level. Many international organizations are active in presenting and producing standard contracts and general terms; for instance, united nations economic commission for Europe, International Chamber of Commerce, International Institute for the Unification of Private Law and The International Federation of Consulting Engineers (FIDIC) can mention.

2.3.8.3. Benefits of Using Standard Contracts and General Terms

Currency of standard contracts and general terms in international trades, is because of licenses and profits that are using of them have for the sides; because these texts are pre-written and filling their blank spaces is easy, this affair firstly causes to fasten the agreement about contractual conditions and its contents and there will be no need for the sides to negotiate about every detail. This affair allows the sides that their energy and strength won't be wasted negotiating on setting contractual details and be able to focus on more important matters such as the worth of the contract and repaying way of it, quality of goods and services, agreement's topic, type and amount of after-sales services and so on. If the sides decide to negotiate every detail of the agreement and agree on each one of them, so they must spend a lot of their time to things that may never cause any disagreements and only causes distrust between the sides and keeps them away from prior tasks. This affair

will make the negotiations so long, and cost increases can cause the negotiation to failure.

Secondly, standard contracts and general terms- especially those who are adjusted by transnational organizations- shows the common laws existing in that trade and contains the most important conditions that must be anticipated in an agreement. These agreements are adjusted accurately, and basically, their sort of composition is simple and without ambiguity and sides can trust with confidence. It's hard for sides to adjust their agreement; that more than predicting the agreement's important conditions from composing and agreement writing basics point of view, to reach the standard contracts and general terms' level which are usually adjusted by teams formed of skilled lawyers, businessmen and authorities. And constantly are used, criticized and evaluated by juridical and commercial circles (Schmitthoff, 1977: 182).

Thirdly, a lot of national juridical systems are not enough developed to respond the needs and complicated and long-term problems of agreements that are related to huge industrial and economic projects, that perhaps may be executed by the participation of several external companies. Solving of the juridical problems of these agreements is possible by resorting to general manuals that may have no satisfying results. In these cases, the sides prefer to set an agreement according to their type of profession and their trade so to limit influence range and impact of national juridical systems. (Michida, 1966: 254)

Fourthly, in a situation that sides of the agreement have no will to use standard contracts or general terms, they might use them as drafts. According to the fact that the standard contracts and general terms are so flexible, sides that decide to set the details of their own agreement can set text as their basis and change conditions that they think are improper (Boggiano, 1991:25). With this method, sides benefit from advantages of a standard text at the same time they match it with their own needs.

2.3.8.4. Relation of Standard Contracts and General Terms with Governing Law

Standard contracts and general terms like other agreements are basically formed in the frame and range of national law and have impressions. The legitimacy

of these type of agreements is dependent on the principle of will freedom that more or less has been accepted in different juridical systems. Sides of the agreement can adjust the content of their agreements; they also can set a pre-made agreement or attach general terms to their agreement, because most of the national systems, know the sides of agreement as the best persons that have the authority to specify the number of contractual rights and commitments.

According to standard contracts and general terms, doesn't matter how comprehensively is adjusted, can't be out the impact of governing law; so the standard contract must be in the same line with the governing law, because first, conditions represented in standard contracts must not opposite imperative manuals of governing law and must not be opposed to general discipline except until an extent that is opponent to, agreement manuals will be effectless. Secondly, standard contracts basically are interpreted according to the governing law of the agreement, and if a topic is not explained in the agreement, the topic will be solved based on the governing law of the agreement. The setting of standard contracts albeit extensively, won't cause the agreement to be able to predict all contractual aspects and as a result, the need for the governing law of agreement emerges. So the standard contract can't be executed 100 percent out of the zone and influence of governing law.

2.3.8.5. Standard Contracts and Attached Agreements

Using of standard and pre-made agreements haven't been exclusive to international trade and are used extensively inside the borders of a country. In many cases, these exemplary agreements are presented by big and powerful companies and institutions that have exclusive power and quasi-exclusive in presenting those goods or services. To prevent extortion of great companies and support consumers in many national juridical systems the weak side in these type of agreement is being supported. The question here is that do these exemplary agreements which are known as attached agreements have a single logic with standard contracts or must be controlled equally by law or that their functions are different and must be examined separately? So it's necessary first to have a definition of attached agreements and briefly discuss the reasons for controlling them to specify if those reasons also exist about standard contracts (Abdulhossien, 1999).

Attached agreements, is an exemplary agreement that usually is printed and adjusted by a good or service's presenter who has the dominant economic power and is presented to the consumer of the goods or services, while the consumer must accept the agreement with its all conditions or totally refuse it. For instance, individuals that need telephone have to go to telecommunication department and sign an exemplary agreement that has been pre-written by the telecommunication department. In these cases, the needy individuals to telephone have no choice but to accept the agreement with its all conditions or to refuse to have a telephone because the consumer has needed to telephone and can't get away from signing the agreement.

In internal rights of many countries, there are manuals that allow the courts to interfere for benefits of weak side and adjust the conditions and contents of the attached agreements. These supporting manuals basically don't consist standard contracts that are adjusted for commercial purposes between international businessmen; because attached agreements are different from standard contracts in basis, station, and manner of adjusting. Lord Diplock, in Macaulay v Schroeder Music Publishing file has clearly explained the differences between standard contracts and attached agreements and explained the reason of why only attached agreements need the support and juridical interference? In this regard Lord Diplock says:

Standard contracts are of two kinds. The first type, which is very old and expresses conditions that according to it conditions of the agreement must be executed. Bills of lading, ship rentals, insurance policies and the agreements of goods sales are examples of these type of agreements. Standardized conditions in these agreements are results of years of negotiation between agents of a beneficial group that has been involved in these agreements and has been accepted widely because experience has proved that such agreements facilitate the procedures of trade. Influence of such agreements is not only exclusive to the sides of the agreement, but they influence those who interfere in commercial affairs like buyers and sellers, ship renters and their owners, insurers, and banks. If fairly and logical being of conditions of such agreements have had a role in performance ability, this fact that they have been extensively used by sides that have had almost equal economic power would lead to this assumption that the conditions of such agreements are fairly and logical.

Nevertheless, this assumption is not running about the second type of standard contracts. Such agreements are comparatively new. These agreements, are results of focus of a special type of commercial activities controlled by a few. Files related to buying of the ticket in the 19th century probably shows the first examples. Conditions of such standard contracts haven't been the subject of the negotiations between the sides and also haven't been confirmed by any organization that preserves the benefits of the weak side. These conditions have been dictated by the side having the dominant economic power alone or along with other who present similar goods and services, and tells the weak side; if you want these goods or services accepting these conditions is the only way to access such goods and services, so accept or go away (Macaulay, 1974).

Second, the reason of interfering of the courts in attached agreements is because of that the goods and services providers have exclusive or quota exclusive powers and the consumer has no choice but to accept the agreement because that good or service is a need of general.

Third, in attached agreements, the agreement is presented to consumers that may be illiterate or Without juridical information, and are not able to understand the contents or conditions of the agreement and the conditions of the agreement are written so small that usually, people can't read them.

