

## Elements of the crime of bankruptcy in Algerian law



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Oualid KEHOUL<sup>1\*</sup>, Elkahina ZOUAOUI<sup>2</sup>

<sup>1</sup> University of Constantine 1, Algeria, [kehoul.oualid@umc.edu.dz](mailto:kehoul.oualid@umc.edu.dz).

<sup>2</sup> University of Constantine 1, Algeria, [elkahina.zouaoui@umc.edu.dz](mailto:elkahina.zouaoui@umc.edu.dz).

### Abstract

The offences of bankruptcy are extremely serious to trade, investment and the national economy, with negative and severe consequences in many areas, which have led countries to work against them.

To address them, in order to strengthen confidence and credit among traders, and to create a secure and conducive economic environment for enterprises and national or foreign investors.

The bankruptcy laws have therefore speedily enacted severe penalties for bankruptcy offenders, in order to deter those who think of their commission, limit their prevalence, foster the interests of all parties and protect trade and the economy in general.

### Keywords

Trade;  
Credit;  
Trust;  
Bankruptcy;  
Investment;  
The national economy;

### الكلمات المفتاحية

التجارة؛  
الائتمان؛  
الثقة؛  
جريمة الإفلاس؛  
الاستثمار؛  
الاقتصاد الوطني؛

### جريمة الإفلاس في التشريع الجزائري

#### ملخص

تمثل جرائم الإفلاس خطورة بالغة على التجارة والاستثمار والاقتصاد الوطني، وذلك بما لها من آثار سلبية وعواقب وخيمة في مجالات كثيرة ومتعددة، الأمر الذي أدى بالدول للعمل على مجابقتها والتصدي لها، من أجل تدعيم الثقة والائتمان بين التجار، وإيجاد بيئة اقتصادية آمنة ومشجعة للمشاريع والمستثمرين وطنيين كانوا أو أجانب.

لذلك سارعت قوانين الإفلاس إلى سن العقوبات الجزائية الصارمة بحق مرتكبي جرائم الإفلاس، لتمثل تلك الجزاءات ردعا لكل من يفكر في ارتكابها، والحد من انتشارها، ورعاية مصالح جميع الأطراف، وحماية للتجارة والاقتصاد بشكل عام.

\* Corresponding author. E-mail: [oualid.kehoul@umc.edu.dz](mailto:oualid.kehoul@umc.edu.dz)

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## **I- Introduction:**

Trade and the economy are one of the fundamental components of civilizations and States. Since time immemorial, regimes have been quick to regulate commercial and economic transactions, and the bankruptcy regime is a model for such regulations and laws. At the beginning of the business, bankruptcy was of a criminal nature and was considered an offence, in which the creditor owned the debtor and ap; s person in satisfaction of its debt, and could sell, slave, lease or kill it. The notion of bankruptcy then evolved for creditors to become a means of executing the debtor and ap; s property.

Bankruptcy, in its legal sense, is not defined in Algerian legislation, but the doctrine has been established as a legal situation in which a trader ends up as a result of his failure to pay his debts, or as a means of collective enforcement of the debtor's assets, which ceased to pay his debts on a due date, leading to the liquidation and sale of his assets in preparation for the distribution of the price to the public, splitting up the amount of the debt into the amount of the debt. (**Nadia Fodil, 2nd edition, 2007, p. 5**).

Bankruptcy is a commercial system that applies to the merchant, and he alone can declare his bankruptcy. However, we find some legislation that applies it to the merchant and non-trader, such as American and German legislation. As for Algerian legislation, we find that it applies bankruptcy to merchants only, whether they are natural or legal persons.

Bankruptcy crimes have a significant impact on commercial transactions and obstruct the wheel of economic life through their negative impact on the national economy, as well as because the issue affects the public and private interest, and every person involved in commercial transactions is harmed by these crimes.

From this standpoint, we pose the following problem: When is bankruptcy a crime, and how did the Algerian legislator regulate bankruptcy crimes?

To answer this problem, we followed the following division:

The first axis: the crime of fraudulent bankruptcy.

The second axis: the crime of bankruptcy by negligence.

