



MANAGEMENT OF SOURCES OF PUNISHMENT

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Abstract:

There is no legal definition of white-collar crime, and authors do not always categorise the same offences within this legal framework. The definition of offences is based on economic considerations. Criminal sanctions are cumulative with administrative sanctions.

It is therefore important to question the specificities of economic criminal law in relation to special criminal law, general criminal law and criminal procedure, and to consider whether these specificities make it an autonomous branch of law distinct from other criminal disciplines. Moreover, we should ask whether this law merely manages these sources of punishment between repressive and preventive measures. This paper serves as an introduction to economic law, adopting a diachronic approach and remaining open to other legal systems and contexts.

Keywords: corporate criminal law - sources - offences - business

INTRODUCTION:

The simplest questions can prove to be the most difficult for those seeking an answer. This is certainly the case with economic criminal law. Alexandre Dumas fils answered: “Business? It’s simple, it’s other people’s money”¹. This answer, however, would not satisfy the jurists who argue on the basis of pure law or by introducing economic considerations. The many anecdotes lead us to invoke the morality of business; business is a matter of morality. The morality of business is an old discourse, and the whole of classical culture lends itself to this discourse².

Since the nineteenth century, economic criminal law has undergone significant development and a real legislative inflation, due to the industrial revolution and technological and economic progress³. It is undoubtedly for this reason that its contours remain somewhat unclear. Moreover, it is a multidisciplinary field that is difficult to define. Commercial criminal law is used to punish the cunning criminality of perpetrators who are business people, “white-collar” professionals. These people act within the framework of the economic activities of the company. This means that these activities are carried out with the aim of making a profit. Thus, the offender is indeed a professional.

In any case, economic sanctions are more or less severe depending on the situation and the politico-economic regime. Indeed, criminal sanctions are much more severe when the state is governed by authoritarian leaders or during economic crises. If the political regime is more liberal with a healthy national economy, punishment will be used less often. A liberal regime will resort to punishment less than an authoritarian regime or during periods of economic crisis, as is currently the case in Algeria, which has led to an increase in laws punishing

¹- Pradel (Jean), *The Penalization of Business Law*, University of Poitiers (France), 2009, p. 2 and following.

²- *The Faces of Financial Crime*, Les Petites A fiches, No. 140, pp. 4-5. Business Law and Criminal Law; Summary Report, La Gazette du Palais, No. 69, 10/03/2002, pp. 55-64. Blanchot (Alain), *Advocacy for the Abolition of Criminal Negligence*, La Gazette du Palais, No. 249, 06/09/2002, p. 39.

³- Haschke-Dournaux (Marianne), *Reform Paths in Business Criminal Law*, Monthly Bulletin of Business Information Joly (BMIS), No. 4, 04/01/2003, pp. 377-392. Giudicelli-Delage Geneviève, *Business Criminal Law*, Dalloz, Mémentos Dalloz 2003. Stasiak (Frederick), *Business Criminal Law*, 2nd ed., 2009, Manuels LGDJ. Wilfrid (Jean Didier), *Business Criminal Law*, 6th ed., Dalloz, 2005.

business activity. As a result, economic criminal law appears to pose a legitimacy problem. Moreover, the presence of ideas related to business and profit leads to a certain specificity of this law compared to other branches of special criminal law.

Business criminal law has been mobilized by two main categories of interests: private interests and the public interest, meaning the interests of the State and everything related to its budget. To attempt to reconcile these two interests, a protection system for individuals and markets was established, which developed in the early 19th century, a time when the State was to intervene only in extreme cases where economic operators could not regulate the markets on their own. This is the principle of freedom⁴.

Looking further back in time, in 1810, business criminal law was limited to the basic qualifications studied in special criminal law: theft, fraud, and breach of trust. However, from the 19th century onward, business criminal law began to free itself from special criminal law by creating specific offenses within the business milieu. Thus, business criminal law appears as special criminal law confined to business, that is, to themes of finance, companies, competition, consumption, and distressed businesses.

As a branch of criminal law, economic criminal law must respect general criminal law (which studies the common principles applicable to all offences). Therefore, it is appropriate to question the specificities of business criminal law in relation to special criminal law, general criminal law and criminal procedure, and to ask whether these specificities make it an autonomous law from other criminal disciplines. Having shown that business criminal law has a genuine substantive particularism that makes it a disparate and rigorous law (I), its formal particularism is only apparent and does not constitute a legal discipline in its own right; consequently, what offences are sanctioned? (II).

I - Commercial criminal law: A legal/economic concept?

Commercial law itself occupies an essential place in the management of companies, given the number of regulations governing business life and the importance of legally safeguarding relations between the various parties involved in the company. First of all, it should be noted that there is no legal definition of economic criminal law, and authors do not always include the same offences in this area of law. The definition of offences is based on economic considerations. Criminal sanctions are cumulative with administrative sanctions.