Fourth, many of the standard contracts are adjusted by the guild and commercial associations and international organizations that contains the common laws in that trade and can't claim that the agreement contains unfair conditions for benefits of one side and disadvantages the other side, to justify the interference juridical authorities. It's because of such considerations that in different countries, such supporting manuals are exclusive to internal agreements and international trade agreements are directly become exceptions. For instance, in Unfair Contract Terms Act 1974 (UK) (Unfair Contract Terms Act 1974 UK) considered supporting manuals are directly limited to internal agreements or civil law of Dutch 1992 that became indispensable, also has restricted its supporting manuals zone to consumer's agreements and small internal companies. (Sperling, 1993: 489).

2.3.8.6. Using of Standard Contracts and General Terms

In the international commercial, using of standard contracts and general terms becomes more important day to day and are increased in number, in a way that some writers have claimed that more than 90 percent of the concluded agreements are done through the standard contracts (Slawson, 1971: 529). Numerous advantages of such agreements have made most of the big companies to act toward providing dedicated standard contracts and general terms. Also, guild associations and regional and international organizations for facilitating in making agreements and providing acceptable contractual terms for international businessmen have acted out toward providing standard contracts and general terms.

These standard terms also might be used without any changes or updates for many years, and no effective acts might have been done for correcting it. This problem is much higher, especially with regard to standard terms used by governmental corporations and institutions, these institutions because of conservatism, lack of access to experienced contractual experts or lack of necessary authorities shorten in updating standard contracts and general terms and for years impose their old terms to their business parties.

Other concern is that these contracts contain exorbitant conditions in favor of the organizer that literally faces the execution of the contract with problem or exposure all or a part of it to void. A point to be considered in adjusting standard contracts and general terms is that in case of ambiguity in provisions of standard contracts, many of the courts and arbitration tribunals interpret the provisions of the contract and standard terms to the detriment of organizer and for the benefit of the audience that did not have a role in adjusting it. The other point is that in the event of a conflict between the printed terms and fulfilled terms, considers the fulfilled terms as the dominant term.

According to this, in adjusting standard contracts or general terms must act in a way that an acceptable and logical balance be created between rights and commitments of the sides and must not abuse the existing exclusive power and must not put excessive conditions at the expense of other sides of the contract. For this purpose, can use the prepared standard contracts and general terms by the guild and international associations and these contracts and terms can be updated regularly.

In the event of a confrontation with the standard contracts or the general terms provided by a company, it should be noted that the standard contract that is supplemented and signed will be as a contract that sides have negotiated and arranged every line of it. Since there basically, the settled supports of the internal rights about attached contracts, that is not used in international trade, the side that such contracts have been offered to must be careful and sign it with complete awareness. Also when in the contract it's referred to certain general terms, before signing the contract must get informed from the provisions of its general terms.

2.3.9. Important Points in Setting Contracts

In setting up of international contracts, there are a lot of points to be considered. Here are so, of the important issues.

2.3.9.1. Preparing Primary Draft

In adjusting and setting up the international contracts the first step is a determination of goals and the way of achieving them, the contract first must be designed and then based on that design, the contractual conditions are set. After defining the general framework of the contract, one of the sides usually has the duty to provide the primary draft of the contract for the future negotiations. Despite that preparing a draft is difficult, sensitive and costly, many foreigner sides prefer to take the duty themselves. In return, the Iranian sides because being unable to prepare such drafts, prefer to comment the text provided by the foreign side instead of providing drafts.

In preparing a primary draft, contracts that were previously concluded in the same or similar subject are very beneficial. Sample contracts, especially those provided by international organizations and with large companies, are very useful, especially that the individual gets to become aware of the points that must be anticipated in the contract that before observing the sample contract his mind wasn't able to perceive it. As stated above using the standard and sample contracts must be done carefully and precisely reconciled with the present conditions.

2.3.9.2. Preliminary Contract

In daily and usual trades, basically negotiations and making a contract is done at the same time, like a person who goes to a store to buy stuff and after being aware of its quantity and quality and price, s/he buys the goods. However; in a social and economic relationship there are a lot of cases that both sides for some reasons aren't able to finalize and conclude the contract, and it is necessary to prepare an introduction before concluding a contractor to reach to acceptable conditions, some negotiations should be done. (Shirawi, 2003:5).

As preparing introduction and negotiating causes lengthening the contract concluding, both sides may agree on the contract concluding the main contract the way that to continue negotiations to improve it or record conditions that are agreed gradually or transfer the context of the contract officially. For example, in buying a piece of land, it is impossible to transfer immediately because the seller should prepare preliminaries for this official transferring which requires time and expenses and on the other hand, the buyer also may need time to prepare the cost of the trade.

To have the confidence in each other that no sides will cancel the trade, a preliminary contract related to this matter is concluded. In complex and heavy contracts, the necessity of preliminary contracts is seen more because for suggestion the other side should pay more expenses and s/he should confer and coordinate with different centers and institutions.

In this situation, the contractor should be sure (after spending so many expenses and time) that at least the government won't cut the negotiations and won't give the project to the third person for no good reason. To make sure, the government and the contractor may sign a preliminary agreement so-called understanding note protocol and things like that which based on them both sides are committed to fulfilling negotiations to reach the final contract. Preliminary contracts have great roles in economic and commercial lives day after days. This is especially important in international commercial relations, investment projects, founding incorporation investment and so on (Shirawi, 2005)

Preliminary agreements include a set of permission notes, contracts, protocols, agreements, understanding notes, etc. which imply both sides resolution to follow negotiating or finalizing one or some contracts in the future. This is common among all preliminary contracts to conclude the main contract between both sides in

the future that the mentioned contract determines the rights and commitments of both sides. Preliminary contract is a step to reach the final contract.

These protocols and preliminary contracts may be brief or very complex and detailed. These contracts may include all basic conditions for the future contractor just include series of vague and general commitments. In some preliminary contracts, both sides predict frankly that their contract doesn't have any legal vagueness and it and it is just for expressing both sides' wanted and desire to fulfill negotiation and to conclude the main contract if they reach to an agreement.

2.3.9.3. Form of Contract

International contracts may be concluded in different forms. An international contract may be concluded in the form of verbal or through exchanging letters, faxes, or emails. In vague contracts, first, both sides negotiate about the content of the context of contract and then sign them. It is a wrong view that all international contracts are in the type of latter. Business people who trade with each other for years may do their offers just by a phone call.

Usually, in this pre-bill, the general conditions of the company are referred, and in this way the main points are determined. The buyers usually accept the sale by opening letters of credit that have been mentioned in the pre-bill that the other side can announce his/her acceptance in written form. Sometimes both buyers and sellers have their own general and specific conditions, and they use them in their letters. And here a problem arises, and that is, which general conditions have the contract been referred to? this problem has been discussed and investigated as, "contrast forms in law books of contracts. (Abdulhossien, 2017:173)

While specified conditions are set according to a special case, general conditions are the same in different contracts. The advantage of this method is that both sides' negotiations are about specified conditions and the companies usually don't let the general conditions be negotiated. The disadvantage of this method is that the specified conditions may not coordinate with general conditions and it may cause some contrast between them. Often to solve this problem, it is written in the contract; when there is a contrast between specified conditions and general conditions, specified conditions dominate and proceed general conditions.

As it was mentioned above, some attachments are pinned to any contracts that based on the type of the contract, the number of the attachments may reach over ten. Always there is a concern and risk in the contrasts that the texts and the attachments may not coordinate with each other and different rules may be written in text and attachments. Usually, to avoid this problem, it is stipulated in the contract that if there is a contrast between the text of contract and attachments, the text of contracts dominates and proceeds the attachments. This method of solving like the contrast between specified conditions and general conditions is just useful when there is contrast, and it doesn't solve the unconditioned and tide or general and special problems.