### **The first axis: The crime of fraudulent bankruptcy:**

The Algerian legislature has regulated the offences of bankruptcy by means of fraud in commercial law and specifically in chapter I, section 2, of Title III, entitled " In bankruptcy and other offences in bankruptcy " and in section 372 to 374 thereof (**79-57, 26 septeber 1975**).

Article 374 defines it as follows: "Any merchant who, in the event of a cessation of payment, conceals his accounts, squanders or embezzles all or some of his assets, or who fraudulently acknowledges his indebtedness for amounts that he does not owe, is considered to have committed fraudulent bankruptcy, whether this is in his documents on official papers." Or customary pledges, or in his budget.

The definition of bankruptcy as a capital crime also requires a special criminal intent, which is the penniless intent to damage its creditors (**Hani Dowidar, 2006, p. 370**) Therefore, we will discuss its material and moral aspects:

#### **First: The material element of the crime of fraudulent bankruptcy:**

The physical element of bankruptcy by drool means the activity of the criminal actor who is the body of the crime in the outer neighborhood, in a way that cannot be imagined without it, the physical element of this crime is based on the same idea of harming the creditors of the way they mess with the deed and trying to hide that mess. (**Fahd Yousef Al-Kasasbeh, 2011, p. 211**).

According to Article 374, actions Component To park Physical For a crime Fraudulent bankruptcy on way The limitation is represented in:

### **1- Concealment of accounts:**

In the text of article 374 of the Algerian Commercial Code, concealment is intended to conceal the trader.

The one who stopped paying his accounts, which was meant to hide the dealer's books and put them in a secret place so that I couldn't plating to guide them.

And it doesn't matter if Ikon puts it in his house or keeps it in his own shop as long as it's in the two cases, it's stubbornly beyond the reach of the creditors, and the trader's concealment of his books is considered a crime, and if it isn't accompanied by other elements, such as her execution or a fraud procedure, the crime here is of a continuing kind, so it's still there until the creditors are in need of the trade books.

The dealer's accounts, whether it's a medical person or a medical person, mean all his books, especially his mandatory books, as well as his correspondence, which he must hold and keep for 10 years after they've been completed (**Nadia Fodil, 2nd edition, 2007, p. 113**).

A-Commercial books: They are divided into mandatory books and non-mandatory books. The mandatory books, represented by the daily book and the inventory book, are the ones that represent and control the accounts. Therefore, the merchant is considered bankrupt due to fraud if he conceals them.

As for non-mandatory books, there is no crime for concealing or destroying them unless they show the truth of his financial position, such as a warehouse book.

B-Merchant correspondence and commercial documents: It is all correspondence issued by or sent to the merchant, and related to his commercial activity, such as telegrams, notices, and transfers.

### **2- embezzlement or Waste all or part from Assets:**

To understand What is meant? from This is amazing the condition will We touch to all an act on Someone

A- Embezzlement: He means By embezzlement Deportation money The debtor Merchant on Reachable His creditors To prevent them from Use their right in Implementation On him To complete Their rights or Destroy it or Consume it or Give up about him or Sell it Or deposit it in bank Basim person last (**Aziz, 2009**).

and on this It is if He rose Merchant By transfer part from Goods existing in the shop to His house is covered On him This is amazing The crime what Last What is meant? from Transport, Hide Goods Harm With creditors And also If he embezzles part Big from Goods after situation Seals on the shop then Solution Its place Goods Other From the same Type, But from Classify poor, same The thing Also in condition a contract Mortgage Sour Who handles it Merchant before His bankruptcy A little And fall This is amazing The crime whether Benefit bankrupt from Embezzlement Mother Did not benefit from him, And a crime Embezzlement no Located unless after Standing up condition to stop Merchant on paying off And it remains Even a criminal It ends condition Guilty Hand.

B- Dissipation: He means By dissipation Excessiveness in Cashing the money Without benefit, or Act With it In a contrary manner For the reasonable, Like selling At a price Low or Prestige or Consumption Excessive (**Nassif, 1999,, p. 632**).

