

# ADMINISTRATIVE LAW2

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# LEARNING OUTCOMES

- ◉ Students will able to:
- ◉ To describe **the administrative decisions** definition, and the power of the government to use such decisions.
- ◉ Know the types of administrative decisions and the differences between them.
- ◉ Describe **the administrative contract** definition, public criterion, contracts by law, and the liberty and restrictions of administration in making an administrative contract.
- ◉ Know the types of administrative contract and the differences between them.
- ◉ Describe the structure and basic principles of the Saudi administrative contract , the employment regulations, and the public property.
- ◉ Study of the **legal system governing public employment** (civil services) in Saudi Arabia.
- ◉ Know the appointment of **civil servants**, their powers & rights, their duties & obligations, the disciplinary system and the end of the term of their service.
- ◉ Know the regulations that cover **public properties** and how public agencies can protect them.

# ADMINISTRATIVE CONTRACTS

Administrative contracts are contracts where one of the parties is a public person.

Administrative contracts are examined by the Administrative Court.

Administrative contracts are qualified as such either by virtue of a specific legal attribution, or because they concern a public service or contain a highly unusual clause



**What are the similarities and differences between administrative contracts & civil contracts?**

# WHEN A CONTRACT IS CONSIDERED AS AN ADMINISTRATIVE CONTRACT ?

In order for a contract to be considered as an “administrative” one, it must fulfill the following conditions:

1. One of its parties must be a public authority.

2. The administrative judicial authorities must have jurisdiction to look into such contracts.

3. It must be related to a public service or be classified by the law as an administrative contract.

4. It must include a hard clause or condition from the public law.

# **DISTINCTION BETWEEN ADMINISTRATIVE CONTRACTS AND CIVIL CONTRACTS**

**We have two standards to distinguish between administrative contracts and civil contracts:**

**The personal  
criteria**

**The objective  
criteria**

# THE PERSONAL CRITERIA

- According to the personal criteria, a contract is administrative if one of the contracting parties is a public entity.

- In the case where both the contracting parties are public entities, precedents have confirmed the existence of a “presumption of administrative quality”.

- A contract between two private contracting parties is generally a private law contract, even if one of the private contracting parties is in charge of the execution of a public service.

# THE OBJECTIVE CRITERIA

- ◉ This criteria is based on two alternative conditions:
  - ◉ The object of the contract: A contract is administrative if it is related to the organization or the execution of a public service
  - ◉ As an example, this is the case for contracts with users of a public service.
  - ◉ The clauses or the regime: A contract is administrative if its clauses or general regime eliminate the traditional contract law, such as for example:
    - ◉ a. The possibility to confiscate the goods that are not in conformity with the conditions agreed upon;
    - ◉ b. Referring the clauses to provisions according to the conditions;
    - ◉ c. Imposing a guarantee or bond on the party contracting with the administration;
    - ◉ d. Considering the contractor as having failed to carry out his obligations and confiscating the bond;
    - ◉ e. Re-awarding the work to another person at the expense of the relevant contractor.

# ELEMENTS OF ADMINISTRATIVE CONTRACTS

Consent

Object

Reason

Form

# 1- CONSENT

The formulation of the administrative contract requires the existence of complete satisfaction between the parties to the contract

The contract shall be concluded as soon as both parties express their will in the offer and acceptance

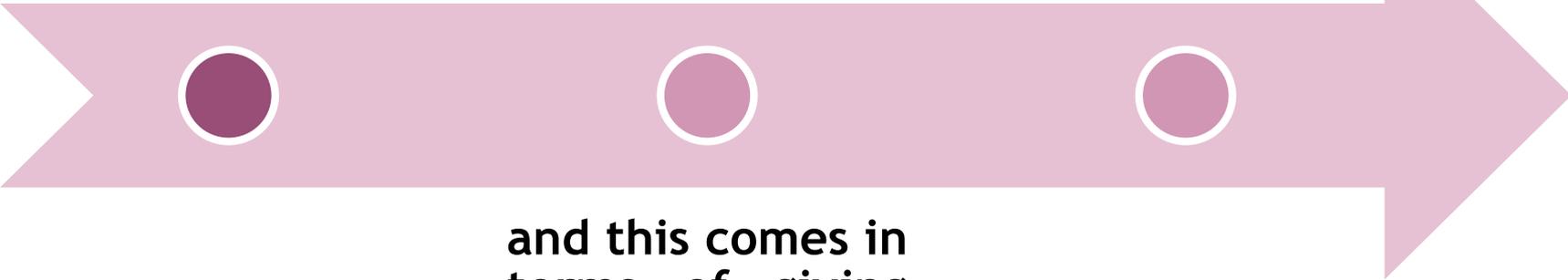
Taking into account the law and the provisions imposed by it in certain situations to be followed.

Satisfaction with the administration is required to be issued by the party responsible for contracting, according to the laws prescribed in terms of jurisdiction, and the persons responsible for the formulation of these contracts are determined by the legislator

## 2- OBJECT

It is the purpose or legal process intended to be achieved from this contract.

and the basic requirements for the object are to be present or achievable and Specific and can handle it.



and this comes in terms of giving rights and impose obligations corresponding to the contractors.

### 3- REASON

**In order to complete the legality of the administrative contract there must be a legitimate cause, otherwise the contract shall be deemed to be invalid.**

# 4-FORM

The rule is that administrative contracts require the consent of the contracting parties only.

But this contract requires a particular form in the case of the requirement of law.

# TYPES OF ADMINISTRATIVE CONTRACTS

**The Contract of concession**

**Contract of loan**

**Contract of carriage**

**The contract of supply**

**The Contract of Public Works**

**The contract of supply and installation**



**The consultancy contract**

**The operating contract**

# 1- SUPPLY CONTRACT

Supply Contract is an agreement between the administration and an institution or a private company, under which it undertakes to supply certain movables to the administration within a certain time and a fixed price.

# CHARACTERISTICS OF THE SUPPLY CONTRACT

1- It is only for movables and not related to real estate

2. The contract of supply is similar to the contract of sale in the private law.

3. The main element of the contract is the contractor's obligation to deliver movables only.

## 2- THE CONTRACT OF SUPPLY AND INSTALLATION

The contract of supply and installation is an agreement between the administration and one of the specialized institutions or companies under which the second party undertakes to supply the movables and install it within a certain time and a fixed price.

