

KENYA SCHOOL OF LAW
DIPLOMA IN LAW (PARA-LEGAL STUDIES)
COMMERCIAL LAW 1 - COURSE OUTLINE
ACADEMIC YEAR 2014/2015: TERM 1
LECTURER: DAMARY AYUKU-ANGULU

COURSE DESCRIPTION

This course will endeavor to facilitate a clear understanding of the basic principles of Commercial Law. Accordingly, the students will be able to acquire a general understanding of the various laws, concepts and principles that attend to the commercial practice and their significance to the efficient and lawful carrying on of business and any meaningful commercial practice and in our day to day life. The student will be able to understand the various laws whether statutory or common law based that govern the principles of commerce.

At the end of this course, the student should be able to:

- Explain the meaning of commercial law and its components;
- Give an over view of the law relating to Sale of Goods, Agency and Hire Purchase in Kenya;
- Explain the meaning of property in goods and how such property may be transferred from one person to another;
- Explain the meaning of the doctrine *of nemo dat non habet and its exceptions*;
- Understand the terms and conditions in a contract for Sale of Goods;
- Analyze how the property and risk passes in a sale and under hire purchase;
- Explain the rights of an unpaid seller and the remedies available to the Seller;
- Distinguish between a sale and hire;
- Explain how agency is created, the rights and duties of an agent, the principal and how third parties may be affected; and
- Explain how agency relationship may come to an end.

COURSE EVALUATION

The Course will be evaluated as follows:

Continuous assessment tests	30%
Final examination	70%
TOTAL MARKS	100%

HOURS OF TEACHING

The Subject lecturer shall deliver 3(three) hours for the morning class and 2 (two) hours for evening class per week for the entire term. Alternative arrangements shall be made in consultation with the class for contact hours that are lost for whatever reason.

STATUTORY REFERENCE

1. Sale of Goods Act, Chapter 31 of the Laws of Kenya
2. Hire Purchase Act, Cap 507 of the Laws of Kenya
3. Limitation of Actions Act, Cap 23 of the Laws of Kenya

RECOMMENDED STUDY TEXTS

1. P.S Atiyah *et al*, *The Sale of Goods.*, (Harlow; Pearson Longman; 2005)
2. J.K Macleod, *Sale and Hire Purchase*, (London; Butterworths; 1971)
3. A.G. Guest (ed.), *Benjamin's Sale of Goods*, (London; Sweet & Maxwell; 1981)
4. Brian Ball and Frank Rose, *Principles of Business Law* (London; Sweet & Maxwell; 1979)
5. Aubrey L. Diamond, *Diamond's Introduction to Hire Purchase Law* (2nd ed)(London; Butterworths; 1971)
6. Gordon J. Borrie, *Sourcebook of Commercial Law*, (London; Butterworths; 1967)
7. E.R. Hardy Ivamy, *Casebook on Mercantile Law*, (London; Cape Town; 2006)
8. Shawn Kopel, *Guide to business law* (8th ed), Thomson Learning; London; 2007
9. Keith Abbot *et al*, *Business Law* (8th ed), Thomson Learning; London; 2007
10. J.K. Macleod and A.T. Hudson, *Stevens & Borrie Mercantile Law* (17th ed), (London; Butterworths; 1978)
11. Ewan Macintyre, *Business Law*, (2nd ed), (Harlow, Pearson Education Ltd; 2005)
12. Kibaya Imaana Liabuta, *Principles of Commercial Law* (2nd ed) (Law Africa, 2006)

N/B

You may also look at other texts in the library that are generally titled Commercial Law, or Business Law or Mercantile Law. Also look at text books by Ashiq Hussein and J.J. Ogola that will be instructive for grasping the basic concepts of commercial law.

SPECIFIC TOPICS

1. PART ONE: THE LAW OF SALE OF GOODS COMPANIES

- a) Introduction, meaning of sale of goods; goods, seller, buyer, property in goods, price/consideration, contractual capacity.
- b) Conditions and Warranties in the sale of goods
 - Conditions: right to sell, sale by description, sale by sample, quality/fitness for particular use, merchantability.
 - Warranties: quiet enjoyment; freedom from charges or encumbrance
- c) Transfer of property in goods
 - Rules for determining the passing of property
 - Ownership, possession and delivery
 - Transfer of risk
- d) Transfer of Title by a person who is not the owner-the *nemo dat rule*
 - Right to transfer
 - Exceptions to the *nemo dat rule*
- e) Performance of Contract
 - Rights of unpaid Seller
 - Remedies of an unpaid seller-right of lien, right of stoppage in transit, right of resale, and suit for damages.
 - Remedies for the buyer-suit for non-delivery, price, specific performance, damages for breach of warranty/condition
- f) Rights and duties under the Standard Contracts
 - FOB Contracts
 - CIF Contracts
 - FAS Contracts
 - Ex-ship Contracts
 - Ex-works contracts
- g) Attempts to harmonise rules for international sale of goods-UNDROIT, CISG(UNICITRAL), INCOTERMS 200 (ICC)