And we find that The legislator The Algerian may He was affected in Beginning The command By the lawmaker Egyptian With his text on Dissipation in crimes Bankruptcy By negligence And that in text Article 370, paragraph 1, of the Commercial Code except that The legislator The Algerian did not He keeps it on This is amazing the condition And text On her As The crime of bankruptcy By fraud, Change that The legislator did not Specifies Roads that Done In it Process Waste Bankrupt but to leave the field Open A criminal With that all an act from Like him He is wasting with it His assets for his money.

C- Embezzlement and squandering of assets:

The debtor and his assets in this case mean the positive aspect of the debtor and his financial liability, namely its movable property and real estate, and its rights over third parties provided that its misappropriation or misappropriation would damage the group of creditors, and that fraud in the sense of the offence is not considered to be fraudulent if the trading debtor embezzles or destroys a small portion of its assets that does not affect the general security of its creditors or the remainder of its assets is sufficient to satisfy each creditor and his right in addition to the costs of bankruptcy.

**3-Acknowledgment With debts Not in His liability:**

In this picture, the intent is to acknowledge the bankruptcy of a merchant with a view to exaggerating its liabilities and reducing the shares obtained by creditors when money is sold and the price is distributed. In this regard, I note that the punishable act is not merely the existence of a merchant in the liabilities of creditors, but its recognition, which is provided for in article 374 of the Algerian legislature. The delusional religion is recognized both in the trader's books and in its budget as follows:

A-in His books Official :any that He acknowledges Merchant structure Harm With his creditors in Contracts or documents formal, With debts Not in I owe him And be the paper Official according to For the material324from the law Civil (**Order No. 75-58, Of September 26, 1975, No. 78.**)

And example Books Official that maybe For the debtor Merchant Stopped on paying off Acknowledgment In which With debts Not in I owe him, a contract Mortgage the official, a contract Recognition By religion, And others from Contracts.

B-in His pledges Martial: Which Papers that Prepare argument For proof, Which Issued on Merchant without to intervene employee public, sign On it the merchant And determines its history, And it counts Papers Martial argument For proof According to For the material30from the law Commercial The Algerian.

And example This is amazing leaves, Accept it The signage courtesy, or Edit it For bonds Deposit or storage For goods did not to intervene His stores Or submit it Origins to receive For goods did not He receives it.

C- Recognition With debts Fake in His budget: According to For the material10from the law Commercial The Merchant whether He was In person Naturally or morally binding Hold me Inventory book And it restricts in it Origins And opponents his trade, And percentage Profits And losses He meant Preparation his budget, And from him considered as budget Merchant As a survey complete For its origins And his opponents, So what I confess Status Stop it on paying off in His budget-any in notebook Inventory or His other documents Stomach For budget–Obese Imaginary not in I owe him He meant Harm With his creditors, on road Decrease from value Its origins, reduced With that from value Security General , it is It is considered Broke By fraud.

no lesson With value Debt The placebo Confessor with it, But he is punished Merchant when He was from Affair Debt The placebo that Catch Harm In a group Creditors until and that He was An amount Easy.

And after that We touched For cases The three Component For a crime Bankruptcy By fraud, He should that We alert to that it no Required To rise

This is amazing the crime, that Commit Merchant all This is amazing Actions but rather It is enough Bring it on actually solo Of which until We can Saying That he is Bankrupt by fraud.

And it's even that He performs these actions merchant Practice commerce As single, or get up this a partner in one Companies

People commercial, as long that it Enjoy As merchant, The I agree Partner in a company Solidarity for example With debts Not in The company's liability, or hid or Wasted Her calculations or Embezzlement all or part from Its origins, As if it were hid or Wasted His calculations or his own origins, so that it It is

considered Responsible on Debt Company And it is considered funds Company As if it were His money And its debts as if His debts private, as That if what Months bankruptcy Company Stretching for him also.

## **Second: Criminal intent in the crime of fraudulent bankruptcy**

Prepare a crime Bankruptcy By fraud from Crimes Intentionality, so Required For doing it Availability Intention Criminal General In addition He should that He is To the perpetrator He meant private, and this is what We'll touch on mechanism While Next:

### **1-General criminal intent:**

He gets up The general criminal intent in all intentional crimes consists of two elements that must come together, as they do not Punishment There is no crime for whoever commits one of the aforementioned acts if one or both of them lack knowledge and will..