2.3.9.4. The Status of Being Detailed or Brief Context of a Contract

A contract may be set in detailed or briefly. In a detailed contract, rights and commitments of both sides, the dissolving of the contract, awards, and fines, solving differences, dominated laws and other details are mentioned widely. The briefer is the contract; the more is interference of the dominated laws to interpret and fulfill the content of the contract. That a contract is set in detailed or briefly, depends on the type of the contract, dominant law and the complexation of the contract relations. The more is the cost of the contract and due time of doing, the longer is, and the subject is more complex and more details should be predicted in the contract. Naturally, a contract for buying a computer set is less detailed than a BOT contractor providing the finance of a project or long-term industry cooperation.

Contracts which are going to set complex relations between both sides should be prepared in more detailed. For example, a deductible contract includes, granting using license of a brand, technology transferring, technical knowledge, granting agency, selling equipment and raw materials, training, keeping secret and etc. that setting this complex relation requires setting long contracts.

2.3.9.5. The Status of Being Complex or Simple Context of a Contract

It is a principle in setting a contract that the content of the contracts should be clear and exact so that it can show both side's resolutions. The clearness in contracts prevents the future differences, and if there are differences, authorities can interpret them easily and surely. Also, a clear contract can give the opportunity to both sides

to predict the contract effects and their rights and commitments. Both sides can be sure about their activity economically. As in interpreting a contract, it is paid attention to the custom meaning of terms and phrases; it is necessary to be careful about the custom meaning of chosen terms and phrases.

If the custom meaning of words and phrases aren't clear, it is advised that in the glossary, give the definitions of words and phrases. When a phrase is defined in a contract, it should be cleared that where these words and phrases have been used in the contract in terms of the defined meaning and where they have been used in terms of custom meaning. In English contracts, defined words and phrases are usually written in capital letters. When one side can't write his/her opinion in the contract clearly, mostly s/he uses vague words to be able to use it later. In some cases, those who have lots of knowledge and experiences in setting contracts, misuse their ability to escape from their own commitments and responsibilities. At first, using vague and brief words doesn't seem to have a risk, but in the rainy day, it will be revealed that these vague words have been chosen cleverly.

Another trick which is used in setting contracts is that special meaning somewhere in the contract is given to words and phrases, and then they are used in later situations. Using this trick, special meaning is hidden from other side's sight, and he /she satisfies with it.

Although some words and phrases are vague, they are used in contracts widely and apparently there is no way to stop it. For example, it isn't logical for any sin from commitment let the other side to dissolve the contract, so this dissolving right should be restricted to important and basic sins. However; there isn't an exact definition of basic and important sins and giving a comprehensive definition of the contract isn't simply possible. Usually, in these cases, samples of basic and important sins are mentioned to make both sides and judges aware of basic and important sins.

CHAPTER THREE
THE STUDY MATERIALS AND METHOD

The aim of this chapter is to argue the material and method employed in this study to explore the commercial contracts in Iraqi and international laws in Erbil Iraq. Furthermore, to respond to the study questions and the hypotheses. Accordingly, this part argues the study approach and design, survey population and sampling, and data collection procedures, data collection instrument, scale, data analysis and the limitation of the study.

3.1. The Study Method and Design

This study employed the quantitative method. So, a quantitative method revealed appropriate for the study is explore the commercial contracts in Iraqi and international laws in Erbil Iraq. Though, the quantitative method frequently used in the study when engaged with statistical data. Hence, quantitative research comprises quantities and statistical techniques that help clarify, define, pursuit and reveals the relationships among the study variables.

Moreover, the calculable study can apprehend as a study procedure that over statistical and considered results that recognized the practicality efforts to measure the study purpose. Additional, the study design is more appropriate as it permitted respondents to provide their relevant information on the topics of interest to the study, through questionnaire form which used a five-point Likert scale that is further relevant for data collecting.

3.1.1. Study Population and Samplings

The study population comprises of the judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region. So, the judges, lawyers, judicial assistant, and jurists selected as the study population, whereas they are more likely to better recall on the commercial contracts in Iraqi and international laws, as they have an awareness of the Iraqi and international laws.

However, the judges, lawyers, judicial assistant, and jurists are the specifically targeted population size. Subsequently, the study sampling technique presented as well as the sampling preparation. Thus, the purpose of sampling procedures is, by

forming a range of approaches, to narrow down a study population to order the proper sample. Accordingly, (107) questionnaire forms distributed among the judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region that they contributed over responding to the survey questionnaire statements which is self-administered and distributed in the departments of the Erbil court in particular.

3.1.2. Data Collection Technique

The questionnaire is applied as a data collection technique while a questionnaire is an equitable way to collect data from a possibly large number of participants. In this context, the study chose the survey questionnaire for data collection since its significance for the study approach and design and for the possible assistance it offers. Nevertheless, the questionnaire allocated into three sections. While each section of the questionnaire limited to statements and items that could measure the sample's opinions specified in the questions and hypotheses of the study appendix (1) demonstrate the survey questionnaire structure.

3.1.3. Data Analysis

Parametric statistical procedures used to test the suggested study hypotheses. Factor analysis used to classify the underlying predictors of commercial contracts in Iraqi and international laws toward the significance of the commercial contracts for the economic activities and business organizations. While the descriptive statistics used for the study variables and to define the variable's dimensions considerably, however, correlation analysis technique used to demonstrate the strength of the relationship between various constructs. The Spearman correlation coefficient used when two variables correlated linearly, and this has tested using scatter diagram. The SPSS V-24 software employed for analysis and the outcomes revealed in tables and figures.

3.1.4. The Study Limitation

Spatial boundaries, this study limited to the judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region. Objective limits, this study also concentrated on the correlation between commercial contracts in Iraqi and

international laws. Time boundaries, this field study applied in the second semester of the academic year 2017-2018.

3.1.5. Reliability and Validity of the Scale

3.1.5.1. The Reliability

The survey reliability test means that data collected or records from a method of data collection are constant and reliable. Therefore, the load values must be nearby the comparable when researchers used the questionnaire scale method various times to the same survey providers. Though, it is vital that the method managed for data collection would bring reliable data that would yield particular and constant outcomes after observing.

Consequently, the Cronbach's Alpha value for all the commercial contracts in Iraqi law scale indicators is (0.808>0.60). However, the Cronbach's alpha value of commercial contracts in international law is (0.710>0.60), so, the outcomes specified a high level of reliability in the entire set of indicators, while the overall value loaded is (0.757>0.60). Therefore, the questionnaire used for data collection could contain highly reliable, as shown in a table below (2).

Table 2: Reliability Test

Variables	Cronbach's Alpha	No. of Items	N	%
Commercial contracts in Iraqi law	0.808	15	107	100.0
Commercial contracts in international law	0.710	15	107	100.0
Overall	**0.757**	**30**	**107**	**100.0**

3.1.5.2. The Scale Validity

In this context, the validity of the survey questionnaire established through a range of ways. While all of the questions adapted from connected studies and research that formally confirmed. Conversely, some questions enthused. Hence, scale validity has clear through the amount to which a test method what it claims to measure (Devellis, 1991:117).