2. PART 2; THE LAW AGENCY

- a) Introduction; definition of agency; agency contrasted with the other relationships.
- b) Creation of agency relationships; express authority, ratification, implied authority, apparent authority, estoppels etc.
- c) Categories and types of agents.
- d) Relationship between the principal and the agent: rights, duties and liabilities;

- e) Termination of agency relationships-express revocation, revocation by operation of the law (death, insolvency, other incapacity, implied revocation).

3. PART THREE; THE LAW OF HIRE PURCHASE

- Introduction and definition
- Hire Purchase vis-à-vis, credit sale and conditional sale
- Requirement for registration of hire purchase agreement
- Cash price
- Conditions and warranties
- Duties or obligations of the hirer
- Termination and completion
- Recovery of possession by suit
- Request for information
- Licensing of hire-purchase business

End

**KENYA SCHOOL OF LAW****DIPLOMA IN LAW [PARALEGAL STUDIES]**

COMMERCIAL LAW2; COURSE OUTLINE

ACADEMIC YEAR 2013/2014; TERM 1

LECTURER: BENARD WASONGA

COURSE DESCRIPTION:

Law as a discipline is not unique in its tendency to reflect the ideology of society at whatever place or time. It permeates in all spheres of life, and the general commercial/business environment itself not being an exception to the phenomena. Against this background, this course will endeavour to facilitate a clear understanding of the basic principles of commercial law. Accordingly the students will be required to understand the basic concepts and principles that attend to the commercial law are of fundamental significance to the efficient and lawful carrying on of business and any meaningful commercial practice and in our every day-to-day life. The student will be able to understand the various laws and principles, whether statutory or common law-based, that governs the general practice of commerce.

COURSE EVALUATION:

The course will be evaluated as follows:

Continuous Assessment Tests	30%
Final Examination	<u>70%</u>
Total marks	100%

CONTACT HOURS:

The subject lecturer will deliver three lecture hours a week for the entire term. Alternative arrangements will be organized for any contact hours that are lost for whatever reasons.

STATUTORY REFERENCES:

1. Bills of Exchange Act, Chapter 27
2. Cheques Act, Chapter 35
3. Bankruptcy Act, Chapter 53
4. Chattels Transfer Act, Chapter 28

RECOMMENDED TEXTS:

1. Brian Ball and Frank Rose, *Principles of Business Law* (London; Sweet & Maxwell; 1979)
2. Gordon J. Borrie, *Sourcebook of Commercial Law*, (London; Butterworths; 1967)
3. E.R. Hardy Ivamy, *Casebook on Mercantile Law*, (London; Butterworths; 1967)
4. Shawn Kopel, *Guide to Business Law*, (Oxford University Press; Cape Town; 2006)
5. Keith Abbot et al, *Business Law* (8TH ed.), Thomson Learning; London; 2007
6. J.K. Macleod and A.T. Hudson, *Stevens & Borrie Mercantile Law* (17th ed.), (London; Butterworths; 1978)
7. Ewan Macintyre, *Business Law* (2nd ed.) (Harlow, Pearson Education Ltd.; 2005)
8. Laibuta K.I. *Principles of Commercial Law* (2nd Ed.) Nairobi, Law Africa, 2006

NB: There are other texts that are instructive in this area of law that are not necessarily in the library. They generally bear the titles of **commercial law, business law or mercantile law**. You may also look at local text books by Ashiq Hussein and J.J. Ogola that will be instructive for grasping the basic concepts of commercial law.

SPECIFIC TOPICS:

1. LAW OF NEGOTIABLE INSTRUMENTS

- Introduction
- Characteristics of negotiable instruments
- Rules relating to negotiable instruments
- Bill of exchange
- Cheques
- Promissory notes

2. LAW OF BANKRUPTCY

- Introduction
- Procedure in bankruptcy
- ✍ Distributable property
- ✍ Bankruptcy and everyday banking

3. LAW OF CHATTELS TRANSFER

- Introduction
- Types of instruments
- Other documents deemed to be instruments
- ✍ Documents excluded - *leases, assignment*
- Form and contents of an instrument *Sec 45, 46, 47*
- ✍ Registration *Sec 16, 4, 5, 7, 8 • Permanent record*
- Attestation
- Renewal
- Satisfaction
- Prescribed forms

<The End – Good Luck>