

11. Business Law

Objectives

At the end of this chapter, students should be able to list and explain some branches of commercial law; distinguish between the rights and duties of the principal and agent and the rights and obligations of the employer and employee. They should also be able to explain the various ways government regulates business in Nigeria, e.g. registration of business, patent, trademark and copyright.

11.1 Introduction

Business Law is otherwise known as commercial law. Business law is the legal framework within which a business is transacted according to the law of the land. It is an assortment of laws that govern the operations of business. It consists of the laws of contract, the sale of goods, agency and hire purchase.

11.2 The Law of Contract

A contract is a formal written agreement, having the force of law between two or more persons or group. For a contract to be legally binding, there must be an offer and acceptance. In an oral contract, there must be consideration, i.e. something given in return for the promise made by the other party or person. The person who makes the offer is called "Offeror", while the person to whom the offer is made is called "Offeree".

Validity of Contracts

- (a) **Mistake:** Errors in a contract can make the agreement invalid. The common error is of mistaken identity of the subject matter of the contract, e.g. in a contract to buy a car, if the seller has in mind a Toyota car while the buyer has in mind a Datsun car, there is no valid contract as the two parties are not talking or thinking of the same car or item, which is the subject matter of the contract.
- (b) **Misrepresentation:** Misrepresentation in contracts is a criminal offence. Misrepresentation is defined by the Trades Descriptions Act of 1968. Any contract entered into as a result of misrepresentation can be void (of no effect), and the injured party can claim damages in a civil action.
- (c) **The principle of utmost good faith (*unberrimae fidei*):** It is very important in some contracts that all facts which are material to the agreement should be declared if the contract must be valid. For instance, in the law of insurance, life assurance contracts will require details of any previous illness of the assured. Failure to provide such detailed information at the material time can make the contract void.
- (d) **Unlawful intent:** Any illegal contract is un-enforceable; for instance, any contract for the purpose of committing fraud is unlawful and therefore invalid.

11.3 Sale of Goods

These are the legal rules governing agreement on sale and purchase of goods. These have been dealt with exhaustively in Chapter Five of Book 2.

11.4 The Sale of Goods Act

The Sale of Goods Act 1893 explains that the sale of goods is a contract whereby the seller transfers or agrees to transfer the ownership of goods to a buyer for a money consideration called ‘price’.

This explanation covers both sale and an agreement to sell. A sale is where the ownership of the goods is transferred at the time of the deal to the buyer; while in an agreement to sell, the ownership of the goods is transferred at a later time or date and not at the time of the deal.

11.5 Hire Purchase

In 1965, a legislation on Hire Purchase was passed and made applicable only to Lagos at first. In 1966, the law was made applicable to all parts of the federation by the Hire Purchase (Application) Decree 1966. The Hire Purchase Act of 1985 brought the Act into full operation. The Act applies to all hire purchase and credit sale agreements. For hire purchase agreement to be valid or enforceable, it must satisfy certain statutory requirements, e.g. it must be in writing and signed by all the parties.

11.6 Agency

We have treated the wholesalers as middlemen. It must be added that wholesalers would have been ineffective but for their use of representatives and agents. Let us therefore examine the roles of an agency in business. An agency is a relationship that exists between two people, one of whom is a principal and the other an agent, by which the latter is delegated the power to enter into a contract between his principal and a third party.

The authority that is delegated to the agent belongs to his principal in the first place, and the agent is merely asked to act for his principal. In like manner, the agent does not own his principal’s property, but he is merely trusted to dispose of it. The act of an agent, done within his authority, binds his principal. The agent earns a payment, known as commission, from his principal.

11.6.1 Types of Delegated Authority

The authority delegated to an agent by his principal can be in different forms as shown below:

- (i) **Express authority:** This is a specific authority which is either oral or written. It could also be in deed or seal: a document signed, sealed and delivered. The lawyers then refer to this as the ‘power of attorney’.
- (ii) **Implied authority:** This is otherwise known as agency by implication. In this regard, the agent has the right to do anything that is necessary and incidental to his express authority. For instance, the branch manager of a bank who is given a delegated authority to grant loans up to five hundred thousand naira (₦500,000) per customer without any

reference to a superior officer, must, by implied authority, ascertain that he is granting the loan to an honest customer who is engaged in a lawful and gainful business transaction.