# CHARACTERISTICS OF THE CONTRACT OF SUPPLY AND INSTALLATION

**1. There are two main elements of the contract, because the contractor's obligations are to deliver movables and install it.**

**2 - This contract is called a mixed contract because it requires more than one obligation of the contractor.**

# 3- THE OPERATING CONTRACT

Operating contract is an agreement between the administration and one of the institutions or companies to provide services to it, which is to operate the equipment or facilities of the administration over a certain time and at a fixed price.

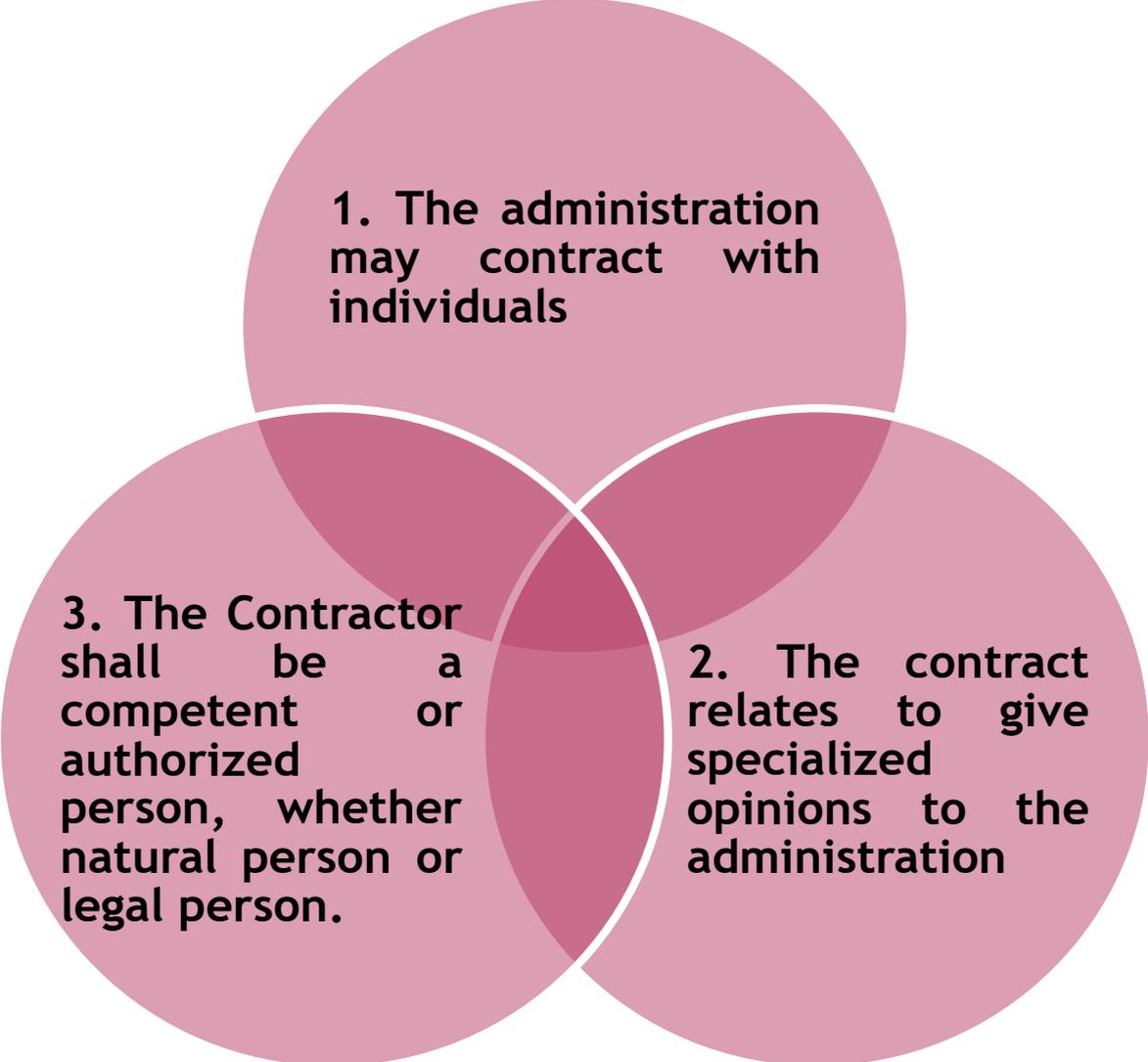
# CHARACTERISTICS OF THE OPERATING CONTRACT

It focuses on the operation of (equipment or facilities) such as bridges, airports or hospitals.

## 4- THE CONSULTANCY CONTRACT

A consultancy contract is a contract between administration and individuals, or specialized offices, or institutions or licensed companies, which prepares studies on a public projects, in terms of economic feasibility or in terms of calculating the costs of implementation or preparation of designs, over a certain time and at a fixed price

