NATURE OF BUSINESS LAW

OPEN UNIVERSITY OF KENYA

PROGRAMME: BACHELOR OF COMMERCE

BCM 106: Business Law

DEVELOPER: Betsy W Wanjala

Credit Hours: 45

Prerequisite: None

COURSE OVERVIEW

This undergraduate course in Business Law is intended to equip you with comprehensive knowledge in the general principles of law and frameworks that govern business activities in Kenya. The course is designed to facilitate acquisition of skills necessary to interpret, apply and navigate the legal landscape of the commercial world, as well as appreciate the development of Kenya's legal system. By gaining insights into laws that govern business transactions, you will be able to creatively develop business strategies and models that respond to the requirements of both local and global legal expectations. It will also enhance your ability to guide small and medium enterprises to leverage on business related ACTS, particularly the intellectual Property regulations, to use innovation as a tool for competitiveness in today's technology based economies.

Course purpose

This course will equip learners with knowledge; skills and attitudes needed to apply the general principles of business law and related regulations in commercial operations, and to appreciate the role of law in creating an enabling entrepreneurial environment.

Expected Learning Outcomes

By the end of this course, the learner should be able to:

1. Articulate the nature, purpose and scope of Business Law.
2. Examine relevant statutes and regulations with a view to using them to resolve business-related legal problems.
3. Analyse the legal implications of business decisions and transactions on organizational performance.
4. Apply legal and ethical reasoning in business practices within the local and international legal frameworks.

COURSE CONTENT

Introduction to Business law: The nature of law, Genesis and evolution, Law and morality, purpose and functions of law, scope of business law and effect of commercial transactions; Contemporary issues in law. **Branches of law:** The role of classification**,** Public vs. Private Law; Civil vs. criminal Law, National vs. International Law, Substantive and Procedural; **Important Concepts in law:** Legal system, Rule of law, Principles of natural justice, Doctrine of separation of powers, Fundamental rights of individuals**;** **Different sources of law**: Understanding the sources of law in Kenya: The Kenya constitution, Legislation, English common law and rules of equity, Case law or judicial precedence, Interpretation of law; African customary law, Islamic law, delegated legislation; **Law of Contract**; Nature of a contract, Importance of contracts in commercial transactions, Types of contracts, Essentials of a valid contract, Conditions and warranties, Privity of contracts, discharge of contracts, breach and remedies; **Sale of goods Act:** Transfer of property, unpaid sellers rights, contract of sale by auction, bailment and carriage of goods, Inco terms (CIF, FOB, FAS, EX-SHIP etc.), **Hire Purchase Act:** Essentials of a hire purchase agreement, Implied terms, Rights, duties and remedies under hire purchase agreement, completion and termination of a hire purchase agreement; **Agency Law**: Agency and types of agents, Creation of agency, The agent's authority, Liability to third parties, Rights and duties of agents and principals, Termination of agency; **The law of negotiable instruments**: nature of negotiable instruments and role in business, types of negotiable instruments, The types of bankers – paying and collecting bankers, and their role in negotiable process, contemporary issues in banking**; Intellectual property:** definition of terms, intellectual property law and role in commerce, Forms of protection, technovations, infringement of rights and remedies, International intellectual property protection.

LIST OF MODULES

Module 6: Sale of Goods Act
Module 7: Hire Purchase Act
Module 8: The Law of Agency
Module 9: The Law of negotiable instruments
Module10: Intellectual Property Law

MODULE 1: INTRODUCTION TO BUSINESS LAW

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

This module provides an essential foundation in general law as well as the nature andscope of business law, covering the fundamental principles that govern business operations. It explores the role of law in society and business, contemporary issues, and importance of compliance.

LEARNING OUTCOMES

At the end of this module, the learner should be able to:

1. Explain the nature and different forms of law as applied in the legal space.
2. Distinguish between law and morality
3. Examine the purpose and functions of law in society and business settings.
4. Analyze contemporary issues in law.

LEARNING ACTIVITIES/TASK LIST

1. Watch/listen to pre-recorded video
2. Review module notes
3. Complete module Quizzes
4. Analyze case studies
5. Engage in forum discussion
6. Complete end of module assignment

LET US BEGIN!

INSTRUCTIONAL MATERIALS & LEARNING ACTIVITIES

We begin our journey with a collection of learning materials designed to help you build a strong foundation in general law, before narrowing down to business law. Throughout the course, you will access learning materials comprising of videos, journal articles, eBooks and lecture notes to prepare you for practical applications. You are required to listen in and read through all the provided resources.

Task 1. You are advised to watch/listen to the pre-recorded video on the module topic: Nature of law. On completion, read through the two brief case studies in task 2 to enhance your understanding of the topic and to enable you to effectively complete module quizzes and assignments.

	PRE-RECORDED LECTURE ON THE MODULE TOPIC : NATURE OF LAW

Nature of Law

The phrase "nature of law" encompasses fundamental characteristics that define law as well as how law functions within society. It also describes the origin and functions of law. In this topic therefore, you are required to define law, analyze its characteristics that distinguishes law from other rules and analyze the functions of law.

What is Law?

Several attempts have been made to define the term law and the following describe such attempts:
Definition 1: Salmond defines law as the principles set out by the government, and enforceable on the people to achieve justice.

Definition 2: Hart postulates that law is the coercive instrument for regulating social behavior.

Definition 3: John Austin defines law as "the body of rules for the guidance of human conduct which is imposed upon and enforced among the citizens of a given state.

Definition 4: According to Phillip James, Law is a body of rules for *the guidance of human conduct* which *are imposed* upon *and enforced* among the members of a given state. It is a rule of conduct developed by the government or society over *a certain territory*.

Generally, law is described as the body of rules governing human conduct of a community, enforced by a controlling authority, and which is formally recognized as binding among members who constitute that community.

Five distinct aspects can be derived from these definitions:

a) That law is imposed upon members of a state or society by a sovereign body. The sovereign body in Kenya is parliament which is the sole legislative body
b) That law in enforced by a sanctioned authority.
c) That law is applied within a given state.
d) Law regulates human conduct
e) Law is binding among members of the specific community or state.

Law is only law if it is binding and it is enforced by a sovereign authority otherwise it creates confusion and breeds anarchy. Therefore, the following characteristics define 'good' law:

- The law must be in the interest of the people.
- The law must not discriminate. This means the law must be applied equally to everybody.
- A good law must be reasonable, the law should not be too harsh or rigid.
- A good law should be made known to the people who are going to be ruled by it.
- A good law should not suppress the people

Purpose and functions of law

Law is the means and the instrument man used and still uses to achieve justice in the society. Generally, Law serves many purposes in society and the fundamental one is that it acts as a guideline as to what is acceptable and not acceptable in society. Without it there would be conflicts between social groups and communities, creating chaos and anarchy.

It establishes acceptable standards of behavior in society, maintains order by regulating human conduct and therefore creating peace.

Law and order is important because it acts as a guideline as to what is accepted in society. ***Order*** is a situation in which people obey the law and follow the accepted rule of social behavior. Law and order is necessary in order for a society to maintain peace and remain problem-free, resolving disputes over limited resources e.g. land litigation, encourages people to do the right thing for a common good, and Law and order also helps to protect lives and property.

Policing represents the normal means by which order is maintained in society. In occupied territory the preference should be for maintaining order *by means of properly trained police forces seeking to apply international human rights law standards.*

Task 2 Analyze the following two case studies to enable you attempt Quiz 1.

Case 1: *Singapore* remains one of the safest places in the world. The 2020 Gallup Global Law and Order Report ranked Singapore first, for the seventh year running. Singapore was also ranked first in the 2020 World Justice Project Rule of Law Index in the area of "Order and Security". The peace in Singapore is achieved through law enforcement. Laws in Singapore permit the ***death penalty*** for people convicted of trafficking more than 15 grams of heroin, 30 grams of cocaine, 250 grams of meth, or 500 grams of cannabis. As of August 9, 2023, there are 50 people currently on death row in Singapore, only three of whom were convicted of murder.

One of the reasons for the low crime rate in East Asian nations is the ***low rate of narcotic abuse***. The percentage of addicts in the population is far lower than in Western nations, and thus the rate of drug-related crimes is lower as well. Historically speaking, the crackdown on drugs is a fairly recent phenomenon.

Case 2: *Japan:* Another country with low rates of misdemeanors is Japan. Perhaps the most important reason why Japan has such a low crime rate is ***Japanese culture and the Japanese "kokuminsei," or national character***. It is well known that the Japanese value social harmony, observe hierarchy, and prefer to avoid conflict.

Task 3: Quiz 1

?	**QUIZ/ QUESTION** **Instructions: Choose the relevant answer for each question.**

1. How does law contribute to conflict resolution?
A) By encouraging violent protests
B) By providing a framework for peaceful dispute resolution
C) By ignoring minor disputes
D) By promoting corruption
Answer: B

2. What is the impact of strong legal institutions on societal peace?
A) They increase crime rates
B) They undermine public trust
C) They enhance stability and security
D) They promote social unrest

Answer: C

3. What is the main function of judicial police officials in Japan?
A) Conducting military operations
B) Handling specialized fields with high expertise
C) Overseeing economic policies
D) Enforcing criminal laws and maintaining public order
Answer: D

4. Which of the following is a key principle of ethical law enforcement?
A) Upholding the law with integrity and fairness
B) Discrimination based on personal biases
C) Ignoring minor offenses
D) Prioritizing personal gain
Answer: A
5. Which agency is typically responsible for law enforcement at the national level in Kenya?
A) Administration Police Service
B) National Police Service
C) The Ombudsman
D) Military police
Answer: B

READING MATERIAL 1

Task 4: Below are two pdf files on various forms of law, and Law and Morality. Read through the materials to gain a deeper insight in the forms of law and the distinction between law and morality.

Various Forms of Law

Various Forms of Law.pdf

Law and Morality

Law and Morality.pdf

Task 5: Read the module notes below to enable you complete end of module assignment

BUSINESS LAW AND ROLE IN COMMERCE

Definition of Business Law

Also known as commercial law, business law *is* the body of law that governs business and commercial transactions or activities. Commercial activities mean activities for the purpose of generating profits, including: sale and purchase of goods, provision of services, investment, commercial promotion and other activities for the profit purpose

Business law mainly refers to legal aspects surrounding the relationship between business and the customers, the business and another business, and the business and the shareholders. It is a group of law which governs the transactions and commercial aspect of the business including selling, distribution and payment for goods.

Commercial law regulates corporate contracts, hiring practice, and the manufacture and sales of consumer goods, and is essential for the smooth functioning of commerce and trade.

Role of Law in Business in commerce.

Business law serves to provide a legal framework that ensures fairness, transparency and accountability in the commercial space. Commerce

Harmony: law creates a harmonious and peaceable environment within which people invest confidently;

Regulating Business Activities: Business law provides a legal framework that regulates business activities, ensuring that businesses operate within the law.

Protection of property: Law Protects property acquired in business.

Private Choice: Facilitates and effectuates private choice – a good example is in the law of contract where law helps determine individual commitments out of agreements. Such private choices also include writing of wills, marriage, and revocation of rights and making of personal gifts.

Promotes Healthy Competition: By preventing monopolistic practices and promoting competition, commercial law helps to create a dynamic and competitive market environment. It also sets ethical standards to ensure that entrepreneurs value integrity and accountability.

Creativity and Innovation: Law defines parameters within which individuals should relate to other entities in business and their own individual rights. This encourages innovation and creativity through intellectual property rights.

Dispute resolution: Provides mechanisms for resolving business disputes by way of offering remedies – otherwise commercial players would end up in interminable friction and anarchy, thus discouraging investment. It offers remedies

Judicial controls: Law structures and controls public power. E g. administrative law defines and controls governmental organizations and the powers, discretions, duties and jurisdictions of administrative authorities Vis-a Vis the public.

Scope of Business law

Business law is broad and encompasses a wide range of legal principles and regulations that govern the buying and selling of goods and services, including the relationships of key players. It covers the following key aspects:

Law of contract: regulations governs the creation and enforcement of agreements between parties, and provide remedies to the aggrieved parties.

Sales of Goods: Regulates the sale and purchase of goods, as well as defining the rights and duties of the parties involved.

Agency Law: Deals with the relationship between agents and principals

Company Law: Outlines the formation, operation, and dissolution of companies, and issues related to corporate governance and shareholder rights.

Employment Law: Companies procure human capital and therefore employment law is crucial as it regulates the relationship between employers and employees, and covers issues such as employment contracts, workplace safety, discrimination, and labor rights.

Intellectual Property Law: Protects the rights of creators and inventors to ensure that they benefit from their innovations.
Consumer Protection Law: Ensures that consumers are protected from unfair practices and that they have rights in transactions.

Banking and Finance Law: Regulates the operations of financial institutions to ensure accountability and stability of the financial system.

Environmental law:

Other key areas of business law include banking and finance law, consumer protection, Environmental law, Tax law, Bankruptcy and insolvency law, securities law, and competition Law

Contemporary issues in Business Law

In this section, you are expected to interact with the current relevant laws and legal challenges that face the business world today. These issues are important as they help business managers to understand the dynamic legal environment in which companies operate today.

READING MATERIAL 1

Task 6: Click on the link below to access material on the Business Law Amendment No 2 of 2021

(*Highlights of Business Laws (Amendment) (No.2) Act, 2021: Part 1*, 2021)
https://www.dentonshhm.com/en/insights/articles/2021/

Environmental Law: Due to issues of Climate change, environmental law has become a significant form of law in todays' societies and particularly the commercial world. Businesses now face new regulations and expectations regarding the impact of their activities. The constitution of Kenya since its promulgation in 2010 now focuses on the right to a sustainable environment as a fundamental right and freedom. Article 42 provides for the right to a clean and healthy environment. NEMA is established under the EMCA and is the main regulatory authority vested with the authority to exercise general supervision and co-ordination over all environmental matters and to implement environment-related polices on behalf of the government. Business organizations are required to pursue activities that are more eco-friendly, thus the current emphasis on environmental entrepreneurship (also known as ecopreneurship, it emphasizes on creating commercial enterprises that solve environmental problems or that conduct operations sustainably).

Employment laws: Evolving laws include affirmative action regulations, remote work, gender balance, sexual harassment in the work place among others.

Corporate governance**:** issues related to corporate governance such as transparency, accountability, and ethical business practices are becoming increasingly important.

Regulation of digital markets and Fintech**.** The rise of digital platforms and Fintech raises questions of how law agencies may to regulate providers, afford players data privacy, and cyber security

Engage and Explore!

In this task, you are required to participate in interactive discussions that will challenge you to think critically and apply the basics you have learnt. Create a blog forum and share the relationship between business law and economic growth. Post your work in the discussion forum.

REFERENCE LIST AND FURTHER READING

1. Nicole Grmelová. (2023). *Perspectives of Law in Business and Finance*. ADJURIS. Section 1
2. Orkun Akseli, & John Linarelli. (2020). The Future of Commercial Law : Ways Forward for Change and Reform (Vol. 00004). Hart Publishing. Part 1 & Part 3
3. Roy Goode, Herbert Kronke, & Ewan McKendrick. (2015). Transnational Commercial Law : Texts, Cases and Materials. OUP Oxford. Chapter 1 & 5
4. Karanja, J. G. (2022). Domestic trade regulation and growth of wholesale and retail firms; evidence from Kenya. Cogent Economics & Finance, 10(1), 1–14. **https://doi.org/10.1080/23322039.2022.2127218**

Task 7. Practical skills

END OF MODULE ASSESSMENT 1.2

Test your knowledge!