- (iii) **Authority by operation of law:** This is otherwise known as "agency by necessity". This is when certain actions must be taken by the agents to safeguard the interests of his principal. For instance, if a ship is about to sink, a ship master has authority in law to jettison into the sea some of the contents (luggage) of the ship in order to lighten the ship and save it from sinking.
- (iv) **Apparent or ostensible authority:** Lawyers also call this authority "Estoppel". A person introduced as the general manager of a company is rightly presumed able to enter into a contract on behalf of the company within the acceptable powers of a general manager.

11.6.2 Duties of an Agent

Since the relationship between an agent and principal must be personal, mutual and legal, the bonds between them have the strands of morals and laws. Therefore, the duties of the agent can be put thus:

- (i) The agent must work within the authority delegated to him. He must not exceed his terms of agreement.
- (ii) He must be diligent in carrying out the authority, and must be reasonable all the time.
- (iii) He must not allow his personal interest to conflict with the principal's interests. He must maintain a high standard of honesty, trust and integrity.
- (iv) He must not make any secret gains out of his agency at the expense of his principal; neither should he allocate to his own use any property that belongs to his principal.
- (v) He must not divulge (reveal) the secrets of the principal's business interests to the principal's competitors.
- (vi) He must keep proper records of accounts and present same to the principal at specific periods.
- (vii) The agent cannot delegate the authority delegated to him without the permission of the principal. The reason is that the relationship between the principal and the agent is personal and mutual, the agent cannot extend such relationship to a third party without the consent of the principal.
- (viii) The agent has a lien (a legal claim) on the goods of his principal in his (agent's) possession, if the principal fails to pay him the agreed remuneration.

11.6.3 Duties of a Principal

An agency has dual roles. It specifies the duties of an agent and at the same time, states the responsibilities of a principal without which an agent cannot carry out his duties efficiently. Therefore, the principal must keep to the terms of the agreement as an act of faith. That is, he must:

- (i) pay the agent promptly, as and when due, the agreed commission;
- (ii) pay the agent all the reasonable expenses incurred in the course of his legitimate duties;
- (iii) make available all facilities that would enable the agent to discharge his duties efficiently. That is, the principal must put no barriers or problems in the way of the agent in the course of his duties.
- (iv) accept responsibilities for all the actions of the agent performed on his (principal's) behalf in strict compliance with the terms of the agreement, expressed or implied.

11.6.4 Conditions under which an agency could be terminated

- (i) Agency, like any other contracts, can be terminated by the mutual agreement of both the agent and the principal.
- (ii) It can be terminated by insanity of either party.
- (iii) It is automatically ended by the death of either party.
- (iv) The agency comes to an end if either party becomes bankrupt – that is, if he cannot pay his debts,
- (v) In the event of a war between the country of origin or residence of the agent and that of the principal, then the agency agreement becomes automatically terminated.

11.6.5 Types of Agents

There are many kinds of agents:

- (i) **The jobbers:** These are a speculative category of middlemen. They buy at low prices in anticipation of selling at high prices at the right time. They live on the differential between the low and the high prices. When they operate on the stock exchange, they are known as stockbrokers.
- (ii) **The brokers:** These are agents who link their principals with clients. Through the brokers, the principals get a great amount of business transactions. The brokers save their principals a lot of trouble and expenses of combing the market for clients. Brokers are paid some commission known as brokerage, which is based on the volume of business found for their principals.

The brokers have no possession of the goods, they merely sell or organize to sell on behalf of their principals. This explains why insurance brokers merely act on behalf of their principals – the insurance companies – which take all the decisions as to the acceptance of insurance policies, insurance certificates and payment of appropriate compensations. The brokers are also active in the stock exchange markets, and commodity markets for mineral and agricultural products.

- (iii) **A factor:** A factor sells goods on behalf of his principal. Therefore, he may be likened to a salesman, who must be in possession of the goods to be sold. He has some implied authority and as a consequence:
 - (a) can pose as the owner of goods and sell in his own name;
 - (b) can issue a receipt for sales in his own name;

- (c) in the absence of any preset price, he can sell at prices he thinks best in the interest of his principal.

