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A Discussion On Beijing Tourism Branding

Abstract: What brand should be developed for Beijing tourism has been discussed and suggestions on how to communicate it to the world has been raised.

Background

In this globalized world, city join the war of place marketing in order to be attractive for tourists, business, investment and students.

Beijing , situated in northern China, with a population of over 20 million, it is the capital of People's Republic of China (PRC), it is the political,cultural,educational,international communication and Science and Technology Innovation center of the nation. It is the hub of transportation and the home of a great number of colleges and universities including two key universities in China- Peking University and Tsinghua University.

Beijing is a fast-growing, dynamic metropolis with rich tourism resources. As a city of over 3,000 years old, a capital of over 700 years, the city has many historical interesting places such as the Palace Museum,the Summer Palace, the Great Wall and Temple of Heaven Park.They attract many tourists from all over the world.

Beijing is also the host of 2008 Summer Olympic Games and will be the join host city of 2022 Winter Olympic Games.

There are two flows of people, which always make the city very busy and crow-people from different part of China, as the capital of the country, with many good cultural sites, royal museums, universities, headquarters of

international companies and embassy areas. -people from the world for business , sightseeing, governmental and cultural , educational visit. So a lot of international communications, activities, events happens here, they make the city colorful and attractive with international features.

Beijing Tourism Brand Building (Brand pyramid)

In branding research field and practice, brand wheel and brand pyramid are two of the most mentioned and used methods. In this research, Beijing tourism brand pyramid are build and discussed.

The brand pyramid is a tool that builds up a brand logically from an assessment of the destination's main strengths to a distillation of its essence.

Based on expert interview , tourist interview , and online social media analysis,

Beijing tourism branding pyramid is built up.



Analysis of Beijing tourism brand pyramid

Brand essence :
energetic.

Brand value:

Opportunity

- .Capital , heart of political and cultural center;
- .Scientific background and development;
- .Cultural window and communication and innovation center;

Brand personality:

friendly, convenient, huge,crowd,cultural,modern, historical,great wall with nature, secure.

Emotional benefits:

Sense of splendid, sense of historical with east civilization, sense of interesting, sense of fast development.

Physical traits:

Capital of China, forbidden city - with the largest visitor number before Louvre Museum in Paris,Olympics(2008, 2022), the Great Wall - most of presidents will visit the place when they are in Beijing, Hutong, Sanlitun, etc.

Brand essence defines the core essence of the destination.

These are generally single word descriptors. For Beijing Tourism brand, WE choose the word “energetic”.

Brand personality is to identify what is truly unique about the destination. Here for Beijing tourism, we summarized with these personalities as “friendly, convenient, huge,crowd,cultural,modern, historical,great wall with nature, secure.”

Emotional benefits considers how do consumers feel about the place.For Beijing visitors, they get the sense of “splendid, historical , interesting and fast development”.

Physical traits are the main tourism assets, they are the things people like to see and do. In Beijing, the key physical traits include “the Capital of China, Forbidden City - with the largest visitor number before Louvre Museum in Paris, Olympics (2008, 2022), the Great Wall - most of presidents will visit the place when they are in Beijing, Hutong, Sanlitun, etc.”

Beijing Tourism brand slogan

In destination marketing and place marketing, slogan functions as the hook to combine many elements together.

Based on the analysis above, the study suggested Beijing tourism slogan to be “Beijing, an energetic capital of China”.

Suggestions to Beijing tourism brand communication strategies

A good destination brand should have many supporting structure to guarantee the carrying out of the brand over time. In this aspect, Beijing has many advantages. First, Beijing holds many big events such as Beijing Garden Expo 2019 (from April 29 to 7th October). These big events function as the platform for promoting Beijing Tourism. Second, Beijing becomes the friendly city with many other cities such as Paris. This tie could also enhance mutual exchange in cultural and other aspects. Third, Beijing already has city regional sub brand, for instance, one Beijing city district, Beijing Dongcheng district, in this year, 2019, announced its new district tourism brand “East of Forbidden City”, this brand is strong with rich cultural and regional characteristics as in this part of Beijing, east of Forbidden Museum-the former emperor’s palace, the most visited museum in the world, there are many historical and cultural sites

Waiting for explore from visitors.

For Beijing tourism brand management, we should emphasizing green and sustainable environment elements in Beijing as Beijing is famous for its bad air pollution (smog)
Although the air becomes much better now.

Acknowledgement:

Thanks to the students of Beijing International Studies University for their tourist site interview with tourists in each October in Beijing from 2014 to 2018.

References:

<http://r.visitbeijing.com.cn/>

**The Differences between Genders in Academic Perseverance,
Motivations and Their Relation to Academic Achievement in the
University of Tabuk**

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Abstract:

This study aims at studying the differences between the different genders in academic perseverance and motivations and their relations to academic achievements for students in the University of Tabuk. The study used a research tool to study the academic perseverance and another tool to study the motivation. The study sample included 200 students from the university. (42) Students were excluded from the study sample because their questionnaire forms were not completed. Accordingly, the study sample included (158) students, divided into (66) males and (92) females. The study sample was selected randomly to represent the PYP students in the university and in the academic year 1439 – 1440 H. The results of the study presented statistical differences between the genders in the academic perseverance and no statistical differences between the genders in the motivation. The study also indicated that there are no statistical relation between the academic perseverance and motivation for male and females.

Keywords: Academic Perseverance, motivation, gender, academic achievement.

Introduction:

The Process of learning is the heart of the educational and the main goal that the academic system tries to achieve. Since learning is a psychological invisible process takes place as a result of the changes in the perceptive structure of students, it can be identified through the concept of achievement. Achievement is identified as the degree of acquirement that a person can obtain in certain academic subject or field (Hamdan and Alaam 2000).

Students in higher education vary in success and academic achievement in the light of their skills and abilities such as the motivation and academic perseverance. These variables are considered the main forces for the students' behaviors and their responses to the educational process and their academic behaviors like using their mental and physical abilities to achieve excellence and improve their academic level. Ahmad (2008) defines the achievement motive as the individual's desire to succeed and complete the daily tasks in time and in a satisfactory way. Mahmoud (2001) defines it as the increase in the students' ability to achieve the tasks in an excellent way and that leads to improve the academic achievement and achieve high levels in the academic field in addition to the satisfaction status.

Academic Perseverance is considered as one of the most effective forces in achieving success and accomplishment and in improving the level of the academic achievement. It is based on selecting the goals and plans, performing the academic tasks, overcoming the obstacles and using the energy and power in the learning process so that the individual can face the problems through developing ideas, beliefs, opinions and behaviors that lead to improve his achievement and activity (Esonis 2009).

This study came to highlight academic issues like the academic achievement for the students in the University of Tabuk and its relation to the variables of

academic perseverance and motivation especially that there are many studies which tackled the subject of academic achievement and its relation to many variables like achievement and perseverance in different school stages. This study came to shed some light on the subject of academic achievement for the students of Tabuk University and its relation to the variables of academic perseverance and motivation. The problem of the study aims at answering the following questions:

Research Questions:

- 1- Are there any differences between the genders in academic perseverance and academic achievement?
- 2- Are there any differences between the genders in the motivation to academic achievement?
- 3- Are there any relation between the academic perseverance and motivation to academic achievement for the students?

The Study Importance:

The importance of this study lies in the fact that it presents a study to the academics and researchers in the field of the differences between genders in motivation and academic perseverance and their role in developing the positive directions in the educational process. It also encourages efforts and enables students to achieve advanced levels in achievement and success in which the student reaches a level of satisfaction and personal and social harmony. This will also lead students to learn in high spirit. In the light of what has been mentioned the importance of the study lies in the following facts:

- 1- Enrich the educational literature with a theoretical frame about academic achievements and motivation for university students.

2-The results of the study will help in further descriptive and experimental researches in this field.

Definitions:

Academic Achievement Motive: the self-indicating power of self-independence and the ability to do more realistic tasks to achieve success and improve the level of academic achievements. This motive can be measured according to the grades that the students achieve in Tabuk University after answering the Achievement Motive meter.

Academic Perseverance: the students' will to continue accomplishing academic missions, working hard to overcome obstacles and difficulties in order to achieve success. This motive is measured by the grades of the students in Tabuk University and their answers of the Academic Perseverance meter.

Academic accomplishment: refers to the level of knowledge and information that the student acquires or the skills that he develops through learning and studying academic subjects in the university. This motive is measured through the grades that the students achieve in university courses.

Study limits: the study only included the PYP students in Tabuk University in the city of Tabuk in the academic year 1439 – 1440H.

Literature Review:

Motivation Concept:

Henry Mawari – who was the first to deal with the need to accomplish or what was later known as the motivation drive – believes that the need to accomplish refers to the desire to accomplish things in a high level of independency and competency with others and the ability to win over them.

The interest in the subject of motivation has increased in the light of the literature that McClelland and Watkinson presented in the middle of this century. They have managed to come with a new concept for the motivation drive as a potential ability in the personality that defines the individual's ability to reach a certain level of excellence (Al-Absi & Mokhaimer 2014). Lindsey and Fulker (1996) consider the motivation drive as one of the most important drives used in discovering the distinguished students' abilities in the light of the learning outcomes that provide targets for understanding, desire, knowledge and the ability to score high grades (Dawdeen and Jarwan 2012). Emran believes that the function of the motivation drive in developing the learning skills lies in three dimensions:

First: Enforcing the potential energy in the individual.

Second: The individual's response to a certain motive rather than the others.

Third: directing the individual's potentials to a certain target (Yousef 2008).

The motivation drive is considered one of the basic motives that have a direct relation to academic achievements for students through a group of indicators that highlight a motive toward success like enthusiasm, competition, and desire to achieve something. The motivation drive increase the energy that we use to do a certain activity and that enhances the efforts and leads to improve the performance and ability to achieve the personal goals (Saeeda 2013). In the light of the previous definitions the researcher can present a definition to the motivation drive as the personal energy which indicates the self-independence and the ability to do many realistic activities, tasks, and improving academic achievement.

Motivation Drive Characteristics:

Motivation drive has many characteristics that distinguish it like perseverance, orientation to future, ambition level, desire to appreciation, desire to perform, fear of failure, exam anxiety, and others. The motivation

drive is the first motive in the individual's behavior and the human's behaviors are based on it (Abu Hadroos and Faraa 2010).

Dalia Yousef (2008) affirms in her study that the motivation drive is different according to different cultures and societies, and it is determined by the nature of the social harmony for students. It is connected positively with the social growth methods. McClelland studies confirm that the achievement motive grows in cultures and families according to the parental growth style. Families that train their kids early to depend on themselves and improve their skills enhance their kids' abilities and their motivation drive. Other families which make their kids depend on their parents or separated families or families that suffered from the loss of one of the parents present kids with a low motivation drive. The motivation drive is affected also by the place of the kid within the family. The elder kid mostly has a better motivation drive. Veruv distinguishes between two kinds of motivation drives:

First: Self-motivation drive: refers to applying the inner and personal standards in the achievement situations.

Second: Social motivation drive: refers to the standards of others and is measured in the light of these standards. It usually starts in the primary school period (Khalifa 2012).

Stipek defines a point of view that is based on four assumptions. These assumptions enhance the academic achievement motive:

- 1- Motivation ability: individuals participate in tasks so as to improve their abilities in order to feel good after they achieve success.
- 2- Knowledge desire: individuals are curious by nature toward events, activities that are different from their expectations.

3- Self independence: people have instinctual need to decide their fate. They need to be part of activities that they choose to accomplish something.

4- The self-motive: some individuals participate in certain tasks even with the absence of outer motives because they know how to appreciate academic activities by themselves (Renchler 1992).

Atkinson that tendency to achieve success is different between individuals and it is also different within the individual in different situations. This motive is affected by three major factors when any individual performs a certain task:

First: Success motivation.

Second: Success possibilities.

Third: the success enforcing powers (Petri & Govern 2004).

In the light of what has been mentioned, the researcher summarizes the achievement motives as the following:

1- Achievement motive is the first motive of behavior.

2- Achievement motive grows on cultures and families in the light of parental care of children during growth.

3- Achievement motive is based on the social growth methods.

4- The existence of enhancers for this motive like efficiency, knowledge desire, self-independence.

5- This motive highly affects achieving success.

Academic Perseverance:

Zamzami clarifies the fact of perseverance as one of the basic characteristics in the individual's behavior and it also refers to ability to continue efforts

and determination to achieve high levels of achievements in the face of the obstacles, dullness and exhaustion that face individuals (2012).

Self-ability is one of the most important basics of academic perseverance. It refers to the individual's ability to perform certain tasks successfully. It also refers to the continuation of a certain effort to accomplish certain goals. Self-ability and perseverance are indications of academic success and self-independence in order to achieve a certain task despite the obstacles. The individual can develop this motive through hard working in performing tasks (Thomas & Weible 2005).

The researcher defines academic perseverance as the student's desire to continue in achieving academic tasks, working hard and overcoming obstacles to achieve success and improving academic levels.

Personal Characteristics of Academic Perseverance:

Costa believes that the personality of those who have academic perseverance has a group of characteristics like continue doing a certain task till it finish, not giving up easily in front of obstacles and difficulties, the ability to analyze problems and building strategies to tackle these problems, using certain strategies to solve problems, gathering evidences to ensuring the success of the used strategy, using new strategies, knowing all the details of the tasks, knowing what should be done in a certain task, determination, not giving up after failing in a certain task, continue doing a certain job till achieving it successfully and following the decided plan till success (2012).

The level of academic perseverance in achieving goals varies between students. This difference is based on the students' realization and abilities. Academic perseverance is also considered as one of the academic achievement standards. Students vary here in their determination, in

overcoming the difficulties and pressures, in the academic achievements, in the ambition to overcome all the difficulties and pressures, and in their well to achieve success and continue learning (Abdulsalam 2002).

Al-Aswad confirms that the university – as one of any society constituents – plays an active role in the social and educational roles in society, in building the society's abilities, empowering the well to success, and in academic perseverance and academic ambition (2009).

In the light of what has been mentioned, the researcher summarizes the effective elements of the person who aspires to achieve academic perseverance:

- 1- Determination, the ability to not be affected by others and the strong will.
- 2- The level of realization for the individual's abilities, potentials and the positive view of life.
- 3- The university as one of the essential constituents of society plays an active role in developing students' abilities and their well in academic perseverance.

Previous Studies:

Studies about the differences between genders in the Achievement Motive and the academic achievement.

Al-Fahel study aimed at studying the achievement motive the distinguished and average students from the different genders in the first secondary class. It also aimed at recognizing the differences between them. The study sample included (60) students. The results of the study included statistical differences between the averages of the grades for the distinguished students according to the achievement motive in favor of the distinguished students. The results also indicated no statistical differences between the grades of the

average male students in academic achievements and average female students according to the achievement motive. There are also statistical differences between the grade averages of the distinguished and average female students (2000).

The study of Alwan and Attiat aimed at studying the relationship between the inner academic motive and academic achievements for a sample of students in the tenth grade in the city of Ma'an in Jordan. The study sample included (111) female and male students, (62) male and female distinguished students, (49) low average students. The inner developed academic motive meter of Lepper (2005) was used. This meter includes three dimensions which are the challenge preference, the knowledge desire and the independent perfection desire. The study results revealed statistical relation between the inner motive and the academic achievement for students. The study results also revealed statistical differences between the distinguished students and the low average students in favor of students with inner motive. The study had not revealed any differences between male and female students in the inner motive. In addition to what has been mentioned the study also revealed that the results of the students can be predicted through knowing their inner motive (2010).

Gota study aimed at recognizing the effect of parental methods, academic efficiency and academic motives on the academic achievement of the students in Ethiopia University. The research used a tool to study the data which are related to the demographic, parental, self-academic motive and academic achievement motive. The study sample included (2116) female and male students, (763) female and (1353) male students. The students were selected randomly from Addis Ababa University, Cottebe Teachers College and Sodo State University in Ethiopia. The academic results of the students in the second semester of the academic year 2008/2009 were collected and analyzed. The results of the study showed that the parental

authority was the highest familial and parental method used in Ethiopia despite the differences in the used parental methods in the late adolescence stage. The study also indicated that parental and familial methods have an important role in the academic efficiency, the academic motive and the academic achievements of the students. The students who believed that the parental authority had effect on academic achievement believed that the effect was positive on the academic achievement level for male and female students (2010).

Al -Taj study aimed at recognizing the relation between the achievement motive and the academic achievement for students in the Faculty of Education in Sudan University for Science and Technology. The researcher used the descriptive method and the study sample included (100) male and female students. The sample included (42) male and (58) female students in the second, third and fourth academic years. The sample was selected randomly and the researcher used the achievement motive meter to collect data in addition to the results of the students in the academic year (2012 – 2013). The researcher also used the SPSS application to analyze the data through using the T.Test for the samples in addition to Pearson Test for the relations. In addition to these methods the researcher used the Anova Test for analyses to study the differences. The results of the study showed that the achievement motive is high for the student of the faculty of education in Sudan University for Science and Technology. There are also no statistical relation between the achievement motive and the academic achievements of the students. There are no statistical differences in the achievement motive for the students and there are no statistical differences in the achievement motive of the students which are related to the academic level of the students in the second year. In the light of these results the researcher came out with a group of recommendations and suggestions.

Studies about the differences between Genders in Academic Perseverance and Academic Achievements

Al-Aswad study aimed at studying the role of the university in developing the academic ambition of the students toward excellence and inspecting the essential differences which are related to the variables of university, gender, academic level and academic major. The study sample included (272) male and female students from Al-Azhar University and Jerusalem Open University in Gaza. The researcher used a questionnaire about the role of the university in developing the academic ambition of the students toward academic excellence. The results of the study indicated the role of the university in developing the academic ambition of its students had a relative weight of about (67.078%). The study also found some statistical differences in the role of the university in developing the academic ambition of its students toward excellence in favor of Al-Azhar University. There are also some statistical differences in the academic harmony for the two genders in favor of females. The study also confirmed the inexistence of any statistical differences for the role of the university in developing the academic ambition for the students toward excellence according to the following variables: the academic level and the academic major (2004).

Al-Alawneh and Abu-Ghazal study aimed at identifying the relation between the school fairness and the self-academic activity which is considered one of the variables resulted from the perseverance of the students in primary schools in the city of Irbid. The study sample included (591) male and female students from the fourth, seventh, and ninth grades. The results indicated the existence of statistical differences between the levels of self-academic motivation for the students that are related to the variables of gender in favor of female students and in the academic level and in favor of the ninth and seventh grades (2010).

Studies about the Achievement Motive and the Academic Perseverance

The study of Thomas and Weible aimed at studying the statistical differences in the achievement, perseverance, and ability to adjust motives and their influence on the academic achievement between two groups of male African American Students (distinguished – weak). The study used the interview tool to collect data. The study sample included the African American male students (distinguished – weak) in the secondary stage in public schools. The study tested three hypotheses: (1) The inexistence of statistical differences in the average levels and in the achievement motive between the two groups of the students in academic achievement. (2) The inexistence of statistical differences in the average levels between the two groups of the students in the academic achievements. (3) The inexistence of statistical differences in the levels of the academic adaptation between the two groups of the students in the academic achievement. The study used the (T) test and differences analysis in interviews to reach the results. The results showed that there are no statistical differences in the motives of perseverance, and the ability to adopt for the African American male students in the high schools. These results are based on a group of factors such as: (1) The parental continuous role. (2) The limits and discipline. (3) Love, support, and communication with the kids. (4) The solitude and the society's financial status. The study recommended doing further studies about the levels of the achievement, perseverance, and ability motives and the ability of academic adaptation for the different levels of students (distinguished – average – low) for females and males and in the rural and civilized areas.

Comments on Studies:

After studying the previous studies the researcher found the following:

1- The studies of both (Al-Fahel1999), (Alwan 2010), (Jute 2012) and (Al-Taj 2014) discussed the differences between the two genders in the relation motive with the academic achievement. Al-Fahel study indicated that there

are differences between the genders in favor of females and in the study of Jute the motive was positive in the level of academic achievement. Alwan study, on the other side, indicated that there are no statistical differences according to the gender factor.

2- (Al-Aswad 2009) and (Alawaneh 2010) studies discussed the differences between genders in the academic perseverance relation with academic achievement. Al-Aswad study indicated that there are differences between genders in the academic perseverance toward academic excellence - (High academic achievement) for females. Alawneh study discussed the academic justice including the academic results and their relation to academic perseverance between the different genders. The differences in academic perseverance were in favor of the females.

3- Thomas & Weible study (2005) discussed the relation of the motive and academic perseverance with the academic achievements for the African American students. The study revealed that that there is a relation between the students with low academic achievements and students with high academic achievement. The study indicated that there are no statistical differences in ability, perseverance and ability of the African America distinguished male students and it did not discuss the differences between the genders.

The Research Methodology:

The study followed the descriptive study which is based on using the perseverance and achievement motives of Dr. Farooq Abdelfattah Moussa.

The Study Sample

The study community included the PYP students of Tabuk University in the city of Tabuk. The study included (5576) students in the academic year 1439 – 1440 H. The study sample included (200) students, (42) male and

female students were excluded because their questionnaire was not completed. Accordingly, the sample became (158) students divided into (66) male and (92) female. The sample was chosen randomly to represent the students of the PYP in Tabuk University in the academic year 1439 – 1440 H.

The Study Tools

The study applied Dr. Farooq's Abdelfattah Moussa achievement and perseverance academic motives of the undergraduate studies in the Egyptian environment on a pilot sample included (50) PYP students in Tabuk University. Validity and stability were taken as measurement standards. The validity of this tool to be applied on the Saudi environment was confirmed. The validity and stability values of the research are in the following section:

First: Stability Measurement:

1- Stability coefficient in Alpha Cronbach.

Second: Validity Measurement:

1- Internal Consistency Validity.

First: Stability:

Alpha Cronbach coefficient.

The researcher studied the Alpha coefficient for the total result and for the sub dimensions of the standard. It is a general formula includes all the other formulas for studying stability (Safwat & Farag 2012). The results included the following:

Table (5-2) Alpha Stability Coefficient for Academic Perseverance and Achievement Motive.

N	Value	Quantity	A. S. C
1-	Academic Perseverance	20	0,724
2-	Achievement Motive	28	0,808

Second: Internal Consistency Validity:

The internal consistency is one of the methods to count the validity of the structure. The internal consistency for a certain test can be counted through the relation of this term with the total grade of the test (Safwat & Faraj 2012).

N	Value	Quantity	Correlation Coefficient
1.	Academic Perseverance	20	880,0: 0,541
2.	Achievement Coefficient	28	0,33: 0,717

* Indicative at: 0, 01

Results:

First: The differences between the two genders in academic perseverance or the achievement motive in academic results.

1- There are statistical differences between the two genders in academic perseverance in academic achievements.

2- There are no statistical differences between the genders in the achievement motive for academic achievement.

The Differences between the two kinds in relation to the Study variables

Sample Variable	Male N=66		Female N=92)T(Referent Level
	M	P	M	P		
Academic Perseverance	50.44	2.808	48.94	3.706	,2776	Referent

Achievement Motive	59.66	11.677	58.47	9.474	,711	Non – Referent
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Accordingly, we can notice that there are differences between the two genders in academic perseverance indicative in 0,05 and the indicative is in the direction of males.

Second: there is no relation between the academic perseverance and the academic motive with the academic results for both males and females.

Linear correlation factors for Pearson between the academic perseverance, achievement motives and academic achievement for students (male – female).

Variables	Academic Achievement for Males	Academic Achievement for females
Academic Perseverance	-090-	-126-
Achievement motive	007	-085-

The table indicates that there is no significant correlation between academic perseverance and achievement motive with academic results (males-females). Through answering the first, second and third questions we find the following:

1- The study agreed in the result of the first question with all of the following studies: (Al-Aswad 2009) and (Alawneh 2010). The study discussed the differences between genders in relation to academic perseverance and academic achievement toward the academic perseverance (high academic results) in favor of females. The study also presented this difference in favor of females and might be related to the fact that this study took place in KSA where there is no mixing between the genders in the classrooms through which they can complete together.

2- The results of the study in the second question agreed with Alwan study. It indicated that there are no differences between males and females in the

achievement motive. Al-Taj study mentioned that there are no statistical differences related to the gender variable.

3- The results of this study agreed in the third question with the study of Thomas & Weible (2005). It discussed the relation of the achievement motive with academic perseverance and their relation to academic achievement for African American students. The study revealed the relation between low achievers and high achievers. It mentioned that there is no statistical indicator in the motive, perseverance, ability motives for the distinguished African American students in schools.

Study Recommendations

In the light of the research results, the researcher found the existence of differences in academic perseverance between the genders. The studies agreed with the previous studies and the researcher recommends studying the academic missions that distinguish genders, academic obstacles, for the two genders through the educational program which help the two genders in improving the academic perseverance for them.

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**PATIENTS' LANGUAGE DEFICIENCY: A CAUSE OF
MEDICAL PRACTITIONERS' DILEMMA**

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ABSTRACT

This study aimed to analyze the patients' language deficiency to determine whether it is a cause of medical practitioners' dilemma and how the action is taking place in maintaining the good patient-medical practitioner relationship. Therefore, the individual's ability to speak and comprehend English language plays essential role in this study. This is a descriptive research design utilizing survey questionnaire. The population was composed of fifty-one private medical practitioners. Descriptive statistics using frequency distribution, percentage, mean, standard deviation, averaging and descriptive ratings based on 5-point scale were utilized. On the extent of experienced dilemma due to patients' language deficiency, the five indicators obtained a mean of 3.43 interpreted as moderate extent. In this situation, language deficiency is the most obvious barrier in communicating the prescription to the concern. In the light of the foregoing finding and conclusion, the following were recommended: Language deficiency should be given utmost consideration in order to attain smooth delivery of medical services and harmonious relationship between the patients and medical practitioners. Because communication is more than a cognitive process, research suggests that education must highlight its

significant role of improving the capacity of individuals and communities by bridging the gap between language deficiency and language proficiency.

Keywords: medical practitioners, a cause of dilemma, patients' language deficiency, medical services

Introduction

Most physicians and all involved in medical services want to deliver appropriate care. However, there are reasons that caused this decision complicated for them and conditions in which the decision made them to feel discomfort. There are many aspects thought to be significant about the patients that include their maturity, societal background, social group and educational attainment, but the most sensitive factor is the patients' communication problem because of its effect on prescribing decision. The concerns on maintaining the connection between medical practitioner and patient and the variety of approaches, insights and practices that he/she applies in giving prescription rely on how they can make their patients understand. In order to effect appreciable change in prescribing, clinical/medical terms must first be understood and tackled (Fuchs, 2011).

Not only in prescribing where skillful communication is required, but also critical when a medical practitioner has to bring terrible news such as an incurable analysis or diagnosis, undergoing painkilling care, recognizing the breakdown or insufficient access of offered therapy, or clearing up side effects that are irremediable. How a medical practitioner communicates these diagnoses to his/her patient while preserving the patient's hope is his/her most challenging task. As the medical practitioner gives dreadful information in a direct and truthful approach, he/she must ensure that patient can gently accept it. It can only happen when communication is facilitated

appropriately (Monden, Kimberley R. PhD., Gentry, Lonnie MTh. and Cox, Thomas R. PsyD., 2016).

Deficiency in language has been considered a barrier to this clinical communication resulted to frequent patient dissatisfaction. Therefore, the quality of medical care depends on the interaction of the patient and the medical practitioner. While it is true that achieving patients' satisfaction in the delivery of medical care must be the medical practitioners utmost concern, it is also important to determine their problem concerning patients' language deficiency to have a full grasp on how they put forth a solution to such problem. The patient's ability to speak and comprehend the language being used plays essential role in this study to make known the factual depiction of its effects on medical practitioner-patient communication and to help in finding out whether it can play a significant part to the success in today's educational scheme (Horber, Dot, Langenau, Erik E. and Kachur, Elizabeth, 2014).

Literature Review

Medical patients with language deficiency demonstrate attitudes that obstruct effectual medical care. These manners characteristically stir up unconstructive feelings in caregivers, and this aversive reaction leads to the label of such patients as "difficult." For instance, if the patient cannot express clearly what he/she wants/feels a medical practitioner will become irritated so he/she avoids to get in touch with the patient, or even refuses to give medication (Jacobs, Elizabeth, Chen, Alice HM., Karliner, Leah S., Gupta, Niels Agger and Mutha, Sunita, 2006). In this case, the recipients' difficulty of understanding the intended meaning of the communication is considered as the cause of failure.

The purpose of medical practitioner is to obtain/give aid for disease in a manner that no added injury is made to the patient, particularly in his/her susceptible condition. The patient should be supported to return back to a situation of individual fairness, free from reliance by bringing back the patient's self-determination. The therapeutic connection goes into a calculus of morals in which the value for the right to accuracy of the patient is evaluated against weakening the restoration of power by the truth (Del Vento, Agustin, Bavelas, Janet, Healing, Sara, MacLean, Grant and Kirk, Peter, 2009). Nevertheless, it is imperative to keep in mind at this time that "truth will always prevail" that is why it should be appropriately expressed in a language accepted and understood by the medical practitioner and patient.

Based from the study of Carrasquillo, Orav, Brennan and Burstin (2000) concerning the effect of communication problems on patients' approval about hospital service department, fifteen percent of the patients were reported non-speakers of English. Based from the overall rating of patients' approval, only fifty two percent of non-English-speaking patients were satisfied as compared with seventy one percent of English speakers. Among non-English speakers, fourteen declared that they would not like to be confined in the same emergency department if they had another problem requiring hospital care. In multivariate analysis, it found out that non-English speakers were significantly less likely to be satisfied and significantly less willing to return to the same emergency department and were significantly more likely to report overall problems with care. Strategies to improve satisfaction among this group of patients may include appropriate use of professional interpreters and increasing the language concordance between patients and providers.

Also, Bartlett, Blais, Tamblyn, Clermont and MacGibbon (2008) pointed out in their study that language deficiency had tremendously affect

communication resulted to the decrease in the delivery of quality care. Through their randomly selected 20 general hospitals in the province of Quebec, it was interpreted that patients with communication problems appeared to be at highest risk for preventable adverse events. An adverse event is an unintended injury or complication caused by delivery of clinical care rather than by the patient's condition. The occurrence of adverse events had been well documented; however, identifying modifiable risk factors that contribute to the occurrence of preventable adverse events is critical. Studies of preventable adverse events have focused on many factors, but researchers had evaluated the role of patient characteristics. Patients' communication problems are estimated to affect 5%–10% of the general population in their study. In addition, patients with communication problems are already at increased risk for depression and the presence of one or more additional diseases co-occurring with a primary disease.

Another study disclosed that in the hospital, a bad translation can destroy a life. Translating from one language to another is a tricky business, and when it comes to interpreting between a doctor and patient, the stakes are even higher. It happened to a patient who was taken to a South Florida hospital. The family apparently used a Spanish word which means that you take in something in your body like food, drug or whatever thing that has made you ill."The members of the family had in mind that their son had eaten something that probably have led his signs. However the interpreter decoded their Spanish as "intoxicated." "So the doctor instantly completed an analysis of drug overdose. Several days later, the health panel pointed out that patient's sickness was really bleeding in his brain. But by then he'd experienced permanent impairment. A person affected by paralysis of all four limbs was the guy dreadful condition (Vencil, 2014).

Research Context

The search strived for providing much-needed information with respect to the patients' personal profile, the extent of the situations' effects on medical practitioners' dilemma, problems encountered associated with patients' language deficiency in maintaining medical practitioner-patient relationship, perceived effects of the problems in delivering medical services and the solutions provided by the medical practitioners in addressing the dilemma despite patients' language deficiency. In attaining these, questionnaire was utilized and further supported or explained by interview.

This research was limited only to the level of medical practitioners' dilemma due to patients' language deficiency. This group of people could give better insights with respect to this matter. Thus, the population of the study was confined to the purposely selected private medical practitioners who are working within the scope of the researcher's knowhow and are known by some of the researcher's contemporaries/friends so gathering and retrieval of data were made easy. Furthermore, most of the medical practitioners' patients are expatriates; it is expected that different languages are being used in dealing with them. How did the respondents overcome the dilemma despite language deficiency was one of the concerns of this study.

Methods

Descriptive method will be utilized in carrying out this research. Description, recording, analysis and interpretation of phenomena, those already exist; will be involved in this procedure (Van Dalen, 2004). It is also a process of investigation involving collection of data in order to find answers to the questions concerning the recent status of the subject of the

study. The strong point of descriptive study lies in describing the status of observable facts as well as identifying relationship between and among the variables since it is not simply a customary fact finding activity (Fraenkel, 2003).

Findings

Extent of experienced dilemma due to patients' language deficiency.

Table 1 shows the mean, standard deviation and description taken from the responses of fifty-one (51) private medical practitioners (with 3, 2 and 1 as minimum ratings and 5 and 3 as maximum) on their perception about the extent of experienced dilemma due to patients' language deficiency.

The respondents pointed out the standard deviation of the following: delivering diagnosis .904, giving prescription .816, declaring breakdown or insufficient access on offered therapy .775, clearing up side effects .730 and immediate reminders .568. The findings revealed that immediate reminders (indicator 5) obtained a set of data values closer to the mean. However, clearing up side effects (indicator 4) and declaring breakdown or insufficient access on offered therapy (indicator 3) attained a lesser dispersion of a set of values from the mean while delivering diagnosis (indicator 2) garnered a greater dispersion of a set of data values from the mean. The results proved that; the smaller the computed standard deviation, the lesser the quantified amount of variation of a set of data values or the closer that set of data values to the mean; while the larger the computed standard deviation, the greater the measured dispersion of a set of data values. Combining the five indicators revealed an overall standard deviation of .759.

Table 1: Extent of Experienced Dilemma due to Patients' Language Deficiency as Perceived by the Respondents

Indicator	N	Minimum	Maximum	Mean	Std. Deviation	Description
1.Giving Prescription	51	2	5	3.88	.816	Great Extent
2.Delivering Diagnosis	51	2	5	3.94	.904	Great Extent
2.Declaring Breakdown or Insufficient Access on Offered Therapy	51	2	5	3.14	.775	Moderate Extent
3.Clearing Up Side Effects	51	3	5	4.45	.730	Great Extent
4. Others, please specify (Immediate Reminders)	51	1	3	1.73	.568	Lesser Extent
Overall				3.43	.759	Moderate Extent

The results of respondents' ratings on the extent of experienced dilemma due to patients' language deficiency are presented in their computed mean. Obviously, clearing up side effects 4.45, delivering diagnosis 3.94 and giving prescriptions 3.88 were all perceived as great extent. On the other hand, moderate extent was the descriptive rating derived from 3.14 for declaring breakdown or insufficient access on offered therapy and lesser

extent from 1.73 for immediate reminders. The overall result taken from the five indicators obtained a mean of 3.43 interpreted as moderate extent.

Medical Practitioners usually provide prescription to cure a diagnosed disease/illness. In this situation, language deficiency is the most obvious barrier in communicating the prescription to the concern. If a person perceives things differently, then, it is a big problem in clinical communication (Medical Prescription, 2018).

In delivering diagnosis, a threat is expected when it is connected with language deficiency—an obstacle to effective communication - because the cited situation hinders the correctness of exchanging messages of the people concerned (World Health Organization, 2012). On the other hand, Medical practitioner's declaration of failure **or lack of available treatment** can be devastating to the patient, but it can be open-mindedly accepted by the concern if the information is well-channeled (Pheage, 2016).

Most of all, in giving Healthcare services (where the dangers are generally elevated and situations are more vague and difficult) nearly every medical practitioner who communicates with patients has to converse information on possibility and apply particular approaches that can help out to cure this paucity and develop patients' thoughtful acceptance of risks (Paling, 2003).

Range of the problems met associated with patients' language deficiency. Table 2 presents the problems encountered associated with patients' language deficiency. The level of each problem was rated based on the given 5-point scale such as: all of the time, often, sometimes, rarely and never.

The analysis of the data was known through the mean score obtained from the medical practitioners' responses on the encountered problems. The outcomes were presented according to each acquired rank in chronological order. The following were: patients' reluctance in dealing with the medical practitioners (3.94; 1st), awkwardness (3.75; 2nd), patients' hesitation in abiding medical practitioners' instructions (3.14; 3rd), lack of attention to each other's expression of concern (1.98; 4th), time, compassion and understanding are inappropriately dispensed (1.94; 5th), exhibit uncaring attitudes that's why intended actions/responses are not given right away (1.88; 6th), other unpleasant approach (1.73; 7th), immediately request for replacement to match each other's interest (1.41; 8th), intimidation (1.33; 9th), tendency to become doubtful (1.25; 10th) and coarseness is evident (1.14; 11th).

Some problems (1 and 10) were frequently and rarely (3, 4, 5 and 11) experienced, while problem no. 2 was sometimes met due to patients' language deficiency. However, there are problems that never happened such as: 6, 7, 8 and 9.

A great deal of patient disappointment and numerous grievances are caused by the failure in maintaining medical practitioner-patient attachment brought by the difficulty in understanding what the medical practitioner intends to happen. In some cases, several medical practitioners have a tendency to overrate their skill in communication that they neglect patients desire to be heard and understood in order to at least lessen their sufferings (Fong Ha, 2010). The present study concerns on the capability of the respondents in understanding their clients despite language deficiency in order to maintain medical practitioner-patient trust to avoid frustrating result.

Table 2: Range of the Problems Met Associated with Patients' Language Deficiency

On Patient-Medical Practitioner Relationship

Indicator	Mean	Rank	Descript
Problem 1	3.94	1st	Often
Problem 2	3.14	3rd	Sometim
Problem 3	1.94	5th	Rarely
Problem 4	1.88	6th	Rarely
Problem 5	1.98	4th	Rarely
Problem 6	1.41	8th	Never
Problem 7	1.25	10th	Never
Problem 8	1.14	11th	Never
Problem 9	1.33	9th	Never
Problem 10	3.75	2nd	Often
Problem 11	1.73	7th	Rarely

Perceived effects of the problems met in delivering medical services.

Table 3 shows the mean, standard deviation and description taken from the fifty-one (51) respondents on their perceived effects of the problems met in delivering medical services.

Table 3: Perceived Effects of the Problems Met in Delivering Medical Services

Indicator	N	Mini mum	Maxi mum	Mean	Std. Deviation	Descripti
Problem 1	51	2	5	3.55	.879	More Serio
Problem 2	51	2	4	3.16	.612	Moderate Serious
Problem 3	51	1	3	1.63	.599	Less Serio
Problem 4	51	1	2	1.37	.488	Not a Prob
Problem 5	51	1	4	2.51	.834	Moderate Serious
Problem 6	51	3	5	3.63	.720	More Serio
Problem 7	51	1	2	1.27	.451	Not a Prob
Problem 8	51	1	4	2.82	.865	Moderate Serious
Problem 9	51	1	3	1.55	.783	Less Serio
Problem 10	51	1	3	1.35	.594	Not a Prob
Problem 11	51	1	3	1.43	.539	Not a Prob
Overall				2.21	.260	Less Serio

On findings concerning the effects of the problems met in delivering medical services (with 3, 2 and 1 as minimum ratings and 5, 4, 3 and 2 as maximum), the respondents revealed the standard deviation of the following: the intended meaning of whatever forms of communication is distorted, as a result; medical practitioners' prescriptions fail to reach its desired purpose .451, medical practitioners' response to an urgent situation is interrupted .488, others (delay of services) .539, fail to exercise their respective role in the fulfillment of medical/health services .594, medical/health routines are disrupted .599, appropriate medical/health behaviors are not easy to promote .612, impending problems are hard to relate .720, fail to comply on medical practitioners' instructions .783, misinterpretation of the given medical/health instructions is experienced .834, lessen the patients' ability to cooperate .865 and good guidance and assistance are difficult to provide .879. The findings revealed that indicator 7 (the intended meaning of whatever forms of communication is distorted, as a result; medical practitioners' prescriptions fail to reach its desired purpose) obtained a set of data values closer to the mean. However, indicator 4 (medical practitioners' response to an urgent situation is interrupted) attained a lesser dispersion of a set of values from the mean while indicators 1 (good guidance and assistance are difficult to provide) and 8 (lessen the patients' ability to cooperate) both garnered a greater dispersion of a set of data values from the mean. The results proved that; the smaller the computed standard deviation, the lesser the quantified amount of variation of a set of data values or the closer that set of data values to the mean; while the larger the computed standard deviation, the greater the measured dispersion of a set of data values. Combining the eleven indicators revealed an overall standard deviation of .260.

