

# Business Law: A Relevant Component of Technical Education

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## Abstract

Businesses thrive on serene atmosphere where there is orderliness, fair play, rules and regulations. Every business minded person therefore seeks an enabling environment which would enhance business opportunities. Business law is the discipline which provides the framework for discovering and determining the indicators of fertile grounds for businesses. The Polytechnic or the Technical University student, being prepared for the job market as well as for self-employment ought to be abreast of the laws that govern business activities and to apply them in his future career. This paper examines the importance or relevance of business law as a discipline in the Polytechnic and Technical University curricula in Ghana. It also discusses the various reasons why students of Polytechnics and Technical Universities in Ghana in particular, ought to regard business law as an integral part of their preparations towards their future career objectives.

**Keywords:** Business law, relevance, Polytechnics, students.

## 1. Introduction

The Polytechnics Act, 2007 (Act 745), enacted by the Parliament of Ghana, to revise laws relating to Polytechnics and to provide for connected purposes, sets out the following as objectives for establishing Polytechnics under section 4(a) and (b) of the Act.

Section (a) states that Polytechnics in Ghana are established to provide tertiary education in the fields of manufacturing, commerce, science, technology, applied social science and applied arts and any other field approved of by the Minister (Minister of Education).

(b) To provide opportunities for skills development, applied research and publication of research findings.

The Technical Universities Act, 2016 (Act 922) also has similar provisions.

The import of Act 745 and Act 922 is that Polytechnics and Technical Universities in Ghana have been established purposefully to prepare students for the job market. Polytechnic and Technical university students are to be trained and equipped with skills and expertise to man the manufacturing, building, banking, hospitality and tourism and catering industries in the country and beyond. Others are prepared to fit into commerce, electrical engineering, agricultural engineering, automobile engineering, and corporate bodies.

It is as well envisaged that having been trained in the Polytechnics and the Technical Universities, graduates are able to establish their own businesses and employ others in these establishments to reduce the unemployment level in the country.

All the above areas of work have their legal ramifications which make them survive. Business law is the discipline which equips the Polytechnic student with the requisite knowledge to a successful business. There may however be the tendency of students to paying little attention to subjects that are not directly linked with their core areas of study and business law happens to be one of such disciplines.

This paper is aimed at educating both students pursuing technical courses and Management of Polytechnics and Technical Universities in Ghana and elsewhere on this all important aspect of their curriculum (business law) and to impress upon both students and staff of technical educational institutions all over the country to pay attention to this important discipline.

## 2. Literature Review

According to **Abdule Rehman (2012)**, an advocate of the House of Commons, the study of law is very important for business men and women. Ignorance of law is no excuse in practical life. Therefore, the study of law relating to our daily transaction, would enable business men and women perform well and demand that others also perform well. In the history of the world everybody wants to give out less and demands more from others. The study of law helps us to improve our business from errors and frauds, misrepresentation and the like. Rehman's position holds true especially in our contemporary era where rule of law is predominant in all spheres of life including business organizations. It is trite learning that to study laws that govern business is crucial in becoming a successful business man or woman. This is so because businesses today thrive on legal principles and the business man or woman who want to succeed in his area of endeavor must be conversant with them.

In the opinion of **Hisiw (2012)**, a developing business must take into account all of the laws and regulations that will apply to it, so that it is in compliance. If a business is found not to be in compliance with law, it could possibly be subject to very heavy fines and this would definitely affect the growth of the business in question. The goal of every business is to minimize loses and maximize profit. In order to achieve this objective, the business man or woman ought to comply the relevant legislation governing his or her choice of business. Failure

to do this may result in legal tussles which attract fines and payment of damages as observed by Hisiw.

For **Lewis**, law is important to the business students because first of all it makes a student aware about law. Law is helpful in maintaining business in legal ways. It is to make the business man have a secured business and to make us aware of the legal issues involving businesses and how to deal with them (Lewis). In reality, knowing how to deal with business issues or challenges that may arise enhances one's chances of running a successful business. Business management involves contractual relations which may arise more often than not. Thus, the business man or woman who knows how to handle them legally is a potential successful business person.

According to **Tabrez Ahmed (2009)**, business law studies is very important, as it helps the management professional in realizing the business ethics he or she must follow in order to run a proper and authenticated business. This must be in accordance with the laws and regulations prevailing in the society. The business law studies are necessary for every management graduate whether he wants to setup a proper business, or willing to join a service as a manager.