Hence, the researcher proved the validity of the survey questionnaire through accepted and evaluated by experts who are so-called content validity. (Saunders et al., 2009:78). Nevertheless, (Gay, 1992:55) claims that the scale validity is further associated to the reliability of the data collection technique, but contrasts in that it

also measured on the investigator's classifying and if the dependent variables vary because of the independent variable and not sense of some other variable. However, according to (Plano and Creswell, 2015: 241), the validity means that the values from a survey questionnaire are truthful pointers of the variable being measured and permit the researcher to draw proper clarifications. Successively, the procedures also necessity be constant to make valid outcomes anywhere from the study.

3.1.6. Factor Analysis

Factor analysis is a technique for investigating whether a number of variables of interest Y1, Y2,…...,Yl, are linearly connected to a smaller number of unobservable factors F1, F2,……, Fk .

However, the fact that the factors are not recognizable disqualifies regression and other methods previously examined. Though under assured conditions, the hypothesized factor model has certain implications, and these implications, in turn, can test against the explanations. Accurately what these circumstances and implications are, and how the model can test, must explain with some care (Grice.2001, Kim. Jae-on.1978, MacCallum.1999). While, factor analysis is the components reduction technique that forms responses to various variables, their dimensions, and analyses them into several variables, known as factors that make assessing.

Accordingly, commercial contracts in Iraqi law as a study variable have a total 15 indicators. Besides, the commercial contracts in international law have a total 15 questions or indicators, which is complex to take and relay the deductions. Additionally, to do the additional observation and test easier the factor analysis test has employed and outcomes publicized in the subgroups as follows. Steps in employing factor analysis:

- Step 1: Analyzing a *k* by *k* Inter-correlation ground. Determine the factorability of the matrix.
- Step 2: Extracting an initial interpretation.
- Step 3: From the initial solution, selecting the suitable number of factors to be extracted in the final interpretation.
- Step 4: If necessary, rotate the factors to light the factored form to interpret the nature of the factors better.

– Step 5: Depending upon consequent requests, analyze a factor mark for each subject on each factor.

3.1.6.1. The KMO and Bartlett's Test for the Commercial Contracts in Iraqi Law

In the same context, the Kaiser-Meyer-Olkin measure of sampling adequacy employed to test the weight of factor analysis. Although according to this test the high loading values are (between 1.0 and 0.5) while those loaded values classify that the factor analysis is a suitable analysis. Successively, the loading values lower than 0.5 means that the factor analysis may not apply. Accordingly, the KMO test outcome is (0.748) more beige than 0.5; it means that KMO test provided high value and significant at (p0.000<0.05). Nevertheless, Bartlett's Test of Sphericity (Approx. Chi-Square) is (385.041) at the *df* (105). Therefore factor analysis is suitable for commercial contracts in Iraqi law as a study first variable, as shown in a table (3).

Table 3: The KMO and Bartlett's Test for the Commercial Contracts in Iraqi Law

KMO and Bartlett's Test	
	Commercial Contracts in Iraqi Law
Kaiser-Meyer-Olkin Measure of Sampling Adequacy.	**0.748**
Bartlett's Test of Sphericity (Approx. Chi-Square)	**385.041**
Df	**105**
Sig.	**0.000**

3.1.6.2. Rotated Factor Matrix for Commercial Contracts in Iraqi Law

The rotation of factors or components is essential when extraction show proposes two or more factors. Thus, the rotation of factors reflects to obtain information of how the factors essentially extracted differ from each other and to allocate a clear justification of which component loads on which factor with rotated factors. Yet, the total variable has the factor taking values, while the lower value is 0.581 that load on the first factor; regarding having e-commerce in amended Iraqi trade law is necessary, besides the higher value is 0.838 on the third factor that about the Iraqi commercial (trade) law which was not paid attention to the significance of the business commerce and serve new trade, as shown in a table below (4).

Table 4: Rotated Factors Matrix for Commercial Contracts in Iraqi Law

Items	Factors				
	1	2	3	4	5
CCIIL 12	0.801				
CCIIL 11	0.600				
CCIIL 3	0.599				
CCIIL 15	0.588				
CCIIL 13	0.581				
CCIIL 2		0.798			
CCIIL 1		0.621			
CCIIL 9		0.620			
CCIIL 6			0.838		
CCIIL 7			0.622		
CCIIL 8			0.607		
CCIIL 4				0.836	
CCIIL 5				0.685	
CCIIL 14					0.719
CCIIL 10					0.582

Extraction Method: Principal Component Analysis.
Rotation Method: Varimax with Kaiser Normalization. a
a. Rotation converged in 10 iterations.

3.1.6.3. The Total Variance Explained of the Determined Factors for Commercial Contracts in Iraqi Law

As the researchers argued that the percentage of eigenvalues closely related to eigenvectors, therefore the researchers can comprehend that eigenvectors and eigenvalues always come in pairs. Consequently, as publicized in a table (5) and figure (1) that the percentage of eigenvalues take as one and as an outcome five factors resolution. While the total variance explained of the determined factors for commercial contracts in Iraqi law are (62.63%). However, the variance explanation amounts they established were (27.60%, 10.08%, 9.28%, 8.67%, and 6.98%) respectively. Hence, the cumulative variance attained at the close of factor analysis.

Table 5: Total Variance Explained of the Determined Factors for Commercial Contracts in Iraqi Law

Factors	Initial Eigenvalues			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	4.141	27.605	27.605	2.490	16.603	16.603
2	1.513	10.089	37.694	1.968	13.120	29.723
3	1.393	9.288	46.982	1.913	12.753	42.476
4	1.301	8.670	55.652	1.564	10.429	52.905
5	1.048	6.987	62.639	1.460	9.735	62.639
6	.878	5.855	68.494			
7	.798	5.319	73.813			
8	.727	4.848	78.661			
9	.668	4.456	83.118			
10	.550	3.667	86.785			
11	.478	3.187	89.972			
12	.475	3.166	93.138			

13	.388	2.585	95.723
14	.366	2.440	98.163
15	.276	1.837	100.000
Extraction Method: Principal Component Analysis.			