The outcomes of respondents' ratings on the perceived effects of the problems met in delivering medical services are shown in their computed

mean. Evidently, indicators 1 (good guidance and assistance are difficult to provide - 3.55) and 6 (impending problems are hard to relate - 3.63) correspondingly perceived as more serious. Whereas indicators 5 (misinterpretation of the given medical/health instructions is experienced – 2.51), 8 (lessen the patients’ ability to cooperate – 2.82) and 2 (appropriate medical/health behaviors are not easy to promote – 3.16) obtained moderately serious descriptive rating. However, less serious was the descriptive rating derived from 1.55 for indicator 9 (fail to comply on medical practitioners’ instructions) and from 1.63 for indicator 3 (medical/health routines are disrupted); while not a problem from 1.27 for indicator 7 (the intended meaning of whatever forms of communication is distorted, as a result; medical practitioners’ prescriptions fail to reach its desired purpose), from 1.35 for indicator 10 (fail to exercise their respective role in the fulfillment of medical/health services) from 1.37 for indicator 4 (medical practitioners’ response to an urgent situation is interrupted) and from 1.43 for indicator 11 (others-delay of services). The overall result taken from the eleven indicators obtained a mean of 2.21 interpreted as less serious.

There are situations that medical practitioners successfully dealt with; however there are also cases where they failed in attaining the main goal in communication and in achieving interpersonal relationship skills the facility to collect facts in order to provide precise diagnosis, give suitable advice, confer curative information, and create thoughtful interaction with patients (Institute for Healthcare Communication, 2011).

Effectiveness of remediation applied in addressing the dilemma despite patients’ language deficiency. Table 4 shows the mean, standard deviation and description taken from the fifty-one (51) respondents (with 4, 3, 2 and 1 as minimum ratings and 5, 4 and 2 as maximum) on their perception about

the effectiveness of remediation applied in addressing the dilemma despite patients' language deficiency.

Table 4: Effectiveness of Remediation Applied in Addressing the Dilemma Despite Patients' Language Deficiency

Indicator	N	Mini mum	Maxi mum	Mean	Std. Deviation	Descripti
Remediation 1	51	4	5	4.69	.469	Very Much Effective
Remediation 2	51	2	5	3.20	.530	Moderate Effective
Remediation 3	51	1	5	2.84	.809	Moderate Effective
Remediation 4	51	1	4	2.86	.825	Moderate Effective
Remediation 5	51	1	5	2.69	1.122	Moderate Effective
Remediation 6	51	3	5	3.75	.796	More Effective
Remediation 7	51	3	5	4.53	.644	Very Much Effective
Remediation 8	51	3	5	3.78	.757	More Effective
Remediation 9	51	1	4	2.24	.619	Less Effective

Remediation 10	51	1	4	2.18	.713	Less Effect
Remediation 11	51	1	2	1.35	.483	Not at A
Overall				3.10	.245	Moderate Effectiv

On obtained data relating to the effectiveness of remediation applied in addressing the dilemma despite patients' language deficiency, the respondents depicted the standard deviation of the following: ask a relative/friend to interpret the information in their own language .469, others (beneficial assistance) .483, ask a coworker who speaks the same language with the patient to translate the prescription .530, capture a conversation in which the content focuses on the risks to the patients to avoid untoward incident .619, medical practitioners must know when they are most likely to arise and what their specific nature is to prepare the solutions ahead .644, a certain department is assigned to mitigate the problem of obtaining conversations on patients' concern .713, medical practitioners undergo language training programs .757, medical practitioners are likely to have mastered more than two languages excluding English .796, provide a prescription that is already translated to a desired language .809, secure list of contacts to rapidly disseminate information concerning patient's condition .825 and ensure that accurate interpreter is always available 1.122. The findings revealed that indicator 1 (ask a relative/friend to interpret the information in their own language.) obtained a set of data values closer to the mean; while, indicator 11 (others-beneficial assistance) attained a lesser dispersion of a set of values from the mean. On the other hand, indicator 5 (ensure that accurate interpreter is always available) garnered a greater dispersion of a set of data values from the mean. The results proved that; the smaller the computed standard deviation, the lesser the quantified amount of variation of a set of data values or the closer that set of data values to the

mean; while the larger the computed standard deviation, the greater the measured dispersion of a set of data values. Combining the eleven indicators revealed an overall standard deviation of .245.

The outcomes of respondents' ratings on the effectiveness of remediation applied in addressing the dilemma despite patients' language deficiency are shown in their computed mean. Evidently, indicators 1 (ask a relative/friend to interpret the information in their own language-4.69) and 7 (medical practitioners must know when they are most likely to arise and what their specific nature is to prepare the solutions ahead-4.53) perceived as very much effective, whereas; not at all effective was the descriptive rating derived from 1.35 for indicator 11 (others-beneficial assistance). In relation to indicators 8 (medical practitioners undergo language training programs-3.78) and 6 (medical practitioners are likely to have mastered more than two languages excluding English -3.75) were equally perceived as more effective; whereas, moderately effective was the descriptive rating derived from 3.20 for indicator 2 (ask a coworker who speaks the same language with the patient to translate the prescription), from 2.86 for indicator 4 (secure list of contacts to rapidly disseminate information concerning patient's condition), from 2.84 for indicator 3 (provide a prescription that is already translated to a desired language) and from 2.69 for indicator 5 (ensure that accurate interpreter is always available). Unlike indicators 9 (capture a conversation in which the content focuses on the risks to the patients to avoid untoward incident -2.24) and 10 (a certain department is assigned to mitigate the problem of obtaining conversations on patients' concern.-2.18) in which less effective was respectively attained. The overall result taken from the eleven indicators obtained a mean of 3.10 interpreted as moderately effective.

In this situation, medical practitioners are aware that patients' satisfaction is being judged as a main pointer of their wide-ranging proficiency. Medical

practitioners help regulate patients' emotions, facilitate comprehension of medical information, and allow for better identification of patients' needs, perceptions, and expectations. Patients' agreement with the medical practitioners about the nature of the treatment and need for follow-up is strongly associated with their recovery (Bowen, 2015).

Conclusions

In view of the findings presented, the following conclusions are drawn:

Extent of experienced dilemma due to patients' language deficiency. The results proved that; the smaller the computed standard deviation, the lesser the quantified amount of variation of a set of data values or the closer that set of data values to the mean; while the larger the computed standard deviation, the greater the measured dispersion of a set of data values. Combining the five indicators revealed an overall standard deviation of .759.

Range of the problems met associated with patients' language deficiency. Some problems (1 and 10) were frequently and rarely (3, 4, 5 and 11) experienced, while problem no. 2 was sometimes met due to patients' language deficiency. However, there are problems that never happened such as: 6, 7, 8 and 9.

A great deal of patient disappointment and numerous grievances are caused by the failure in maintaining medical practitioner-patient attachment brought by the difficulty in understanding what the medical practitioner intends to happen. In some cases, several medical practitioners have a tendency to

overrate their skill in communication that they neglect patients desire to be heard and understood in order to at least lessen their sufferings.

Perceived effects of the problems met in delivering medical services.

The overall result taken from the eleven indicators obtained a mean of 2.21 interpreted as less serious.

There are situations that medical practitioners successfully dealt with; however there are also cases where they failed in attaining the main goal in communication and in achieving interpersonal relationship skills the facility to collect facts in order to provide precise diagnosis, give suitable advice, confer curative information, and create thoughtful interaction with patients.

Effectiveness of remediation applied in addressing the dilemma despite patients' language deficiency.

The overall result taken from the eleven indicators obtained a mean of 3.10 interpreted as moderately effective. In this situation, medical practitioners are aware that patients' satisfaction is being judged as a main pointer of their wide-ranging proficiency. Medical practitioners help regulate patients' emotions, facilitate comprehension of medical information, and allow for better identification of patients' needs, perceptions, and expectations. Patients' agreement with the medical practitioners about the nature of the treatment and need for follow-up is strongly associated with their recovery.

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Correlation of Reading Comprehension and Writing Ability of Grade 7 Students of Emilia Ambalada Poblete National High School: A Basis for Intervention

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Abstract

Reading and writing are two skills that are oftentimes inseparable from each other. In fact, these two skills are part of our everyday lives. This led the researchers to conduct the study “Correlation of Reading Comprehension and Writing Ability of Grade 7 Students of Emilia Ambalada Poblete National High School: A Basis for Intervention”. The researchers aimed to know the correlation between reading and writing through assessing the students’ reading and writing proficiency using a Multiple Choice Test for their reading proficiency and an Essay Type Test for their writing ability. In this study, the researchers adopted and modified the reading text from www.ereadingworksheets.com. Through this standardized test that the researchers adopted and modified, they were able to determine the reading and writing proficiency of the students which became the basis of an appropriate intervention. The data gathered revealed that there is a significant relationship between students’ reading comprehension and writing skills. Furthermore, the result showed that majority of the respondents’ reading and writing proficiency are below and not appropriate for their grade level; thus, the need for an intervention.

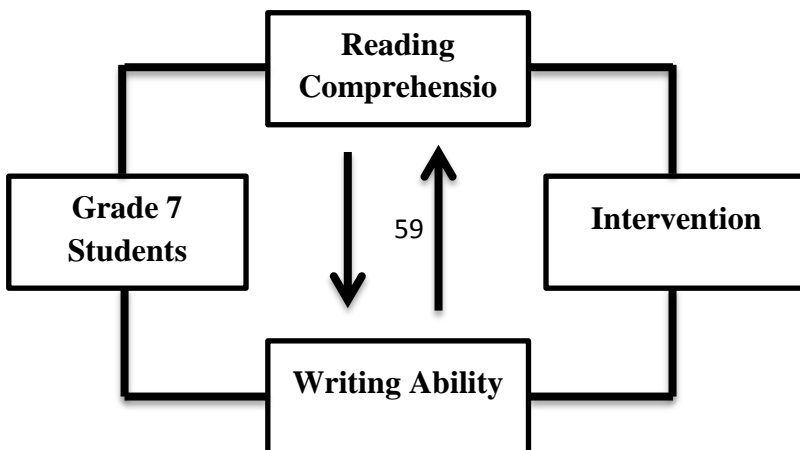
Keywords: writing ability, reading comprehension, intervention, correlation

Introduction

In our everyday life, reading and writing are always part of it. Whether we are at home or at school, these two cognitive activities are really inseparable. When we are at home, reading could be the first thing that we usually do, we could even guess that the very first thing that everyone (not just millennial) do upon waking up is to check messages from smart phones or e-mails on personal computers or any gadget, thus, it is reading. After reading all of those text messages or e-mails, one tends to compose immediately a message to reply, thus, it is writing. At school, reading and writing are inseparable skills. There would be a lot of reading materials and writing activities that students face regardless what their grade levels are.

Thus, the inquiry on the relationship of these two skills. Is there significant relationship between reading and writing? Is it safe to conclude that when one is good in reading, he or she could be good in writing also?

This study worked within this paradigm:



This study aimed to show the relationship between reading Skills and writing Skills of students through the use of Multiple Choice and Essay Type Examination with the goal of proposing an intervention if the need arises. Furthermore, it wanted to answer its main research question, viz. How is Reading Comprehension related to Writing Ability of the Students?

Specifically, the following questions were answered:

1. What is the demographic profile of the students in terms of:
 - (a) Age
 - (b) Gender
2. What is the result of the Standardized Examination that was implemented to the students?
 - (a) Reading Comprehension Test
 - (b) Writing Test
3. How is Reading Comprehension related to Writing Ability of the students?
4. What appropriate intervention could be applied?

Scope and Limitation of the Study

The coverage of this study was determining the correlation between reading comprehension and writing ability of students through assessing their proficiency on the two skills. Reading comprehension and writing ability of the students were assessed through the use of a Standardized Test consisting of multiple choice and essay type Test. Also, this focused on Grade 7 students of Emilia Ambalada Poblete National High School, Cavite, Philippines.

Methods

This study used comparative method. The research respondents were Grade 7 students of Emillia Amabalada National High School. Two sections from this grade level composed of 127 students in total were chosen conveniently depending on their availability.

Instrumentation

Two instruments were used in this study. First, an adopted and modified standardized examination from www.ereadingworksheets.com that is consist multiple choice test assessing the following skills: identifying text structure, determining the author's purpose, distinguishing facts from opinion, interpreting main ideas, and comprehending text. Second, an essay part examination based on the same reading selection was done. A modified rubric for checking of the essay part was used.

Statistical Technique

The scores were statistically analysed. To determine the relationship between reading and writing, the Formula for Frequency and Percentage

$$r_s = 1 - \frac{6\sum D^2}{n(n^2 - 1)}$$

was used.

Results and Discussion

Problem 1. What is the demographic profile of the students in terms of?

a. Age (Figure 1.1)

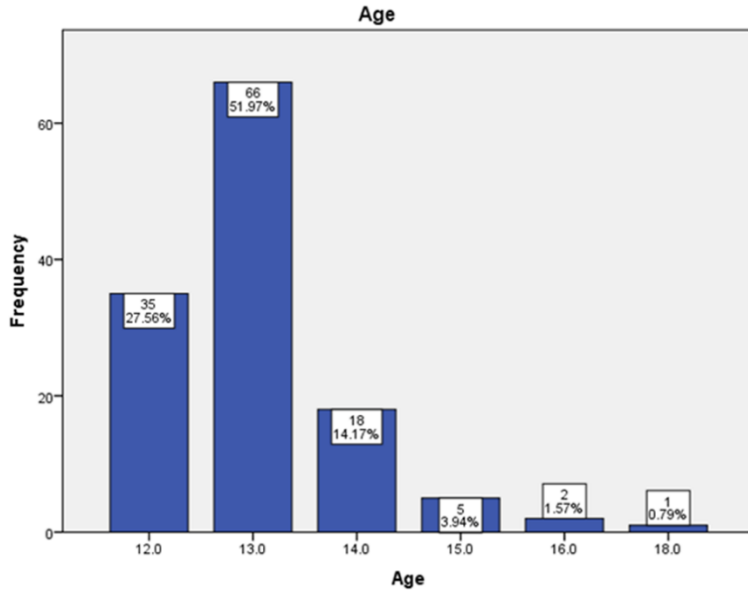


Figure 1.1 Frequency distribution of Age of the respondents

Figure 1.1 depicts the frequency distribution of age of the respondents. It portrays that there are 66 (51.97%) 13 years old; 35 (27.56%) 12 years old; 18 (14.17%) 14 years old; 5 (3.94%) 15 years old; 2 (1.57%) 16 years old; and 1 (0.79%) 18 years old.

b. Gender (Figure 1.2)

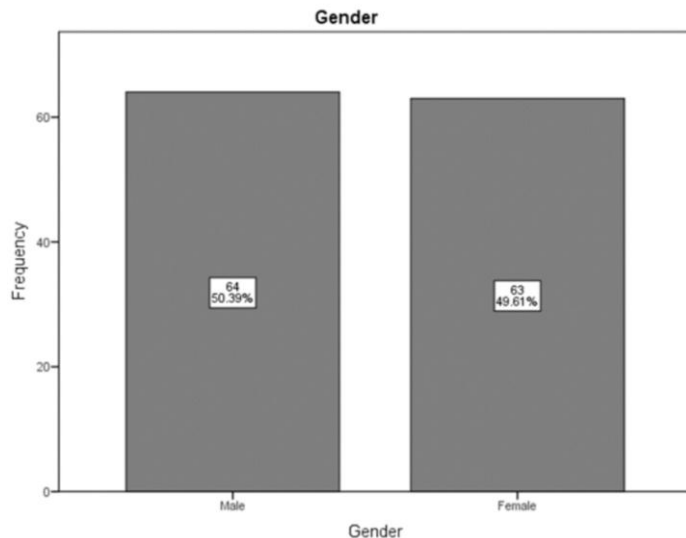


Figure 1.1 Frequency distribution of Age of the respondents

Figure 1.2 depicts the frequency distribution of gender of the respondents. It portrays that there are 64 (50.39 %) male; and 63 (49.81%) female.

Problem 2. What is the result of the Standardized Examination that was implemented to the students?

Frequency and Percentage of passed and failed remarks in reading, writing, and combined score.

Variable	Pass		Fail	
	f	%	f	%
Reading	26	20.5	101	79.5
Writing	31	24.4	96	75.6
Combined Score	29	22.8	98	77.2

The above table shows the frequency and percentage of passed and failed remarks in reading, writing, and combined score. The results depict that there are 101 (79.5%) in reading, 96 (75.6%) in writing, and 98 (72.2%) in combined scores who got a failing mark. In terms of the passing mark, there are 26 (20.5%) in reading, 31 (24.4%) in writing, and 29 (22.8%) in combined scores.

Problem 3. How is Reading Comprehension related with the Writing Ability of the Students?

Relationship between Reading and Writing

Variables	Reading		
	<i>r</i>	<i>p</i> -value	Remarks
Writing	.379	.000	Reject H ₀

N= 127

The above table shows the relationship between reading and writing. The result shows that there is a good direct significant relationship ($r = .379$, $p = 0.01$). This means that when reading score increases, writing scores also increases and vice versa. This led to the rejection of null hypothesis that there is no significant relationship between reading and writing score.

Conclusions

Based on the research findings, the following conclusions can be drawn:

1. There is a good direct significant relationship between reading and writing. When reading score increases, writing scores also increases. When reading score decreases, writing score decreases also.

2. Some students who chose not to answer the second part of the standardized test, i.e. writing. This resulted to a failing mark.
3. An intervention program should be done because the students failed the standardized test for their grade level.

Recommendations

Based on the foregoing findings of the study, the following are recommended:

1. This study focused only on comparing the reading and writing skills of Grade 7 students. For further study, future researchers may consider other grade levels.
2. This study focused on the relationship of reading and writing. Another study may be done using the other macro skills.

**An Exploratory Study on Saudi Arabian Consumers' Behavior
Towards Green Packaging**

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ABSTRACT

Packaging is an unconditional necessity in the modern world. Our contemporary society places many demands upon packaging relative to issues such as safety, convenience, efficiency, identification, and marketing. Increasingly people are becoming “modern consumers” around the world, packaging materials and methods, as well as thought processes, will also need to change in order to minimize the harmful impact of packaging on the planet. The environmental impacts of product packaging and its waste are an issue of growing importance and concern worldwide. All companies use various quantities of materials and other resources to package their products to survive distribution and other harmful elements. The paper analyzes the perception of the Saudi consumer regarding the role of green packaging in the formation of sustainable behavior. The main objectives of the paper are: to assess consumer preferences for the types of green packaging, knowing the reasons for purchasing green packaging products, and the role of the information about green packaging in promoting sustainable environment.

Packaging preferences of the consumers include paper, glass and cardboard and wood. The effects of packaging and how packaging is harmful for the environment has also been discussed. The paper also explores the importance of Green Packaging and how it is beneficial in making the environment sustainable.

Keywords: Green Packaging, sustainable behavior, environmental, packaging materials and methods, thought processes and cardboard.

INTRODUCTION

Green Packaging specializes in environmentally friendly packaging solutions that protect your product and the environment. All of the products are recycled or recyclable, and offer green alternatives to conventional corrosion inhibiting packaging.

Green packaging is a relatively new addition to the environmental considerations for packaging. It requires more analysis to look at the package design, choice of materials, processing and life cycle. This is not just the vague “green movement” that many businesses and companies have been trying to include over the past years. Companies implementing these eco-friendly actions are reducing their carbon footprint, using more recycled materials, reusing more package components, etc. The variety of a package is a communication mechanism between businesses and end users and it is a way of attracting consumer’s attention [Draskovic, Temperley, Pavicic, 2009]. It often encourages suppliers, contract packagers, and distributors to do likewise. It also helps consumers to use the product and, lastly, packaging facilitates recycling and decrease environmental damage [Lamb, Hair, McDaniel, 2011]. Disposed packaging material is one of the leading causes of soil pollution. Vast landfills are required to accommodate the millions of tons of packaging material disposed every year. Eco packaging promises to change all this. [Carlson, 2009] considers that eco-packaging must be safe and healthy for the individual and the community throughout its life cycle, be market-efficient and cost-effective; be obtained, produced,

transported, and recycled via sources of renewable energy, as well as maximizing the use of renewable or recyclable materials; utilize clean production technologies and best practices; can be designed to optimize the materials and energy used, and can be effectively recovered and reused in numerous production cycles. The most prevalent concerns in the packaging industry are: usage of natural resources and high level of energy consumption, usage of non-recyclable packaging material, half-empty and double-skin / over packed packages which leads to wasteful use of resources and unnecessary waste and litter [Peattie, 2005]. There are various types of green strategies businesses can incorporate. The most common of them are [Peattie, 2005]:

1. **Removal strategy** – to remove all unnecessary layers from the package, minimizing extra waste;
2. **Reduction strategy** – to reduce the resources used for packaging material through larger unit sizes, refilled packages, reduced thickness of the package, switching to more environmentally friendly material, improving the resource efficiency of packaging process;
3. **Reuse strategy** – to offer reusable containers such as glass bottles, containers with refilling function, sturdy reusable shopping bags, etc.;
4. **Recycling strategy** – to recycle the waste, formed during production;
5. **Biodegradability strategy** – using biodegradable materials, including biodegradable plastic.

2. Sustainable Consumer Behavior towards Green Packaging

Packaging has changed radically lately, especially as a result of unlimited consumer access to information [Sandu, 2014]. [Shamdasami et al., 1993] defined green product as the product that will not pollute the earth or deplete natural resources, and can be recycled or conserved. It is a product that has more environment friendly content or packaging in

reducing the environmental impact [Elkington and Makower, 1988; Wasik, 1996]. [Krause 1993], in his research found that consumers were becoming more concerned about their everyday habits and the impact on the environment.

The growth of green marketing and green consumer is "perhaps the biggest opportunity for organizations the industrial world has ever seen" [Cairncross, 1992]. Consumers who are aware of and interested in environmental issues are called green consumers [Soonthonsmai, 2007]. These green consumers usually organized petitions, boycotted manufacturers and retailers and actively promote the preservation of the planet [Fergus, 1991]. [Ottman, 1992] reported that consumers accepted green products when their primary need for performance, quality, convenience, and affordability were met, and when they understood how a green product could help to solve environmental problems. A green consumer can be identified to be one who avoids any product which may cause damage to any living organism, cause deterioration of the environment during process of manufacturing or during process of usage, consume a large amount of nonrenewable energy, involves unethical testing on animals or human subjects [Elkington, 1994]. There have been a number of various factors which are influential in promoting green consumers to purchase products in green packaging. Extensive research over the years identify that heightened awareness of green issues; increased level of information availability on environmental sustenance; green advertising by corporations; increased concern for the environment; increase in popularity of green products by social and environmental charities as some factors. This overwhelming increase in the overall environmental consciousness among different consumer profile there have been efforts undertaken by firms to "go green" by presenting the concept of corporate environmentalism [Banerjee, 2003; Hay and Lichter 2000]. Today green development are identified as opportunities by business firms as

opportunities to improve their marketing niche rather than just actions which need to be carried out.

2.1 Green Consumer Attitude and Behaviour

According to [Schultz and Zelezny, 2000], “attitudes of environmental concern are rooted in a person’s concept of self and the degree to which an individual perceives him or herself to be an integral part of the natural environment”. In conclusion, attitude represents what consumers like and dislike [Blackwell et al., 2006] and consumers’ product purchasing decisions are often based on their environmental attitudes [Irland, 1993; Schwepker and Cornwell, 1991]. Green packaging depends on the consumer’s attitude towards the environment. If there is no strong demand for such a shift in consumer attitude, businesses will not put in the extra effort to move towards introducing green products and services. The quality of the environment depends critically on the level of knowledge, attitudes, values and practices of consumers [Mansaray and Abijoye, 1998]. Consumers’ perceived level of self-involvement towards the protection of the environment may prevent them from engaging in environmentally friendly activities such as recycling [Wiener and Sukhdial, 1990]. According to [Tanner and Kast, 2003], green food purchases strongly facilitated by positive attitude of consumers towards environmental protection. The extent to which people feel obliged to recycle is related to conservation-related product attributes [Ebreo et al., 1999]. These investigations suggested that environmentally friendly behavior may be related to moral thinking of the consumers. Consumers feel morally obligated to protect the environment and to save the limited natural resources on the earth. However, [Tanner and Kast, 2003] found that consumers’ green food purchases were not significantly related to moral thinking.

There is a general belief among researchers and environmental activists that through purchasing environmentally friendly products or green products, products with recyclable packaging or properly disposing of non-

biodegradable garbage, consumers can contribute significantly to improve the quality of the environment [Abdul-Muhmim, 2007].

2.2. Price Perception and Knowledge

Consumers' reaction towards the price of the sustainable products is really sensitive. However, the real fact is that green products are not extraordinarily expensive, but conventional products are extremely cheap [Thogersen, J.; Olander, 2001]. Even if the perceived costs exceed the perceived benefits, the consumer will not act to conserve the environment even if they are sympathetic towards environment [Radulescu, 2012].

Attitudes are the most consistent explanatory factor in predicting consumers' willingness to pay for green products [Chyong et al., 2006]. This means that price is not the main factor in preventing consumers from purchasing green products if they are pro-environment.

In Ottman's opinion, four universal green consumer's needs can be identified: the need for information, the need for control, the need to make a difference, and the need to remain current. If a sustainable product satisfies these needs, then the consumer will be more eager to buy the product in green packaging [Ottman, 1993].

[Nordin and Selke, 2010] appreciate that consumers' perceptions are influenced by a lack of consumer knowledge about the concept of sustainability, terminology gaps and an inconsistent attitude towards green packaging.

2.3 Demographic Characteristics

[Straughan and Roberts, 1999] segmented college students based upon ecologically conscious consumer behavior and stated that the younger individuals were likely to be more sensitive to environmental issues. The results of their study indicated that the demographic variables such as age and sex were significantly correlated with ecologically conscious consumer behavior when considered individually; and that income lacks significance. Green purchase intention correlates positively with every age and income

except for education [Soonthonsmai, 2001]. Many studies have shown significant differences between men and women in environmental attitudes [Brown and Harris, 1992; Tikka et al., 2000] with men having more negative attitudes towards the environment compared to women [Eagly, 1987; Tikka et al., 2000]. Women were more likely to buy green product because they believe the product was better for the environment [Mainieri et al., 1997].

3. Methodology and Data Collection

A convenience sampling technique was used for this study. The survey was done in the city of Hail, in KSA. The quantitative research was conducted on a sample of 180 respondents and yielded 160 valid questionnaires to determine the familiarity of the Saudi Arabian consumer regarding the role of green packaging in the formation of sustainable behavior. The research, through its major objectives, identifying consumer preferences for green packaging, knowing the reasons for buying/not buying the products in green packaging and the role of information for the consumer, helps determine the major factors influencing the Saudi Arabian consumer's perception of ecological packaging.

The sample structure was (see Table 1).

Table 1. The sample structure.

Demographic Characteristics	Share in the Sample	Results
Gender	Male	73
	Female	87
Age Group	18-24	16
	25- 34	41

	35-44	50
	45-54	36
	55-64	17
	Above 65	0
Residence	Urban	114
	Rural	44
Monthly Income*	1000SR-3000SR	29
	4000-SR-6000SR	47
	7000SR-9000SR	43
	10000SR-12000SR	34
	Above 13000SR	7

** Starting 1 January 2019, the minimum gross wage in the economy is 1000 SR, equivalent to 237.51417 euros.*

4. Research Findings

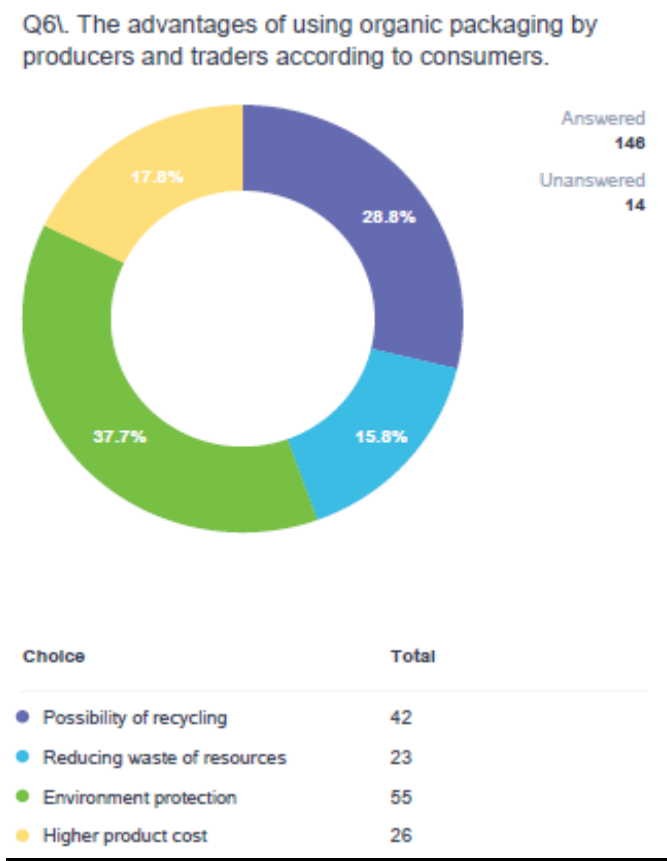


Figure1. Advantages of using organic products

According to the survey result 37.7% of the respondents are very much agreeable that green packaging contributes to environmental protection. This is very much required for making the world sustainable.

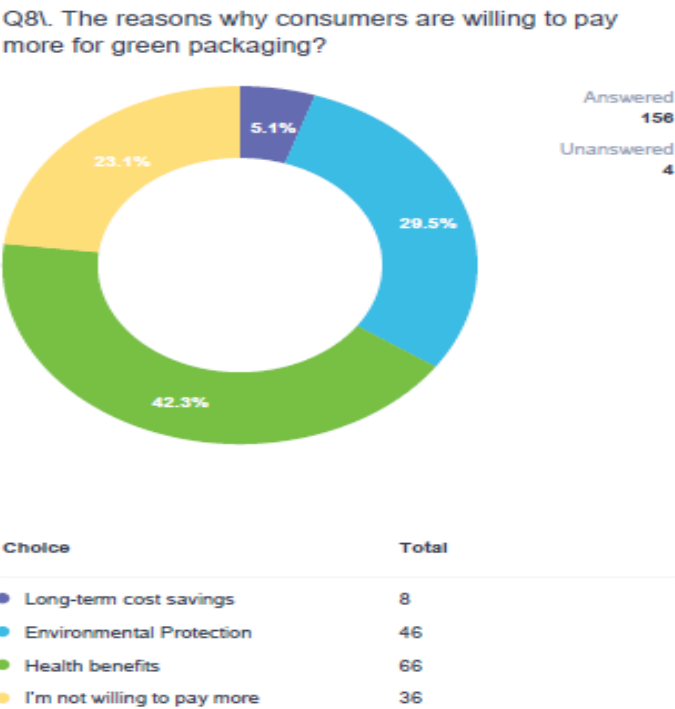
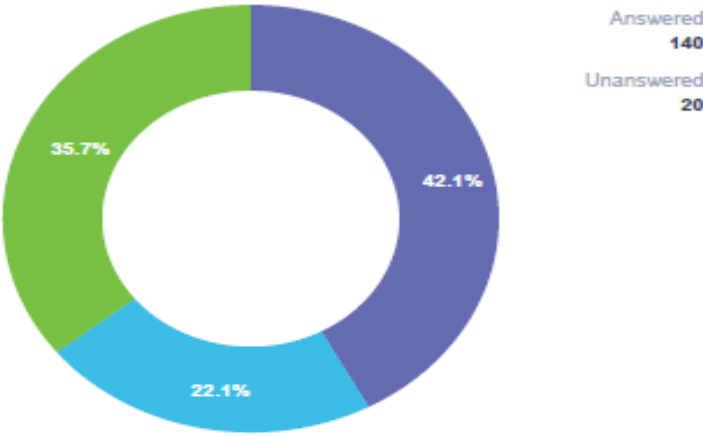


Figure 2. Reasons for paying more for Green Packaging.

According to survey results of (Figure 2) majority of the respondents are willing to pay even more price for the products packed in organic packages. The Saudi Arabian consumer is aware of the impact of packaging used on the overall health of the individuals.

Q 11\l. Who should be responsible for informing consumers about the green packaging?

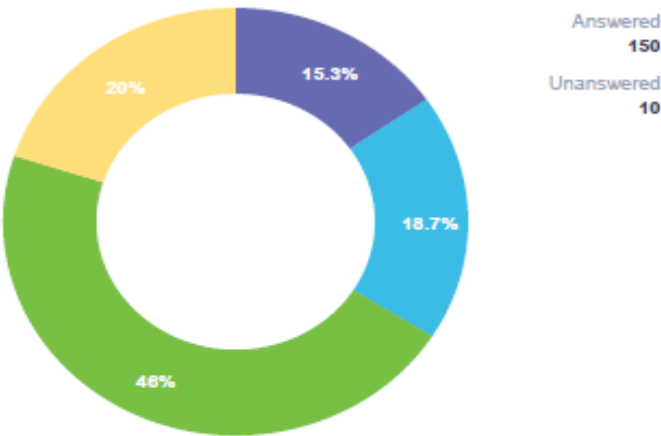


Choice	Total
Ministry of Environment, Water, and Forestry	59
Producers and traders	31
Nongovernmental organizations	50

Figure 3. Responsibility for informing consumers about Green Packaging.

Analyzing the research results, 59% of the respondents mentioned that the Ministry of Environment, Waters, and Forests, is responsible and to a lesser extent, they considered the responsibility of nonprofit organizations.

Q12\ How would you rate your level of awareness about Green packaging?



Choice	Total
Very Low	23
Low	28
Average	69
High	30
Very High	0

Figure 4. Level of awareness about Green Packaging

The average level of awareness on environmental packaging and its benefits to the consumer is an important factor preventing the consumer from adopting a sustainable behavior. According to the research results, 69% of

the respondents said they have average level of awareness about ecological packaging.

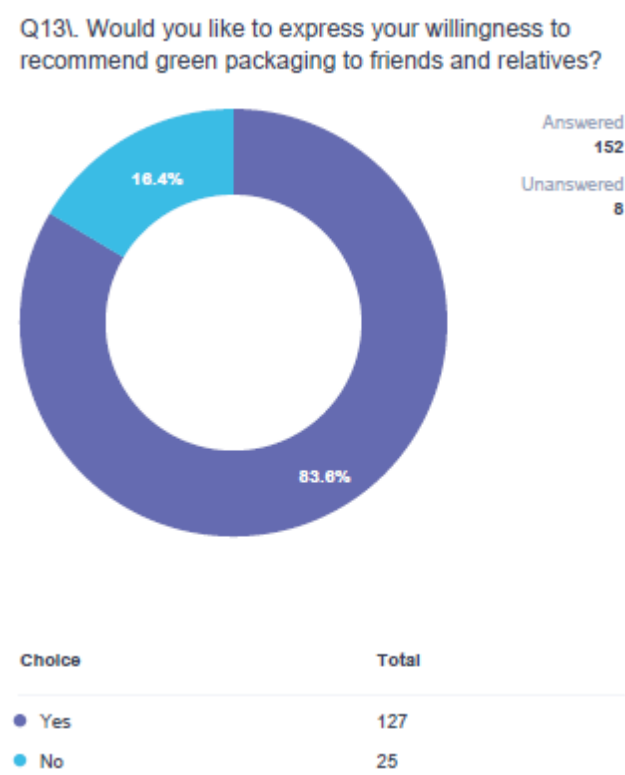


Figure 5. Willingness to recommend Green Packaging

According to this survey result of (Figure 5) majority of the respondents are very much willing to recommend green packaging among their relatives and friends. This shows that now consumers are getting more aware of organic packaging.

5. Table 1. Overall Findings of the Survey

Questions in Our Survey	Measurement	Result
Do you prefer to buy products in ecological packaging?	Yes	128
	No	25
What is your source of information?	Directly from the product label.	25
	From the information campaigns of producers and merchants	22
	From the internet	72
	Other sources	24
What is your preferred eco-packaging?	Paper	41
	Cardboard	16
	Biodegradable Plastic	61
	Wood	15
What is your purchase frequency of products in green packaging?	Daily	5
	Weekly	31
	3-4 times a month	50
	Occasionally	53
	Never	9
Your reasons to prefer green packaging.	Can be recycled/reused	28
	To protect environment	64
	Green packaging is trendy	29
	Other	26
The advantages of using organic packaging by producers and traders according to consumers.	Possibility of recycling	42
	Reducing waste of resources	24
	Environment protection	55
	Higher production cost	26

The disadvantages of using eco-packaging for consumers.	Products packaged in organic packaging are more expensive.	33
	Requires more storage space.	15
	There are no disadvantages	37
	Difficulty to purchase.	59
The reasons why consumers are willing to pay more for green packaging?	Long-term cost saving	8
	Environmental protection	46
	Health Benefits	66
	I'm not willing to pay more	37
The reasons why consumers are not willing to pay more for ecological packaging?	Low Budget	25
	Lack of information	83
	Green reservations	29
Do you have sufficient information about the benefits of green packaging?	Yes	117
	No	31
Who should be responsible for informing consumers about the green packaging?	Ministry of Environment, Water and Forestry	59
	Producers and traders	30
	Nongovernmental organizations	51
How would you rate your level of awareness about Green packaging?	Very low	23
	Low	28
	Average	69
	High	30
	Very high	0
Would you like to express	Yes	127

your willingness to recommend green packaging to friends and relatives?	No	25
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6. Conclusions

To conclude this study has many managerial implications as it notifies decision makers and marketing managers about the factors that influence a consumer’s sustainable behavior. Research results have shown there are three main motivational factors—possibility of recycling and environment protection and health benefits as well to some extent—which would influence the decision of the consumers to buy organic packaging. The high costs of eco-packaging, green reservations and average level of awareness about the advantages of their use is considered as reasons for not purchasing them.