Read the following case study and answer questions that follow. The responses should be uploaded to the LMS either as a word document or pdf

The effect of compliance on Mobile Money Services in Kenya

Kenya has been a global leader in mobile money services, with M-Pesa being one of the most successful mobile money platforms. Launched in 2007 by Safaricom, M-Pesa has revolutionized financial transactions in Kenya, providing financial inclusion to millions of unbanked individuals.

The success of M-Pesa can be attributed to a supportive regulatory environment created by the Central Bank of Kenya (CBK). The regulatory environment for mobile money services in Kenya involves multiple regulatory bodies, including Central Bank of Kenya (CBK) - Oversees financial regulations and ensures the stability of the financial system; Communications Authority of Kenya (CAK) - Regulates telecommunications services, including mobile networks.

Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) Regulations - Ensures that mobile money services are not used for illegal activities.

Initially, there were concerns about the risks associated with mobile money, such as money laundering and fraud. The compliance framework enhanced public trust in mobile money services, leading to widespread adoption. By 2008, M-Pesa had over 4 million active users. Mpesa products have leveraged on such regulations to expand services, reaching remote and underserved areas, pursue innovation as a strategy for growth within the industry, by continuously introduced new services.

1. **Analyze the effect of compliance on Safaricom's Mpesa mobile money services. (4 marks)**
2. **What are the challenges of having multiple regulations? (6 marks)**

TAKE HOME MESSAGE/SELF REFLECTION

From the knowledge gained in this module; what key points would you share with a business organization on leveraging environmental laws to create a competitive advantage in today's global markets?

WHAT'S NEXT?

Congratulations on completing module one activities. In module two you will learn about branches of law and their effect on commercial activities.

MODULE 2: BRANCHES OF LAW

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

IN THIS MODULE, YOU WILL EXPLORE DIFFERENT BRANCHES OF LAW. YOU WILL ALSO ACQUIRE AN UNDERSTANDING OF HOW THESE LAWS ARE APPLIED IN REAL WORLD SITUATIONS.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Identify the different branches of law
2. Compare and contrast the different classes of law
3. Examine the implication of each class on the business environment
4. Apply different classes of law in business situations.

LEARNING ACTIVITIES/TASK LIST

1. Review learning materials on the module
2. Complete module quizzes
3. Participate in a discussion forum
4. Complete end of module assignment

INSTRUCTIONAL MATERIALS & LEARNING ACTIVITIES

Task 1: Read the notes below on branches of Law and attempt quiz 1

Different branches of Law

The classifications of law are the different categories into which all areas of law can be collated. Classifying law helps law makers to draft and amend laws and to organize the many legal rules into a coherent system. Law may be classified into the following categories.

Written and Unwritten Law

Written law is regarded as written not because it is written down in a document, but that it has been validly enacted by the legislature of a country. In Kenya parliament legislates.

Unwritten law***,*** on the other hand, is that law that is not enacted by the legislature. This group includes both customary laws (such as trade customs and business etiquette) and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature.

Public and Private law

Public law: This is that branch of law which regulates the relationship between a higher party — the state — and a lower one, the citizens. And includes:

Constitutional Law – The constitution establishes the structure of government and contains laws that protect individual rights.

Administrative Law – comprises laws that govern state agencies, providing mechanisms that allow citizens to challenge administrative decisions.

Criminal Law - deals with behavior that is or can be construed as an offense against the public, society, or the state—even if the immediate victim is an individual.

International Law - laws that oversee relations between nations, and includes conventions, treaties and trade agreements.

Environmental law – It protects natural resources and ensures sustainable development.

Private law - is that category of the law that concerns itself with the relationship amongst private citizens and concerns the rights and duties of individuals towards other individuals. This branch includes

Torts– A tort is a civil wrong and includes defamation, negligence, nuisance, trespass etc.

Contracts – govern the rights and obligations of contracting parties.

Trust – A trust is the relationship created when property is transferred by one person (the "settlor") to another (the "trustee") to hold for the benefit of specified persons or a class of persons (the "beneficiaries").

Property Law- describes various forms of property, their transfer, and tenant issues.

Succession - regulates the transfer of estates between parties.

Family law - governs family related and domestic issues including *marriage and divorce, the treatment of children,* and related economic matters.

Civil Law and Criminal Law

Civil Law: the branch of law that regulates relationships amongst individual citizens in their capacity as individuals. It is concerned with violations of private rights e.g. defamation, breach of contract, nuisance or tress pass.

Criminal Law: Crime is a Latin word meaning accusation. It may be defined as an unlawful act or omission which is an offence against the state; prohibited and punished by law. A crime is punished by a fine or a term of imprisonment or by capital punishment. Kenya inherited English law and classifies crimes as felonies or misdemeanors.

A Felony is an offence which is declared by law as a felony, is punishable without proof of previous conviction with death or with imprisonment for three years or more. *Felonies* are the *most serious* crimes. They are either supported by a heinous intent, like the intent to kill, or accompanied by an extremely serious result, such as loss of life, grievous injury, or destruction of property.

A Misdemeanor is any offence which is not a felony. Misdemeanors are *less serious* than felonies, either because the intent requirement is of a lower level or because the result is less extreme. Misdemeanors are usually punishable by jail time of one year or less per misdemeanor, a fine. The incarceration for a misdemeanor is in jail rather than prison. Jails are for defendants who have committed less serious offenses, so they are generally less restrictive than prisons.

Infractions. Also called *violations*, are the least serious crimes and include minor offenses such as jaywalking and motor vehicle offenses that result in a simple traffic ticket. Traffic offenses are the most common form of infraction

All crimes in Kenya are created by parliament through statutes. Under section 77 (2) (a) of the constitution, the accused person is presumed innocent until proven or pleads guilty. The burden of proof rests on the prosecution.

Substantive and Procedural Law

Procedural law is deals with the process which the courts must follow in order to enforce the substantive law. It determines the manner in which the court proceedings will be conducted by a certain party. It is also referred to as adjective law e.g. criminal procedure code cap 75, Civil procedure Act cap 21.

Substantive law is a branch of law that has the actual rules that generally define what is unlawful and defines the various existing civil wrongs and later in turn provides the remedies that can be used to handle them. It defines offences and prescribes punishment e.g. Penal Code Cap 63.

Domestic and International Law:

Domestic law/National or municipal law - is the aspect of law which emanates from and has effect on members of a specific state. It regulates the relation between citizens and the state and is based on Acts of Parliament, customary and religious practices of the people.

International law, on the other hand, is the law between countries. It regulates the relationship between different independent countries and is usually in the form of treaties, international customs etc. Examples of International law include the *Universal Declaration of Human Rights* ***and the*** *African Charter on Human and People's Rights***.**

Task 2: Quiz

You are now required to test your mastery of the above concepts by attempting the true or false quiz below.

True or False

1. Public law primarily deals with disputes between private individuals and does not involve the government.
2. Substantive law defines the rights and duties of individuals and organizations.
3. Procedural law determines the actual rights and duties of individuals and organizations.
4. Criminal law is primarily concerned with resolving disputes between private parties.
5. Civil law deals with disputes between individuals or organizations, often involving compensation.
6. Unwritten law includes statutes and regulations passed by legislative bodies.
7. Environmental law regulates the interaction between humans and the natural environment.
8. International law governs the relationships between sovereign states and other international actors. 9. Substantive law is also known as adjective law.
10. A tort is a civil wrong that causes harm or loss

Answer Key

1. False
2. True
3. False
4. False
5. True
6. False
7. True
8. True
9. False
10. True

Task 3: Application exercise.

	ONLINE DISCUSSION Create a blog to discuss at least four forms of civil law and their effect on your country's business environment. Post your work in the discussion. Read through your colleagues' responses and comment.

REFERENCE LIST AND FURTHER READING

1. Ochieng, J. (2020). Classification of Law in Kenya: A Comprehensive Guide. Nairobi: Kenya Literature Bureau.
2. Cheeseman, H. R. (2019). Business law: Legal environment, online commerce, business ethics, and international issues (10th Ed.). Pearson.
3. Linda Harrison. (2018). Business Law : A QuickStudy Digital Reference Guide. Quick ickStudy Reference Guides.
4. 4. Clarkson, K. W., Miller, R. L., & Cross, F. B. (2020). Business law: Text and cases (15th ed.). Cengage Learning.

Task 4. Having read through the materials on the module topics, you are now ready to complete the module assignment which you will be expected to upload to the LMS in pdf.

END OF MODULE ASSESSMENT

You are required to read the following case scenario and identify the elements of Criminal and Civil law. Justify the reasons for your answers.

(10 marks)

ABC Corporation, a large manufacturing company, entered into a contract with XYZ Ltd., a supplier of raw materials. The contract stipulated that XYZ Ltd. would deliver specific quantities of raw materials to ABC Corporation on a monthly basis. However, XYZ Ltd. failed to deliver the agreed quantities for three consecutive months, causing significant production delays and financial losses for ABC Corporation. During the investigation, it was discovered that the CEO of XYZ Ltd. had been involved in fraudulent activities. The CEO had intentionally diverted the raw materials to another company in exchange for personal financial gain.

TAKE HOME MESSAGE/SELF REFLECTION

Reflect on the key areas of procedural and substantive law that would directly impact a nascent entrepreneur who is keen on initiating an ICT project in a technology based economy.

WHAT'S NEXT?

Congratulations for successfully reviewing module notes and articles in module 2. You are now ready for module 3 where you are going to walk through key concepts that guide administrators of justice to determine both business and administrative disputes.

MODULE 3: IMPORTANT CONCEPTS IN LAW

INSTRUCTIONAL HOURS: 4,

MODULE OVERVIEW

IN THIS MODULE, YOU WILL LEARN ABOUT KEY CONCEPTS WHICH ARE CRUCIAL IN UNDERSTANDING LEGAL AND ADMINISTRATIVE DECISIONS MADE BY LEGAL OFFICERS AND POLICY MAKERS TO ENSURE JUSTICE AND FAIRNESS IN JUDICIAL PROCEEDINGS.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Identify key concepts applied in principles of law.
2. Examine the role of these concepts in dispute resolution.
3. Analyze the implication of these principles on commercial transactions.
4. Apply the concepts in hypothetical legal situations.

LEARNING ACTIVITIES/TASK LIST

1. Review power presentation PDF
2. Complete participation assignment: Quiz 1
3. Apply module concepts in case studies
4. Complete end of Module Assignment: Quiz 2

READING MATERIAL 1

IMPORTANT CONCEPTS IN LAW

Task 1 Review PowerPoint PGF

In this power point presentation, you are required to read through the slides in order to participate effectively in module activities. The power points comprise of the key legal concepts in the following order:

3.1. Arms of Government
3.2. Doctrine of separation of powers
3.3. Rule of Law
3.4. Principles of Natural Justice

Arms of Government

The arms of government in Kenya are the *National Executive*, the *Legislature (Parliament*), the *Judiciary for the national government* and the *County Executive*, and the *County Assembly* for the county governments.

The National Executive: The national executive of the Republic of Kenya comprises the President, the Deputy President and the rest of the Cabinet (Attorney General and Cabinet Secretaries). Executive power is vested in the President by section 23 of the repealed Constitution of Kenya. The executive oversees agencies that regulate commercial activities such as the Environmental Protection agency, Kenya Bureau of Standards (ensures safety and quality of products), Capital Markets Authority (supervises capital markets), and Kenya Industrial Property Institute (protection of industrial property rights) among others.

County Executive: The county executive committee consists of the county governor, deputy county governor and other county executive committee members.
County Assembly: The County Assembly comprises elected members (Ward Representatives), nominated members and the speaker as an ex officio member of the assembly.

The Legislature: The Kenyan legislature is bicameral meaning that it is divided into two houses; the National Assembly (lower house) and the Senate (upper house). Each house represents a certain principle. The lower house usually represents democracy, one man one vote, whereas the upper house is intended to neutralize the numerical superiority of certain interests and to limit dictatorship by the majority.

“Legislation” describes both the enactment of laws and the product of that enactment (statutes, rules, or laws). Legislative power is derived from the people and is vested in and exercised by parliament according to Article 94 of the Constitution of Kenya.

The laws made by the legislature in Kenya regulate commercial activities by establishing trade and fiscal policies that impact the environment within which businesses operate. These laws also influence creation of business entities, regulation of labor and preservation of the natural environment among other responsibilities.

The Judiciary: the Judiciary is primarily charged with ensuring the fair and effective administration of justice, it also, in accordance with the doctrine of the separation of powers, provides a safeguard against the abuse of power by the Executive, and, in certain circumstances, the Legislature.

It serves an indispensable role in the protection of fundamental human rights. The new Constitution gives the Judiciary an extensive mandate against the renewed aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the *rule of law.*

Article 160(1) of the Constitution Kenya, 2010 states that 'in the exercise of judicial authority, the judiciary …shall be subject to the Constitution and the law and shall not be subject to the control or direction of any person or authority.' Independence of the judiciary is critical as (i) It promotes the liberty of human beings by checking on the excesses of the state. (ii) It promotes the rule of law.

Doctrine of separation of powers

The doctrine of separation of powers is a legal framework developed by a French jurist named Montesquieu whose concern was to avoid the over-concentration of governmental powers in the hands of one person or a body. According to Montesquieu the only way to create a system of checks and balances was to ensure that governmental powers were devolved. He developed the classical doctrine of separation of powers and suggested that:

o There should be different organs of government i.e. executive, legislature and judiciary.

o These organs should exercise different functions. The legislature makes the law, the judiciary interprets it and the executive administers.

o No person should be a member of more than one organ. According to Montesquieu, such an arrangement would ensure that no single organ exercises unchecked power, however, this framework cannot operate in any country in its pure state, as government does not operate in water-tight compartments.

Application in business context

Separation of powers is used to departmentalize business operations in organizations by dividing power, authorities, and responsibilities among different positions to enhance transparency, accountability and efficiency, Businesses implement checks and balances to control abuse of power. Examples include board of directors, who oversee the management team, auditors, who ensure compliance with regulatory requirements etc.

Task 2 Quiz 1 Application of separation of powers

CASE STUDY

Examine the case below and determine why the Supreme Court ruled it the way it did.

In 2013, a significant case involving the separation of powers in Kenya was brought before the Supreme Court. The case, Speaker of the Senate & another v Attorney-General & 4 others, revolved around the Division of Revenue Bill, 2013. The Senate argued that the National

Assembly had passed the Bill without involving the Senate, which they claimed was a violation of the Constitution.

The central issue was whether the National Assembly had the constitutional authority to pass the Division of Revenue Bill without the participation of the Senate. This case tested the boundaries of legislative powers and the role of the judiciary in resolving disputes between different arms of government.

Supreme Court Decision
The Supreme Court ruled that the Division of Revenue Bill was a matter concerning county governments and, therefore, required the involvement of the Senate. The Court emphasized the importance of both houses of Parliament working together in the legislative process, especially on matters affecting county governments.