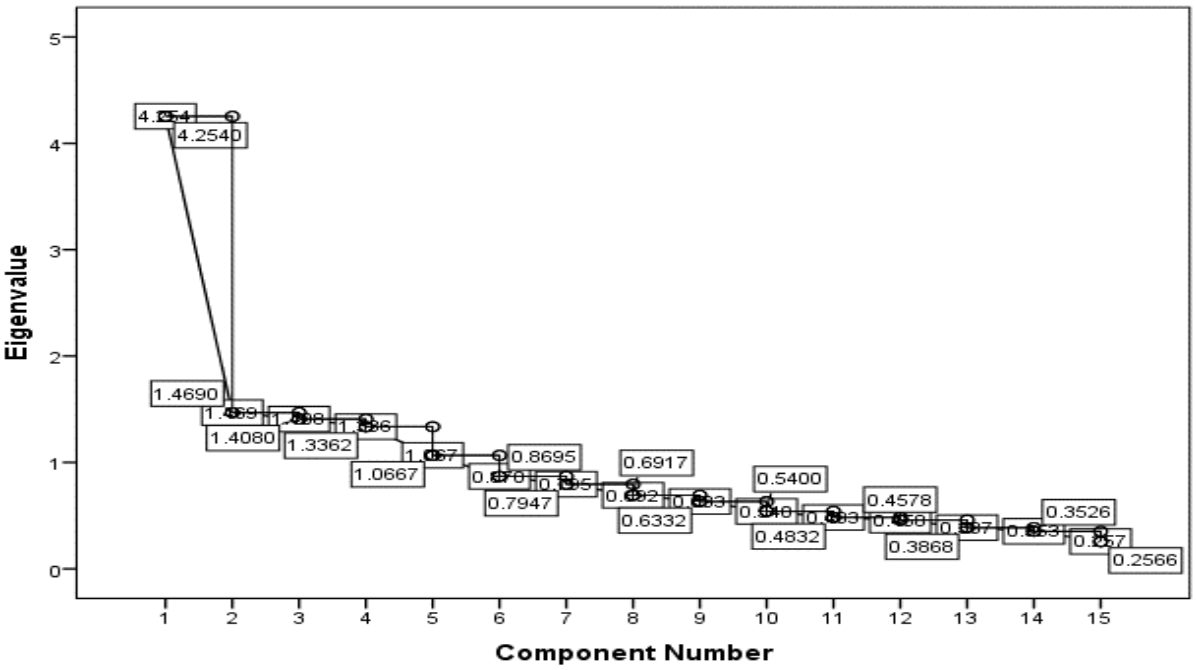

Figure 1: Load Graph for the Component Numbers of Commercial Contracts in Iraqi Law

3.1.6.4. The KMO and Bartlett's Test for Commercial Contracts in International Law

In the same context, the table (6) reveals the Kaiser-Meyer-Olkin (KMO) measure of sample adequacy also used to test the significance of factor analysis for the commercial contracts in international law. The KMO test result is (0.826) so, that means administrative creativity as a dependent variable provide high value and significant at (p0.000<0.05). While Bartlett's Test of Sphericity (Approx. Chi-Square) is (2878.025) df (120), therefore factor analysis is appropriate for administrative creativity.

Table 6: The KMO and Bartlett's Test of the Commercial Contracts in International Law

KMO and Bartlett's Test	
	Commercial Contracts in International Law
Kaiser-Meyer-Olkin Measure of Sampling Adequacy.	**0.708**
Bartlett's Test of Sphericity (Approx. Chi-Square)	**344.546**
Df	**105**
Sig.	**0.000**

3.1.6.5. Rotated Factor Matrix for Commercial Contracts in International Law

As summarized in the table (7) the rotated factor matrix also used for the commercial contracts in international law. Subsequently, the rotation needed when extraction method intends two or more factors. Then, the rotation of factors restrained to provide information on how the factors mainly extracted difference from each other and to deliver a clear clarification of which factor loads on which factor. However, the complete variables of all four factors have the factor taking values, while the lower value is 0.453, regarding the domestic and international commercial contracts in international commercial laws, must contiguous and integrate themselves. And, the higher value is 0.988, loaded on question fourteen about the e-commerce contacts or smart contracts must be in the international commercial law.

Table 7: Rotated Factor Matrix for Commercial Contracts in International Law

Items	Factors			
	1	2	3	4
CCIINL 6	0.758			
CCIINL 7	0.748			
CCIINL 4	0.721			
CCIINL 3	0.453			
CCIINL 11		0.695		
CCIINL 1		0.662		
CCIINL 12		0.574		
CCIINL 8			0.730	
CCIINL 9			0.677	
CCIINL 10			0.484	
CCIINL 2			0.475	
CCIINL 15			0.458	
CCIINL 14				0.821
CCIINL 13				0.804
CCIINL 5				0.764

Extraction Method: Principal Component Analysis.
Rotation Method: Varimax with Kaiser Normalization. a
a. Rotation converged in 10 iterations.

3.1.6.6. Total Variance Explained of the Determined Factors for the Commercial Contracts in International Law

The table (8) and figure (2) reveals the eigenvalue reserve as one, as the outcome of constant factor analysis, four factors determined for the variable commercial contracts in international law. Thus, the total variance clarified by these four factors is (53.6%). Nevertheless, the percentage of eigenvalue and variance explanations of the determined factors for the commercial contracts in international law listed under the columns (3 and 4). The variance account amounts they

confirmed were (26.48%, 10.53%, 8.50%, and 8.14%) respectively. Hence, the cumulative variance took at the end of factor analysis.

Table 8: Total Variance Explained of the Determined Factors for the Commercial Contracts in International Law

Factors	Initial Eigenvalues			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	**3.973**	**26.485**	**26.485**	**2.389**	**15.926**	**15.926**
2	**1.580**	**10.531**	**37.016**	**1.972**	**13.148**	**29.074**
3	**1.275**	**8.503**	**45.519**	**1.753**	**11.688**	**40.762**
4	**1.222**	**8.145**	**53.664**	**1.722**	**11.483**	**52.245**
5	1.119	7.459	61.123			
6	.967	6.447	67.569			
7	.870	5.803	73.372			
8	.816	5.439	78.811			
9	.677	4.512	83.323			
10	.574	3.829	87.153			
11	.487	3.247	90.400			
12	.474	3.163	93.563			
13	.371	2.475	96.038			
14	.327	2.181	98.219			
15	.267	1.781	100.000			
Extraction Method: Principal Component Analysis.						

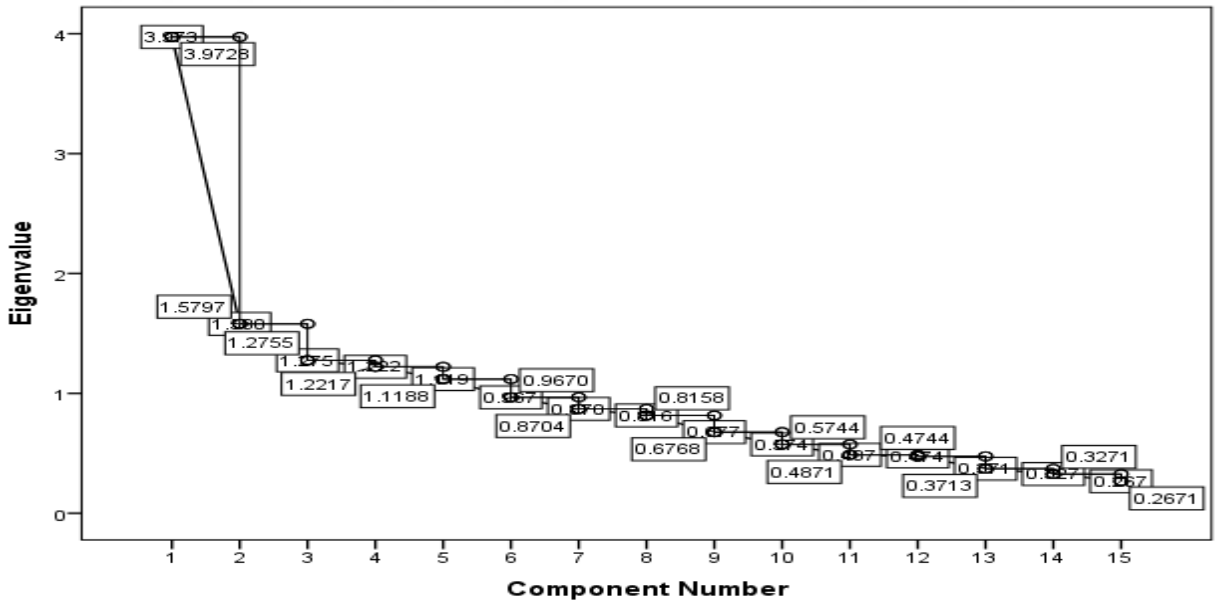

Figure 2: Load Graph for the Component Numbers of Commercial Contracts in International Law

CHAPTER FOUR
DATA ANALYSIS AND RESULTS

This aim of this chapter is to reveal analysis and findings for the demographic data collected from the respondent's the judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region. The demographic data includes frequency distributions. While, the second part statistical results from the data analysis presented by testing descriptive statistics, ANOVA & t-test, correlation and regression analyses.