Therefore, managers need to know what benefits and constraints are perceived by consumers in purchasing green packaging products in order to develop strategies for changing consumer attitudes and behavior towards sustainability. In order to change the attitude and behavior of the Saudi Arabian Consumer consumer, organizations must follow the following directions:

- _ Informing the population about the effects of ecological packaging on environmental through communication campaigns [Grunert, Hieke, Wills, 2014] that sensitize consumers and encourage eco-friendly consumption habits;

_ Product information based on labeling schemes (“eco-labeling”) to help consumers by providing details on the environmental performance of products and packaging and to make them buy environmentally-friendly products [Radulescu, 2011].

The information consumers expect to find and would inspire their trust in recycling the packaging refers to the economical use of source materials in the manufacturing of the packaging, as well as the health and safety of the consumer [Jerzyk, 2016].

[Sharma, 2011] says that companies can act in their green communication campaigns in three

directions: at the beginning of educational communication, the emphasis must be put on the content, then focus on environmental concern, after which the emphasis is on the fact that firms modified production procedures to promote a green lifestyle, and ultimately communication indicates the image of an environmentally responsible firm.

7. Limitations and Future Research

This study has certain limitation. The study was descriptive and sampling was done only from Hail city only and thus is not representative of entire population of Saudi Arabia.

Further research is needed that covers the other cities of Kingdom of Saudi Arabia. Also, majority of the respondents are female, which is not representative of the entire population.

Furthermore, the study on the social values should also be included in the future research to compare its impact with personal norms on the consumers’ behavior and attitude towards green products. As the current research is restricted to the investigation on the green product packaging only, future study should focus on the consumers’ attitude and perception towards green label, and green values or green service on a specific type of

green product in the market. Finally, future research should also consider the areas of green purchase intention and green buying commitment.

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Math Anxiety, Its Development and Elimination

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Abstract

This paper discusses research on relation between teaching methodology and math anxiety. To understand why people have math anxiety, students' thinking processes and their prior learning experiences were observed. This led to compare teaching and learning mathematics in the US with teaching and learning mathematics in Armenia. Through a multistage approach a method of teaching mathematics was devised that eliminates math anxiety.

Keywords

Causes of math anxiety, education, mathematics education, eliminating anxiety, new trends and experiences, student learning assessment, teaching strategies, learning by rote, memorization, learning by understanding.

1. INTRODUCTION

To understand why people have math anxiety, I have observed my introductory math students' thinking processes, and I have identified gaps in their knowledge. I have also identified the reasons of those gaps. I have compared teaching and learning mathematics in the US with my experience of teaching and learning mathematics in Armenia. In Armenia in learning mathematics emphasis is on understanding, and almost no memorization.

From what I gather from my students they are trained to learn mathematics through rote and memorization. I have tried to adopt the teaching methodologies used in Armenia here in the US successfully. Based on my research and experience I devised a method to eliminate math anxiety.

2. MATH ANXIETY

The existence of math anxiety among my students made me become interested in exploring its reasons.

In order to address the problem, we need to understand what math anxiety is.

Math anxiety defined by Mark H. Ashcraft is “a feeling of tension, apprehension, or fear that interferes with math performance.”[1] Hembree’s meta-analysis determined that math anxiety is related to poor math performance on math achievement tests and that math anxiety is related to negative attitudes concerning math. Math anxiety is directly connected with math avoidance.[3]

Next, we need to find out what causes math anxiety, how serious the problem is, and what its consequences are.[4, 5] For this purpose, I surveyed my students. Their responses showed that math anxiety is a serious problem.

55% of my students admitted that they unnecessarily suffered from math anxiety, and only 36% do like math.[5]

The seriousness of the problem made many scholars to research the psychological side of math anxiety.[2] It is obvious that the fear to perform poorly in mathematics creates math anxiety. Why are people so afraid of mathematics? What is the reason of performing poorly in math?

3. RESEARCH TO ADDRESS MATH ANXIETY

My research interest is in exploring the relation between teaching methodology and math anxiety. This research led me to a multistage approach.

For the first stage, I devised strategies to address my students' math anxiety by providing extra tools to improve student learning, such as refresher workshops, peer-tutoring, and use of computer based tutorial and course management systems, which were an additional help to with memorizing the correct set of steps.[5] My research showed considerable improvement in student learning. However, I discovered that knowledge so gained was not long lasting.

Analysis of results showed that the outcome from a refresher workshops were reviewing of fundamental concepts refreshed students' knowledge and brought back what was forgotten. Peer tutoring sessions were usually one hour a week, which were helpful to fill up the knowledge gaps students had. The computer based tutorial and course management systems were an extra help to with memorizing the correct set of steps.

The second stage of my research was devoted to looking into my students' prior learning experiences of the diverse student population, typical for New York City. Despite their differences, I find one common root cause for "fear of math" among students, by and large, to be the improper, confusing explanations they have been given for basic concepts. Because the fundamental concepts are not clear to students, they learn those concepts by rote and memorization, without understanding. Further on, students continue learning mathematics by rote and memorization, not through understanding and reasoning.

In the third stage, I researched the essential causes and processes of development of math anxiety.

The fourth stage is to explore what helps to overcome math anxiety, and to succeed in learning mathematics.[5] Exploring the interrelation between

mathematical logic and history of math education,[6, 9] led me to devise a methodology of teaching mathematics, to eliminate math anxiety. This methodology addresses the below mentioned processes of development of math anxiety.

4. WHAT CAUSES MATH ANXIETY?

Math anxiety develops as a consequence of learning mathematics by rote and memorization without understanding. Below is described the process of its development.

1. Repeating the same over and over without understanding (learning by rote) becomes annoying because the process is not enjoyable, and there is no brain stimulation.
2. It is usually easier to memorize what is familiar. For example, one can learn a poem by heart in a spoken by the person language because she/he understands what the poem is about. That is, the poem makes sense for the person. To memorize poems in a language that the person does not know is hard or impossible. Similarly, it is challenging to memorize if students do not make sense of math topics, and very soon students' brains refuse to memorize mathematics they do not understand.
3. From #1 and #2, we conclude that the process of learning by rote and memorization is challenging. Learning mathematics becomes more difficult as topics get more advanced.
4. Math textbooks provide steps for solving particular problems, often without any explanation. Consequently, students do not connect the steps with the problem, and does not try to understand the steps, the logic behind the calculations they perform. Students solve word problems by matching the problem with examples from the textbook, and perform the same operations from the example using the numbers from the problem that should be solved. The only

necessary skill would be to define which of the given values to use for each calculation. Students often do that without examining the solution. Because these steps are applicable only for this particular problem, the slightest variation of the problem confuses students. Of course, none of the textbooks contain solutions of all possible word problems. Therefore, matching real-life problems with examples can be difficult or impossible. This makes solving word problems challenging. That is, students do not learn to apply mathematics in solving real-life problems.[7]

5. From #4, we conclude that students do not apply the topics covered in math class in their lives and business. That is why students do not see any need of learning mathematics.
6. Mathematics becomes something unnecessary, and students lose interest in mathematics, and do not want to spend time studying mathematics.
7. Students spend a lot of time on “learning” math which in their opinion is unnecessary, useless, boring and challenging. Plus, after putting a considerable amount of time and effort, students make little to no progress in their math class that is required. Students study math with constant fear of failing the class. The result is that students develop math anxiety.

Let us discuss how to eliminate the above-mentioned causes of math anxiety through teaching mathematics.

4.1. Addressing #1 – Learning by Rote

Generally speaking, people are equipped, naturally, with critical-thinking capabilities and are more likely to accept new information when it is presented logically, in an orderly, precise, and clear manner. I try to present complex information in a simple manner as opposed to teaching dry and sophisticated theories leaving the students with a bitter taste and with an antipathy toward mathematics. I try to provide students with a clear, logical

development of the topic, and I focus on material and activities that provide motivation for learning and scientific discoveries.

Devising strategies that address the negative effects of learning by rote led me to observe student-learning processes in order to compare learning by rote with learning through understanding. My results show that learning by rote may be effective only for short time memorization, that is, until the completion of a test, or, at best, until the completion of the course.

Therefore, I concentrated on devising teaching methodologies that would foster understanding, and would minimize learning by rote and memorization. These strategies are well received by students and improved student learning.

4.2. Addressing #2 – Brain Refuses to Memorize Mathematics Students do not Understand

I observe the week loops in student learning, and I address them in my teaching by emphasizing their importance, and discussing the common mistakes students do. My methodology allows students to strengthen their analytical thinking and reasoning skills without making them spend long hours on repetitious practice. In other words, students learn through understanding not by rote and memorization.

By applying newly acquired knowledge to problem solving, students retain this knowledge and expand their set of skills. Examples and analogies make the often-abstract concepts more concrete. While solving exercises, I employ my own devised “n+” method, which is going a bit beyond the current level of their knowledge. This method creates the required challenge and the desired impetus in the students to think and to push their brains one notch further, thus, simultaneously using their acquired knowledge and to trigger thinking.

Because students understand the topic, very little memorization is required in learning mathematics.

4.3. Addressing #3 – Challenges of Learning by Rote and Memorization

Once students discover the strength of their logic, simply put, it makes them feel good about themselves, and they become their own best teacher. Here is where learning by rote and memorization stops and learning by understanding begins. I consistently stimulate thinking.

The process of learning, among other things, is based on bridging and building relationships between brand new information and existing knowledge. I encourage student participation by eliciting their input while presenting the new material and by asking pointed questions that force the students to consider the implications of the material in the context of other issues. I employ in-class exercises in order to give the students the opportunity to apply the acquired knowledge and to reinforce the material through its active use. I believe in activity-centered teaching methods, which focus on students' exploration and discovery first, and abstraction and precision later.

Understanding of the topic eases learning process. Students learn mathematics spending less time, and there is very little to memorize.

4.4. Addressing #4 – Steps Provide in Textbooks for Solving Word Problems

Rather than teaching math via a dry set of rules and steps, or by rote, I encourage thinking and learning through understanding. If something is clearly understood, it will stay forever. 'Steps' have a tendency to be forgotten, or confused. I carefully explain the "why" and "let us think why," and I make sure everyone understands it.

I have also observed various groups solving problems from the textbook using the steps, provided in the textbook. Although they were asked to solve the problem in collaboration, each student would invariably solve the problem alone by just following the steps. Then I devise a special problem for the group. Invariably, the group becomes active. After discussions, and trial and error, the group comes up with the correct solution. Then usually one or two students explain to the group how they solved the problem. This is the moment of discovery.[9]

Employing my “n+” method creates the required challenge and triggers thinking.

Another net effect is better learning experience. From my observation and from students’ testimonials, I conclude that they learn more from this method of problem solving where they put to use their own innate, natural capability to use logic and reasoning.

4.5. Addressing #5 – Using Mathematics in Life and Business

My methodology appeared to be successful in helping students to learn mathematics through understanding. The net effect is that students, after fully understanding the topic, successfully apply the gained knowledge in solving decision-making and word problems. Knowledge gained through understanding is long lasting that students can apply in their lives and careers.

4.6. Addressing #6 – Students’ Interest in Mathematics

My research showed that teaching through understanding is the only effective way of teaching mathematics. As a math logician, it is obvious for me that teaching mathematics using my methodology develops my students’ analytical thinking skills.[8] Plus, I have detected considerable progress in learning mathematics. Another consequence was that after students start

understanding mathematics, they start being interested in it, and even enjoy learning mathematics.

4.7. Addressing #7 – Learning Mathematics that is Unnecessary, Useless, Boring and Challenging

“I hated math, but now I love it.”

“Math is fun.”

“You make it sound so simple.”

“I didn’t know that there is so much math in music.”

“I couldn’t ever imagine that I can understand and learn math.”

These are just a few comments made by my students. These student testimonials illustrate the effectiveness of my methodology of teaching mathematics. The methodology helps students to overcome their math anxiety. After learning mathematics through understanding, students enjoy learning it and start liking mathematics. Students learn to apply mathematics in their lives and career. Mathematics stops being unnecessary, useless, boring and challenging.

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Is Social Work a Female-Dominated Profession?

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Abstract

The feminine face of social work is deeply rooted in the social work history. Like in some other professions such nursing, social work has attracted mostly females more than the males. Although the nature of social work does not indicate any signs of gender preference, it is worth investigating this topic to find out why such trend existed in the past for this profession. This article will discuss female-domination in the social work profession and aim to contribute more to the existing literature.

Keywords: Social Work, Femininity, Masculinity, Gender

Introduction

In the history of social work there is a clear hint of femininity. Julia Lathrop (1858 – 1932), Jane Addams (1860 – 1935), Mary Richmond (1861–1928), Sophonisba Breckinridge (1866 – 1948), *Alice Salomon* (1872

– 1948), Eglantyne Jebb, (1876 –1928), Edith Abbott (1876 – 1957), Grace Abbott (1878 – 1939), Bertha Reynolds (1887 – 1978), *Manon Luttichau* (1900 – 1995), Dame Eileen Louise Younghusband (1902 – 1981), Irena Sendler (1910 – 2008), Nnoseng Ellen Kate Kuzwayo (1914 – 2006), Sybil Francis (1914 –), and Sattareh Farman Farmaian (1921 – 2012) are all female social work pioneers and founders.

This paper seeks to critically examine the reasons why there are relatively fewer male social workers as opposed to females. Among the factors to be explored include those dissuading men from entering the profession as well as why the profession is practiced predominantly by females.

An examination of gender balance in the social work profession shows that there are few male workers compared to their female colleagues (Christie, 2001). Various reasons have been postulated in the literature regarding this phenomenon (Christie, 2001). One of the reasons discussed is the historical perspective for few male social workers (MSW Careers, 2017). In addition, the gender imbalance in the social work occupation is linked to gender roles associated with femininity (Poole & Issacs, 1997). On the other hand, males in the profession either are quickly promoted or prefer positions of authority such as managers while women often stay in the service positions consistent with societal perceptions (Lupton, 2006). Further, many women in the field and the public are enabling their predominance in the profession by questioning whether men have the emotional capabilities to work with vulnerable groups. Traditionally, men are expected to suppress their emotions (MSW Careers, 2017). A look at the statistics of male representation in the profession across the globe also indicates that women are over represented in the profession both in academic as well as practice settings (Galley & Parrish, 2014). Additional related factors to a low percentage of male social workers also show that systematic devaluation of the profession contributes to low wages, thus discouraging men and women

leaders from seeking employment as social workers (Cohen & Huffman, 2003). Further, the implications of few male social workers include, for instance, men's unwillingness to be helped by female social workers because of a belief that their problems can be better handled by male social workers (Cohen, 1999).

Historical Perspective on Few Male Social Workers

Social work traces its origin to the United States where prominent female leaders started it. On the other hand, men regard themselves as the pioneers of professions seen in the modern career world as intellectually involving such as management, administrative or technical roles. Consequently, there are more men in such 'knowledge based' professions, while women predominate in social work (MSW Careers, 2017). Historically, social work began as a charitable project where individuals, mostly women, volunteered their efforts to help disadvantaged groups in the society (MSW Careers, 2017). Social work services were offered mostly in times of war or national crisis, where women assumed caring roles on a voluntary basis before the later professionalization of such services. On this note, early attempts to transform social work into a profession included plans to dissociate it with empathy and emotions in order to suit masculine needs unrelated to feminine roles such as caring. After social work was integrated into the mainstream of professionalism, the occupation still attracted more female practitioners compared to males (MSW Careers, 2017).

Conversely, the few men who sought work in the profession appeared to advance a gender-based hierarchy based on their 'natural leadership'. As such, their interest in the field of social work mainly focused on managerial as well as administrative duties, while enabling women to assume subordinate roles (McLean, 2003). As a result, since the genesis of social work as a professionalized field, women have dominated subordinate roles while their male colleagues fill leadership positions. Throughout history,

gender has also been viewed in terms of division of roles between men and women respectively. For instance, while women are associated with roles such as caregivers, men, on the other hand, assume the responsibility of breadwinners and head of their respective families (Connel, 1995).

According to Christie (2001), how both genders understand the social world has a significant influence on the meanings they attach, for instance, to practices, events as well as ideologies. Further, Foucault (1977) also observed that certain discourses in the social realm tend to legitimize, institutionalize or normalize various practices that influence individuals understanding of the social world. This explains the reason how throughout the history of humankind, it became 'normal' for women to assume caring roles while men took up the provider-wage earner role. The entrenched notion of gendered roles across societies contributes to gender stereotypes such as those evident in social work and other caring occupations. In most instances, discourses related to welfare and social work tend to view men as passive recipients and providers of care (Park, 2005).

On the other hand, women are considered in different social settings as active providers as well as receivers of care. Across societies, contradictory views are also evident with regard to the appropriateness of men in caring roles. Typically, men perceive social work as a female occupation. Further, as men grow up, they are encouraged to suppress their emotions and not talk about their feelings and insecurities (Pease, 2011). Characteristically, social work largely involves addressing problem situations mostly encountered by vulnerable groups. As a result, men are more reluctant to seek employment as social workers (Simpson, 2004). Similarly, only a small number of male social workers are persuaded to join the profession before college since the vast majority does not view social work as an option. In essence, they tend to emulate the normalization of gendered roles in occupations. As such, men are more likely to seek work in occupations they associate with knowledge

production compared to those seen to involve empathy and emotions (Christie, 1998).

World Statistics Supporting the Perspective of Few Male Social Workers

Internationally as well as nationally, women tend to dominate the social work profession. A study conducted in the UK by Furness (2007) from 2002 to 2005 that examined the factors motivating students to train as social workers, found that an average of 83% of students taking a course in social work were females. Further, as pointed out by Earle (2008), even in professions where men are in the minority, they tend to seek positions of control that include, for example, probation work, managerial and the civil service. According to McPhail (2004), such positions give men the opportunity to scale the career ladder faster compared to women in social work. Mcphail (2004) further associates the trend with the tendency of men to enforce their gender privilege especially when they join occupations that are dominated by women. On the same note, since men tend to occupy leadership positions in social work, McPhail (2004) suggests that social work has been transformed into a predominantly female profession rather than a female dominated profession. Consequently, men's salaries tend to be relatively high compared to women's in the profession due to gendered roles.

In the social work profession, McPhail (2004) raises concerns that gendered salary inequality is a common feature. Lins`ely (2003) also voices her concerns with regard to the salary discrepancy evident in the social work profession, where she reports a 20% gender salary gap between men and women. In South Africa, the Department of Labour (2008) associated the low salaries paid to social workers with the predominance of female worker, which further reinforces the categorization of social work as a low status profession. Similarly, the low salaries are likely to discourage men who may

have interest in working in the profession. On the other end of the spectrum, the statistics provided by the Bureau of Labor Statistics in the U.S shows that 80.3% of employees in the social work profession are females. In addition, the statistics also indicate that male social workers aged below 34 years make up less than 10% of professional social workers. Khare (2017) observes that in the 1980s, 36% of social workers across the country were male. However, the introduction of managed care in the 1990s affected the salaries of care workers thus discouraging men from joining the care profession.

Additional Factors Related to Fewer Male Social Workers

The systematic devaluation of professions in the human services realm tends to contribute to lower wages earned by workers. In addition, in occupations over-represented by women, salaries are seldom increased (Cohen & Huffman, 2003). The low wages associated with female-dominated occupations are the outcomes of embedded traditions that reinforce male dominance over their female colleagues. For instance, women are not expected to assume greater roles outside the home especially in the developing world (International Labour Organisation, 2016). On the same note, the cultural boundaries between men and women also extend to the professional world where women are castigated for seeking superior positions (ILO, 2016). As a result, the occupational gender stereotypes enabled by gender inequality contribute to the devaluing of certain professions associated with predominantly female workers, such as social work (MSW Careers, 2017). The lack of gender equity in the social work profession also helps to cause the wage disparity between male and female social workers despite both having similar qualifications, skills and experience. The perception of social work as a female occupation also plays a role in dissuading men from joining the profession. Consequently, women may continue to dominate the social work profession. Similarly, the devaluation of social work in terms of low pay and lack of promotional

opportunities may also discourage women leaders seeking better pay as well as opportunities for career growth (MSW Careers, 2017).

The Possible Results of Fewer Male Social Workers

Khare (2017), points out that the minority representation of men in the profession is harmful. For instance, the lack of male social workers may lead to many of their colleagues avoiding social work services because of a preference for their problem situation to be handled by a male colleague (Cohen & Huffman, 2003). This is because the gender of a social worker may have an influence on a client's decision to seek social service assistance. There are problems situations that are better handled with a practitioner from the same gender. The social stigmatization associated with seeking help among men may also discourage them from seeking services and stating their concerns to a female social worker (Khare, 2017).

Male clients may also shy away from seeking the services of female social workers out of concerns that they lack an understanding of the presented problem situation from a male perspective. In this respect, making social work more attractive to men requires addressing systemic biases in gender roles to ensure the profession becomes more diverse by having equal representation of men and women. Similarly, the demand for social services is on the rise due to a growing population of older demographics. Older males seeking a second career may provide fertile ground for increasing the number of males providing services. Subsequently, an incentive to the social work profession would motivate more male students and graduates to seek employment in the field (Khare, 2017). Incentives may include: recognizing the gender bias and providing incentives for males to enter the field such as: increased pay for the profession, increase education on what social workers do and the skill needed.

Conclusion

Associating social work mainly with women continues to deter most men from joining the profession. Similarly, when males do enter the profession, they often seek administrative positions which take them out of the direct service area. This supports cultural boundaries that enforce gendered roles are influencing the decision by men to mostly seek positions of authority in the social work profession. However, since leadership positions are few compared to subordinate roles, a significant number of men tend to avoid seeking employment in the profession. The low wages in the profession - regardless of qualifications, skills or experience- further discourages men and women leaders from the profession.

Traditionally, men suppress their emotions and insecurities, and as such, they are more likely to avoid occupations such as social work that involves the expression of empathy or emotions. Males may also be concerned about what family and friends might say if they chose a “female dominated profession. Institutions offering training in social work are also reluctant to encourage male students to register for the course thus contributing to female graduates dominating the profession. In essence, the minority representation of men in the social work profession is counterproductive in the provision of social services programmes that target the men. Similarly, the social stigma encountered by men seeking help from social services also places them at a disadvantage in terms of benefiting from such programmes.

Currently, the demand for social services is on the rise especially in the developed world with an increasing population of seniors (Khare, 2017). As result, the field will need more social workers due to its increasing role in the provision of services to the elderly and disadvantaged groups. In this respect, policy makers in the realm of social work need to embrace reforms that would ensure that gender equity is encouraged in the employment of social workers. In addition, reforms are also necessary to improve wages in the occupation as way to encourage more men and women leaders to seek

employment in the social work profession. On the other hand, men also need to reenter the profession. Men's reentry into the profession can be achieved, for instance, through efforts by male social workers and other actors in the social work realm reengaging men to consider training as social workers as well as seek employment in the field.

There are few male social workers because they associate the profession with women. Social work mainly deals with caring roles that require an emphasis on emotions and empathy. However, traditionally expect men to mask their emotions and insecurities. As a result, a significant number of men are unlikely to consider social work as an option. Further, the few men in the profession often focus their interest on managerial as well as administrative roles. The low pay that characterizes the profession also discourages men from seeking employment in the field. Historically, the reinforcement of male privilege also extends to the professional realm thus contributing to occupational gender stereotypes. In this sense, occupations associated with femininity attract low-waged workers compared to perceived masculine occupations. Consequently, men looking for status and better pay are likely to avoid the social work profession. Conversely, since men associate social work with feminine roles such as caring, their avoidance of the profession means women continue to dominate the profession. However, the problem of having only a few male social workers is that a significant number of their male colleagues may also avoid seeking social work services. This is because male clients prefer to receive the services from a male rather than a female social worker. Men's preference to work with male social workers is influenced by the view that men are in a better position to relate to their worldviews on various problem situations. Addressing the problem of few male social workers may require giving attention to improving incentives for workers as well as embracing diversity by advancing gender equity in the profession.

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**Personality as a Means of Understanding and Facilitating
Communication**

in Organizations

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Abstract

The simple task of exchanging ideas, information and experience so that another person or group of people, each with their own set of biases, filters and perceptions, is in reality a multi-faceted process based on various aspects of the participants' characteristic manner of interpreting the world. In the realm of organizations, the MBTI typology theory provides a logical, coherent structure for understanding normal differences between individuals in a variety of work-related areas, including, communication styles, team orientation, project management, preferred supervision style, work environment affinities, responses to organizational change, learning styles and motivation. Furthermore, consideration of the MBTI preferences and the personality combinations demonstrates the value of capitalizing on diversity within organizations or workgroups. In this way, it supports the ethical and constructive use of differences - a principle that is particularly applicable in the diverse and globally-oriented organizations of today and the future. When handled correctly, differences in type can create a stronger organization by capitalizing on an individual's strengths, matching preferences with responsibilities and creating complementary workgroups. Effectiveness will be enhanced if members of the organization recognize the value and contribution of each preference in reaching a sound and balanced solution to organizational challenges.

Keywords: organizational communication, personality, MBTI, communication

Introduction

The process of communication has been defined as “attempts to construct shared realities through social interaction” (Shockley-Zalabak, 2014, p. 23). This simple and concise depiction of communication does not reveal the complex, intricate and often enigmatic conscious and unconscious aspects of the process of communicating. The purely theoretical mechanics of the operation of transmitting and receiving messages - the sender, receiver, message and noise - can be outlined and diagramed with relative ease. However, it is the more ambiguous aspects of the interaction - the individual's unique construction of the reality to be shared, the chosen avenue of delivery and the complex subtleties of the interaction of the personalities involved - which often represent the real power of the communication and determine its effect. The simple task of exchanging ideas, information and experience so that another person or group of people, each with their own set of biases, filters and perceptions, is in reality a multi-faceted process based on various aspects of the participants' characteristic manner of interpreting the world.

The Personality Factor - The MBTI Applied to Organizational Communication

Personality is a broad and inclusive concept which refers to “the unique and relatively enduring internal and external aspects of an individual's

character that influence behavior in different situations” (Schultz & Schultz, 2017, p. 16). As such, personality affects all human interaction. Individuals unconsciously bring their personality styles into the organizations in which they operate and into each situation they encounter therein. Interaction with different personality styles can result in conflict or complementary harmony depending upon how it is viewed and managed.

The Myers-Briggs Type Indicator (MBTI) is a personality inventory that categorizes individuals according to four dichotomous scales of preferences which describe orientations toward four functions of the personality - source of energy, information-gathering/attending, decision-making, life-orientation. Each scale presents a set of polar opposite characteristics or temperament alternatives between which each person displays a preference to some degree toward one disposition or the other. The Extraversion and Introversion preferences constitute the Energizing Dimension and measure, the individual’s preference for concentration on the external actions and activities involving other people or the internal world of concepts, ideas and personal contemplation. The Sensing and Intuitive preferences encompass the Attending Dimension and assess the individual’s propensity for understanding through perception using the five senses or by inferred meaning and possibilities. The Thinking and Feeling preferences comprise the Deciding Dimension which evaluates whether decisions are made based on logical processes or personal values and feelings. Finally, the Judging and Perceiving preferences constitute the Life Orientation Dimension which classifies individuals according to an affinity toward planning and controlling events or toward spontaneity and flexibility (Hirsch & Kummerow, 1989; Kiersey & Bates, 1984; Briggs-Meyers, 1980). The combination of the four preferences results in one of 16 psychological types. It is this aggregate of predilections which gives rise to an individual’s unique personality and thus determines manner and behavior that is often

judged as either similar or dissimilar to the characteristic demeanor and reactions of others.

In the realm of organizations, the MBTI typology theory provides a logical, coherent structure for understanding normal differences between individuals in a variety of work-related areas, including, communication styles, team orientation, project management, preferred supervision style, work environment affinities, responses to organizational change, learning styles and motivation. On a macro level, the MBTI outlines a perspective for analyzing organizational culture, management structures and operational systems (Briggs-Meyers, 1998). Furthermore, consideration of the MBTI preferences and the personality combinations demonstrates the value of capitalizing on diversity within organizations or workgroups. In this way, it supports the ethical and constructive use of differences - a principle that is particularly applicable in the diverse and globally-oriented organizations of today and the future.

The following table indicates the relationship between the MBTI preferences and communication styles as compiled in an extensive review of over 130 studies analyzing psychological type and communication styles (Briggs-Myers & Myers, 1995; Keirsey & Bates, 1984; Kroeger & Thuesen, 2013; Hirsh & Kummerow, 1989; Bayne, 1997; Pearman & Albritton, 2010; Briggs-Myers, 1998; Keirsey, 1998).

Table 1: MBTI Preferences and Communication

Extraversion (E)	Introversion (I)
♦Communicate outwardly with energy, excitement and enthusiasm with almost anyone in the vicinity	♦Keep their energy, enthusiasm, excitement to themselves, unless they are sharing it with someone they know well

<ul style="list-style-type: none"> ◆Respond quickly to questions and outward events ◆Communicate one-to-one or in groups with equal ease and enjoyment ◆Need to moderate themselves in order to allow others a chance to speak ◆Prefer face-to-face verbal communication over written communication ◆Think out loud, interact with others and in the process reach their conclusions ◆Need to share their experiences with others almost as soon as they happen, in order to make them come alive ◆Share personal information easily 	<ul style="list-style-type: none"> ◆Take time to think before responding to questions and outward events ◆Prefer communicating one-to-one ◆Need to be drawn out and invited by others to speak ◆Prefer written communication over face-to-face communication ◆Reflect and think for a time before presenting conclusions to others ◆Need to internally review experiences before sharing them with others ◆Hesitate about sharing personal information
<p>Sensing (S)</p> <ul style="list-style-type: none"> ◆Present evidence, facts, details and examples first ◆Want to know the practical and realistic applications of data ◆Rely on their own experience to illustrate and clarify points ◆Want others' suggestions to be straightforward, feasible and practical ◆Are orderly and step-by-step in their approach to presentations ◆Refer to specific examples in discussions 	<p>Intuition (N)</p> <ul style="list-style-type: none"> ◆Present insights, concepts and ideas first ◆Want to know the challenges and opportunities that may be suggested by others ◆Rely on hunches and imagination to embellish their points ◆Want others' suggestions to be novel, original and challenging ◆Are roundabout in their approach to presentations ◆Refer to general concepts in discussions ◆Digress from the agenda when it gets boring

<ul style="list-style-type: none"> ◆Follow the agenda and its time frames in meetings ◆Use detailed descriptions frequently 	<p>way at meetings</p> <ul style="list-style-type: none"> ◆Use metaphors and analogies liberally
<p>Thinking (T)</p> <ul style="list-style-type: none"> ◆Prefer brief and concise communication ◆Note the pros and cons of each alternative ◆Show objectivity and readily critique ideas and people ◆Convince others by cool, impersonal, logical reasoning ◆Present goals and objectives first ◆Recognize people's feelings and emotions as data to consider, but without undue emphasis on them ◆Focus communications on tasks and impersonal occurrences ◆See others' flaws 	<p>Feeling (F)</p> <ul style="list-style-type: none"> ◆Prefer sociable, friendly and even consuming communication ◆Note how a given alternative has value, how it affects people ◆Show appreciation and readily engage with people and their ideas ◆Convince others with personally meaningful information enthusiastically delivered ◆Offer pleasantries and then present proposals for agreement ◆Recognize logical and objective arguments as data to consider, but without undue emphasis on them ◆Focus communication on relationships between people and personal happenings ◆See others' positive points
<p>Judging (J)</p> <ul style="list-style-type: none"> ◆Discuss schedules and timetables and set realistic deadlines ◆Dislike surprises and want advance warnings ◆Expect others to move their thought through to conclusions 	<p>Perceiving (P)</p> <ul style="list-style-type: none"> ◆Dislike schedules and feel constrained by many deadlines ◆Like surprises and enjoy adapting to minute changes ◆Expect that others may not reach a conclusion

<ul style="list-style-type: none"> ◆Decisively fix positions and decisions, stating them clearly ◆Orient communications toward results and achievements ◆Talk with purpose and direction ◆Focus discussions on the content ◆Dislike side discussions or “going off on tangents” in meetings 	<ul style="list-style-type: none"> ◆Regard positions as tentative and subject to change ◆Orient communications toward optimal contingencies ◆Talk about flexibility and change ◆Focus discussions on the process ◆Do not mind getting sidetracked in meetings
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Communication between different types represents both a challenge and an opportunity. In terms of organizational communication, opposite kinds of perception allow different individuals to see different aspects of a situation and opposite kinds of judgment direct action toward different ends. Ideally, members of an organization constitute a team with a common purpose and shared goals. When handled correctly differences in type can create a stronger organization by capitalizing on an individual's strengths, matching preferences with responsibilities and creating complementary workgroups. Effectiveness will be enhanced if members of the organization recognize the value and contribution of each preference in reaching a sound and balanced solution to organizational challenges. Such a perspective embodies the essence of a true shared reality.

Conclusion

We live now in an age that is finally beginning to appreciate the strength of diversity. Every day in our organizations we relate to and communicate with others who have differences in perspectives, styles, beliefs and

feelings. As such it has become inadequate to merely tolerate differences. Rather, we must truly and more deeply understand, value and capitalize upon diversity among people. Individual efforts and pursuits will be successful only to the extent that we can successfully communicate with and otherwise relate to those around us. Perhaps, in our interactions with individuals, each different and unique in their own way, it would be wise to remember the words of Henry David Thoreau:

“If a man does not keep pace with his companions, perhaps it is because he hears a different drummer. Let him step to the music which he hears, however measured or far away”

for such will be the strength of our organizations, communities and societies of the future.

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Slums in India: Socio-economic status of slum dwellers in central Himalayan region

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Slums are generally neglected part of city where housing and living conditions are very poor. The increasing migration from rural to urban areas has led to growth of slums in every city. According to the Census of India 2001, slum population in the country is of the order of 40.3 million out of the total urban population in 607 towns/cities. This population constituted about 23% of the total population. It is estimated that every seventh person living in the urban areas is a slum dweller. Slum dwellers have to live in adverse conditions due to poor social, economic and health facilities. Lower socio-economic conditions lead them to ailing life. The slum dwellers have no assured income. Most of them are casual labourers and unemployed. The main objective of this research paper is to examine the socio-economic status of Slums dwellers in Nainital city in Central Himalayan region of India. This study is based on secondary data and secondary information.

Key words: slums, slum dwellers, Central Himalayan region, urban poor, poverty

Introduction

The existence of urban slums is one of the major problems faced by almost all the metropolitan cities throughout the world and Indian cities are no exception. Urbanisation brings about a rapid change in the social systems of urban society. This rapid urbanization is due to large scale rural migration to the urban centres. Majority of slum dwellers are migrants from different places within the country and are unskilled workers with low occupational

status and low income. The growth of slums is a manifestation of the urban poverty as the majority of the urban poor lives in the slums. Poverty is one of the disturbing features of the slums. It cannot be separated from the slum life. Besides, urbanization, industrialization, higher productivity in the secondary/tertiary sector against primary sector makes cities and towns centres of economic growth and jobs etc are the main reasons for the development of the slum areas. According to the Census of India 2001, slum population in the country is of the order of 40.3 million out of the total urban population in 607 towns/cities. This population constituted about 23% of the total population. Slum dwellers have to live in adverse conditions due to poor social, economic and health facilities. Lower socio-economic conditions lead them to ailing life. The slum dwellers have no assured income. Most of them are casual labourers and unemployed. The main objective of this research paper is to examine the socio-economic status of Slums dwellers in Nainital city in central Himalayan region of India. This study is based on secondary data and secondary information.

According to the reports of the United Nations on the urban land policy 'a slum is a building, group of buildings or area characterized by overcrowding, deterioration, insanitary conditions or absence of facilities or amenities which because of these conditions or any of them, endanger the health, safety or morals of its inhabitants or the community' (Rao and Rao, 1984).

For the purpose of implementation of the environment improvement of urban slums, the government of India adopted the following definition for the slum areas, 'a slum means any area where such dwellers predominate which by reason of dilapidation, overcrowding, faulty arrangement of design of building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, inadequacy of open space and community facilities or any combination of these factors are detrimental to safety, health or morals. Any slum area selected for improvement under the scheme should have at least $\frac{2}{3}$ rd of the slum families with an income of less

than Rs. 250/ per month and also there should be no likelihood of any slum clearance for redevelopment programme to be taken up in that area for a period of at least 15 years in case pucca built slums and 10 years for hutment type slums, so that adequate benefit is secured from the money spent on improvement (Government of India, 1985)'.

For the purpose of the survey in 1976-77, NSSO adopted the definition of slums as declared and undeclared slums. The declared slums were areas which have been formally declared as slum by the respective municipalities, corporations, local bodies or the development authorities. The undeclared slums were defined as 'an aerial unit having twenty five or more katcha structures mostly of temporary nature or inhabited by persons with practically no private latrine and inadequate public latrine and water'.

For the purpose of the survey in 1993 and 2002, NSSO adopted the definition of slums as 'a slum is a compact settlement with a collection of poorly built tenements, mostly of temporary nature, crowded together usually with inadequate sanitary and drinking water facilities in unhygienic conditions. Such an area, for the purpose of this survey, was considered as "non notified slums" if at least 20 households lived in that area. Areas notified as slums by the respective municipalities, corporations, local bodies or development authorities are treated as 'notified slums'.

Review of literature:

The slum dwellers have no assured income. Most of them are casual labourers and unemployed. A slum is a by product of poverty; and poverty leads to the rise of slums. According to David R. Hunter (1964) a slum is the locus of poverty and poverty is one of the potent forces that maintain the vicious circle and make it so difficult for people to breakout.

Generally the living standard of the slum dwellers is very low. They belong to poor build up households, lack of basic amenities like fresh drinking water, electricity, latrine facility, sewerage facility etc. Their social status, economic condition and livelihood profile is very poor. According to Asker et al (1992) the living conditions of the slum dwellers

are poor in the slums of Faisabad city. Chandramouli's (2003) study of slum dwellers of Chennai reveals the poor social status and living conditions of slum dwellers. According to Gangadharan K. (2005), slum area are effected with poor household conditions, educationally backward, high level of diseases occur, lack of available health services exist in slums.

Generally most of the slum dwellers live below poverty line (BPL). They do not have good source of income. Most of them are engaged in low level of economic activities as labours, rickshaw pullers, auto drivers, house maids, domestic workers, street vendor etc. Maximum number of slum dwellers work in informal/unorganized sectors. According to Sajjad H. (2014), the male slum dwellers are engaged as daily wage earners. They are rickshaw pullers, Tonga pullers, industry workers and construction workers. The female slum dwellers work as domestic workers in nearby localities. Street vending, small shop keeping, selling handicrafts and hawking are the main occupations of these slum dwellers. According to Chakarborthy and Rana (1993) slum dwellers generally work as daily wage workers, construction workers, industrial workers and vendor's etc.

Slum dwellers generally do not have any formal education facilities. It is generally observed in India that low income families, especially the lower caste families live on the outskirts of villages. Slums are generally educationally backward areas. Mostly slum dwellers are illiterate and they do not realise the importance of education. Therefore they do not spend their income on education. According to Khan and Dassii (1996), all changes and progress in society comes from literacy and education. Among the slum population literacy level is very low. According to Dhadave (1986) more than two third of the slum dwellers were illiterate. The study of Indian slums of Bombay by A.R. Desai and S.D. Pillai reveals that in families where both parents work, grownup children are kept at home to look after younger siblings. In families where such a situation does not exist, the child's lack of interest in schooling is quoted and often to such an extent that it would seem that it is the children themselves who decide whether

they need education or not. Distance from school, danger of crossing the road, no school of a particular medium of instruction and so on, were also frequently quoted as reasons along with other reasons.

