Academy™

COUNTER BOOK

NYAGAWA, KEVIN
LS 106 -
COMMERCIAL LAW
PRACTICE & PROCEDURE

- Long Life Hard Cover
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2 QUIRE
192 PAGES

ACADEMY
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12th May, 2025

Dr. G. Cosmas

Introduction to Practical Aspects of Commercial Law.

Common Issues are contained:-
- Law of Contract
- Business Law
- Sales of Good
- Laws of Agency
& many more

Other knowledge you have are relevant.

Those basic remain the same.

You are to make them relevant.

The Basic theories you already have them.

Here is Learn by doing.

OBJECTIVES:
1. To be able to:-
(i) Make identification and analysis of practical Issues when one opt to a particular business or organization.
Be able to identify and advise:-
- I think this is sole proprietorship
- If a Partnership

It □ a company
Is it private or Public?

Be able to identify kind of business.

Why Sole Proprietorship and not Company?

Tell us which is right? Your answer might be correct but not the Best.

Let. say the person want to be a business no any interference then SOLE PROPRIETORSHIP is the best.

2. Be able to draft relevant document.
Which document are relevant for this business

If patternership? The Law says it is Contractual relationship.

There should be parties, Consent, Capacity, Consideration, Intention to create legal relation

It can be oral patternership or by a Written Deed / Agreement in a form of a PATTERNERSHIP DEED

NOTE What are the key clauses to be contained? Can be oral but we do advice our clients to have a written deed. We have PAROLE EVIDENCE.

Once you have the document, it cannot be superseded

by the oral accounts (KIMELA Esq).

You may easily know and use in the event of Breach.

NOTE Be able to draft the MEMART (Memorandum and Articles of Association).
↳ if Public or private
What are key clauses in the two.

Know that Public Company need PROSPECTUS

IPO (
What are the contents of each)
of IPO and PROSPECTUS

NOTE You want to wind up the Company or to dissolve the Patternership How can the Court assist?

⟹ How to seek administration order before the Court and which document do you need

3. Be able to demonstrate ~~Sufficient~~ legal skills on:-
- Management and control of these organizations/ Business organization
When you advise your client to form Patternership do you know how to Manage and control -
- Do you know it is rotational? You are the one responsible to Manage
- The PaHeners control and Manage the Patternership.

ACADEMY
PAGE NO.
DATE

But for Company the Board of Directors run the Company. The Company can hire and fire.

The Company run by the Board of Directors but the shareholders control the Company in the Annual General Meeting (AGM)

That we want the company to achieve this and failure we may hire others.

STATUTES are many:-
- National Industry
- Companies Act
- Business name Registration Act
- Service Act
- Sales of Goods Act
- Pharmacist Act - Look respective Law
- And other field, as required by the client, research on other areas where the business may be established

⟹ Conduct legal research on commercial aspect.

Do not read in Isolation. Update yourself. So as you can be able to live up to the day

ACADEMY
PAGE NO.
DATE

GENERAL INTRODUCTION

When you are thinking of going to business, You should be focused. Look the possible structure. Look which is suitable to your client. The need for your client give you which one is suitable.

The practical aspect is choosing the correct structure Receive facts and evaluate them and say this is the correct choice and give reasons.

The choice you make for your client could positively or negatively affect the business continuity

So, you are paid to give the correct answer. Say, given the facts this person should form a Public Company, Private Company, Patternership, Joint venture, or Sole Trade. Be able to identify

The client relies on your skills and competence knowing that you are a Lawyer

ASPECTS BEFORE ADVISING THE CLIENT

1. Ownership

Who owns the Business. After its establishment. Is it the shareholders, sole, or the Patterners.

In case it runs into trouble, who is going to be sued, Is that me or the Business itself?

If Creditors are looking for Money, who will be sued?

Or the Business needs Money from the Creditors

ACADEMY
PAGE NO.
DATE

Who should take party, Is it sole or Directors of the Business.

Now comes to RIGHTS & OBLIGATIONS

How are you going to divide shares?

How your Articles say about DIVIDENDS?

What if no Profit generated in a year?

What are you going to do?

What about ownership of public Company?

2. How effectively the structure you choose is going to protect your client?
- E.g SOLE TRADER
How it is going to protect your client from the liability
It is just the business extension.

You will be sued and your earnings and properties will be at risk.

You and the Business is the same person

You cannot run away from the Liability.

ACADEMY
PAGE NO.
DATE

3 Involvement in the Management
Are you going to be involved?

Is it directly or indirectly?

Are you expected to be there day in day out or you just pay called up-share and now you have PAID UP SHARE that you own shares in the Company and relax or you are going to relax?

You are the shareholder then how are you going to be involved?

You are not going to be involved for day to day operation. Because you will have the Directors.

You will participate on;-

AGM - Annual General Meeting
&
EGM - Extra-Ordinary General Meeting.

4. Tax obligations
You have created the structure now your business is subjected to tax.

If Sole trader, then you are the one liable or you have that obligation. No other person will be involved. You will be assessed in your individual capacity. Sole trader is the same person. To be obligated in his person capacity.

ACADEMY
PAGE NO.
DATE

Look ☐ be interested in personal obligation or Business obligation? & he has to form the Company because he do not want the liability & the Business will be sued as it ☐ different person.

So you have invested but you are not the Business

⇒ Read Companies Regulations - Corporate Tax are Higher than Individual Taxes -.

Individual 10%
Corporate 30%

5. How REGULATED YOUR BUSINESS ACTIVITY WILL BE:-

If you advice the client to form the Bank, what does the Law say about forming a

⇒ Bank? Bank & Financing Act

Bank should be a Company Limited by Shares.

You can't form the Sole Trade or Patternership.

You will be regulated by Bank of Tanzania (B.O.T)

How much should I have? Amount? Minimum amount.

⇒ Nationalwide or Regional Institution?

⇒ What ☐ the Difference between FINANCIAL INSTITUTION AND BANK

Go and digest

ACADEMY
PAGE NO.
DATE

LAW:- Banking and Financial Institution Act

A Lawyer should not know all the Law but where to find it.

⇒ This is a pharmaceutical industry? How many Licence do I need to have

This is Mining - How many Licence do I require? Compliance? Mining Act? Environmental Practical Assessment? How much should I pay to one who Evaluate?

⇒ Before going to Tanzania Investment Centre say? How does Tanzania Investment Act say?

How long will it take? Is it two days a year?

Sole trader, just need a NIDA Number so that process

6. DECISION MAKING ISSUES
How are decision made in this kind of Business?

In Sole trade, you are the decision maker of your business. You're the decision maker and think tank.

Is that what your client want? Want to be ~~got~~ the Controlled? or he want to join forces with the other members
Or want to make decision in the AGM & EGM

ACADEMY
PAGE NO.
DATE

Or Joint Venture say just they have one Venture, want to build Road - Just a Tender.

Requires the two Local Companies to bid the tender and do the task and go separate ways after completion.

You are going to make VENTURE AGREEMENT

or form Separate Company for that Business.

7 Dispute Resolution
How?

8. Expulsion of Business
Is your client looking a venture to supplement his earning?
He already have his earning so he just want to add / Supplement not looking for the International.

or he want to have Multi-national Cooperation? So as he can sell shares in the New york Stock Exchange then here you advice him to form the PUBLIC COMPANY

As you can sell your shares and one interest can buy in the Dar es Salaam Stock Exchange.

With that kind of idea of your client then you advice to form a Public Company. You could advice to form a Sole trade. Look what he looking for?

Is it or he wishes to go Internationally or just want to supplement?

⟹ If he is in Mwanza, and the Business in Dar es Salaam, will it be possible to form a sole trade? No. he should be a silent patterner so he contribute the Capital and form a patternership and actually share profit equally or equitable

9. CAPITAL SHOULD ALSO BE A RELEVANT FACTOR TO BE CONSIDERED
Is your client having a requisite capital?

Does he has capital to establish a Bank?

If he does not have then he should look the other business may be start a FINANCIAL INSTITUTION as the requirement for Financial Institution is lesser far from requirement for Bank and advise to form a Bank after acquiring the capital.

⟹ Say I do not have initial ~~Busines~~ capital? So is there any structure which can help to raise capital ~~for~~ from the Public?

YES, it is a PUBLIC COMPANY, I sell the shares and the Public subscribes, we get 5 Billion and proceed

⟹ Banking requires a Company Limited by shares and Company Limited by guarantee?

ACADEMY
PAGE NO.
DATE

⟹ What is the difference between COMPANY LIMITED BY SHARE and COMPANY LIMITED BY THE GUARANTEE. (Legal and Human Right Centre)

Read here

If a charitable, their liability accrue when and only when the liability comes?

NOTE. Miscellaneous Ammendment (No. 3) of 2019 to know what is the legal status of Company Limited by Guarantee.

⟹ DOES THE PERSON WANT TO BE THE ENGINE OR TO HAVE SEPARATE ENTITY

⟹ OPA Questions

- Makaura's case VS
- Donoghue VS Stevenson
- ATILIO VS MBOWE
- SOLOMON VS SOLOMON

MAKAURA
Personality (Separate personality)

So that you will be liable to your contribution?

What are the Implication of forming each of the structure?

How should the client take INSURANCE POLICY, will of be the Company or himself. What if he takes in his name? What if Losses occur to the Company? Will he be able to recover?

You cannot INSURE what you do not have

ACADEMY
PAGE NO.
DATE

You cannot transfer what you do not have.

Do you have the right to dispose? Do you want that right?

STRUCTURES

1. Sole Trader
2. Partnership
3. Company
4. Joint Venture

Special purpose Vehicle - Special company for that task, particular venture and you go separate ways after the completion of the task / transfer.

SOLE TRADER

Kind of business established whereby an individual runs or operate the business on his own account. Alter ego Extension of oneself.

- In other words, he is a single person undertaking business for profit.

- The following can just be taken as features that distinguishes from the other

FEATURES

1. Conducted by oneself
2. Can be the same name or register a trading name (Business name Registration Act Cap. 213).
3. He has the sole responsibility to the debts of the business and incurs personal liability to the fullest

extent

4. He is responsible in the Management of the Business. He is the one to make decision. The business can raise or crumble due to his or her wrong or right decision.

Is he engage in other Business which would affect other business?
Is he employed?
Where is he working?
He may hire somebody, but responsibility goes to him.

5. On his demise, that is the end of the Business, the Business will go direct to the Administrator who will collect and Distribute,
This is part and parcel of your property. It is part of Inventory. It will be distributed to the heirs.

The sustainability will depend on the or on your presence.

If you die, it will be another business.

6. No formality of ending the business.
You may just inform the Authority that you are Closing your business

Summary - LIMITED LIFE - ends upon death
- LIMITED ACCESS TO FINANCE - You cannot get enough loans
- UNLIMITED LIABILITY - Your house can be sold.

You will absorb all the Liabilities of your Business.

FORMATION OF A SOLE TRADE BUSINESS

Read the Business Registration Act [Cap. 213]

Trading as / T/A what do you need to comply?

Go and Read.

REGISTRATION PROCESS

- Read Section 6 on manners and particulars of registration.
- Section 8 on timeframe for registration
- Read section 9 on restriction on certain business names
- See Section 14 on penalty on unauthorized busine. name.

What is BRELA (Business Registration & Licencing Agency).

PROCESSESSES

- Select Business name
- Filing Form No. 3 BRELA for purpose of name Clearance
- Payment of necessary fees
- Certificate is issued (Registration Certificate)
- Obtain TIN from TRA
- Application to the Municipality
- Appropriate authorities Compliance Eg (TMDA), Previously TFDA, Tanzania Food, Drugs and Cosmetics Act Cap 219

Go & Read?

Where to get the Business Licence?

Municipality - Answer:

- Tanzania Medicines and Medical Devices Act, Cap. 219 TMDA

ACADEMY
PAGE NO.
DATE

ADVANTAGE OF SOLE TRADE

1. It is the least expensive and the most simple business structure to set up and maintain.

2. You have complete control of the management and direction of the Business. No resolution; you are the decision maker and Engine

3. You are entitled to all the Business' profits and successes.
It is your capital so whatever profit is yours. Because you do not want to share the profits.

4. There is little paperwork, Minimal statutory provision and Minimal government regulations that govern how you operate your business.

5. Your business losses can be ~~offset~~ against any other income you earn.

6. It provides scope for greater privacy (i.e. You don't have to disclosure your profits to the public like you would if you operated through public company),

Business Secrecy — Go and reap

No body can ~~still~~ steal from him as it has product a way of doing business. Yours must be better than others.

Eg Selling Rice, your choice of business taste better than of others.

It is different from Partnership, as one can diverge the

Idea same to companies.

If you are the Public Company then you should mention your income.

7. Little Tax liability as you are only required to pay income tax for the profit made.

8. Easy to switch from one business to another without paperwork. For a company it would have required amendment of object clause and file with RROCS

Disadvantage

1. Fully Liability over the debts of the Business - which means your assets (personal) including your house can be be put at risk - UNLIMITED LIABILITY

2. Fully engaged, no room for Leisure

3. The potentiality of the Business to grow is very little. You can not be given Loan which is too High. Different If you were a Company because existence of the Company does not depend on the existence of shareholders.

The Company can be transmitted to heirs or sell your shares to the other.

DISSOLUTION OF SOLE TRADE

As easy as established as easy closed.

Inform the Tax Authority by letter that you are Closing the Business.

Law 2. You may be declared Bankrupt read the Bankruptcy Act

PARTNERSHIP

Governed by LCA Part XI Cap 345

Relationship (contractual) which subsists bth persons carrying on business in common with a view of profit

Section 190 (2)

Can be carried out by all of them or any one of them on behalf of others.

Read ⇒ MAGAMBAZI MINES Co. LTD VS KIDEGE. MINING – CAT TANZLII 7th December, 2012

There should be PROFIT ELEMENT

The purpose should be to make profit. If you have relationship with no profit, that is not a Partnership under the Law. It is something else.

If you have something to help children – Charitable probably that is an NGO or SOCIETY as per the Societies Act

LAW TO BUY ⇒

NGO Act
Society Act

ACADEMY
PAGE NO.
DATE

ELEMENTS OF PARTNERSHIP

Section 190(2) of LCA

1. - Association of two or more persons
2. Result of Agreement
3. To carry business
4. A person may inherit the shares of a partnership but not a partner until you do NOVATION of a PARTNERSHIP

CREATION OF PARTNERSHIP

Section 191 of LCA - by Agreement.
Can be oral or in writing - the Law allows

In practice it is very difficult to run an oral Partnership especially when you want to get profit.

In writing it is called PARTNERSHIP DEED
↓ Components
Name
Parties
Capital Requirement
Rules of Engagement
What are the do and don't (Rules of obligation)

FORMATION OF PARTNERSHIP

Is very sensitive and delicate. Be cautioned as to who is going to be your partner, have a MUTUAL CONFIDENCE AND UTMOST GOOD FAITH
Know your partner well otherwise there will be trouble Soon.
Trust your partner. Make sure he will protect your mutual Goal.