He lives on commission calculated on the volume of business transactions carried out for the principal.

- (iv) **The commission agents:** These agents buy or sell on behalf of their principals. If they sell, they deduct their own agreed commissions before remitting the balance of the proceeds to their principals. They add to the bill their own percentage commission which would be paid together by their principal. They can be agents for principals at home or abroad.
- (v) **The *â€˜del credere* agentsâ€™:** These are like any other selling agents to their principal, but with a major difference. They take additional or higher commission (premium) for accepting responsibility for the collection of proceeds from all sales they have made on behalf of their principals. In other words, they relieve their principals the burden of bad debts that is usually incidental in all businesses. Therefore, although they earn fatter commissions, they take more risks.
- (vi) **The legal practitioner:** This, in a way, is an agent of his client whom he represents on many legal matters apart from court cases; such as making of will, conveyance of landed property and other forms of legal agreements. He is distinguished from other forms of agents because he uses the professional discretion in the conduct of his business. He may make compromises or give undertakings in the conduct of a case. He charges a fee for his services.
- (vii) **An estate agent:** This, like the legal practitioner, is a professional agent. His agency is mainly concerned with contracts for the sale of land; but he is not expected to sell when he is merely asked to find a buyer or a renter. He charges a commission based on the rental value of the property.
- (viii) **An auctioneer:** He is licensed to sell goods to the public by auction. He sells according to laid-down instructions at public places. Certain auction terms are frequently used in the course of making such public sales. These are:
 - (a) *â€˜Without reserveâ€™:* When goods are advertised for sale â€˜without reserveâ€™, they are meant to be sold to the highest bidder. If the article costs ₦200,000 and the highest bidder offers ₦150,000, it would be sold for ₦150,000 only.
 - (b) *â€˜Subject to reserveâ€™:* Here, there is a minimum price below which the article will not be sold. For instance, if the same article in (i) above is offered for sale for ₦180,000 â€˜subject to reserveâ€™ then unless there is a bid as high as ₦4180,000 or above, it would not be sold at all. Therefore, while an auction under â€˜without reserveâ€™ means the highest bidder, an auction with â€˜subject to reserveâ€™ suggests a minimum price. The proceeds from the latter will be more than the proceeds from the former.

- (c) *â€˜Knock down of the hammerâ€™*: This signifies the acceptance of the highest offer or bid. After this knocking down of the hammer, no other bid is entertained; the last pronounced offer is final.
 - (d) *â€˜Going! Going!! Gone!!!â€™*: These are words that precede the knocking down of the hammer. The words â€˜Going! Going!! Gone!!!â€™ are uttered to warn all potential buyers that the last declared offer may become acceptable and final; and once the whole of the slang, â€˜Going! Going!! Gone!!!â€™ is proclaimed, no other offer is entertained. In most developed economies like Britain, United States of America, etc. auctions are a popular feature of disposing of agricultural commodities and secondhand vehicles. The auctioneer has possession of the goods, following our discussions above, and earns a commission based on the value of the sales made:
- (ix) **The speculator:** This dabbles into all forms of speculative trades on behalf of real and potential clients. He anticipates the fall and rise in the prices of commodities, buys and sells accordingly. Sometimes, he hoards to mop up the glut of goods on the market, creates an artificial scarcity and sells the hoarded goods once the prices have risen. Although these activities may sometimes upset the economy, they are purely legitimate. When speculators engage in speculations against national currencies, they can cause considerable financial embarrassment to national governments, owners of such currencies.
- (x) **The forwarding and clearing agent:** This is a specialist agency clearing and forwarding goods at the dock or airport. The ports authority lays down conditions for handling goods that are not only complex in composition but also technical in nature, which only the forwarding agents can easily comprehend. The agents saves exportersâ€™ and importersâ€™ time and energy, allowing them to concentrate on other parts of their business. He is so familiar with the ports authority officials that he uses his personal touch to get things done easily. As a professional agent, he has preferential treatment from the ports officials.