Business criminal law indeed presents marked particularities while remaining subject to the fundamental principles of criminal law. There is no specific Criminal Code for business law; thus, some offenses fall under the Penal Code, others under the Commercial Code, Customs Code, Environmental Code, or Consumer Code. Many offenses also arise from regulatory powers, such as decrees, orders, and ordinances. Furthermore, community sources are predominant, as regulations apply directly in domestic law under various treaties. Therefore, business criminal law is characterized by the fragmentation of its texts. It was created to prevent and sanction economic and financial crimes within the business world. We will examine the notion of business criminal law (A), its characteristics in terms of its role and purpose (B).

The sources of business law are numerous and derived from various laws, the majority of which are consolidated in the Commercial Code and the Civil Code. Intellectual property law is also an essential component of business law. As a priority area, intellectual property is a major issue for companies, as it constitutes an important and often indispensable asset. Companies typically build their identity and competitive advantage around their brand image, inventions, or artistic production.

⁴. The origin of business criminal law dates back to the law of July 17, 1865, criminalizing the distribution of fictitious dividends in partnerships limited by shares. The Stavisky affair led to the promulgation of the decree-law of August 8, 1935, on the abuse of corporate assets. Post-war ordinances of June 30, 1945, regarding price regulations and economic legislation violations mark the evolution of economic criminal law. Lexinter Law, Business Criminal Law, June 9, 2014, [Lexinter](<https://lexinter.net/JF/dtpenafffr.htm>). Business criminal law has thus become a mode of market regulation through business law and public procurement law, an essential aspect of social or administrative law. The penalization corresponds to a form of judicialization of regulation, where every text contains a penal component, with violations constituting offenses. Mascala (Corinne), Business Criminal Law, University Toulouse 1, [University Profile](<https://univ-droit.fr/universitaires/5136-mascala-corinne>).

The purpose of intellectual property law is to protect inventors and authors against opportunistic behaviors from competitors by granting temporary exclusive rights of exploitation. This protection is ensured through specific procedures for actions against counterfeiting, both at the penal and civil levels. Industrially applicable inventions are protected by patents; trademarks are safeguarded by trademark law; literary and artistic works and software codes are protected by copyright; and designs and models are covered by design law and copyright. 01.02.2018 <https://www.editions-legislatives.fr/droit-des-affaires> 2 Malan (Bélot), droit pénal des affaires, <https://bmavocats.com/droit-penal-des-affaires>, 2022 3 <https://www.doc-du-juriste.com/droit-prive-et-contrat/droit-penal/dissertation/specificite-droit-penal-affaires>

Special criminal law serves as the charter of what is prohibited or permitted. The study of special criminal law allows individuals to understand the boundaries between what is permissible and impermissible, legal and illegal, thereby guiding their behavior accordingly (Merle & Vitu, 1982, p. 18)

Special criminal law focuses on the examination of offenses in terms of their conditions for existence and their legal consequences. This branch of criminal law analyzes various infractions, their constitutive elements, and the modalities of their repression. Each offense must be incriminated and defined by a legal text, in accordance with the principle of legal legality (Malabat).

A. The concept of economic criminal law: Theory of the Economics of Law According to Le Petit Robert, “business” refers to economic activities, particularly in their commercial and financial consequences. It can be seen as a distinct, significant world - often associated with money. Sometimes it is described as a world of deception. During the 2000s, there has been an intensified movement to moralize the business world, with a desire to reaffirm ethics in business practices. Numerous ethical charters were drafted to define the duties of professional conduct expected of individuals and organizations in their interactions with users, each other, and the profession itself.

This notion is relatively recent; between the two world wars, discussions revolved primarily around financial criminal law. Around the time of the Second World War, the focus shifted more to commercial or economic criminal law. The first work to use the term “economic criminal law” was written by Mrs. Delmas Marty, and since then this term has been adopted by all authors, as it corresponds to a broader field of research.

Michel Véron questioned whether white collar crime is a myth or a reality. One criterion that comes to mind is material: economic criminal law is defined by its content and appears as a subset within special criminal law. It includes crimes such as embezzlement of corporate assets, bankruptcy, and insider trading. Beyond this, however, there are ambiguities. For example, should labor law and common business crimes such as fraud and concealment be included?

This leads to the temptation to apply a formal criterion. The crimes are classified according to their place in the codes: those in the Criminal Code are considered special criminal law, while those outside the Criminal Code may fall under economic criminal law. However, this second criterion is not superior to the first. For example, the Criminal Code contains crimes such as embezzlement or fraud that can be committed by business people; conversely, outside the Criminal Code there are crimes that are clearly not related to business, such as driving under the influence of alcohol.