It should be for the best interest of your partnership and not for INDIVIDUAL.

Choose your Partner with care and Patient.

As a partner you should be truth worthy to avoid near dissolution.

It is a due diligence matter

It is like choosing a wife or husband in the Law of Marriage Act

There is Courtship, the aim being to know better if she will be your wife.

It is the Union intending to Last to life.

Same should apply to Partnership

Because one Partner is the agent of other Partner.

One action of the one Partner binds the all other Partner.

The Liability are JOINTLY and SEVERALLY, we cannot stop as Creditor until the debt is cleared.

Better Half or bitter half. So prepare yourself.
- Successful
- Sour - downfall
  - Your capital will be lost
  - Not matter who made the decision.

CAPACITY

- Person of sound mind
- Age of Majority
- Minors not required
- See ss. 10, 11, 12 and 21 of LCA
- Bankrupt not allowed

⟹ Can a Partnership enter into a contract?
No, because it ~~cannot because~~ is not a Legal person but can enter through the individuals who have shares.

MUTUAL RIGHTS & DUTIES

The rights and Duties could be provided in the Partnership Deed (Incorporated there).

Oral agreement is good if things are normal.

- Dismissed?
- Reprimanded?
- Remove?
- Dissolve?

} In oral we cannot have something to refer in oral but in Deed we can.

Bank? Partnership Deed become good.

IMPORTANT CONTENTS IN DEED OF PARTNERSHIP

1. Name of firm, partners, and Address
2. Nature of business
3. When the business is going to start.
4. Duration - 3yrs
5. The amount of capital to be contributed by all

ACADEMY
PAGE NO.
DATE

6. Ratio of sharing,
Equally or Equitably?

Or □ if one □ going to contribute a car or a House (Head quarters)

How □ it going to be valuable? so calculate the Rent as well in the sharing aspects.

7. Salaries, Commission, if payable to partners
E.g If I bring more tasks what Am I entitled to?

8. Division of task
Diverse activities, who □ going to be in charge

9. Powers and duties of each partner.
should be very clear.

10. Rules in case of retirement, death, and admission of new partner.
How about liabilities accrued during your presence?

After your death, to whom should the shares of your go?

Or should we admit another by NOVATION or DEED

11. Expulsion of Partners rules
- Suspension, dismissal, Repremand,
Will you receive profit while in Repremand?
Suspension should have effect

If expelled, what happens to your capital?

12. Not to carry competing business rules
Conflict of interest
To pull resources together
Youre there to make profit for the firm and not to compete.

13. Dissolution of Partnership Rules
When should it come to an end?
It could be by an application by the one party.

Those interested can form alter or Verge.

14. Dispute Resolution
Are we going to Court or to a Mediator?

15. Governing Law
Which Law will govern.

16. Signatures
Parties should sign

17 Attestations / Notary public

It is a Registrable document to the Registrar of the Documents.

EXPRESS AUTHORITY OF A PARTNER
- A partner can act on behalf of others once authorized by others to deal with third parties.

ACADEMY
PAGE NO.
DATE

IMPLIED AUTHORITY

By being a Partner, it is expected that he will have implied authority to do a certain thing. We call it incidental authority.

Given the circumstance of the case.

STATUTORY RESTRICTIONS

- Certain acts have been by the Law excluded from the scope of Implied authority of a partner:-

Section 201 (2) (a-h) LCA to include but not limited to

1. Submit dispute with a third parties
   All parties must consent
2. Opening Bank Account on behalf of Partnership
   All should be aware
3. Compromise or relinquish any claim on behalf of the partners
4. Admit any liability in relation of a suit against the Firm
5. Buying of Immovable properties in relation to the Firm.
   All should have knowledge.

DUTIES OF PARTNERS

- Absolute & Qualified Duties

Read
Absolute - You must adhere to as per the Law S. 192 of LCA, - Just, faithful, full information, true account for the best of a firm
Qualified - Parties may agree otherwise

ACADEMY
PAGE NO.
DATE

Absolute S. 192

PRINCIPLE of GOOD FAITH

a. Duty to do for the interest of the firm

b. Duty to indemnify for fraud.
Compensate for that Misconduct.
Section 194 (9) of LCA

c. Due diligence
S. 192 and 194 (5)
If acted negligently then pay for compensation.

QUALIFIED DUTIES

1. Duty not to make secret profit.
Unless otherwise agreed, then the partner may be liable to the firm if he make secret profit to the detriment of other partner
Do, in Lower season for your own survival

2. Duty not to compete S. 196 (b)
Unless otherwise agreed, without consent of the other partner

If there is consent then you can proceed.

3. DUTY NOT TO ASSIGN HIS INTEREST
Make sure the firm get profit

4. S. 196 (c)
S. 194 (d)
S. 196 (a)
S

ACADEMY
PAGE NO.
DATE

LIABILITIES

S. 201 – 210

OR A NEW PARTNER

S. 198

UPON NOVATION

From that date of Novation

OR. RETIRED. PARTNER

S. 208

Does not cease to be liable, he will be liable to liabilities accrued during his/her existence.

DISSOLUTION OF PARTNERSHIP

Parties decides

1. BY AGREEMENT
2. COMPULSORY DISSOLUTION – Law
3. CONTIGENT DISSOLUTION
4. DISSOLUTION BY NOTICE AND
5. DISSOLUTION BY COURT

AGREEMENT

Section 212 (a)

Member may request and parties may agreed. It By a Party. Autonomy

COMPULSORY

S. 214 – No Liberty

You are ending because it has to come to an end.

It is contrary to the Law as previously was okay. but the Law has changed

Or if the objective is illegal from the beginning.

It will be compulsorily dissolved.

Read also Section 23 of LCA

⟹ NOTE Small scale Mining - Local and Foreigner
Now comes the Law saying it should be formed by Locals only so it has to end.

CONTIGENCY DISSOLUTION

Occurence of ~~the~~ something:-

Eg

1. Expiry of time S. 212 (a)
2. Completion of Business
3. Death of Partner
   S. 213(1)

If two it ends, If 5 you have to Novate

4. Bankruptcy of a Partner
   One has lost the capacity to contract
   S. 213(c) of LCA

DISSOLUTION BY NOTICE

S. 212 (1) of LCA

ACADEMY
PAGE NO.
DATE

BY COURT

S. 215

A. Where there is different opinion of partners on whether to continue ~~to~~ not to continue then one may go to Court.

E.g One Insane
Losses every time

File a suit for dissolution.

B. Permanent Incapacity

One of the Partner has been incapacitated. He is in Comma. The Court may intervene

It has to be permanent incapacitation.

C. MISCONDUCT BY PARTNERS

Which affect the image of the Partnership
It maybe private

EFFECTS OF DISSOLUTION

S. 218

Preference of Assets

S. 224

- It always start with out liabilities
- Debts
- If it remains then residuals will be divided.

ACADEMY
PAGE NO.
DATE

12th May 2025

Advocate Edward Chuma

COMPANIES IN TANZANIA

We learn the Companies or formation of the Companies because we are supposed to cover the objective studied during the morning session.

1. To have practical knowledge so as to identify the forms of business.
2. To know how to draft documents
3. To know the Management of the form of business.
4. To know how people Exit from these organisation How the company dies?

The basis for this course is the Law of Contract so what are the elements of a valid contract:-

<i> Capacity
<ii> Consent
<iii> Intention to create a legal relation
<iv> Lawfully consideration
<v> Lawfully object
<vi>

How is the contract formed?
A contract is formed when the parties have an intention to create a legal relation

Question I want to do business. I have 100,000,000 won from BET. Advise
You know Interview,
According to facts, open Sole, Partnership or Joint venture

NGo, trust or Societies or Joint venture.

There are kind of quation coming to the Examination Scenario come, prepare opinion then draft necessary documents

Sometime he has already formed an opinion so you proceed.

Or sometimes come that we are in conflict with the Partner, he is having affair with my wife is that a ground for Dissolution of a Partnership.

Merger, Acquisition then how? How do you go about?

Under Section 10 of LCA, all agreement are made by:-

Free Consent
Capacity
Lawfully consideration
and has not been declared to be Illegal
Lawfully object

Eg You have constructed a House but the purpose is for bribery (Madangulo) that is invalid.

Broaden the definition of Consent - Go to the diff definition of an Offer - Section 2 of LCA
And when the other guy freely accept that offer then it comes a PROMISE

And when one person breaches the promise then there are reliefs.

But sometimes the contract can be vitiated by:-

(i) Fraud

(ii) Mistake

(iii) ~~Coesi~~ Cohesion

(iv) Force

(v) ~~Re~~ Misrepresentation

So the above may make the contract voidable at the option of one party.

Mistake ← ~~Natural~~ Common ~~Identity~~

E.g You want to enter into the contract with X but you mistakenly entered into the agreement with Y and Y was aware of such a thing and thought that you are able to enter into contract. Is there contract? No

Why there is no contract?

There is no WILLINGNESS so that contract is Void.

You have the contrad and the subject matter is not there. Can you sue for breach of contract? No because there was no contract.

It is quite different between COMMON MISTAKE & UNILATERAL MISTAKE

Some mistakes does not ~~affect~~ the contract

Before a contract is made there are negotiations they are called Representation.

If there will be innocent Representation then fine but if otherwise, it will be fraudulent misrepresentation. You may sue.

NOTE There is sanchity of the contract, You cannot interfere.

But the Court may agree or intervene. The court may see the express terms and add other terms which are:-
- Terms implied by Court
- By Customs.
- By Law

Sale of Goods Act, there is implied terms that whatever you buy is fit for consumptions.

There are standard terms / contract. E.g Ticket ya Ndege, Law school, SGR, there are standard terms, You either take it or not
⟹ Contra preferentem Rule against the Maker. (Read)

E.g "We will not be Liable for your Loss" should be seen before making payment.

But if you meet that after entering the contract then you will be paid.

Executed consideration
- Same time
Executory consideration

Past consideration

End of contract
- Performance
- Breach
- Frustration
-

Remedies
- Specific
- Compensation

COMPANIES IN TANZANIA

Partnership is the highest stage of doing business in an Unincorporated form.

Company highest form of business in the Incorporated form.

See if at all the Law has been amended

Question Wakenya wakifungua kampuni Tanzania wako wawili Is it right?

Read Section 3 of The Companies Act [Cap. 212 R.E 2002]
The section goes fired to the definition of the company. Two or more people join in incorporated form.

The Law says any person so no mention of the country so it is any person irrespective of their country of origin.

If they want to acquire Land it will be called a foreign Company if it exceeds 75% of shares by foreigners. According to Land Act.

Foreign Companies

Read section 433 of companies

Read section 434 gives the requirements and you are to ~~regi~~ certify all the documents in your jurisdiction and further again you will be required to submit here and you will be given a CERTICATE OF COMPLIANCE.

Section 9 again
- Limited by shares
- Limited by guarantee
- Public
- Private section 27 - No transfer of shares to the public and limit its members to 50 only.

* LIMITED BY SHARES

Liability of members which have been paid up during winding up.

LIMITED BY GUARANTEE

Members agree and guarantee that they will contribute a certain amount to the extent of such guarantee.

ACADEMY
PAGE NO.
DATE

⟹ A private company is prohibited to issued an OFFER DOCUMENT (PROSPECTUS).

PROSPECTUS tells you what is there.

PROSPECTUS in a Law of contract is an Invitation to treat, and not an offer.

You are the one making the offer to take the shares and if they accept it is called ALLOTMENT OF SHARES (Contract to receive shares).

⟹ Capital Market Act — BUY.

All companies are formed by INCORPORATION three Important documents:-

1. Memorandum of Association
This is a document which constitute the constitution of the company.
Outsiders and members inter se:

CLAUSES
(a) Name S. 33, and 30
(b) Registered office
(c) Object clause

If you change the office, NOTIFY the Registrar
Certificate of shares
Name
The purpose on which the company is formed.

But nowadays the objects are customized under the BRELA system.
Read section 35 of companies Act read

4. Capital clause
Provides for the authorize capital of the company, the Limit of the capital and its division (Nominal shares)

5. Subscription clause
This is the clause where the first subscribers become members by signing the Memorandum of Association

The above document is a contract. Once you sign the Memorandum then you may vote, petition for winding up e.t.c

Or you may ask the Court to stop something.

Also you have liability.

ARTICLES OF ASSOCIATIONS
This provides for the internal Management of the Company.

There are guidelines

Class of Shares
Types of Shares
Meetings
Corum

Proxy

Be careful when you are drafting the Articles.

E.g Preferential shares must be in the Articles

When you sign the Articles, you are bound by the term of the Articles

Privity of the Contract - An outside cannot sue the company because he is not party to the agreement

But they are entitled to constructive Notice - as they can actually search BRELA

Read INDOOR Management

Forms to be signed by Directors

G.N No 483
The Companies (Beneficial Ownership) Regulations, 2023

Go & Read ⇒ Mention whoever has the interest.

⇒ For instance, A corporate entity may be a Share-holder of the company then you should mention all the shareholders of that company

If the Registrar will be satisfied then the Company is formed, then we have the so called Consequences of Incorporation:-

<i> Separate personality

(ii) Perpetual succession
(iii) Sue or be sued etc

Amendment to the Companies Act - Section 19 of Companies Act

Read by your own

That was not the purpose of sending to NGO
E.g HAKIELIMU is a Company Limited by guarantee

What was a purpose

Discuss Holding Company } What is it?
Subsidiary Company }

Read the Law, there are some restrictions so be aware of the Companies Act

Also, know what is Group of Companies.

ABSA Company
Bakhresa Group of company
SBC - Pepsi

Question The Companies (Holding & Subsidiary) are different but they have a relationship.

Go and read the law and find answers.

⟹ Under what circumstance do you register the name under sole proprietorship

ACADEMY
PAGE NO.
DATE

⇒ Compulsory registrable name – which one S. 21?

Can you register names when the business is yours and your wife.

Differentiate Registration of names and Business Licence.

If it is your name then what are you registering?

And if it is not your name what do you do?

Holding Companies & Subsidiary Companies

Questions left during Classes

Holding – Main Company which buy shares in a subsidiary company

Subsidiary Company is under the control of the Holding Company.

Holding Company and subsidiary Company

If given a scenario, can you know if it is a Holding or subsidiary.

Holding controls the subsidiary company – More than 50% of the Management of subsidiary Company are from the Holding company.

Read

What is beneficial owner; Is the person who owns an interest from the Company whether registered in its name or not (Indirect or Direct).

ACADEMY
PAGE NO.
DATE

Provides particulars of beneficial owner.

NOTE THIS → Ammendment of section 19 of Companies Act
Companies Limited by guarantee.