# CHARACTERISTICS OF CONSULTANCY CONTRACT



1. The administration may contract with individuals

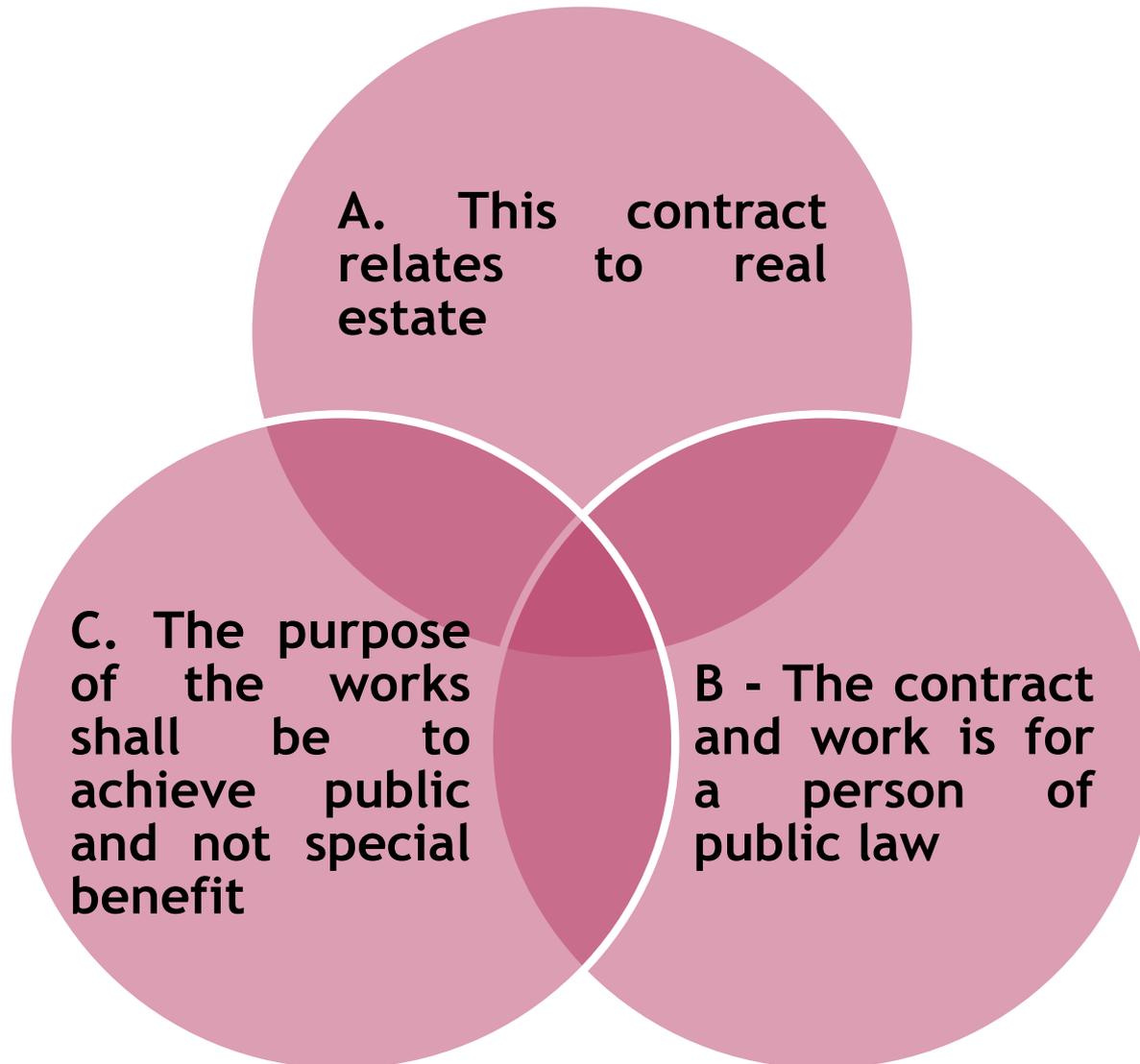
3. The Contractor shall be a competent or authorized person, whether natural person or legal person.

2. The contract relates to give specialized opinions to the administration

# 5- THE CONTRACT OF PUBLIC WORKS

The Contract of Public Works is an agreement between the administration and one of the institutions or companies to build or renovate a property or to build a bridge or a tunnel over a certain time and at a fixed price

# CHARACTERISTICS OF THE CONTRACT OF PUBLIC WORKS



## 6- CONTRACT OF CARRIAGE

Contract of carriage is the contract under which the contracting party (private companies) undertake to transfer persons, goods or objects to the account of the administration, once or for a number of times for a fixed price

# CHARACTERISTICS OF THE CONTRACT OF CARRIAGE

1. The means of transportation can be land, air or sea.

3. Transportation could be for persons, goods or objects and shall be owned or followed by the administration.

2- If the movables are owned by the carrier, this is a contract of supply and not a contract of carriage.

## 7- LOAN CONTRACT

Loan Contract is a contract by which a financial institution or banking company is obligated to pay an amount of money to the State or a public legal person, in exchange for a pledge of it to repay the amount of the debt

# CHARACTERISTICS OF THE LOAN CONTRACT

1 - Due to the importance of loan contracts to the national economy, it is usually written in the constitutions to oblige the government before the conclusion of a loan contract to obtain the approval of (parliament).

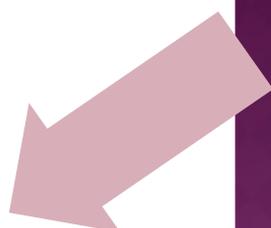
3. The loan may be obtained by the administration or may be lent to any entity such as the Real Estate Development Fund.

2. In the Kingdom, a loan contract can only be concluded by a Royal Decree issued by a decision of the Council of Ministers.

## 8- CONCESSION CONTRACT

A concession contract is an administrative contract based on the singularity of a particular natural or legal person under which he can perform a particular activity alone, whether this activity is in the form of exploitation of a natural resource or to operate a public utility.

# CHARACTERISTICS OF THE CONCESSION CONTRACT



1- The contract shall be in an economic and not an administrative facility.

5. The contractor shall pay the expenses and the State shall assist him in the case of (necessity)

2- The facility shall have a financial return

4 - These contracts entitle their contractor public powers

3 - The contract shall be for a long time



**Means of  
Resolving  
Administrative  
Contract  
Disputes**

# MEANS OF RESOLVING ADMINISTRATIVE CONTRACT DISPUTES

There are three possibilities:

- 1- The administrative judiciary (the Board of Grievances)
- 2 - Special Committee
3. Arbitration

# THE ADMINISTRATIVE JUDICIARY

1- The Board of Grievances has the general jurisdiction in all contracts to which the administration is a party, whether the contract contains the element of public utility or the element of the special conditions or not (it is important that the administration is a party in the contract)

2. Claims for compensation and cancellation of any administrative contract shall be considered

3. It is not competent to consider disputes of a labor nature, even if the administrative body is a party to them

# SPECIAL COMMITTEE

This Committee shall be competent only for compensation claims related to the contracts of Government Tenders and Procurement Law

The Committee shall be formed by a decision of the Minister of Finance, by:

1. Legal Consultant (chairman of the committee)
2. Technical expert
3. Any third member

# ARBITRATION

Arbitration is speed, low costs , and encourages investment

Arbitration in the Kingdom was not permitted for all disputes that the administration is part in it.

The new Arbitration law allow arbitration in disputes to which the state is a party only after the approval of the Prime Minister.

# The Effects of Administrative Contracts

# The Effects of administrative contracts

The Effects of  
administrative  
contracts for the  
**administrative  
body**

The Effects of  
administrative  
contracts for the  
**other contracting  
party**

# The Effects of administrative contracts for the **administrative body**

1 - Private contracts (civil or commercial) contract are governed by the principle of: “contract is the law of contractors”, so no party may cancel or amend without the consent of the other party.