Ultimately, it is essential to go beyond these two criteria and consider concepts of business and enterprise - concepts that are not strictly legal, even though the authors strive to construct a theory of the economics of law. Thus, economic criminal law is, in fact, the branch of special criminal law that deals with crimes committed within the framework of a business and is based on economic principles.

1. Aristotle and the Notion of Economic Interest:

1. Aristotle notes the existence of commercial exchanges but condemns the notion of interest-bearing loans. The purpose was to solicit the public to allow the construction of this canal. Much of this money will be used to support press campaigns, but it will fail. Bankruptcy is declared, and hundreds of thousands of subscribers are ruined. The 20th century’s economic crisis of 1929 is worse than assassination. After World War II, there were other significant cases. Berthoud (Arnaud): Aristotle and Money, Maspero (François), Paris, 1981. Aristotle condemns interest on loans in principle, stating that “money was invented for the purpose of exchange, while interest multiplies the quantity of money itself” (Politics, translated by Jules Tricot, Librairie Vrin (Joseph), Paris, 1962, I, 10, pp. 65-66).

2. These charters sometimes originate purely from private sources, sometimes they are approved by the state, and sometimes they are created by the state; they model codes of ethics created by professional orders. Today, the legislator delegates to professionals the adoption of a certain number of rules; the most recent example is the law [link].

3. Delmas Marty (Mireille), Geneviève Giudicelli-Delage, *Business Criminal Law*, Volume 1, Themis, 2000, Offenses, 2nd edition, *International Review of Comparative Law*, 1982, pp. 453-454. Delmas-Marty's *Business Criminal Law* has been a fundamental work for the development of this discipline for three decades.

4. Véron (Michel), Beaussonie (Guillaume), *Business Criminal Law*, Dalloz, *Economy and Law Enterprise*, Paris, 2019. Michel Véron, *Special Criminal Law*, Sirey, LGDJ, Paris, 2019.2. Charters of Ethics.

Tax law: tax fraud, money laundering, etc⁵. This non-exhaustive list gives us an overview of the various reprehensible actions. All of these crimes are no longer just words, but a harsh reality of the business world.

Today, the criminal judge has a significant legislative arsenal that allows him to better address fraudulent acts. They work to better regulate, moralize and punish the crimes, errors and misdeeds of the individuals or legal entities involved⁶.

It seems that the number of these studied offenses can vary elastically. The various codes, such as the Commercial Code, the Monetary and Financial Code, or, for example, the Consumer Code, contain numerous offenses (and some minor violations), but their relevance varies depending on the offenses⁷.

It is clear that defining economic criminal law is a challenge, as its boundaries seem vague and fluid⁸. Very schematically, it can be said that it represents the part of special criminal law that concerns the world of "business". But what is this world? Criminal law deals with almost all areas of law. It regulates the activities of businessmen and industrialists in the exercise of their professional activities. It also defines occasional commercial acts produced by non-merchants. Criminal law is an extension of these laws, and criminal sanctions ensure the respect of private interests⁹. Therefore, by its nature, it is more preventive than repressive, but the repressive aspect is still present.

B. The Link Between Criminal Law and Business: Criminal Law or Penalizing Law?

There is an initial debate about the appropriateness of white-collar crime and a debate about its specialization. The debate on appropriateness raises two questions: Is it legitimate to create a criminal law in such an important sector? What is its effectiveness? The opponents include the business community in general. They argue that there are contradictory logics between the business world and that of the judges. The former demands speed, while the latter demands time. The concept of time does not correspond at all between the two. Nor do the philosophies match. Ripert said that in business one should prefer the tolerance of skillful immorality to the fear of suspicion¹⁰. Gavalda¹¹ said that criminal law is to business what surgery is to medicine: the admission of the inadequacy of one's technique.

Lawyers and administrators are convinced. The first argument is that in every field it's important to set limits to everyone's freedom, to limit the freedom of professionals when there is harm to individuals in vulnerable

⁵ - Mascala (Corinne), *Business Criminal Law*, University Toulouse 1, [University Profile](<https://univ-droit.fr/universitaires/5136-mascala-corinne>).

⁶ - Picovschi (A), *Business Criminal Law*. [Law Firm Profile](<https://www.avocats-picovschi.com/droit-penal-des-affaires>). Ambroise-Castérot (Coralie), *Business Criminal Law*, 2nd ed., Gualino, Lextenso, Collection "Mémentos", Paris, 2020-2021, p. 6 and following.

⁷ - Ambroise-Castérot (Coralie), *Business Criminal Law*, 2nd ed., <https://www.fureet.com/media/pdf/feuilleter/9/7/8/2/2/9/7/0/9782297076906.pdf>

⁸ - Ambroise-Castérot (Coralie), *Business Criminal Law*, 2nd ed., Gualino, Lextenso, Collection "Mémentos", Paris, 2020-2021, p. 6 and following.