Answer: Separation of powers requires that
(i) Each organ of government concentrates on a specific function
(ii) Each organ should not interfere with activities of other related organs.
(iii) However, other organs have a responsibility to work with other organs for purposes of upholding constitutional principles.
(iv) The function of the Senate is to neutralize excesses.
(v) In this case, senate had a duty to be engaged in the process to ensure due process is followed. **(5 marks)**

Task 3 Self recorded video exercise

The constitution is the supreme law in Kenya. This means that Commercial players and managers are required to familiarize themselves with the articles as well as implications of the articles on organizational operations. Being a student of Commerce, you are now required to watch/listen to the video below on the role of the constitution. After listening, form groups of five members per group and examine the role of article 2 of the Kenyan constitution on business environment. Record your discussion and post it on the forum. Click on the link below to access the required information

Legal Lens Kenya. (2023). *Kenyan Constitution Essentials: Breaking Down The Law, Chapter 1, Article 2, Section 1*. YouTube. https://www.youtube.com/watch?v=c6cc5SwGnvQ

RULE OF LAW

It has its origin in the French phrase la principe de legalite. This refers to governance based on law and not of men. Lord Edward Coke is said to be the originator of the concept when he declared that the king must be under God and Law.
It provides that matters of governance should be based on the established laws and principles but not on the personal whims of the governors. It also stipulates that the standards against

which official action is accessed. The principle of the rule of law refers to three things in public administration:

a) *Legality*: This aspect of the rule of law requires that everything must be done according to the law. It requires government action to be conducted within a framework of recognized rules and principles and abhors (discourages) unlimited discretion.

   The principle of legality is also applicable to criminal procedure and imposes a number of obligations including the requirement that no one should be punished except for some legally defined crime and the prohibition against retrospective application of legislation. This principle prevents Government authorities or those in Government from acting ultra vires

b) *Judicial independence:* Disputes about the legality of government actions are to be decided by judges who are independent of the executive. In the common law set up, dispute between citizens and the government are resolved by ordinary courts.

c) *Fairnes*s: The rule of law denies the government unnecessary privileges or exemptions from ordinary law. Express references in the constitution as regard the rule of law. The constitution requires respect for the rule of law in numerous aspects in its preamble.

Rules of Natural Justice

Natural justice simply means to make a sensible and reasonable decision-making procedure on a particular issue. Natural Justice therefore is the administration, maintenance, provision or observance of what is just, right, proper, correct, morally upright, merited or deserved by virtue of the inherent nature of a person or based on the inherent sense of right and wrong.

Principle of Natural Justice is derived from the word 'Jus Natural' of the Roman law and are the rules governing procedure and conduct of administrative bodies. They were developed by the courts in England and imported into Kenya as part of common law principles. The principles of natural justice are firmly emphasized in article 47-50 of the Constitution of Kenya, 2010. Principles of natural justice are implied i.e.; they are not expressed in a statute; they are supposed to apply in every case unless a statute expressly states that they will not apply.

The three main requirements of natural justice that must be met in every case are: adequate notice, fair hearing and no bias.

1. Nemo judex in causa sua (A man may not be a judge in their own case) - no one shall be an arbitrator on his own or a case in which he is interested."
2. Audi alterem partem (A man's defense must always be fairly heard - It translates "to listen to the other side." This principle is required for a fair hearing, and the rule against partiality would undoubtedly be part of the procedure.
3. Speaking Orders or Reasoned Decision: Giving explanations for a decision is now universally recognized as one of the basics of effective governance and protection against arbitrariness.

The refusal to provide reasons may raise the possibility that there are no good reasons to support the decision.

Task 3: Rule of Law

	ONLINE DISCUSSION Listen to the video below and use the discussion forum to engage others on this topic: **Application of the rule of law in my country**. Your posts will be analyzed by the facilitator to assess your understanding of the concept. Click here: **https://www.youtube.com/watch?v=y3am4T5LuKU**

REFERENCE LIST AND FURTHER READING

1. Kubasek, N. K., Brennan, B. A., & Browne, M. N. (2020). The legal environment of business: A critical thinking approach (9th ed.). Pearson.
2. Nyamu, H. (2019). Public administration and administrative law in Kenya. Jomo Kenyatta Foundation.
3. Ambani, J., & Mbondenyi, M. K. (2010). The new constitutional law of Kenya: Principles and human rights. Law Africa Publishing.
4. Waldron, J. (2023). *Thoughtfulness and the rule of law*. Harvard University Press.

END OF MODULE ASSESSMENT: Quiz 2

You are working as a marketing officer in organization X. The company has been disseminating wrong information about its edible products which are causing hernia in children below five years. The marketing manager was arrested without being informed of the reasons behind the warrant and jailed within 48 hours by a judge whose grandchild was a victim of the company products.

List five key legal concepts studied in this module that are relevant in this hypothetical case scenario. (5 marks)

Rubric
Responses:

1. Rule of law: No man shall be above the law regardless of position in society

2. Principles of Natural Justice (To uphold fairness and ensure justice)
   a) Principle of bias: no man shall be a judge in his own case
   b) Principle of fair hearing: no man shall be condemned unheard
   c) Reasoned decision: every legal decision should be based on reasoning

TAKE HOME MESSAGE/SELF REFLECTION

Now that you have interacted with key concepts applied in administration of justice, what would you say are the key legal concepts that may have contributed to the robust economic activities in Kenya?

WHAT'S NEXT?

Having gained knowledge in the concepts that guide procedural interpretations, you are now ready to interact the origins of the laws applied in the legal system, particularly in Kenya. If your country of origin is not Kenya, you are requested to compare these sources and the ones in your country's legal environment.

MODULE 4: SOURCES OF LAW IN KENYA

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

The module provides you as a learner with an in-depth comprehension of the origin of current laws in application in Kenya's legal system. As a local or foreign student, the module is the Foundation of substantive law and requires your keenness and grasp of the knowledge therein. This module has more reading materials and exercises than the previous and preceding modules for the simple reason that sources law are at the heart of any country's legal system, and a source of reference for judicial decisions.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Identify the sources of laws in application in Kenya.
2. Examine the application of each source on Kenyan legal system
3. Demonstrate an understanding of principles of interpretation
4. Apply different sources of law in real world situations.

LEARNING ACTIVITIES/TASK LIST

1. Watch lecture related video

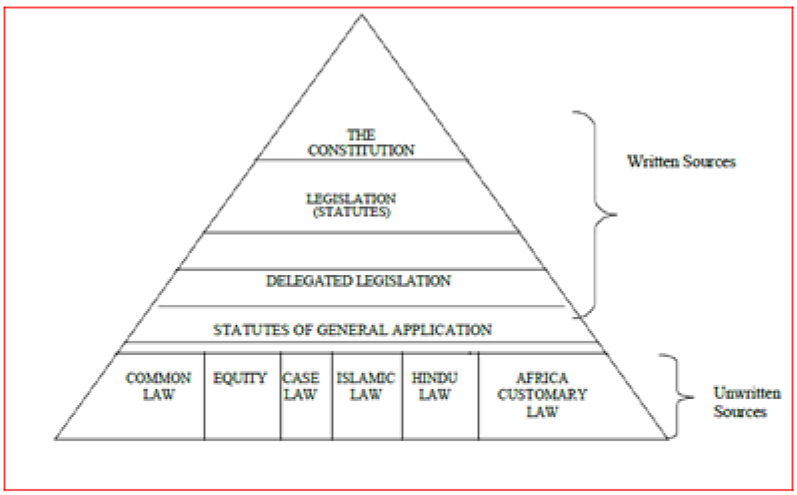
2. Review provided materials provided on the module
3. Complete module quizzes: Quiz 1 and Quiz 2
4. Conduct legal interpretations using relevant principles.
5. Participate in group presentations.

INSTRUCTIONAL MATERIALS

Task 1: Read the following notes to gain insights on sources of law

The Sources Law

The term source of law means the origin of the law. It can also be used to refer to the factors that have influenced the development of the law from the point to the other. It means the materials from where the law can be obtained.



1. The Constitution

A constitution is a body of principles written or unwritten that enable people to live together in peace and harmony. It is the basic law of any democratic country from which all the other laws derive their powers and existence. Constitutions express the agreed content of a political system by describing the principal and basic structure upon which the system is founded.

In Kenya, i*t determines the distribution of powers among different organs of the state*. It serves to organize the state, determine the distribution of powers among the different organs of the state and determines the relationship between the governors and the governed.

It is the systems of law to which no other law should be inconsistent with. *"If any other law is inconsistent with the constitution, the constitution shall prevail and the other law shall to the extent of its consistency be void."*

2. Parliamentary Legislation

In the Kenyan legal system, the constitution vests legislative power in parliament. Parliament exercises these powers through Bills. A bill is a draft legislation law (proposed law).

Legislation is the main source of all written law. There are several types of Bills which may be tabled in parliament, and:

- ✓ *Public Bills*- these are defined by standing orders as any Bill other than private bills. They are bills introduced by government ministries and deals with matters of public policy.
- ✓ *Government bills*- are drafted by the attorney general and deals with matter of public policy which affects all the Kenyans. Government bills are drafted by the parliament counsels in A.Gs chambers.
- ✓ *Private bills* - means any bills not being a bill introduced by a minister. It normally affects a small section or particular section of the community. Special permission is usually required before it can be introduced it. The affected parties must be notified in Kenya gazette. The promoter of the bill must supply copies and meet the cost of the bill.

✓ *Private members' bill*- this is introduced by a private member of parliament in his capacity as such (backbenchers). Such bills normally affect particular people or group of people. The promoter must seek the permission of the house and must therefore move a motion requesting the leave of the house. The promoter is responsible for the drafting and the costs of the bill. He is also required to supply copies to all the members of the house. E.g. Hon, Mututho's alcoholic control bill

Task. 2: Parliamentary procedure

In order to understand how parliament legislates in Kenya, click the link below to access the materials.

The Legislative Process. (2022). http://www.parliament.go.ke/sites/default/files/2022-08/FS02%20The%20Legislative%20Process.pdf

After reading through the process, attempt the Quiz in Task 3.

DELEGATED LEGISLATION

Delegated (or subordinate or Subsidiary) legislation means the powers given by the legislature to enact certain laws.

Delegated legislation is made by non-elected bodies away from democratically elected politicians (parliament). There are different types of delegated legislation:

Ordinance: delegated powers being distinct from legislative power they ordinarily do not adopt pursuant to a legislative procedure. They are thus primary legislations which apply to different territories either nationality or some local government bodies.

By laws: These are delegated by subnational govt entities e.g., counties local governments and only have effect and application within areas of responsibility or authority. By laws can thus differentiated from ordinances as by laws are made by local authority as a custom of settlement within a particular area while an ordinance regulates matters in decree like building, safety as an edict.

Declarations: these are lists of formal proclamations or announcements on a particular legal issue.

Legal notices: These are mostly political than administrative delegations issued by cabinet secretaries of particular ministries concerning their departments

Statutory instruments: These are delegated to government agencies to amend laws concerning a person or organization

Task 3: Quiz

Laws made by Parliament provide a structured and predictable legal environment for better governance. You are required to test your understanding on the process of drafting bills in Kenya by attempting the following quiz.

1. What is required for a bill to pass the Third Reading in the National Assembly?
A. A simple majority vote
B. A two-thirds majority vote
C. Unanimous consent
D. Approval by the Judiciary
Answer: A.

2. During which stage is a bill debated in detail and amendments proposed?
A. First Reading
B. Second Reading
C. Committee Stage
D. Third Reading
Answer: C.

3. What happens if the President refuses to assent to a bill?
A. The bill is sent back to Parliament with recommendations
B. The bill is automatically passed

C. The bill is discarded
D. The bill is sent to the Judiciary for review
Answer: A

4. Which house of Parliament can introduce a money bill?
A. The Senate only
B. The National Assembly only
C. Both the Senate and the National Assembly
D. The Executive
Answer: B.

5. Which of the following is NOT a type of bill in the Kenyan legislative process?
A. Government Bill
B. Private Member's Bill
C. Public Bill
D. Executive Bill
Answer: D.

Unwritten sources of law

These are sources of law which have not been documented.

4. Judicial Precedents or C*ase law:* This refers to the legal doctrine that requires a judge hearing a case to refer to earlier cases decided over by his predecessor in order to find out if material facts in those cases are similar and to decide the case in the same way as the previous case.

Which means that in trying and deciding cases a judge, must look back to see how the previous judges have dealt with the case involving similar facts. Judicial precedent is based upon the doctrine of *stare decisis*.

Practical sample case summary 1

One notable example of a commercial case where a judge had to invoke judicial precedence is Coral Reef Limited v. Silver bond Enterprises Ltd and Another. In this case, the issue revolved around the beneficial ownership of shares in Silver bond Enterprises Ltd, a company registered in England and Wales1.

Case Summary

Facts: Coral Reef Limited, a private company incorporated in Hong Kong, claimed a 9.99% shareholding in Silver bond Enterprises Ltd based on an alleged allotment of shares. The *defendants denied the authenticity of the documents presented by Coral Reef Limited and argued that the claimant had no beneficial interest in the shares.*

Legal Issue: The defendants applied for security for costs, arguing that there was reason to believe the claimant would be unable to pay the defendants' costs if ordered to do so.

5. English Common law and Equity

This is a branch of law of England which was developed by the ancient common law courts from customs usages and practice of the English people. These courts applied the people‟s customs to resolve legal problems thereby giving the customs the effect of law.

The substance of common law got incorporated in the Kenyan law through the Judicature Act 1967. It is not the entire common law that is a source of law in Kenya but only that portion which the courts find compatible with the needs of the people of Kenya.

Shortcomings of common law

a***) Writ system***. - It did not recognize all possible complaints and many persons had no access to the judicial system. This encouraged corruption and lengthened the process of administration of Justice.

b) *Delay***:** - The administration of justice at common law was extremely slow. Defendants often relied on standard defenses such as Sickness, being cut off by floods, being away on a crusade, etc.

c) *Procedural technicalities*. - The process of administration of justice at common law was fairly technical. Court paid undue attention to minor points or procedure and many god actions were lost on procedural points.

d) *Inadequate remedies***:** The common law courts had only one remedy to offer namely a monetary award on damages. They had no jurisdiction to compel performance or restrain the doing of an act.

e) *Non- recognition of trust***:** The common law system did not recognize these relationship hence beneficiaries had no remedies against errant trustees and trustees had no enforceable rights.

f) *Inadequate protection of borrowers:* At common law a borrower who failed to pay the amount borrowed within the contractual period of repayment often lost his security as well as the amount paid as there was no extension of time.

Rules of Equity

This is the branch of law of England which was developed on the basis of the principle of fairness and justice by the Lord Chancellor's courts. They were developed to mitigate (lessen) the harshness of the common law. Equity developed additional remedies e. injunction, specific performance. The chancery was basically an appeal court.

Task 4 Listen/Watch the video and create a blog to summarize the circumstances that led to the development of the rules of equity.

YouTube	**Click here!** **https://www.youtube.com/watch?v=qKhnxwuemo4&t=17s**

6. African Customary Law

Customary law is generally understood to be rules of law derived from the customs and usages of different communities.

A custom is a habit, norm or usages by a given community that has lasted over time and has its roots in wisdom, need and character of a particular community.

The statutory application of customary law is provided by two statues:

a) Judicature Act Cap. 8 laws of Kenya. b) Magistrates Courts Act Cap. 10 laws of Kenya.

Characteristics of customs

Customs can be said to be the oldest source of law. However in order to gain recognition and enforcement by the courts, the particular custom should have the following characteristics

a) *Reasonableness:* A good local custom must be reasonable (logical). This means it must be consistent with the principles of justice.

b) *Conformity with the written law*: A custom must be consistent with the written law as it supersedes the customs

c) *Observance as of right*: Must be acceptable to the people and must not have been exercised by use of force.

d) *Must have existed since time immemorial*: Time immemorial means no living person can attest as to when the custom did not exist.

e) *Continuity:* The right to exercise the customs must have been continuous and there must not have been any interruptions or breaks in its application.