4.1. THE STUDY DEMOGRAPHIC DATA

The samples demographic data in the study were collected to provide a reliable demonstration of the sample in this study. So, the below demographic data was collecting: gender, age, and academic degree, job title, and overall job experience as revealed in a table below.

As showed in the table (9) the male sample who contributed in the survey constituted 69.2% or (74) individuals of the survey sample compared to 30.8% or (33) female judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region

Table 9: Frequencies of the Respondent's Gender

Gender		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	74	69.2	69.2	69.2
	female	33	30.8	30.8	100.0
	Total	**107**	**100.0**	**100.0**	

From the table (10) the frequency of participant's ages, 50.5% or (54) individuals aged between 25-34 years, while 25.2% or (27) judges, lawyers, judicial assistant, and jurists at the Erbil court in the Iraqi Kurdistan region aged aged between 35-44 years; furthermore 17.8% or (19) aged between 45-54 years; nevertheless, 6.5% or (7) individuals of the total survey aged 14-50.

Table 10: Frequencies of the Respondent's Age Groups

Age Groups		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	25-34	54	50.5	50.5	50.5
	35-44	27	25.2	25.2	75.7
	45-54	19	17.8	17.8	93.5
	55-64	7	6.5	6.5	100.0
	Total	**107**	**100.0**	**100.0**	

As obtained in the table below (11) the frequency of participates academic degree, it was obtaining that of the whole survey who contributed: 92.5%, or (99) of overall survey sample are bachelor degree owners; while 24.3% or (83) individuals of the respondents were diploma holders. Further, 18.4% or (63) managers the Ph.D. and high school owners respectively, as well as 1.5% or (5) individuals of the respondents' master degree holders.

Table 11: Frequencies of the Respondent's Academic Degree

Academic Degree		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Master	8	7.5	7.5	7.5
	Bachelor	99	92.5	92.5	100.0
	Total	**107**	**100.0**	**100.0**	

From the table (12) the frequency of respondent's job title, 72.9% or (78) of the total survey sample is lawyers, while 12.1% or (13) judges; so, 10.3% or (11) individuals of the sample are a judicial assistant at the Erbil court. Furthermore 4.7% or (5) Jurists. Although, the result confirms that the survey sample is relevance to the study topics the commercial contracts in Iraqi and international laws.

Table 12: Frequencies of the Respondent's Job Title

Job Title		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Judge	13	12.1	12.1	12.1
	Lawyer	78	72.9	72.9	85.0
	Judicial Assistant	11	10.3	10.3	95.3
	Jurist	5	4.7	4.7	100.0
	Total	**107**	**100.0**	**100.0**	

As a table (13) summarizes the respondent's overall job experience, it revealed that of the total respondents: 41.1% or (44) individuals serviced between 1-5 years. Consequently, 21.5% or (23) individuals serviced between 6-10 years.

Furthermore, 14.0% and 13.1%, respectively of the overall survey sample individuals were overall's job experience 21 and more than between 11-15 years, respectively. While the lowest 10.3% or (11) individuals their working service start from 16 to 20 years.

Table 13: Frequencies of the Respondent's Overall Job Experience

Overall Job Experience		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1-5	44	41.1	41.1	41.1
	6-10	23	21.5	21.5	62.6
	11-15	14	13.1	13.1	75.7
	16-20	11	10.3	10.3	86.0
	21 and more	15	14.0	14.0	100.0
	Total	**107**	**100.0**	**100.0**	

4.2. DESCRIPTIVE STATISTICS

This section analyzes the study variables and their components, so, this section focused on participants' answer to provide their perspectives about the significance of the commercial contracts in Iraqi and international laws on five-point Likert Scale. However, descriptive statistics employed to quantitatively define the significant components of the variables by using statistical mean, standard deviations, the weight of agreement and t-test also used to test the significance of each item as being qualified for analysis.

4.2.1. Variables Descriptive Statistics

As shown in a table (14) the results of descriptive statistics mean, and standard deviation values for the commercial contracts in Iraqi law are (4.1284, and 0.49734) respectively. Although the weight of agreement came at the rate of 82.5% of the overall survey sample agreed that contracts in commerce are significant and necessary for the economic activities and business organization's benefit, besides local and international commercial contracts must contiguous and integrate themselves to activate commerce and reduce obstacles in front of commercial activities. While, the Iraqi trade law act 1984, generally need an amendment to adopt it with current local and international trade environments; which supported by t (85.867) at the Sig (0.000<0.05). The result indicates that (CCIIL1, CCIIL2, CCIIL 8, CCIIL12, and CCIIL,13) riches the commercial contracts in Iraqi law. Although,

the outcomes tell that (CCIIL4) reached the lower mean. Therefore, the Iraqi trade law act 1984, not suitable law for current trade enables.

Table 14: The Results of Descriptive Statistics and T-tests for the Commercial Contracts in Iraqi Law (CCIIL)

Variables		Descriptive Statistics			T-test		
		Mean	Std. Deviation	The rate of Agreement	t	df	Sig. (2-tailed)
Commercial Contracts in Iraqi Law		4.1284	0.49734	82.5%	85.867	1 106 107	0.000
Components			N	Descriptive Statistics			
				Mean	Std. Deviation	Rate of Agreement	
Loads on Components							
Components of the Commercial Contracts in Iraqi Law	CCIIL1		107	4.62	.654	92.4%	
	CCIIL 2		107	4.46	.893	89.2%	
	CCIIL 3		107	4.05	1.067	81%	
	CCIIL 4		107	3.60	1.080	72%	
	CCIIL 5		107	4.07	.998	81.4%	
	CCIIL 6		107	3.86	.916	77.2%	
	CCIIL 7		107	3.69	1.018	73.8%	
	CCIIL 8		107	4.29	.880	85.8%	
	CCIIL 9		107	4.13	1.074	82.6%	
	CCIIL 10		107	4.21	.962	84.2%	
	CCIIL 11		107	4.26	.828	85.2%	
	CCIIL 12		107	4.26	.935	85.2%	
	CCIIL 13		107	4.19	1.047	83.8%	
	CCIIL 14		107	4.12	1.007	82.4%	
	CCIIL 15		107	4.12	.939	82.4%	

$$^{*}\text{Rate of agreement} = \frac{Mean*100}{5\ (Five\text{-}point\ Likert\ Scale)}$$

As seen in the table (15) statistical mean and standard deviation values for commercial contracts in international law are (4.090 and 0.75190) respectively. However, 81.18% of the overall survey sample agreed on the importance of commercial contracts in international law. The overall t (56.012), (p0.000), is less than (0.05). Therefore, having modern international commercial law is vital to organizing business trades between the countries, as well as contracts in international commerce are significant and necessary. While the international commercial law has a positive impact on the states' economy and their business organizations. The amendment of international commercial law well plays a decisive role in trade activities within the countries and international commerce.