⁹ - Frédéric Desportes, Francis Le Guhenec. *General Criminal Law*, No. 42

¹⁰ - . Ripert (Georges), Germain (Michel), Roblot (René), Magnier (Véronique), *Treatise on Business Law*, Volume 2, L.G.D.J., 2014.

¹¹ - Gavalda (Christian), *Impertinent Remarks on Business Law*, Dalloz, 2001.

situations, and to limit freedom in light of the general interest, since in certain cases public finances may be affected.

The second argument concerns the equality of citizens before punishment, the principle of trust, and the principle of credibility of commercial law, which, like others, has its bad apples. Fouqueau explains that it is a totally unhealthy technique to violate the principle of equality among citizens¹².

The third argument mentioned is paradoxical, since economic criminal law would not be a law of repression, but would aim to prevent crimes and make penal rules symbolic. The symbolic aspect means that criminal law would contribute to changing mentalities. Some explain that capitalism has been able to develop thanks to the existence of certain criminal laws; it has been able to civilize itself. It is accepted as legitimate.

The question that raises divergences is the effectiveness of economic criminal law, specifically whether it is effective or not. The modern criminalization of business life already leads to a distinction between crimes that fall within the traditional domain of criminal law and those that merely support the implementation of economic law. In the first case the criminal law is the “driver”, in the second case it is the “follower”.¹³ Are we studying only economic criminal law or the coordinated field of civil, commercial, ethical and criminal sanctions in economic law? Without playing with words, is it criminal law or sanctions law?

The proponents of effectiveness will claim that criminal law complements the specialized laws because they cannot stand alone, and if we accept this doctrine, we can say that criminal law will become the best protector of business law, mainly because of the principles that the criminal chamber must apply, especially the principle of legality and the strict interpretation of criminal law.

Opponents will point out the danger of trivializing criminal law. For them, if the criminal law is abused, it will wear out considerably. They argue that there is far too much criminal law in economic life. In general, the state creates so many crimes that they become invisible; they are no longer reported or punished. People get used to having a criminal law that is not used to its full extent. In practice, the idea of decriminalizing business law has been around for a long time¹⁴.

Second Debate: The Specialization of Criminal Law

Business criminal law is considered a special law due to its specific links with common law, making it a specialized field.

A Special Law:

The interactions between business criminal law and common criminal law are significant. Traditional offenses such as theft, fraud, and breach of trust also apply within the context of business law. These traditional offenses often serve as models for creating specific offenses, such as the misappropriation of corporate assets or fraud, which can lead to deceptive advertising practices. In many ways, it is business criminal law that has influenced common criminal law, showcasing its originality and impact on the broader legal framework.

A Specialized Criminal Law:

Business criminal law encompasses offenses committed by professionals or insiders within the scope of their activities. It is specialized not only in terms of the legal framework but also concerning the context in which the offenses occur. There are offenses that have a necessary connection with business operations, while others may have an occasional relationship with business that facilitates the commission of the crime

¹²- Mazabraud (Bertrand), Foucault, Law, and Power Devices, *Cités*, 2010, No. 42, pp. 127-189.

¹³- Chaput, The Penalization of Business Law: Real Observations and False Rumors, *Le Seuil*, "Pouvoirs" 2009/1 No. 128, pp. 87-102, [Cairn](<https://www.cairn.info/revue-pouvoirs-2009-1-page-87>).

¹⁴- Bouloc (Bernard), Reflections on the Envisaged Depenalization of Business Law, *Reforms 2008*, Kluwer (Wolters), 2007. Brome (Brigitte) and Vasa (Julie), Depenalization of Business Life: "Building a Balanced, Coherent Work with Clear Rules," Interview with Coulon (Jean-Marie), *Revue Lamy Business Law, Perspectives*, March 2008, pp. 56-59.

II. Commercial Criminal Law: What Crimes Are Punished?

After developing how business criminal law has a true substantial particularity that makes it a scattered and rigorous law in the qualification and repression of offenses, the formal particularity is only apparent and does not make it a complete legal field.

The offenses related to business crime are very diverse. It encompasses the entire body of legal rules concerning offenses that may occur in business life, as well as all economic rules that can be penalized¹⁵. We conclude that business criminal law is indeed the set of legal rules concerning offenses that may occur in business life¹⁶. It regulates a number of behaviors that can threaten not only the business world but also the economy as a whole. This chapter addresses the rules of repressive law applied to business. The offense in business criminal law thus covers very diverse realities¹⁷. Here, we present the various facets of criminal offenses¹⁸ that this branch of business law may encompass¹⁹. Hence, the theme of managing sources of penalization.