Limitations in application of African Customary law as a source of law

African customary law is only applicable under the following limited circumstances.

a) ***Customary law applies only to civil cases.*** This meant that customary law had not developed to a stage where it could handle criminal justice. These matters include: Land held under customary tenure; Marriage, divorce, maintenance or dowry; Enticement of or adultery with a married woman; Seduction or pregnancy of an unmarried woman or girl; Matters affecting status and in particular the status of woman widows, children, including custody, adoption, guardianship and legitimacy; Intestate succession and the administration of intestate estate.

b) ***It only applies where one or more of the parties are subject to it or affected by it***. One or both of the parties must be subject or affected by it. If the plaintiff and the defendant belong to the same ethnic group they are said to be "subject" to the customs of that ethnic group which could then be applied to resolve their dispute. However if there is a dispute involving parties from different ethnic groups, the dispute may be determined according to the customs of either party since the other party would be "affected "by it.

c) ***Customary law should not be inconsistent with any written law***. African customary law must be compatible with the written law. Therefore as a source of law customary law is subordinate to legislation or any other written law and in the event of any conflict must give way to the written law.

d) ***It must not be repugnant to justice and morality***. This was justice and morality of civilized people. In other words, the local custom should be reasonable and not inconsistent or in contradiction with the principle of justice.

Practical sample case summary 2

This case involved a dispute over land inheritance. Aili tupu (Name withheld) claimed ownership of a piece of land based on Kikuyu customary law, which dictated that land should be inherited by the eldest son. Avenger, (name withheld) the defendant, contested this claim, arguing that the land had been sold to him by the deceased owner.

Legal Issue: *The main issue was whether the court should apply Kikuyu customary law to determine the rightful owner of the land.*

Court's Decision*: The court upheld the application of Kikuyu customary law, recognizing it as a valid source of law under the Judicature Act. The court ruled in favor of Akili tupu affirming that the land should be inherited by the eldest son according to Kikuyu customs.*

7. Islamic Law

This is a limited source of law in Kenya, applied by Kadhis Courts, established under Section 66 of the Constitution. The rules of Islamic law are derived from the Muslim religious book "The Quran". Islamic law is applicable in Kenya under Section 5 of the Kadhis Court Act 1967 in the following limited circumstances:

- It can only be relied upon in the determination of civil disputes

- It is only applicable in the determination of question of Muslim law on marriage, divorce, succession and personal status.
- It can only be relied upon in proceedings in which all parties profess the Muslim faith.

Practical Sample Case Summary 3

Facts: The plaintiffs, who were Muslim employees of Haco Industries Ltd, claimed that their employer had violated their rights by not allowing them to observe their religious practices, specifically the right to attend Friday prayers (Jumu'ah). They argued that this was a fundamental aspect of their faith and sought legal redress.

Legal Issue: The main issue was whether the employer's refusal to allow the plaintiffs to attend Friday prayers constituted a violation of their rights under Islamic law and the Kenyan Constitution.

Court's Decision: The court applied Islamic law principles, recognizing the importance of Jumu'ah prayers in Islam. The court ruled in favor of the plaintiffs, stating that the employer must accommodate their religious practices unless it could be shown that doing so would cause undue hardship to the business.

Statutory Interpretation (Interpretation of written laws)

The precise meaning of a written law such as an Act, delegated legislation or a rule may cause a legal dispute. This is because although the law is written and can therefore be read by any literate person, some of the words may not mean the same thing to all the parties to a dispute.

In the course of settling disputes , the English and Kenyan courts have established rules which they use in order to interpret if necessary any statute. The rules may be summarized as follows:

a) The literal Rule: This is the primary rule of statutory interpretation. Under this rule, the words or phrase used in the statute are given their plain, grammatical, dictionary or ordinary meaning. It requires the judges to interpret the words of a statute according to their plain grammatical or literal meaning.

b) ***The golden Rule:*** This is a modification of the literal rule and states that the literal meaning may be ignored where it results in absurdity (unreasonable) or where a study of the statue as a whole reveal that decision reached by applying literal rule is contrary to the intention of the parliament.

c) ***The Mischief Rule:*** Under this rule, the court will examine the Act or Rule to ascertain what its purpose was and the mischief or defect for which the common law had no provision and which it was intended to remove.

d) ***Ejusdem Generis:*** This literally means "of the same kind or nature". Under this rule, where general words in an Act follow particular words, then the general words are construed (taken to mean) as being restricted to the same kind as particular words. For example in reference to "cows, goats, chicken, donkeys and other animals" the general words "animals" will be held to mean animals of the same genus or species as cows, goats, chicken and donkeys, that is domestic animals. That list would therefore not include animals such as lions, zebras or leopard because the genus or species of such animals would be considered as wild animals.

e) ***Noscitur a sociis***: This literally means "known by the company it keeps". This means that a doubtful word may be ascertained by reference to the meaning of words associated with it i.e. Thus, the meaning of words can be known or recognized by associated words.

f***) Rank principle***: Under this rule, where a string of items of a specific rank is followed by residuary words, it is presumed that the residuary words are not meant to include items of a different rank e.g. Where personalities such as VP, Ministers, Assistant Ministers and such other personalities are mentioned, the residual words such other personalities‟ will include persons of a lower rank than assistant minster but will not include the president.

Task 5 Test your understanding exercise

Complete this assignment to demonstrate your grasp of the concepts and apply your knowledge to practical scenarios.

Read the journal provided and in 500 words, write an essay on the reasons behind application of diverse rules of interpretation used by the Judiciary. Submit your work on the LMS in word document or pdf

The Law Brigade Publishers (India). 2022,

Click here to access the journal : https://thelawbrigade.com/

REFERENCE LIST AND FURTHER READING

1. Mutunga, W. (1999). Constitution-making from the middle: Civil society and transition politics in Kenya, 1992-1997. SAREAT. Chapter 1-2

2. Ghai, Y. P., & McAuslan, J. P. W. B. (1970). Public law and political change in Kenya: A study of the legal framework of government from colonial times to the present. Oxford University Press. Chapter Three

3. Anditi, S. (2021). Judicial Approaches to Constitutional Interpretation in Kenya. The Law Brigade Publishers. Chapter Three

4. Parliament of Kenya. (2022). The legislative process. http://www.parliament.go.ke/sites/default/files/2022-08/FS02%20The%20Legislative%20Process.pdf

Task 6: Complete this assignment to enhance your knowledge on module topics

END OF MODULE ASSESSMENT 1.2

1. What is the primary difference between common law and equity?
A) Common law is based on statutes, equity is not
B) Common law is rigid, equity is flexible
C) Common law is created by the executive, equity by the judiciary
D) Common law is based on customs, equity on written laws
Answer: B

2. Which chapter of the Kenyan Constitution deals with the Bill of Rights?
A) Chapter 4
B) Chapter 1
C) Chapter 6
D) Chapter 10
Answer: A

3. Which of the following is NOT a source of law in Kenya?
A) Common law
B) Equity
C) Customary law
D) International law
Answer: D

4. Which court in Kenya has the authority to interpret the Constitution?
A) Magistrate Court
B) Supreme Court
C) High Court
D) Court of Appeal
Answer: B

5. What is the significance of the Judicature Act in Kenya?
A) It establishes the hierarchy of courts
B) It outlines the sources of law
C) It provides for the application of customary law
D) All of the above

Answer: D

TAKE HOME MESSAGE/SELF REFLECTION

From the knowledge gained in this module; what are the key points you would make to an emerging entrepreneur on the significance of sources of law in Kenya?

WHAT'S NEXT?

With the firm foundation of in the foundations of law, you now qualify to delve into the ACTS that directly affect business operations. You are welcome to module 5 where you will learn about the nature of business contracts.

MODULE 5: THE NATURE OF CONTRACTS

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

This module introduces you to the fundamental aspects of the formation, enforcement of the essential elements required for a valid contract, and the legal implications of contractual agreements.

LEARNING OUTCOMES

At the end of this module, the learner should be able to:

1. Identify various types of contracts
2. Describe the essentials of a valid contract
3. Examine sources of breach of contract
4. Apply the principles of the law contract law in business transactions.

LEARNING ACTIVITIES/TASK LIST

1. Read materials on the nature of contracts
2. Watch module related videos
3. Complete module quizzes
4. Determine sample cases on validity and breach of contracts
5. COMPLETE END OF MODULE ASSIGNMENT

INSTRUCTIONAL MATERIALS

READING MATERIAL 1

NATURE OF CONTRACTS

A contract is an agreement giving rise to obligations which are enforced or recognized by law. It differs from other contracts such as domestic arrangements and social invitations because it creates legal relations.

Contracts are take various forms which include:
Specialty contracts: Must take a special form e.g. evidenced in writing (a receipt) or written.
(i) Evidence in writing means that material evidence must satisfy the courts that it contained terms of the contract. (These are contracts which must be evidenced by some notes or memorandum). The note therefore should contain: the names of the parties, the subject matter of the contract, the signature of the party to be charged or his agent, the consideration (value).

(b) **Written** contracts are those which under the law must be written, that is embodied in a formal document e.g. hire purchase agreement, contract of marine insurance, contracts of guarantee, contract of sale of land.

2. Simple contracts: These are contracts whose formation is not subject to any legal formalities.
The contract may be: oral, written, partly oral and written, implied form conduct of the parties
Examples include; contract of sale of goods, partnership agreement, and construction contracts.

3. Contracts under seal: Contracts under seal: this is a contract drawn by one party, sealed and sent to the party / parties for signature. Such a contract requires no consideration e.g. a lease agreement, mortgage, charge.
4• ***Contracts of record***: these include the judgments of the courts and personal recognizances.

Formation of Contracts

A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with. The following video discusses the essentials of a valid contract.

Task 1.5: Watch/Listen to the following short videos to enhance your knowledge on how contracts are formed

SHORT VIDEOS ON THE FORMATION OF CONTRACTS

Having watched/listened to these three short videos, create a blog to discuss the elements that the courts use to validate business contracts.

Video 1: https://youtu.be/5sYHuHmGCtw
Video 2: https://youtu.be/gVjL5lt79dY
Video 3: https://youtu.be/NxCt6jK-W0w

Task 2. Quiz: Challenge yourself with this case summary designed to reinforce your practical skills and test your understanding of the material.

Case summary. Mali Ngumu imports cars from Japan and supplies to local institutional customers who comprise of universities, county governments and parastatals. He received an offer from Sharp dealers to supply five vans at a cost of $300,000 within 14 days. After 15 days, he wrote back requesting that he supplies the five vans at a cost of $500,000 citing the fluctuations in the exchange rate. He then went ahead and imported the vans which while at sea, he received information that Sharp dealers had procured vans from his competitor. Mali Ngumu is aggrieved and wants to sue Sharp.

(i) Identify the general principles of the law of contract to be applied in this case scenario.

(ii) Advice Mali Ngumu on whether his concerns are actionable or not using the facts in of the case summary.

Rubrics

(i) General principles:

- The rules of offer and acceptance apply
- According to the rules of offer and acceptance, a contract is formed or becomes valid if one party makes an offer and the other party accepts the terms of the offer absolutely without variation.
- Such offers must be accepted within the stipulated time frame for it to be valid.

- Varying the terms of a contract amounts to a counter offer and therefore extinguishes the contract, giving the offeror the right to extend it to another willing party.

(ii) Mali Ngumu may not succeed in his suit since he failed to respond within the stipulated timeframe and at the same time he varied the terms of the offer, thus nullifying it. (5 marks in total)

Discharge of a Contract

A contract is said to be discharged when the obligation created by it ceases to bind the parties who are now freed from performance. Discharge may take the following forms:

1. Express agreement: The general rule is that what has been created by agreement may be extinguished by agreement.

a) Performance: The general rule is that the parties must perform precisely all the terms of the contract in order to discharge their obligations. For example, in contracts for the sale of goods, if the contract imposes the condition that the goods must correspond with the description and they indeed correspond and are delivered within stipulated time and paid for, then performance occurs.

b Breach: A failure to perform the terms of a contract constitutes a breach

c) Impossibility or doctrine of frustration The doctrine of frustration operates in situations where it is established that due to subsequent change in circumstances, the contract is rendered impossible to perform, or it has become deprived of its commercial purpose by an event not due to the act or default of either party.

Examples of frustration:

(i) Destruction of the specific object essential for performance of the contract: The destruction of the specific object essential for performance of the contract will frustrate it.

(ii) Personal incapacity: Personal incapacity where the personality of one of the parties is significant may frustrate the contract.

(iii) The non-occurrence of a specified event: The non-occurrence of a specified event may frustrate the contract.

(iv) Interference by the government: Interference by the government may frustrate a contract.

(v) Supervening illegality: A contract may become frustrated if it later becomes illegal.

(vi) Delay: Inordinate and unexpected delay may frustrate a contract. The problem is to know how long a party must wait before the delay can be said to be frustrating.

2 Operation of law: A contract may be discharged under operation of law under the following circumstances:

a) Lapse of time: If time is of essence in a contract and a party fails to perform within prescribed time, the contract is discharged.

b) Death: In case of personal services, death of either party discharges a contract.

c) Merger: This is the incorporation of the items of a simple contract into a subsequent written agreement between parties. The simple contract is then discharged

Remedies for Breach

Damages: In most cases, damages take the form of monetary compensation.

Prohibitory injunction: This is a court order which restrains a party from doing or continuing to do a particular thing.

Rescission: It is a remedy to restore the parties to the position they were before the contract.

Quantum meruit: Quantum meruit means as much as earned or deserved. It is compensation for the work done. The plaintiff is paid for the proportion of the task completed.

Task 3 Quiz Ready to show what you've learned?
Attempt the following quiz.

	Instructions Match the statements in A with their appropriate contractual concepts provided in B.

A: Topic statements:

1. Must be communicated to the offeror to validate a contract
2. Renders a contract void.
3. It is defined as an advert aimed at attracting offers.
4. Even if a contract may have the essential elements, it may still be affected by it rendering it void or voidable. Vitiating factor
5. Intended to restore the aggrieved

B: Answer Key

1. Acceptance
2. Illegality

3. Invitation to treat
4. A vitiating factor
5. Compensatory damages

REFERENCE LIST AND FURTHER READING

YOU ARE REQUIRED TO CLICK ON THE LINKS BELOW TO ACCESS FURTHER READING MATERIALS TO ENHANCE YOUR KNOWLEDGE ON THE MODULE TOPICS.

1. CAP. 23. (2022). Kenyalaw.org.
http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2023

2. Highlights of Business Laws (Amendment) (No.2) Act, 2021: Part 1. (2021). Dentonshhm.com.
https://www.dentonshhm.com/en/insights/articles/2021/april/23/highlights-of-business-laws-amendment-no2-act-2021-part-1

END OF MODULE ASSESSMENT

Case Study Analysis

Task 4:5 Read the following case study and in your already formed discussion groups of five members each, Prepare a power point class presentation using two questions at the end of the case study.

In 2019, Cytonn Investments entered into an investment agreement with numerous investors. The agreement promised high returns on investments within a specified maturity period. Investors were assured that their funds would be managed prudently and that returns would be paid as agreed.

As the maturity period approached, Cytonn Investments informed investors that it would be unable to pay the pre-agreed returns due to adverse economic conditions exacerbated by the COVID-19 pandemic. Instead, Cytonn offered two options: extend the investment period by 12 months or enter a standstill agreement extending the maturity period by an additional two years.

A major investor (name withheld), along with other investors, filed a lawsuit against Cytonn Investments, alleging breach of contract. The plaintiffs argued that Cytonn unilaterally altered the terms of the investment agreement without their consent, which constituted a breach of the original contract. They sought a declaration that Cytonn's actions were unlawful, an audit of Cytonn's activities by the Capital Markets Authority, and general damages for the breach.