11.6.6 General Agents

They are agents given a free hand to act in the matter of business or trade entrusted to their care. In a business category, they include the director or secretary of a company, the manager of a shop, the legal adviser or the company doctor.

11.6.7 Special Agents

These are agents employed to carry out a particular obligation. In this category are the auctioneers, the estate agents, the brokers, etc.

11.7 Government Regulation of Business

11.7.1 Introduction

Just as in the case of principal and agent, the law also lays down the rights and obligations of the employer and the employee. Such rights and obligations are provided for by an Act of Parliament, generally referred to as Contract of Employment Act of 1972.

11.7.2 Contract of Employment Act of 1972

The substance of Employment Act of 1972 can be summarized as follows:

- (i) The employer must make an offer of a job to his employee and also a consideration for the amount of wages or salary payable in respect of the job.
- (ii) In return, the employee must guarantee that he is fit and competent to do the work which is required. Should the employee default in any way or fail to carry out any such duties, the employee is held responsible for such a default since he is employed in the hope that he is qualified to perform such duties.
- (iii) As in the case of agency and its principal, the Contract Act states that the employee must declare any conflict of interest. For example, public employees are not allowed to advance their private interests when working in the public service. This requirement has since been reinforced by the Private Practice Decree of 1984 which forbids public employees from engaging in any private practice for promoting employees' private interests. That is, an employee must not engage in such practice for the purpose of earning income for self.
- (iv) The law requires the following details in the contract of employment or letter of employment:
 - (a) identification of the parties (i.e. the names and addresses of both the employer and the employees);
 - (b) date of commencement of employment;
 - (c) rate of remuneration and method of calculation;
 - (d) intervals at which remuneration is to be paid;
 - (e) terms and conditions of service relating to hours of work;
 - (f) terms relating to holidays and holiday pay;
 - (g) terms relating to sickness and sick pay;
 - (h) terms relating to pensions and pension schemes;
 - (i) length of notice to be given by either side;
 - (j) entitlement to holiday, including public holiday, so that holiday pay entitlement can be calculated on termination of employment, that is, if any remains;
 - (k) the right to belong to a registered trade union;
 - (l) the right not to belong to a union;
 - (m) the person with whom one should take up a grievance and the stages in the subsequent grievance procedures;
 - (n) the title of the job.

Conditions of Employment

Conditions of service are often combined with the offer of employment. For instance, once the employee starts work, the employer has the right to supervise the employee's duties and to decide how the work should be performed. Other conditions of employment are as contained in (iv) above, such as the grievance procedures and disciplinary rules.

Termination of Contract

In spite of the contract of employment between an employer and an employee, there are circumstances under which an employer could get rid of his employee summarily. Such conditions are as follows:

- (i) Disobedience to lawful orders given by a superior officer to a junior staff in the course of duty.
- (ii) Gross negligence causing the company some serious damages to property or loss of a large sum of money.
- (iii) Dishonesty such as stealing money or property of the company.
- (iv) Disclosure of business secrets.
- (v) Immorality that interferes with duties, for example a sex scandal.
- (vi) Wilful misconduct at work, bordering on indiscipline.
- (vii) Drunkenness or drug addiction, interfering with the employee's efficiency.

The right of the employee or the obligations of the employers are as follows:

- (i) The employee has the right to be paid according to the terms of the contract. The following regulations apply to the payment of the employee:
 - (a) He must be paid with a legal tender. However, with a written request by the employee, payment may be made by cheques or paid into his bank account.
 - (b) No deductions should be made from the employee's pay or wages without his consent or prior approval, obtained from an authorised labour officer.
 - (c) It is the right of the employee to be paid during his absence through temporary ill health.
- (ii) It is the right of the employee to be given, within 13 weeks of employment, a written statement of the terms of his employment.
- (iii) If the employee's contract is to be terminated by the employer, he must be given a minimum notice or be paid in lieu of notice. This and the minimum length of notice must be stated in the contract.
- (iv) The employee is entitled to be indemnified by his employer for or 1 against expenses or liabilities incurred in the proper course or execution of his duties as employee.
- (v) The employee is entitled to work in reasonable safety, which includes the use of safe equipment, tools, materials and environment.