It did not abolish the Company Limited by guarantee but it has to do with the object of the Company

NOTE → If the objects are not as per the companies Act then it cannot be formed as such but be go to NGO's or Societies under Societies Act & NGO's Act.

CONSIDERATION

Consideration is important

A contract without consideration is void.

Is there any ~~Consideration~~ Exceptions?

Love is consideration?

Do you have any property?

You may give the property out of Love and affection so that is consideration.

Is that means that Love is consideration?

Love and affection has value.

ICA - Question from Contract

ACADEMY
PAGE NO.
DATE

If your father give you property out of Love and affection. Is that a valid consideration?

Read Section 25 of the Law of contract Act [Cap. 345 R.E 2019].
Provides for Exceptions to consideration
Contract may be without considerations

CASES TO READ

Ruling in PENAL'S CASE
FOX VS BEER
} Go and read

Payment of a lesser sum to the satisfaction
You owe me 1,000,000/= but you say I do not have money but since we are here, I will pay your Bills because You owe me.

If the payment is made before the due date, the

ACADEMY
PAGE NO.
DATE

MANAGEMENT OF COMPANIES IN TANZANIA

A company is an artificial person. But it is a person. So it is an artificial. So it has to be managed by two organs:-

(i) Directors through the Board of Directors
(ii) And by the company itself - Members of the company through AGM

TASK TO READ

Position of Directors in the Company
Are they agent?
Employees?
What are their duties?
How are they being appointed?

When you are registering the company, you should mention Directors, how will they be appointed and how will they retire?

All are contained in the Articles

Is it a must to have shares so as you can be a Director.

Open Section 133 - 150 of Companies.

It provides for Meeting of companies and Directors

Apply to both Private & Public Companies

Interpretation-

ACADEMY
PAGE NO.
DATE

NOTE If you see subjected to Articles - - - Means it can be altered by the Articles of association.

E.g Statutory meeting after incorporation - that is mandate 15 months.

Read which may be altered na Articles and its vice versa.

E.g of Altered Rules are section 136 of Companies Act.

MEETINGS

- Are called by the company
- Are attended by those entitled to attend the Meeting.
- If you have shares you attend and vote
- How you vote depend on Articles.

- The day to day Management are done by Board of Directors through AGM & EGM

- Rights of shareholders is to attend Meeting yourself or by appointing representative (By proxy).

NOTE IMPORTANT
- In these Meetings of a company. The Members may make alteration of the objects of the Company, Articles of Association, Change name of the Company, by special Resolution, decide to issue discount shares S. 68, can increase or reduce shares in the company S. 66 & 61,

Members of the Company in AGM
- Can Make variation of class rights (S.71)
- Can appoint & remove auditors of the Company
- Can appoint Directors of the Company S. 192, 193 of Companies.

{Insolvency}

ACADEMY
PAGE NO.
DATE

- They can declare dividend - out of profit - in the AGM
- They can wind up the company - S. 278

-

The Articles may provide other matters which are not provided under the the Law.

What are the requisite of a Valid Meeting?

1. Meeting must be called by proper authority

Who calls a meeting?

Directors of the Company
Power vested to them
Any person must be authorized by Board of Directors, so secretary proceeds after being authorized by Board of Directors

Go & Read

Protection of Minority shareholder Principle

- Means one that some decisions of Director and affect the Minority shareholders

EXAMINATION 14/05/2025

- Unfair prejudice - Once decision injure the other party - Section 213 of Companies Act.
- The Law allow to take an action before the court
- How can it be sent to court and which documents?

Go & Read

Irregularity

If the Meeting

↓

Increase of share but irregular Requirement of Resolution

It come after the decisions of the Directors or their actions.

Sometimes, decision may go against the prosperity of the Company so differentiate with unfair termination. You are bound by MEMART, so you may sue the company or Members to prevent breach of contract under MEMART - DERIVATIVE ACTION

Right - This is not automatic, you should apply for LEAVE

Read

Conversion from Private to Public Company
Can we convert a Private Company limited by guarantee to Company limited by share?
- Can change objects but the law does not talk of

ACADEMY
PAGE NO.
DATE 13/05/2025

Capital clause. So what will Miss Gift Raphael Kaziywa You do? (Registrar / Assistant Registrar of Companies - BRELA)

REGISTRATION OF VARIOUS ENTITIES, RIGHTS AND LICENCING

CONTENTS:

- Establishment of BRELA
- Core functions
- The online Registration system
- Prerequisites to access the BRELA Online Registration System (ORS)
- Registration of Companies
  - Types of companies
  - Documents required for registration
  - fees
  - How to register a company
- Registration of Business names
- Registration of Trade and Marks.
- Beneficial ownership.
  Without submission of Beneficial owner, No service.

BRELA - Is an Executive Agency under the Ministry of Industry and Trade established under Cap Executive Agency Act No. 30 of 1997 responsible for business Administration and regulation of the following Laws:-

- Companies Act
- Business names
- Trade & Service Marks Registration Act

ACADEMY
PAGE NO.
DATE

The Online Registration System

Now you should visit BRELA service without physically visiting the office. Since 2018.

- Tanzania National Business Portal (TNBP) - Licence
- ORS - Business

PREREQUISITIES

Tanzanian
Have a National Identification Number (NIN)

Foreigner
Have particulars as per your passport.

If Director is from Tanzania then you should have Tax Identification Number from TRA

EXTERNAL USER - CREATE ORS Account

→ Have unique Email
→ Have NIDA number
→ Fill the form
→ System sends activation link
→ Confirm

COMPANIES REGISTRATION

Private & Public Companies
→ Memorandum & Articles of Association

MEMORANDUM
- Name
- Address
- Objective
- Capital Clause
- Liability

} signed by all shareholders and attested by active Advocate

If there are foreigners;

Attach copy of passport

If foreigh foreign Company owns shares in a local Company then attach Certificate.

FOREIGN COMPANIES REGISTRATION

Here they will get Certificate of compliance but inside Certificate of Incorporation

Consolidated form - Fl4a

But nowdays you fill in the system and download

Integrity form - Kiapo - Director sign and put dates.

FOREIGN COMPANIES REGISTRATION.

- Certified copies of Certificate of Incorporation, MEMART from the Registrar of Companies from the County of origin.

- Form 434 - available on BRELA website - In Companies it is there as well.

- Copy of Most recent account - Annual

FEES

Fees depend on the amount declared in the MEMART

LAW to FIND

Found in the law, fees payable to the Registrar of Companies Rules

ACADEMY
PAGE NO.
DATE

Foreign Company are just seeking a place of Business in a foreign Country and they are only Looking for the CERTIFICATE OF COMPLIANCE.

* Fees depend on the Nominal share capital and the lesser share capital ☐ 20,000/=

Look first the amount of Capital invested so as to determine fees.

More than Bhs. 50,000,000/= fees ☐ 440,000/=

Filing fees ☐ 66,000/=
Stamp duty ☐ Bhs. 6,200/=
Foreign Companies ☐ USD 1,190

HOW TO REGISTER A COMPANY

Client comes to you want you to register a Company What do you do.

1. Visit BRELA Website
2. Create an online Registration system (ORS) Account NIN & Email
3. Select New E-Service
4. Select Company
5. Select Registration of New Company
6. Select Business type
   Foreign, Private, Public, limited by shares
7. Provide the system with particulars of Directors, shareholders, Company Secretary, registered office and proceed.
8. Upload attachments (MEMIART, Integrity Pledge Form and

ACADEMY
PAGE NO.
DATE

Consolidated Form)

9. • Make payment of registration fees.

10. How long does it take for Certificate of Incorporation/Compliance to be issued?
It takes about 1 to 5 days after payment has been effected for Certificate of Incorporation or Compliance to be effected.

REQUEST THE CLIENT THE FOLLOWING;
NIDA of Every Director and TIN
Phone Number of Every Director.
Email Address of Every Director
Shareholders of ~~Every Director~~
Capital
Division of shares
Physical address - Surveyed - have Plot No. if Unsurveyed then Mark nearby - Eg Sinza - TCRA

There is name reservation — You provide the name which you want, you pay Tshs. 50,000. Reserved for only Sixty (60) days.

The system gives you the ~~purpose~~ clearance of names

You will also fill the OBJECTIVE OF THE COMPANY It is standardize, you just select.

⟹ If the Private "Company limited by guarantee (without shares) it should have 2 or more members.

ACADEMY
PAGE NO.
DATE

BUSINESS NAMES

- Sole proprietor
- Partnership
- Corporation

Fees Tshs. 20,000

- OG Company but wishes to open other Business kujitangaza zaidi so you may either call it OG Insurance.

Once you register the name, you should pay Tshs. 5,000/= but no liability if you will not pay.

There is ~~convention~~ Conversion of Business to the Company.

The only different is that addition of the word Limited at the end.

Most of the applications BRELA receives are all about Business names registration.

HOW TO CONVERT NAMES TO COMPANY

1. Cessation of Business name.
2. You start normal procedures of registering a Company

You may do Changes of your name or Cease your name.

- Change of particulars of Business name - premise e.t.c
Fill Form No. 6 - available online.

Ceassation - Fill Form No. 7 - available BRELA

If the Company has been wound up, you cannot use that name of the Company before Expiry of 10 years.

BENEFICIAL OWNERSHIP DISCLOSURE UNDER THE COMPANIES ACT

- Beneficial ownership concept
- Who is a BO
- Identifying of BO
- Information
- c

Introduction of BO
Finance Act of 2020 defined BO
Amended S. 2 of Companies Act

Regulation come in 2021
to regulate
There are forms you fill and submit to BRELA

Why BO?
Want Transparent Beneficial owner - FIU - Financial Task Force.

If has to do with Money Laundering Issues.

Eastern Southern Anti-Money Laundering Group

Terrorism, Financing Terrorism e.t.c

Recommendation 24 - Beneficial ownership.

Financial Task Action - Globally

The Law wants the Registrar to have the Book of Beneficial owner.

The Reasons were because people were using the companies illegally so the concept of knowing:-

(i) Who is the owner?
(ii) Who control, the company?
(iii) Who has the interest in the company?
(iv) Who has or is entitled to something from the company?

BENEFICIAL OWNER

Must be a natural person who effectively own or substantially control the company

Read S. 7 of Finance Act, 2020 which amended Section 2 of Companies Act.

Indirect - A company for instance owns the all shares of the Company now we want to see who are the natural person behind the company.

Who receives the interest, Who is a Beneficial owners?

ACADEMY
PAGE NO.
DATE

The details of Beneficial owners are confidential.

There are registered shareholders and those who are owners but in actual sense do not have shares. May be all the shares have been vested to the Companies

Some companies are very difficult to identify the beneficial owners here we use Cascading test - - -

Of which it is an international standard,

- Know the natural person who has interest if you fail,

Go to who controls the company, If it fails then,

Submit the CEO as the BO .

As the BO is not necessarily be the one who has shares

So, CEO as a Senior Managing officer has influence and control.

Ownership can be direct or indirect.

Registered owners & Directors are also BO - simple

Registered owner is Company A, interest Company B, you find a natural person of the end.

Company maybe indirectly involved

ACADEMY
PAGE NO.
DATE

Why Beneficial owners Matters

We are under Financial Task Force Action

Improve the Investment climate as Investor knows the owners and Bo

Reduces corruption

Illicit the Financial flows

Taxes easy to get them

Mechanism for collection of Information
Recommendation 24 - Beneficial ownership
- Company Approach
- Registry Approach
- Additional Supplementary Measures.

Now the Companies has two Registries
(i) Beneficial owners
(ii) Registry of Names.

Beneficial Owners' particulars should be submitted to Registrar of Companies.

Registry Approach,
- Was established on 2021 to allow submission of particulars to the Registrar of Companies.

If you have not submitted the Bo Information then you cannot update anything.

If you have changes then you should proceed to make notification to the Registrar of Companies.

E.g Macedonia - they use Bank, and they look on who is a BO

Depend on the county how the information are updated.

Now Sanction is late filing fee

Now, once you have registered the Company then the Directors and Secretary shall, within, 30 days to file the BO information. Fee is 22,000/=

Failure, you will start to be charged 2500 extra and the amount is compounded.

Not everyone has information of BO. It is confidential

Other countries it is open. E.g Ghana with minimal restriction.

Additional Supplementary Approach.

Look to the other systems and Bank if the information are similar the aim being getting the same and up to date information.

What is required and When? Reasons

1. Form 14A as in the G.N No. 366 of 2021
The Companies Act Rules
The Companies (Forms) (Amendments) Rules, 2021

ACADEMY
PAGE NO.
DATE

2. Once the BO has ceased to be a BO, submit Form No. 14G

3 The Last form is 14f - Changes (if any)

Form 14d - Submitted to the company, should state who the actual owner of the shares
14e - Indirect BO should fill the form and say who is holding the shares on his/her behalf.

Manually

The first three are filed online.

When filing the form, we actually use the percentage and not shares. - We do not use total number of shares but total number of issued shares.

Number of shares / Total number of issued shares × 100

Go & Read Kelvin this formula

CONSEQUENCES OF FAILURE TO FILE BO INFORMATION

1. Late filing fee
2. Penalty/Fine No. to 5,000,000/= not exceeding 10,000,000/=

QUESTION: HASSAN KIMELA
In 2021
What is wrong with share warrant?
Why was it abandoned?
⇒ Because we wanted to know as it could be possibly be used for MONEY LAUNDERING.

All these are in the Law - Regulations — Penalty 2,500 per Month It accrues.

ACADEMY
PAGE NO.
DATE

QUESTION: BENJAMIN LOITA

- Do we pay fee for beneficial owner per annum?

Answer - No, submitted once, you submit if there is changes, or cessation

- Or we have one BO and then what happens if other people joins? You submit after making changes to your registry

AUGREY → QUESTION: Whether a Minor can be a beneficial owner
└ This goes to the Laws of Contract - Nashma vs Ipman # Go & read

No, a Minor cannot be a beneficial owner, but there is one called Next of kin who make decision is a BO.
└ It is sometimes possible but know why he is a Beneficial owner.

PRACTICAL ASPECTS NOW

⇒ Create ORS Account
⇒ Fill details
⇒ Load from NIDA
⇒ Email & Phone Number
⇒ Password
⇒ Privacy and I agree

After having Account ↓

⇒ E-service for registered user
Enter username and Password

E-service
↓
Business name
↓
Business name / Cease / Change / Data update / Fees

{Private should End with LIMITED
Public LTD}

07 65 50 54 27

ACADEMY
PAGE NO.
DATE

Resolution - Members
During Meeting - Chairperson & Secretary.

Special Resolution

Ordinary Resolution

~~Forfeit~~

Forfeit shares - ~~Rcdp of~~ Board of Directors

13

MEETING GO AND READ

Ss. 133 - 150 of Companies Act

1. Two organs of running a company. Meeting of a company
The Company - Members - Annual General Meeting

Incorporation - First Meeting of the company within 1 year
Find section.
Other Meetings should be done not more than 15 months from the 1st meeting.