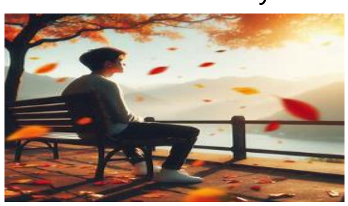
The high court of Kenya ruled in favor of the plaintiffs, finding that Cytonn's investments had indeed breached the contract by failing to honor the agreed terms. The court ordered Cytonn to pay the investors the amounts due, along with interest and costs of the suit. the ruling emphasized the importance of adhering to contractual obligations and the legal consequences of failing to do so.

Having read the case study on breach of contract by Cytonn Investments, answer the following two questions.

1. Discuss three lessons you have learnt from the case study
2. What impact did the breach have on Cytonn?

TAKE HOME MESSAGE/SELF REFLECTION

Think of the ethical issues highlighted in this module. Reflect on what the Kenyan legal system has done to protect commerce by embedding ethics into business regulations.



WHAT'S NEXT?

Module 6: This module is the engine of all commercial activities!

MODULE 6: CONTRACT FOR THE SALE OF GOODS

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

This focuses on the Sale of Goods Act (Cap 31) of the laws of Kenya. The Act governs the sale and purchase of goods. In this module, you will learn about the key principles that guide the exchange process and their practical applications.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Describe the key provisions of the Sale of Goods Act (Cap 31) laws of Kenya
2. Distinguish between key concepts as applied in the Act.
3. Examine the rights and duties of the parties in the sales contract
4. Apply the general principles of the Act in real world case scenarios.

LEARNING ACTIVITIES/TASK LIST

1. Read module notes
2. Complete participation assignment: Quiz 1 and 2
4. Evaluate case scenarios based on the sale of goods Act
3. Watch/Listen to video on Inco terms
5. Complete end of module assignments

INSTRUCTIONAL MATERIALS & LEARNING ACTIVITIES

TASK 1: In this section you will find content on the provisions of the Sale of Goods Act. You are required to read through the materials to enable you attempt module assignments.

Provisions of the Sale of Goods Act (Cap 31) laws of Kenya

The Kenya Law relating to the sale and purchase of goods is contained in the Sale of Goods Act (cap 31). The Act is a reproduction of the English Sale of Goods Act 1893 which was made part of the Kenya Law by the colonial administration in Kenya on 1st October 1931.

The Act defines a sale of goods as *"a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price".*

Goods are defined in Section 2(1) as including "*all chattels personal other than things in action and all implements, industrial growing crops and things attached to forming part of the land which are agreed to be severed before sale or under the contract of sale".*

This covers anything that can be touched, moved or taken away but does not cover land and other species of commercial property such as shares, debts, etc. which cannot be physically moved or taken away.
"Money" may in exceptional cases be "goods". An example is where money is bought or sold as a curio by a person who collects coins. However, money which is used as currency, or legal tender, cannot be sold as "goods".

The legal effect of this definition is that:

- ✓ A sale of goods is "a contract". It's therefore reasonable to assume that the sale of goods contract is to be formed according to the rules which govern the formation of contracts in general, namely, the rules of the common law. Consequently, before a sale of goods can take place:

  i). There must be an offer to buy, or sell, followed by a corresponding acceptance.

  ii). All the other conditions prescribed by the common law for the validity of a contract must be met.

  However, S.6 provides that a contract for the sale of goods worth two hundred shillings or more must be entered into, or evidenced, in writing, otherwise the contract is unenforceable.

- ✓ The contract effects a transfer of "the property in the goods" delineated by it to the buyer. "The property in goods" in this context means "the ownership of the goods" sold or agreed to be sold. In effect what the buyer pays for is not the physical goods but the right to own them. As soon as he has acquired the ownership, he will be in a position to do anything he pleases—usually taking possession of them or reselling them.

  (i) Where the transfer is immediate, the contract constitutes "a sale".

  (ii) Where the transfer is delayed, the contract constitutes "an agreement to sell."

The distinction between sale and agreement to sale

SALE	**AGREEMENT TO SELL**
1. Property in the goods passes immediately at the time of making the contract	1. No transfer of property, the conveyance takes place later so that the seller continues to be the owner until the agreement to sell becomes a sale
2. In case of destruction of the goods the risk passes to the buyers immediately, it is immaterial that the goods were in the sellers	2. If the goods are destroyed the loss, as a rule, falls on the seller.
3. If the buyer neglects to pay, the seller can sue for the goods even though the goods are still in the in his possession	3. If the buyer fails to accept and pay for the goods, the seller can only sue for the damages and not the price
4. The property is with the buyer, therefore, the seller who is in possession of the goods cannot resell them	4. The property in the goods remains with the seller and as such, he can dispose off the goods as he likes, and the original buyer can only sue him for a breach of the contract
5. If the seller is adjudged insolvent, the buyer the buyer who has already paid the	5. If the buyer has already paid for the goods, and the seller is adjudged insolvent,

price is entitled to recover the goods from the Official Receiver or Assignee as the property in the goods rests with the buyer.	the buyer can only claim a rateable dividend (as a creditor) and not the goods because the property in the goods still remains with the seller

TRANSFER OR PASSING OF PROPERTY

Assuming that the seller has a right to sell the goods, it becomes necessary to determine the precise moment when the transfer of the property in goods, envisaged by the contract of sale, takes place. Such determination is important because:

(a) It determines when risk in the goods pass to the buyer; if the goods were destroyed accidentally it would be necessary to know which party has to bear the loss.
(b) It determines the remedies available to the parties.
(c) It is the essence of the contract of sale of that property.

<u>General Rule</u>

The general rule is that the property passes in accordance with the intention of the parties, express or implied. In practice, however, buyers and sellers, not being lawyers, do not distinguish, as the lawyer does, between ownership and possession of goods. In realization of this fact, the Act provides the rules which will govern the passing of property from the seller to the buyer. These rules are contained in Section 20 of the Act and are follows:

Sample case summary 1: Interpretation of ownership and possession

Case Example: Wanjiru v. Karanja

Facts: In this case, Wanjiru sold a car to Karanja. The agreement stipulated that Karanja would take possession of the car immediately but would complete the payment in installments over six months. After taking possession, Karanja failed to make the subsequent payments. Wanjiru sought to reclaim the car, arguing that ownership had not fully transferred due to the incomplete payment.
Legal Issue: The main issue was whether Wanjiru retained ownership of the car despite Karanja having possession, given the incomplete payment.

Interpretation: The court emphasized that under Section 20 of the Act, the property in the goods does not pass to the buyer until the conditions of the sale are fulfilled, which in this case included full payment.
Decision: The court ruled in favor of Wanjiru, allowing her to reclaim the car. This decision underscored the principle that ownership and possession are distinct concepts under the Sale of Goods Act, and ownership remains with the seller until all conditions of the sale are met.

CONTRACT FOR "WORK AND MATERIALS"

A contract for the sale of goods must be distinguished from contract for work and material. The contract of goods act does not apply to contracts for work and services. Where the subject matter is an undertaking to use skill in producing a particular article e.g., a painting, the contract is for work and material.

Sample case summary 2: Interpretation of work and materials

In Robinson v Graves a dispute arose over an agreement under which an artist had promised to make a portrait for 250 guineas. The question which had to be considered was whether the agreement constituted a sale of goods so that the provisions of the Act can applied to it. It was held by the English Court of Appeal that the agreement was not sale of goods but a contract for "work and materials".

Although a good was to be ultimately delivered, the substance of the contract was not a transfer of its ownership (since it did not exist at the time of the contract) but the application of the artist's skill towards its production. What was to be paid for was the work to be done by him, and having been paid for the work, he must deliver the physical object or material he produced or made. Such a contract, not being a sale of goods, is not governed by the Act.

Terms of Sale of Goods contract

The terms of a contract of a sale of goods are the same as the terms of other contracts. They are governed by the common law which relies on the intention of the parties as the basis of their classification.

Implied terms

There are certain terms, called conditions and warranties, which are implied into every contract covered by the Sale of Goods Act, unless the contract shows a different intention.

The implied terms are as follows.

1. Conditions

(a) Right to sell.

Section 14 (a) provides that there is an implied condition that the seller has ***a right to sell*** the goods and, in the case of an agreement to sell, that he will have a right to sell at the time that the property is to pass.

The primary aim of this provision is to protect a buyer who unknowingly bought, or agreed to buy, goods which had been stolen.

(b) Correspond with description

Section 15 provides that, where goods are sold by description, there is an implied condition that the goods correspond with the description. A sale is by description when:

(i) The goods are unascertained or future goods
(ii) The goods are specific but are bought as "a thing corresponding with specific description".

(c) Correspond to sample and description. Section15 (2) provides that, where there is a sale of goods by sample as well as by description, the goods must correspond with the description as well as the sample.

(d) *Goods are of "Merchantable quality".*
Section 16 (b) provides that, where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that they are of "merchantable quality. Although "merchantable quality" is not defined by the Act it is generally stated in legal textbooks that goods are of "merchantable quality" if they are reasonably fit for the purpose or purposes for which the goods of that kind are generally bought.

(e) Fitness for purpose: That goods which are bought for a particular purpose are reasonably fit for that purpose

This condition is implied only if:
- ✓ The particular purpose was made known to the seller, expressly or by implication.
- ✓ The goods are of a description which it is in the course of the seller's business to supply.
- ✓ The buyer relied on the seller's skills or judgment. The reliance will generally be assumed, and is based on the fact that selling the goods is the seller's profession or business.

This provision limits liability to manufacturers, wholesalers, retailers and dealers. Private sales of second-hand goods are presumably excluded from its operation.

(f) Bulk of goods shall correspond with the sample.
Section 17 provides that where the goods are bought by sample, there is an implied condition that the bulk will correspond with the sample in quality. If a sale is by sample and description the goods supplied must correspond with both the sample and the description

Effect of Breach
S.13 (1) provides that the breach of a condition entitles the buyer to treat the contract as ended and to sue for damages, or to affirm the contract and sue for damages.

Exclusion of Liability
Section 55 enables the seller to exclude or limit liability for a breach of any of the implied conditions. It however provides that an express condition does not negate a condition implied by the Act unless they are mutually inconsistent. But an express warranty cannot negate the effect of an implied condition.

This is illustrated by Baldry v Marshall in which a clause which exempted the sellers from liability for breach of any "guarantee or warranty, statutory or otherwise", was held not to exonerate them from liability for breach of implied condition that the goods were reasonably fit for the particular purpose for which they had been bought.

MASTERY EXERCISE 1.1

Task 2. Quiz

Match the **Terms of a Sale of Goods contract to appropriate descriptions**

1. Regarding the sale of goods Act, the Section on implied condition as to the quality of fitness of goods: section 16
2. Right of unpaid seller: Lien
3. Breach of warranty: Damages
4. Goods delivered but of different description: Rejection
5. A refrigerator that does not cool: merchantable quality

NEMO DAT QUOD NON HABET

Another common law maxim that applies to sale of goods is "*nemo dat quod non habet":* a person cannot give that which he does not have. This maxim has been incorporated into every contract of sale of goods by section 23, which provides that "where goods are sold by a person who is not the owner thereof and who does not sell them with the consent or authority of the owner, the buyer acquires no better title to the goods than the seller had".

This principle was developed by the common law courts to protect the interest of the true Owner of the goods.

Consequently, if the goods had been obtained by fraud and the seller had a voidable title thereto, the buyer would acquire a voidable title even if he were not aware of the fraud. If the seller had a valid title, the buyer would get a valid title.

Stolen Goods

Where goods have been stolen and the thief has been prosecuted and convicted, the property in the goods reverts in the original owner. This is so even if the goods had been resold or otherwise dealt with in the meantime.

This provision may be viewed as supplementing the provisions of the Penal Code pertaining to theft by making it impossible for a client of a thief to plead his innocence as a ground for retaining stolen goods. This rule should make people extremely careful when buying goods so that they do not buy them from a thief. If that really happened thieves would have no buyers and would be forced to abandon stealing. Unfortunately this is not so and some people knowingly buy stolen goods because they are generally cheaper to buy.

Task 3.6: Incoterms

Read through the following article on Incoterms and thereafter post on the forum about your reflections and observations regarding the types of incoterms used in international trade and their significance. After posting your blog, also comment on other learners' posts about the same activity.

Role of incoterms

Click on the link below to access the materials
The Importance of Incoterms | RTS International.
https://www.rtsinternational.com/article/importance-incoterms

OBLIGATIONS OF PARTIES

Duties of the seller

a) Duty to deliver the goods
b) Duty to pass a good title
c) Duty to put the goods into a deliverable state

"It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale." (Section 28.)
"Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for the possession of the goods." (Section 29)
Where goods have been delivered to the buyer, and he has had a reasonable opportunity of inspecting them, he is deemed to have accepted them.

d). *Duty to Deliver Right quantity*

Delivery must be of the exact quantity—if it is too much or too little the buyer may reject the whole. If quantities are stated as "more or less" the seller is allowed a reasonable margin. If, however, that margin is exceeded, the buyer may reject the goods. Each case has to be judged on its own merits.

DELIVERY

This is the voluntary transfer of possession from one person to another. Delivery generally takes any of the following forms, namely
(a) Physical transfer of the goods
(b) Delivery to common carrier

(c) Delivery of documents of title
(d) Transfer of the means of obtaining the delivery
(e) Delivery by atonement

Rules of delivery
(a) The goods must be in a deliverable state
(b) Unless otherwise agreed, the cost of putting the goods into a deliverable state is borne by the seller
(c) Whether it is for the seller to transmit the goods to the buyer or for the buyer to take delivery thereof depends on the terms of the contract
(d) Unless otherwise agreed the place of delivery is the sellers place of business, if any if not, his residence.
(e) In a sale f specific goods which the parties know are in some other place, that other place is the place of delivery.
(f) If the goods are in the hands of a third party, delivery takes place when such party notifies the buyer that he holds goods on his behalf.
(g) If the seller is bound to transmit the goods
(h) Delivery by common carrier is prima facie complete when the goods are handed on to the carrier.
(i) If the seller delivers more goods than contracted the buyer is entitled to
- ✓ Reject all the goods
- ✓ Accept those included in the contract and reject the balance or
- ✓ Accept all the goods and pay at the contract rate.

(j) If the seller delivers less goods than contracted, the seller is entitled to:
- ✓ reject all the goods or
- ✓ Accept and pay at the contract rate.

(k) If the goods delivered are mixed with goods of a different description, the buyer is entitled to
- ✓ Reject the goods or
- ✓ Accept those included in the contract and reject the balance.

(l) Unless otherwise agreed the buyer is not bond to accept delivery by instalments
(m) Where delivery is by instalments to be paid for separately and the seller makes one or more defective deliveries or the buyer neglects or refuses to accept and pay one or more deliveries, whether this is treated as a severable breach or a total repudiation of the contract depends on
- ✓ The terms of contract
- ✓ The circumstances of the case.

(n) If the buyer refuses to take delivery as of right he would not be bound to return the goods but must notify the seller his refusal.

Duties of the buyer
a) *Take delivery*;

Under section 2 of the Act, it is the duty of the buyer to take delivery of the goods failing which the seller may maintain an action against him for damages for non-acceptance pursuant to section 50(1) of the Act.

b) Pay the price - under section 28 of the Act it is the duty of the buyer to pay the price of the goods failing which the seller may maintain an action against him for the price pursuant to section 49 of the Act.

Remedies of the parties for breach of contract

Remedies of the Unpaid Seller

Remedies of the unpaid seller are either real or personal. Real remedies are remedies against the goods and are enforceable without judicial intervention. Personal remedies are remedies against the buyer and enforceable through the courts.