These different offenses can be divided into two categories: common law offenses (A) and offenses arising from special laws, specifically penal offenses related to certain areas of business law (B).

A. Common Law Offenses Applied to Business: The Establishment of Business Criminal Law

The offenses relevant to business law originate from various sources, resulting in a somewhat unstructured overall picture. Most often, these are crimes against individuals, with a focus on penalizing fraudsters and protecting consumers during their purchases. To clarify this landscape, we will discuss the main common law offenses (a) followed by other common law offenses (b).

a. Main Common Law Offenses

The evolution of business law has largely occurred outside the Penal Code. For instance, the law of February 6, 2005, concerning commercial companies, served as a foundation for the repression of offenses in corporate law for a long time. Additionally, Legislative Decree No. 93-08 of April 25, 1993, regarding the liquidation and restructuring of businesses, modified and supplemented the Commercial Code²⁰.

Article 389 states:

- "The legal entity that commits the offense provided for in Articles 389 ter and 389 quater is punished by:
 - A fine that shall not be less than four (4) times the maximum fine provided for by Articles 389 ter and 389 quater;
 - Confiscation of laundered assets and income;
 - Confiscation of the means and instruments used to commit the offense. When the confiscated assets cannot be seized or represented, the competent jurisdiction shall impose a monetary penalty equal to the value of those assets. The jurisdiction may also impose one of the following penalties:
 - a) Prohibition from exercising a professional or social activity for a duration not exceeding five (5) years.
 - b) Dissolution of the legal entity."

¹⁵- Business criminal law includes common law offenses (theft, fraud, breach of trust, corruption) and specific offenses in areas such as: corporate law (inflation of contributions in kind, abuse of corporate assets, etc.); competition law (collusion, abuse of dominant position, etc.); consumer law (deceptive advertising); and securities law (insider trading and privileged information).

¹⁶- Cornu (Gérard), Legal Vocabulary. 7th Edition, Presses Universitaires de France, Paris, 2005. Michel (Véron) and Beaussonie (Guillaume), Business Criminal Law, 12th Edition, Dalloz, 2019.

¹⁷- Calfoun (David), Offenses in Business Criminal Law, 2nd Edition, Gualino, Lextenso, Paris, 2021, pp. 9-48

¹⁸- Alfandari (Elie), Business Law is not an Autonomous Law; it is an Original Law, Business Law, Court of Cassation Publishing, Paris, pp. 5-7.

¹⁹- The objective of business criminal law is to sanction the most harmful offenses to public order. It includes both common law offenses and those arising from consumer law, corporate law, competition law, and securities law.

²⁰- J.O n° 27 du 27/04/1993

We also find the criminal liability of legal entities established by Ordinance No. 96-22 relating to the repression of offenses against foreign exchange legislation and regulations regarding the movement of capital to and from abroad, which clearly presents itself as a new general principle²¹.

Regarding crimes, there are formal shifts or disappearances of crimes. Three movements regarding offenses are noted.

First Movement: There are crimes that were included in the Criminal Code and will change their place within it, such as forgery, as well as crimes related to corruption.

Second Movement: Crimes may leave the Criminal Code to be incorporated into another text. For example, the offense of provoking an artificial increase or decrease in the price of goods will be removed from the Criminal Code because it relates to competition. However, the drawback is that this ordinance refers to decriminalization, but contains a text that punishes this behavior.

Third Movement: The offense of bankruptcy is a general offense that consists of continuing to manage a business while pretending that everything is fine when it is not. The texts on bankruptcy belong to the Commercial Code. This offense has been around for a long time; it used to be a criminal offense.

Eventually, things changed and the crime of bankruptcy was distinguished from the crime of suspension of payments. From the 20th century, a distinction is made between civil commercial situations and criminal situations.

The crime of bankruptcy has been commercialized; most behaviors have been decriminalized, except in cases of fraud, where it is necessary to prove a particularly specific intent. The offense is simplified and focused only on the most serious cases of bankruptcy, especially those that are clearly intentional: the artificial maintenance of a failing business. The manager tries to delay the opening of judicial recovery proceedings and will use certain methods, such as obtaining bank loans or multiplying actions; misappropriation or concealment of assets, such as an operator who holds an asset while it is pledged or used as collateral; fraudulent increase of liabilities; fictitious accounting; and manifestly incomplete or irregular accounting.

Does this mean that the Criminal Code acts as a guide for the commercial and financial codes with regard to the moral element?²² The codification with the permanent law has raised several difficulties, including issues outside the criminal law that were not considered by the legislator. The harmonization and classification of the texts has not been completed.

The main common law offenses can be summarized as follows:

Misappropriation of company assets: This is an offense in which a manager knowingly diverts assets or credits belonging to the company he manages for interests contrary to that company. The offense of misappropriation of assets, credits and powers is defined and punished by the provisions of article 800 of the Commercial Code for limited liability companies (SARL), article 811 of the Commercial Code for public limited companies (SPA) and article 840 of the Commercial Code for liquidators.