During 2010-2011, Government of India Ministry of Housing and Urban Poverty Alleviation (national building organisations), JNNURM has conducted a survey on the conditions of slums of Nainital city in Central Himalayan region. As per 2001 census town population was 39,911 and number of total households was 8,647. In Nainital city there are 14 slums identified spread in around 2219 sq. mts. Total population in slums is estimated around 4758 of which 657 (14%) is BPL population. Total number of households are 909 of which 131 (14%) are BPL households. Nainital city is a popular hill station in the Indian state of Uttarakhand and head quarters of Nainital district in the Kumaun foothills of the outer Himalayas. All 14 slums covered under the survey are listed by Nainital Nagar Palika Parishad, and are located in core city area/town of which some slums are concentrated along the Naini Lake. These slums have come up past 90 year and have been growing, average age of slum being 49 years. All 14 slums have come up on area that belongs to the state government. Following table reveals that all 14 slums have come up on area that belongs to the state government.

Table 1
Urban population living in slums

S.no.	Name of slum	Ownership of land where slum located	Area in sq. mts.	Slum population	No. of slum households	BPL population	No. of BPL households
1.	Bakery compoun	State govt.	343.8	87	17	10	02

	d						
2.	Breysite	State govt.	189 3.8	284	61	15	03
3.	Dhobigh at	State govt.	370 0.0	468	100	31	11
4.	Hari nagar	State govt.	622 5.0	854	186	165	36
5.	Jubli hall	State govt.	887. 5	183	32	143	27
6.	Kameti line	State govt.	120 0.0	149	28	03	01
7.	Kathbas	State govt.	825. 0	112	20	0	0
8.	Langham /dsb	State govt.	248 7.5	298	62	04	01
9.	Mangaw ali	State govt.	321 2.5	404	80	76	13
10.	Narayan nagar	State govt.	515 6.3	854	145	165	28
11.	Rajpura	State govt.	213 1.3	347	65	19	04
12.	Sadar line	State govt.	981. 3	331	45	04	01
13.	Sherwoo d compoun d	State govt.	606. 3	107	19	0	0
14.	Sukhataa l	State govt.	141 8.8	276	49	22	04
Average /Total			221	4758	909	657	131

		9.2				
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Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Total population in the slums of nainital city is 4758 of which 2502 are male members and 2256 are female members. Slums of nainital city constitute of all castes categories of which 65% population belongs to SC category, followed by general category that constitute around one-fourth (24%) of the slum population. OBC population is 10%, and there is very small number of ST population i.e. 1%. The percentage of women headed households is 16. Muslim and Hindu migrants of Uttar Pradesh and Uttarakhand (especially remote hill areas of Uttarakhand) are the main residents of these slums. They migrated to Nainital in search of livelihood. They are mainly engaged in daily wage labour, private jobs and some are employed in nearby hotels and shops. They are poor, sick, illiterate and below the poverty line (ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011).

Discussion and analysis:

Education

Table 2

Literacy in slums

S.no.	Slum name	Illiterate adult male	Illiterate adult female	Illiterate adult total
1	Bakery compound	28	28	56
2	Breysite	11	15	26
3	Dhobighat	165	154	319
4	Hari nagar	139	157	296
5	Jubli hall	17	47	64
6	Kameti line	65	72	137
7	Kathbas	40	42	82

8	Langham/dsb	52	60	112
9	Mangawali	11	14	25
10	Narayan nagar	146	153	299
11	Rajpura	67	66	133
12	Sadar line	60	56	116
13	Sherwood compound	05	10	15
14	Sukhataal	36	39	75
Total		842	913	1755
Percent of total population		17.7	19.2	36.9

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Above table shows that of total number of illiterate adult population in slums is 1755 i.e. 36.9 % of total population of which 842 (17.7%) are adult male population and 913 (19.2%) are female population. It shows that slum dwellers do not spent money on the education.

Table 3
Dropout school children in slums

Slum name	Dropout children male (6-14 years)	Dropout children females (6-14 years)	Dropout total (6-14 years)
Bakery compound	05	06	11
Breysite	02	01	03
Dhobighat	11	10	21
Hari nagar	0	01	01
Jubli hall	13	14	27
Kameti line	0	0	0
Kathbas	01	02	03

Langham/dsb	0	0	0
Mangawali	10	09	19
Narayan nagar	15	16	31
Rajpura	31	21	52
Sadar line	02	01	03
Sherwood compound	0	01	01
Sukhataal	0	0	0
Total	90		172
Percent of total	52.3	47.7	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Above table depicts that 172 children between ages 6-14 years are not attending /dropout from school of which 52.3% are boys and 47.7% are girls. It shows that slum dwellers do not spent money on the education of their children. Due to the low level of income slum dwellers do not send their children to the school.

Table 4
Type of primary school available for households

Slum name	Municipal	Government	Private	Total
Bakery compound	01	0	0	01
Breysite	01	59	0	60
Dhobighat	0	94	0	94
Hari nagar	02	176	0	178
Jubli hall	03	26	03	32
Kameti line	0	28	0	28
Kathbas	0	20	0	20
Langham/dsb	01	61	0	62

Mangawali	15	55	06	76
Narayan nagar	0	145	0	145
Rajpura	07	30	10	47
Sadar line	0	17	01	18
Sherwood compound	0	19	0	19
Sukhataal	0	44	0	44
Total	30	774	20	824
Percent of total	3.6	93.9	2.4	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Table 5
Types of high school available for households

Slum name	Municipal	Government	Private	Total
Bakery compound	01	0	0	01
Breysite	0	60	0	60
Dhobighat	02	92	0	94
Hari nagar	02	176	0	178
Jubli hall	03	26	03	32
Kameti line	0	28	0	28
Kathbas	0	20	0	20
Langham/dsb	01	60	0	61
Mangawali	07	60	05	72
Narayan nagar	0	58	0	58
Rajpura	0	37	11	48
Sadar line	0	18	0	18
Sherwood compound	0	19	0	19

Sukhataal	01	43	0	44
Total	17	697	19	733
Percent of total	2.3	95.1	2.6	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Pre-primary schools-Aganwadi facility is available within most of the slums. Majority of the slum dwellers (86%-95%) are accessing government owned schools viz. Pre-primary schools, primary or high school. Private owned schools have also come up and are being accessed by the slum dwellers as well. High school could be assessed by travelling between 1-2 kms by the slum dwellers.

Health

Table 6

Access to type of health facility by households

Slum name	Primary health centre	Government hospital	Maternity centre	Private clinic	Ayurvedic doctor	Total
Bakery compound	0	02	0	0	0	02
Breysite	03	57	0	0	0	60
Dhobighat	59	29	0	03	0	91
Hari nagar	142	26	0	07	01	176
Jubli hall	04	23	01	04	0	32
Kameti line	0	28	0	0	0	28
Kathbas	10	10	0	0	0	20
Langham/dsb	01	61	0	0	0	62

Mangawali	02	74	02	0	0	78
Narayan nagar	0	58	0	0	0	58
Rajpura	0	44	01	01	0	46
Sadar line	0	19	0	0	0	19
Sherwood compound	0	19	0	0	0	19
Sukhataal	0	43	0	0	0	43
Total	221	493	04	15	01	734
Percent of total	30.1	67.2	0.5	2.0	0.1	100.0 0

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Status of health facilities is not adequate in and around the slum dwellings. Primary health centres (PHC), Maternity centre and Government hospital facility could be accessed by slum dwellers travelling between 0.5 to 02 kms. In the government hospital the slum dwellers go for registration and check up only and for medicine they have to go outside. The community prefers to go to hospital or deliveries. Private clinics have come up within slum areas in almost all slums. Other than these private clinics, Ayurveda doctors/Vaidya is also operative and could be accessed travelling some distance. Majority of the slum dwellers (67%) prefer to visit government hospital and some (30%) access PHC (primary health centres) for health services, only few visit private clinics.

Table 7
Type of houses

Slum name	Pucca	Semi-pucca	Katcha	Total
Bakery compound	01	0	16	17

Breysite	01	58	02	61
Dhobighat	51	44	05	100
Hari nagar	50	119	17	186
Jubli hall	05	13	14	32
Kameti line	26	02	0	28
Kathbas	16	04	0	20
Langham/dsb	46	14	02	62
Mangawali	66	05	09	80
Narayan nagar	82	31	32	145
Rajpura	25	23	17	65
Sadar line	05	01	39	45
Sherwood compound	01	18	0	19
Sukhataal	07	26	16	49
Total	382	358	169	909
Percent	42.0	39.4	18.6	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

The above reveals that out of the total 909 households maximum population i.e. 42% live in pucca houses, 39.4% live in semi-pucca houses and 18.6% live in katcha houses. 25% houses have cement roof and 11.2% roofs are of asbestos. 12.3% houses have roof made of wood while 16% are made of tarpaulin. Flooring in 69% houses is of cement and 9.9% are still done with mud.

Table 8
Lighting source

Slum name	Electricity connection	Kerosene	Firewood	Other	Total
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Bakery compound	02	0	0	15	17
Breysite	59	01	0	01	61
Dhobighat	94	03	0	03	100
Hari nagar	172	05	01	08	186
Jubli hall	26	03	01	02	32
Kameti line	27	0	0	01	28
Kathbas	20	0	0	0	20
Langham/dsb	61	01	0	0	62
Mangawali	78	0	0	02	80
Narayan nagar	125	10	10	0	145
Rajpura	39	01	0	25	65
Sadar line	19	0	0	26	45
Sherwood compound	19	0	0	0	19
Sukhataal	44	03	01	01	49
Total	785	27	13	84	909
Percent	86.4	3.0	1.4	9.2	100.0

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

It is clear from the above table that out of total 909 households maximum number i.e. 785 (86.4%) possess electricity connections, however when data analysed by type of dwelling around 10.6% of the kutcha dwellings have electricity connections. 3% slum dwellers use kerosene while other (9.2%) use paraffin, candles etc. According to ULB report around 80% households use Gas-stove for cooking purpose, while 5.6% still use kerosene for fuel followed by fire wood 2.4%. Some households are also using electricity (1.4%) as a source for cooking. It is clear from the following table:

Table 9

Fuel for Cooking used by households

Slum name	Ga s	Electrici ty	Kerose ne	Charco al	Firewo od	Othe r	Total
Bakery compound	01	0	0	0	0	16	17
Breysite	56	01	0	02	0	02	61
Dhobighat	87	02	06	01	02	02	100
Hari nagar	151	04	16	02	08	05	186
Jubli hall	24	01	0	04	03	0	32
Kameti line	28	0	0	0	0	0	28
Kathbas	19	0	01	0	0	0	20
Langham/dsb	56	03	02	01	0	0	62
Mangawali	70	0	05	0	05	0	80
Narayan nagar	113	0	16	12	04	0	145
Rajpura	47	0	01	0	0	17	65
Sadar line	18	01	0	0	0	26	45
Sherwood compound	19	0	0	0	0	0	19
Sukhataal	42	01	04	02	0	0	49
Total	731	13	51	24	22	68	909
Percent of total	80.4	1.4	5.6	2.6	2.4	7.5	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Table 10
Source of drinking water

Slum name	T a p	Tube-well/ Hand pump	Op en we ll	Pu blic tap	Bo re we ll	Tank/ pond	River/ canal	Wa ter tan ker	Ot her	Tot al
Bakery compou nd	02	0	-	0	0	0	0	15	0	17
Breysit e	10	0	-	17	0	0	24	10	0	61
Dhobig hat	46	0	-	35	03	06	03	05	02	100
Hari nagar	91	03	-	81	0	04	0	04	03	186
Jubli hall	02	02	-	23	01	01	0	02	01	32
Kameti line	28	0	-	0	0	0	0	0	0	28
Kathba s	01	0	-	18	0	0	0	01	0	20
Langha m/dsb	20	0	-	41	0	0	0	0	01	62
Manga wali	59	01	-	20	0	0	0	0	0	80
Naraya n nagar	45	0	-	27	0	04	0	68	01	145
Rajpura	20	02	-	08	0	07	01	23	04	65
Sadar line	0	0	-	19	0	0	0	26	0	45

Sherwood compound	03	0	-	16	0	0	0	0	0	19
Sukhatal	12	01	-	35	0	0	0	01	0	49
Total	339	09	-	340	04	22	28	155	12	909
Percent of total	37.3	1.0	-	37.4	0.4	2.4	3.1	17.1	1.32	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Above table depicts that 37.4 % slum dwellers use public taps for fetching drinking water and the same percentage of slum dwellers i.e. 37.3 % have their individual tap connections. 17% households depend on water tank supplies and 3.1% access tank/pond for drinking water. It is clear that there is no scarcity of drinking water in the slum area. However the quality of water is not good. Piped water supply in 14% cases is available daily for less than 01 hours while in 10% cases it is available between 1-2 hrs daily, and in some 23% cases the supply is for more than 2 hrs. Around 3% reported water supply once a week. Around 44% households have to travel less than 0.5 kms, while some 13% had to travel 1-2 kms or less to fetch water.

Sanitation

Table 11

Toilet facility with households

Slum name	Own septic tank/flush latrine	Own dry latrine	Shared septic tank/flush	Shared dry latrine	Community septic tank/flush	Community dry latrine	Open defecation	Total
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	e		latrine		latrine			
Bakery compound	02	0	0	0	0	0	15	17
Breysite	14	02	01	02	38	02	02	61
Dhobighat	44	04	05	01	38	03	05	100
Hari nagar	128	02	0	05	41	03	07	186
Jubli hall	03	01	06	04	15	0	03	32
Kameti line	28	0	0	0	0	0	0	28
Kathbas	04	02	05	0	08	01	0	20
Langham/dsb	31	02	0	0	0	0	29	62
Mangawali	43	06	01	03	01	20	06	80
Narayan nagar	85	0	0	0	02	29	29	145
Rajpura	20	17	02	02	01	01	22	65
Sadar line	0	17	0	0	0	0	28	45
Sherwood compound	01	0	16	02	0	0	0	19
Sukhatal	35	02	03	01	01	05	02	49

Total	438	55	39	20	145	64	148	909
Percent of total	48.2	6.1	4.3	2.2	16.0	7.0	16.3	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Most of the slum dwellers have access to toilet facilities-either individual or community based. It is very striking that 48% households have own toilet facility but still 16% households defecate in open. The community goes to drain for open defecation, as slums are not having the toilet facility. Bathroom is meant for taking bath in privacy, particularly for females, and it is good to observe that around 63% household possess bathroom within their premises. Infra structure within the slum is poor, and neither these slums get benefitted by the town-level drainage and sewerage system. Most of the time Sewer line within the slum remains choked. The community throws the garbage into lake, which is further promoting unhygienic conditions.

Around 43% households reported that they have access to motorable-katcha road and some 34% have access to non-motorable-katcha road. The distance from the nearest motorable road is less than 0.5 kms for almost all of the slums. Within the slum also the road is motorable but dusty. Slums do have the street lights but it seldom works.

Social development/Welfare

Table 12

Access to welfare benefits by households

Slum name	Old age pension	Widow pension	Disabled pension	Health insurance	General insurance	Other	Total
Bakery compound	0	0	0	0	01	0	01
Dhobighat	02	02	01	0	02	05	12

Hari nagar	01	04	01	0	01	0	07
Jubli hall	0	0	0	0	0	02	02
Kameti line	02	0	0	0	0	0	02
Kathbas	0	02	01	0	0	01	04
Langham/dsb	0	01	0	0	0	0	01
Mangawali	01	0	01	01	10	0	13
Narayan nagar	14	05	01	0	01	09	30
Rajpura	04	03	01	0	04	09	21
Sukhataal	03	0	0	0	01	01	05
Total	27	17	06	01	20	27	98
Percent of total	3.0	1.9	0.7	0.1	2.2	3.0	10.8

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Benefits of various welfare schemes are also reaching the slum dwellers though in a limited manners. Some 03% is benefited with old age pension, widow pension (1.9%) or disabled pension (0.7%) scheme. Some (2.2%) covered with general insurance and 03% has taken Health insurance. None of the slums have reported to have SHG's (self help groups) however slum dweller association have been reported in the slums. Facilities like community halls, production centre, vocational training, street children rehabilitation centre or night shelter, and old age home do not exists in slums.

Asset possession (consumer durables/livestock)

Table 13

Consumer durables with households

Slum	Elect	Refriger	Cool	Residen	Mob	B/W	Colou
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name	ric fan	ator	er	tial telepho ne	ile phon e	televisi on	r televisi on
Bakery compoun d	0	0	0	0	01	01	01
Breysite	0	0	0	04	54	02	50
Dhobigha t	02	10	01	08	79	11	72
Hari nagar	12	32	01	10	146	19	115
Jubli hall	01	0	01	01	07	08	05
Kameti line	0	01	0	08	26	03	25
Kathbas	02	02	0	03	18	02	17
Langham /dsb	0	01	0	0	61	07	35
Mangawa li	11	12	01	07	66	13	59
Narayan nagar	02	17	01	12	60	14	91
Rajpura	04	03	0	14	42	05	39
Sadar line	0	0	0	0	01	01	01
Sherwoo d compoun d	0	0	0	0	19	0	17
Sukhataal	0	04	0	01	37	03	38
Total	34	82	05	68	617	89	565
Percent	3.7	9.0	0.6	7.5	67.9	9.8	62.2

of total							
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Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Possession of consumer durables by slum dwellers varies but most of them possess electric fan, mobiles, colour television, and refrigerator. Slum dwellers are also keeping sewing machine and two wheelers for their use. Slum dwellers also possess cows and buffalos, sheep/goat and pig as well.

Migration

Table 14

Number of years of stay in the city by households

Slum name	0-01 years	01-03 years	03-05 years	More than 05 years	Total
Bakery compound	0	0	0	17	17
Breysite	01	0	0	60	61
Dhobighat	02	0	0	98	100
Hari nagar	02	05	04	175	186
Jubli hall	0	01	0	31	32
Kameti line	0	02	07	19	28
Kathbas	0	0	0	20	20
Langham/dsb	0	03	01	58	62
Mangawali	02	0	02	76	80
Narayan nagar	01	08	20	116	145
Rajpura	05	06	02	52	65
Sadar line	0	0	0	45	45
Sherwood compound	0	0	0	19	19
Sukhataal	0	02	0	47	49
Total	13	27	36	833	909

Percent of total	1.4	3.0	4.0	91.6	100.00
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Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Larger sections of the slum population (92%) have been staying for over 05 years; and reported that their forefathers migrated to the present slum areas, 23% migrated from Rural to Urban setups mostly to seek better employment opportunities in Urban areas, and also to get better wages.

Economic-condition

Table 15

Gender-wise distribution of earning members of the household

Gender	Total	Percentage
Male	1107	59.9
Female	740	40.1
Grand total	1847	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

The above table reveals that total number of earning members in slum dwellers is 1847 of which 59.9% are male members and 40.1% are female members. It is clear that the percentage of earning male member is high comparatively still the percentage of female earning member is satisfying.

Table 16

Skill training acquired by the earning members of the household

Skill training	Total	Percentage
Pre-employment Training	14	0.8
In-service Training	25	1.4
Apprenticeship	06	0.3
Soft skill/life skill	09	0.5

programme		
Entrepreneurship	41	2.2
Hereditary	05	0.3
Other	51	2.8
No skills training	1696	91.8
Grand total/Percentage	1847	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

The above table shows that maximum number of slum dwellers have not received any kind of skills training and those who got some kind of training had received it from ITI.

Table 17
Employment status of earning members of the household

Employment status	Total	Percent
Self employed	569	30.8
Salaried	698	37.8
Regular wage	85	4.6
Casual labour	97	5.3
Others	398	21.5
Grand Total	1847	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Above table reveals that most of the earning members of the slum household are salaried (37.8%). 30.8% slum dwellers are self employed and 21.5% slum dwellers livelihood is based on some other works.

Table 18
Monthly earnings of earning members

Monthly earning	Total	Percent
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Below 500	55	3.0
500-1000	73	4.0
1100-1500	267	14.5
1600-2000	101	5.5
2100-3000	46	2.5
Above 3000	1305	70.7
No income	0	0
Grand total	1847	100.00

Source: ULB database/baseline survey by HIFEED/PrimeNET; Year 2010/2011

Above table shows that the monthly income of maximum slum dwellers (70.7%) is above Rs.3000 and the monthly income of 14.5% slum dwellers is between Rs.1100-1600. 5.5% slum dwellers earn between Rs. 1600-2000 followed by Rs.4% households are earning Rs. 500-1000. Maximum slum dwellers feel that the main reason of unemployment in slum areas is lack of job opportunity. Some slum dwellers have expressed lack of vocation skills as main reason for un-employment of un-employed members.

Conclusions:

It is clear from the above discussion that slums of Nainital city in Central Himalayan region have poor infrastructure and living conditions are pathetic and unhealthy. The socio-economic status of slum dwellers is very low. Most of the households have BPL status. The residents were underprivileged and belong to vulnerable sections of the society (SC). Educational status of slum dwellers is very low. Due to the low level of income slum dwellers do not send their children to the school. There has been improvement in terms of housing type as majority of slum dwellers live in pucca and semi pucca houses but the condition of these houses is not good. Majority of them are living in houses with cement roofs. Maximum houses possess electricity connections. Majority of slum dwellers use public taps for fetching drinking water followed by households have individual tap connections. Quality of water is not good and water supply is not adequate.

Most of the slum dwellers have not received any kind of skills training. Therefore living in the slum areas is a challenging lihe.

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**Reading Rocks:
An Approach to Support and Motivate Vulnerable Readers
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Abstract

Reading Rocks is a literacy approach that is designed to teach primary literacy skills but also designed to promote motivation in reluctant readers. The research team developing Reading Rocks has partnered with the Learning Disabilities Association of Niagara Region (LDANR) to offer the program in local communities to children who struggle with reading, writing, and spelling. This one-on-one program promotes repetition of core-reading skills such as phonological processing, fluency and comprehension. Implementing a program of constant repetition of phonics, reviewing sight words, and practicing fluency, allows for the brain to exercise these skills, which results in neural sculpting. In addition to supporting children improve their literacy skills the program also promotes self-regulation tactics and motivational skills. This is achieved through positive feedback from the child's personal tutor, visual tracking of goals through graphing techniques and combined program planning between the child and tutor. Increasing the children's confidence levels through positive feedback and graphing has resulted in higher outcomes in their literacy levels and overall self-esteem. The combination of repetitive practice, encouraging support and individual goal setting all contribute to the increase in the child's educational, emotional and psychological well-being. This article additionally discusses a

case study on a child with a learning disability who participated in the Reading Rocks program and the positive outcomes associated with the child's overall literacy and emotional levels.

Keywords: reading, literacy, comprehension, phonological processing, motivational tactics, Reading Rocks, vulnerable readers

Introduction

Approximately 20% of children experience significant challenges with the reading process (Snow, Burns, & Griffin, 1998). Reading difficulties can be attributed to a number of factors including environmental disadvantage, second language learners, and/or cognitive processing impairments commensurate with diagnoses such as learning disabilities (Case, Speece, Molloy, 2003; Crosnoe, Leventhal, Wirth, Pierce, & Pianta, 2010; Morris, Lovett, Wolf, Sevcik, Steinbach, Frijters, & Shapiro, 2012). Learning disabilities, and particularly reading disabilities have received a great deal of attention over the past two decades as stakeholders have realized the negative effect reading disabilities can have on not only academic achievement, but also secondary characteristics such as depression, anxiety, and a host of other mental health related illnesses.

Vulnerable Readers

Although the majority of children learn to read without difficulty, approximately 20% of children experience significant challenges with the reading process (Snow et al., 1998). Among this group of children exist a variety of developmental paths and diverse literacy experiences, some of which greatly influence how

children become ‘vulnerable readers’. Research has pointed to several factors that can affect children’s reading. Such factors may include cognitive factors such as learning disabilities (Torgesen, Rashotte & Wagner 1994), behavioral or emotional difficulties (Arnold et al., 2005), environment and specifically socio-economic status (Arnold & Doctoroff, 2003; Crosnoe, et al., 2010), and learning a second language (Lipka & Siegel, 2012). However, regardless of the cause of the reading difficulty, it is important that researchers and concerned stakeholders look for the most effective interventions aimed at supporting vulnerable readers. There are a number of literacy skills and tactics that have been linked to effective reading interventions. Research consistently indicates that vulnerable readers benefit from literacy interventions that strengthen their phonics, sight word vocabulary, and fluency (McNamara, Scissons, & Gutknecht, 2011; National Reading Panel, 2000; Scruton & McNamara, 2014; Snow et al., 1998; Torgesen et al., 1994). After analyzing over 100,000 studies, the National Reading Panel (2000) concluded that the most effective reading intervention is one that includes explicit instruction in phonemic awareness, systematic phonics instruction, methods to improve fluency and ways to enhance comprehension.

Reading Rocks

Reading Rocks is an intervention approach that uses motivational tactics to engage children in the reading process. Specifically, Reading Rocks has children use tactics such as graphing, goal setting, and monitoring – tactics are designed to actively engage children in their own learning. This active engagement will allow children to recognize their own progress and achievement. By combining traditional literacy with motivational tactics, Reading Rocks aims to bolster children’s motivation and increase their

reading achievement to support long-term reading success.

Reading Rocks was designed by John McNamara, Ashley Short, and Hilary Scruton (2014) and is currently offered throughout Southern Ontario, Canada in partnership with several learning disabilities agencies. Reading Rocks is best suited to be used as a one-on-one instructional approach however; it can be modified for small groups of readers at similar reading levels. The program is designed to be an 8-week intervention program that includes two, 1-hour sessions, weekly. Trained tutors or educators delivering the program work individually with children who have been identified as having reading-based needs. The program is based on recommendations by the National Reading Panel (2000) suggesting that remedial literacy instruction be systematic and explicit, providing children with ample opportunity for individual feedback and practice with foundational literacy skills such as phonetic decoding, phonics, sight word vocabulary, fluency, and comprehension. Furthermore, the one-on-one instruction provided in the Reading Rocks program allows tutors to customize the program to best meet individual children's various needs.

The Reading Rocks program is designed to be delivered in a series of 1-hour tutoring sessions. Each hour session should be broken down into four 15-minute instructional blocks each corresponding with one literacy-based instructional component. For example, a 1-hour tutoring session would include a 15-minute block of phonics, followed by a 15-minute block of vocabulary, a 15-minute block of reading fluency, and ending with a 15-minute block of reading appreciation. The purpose of 15-minute block structure is twofold. First, research has demonstrated that short, intensive instructional sessions (10-15 minutes) are more effective than longer sessions (Vaughn & Roberts, 2007). Second, the 15-minute block structure in Reading Rocks is designed to be motivational. Within the

program, children set out to meet instructional goals within set time periods. This process encourages children to engage with the task vigorously in order to meet their defined goal.

Reading Rocks is similar to traditional reading programs in that tutors focus on essential component skills required to teach children how to read; however, the program is unique as it also uses motivational tactics to engage children's self-regulated learning. Reading Rocks recognizes that within the spectrum of motivation there are several tactics that can be used to bolster children's motivation and increase their reading achievement. Specifically, within each instructional block (i.e. phonics, sight word instruction, etc.) Reading Rocks engages a number of motivational tactics that promote the self-regulated learning skills proposed by Winne and Hadwin (1998). The motivation tactics are engaged through the use of instructional workstations that tutors design and tailor to each child's needs.

Case Study

This paper describes a case study of Reading Rocks as it was implemented with Child A. Child A is a second grade student, diagnosed with a learning disability that has been struggling with basic foundational phoneme identities, fluency rates, and overall comprehension. Child A demonstrates negative attributes towards learning ability and finds it challenging to remain motivated in school. This was Child A's first encounter with the Reading Rocks program.

Child A received one-on-one instructions from a qualified instructor twice a week for 1 hour, over an 8-week period. Child A's individual program was created from a detailed four category assessment that was conducted at the beginning of the program. The assessment examined fluency, phonological awareness,

vocabulary, and comprehension skills. Child A expressed a strong base of common grade 2 sight words but scored relatively low on phoneme identities and fluency speed. These findings were the guiding features of the creation of Child A's individual learning plan.

At the beginning of each tutoring session Child A and the tutor collaborated to create individual goals for the three literacy categories (phonics, sight words, fluency). This tactic was implemented in order to increase children's motivational outlook on learning. This ultimately contributes to their overall intrinsic motivation. Each session Child A and the tutor would place the goals on the graphing charts. Each category had its own specific goals. For example, Child A and the tutor would choose 5 particular sight words to master during the session. Child A was able to witness the progress being made through the visual graphing, which awakened the desire to continue to learn.

Phonics

The first work block Child A and the tutor would focus on was phonics. Particular phoneme identities that were challenging for Child A were gh, wh, ph, ng, scr and str. Each one of these phonics blends was introduced at a comfortable pace throughout the program. Child A and the tutor would generally focus on 3-6 sounds to master each class. Child A responded extremely well to educational games, which incorporated phoneme identities.

One tactic that was found to be very effective for teaching phonics was the game Phonics Jenga. The purpose of this game was to allow Child A to identify specific phonics sounds and blends through an enjoyable approach. This game was administered by:

- Set up blocks on top of each other to form a standing structure

- Each block would have a phonics sound or blend on it
- Whenever Child A would pull a piece out of the structure and place it on top of the structure the tutor would ask Child A to name the sound
- In addition to this the tutor would ask Child A to spell a word using the chosen sound

Combining phonics and spelling with a game worked incredibly well for Child A. This game enabled Child A to reach the phonics goals and allowed Child A to become extremely positive and confident with learning. This is one examples of several phonics activities that are implemented in Reading Rocks. Moving forward, Child A will continue to strengthen phoneme identities, which will contribute to Child A's overall spelling and comprehension.

Sight words

The second work block focused on was sight words. Sight words were practiced following phonics because they are the proceeding step in mastering fluency and comprehension. Again, the sight words section was administered for 15-minutes of the program.

As previously mentioned, Child A held an average understanding of basic sight words. The words that required improvements were as followed, where, were, know, those, through, and which. These foundational words are mastered through repetitive practice techniques. The practice techniques Child A thrived on were flash cards, using a white board and coloured markers, and the Cup Game. Flash cards were created by Child A and the tutor and used quite frequently throughout the program. The white board and coloured markers proved to be

effective because it expressed a creative feel to learning. Child A very much enjoyed writing sight words on the white board in different colours. This technique comes across as simple, however, for visual learners proven to be very successful.

The Cup Game proved to be the most successful strategy for Child A. Child A enjoyed active games because of the amusing feel. The aim of the Cup Game was to score as many balls into the cup and spell the words on the cup. These were the steps involved:

- 10 cups were set up in a pyramid
- Each cup had a phonics sound on it like ph, th, ou
- Child A had 3 ping pong balls to toss into the cups
- Each time Child A tossed a ball into the cup Child A had to read the letter sound
- After Child A read the letter sound the tutor would ask Child A to spell a word using that sound ex. ou and would

This game was successful in increasing Child A's motivation, self-confidence, and self-esteem levels. Each time Child A spelt a word correctly an increase in Child A's desire to continue spelling was expressed. Child A demonstrated a positive attitude throughout this game. This strategy was used in each one of the blocks in order to continue to boost confidence and allow Child A to realize overall learning potential. Again, this is one example of a sight word activity that is used in the Reading Rocks program.

Fluency

The third work block was fluency. Fluency consisted of reading the same passage each week and calculating words correct per minute (WCPM). Excellent fluency rates are achieved through mastering the primary skills of phonics and sight words through repetitive retrieval.

Child A's fluency assessment indicated that he was indeed

reading 48 WCPM. The passage that Child A read was at a grade 1 level, which was titled *Going to the Movies*. The initial reading of this passage was recorded at 2 minutes and 45 seconds, with misspelling of 17 words. This indicated which words Child A and the tutor needed to focus on and an accurate spot for goal setting.

Each tutoring session Child A and the tutor would practice this exact same passage and the steps, which were taken to complete this, were as followed:

- Child A would read the passage
- The tutor would time Child A and record the number
- The tutor would count the amount of words Child A read correctly and calculate the WCPM
- The formula that was used to calculate WCPM was: *words read correctly/ number of seconds to read the passage x 60 seconds*
- Any of the words Child A struggled were later incorporated in Child A's education curriculum

Child A's fluency rate significantly increased throughout the program. The tutor did notice if Child A ever misspelled a word the fluency rate did decrease. On occasion Child A did require a break simply to reduce the level of anxiety associated with reading. Towards the end of the program Child A had raised the WCPM to 88, only stumbling on 4 words and read *Going to the Movies* in 1 minute and 33 seconds. This was one of Child A's biggest achievements throughout the program season. Confidence in reading will continue to grow and lead to the mastery of comprehension.

Free Reading Period

The last 15-minutes of the program consisted of free reading period. Child A enjoyed being read to by the tutor. Children in the program were encouraged to bring in various books they were

being read to at home or attempting to read. The idea behind the free reading period is that it promotes reading comprehension skills. When a child hears the words being read out loud by someone else this allows them to expand their listening skills and vocabulary awareness. This then prepares them with written comprehension skills.

Conclusion of Case Study

Throughout the entire journey of the Read Rocks program Child A expressed significant improvements in phoneme identities, sight words, and fluency rates. Child A's favourite portion of this program was expanding his knowledge of sight words, leading to a Child A meeting their goals in every session. Child A mastered 27 new sight words by the end of the program. Some of the specific words Child A experienced some difficulties with but mastered shortly were they, were, where, which, behind, those, though, and house. The graphing station, where goals were set and reached immensely contributed to Child A's overall motivation, self-esteem, and self-efficacy. All three of these attributes are important foundational skills required to have children persist in their education.

Child A responded well to the one-on-one tutoring concept and was evident through the graphing outcomes. The strategies that the tutor used were personalized to Child A's ability and were administered at a comfortable pace. This form of teaching truly provides all the necessary tools a child requires with their learning. Future implications for Child A would be to continue working one-on-one with a skilled tutor on educational active learning games and activities.

Conclusion

This paper presented Reading Rocks, a literacy intervention program

designed by understanding the effective component skills of reading such as letter sounds, phonics, sight word vocabulary, and reading fluency. However, in addition to this Reading Rocks was designed to address the decrease in motivation often experienced by children with reading disabilities. Motivational tactics are important components of the learning process. Children with reading disabilities often experience significant challenges with their academic achievement and also their self-regulated learning. Specifically, children with reading disabilities tend to approach tasks with poor self-efficacy, do not engage in effective goal setting, and have negative internal monitoring and feedback systems. Reading Rocks combines the explicit teaching of effective reading-based skills with a focus on self-regulated learning through the use of instructional workstations and motivational tactics. Within the Reading Rocks program, tutors work with children to design and build an instructional workstation that acts as a graphic organizer of their self-regulated learning. As illustrated through this chapter, tutors and children collaboratively develop a sense of task understanding, set challenging yet achievable goals, and track and monitor progress. Reading Rocks is aimed at engaging children's self-regulated learning processes and as such, increasing their motivation to engage in reading-based tasks – tasks that children with reading disabilities often find significantly challenging.

The process of bridging a model of reading remediation and self-regulated learning holds important implications. First, research suggests that struggling readers often lack the self-efficacy to engage in the reading process. Following this, it is reasonable to expect that struggling readers are generally less motivated to engage in reading tasks. This is problematic in that vulnerable readers are learning alongside strong readers who are engaging with reading tasks. The differences in “willingness to engage” can

create long-term gaps in achievement that are difficult to overcome. However, by improving struggling readers' self-efficacy by engaging their motivation through tactics such as those described in this chapter, children may be more likely to engage in reading, and thus, progress through the reading process. A second implication is based on the data indicating that the gap between grade-level and struggling readers grows exponentially throughout elementary school years. By engaging vulnerable readers' motivational processes, educators will be promoting at-risk readers' self-directed learning – an important process that will assist children in the long-term independent learning process. Finally, by facilitating the development of motivation, children can employ these skills in all areas of their education, to not only use reading as a tool for further learning, but to do so effectively and independently.

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المسؤولية القانونية لمشيدي البناء (المهندس المعماري - المقاول)

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موضوع البحث:

عملية البناء تتضمن جوانب مختلفة يثير بغض منها مشاكل قانونية منها ما يتعلق بالاجراءات الإدارية التي يلزم اتمامها قبل مباشرة عملية البناء، كما هو الحال في استلزام الحصول على الرخص الإدارية قبل البدء في التنفيذ أو إجراء تعديلات أو اضافات .

كذلك قد يؤدي اخلال كل من المهندس المعماري والمقاول بشروط العقد إلى مسؤوليتهم العقدية، أو يؤدي مخالفتهم للأصول المهنية إلى المسؤولية التقصيرية ، هذا بالاضافة الي المسؤولية الجنائية التي قد تترتب اذا تم الاضرار بأحد الأشخاص.

مشكلة البحث:

عدم مراعاة الاصول الفنية في البناء تعد من أخطر المشكلات المثارة ، حيث أصبح القانون الجنائي في مواجهة هذه الظاهرة التي يجب التصدي لها بصورة جدية وحاسمة.

حيث أن ذلك يؤدي إلى تحقق المسؤولية المدنية والجنائية على كل من المقاول والمهندس المعماري.

أهداف البحث :

- تحديد المسؤولية المدنية و الجنائية على كل من المقاول والمهندس.
- بيان القواعد الفنية والهندسية المتعارف عليها في مهنة الهندسة المعمارية.
- بالتالي فموضوعنا يجمع بين الشق القانوني والفني والجمع بينهما للوصول الي الحلول ، وتحديد متى يعتبر المهندس قد خالف الأصول الفنية ، وما مدى مسؤولية المقاول أيضاً.

- المبحث الأول: دور مشيدي البناء

المطلب الأول: دور المهندسين المعماريين .

أولاً: المهندس المعماري الاستشاري المكلف بالتصميم.

المهندس المعماري هو كل من اتخذ لنفسه هذه الصفة وأدى دور المهندس في عملية البناء من الناحية الفنية*.

هناك قاعدة عامة تنص على أن المستشار مؤتمن ، ويندرج تحت هذه القاعدة أهل الاختصاص، بمعنى أن المستشار في مجال معين هو المتخصص في ذلك المجال ، والذي له الدراية والخبرة والتجربة مما يؤهله لتكوين الرأي واستنباط الحل في شتى مجالات الحياة، ومنهم بالطبع المهندس الاستشاري والذي تظهر أهميته بخصوص

د. أحمد شعبان محمد طه- المسؤولية المدنية عن الخطأ المهني لكل من الطبيب والصيدلي والمحامي والمهندس*
المعماري- دار الجامعة الجديدة- 2010 - ص267.

إجراء الرسومات والتصاميم الخاصة بالتصميم الذي يرغب به المالك وفقاً لامكانيات هذا المالك[†].

وفي الحقيقة فإن دور المهندس الاستشاري هو تقديم المشورة وفقاً لخبرته الفنية لصاحب العمل ، ويكون مرجعه في ذلك عقد الاستشارات الهندسية المبرم مع صاحب العمل، حيث يقوم المهندس هنا بأعداد البحوث والدراسات الأولية للمشروع وفحص العروض المقدمة ومراجعة التصميمات، وابداء الملاحظات عليها.[‡] ثانياً: المهندس المعماري الانشائي .