The result shows that (CCIINL1, CCIINL 2, CCIINL 3, and CCIINL 4) riches the Commercial Contracts in International Law or reached the highest mean

values. Thus, having modern international commercial law is vital to organizing business trades between the countries. Besides, contracts in international commerce are significant and necessary. Also, local and international commercial contracts in international commercial laws must contiguous and integrate themselves.

While the results reveal that (CCIINL 7) reached the lower mean, hence the survey sample whether no sure or disagree that the Iraqi international commercial law separated the national and international commercial contracts.

Table 15: The Results of Descriptive Statistics and T-tests for the Commercial Contracts in International Law (CCIINL)

Variables		Descriptive Statistics			T-test		
		Mean	Std. Deviation	The rate of Agreement	t	df	Sig. (2-tailed)
Commercial Contracts in International Law		4.0906	0.75190	81.18%	56.012	1 106 107	0.000
Components			N	Descriptive Statistics			
				Mean	Std. Deviation	Rate of Agreement	
Loads on Components							
Components of the Commercial Contracts in International Law	CCIINL1		107	4.84	3.873	96.8%	
	CCIINL 2		107	4.49	.744	89.8%	
	CCIINL 3		107	4.35	5.025	87%	
	CCIINL 4		107	4.19	4.003	83.8%	
	CCIINL 5		107	3.93	.876	78.6%	
	CCIINL 6		107	3.49	1.076	69.8%	
	CCIINL 7		107	3.40	.910	68%	
	CCIINL 8		107	3.74	.915	74.8%	
	CCIINL 9		107	3.93	.934	78.6%	
	CCIINL 10		107	4.34	.868	86.8%	
	CCIINL 11		107	4.05	.975	81%	
	CCIINL 12		107	3.98	1.000	79.6%	
	CCIINL 13		107	4.25	.891	85%	
	CCIINL 14		107	4.18	.940	83.6%	
	CCIINL 15		107	4.13	.870	82.6%	

4.2.2. ANOVA and T-Test

For the variance analysis test ANOVA and independence t-test used to elucidate whether there is a variance between survey sample replies according to their demographic data namely: gender, age, academic degree, job title, and overall job experience).

As publicized in the table below, ANOVA and independence t-test consequences specify that for same demographic data in regards the commercial contracts in Iraqi law ($p>0.05$), besides, independence t-test outcomes revealed that there isn't variance between male and female values f= (1.131) and (p0.290>0.05),

So, there isn't a difference in the scores between age groups, f= (2.507; p0.063>0.05) as well for academic degree f= (1.474; p0.227>0.05). However, the results showed that there is no variance between scores of job title and survey sample's overall job experience (p-value<0.05), as shown in the table below (16).

Table 16: ANOVA Test Results According to the Demographic Data for the Commercial Contracts in Iraqi Law

Commercial Contracts in Iraqi Law	**Sum of Squares**	***DF***	**Mean Square**	***F or T***	**Sig.**
By Gender					
Equal variances assumed	***Levene's Test for Equality of Variances***				
				1.131	***0.290***
By Age Groups					
Between Groups **Within Groups** **Total**	**1.784** **24.435** **26.218**	**3** **103** **106**	**.595** **.237**	***2.507***	***0.063***
By Academic Degree					
Between Groups **Within Groups** **Total**	**.363** **25.855** **26.218**	**1** **105** **106**	**.363** **.246**	***1.474***	***0.227***
By Job Title					
Between Groups **Within Groups** **Total**	**.592** **25.627** **26.218**	**3** **103** **106**	**.197** **.249**	***0.793***	***0.501***
By Overall Job Experience					
Between Groups **Within Groups** **Total**	**1.525** **24.693** **26.218**	**4** **102** **106**	**.381** **.242**	***1.575***	***0.187***

In the same context, the ANOVA and independence t-test also used for the variable commercial contracts in international law. So, as the results reveal in the table below (17) that there isn't significant variance between responses regarding the demographic differences.

Moreover, independence t-test outcomes exposed that there isn't variance between male and female values f= (2.506; p0.116>0.05). While, there isn't a variance in the scores among age groups, f= (0.586; p0.623>0.05) as well for academic degree f= (0.124; p0.725>0.05). Nevertheless, the results showed that there is no variance between scores of job title and survey sample's overall job experience (p-value<0.05), as revealed in the table below (17).

Table 17: ANOVA Test Results According to the Demographic Data for the Commercial Contracts in International Law

Commercial Contracts in International Law	Sum of Squares	*DF*	Mean Square	*F or T*	Sig.
By Gender					
Equal variances assumed	***Levene's Test for Equality of Variances***				
				2.506	*0.116*
By Age Groups					
Between Groups **Within Groups** **Total**	**1.003** **58.744** **59.747**	**3** **103** **106**	**.334** **.570**	***0.586***	***0.625***
By Academic Degree					
Between Groups **Within Groups** **Total**	**.070** **59.677** **59.747**	**1** **105** **106**	**.070** **.568**	***0.124***	***0.725***
By Job Title					
Between Groups **Within Groups** **Total**	**3.385** **56.363** **59.747**	**3** **103** **106**	**1.128** **.547**	***2.062***	***0.110***
By Overall Job Experience					
Between Groups **Within Groups** **Total**	**.888** **58.859** **59.747**	**4** **102** **106**	**.222** **.577**	***0.385***	***0.819***

4.3. CORRELATION ANALYSIS

As shown in a table (18) the correlation test indicated that there is a positive and significant correlation between study variables commercial contracts in Iraqi law and commercial contracts in international law were (p0.000<0.05). However, (**r**= 0.655**; p0.000< 0.05), therefore, having modern local and international commercial laws are vital to organizing businesses in the country and trades between the countries.

Table 18: Correlation Analysis

			Commercial Contracts in Iraqi Law	Commercial Contracts in International Law
Spearman's rho	**Commercial Contracts in Iraqi Law**	**Correlation Coefficient**	**1.000**	**.655****
		Sig. (2-tailed)	**.**	**.000**
		N	**107**	**107**
	Commercial Contracts in International Law	**Correlation Coefficient**	**.655****	**1.000**
		Sig. (2-tailed)	**.000**	**.**
		N	**107**	**107**

****. Correlation is significant at the 0.01 level (2-tailed).**

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

This study conceded to examine the commercial contracts in Iraqi and international laws. Consequently, to comprehend the study purpose, the researcher tested the study variables by using parametric statistics and correlation analysis to examine the relationship between the commercial contracts in Iraqi and international laws through taking perspectives from a survey sample of the Erbil court. Hence, the researcher absorbed the effect of commercial contracts in this relationship.

Based on the outcomes of descriptive statistics, that it can be predicted the commercial contracts exercises significant impacts on the trade activities between states, while the results revealed that the overall survey sample agreed that contracts in commerce are significant and necessary for the economic activities.