- The Company may by special Resolution - - AGM
Differentiate from ordinary meeting.

1. Must be called by competent authority - Board of Directors are sending must get powers
2. Notice - there should be proper Notice
Read the Law, 21 days or if there is special thing to discuss. (Section 135) who can call the Meeting.

ACADEMY
PAGE NO.
DATE 13/05/2025

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NOTE - There is Extra-ordinary Meeting
Read S. 134
By members requisition

NOTE We say that Directors call the Meeting but if it happens Meeting has not been called, Minister may cause or you apply to the Court under section 137

Also, read which Law provides for the corum of the Meeting.

How Minutes are taken/recorded

In special Resolution, }

Or Ordinary resolution } Wengi wape

NOTE Different Meetings:-
(i) AGM - S.132
(ii) EGM - Ss. 134
(iii) Class Meeting - Ss.
"Meeting called to discuss rights of shareholders of certain class of shares. Other members do not enter they do not enter into other meetings and do not vote.

In Annual General Meeting: things done are;
1. Discussion of Auditors & Directors Report
2. Appointment of Directors, Retired, removed etc
3.

ACADEMY
PAGE NO.
DATE 13/05/2025

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CAPITAL STRUCTURE AND MAINTAINANCE (Share Capital and Debt Financing)

→ Share means share in the share capital of a company and includes stock except where a distination btn stock and shares express or implied S. 2 of Companies Act

MASANGULA Share Capital - Amount invested

Question on shares - I asked a question about this issue.

In the Set - Mathematics

NOTE Cook food, We eat together food in one table when Mama cook food onces. See Maasai

You see the other is not there. So Mama knows that one is absent, so he ~~give~~ store his share. He give him because it is his share.

But if they are not aware of where you are then you will not be entitled to share. In Company law that is irregular Allotment.

And that is because all are entitled as per the Share Capital.

There are 5 children, Everyone I give his farm. Once you receive a farm then you should Marry.

If you did not Marry then they will bury you in the boundary and put Mgomba with you.

Can mtu ageae Mtoto wje ya Adoa. There is no such a thing. Wachagga do not isolate their children. I just find a friend. and the friend says it is your child. Once you introduce the child there there are formalities.

They ask you what you have to give him? So you have to increase share Capital then. Alteration of shares.

That is a background of share capital.

Sometimes Conflict arose with the wife a children so anaacha laana means amekuta so he reduces the share Capital - Your share is no longer there.

⟹ So, share is the subset in the Major set - It is a part of the share capital

SHARE Is an Interest of a shareholder in the Co. measured in terms of money for the purpose of obligation and Liability.

Ukiwa Mtoto wa Mtu unchaki ya kusameshwa.

~~Not obligation~~

A Shareholder Enjoy some rights & Benefits e.g

1. Benefit of attending Meeting
2. Making decision (By vote).
3. He can participate in sharing profit of the company by

Way of Dividendi.

Dividendi is not a profit but it is declared out of Profit. Declared during AGM

4. Can Petition for Winding up of Company
5. Can Petition for calling of Meeting.

BUT, being a shareholder you have obligations:-

1. Paying for the shares if it is a Company by Limited by shares.

If it is a Company Limited by guarantee then it is your obligation to pay to the extent so guaranteed in the event of winding up. Contribute to assets of the Company.

Asiye fanya kazi na asile.

Do this to enjoy the benefits of the company.

Paying shares - Call of shares

WHAT IS A SHARE CAPITAL?

1. AUTHORIZED SHARE CAPITAL

Is the amount of capital which the Company has been registered with. Or the amount proposed as the capital of the Company.

We talked of MEMORANDUM OF ASSOCIATION which contains the Capital clause - It should state the Capital Clause = of 20,000,000,000 divided by

ACADEMY
PAGE NO.
DATE

Authorized share capital 20,000,000,000/= ~~divided by 2 of 2,000~~ 200,000 each share valued at 100,000/=

Authorized Capital 20,000,000,000/=

Shares of Equal amount: 200,000/=

Share value of Each = 100,000/=

2. ISSUED SHARE CAPITAL

Is the amount of the share capital which the company has issued to shareholders during incorporation.

Yesterday we talked of subscription clause

NAME	ADRESS	SHARE TAKEN	SIGNATURE
MANKA	P.O Box 2, MARANGU	10	
KEKU	P.O. Box 6, MACHAME	60	
NKAKENI	P.O. Box 7, MOSHI	1,000	
	TOTAL	1,070	

Said Usiandike

When calculating looks at the issued shares and not total shares.

Issuance of shares is the duty of Directors and the others may opt for shares. When one want shares and Directors once they accept then request is good

Contract for shares

it will be called ALLOTED SHARES but they are all ISSUED SHARES.
- During formation.
- In public all are issued shares. No difference.

CALL FOR SHARES allowed by DIRECTORS only

- You may be asked to p to come and pay the shares you took. Not necessary be all. If you took 1000 then what happens you may be called to pay 500 then it is called - CALLED UP - SHARES

Directors may also say, there are shares not CALLED, We will not call them - it cannot be UNCALLED UP SHARE CAPITAL, the Company should create RESERVE CAPITAL FUND of which through resolution, they will not CALL AGAIN.

If no resolution they will be called - UNCALLED UP SHARE but if resolution not to call then it will be called RESERVE CAPITAL to be used during winding up of the company

Shareholders if they respond to the called up share and pay it will be called PAID UP SHARE those not paid can be called but not paid are called UNPAID UP SHARE CAPITAL - You will be liable during Winding up - Liability of shareholder to pay.

The Company can issue shares of different classes;

PREFERENTIAL SHARES - as per Articles of Association

ACADEMY
PAGE NO.
DATE 14/05/2025

Adv. Edward Chuma

CAPITAL REDEMPTION FUND - Tedha imetengwa kuko mbaa class of shares, they give those preferential shareholders wakidai tena.

NOTE Suppose the Company issued all 200,000 shares and no shares to issue again and then happens investor wants to invest 200,000 shares, then the Company has nothing to give then what to do ?:-

INCREASE OF SHARE CAPITAL

1. Call of Meeting - Special Resolution
2. To alter the MEMART so as (ALTERATION OF SHARES)
3. To increase Share Capital
4. To create More shares
5. So as to allot shares
6. To Investor
7. Notify the Registrat
8. By Form No. 66

Upload MEMART
Upload Form No. 66 - Notice to Registar

After allotment then Fill form No. ~~56~~ 55(a) - Return of Allotment
Then fill Form No. ~~55~~ 55(b) particulars of allotment

18/05/2025

QUESTIONS: TO READ

Conversion from Private Company to Public

⇒ Can we convert a Private Company limited by ~~shares~~ guarantee to Private Limited by shares?

The Law says you can only change object Clause and nothing is talked about Capital clause

TRUST

There are beneficiaries which are not disclosed.
They brought the issue to Police that people have taken or destroyed properties.
The Administrator General says he will take control of the school.

Tax issues there is a ~~tax~~ Commissioner's Ruling saying that they are paying more taxes. So what ought to be done was not to transfer from Guarantee to NGO or charitable.

Company Limited by guarantee without share capital cannot be converted to Private Company Limited ~~Company~~ by shares.

MASANGULA:

TO READ

The Amendment of 2019 did not erase the Private Company Limited by guarantee but rather if they are to be formed, there should be a share capital clause for otherwise they will be doing charity and should go to Charitable organization or NGOs'.

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ACADEMY
PAGE NO.
DATE 14/05/2025

SHARE CAPITAL CONTINUES.

The Company may decide to issue PREFERENTIAL SHARE or REDEMPTION which they should issue the REDEMPTION CAPITAL FUND.

How to be a Member of a Company

- Subscribing shares when the company is formed
- Allotment - after the company has been formed
- Transfer of shares - Transfer Intervivos btn living person
- Transmission of shares - Transfer of share by operation of the Law, upon death of shareholder. The shares passes to the heirs

TRANSFER OF SHARES

Go and Read

- ~~Shawses~~ in action
- ~~Shawses~~ in possession

} The property we possess are divided into two:

Chose in action
Choses in possession

Chose in action - Personal right to property which can only be claimed or enforced through Legal action not by taking physical possession of the property.

Eg A Cheque is a Chose in action
Thing we have but we cannot arrest. You prove your ownership by court action.
Most of chose in Action are Negotiable Instrument

ACADEMY
PAGE NO.
DATE

Endorsement and deliver - Cheque
"Please pay Masangula"

A share is a property - but not a negotiable instrument but the rights in shares may be transferred to another person.

If you have shares in the Company your name should appear in the Register and you are given Certificate of shares but that cannot be a Negotiable Instrument. But previously, you would be entitled to Share Warrant which was a Negotiable Instrument and you can turn back and transfer shares and be removed in the Register

Now, BRELA removed the Share Warrant because it was hard to trace the Beneficial Owner.

In transfer of shares the requirement of law is that you have to prepare a SALE AGREEMENT.

The law says transfer of shares should be STAMPED.

Then you prepare a transfer DEED.

Section 27 prohibit offering shares to the public but anyone can transfer shares.

We only look if there is Preemptive Rights (Articles should say)

Ask from the within if they want to buy or if no

one then you sell to outsiders.

Documents sent to TRA for tax clearance and you are issued by the TAX CLEARANCE CERTIFICATE

File BRELA

Present the document to the Company to be entered into the Register.

TRANSMISSION OF SHARES

Probate & Letters of Administration, anyone entitled should benefit.

The Company determines if you are entitled to the proceeds or to be a shareholder as per the Articles of association.

Go & Read For Untraceable shareholders there is a decision of MLYAMBINA, J.

NYANZA MINING (TANGANYIKA) VS REGISTRAR OF COMPANIES

ANOTHER CONCEPT
- → Publish ~~Hee~~ Gazette
- → Then, Meeting of the Company
- → Then, Look if there were compliance
- → Then, if no beneficiaries are not traceable
- → The property can go to the Administrator General

NOTE THIS → In transmission, the heirs are aware of the shares of the deceased but in untraceable shares are not aware.

ACADEMY
PAGE NO.
DATE

- Transmission

Submit a letter to the Company

The company checks if you as the heir has been legally appointed

And then, enters your name into the Register

And again, they will notify the Registrar of Companies

There is no fees because it is transmission by operation of the Law.

⇒ Shareholders' Agreement & MEMART - Go & Read.

Question CAN SOMEONE BE A MEMBER OF THE COMPANY WITHOUT BEING A SHAREHOLDER?

OR BE A SHAREHOLDER WITHOUT BEING A MEMBER?

In Articles of Association, that is a document which state how the Internal ~~Management~~ affairs will be Managed.

It also provides the types of shares. A company can issue different type of shares:-

- ORDINARY SHARES

ACADEMY
PAGE NO.
DATE

Class of shares carrying preferential rights compared to other types of shares.

E.g in Payment of Dividend, may receive the fixed sum compared to the other. Look the Articles.

Can be Cumulative or Non-Cumulative preferential shares

NOTE: CUMULATIVE SHARES

Company do business, generate profits, cannot declare dividend. If no profit. If losses no dividend.

A company may get loses this year, 2nd year, --- 5th year get ~~dividend~~ profit and declare dividend which is divided to all.

But if Articles say it will not reserve the other Losses. Now, Preferential shareholders will get the one of the 1st, 2nd, 3rd, 4th and 5th year first and the other will follow.

If the arrears of dividend for the preferential shares are to be carried on forward to the subsequent years when the company will make profit. That is called Preferential shares.

But if the payment of arrears lapse when the company does not make profit. That is called NON-PREFERENTIAL SHARE

ACADEMY
PAGE NO.
DATE

NOTE In the absence of provision on the Articles, the assumption is that it is CUMULATIVE SHARES

PARTICIPATORY AND NON-PARTICIPATORY PREFERENTIAL SHARES

Kwenye kampuni, it can make profit but their budget (projection, target of the year)

We will divide this ratio of the dividend and the rest is surplus profit.

Some Articles say Preferential shareholders will participate and they will be called participatory.

If the preferential shareholders are going to participate in the distribution of surplus profit are called participatory preferential shareholders.

In the absence of express provision, then the all preferential shareholders will be Non-participatory preferential shareholders.

Go & Read TASK:

Ask if there is surplus during Insolvency, how the preferential shareholders are treated.

Find the provision in the Statutes.

Look the Insolvency which is Winding up. All debts paid what remains, will those preferential shareholders participate in the distribution of the remaining properties or not.

CLASS MEETING

There is class meeting - Some does not participate certain class of shareholders.

They are not allowed to vote (Preferential shareholders).

What is Debenture?
Bank and Financing Act,

Be careful with choice of words.

Debenture - Is a document which acknowledge the debt borrowed from the Bank. It is a security.

TYPES OF DEBENTURE

⇒ Float charge - Tumekopa na tume pledge Mali zetu kama security

⇒ Fixed charge - Specific assets have been pledged as a security e.g Landed property.

Company If Land is a security

They will prepare the Mortgage
- Approved disposition by way of Mortgage
- Consent
- Tax Clearance
- Mortgage is registered
- Form No. 96 of the Company - Prepare a Charge and register with Registrar of Companies

Cars - CHATTEL MORTGAGE

In case you default - Lender will Issue Notice

If fixed, the Lender will appoint a Receiver automatic sale etc

If floating assets then, Crystallization will be done to identify property and proceed.

⟹ Bank akikunpa Mkopo — every month they will be charging Interest per month.

Question Scenario / Read Question ICA

A Holder of preferential shareholders is more likely of a Debenture, than a shareholder. Discuss

So, they do not enter into the Meeting and do not vote.

Also, in fact the Lender is also not a participant in the meeting of the Company.

NOTE THIS KELVIN

HOW TO RESPOND QUESTIONS IN COMMERCIAL

I do not want you guys to produce statutes or what you have been taught.

Just say how what you have been taught is applicable to the scenario.

So that is what all I want.

You are here to solve the client's problems

We want to see how do you apply theoretical knowledge in a practical Aspect. Not just to respond.

ACADEMY
PAGE NO.
DATE

→ 1. They do not vote
2. Get fixed amount of dividend: whether the company got loss or not.

INSOLVENCY AND CORPORATE RESCUE

Solvent - Vizuri, performs better

Liquid - Ina hela

Individual Insolvency proceedings - Bankruptcy Act

Insolvency ni caused by debts. Huweza ukafirisika kimapenzi.

Started waybaik and later on the law had to be enacted to regulate watu waliofirisika.

Who ni Babilon, where ni ke from. The Law started there. ~~Then~~ The Law was associated with Madeni. The punishment before was if you are indebted you are KILLED.