A-Knowledge : Knowledge It is a state of awareness and awareness of the actor that makes him perceive things as they really are, and even... Available Science element in The crime of fraud, the merchant debtor who has stopped paying must be sufficiently aware of the circumstances and elements of the crime.

It is necessary He must know, in addition to being a merchant, that he is in a state of cessation of payment, meaning that he is incapable of fulfillment With his debts At the time it is due and in all other circumstances of the crime.

As for If he lacks knowledge With this Elements ,As if he is not aware that he is in a state of stopping payment, as if He appoints For someone else to manage his business, he is not considered fraudulently bankrupt if he commits one of the above-mentioned acts while unaware that he is bankrupt in Case of stop payment.

B-Will: to get to know Will BaNohapower Psychological You pay the person to commission verb, And headed His activity no It is enough For availability Criminal intent General that He is Merchant Stopped on paying off Scientist With elements And circumstances the crime, but rather He should that Trending His will To commit This is amazing the crime, No get up For this the crime existing if what It disappeared Will he have He was exposed For a loss commodity Due to the collapse of prices or accident during Stop it on paying off, or He was You pay condition necessity to spend His money after Stop it on paying off, As if he was standing up With payment Expenses His treatment or treatment One Individuals His family for example, No maybe in This is amazing the condition that Accuse With bankruptcy By fraud road dissipation Its origins Status Stop it on paying off.

### **2-Special criminal intent:**

Addition In order for this crime to occur, there must be a special intention on the part of the perpetrator, namely the intention to defraud or Intent to harm creditors, and criminal intent is the goal that the actor seeks to achieve through his action.

And he means By fraud in the crime of fraud and defrauding creditors, with the intention of enabling the merchant who has stopped paying Doubt His money and preventing the group of creditors from seizing it, which leads to a decrease in the guarantee of fulfillment of their rights Consequences On his behalf.

While The Algerian legislator did not assume the existence of an intention to defraud the merchant who stopped paying if he made the declaration With debts A fake is not his responsibility, as the Public Prosecution must prove its availability in order to be able to accuse him. directed to him.

And in condition non Existence intention Fraud I have Merchant Stopped on paying off, He was He is Hassan Intention or Be I paid it power Cairo or condition necessity to commission This is amazing Actions No area To hold him accountable, so no It is enough Availability Intention General Who knew? And will To rise a crime Bankruptcy By fraud, but rather He should that He is Merchant The intention Bad It is represented in intention Harm With his creditors.

### **Third: Penalties decided For a crime Bankruptcy By fraud**

The penalty is the penalty imposed on any person found guilty of an offence under the law. Since this is the case, the bankruptcy of a trader who has stopped paying using fraudulent methods has been imposed by the legislature.

#### **1-Penalties The original For a crime Bankruptcy By fraud**

Article 4 of the Algerian Penal Code defines in its second paragraph the original penalties as " Original penalties are those that may be judged without being accompanied by another penalty and penalties. The original applies whether to a medical or moral person.

A-Original penalties for a medical person: With reference to the text of article 383 of the Penal Code, it is stated that anyone found guilty of a crime shall be liable to the death penalty. The person responsible for the commission of the Philosopher ' s Hollow Crime in cases provided for in the Algerian Commercial Code shall be sentenced to one to five years ' imprisonment and a fine of 100,000 to 500,000 d.

And it becomes clear for us Than Previously that The legislator The Algerian did not Yasun Actions Component For a crime Bankruptcy By fraud In law Penalties as he adverb On him in crimes Money the other, But He referred that For the law Commercial from during Texts Materials372to375from him Considering The culprit in This is amazing The crime always It is A merchant.

#### **B-Original penalties for a moral person:**

It was completed Consecration Responsibility Penal For the person Moral Under Law 04-15 amending and supplementing the Penal Code And that in Subject15redundant from him that states on that it «It is the person Moral responsible Penalty for crimes that commit For his account from party His devices or His representative when It states The law is on that".