Moreover, business organization's benefit, besides, local and international commercial contracts must contiguous and integrate themselves to activate commerce and reduce obstacles in front of commercial activities. While, the Iraqi trade law act 1984, generally need an amendment to adopt it with current local and international trade environments.

Therefore, having modern international commercial law is vital to organizing business trades between the countries, as well as contracts in international commerce are significant and necessary. While the international commercial law has a positive impact on the states' economy and their business organizations, the amendment of international commercial law well plays a decisive role in trade activities within the countries and international commerce.

The ANOVA test revealed that there aren't significant variances among respondents' replies toward commercial contracts in Iraqi and international laws, according to survey sample's characteristics. However, the results also showed that positive and significant relationship occurs between commercial contracts in Iraqi and international laws.

2. Recommendations

For the Iraqi legal system to have modern commercial law and commercial contracts which are essential for organizing businesses in the country. While contracts in commerce are significant and necessary for the economic activities and business organization's benefit, the amendment of Iraqi trade law became necessary which will play a decisive role in local trade activities and make business trade organizations more active.

Thus, it is essential that the local and international commercial contracts contiguous and integrate themselves to activate commerce and reduce obstacles in front of commercial activities. Accordingly, the researcher recommends that Iraqi trade law act 1984, amended to adopt it with current local and international trade environments, while, Iraqi trade law act 1984, not suitable law for current trade enables.

However, amended trade law, particularly in contract section, makes the business organizations more effective in trade activities with other countries. The Iraqi legal system, should increase and implement the e-commerce in amended Iraqi trade law is necessary, as well as the e-commerce contacts or smart contracts must be a part of the amended law. The researcher also recommends that the revision of Iraqi trade law must take place to pay full attention to the local and global commercial contracts and bring them close to each other.

Thus, having modern international commercial law is vital to organizing business trades between countries, while contracts in international commerce are significant and necessary. The researcher recommends that the Iraqi legal system must amendment the international commercial law which will play a decisive role in trade activities within the countries and international commerce. So, the contracts in international commercial law must avoid a negative impact in local trade activities with the countries. However, the contracts in international commercial law must allow commerce parties are doing their business trades freely and without obstacles.

3. The Study Contributes and Suggestions

This study will contribute to the commercial contracts in Iraqi and international laws literature by providing theoretical context, besides offer implications for the legal system literature through presenting potential recommendations which are probably helpful to Iraqi legal system. Additionally, the study results and findings are joint the present procedure of study literature which has practiced to find the statistically significant relationship between commercial contracts in Iraqi and international laws. Also, the researcher suggests that the future studies would relate a more significant number of issues to investigate for significance in different business codes.

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APPENDIXES

Appendix1: Questionnaire Form

T.C
BİNGÖL UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCE
BUSINESS ADMINISTRATION DEPARTMENT

Dear Respondent

This survey questionnaire form is a part of the thesis study titled " **COMMERCIAL CONTRACTS IN IRAQI AND INTERNATIONAL LAWS AN EXPLORATORY STUDY IN ERBIL IRAQ.**" And, its part of Requirements for the degree of Masters in the jurisdiction of the Administrative Sciences.

I will appreciate taking the time to reply the below questions, after reading all its content thoroughly. Please give it time and consideration, as responses will be used to reach the results of this study, and indeed the result will use only for educational purpose, and names will not mention on the forms. Knowing that responses will be confidential and I will work for scientific research entirely.

Thanks in advance.

Supervisor

Prof. Dr. Sait PATIR

Researcher

Haval Nazhad Abbas AGHA
Master Student

Please Select the Option that Represents the Alternative, Think Proper for the Phrases below:

First Section: General Information

1. **Gender:** Male ( ), Female ( ).
2. **Age:** 25–34years ( ), 35–44years ( ), 45–54years ( ), 55-64 ( ).
3. **Academic Degree:** PH. D ( ), Master ( ), Bachelor ( ).
4. **Job Title:** Judge ( ), Lawyer ( ), Judicial Assistant ( ) Jurist ( ),
5. **Overall Job Experience:** 1-5 ( ), 6-10 ( ), 11-15 ( ), 16-20, ( ) 21 and more ( ).

Second Section: The Scale of Commercial Contracts in Iraqi Low

Q	Statements	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1	Having modern commercial law essential to organizing businesses in the country.					
2	Contracts in commerce are significant and necessary for the economic activities and business organization's benefit.					
3	Local and international commercial contracts must contiguous and integrate themselves to activate commerce and reduce obstacles in front of commercial activities.					
4	Iraqi trade law act 1984, not suitable law for current trade enables.					
5	Iraqi trade law act 1984, generally need an amendment to adopt it with current local and international trade environments.					
6	Iraqi commercial (trade) law not paid attention to the significance of the business commerce and serve new trade.					
7	The commercial contracts in the Iraqi trade law are not clear and unfortunate.					
8	Iraqi commercial (trade) law not addressed to the e-commerce, therefore, need amendment.					
9	The amendment of Iraqi trade law will play a decisive role in local trade activities and make business trade organizations more active.					
10	The Iraqi trade law amendment well plays a decisive role in trade activities among states.					
11	The amendment of Iraqi trade law must take place to integrate it with the international commercial law.					
12	The revision of Iraqi trade law must take place to pay full attention to the local and global commercial contracts and bring them close to each other.					
13	Having e-commerce in amended Iraqi trade law is necessary.					
14	The e-commerce contacts or smart contracts must be a part of the amended law.					
15	Amended trade law, particularly in contract section, makes the business organizations more effective in trade activities with other countries.					

Third Section: The Scale of Commercial Contracts in International Law

Q	Statements	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1	Having modern international commercial law is vital to organizing business trades between the countries.					
2	Contracts in international commerce are significant and necessary.					
3	Local and international commercial contracts in international commercial laws must contiguous and integrate themselves.					
4	The international commercial law suitable law for current trade activates.					
5	The international commercial law has a positive impact on the states' economy and their business organizations.					
6	The international commercial law paid full attention to the commercial contracts and the obstacles detached.					
7	The international commercial law separates the national and international commercial contracts.					
8	The international commercial law not addressed enough to the e-commerce, therefore, need amendment.					
9	The amendment of international commercial law well play a decisive role in trade activities within the countries and international commerce					
10	The contracts in international commercial law must avoid a negative impact in local trade activities with the countries.					
11	The contracts in international commercial law must allow commerce parties are doing their business trades freely and without obstacles.					
12	The contracts in international commercial law must allow individuals to do business trades not monopole it only for states or international trade companies.					
13	Having e-commerce in international commercial law is necessary.					
14	The e-commerce contacts or smart contracts must be a part of the international commercial law.					
15	Amended of international commercial law particularly in contract section make the business organizations more effective in trade activities between countries.					

Appendix 2: Curriculum Vitae

Personal Profile			
Name and Surname	Haval Nazhad Abbas AGHA		
Place and Date of Birth	14th Feb, 1989		
Email	h.nazhad@gmail.com		
Phone	00964 (0) 750 463 11 97		
Education			
Degree	**College and Depart.**	**University**	**Year**
Undergraduate	LLB (Bachelor of laws)		2012
Graduate	Business Administration	Bingöl University	2018
Work Experience			
Workplace	**Position**		**Year**
Mega Mall Company	Lawyer		Nov 2014
Foreign Languages Skills			
English - intermediate level	**Arabic good**	**Persian Good**	
Publication			

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