The right of the employer or obligations of the employee

- (i) The employee has to render general service to the employer according to the terms of the contract. He must not delegate his duties without the consent of his employer.
- (ii) He must obey all orders or instructions which fall within the scope of his contract of service.

- (iii) He must indemnify his employer against any injury caused to a third party through his negligence during the course of normal duties.
- (iv) The employee must exercise good faith and loyalty in the discharge of his duties, i.e. he must not accept bribe, must not make secret profit and must keep secret his employer's business affairs.
- (v) He must give to his employer notice of termination of employment according to the terms of contract or make some pay in lieu of notice.

11.8 Registration of Business Name

The law stipulates that anyone doing a business in Nigeria in a name other than his own name must register with the Registrar of Business Names in the Corporate Affairs Commission (CAC), Abuja.

After registration, a certificate of registration is issued to him. This certificate of registration must be displayed at the principal place of business or the head office for all to see. The true name of the owner of the business and his nationality, if he is not a Nigerian, must appear on circulars, letterheads, etc. which bear the name of the business.

11.9 Patent

This is the sole authority given by the government to an inventor, the sole right of making, using and selling an invention for a certain period. The inventor must have made an application to the Patent Office of the government and must be accompanied by sufficient proof of a degree of novelty for the new invention, as distinct from any of the existing patents. Such application is made on behalf of the inventor by a specialist, known as patent agent. Records of all patents are always available in the patent office for examination and comparison with any new inventions.

Every country has its own system of patents; but usually, a patent lasts for about sixteen years and is subject to payment of an annual fee. There are international agreements which allow patent holders in one country to obtain patent in other countries. Patent is an abbreviation of 'letters patent', that is, letters open for all to see, which is the permission for a legal monopoly. Patent can be transferred like other property rights.

11.10 Trademark

This is a trade name or a special word that is the sole property of one producer and which is used by him to denote his products. It is a symbol of the monopolistic power of a producer over a certain product. It is a sort of differentiation among many products. Therefore a trademark is not used by a firm in a perfectly monopolistic industry. For example, all sorts of soft drinks and beer – producing firms have their own trademarks – Seven Up, Fanta, Coca-Cola, Gulder, Harp, etc. Therefore, trademarks are characteristic of monopolistic competition.

Any trademark which is registered and maintained becomes the exclusive property of its owner. Patent confers monopoly on a product and trademark helps perpetuate the monopoly so conferred. Therefore, the purpose of a trademark is to limit or eliminate competition by

creating consumer preference for a company or its products. Using another company's trademark without permission is an infringement which is actionable by the owner.

11.11 Copyright

This is a monopoly of ownership granted in law to the author of books and other writings so that he is recognized as having authorized the publication of any writing credited to him. The exclusive right granted to an author, artist, painter, composer, actor, etc. to possess, make, publish or sell literary, musical, artistic work or to permit or authorize others to do so for him for specified period of time is known as Copyright ©.

A copyright can pass to the owner's spouse or children when he/she dies. In other words, it means that a particular writing can only be published in his own name, in most cases, he is entitled to an agreed portion of the sales proceeds from such publication. The author's earnings on his publication are usually referred to as royalties. For anybody to make an unauthorized copy of such publication is a criminal offence and is punishable in the court of law. Such an offence can take either of two forms: one is plagiarism. This is taking words or ideas from the work of someone and using them as one's own without acknowledging the original owner of such a work.

The second form of offence is piracy – this is when someone, other than the authorized publishers of a work, goes to press to produce such work without permission. This is done by reproducing the original book by the authorized publishers. Books that suffer piracy are those that command much demand in the market, thereby providing an illegal income to those who indulge in piracy. Piracy is like a cancer killing the publishers and authors association. Publishers and authors are pressurizing the government to impose more severe penalties for piracy. Despite the unimaginable damage done to the publishing world through piracy, the Nigerian laws prescribe only a few hundred naira fine on the perpetrators.

In all books published for an author, the copyright published books sign is usually indicated thus © Ayodele Asaoju/P.M. Igwe. In addition, some notes of warning are usually indicated against an illegal copying of an author's book. The wording is usually as follows: All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Summary

The branches of business law comprise laws of contract, sale of goods, hire purchase, and law of agency. Law of agency is about the duties and obligations of a principal and an agent. An agent must subject his personal interests to that of his principal and must keep his principal's secret. He cannot delegate what is delegated to him without his principal's consent. A principal must pay his agent reasonable expenses incurred in the course of duties. Under certain conditions, an agency can be terminated.