And just text Subject18redundant"Penalties that apply on Legal person in Material Felonies And Misdemeanors she Cancel a Rama that Equal from Once to five times maximum for the prescribed fine For the person Natural in the law that He is punished on The crime"

#### **2-Penalties Supplementary For a crime Bankruptcy By fraud:**

##### **A-Supplementary penalties for natural persons:**

Deprivation from practice Rights Patriotism And civil And familyIt represents Deprivation From exercising rights Patriotism And Family in:

- Insulation or Exclusion from All Jobs And Positions Generality that she has relationship By crime.

Deprivation from right Election or Nomination And from Pregnancy any badge.

- non Eligibility because It is assistant, sworn, Hide a R, or Witness on any a contract, or Witness Before

Judiciary to on way Inference.

- Deprivation from Right in Pregnancy

- Weapons And in Teaching And in administration school or the service in Education institution As Professor or A teacher or Watching.

- non Eligibility because It is A guardian or Valuable.

- Dropp off rights The state all of which or Some of them.

- Publication of the conviction

B-Supplementary penalties for a legal entity:

- Solution the person Moral.
- close Enterprise or branch from Its branches For a period no exceed 5Years.
- Exclusion from Deals Generality For a period no exceed 5Years.
- confiscation The thing user in commission The crime or It resulted about her.
- to publish And Comment to rule Condemnation.
- the situation under Guarding Judicial Activity that led to The crime For a period no exceed 5Years.
- Prevention from Carrying out the activity or several Activities Professional or Social In a way direct or Change direct, Permanently or For a period no exceed 5Years

**The second axis: the crime of bankruptcy by negligence**

Feliminism is meant to mean that the trader is attributed to an act defined by articles 370 and 371 of the Algerian Commercial Code, which reveals a gross error or negligence of the bankrupt cities in their administration of his trade, and does not cause harm to the creditor and does not require bad intent.

In Algerian law, bankruptcy has been divided into philosophism by philanthropy, which the judge is obliged to impose if the elements of a crime are available, and bankruptcy by cascading or choiring, which the judge may impose if the elements of a crime are available (**Mustafa Kamal Taha, 1997, p. 122**).

**First: cases Bankruptcy by negligence**

The Algerian legislature has distinguished between two types of bankruptcy by default:

Cases in which the court must sentence him, which is known as bankruptcy by default Due process, and cases in which the court may or may not order the penalty are bankruptcy by casino default.

**1-Bankruptcy by obligatory negligence:**

States Article 370 of the Algerian Commercial Code: “Any merchant in the event of bankruptcy is deemed to have committed bankruptcy by negligence.”

Stopping payment occurs in one of the following cases:

- If His personal or business expenses have proven to be excessive.
- if Consume sums Serious in Operations Set up Purely or Operations Fake.
- if He was maybe He rose With purchases To redo sale For less from price market With intention delay Proof Stop it on paying off Or use With the same Intention means Performing For bankruptcy To happen on His money.
- if He rose By stopping on paying off With fulfillment Sunday Creditors Harm In a group Creditors.
- if He was may be Months His bankruptcy twice And it closed The two bankruptcies because of non Adequacy Money.
- if did not It is not may be Catch Machine Accounts Matching To know Occupation Due For importance His trade.

- if He was may be March His profession In violation to ban stipulated on him in the law.

## **2-BankruptcyBy legal negligence or Optional:**

Permissible to be considered to have committed bankruptcy by negligence, every merchant in a state of cessation of payment exists in one of the cases stipulated It is stipulated in Article 371 of the Algerian Commercial Code, which stipulates:

- if He was may be a contract To calculate Others Pledges Proven She is an adult opposite especially with regards To put it when Contracting Without To get paid Opposite her Something He was You pull on Merchant Savage many He kisses her in absence Opposite Fulfillment.

- if He was may be to rule With his bankruptcy Without that He is may be More fulfilling With his obligations on reconciliation former.

- if did not Stand up With a statement I have writer Adjust The court on condition Stop on paying off in time limit15One day Without Legitimate objection.

- if He was did not Bring in person I have agent Bankruptcy in Conditions And appointments specified Without Mind conditional.

- if She was His calculations Incomplete or not Possessed regularly.