However, the situation is different in the administrative contracts, the administrative body (with its own will) will have the right to cancel or amend the contract to achieve a public interest.

2. civil or commercial contracts are governed by the principle of “the relativity effects of the contract to it’s parties”, that means: no person can be charged with contractual obligations unless he is a party to the contract.

This principle does not exist in the administrative contracts. The subcontractor is responsible with the original contractor.

# The rights of the administrative body

The right to  
control  
implementation

The right to  
amend the  
contract by  
its own will

The right to  
impose  
sanctions

# 1- THE RIGHT TO CONTROL IMPLEMENTATION

1- The administration shall have the right to monitor the contractor's implementation of his obligations arising from the contract, as well as to supervise and guide him during the execution of the contract.

2. The Administration shall have exceptional powers in controlling the contractor.

3. The Administration shall exercise these powers whether or not it is mentioned in the contract or in the system.

## 2- THE RIGHT TO AMEND THE CONTRACT BY ITS OWN WILL

1. The Administration shall have the right to amend the conditions with an increase or decrease without the consent of the Contractor (even if it is not mentioned in the contract)
- 2 - The obligations of the contractor can't be increased more than 10% of the contract and the obligations of the administration can't be reduced more than 20%
3. If it exceeds the limit, the administration shall be liable to compensation
4. The contractor doesn't have the right to terminate the contract that the administration amended it, but he has the right to ask for compensation only.
5. The basis of this right is to ensure the regular functioning of the public facility

# 3- THE RIGHT TO IMPOSE SANCTIONS

1 - This right is the strongest right granted to the administration even if it is not included in the contract

2. The administrative authority shall have the right to impose sanctions on the contractor with its own will and without the need to resort to the judiciary, in the cases of delay or failure of the contractor to implement his obligations.

3. This right does not entitle the administration to impose penalties such as imprisonment

# THE FOLLOWING ARE THE MOST IMPORTANT TYPES OF SANCTIONS

Contract termination

Withdrawal the work and execution of contract at the expense of the contractor

Delay fines

# • The Rights of Contractor

The right to receive the agreed price

The right to restore the financial balance to the contract

The right to receive the appropriate compensation

# 1- The right to receive the agreed price

This right to receive the agreed price is the main objective of contracting.

The dates and types of payment are determined under the terms of the contract.

The payment shall be after the contractor has fulfilled the obligations.

However, the law has allowed the administration to pay (5%) of the total contract value and a maximum of 50 million riyals, against a bank guarantee equal to the value.

## 2- The right to receive the appropriate compensation

If the administration fails to perform any of its essential obligations in the administrative contract, which causes damage to the contractor, the contractor is eligible for compensation.

The contractor shall inform the administration with a written letter, within (15 days).

The request for compensation shall be submitted to a special administrative committee with jurisdiction

For example, the delay of the government authorities in the delivery of the sites, or issuing an order to the contractor to stop working, or changing contract specifications.

The contractor shall continue to carry out the implementation as long as implementation is possible while he is waiting to receive his right of compensation.

### 3- The right to restore the financial balance to the contract

If the financial expenses increased in a way that disrupts the financial balance of the administrative contract, and that lead to the suspension of the implementation of the contractor's obligations.

The reasons for the financial imbalance of the administrative contract are the following:

1- **The act of administration**: which is a work taken by one of the public authorities that increased the contractor's obligations.

2- **The emergency conditions**: which is an exceptional reason was not known or expected, and not happen because of the administration, that makes the contractor suffer a lot if he continues to implement the contract.

# **The Expiration of Administrative Contracts**

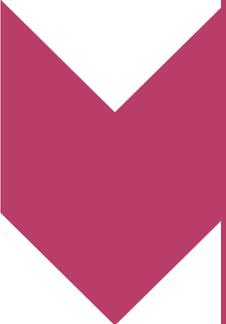
# The expiration of administrative contract



•1. Termination of the contract by achieving the result ie by the full implementation of the parties to all the obligations of it, such as contracts of supply and installation and contracts of Public Works.



•2. Termination of the contract, by the end of the specified agreed period, ie consultancy services for a specified period.



•3. Termination of the contract according to the administration own will, or by an agreement by both parties before the end of the agreed period, that occurs:

- 1- According to the law
- 2- Through the judiciary
- 3- By an administrative authority

# 1- According to the law

## A - The case of the loss of the contract's object

1. If the contract's object was lost for any reason not related to the parties, the contract terminates without compensation
2. If the loss is the result of an act of administration, the contract terminates with a compensation

B - If the contract contains a condition that terminates the contract, so if this condition is fulfilled, the contract is terminated by force of the law.

(C) The third case: if there are provisions or reasons by the law, such as the expiry of a consultancy services, by the death of the contractor.

## 2- Through the judiciary

It is the annulment of the administrative contract that sentences by the competent judge according to a claim filed by the interested party requesting a judgment of annulment.

The effect of this expiration defers from expiration according to the law, because if the expiration is by law it does not return to the beginning of the contract, while the effects of the judiciary expiration shall be from the date of the claiming, not the date of judgment.

### 3- By the administrative authority

The most important reasons for the issuance of expiration by the administrative authority are:

1- Force majeure.

2- By the will of the administrative authority with or without a fault of the other party in the contract.