مهمة المهندس الانشائي هي الاشراف على تنفيذ الأعمال المرخصة، ويكون مسؤولاً مسؤولية كاملة عن ذلك، حيث أن على مالك البناء تحت التشييد أن يعهد إلي المهندس الإنشائي المؤهل الإشراف على التنفيذ و انجاز المشروع، وجوهر مهمة الاشراف هي الإدارة و مراقبة في نفس الوقت، فالإدارة تعني مباشرة سير الأعمال وفقاً للأصول الفنية، وتضمن معنى الخبرة والعلم، أما الرقابة هي متابعة أشغال وأعمال انجاز المشروع والإشراف عليه؛ لتفادي الوقوع في خطأ أو اغفال أو اهمال ، والسرعة في تصحيح أي خطأ واقع أثناء التنفيذ.[§]

المطلب الثاني : دور المقاول .

د. علاء ذكي- المسؤولية الجنائية لمهندسي البناء والمقاول- مكتبة الوفاء القانونية-2014- ص 251-252.[†]

د. محمد حسين منصور - النظام القانوني للمباني والانشاءات- دار الجامعة الجديدة- 2011-ص 493.[‡]

نصرون وردية- نصرون وردية- المسؤولية الجنائية لمشيدي البناء-(مالك البناء- المهندس المعماري-والمقاول) -[§]

رسالة ماجستير- 2001- ص96.

عرفت المادة (872) من قانون المعاملات المدنية عقد المقابلة بنصها على أن "المقابلة عقد يتعهد أحد طرفيه بمقتضاه بأن يصنع شيئاً أو يؤدي عملاً لقاء بدل يتعهد به الطرف الآخر"

أما عن خصائص عقد المقابلة، فيتضح من التعريف السابق أن عقد المقابلة عقد رضائي، يكفي لانعقاده وجود إيجاب وقبول، كما أنه عقد ملزم للجانبين المقاول الذي يلتزم باتمام العمل وبتسليمه ويقع عليه الضمان، وصاحب العمل والذي يلتزم بعد تمام العمل بدفع قيمة الأعمال، كذلك عقد المقابلة عقد معاوضة يأخذ فيه كل طرف مقابل ما أعطى فالمقاول يأخذ قيمة الأعمال بعد أدائه لهذه الأعمال المطلوبة منه، وصاحب العمل يحصل على انجاز العقد المطلوب **.

المبحث الثاني

المسؤولية المدنية والجنائية لمشيدي البناء

المطلب الأول : المسؤولية المدنية للمقاول والمهندس

المعماري

أولاً: مسؤولية عقدية أساسها العقد.

أ.د. عدنان إبلاهييم سرحان - عقد المقابلة في قانون المعاملات المدنية لدولة الإمارات العربية المتحدة - مكتبة **
الجامعة - 2015 - ص 9-10.

ذهب الرأي الغالب في الفقه الفرنسي إلى أن مسؤولية المقاول والمهندس مسؤولية عقدية، إذا كانت ناجمة عن عدم تنفيذهما لالتزاماتهما العقدية ، وهذا ما ذهبت إليه محكمة النقض الفرنسية معلنة بصفة مستقرة أن دعوى الضمان الخاص تقوم على المسؤولية العقدية؛ لأنها تنشأ نتيجة الإخلال بالتزامات مترتبة على عقد المقولة، فالمقاول يكون مسؤولاً عن جودة العمل، فيكون مسؤولاً عن كل عيب في الصنعة، وهذه المسؤولية هي لا شك مسؤولية عقدية، لأنها تقوم على التزام عقدي أنشأه عقد المقولة، وهذا يصدق أيضاً على المقاولات المتعلقة بالمنشآت الثابتة في الأرض، فهي كسائر المقاولات تنشئ التزاماً في ذمة المقاول أن تكون المنشآت خالية من العيب، فإذا انهدم البناء أو ظهر فيه عيب فقد تحققت المسؤولية العقدية للمقاول والمهندس.^{††}

ويعتبر المقاول هو الجهاز التنفيذي لمشروع البناء، لذا يتعين عليه أن يبذل كل الإمكانيات الفنية التي يملكها لإبراز تصاميم المهندس المعماري إلى حيز الوجود، وهو يتقيد في ذلك بمجموعة من الضوابط والمعطيات التقنية والقانونية التي تحكم عقود ، من ذلك على الخصوص احترام بنود الصفقة التي أبرمها مع المقاولات بصورة عامة

عادل عبد العزيز سمارة عبد الحميد - مسؤولية المقاول والمهندس عن ضمان متانة البناء في القانون المدني^{††}
الأردني (دراسة مقارنة) - رسالة ماجستير - جامعة النجاح الوطنية - فلسطين - 2007 - ص 24.

رب العمل وأن يتقيد بالمواعيد والآجال التي يتعين عليه إنجاز الأشغال خلالها، وكل^{††} . تأخير في ذلك يعرضه لتحمل المسؤولية العقدية

كما أنه يظل مسؤولاً تجاه رب العمل حتى من أخطاءمقاوليه من الباطن والذين يمكن أن يستعين بهم.

نظم المشرع الإماراتي عقد المقاولة ضمن عقود العمل وهي جزء من العقود المسماة في قانون المعاملات المدنية، حيث خصص لعقد المقاولة أربع وعشرون مادة من المادة 872 وحتى المادة، 896 ونظم التزامات المقاول في المواد 875-883 والتزامات صاحب العمل في المواد (884-889) ثم تطرق إلى أحكام المقاولة من الباطن في المادتين (890-891) وختم أحكام عقد المقاولة بتنظيم الأسباب التي ينقضي فيها عقد المقاولة في المواد 892-896.

وأول التزامات المقاول تتمثل في إنجاز العمل اذ يعتبر إنجاز المقاول للعمل محل العقد المتفق عليه، هو الالتزام الرئيسي الذي يجب على المقاول القيام به، وهذا يفرض على المقاول مجموعة من الالتزامات الفرعية التي تؤدي إلى تحقيق ذلك، فهناك واجبات لإنجاز العمل ويكون ذلك بعد تعاقد المقاول مع رب العمل، فعلى كل طرف الالتزام بتنفيذ ما التزم به، وعليه فعلى المقاول أن يقوم بتنفيذ وإنجاز العمل بالطريقة

باسوي رضوان - مسؤولية المقاول والمقاول من الباطن - مجلة العلوم القانونية - 2005-2006-††

<https://www.marocdroit.com>.

المتعارف عليها في أعمال البناء، وعلى أن يبذل في العمل العناية اللازمة متمماً عمله في المدة المتفق عليها، ومن ثم يسأل المقاول عن خطئه وخطأ تابعيه في طريقة انجاز العمل .

وتنص المادة 877 من قانون المعاملات المدنية "يجب على المقاول إنجاز العمل وفقاً لشروط العقد" بالتالي فالمقاول ملزم بالطريقة المتفق عليها بعقد المقاولة . وهذا يعني أنه يجب على المقاول العمل بالطريقة المتفق عليها في عقد المقاولة، وطبقاً للشروط الواردة فيه، إلا أن عدم الاتفاق على طريقة معينة لإنجاز العمل لا يعني أن للمقاول أن ينجز العمل كيفما يشاء، بل عليه أن يتبع عرف المهنة وبخاصة أصول الصناعة والفن في العمل الذي يقوم به حيث إن لكل عمل تقاليد وأصولاً فإن خالفها كان مسؤولاً تجاه صاحب العمل مسؤولية عقدية

وأعطى المشرع صاحب العمل إذا وجد أن المقاول يقوم بما تعهد به على وجه معيب: أو مخالف للشروط المتفق عليها الحق في أن يتدخل حالاً وقد ميز بين حالتين الحالة الأولى: إذا كان العيب يمكن إصلاحه، ففي هذه الحالة لصاحب العمل أن يطلب من المقاول الالتزام بشروط العقد وإصلاح عيوب العمل، خلال مدة معقولة، فإذا انتهت هذه المدة دون أن ينصاع المقاول إلى طلب صاحب العمل فإنه يحق للأخير، إما طلب فسخ العقد أو أن يطلب ترخيصاً من المحكمة في أن يعهد بالعمل إلى مقاول آخر، ويتحمل المقاول الأول النفقات اللازمة لإنجاز العمل من قبل المقاول الآخر. ومما لا شك فيه أن اللجوء إلى الفسخ سيكون هو الخيار الأرجح إذا كانت

شخصية المفاوض محل اعتبار

الحالة الثانية: إذا كان العيب جسيماً لا يمكن إصلاحه، ففي هذه الحالة منح القانون صاحب العمل الحق في طلب الفسخ في الحال، والأمر في الحالتين متروك لتقدير قاضي الموضوع.^{§§}

وفي ذلك قضت المحكمة الاتحادية العليا في الطعن رقم 469 لسنة 26 قضائية على أنه

" من المقرر - في قضاء هذه المحكمة - أن لمحكمة الموضوع السلطة التامة في فهم الواقع في الدعوى وتقدير الأدلة فيها والترجيح بينها والأخذ بما تراه راجحاً منها ، إذ أنها لا تقضي إلا على أساس ما تظمن إليه وتثق به ، وحسبها أن تبين الحقيقة التي اقتنعت بها وأن تقيم قضاءها على أسباب سائغة تكفي لحمله وليس عليها من بعد أن تنتبج الخصوم في مختلف أقوالهم وحججهم وطلباتهم وأن ترد استقلالاً على كل قول أو طلب أثاروه ما دام قيام الحقيقة التي اقتنعت بها وأوردت دليلها فيه الرد الضمني المسقط لتلك الأقوال والحجج والطلبات وأنه إذا اشترط صاحب العمل أن يقدم المفاوض مادة العمل كان مسئولاً عن جودتها طبقاً لشروط العقد إذا وجدت وإلا طبقاً للعرف الجاري عملاً بالمادة 1/875 من قانون المعاملات المدنية وأن يضمن المفاوض ما تولد عن فعله وصنعه من ضرر أو خسارة سواء بتعديه أو بتقصيره عملاً بالمادة 878 من ذات القانون . لما كان ذلك وكان الحكم المطعون فيه تناول الرد

المستشار جمال الجابري - محاكم دبي - مقال منشور في عدد يوم السبت تاريخ 22-3-2008.^{§§}

على هذا النعي بما أورده بأسبابه من أن المطعون ضدها - الشركة العالمية للميكانيك والكهرباء (أميكو) - أكدت في دعواها وهي المقاول الأول اتفاقها مع الطاعنة - شركة متينو أوفر سيز - على أن تقوم هذه الأخيرة وهي المقاول الثاني بتصنيع وتصميم وتوريد والتسليم إلى الموقع والإشراف والتركيب والتشغيل التجريبي وتسليم محطة معالجة المياه في مصفاة أم النار وذلك وفقاً لتعليمات شركة تكرير نفط أبوظبي صاحبة العمل التي وافقت عليها الشركة الطاعنة (المقاول الثاني) في كتابها رقم 97 - 003 - 13 بتاريخ 2/3 / 1998م وبذلك تكون ملزمة وبمقتضى عقد المقاولة المبرم بينها وبين الشركة المطعون ضدها (المقاول الأول) بإنجاز العمل المسند إليها وفق الكيفية الواردة في تلك التعليمات ومسئولة عن إنجاز هذا العمل وفق هذه الكيفية التي وافقت عليها حسب المستفاد من كتابها المذكور وذلك تنفيذاً لمقتضى المادة 875 من قانون المعاملات المدنية الاتحادي ومعه يكون الدفع المعتمد فيه على نسبية العقد المبرم بين الشركة المقاول الأول والشركة صاحب العمل لا ينهض حجة للشركة المقاول الثاني بعد المستفاد من كون عقد المقاولة من الباطن قد أبرم بعد الاطلاع على العقد المبرم بين الشركة صاحبة العمل والشركة المقاول الأول مما يتعين معه رفض هذا الدفع ، وحيث يستفاد من عقد المقاولة المبرم بين الطرفين أن الطاعنة - شركة متينو أوفر سيز - وهي المقاول الثاني قد التزمت بتقديم مادة العمل كلها وبذلك تكون مسئولة عن جودتها وعليها ضمانها لكون العقد مزيجاً من بيع مادة العمل ومقاولة على العمل وبصفتها بائعة يكون عليها ضمان العيوب

الخفية من وقت إتمام العمل وكسب الشيء المتفق على إنجاز مقوماته الذاتية وضامنة لكل ما يتولد عن فعلها وصنعها من ضرر أو خسارة تنفيذاً لمقتضى المادة 878 من قانون المعاملات المدنية ، وحيث لم تنكر الشركة المقاول الثاني - الطاعنة - على الشركة المقاول الأول - المطعون ضدها - ما ادعت هذه الأخيرة من كونها وجهت إليها عدة مراسلات للقيام باستبدال المضخات والبطانات المطاطية خصوصاً لخطوط حامض الأسيد بالإضافة إلى التحذيرات المتعددة وحددت لها قائمة بالأعمال المطلوبة من طرف الشركة صاحبة العمل كما حددت لها مهلة 48 ساعة لمباشرة الإجراءات الضرورية وأنه في حالة عدم الاستجابة ستباشر شركة أميكو (المطعون ضدها) ذلك على مسئوليتها وعلى حسابها ومع ذلك رفضت القيام بتلك الأعمال كما هو مضمن في رسالتها بتاريخ 2/10 / 2002م وأكد المهندس المنتدب خبيراً في الدعوى واعتماداً منه على ما قام به من عمليات أن شركة المقاول الأول - المطعون ضدها - وبسبب رداءة المواد المصنعة منها الملفات والبطانة المطاطية قد تحملت تكاليف لإصلاح وتغيير الأجزاء المعيبة وانتهت المحكمة بما لها من سلطة تقديرية إلى أن الطاعنة مسئولة عن تغيير هذه المواد المباعة منها للمطعون ضدها وإحلال مواد أخرى مطابقة للمواصفات بدلاً منها وعلى نفقة الطاعنة - وهذه أسباب سائغة . لحمل قضاء الحكم وفيها الرد الضمني المسقط لكل ما أثارته الطاعنة بالنسبة للمهندس المعماري إذا اقتصر دوره على وضع التصميم أي أن يكون مهندساً استشارياً فقط ، دون أن يكلف بالرقابة على التنفيذ لا يكون مسؤولاً إلا عن عيوب

التصميم، والمقصود بعيوب التصميم هي تلك العيوب الناجمة عن الأخطاء التي ترتكب في إعداد الوثائق الصادرة عن المهندس المعماري مثل الخرائط والرسومات.***
أي أنه لا يسأل عن العيوب التي ترجع إلي طريقة التنفيذ ، كذلك قد يسأل عن العيوب التي تكتشف في الأرض المقام عليها البناء إذا كان من الممكن كشف هذا العيب قبل البناء، أما إذا تبين استحالة كشف هذا العيب قبل البناء فقنا تنتفي مسؤوليته عن عيوب الأرض أيضاً⁺⁺⁺.

ويتضمن الخطأ العقدي عدة مظاهر يمكن من خلالها إنعقاد المسؤولية العقدية للمهندس المعماري في إطار العلاقة العقدية بينه وبين رب العمل، فإذا توافرت أيّاً من هذه الأخطاء تنعقد المسؤولية العقدية بشرط أن تتوافر قبل تسليم البناء إلي رب العمل، حتى تسرى القواعد العامة للمسؤولية العقدية، وعلى رب العمل إثبات وجود خطأ في البناء صادر من المهندس المعماري فمسؤوليته العقدية ليست مفترضة، أما إذا ترتب على الخطأ الذي وقع فيه المهندس المعماري أضرار لحقت بالبناء بعد تسليمه لرب العمل فإنها تدخل في مجال قواعد وأحكام الضمان العشري ، وهنا تكون مسؤولية المهندس مفترضة بحيث لا يلزم رب العمل بإثبات خطأ المهندس بعكس

د. سمير عبد السميع سليمان الأودن- المسؤولية القانونية للمهندس الاستشاري والتنفيذي ومقاول البناء- منشأة المعارف- 2014-ص126.

د. علاء ذكي – المرجع السابق-ص321.⁺⁺⁺

المسؤولية العقدية للمهندس والتي يكون فيها عبء إثبات الخطأ العقدي للمهندس على رب العمل.⁺⁺⁺

وقد قضت محكمة تمييز دبي بأن " مؤدى نص المادة (877) من قانون المعاملات المدنية أنه إذا تبين أن المقاول قام بما تعهد به على وجه معيب أو مناف لشروط العقد جاز لصاحب العمل أن يطلب فسخ العقد في الحال اذا كان العمل غير ممكن أما اذا كان الاصلاح ممكناً فيجوز لصاحب العمل أن يطلب من المقاول أن يلتزم بشروط العقد ويصح العمل خلال أجل معقول، فاذا انقضى الأجل دون اتمام التصحيح جاز لصاحب العمل أن يطلب من القاضي فسخ العقد أو الترخيص له بأن يعهد إلي مقاول آخر باتمام العمل على نفقة المقاول الأول الأمر الذي يدل على أن المشرع قد قيد حق صاحب العمل في الاستعانة بمقاول آخر باتمام العمل على نفقة المقاول الأول بالحصول على ترخيص بذلك من القاضي المختص الا اذا كانت ثمة حالة ضرورة تستدعي لقيام بالعمل دون الحصول على ترخيص ويكون أمر تقدير هذه الحالة متروكاً للقاضي الموضوع بشرط أن تقيم قضاؤها على أسباب سائغة"^{sss}

ثانياً: مسؤولية تقصيرية أساسها الخطأ.

يشترط في المسؤولية التقصيرية أن يكون هناك خطأ من جانب كل من المقاول والمهندس يتمثل في تقصيرهما أو اهمالهما في أعمال البناء أدى إلي حصول التهدم أو ظهور العيب فيه، أما مسؤولية المقاول والمهندس وفقاً للقواعد الخاصة تقوم على

د. أحمد شعبان محمد طه- المرجع السابق- ص 270- 271.⁺⁺⁺

تمييز رقم 227 لسنة 2009 تجاري – جلسة الاثنين 26-4-2010 .^{sss}

خطأً مفترض وهو مخالفة القانون، ولا يمكن نفي هذه المسؤولية إلا بإثبات السبب الأجنبي وهذا على خلاف ما توجبه القواعد العامة التي تقضي بأن الضمان لا يتحقق إلا إذا كان العيب موجوداً قبل التسليم. ****

ومن الثابت في قضاء المحكمة الاتحادية العليا في دولة الامارات العربية المتحدة أنه في حالة ثبوت أن الطاعنة هي التي اختارت الاستشاري فانها تتحمل نتيجة خطئه لأنه منسوب لها، ولا يجوز لها بالتالي التوصل مما ترتب على اختيارها له من نتائج. +++++

المطلب الثاني :المسؤولية الجنائية للمقاول والمهندس المعماري.

إن المسؤولية الجنائية من أهم الموضوعات التي تمس وبشكل مباشر فلسفة القانون، والفقه الجنائي، فهي تعتبر بوجه عام المحور الأساسي الذي تدور حوله الفلسفة الجنائية، ومن ثم كانت النهضة العلمية والفكرية التي لحقت بالقانون الجنائي الحديث والتي كانت وليدة الاتجاهات الفلسفية المختلفة حول نظرية المسؤولية الجنائية، ولهذا نشأت المدارس الفقهية في القانون الجنائي. +++++

****. عادل عبد العزيز سمارة عبد الحميد – المرجع السابق- ص 26.

++++. الطعن رقم 88 و 103 لسنة 28 تجاري-جلسة الأحد 29 مارس-1009.

++++. رامي يوسف محمد ناصر- المسؤولية الجزائية للشخص المعنوي عن الجرائم الاقتصادية- جامعة النجاح الوطنية- 2010-ص1.

أولاً: جريمة البناء بدون ترخيص.

تم تعريف جريمة مخالفة البناء بدون ترخيص، بأنها الجريمة التي يقوم فيها الجاني بإنشاء مبان أو إقامة أعمال مثل الأسوار والسيارات وما شابهها أو توسيعها أو تعليتها أو تعديلها أو تدعيمها أو هدمها قبل الحصول على ترخيص في ذلك من ^{§§§§}الجهة المختصة.

وقد قضت محكمة النقض المصرية بأنه " لما كان المقصود بالبناء في جريمة البناء دون ترخيص هو كل كيان متماسك من فعل الإنسان متصل بالأرض اتصال قرار وسواء كان اتصالاً مباشرة بالبناء على سطح الأرض أو بإقامة أساسات فيها غير مباشر كالبناء فوق سطح بناء قائم وأياً ما كان نوع البناء ومهما كان شكله وكيفما كانت مادته، وكان قوام الركن المادي في هذه الجريمة هو إنشاء البناء أو إجراء عمل ما نصت عليه المادة الرابعة من القانون رقم 106 لسنة 1976 في شأن توجيهِ وتنظيم أعمال البناء وهي أعمال البناء اللاحقة على الإنشاء وأعمال توسيع المباني وتعليتها وتعديلها وتدعيمها أو إجراء أية تشطيبات خارجية مما حددته اللائحة التنفيذية - إضافة إلى أعمال هدم المباني - ومن ثم يجب على الحكم بالإدانة في

فاطمة متميز - المسؤولية المعمارية للمقاول بين أزمة النص ومتطلبات الإصلاح - مطبعة الأمانة - المغرب-^{§§§§}
2010 - ص294.

هذه الجريمة أن يعنى بداءة بيان ماهية أعمال البناء التي تمت بالمخالفة للقانون وكيفية إجرائها مع إسنادها إلى مقارفها مدلولاً عليها بما يثبت الاتهام في حقه"**** بدون تصريح +++++

وقد قضت محكمة النقض المصرية بأن " جريمة البناء بدون ترخيص من الجرائم المتتابعة الأفعال متى كانت أعمال البناء متعاقبة متوالية إذ هي حينئذ تقوم على نشاط وإن اقترف في أزمنة متوالية إلا أنه يقع تنفيذاً لمشروع إجرامي واحد، والاعتداء فيه مسلط على حق واحد وإن تكررت هذه الأفعال مع تقارب أزمنتها وتعاقبها دون أن يقطع بينها فارق زمني يوحي بانفصام هذا الاتصال، الذي يجعل منها وحدة إجرامية في نظر القانون ، وإم مدة سقوط الدعوى الاجرامية في هذه الجريمة تبدأ من تاريخ آخر هذه الأفعال المتتابعة"+++++

ثانياً: جرائم القتل والاصابة الخطأ

تعني المسؤولية الجزائية الالتزام بتحمل العقوبة المقررة للجريمة إذا توافرت أركانها، فالمبدأ الأساسي للمسؤولية الجزائية أنها شخصية، بمعنى أن الإنسان لا يسأل إلا عن عمله الشخصي، فلا يجوز أن يسأل شخص عن عمل غيره .

**** http://bit.ly/money_crypto. الطعن رقم 25325 لسنة 62 جلسة 13/01/2002 س 53 ص 74- *****

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++++ محمد حسين منصور- المرجع السابق ص349.
***** طعن رقم 589 لسنة 65 ق – جلسة 2001/3/11.

وقد ذهب القانون المصري والفرنسي بأن جعلاً المقاول والمهندس ضامنين متضامنين على الخلل الذي يلحق بالبناء في مدة عشر سنوات، ولو كان ناشئاً عن عيب في الأرض أو عن اذن المالك في انشاء أبنية معينة بشرط ألا يكون البناء في هذه الحالة الأخيرة معداً في قصد المتعاقدين لأن يمكث أقل من عشر سنوات. §§§§§ وقد يتسبب هذا الخلل في البناء أو الإهمال أو الرعونة أو عدم الاحتراز أو عدم مراعاة القوانين والقرارات واللوائح من قبل المقاول والمهندس إلى وقوع عدة جرائم تؤدي بالأرواح أو تسبب إصابات بالأجساد ومن ذلك مثلاً جريمة القتل الخطأ، والإصابة الخطأ.

وتقوم المسؤولية الجزائية في جريمة القتل والإصابة الخطأ عندما تتجه إرادة الجاني إلى سلوك إجرامي معين دون أن تتوافر لديه إرادة النتائج غير المشروعة التي وقعت، فالجاني هنا يريد نتيجة مشروعة ولكن تقع نتيجة أخرى غير مشروعة على غير إرادة منه، كالمقاول أو المهندس المعماري الذي يقوم بتشييد مبنى وهذه (نتيجة مشروعة)، غير أن العقار يسقط (نتيجة غير مشروعة) سواء بسبب الغش في مواد البناء أم بسبب عدم مراعاة الأصول الفنية في التصميم، ومن ثم يثار التساؤل عن مدى مسؤولية كل من المقاول والمهندس المعماري في حالة انهيار المبنى وموت عدد ***** من الأشخاص أو إصابتهم في أجسادهم.

د. علاء ذكي- المرجع السابق- ص 385. §§§§§

د. عزت محمد العمري- المسؤولية الجزائية للمقاول والمهندس المعماري في النظامين المصري والسعودي- مجلة ***** المحامين العرب- العدد الرابع- 2009.

ففي القانون الاماراتي تنص المادة 343 من قانون العقوبات الاتحادي لدولة الامارات على أنه:

يعاقب بالحبس مدة لا تزيد على سنة وبالغرامة التي لا تجاوز عشرة آلاف درهم " أو بإحدى هاتين العقوبتين ، من تسبب بخطئه في المساس بسلامة جسم غيره ، وتكون العقوبة الحبس مدة لا تزيد على سنتين والغرامة أو بإحدى هاتين العقوبتين إذا نشأ عن الجريمة عاهة مستديمة أو إذا وقعت الجريمة نتيجة إخلال الجاني بما تفرضه عليه أصول وظيفته أو مهنته أو حرفته أو كان الجاني تحت تأثير سكر أو تخدير عند وقوع الحادث أو امتنع عن مساعدة المجني عليه أو عن طلب المساعدة له مع وتكون العقوبة الحبس والغرامة إذا نشأ عن الجريمة المساس بسلامة . استطاعته ذلك أكثر من ثلاثة أشخاص فإذا توافر ظرف آخر من الظروف الواردة في الفقرة السابقة تكون العقوبة الحبس مدة لا تقل عن ستة أشهر ولا تزيد على خمس سنين والغرامة هذا بالإضافة لعقوبة الغرامة التي تطبق على الشركة ذاتها كشخص معنوي طبقاً " لنص المادة 65 من ذات القانون والتي تنص على " الأشخاص الاعتبارية فيما عدا مصالح الحكومة ودوائرها الرسمية والهيئات والمؤسسات العامة، مسؤولة جنائياً عن ولا يجوز . الجرائم التي يرتكبها ممثلوها أو مديروها أو وكلاؤها لحسابها أو باسمها الحكم عليها بغير الغرامة والمصادرة والتدابير الجنائية المقررة للجريمة قانوناً فإذا كان القانون يقرر للجريمة عقوبة أصلية غير الغرامة اقتضت العقوبة على الغرامة التي لا

يزيد حدها الأقصى على خمسين ألف درهم ولا يمنع ذلك من معاقبة مرتكب الجريمة "شخصياً بالعقوبات المقررة لها في القانون

وفي القانون المصري:

تنص المادة 238 من قانون العقوبات على أن كل "من تسبب خطأ في موت شخص آخر بأن كان ذلك ناشئاً عن إهماله أو رعونته أو عدم احترازه أو عدم مراعاته للقوانين والقرارات واللوائح والأنظمة، يعاقب بالحبس مدة لا تقل عن ستة أشهر وبغرامة لا تجاوز مائتي جنيه أو بإحدى هاتين العقوبتين. وتكون العقوبة الحبس مدة لا تقل عن سنة ولا تزيد على خمس سنين وغرامة لا تقل عن مائة جنيه ولا تجاوز خمسمائة جنيه أو بإحدى هاتين العقوبتين إذا وقعت الجريمة نتيجة إخلال الجاني إخلالاً جسيماً بما تفرضه عليه أصول وظيفة أو مهنته أو حرفته أو كان متعاطياً مسكراً أو مخدرات عند ارتكابه الخطأ الذي نجم عنه الحادث أو نكل وقت الحادث عن مساعدة من وقعت عليه الجريمة أو عن طلب المساعدة له مع تمكنه من ذلك. وتكون العقوبة الحبس مدة لا تقل عن سنة ولا تزيد على سبع سنين إذا نشأ عن الفعل وفاة أكثر من ثلاثة أشخاص، فإذا توافر ظرف آخر من الظروف الواردة في الفقرة السابقة كانت العقوبة الحبس مدة لا تقل عن سنة ولا تزيد على عشر سنين".

وتنص المادة 244 من قانون العقوبات على أن "من تسبب خطأ في جرح شخص أو إيدائه بأن كان ذلك ناشئاً عن إهماله أو رعونته أو عدم احترازه أو عدم

مراعاته للقوانين والقرارات واللوائح والأنظمة، يعاقب بالحبس مدة لا تزيد على سنة وبغرامة لا تجاوز مائتي جنيه أو بإحدى هاتين العقوبتين. وتكون العقوبة الحبس مدة لا تزيد على سنتين وغرامة لا تجاوز ثلاثمائة جنيه أو إحدى هاتين العقوبتين، إذا نشأ عن الإصابة عاهة مستديمة أو إذا وقعت الجريمة نتيجة إخلال الجاني إخلالاً جسيماً بما تفرضه عليه أصول وظيفته أو مهنته أو حرفته أو كان متعاطياً مسكراً أو مخدراً عند ارتكابه الخطأ الذي نجم عنه الحادث أو نكل وقت الحادث عن مساعدة من وقعت عليه الجريمة أو عن طلب المساعدة له مع تمكنه من ذلك. وتكون العقوبة الحبس إذا نشأ عن الجريمة إصابة أكثر من ثلاثة أشخاص، فإذا توافر ظرف آخر من الظروف الواردة في الفقرة السابقة تكون العقوبة الحبس مدة لا تقل عن سنة ولا تزيد على خمس سنين".

وبالطبع فإن تقدير توافر السببية بين الخطأ و الإصابة ، أو عدم توافرها ، هو من المسائل الموضوعية التي تفصل فيها محكمة الموضوع و بغير معقب عليها ، ما +++++. دام تقديرها سائغاً ، مستنداً إلى أدلة مقبولة و لها أصلها في الأوراق

وقد قضت محكمة النقض المصرية بأن " مسؤولية صاحب البناء عن تعويض الضرر الذي يصيب الغير بسبب هدم بنائه أساسها إفتراض الخطأ من جانبه لأن هذا النوع من المسؤولية لا يقوم إلا على أساس وقوع خطأ بالفعل ... وإذا كان هذا هو المقرر في المسؤولية المدنية فإنه يجب من باب أولى في المسؤولية الجنائية تحقق

الطعن رقم 403 لسنة 41 ق جلسة 24/5/1971-محكمة النقض المصري.+++++

وقوع الخطأ من جانب المتهم فإذا كانت الواقعة ثابتة بالحكم هي أن مهندس التنظيم عاين منزل الطاعنة فوجده بحالة تنذر بالسقوط العاجل لوجود شروخ فيه لا يمكن إدراكها إلا بعين ذي الفن، وأنه طلب إلي ساكنيه أن يخلو ظرف أربع وعشرين ساعة، ولكن قبل إنتهاء المدة سقط فأصيب من ذلك شخص كان سائراً في الطريق، فهذا ليس فيها ما يدل على وقوع خطأ أو اهمال من صاحبة المنزل حتى تمكن مساءلتها جنائياً عن الحادثة. #####

الخاتمة

إن العقد هو شريعة المتعاقدين وهو تلاقي إرادتين أو أكثر على ترتيب آثار قانونية سواء كانت هذه الآثار هي إنشاء الإلتزام أو نقله أو تعديله أو إنهائه. ومن هذه العقود عقد المقاولة الذي عرفته المادة 872 من قانون المعاملات المدنية عقد المقاولة على أنه عقد يتعهد أحد طرفيه بمقتضاه أن يصنع شيئاً أو يؤدي عملاً لقاء بدل يتعهد به للطرف الآخر. ومن خلال بحثي هذا توصلت إلي عدة نتائج أهمها:

1- عقد المقاولة عقد رضائي، يكفي لانعقاده وجود ايجاب وقبول، كما أنه عقد ملزم للجانبين المفاوض الذي يلتزم باتمام العمل و بتسليمه ويقع عليه الضمان.

الطعن رقم 1709 سنة 9 ق نقض جنائي- جلسة 1939/11/27. #####

- 2- دور المهندس الاستشاري هو تقديم المشورة وفقاً لخبرته الفنية لصاحب العمل ، ويكون مرجعه في ذلك عقد الاستشارات الهندسية المبرم مع صاحب العمل.
- 3- مسؤولية المقاول والمهندس مسؤولية عقدية، إذا كانت ناجمة عن عدم تنفيذهما لالتزاماتهما العقدية.
- 4- مسؤولية التقصيرية في حال أن يكون هناك خطأ من جانب كل من المقاول والمهندس يتمثل في تقصيرهما أو إهمالهما في أعمال البناء أدى إلى حصول التهدم أو ظهور العيب فيه.
- 5- يحظر إنشاء مبان أو منشآت أو إقامة أعمال أو توسعتها أو تعليتها بدون تصريح، وإلا ترتب عليه مسؤولية جنائية على المكلف باستخراج التصريح.
- 6- قد يتسبب الخلل في البناء أو الإهمال أو الرعونة أو عدم الاحتراز أو عدم مراعاة القوانين والقرارات واللوائح من قبل المقاول والمهندس إلى وقوع عدة جرائم تؤدي بالأرواح أو تسبب إصابات بالأجساد ومن ذلك مثلاً جريمة القتل الخطأ، والإصابة الخطأ.

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"ممارسة النشاط الاقتصادي وفقا للقانون الاماراتي، بين ضرورة التنظيم وتحقيق التنمية الاستدامة".

مقال بحثي من اعداد:

الدكتورة كريمة كريم، أستاذ القانون التجاري المساعد -جامعة الشارقة –
مسؤولة مشروع بحث للمستجدين عنوانه: النظام القانوني للمشروع وتحقيق التنمية المستدامة.

الملخص:

لم يكن المشرع الاماراتي ببعيد عن التحولات الاقتصادية التي عرفها العالم ، بل يسعى دائما من خلال تدخلاته التشريعية المتعددة لمسايرة تلك التغيرات والعمل على جذب أكبر عدد من المستثمرين لممارسة الأنشطة الاقتصادية مهما كان نوعها- تجارية ، صناعية، خدماتية..- داخل الامارات العربية المتحدة، وذلك بتنظيم طريق ممارسة تلك الأنشطة بطريقة تضمن التنمية الاقتصادية وتجعل المشروع مسؤول اجتماعيا وملزم بحماية البيئة والحفاظ عليها، كل ذلك للوصول الى التنمية المستدامة. عن طريق فرض اجراءات والتزامات شكلية على المشروع الاقتصادي اما قبل أو أثناء ممارسة النشاط تجعل الادارة او الجهات المختصة تراقب سير عمل تلك المشاريع، وتسعى لتحفيزهم بمنحهم امتيازات نتيجة تحملها لمسؤولياتهم.

الكلمات المفتاحية: النشاط الاقتصادي، المشروع الفردي، الشركة، المسؤولية البيئية، المسؤولية الاجتماعية.

Abstract :

The UAE legislator was not far from the economic changes that the world has known. He has always sought through his various legislative interventions to keep pace with these changes and to attract the largest number of investors to engage in economic activities of any kind - commercial, industrial, service. Within the United Arab Emirates, by organizing the way in which these activities are carried out in such a way as to ensure economic development and make the project socially responsible and binding for the protection and preservation of the environment, all in order to achieve sustainable development. By imposing formal actions and obligations on the project Through the imposition of formal procedures and obligations on the economic project either before or during the exercise of activity make the management or the competent authorities to monitor the

progress of those projects, and seeks to motivate them by granting privileges as a result of their responsibilities.

Keywords: Economic activity, Individual project, Company, Environmental responsibility, Social responsibility.

المقدمة:

عرف الاقتصاد الاماراتي تحديات متعددة تتعلق بالجانب الاقتصادي والتنموي، ويعتبر من الاقتصاديات التي اثبتت وجودها واستمرارها نتيجة عدة أسباب أهمها الموقع الجغرافي والاستقرار الأمني والرؤية البعيدة لقياداتها الرشيدة التي تعمل للمضي قدما لتربع المراتب الأولى في جميع المجالات ولجعل الامارات من افضل الدول لممارسة الاعمال. وعلى الرغم من المتغيرات التي عرفها الاقتصاد العالميⁱ، ومرت بها الدول الأخرى والتي تسببت في تقلبات أسعار الدولار وتذبذب أسعار النفط والمضاربة على المعادن الرئيسية وما نتج عنه من ظروف اقتصادية صعبة في الدول الاوربية ورفع أسعار الفائدة وعدم استقرار مستويات التجارة الدولية بسبب النزاعات التجارية بين الكتل التجارية الرئيسية: الصين والولايات المتحدة الأمريكية وروسيا والاتحاد الأوروبي...؛ رغم كل ذلك فان الامارات العربية المتحدة حافظت على معدلات نمو عاليةⁱⁱ لتكون من افضل الجهات للاستثمار والإقامة والعمل إضافة للسياحة.

و ما يؤكد ذلك تزايد عدد طلبات تراخيص ممارسة الأنشطة الاقتصادية من سنة لأخرى والبرامج التي تم اطلاقها ذات ابعاد زمنية. بالانتقال من الارتكاز الكبير على الزراعة في الواحات والصيد وتجارة التمور واللؤلؤ الى الأنشطة المرتكزة على النفط والغاز، والتوجه نحو تجارة العملة والتجزئة والتصنيع والتشييد والعقارات وما يرتبط بها من خدمات الصيانة والتصليح والانشاء والبناء، وأيضا سعيها نحو تحقيق تنمية وتنافسية الاقتصاد الوطني وتهيئة بيئة لممارسة الاعمال الاقتصادية، عبر سن وتحديث التشريعات الاقتصادية وسياسة التجارة الخارجية وتنمية الصناعات والصادرات الوطنية، مع تنمية السياحة عبر تطوير منتجاتها وتشجيع الاستثمار وتنظيم قطاع المشاريع الصغيرة والمتوسطة وتنويع الأنشطة الاقتصادية والتوجه نحو اقتصاديات المعرفةⁱⁱⁱ.

وقد أكد الدستور الاماراتي ذلك الاتجاه، بان جعل الدولة تسعى الى اعتبار الاقتصاد الوطني يقوم على أساس العدالة الاجتماعية وهدفه تحقيق التنمية الاقتصادية وزيادة الإنتاج ورفع المستوى

المعيشي^{iv}، مع الحفاظ على الثروات الطبيعية على أن يكون استغلالها بشكل حسن ولصالح الاقتصاد الوطني^v، كما أنها تقوم بربط الاعتبارات البيئية بسياسة التخطيط والتنمية بما يحقق احتياجات وتطلعات الحاضر دون إخلال بالقدرة على تحقيق احتياجات وتطلعات المستقبل باعتبارها ملزمة بحماية البيئة وتميئتها^{vi}. هذا من جهة .