## **second: Physical element of bankruptcy by default**

The material element of the crime of bankruptcy by negligence of both types:

1- **The material element of the crime of bankruptcy by negligence The obligatory** :for this Require The legislator The Algerian in Crime Bankruptcy By negligence Being Crime Resultant About a transaction Commercial that Available characteristic Certain in The culprit Which characteristic merchant (**IBN DAUD Ibrahim, 2008, p. 34**), so She listened Subject 370 From the law Commercial on that it "He counts committed For bankruptcy By negligence all merchant to stop on paying off There is In one Cases Next:

- if Proven that His expenses Personality or Expenses His trade excessive,
- If consumed sums Serious in Operations His share Purely or Operations Fake,
- if He was He has risen With purchases To redo Selling For less from price market or Use it means Performing For bankruptcy to get on funds.
- if He rose Stop on paying off With fulfillment Sunday Creditors Harmful In a group creditors,
- if He was may be Months His bankruptcy Twice And it closed The two bankruptcies because of non Enough assets,
- if did not Yes may be Catch Verse Accounts Matching To know Occupation Organize ar For its importance his trade
- if He was may be March His profession In violation to ban stipulated On him in the law

## **2- Corner Materiality of the crime of bankruptcy by criminal negligence:**

Corner The material aspect of the crime of bankruptcy by permissible negligence consists of three elements. The presumed element is the character of the merchant and carrying out behavior in one of the forms stipulated in Article 371 of the Commercial Code, and the causal link between this behavior and the cessation of payment on the part of the accused.

From By extrapolating Article 371 of the Commercial Code, it becomes clear that the material element of the crime of bankruptcy by permissible negligence is achieved by the availability of one of the cases stipulated exclusively and not as an example.

And here The criminal judge has the choice between convicting the perpetrator and sentencing him to a penalty or releasing him, either because of the triviality of the errors attributed to him or because of his situation.

And therefore In this case, the judge has broad discretionary power, because the legislator expressed this form using the phrase: "He may be considered to have committed bankruptcy," while in the case of bankruptcy by compulsory negligence, he used the phrase: "He may be considered to have committed bankruptcy."

### **Third: Corner Moral in a crime Bankruptcy By default:**

#### **1- Corner Moral in a crime Bankruptcy By default The obligatory:**

Corner Moral For a crime Bankruptcy By default The obligatory in the law The Algerian no Requires Existence Fraud or to cheat from Debtor but rather It is enough Availability The error any that Corner Moral get up on Basis The error (**IBN DAOUD Ibrahim, 2008, p. 56**).

And the question Subtracted he Do It is considered The error supposed any merely verification any an act from Actions that form Physical element For crime Prepare Proof To park Physical And the moral together.

So what? Last The legislator The Algerian may be Locate cases Bankruptcy By default The obligatory on way confinement, And a half on that it In case verification one This is amazing Actions stipulated on her in Subject370The The court Be Majira on Declaration By punishment, the The error in This is amazing the crime It is considered supposed.

And therefore Supposedly that Merchant Accept Duty Caution And be careful And care that He should that Committed this Merchant in Project management Commercial.

And the judge Penal For the extraction Corner Moral on him search in Appearances External And actions that from ChaNohaTo reveal on He meant the subject And therefore The the judge Penal Can that Judged Innocence if Show for him despite Proof Physical action And why It is not this verb Accompanied By mistake.

#### **2-The moral element of bankruptcy By default Permissible(Optional):**

If The moral element of the crime of bankruptcy by obligatory negligence was proven by mistake, which is the same case as the moral element of a crime Bankruptcy By legal negligence.

Unless The difference lies in the criminal judge having broad authority to assess whether or not there is error in a crime Bankruptcy By legal negligence.

And from him We conclude that the Algerian legislator did not differentiate between the moral element of the crime of bankruptcy by obligatory negligence and the element Moral For the crime of bankruptcy by negligence, it was considered permissible, and it was considered that the crime of bankruptcy by negligence in both its forms does not necessarily include fraud. From Before the debtor, it is sufficient for the error to exist, and the prosecution has the burden of proof.

And here The legislator did not differentiate between error and negligence, and by analyzing bankruptcy cases by obligatory negligence and passport, We find Some cases included actions that only occurred intentionally, and others involved a group that could occur between them baptism Or unintentional.