Corruption: This is regulated by articles 126 to 134 of the Penal Code. It is considered active when anyone, without right, at any time, directly or indirectly, offers, promises, gives, presents or any advantage to a public authority, a person entrusted with a public service mission or a person entrusted with a public electoral mandate, for himself or for others: - either to perform or refrain from performing, or because he has performed or refrained from performing, an act related to his function, mission or mandate, or facilitated by his function, mission or mandate.

²¹- Ordinance No. 66-156 of June 8, 1966, affirmed the principle of the non-responsibility of legal entities in criminal matters, although there are several exceptions in tax legislation concerning the income tax code and corporate profit tax.

Zaalani (Abdelmadjid), *The Criminal Liability of Legal Entities*, Algerian Review of Legal and Political Sciences, Volume 36, No. 1, 1999-03-15, pp. 9-21.

²²- The proof of intent is the principle for any judge. The text provides several exceptions in tort matters. In connection with this article, in business law, during codification, adverbs in the texts were removed because the idea is to prove intent unless an exception is provided by a text.

- Either to abuse, or because he has abused, his real or supposed influence to obtain from a public authority or administration honors, jobs, contracts or any other favorable decision

On the other hand, passive corruption is the act by which a person who holds a public office, who is entrusted with a public service mission, or who is entrusted with a public electoral mandate, requests or accepts, without right, at any time, directly or indirectly, offers, promises, gifts, presents or any advantage for himself or for others

- To perform or cause to be performed, to omit or cause to be omitted, any act related to their function, mission or mandate, or facilitated by their function, mission or mandate; - Or to abuse or cause to be abused their real or supposed influence in order to obtain from a public authority or administration honors, jobs, contracts or any other favorable decision.

Law 06-01 on the Prevention and Fight against Corruption has broadened the scope of corruption.

Fraud²³ is one of the most common economic crimes²⁴. It is defined in Article 372 of the Criminal Code:

“Anyone who, either by using false names or false qualities, or by using fraudulent maneuvers to convince of the existence of false companies, an imaginary power or credit, or to create hope or fear of success, an accident, or any other chimerical event, causes or attempts to cause himself to receive or deliver money, goods, or obligations, dispositions, notes, promises, receipts, or discharges, and by any of these means defrauds or attempts to defraud another person of all or part of his property...”.

Theft and extortion are defined by the amended Article 350: “Anyone who fraudulently takes something that does not belong to him is guilty of theft and shall be punished by imprisonment for one (1) to five (5) years and a fine of one hundred thousand (100,000) to five hundred thousand (500,000) DA....”.

Thus, it is the fraudulent taking of another’s property.

Embezzlement, according to Article 376 of the Criminal Code, is defined as:

“Anyone who, in bad faith, diverts or dissipates, to the detriment of the owners, possessors or holders, effects, money, goods, notes, receipts or any other writing containing or operating an obligation or discharge, which have been entrusted to him only for the purposes of lease, deposit, mandate, pledge, loan for use, or for paid or unpaid work, with the obligation to return or represent them, or to use or employ them for a specific purpose, is guilty of breach of trust”.

According to this article, the breach of trust consists in the fact that a person diverts, to the detriment of others, funds, assets or any other property that has been entrusted to him and that he has accepted with the obligation to return it, to represent it or to use it for a specific purpose.

b- Other common crimes

The Penal Code defines in its article that forgery is any fraudulent alteration of the truth, capable of causing harm, and accomplished by any means, in a written document or any other medium of expression of thought, aiming to establish proof of a right or a fact with legal consequences.

Money laundering²⁵, as a repressive measure, is a highly regarded offense throughout the world. It represents a new tool for the protection of the national economy, which has become necessary due to the lack of legal and regulatory mechanisms for the prevention of these crimes. It involves the reinvestment of illegally obtained

²³- Fraud is defined as "deceiving a natural or legal person and thereby inducing them, to their detriment or that of a third party, to hand over funds, values, or any property, to provide a service, or to consent to an act creating an obligation or discharging it." This can occur by using a false name or quality, abusing a true quality, or employing fraudulent maneuvers.

²⁴- Babonneau-Mariotti, Fraud, Les Echos, [SBA Avocats](<https://www.sba-avocats.com/avocat-droit-penal-des-affaires-lescroquerie>).