ومن جهة ثانية، فقد جعل المشرع الاتحادي تحقيق التنمية المستدامة من الأهداف التي تسعى عدة قوانين لتحقيقها، منها: القانون الاتحادي رقم 2 لسنة 2015 خاصة المادة الثانية، وقانون المنافسة رقم 4 لسنة 2012 خاصة المادة 2 التي تنص على أنه: "يهدف هذا القانون إلى حماية وتعزيز المنافسة ومكافحة للممارسات الاحتكارية، وذلك من خلال ما يأتي: 1- توفير بيئة محفزة للمنشآت من أجل تعزيز الفاعلية والتنافسية ومصلحة المستهلك وتحقيق تنمية مستدامة في الدولة"،... ومن جهة ثالثة، فإن الإمارات العربية المتحدة ، وإمارة الشارقة كمثال تعمل على تحقيق التنمية الاقتصادية وتطبيق النظم والإجراءات المرتبطة بممارسة النشاط الاقتصادي وإيجاد بيئة اقتصادية مثالية لمزاولة الأعمال ورفع معدل النمو الاقتصادي وتشجيع الاستثمارات بموجب المادة 2 من قرار المجلس التنفيذي رقم 21 لسنة 2017 المتعلق بالنشاط الاقتصادي^{vii}.

والتنمية المستدامة ، كمفهوم تتكون من مفردتين: **التنمية** التي تعتبر من حقوق الإنسان التي تم الاعتراف بها منذ 1986 بموجب قرار الجمعية العامة للأمم المتحدة^{viii}، فالفقرة الأولى من مادته الأولى تنص على أن: " 1. الحق في التنمية حق من حقوق الإنسان غير قابل للتصرف وبموجبه يحل لكل إنسان ولجميع الشعوب المشاركة والإسهام في **تحقيق تنمية اقتصادية واجتماعية وثقافية وسياسية** والتمتع بهذه التنمية التي يمكن فيها أعمال جميع حقوق الإنسان والحريات الأساسية إعمالاً تاماً. " . وأيضاً **المستدامة**: وهو مصطلح ظهر استعماله مرتبطاً بالبيئة وبحمايتها فقد كانت من أهم المبادئ الأساسية لمؤتمر الأمم المتحدة حول البيئة والتنمية المنعقد في ريو دي جانيرو بالبرازيل سنة 1992^{ix} والمسمى بـ "قمة الأرض" ، والذي قام بالتوفيق بين مسألتين مختلفتين البيئة والتنمية الاقتصادية ، وذلك بافتراض أن الفقر يؤدي إلى فساد البيئة والعكس صحيح ففساد البيئة يترتب عنه ارتفاع نسبة الفقر^x. فيمكن اعتبار **التنمية المستدامة** : الحق في الاستدامة والانصاف بين الأجيال من الجيل الثالث لحقوق الإنسان المتمثلة (الحقوق البيئية والتنمية^{xi}) تسمى بحقوق التضامن^{xii} وهي حقوق ترتبط ظهورها بالمتغيرات الدولية واتساع آثار التطورات التي عرفتتها التكنولوجيا خاصة المرتبطة بالاتصالات، فالعصر الذي ظهرت فيه ارتبط بظهور العولمة القائمة على سيطرة فكرة المقولة القائمة على منطق الربح والخسارة، والتي تمارس أنشطة اقتصادية تضر لا محالة بالبيئة وتسبب في كوارث صحية تمس جميع الدول وليس فقط الدولة التي يمارس فيها النشاط.

فنتيجة لاهتمام دولة الامارات العربية المتحدة بالتنمية المستدامة وربطها بالمجال الاقتصادي فهل يجسد بالفعل القانون الاماراتي المنظم لممارسة النشاط الاقتصادي تلك الرؤية المستقبلية القائمة على التنمية المستدامة؟؟؟ وبمعنى آخر، هل الأحكام التي وضعها المشرع الاماراتي لممارسة النشاط الاقتصادي توفر التنظيم القانوني للمنشآت الاقتصادية بشكل مستدام؟ الإجابة على التساؤل ستكون بدراسة نقطتان مهمتان، بالاعتماد على مجموعة متعددة من التشريعات الاماراتي التي اهتمت او نظمت المنشآت التي تمارس نشاطها في الامارات، باعتماد المنهج الوصفي، وذلك بدراسة: التنظيم القانوني لممارسة النشاط الاقتصادي وفقا للقانون الاماراتي-مبحث اول-؛ ممارسة النشاط الاقتصادي لا تتعارض مع التنمية المستدامة-مبحث ثاني-.

المبحث الأول: التنظيم القانوني لممارسة النشاط الاقتصادي وفقا للقانون الاماراتي.

يقصد المشرع الاماراتي من النشاط الاقتصادي: النشاط التجاري أو الصناعي أو المهني أو أي نشاط آخر يرخص له من دائرة التنمية الاقتصادية، وذلك اعتمادا على قرار المجلس التنفيذي رقم 21 لسنة 2017 بشأن الأنشطة الاقتصادية في اماره الشارقة^{xiii} وقانون اماره دبي رقم 13 لسنة 2011 بشأن تنظيم مزاولة الأنشطة الاقتصادية^{xiv}؛ وبالنتيجة فتصنيف الترخيص يكون اعتمادا على النشاط الممارس: رخصة زراعية وثروة سمكية وحيوانية، رخصة صناعية، رخصة تجارية ، رخصة مهنية، رخصة حرفية^{xv}، ومزاولة النشاط أو حتى فرع لنشاط اقتصادي لا يكون قبل الحصول على ترخيص باستثناء الشركات والمؤسسات التي يصدر بشأنها تشريع خاص^{xvi}، ومثل تلك الرخصة مرتبطة بالمشروع وممارسة النشاط فلا يمكن تأجيرها لكن يجوز بيعها ضمن التنازل وبيع المحل التجاري^{xvii}.

وقد يتخذ المشروع او المنشأة التي تمارس النشاط الاقتصادي عدة اشكال، وذلك بموجب عدة تشريعات. فلقد تدخل المشرع المحلي سواء في اماره دبي أو في اماره الشارقة لتحديد الشكل القانوني الذي يمكن أن تتخذه المنشأة أو المشروع، فألزم أن يتكون مزاولة النشاط الاقتصادي في الإمارة من خلال منشأة على أن تاخذ بصفة الزامية احدى الأشكال القانونية المحددة قانونا وذلك بموجب قانون اماره دبي رقم 13 لسنة 2011 بشأن تنظيم مزاولة الأنشطة الاقتصادية^{xviii}؛ وقرار المجلس التنفيذي للشارقة رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في اماره الشارقة^{xix}، والاختلاف بين هذين التشريعين ، يتمثل في ترتيب الشكل القانوني الذي يمكن اختياره، وفي الجزاء المترتب لمخاله الاختيار من تلك الاشكال. ويعتبر التشريع في الشارقة -مقارنة بنظيره في دبي- آخر تشريع ينظم طريقة ممارسة الأنشطة الاقتصادية في الشارقة(2017) بعد صدور قانون الشركات التجارية رقم 2 لسنة 2015.

و الاشكال التي يمكن الاختيار منها هي : -شركة تجارية طبقا لأحكام قانون الشركات التجارية؛ ب- فرع شركة وطنية أو خليجية أو فرع شركة عاملة في المنطقة الحرة؛ ج- شركة أعمال مدنية؛ د- مؤسسة فردية^{xx}. لذلك، يمكن التمييز في التنظيم القانوني للمنشأة الاقتصادية بين المشروع الفردي والمشروع متعدد الشركاء.

المطلب الأول: المشروع الفردي كتنظيم قانوني لممارسة النشاط الاقتصادي.

يقصد بالمشروع الفردي، ذلك المشروع او المنشأة التي تمارس النشاط الاقتصادي من طرف شخص واحد غالبا ما يكون شخصا طبيعيا اذا تعلق الامر بالمؤسسة الفردية التي لا تتمتع بالشخصية القانونية، أو قد يكون شخص طبيعي أو معنوي متى تعلق الامر بشركة الشخص الواحد المتمتعة بالشخصية القانونية.

الفرع الاول: المشروع الفردي الذي لا يتمتع بالشخصية القانونية.

كل شخص طبيعي، يرغب في ممارسة نشاط اقتصادي لوحده مع عدم تكوين شخص معنوي مستقل عن شخصيته ، فانه سيجد نفسه ملزما بتحمل مسؤولية غير محدودة عما يترتب عن ممارسته لذلك النشاط بصورة منفردة، لان المشروع الذي سيقوم بتكوينه لا يتمتع بالشخصية القانونية المستقلة، بل سيلحق بشخصه ويعتبر جزءا من ذمته المالية. وغالبا ما يتم اعتماد هذه الطريقة في بداية ممارسة الأنشطة الاقتصادية: مهن حرة، نشاط تجاري، نشاط خدماتي.... وقد تدخل المشرع الاماراتي لتسميتها بالمؤسسة ، والتي عرفها على أنها" هي ملكية فردية لشخص طبيعي واحد فقط ويصدر ترخيصها لمواطني دولة الامارات العربية المتحدة وفقا لشروط الترخيص المقررة ..."^{xxi}

لكن ما يميز هذا النوع من المشاريع او المؤسسات:

- أنها تصنف اعتمادا على النشاط الذي يمارسه الشخص:
- قد يكون مدني لا يسعى الى تحقيق الربح وقد يكون نشاط مهني يرتبط المشروع فيه بالعمل الذي يعتمد فيه الشخص على قدراته الذهنية وملكاته الفكرية ودراساته ومواهبه العلمية كالاستشاري والمحامي...، او قد يكون مشروع حرفي يمارس فيه الشخص حرفة يعود مردودها إليه بالاعتماد على مجهوده البدني أو يمكنه الاستعانة ببعض الأدوات والمعدات بمفرده أو مع عدد من العمال لا يزيد عن خمسة^{xxii}.
- كما قد يكون تجاري تطبق عليه أحكام المحل التجاري التي يتضمنها القانون التجاري، وذلك باعتبار صاحبه يحترف ممارسة عمل تجاري يكسبه صفة التاجر،

والامر يتعلق بالاعمال التي اعترها القانون الاماراتي تجاريه اعتمادا على معيار الاحتراف بموجب المادة 06 من قانون المعاملات التجارية ومثل هذا المشروع التجاري، يخضع لأحكام المحل التجاري هي التي ستطبق عليه، فيكون صاحب المشروع التجاري هو صاحب المحل التجاري يتكون من عناصر مادية ومعنوية تعتبر الأساسية في تكوينه.

- ومن ناحية ثانية، مثل هذه المشاريع محصورة كاصل عام للمواطنين ولمواطني دول مجلس التعاون الا استثناء. فلا يمكن ممارسة نشاط التجارة العامة الا من المواطنين سواء اشخاص طبيعيين او شركات مملوكة للمواطنين بنسبة 100%^{xxiii}. لكن يجوز الترخيص لغير المواطنين لممارسة النشاط المهني والحرفي البسيط ولكن بشروط معينة أهمها ان يكون له وكيل خدمات اماراتي وشروط أخرى محددة قانونا^{xxiv}. وفي جميع الحالات لا يمكن التنازل عن مؤسسة تجارية او صناعية لشخص اجنبي الا بعد تغيير المؤسسة الى مهنية باسم الشريك المواطن .

الفرع الثاني: المشروع الفردي المتمتع بالشخصية القانونية- شركة الشخص الواحد-

يعتبر القانون الاماراتي ، من التشريعات التي تسمح بمنح المشروع الفردي أن يكون له وجود قانوني بأن يتمتع بالشخصية القانونية، وذلك منذ صدور قانون الشركات رقم 2 لسنة 2015^{xxv} خاصة المادة 3/8 منه، والتي تعتبر إمكانية التأسيس أو التملك لشخص واحد استثناء عن القاعدة العامة المتمثلة في التعدد، وذلك متى توافرت شروط معينة مع إمكانية الاعتماد على احدى طرق التأسيس اما المباشرة او غير المباشرة.

1- الشروط الواجب توافرها لتكوين مشروع فردي متمتع بالشخصية القانونية

باعتبار تأسيس الشركة بشخص واحد هو الاستثناء عن قاعدة تعدد الشركاء لتكوين عقد الشركة، لذلك فقد تدخل المشرع الاماراتي وحدد مجموعة من القيود او الشروط ، والتي يمكن حصرها فيما يلي:

-قيود شخصية واردة على الشركة ذات الشخص الواحد: فقد اشترط القانون الاماراتي ان يكون الشريك الوحيد فيها من جنسية إماراتية، وبطبيعة الحال يمكن ان يكون من مواطني مجلس التعاون، لذلك يمنع عن الأجانب تأسيس مثل هذه الشركات. بمعنى لا بد أن يكون الشريك إما شخص طبيعي متمتع بالجنسية الإماراتية او جنسية دول مجلس التعاون، اما الشخص المعنوي فلا بد أن يكون قد تم تكوينه من طرف مواطنين بنسبة 100% وذلك لانه على الرغم من ان كل شركة تؤسس في

دولة الامارات تحمل جنسيتها، لكن ذلك لا يستتبع بالضرورة تمتعها بالحقوق المقصورة على المواطنين^{xxvi}. ومثل هذا القيد اعتبره الفقه^{xxvii} قد يعيق الاستثمار وتكوين المشاريع نتيجة لمنع الأجانب ان يؤسسوا الشركة بشخص واحد ويقترح عدم حصر تأسيس هذا النوع من الشركات في المواطنين فقط، بل لا بد من اتاحة الفرصة للأجانب وذلك لاستقطاب وتشجيع الاستثمارات الأجنبية مع وضع المشرع للضوابط والقيود المناسبة. أما بالنسبة لشركة المساهمة الخاصة فلا يمكن أن يكون الشريك الوحيد فيها شخص طبيعي بل حصره المشرع الاماراتي في الشخص الاعتباري .

- قيود موضوعية: بمنعها من ممارسة بعض الأنشطة، فشركة الشخص الواحد ذات المسؤولية المحدودة يمكنها ممارسة كافة الأنشطة الاقتصادية باستثناء تلك التي حظرها القانون الاماراتي عليها بموجب المادة 4/11 من قانون الشركات التجارية: كمزاولة اعمال المصارف واعمال التأمين و التي لا يمكن ان تكون الا شركة مساهمة عامة، واستثمار الاموال لحساب الغير وذلك بسبب ان تلك الأنشطة تتطلب استثمار اموال ضخمة تقدم ضمانا للغير المتعامل معها. وفي المقابل يمكن ان تكون من المنشآت المالية المرخصة باستثناء البنك، بمعنى تكون مؤسسة مالية او منشأة صرافة والوساطة النقدية^{xxviii}.

- قيود شكلية: تتمثل في حصر الاختيار بين شكلين فقط من الشركات التجارية المنظمة بموجب قانون الشركات رقم 2 لسنة 2015، من دون امكانية أن يتم تأسيس باقي الشركات بشخص واحد مثل شركة التضامن، التوصية البسيطة التي يشترط فيها دائما تعدد الشركات، وحتى المساهمة العامة لا يمكن تأسيسها من طرف شخص واحد الا اذا تعلق الامر بالشركات العامة التي يتم تأسيسها من طرف الحكومة الاتحادية او الحكومات المحلية بأن تنفرد الدولة بتأسيسها لوحدها دون تواجد شريك اخر^{xxix} وذلك لمقتضيات المصلحة العامة ما دامت الدولة تبقى المسيطرة على راسمال مثل هذه الشركات والتي غالبا ما ترتبط بقطاعات اقتصادية محددة^{xxx} والتي غالبا ما تنظمها الدولة بتشريعات خاصة والتي ادرجها القانون الاماراتي ضمن القائمة السلبية الممنوعة على الاستثمار الاجنبي المباشر^{xxxi}. فالاختيار يكون بين شكلين قانونيين إما : شكل الشركة ذات المسؤولية المحدودة بموجب المادة 2/71 "يجوز لشخص واحد مواطن طبيعي أو اعتباري تأسيس وتملك شركة ذات مسؤولية محدودة ولا يسأل مالك رأس مال الشركة عن التزاماتها إلا بمقدار رأس المال الوارد بعقد تأسيسها ، وتسري عليه أحكام الشركة ذات المسؤولية المحدودة الواردة في هذا القانون فيما لا يتعارض مع طبيعتها..."، أو شكل شركة المساهمة الخاصة اعتمادا على المادة 3/255: "استثناء من الحد الأدنى لعدد المساهمين المقرر بالبند (1) من هذه المادة، يجوز لشخص واحد اعتباري تأسيس وتملك شركة مساهمة خاصة ولا يسأل مالك رأس مال الشركة عن التزاماتها إلا بمقدار رأس المال الوارد بعقد تأسيسها ويجب أن يتبع اسم الشركة عبارة "شركة الشخص الواحد مساهمة

خاصة"، وتسري عليه أحكام شركة المساهمة الخاصة الواردة في هذا القانون فيما لا يتعارض مع طبيعتها".

2- طريقة تكوين المشروع الفردي المتمتع بالشخصية القانونية

اعتمادا على المستجدات التي نظمها القانون الاتحادي رقم 2 لسنة 2015 بشأن الشركات التجارية، فإن عملية تأسيس الشركة التجارية قد تتخذ طريقين اما عن طريق وجود شريكين فاكثر وهي الطريقة العادية عن طريق عقد الشركة ، أو يتم التأسيس المباشر أو غير المباشر من طرف شخص واحد بمعنى عن طريق الارادة المنفردة متى كانت الشركة مؤسسة بشخص واحد وذلك تطبيقا للمادة 1/8 من قانون الشركات التجارية . وهو ما أدى الى اعادة النظر في الطبيعة القانونية للشركة، فلم تبق من طبيعة عقدية أو من طبيعة نظامية ولا حتى من طبيعة مختلطة تجمع بين العقد والنظام، بل أصبحت تنظيميا قانونيا للمشروع المستغل وهي تمنحه الوجود القانوني رغم عدم توافر ركن التعدد . بمعنى وجود الشركة مرتبط بالمشروع^{xxxii}، لكن بعض الفقه يرى بان المشرع من خلال تعريفه للشركة يؤكد أن الطبيعة القانونية للشركة تجمع بين الصبغة العقدية والصبغة النظامية، فلا يمكن تغليب مفهوم على آخر، بل لا بد من النظر الى الشركة على أنها كيان تتعايش بداخله القواعد العقدية جنبا الى جنب مع القواعد التنظيمية بدرجات متفاوتة وفقا لشكل الشركة^{xxxiii}.

فيمكن للشخص أن يكون شريكا وحيدا في شركة تجارية وفقا للقانون الاماراتي، وذلك بطريقتين اما يؤسسها مباشرة بارادته المنفردة بان يقوم بجميع الاجراءات لتكوين شخص معنوي جديد، أو أن تجتمع جميع حصص الشركة بيده إذا تعلق الأمر بشركة ذات مسؤولية محدودة أو تجتمع جميع الاسهم في يده إذا كانت الشركة مساهمة خاصة ، ولا يهم سبب ذلك التجميع اما بسبب التنازل أو بسبب الوفاة أو لتوافر الموانع القانونية لدى باقي الشركاء، أو نتيجة تحويل شركة متعددة الشركاء تجمعت الحصص في يد شريك واحد تحولها الى شركة الشخص الواحد مع اتباع الاجراءات القانونية^{xxxiv}. وما يمكن ملاحظته أن المشرع الاماراتي لم يضع حدا معيناً لعدد الشركات ذات الشخص الواحد والتي يمكن للشخص تأسيسها بمفرده عكس التشريعات المقارنة. والفقه يعتبر سكوت المشرع الاماراتي عن تحديد عدد الشركان التي يمكن تأسيسها يجعل الامر متروكا للاجتهاد بعد تطبيق القانون على الواقع^{xxxv}. على ان يبقى الشريك الوحيد ملزم دائما باحترام جميع الاجراءات والشروط التي حددها القانون لكتابة النظام الاساسي للشركة والشهر والقيد في السجل التجاري بعد الحصول على الرخصة المطلوبة^{xxxvi}.

المطلب الثاني : الشركة أو المشروع الجماعي كتنظيم قانوني لممارسة النشاط الاقتصادي.

المشروع الجماعي الذي يمكنه ممارسة النشاط الاقتصادي ، والذي تدخل القانون الاماراتي لتنظيمه هي الشركات، والتي نظمها قانون المعاملات المدنية وأيضاً قانون المعاملات التجارية. فهي قد تكون مدنية أو تجارية ، ويمكنها اتخاذ عدة اشكال حددها القانون.

الفرع الاول: مفهوم الشركة باعتبارها تنظيم قانوني لممارسة النشاط الاقتصادي

الشركة التجارية كشكل قانوني للمشروع، تدخلت عدة تشريعات لتعريفها:

- تعرف الشركة اعتماداً على المادة 654 من قانون المعاملات المدنية، على أنها: "... عقد يلتزم بمقتضاه شخصان أو أكثر بأن يسهم كل منهم في مشروع مالي بتقديم حصة من مال أو من عمل لاستثمار ذلك المشروع واقتسام ما قد ينشأ عنه من ربح أو خسارة"،
- وعرفها قانون المعاملات التجارية الاماراتي -أما الملغى^{xxxvii} أو ساري المفعول^{xxxviii}- على أنها : " 1- الشركة عقد يلتزم بمقتضاه شخصان أو أكثر بأن يشارك كل منهم في مشروع اقتصادي يستهدف تحقيق الربح، وذلك بتقديم حصة من مال أو عمل، واقتسام ما ينشأ عن هذا المشروع من ربح أو خسارة."

والفرق بين التعريفين في القانونين، ان الشركة المدنية تخضع للقانون المدني كاصل عام أما التجارية فتخضع للقانون التجاري باعتبارها تاجر، يوجد معيارين للتمييز بين الشركة المدنية او التجارية، فيمكن الاعتماد على المعيار الموضوعي بمعنى ضرورة النظر والاهتمام بطبيعة النشاط إذا كان مدني فهي شركة مدنية تخضع لأحكام القانون المدني ولأحكام النشاط الذي تمارسه، أو يكون نشاط تجاري بمعنى ممارسة الاعمال التجارية بحسب ماهيتها التي نظمها قانون المعاملات التجارية في المواد 5،6، والتي تتمثل في الصناعة والخدمات والتجارة وحتى النشاط الزراعي بتوافر شروط معينة/ وهي نفسها الأنشطة التي اعتبرها قانون الشركات تندرج ضمن المشروع الاقتصادي والمتمثلة في النشاط التجاري أو المالي أو الصناعي أو الزراعي أو العقاري^{xxxix}. او يتم الاعتماد على المعيار الشكلي، بمعنى لا يهم النشاط الممارس بل الشكل الذي تختاره ، فاذا اختارت لتنظيمها احدى اشكال الشركات التجارية الخمسة^{xl} المحددة في قانون الشركات التجارية لسنة 2015^{xli} فهي تعتبر تجارية دائماً بعد قيدها في السجل التجاري

فالقانون الشركات التجارية، ربطت تعريف الشركة بوجود مشروع اقتصادي يساهم فيه الشركاء بالحصص المقدمة، وفقاً للمادة 1/8 المحددة سابقاً، وقد جعلته الفقرة الثانية من المادة نفسها يشمل : "كل نشاط تجاري أو مالي أو صناعي أو زراعي أو عقاري، أو غير ذلك من أوجه النشاط الاقتصادي". وهي نفس الأنشطة التي حددتها التشريعات المنظمة للأنشطة الاقتصادية^{xlii}. وقد

اعتبر البعض^{xlili}، ان المشرع حاول إزالة الغموض الذي قد ينشأ عن تفسير المقصود من المشروع الاقتصادي، بأن عدد على سبيل المثال بعض الأنشطة التي من الممكن للشركات مزاولتها ومنها الأنشطة التجارية والصناعية والزراعية... قد حاول الفقه القانوني تعريف المشروع باعتباره وحدة اقتصادية وقانونية تجتمع فيها العناصر البشرية والمادية للنشاط الاقتصادي^{xliv}. وهو وحدة انتاج اقتصادية تتميز بالتنظيم بين عناصره المادية والبشرية غرضها الانتاج والتمويل وتجارة الأموال والخدمات^{xlv}..

فالشركة اذن بعيدا عن اعتبارها شخص معنوي هي مشروع أو منشأة يسعى المشاركون فيها الى تحقيق تنمية اقتصادية بالسعي نحو تحقيق الربح وتشغيل العمال ورفع مستوى المعيشة في المنطقة التي تنشأ فيها الشركة. فهي منشأة صغيرة او متوسطة^{xlvi} متى مارست نشاط اقتصادي صغير او متناهي الصغر او متوسط^{xlvii}، وتوافرت على المعايير المعتمدة لتصنيف المشروع الصغير والمتوسط والمحددة قانونا^{xlviii}؛ كما تعتبر، منشأة تخضع لقانون المنافسة^{xlix}، وهي منشأة اقتصادية بمفهوم القانون المحلي المنظم لممارسة الأنشطة الاقتصادية!

الفرع الثاني: الشكل القانوني للشركة باعتبارها تنظيم قانوني للممارسة النشاط الاقتصادي

بعد صدور قانون الشركات التجارية لسنة 2015، فغن المشرع الاماراتي اصبح ينظم خمسة اشكال قانونية للشركة التجارية بدلا من سبعة اشكال^{li} وفقا للقانون الملغى^{lii} رقم 8 لسنة 1984. فكل من يريد ممارسة نشاط اقتصادي في شكل شركة، فهو ملزم بالاختيار بين الاشكال الخمسة المحددة في المادة 9/ 2، 1 منه وذلك تحت طائلة البطلان، والتي تنص: "1- يجب أن تتخذ الشركة أحد الأشكال الآتية: أ- شركة التضامن. ب- شركة التوصية البسيطة. ج- الشركة ذات المسؤولية المحدودة. د- شركة المساهمة العامة. هـ- شركة المساهمة الخاصة. 2- كل شركة لا تتخذ أحد الأشكال المشار إليها في البند السابق تعتبر باطلة ويكون الأشخاص الذين تعاقبوا باسمها مسؤولين شخصيا وبالتضامن عن الالتزامات الناشئة عن هذا التعاقد."

و بالاعتماد على الاحصائيات المقدمة من طرف دائرة التنمية الاقتصادية لإمارة الشارقة، المتعلقة بالرخص الممنوحة لممارسة نشاط اقتصادي معين عن طريق منشأة اقتصادية، فانه يمكن ترتيب الشكل القانوني للمشروع او المنشأة والتي اختارت شكل شركة تجارية بالاعتماد على الاحصائيات الخاصة بالمركز الرئيسي لامارة الشارقة^{liii}، ترتيبا تنازليا من اكثر الاشكال اختيارا بين الاشخاص الى الاقل اختيارا، على النحو التالي:

1- الشركة ذات المسؤولية المحدودة : هي تلك الشركة التي تتخذ مكانا وسطا بين شركات الاموال وشركات الاشخاص، فهي ذات طابع هجين مختلط، تجمع بين المسؤولية المحدودة للشركاء وهي ميزة في شركات الاموال وبين وضع حد اقصى لعدد الشركاء حفاظا للاعتبار الشخصي مع ترك تحديد راسمال الشركة لارادة الشركاء، عرفها القانون الاماراتي بموجب المادة 71 من قانون الشركات التجارية، وجعلها نوعان:

- شركة ذات مسؤولية محدودة متعددة الشركاء: هي الشركة التي لا يقل عدد الشركاء فيها عن اثنين ولا يزيد على (50) خمسين شريكا، ولا يسأل كل منهم إلا بقدر حصته في رأس المال. يشترط فيها احترام ملكية المواطنين لاغلبية راسمال الشركة، فيمكن للأجانب ان يكونوا شركاء، كما يمكن لمواطني مجلس التعاون الخليجي تأسيسها لوحدهم. وبذلك لممارسة جميع الأنشطة التجارية، صناعية، مهنية، سياحية باستثناء تلك المخصصة لشركات الأموال، وأيضا يمكن ان يكون الشخص المعنوي شريكا فيها^{liv}.

- شركة الشخص الواحد ذات المسؤولية المحدودة: هي تلك الشركة التي يتم تأسيسها اما بطريقة مباشرة او غير مباشرة-تجمع الحصص في يد واحدة- من طرف شخص واحد مواطن طبيعي أو اعتباري، ولا يسأل مالك رأس مال الشركة عن التزاماتها الا بمقدار رأس المال الوارد بعقد تأسيسها، وهي تبقى خاضعة لاحكام شركة ذات المسؤولية المحدودة متعددة الشركاء^{lv}.

2- شركة المساهمة العامة، هي: الشركة التي يقسم رأسمالها إلى اسهم متساوية القيمة وتكون قابلة للتداول ويكتتب المؤسسون بجزء من هذه الاسهم لا تقل نسبة المساهمة عن 30% و لا تزيد على 70% من رأسمال الشركة المصدر وذلك قبل الاكتتاب العام في باقي الاسهم^{lvi}، على أن يطرح باقي الاسهم على الجمهور للاكتتاب العام، ولا يسأل المساهم فيها إلا بقدر حصته في رأس المال^{lvii}. ويمكنها ممارسة الأنشطة التجارية والصناعية بما لا يتعارض وقوانين الدائرة حسب الجنسيات، مع احترام دائما نسبة الملكية الوطنية للاسهم والتي لا تقل عن 51%، كما انه يمكن للشخص الاعتباري أن يكون مساهما فيها، على اعتبار أن هذه الشركة تقوم على الاعتبار المالي وتبتعد عن الاعتبار الشخصي^{lviii}. بشرط أن لا يقل الحد الأدنى عن للمؤسسين عن خمسة مساهمين مواطنين يمتلكون ما بين 30% و 70% من اسهم الشركة التي لا تعرض للاكتتاب. وتلجأ هذه الشركة للاكتتاب العام من اجل التأسيس نتيجة لقيمة الحد الأدنى لرأسمال الشركة في هذه الحالة والذي لا يقل عن ثلاثين مليون درهم-30000000-^{lix}.

3- شركة التوصية البسيطة: هي شركة تميل الى شركات الاشخاص على الرغم من أنها تضم نوعين من الشركاء بنوع مسؤولية مختلف. فالشريك المتضامن مسؤوليته غير

محدودة عن ديون الشركة على خلاف الشريك الموصي الذي تكون مسؤوليته محدودة. وقد عرفها القانون الاماراتي في المادة 62 من قانون الشركات التجارية : الشركة التي تتكون من شريك متضامن أو أكثر يكونون مسؤولين شخصيا وبالتضامن عن التزامات الشركة ويكتسبون صفة التاجر يشترط أن يكونوا شخص طبيعى ومتمتع بالجنسية الإماراتية، ومن شريك موص أو أكثر اما مواطنين أو أجانب شخص طبيعى او معنوي^{lx}، لا يكونون مسؤولين عن التزامات الشركة إلا بمقدار حصتهم في رأس المال ولا يكتسبون صفة التاجر. وهي تعتبر من شركات الأشخاص ، لذلك فهي تخضع لأحكام شركة التضامن مالم تتعارض مع خاصية الشريك الموصي يمكنها ممارسة الأنشطة التجارية والصناعية فقط، باعتبارها التي تناسب مع حجم وخصائص هذا الشكل من الشركات التجارية^{lxi}.

4- شركة التضامن ، هي تلك الشركة التي تتكون من شريكين أو أكثر من الأشخاص الطبيعيين يكونون مسؤولين شخصيا وبالتضامن في جميع أموالهم عن التزامات الشركة^{lxii}، يكتسب فيها الشريك صفة التاجر ويعتبره القانون يزاول التجارة بنفسه باسم الشركة، ويترتب على اشتهار افلاس الشركة اشتهار افلاس الشركاء بقوة القانون^{lxiii}. وهي من شركات الاشخاص تقوم على الاعتبار الشخصي لذلك فان المشرع لم يتدخل لتحديد الحد الأدنى لرأس المال مادامت الذمة المالية للشريك هي ضامنة للوفاء بديون الشركة، وهي محصورة على المواطنين اشخاص طبيعيين، فلا يمكن للأجنبي ان يكون شريكا متضامنا أو أن يملكها مواطنوا دول مجلس التعاون. يمكنها ممارسة الأنشطة التجارية والصناعية فقط، وذلك باستبعاد باقي الأنشطة المعتمدة على استثمار مبالغ مرتفعة^{lxiv}.

5- شركة المساهمة الخاصة: والتي عرفتها المادة 1/255 من قانون الشركات التجارية رقم 2 لسنة 2015، على أنها: "...هي الشركة التي لا يقل عدد المساهمين فيها عن اثنين ولا يزيد على مائتي مساهم ويقسم إلى أسهم متساوية القيمة الاسمية تدفع قيمتها بالكامل دون طرح أي منها في اكتتاب عام، وذلك عن طريق التوقيع على عقد تأسيس والالتزام بأحكام هذا القانون فيما يتعلق بالتسجيل والتأسيس، و لا يسأل المساهم في الشركة إلا في حدود ما يملكه من أسهم فيها."

ما يميز هذه الشركة^{lxv}، انها تخضع لاحكام شركة المساهمة العامة فهي من شركات الاموال التي تقوم على الاعتبار المالي، تدخل المشرع لتحديد الحد الأدنى لرأسمالها بخمسة ملايين درهم-5000000. يدفع كاملاً^{lxvi}، فلا يمكن ان يتم تأسيسها عن طريق الاكتتاب العام عكس شركة المساهمة العامة. كما أنه يمكن ان تكون مملوكة او مكونة كلية من طرف شخص

اعتباري واحد لتسمى " شركة الشخص الواحد مساهمة خاصة"^{lxvii} كما يمكن ان تكون متعددة الشركاء تتكون من مساهمين اثنين كحد ادنى على ان لا يتجاوز عدد الشركاء مائتي مساهم، وفي حال اختلاف جنسية المساهمين فلا بد دائما من احترام نسبة 51 % من راس المال تكون ملكية وطنية مقابل 49%. لكن اذا كانت الجنسية تابعة لدول مجلس التعاون فما يسري على المواطن يسري عليهم، فيمكنهم تكوين هذه الشركة دون اشتراط اشتراطهم مع اماراتيين. ومثل هذه الشركة يمكنها ممارسة جميع الانشطة الاقتصادية: نشاط تجاري، صناعي، الا أن الانشطة المهنية لا يسمح بها القانون تحت هذا الشكل. مع ضرورة الحصول على موافقة من وزارة الاقتصاد

المبحث الثاني: ممارسة النشاط الاقتصادي لا تتعارض مع تحقيق التنمية المستدامة.

على الرغم من أن ممارسة النشاط الاقتصادي تتم بحرية تطبيقا لحرية التجارة و الصناعة^{lxviii}، لكن المشرع يتدخل في اغلب الأحيان لاشتراط على المشروع أن يتحصل على ترخيص أو موافقة من الجهة المختصة قبل ممارسته و أو عند اجراء أي تعديل عليه، سواء لخصوصية النشاط -كالمشروع الصناعي^{lxix}، أو حماية للبيئة بالزام جميع المشاريع قبل مباشرة نشاطها بضرورة الحصول على الترخيص الذي يتضمن تقييم التأثير البيئي^{lxx}، كما يجب على الشركة أن تتحصل على كافة الموافقات و التراخيص التي يتطلبها النشاط الذي تمارسه في الدولة قبل البدء في ممارسة نشاطها^{lxxi}.

و بصفة عامة لا يجوز لأي شخص مهما كان شخص طبيعي او شخص معنوي -الشركات التجارية-مزاولة الانشطة الاقتصادية الا من خلال منشأة يتم ترخيصها أو التصريح لها من قبل دائرة التنمية الاقتصادية وفقا لاحكام التشريعية^{lxxii}، لان المنشأة أ-فردية او شركة- تبقى دائما مقيدة باحترام التشريعات المعمول بها لا سيما المتعلقة بحماية البيئة و بالنشاطات و المهن الاقتصادية المقننة أو المنظمة قانونا^{lxxiii}. فالمنشأة الاقتصادية تعتبر مؤسسة مصنفة لحماية البيئة لا يمكنها مباشرة نشاطها و القيد في السجل التجاري الا بعد الحصول على التراخيص و الاعتمادات الإدارية الضرورية، كما انها في الوقت نفسه مسؤولة اجتماعية عن نشاطها .

المطلب الأول: المنشأة الاقتصادية ملزمة باحترام البيئة باعتبارها مؤسسة مصنفة لحماية البيئة.

وفقا للقانون الاماراتي، يقصد بالمؤسسات المصنفة لحماية البيئة تلك المنشأة المخاطبة بقانون حماية البيئة، بمعنى المنشآت الصناعية والسياحية ومنشآت انتاج وتوليد الكهرباء والمنشآت العاملة في مجال الكشف عن الزيت واستخراجه ونقله واستخدامه، وجميع مشروعات البنية الأساسية و أية منشأة أخرى^{lxxiv}. كما أنه حدد مجموعة الأنشطة التي تخضع لضرورة تقديم دراسة تقييم الأثر البيئي للمنشآت^{lxxv}، والتي يمكن تصنيفها الى مشاريع الموارد الطبيعية ذات الاصل الاحفوري كالنتقيب على البترول و الغاز و جميع الأنشطة المرتبطة بهما، و مشاريع الموارد الطبيعية ذات الاصل غير الاحفوري، مشاريع صناعية، مشاريع الغذاء و الثروة الحيوانية و الزراعية، مشاريع توليد الطاقة و تحلية المياه، مشاريع النقل البري و البحري و الجوي، مشاريع لها علاقة بالمخلفات، مشاريع لها علاقة بالاسكان و الصناعة، مشاريع ذات طبيعة خاصة مرتبطة اساسا بالمناطق السياحية او الاثريّة. و دراسة تقييم الاثر البيئي تتضمن مجموعة من البيانات^{lxxvi} كما ان اللجنة المختصة تقوم بتقييم تلك الدراسة مع الاستعانة باهل الاختصاص^{lxxvii}

فالمشروع الفردي والشركة التجارية تعتبر مؤسسة مصنفة متى كان النشاط المستغل يسبب اعتداءات على البيئة تفرض على الإدارة التدخل لفرض رقابتها على ذلك النشاط الاقتصادي، فالمعيار المعتمد لاعتبارها مؤسسة مصنفة لحماية البيئة هو خطورة النشاط و مساهمته بالمصالح المحمية قانونا: الصحة العمومية، البيئة، الجوار، الفلاحة، الآثار السياحية، الطبيعة و النظافة^{lxxviii}. فتكون ملزمة باحترام شكليات وإجراءات معينة. من تلك الإجراءات الشكلية السابقة لممارسة النشاط الاقتصادي والتي تؤكد سعي القانون الاماراتي لحماية البيئة، ضرورة:

-الحصول على الترخيص المطلوب، وهو ذلك المستند الذي يمكن المنشأة من مزاوله النشاط الاقتصادي^{lxxix}، يصدر من دائرة التنمية الاقتصادية والجهات المختصة يحدد الأنشطة المصرح للمنشأة مزاولتها^{lxxx}، يسمح للجهات المختصة مراقبة مدى احترام المنشأة للشروط المحددة قانونا لمزاوله تلك الأنشطة بما لا يلحق اضرارا للغير وللبيئة. كما أنه، لا يجوز لأي شخص طبيعي أو معنوي مزاوله نشاط اقتصادي قبل الحصول على الترخيص وذلك تحت طائلة عقوبة جزائية تتمثل في الحبس مدة لا تقل عن ثلاثة اشهر ولا تزيد عن سنة وبغرامة لا تقل عن 20000 درهم ولا تزيد على 50000 درهم او بإحدى العقوبتين^{lxxxi}. ومثل هذا الترخيص لا يجوز التنازل عنه وبيعه عند التنازل او بيع المحل التجاري لكنه يحل الورثة محل مورثهم^{lxxxii}. ونوع الرخصة تختلف باختلاف النشاط الممارس^{lxxxiii}. فقد تكون رخصة زراعية تصدر لمزارع الإنتاج النباتي والحيواني والبحري وتقوم باعمال صناعة تحويلية لمنتجاتها لبيعها بقصد الربح، او صناعية تصدر للمصانع بصفة عامة سواء كانت إنتاجية او تحويلية، او رخصة تجارية تصدر للشركات والمؤسسات والتي تزاول الاعمال التجارية، او مهنية تصدر لاصحاب المهن الذين يعتمدون في عملهم على قدراتهم

الذهنية وملكاتهم الفكرية ودراساتهم ومواهبهم العلمية كالأستشاري والطبيب والمحامي، أو حرفية تصدر للحرفي الذي يمارس حرفة مستقلا يعود مردودها اليه معتمدا على مجهوده البدني أو مستعينا ببعض الأدوات والمعدات بمفرده أو مع عدد من العمال لا يزيد على خمسة^{lxxxiv}

- **تقديم دراسة التقييم البيئي**، فكل من يرغب في اقامة أو تعديل مشروع أو نشاط أو اعمال بالدولة الحصول على تصريح بيئي من الهيئة المختصة بإصداره و الرقابة و التفتيش عبر كل امارة من الامارات، سواء كان شخص طبيعى أو معنوي^{lxxxv}، و ذلك بعد الحصول على استمارة الافادة البيئية^{lxxxvi} من الجهة المرخصة، مع ضرورة تقديمها الى الإدارة المختصة مع باقي المستندات التي يتطلبها القانون لإستصدار التصريح البيئي^{lxxxvii} على ان تتولى تلك الهيئة اتخاذ القرار المناسب، اما ايجابيا بالموافقة على منح التصريح لعدم وجود آثار بيئية أو اصداره بعد قيام صاحب المشروع بمجموعة من الاجراءات لضمان احترام البيئة أو رفض منحه، مع ضرورة اعلام طالب التصريح بذلك في كل الحالات^{lxxxviii}.