Later on, they thought it was too harsh.
Google HAMORABI LAW — the Most oldest Diaconic Law

Later on they said, If he fails to pay then one of your family member ni sent as slaves so as he can work to pay.

Later on, they said debt If you fail to pay then the debt be attached to property - Order XXI.

And later to civil prison - attached to person.

ACADEMY
PAGE NO.
DATE

Now, Tanzania we have Bankruptcy Law.

READ Read section 3 of Bankruptcy Law which allows Bankruptcy proceedings, Cap. 2.

Or you may send a PETITION to be declared as Bankrupt → Read the Act.

In Companies, the only remedy was Winding up - as per the Companies Ordinance.

⟹ In UK they saw it in 1970 - They made the COMMITTEE. They made their Recommendation and came with the UK Insolvency of 1986, They also amended the Companies Act.

NOTE Now, there are other Remedies which are alternative to winding up as follows:-
(i) Merger and acquisition / amalgamation
(ii) Voluntary arrangement
(iii) Appointment of administrator

NOTE: Insolvency is due to DEBTS. Failure to pay debts

NOTE But factual Inability to pay should be distinguished from Refusal to pay.

⟹ Or a Dispute on Law should also be distinguished from Inability to pay. - This can't be Insolvency

⟹ Or Careless Management of financial affairs ~~short~~.

Or deliberate action/tendency of keeping away from Creditors. Tajiri lakini haliji. Hajisikii tu kulipa.

⟹ Non-payment by solvent Debtor has to be distinguished from non-payment by insolvent Debtor.

⟹ NON PAYMENT BY SOLVENT DEBTOR TO BE DISTINGUISHED FROM NON-PAYMENT BY INSOLVENT DEBTOR

Assets 40 Million — Debt 600 Million

Here the law will choose who should be paid in the event of the circumstance above.

In Law, the one having huge debt is the last to be paid.

Insolvent Debtor — The Law is very harsh when choosing who to pay.

E.g there is a person ameingia cement and no security and you have other debts like Bank — then Bank will be the last.

Why the law chooses?
Because there are Limited resources.

There are Liquidation proceedings.

NON-LIQUIDATED PROCEEDINGS

Before Liquidation there should be RECEIVERSHIP — Instrument Holder, Exhaust all the available remedies in the

instrument eg in Debenture.

For appoint Receiver as power is given by the Instrument he will be called Administrative Receiver.

Mortgage provided under Land Act. — —

Receiver just exercise the remedy available in the instrument only.

It will only deal with properties listed if debenture was FIXED.

TYPES OF RECEIVER

1. Appointed by Instrument → to person who appointed he will report.
2. Receiver Appointed by Court
   subject to Court Order and will be reporting to Court

When reading, differentiate Administrative Receiver.

WHY THE GOVERNMENT IS PAID FIRST

ANS: That is why we say the Law is harsh

Tax – there must be a Law for derogation of peoples property

→ Customer objection you do not file objection – You ask for REVIEW to Commissioner. TAX ISSUES

TAX was there but no one likes tax.

ALTERNATIVES TO WINDING UP OF THE COMPANY

Go to Section 240 of CA

1. VOLUNTARY ARRANGEMENTS OF THE COMPANY

Questions:

What is the proposal for Voluntary arrangement?

A situation where the the creditors of the company and the company sit and discuss how to pay the debt (s):

Who may make proposal?

1. Section 240 (1)
   The Directors of the Company

CONDITIONS – S. 240 (1)

1. If there is no Administrator who has been appointed
2. If the Company is not in the process of being winding up

In that proposal, provides for appointment of ~~NOME~~ NOMINEE who will act as TRUSTEE for supervision of the Arrangement / proposal.

Effect of Administrator to be ad appointed means the Directors and Members cease to have power to make proposal

TO BINALI 2E

Or in Winding up – Liquidator appointed therefore

ACADEMY
PAGE NO.
DATE

2. An administrator may make a proposal for a voluntary arrangement.

Qn. Suppose administrator has been appointed what will he do? S. 247 of CA
- If there are possibilities of settling then he propose for arrangement
  or If it fails he go for winding up.

LIQUIDATOR Also, during Winding up, Liquidator may also make a proposal for Voluntary arrangement of thinks that the Company can settle the debts.

Liquidator
Administrator } Who appoints them?

GO & READ
Chapter II & III & IV of GN 43 of 2015
(Companies (Insolvency) Rules.

Then,

Section 240 - 246

1. Terms of proposal
2. Functions of NOMINEE

Briefly, know that the above is alternative to the winding up. It is just a settlement to settle liabilities.

ADVANTAGE OF PROPOSAL FOR VOLUNTARY

1. It does not affect capacity of Director to Act. They do not vacate the office. Can make decision. Can borrow

ACADEMY
PAGE NO.
DATE

DISADVANTAGE

* 1. This proposal does not give a Company ~~Injunction~~ Moratorium *
└ Temporary prohibition of an activity.
It does not act as a suspension of claims against the Company

Cases will proceed
Execution will proceed
Everything against the company

In Exams: So the above is not the best opinion - Number Fourteen

SECTION 247
ADMINISTRATION ORDERS

1. When can administration Order be made?
2. And who may make the Orders!

Section 247 (1) ~~respondent~~ responds.

So it is the Order by the COURT

WHEN NOW?

The following conditions must be satisfied:-
(a) Satisfaction that the Company is or unlikely to become unable to satisfy its debt in the Meaning of s. 250 of CA, the court may make order.

There has to be proof under the Law as per the definition of S. 280 - DEFINITION OF INABILITY TO PAY

Section 280 (a) and (b) & (c)

ACADEMY
PAGE NO.
DATE

CASH Flow INSOLVENCY

1. Failure to satisfy the debt of 50,000 and there should be demand Notice within 21 days

The demand is highly formal and sends you to the Company Forms where there is STATUTORY DEMAND

Form No. 280 Companies Act

When you apply for Administration order you attach the Affidavit and that Demand that you asked for payment but they did not.

The consequences is Winding up - Petition for ---

⇒ If there is dispute on the debts incurred then you file a suit if you prove then you go for Winding up, Do not go for winding up straight.

2. If Execution or other process issued on a judgement, decree or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part

3. If it is proved to the satisfaction of the Court that the company is unable to pay its debt as they fall due

BALANCE SHEET INSOLVENCY S. 280 (d)

4.

NOTE AND READ KELVIN

LIQUIDATION - Return of capital
All will get the shares
In Exams You will know what to do.

ACADEMY
PAGE NO.
DATE

8. The Court may issue administration order if it is Beneficial to the Company
Tendelee kama iliyokuwa so as to meet its objective.

Because the Company generates profit but only one Director misuses the funds.

Unakuta kampuni inaanza kuuza, Ngurume, Ngombe etc, watu wamejaa but there is one person taking Monies under that circumstances when the Court is satisfied by an Affidavit. The Court will issue administration Order as Only the Management is the problem.

⟹ But sometimes you may SAY No to ~~winding up~~ ~~up propose for~~ Administrative Order, arrangement. You go Straight to LIQUIDATION, If debts are low,

⟹ NO CREDITORS' WEALTH THAN IN LIQUIDATION (NCWTIL)

⟹ Eg The Company has assets of 40 Billion and in the Account Director took all the Money, No Cash

⟹ Sometimes you see there is no assets but the profits is generated, so in Winding up you will loose go for Voluntary arrangement.

PURPOSE OF ADMINISTRATION ORDERS

INSOLVENCY

We have three Chapters :-
- Merger, acquisition and amalgmation (Component of Insolvency)

1. Re-organization of the Company
   (Voluntary arrangement
   Company in trauma

   Measures to rescue the Company
   - Merger, acquisition and amalgamation
   Love will die
   Tax consequences
   Taxable events

2. Proposal for Voluntary Arrangement and Administration Order

3. Winding up

Read the definition of Insolvency

Is this company really insolvent ?

Have no ability to pay ? or just ana kibun kulipa. So be careful when responding to Questions

Distinguish ~~hasta~~ Insolvency and Bankruptcy

ACADEMY
PAGE NO.
DATE

A. NON- LIQUIDATION PROCESSES

1. Receivership - Debentures

ALTERNATIVES TO WINDING UP

⇒ Section 240(1) — VOLUNTARY ARRANGEMENT

(i) Who may make a proposal

(a) Director

(b) Liquidator - in the process of winding up

(c) Administrator - in the administration order

Go & Read Details provided under Chapters 2, 3, 4 of G.N 43

Nominee is a Trustee - appointed after discussion by the Company and Creditors

Anahalikisha implementation - No suspension here - If there are cases will proceed.

Advantage

Directors continue to work

Unlike when Administrator or Liquidator has been appointed - Here there is suspension

Company X under LIQUIDATOR

ADMINISTRATION ORDER

Section 247 of Companies Act

Questions

Where does the question fall? Insolvency
What does he want? Administration Order
What are the requirement?

REASONS Under S. 247 you get the following grs.
- When can it be made?

1. Inability to pay debt or unlikely to pay debt

It is not normal failure to pay - Read the Section 280 of CA

After statutory demand, 280 Form

The Demand should state that failure we go to the Insolvency Proceedings

→ Balance sheet problem - Assets are very few but Liabilities are so many

2. Likelihood of attainment of an authorized purpose
Say there is proposal but inayumba, Nominee will cease and Administrator will enter.

We want to do something but the Directors are not able then Administrator will be appointed..

3. You appoint the Administrator so as or for More advantageous realization of assets.

ACADEMY
PAGE NO.
DATE

2. WHO MAY APPLY FOR ADMINISTRATION ORDER

- The Company itself
~~For or By the meeting of the~~
- The directors (collectively)
Section 247 (1)
there should be ~~an applic~~ a meeting

- Creditors.

Procedures are provided under ~~Section~~ Regulations 33 - 49

The Court with jurisdiction is the High Court

EFFECTS OF THE APPLICATION
Section 250

POWERS OF ADMINISTRATOR
Section 258
Section 240 (1)
⇒ He may petition for Winding up

Calls Creditors' Meeting -

Or says this must be die.

FOCAL POINT
Is creditors of the Company

EXPENSES
Where does he get

ACADEMY
PAGE NO.
DATE

VACATION OF OFFICE
Section 257 of Companies Act

WINDING UP OF THE COMPANY
Know when you are supposed to advice the parties for Administration order, Voluntary arrangement & for Winding up

Last stage of the Company

The Creditors are paid and shareholders get the Capital Investment (SETTLEMENT OF ACCOUNT)

TYPES
VOLUNTARY WINDING UP
- Members Voluntary winding - Grounds S. 333 of CA
- Creditors

It is the shareholders who are interested with return of their interest. Provision,
Creditors interest at stake

COMPULSORY WINDING UP
- The Court issue RECEIVING ORDER
The Court is in control

MEMBERS VOLUNTARY WINDING UP
Read Section

The Company is SOLVENT only to find they want to end.

There should be a Special Resolution that the company has to be wound up.

Directors must pass a Declaration of solvency

If they lie, they will be liable.

- They should notify the Registrar within 14 days

- Also notice to the Public Gazette

DISTINCTION BTN MEMBERS & CREDITORS WINDING UP

WHY PREFERENTIAL SHARES?

Eg I want to give my children 500,000,000/=. I do not want to know what is going on. I do not go to the meetings. But if the want to discuss about my funds then they call me. And if they do not want to continue and there was ~~Reede~~ Redeemable shares, they will be called. The MEMART will be amended to remove the preferential shares.

But, in the event of Winding up then they will receive their Capital

- MEMBERS - initiated by members and the Company is SOLVENT. They appoint their own Liquidator.
- CREDITORS - The Company may make resolution that the Company is Insolvent so let it be wound up by the Creditors.

Dissolution to the Registrar.

Or of the Company or Declar Declaration by the Director of Solvent was forged and the company is not able to pay within One year then AUTOMATICALLY CHANGES FROM MEMBERS TO CREDITORS VOLUNTARY WINDING UP and will convene a MEETING and VOTE whether to proceed

COMPULSORY WINDING UP

Read Companies Act to see the grounds

3. Who may petition

1. When can the Court make the winding up

4. Court with jurisdiction

5. Presentation of the Petition before the Court

6. Advertisement - G.N and Named Gazette

2 Grounds

RECEIVING ORDER - Official Receiver who is subject to Court order,

Should report everything from the Court

Consequences of RECEIVING ORDER

0655 215 377 CHUWA

ACADEMY
PAGE NO.
DATE

IMPORTANT

⇒ Derivative actions
⇒ Privity of contract
⇒ Breach of contract

LIQUIDATOR ISRAEL KILLER

Who can Manage?
⇒ Receiver Manager
⇒ Administrator
⇒

ACADEMY
PAGE NO.
DATE 15/5/2025

DR. COSMAS - Lecturer Mzumbe University

LAW ON SALE OF GOODS

Paying something to get something.

Sales is just a contract just like any ofthe contract.

The general basics of LCA normally applies here.

You need to have:
- (i) Parties
- (ii) Free will (out
- (iii) Intention to create legal relation.
- (iv) Consideration
- (v) Lawful object

FEATURES WHICH ARE PECULIAR IN THE SALE OF GOODS

Contract can be on Lease, buying of Plot but that is not for sales of goods. (Not sales of goods).

Here It is buying goods

The SALE OF GOODS ACT (SOGA) Cap. 214 gives distinct patues.

1 ✱ Section 3 defines the contract of sale of goods is where a seller agree to transfer goods to the buyer for a consideration known as price.

Transfer or agree to transfer property in goods.

Here we have SELLER and BUYER

In other contract you may have different parties.

2. Price is in MONETARY form

There must be parties
There must be transfer
property in goods
Price must be involved
Price of transfer of goods

PARTIES

There must be more than one person involved. Seller and Buyer who all will have some rights and obligations.

Each assume rights and obligations. You cannot transfer to yourself.

TRANSFER / AGREE TO TRANSFER

Agree to transfer the absolute legal interest in the goods.

The seller relinquishes all of his rights to that goods (The right in rem).

No body else can claim to have the ~~right to the~~ property other than the buyer.

The buyer can do what legal he think about the property.

They change hands from the seller and buyer.

The Nemo dat no quod habet will apply here.

What is Nemo dat No quod habet
"You cannot give what you do not have"

Bailment is just transfer of possession.

So even the buyer cannot get ownership rather a possessory right.

There must be TRANSFER OF LEGAL INTERESTS ABSOLUTE

Bailment - taking your clothes to the cleaning Company that is just giving them possession they only make sure that the clothes are in good order. It is not absolute transfer of legal interest. If is not SALE

PROPERTY IN GOODS
they agree to transfer property in goods

Its not all about object. If is all about the transfer of ownership. The word property means ownership. Means the object is there. Property in goods here we are not talking of the object but only we talk of the ownership.

The Buyer acquire the whole and Absolute legal interests against the whole world.

Once you are the owner, you are to make sure that the property are in good order. Insurance it is up to you.