And example Actions that only occur intentionally, i.e. the presence of criminal intent, and the merchant's use of effective means for bankruptcy ,As for an example of acts that mediate between

intentional and unintentional \*paying one of his creditors after he stops paying\* here it is available. Corner Intentionally if the merchant knows that he is in a state of stopping payment, but if he does not know, then he does not intend to harm a group Creditors.

**forthly: Punishment The crime of bankruptcy by negligence:**

Convicted by the crime of shorting up, severely punished the perpetrator, some of them. The judge shall prescribe original penalties, but shall not follow them with other penalties, such as those that supplement the original penalties that the judge shall add to the original penalties.

**1-Penalties The original For the crime of bankruptcy By default:**

He is punished The legislator The Algerian on Crime Bankruptcy By negligence Under Provisions Subject383paragraph

The first from Law Penalties Where came In It "all from Prove it His responsibility to commit Crime Bankruptcy in

Cases stipulated On her in the law Commercial The Algerian He is punished:

- on Bankruptcy By negligence With imprisonment from Two months(2)to Two years(2)And PG a Rama Finance ability from 25,000 to 200,000DJ.

And he understands from during This is amazing Subject that The legislator C a Roar He is punished the subject the original For a crime Bankruptcy By negligence.

As she adds Subject384from Law Penalties that it He is punished Partners on This is amazing The crime With penalties stipulated On her in Subject383mentioned previously , until if did not Be for them characteristic merchant, and this is what Shows intention The legislator in Expansion Toward Protection Transactions Commercial.

**2-Penalties Supplementary For the crime of bankruptcy By negligence**

It is represented Supplementary penalties for the crime of bankruptcy due to negligence in publishing the conviction ruling, which is stipulated On him Article 18 of the Penal Code

" If convicted, the court may order that, in cases specified by law, the entire sentence be published or extracted in a newspaper or in connection with it in the places where it is established, all of which shall be at the expense of the convicted person, provided that the publication shall not exceed the amount determined by the conviction for that purpose, and that the period of the instruction shall not exceed one month."

It is required To apply This is amazing The punishment that Be scheduled With a text Frankly in the law, as We find that The legislator The Algerian did not It states on This is amazing The punishment in Material Felonies no Violations But text On her in Misdemeanor materials Just (**Bousaqla, 2007, 4th, p. 262**).

as that Subject388from the law Commercial It requires Paste And publish Provisions Condemnation Outgoing According

To the door Related With bankruptcy And crimes The other in material Bankruptcy on Road sticky to rule Condemnation In its entirety In a place intended To paste Advertisements Legal And publish it in one Newspapers Approved For advertisements Legal.

#### IV- Conclusion:

The Algerian legislature has paid particular attention to the business climate, which is based on confidence, trust and speed. This has created the bankruptcy regime.

From our modest study, it is clear to us that what distinguishes ordinary or simple bankruptcy from criminal bankruptcy is that the latter constitutes an attack on the assets of bankruptcy, and therefore all damage to creditors as a result of fraud, fraud or an act of error or omission constitutes the crime of bankruptcy by fraud or omission.

Although bankruptcy offences fall within the scope of offences against funds, However, the Algerian legislature has left these elements in the perpetrator of the crime to the criminal judge, knowing that they are matters of commerce that I am leaving to the commercial judge, and besides, the legislator has taken the view that the actual bankruptcy in the form of criminal law is sufficient for the criminal judge to stop the trader from paying, regardless of the month of bankruptcy or not.

Despite the efforts made by the Algerian legislature to protect trade relations from disturbances that may result from bankruptcy offences of both kinds, there are still serious shortcomings in the law, which prompts us to propose a set of recommendations, namely:

The Algerian legislature is required to consolidate the offences of bankruptcy by removing the distinction between them, since the principle that brings together the crime of the constituent acts of each crime is the protection of the rights of creditors.

- Algerian lawmakers must also find a balance between the criminal rules in bankruptcy offences and the commercial provisions in bankruptcy.

- The Algerian legislature must, in some cases, take precautionary measures in lieu of criminal sanctions in order to safeguard the enterprise.

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