²⁵- In the late 1980s, many texts emerged in the area of money laundering and narcotics: December 1988 Convention, November 8, 1990, Council of Europe Convention; not limiting the scope of money laundering to narcotics. Directive of 1991, amended first in 2001, then in 2005, and a third time in 2008. In Algeria, Law No. 05-01 of February 6, 2005, on the fight against money laundering and the financing of terrorism, amended by Ordinance No. 12-02 of February 13, 2012, approved by Law No. 12-10 of March 26, 2012.

funds. The reinvestment takes place in legal activities. Money laundering is widespread in Algeria. Criminals are constantly resorting to innovative methods (import-export, automobile, real estate), which is causing a fierce struggle for the legislator²⁶.

Money laundering is defined as the act of facilitating, by any means, the deceptive justification of the origin of assets or income belonging to the perpetrator of a crime or offense that has yielded them a direct or indirect profit, or as the act of contributing to an operation involving the placement, concealment, or conversion of the direct or indirect proceeds of a crime or offense.

Extortion: is defined as obtaining, through violence, threats of violence, or coercion, either a signature, a commitment or waiver, the revelation of a secret, or the delivery of funds, valuables, or any kind of property.

Influence peddling: is a form of corruption where a public authority holder receives gifts (money, goods) from an individual or entity in exchange for granting or promising various benefits (decorations, contracts, employment, favorable arbitration, etc.). It is considered a type of corruption²⁷.

Embezzlement and extortion, as well as illegal interest-taking, are defined under Article 119 of Law No. 88-26 of July 12, 1988: "Any magistrate, public official, or officer who willfully diverts, dissipates, improperly retains, or misappropriates public or private funds, or any equivalent items or documents that were in their possession, either by virtue of or due to their functions..." This includes the act of a person in a position of public authority, or someone charged with a public service mission or elected mandate, taking, receiving, or retaining, directly or indirectly, any interest in a business or operation for which they are responsible for oversight, administration, liquidation, or payment, in whole or in part, at the time of the act.

Fraudulent organization of insolvency: is defined as the act of a debtor who "organizes or aggravates his insolvency, either by increasing the liabilities or decreasing the assets of his estate, by reducing or concealing all or part of his income or by hiding certain assets, with the intention of avoiding the execution of a financial judgment rendered by a criminal court or, in matters of tort, quasi-tort or maintenance, by a civil court²⁸".

B - Criminal Offenses Specific to Certain Areas of Business Law: Offenses Arising from Special Laws

In addition to common law offenses, those arising from special laws are also relevant to business criminal law. These offenses primarily arise from various aspects of business law. For example, offenses related to competition law are governed by the provisions of business criminal law. The same applies to several other areas of business law. Offenses arising from special laws include, among others: anti-competitive fraud; deception; bankruptcy offenses; tax fraud; insider trading; forgery; and anti-corruption measures. Below are examples of offenses specific to three areas of business law: competition law, consumer law (a), and business insolvency law (c).

a - Offenses Specific to Competition Law and Consumer Law

Offenses Specific to Competition Law: Fraudulent participation in anti-competitive practices. An anti-competitive agreement is a coordinated action or agreement intended to prevent, restrict, or distort competition in a specific market for goods or services. Such agreements can take various forms (written or oral, explicit or tacit, horizontal between competitors in the same market, or vertical, such as between a producer and a distributor)²⁹. The agreement, which restricts competition, is prohibited by Article 6 of the amended and supplemented Ordinance No. 03-03 of July 19, 2003, concerning competition. Given the number and diversity of anti-competitive agreements, it would be impossible to provide an exhaustive list. Therefore,

²⁶- Articles 389 bis to 389 nonies of the Penal Code.

²⁷- Articles 126 to 134 of the Penal Code.

²⁸- Among the acts constituting the offense of fraudulent insolvency organization are the reduction of asset value, increasing liabilities, concealing assets, and hiding part of income. The moral element must also be considered; it is necessary to prove the intent to evade payment of sums due.

Zubaroglu (Samuel), What is Fraudulent Insolvency Organization? Published 24/03/2022, [Alexia](<https://www.alexia.fr/fiche/10777/qu-est-ce-que-l-organisation-frauduleuse-d-insolvabilite>).

²⁹- The General Directorate for Competition, Consumption, and Fraud Prevention, Anticompetitive Agreements published on 30/06/2022, [Government Website](<https://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/Fiches-pratiques/Entente>).

Article 6 limits itself to citing the most frequently encountered examples³⁰. Article 9 of the competition ordinance provides for an exemption regime that applies, in particular, to practices qualified as agreements. Thus, agreements and practices resulting from the application of legislative or regulatory texts are not subject to the provisions of Article 6. Similarly, agreements and practices can be exempted if their authors can justify that they contribute to economic or technical progress, improve employment, or allow small and medium-sized enterprises to strengthen their competitive position in the market³¹.

One of the offenses specific to consumer law:

Deception. This special law protects consumers who are presumed to be at a disadvantage compared to professionals offering the goods and services they want or need. This area, known as consumer law, recognizes a social reality: in business, professionals are generally better equipped to negotiate contracts and may create illusions through certain sales techniques. Therefore, rules are established to promote a certain moralization of legal relations between professionals and consumers³².