Personal Remedies:

(a) *Action for Price -* Section 49 provides that the unpaid seller has a right of action for the price of the goods:

- ✓ Where the property in the goods has passed to the buyer and he refuses to pay for them according to the contract.
- ✓ If the buyer has agreed to pay for the goods on a certain day, and he wrongfully refuses to pay for them.

(b) Action for damages

Section 50 provides that where the buyer wrongfully neglects or refuses to accept and pay for the goods (i.e. the property in the goods has not been passed to the buyer) the seller may maintain an action against him for damages for non-acceptance. The amount of damages will be the estimated loss caused by the buyer's breach of contract.

Real remedies

(a) Right of Lien or retention of goods

Sections 41 to 43 give the unpaid seller who is still in possession of the goods the right of lien (i.e. the right to retain them until payment or tender of price) in the following cases:

- ✓ Where the goods have been sold on credit but the term of credit has expired.
- ✓ Where the goods have been sold without any stipulation as to credit.
- ✓ Where the buyer becomes insolvent.

The lien will be lost if the unpaid seller delivers the goods to a carrier or other bailee for transport to the buyer, without reserving the right of disposal of the goods. It will also be lost where the buyer (or his agent) lawfully obtains possession of the goods, or where the unpaid seller waives his rights.

Where part delivery has been made, the unpaid seller has a lien over the rest of the goods, provided that the part delivery already made does not amount to a waiver of the right of lien.
The lien is for the price or for the unpaid balance of price only, and not for any accidental expenses, such as storage charges.

(b) Stoppage in transit
Sections 44 to 46 provide that, where a buyer becomes insolvent, the unpaid seller has a right of stopping the goods "in transit". This right is exercisable only while the goods are still in transit. If transit is at an end, the right is also at an end.

Goods are in transit from the time they are delivered to a carrier by land or water or other bailee, for the purpose of transport to the buyer, until the buyer or his agent takes delivery of them from the carrier or bailee.
(c) Right of Re-Sale
The seller may re-sale the goods under Section 48 if the buyer does not pay for the goods, or tender their price, within the agreed or a reasonable time.

This right of re-sale is allowed in the following three cases:
- ✓ Where the goods are of a perishable nature.
- ✓ Where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price.
- ✓ Where the seller expressly reserves a right of re-sale.

Remedies of the buyer
(a) Damages for non-delivery
Section 51 (1) provides that: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

Section 51 (2) further provides that "the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract."

S.51 (3) provides that "where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the differences between the contract price and the market or current price of the goods at the time when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver."

(b) Specific Performance
Section 52 states that "in any action for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its judgement or decree, direct that the

contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. Judgments for specific performance are usually only made where the goods are unique or of some special value e.g. an article of special artistic value or of rarity.

(c) Damages for Breach of Warranty
Section 53 provides that, where there is a breach of warranty by the seller, the buyer is not entitled to reject the goods on that account. He may, however, "set up against the seller, the breach of warranty in diminution of extinction of the price"; or he may sue the seller for damages for the breach of warranty.
(*d) Recovery of price*
(e) Rejection of the goods

REFERENCE LIST AND FURTHER READING

1. Mativo, J. N. W. (2018). Business Law. Nairobi: Focus Publishers Ltd.

2. National Council for Law Reporting. (2009). The Sale of Goods Act (Cap. 31). Nairobi: National Council for Law Reporting with the Authority of the Attorney General.

END OF MODULE ASSESSMENT 1.2

Task 4.6: Quiz 3

Read the following case scenario and complete the multiple choice quiz.

Sister Visanga purchased a new washing machine from a reputable electronics store in Nairobi. The washing machine was advertised as having advanced features, including energy efficiency and a high-capacity drum. After using the machine for a week, Jane noticed that it was making unusual noises and not spinning properly. She contacted the store, but they refused to replace the machine or offer a refund, claiming that the warranty did not cover the issues she was experiencing.
Jane decided to take legal action against the store, claiming that the washing machine was not of merchantable quality and that the store had breached the implied conditions under the Sale of Goods Act.

Questions

1. What is the primary legal issue in this case?

A) Breach of contract
B) Defamation
C) Negligence
D) Breach of implied conditions of merchantable quality
Answer: D

2. If the court finds in favor of Jane, what is the most likely outcome?
A) The store will be required to replace the washing machine or provide a refund
B) Jane will be awarded punitive damages
C) The store will be required to issue a public apology
D) Jane will be required to keep the defective washing machine
Answer: A

3. What must Jane prove to succeed in her claim that the washing machine was not of merchantable quality?
A) That the washing machine was the cheapest model available
B) That the washing machine was not fit for the purpose for which it was commonly bought
C) That the store had a history of selling defective goods
D) That she did not read the warranty terms
Answer: B

4. If the store argues that the warranty does not cover the issues Jane is experiencing, what legal principle might Jane rely on?
A) The principle of caveat emptor (buyer beware)
B) The implied condition of fitness for purpose
C) The principle of force majeure
D) The implied condition of quiet possession
Answer: B

5. What remedy is Jane seeking in this case?
A) Specific performance
B) Damages for defamation
C) Replacement of the washing machine or a refund
D) Punitive damages
Answer: C

TAKE HOME MESSAGE/SELF REFLECTION

What's that one thought that will stick with you as far as the provisions in the sale of goods Act are concerned?

WHAT'S NEXT?

We appreciate you taking time and interest in learning Business Law up to this point. The next module is related to the sale of goods act, and it is about instalment selling.

MODULE 7: SALE BY HIRE PURCHASE

INSTRUCTIONAL HOURS: 4,

MODULE OVERVIEW. This course provides a detailed exploration of the Hire Purchase Act (Cap 507) in Kenya, which regulates hire purchase agreements. The course covers the legal the key principles, and practical applications of the Act, offering you a comprehensive understanding of how hire purchase transactions are differ from sale, and credit sale transactions.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Describe the provisions of the Hire Purchase Act (Cap 507) laws of Kenya
2. Distinguish between Hire Purchase and sale of goods, and other contracts
3. Examine the rights and obligations of the parties to the hire purchase contract.
4. Apply the hire purchase principles to real-world commercial transactions

LEARNING ACTIVITIES/TASK LIST

1. Listen to a recorded lecture
2. Review module notes
3. Complete Module Quiz
4. Analyse provided case scenarios.
5. COMPLETE END OF MODULE ASSIGNMENT

TASK 1.7 LISTEN TO THE FOLLOWING VIDEO TO ENHANCE YOUR UNDERSTANDING OF THE MODULE TOPIC.

UPON COMPLETION, ATTEMPT TO SOLVE A SAMPLE LEGAL SITUATION IN TASK 4

	RECORDED LECTURE ON TOPIC (CLICK ON THE LINK) Hire. (2019). *Hire Purchase - Meaning, Features, Parties and Differences*. YouTube. https://youtu.be/fwMi9kQ-TNE

	READING MATERIAL 1

Hire Purchase Law in Kenya

In Kenya Hire Purchase Contracts are governed by Hire-Purchase Act, Cap 507, Laws of Kenya.

Defined as a credit agreement, the Hire Purchase Act Cap 507 Section 2 defines a hire-purchase agreement as: *"an agreement for the bailment of goods under which the Bailee may buy the goods or under which the property in the goods will or may pass to the Bailee".*

Section 3 (1) provides:

"This Act applies to and in respect of all hire-purchase agreements entered into after the commencement of this Act (commencement date is 2nd November 1970) under which the hire-purchase price does not exceed the sum of four million shillings or such other higher or lower sum as the minister, may, after taking into account market forces from time to time prevailing, prescribe other than a hire-purchase agreement in which the hirer is a body corporate, wherever incorporated; but that monetary limitation does not apply so as to affect the definition of "hire-purchase business" in Section 2 (1)

The essence of a hire-purchase agreement is that the goods are on hire only, and the property (i.e., the right of ownership) does not pass to the hirer until the final instalment of the total hire purchase price is paid.

Key Terminologies

Hire-purchase business - means a business, whether carried on alone or with other business, of entering into hire-purchase agreements, whatever the hire-purchase price under any agreement;

Contract of guarantee: In relation to a hire-purchase agreement, means a contract, made at the express or implied request of the hirer, to guarantee the performance of the hirer's obligations under the hire-purchase agreement,

Hire Purchase Price: means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, including any sum payable by the hirer by way of a deposit or other initial payment.

Hirer: The buyer, called the "hirer" is said to hire an item such as machinery or equipment from the seller (owner) and pays an agreed amount in monthly payments. The hirer does not own the item until he has made the final payment.

Bailment: A 'bailment' is defined as **a non-ownership transfer of possession**. Under English common law, the right to possess a thing is separate and distinct from owning the thing.

Bailee: The person to whom goods are delivered (buyer) is called the **"bailee."**

Bailor: The bailor is the owner (seller) of such goods although they may not have been delivered by way of bailment.

According to the Hire-Purchase Act a hire-purchase agreement must be made in writing in two copies and one copy has to be given to the buyer. The agreement must be dated and signed by both parties.

The seller or the financier retains the right to take back the object of the sale, if the buyer neglects his contractual obligations, or the right of ownership in the object of the sale normally until the purchase has been fully paid.

NATURE OF HIRE PURCHASE AGREEMENT

- As the ownership remains with the owner until the final instalment is paid, the hirer cannot pass on any title even to an innocent purchaser. Thus, a purchaser of goods will be compelled to return the goods to the original owner.

- There is no contract to sell the goods unless the option to purchase is exercised, or the goods are bought at their exhibited or agreed cash price.

- Payment of the price in cash for goods originally intended for hire purchase converts the transaction into an actual sale within the meaning of the Sale of Goods Act.

- If the hirer fails to pay any instalment, the owner is entitled to take back the goods and the hirer will have no claim over the instalments he has already paid. The amount paid will be treated as hire charges for the good(s) until the final instalment is paid and unless the hirer elects to purchase the goods, the agreement remains one of hiring.

However, upon payment of the final instalment, the property in the goods passes to the hirer who becomes the owner.

Hire purchase and credit sale

Credit sale is different from hire-purchase agreement. Credit sale arises when there is an agreement for the sale of goods on credit basis. In this case, like in hire-purchase agreement, the purchase price may be paid in future by way of instalments. However, in credit sale, the goods become the property of the buyer upon payment of the first instalment. In case of failure to pay the instalments in time the owner cannot repossess the goods but can sue for the sum due.

- ✓ In hire-purchase there is no agreement to buy but only an option to buy which is given to the hirer.

  Goods under credit sale can be subjected to execution but goods on hire are not liable for execution on account of hirer's debts since the goods are not his. Upon being given notice by the owner, a landlord of the hirer has no right to levy distress on hired goods.

- ✓ A hire purchase agreement must be registered with the Registrar of Hire-purchase Agreements within thirty days after making the agreement. Unless the agreement is registered:

  a). No person shall be entitled to enforce the agreement against the hirer or against the guarantor, and the owner will not be allowed to recover the goods from the hirer and;

  b). No security given by the hirer or the guarantor shall be enforceable against the hirer or the guarantor by any holder thereof.

A hire-purchase agreement also differs from a simple hire agreement in which case there is no option to purchase the hired good. The goods must be returned upon expiry of the hire period e.g., a vehicle hired to ferry mourners to a funeral must be returned to the owner after the funeral event.

Chattels mortgage or pledge agreements also differ with hire-purchase in that in case of default the chattels can be sold and the buyer can acquire good title. A hirer cannot pass a good title to a third party by selling the goods while on hire.

MASTERY EXERCISE 1.1

Task 2.

Use the information from the recorded video in task 1.7 to attempt the quiz below

True or False Questions

1. True or False: Hire purchase agreements help businesses acquire expensive assets without paying the full price upfront.

Answer: True.

2. True or False: In an instalment purchase, the buyer gains ownership of the asset immediately after the agreement is signed.

Answer: True.

3. True or False: In a leasing agreement, the lessee gains ownership of the asset at the end of the lease term.

Answer: False. Ownership typically remains with the lessor unless there is an option to purchase.

4. True or False: Both leasing and hire purchase agreements allow the user to possess and use the asset during the agreement term.

Answer: True.

5. The use of hire purchase agreements can lead to decreased sales for small businesses.

Answer: False

Essential Requirements of a Hire Purchase Agreement

(i) Every hire purchase agreement must be in writing (Section 5).

(ii)It must be delivered for registration to the registrar within thirty days from the date of execution whereupon a certificate of registration is issued. The registrar can extend the period if failure to register was accidental or was due to inadvertence or any other sufficient cause.

(iii) The agreement must be in English language and must

(a) Describe the goods;

(b) Indicate the cash price and hire purchase price;

(c) Indicate due date of the installments and

(d) Indicate the rights of the hirer.

As is the case in all contracts, a hire-purchase agreement confers contractual rights and imposes corresponding duties or obligations on the parties in the express terms agreed between them.

The following general duties of the owner and hirer must be fully discharged if they have to be released from contractual liability

Duties of the owner

i*). Notice of cash price*: Under section (1) it is he duty of the owner to notify the prospective hirer the cash price of the goods in a prescribed form

ii). *Furnish copy*: Under section 6(2) (d) of the Act, within 21 days of the execution of the hire purchase agreement, the owner must send a copy thereof to the hirer.

iii). *Deliver the goods:* It is the duty of the owner to put the hirer in possession of the goods let under the hire purchase.

iv). Indemnity: It is the duty of the owner to compensate the hirer for any loss or liability arising by reason of any defects in the goods or hire.

v). Disclosure of defects: the owner is bound to disclose to the hirer any defects in the goods or in his title.

Duties of the Hirer

i). *The duty to take delivery of the goods*: Failure or neglect to take delivery, or rejection of the goods, amounts to fundamental breach for which the owner may treat the contract as repudiated. The owner has the right to rescind the contract and sue for damages to compensate him for actual loss (if any) directly arising from the hirer's breach.

ii). *The duty to exercise reasonable care of the goods in his possession*: Breach of this duty gives the owner the right of action for damages in negligence. If damage to the goods is willfully inflicted, the owner may institute civil proceedings based on the tort of trespass to the goods and/or take criminal action against the hirer for malicious damage to property. The hirer, as a bailee, must exercise such degree of care as is reasonably expected of a prudent bailee in his position.

iii). *Not to remove or permit the removal of the goods* from the premises where they are ordinarily located or from Kenya without the written consent of the owner.

iv). *To pay the hire-purchase instalments as they fall due*: Default in payment of due instalments amount to serious breach for which the owner may terminate the hire-purchase agreement and repossess the goods subject, of course, to the number of instalments in arrears, and the proportion of the hire-purchase already paid as at the date of breach. If the hirer has paid at least two-thirds of the hire-purchase price, then the owner is precluded from repossessing the goods but can sue for the balance of the purchase price.

v). *To continue hiring the goods for the agreed period and not to re-let, sell or part with possession thereof:* where assignment of the option to purchase is expressly prohibited in the agreement, breach of this duty on the part of the hirer by re-letting or parting with possession of the goods to a third party gives the owner the right to terminate the agreement and repossess the goods. It is immaterial that the instalments are promptly paid either by the hirer or the third party as they fall due unless assignment is allowed by agreement and notice of such assignment, if that be the case, is duly given to the owner.