**PUBLIC PROPERTY**

**THE DEFINITION OF  
PUBLIC PROPERTY**

**THE PROTECTION OF  
PUBLIC PROPERTY**

# Administrative Decisions

# ADMINISTRATIVE DECISIONS

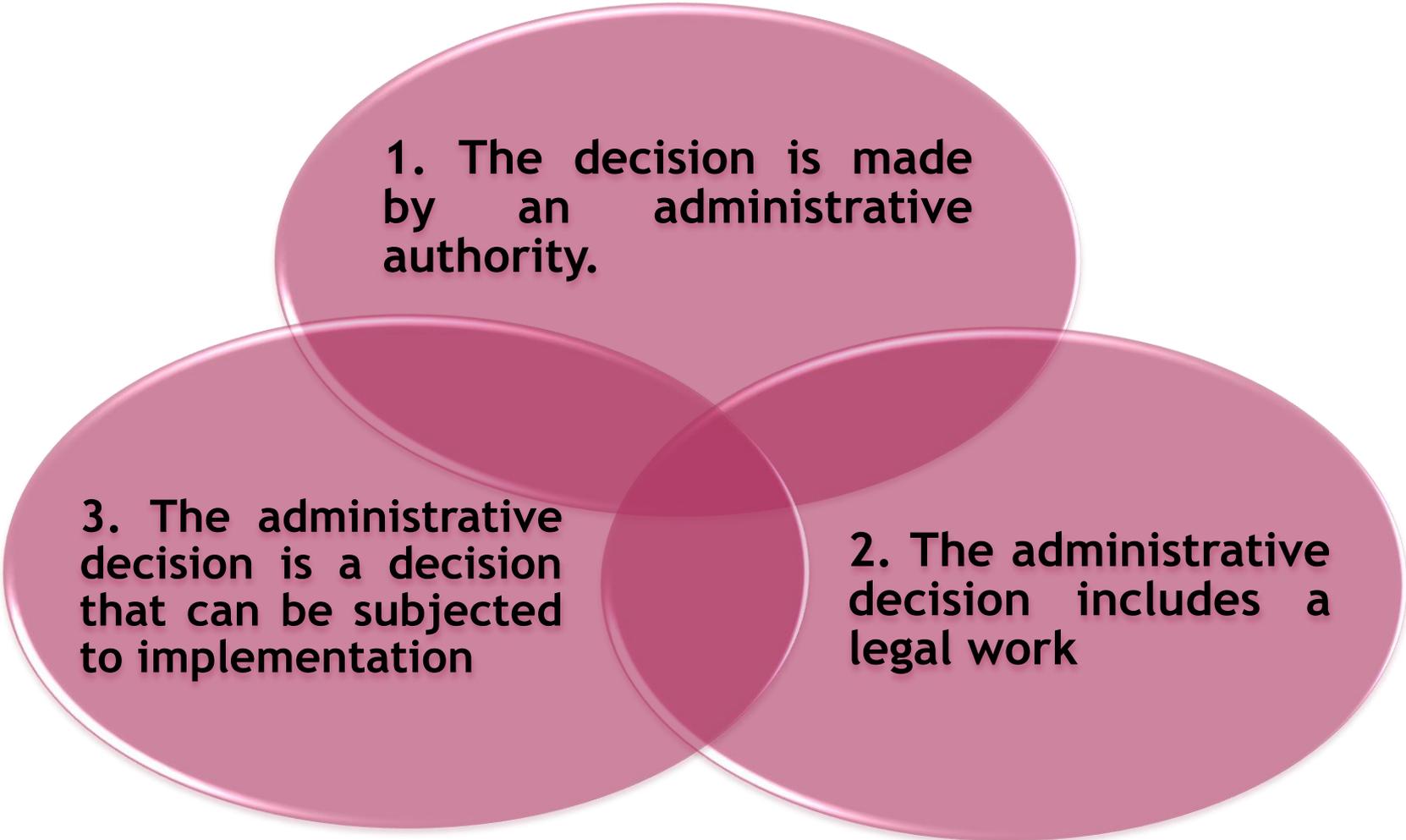
Administration uses administrative decisions as a legal means of expressing its will to perform its functions.

An administrative decision is a legal act which in itself is the source of a legal effect.

# DEFINITION OF ADMINISTRATIVE DECISION

administrative decision is the disclosure by the administration of its binding will by virtue of its laws and regulations, with a view to creating a particular legal status where it is possible and legally permissible and motivated by a public interest.