### **Scope of Business Law**

Business law, also known as commercial law is a generic term that contains a large number of topics. Broadly, it is the body of law that regulates commercial and business activities, but there are some specific areas of influence.

Business law can be considered to contain the following:

- Commercial contracts
- Corporate contracts
- Hiring regulations
- Manufacturing and sale of consumer goods
- Protecting consumer and business
- Merchant shipping
- Insurance
- Intellectual property
- Land acquisition
- Banking and finance
- Dispute resolution

This is not however to say that the scope of business law is exhaustive. There may be other fields of business which are not listed above but which business law governs.

### **3. Relevance of Business Law to the Technical Student**

The study of law is very important for every business man or woman in the contemporary era. Law, it is said is the cement of society. In a world where rule of law has permeated the fabric of all human activities, business can operate successfully only on a solid foundation of law. Ignorance of law is no excuse in practical life. When technical students study the law relating to their field or expertise, their businesses are likely to perform well. The relevance of business law to the Polytechnic or the Technical university student may be verified in the following areas of business activity.

#### **3.1 Acquiring Resources for Business**

In order to establish any business activity, the proprietor needs a piece of land or some form of space to put up a building or set up his machinery. To acquire the piece of land, he has to enter into a series of contractual arrangements with the land owner who would eventually transfer the landed property to the proprietor or the business man. In transferring the ownership of the piece of land to the business man, the law relating to conveying must be followed strictly in order to make a valid transfer or grant to the purchaser or in the case of grant to the *donee* or lessee in case of leases or licensee in case of licenses.

Thus in his attempt to acquire the piece of land or space or property in order to establish his business, knowledge in a number of relevant legislations such as laws in relation to conveyance, local government laws, including Metropolitan, Municipal and District Assembly by-laws, contract law and similar legislations are relevant in that regard. In this instance, the business law student is likely to have some form of advantage over another person with little or no knowledge in law. While the business law student is likely to follow the legal requirements for land or property acquisition, the non-business law student is unlikely. In fact, unless he depends on some form of legal advice, he is likely to make some mistakes.

For instant, section 1 of the Conveyancing Act, 1973 (NRCD 175) of Ghana provides that a transfer of an interest in land shall be by writing signed by the person making the transfer or by his agent duly authorized in writing. This provision implies that all transfers of an interest in land *prima facie*, should be in a written form and signed by the authorized parties. A lot of people are either ignorant of this legal provision or have refused to comply with it. In effect, they complete the purchase without any written document evidencing it. The legal effect is that in case a dispute arises over ownership of the land, the party who possesses a written document of

title i.e. a deed of conveyance, is most likely to have an advantage over the other party who depends on a mere receipt or on oral evidence.

A Polytechnic or a Technical university student who studies law and is conversant with above provision is more likely to do the right thing than the business one who did not study business law. Here lies the relevance of business law to the technical student.

#### **4. Establishing the Organization**

Another important landmark in business establishment is incorporating or registering the business. The potential business man or woman ought to be familiar with the various business organizations in law. For instance, sole proprietorship, partnerships, private companies, public companies etc. Before establishing the business, he must decide which form the proposed business would take as each has its own legal requirements.

For instance, in a sole proprietorship business, one typically registers a business and carries on the said business as the only owner, bearing all the liabilities and debts, if any, of the business venture. The law requires that the name of such business be registered under the Registration of Business Names Act, 1962 (Act 151) of Ghana. This law requires that every business name be registered other than a business operating under the true personal name or surname or initials of the proprietor. The name must not be misleading, and the applicant must be at least 21 years old. Registration of a business name is valid for a year and must be renewed annually else it lapses.

A partnership on the other hand is an association of between 2 to 20 people carrying on business for the purpose of making profit. Prohibited from being partners in a firm are bodies corporate, infants, persons of unsound mind, and persons who within the preceding 5 years have been found guilty of any offence involving fraud or dishonesty. A partnership is incorporated in Ghana, pursuant to the Incorporated Private Partnership Act, 1962 (Act 152).

Companies are incorporated under the Companies Act 1963 (Act 179) in Ghana or under an Act of Parliament. Upon incorporation, a company assumes the status of legal personality. This means that it can sue or be sued and can enter into contracts. As a legal personality the company is distinct from its members and officers.