That means the Title changes and the duty shift to the Buyer.

Goods

What kinds of goods are we referring to? Is that building goods? Money goods?

Section 2 defines goods or what are we ~~re~~ referring to:-

Goods includes anything or all chattels other than things in action e.g Bill of Exchange or Negotiable Instrument i.e Cheque, Promissory Note

Bill of Exchange Act

Money is not a transaction of sale because it has been excluded. "Expressio Exclus Express Unius"

Chattels means Movable property.

If cannot deal with Immovable property e.g Land and everything attached to it. Look for other Law e.g Land Act.

The goods in Sale of goods must be MOVABLE property

It must be Tangible property which can move from one point to another.

Here we are talking of Seller and Buyer. And not Vendor and Vendee, Landlord & Tenant, & Lessor & Lessee, etc

Because we are dealing we movable property under the

ACADEMY
PAGE NO.
DATE

Sales of goods Act.

PRICE

There must be price. That is what is called consideration which is MONEY! There must be LIQUIDIT involved.

You have to satisfy the court that MONEY has been paid.

Not all contract requires money.

In sales of Goods Act, Money has to be involved.

The price will be fixed or will be so in a manner agreed by the parties.

You may be paid instantly or Later on. There should be CERTAINTY of the sale of Goods:-

1. Clear chattel
2. Price
3. When to be paid
4. Manner of payment
5. Delivery.

Look section 10 for all the above.

There is PARTIES AUTONOMY. Parties determine what should be contained. The Law is there where there is LACUNA. Parties agree even if the Price is Law, the Buyer or seller is not forced. It is his property so there should be Free CONSENT (PRINCIPLE OF SANCTITY OF CONTRACT)

↳ Whatever parties agree should prevail if made through consent

Internationally PACTA SUNT SERVANDA

" We stand with our agreement"
Let stand with our agreement.

The price should be REASONABLE

REASONABLE is subjective and matter of FACTS

What is REASONABLE is a matter of fact.

You may sell your property at the lesser value but Tax Master will come for her Money so as you can pay the Capital Gain Tax. You will be required to pay and there will be no transfer if you have not paid CGT.

A SALE OR AN AGREEMENT TO SELL
Section 3
The two are different.
A SALE immediately thereafter (Exchange of goods)

The Property move from the seller to Buyer.

The fact that there is sale, and then the property is at the Seller's premise, The Buyer is the one responsible to take insurance of his goods as in actual sense the seller has been relinquished from Responsibilities.

That is for sale — We call it in contract "EXECUTED CONTRACT."

You pay the Money

AN AGREEMENT TO SALE: Responsibilities are ~~Executory~~ futures. We say it is EXECUTORY. It is expected to be transferred in the future.

ACADEMY
PAGE NO.
DATE

E.g Maize are still in the farm, so the buyer should wait.

There are conditions as follows:-
- Getting them out of the field
- Processing them
- Weighing them and Packaging
- Packaging for delivery / Deliverable state

It is not all about 100 bags of Maize.

But make sure they become ready for sale.

It became sale when the Time elapses or when the delivery has been done.

From the moment the BUYER assumes responsibilities it changes to SALE.

DISTINCTION

A sale & an Agreement to sale

In sale, Title and risks passes ~~at the~~ from the Seller ~~and~~ to the Buyer.
E.g If fires ~~have~~ catch after sale in the ~~Godown~~ Godown then it will be at the expense of the BUYER

It was the duty of BUYER to insure the goods. (MAKAURA'S CASE)
That is, you have lost everything

WHILE, in Agreement to sale, transfer will come to the later days.

ACADEMY
PAGE NO.
DATE

SALE OF GOODS AND BAILMENTS

BAILMENT transaction where by goods are delivered by one party (The Bailor) to another (Bailee) on terms which normally require the bailee to hold the goods and ultimately to deliver them back to the Bailor.

- The Common bailment include deposit goods for dry cleaning, simple hire of an item for use and return.

Mathematically,

The Real buyer does not loose ownership rather possessory right only.

No absolute transfer of Legal Interest.

The Bailee can not ~~sale~~ sell the ~~property~~ goods to the third party - ~~Void~~

SALE VS EXCHANGE / BARTER

Sale consideration must be MONEY

If MONEY is not involved that is not SALE

In BARTER it is all about ~~transfer~~ / Exchange of Goods for goods.

Sale involves transfer of goods but Exchange is not the same. It has different meaning.

ACADEMY
PAGE NO.
DATE

SALE VS HIRE PURCHASE

Hire purchase - E.g you have a Logistic Company and you sell vehicles and someone has interest so he approaches the company that you lend me this Bus purpose and I will be remitting the money monthly and up to a certain time until the last instalment whereas after that final instrument what happens is the TITLE TO THE BUS WILL BE GIVEN TO YOU.

Purchase is until the Last Instalment.

DISTINCTION

The Buyer in hire purchase can return the BUSES or GOODS if there is discovery of. LATENT DEFECT (difficult to be seen by naked eyes).

In SALE there is BUYER BE AWARE (CAVEAT EMPTOR) it might be difficult to return.

In HIRE PURCHASE the last instalment is the SALE

In HIRE PURCHASE, the Hirer cannot transfer the property to the third party who has conducted the due diligence

Parties are Hirer and Hire (To pay in instalment).

In Hire Purchase, the Hirer receive the property immediately. So as he can generate the profits.

But in sale might be immediately or sometimes later

ACADEMY
PAGE NO.
DATE

stages.

TERMS OF A CONTRACT OF SALE

1. Terms of Description and Quality of Goods
2. Terms of Mode of payment
3. Terms of Time and Place of delivery

Terms differ in terms of impatance to the contract of Sale of Goods.

Terms Terms are divided into conditions and Warranties.

The Buyer may reject goods if goods are not of quality, Quantity etc

Time may be considered as Breach of condition or Warranty

CONDITION and WARRANTY

CONDITION - obligation which goes so directly to the substance of the contract or in other words, is essential to its very nature that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all.

- The Breach of a condition entitles the innocent party to repudiate the contract/fundamental breach.

CONDITION
Is the key. E.g The purpose of the contract is to deliver 100kg Bags of Maize to Dar es salaam.

ACADEMY
PAGE NO.
DATE

And that is why I am paying Money so, such failure to ~~pay~~ ~~on~~ deliver and time has lapsed then it is a BREACH OF A CONDITION because it goes to the ROOT

A WARRANT

Is an obligation which though need to be performed, its failure to perform does not go to the root of the contract.

E.g

You were supposed to deliver 100 bags, you have delivered 80 bags. YES you have breached, the delivery has been done but not to the full effect so what you should do is not to REPUDIATE the contract but you just SUE FOR DAMAGE or PAY FOR DEFICIT.

E.g Delivery of christmas goods to its depot leading failure to generate More income. So, the aggrieved / Innocent will be entitled to the Compensation — Restitution.

Warranty, S. 2(1) of SOGA

NORMAN VS OVERSEAS MOTOR TRANSPORT (Tanganyika) 1959 EA 131

Section 13 entitles the Buyer to waive the ~~~~ of the right to repudiate the Contract for sale

- Defect in gear Box is it breach of CONDITION or Breach of WARRANTY?

A car should be able to Move (Roadworthy)

⟹ Gear Box and Engine is the Fundamental ~~Condition~~ and is the breach of CONDITION.

ACADEMY
PAGE NO.
DATE

The Buyer returned the car to be fixed and the seller took it again, and later on wanted to return so the Court said the Buyer treated condition as Warranty so he may only sue for damages.

Section 14 provide for the IMPLIED TERMS As To TITLE, QUIET POSSESSION AND ENCUMBRANCES.

If you have no title and you pretend to sale sell that is a Breach of CONDITION.

I can repudiate the Contract If you Lave no title.

IMPLIENT WARRANTY FOR QUIET POSSESSION OF THE GOODS, SECTION 14b
No body should come and disturb me.

I am entitled to the fullst extent to the goods

Because I got from the real owner

LACKHAMSH BROS VS. RAJA & SONS 1966 EA 178
Goods were sold, the goods were seized by the police as they were stolen. So, the seller refused to refund and the Court held that such proof establishes the prima facie breach of contract.

Section 14c - IMPLIED WARRANTY FOR GOODS TO BE FREE FROM ANY CHARGE OR INCUMBRANCE
No third panty should be interested. Property should be free.

ACADEMY
PAGE NO.
DATE

SECTION 15 - IMPLIED CONDITION ON SALE BY DESCRIPTION

Goods shall correspond with description. That is implied term that description like How the Tractor look like, Engine is working, that is what the Buyer is looking for. So if the seller does not meet or give something which does not meet the description that is a Breach of condition.

Description: Terms used to identify the Item.

CASE ⟹ Read BOWES VS SHAND
It was held that if you contract to sell peas, you cannot oblige a party to take a Beans

If the Description of the Article tendered is different in any respect, it is not the article bargained for and the other party is not bound to take it.

⟹ BEALE VS TAILOR - Car Herald Convertible 1961 he discovered it was welded by two parts together, only one of which was from 1961 Model. It was a Breach of Condition.

⟹ ELLY BENSON MWANGOMO VS THE REGISTERED BOARD OF TRUSTEES OF THE AGRICULTURE TRUST FUND (Land Appeal No. 10 of 2017)

"If there is description, you should meet the same".

SECTION 16 - STIPULATION AS TO QUALITY AND FITNESS.

There is no implied warrant or condition as to quality

or fitness for any particular purpose of goods supplied under a contract of sale except as follows:-

1. SELLER has no duty to guarantee the Quality or the FITNESS of goods. - GENERAL RULE

EXCEPTION

1. If the Buyer tells you relying on your Judgement because you are the Dealer, and upon relying from your Skill, Judgement, he buys the goods then here the seller is LIABLE/RESPONSIBLE.

KINYANJUI VS D.T DOBIE [1975 EA 196]

The appellant bought a Modified lorry for use on Mombasa to ~~Zambia~~ Zambia Road

THE IMPLIED CONDITION IS TO A NORMAL BUYER

→ If a buyer is suffering from abnormality he has to make sure the abnormality is known to the seller

→ ~~Proceed~~

TRANSFER OF PROPERTY IN GOODS

S. 2(1)

⟹ S. 20 (a-d) of SOGA - Rules on passing of property in Specific goods

ACADEMY
PAGE NO.
DATE

TRANSFER OF TITLE BY A NON OWNER

"Nemo dat quod non habet."

- To protect the real owner
No body should have a better title than you have.

A thief has no better title to pass so he cannot pass the title or even when passed, ~~they cannot~~ the owner may retain.

MOTOR FINANCE CORP VS TRANSPORT BROKES (1949) 1 KB 332, DENNING J.

1. No one can give a Title than what he himself has (Nemo dat quod non habet)
If you have bad Title you pass a bad Title

2. Protection of Commercial Transaction.
"The person who takes in good faith and for value without notice should get a better Title"

Despite the existence of the real owner.

Read Section 23 - NEMO DAT QUOD NON HABET

Exceptions - S. 24, 25, 27 of SOGA

S. 23 - ESTOPPEL

→ Nemo dat quod non - habet
Unless the owner by his conduct made it to believe that the one selling has that selling Authority. The General public is not

aware.

failure to issue Notice is at the owner's peril.

Because the seller used to be your agent and no Notice of change of status quo.

You will be estopped from denying the facts (ESTOPPEL).

SECTION 24 – MARKET OVERT

Goods openly sold in a market established by law in Tanzania in the ordinary course of the business of such market

APPLICATION OR THE EXCEPTION

– The goods must have been exposed publicly for sell

– The goods must – – –

SALE UNDER VOIDABLE TITLE S. 25

⇒ Vitiating factor

– Undue influence
– Coercion
– Misrepresentation

The Buyer get better title if not voided.

ACADEMY
PAGE NO.
DATE

SALE BY SELLER IN POSSESSION, S. 27 (1)

If the Buyer has not fulfill the condition, the seller sell to the third part.

HARITH SAID BROS VS MARTIN NGAO (1989) T.LR

SALE BY MERCHANTILE AGENT, S. 27 (2)
Auction
You buy goods from the auction.
It is acceptble
And became as genuine

SALE BY JOINT OWNER
- If one sell, it will be considered to be valid.

- SALE BY OTHERS PROVISIONS
1. Liquidator - during winding up
2. Administrator - during insolvency
   Receiver during winding up

3. Sale by Bank under lien under Bank & FINANCING INSTITUTION ACT

4. Sale by Mortgagee after failure by Mortgagor to pay LOAN

DUTIES OF THE PARTIES
- Duties of the seller to deliver goods, S. 29
- S. 32 (1), (2), 29, 30, 39 (Buyer's duties),
  - Duty to take delivery
  Duty to pay for price.

ACADEMY
PAGE NO.
DATE

REMEDIES FOR SELLER

1. Remedies for unpaid seller
   S. 40, 41, S. 43

2. Unpaid seller lien - retain the goods until price paid.
   S. 43

3. Stoppage in transit
   S. 45
   Goods are in route to Dar es salaam to Mbeya and the Buyer has not paid the price. The seller may find a new buyer in Morogoro and it will be the end of the Journey.

4. Resale of goods
   Section 49(2)
   Exception of Nemo dat quod non habet

5. Sue for Damages

FOR BUYER

1. Rejection of non-conforming goods. S. 38

2. Damage for non-delivery, S. 52

3. Specific performance, S. 53.

4. Damages for breach of Warranty, S. 54

If it cannot cover the damages. Or if the seller is the only who Manufactures the goods/machines.

Or if that Money / compensation cannot serve the purpose.

5. Damages cannot serve the purpose.

INTERNATIONAL SALES

International Trade?

- Movement of goods, services from one County to another when involves nationals of different countries and when the contract was concluded in a foreign state.

International trade is exchange of goods [or] services between nations." Black's Law Dictionary 285, 1529 [8th ed. 2004]

That is when International Forum like Arbitration come into place as we want Neutral ground for solving the dispute.

Mostly, disputes are not sorted in Court but in the Arbitration eg ICICD or ICC, London Chambers of International Arbitration.

SOURCES OF INTERNATIONAL TRADE LAW

1. CISG
2. New York Convention on Recognition
3. WTO, EAC, COMESA, SADC & AfCFTA
4. INCOTERMS,
5. ICC – UCP
6. Local Legislation like COGSA

ACADEMY
PAGE NO.
DATE

WHY DO NATIONS TRADE?

- Subject to Law of demand
- Subject of Law of supply

Nation, by necessity or otherwise have to import and Expat.

- Reasons underlying these processes may differ from County to county

WHY EXPORTS?

- Sell of surpluses
- May obtain higher prices overseas
- Depend on natural endowment, structure of production and trade partners, level of dvt etc
- Earn foreign currency to pay for Imports
  - Link to exchange rts

WHY IMPORT?