# CONDITIONS OF ADMINISTRATIVE DECISION

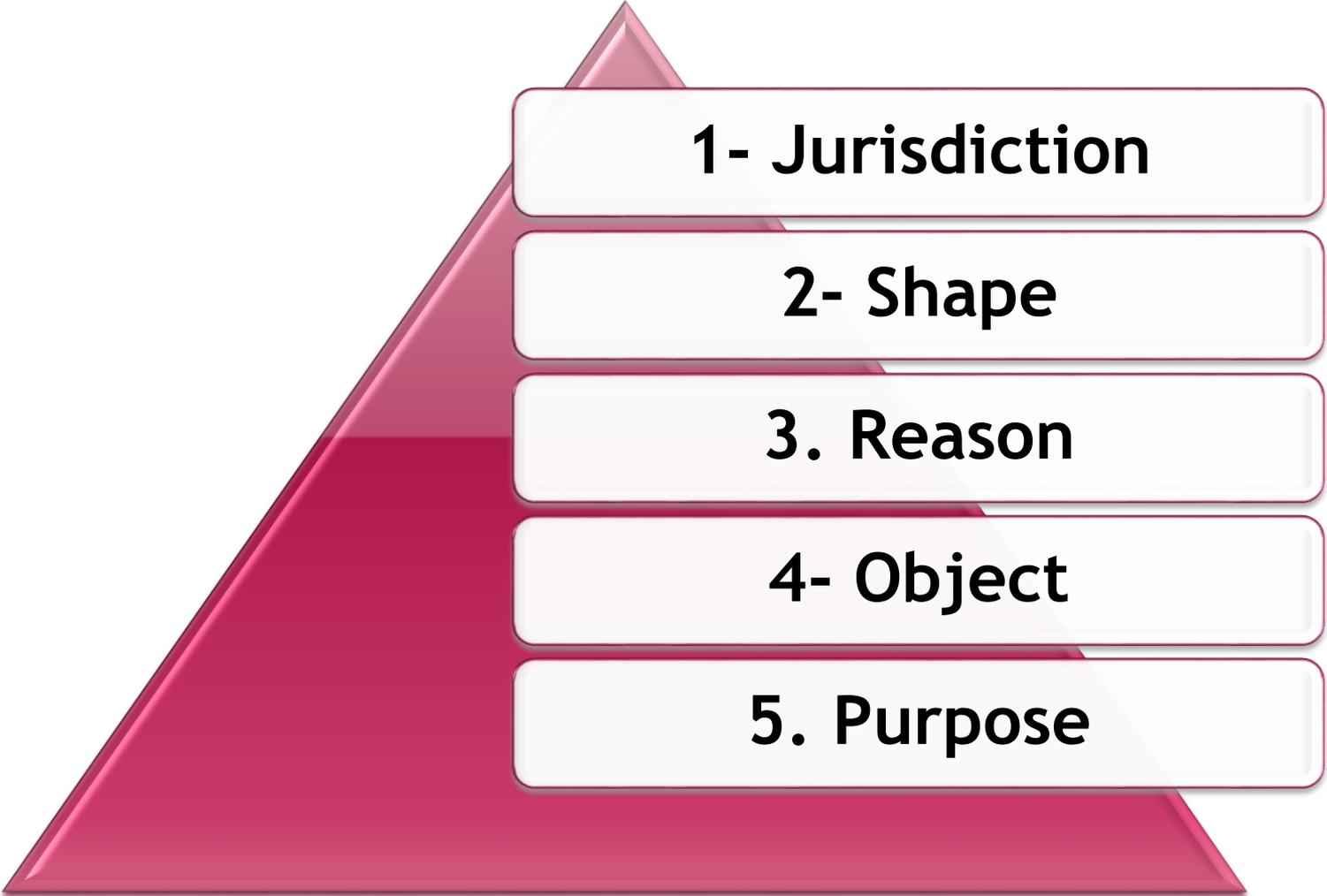


1. The decision is made by an administrative authority.

3. The administrative decision is a decision that can be subjected to implementation

2. The administrative decision includes a legal work

# ELEMENTS OF ADMINISTRATIVE DECISION



**1- Jurisdiction**

**2- Shape**

**3. Reason**

**4- Object**

**5. Purpose**

# 1- JURISDICTION

Jurisdiction is the principle of determining competences requires the public official to exercise his work within the limits of his competence, which is legally authorized to do so, but if a decision is issued outside his competence, it is void.

## 2- SHAPE

The decision shall be issued in the form prescribed by law. It shall be followed in the issuance of the steps and procedures by law. If it violates the form or procedures, it shall be considered defective and shall be subject to appeal.

### 3. REASON

The reason of the decision must be legitimate, so that the decision is correct.

The administration is not obliged to mention the reasons for the administrative decisions issued by it unless the system requires that.

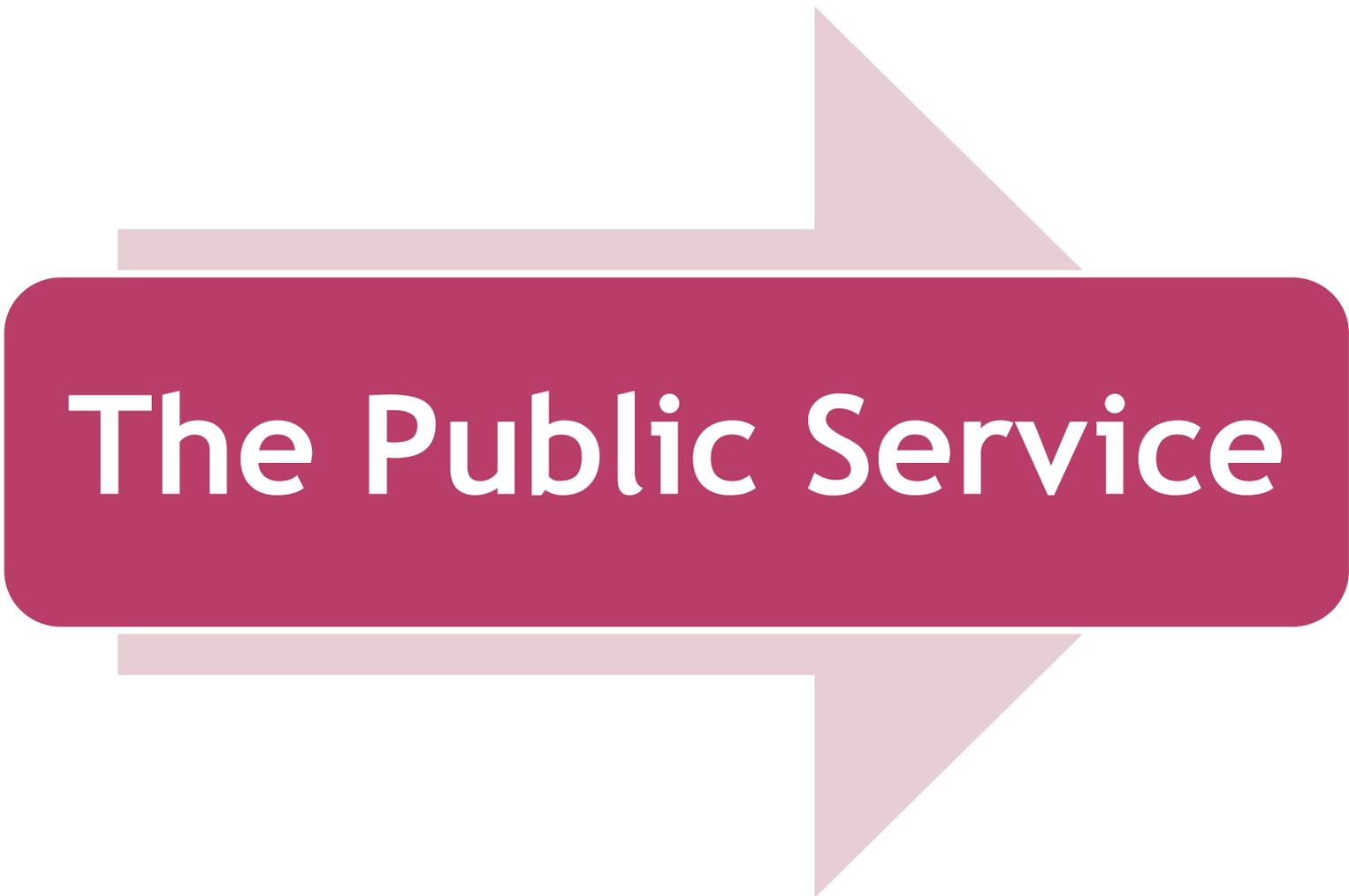
## 4- OBJECT

The subject of the decision is its legal effect, which immediately and directly entails (the creation, modification or cancellation of a particular legal status).

## 5. PURPOSE

The purpose means the ultimate goal that the decision source wants to reach.

Or the final result to be achieved. For example, the direct result of a decision to appoint a faculty member is to ensure that the education facility continues to walk regularly and steadily



# The Public Service

# General principles of The Public Service

The civil service system guarantees the general principles governing the public service.