المطلب الثاني: المنشأة الاقتصادية مسؤولية اجتماعية .

تعد المسؤولية الاجتماعية أو التنمية الاجتماعية هي البعد الاجتماعي للتنمية المستدامة هدفها العدالة الاجتماعية، مكافحة الفقر، توفير الخدمات الاجتماعية، الاهتمام بحقوق الانسان ودمجها في النشاطات التجارية. فهي نترجم من الناحية القانونية بإدماج الأخلاق في سلوكيات المشروع ، بأن يأخذ المشروع أو الشركة التجارية بعين الاعتبار التأثيرات الخارجية الناتجة عن قيامه بنشاطه بطريقة تظهر فيها مسؤوليته اتجاه عماله و المساهمين فيه و أيضا اتجاه المجتمع ككل^{lxxxix}.

على الرغم من اعتبار المسؤولية المجتمعية ، مفهوم جديد بالنسبة للدول العربية وتشريعاتها، لكن لها جذور ضمن التشريع الإسلامي، تندرج ضمن الامر بالمعروف والنهي عن المنكر والذي يؤكد القرآن الكريم : "و تعاونوا على البر و التقوى"^{xc}، "فمن تطوع خيرا فهو خير له"^{xci}، و عدة احاديث من السنة النبوية الشريفة: قوله صلى الله عليه افضل صلاة وسلام" لا ضرر ولا ضرار"^{xcii}، " كلكم راع وكلكم مسؤول عن رعيته..."^{xciii}، " خير الناس انفعهم للناس"^{xciv}. أما المفهوم الذي ظهرت بوادره منذ القرن 18 وتاكد بشكل رسمي مع نهاية القرن العشرين، فقد كان لمعالجة فشل الرأسمالية في تحقيق العدالة الاجتماعية بعد ظهور النقابات العمالية التي تسعى لتحسين ظروف العمل ولحماية حقوق العمال، في الوقت الذي كان فيه الهدف الوحيد للمشروع أو المؤسسة هو تحقيق الربح. فاصبحت نتيجة لذلك، أهداف الشركة متعددة لا تنحصر في تعظيم الربح

بل تعتمد أيضا أهدافا داخلية وأخرى خارجية تجعل من المشروع الذي يتم استغلاله يسعى لتحقيق مصالح أخرى ترتبط بالجانب الاجتماعي والبيئي .

ويعتبر القانون الاماراتي من التشريعات السبابة للاخذ بهذه المسؤولية باعتبارها البعد الاجتماعي للتنمية المستدامة، وخصص لها مكانا ضمن القانون الاتحادي للشركات التجارية رقم 02 لسنة 2015 لكنه ربطها فقط بالشركات التجارية مستبعدا الشركات التي لا تخضع لقانون الشركات .، بان اعتبرها: كل عمل تطوعي تقوم به الشركة بشكل جوازي بعد انقضاء سنتين ماليتين من تاريخ تأسيسها وتحقيقها أرباحا، على أن لا تزيد قيمة تلك المساهمات عن 2% من متوسط الأرباح الصافية للشركة خلال السنتين الماليتين السابقتين للسنة التي تقدم فيها تلك المساهمة الطوعية والغرض من تلك المساهمات هي خدمة المجتمع مع تحديد ا

لجهة المستفيدة في تقرير مدقق الحسابات وميزانية الشركة.^{xcv}

لكنه تدخل مؤخرا بموجب قرار مجلس الوزراء رقم 02 لسنة 2018^{xcvi}، ليقوم بتوسيع مجال المسؤولية المجتمعية ليشمل جميع المنشآت والشركات المتواجدة في الدولة بكافة اشكالها القانونية ، عمومية كانت او خاصة، كما أنه حدد الممارسات المجتمعية المرتبطة بها في: المساهمة في تطوير المجتمع في المجالات الاقتصادية والاجتماعية والبيئية وغيرها من خلال تقديم المساهمات النقدية والعينية لتمويل البرامج والمشاريع التنموية في الدولة التي تنطبق عليها الشروط والضوابط والمعايير المعتمدة ، مع ضرورة تبني سياسات صديقة للبيئة في الإنتاج والعمل وتعزيز روح الابتكار والبحث العلمي، والمساهمة في تقديم حلول للمشكلات او التحديات التي تواجه المجتمع، وإرساء ثقافة المسؤولية المجتمعية في الشركات والمنشآت من خلال وضع استراتيجيات مستدامة للمسؤولية المجتمعية، وتوفير الفرص لتطوير حملات ومبادرات إنسانية ومجتمعية والانخراط في البرامج التطوعية^{xcvii}.

ويؤكد هذا التشريع الأخير الطابع الاختياري والتطوعي للمسؤولية المجتمعية عند تعريفه لها بأنها: "المساهمة الاختيارية للشركة أو المنشأة في التنمية المجتمعية من خلال تقديم مساهمات نقدية و/أو عينية لتنفيذ المشاريع و البرامج التنموية ومنها الاقتصادية والاجتماعية والبيئية في الدولة بالإضافة إلى ممارسات المسؤولية المجتمعية"^{xcviii}، فهي تقوم على اسس اختيارية تعكس رغبة تلك المشاريع في العطاء المؤسسي والمساهمة في تنمية المجتمع، باعتبارها شريك أساسي في التنمية المستدامة في الدولة^{xcix} كما نظم هذا القرار آليات أخرى تساعد في تجسيد تلك المسؤولية كالصندوق الوطني للمسؤولية المجتمعية الذي يتابع تنفيذ المشاريع لمسؤوليتهم المجتمعية مع ربط

تجديد رخصة المشروع او الشركة بعملية الافصاح في المنصة المخصصة عن مساهمته المجتمعية ، هذا بالإضافة الى التقرير المحاسبي للشركة الذي لا بد ان يتضمن كل البيانات المرتبطة بتلك المساهمات..

فعلى الرغم من اعتبار هذه المسؤولية تعتمد على العمل التطوعي الذي يرتبط بالاخلاق اكثر من الالتزام القانوني، الا ان المشروع او الشركة ملتزم دائما اراديا اتجاه المجتمع بارادته المنفردة أو تطبيقا لنصوص قانونية اخرى تؤثر على سلوكيات المقاولين و اصحاب المشاريع، لتصبح بذلك تلك السلوكيات الاخلاقية ذات مصدر قانوني اما دولي او وطني. كما ان القانون الاماراتي ربط القيام بتلك الممارسات الاجتماعية المرتبطة بالمسؤولية المجتمعية بمنح امتيازات معينة يتولى رئيس مجلس أمناء الصندوق اعتمادها لصالح الشركات والمنشآت المدرجة في المنصة^c منها الحصول على علامة المسؤولية المجتمعية او على جواز المسؤولية المجتمعية وذلك بالزام الشركات بدفع مبالغ معينة للصندوق المخصص لذلك تختلف القيمة باختلاف الامتيازات وذلك اعتمادا على المادة 22 / أ،ب،ج من قرار مجلس الوزراء رقم 2 لسنة 2018^{ci}. كما اهتم القرار بتنظيم العمل التطوعي الذي تقوم به تلك المشاريع في اطار المسؤولية المجتمعية بإنشاء الصندوق الوطني للمسؤولية المجتمعية كشخص معنوي مستقل وجهاز اداري اتحادي يلحق بالوزير، يتابع تنفيذ مشاريع وبرامج المسؤولية المجتمعية واعداد التقرير السنوي الخاص بها^{cii}

الخاتمة:

نتيجة لما سبق، فمن يرغب في ممارسة نشاط اقتصادي في دولة الامارات العربية المتحدة فله الاختيار بين المشروع الفردي او الشركة باعتبارهما التنظيم القانوني للمنشأة الاقتصادية، ويكون الاختيار اعتمادا على نوع النشاط وجنسية القائم بالنشاط ومدى تواجده لوحده ام بمشاركة غيره. والمشرع الاماراتي تدخل بموجب عدة تشريعات لتنظيم تلك المشاريع سواء في قانون المعاملات التجارية وقانون الشركات التجارية، والتشريعات المنظمة لممارسة النشاط الاقتصادي والمشاريع الصغيرة والمتوسطة سواء قوانين او تشريعات فرعية. كما يعتبر التشريع الاماراتي من التشريعات السباقة في جعل المنشآت الاقتصادية مسؤولة اجتماعية مهما كان حجمها وشكلها القانوني وذلك حماية للمشروع وللإقتصاد الوطني، كما يعتبر اشتراط الحصول على الرخصة لممارسة النشاط وتجديدها كل سنة ميزة تحسب للقانون الاماراتي لان اشتراط ذلك المستند سيجعل السلطات المختصة تراقب باستمرار مدى تطبيق المنشآت الاقتصادية للأحكام القانونية المتعلقة بحماية البيئة وبالشكل القانوني لممارسة النشاط.

فيظهر بأن الاحكام التشريعية الإماراتية تجسد فعليا اهتمام وحرص الدولة على تحقيق متطلبات التنمية المستدامة : بالزام المشاريع والمنشآت الاقتصادية بتحمل المسؤولية الاجتماعية والمسؤولية البيئية عند ممارستها لمختلف الأنشطة الاقتصادية، من دون تجاهل التنمية الاقتصادية ووصولاً لتحقيق مكانة مرموقة للاقتصاد الوطني محلياً ودولياً. لكن، رغم ذلك يظهر من الضروري ومسيرة للتوجه التشريعي الحالي القائم على التبسيط والتسهيل فانه من المستحب القيام بما يلي وصولاً لتلك النتيجة ولتقريب المعلومة القانونية من المتعاملين، وذلك بتعديل بعض الاحكام المتعلقة بحماية البيئة وذلك قصد الوصول الى وضع تنظيم قانوني خاص بالمؤسسات المصنفة لحماية البيئة؛

كما أنه بحسب على الحكومة الاماراتية اعتمادها في تعاملاتها على الحكومة الذكية، والتيسير على المتعاملين التعرف على الاحكام التشريعية بالتطبيق الالكتروني الخاص بالتشريعات الاماراتية، لكن يظهر من المفيد تنظيم ملتقيات ودورات تدريبية لتشجيع انشاء المشاريع خاصة بالنسبة للمواطنين وحتى الاجانب ، وذلك بشرح الاشكال القانونية الممكن الاختيار بينها وشروط كل واحد منها مع مميزات كل شكل قانوني. خاصة وان التوجه المستقبلي لاقتصاد دولة الامارات هو التركيز على استعمال المجال المعرفي والذكاء الاصطناعي^{ciii} ، والذي سيسعمل حتى في ممارسة النشاط الاقتصادي بجعل البرامج المعلوماتية هي التي تتعامل مع المستهلكين، وهو ما سي طرح التساؤل حول طبيعته القانونية وهل يمكن اخضاعه لنفس الاحكام السابقة التنظيم والمتعلقة بالمشاريع الفردية او حتى الشركات أم يستدعي ضرورة وضع أحكام خاصة به باعتباره شخص قانوني له وجود مستقل عن وجود من وضعه ويستعمله ولكن له طبيعة الكترونية بمعنى شخص الكتروني؟؟

ⁱ - للتعرف على اهم التغيرات التي عرفتها الاقتصاديات العالمية والعربية، يراجع، التقرير الاقتصادي السنوي، 2018، الإصدار السادس والعشرين، وزارة الاقتصاد، الامارات العربية المتحدة، ص. 16-24، على الموقع الالكتروني، [ae.economy.www](http://www.ae.economy)

ii- اعتمادا على التقرير السنوي 2016 "من الترخيص إلى الاستدامة"، دائرة التنمية الاقتصادية، حكومة الشارقة ، الإصدار السادس، ص.16.

iii- للتفصيل أكثر حول الاهتمام الاقتصادي للامارات العربية المتحدة، يراجع التقرير الاقتصادي السنوي، 2018، الإصدار السادس والعشرين، المرجع السابق، ص 27-48، على الموقع الإلكتروني، ae.economy.www
iv- بموجب المادة 24 من دستور الامارات لسنة 1971 والمعدل خلال سنة 2009: والتي تنص على انه: " الاقتصاد الوطني أساسه العدالة الاجتماعية وقوامه التعاون الصادق بين النشاط العام والنشاط الخاص ، وهدفه تحقيق التنمية الاقتصادية وزيادة الانتاج ورفع مستوى المعيشة وتحقيق الرخاء للمواطنين في حدود القانون. ويشجع الاتحاد التعاون والادخار. "

v- المادة 23 من الدستور: تعتبر الثروات والموارد الطبيعية في كل اماره مملوكة ملكية عامة لتلك الامارة . ويقوم المجتمع على حفظها وحسن استغلالها ، لصالح الاقتصاد الوطني.

vi- بموجب المادة 1 من القانون الاتحادي رقم 24 لسنة 1999 في شان حماية البيئة وتنميتها ، والتي تميز بين التنمية والتنمية المستدامة: التنمية يقصد بتنمية البيئة: " السياسات والإجراءات التي تلبي احتياجات التنمية المستدامة في الدولة اجتماعيا وثقافيا و اقتصاديا وتحقق الأهداف والمبادئ التي من أجلها وضع هذا القانون واهمها تحسين عناصر البيئة الطبيعية والمحافظة على التنوع البيولوجي والتراث التاريخي والأثري والطبيعي الحالي والمستقبلي بالدولة"؛ " التنمية المستدامة: " ربط الاعتبارات البيئية بسياسة التخطيط والتنمية بما يحقق احتياجات وتطلعات الحاضر دون إخلال بالقدرة على تحقيق احتياجات وتطلعات المستقبل. "

vii- المادة 2 من قرار المجلس التنفيذي رقم 21 لسنة 2017 المتعلق بالنشاط الاقتصادي : " يهدف هذا القرار لتحقيق الآتي: 1- العمل على تحقيق التنمية الاقتصادية في الامارة وتنظيم مزاولة الانشطة الاقتصادية من خلال تفعيل الأداء والتشريعات وتحقيق الجودة في الممارسات وتطبيق النظم والاجراءات ذات الارتباط بمهامها. 2- الترويج الاقتصادي للامارة وتعزيز مكانتها الاستثمارية محليا ودوليا ويجاد بيئة اقتصادية مثالية لمزاولة الاعمال ورفع معدل النمو الاقتصادي في الامارة. 3- تشجيع الاستثمارات الوطنية والاجنبية وتوفير المناخ الملائم لهذه الاستثمارات.

viii- بموجب قرار الجمعية العامة للأمم المتحدة رقم 41/128 4 ديسمبر 1986 ،يراجع محتوى إعلان الحق في التنمية الذي اعتمد ونشر على الملأ بموجب قرار الجمعية العامة للأمم المتحدة 41/128 المؤرخ في 4 كانون الأول/ديسمبر 1986، على الموقع الإلكتروني

https://www.ohchr.org/Documents/Issues/Development/DeclarationRightDevelopment_ar.pdf

ix- فترة القمة امتدت من 3 حزيران الى 14 منه سنة 1992

x- يراجع في ذلك، صفوت عبد السلام عوض الله، " تحرير التجارة العالمية وأثارها المحتملة على البيئة"، بحث منشور بمجلة العلوم القانونية والاقتصادية الصادرة عن جامعة عين شمس، عددا يناير 1999، ص.149-150.

xi-، وحقوق الجيل الثالث^{xi} متنوعة أهمها: الحق في السلام، الحق في التنمية،، الحق في بيئة نظيفة، الحق في الهدوء، الحق في الإغاثة بسبب الكوارث الكبرى

xii- لانها تجعل الشعوب تتشارك جميعا لمواجهة التحديات التي تعرفها البشرية وتسعى لضمان حق العيش في بيئة صحية نظيفة، الحق في

الموارد الطبيعية، ، والحق في التنمية الثقافية والسياسية والاقتصادية، مع حق الشعوب في السلم.
xiii - خاصة المادة 1/11 من قرار المجلس التنفيذي للشارقة رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في اماره الشارقة.

xiv - وذلك بالاعتماد على المادة من القانون رقم 13 لسنة 2011 بشأن تنظيم مزاوله الأنشطة الاقتصادية

xv - اعتمادا على المادة 1 من القانون رقم 5 لسنة 1998 بشأن اصدار التراخيص في اماره أبو ظبي.

xvi - بموجب المادة 2 من القانون رقم 5 لسنة 1998 بشأن اصدار التراخيص في اماره أبو ظبي.

xvii - بموجب المادة 4 من القانون رقم 5 لسنة 1998 بشأن اصدار التراخيص في اماره أبو ظبي.

xviii - وذلك بالاعتماد على المادة 14 من القانون رقم 13 لسنة 2011 بشأن تنظيم مزاوله الأنشطة الاقتصادية

xix - وذلك اعتمادا على المادة 16 من قرار المجلس التنفيذي رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في اماره الشارقة المؤرخ في 4 يوليو 2017

xx - ويتضح من مقارنة التشريع المحلي للشارقة بالتشريع في اماره دبي، النتائج التالية: - الترتيب الذي وضعه المشرع في اماره دبي للشكل القانوني للمنشأة الاقتصادية، يظهر أنه قد جعل الاختيار الاول للمنشأة "المؤسسة الفردية" التي لا تتمتع بشخصية معنوية مستقلة عن صاحبها، أما الثاني فكان المشروع المتمتع بالشخصية المعنوية دون صفة التاجر- شركة اعمال مدنية-، والاختيار الثالث التمتع بالخاصيتين الشخصية المستقلة وبصفة التاجر باختيار شكل شركة تجارية. على عكس تشريع اماره الشارقة الذي جعل الاختيار الاول هو الشركة التجارية المنظمة بموجب قانون الشركات، ربما كانت غايته من وراء الترتيب بهذه الطريقة، التأكيد على الصفة التجارية والحماية المقررة للشركة من خلال قانون الشركات وتشجيعا على اختيار الشركة التجارية كشكل او تنظيم قانوني للمشروع أو المنشأة.

- كما انه لم يشر الى فروع الشركات الخليجية، والتي ذكرها قرار المجلس التنفيذي لاماره الشارقة وعاملها كمعاملة فروع الشركات الوطنية، وهو تأكيد للاتفاقيات التعاون التي تجسد معاملة مواطني مجلس التعاون الخليجي كمعاملة مواطني الامارات وتؤكد عدة نصوص في القانون التجاري....

- كما أن التشريع المتعلق باماره دبي لم يميز في ضرورة اختبار احد الاشكال القانونية المحددة بين المنشآت التي يؤسسها القطاع الخاص وتلك التي تؤسسها الحكومة ، على عكس نظيره في اماره الشارقة الذي قام باستثناء المنشآت التي تؤسسها الحكومة أو إحدى مؤسساتها من ضرورة اتخاذ الاشكال القانونية المحددة، بمعنى تلك الاشكال تلزم بها المنشآت الخاصة دون المنشآت العامة

- وما يحسب ايضا لقرار المجلس التنفيذي للشارقة، أنه يحدد الجزاء المترتب عن عدم اختبار إحدى الاشكال القانونية المحددة ، والمتمثل في البطلان، بحيث تنص الفقرة الثانية من المادة السادسة عشر منه على أنه "كل منشأة لا تتخذ أحد الأشكال المشار إليها في البند (1) من هذه المادة تعتبر باطلة" ، فستكون المنشأة غير موجودة قانونا، لمخالفتها نص قانوني أمر، يمكن بالنتيجة اثاره البطلان من طرف القاضي حتى وان لم يتمسك به أحد الأطراف، لان المسألة في هذه الحالة متعلقة بالنظام العام.

xxi - اعتمادا على المادة 10 من قانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في اماره أبو ظبي،

- xxii - تطبيقاً للمادة 1 من القرار الإداري رقم 29 لسنة 1999 لتنفيذ أحكام القانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في إمارة أبو ظبي
- xxiii - تطبيقاً للمادة 5 من القرار الإداري رقم 29 لسنة 1999 لتنفيذ أحكام القانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في إمارة أبو ظبي، المحدد سابقاً.
- xxiv - اعتماداً على المادة 11 من قانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في إمارة أبو ظبي، المحدد سابقاً.
- xxv - الذي ألغى قانون الشركات السابق الذي كان يحدد الحد الأدنى لعدد الشركاء بشريكين اثنين لأن الشركة تعتبر عقد
- xxvi - تطبيقاً لأحكام المادة 3/9 من القانون الاتحادي رقم 2 لسنة 2015 بشأن الشركات التجارية المحدد سابقاً.
- xxvii - يراجع ذلك الموقف، عبد الله حميد الغويري، "تأسيس شركة الشخص الواحد في القانون الإماراتي رقم 2 لسنة 2015"، مجلة جامعة الشارقة للعلوم الشرعية والقانونية، المجلد 13 العدد 3، جامعة الشارقة، ديسمبر 2016، ص 332-333.
- xxviii - فالمؤسسات المالية يمكنها ان تتخذ شكل الشركات المساهمة أو ذات المسؤولية المحدودة، أما منشأة الصرافة والوساطة النقدية يمكن ان تكون مؤسسة فردية او تتخذ أي شكل قانوني آخر، كل ذلك وفقاً للشروط والقواعد التي يصدرها مجلس إدارة المصرف المركزي، تطبيقاً للمادة 2/3/74 من المرسوم بقانون الاتحادي رقم 14 لسنة 2018، في شأن المصرف المركزي وتنظيم المنشآت والأنشطة المالية، المؤرخ في 23 سبتمبر 2018
- xxix - تطبيقاً للمادة 2/107 من القانون رقم 2 لسنة 2015 الشركات التجارية الإماراتي، المحدد سابقاً.
- xxx - يراجع في ذلك، رشا محمد تيسير خطاب، أحمد قاسم فرح، "الشركات التجارية في دولة الامارات العربية المتحدة"، جامعة الشارقة، الطبعة الاولى 2017، ص 35-36.
- xxxi - تطبيقاً للمادة 2/7 من المرسوم بقانون اتحادي رقم 19 لسنة 2018 بشأن الاستثمار الأجنبي المباشر، المحدد سابقاً.
- xxxii - يراجع في المفهوم الحديث للطبيعة القانونية للشركة، كريمة كريم "شركة الشخص الواحد وذات المسؤولية المحدودة الاطار القانوني للمشروعات المتوسطة والصغيرة"، دار الجامعة الجديدة، الإسكندرية، جمهورية مصر العربية، 2014، ص 40 وما يليها؛
- J.PALLUSSEAU , « L'EURL ou des intérêt pratique et des conséquence théoriques de la société unipersonnelle », J.C.P. G., 1986, I,3242.
- xxxiii - وهو موقف رشا محمد تيسير خطاب، أحمد قاسم فرح، المرجع السابق، ص 19، ص 21.

- xxxiv - تطبيقاً للمادة 273 من القانون رقم 2 لسنة 2015، التي تنص على أنه: "يجوز لأية شركة أن تتحول من شكل إلى آخر مع بقاء شخصيتها الاعتبارية وفقاً لأحكام هذا القانون واللوائح والقرارات المنظمة لتحول الشركات التي تصدرها الوزارة أو الهيئة كل فيما يخصه في هذا الشأن بالتنسيق مع السلطة المختصة".
- xxxv - يراجع، عبد الله حميد الغويري، المرجع السابق، ص. 315.
- xxxvi - وذلك باحترام المواد: 43، 42، 73، 72، 71 من القانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية المحدد سابقاً.
- xxxvii - بموجب المادة 4 من قانون سنة 1984 الملغى.
- xxxviii - اعتماداً على المادة 1/8 من قانون الشركات التجارية رقم 2 لسنة 2015 المحدد سابقاً.
- xxxix - اعتماداً على المادة 2/8 من قانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية المحدد سابقاً.
- xl - بعدما كان عدد الشركات الممكن أن يختار منها لتنظيم المشروع الاقتصادي سبع أشكال: تتمثل في شركة التضامن، التوصية البسيطة، التوصية بالأسهم، المحاصة، ذات المسؤولية المحدودة، المساهمة العامة، المساهمة الخاصة، اعتماداً على المادة 5 من قانون الشركات لسنة 1984 الملغى بموجب قانون رقم 2 لسنة 2015.
- xli - تطبيقاً للمادة 9 من القانون الاتحادي رقم 2 لسنة 2015 بشأن الشركات التجارية المحدد سابقاً.
- xlii - خاصة المادة 11/1 قرار المجلس التنفيذي 21 لسنة 2017: "النشاط الاقتصادي: النشاط التجاري أو الصناعي أو المهني أو أي نشاط آخر يخصص له من الدائرة" يقصد بدائرة التنمية الاقتصادية بامارة الشارقة. ونفس المفهوم حددته تشريعات دبي
- xliii - وهو موقف رشا محمد تيسير خطاب، أحمد قاسم فرح، المرجع السابق، ص. 19، ص. 21.
- xliv - يراجع حول الاجتهاد الفقهي لتعريف المشروع، محمود سمير الشرقاوي، القانون التجاري، اجزاء الاول، طبعة 1982، ص. 31؛ علي سيد قاسم قانون الاعمال، الجزء الثاني، دار النهضة العربية، بدون سنة نشر، ص. 22.
- xlvi - احمد محرز، الوسيط في الشركات التجارية، منشأة المعارف، الاسكندرية، طبعة الثانية، 2004، ص. 83.
- xlvii - وهو المفهوم الذي وضعه المشرع بموجب قرار مجلس الوزراء رقم 35 لسنة 2016 المتضمن اللائحة التنفيذية للقانون الاتحادي رقم 2 لسنة 2014 بشأن المشاريع والمنشآت الصغيرة والمتوسطة، المؤرخ في 31 اغسطس 2016، ج ر عدد 604 بتاريخ 29 سبتمبر 2016،
- xlviii - وذلك بموجب المادة الأولى اللائحة التنفيذية رقم 2 لسنة 2014 : فالمنشأة هي كل شركة او مؤسسة فردية تزاوّل نشاطا اقتصاديا، صغيرة كانت وبما يشمل ماناهية الصغر او المتوسطة،

- وهو نفس التعريف المعتمد في المادة الاولى من القانون الاتحادي رقم 2 لسنة 2014 بشأن المشاريع والمنشآت الصغيرة والمتوسطة، بتاريخ 4 مارس 2014 ج ر عدد 561 بتاريخ 16 مارس 2014.
- xlvi - وقد حدد القانون معايير لتصنيف المشاريع والمنشآت يتم من طرف مجلس المشاريع والمنشآت الصغيرة والمتوسطة،،، بناء على معيارين اساسيين او اكثر مما ياتي حجم العمالة، حجم العوائد السنوية، راس المال، كما يمكن اضافة معايير اخرى من طرف مجلس الوزراء بتوصية من مجلس المشاريع والمنشآت الصغيرة والمتوسطة بالنظر الى طبيعة ونوع الانشطة الاقتصادية التي تمارسها المشاريع والمنشآت، اعتمادا على المادة 3 القانون الاتحادي رقم 2 لسنة 2014 بشأن المشاريع والمنشآت الصغيرة والمتوسطة...
- xlvi - بموجب المادة 1 من القانون الاتحادي لتنظيم المنافسة.
- ¹ - : المادة 1/ 13 قرار المجلس التنفيذي رقم 21 لسنة 2017.
- li - وفقا للقانون الاتحادي رقم 8 لسنة 1984 في شأن الشركات التجارية الملغى، فان عدد اشكال الشركات التي كان ينظمها هو سبع شركات تتمثل في: شركة التضامن، التوصية البسيطة، التوصية بالاسهم، المحاصة، المساهمة العامة، المساهمة الخاصة، ذات المسؤولية المحدودة.
- lii - بموجب المادة 367 من القانون الاتحادي رقم 02 لسنة 2015، والتي تنص: "يلغى كل حكم يخالف أو يتعارض مع أحكام هذا القانون، كما يلغى القانون الاتحادي رقم (8) لسنة 1984 في شأن الشركات التجارية والقوانين المعدلة له."
- liii - وذلك لان الترتيب قد يختلف باختلاف المنطقة الجغرافية، ولكن تقريبا في جميع مناطق اماره الشارقة تعتبر الشركة ذات المسؤولية المحدودة اكثل الاشكال القانونية اختيارا بين باقي الشركات التجارية.
- liv - للتعرف على خصائص الشركة ذات المسؤولية المحدودة، يراجع، رشا محمد تيسير، أحمد قاسم فرح، المرجع السابق، ص ص. 342-346.
- lv - يراجع حول شركة الشخص الواحد خاصة ذات المسؤولية المحدودة، يراجع، عبد الله حميد الغويري، المرجع السابق، ص ص. 312-314.
- lvi - اعتمادا على المادة 1/117 من القانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية، المحدد سابقا.
- lvii - اعتمادا على المادة 105 من قانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية.
- lviii - للتعرف على الخصائص المميزة لشركة المساهمة العامة، يراجع، رشا محمد تيسير، أحمد قاسم فرح، المرجع السابق، ص ص. 176-181.
- lix - تطبيقا للمادة 193 من قانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية المحدد سابقا.
- lx - اعتمادا على المادة 63 من قانون رقم 2 لسنة 2015 بشأن الشركات التجارية المحدد سابقا.

- lxi - للتعرف على خصائص شركة التوصية البسيطة، يراجع، رشا محمد تيسير، أحمد قاسم فرح، المرجع السابق، ص ص. 157-161.
- lxii - اعتماد على المادة 39 من قانون رقم 2 لسنة 2015 بشأن الشركات التجارية المحدد سابقاً.
- lxiii - تطبيقاً للمادة 40 من القانون رقم 2 لسنة 2015 المتعلق بالشركات التجارية المحدد سابقاً.
- lxiv - للتعرف على مميزات شركة التضامن باعتبارها أفضل مثال لشركات الأشخاص، يراجع، رشا محمد تيسير، أحمد قاسم فرح، المرجع السابق، ص ص. 104-120.
- lxv - للتعرف على خصائص ومميزات شركة المساهمة الخاصة، يراجع، رشا محمد تيسير، أحمد قاسم فرح، المرجع السابق، ص ص. 331-332.
- lxvi - تطبيقاً للمادة 1/256 من قانون الشركات التجارية رقم 2 لسنة 2015 المحدد سابقاً.
- lxvii - تنص المادة 3/255 من قانون الشركات التجارية رقم 2 لسنة 2015، على أنه: "استثناء من الحد الأدنى لعدد المساهمين المقرر في البند (1) من هذه المادة، يجوز لشخص واحد اعتباري تأسيس وتملك شركة مساهمة خاصة ولا يسأل مالك رأس مال الشركة عن التزاماته إلا بمقدار رأس المال الوارد يعقد تأسيسها ويجب أن يتبع اسم الشركة عبارة "شركة الشخص الواحد مساهمة خاصة"، وتسري عليه أحكام شركة المساهمة الخاصة الواردة في هذا القانون فيما لا يتعارض مع طبيعتها".
- lxviii - حرية التجارة و الصناعة مبدأ مكرس دستورياً، المادة 24 من الدستور الاماراتي لسنة 1971: "الاقتصاد الوطني أساسه العدالة الاجتماعية وقوامه التعاون الصادق بين النشاط العام والنشاط الخاص، وهدفه تحقيق التنمية الاقتصادية وزيادة الانتاج ورفع مستوى المعيشة وتحقيق الرخاء للمواطنين في حدود القانون. ويشجع الاتحاد التعاون والادخار." و المادة 34 من الدستور الاماراتي: "كل مواطن حر في اختيار عمله أو مهنته أو حرفته في حدود القانون، وبمراعاة التشريعات المنظمة لبعض هذه المهن والحرف. ولا يجوز فرض عمل اجباري على أحد الا في الأحوال الاستثنائية التي ينص عليها القانون، وبشرط التعويض عنه".
- lxix - يقصد بالمشروع الصناعي: "العملية الاستثمارية التي يكون الغرض الاساسي منها تحويل الخامات من حيث جواهرها أو تركيبها أو شكلها أو مظهرها إلى منتجات كاملة الصنع أو وسيطة، كذلك التي تؤدي إلى تحويل المنتجات الوسيطة إلى منتجات كاملة الصنع بما في ذلك مزج المنتجات أو تجميعها أو فصلها أو تعبئتها أو تغليفها. وكذلك إضافة طاقة انتاجية أو تكوين أصول انتاجية جديدة محل أصول قديمة استهلك أو انتهى عمرها الانتاجي وذلك كله طبقاً لما تحدد عن..... المشروع وفقاً لخطة محددة. بناءً على المادة 01 من القانون الاتحادي رقم 01 لسنة 1979 في شأن تنظيم الصناعة، كما تنص المادة 09 من القانون الاتحادي رقم 01 لسنة 1979 في شأن تنظيم شؤون الصناعة، على أنه: "لا يجوز اقامة أي مشروع صناعي في الدولة أو إحداث أي تغيير فيه مالم يحصل صاحبه على موافقة بذلك وفقاً لاحكام هذا القانون و النظم المعمول بها في الدولة، و

يقدم الطلب الخاص بالمشروع الصناعي إلى الدائرة على النموذج الخاص بذلك وفقاً للائحة التنفيذية".

lxx - بموجب المادة 02/04 من القانون الاتحادي رقم 24 لسنة 1999 المعدل.

lxxi - اعتماداً على المادة 11 من قانون الشركات رقم 02 لسنة 2015.

lxxii - وهو ما أكدته المادة 2/04 من قرار المجلس التنفيذي لحكومة الشارقة رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في إمارة الشارقة.

lxxiii - وهو ما أكدته، قرار المجلس التنفيذي لحكومة الشارقة رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في إمارة الشارقة.

lxxiv - بناءً على المادة 01 من القانون الاتحادي رقم 24 لسنة 1999 في شأن حماية البيئة و تتميتها ، المعدل بالقانون الاتحادي رقم 20 لسنة 2006.

lxxv - اعتماداً على المادة 06 من قرار مجلس الوزراء رقم 37 لسنة 2001، والتي تنص على أنه: تحدد الجداول المرفقة بهذا القرار المشاريع والأنشطة التي تتطلب أو قد تتطلب إعداد وتقديم دراسة تقييم الأثر البيئي قبل الحصول على الترخيص بإنشائها أو تعديلها، وفقاً للجدول الملحق رقم (١) (بهذا القرار).

lxxvi - بناءً على المادة 08 التي تنص: يلتزم طالب التصريح بتقديم دراسة تقييم الأثر البيئي للمشروع أو النشاط أو تعديل المشروع أو النشاط تنفيذاً لقرار الهيئة/السلطة المختصة على أن يتضمن هذا التقييم البيانات الواردة بالملحق رقم (٢) (من هذا القرار ويسلم للإدارة المختصة مع باقي المستندات).

lxxvii - وذلك اعتماداً على المادة 09: تتولى الإدارة المختصة مراجعة دراسة تقييم الأثر البيئي المقدمة من طالب التصريح، ولها في سبيل ذلك الاستعانة بمن تراه من أفراد أو جهات عامة أو خاصة أما لها أن تعيد الدراسة إلى طالب التصريح لاستيفاء ما تراه من بيانات أو معلومات وعلى ضوء ما تكشف عنه تلك الدراسة تصدر توصياتها أما بمنح التصريح البيئي للمشروع أو برفضه، على أن تكون التوصية برفض التصريح مسببة. وتتولى الإدارة المختصة إبلاغ طالب التصريح بتوصياتها بعد اعتمادها وذلك خلال ثلاثين يوماً من تاريخ استلام المستندات المطلوبة. "

lxxviii - راجع، عزاوي عبد الرحمان، النظام القانوني للمنشآت المصنفة لحماية البيئة. " دار الخلدونية، الجزائر، ص.20.

lxxix - وهو التعريف الذي حددته المادة 2 من القانون رقم 13 لسنة 2011 بشأن مزاولة الأنشطة الاقتصادية في إمارة دبي وتعديلاته،

lxxx - اعتماداً على مفهوم الرخصة الذي حددته المادة الأولى من قرار المجلس التنفيذي رقم 21 لسنة 2017 بشأن تنظيم الأنشطة الاقتصادية في إمارة الشارقة.

lxxxi - تطبيقاً للمادتي، 2، 12 من من القانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في إمارة أبو ظبي،

lxxxii - تطبيقاً للمادة 4 من من القانون رقم 5 لسنة 1998 بشأن إصدار التراخيص في إمارة أبو ظبي،

lxxxiii - يراجع في ذلك المادة الاولى من القانون رقم 5 لسنة 1998 بشأن اصدار التراخيص في امارة أبو ظبي،

lxxxiv - تطبيقاً للمادة 1 من القرار الاداري رقم 29 لسنة 1999 لتنفيذ احكام القانون رقم 5 لسنة 1998 بشأن اصدار التراخيص في امارة أبو ظبي

lxxxv - وذلك اعتماداً على المادة 02 من قرار مجلس الوزراء رقم 37 لسنة 2001 في شأن الانظمة اللائحية التنفيذية للقانون الاتحادي رقم 24 لسنة 1999 في شأن حماية البيئة و تنميتها

lxxxvi - يقصد بالإفادة البيئية وفقاً للمادة 1 من قرار مجلس الوزراء رقم 37 لسنة 2001 المحدد سابقاً

: الإستمارة المعدة وفقاً للنموذج المرفق والتي يجب تحريرها بمعرفة طالب التصريح وتضمينها البيانات والمعلومات المحددة بهذا القرار، والتي تم تحديدها وفقاً للنموذج المرفق بهذا القرار و هو

الملحق رقم 03

lxxxvii - بناءً على المادة 03 من قرار مجلس الوزراء رقم 37 لسنة 2001 المحدد سابقاً

lxxxviii - اعتماداً على المادة 05: تتولى الإدارة المختصة بالهيئة أو لدى السلطة المختصة حسب الأحوال دراسة طلب التصريح البيئي على ضوء

المستندات المقدمة من طالب التصريح البيئي والجدول المرفقة بهذا القرار والتوصية بأي من التوصيات التالية وفقاً لما تسفر عنه الدراسة.