- * The law that governs the conditions of employment is contained in the Contract of Employment Act of 1972.

There are also the rules and regulations governing the relationship between an agency and a principal. The same law stipulates what must be written in a letter of appointment.

- * The law also states the conditions by which employment can be terminated by both parties. The implications of patent rights, trademark and copyrights are equally explained.

Revision Questions

Essay Questions

1. (a) What is Business Law?
(b) List of the branches of Business Law.
2. Write short notes on the law of contract and state the elements of the law of contract.
3. Explain the following terminologies and the consequences in the law of agency.
 - (a) express authority
 - (b) implied authority
 - (c) authority by operation of law
 - (d) apparent or ostensible authority
4. What are the legitimate duties of an agent?
5. (a) Define the following terms
 - (i) agency
 - (ii) del credere agent
(b) Explain FIVE duties of an agent to his principal.

(NECO 2002)

Objective Questions

1. Chinyere agreed to make a dress for Halima with September 20, 1995 as the delivery date. If the dress was not ready on that date, Halima could
 - A. sue Chinyere for damages
 - B. sue Chinyere for specific performance
 - C. seize another gown from Chinyere's shop
 - D. regard the contract between them as terminated

(JAMB 1995)

Use the information below to answer questions 2–3.

Musa rented a room to Adamu for ₦1,500 and ₦1,000 part payment was made. Adamu brought Audu and Jacob his friends to stay in the room. The three friends later paid the balance of ₦4500 to Musa.

2. Who are the parties to the contract of renting the room?
 - A. Adamu and Musa
 - B. Audu and Jacob
 - C. Musa and Jacob
 - D. Musa and Audu

(JAMB 2001)

3. Who is the offeree in this contract?

- A. Audu
 - B. Jacob
 - C. Musa
 - D. Adamu
4. Adigun displays goods of different makes on the shelves of his supermarket. This is an example of
- A. invitation to treat
 - B. offer to sell
 - C. offer to purchase
 - D. invitation to sell
- (JAMB 1999)
5. Q, acting as the agent of P, lawfully and reasonably incurs the amount of ₦350 as expenses. If Q comes to P for payment, this is an instance of P's duty to
- A. remunerate Q
 - B. repay Q
 - C. indemnify Q
 - D. settle Q
- (JAMB 1999)
6. In a hire-purchase agreement between Argungu Ltd and Maikudi, Argungu Ltd inserted the provision that it can enter Maikudi's premises at anytime and remove the hired vehicle for any breach. The provision is
- A. lawful to both
 - B. unlawful to both
 - C. beneficial to both
 - D. detrimental to both
- (JAMB 1999)
7. In every simple contract, the price which is paid to purchase a promise is called
- A. offeree
 - B. acceptance
 - C. consideration
 - D. representation
- (JAMB 1999)
8. An author's exclusive right to his published and unpublished works is known as
- A. copyright
 - B. constitutional right
 - C. author's right
 - D. patent right
- (JAMB 2002)
9. Kamaldeen is a seller in a hire-purchase agreement with Emeka. By law, Kamaldeen cannot recover the hire purchased goods. This is an instance of a restriction on
- A. Emeka's right to terminate the agreement

- B. Kamaldeenâ€™s right to re-hire the goods
- C. Emekaâ€™s right to breach the agreement
- D. Kamaldeenâ€™s right to terminate the agreement

(JAMB May 1999)

10. The right of ownership with respect to goods or property is
 - A. certificate of occupancy
 - B. title
 - C. right of occupancy
 - D. proxy

Project

Make extensive efforts to find out in your locality the names of agents and ask for the names of their principals at home or abroad.

1. State two examples under each of the following from your own personal knowledge
 - (e) patent right
 - (f) copyright
 - (g) trademark
2. Ask for your brotherâ€™s or sisterâ€™s letter of appointment that he/she got last and examine the contents as per the Employment Act of 1972.