Merit is considered the basis for the selection of staff to fill public service.

# The classification of Jobs

The civil service system required the classification of Jobs into similar categories, according to the functions, the nature of work, the level of duties, responsibilities and qualifications required to fill them.

# the description of Jobs

The various categories have descriptions of each category include:

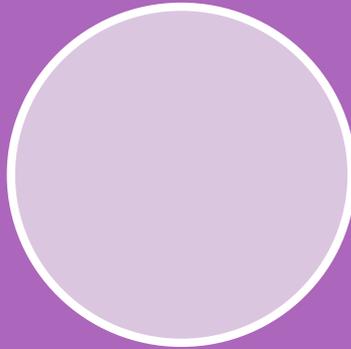
A. The name of it.

B - Salary according to the salary scale attached to this system.

C - A general description of its duties and responsibilities.

D. A statement of the minimum qualifications required for employment, including scientific and practical qualifications, required skill level and other requirements for the job.

# Creating a public service jobs



The Council of Ministers is concerned with the establishment and termination of jobs in the Kingdom.



# The conditions of Public Service

The candidates to the Public Service shall be:

(A) Saudi national.

(B) reached the age of seventeen years old

(C) fit for health service.

(D) Good morals and ethics.

(E) have the qualifications required for the job.

(F) not sentenced for an offense involving honor or honesty until he has completed the execution of the limit or imprisonment for at least 3 years.

(G) not dismissed from the service of the State for disciplinary reasons unless the dismissal decision has been passed for at least 3 years.

# The Appointment in the Public Service

The jobs of the Royal Offices are filled by Royal Order.

The jobs of the fourteenth rank and above shall be filled by a decision of the Council of Ministers.

The jobs of the thirteenth or less rank shall be filled by a decision of the competent minister.

The General Civil Service Bureau shall announce the jobs in the tenth rank or below and all applicants shall be subject to the evaluation.

The administrative body may take the exam of the applicants to fill some of the posts of special rank.

The duties,  
prohibitions,  
and forbiddings  
of Public  
Servant

# The duties of Public Servant

(A) The Public Servant should not do anything that violates the honor of the job and dignity, whether in the workplace or outside it.

(B) The Public Servant must take into account the etiquette of his conduct with the public, his superiors, his colleagues and subordinates.

(C) The working time shall be allocated for the performance of the his duties.

(D) The orders issued to him shall be executed strictly within the limits of the regulations and instructions.

# Prohibitions for the Public Servant

**A. Abuse of functional authority.**

**B. Exploitation of influence.**

**C. Accepting or requesting bribery in any form prescribed in the anti-bribery law.**

**D. Accepting gifts from stakeholders.**

**E. Disclosing the secrets that he is aware of by virtue of his job even after leaving the service**

# FORBIDDING FOR THE PUBLIC SERVANT

Engaging in trade, directly or indirectly

To participate in the establishment of companies, the admission of their board of directors, or any business therein.

The employee shall not be allowed to combine his job with another profession

participating or working in  
the private sector other than  
at official working hours

**is not permissible unless the  
Public Servant is appointed  
by the Government or  
authorized by The Council of  
Ministers.**

The allowing of the public employee to combine his job with another profession, will be by a license from the competent minister.

# The rights of the Public Servant

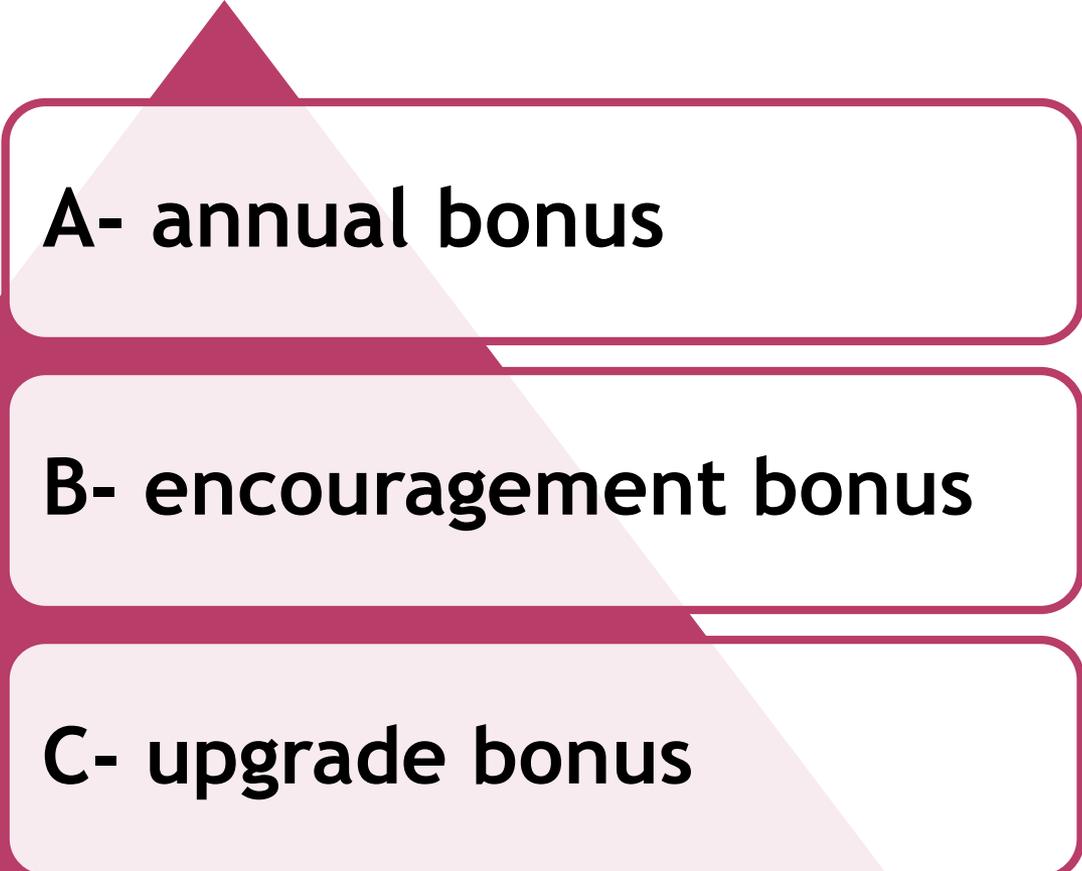
# 1- THE SALARY

Civil servants deserve their salary from the time of **starting job**, not the time of **appointment**.