أ - الموافقة على المشروع أو النشاط أو التعديل المقترح لعدم وجود آثار بيئية محتملة.

ب - إصدار التصريح البيئي بعد تنفيذ بعض الإجراءات أو التدابير البيئية.

ج - إصدار التصريح البيئي على أن يقر طالب التصريح آتابة بتعهده بتنفيذ بعض الإجراءات أو التدابير اللازمة بيئياً.

د - إرجاء البت في التصريح البيئي لحين تقديم طالب التصريح دراسة تقييم الأثر البيئي.

هـ. عدم الموافقة على منح التصريح البيئي.

وعلى الهيئة / السلطة المختصة إخطار طالب التصريح بما انتهت اليه من توصية، وذلك خلال شهر من تاريخ تسليم المستندات.

lxxxix - Voir, ARTHUR Julien , BATTISTELLI Matthieu , HARDY Jean-François, « De la personne morale a la personne éthique », École normal supérieure de Cachan, Antenne de Bretagne, février 2013 Canbera, Pise-Bombay. p.4, consulté l'article sur le site web http://www.rotaryd1650.org/EthiqueProf/2013/memoire/ENS_CACHANT.pdf

xc سورة المائدة الاية رقم 3.

xci - سورة البقرة الآية رقم 184.

xcii - رواه ابن ماجة والدارقطني-

xciii - رواه البخاري-

xciv - - رواه ابن ماجه-

xcv - وذلك بموجب المادة 242 من القانون الاتحادي رقم 2 لسنة 2015 المحدد سابقا، التي تنص على انه " يجوز للشركة بعد انقضاء سنتين ماليتين من تاريخ تأسيسها وتحقيقها أرباحا، بموجب قرار خاص أن تق دم مساهمات طوعية، ويجب الا تزيد على (2%) من متوسط الارباح الصافية للشركة خلال السنتين الماليتين السابقتين للسنة التي تقدم فيها تلك المساهمة الطوعية، ويتعين مراعاة ما يأتي: 1- أن تكون هذه المساهمات الطوعية في اعراض خدمة المجتمع. 2- أن يذكر بشكل واضح الجهة المستفيدة من هذه المساهمات الطوعية في تقرير مدقق الحسابات وميزانية الشركة".

xcvi - قرار مجلس الوزراء رقم 2 لسنة 2018 المؤرخ في 21 يناير 2018، في شأن المسؤولية المجتمعية للشركات والمنشآت، ج ر عدد 626 بتاريخ 31 يناير 2018.

xcvii - اعتمادا على المادة 05 من قرار مجلس الوزراء رقم 2 لسنة 2018 المحدد سابقا، التي تنص على انه " المادة 05: تشمل ممارسات المسؤولية المجتمعية للشركات والمنشآت ما يلي: أ- المساهمة في تطوير المجتمع في المجالات الاقتصادية والاجتماعية والبيئية وغيرها من خلال تقديم المساهمات النقدية والعينية لتمويل البرامج والمشاريع التنموية في الدولة التي تنطبق عليها الشروط والضوابط والمعايير المعتمدة من المجلس. ب- تبني سياسات صديقة للبيئة في الإنتاج والعمل. ج- تعزيز روح الابتكار والبحث العلمي، والمساهمة في تقديم حلول للمشكلات أو التحديات التي تواجه المجتمع. د- إرساء ثقافة المسؤولية المجتمعية في الشركات والمنشآت من خلال وضع استراتيجيات مستدامة للمسؤولية المجتمعية، وتوفير الفرص لتطوير حملات ومبادرات إنسانية ومجتمعية، والانخراط في البرامج التطوعية".

xcviii - المادة 03 من قرار مجلس الوزراء رقم 2 لسنة 2018 المحدد سابقا، والتي تنص على انه: " تسري احكام هذا القرار على كل من: أ- جميع الشركات التجارية في الدولة بكافة اشكالها القانونية بما في ذلك البنوك والمصارف وشركات التمويل والشركات التجارية المستتانة من احكام القانون الاتحادي رقم (02) لسنة 2015 وكذلك فرع الشركات الأجنبية التي تزاو ل نشاطها داخل الدولة ب- الشركات المملوكة بالكامل للحكومة الاتحادية أو المحلية بصورة مباشرة أو تمتلك فيها نسبة من أسهمها ج- المؤسسات والجهات التي ترغب في الادراج في المنصة ومنها على سبيل المثال الشركات المدنية/ الشركات المهنية/ المؤسسات الفردية/ الشركات العاملة بالمناطق الحرة بالدولة/ الجمعيات التعاونية".

xcix - المادة 4 من قرار مجلس الوزراء رقم 2 لسنة 2018 المحدد سابقا .

c - اعتمادا على المادة 18 من قرار مجلس الوزراء رقم 2 لسنة 2018 المحدد سابقا.

ci - وتلك القيمة قد تكون 1500 درهم اماراتي حتى تعتبر هذه المساهمة جزء من المساهمة في المسؤولية المجتمعية للدولة، او قيمة 10.000 درهم اماراتي في حال الرغبة في الحصول على علامة المسؤولية المجتمعية، او ما قيمته 15.000 درهم اماراتي في حال الرغبة في التنافس للحصول على جواز المسؤولية المجتمعية

cii - المادة 7 من قرار مجلس الوزراء رقم 2 لسنة 2018 المحدد سابقا.

ciii - للتعرف على التوجهات الحالية والمستقبلية للامارات العربية المتحدة فيما يتعلق بالذكاء

الصناعي، يراجع ، التقرير الاقتصادي السنوي 2018، المرجع السابق، ص ص.56-62.

Impact of Working Memory Capacity on Creativity and Outcome of Memorization

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Abstract

Working memory is responsible for the storage, processing, and transportation of information during recognition, and working memory capacity (WMC) is the crucial indicator for measuring working memory. This paper mainly focuses on investigating how WMC influences the creativity of approaches used during memorization and the memory outcomes. This research uses a backward digit span test to measure the working memory capacity of the participants, and a word-memorization test with a subjective questionnaire to explore the most commonly used memorizing approaches and the outcome of memorization. The authors found that when grouping WMC scores into a high and a low group, participants with higher WMC are less creative during memorization, and a higher WMC score in one memorization test can predict a better memory outcome in another memorization test. However, each individual WMC score does not correlate with creativity or memorization outcomes. This is mainly caused by the lack of corresponding memory test with the participants' interest and limited sample size. Overall, this paper provides a better understanding of the relationship between WMC and memorization

outcome and creativity, and is helpful for high school teachers and students .to find a suitable memorization approach during teaching and learning

Key Words: working memory, working memory capacity, creativity, memorizing approach, memory outcome

Introduction

According to Baddeley (2003), working memory is a complex system involving the visuospatial sketchpad, which is a visual storage system, the phonological loop, which is a verbal storage system, and the central executive (para. 5). In the recognition process, working memory is responsible for the controlling of attention and the storage and modification of short-term memory input (Cowan, 2008, para. 7). Working memory capacity (WMC) is an important factor that reflects working memory ability (Xu, Li, & Qiu, 2017, para. 1). The purpose of this study is to determine the relationship between the variety in working memory capacity and the creativity (novelty, diversity) of the preferred memorization approaches. The effect on memorization outcome from individuals with diverse WMC who also adopted different memorization methods is also investigated in this study. In this report, the process and results of a recently conducted experiment will be summarized and analyzed, so that the potential relationship between working memory capacity, the creativity of memorization approaches, and memorization outcomes can be determined. Nowadays, middle and high school students receive a lot of stress from learning, and they are often required to memorize a large amount of information. The contents of this paper not only can help teachers and students personally understand the most effective method of remembering key knowledge points, but it can also be utilized to find the most suitable memorization approach for people with diverse WMC

Part One: Literature Review

Prediction of WMC on Creativity-Three Perspectives 1

The correlation between WMC and creativity has been studied for over decades, but related literature mainly focused on testing the creativity in other non-memorization tasks. However, the problem of investigating the correlation of WMC with creativity using non-memorization tasks is that multiple cognitive processes are involved, making analyzing results complicated. Therefore, this study specifically investigates the correlation between WMC and creativity of strategies used during memorization. Most of the previous researches regarding WMC and creativity expressed one of three types of prediction: high WMC positively predicts creativity, high WMC negatively predicts creativity, or high WMC does not predict WMC. The first perspective, WMC positively influences creativity, is supported by a study conducted by Markman (2012, para. 4). In his article, Markman wrote about an experiment on cellists: The experimenters measured the WMC of a group of amateur cellists and required them to play an improvisation. Then, music connoisseurs would listen to the recording of each improvisation and provide a score for the melody's originality and novelty. The results showed that the music improvised by cellists with high WMC are more creative than that composed by cellists with low WMC. However, in this experiment, individuals must recall memories on the solution of similar problems during creative tasks, thus it is not surprising that high WMC would positively predict creativity. Other studies displayed completely different results which demonstrated that high WMC negatively predicts creative thinking. In a thesis written by Fugate, Zentall, and Gentry (2013), the researchers summarized their study on supernormal children with and without ADHD (attention deficit hyperactivity disorder) to determine the relationship between WMC and creativity. Since the

utilization of working memory involves controlling one's attention, children with ADHD tend to have lower working memory capacity. According to the research, children with ADHD and low WMC performed significantly better in creative tasks. Moreover, according to Xu et al. (2017), individuals with high WMC might rely on already existed memory during creative processes, therefore their creativity would be relatively limited (para. 3). However, data collected in the experiment conducted by Smeekens and Kane (2016) indicated that there was no predicting relationship between WMC and creative thinking. The authors measured WMC of the participants with a complex span test, the extent of mind-wandering with a "task-unrelated thoughts (TUT)" report, and the extensiveness of daydreaming with a questionnaire. Afterward, the participants were asked to complete the tasks that tests creativity. No significant correlation between WMC, creativity, especially divergent thinking, and degree of mind-wandering was found, but the extent of daydreaming alone has a weak positive correlation with the strength of creative thinking

Overall, previous studies have noted the relationship between WMC and creativity in non-memorization tasks. However, these studies do not show a consistent result, likely due to the sampling of participants with special talents or mental disorders, and the variety of creative tasks being used in different studies. Thus, the correlation of WMC with creativity needs to be further investigated by conducting unbiased, simple experiment, in which participants are randomly sampled from ordinary people, and creativity is only tested in memorization tasks

Relationship between WMC and Memory Outcome 2

Before designing the experiment, the correlation between WMC and memory outcome should also be understood to achieve the purpose of this study. In studies regarding working memory, a widely used method for

measuring WMC is by conducting span tests. As Oberauer, Süß, Wilhelm, and Wittman (2003) mentioned in the Method portion of their paper, the authors measured the storage ability of the WM of participants with a word span test and a digit span test (para. 21). In the word span test, participants were required to recall lists of words ranging from 4 to 8 items. In the digit span test, participants were required to reproduce lists of numbers ranging from 5 to 9 digits. In both tests, WMC is defined by the number of correct responses, thus it is reasonable to conclude that individuals with higher WMC tend to achieve more accurate memorization outcome. However, this conclusion is only applicable in the investigation of WMC and memory outcome utilizes the same area of WM. Controversies exist between studies that tried to determine the correlation between WMC in one field and memory outcome in another. Two views dominate such researches: WMC has either no correlation or positive correlation with memorization outcome of another field. The experiments conducted by Ashcraft and Kirk (2001) support the first view. In the first part of their experiments, the authors tested the WMC of participants with listening span and computation span tests, and the level of math anxiety with a demographic rating. A significant negative correlation was found between math-specific WMC and the level of math anxiety. In the second part, the participants were required to hold a series of 2 to 6 letters in memory, answer a math addition problem, and then recall the letters. The researchers did not find significant correlation of math anxiety and math-specific WMC with letter recall ability, regardless of memory load at 2 or 6 letters. However, this result is not comprehensive because the participants have certain degree of hardship in math, and therefore their performance in math-specific task is more predictive. In addition, only 4% of the recalls for 6-letter series were incorrect, indicating a ceiling effect in the letter-recalling task, and the absence of correlation between math and letter related WMC unconvincing. The perspective which suggests that there is a positive correlation between WMC and memory

outcome in different areas is supported by Kormos and Sáfár (2008). The participants were Hungarian-English bilingual learners whose first language is Hungarian. The researchers measured the phonological WMC of participants with backward digit span test, and they recorded the score of participants on a Cambridge First Certificate English exam to measure their second language ability. The authors found a strong, positive correlation between phonological numeric WMC and English language proficiency in .listening, speaking, reading, grammar, and vocabulary

Previous literature generally studied the relationship between WMC and the observable outcomes of memorization that utilize working memory of either the same or different kinds of cognitive tasks. Disagreements exist between different studies involving various memory fields, which is caused by different sample characteristics and experimental design. To further investigate the relationship between WMC and memory outcome, this study will use an unbiased sample, and ensure that experiment content tests for the upper limit of WMC in participants. Moreover, the experimental design will account for the influence of adopting various memorization approach on the memory outcome of individuals with different WMC.

Part Two: Hypothesis

As mentioned above, the tasks involved in Markman's study requires the participants to improvise, which needs previous knowledge in music. Thus, the positive correlation between WMC and creativity is expected in Markman's experiment. However, our experiment will use a task that does not require previous experience, and the tasks used for testing WMC and memory creativity are different kinds of cognitive tasks. Therefore, the WMC tested in this study does not necessarily positively predict creativity in memorization approaches. Moreover, previous studies found that no correlation exists between WMC and creativity in various creativity tasks (Smeekens & Kane, 2016). Since our experimental design and tasks being

used in this study focuses on the creativity involved in the memorization process instead of other cognitive tasks, our result may not be consistent with these previous studies. In our experiment, direct memorization strategies such as reciting are considered to represent low creativity, and elaborative memorization strategies such as grouping and association are considered to represent high creativity. Also, as mentioned above, the amount of correctly recalled information represents the outcome of memorization, which can be influenced by both WMC and creativity of .memorization approach

Overall, we predict that individuals with high WMC are more inclined to adopt direct memorization strategies while individuals with low WMC are more inclined to adopt more diverse memorization strategies, but WMC in one memorization task cannot predict the outcome of memorization in another task

Part three: Methodology

Participants 1

This study aims to test how WMC influences the creativity of memorization approaches and memorization outcomes, respectively. In order to fulfill this purpose, 30 students (15 males and 15 females aged between 15 and 16 years old) were randomly selected from the 10th grade in Beijing Haidian Foreign Language Shiyuan School International Department. This sample is a representative of middle and high school student, who need to find their most suitable memorization strategy, so that they can master heavy loads of .knowledge with more ease

Experimental Design and Material 2

In this experiment, a backward digit span test will be conducted to measure WMC. To test how WMC influences the creativity of memorization approaches and memory outcome, a vocabulary test will be done to test the most frequently used memorization approaches of participants, which indicates the creativity, and the number of correctly memorized vocabulary, which indicates the memory outcome. The design of the backward digit span test is stated in detail in Oberauer et al.'s study (2003). In the vocabulary test, the participants were shown a list of words followed by an answer sheet. The list of words includes 21 uncommon English words and their Chinese translation that none of the participants are familiar with, and these words consist of five, seven, or nine letters (7 words for each length). The upper half of the answer sheet includes questions on Chinese-English and English-Chinese translation; the lower half of the answer sheet is a subjective questionnaire that surveys the memory strategy that the participants incline to use most frequently (see test material and answer sheet in appendices).

This experimental methodology can provide a standard for the grouping of participants according to WMC and collect data on the preferred memorization approach for different WMC individuals and their memorization outcomes.

Experimental Procedure 3

In the digit span test, each participant listened to several series of randomly arranged numbers. After each series is over, the participant was required to recite the series of numbers backwards. The length of the series began at two digits and gradually increased by one, and each length was assigned with two series. When the participant was unable to correctly recite backwards both of the series of the same length, the experiment could be paused and the participant's WMC is one digit less than that length. For

example, if the participant made mistakes when reciting backwards both of the series with ten digits, then his or her WMC is 9. Common people's WMC is usually considered to be 7 items (digits, letters, objects, etc.), and .(the normal fluctuation range is between 5 and 9 (Cowan, 2008, para. 25

In the vocabulary test, each participant was given ten minutes to memorize the words on the list. The participants are then asked to complete the two-way translation questions in ten minutes and, immediately afterwards, the subjective questionnaire in five minutes. For any Chinese-English translation question, the participant receives one point only if the spelling is accurate; for any English-Chinese translation question, the participant receives one point if the participant's answer includes the essential characters for the meaning of the complete Chinese translation on the list (such as “干酪” in “波萝伏洛干酪”) and 50% of adjectives in the original translation. In the subjective questionnaire, memorization approaches are categorized into direct memorization approach and elaborative memorization approach that involves grouping, associating, and/or other elaborative strategies. The participants were required to give a personal score ranged from 5 to 1 on the description of their use of each of the two strategies (5=agrees completely; 1=disagrees completely). Two sub-questions were used to measure the participants' inclination to using different types of elaborative memory approach, such as grouping versus associating. However, the significance coefficient of these two questions is 0.07, which means that they measure the same variable. The average score of the two sub-questions is taken as the final score for the elaborative memorization approach. In order to test which memorization approach (direct vs. elaborative) is used more by each individual, we normalized the scores by dividing the elaborative-memorization score by the direct-memorization score. If this ratio is greater than 1, then the participant is more inclined to use elaborative approaches, and if this ratio is less than 1, .then the participant is more inclined to use direct approaches

Statistical Analysis 4

During the process of data analysis, Microsoft Excel was utilized to record the score of digit span test, and Microsoft Access was used to organize the score for digit and vocabulary tests and the answer of the subjective questionnaire. In order to effectively analyze the multiple groups of data, Excel is used to calculate the distribution of WMC and the averages of direct memorization approach scores, elaborative memorization approach scores, memorization approach score ratios, and memorization outcomes, respectively. ANOVA test and t-test are conducted in Excel to investigate whether individuals with different WMC has a significant difference in the creativity of memorization approaches and memorization outcomes.

Part Four: Results

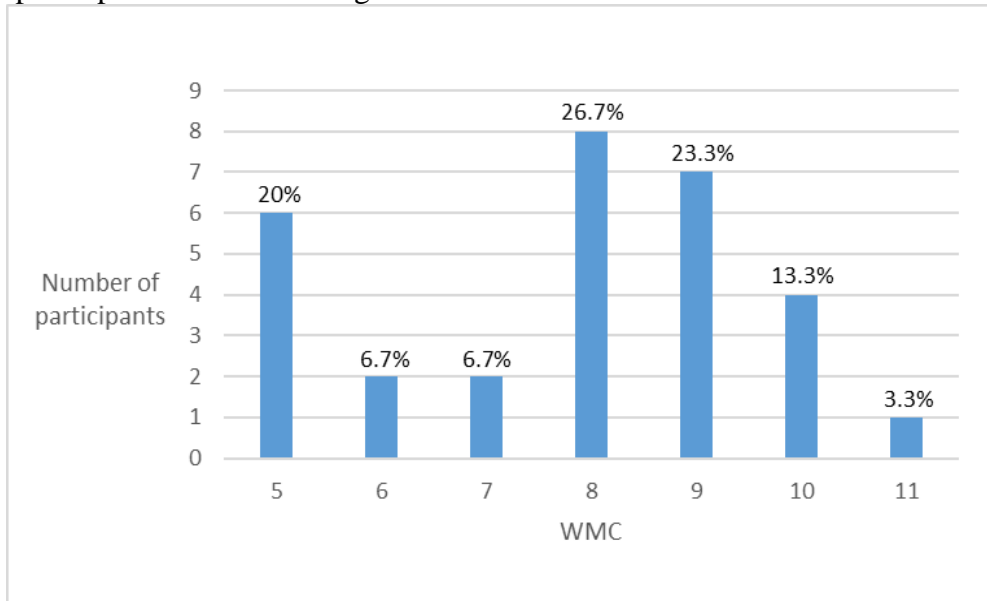
Summary of Experiment 1

When the experiments were completed, WMC, the original score and score ratio of direct and elaborative memorization approaches, and the outcome of memorization of the participants were recorded in the database. These data were then analyzed with Excel to determine the distribution of WMC among participants and how WMC influences memorization approaches and outcomes.

Distribution of WMC among Participants 2

WMC among the participants is not normally distributed (Figure 1). Seventy percent of the participants have a WMC of 5, 8, or 9. In addition, 33.4% of

the participants have WMC equal to or less than 7, and 66.6% of the participants have WMC higher than 7



.Figure 1. Distribution of WMC

Distribution of Various Memorization Approach Scores according to WMC 3

The average scores of different memorization approaches from individuals with the same WMC shows that WMC score is not correlated with either the direct approach score (Pearson correlation, $p\text{-value} = 0.098$, $r = 0.673$) or the elaborative approach score (Pearson correlation, $p\text{-value} = 0.432$, $r = -0.357$) (Figures 2-3). Moreover, the direct memorization score ranges from 2.5 to 4, and the individuals with the highest WMC (10 and 11) had a higher

average direct memorization approach score. The average elaborative memorization approach score ranges from 2.5 to 3.67

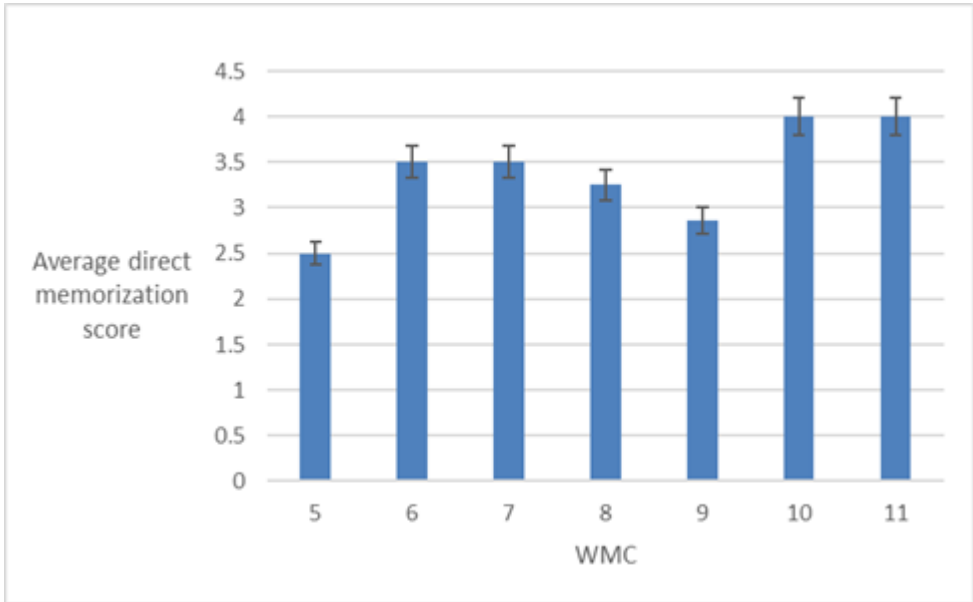


Figure 2. Distribution of Average Direct Memorization Approach Score .according to WMC

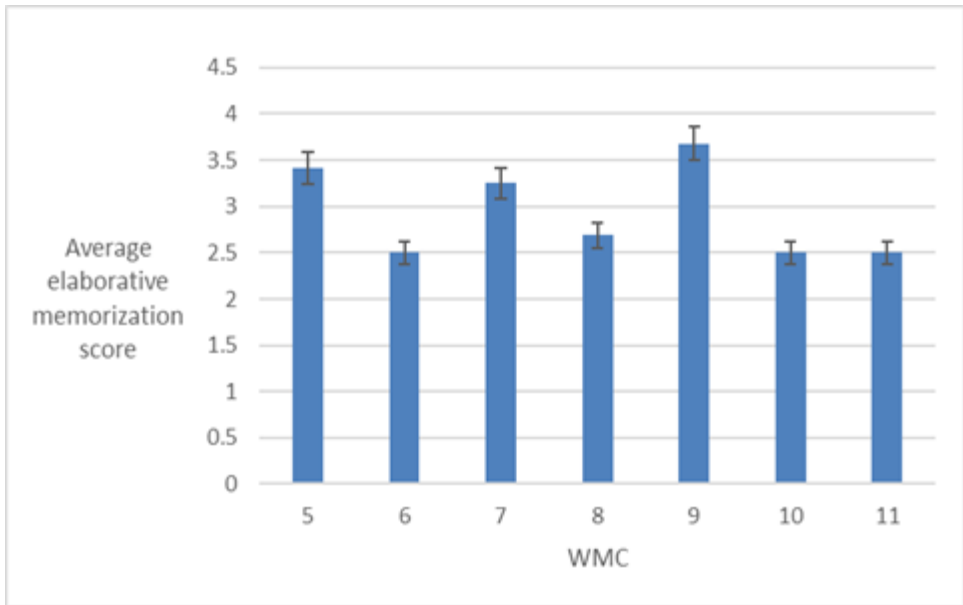


Figure 3. Distribution of Average Elaborative Memorization Approach .Score according to WMC

We analyzed the relationship between WMC and the creativity of memorization approaches further by calculating the average memorization approach score ratio at each WMC level. (Approach score ratio = elaborative memorization score / direct memorization score). Since neither of the memorization approach scores has a significant correlation with WMC, the non-significant correlation of the score ratio with WMC is expected, as shown in Figure 4. As WMC increases, the average memorization approach score ratio does not have a trend to increase or decrease.

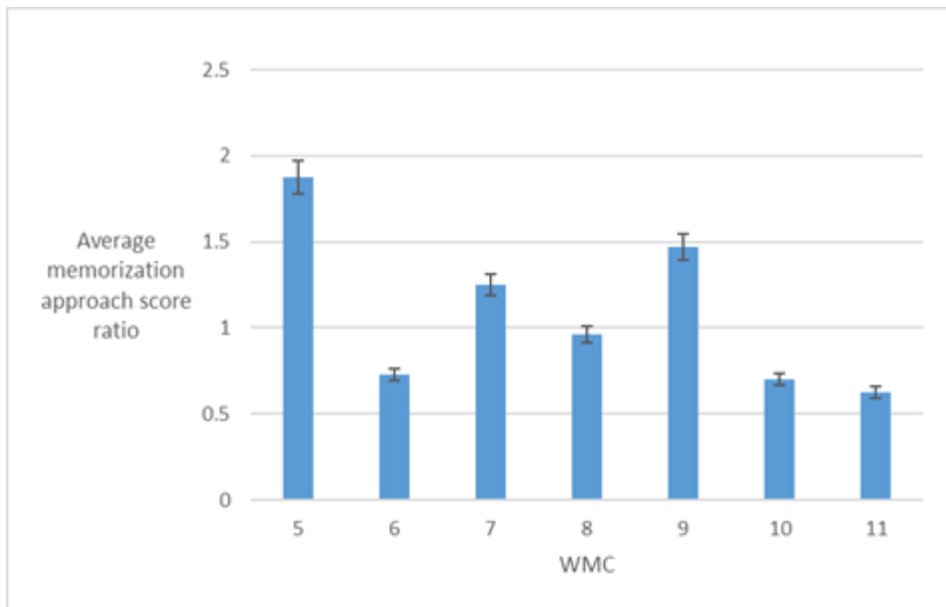


Figure 4. Distribution of Average Memorization Approach Score Ratio according to WMC

However, as shown in Figure 5, the weighted average score ratio for the high WMC (greater than 7) group is greater than that of the low WMC (less than or equal to 7) group. Even though the p-value calculated in the t-test (0.68) is greater than 0.05, the error bar of the weighted average memorization score ratio for $WMC < 7$ and $WMC > 7$ does not overlap. This indicates that even though the difference between memorization score ratio for high and low WMC groups is not significant in the t-test, there is still a big difference between them

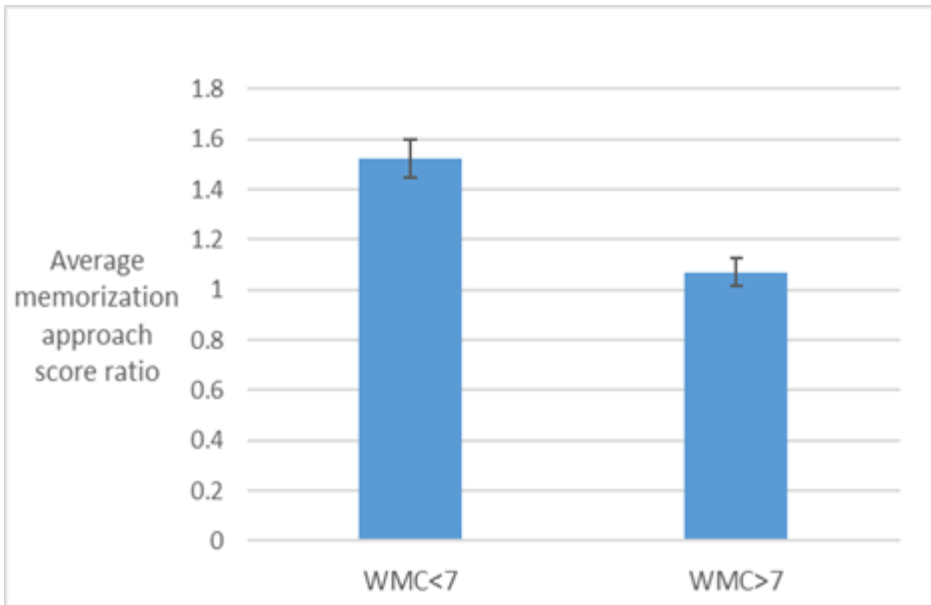


Figure 5. Comparison of Weighted Average of Memorization Approach .Score Ratio for WMC Lower and Higher than 7, respectively

Distribution of Memorization Outcome according to WMC 4

No significant variation existed between average memory outcome and each WMC score (Figure 6) (ANOVA, p-value = 0.915), but different WMC groups have significantly different average memorization outcome (t-test, p-value = 0.037) (Figure 7). Since only one participant has WMC at 11 and the corresponding memorization outcome disobeys the overall trend, the memorization outcome when WMC is 11 is considered not representative and therefore not included in the t-test.

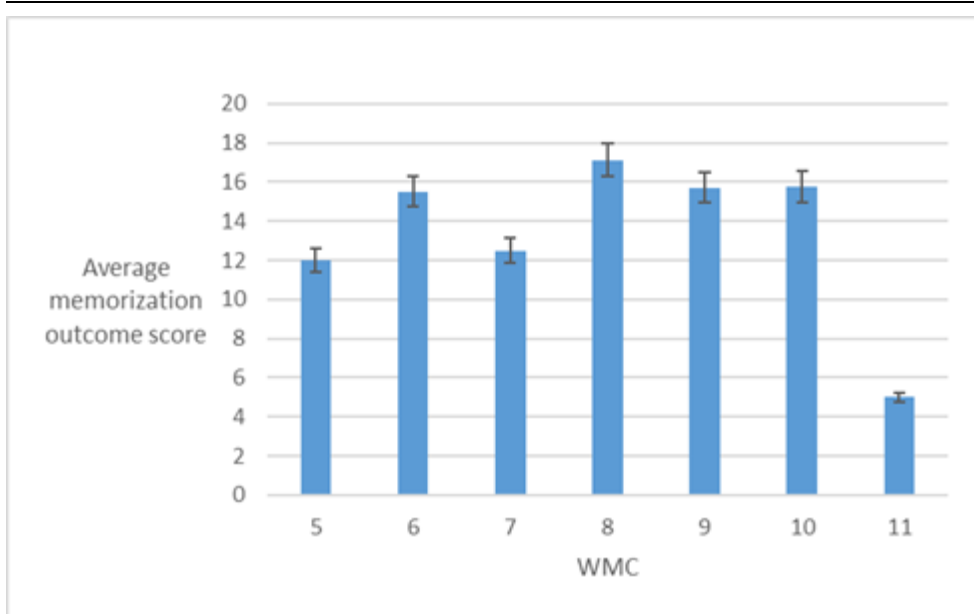


Figure 6. Distribution of Average Memorization Outcome according to WMC

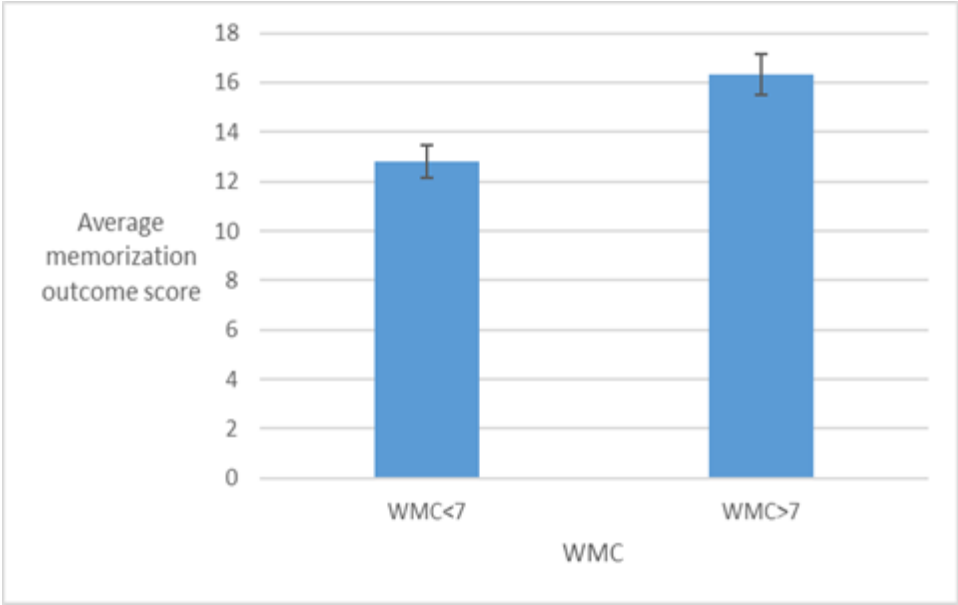


Figure 7. Comparison of Weighted Average of Memorization Outcome for WMC Lower and Higher than 7, respectively.

Part Five: Discussion and Conclusion

Discussion 1

WMC is not normally distributed among the participants, with most people having WMC of 5, 8, or 9. Moreover, no significant correlations are found between WMC and the average score for direct and elaborative memorization approaches among participants with equal WMC. WMC score also has no significant correlation with the average memorization approach score ratio. This indicates that participants with different WMC do not tend to prefer one of the memorization approaches than the other

WMC in later analyses is divided into only two groups: a low WMC group with WMC less than or equal to 7, and a high WMC group with WMC greater than 7. The average memorization score ratios for the two WMC groups are found to have a significant difference, which indicates that people with lower WMC have higher creativity in memorization approaches. This agrees with an opinion offered by McCabe (2014) that low WMC individuals tend to use elaborative memorization strategies to improve the accuracy of their memorization outcomes (page 22). Furthermore, individuals with high WMC in the backward digit span test will achieve significantly higher average memorization outcome in the vocabulary test. This is also supported by the findings of Kormos and Sáfár (2008) that WMC in one kind of memorization task can be an indicator of .memorization capacity in a different kind of task

Problems 2

The insignificance of the results when WMC is not grouped can be caused by the background of participants. Previous studies have found that WMC can both positively and negatively predict creativity. Specifically, Markman (2012) found that WMC can positively predict creativity, and Fugate et al. (2013) stated that WMC can negatively predict creativity. However, both of them studied only the influence of WMC on creativity among groups with shared interest and talent. During the progress of this study, 30 tenth grade students were randomly selected as participants from Beijing Haidian Foreign Language Shiyan School International Department, but not all of them have the same extent of interest for numbers and learning English words. Therefore, it is unlikely for this study to obtain equally explicit .results as previous studies did

In addition, the results of this study are affected by several other factors. The experiments were faced with a certain difficulty in the process of

selecting participants. Most high school students received so much workload from the school curriculum that they could not easily find spare time to complete both sections of the tests. In addition, the contents of digit span and vocabulary tests are quite tedious, so some of the participants could be impatient with the tests, creating a difference between his or her real and measured WMC, making the overall result inaccurate. Lastly, the sample size is limited, and the number of individuals at each WMC value is not normally distributed, creating a deviation

in the calculated results

With the current methodology, the result agrees partially with the study's hypothesis: High WMC individuals are more inclined to use direct memorization strategies, and low WMC individuals usually incline to adopt elaborative memory strategies. The value of WMC positively predicts the outcome of memorization. However, these variation trends are insignificant when participants are not grouped by whether their WMC is higher or lower than 7

Prospect 3

Several aspects of this experiment can be improved in further studies. First of all, other span tests should be included to minimize the inaccuracy in WMC. The backward digit span test may not indicate the WMC of participants comprehensively since some of them may not be sensitive to numbers and will perform better in other types of span tests. Some of the span tests can be added including forward digit span test and word span tests, were described in detail by Oberauer et al. (2003). Also, in similar future studies, larger samples should be used to replenish the amounts of participants at each WMC level, approximating a normal distribution and minimizing the deviation between the calculated result and reality. Future studies can instruct students to formulate the memorization approaches that

can help them achieve the most accurate memorization outcomes according to their WMC

Final Conclusion 4

Working memory capacity plays a very important role in the process of learning, especially for middle and high school students who have a relatively heavy workload and need to remember large amount of information. Therefore, understanding the most suitable memorization approaches for high WMC and low WMC individuals can help students memorize knowledge points more efficiently. During the course of this study, the participants' WMC, creativity of their usual memorization approaches, and the memorization outcomes are measured, and the correlation between the three variables are analyzed. WMC negatively predicts the creativity of memorization approaches and positively predicts the outcome of memorization, but such relationship is only significant when individuals are classified into high ($WMC > 7$) or low ($WMC \leq 7$) WMC groups. Further experiments can recruit subjects with different ages and backgrounds to test if this still holds true

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Appendix 1: Vocabulary Test

List of Words

Vocabulary	Chinese meaning
Abbot	男修道院院长
Bazooka	反坦克式火箭筒
Copra	干椰子肉
Copse	矮树丛
Fledgling	(刚会飞的)幼鸟
Frigate	护卫舰
Galleon	(古西班牙用的)大帆船
Hydra	(希腊神话中的)多头蛇
Lilting	抑扬顿挫的
Macaronic	两种语言混合的
Marsupial	有袋的
Nemesis	公正的惩罚
Noose	活绳结
Persimmon	柿子
Provolone	波萝伏洛干酪
Rectify	精馏(酒精)
Rouge	胭脂
Schnitzel	炸肉排

Stein	(较厚的)带盖啤酒杯
Tangerine	橘红色
Winsome	天真烂漫的

Vocabulary Test Questions

	Vocabulary	Chinese meaning
1	Persimmon	
2		有袋的
3	Hydra	
4		(较厚的)带盖啤酒杯
5	Rouge	
6		天真烂漫的
7	Galleon	
8		炸肉排
9	Noose	
10		精馏(酒精)
11	Copra	
12		抑扬顿挫的