Algerian law has recognized the problems posed by the economic inequality of the parties by means of imperative rules. These regulations explain the duties and obligations imposed on professionals in order to ensure effective consumer protection. The regulations play a preventive role by organizing relations in order to avoid the possible consequences of the abuse of economic power.

Law no. 09-03 provides for criminal sanctions for the violation of the obligation to provide information on the essential characteristics of goods or services. Articles 68, 69 and 70 provide for the application of penalties for the crimes of deception and falsification, as defined in articles 429 and 431 of the Penal Code. In addition, Article 78 of Law No. 09-03 imposes fines ranging from DA 100,000 to DA 1,000,000 on any person who violates the labeling requirements set forth in Articles 17 and 18.

It is forbidden for any person, whether or not a party to the contract, to deceive or attempt to deceive the other party to the contract, by any means or method, even through a third party, regarding:

- the nature, type, origin, essential characteristics, composition or content of the goods; - the quantity of the goods delivered or their identity, by delivering goods other than those specified in the contract; - the suitability for use, the risks inherent in the use of the product, the tests carried out, the instructions for use or the precautions to be taken.

³⁰- Agreements or coordinated practices that:

- Aim to limit market access or the exercise of commercial activities;
- Hinder price setting through the free play of the market by artificially raising or lowering prices (the classic case of price-fixing agreements);
- Aim to limit or control production, sales outlets, investments, or technical progress;
- Allocate markets or sources of supply;
- Apply unequal conditions to commercial partners for equivalent services, thereby disadvantaging them in competition;
- Condition the conclusion of contracts on the acceptance of additional services that, by their nature or according to commercial practices, are unrelated to the subject of these contracts;
- Allow the awarding of public contracts to the authors of these restrictive practices.

³¹- Consumers have gained their "class right" (as expressed by Josserand regarding the proliferation of special rules developing alongside common law). L. Josserand, "On the Reconstruction of Class Law," *Dalloz Recueil*. 2004, Special Issue, p. 3, with the enactment of various laws (the main ones being: Law No. 09-03 of February 25, 2009, on consumer protection and fraud repression [J.O.R.A. No. 15 of March 8, 2009]; Law No. 04-02 of June 23, 2004, amended and supplemented, setting the rules applicable to commercial practices [J.O.R.A. No. 41 of June 27, 2004], which mainly ensure consumer information, safety, and protection against abuses of economic power).

Bazin-Beust, Delphine. "The Major Developments in Consumer Law." In *Constructif*, 2021/2 (No. 59), pp. 16-19. Available at: [Cairn.info], published online on June 15, 2021.

³²- Sari, Nawel. "Consumer Protection in Algerian Law." *Algerian and Comparative Public Law Review*, No. 03/2016, pp. 30-53, p. 30.

b. Crimes specific to companies in difficulty

Crimes related to the crime of bankruptcy are outlined in articles 369 to 375 of the Commercial Code³³. With these offenses, the legislator aims to address acts that are theoretically less serious than those constituting bankruptcy.

The intention to avoid or delay the opening of judicial recovery or liquidation proceedings may manifest itself in various ways, such as making purchases for resale at below market value or using ruinous means to obtain funds.

It also includes actions such as diverting or concealing all or part of the debtor's assets, fraudulently increasing the debtor's liabilities, keeping fictitious accounting records, destroying the company's or legal entity's accounting documents, or failing to keep accounting records when required by applicable regulations. In addition, keeping accounting records that are obviously incomplete or irregular in accordance with the law is also considered a crime.

The list of potential crimes is much broader, but we will limit ourselves to this illustrative example.

Conclusion:

Thus, white-collar crime is a field that is permeated by both commercial and criminal law. This hybrid nature makes it original in many respects. Although it is influenced by other areas of criminal law, it is also distinct in many respects. Some authors even speak of the autonomy of economic criminal law. Business criminal law is simply versatile, which makes it a specific law, but not an autonomous one.

To sum up, economic criminal law must be guided. However, it must be humanized through instruments such as alternatives to criminalization, since it is in a management mode with regard to its sources. This presentation shows that this criminal law is dynamic, technical and somewhat ideological, even moral. Should it be codified?

Recommendation:

- Should we consider codifying business criminal law, which over time has asserted itself through its very special characteristics, particularly its discourse aimed at professional offenders? The answer is an emphatic yes.
- Establish workshops bringing together professionals, jurists, economists, and politicians to create a criminal law code that will provide the opportunity to establish autonomous business criminal law.

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³³- Article 370 of the Commercial Code defines simple bankruptcy, while Article 374 defines fraudulent bankruptcy.

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