- Essential for economy
- Consumer's choice (cars & wine)

Trade specialization

- County by county factors — Countries (some) are good manufacturers.
- Comparative advantage { If I import this, the price of tomatoes / motors is cheaper than the other.

~~Hot~~

ACADEMY
PAGE NO.
DATE

HOW THE INTERNATIONAL COMMUNITY HAVE ADDRESSED

- Parties may litigate in either party counties
- This option is found to be not best option to the Defendant if matter filed in Plaintiff county
- Parties prefers to go for ICC etc

WHY ARBITRATION?

(i) Neutrality - from different jurisdiction
(ii) Expertise - Arbitrators are expert to the area
(iii) Procedural Flexibility - Not bound to follow the rules of Evidence, Parties decide the procedures
(iv) Finality - No appeal - Read New York convention on Recognition of Foreign Award
(v) Superior cross-border enforcement (Read New York convention 1958
(vi) Confidentiality - Proceedings are confidential, Secrecy is maintained. No exposure to the general public.

Factors (i), (ii), (iii), (iv) and (vi) are interests normally shared by claimant and defendant but factor (v) is a Claimant's interest.

There must be an ARBITRATION CLAUSE

CLAUSES IN INTERNATIONAL SALES CONTRACT

1. Parties
2. Clauses on Contract price / Currency? → LETTERS OF CREDIT
3. Clause on payment condition / Mode: Open Account / LoC
4. Necessary documents - Conforming documents.

DELIVERY TERMS

1. Define terms and conditions for the delivery of goods
2. Place of delivery

→ Is it FOB (free on Board) or CIF

ACADEMY
PAGE NO.
DATE

3. Method of transportation
4. Clause on the party responsible for shipping costs
5. Clause on the applicable ~~Ico~~ INCOTERMS
6. Clause on Time of delivery.
7. Clause on Pre shipment Inspection Clause (PSI) which Company should inspect the conformity of the goods?
8. Clause on intellectual property: Address any intellectual property issues related to the goods, including ownership, licencing
9. Clause on governing Law & Jurisdiction
10. Clause on Dispute Resolution/Forum, Applicable Law, Mechanism - ad hoc or Institutional.

To be

ACADEMY
PAGE NO.
DATE 15/05/2025

ADVOCATE MARWA MATANDA KAMBURA

BASIC PRINCIPLES OF CONTRACT DRAFTING

- Contract negotiations and Management
- Agency

These are central to the Commercial Transaction

It is like the constitutional document which guides the parties.

As the Lawyer, you are the one to plan for the parties.

Some Contract are simple.

But there are other complex contract which may require attention & knowledge of the Lawyer. Eg Construction tender S.G.R

So, we have these principles which cover the following Laws:-

LAWS
- The LCA
- The Advocate Act
- Notaries public and Commissioners for Oaths Act
- The Oath
- The ARO
- The Anti-Money - - Act
- Stamp Duty Act
- The VAT Act

ACADEMY
PAGE NO.
DATE

FUNDAMENTAL POLICIES AND VALUES

1. Freedom of Contract
   - No body forces you to enter into a contract

2. Sanctity of contracts
   Section 37 – ABUALY ALIBHAI AZIZI VS BHATIA BROTHERS LTD (2000) T.L.R 288 at page 289

Binding nature

Also S. 100 and 104 of the Evidence Act and the decision in CHARLES RICHARD KOMBE

BASIC ATTRIBUTES

- Defining contract S. 2(1)(h) and S. 10 of LCA (up to 3-9)
- The agreement (promise); offer/proposal and acceptance (Section 11 & 12)
- Enforceability: capacity, consideration, intention to create legal relations and legality of the object and objective
- Free consent and vitiating factors
- Performance of contract
- Termination of contractual relationships

NOTE

Contract for necessity – S. 68 of LCA

General Rule

A minor cannot enter into the contract unless assumes as Guardian.

Exception

S. 68 of LCA

ACADEMY
PAGE NO.
DATE

Section 12- Temporary and Permanent Insanity

Temporary - can enter into the contract when he/she is okay.

Permanent Insanity - Cannot enter into the contract.

LEGALITY

Disqualified by the Law

CONSIDERATION

Section 2 (1) (b)

Section 25 - An agreement without consideration is void

Adequacy of consideration THOMAS VS THOMAS

CURRY VS MISSA

INTENTION TO CREATE LEGAL RELATION

Merit VS Merit, Balfour VS Balfour

Commercial - Presumption that they intended

Domestic arrangement - presumption that they never intended

BALFOUR VS BALFOUR

LAWFULLY/LEGALITY OF OBJECT

→ Bhangi

Objective - Mibie Mtihani afu universe

If all the above are there then the contract is okay.

The Attributes applies cumulative.

ACADEMY
PAGE NO.
DATE

FREEDOM OF THE PARTIES

Now we have vitiating factors
Section 13 - defines free consent

Section 14 lists vitiating factors
- Coersion / duress / threat / force
- Misrepresentation - INNOCENT misrepresentation
- Mistake - Innocent and - Section 22 [unilateral mistake does not render the contract void.
- Fraud

The contract become VOIDABLE at the option of the party.

PERFORMANCE OF THE CONTRACT

The main concern is standard of performance.

It is mandatory to perform - S. 37 of ICA

Performance is supposed to be COMPLETE - but there are Exceptions:-

(i) Prevention of performance
Eg Nagenga nyumba but cement imeisha haleti.
So you cannot claim for breach of contract.

(ii) Divisible contract
Many things to be done in the contract

You cannot just refuse just because tyres were not fixed properly.

(iii) Substantial performance
Like amesema atime 10 elcani but kalima 7, so that

ACADEMY
PAGE NO.
DATE

- substantial performance.

TERMINATION OF CONTRACTUAL RELATIONSHIPS
Bindingness come to an end

Circumstances:-

(i) Performance
All discharged their duties

(ii) Agreement
parties can agree.
Read section 62 and 63 of LCA
Or another may forgive the debt
or change a substitute the contract previously entered through an agreement

(iii) Lapse of Time
The Agreed time. Eg Lease Agreement
short of that you become a trespasser.

Time is of essence.

Read section 55 of LCA

Ndarime Laki maja nikitupa Mwitho
wa wiki au Nikitulipa nikipata

Or if no time specified then Section
46 of LCA come into place of
which the Court will decide the
REASONABLE TIME. Depending
on the nature of subject matter.

(iv) Discharge by operation of the Law
E.g Transaction by USD banned in Agreement or transaction.

Or Banning of importation of Apples from South Africa

Maize Exportation to Malawi.

(v) Possibility of performance
- Section 56 of LCA

Initial Impossibility - at the time of signing

Post impossibility - After Entering the contract (Doctrine of ~~frustration~~ frustration):-
Force Majeure

Section 38 & 39 Breach by offeror and offeree

After Breach results to Remedies as taken care under Section 73 of LCA

As I said earlier, contract is like CONSTITUTION or DRIVE ENGINE of The TRANSACTION.

ACADEMY
PAGE NO.
DATE

- Contract vary depending on the nature and complexity of the transaction it reflects

BASIC TERMS OF THE CONTRACT

E.g shareholders Agreement
Purchase of shares
Transfer of shares etc

1. Title of the Contract
   Hire Purchase, Joint venture Agreement

2. Preamble
   Whereas - - - - - -

3. Definitions of key Terms and Phrases
   If not defined we go to the Rules of Interpretation

4. Consideration
   The value - there should be consideration, what the offeror give or offeree receives

5 CONVENANTS
   - Promises

6. CONDITIONS
   E.g what the other party should do -- to assist

ACADEMY
PAGE NO.
DATE

Guarantee

7. WARRANTIES
   2-4 years Warranties

8. REPRESENTATION

9. INDEMNIFICATION IN CASE OF BREACH (REMEDIES)
   E.g a Retainer Agreement

10. BREACH AND CURE
    What will be a factor for breach, how to cure

11. TERMINATION
    When

12. REMEDIES
    Apart from the common remedies

13 OTHER
   Assignment Clause - to the third party

   Choice of Law (International contract)

   Ammendment and Waiver

   Arbitration (In terms of Dispute Resolution)

   Entire Agreement
   Intergration & Severability - Integrate all the contract

   Notices (How, when, what, who are signatories)

ACADEMY
PAGE NO.
DATE

Authority to sign.

PLANNING AHEAD OF PROBLEMS

TERMINATION PROVISIONS

- Exit provisions
- Well-drafted termination provisions are among the most valuable contractual protections
- Contracts also often grant the parties the right to terminate upon the occurence of certain specified events

Eg:-

- Insolvency, bankruptcy or Liquidation
- Change of control of the other party
-

IMPRACTICABILITY OF PERFORMANCE

- E.g Acts of God - Force Majeure events

Section 56 of LCA

A contract becomes Void.

REMEDIES

Section 65 provides the way forward.

Reimburse whatever have not been used.
Return them kind of funds

FRUSTRATION OF PURPOSE

RISK ALLOCATION

Who assumes the risk. After you have purchased the suit and then who has the risk? Is it the Buyer/Purchaser or seller?

ACADEMY
PAGE NO.
DATE

- Insurance Covers

Who bears the risk, when the Liabilities ends.

POSSIBILITY OF FUTURE LITIGATION

How do you resolve the Misunderstanding.

In most of the cases, dispute resolution depends on the nature of the contract

SALE - You just go to Court direct - No need for the Mediation & Arbitration.

BUILDING CONTRACT - E.g Kilimo cha Ubungo
You have to opt for ADR - because you want to prevent the Resolutions.

Mediation, Arbitration e.t.c

But, the contract can create a Board for the dispute Resolution

So, once the Dispute happen, we just go to the Board.

FORUM SELECTION

Where do we go then, Is it High Court (Commercial Division).

Arbitration clause should mention the ;-
(i) The Law
(ii) Rules.

ACADEMY
PAGE NO.
DATE

Specify the ADR

OTHER CLAUSES
- Entire Agreement clause
- Pacta sunt servanda

WAIVER
If one wishes to waive

TIME
Section 55 (If specified), S. 46 (If not specified).
Time is of essence.

AMENDMENTS CLAUSE
No unilateral amendment
S. 62, 64
You revoke the previous one.
What are the procedures of Amendment.

INDEPENDENT PARTIES CLAUSE
- Liability in the Agreement only.

- Out of it No.

- The Contract cannot make the parties to have Joint Liabilities. - Joint ventures.

SURVIVAL CLAUSE
Common in a Non-Disclosure Agreement.
You are not supposed to disclose any of the trade secre
for a certain period of time.
Obligation after the contract come to an end.

ACADEMY
PAGE NO.
DATE

⇒ SEVERABILITY & REMEDIES CLAUSE

⇒ FURTHER ASSURANCE
After the closure of the Agreement

Kuwa bega kwe bega during transfer of Land after purchase.

⇒ CURRENCY CLAUSE
Which currency are you going to use.

As of recent, you cannot use the foreign currency.

AGENCY LAW AND BUSINESS TRANSACTIONS

Principle under the Doctrine of Consideration

Doctrine of Privity - Stranger to the contract

The contract binds only the parties to the contract.

Agency Law is an exception to the General Principle of Privity of Contract.

Law of Agency deals with intermediaries (Mawakala) Powers of Agency to enter into the contract bound the principle.

ACADEMY
PAGE NO.
DATE 16/05/2025

MARWA MASANDA

In business normally we deal with Agents and not the Company

Covered under part X of the Law of contract.

One party appoint another to deal with third parties (Brokers e.t.c)

This is specialist contract. Only few features differentiate

CAPACITY OF AGENT

Even a Minor can be an Agent but cannot be a Principle

CLASSIFICATION OF AGENT

1. General
2. Special
3. Universal Agent

GENERAL

To do all things after being appointed e.g General manager

SPECIAL

In a specific transaction - known as it

UNIVERSAL

No limitation, can do everything. Very rare

ACADEMY
PAGE NO.
DATE

CREATION OF AGENCY

Can be created - expressly
- Implied
  - By estoppel — Principle of prohibiting one from denying that he is an agent. You will be estopped.
  - By holding out
    - represents himself as an agent. Eg Mmapunsa Law firm and the other come
- By necessity - situations requiring immediate action Nimepata ajali ukisaidie you are bound.
- By ratification
  - Kusaidia, No agreement, no necessity but a person does something and You agree.

EXTENT OF AGENT'S AUTHORITY

All what the Agent does within the Authority binds the Principal while out of that does not.

ACTUAL AUTHORITY

Agreed

OSTENSIBLE OR APPARENT AUTHORITY

Not in the agreement but they are obvious
E.g I told him to sell the House obvious there should Marketing and in case of trespass you will will be liable

AUTHORITY IN EMERGENCY

Kusaidia

DUTIES OF AN AGENT

Read the Law
Section 161 - 177 of the Law of Contract [Cap. 345 R.E 2019]

ACADEMY
PAGE NO.
DATE

Agent should render true Account not aim to make profit.

RIGHTS OF AN AGENT

Section 179 - 177 of the Law of Contract

PRINCIPAL's LIABILITY

Rules of determining the Liability.

We only look on the Authority (actual and apparent authority)

So the Principal is liable only to the scope of Authority.

LIABILITY OF UNNAMED PRINCIPAL

Sue the Agent together with principal or choose to sue any one of them.

LIABILITY OF UNDISCLOSED PRINCIPAL

He does not introduce himself as an agent. A third party can only sue the Agent.

PERSONAL LIABILITY TO THIRD PARTIES

- For all acts done outside the scope of his Authority.
- Directly sued by third party or indirectly sued by Principle.

TERMINATION OF AGENCY

- By agreement
- Revocation by principle

- Death
- Bankruptcy of principle
- Operation of Law
e.t.c

SELECTED COMMERCIAL TRANSACTIONS / ARRANGEME

PRACTICAL ASPECTS OF JOINT VENTURES

- Legal nature of Joint Venture
- Formation of a Joint Venture
- Corporate Joint Venture
- Joint Venture and the formation of a special purpose vehicle
- Joint Ventures and shareholders agreements in practice
- ~~Exist~~ Exit from the Joint venture

JOINT Ventures (Kuunganisha nguvu mbili au tatu) for different purpose

E.g Tender of Mradi wa SGR or Bomba la maguta Mkandarasi needs Experts e.g Landlord, a Lawyer, Employment Lawyers, Expert in Litigation.

To win that deal, I find other Experts. That ~~joint~~ Joining is called JOINT VENTURE

Entities unite

But the firms will Proceed independently but we have also Joint Venture.

It may be Locally or Internationally.

E.g Wachira opened a Law firm to deal with Wachira.

NATURE OF DURATION

Here happens conflicts

E.g Contribution, but some do not contribute

We have agreed that there ~~were~~ will be Management

Who will take assets at the end

Joint Venture agreement.