The Polytechnic or the Technical university student, being prepared for his future career must be familiar with the laws on business organization in order to be efficient in whichever area he or she would like to pursue.

#### **5. Business operations**

Operating a business organization, whichever form it takes, is a daily affair which is governed by the relevant laws, rules, regulations and best practices. The successful business man or woman is the one who knows the relevant laws, rules and regulations of his trade and is able to maximize profits while minimizing losses.

Knowledge in the law of contract and other relevant legislations is paramount. The business person enters into series of contractual relations daily in his business ventures. Unfortunately, not many of them are aware that these relationships, which span from the purchase of raw materials or goods, their transportation and sale or distribution, are all governed by laws. Some of the relevant legislations which govern this area include: contract law, sale of goods laws, the hire purchase and conditional sale laws. Others are insurance laws, Common law, Equity and other relevant legislations.

The Polytechnic or the Technical university student ought to acquire some level of knowledge in the above fields of study as well as in other relevant ones as he prepares himself towards his future career as an entrepreneur.

#### **6. Manufacturing**

Manufacturing is one of the key areas that many entrepreneurs would like to invest their resources. In order to prepare students adequately towards the challenges in the area of manufacturing, knowledge in the law of tort in general and the law on negligence in particular is crucial. The ultimate goal of the manufacturer is to have his goods consumed by potential customers. As such, under the law of negligence every manufacturer owes a duty of care to those potential customers in the sense that if he does not manufacture the products with care and skill, and those products cause harm or injury to his potential customers, he may be liable in tort for the harm or injury caused.

The general principle which underlies the tort of negligence as derived from the English case of **Donoghue v. Stevenson** [1932] 1 All ER 1 HL, which says that the manufacturer, or indeed, the repairer of any article, apart entirely from contract, owes a duty to any person by whom the article is lawfully used to see to it that it has been carefully constructed. Failure of this duty constitutes a breach and the injured party is entitled to sue in damages.

It is important to note that manufacturer's liability is never limited to manufacturers in the usual industrial sense of the word. It has been held to extend to assemblers, erectors, repairers and builders.

In the case of **Grant v. Australian Knitting Mills Ltd** [1936] A.C. 85, the appellant bought woolen

underwear from retailers, wore it and contracted dermatitis due to the presence of excessive sulphide in the underwear. He sued the manufacturers in tort.

It was held that, the manufacturers made the underwear in a negligent and improper manner. Because the defect was such that it could not be discovered by any reasonable examination and the underwear reached the appellant in the same defective condition as that in which it was when it left the manufacturers. Therefore, the manufactures were liable to the appellant in negligence.

## 7. Selling the Output

The manufacturer's work would not be complete until the products reach consumers. Here again, there are laws that govern this all important activity. A series of contractual agreements would take place and this requires some knowledge in the law of contract.

It is important to note however that in Ghana, sale of goods is regulated by the Sale of Goods Act, 1962 (Act 137). Section 60 of the same law allows the application of the rules of Common Law and Customary Law to sale of goods provided they are not inconsistent with the provisions of the Act. The Act applies to contracts of sale made in Ghana including contracts concluded on behalf of Ghana.

The Sale of Goods Act (Act 137) provides that mere possession of chattel does not confer ownership. As such, the seller must have full title or ownership in the goods before he can transfer same to the buyer. The law required that goods sold must be those goods identified and agreed upon by the buyer or those sold by description or by sample (s. (1) Act 137). The law defines the duties of both the seller and the buyer under a contract of sale. The basic duties of a seller are to transfer property and deliver the goods agreed upon under the contract of sale to the buyer at the agreed date, time and place. Those of the buyer include receiving the goods delivered and paying for them.

Closely related the Sale of Goods Act 1962 is the Hire-Purchase Act, 1974 (NRCD 292) of Ghana which regulates both hire-purchase contracts as well as conditional sale agreements.

These laws are crucial in marketing products and the technical student cannot run a successful business in the future without knowing the relevant legal principles and applying same to their business activities.

## 8. Safety of Workers

Workers stand the risk of personal injury either in the form of an accident at work or by contracting industrial diseases. As a result, both the common law and statute have made provisions for the safety of workers in the course of employment. It is the duty of employers to provide a safe environment as well as the right and correct tools and machinery to their workers in order to prevent the occurrence of personal injuries and individual accidents.