If the hirer fails to discharge any of the foregoing duties, the owner has the following rights and remedies:

i). *To terminate the agreement and repossess the goods*. Upon repossession, the hirer may redeem the goods within twenty-eight days by payment to the owner of the net balance due together with reasonable costs incurred by the owner in and incidental to taking possession of the goods, any amount properly incurred by the owner on the storage, repair or maintenance of the goods and any additional interest which becomes due under the agreement.

ii). *Sue for damages*

*H*owever, the hirer has *the right to damages* for any breach of the contract by the owner.
He *has the right to terminate the contract* at any time before the final instalment falls due.
He is entitled to *quiet possession of the goods let.*

REPOSSESSION OF GOODS

Unser section 15 (1) of the Act, if at any time 2/3 of the hire purchase price has been paid by the hirer or any other person on his behalf, the owner cannot repossess the goods other than by court action.

This provision is intended to protect the hirer from the common law practice of *snatch back* under which the owner would repossess the goods at any time.
If the owner repossesses the goods in contravention of this section, the effect would be:

- ✓ the hire purchase agreement terminates
- ✓ the hirer is discharged from all liability under the agreement
- ✓ the hirer is entitled to recover all sums paid under the agreement or the contract of guarantee.
- ✓ The guarantor is entitled to recover any sum paid under the contract of guarantee or under the security given.

The section does not adequately protect he hirer in that:

- ✓ The hirer must pay too much to be protected by this section,
- ✓ Property in the goods does not pass to the hirer even after paying 2/3 of the hire purchase price,
- ✓ He court may still order the repossession of the goods.

Task 3: Case Study

Read through the following case study to help you distinguish between a hire purchase agreement and a sale of goods contract. What elements in the case study identifies it as a case of hire purchase? Form new groups and make a presentation in the next synchronous meeting.

In 2023, a dispute arose between XYZ Electronics Ltd. (the seller) and Tisha Watu (the buyer) regarding the purchase of a high-end laptop. Tisha Watu had entered into a hire purchase agreement with XYZ Electronics Ltd., while he believed it was a straightforward sale of goods agreement. Tisha Watu defaulted on his payments after making three installments. XYZ Electronics Ltd. repossessed the laptop, leading John Doe to file a lawsuit claiming that he was the rightful owner of the laptop and that the repossession was unlawful.

Completion and Termination of a Hire Purchase Agreement

A hire-purchase agreement may be terminated either party or by the owner in accordance with the terms of the agreement, or pursuant to the Hire-Purchase Act as the case may be. The agreement may be discharged or terminated in any of the following ways:

- ✓ *By performance, in which case the parties are fully discharged from their respective contractual obligations.* Discharge by performance simply means the owner and the hirer have fully complied with the terms of the hire-purchase agreement.
- ✓ By notice issued by the hirer in accordance with Chapter 507; or
- ✓ By breach on the part of either the hirer or owner, in which case the injured party acquires the right of action for compensation.

Section 15 of the Act protects a hirer who has paid an amount equal to or in excess of two thirds of the total hire-purchase price and restrains the owner from taking any steps to recover possession of the goods in the event of the hirer's default except under an order of the court, or unless the hirer has terminated the agreement in the prescribed manner. If the owner breaches section 15 then the agreement is terminated and;

The hirer is released from all liabilities under the agreement and is entitled to recover from the owner by suit all payments made under the agreement or under any security given by him in respect thereof; and;

b) The guarantor is entitled to recover from the owner by suit all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

Where at least two instalments of the hire-purchase price remain due and unpaid, the owner may remove the whole or any part of the goods to any premises under his control for the purpose of protecting them from damage or depreciation and retain them there pending the hearing of the suit, but without prejudice to the powers of the court to make any other directions for their preservations.

Removal for safe custody as aforesaid does not amount to repossession within the meaning of the Act.

The owner is liable to the hirer for any loss of or damage to the goods during, or in the process of, such removal or retention.

REFERENCE LIST AND FURTHER READING

1. Institute of Chartered Accountants of India. (2024). Accounting for hire purchase and installment purchases. ICAI.

2. Smith, J. (2024). Hire purchase and installment systems. Accounting Guide Publications.

END OF MODULE ASSESSMENT 1.2

Task 4 Quiz 2

Read through the following case and answer the questions that follow. Upload the answers in the system using word document or PDF.

George entered into a hire purchase agreement with XYZ Electronics Ltd to acquire a high-end television. The agreement stipulated that John would pay monthly installments over a period of 24 months, after which he would own the television outright. The agreement also included a clause that allowed XYZ Electronics Ltd to repossess the television if John missed more than two consecutive payments.

Incident

After making timely payments for the first 12 months, John faced financial difficulties and missed three consecutive payments. XYZ Electronics Ltd repossessed the television without prior notice to John. John argued that the repossession was unlawful as he was not given any notice or opportunity to rectify the default.

Rubric

Answers: Under the Hire Purchase Act (Cap 507), George had the right to receive notice before the repossession of the goods and an opportunity to rectify the default. He also has the right to sue.

The court should award damages for breach of contract.

TAKE HOME MESSAGE/SELF REFLECTION

Now that you have completed the module, what is your take home message?

WHAT'S NEXT?

Congratulations for going through module 7. See you in Module 8, where you will learn about the agency law and its relevance in business management.

MODULE 8: AGENCY LAW

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

In this module you are going to interact with the provisions of the agency law. You will also explore how agency law contributes to the management of business activities.

LEARNING OUTCOMES

At the end of this module, you should be able to:

1. Describe key terms used in the agency law
2. Discuss legal principles governing the creation and termination of agency relationships
3. Analyze the duties, rights and liabilities of agents and principals
4. Illustrate how provisions of the agency law are applied in dispute resolution.

LEARNING ACTIVITIES/TASK LIST

1. Participate in a discussion forum
2. Read blog article on Toyota Kenya dealership
3. Complete module Quiz
4. Review disputes

5 Complete end of module assignments

INSTRUCTIONAL MATERIALS & LEARNING ACTIVITIES

Task 1.

Watch/Listen to the video below to familiarize yourself with the Agency Law. After listening to the video, complete multiple choice questions in task 3 to test your knowledge on agency relationships.

VIDEO 1 (https://www.youtube.com/watch?v=lgKAjsvf8rs

Task 2.

Read the following article describing the agency relations between Toyota Kenya and car dealers and write an essay of not more than 300 words on the key provisions of the agency law in the article. Share your work with your group members

Please click on the link below: https://www.edrawmax.com/article/coca-cola-value-chain-analysis.html

Task 3: Quiz 1

Complete the following multiple choice quiz.

1. Which of the following is a typical scenario for agency by necessity?

A) An agent making decisions during a natural disaster

B) An agent entering into a contract without the principal's knowledge

C) An agent acting within their usual authority

D) An agent refusing to act on the principal's behalf

Answer: A

2. Agency by necessity is most commonly recognized in which type of law?
A) Contract law
B) Tort law
C) Maritime law
D) Criminal law
Answer: C

3. Which of the following can terminate an agency relationship?
A) Mutual agreement
B) Death of the principal or agent
C) Completion of the agency purpose
D) All of the above
Answer: D

4. Who is liable when an agent acts within their authority?
A) The agent
B) The principal
C) The third party
D) Both the agent and the principal
Answer: B

5. Which of the following statements is true regarding the liability of third parties?
A) Third parties are always liable to the principal
B) Third parties are never liable to the agent
C) Third parties may be liable to the principal if they breach the contract
D) Third parties are only liable if the agent discloses the principal's identity
Answer: C

REFERENCE LIST AND FURTHER READING

1. Masomo Msingi Publishers. (2020). Law of Agency – Business Law. Masomo Msingi Publishers. Retrieved from https://masomomsingi.co.ke/law-of-agency-business-law/

2. Kenya National Examinations Council (KNEC). (2022). Law of Agency Notes. KNEC. Retrieved from https://knecnotes.co.ke/2022/05/10/law-of-agency-notes/

3. University of Nairobi. (n.d.). Law of Agency - Lecture Notes 6. Studocu. Retrieved from https://www.studocu.com/row/document/university-of-nairobi/commercial-law/law-of-agency-lecture-notes-6/7746746

END OF MODULE ASSESSMENT 1.2

Think of a hypothetical car manufacturing company with branches in several countries abroad.

(i) Identify the types of agencies the company may create

(ii) Describe how the agency relationships in the company may be terminated by operation of law.

(iii) What would be the legal implications of such termination?

Answer Rubrics

Termination of agency by operation of law.

1. On the death of either the agent of the principal, an agency terminates automatically
2. When either the agent or principal is confirmed to be mentally unstable, the agency relationship may not continue.
3. If either the principal or agent becomes bankrupt, the law terminates the agency as the bankrupt party lacks the capacity to contract.

Legal implications

4. Compensation: If the termination of the agency breaches the contract, then the aggrieved party becomes entitled to compensation
5. Third party rights: The law requires that the termination of agency be communicated to third parties who dealt with the agent to avoid liability for unauthorized acts

TAKE HOME MESSAGE/SELF REFLECTION

Think of the key points you would highlight to an emerging entrepreneur on the challenges of the agency relationship in the management of a multinational company.

WHAT'S NEXT?

- Congratulations for going through this module. See you in Module 9.

MODULE 9: THE LAW OF NEGOTIABLE INSTRUMENTS

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

In this module you will learn about the instruments used in money transactions, the regulations governing their usage as well as their role in business activities.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Identify various forms of negotiable instruments
2. Describe their usage in business operations
3. Examine the role of banks in application of the instruments
4. Apply the provisions of the Act in real world legal situations

LEARNING ACTIVITIES/TASK LIST

1. Watch/Listen to recorded lecture on provisions of the Bill of exchange ACT
2. . Review module materials
3. Complete module Assignment
4. Review practical cases
6. Complete end of module assignments

INSTRUCTIONAL MATERIALS & LEARNING ACTIVITIES

Task1.

To understand the role of negotiable instruments in commercial activities, you are required to watch/listen to the following video by clicking on the link provided.

You Tube	**https://youtu.be/nY4Mhx9_DLs**

KEY TERMS

Bills of exchange

A bill of exchange is "an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer". Bills are commonly used in International trade.

The person issuing the order is called the *drawer,* and the person to whom it is addressed is the *drawee*. If the bill is made payable to a named person, or to his order, it is an order bill and he is the *payee.*

Discounting. - receipt of the amount of the bill from a bank or financial institution less the discount for the unexpired duration.

Endorsement. - This is the signing or executing a bill by a party for the purpose of negotiating it to another

Dishonor – This is a failure to honor a bill of exchange

Notaries Public – An advocate, who attests or certifies deeds and other documents and notes or protests dishonored bills of exchange

Cheques: Under section 73 (1) of the BoE Act a cheque is defined as a Bill of Exchange drawn on a banker payable on demand. Section 73 (2) provides that provisions of the Act applicable to a Bill of Exchange payable on demand apply to a cheque except as otherwise provided in the Act.

There are two main banks to a cheque:

- Paying Bank: This is the banker on which the cheque is drawn. It is the banker liable for the amount.
- Collecting Bank: This is the bank in which the cheque is deposited for payment.

Bank notes

A bank note is a promissory note issued by a bank to pay to a bearer on demand the amount of the note. When presenting a note for payment it is not necessary for the bearer to reveal how he came by the note, but if the circumstances arouse suspicion the bank would be entitled to refuse payment until satisfied of good faith; if however, the bearer sued the bank for its refusal, the burden of proving bad faith would rest on the bank.

Task 2. Quiz 1: Drag and drop assignment

You are required to use information in Video 1 to complete the following Essay

Negotiable instruments are used for purposes of payment or [[1]] and as[[2]]. Bills of exchange are some of the most common types of negotiable instruments

A bill of exchange is a [[3]] used primarily in [[4]] that binds one party to pay a fixed sum of money to another party on demand or at a predetermined date. While a bill of exchange is not a [[5]] itself, the involved parties can use it to specify the terms of a transaction, such as the credit terms and the rate of [[6]]. Unlike a [[7]] a bill of exchange is a written document outlining a debtor's indebtedness to a creditor. The difference between a promissory note and a bill of exchange is that the latter is [[7]] and can bind one party to pay a [[9]] that was not involved in its creation. Banknotes are common forms of [[10]].

Answer Key
1. Credit
2. Security
3. Written order
4. International trade
5. Contract
6 Accrued interest
7. Cheque,
8. Transferable
9. Third party
10. Promissory notes

Role of Banks in application of negotiable Instruments

Negotiable instruments are widely used by banks in Kenya to facilitate commercial transactions. Bills of exchange are integral to international trade and commercial finance in Kenya. Banks in Kenya provide discounting services for bills of exchange, where they pay the holder of the bill before its maturity date at a discounted rate, enhancing liquidity for businesses. This service helps traders manage cash flow more effectively while reducing the risk of non-payment.

By using negotiable instruments, banks contribute significantly to the efficient operation of commercial transactions in Kenya. They help secure payments, minimize transaction risks, and enhance business confidence, all of which are vital to Kenya's economic growth and development. Through services like cheque clearing, promissory note collection, and bill discounting, banks offer businesses the tools they need to operate in a secure and stable financial environment.

Relationship between banks and customers
There is a simple contractual relationship between the banker and a customer. It is a debtor-creditor relationship with modification that the banker is only liable to repay the customer when payment is demanded. If the account shows credit balance the bank is the debtor and the customer the creditor. If the account reflects a debit balance the customer is the debtor and the bank is the creditor.

Duties of the customer

1. Duty of Care: The customer is bound to exercise reasonable care when drawing cheques to guard against alterations. The banker is not liable for any loss arising if the customer has failed to exercise reasonable care.

2. Notice of irregularities: The customer is bound to notify the banker of any irregularities affecting the accounts e.g., forgeries or unauthorized which the customer is stopped from relying on the irregularity.

Illustration

In the case of Greenwood v. Martins Bank, a husband noticed that his wife had withdrawn monies from his account by forging his signature but to avoid publicity, he did not notify the bank. Subsequently his wife shot herself dead. He then notified the bank of the irregularities. Ruling: The House of Lords held that the bank was not liable as the customer had failed to notify it of the irregularity. He was estopped from relying on it.

DUTIES OF THE BANKER

1*. **Duty of Care***: The banker is bound to exercise reasonable care and skill in his dealings with the customer.

A breach of this duty may arise by:
a) Failure to obtain reference or follow them up on opening an account.
b) Failure to obtain the name of customer's employers. When the information is obtained there is no legal obligation to update it.
c) Failure to obtain the name of the husband's employer when an account is opened for a married woman.
d) Collecting for the private account of a director cheque payable to the company.

The standard of care and skill is that of a reasonably competent banker. If the banker fails to exercise such care and skill, the customer has an action in damages for any loss arising for professional negligence.

2. ***Professional Advice***: The banker is bound to give the customer professional advice on request. He is bound to give advice on investments as and when requested failing which he is liable in damages.

3. To observe secrecy by keeping the financial affairs of the customer confidential. Exceptions to this rule are:
a) Where disclosure is in course of legal proceedings.
b) Where disclosure is reasonably necessary for the protection of banker's interests either as against the customer or as against 3rd parties in respect of transactions of banker for or with their customer.
c) Where disclosure is necessary for protecting the banker or public against fraud or crime.
d) Where disclosure is made with customers consent

4. ***Duty to Honor Cheques***: The banker is bound to honor all cheques drawn by the customers provided:

a) The cheque is complete and regular on the face of it

b) The customer's account has sufficient funds

c) The cheque is presented at a reasonable hour on a business hour and business day.

d) The payee identifies himself to the satisfaction of the banker.

e) If a banker fails to honor a cheque in breach of this duty, the customer has an action in damages.

5. Duty of Secrecy: The banker is bound to maintain confidentially in his dealings with customer. He must not discuss to 3rd parties any information which comes to him in the course of his dealings with the customer.