Ans Contract Laws

Tax Laws

Investment Laws

ACADEMY
PAGE NO.
DATE

WHY JOINT VENTURE?

Haja ya kuongeza nguvu in terms of Money, Experts, technological issues

It may be btn Private businesses, Public Private Partnership (PPP) or government to government.

- Such arrangements are often complex, detailed and involves legal mind in structuring, negotiation, drafting agreements, Management etc

It is due to the NEED TO PULL RESOURCES

JOINT VENTURE, is a business arrangement, wherein two or more independent firms come together to form a legally independent undertaking, for a stipulated period, to fulfill a specific purpose.

No specific name of firm is used in Joint Venture

It is of temporary nature. The Agreement terminates once the JV is completed.

The Co-ventures share profit and loss in the agreed ratio. If not agreed you will share equally

During the agreement of JV the Co-Ventures are free to continue with their

businesses unless agreed otherwise.

ADVANTAGES

1. Sharing of risk and resources
   Pooling the financial, physical, intellectual and Managerial resources
2. Cut investment or funding costs
   Apple will share Camera with samsung
3. Provide Quick and low costs access to expertise
4.

DIS ADVANTAGES

1. No overall control, possibility of deadlock
2. Profits are ~~shared~~ shared
3. Partners may gain knowledge and start competition
4. An exit plan need to be worked out to avoid disagreement or deadlock
5. Rewards of success shared with JV partners

KEY TO SUCCESSFUL JV

- Managing people. Human Capital and Cultural differences
- Partner selection. Willingness, financial stability Competitiveness of partner task, similar business philosophy, firm's liability, firm's experience
- Vision. Ensure that the attitude and objectives for the JV are set out clearly from the start for all parties.
- Governance. Appointment of JV leaders, practical planning

and reporting frameworks.

- ~~Exit~~ Exit strategy: Parties should agree on the optimal exit scenario
  Who will exit, who will remain. How do you exit?

- Dispute Resolution Mechanism.

PRACTICAL CHALLENGES

- Parent Company Commitment
  Assurance of a visible commitment from senior executives with Accountability in the parent Company

- Human Capital
  Says my workers will come here and you also says my employees will come. Now what will be the Accountability of those Employees, who pays them Are they under Joint Venture business

- Response to the ~~Exit~~ stakeholders strategy and Exit strategy.

COMMON CONFLICT

- Management — Who will be the Boss, responsibilities, position has always been a challenge. Kila mtu anajiona Mkubwa

- Investment decisions — Where do we invest and how much

- Profit sharing — The ratio, who got and which ratio?
  Profit sharing is the problem. Some wants more monies.

- Return on investment → (ROI)
- Capital Contribution
- Business plan

LAWYERS ROLE IN JV SET UP

- Legal advice / deal structure.
- Due diligence
  financial stabilities, legality etc
- Contract review / draging / Management
- Dispute Resolution

In Joint Venture there is no Law
- Agreement
- Memorandum of Understanding.

FORMATION OF JOINT VENTURE

In two ways:-
1. Strategic alliance (Without creating new entity)
2. Creation of a new Entity, a Joint Venture Company (JVC).

ACADEMY
PAGE NO.
DATE

TYPES OF STRATEGIC ALLIANCES

- Joint working Group — we want to develop new technology no new entity. they do research together
- Dst agreement — anything
- Production Agreement — to produce
- Technology agreement
- Technology transfer Agreement
- Collaboration agreement

} Ushirikiano

ASSESSING THE NEED OF JVC

- Can the new business be carried out within the existing set up?

- Advantages of JVC
  - Focused approach on new business
  - Risk sharing
  - Conservation of Managerial and financial resources

- Disadvantages of JVC
  - Cost of Managing a new Company — Employees
  - Legal compliances — once you have a company things become complicated.
  - Losing control/ownership including Intellectual Property (IP) rights.

Look like a company

CREATION OF JVC

It is a SPECIAL PURPOSE VEHICLE

Created where:-

- Two or more parties (Company or individual) to form a Company to manage a Joint venture business

-

ACADEMY
PAGE NO.
DATE

FACTORS TO CONSIDER IN FORMING JVC

- Selection of business partner
- Preparation of necessary documents
  1. MOU (JV Agreement)
  2. Shareholders' Agreement (SHA)
  3. MOA and AOA (In line with SHA)
     Memorandum of Association & Articles of Association
  4. Other ancillary agreements
- Board approvals and registering the JVC (Kusajili Makampuni Mageuzi (Just like)).

JV AGREEMENT CLAUSES

- Parties
- Definitions
- Scope / purpose
- Form of JV
- Investments
- Management
- Existing operations ← will they continue the previous operation or Lamishia Logo
- Tax ← strategic there is problem even in JVC it is easy. } who is paying Tax?
- Internal Control ← finances - Account
  finding
  investigation
- Business Plan / Budget ← should be there in a nutshell
  Separate document - prepared by those Accountants.
- Technology & IP rights
- Non-compete clause
- Representation and Warranties
- Term and Termination
- Deadlock situations
- Indemnities

ACADEMY
PAGE NO.
DATE

Confidentiality and NDA (Non - Disclosure Agreement)
- Lock in period (when you should not exit.
- Exit strategy including right of first refusal
- Governing law and dispute resolution

QUESTIONS & DISCUSSIONS

In case of death or Incapacity - actually the Joint venture come to an end

We will look on the contribution and distribute

Here only if the Joint venture depended on his skills.

Or else if it did not depend on his skills, then what happens in the, as per the JV Agreement, the heirs will proceed / take over.

If duties cannot be Executed (without skills) then the JV will end.

Can you have Multiple Joint Venture ?

ACADEMY
PAGE NO.
DATE

Dr. Emmanuel Mallya

MERGER & ACQUISITION

There are regulation set and commissions which make sure that you compete fairly.

Fair Competition Commission

Merger & acquisition – how the two companies can join so as to form a new entity so as to operate smoothly

MERGER (Kumeza)

Section 2 of the FCA gives the Meaning of Merger

Merger means acquiring of a business or assets in Tz or out of Tanzania which may result in a change of control of a said business in Tanzania.

ACQUISITION

Section 2 of FCA defines acquisition to mean acquiring jointly or alone of a legal or equitable interests in shares or assets other than by way of a CHARGE.

CHARGE – Creation of interest in the assets of an entity or of a company that gives right to the lender over the said assets.

You borrow the Money, so you give that property in event of failure to payback

In Merger you acquire interest in shares or assets of certain entity

CHANGE OF CONTROL
Not defined in the FCA

But from several decision it means the ability of the acquiring firm or entity / company to influence the business direction of the acquired firm.

We have two parties:-
1. Acquiring Company / Firm

2. Target / Acquired Firm / Company

Uwezo wa kubadilisha Mwelekeo au policies of the Target Company or operation of the Target Company and such influence can either be ~~an it~~ from ownership of shares or assets the Company / Firm.

MERGER = Acquisition + Change of Control

Good Example:
A + B = C

A merges with B form another Company C

⇒ It has to be differentiated from other terminologies.

Merger - take over however differentiate btn take over because in TAKE OVER means A + B = A

ACADEMY
PAGE NO.
DATE

A + B = A

Means no new Company.

TAKE OVER you acquire completely.

THE LAWS ON MERGER & ACQUISITION

1. The FCA, Act No. 8 of 2003
Has been ammended by Fair Competition (Amendment) Act of 2024
There are big changes.

2. The Fair Competition Rules of 2018

3. The Fair Competition (Threshold For Notification of Merger) of 2006
Has been ammended by The Fair Competition (Threshold For Notification of Merger) Amendment order of 2017

(W)Ho REGULATES MERGER IN TZ

Mergers are regulated & supervised by:-

1. The Fair Competition Commission (The FCC) Established under s. 62(1) of The FCA (Go & read)
Section 12 & 13 - decision
They have Fair Competition Tribunal where you go to challenge

TYPES OF MERGER

Four types of Merger

1. Horizontal Merger
This involves entities or firms that are competitors in the same Business. That means the acquiring &

Target are competitors

2. Vertical Merger – NOT COMPETITORS

This involves acquiring of a supplier or distributor by a Company that receives services from that entity.

The acquired Company is either a DISTRIBUTOR or SUPPLIER

Eg Telecommunication Company (Acquiring) received service from other ~~Communication~~ Companies

Vodacom decides to merge with another Company or entity that supply internet.

3. CONGLOMERATE MERGER

This is a type of Merger which involves entities from different business.

The acquired and acquiring are not from the same business.

But they decide to Merge.

4. Cross-Boarder Merger

This involves merging of entities which are in different countries.

Eg Kenya & Uganda

⟹ East African Fair Competition Law

ACADEMY
PAGE NO.
DATE

PROCEDURES FOR MERGER

What should be followed:-

1. Make sure you have two companies.

(i) File a Notification to the FCC

However, this requirement is only for those merging entities that has exceeded the threshold set by the Law.

Currently the Threshold is 3,500,000,000/=

When you combine the assets and shares of the two Entities, it should reach Tshs. 315 Billion

Read S. 11 of The FCA

Also, Rule 33 (1) of the FC Rules, 2006

Section 11, 13 FCA and Part V of the Rules.

Procedures are very clear but complicated.

→ You will use a Form - Read Part V, it is FCC Form No. 8 designed for Notification in Triplicate (3 Copies)

2 → In case there are confidential information the Companies are not intending to disclose attach FCC Form No. 9 (Rule 33 (1))

ACADEMY
PAGE NO.
DATE

WHY NOTIFICATION?

The requirement of notification is designed to control DOMINANCE.

So, what the FCC test is the EXTENT OF CONTROL

That is why they required Notification so as to make sure that the Competition is fairly.

If for instance YASS & Vodacom decide to Merger what will happen to HALOTEL & AIRTEL.

Because in the end there is curtain, They will start to arrange price.

3. PAYMENT OF FILING FEES

Rule 33 (2) (b) of The Rules

Ranges from 25 - 200 Million

What will determine the fees is the based on the Annual Total Return ~~annually~~ of the two Companies.

Audited Report Covers these, Total Annual Turn over/ Assets.

Then they calculate what you are supposed to pay.

4. The FCC will issue NOTICE

It is within 5 days since filing of Application

Can be of two types:-

1. Notice of Complete (Form No. 11)
2. Notice of Incomplete (Form No. 12)

Notice of Complete will be issued if the documents are Complete and in compliance of with the law and the Notice of Incomplete is the otherwise and FCC will explain what is MISSING so as you can rectify.

Assume that Notice of Complete is issued then ↓

5. DETERMINATION OF A MERGER APPLICATION Conducted within 180 days from the date of Notice.

In that determination the FCC will give applicant two answers:-

(i) Merger is approved

(ii) Merger is not approved / require further investigation.

So, If Merger is approved then other procedures will follow.

→ If, Not approved then the FCC will issue the CERTIFICATE OF PROHIBITION - FCC Form No. 14A

Prohibition Certificate - prohibiting them from any activity relating to such Merger until when the Investigation/ Examination is complete.

further investigation - within 90 days.

Here is for Complex Mergers.

In case 90 days are over and Investigation not over then, 30 days will be added. They will Notify the parties that they add 30 days.

Where the investigation Complete and the Fcc has decision - Three decision can be delivered as per s. 12 and 13 of FCA

1. Approve Merger without conditions
2. To approve the Merger subject to conditions
3. To issue a declaration prohibiting such Merger (Application rejected).

They will issue a DECLARATION. FOR PROHIBITION OF THAT MERGER.

Question
Assume that you filed for Merger and rejected. Where do you go?

PROHIBITED MERGER

Section 11(1) of FCA as amended by Section 10 of amendment of 2024 a Merger is prohibited if:-

(i) If lessens Competition
Before 2024 the wording was different
It was like if it create Dominance - previously.
Why domination deleted?
- It appears you have limited some other Merger
- People were smart that they do not affect dominance but they ~~after~~ affect the Market.
It was to close all the avenue designed to affect the Competition.

What is Dominance?
According to FCA a person is said to have dominance

if by acting alone can reduce competition in the Market for a period of time which can be:-

(i) Materially

(ii) Profitably

According to FCA a person will be said to dominate the Market if that persons shares in the relevant Market whether jointly or severally exceeds 40% and there are calculation as how you will get such percent.

Section 5(6) of FCA as amended by S. 4 of 2024 amendment.

Read S. 8(1) of FCA as amended by S. 5 of 2024 amendment.

Before 2024 amendment - it was 35% or more.

When you deal with prohibited Merger, you will not be dealing of only dominance but rather if the application has the effect of affecting the Market / Competition

⟹ Read S. 10(5) of FCA as amended by section 8 of 2024 amendment which talks of abuse of Dominance.
- Dominating alone might not be a problem but to the High extent that is ABUSE OF DOMINANCE.

⟹ EXCEPTIONS TO PROHIBITED MERGER

The Law in 2024 introduces a new provision and that provision which added a sub-provision - S. 11

ONE CONDITION

EXCEPTION: If that Merger will result into Substantial profit or benefit to the public which might outweigh the

negative effect or detriment that were to be caused by that Merger if were to be allowed.

Faida ni kubwa kwa jamii kuliko hasara anbazo zinge jitokeza.

⟹ The Law provided for Indicators In order to ~~MEA~~ MEASURES THE PROFITNESS OF THE MERGER

S. 11A in the amendment

Read S. 11A (2) which provides:-

⟹ ✱ Fcc look on the extent of propose of merger are:-

(a) Contribute to allocation of resources
(b) Improve production of goods
(c) Employment opportunities or Export opportunities.
(d) If that merger will help the small businesses.
(e) Extent to which that Merger will help Local Industries
(f) The Extent to which the acquiring entity will support the Target entity that has been struggling financially.

Is MERGER A JOINT VENTURE?

⟹ FACTORS TO DIFFERENTIATE

1. Parties < In joint venture Natural person or Legal person
In merger only Legal Entities

2. Purpose

3. Duration / Existence

4. CHANGE OF LEGAL STATUS < In joint venture No
In merger there is

5. Merger & SPV (special Purpose Vehicle) - Differentiate

ACADEMY
PAGE NO.
DATE

PENALTIES FOR BREACH

In case Applicants or entities intending to Merged or Merged contrary to the Law, Section 60 as amended by Section 16 of 2024 amendment. There are penalties which shall be not less than 5% - 10% of the ANNUAL TURN OVER - In practice penalties are more.

According to section 35(3) of FCA, the Directors of the entities punished, will also be personally and individually punished unless they will prove that they had no such breach or that they did efforts to escape that commission of offence.

S. 61 of FCA and 17 - of the 2024 Amendment it will give you the REMEDIES AVAILABLE

S. 11 & 13 - Aggrieved may within 28 days can Lodged an Appeal to the Fair Competition Tribunal (FCT) and if further aggrieved appeal to the CAT.

QUESTIONS

Can a Company Limited by guarantee change to Company Limited by shares