Lord Wright summed up the employer's duty to ensure workers safety in the leading case of **Wilson and Clyde Coal Co. Ltd v. English** as:

*"a duty which rests on the employer and which is personal to the employer, to take reasonable care for the safety of his workman, whether the employer be an individual, a firm, or a company, and whether or not the employer takes any share in the conduct of the operations"*

Employers are said to owe a tripartite duty of care to take reasonable care to provide:

- a) Competent staff
- b) Adequate equipment and a safe system of working.

The central question discussed in this section is, what degree and kind of safeguards must employers put in place to discharge their responsibility in tort for the health and safety of their workers?

The duty imposed by law on employers to see to the health and safety of their employees is one that cannot be delegated. It is a personal duty of a general nature.

Once breach of the employer's duty is established, liability will follow even in the absence of any primary negligence by the employer or his employees. The duty of care owed to the employee in other words is non-delegable.

In **McDermid v. Nash Dredging and Reclamation Co Ltd** [1987] AC 906, the plaintiff was employed by the defendants as a deckhand. He was sent to work on a rig owned by Dutch Company under the control of a Dutch Captain employed by that Dutch Company. The plaintiff of course had no idea he was not continuing to work on one of his employer's boats under one of "their" captains. The plaintiff suffered serious injuries when as a result of the Dutch captain's carelessness, a rope that the plaintiff was untying as the rig moved off snaked round his legs.

The employers denied responsibility on the grounds that they were not vicariously liable for the conduct of someone else's employee.

The House of Lords held the defendant employers liable on the ground that the evidence showed that, the plaintiff was injured because, no safe system of work was in operation.

The duty incumbent on his employers to derive and operate such a system was not performed. The essential

characteristics of the employer's non-delegable duty were summed up by the court as:

*"... if it is not performed, it is no defence for the employer to show that he delegated its performance to a person, whether his servant or not his servant, whom he reasonably believed to be competent to perform it. Despite such delegation the employer is liable for the non-performance of the duty"*.

It is the duty of employers to employ competent staff to ensure the safety of other workers on the work premises. Where the employer negligently places an employee in a position and he is injured in the course of work, the employer will be held liable.

It is equally the duty of an employer to provide a proper system of work at his premises. Such a system may include: the physical layout of the job – the setting of the stage, so to speak, the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices and the issue of special instructions. A system may be adequate for the whole job or it may have to be modified or improved to meet circumstances which arise.

The employer must take care to provide safe premises and plant for his workers. Both failure to provide some necessary equipment and the provision of defective appliances constitute breaches of this duty. There is probably a duty not merely to provide the material, but also to maintain it.

Under the Labour Law of Ghana, as provided for in section 9(a) and (c) of the Labour Act, 2003 (Act 561), it is the duty of employers to provide their employees work and appropriate raw material, machinery, equipment and tools as well as take practical steps to ensure that the worker is free from risk of personal injury or damage to his health during and in the course of the worker's employment or while lawfully on the premises of the employer.

In the Ghanaian case of **Ekem v. Wiseway Cleaners Ltd** [1984-86] 1 GLR 61-73, the respondent company used an electrical powered machine called a Hydro-extractor in their laundry business. When power was switched on, the extractor revolved at high velocity. It was stopped by stepping on a foot-brake which combined with an interlocking device to bring the extractor to rest. Ekem, an employee of the company, sustained fatal injuries whilst operating the machine. The plaintiff, the administrator of Ekem's estate, brought an action for damages for negligence against the company. He contended, inter alia, that:

The machine was faulty. Secondly, Ekem was not adequately supervised, and that Ekem was not warned of the inherent dangers of operating the machine.

The company disputed liability on the ground that Ekem sustained his fatal injuries by using unorthodox and unauthorized means to stop the machine. The only eye-witness to the accident, the electrical supervisor of the company, in his testimony for the defence said that Ekem sustained his fatal injuries when he tried to stop the extractor with a sack after his efforts to do so by stepping on the brake paddle and switching off the electric power had failed. An independent factory inspector who had examined the machine after the accident testified that he had found both the braking and interlocking devices defective but the respondent company denied knowledge of the defect and pleaded, inter alia, contributory negligence against the deceased. Although the trial judge found that the machine was defective yet he dismissed the plaintiff's action on the ground, inter alia, that since he was not able to produce an eye-witness to the accident to testify for him, he had not proved his case. The plaintiff appealed.