# THE SEIZURE OF THE CIVIL SERVANT'S SALARY

The law permits the seizure of part of the salary and monthly wage, which is the amount of **one-third of the salary** to pay the debt of the civil servant.

## 2- THE BONUSES OF THE CIVIL SERVANT



**A- annual bonus**

**B- encouragement bonus**

**C- upgrade bonus**

# A- ANNUAL BONUS

It is an amount of money adds annually to the salary

Its value will increase according to the rank or degree, and it is linked to the level of job performance.

## B- ENCOURAGEMENT BONUS

It is an amount of money equals to the annual bonus, in order to encourage the civil servant.

Encouragement bonus is issued by the minister with combatant conditions

## C- UPGRADE BONUS

Upgrade means transferring the civil servant from his degree to a better degree, and increasing his salary according to this upgrade

## 3- ALLOWANCES

It is an amount of money paid to the employee for the increase of the financial burdens he faces when doing his work.

The employee in charge of an **official mission** shall be given cash allowance for each day for an issue outside his work **in the Kingdom or abroad.** "

# THERE ARE OTHER TYPES OF ALLOWANCES AND EXAMPLES:

**Transfer:** A cash amount that the employee is entitled to monthly.

**Infection or damage:** It is paid to some categories of employees who are directly exposed to damage or infection, such as radiation sections

**Dangerous allowance:** such as work on weapons

And work allowance in **far areas**, which is a percentage of salary ranging from 15 to 35%.

## 4- REWARDS

The employee is entitled to a reward for the **extra hours** he / she is working outside the office hours and during public holidays.

## 5- COMPENSATION

The compensation is intended to compensate for loss or amount of money spent by the employee because of the job.

# THESE COMPENSATIONS ARE AS FOLLOWS:

1. Compensation for **death or disability** that prevents the employee from working totally, the employee is entitled to a sum of 100,000 riyals if the death or disability was happened because of the work. if the employee is injured only with a partial disability that does not prevent him from working, he shall be entitled to part of the compensation according to the disability.

2. Compensation for the **transfer** from one country to another: The employee shall be paid compensation equal to two months' salary, not less than three thousand riyals and not more than five thousand riyals

3. Compensation of **tickets**.

4. Compensation for **dismissal** or **cancellation** of the job without the possibility of transferring the employee to another similar job

The employee shall be entitled to compensation equivalent to three months' salary

# 6- Vacations

There are different types of vacations, witch are:

- The official holidays
- The ordinary leave
- The emergency vacation
- The sick leave
- The study vacation
- The exceptional vacation
- The leave of pregnant woman
- The leave of the husband's death

# A - The official holidays

These holidays include Eid al-Fitr holiday and Eid al-Adha holiday.

## B. The ordinary leave

It is thirty days for every year.

This leave is at full salary, and the salary is paid in advance.

The employee has the right to determine the date of his ordinary leave, unless if the nature of the work requires a specific time for it.

The ordinary leave shall not be deferred for more than three year.

## C - The emergency vacation

The employee may request an emergency vacation for five days and provided that no more than ten days in one fiscal year.

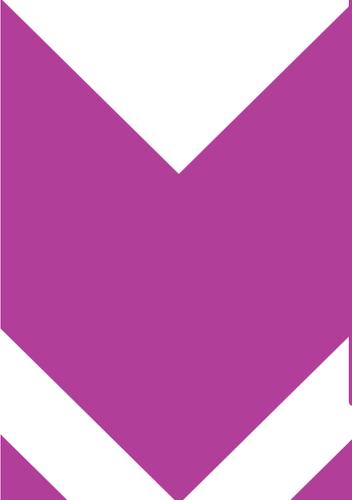
# D - The sick leave

The employee may have a sick leave for his illness during the period of three years, as follows:

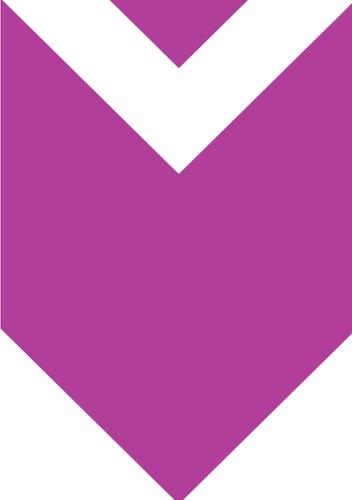
Three months with full salary, three months with half salary, three months quarter salary, and six months without salary

If the illness is due to work and without mistake from the employee, the employee's leave becomes one year and a half with full salary.

# E. The Study vacation



- The employee has the right to request an unpaid study vacation, under specific conditions, which are:
  - a. He must have a high school certificate or equal.
  - B. He must have been in service for not less than three years and his job performance evaluation is not less than good.
  - C. The subject of his study is related to the work in which he works.



- The regulation also allows the employee who takes an exam to take the leave of the exam days. This leave shall be at a full salary, provided that he submits proof of the exam performance and duration.

## F. The exceptional vacation

The employee may request a long leave exceeding the normal leave period in order to discharge any of his own affairs.

The Minister has been granted the authority to give the employee an excused leave for six months within three years without pay, if the employee provides reasonable reasons for his leave.

## G. The leave of pregnant woman

This leave is in order to take care of the health of the pregnant employee. The pregnant employee has the right to have 60-days with a full salary.

The law gives the pregnant woman the right to ask for her leave at any time before or immediately after her child's birth.

## H. The leave of the husband's death

The working wife has the right to take a leave if her husband dies, the leave will be for four months and ten days, at full salary, in accordance with the principles of Islamic law

# Employee secondment

# Employee secondment

The employee may be seconded after his approval to work with public or private institutions, governments or international bodies.

# Termination of public service

# Reasons for Termination of public service

# The service of the employee shall be terminated for one of the following reasons:

Retiring

Dismissal by Royal Order or by a decision of the Council of Ministers

Request for retirement before reaching the statutory age

Dismissal for disciplinary reason

Canceling the job

Absence without a legitimate excuse or failure to implement the transfer decision.

reaching the statutory age for retirement unless his service is extended by a decision of the competent authority.

Health Disability