5. Duty not to pay without Authority: The banker must not pay any monies out of the customer's account without his express or implied authority failing which he is liable in damages for breach of duty. However, the authority of a banker to pay a cheque drawn on him by a customer may not be exercised in the following circumstances:

Countermand of payment: This is an express instruction by the customer to his banker not to honor a particular cheque

If the banker has notice of the customer's death
If the banker has notice of the customers' unsoundness of mind
If the banker has notice of presentation of a bankruptcy petition against the customer in court.
If the cheque is irregular e.g., amounts in words and figures do not tally.
If the customer's account has been frozen by a court order.
If the cheque is presented before time (postdated cheque) or after six months (stale cheque)
If the payee has no title thereto
The customer's account has insufficient funds
The customer has since closed his account.

Bank Drafts

A bank draft is similar to a cheque but is issued by a bank, guaranteeing the payment. It is a safer alternative when a guaranteed payment is needed.

Task 3. Quiz 2: You are required to read the following case scenario and answer the questions that follow. Post your answers on the discussion forum

Mkulima Bora V Bank of Nyamakima

Facts: In this case, the plaintiff, Mkulima Bora, sued County Bank of Nyamakima after a dishonored cheque was returned due to insufficient funds in his account. Mkulima Bora had issued a cheque to a third party, but the bank failed to honor the cheque, leading to damage to his reputation and economic loss. The plaintiff argued that the cheque was a negotiable instrument, and the bank was obligated to honor it if sufficient funds were available at the time it was issued. The court ruled in favor of the plaintiff, Mkulima Bora, stating that the bank wrongfully dishonored the cheque. The court awarded damages to Mkulima Bora for the wrongful dishonor and the harm caused to his reputation and business interests.

Questions

1. Identify the general principles applicable in the case

Answer Rubrics:

Principles

a) Dishonor of an instrument
b) Breach of contract

2. Give reasons why the court awarded Muiruri

i) Breach of duty to pay

ii) Breach resulted in economic loss and damaged reputation

(iii) Bank had contractual obligation to honor as long as the cheque was complete and there were sufficient funds

PR0TECTION OF PAYING BANKER

Section 4(!) of the Kenyan Cheque Act provides that where a banker, in good faith and in the ordinary course of business pays a prescribed instrument (a cheque or draft) drawn on him to a banker, he doe not in doing so incur liability by reason only of absence of or irregularity in endorsement of the instrument. The statutory protection is available to a paying banker when he pays the cheque in the following circumstances:

- *Forged endorsement*: where a banker pays against a cheque drawn on him in good faith and in ordinary course of business, he can debit the account of such a drawer with the amount so paid even though the endorsement of payee subsequently proves to be forged. A banker who pays a crossed cheque is also protected against a forged endorsement provided he has acted without negligence.
- The cheque act provides that a paying banker paying a cheque drawn on him in good faith and in the ordinary course of business which is not endorsed or irregularly endorsed incurs no liability because of absence or irregularity of endorsement.

However, the paying banker received no protection if he pays a customer's cheque when his signature has been forged. This is because the banker has specimen signature of the customer.

PR0TECTION OF THE COLLECTING BANKER

Section 3(2) of Kenya Cheque Act affords protection to the collecting banker who, in good faith and without negligence and in the ordinary course of business:

- Receives payment for the customer of a prescribed instrument to which the customer has no title or has defective title; or
- Credits the customer's account with the amount of a prescribed instrument to which the customer has no title or has a defective title.

Negligence of collecting banker

The following acts have been held amounting to negligence on the part of the collecting banker.

- Opening a current account for someone without making proper inquiries
- Collecting payment for a customer of a cheque which is made out of the customer's employer
- Paying a cheque into a customer's private account which is payable to him in an official capacity.
- Where a customer presents a cheque crossed 'account payee' and he is not the payee named.

Task 4. You are required to read the following journal article and undertake task 5.9

	READING MATERIAL 1 Kumar, A. (2023). Material Alteration in Negotiable Instrument Vis-À-Vis Judicial Interpretation. VIDHIGYA: The Journal of Legal Awareness, 18(1/2), 23–43. https://doi.org/10.5958/0974-4533.2023.00003.9

Task 5. Write short notes of not more than 500 words on the implications of material alterations on negotiable instruments. Post your work on your e-portal.

REFERENCE LIST AND FURTHER READING

1. O'Mahony, D. (2022). A brief history of cross-border payments. Journal of Payments Strategy & Systems, 16(3), 304–317. https://doi.org/10.69554/avtp4900

2. https://archive.org/details/lawofnegotiablei00ogde

END OF MODULE ASSESSMENT 1.2

Read the following case scenario and advice on the legal principles you would apply. If you were working for a legal firm, what advice would you give to the parties involved in the dispute?

In Nairobi Joint Stock Bank v. Macmillan & Arthur*. A clerk of M drew a cheque for M's signature indicating the amount payable as USD500 in figures but not in words. M signed the cheque. The clerk added 2 figures to the two to make it USD 50000 and stated the amount in words. The bank made payments against the cheque. The customer M is aggrieved and blames the bank for the tort of negligence.*

TAKE HOME MESSAGE/SELF REFLECTION

Think about each negotiable instrument studied in this module vis a vis the growth of fintech!

WHAT'S NEXT?

Module 10: Business organizations thrive on creativity and innovation. You will be learning about how companies protect their creations in order to remain competitive in the market place.

MODULE 10: INTELLECTUAL PROPERTY LAW

INSTRUCTIONAL HOURS: 4

MODULE OVERVIEW

This module provides a comprehensive introduction to Intellectual Property (IP) Law, focusing on the legal frameworks that protect innovations. The course will cover various forms of IP, including their significance in both national and international contexts.

LEARNING OUTCOMES

At the end of this module, you will be able to:

1. Examine various types of intellectual property laws in Kenya
2. Describe the importance of these laws in business.
3. Evaluate the role of IP law in promoting innovation and creativity.
4. Apply IP law principles to real-world scenarios and case studies.

LEARNING ACTIVITIES/TASK LIST

1. Listen to prerecorded Lecture Video
2. Watch module related videos
3. Complete participation assignments
4. Review concept discussion exercise
5. Reflect on module using a case study

INSTRUCTIONAL MATERIALS

Time to innovate!

Task 1 Read through module notes and relate the principles to trends in your country's business practices.

Upon completion attempt the MCQ quiz in Task 3 to test your understanding of the key concepts.

INTRODUCTION TO INTELLECTUAL PROPERTY LAW

Intellectual property is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The most common are Copyrights, Patents, Trademarks, and Trade Secrets.

Intellectual Property Rights (IPR)

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

While Intellectual Property (IP) deals with any basic construction of human intelligence such as artistic, literary, technical or scientific constructions; Intellectual Property Rights (IPR) refers to the legal rights granted to the inventor or manufacturer to protect their invention or manufacture product. Intellectual property rights are defined as those rights that allow intellectual property owners alone to benefit from their inventions. Intellectual Property (IP) law relates to the establishment and protection of intellectual creations such as inventions, designs, brands, artwork and music.

On the other hand, Intellectual Property law (IPL) deals with laws to protect and enforce rights of the creators and owners of "intellectual property." It deals with the rules for securing and enforcing legal rights to inventions, designs, and artistic works. Just as the law protects ownership of personal property and real estate, so too does it protect the exclusive control of intangible assets. The purpose of these laws is to *give an incentive for people to develop creative works that benefit society, by ensuring they can profit from their works without fear of misappropriation by others.*

Benefits of intellectual property laws

Intellectual property laws confer upon ***the owners of such property exclusive rights over who is permitted to use their creations.*** These rights include protecting business assets that are critical to its success. Intellectual property (IP) law comprises a set of exclusive rights to exclude others from making, copying, or using certain intangible creations of the human mind.

Protecting a business's intellectual property provides other significant benefits in the commercial world such as:

- Increasing the company's market value through income generation avenues that can include sales, commercialization, and licensing
- Transforming ideas into vehicles for profit

- Creating an image for your business that helps you market your products and services to customers
- Raising money for a business by using IP assets as debt collateral or when applying for government or public funding, as well as through sales and licensing
- Increasing competitive advantage in the global market

In Kenya, Intellectual Property (IP) Law has gained popularity recently due to the growth of Kenya's digital economy, illustrated by increasing investments in intangible assets, such as IP rights. Protection of Intellectual Property is enshrined in ***Article 40(5) of the Constitution of Kenya 2010*** which places the mandate on the government to protect and enforce Kenyan's Intellectual Property Rights. ***Under*** *Article 11 (2) (c)of the Constitution of Kenya*; the State promises to promote the intellectual property rights of the people of Kenya. The same provision is reiterated in Article 69 of the Constitution.

Types of intellectual property laws

There are six main types of intellectual property rights. By understanding the differences between them, an international business entity can better understand how to protect an IP asset.

- ***Copyright law*** protects the rights of creators in their works in fine arts, publishing, entertainment, and computer software. The laws protect the owner of the work if others copy, present, or display the owners work without permission.
- ***Trademark law*** protects *a word, phrase, symbol or design* that is used by an entity to identify its product or service. Examples Apple's apple logo, and Adidas' three stripes. Trademark owners can prevent others from using their marks, or marks which are confusingly similar so that consumers would not be able to identify the source. The following may be trademarked:

  - Name or word
  - Slogan
  - Letter
  - Symbol
  - Design
  - Color

- ***Patent law*** grants protection for *new inventions which can be products, processes or designs* and provides a mechanism for protection of the invention. *The patent law promotes the sharing of new developments with others to foster innovation.* The patent owner has the right to protect others from producing, using, distributing or importing the protected item. Essentially the patent is a property right that can be licensed, sold, mortgaged or assigned.
- The three types of patents consist of:

- *Design patents*: Protection for the aesthetics of a device or invention. Ornamental design patents include a product's shape (Coca-Cola bottle), emojis, fonts, or any other distinct visual traits.
- *Plant patents*: Safeguards for new varieties of plants. An example of a plant patent is pest-free versions of fruit trees. But inventors may also want a design patent if the tree has unique visual properties.
- *Utility patents*: Protection for a product that serves a practical purpose and is useful. IP examples include vehicle safety systems, software, and pharmaceuticals. This was the first, and is still the largest, area of patent law.

Trade secrets are business practices, formulas, designs or processes used in a business, designed specifically to provide a competitive advantage to a business. Trade secrets can include:

- Drug trial data
- Chemical formulas
- Manufacturing processes
- Unique designs

These trade secrets would not be otherwise known to an "outsider" of the business. An example of this is the formula for Coca Cola. Trade secrets are protected without registration and appropriate steps should be taken by the owner to maintain confidentiality. To qualify as a trade secret:

- The trade secret must contain unique, unknown information.
- The company must take reasonable steps to conceal the information from the public.
- The trade secret must have economic value.
- The trade secret can only be known to a limited number of people.

And that a trade secret can involve information that's:

- Business
- Financial
- Technical
- Economic
- Scientific
- Engineering

- ***Industrial Design:*** Industrial design refers to the outward appearance of a product. The special designs of some products may give them an edge in the market based on visual appeal. This form of IP protection seeks to protect the unique design patterns of some products.

- ***Utility Models***: Utility model refers to any form or configuration of an appliance, tool or other object allowing a different (and often better) use or manufacture of the appliance or object, that gives some utility, advantage, environmental benefit or technical effect not available in Kenya before.

Task 2

ONLINE DISCUSSION

Having read through the module notes, use the knowledge gained so far to create a blog to discuss the usefulness of intellectual property rights to a company engaged in environmental entrepreneurship, highlighting the form of protection such a company may require. Share your work with the other learners and popularize your blog.

Task 3

READING MATERIAL 1

Read the notes below and share key points on the discussion wiki

International Intellectual property

Task 4

You are required to read the following article. After the task, summarize the key points in the article highlighting the benefits of TRIPs to youth entrepreneurs operating in the creative and ICT industries. Type your response as a direct text to the LMS or upload as pdf.

The role of TRIPS agreement in International property protection

Click here: https://powerpatent.com/blog/t /

Task 6: Practical skills

Read the following case study on violation of IP rights. What lessons have you learnt from the case study? Type your answers to the LMS and submit in pdf for assessment.

CASE STUDY

The FTA broadcasters claimed that CAK's authorization allowed two broadcast signal distributors (BSDs), Pan African Network Group (PANG) and Signet Kenya Limited, along with pay TV broadcasters like Star Times Kenya Limited and GOtv Kenya Limited, to retransmit their broadcasts. This retransmission occurred without the broadcasters' permission, leading to allegations of copyright infringement. The broadcasters filed a petition in the High Court of Kenya, seeking a permanent injunction to stop the unauthorized transmission of their content. They argued that their copyrighted material was being used without their consent, which constituted a violation of their IP rights. The Supreme Court ruled in favor of the FTA broadcasters, emphasizing the importance of respecting IP rights in the digital broadcasting transition. The decision underscored the need for regulatory bodies to ensure that IP rights are not infringed upon during such transitions

Rubric

Key Lessons

1. Recognition of IP Rights: The law of intellectual property recognizes the protection of individual and corporate rights against unauthorized use.
2. Regulatory Oversight: CAK plays a vital role in regulating the broadcasting sector and ensuring compliance with relevant laws
3. Public Interest: There are instances when an act is not just illegal because it is against statute, but that it affects the larger or the broader public interest. In this case, the public have a right of access to digital broadcasting.

Implications

4. A robust legal frameworks and regulatory oversight are pre-requisites to safeguarding IP rights. The judiciary plays a critical role in upholding the law, ensuring justice through dispute resolution.
5.The digital space is delicate in terms of IP.

REFERENCE LIST AND FURTHER READING

1. Rutenberg, I., Ouma, M., & Munyi, P. (2019). *Intellectual Property Law in Kenya.* Kluwer Law International. Retrieved from https://law-store.wolterskluwer.com/s/product/intellectual-property-law-in-kenya/01t0f00000J4pXJAAZ

2. Kenya Institute for Public Policy Research and Analysis (KIPPRA). (2020). *Overview of Intellectual Property Rights: The Case of Kenya.* KIPPRA. Retrieved from https://repository.kippra.or.ke/bitstream/handle/123456789/2694/WP18.pdf?sequence=1

3. University of Nairobi. (2023). *Intellectual Property Law - Lecture Notes. University of Nairobi.* Retrieved from https://www.studocu.com/row/document/university-of-nairobi/commercial-law/intellectual-property-law-lecture-notes/7746746

END OF MODULE ASSESSMENT 1.2

ACCORDING TO RESEARCH, SMALL AND MEDIUM ENTERPRISES (SMES) ARE NOT ABLE TO COMPETE FAVORABLY DUE TO LACK OF INNOVATION. TO SUPPORT SMES IN YOUR COMMUNITY, IDENTIFY COMMON INEFFICIENCIES IN SERVICE DELIVERY AND DEVELOP AN INNOVATION TO SOLVE IDENTIFIED INEFFICIENCIES.

1. WHAT FORM OF PROTECTION WOULD YOUR INNOVATION REQUIRE AND WHY?
2. DESCRIBE THE PROCESS OF ACQUIRING IP RIGHTS FOR YOUR CREATION

TAKE HOME MESSAGE/SELF REFLECTION

Congratulations on completing your Business Law course! This is a significant milestone in your academic journey and a crucial step towards your professional development.

Reflect on this journey and part yourself on the back. As the journey continues, stay compliant!

WHAT NEXT?

The knowledge and skills you've gained in this course are powerful tools you are required to use to contribute to the success of Business activities in your industry. Use them appropriately and professionally to contribute positively to the business community and society at large. Best of luck!