Held on appeal, inter alia, at holding 3, that the issue that should always be borne in mind was whether it was reasonably foreseeable that such an accident could happen and not whether it could be established exactly how it happened. The respondents' common law duty required the reasonable exercise of care and skill to guard against dangers which an employer must anticipate. Where an employee operated a defective machine with no effective stopping device, the employer must anticipate that attempts would be made to stop the machine by some means other than orthodox ones to keep the work going and the hub of business throbbing. It would be no excuse then to urge that an unorthodox method had been employed since the employee would have had no choice. There would then be a clear nexus between an accident involving the defective machine and the employer's liability since the employer would have been negligent for his failure to repair dangerous machinery. In the instant case, therefore, the injuries to the deceased were direct, consequential and not remote and constituted the *damnosa hereditas* (anything that is acquired but turns out to be disadvantageous) which established negligence against the respondents.

The test for contributory negligence was whether in every case the plaintiff acted reasonably in taking a risk. In the instant case, there had been no instructions on the use of the faulty machine because the respondent-company had even denied knowledge of its defect. It was therefore simply a case of a workman working with what was available and doing the best in the circumstances.

Consequently, no fault could be laid at the door of the deceased for he could not be said to have contributed to the accident in the legal sense. The liability would fall wholly on the respondent-company which failed in its duty of providing a safe system of work. Furthermore, since the deceased took the risk in the respondents' interest, the respondents could not turn round after taking the benefit to urge contributory negligence.

## 9. Dispute Resolution

Human beings cannot relate with one another without any conflict arising out of their interactions. When conflicts arise however, they must be resolved to pave way for peace and development. In fact, no business or commercial activity could thrive when and where there is conflict. The business law course outline for polytechnics has made provisions for dispute resolution aimed as equipping students towards resolving dispute operations.

Dana (2001) in his work entitled “Managing Differences” observed that unmanaged workplace conflict is perhaps the largest reducible cost in organizations today. It is estimated that over 65% performance problems result from strained relationships between employees. Invariably, workplace conflict distracts employees from otherwise productive use of their time. This reduces productivity and leads to loss of revenue. It is widely believed that when employees are in conflict, they turn to activities such as theft or damage of the institution or organization’s equipments and inventory as a way of sabotage. Realizing the importance of this topic, students are taught the various ways of resolving conflicts.

Generally, there are two main methods by which conflicts are resolved. They are:

- (a) The Judicial (court) System of Conflict Resolution and
- (b) Alternative Dispute Resolution (ADR).

In the case of the former, a victim of crime reports an accused person to the police whose responsibility it is to arrest and prosecute the offender in the lower courts. In the case of the superior courts however, State Attorneys from the Attorney General’s Department do the criminal prosecution. After the prosecutions, those found guilty are either fined or imprisoned or both. This is known as Criminal Procedure.

Under Civil Procedure however, a plaintiff (the person wronged) takes a legal action against the defendant (the wrong doer). After the trial, the wrong doer is ordered by the trial court to compensate the other party in the form of damages. In the case of the latter, i.e., Alternative Dispute Resolution, disputes are resolved usually by mediation, negotiation and by arbitration.

In mediation and negotiation, a mediator, a third party neutral, facilitates a mediation conference between the two parties in conflict. The mediator does not decide the solution; it the parties themselves who decide the solution to the dispute. The role of the mediator is like that of a referee. He guides and directs the parties in their attempt to find solution to their dispute.

In arbitration, an arbitrator or panel of arbitrators sits on a case presented before them. The parties adduce evidence in support of their cases, witnesses are called where necessary. At the end of the day, the arbitrator, based on his analysis of the evidence before him, presents an award which is binding until overturned by a court of law.

Studies have shown that Alternative Dispute Resolution method of dispute resolution has a lot more advantages over the Judicial System also known as the Adversarial System of dispute resolution. For instance, while the Alternative Dispute Resolution disposes of cases speedily, the Judicial System is usually slow and since time is of the essence for the business man or woman, resolving conflicts by former method is recommendable.

## 10. Conclusion

In our contemporary era, no human activity can go on successfully without rules and regulations. Every human activity is regulated in one way or the other by some form of legislation and business activities are no exception. Herein lies the importance of business law to the Polytechnic or Technical university student being prepared to take up his entrepreneurial activities in the future. A sound knowledge in business law is therefore a guarantee for a successful business life. On the other hand, lack of knowledge in this area is a recipe for disaster for the Polytechnic or Technical university student of this era.

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