

A BEGINNER'S GUIDE TO CORPORATE AND COMMERCIAL LAW: KEY CONCEPTS AND PRINCIPLES

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1.1 INTRODUCTION

Corporate and commercial law creates the legal framework that controls economic activities, affecting business operations and creating relations internationally. This is an important area of law which comprises a body of regulations controlling commercial transactions, corporate governance, corporate finance, banking and compliance with regulations. It controls all the areas from the establishment of companies, registration under the Corporate Affairs Commission to commercial dispute resolution.

The aim of this article is to x-ray the complex nature of the area of corporate and commercial giving a detailed explanation of its key components, the legal framework controlling this area, and practical implications. This article gives insight to requisite requirements such as establishment and registration of companies, corporate governance principles, contract law, and dispute resolution mechanisms.

The relevance of corporate and commercial law in the economy of every landscape in which it exists, laying emphasis on how it affects business operations and the economy at large.

1.2 DEFINITION OF COMMERCIAL AND CORPORATE LAW

a) Commercial Law

Commerce is the large-scale organized system of activities, functions, procedures and institutions that directly or indirectly contribute to the smooth, unhindered distribution and transfer of goods and services on a substantial scale and at the right time, place, quantity, quality and price through various channels from the original producers to the final consumers within local, regional, national or international economies.

Commercial means involving or relating to the buying and selling of goods.¹

Commercial law governs business transactions including those for sales, trades, commerce, and merchandising. It is often referred to as trade law. If two parties enter into a business transaction, their rights and conduct are covered by commercial law.

It is a phrase used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. It is not a very scientific or accurate term.²

¹ Collins Dictionary <<https://www.collinsdictionary.com/dictionary/english/commercial>>

b) Corporate Law

Corporate law is the body of laws, rules, regulations, and practices that govern the formation and operation of corporations. It is the body of law that regulates legal entities that exist to conduct business. The laws touch on the rights and obligations of all of the people involved with forming, owning, operating, and managing a corporation.

1.3 SCOPE OF COMMERCIAL AND CORPORATE LAW

1. Merger and Acquisition:

One major corporate and commercial practice area is merger and acquisition. Mergers and acquisitions (M&A) is the consolidation of companies or their major business assets through financial transactions between companies. Merger and Acquisition includes properties, production facilities or a brand name through acquiring the company or merging with another company merging the business names or acquiring a new name entirely.

2. Insolvency/Bankruptcy

Insolvency refers to inability to pay one's debts while bankruptcy is a legal proceeding initiated when a person or business cannot repay outstanding debts or obligations. It offers a fresh start for people who can no longer afford to pay their bills.³

3. Dispute Resolution:

Dispute resolution is one of the different areas of a corporate and commercial law. Various methods are employed in the resolution of disputes between business partners, employers and employees, between employers or between employees. Under the Labour Act, some employers mandate that the parties go through alternative dispute resolution which involves mediation and conciliation before going to court otherwise the court will not entertain such matter. The National Industrial Court has the jurisdiction to entertain trade disputes in Nigeria.

5. Tax law

Tax law is a broad aspect of corporate and commercial law practice, it regulates all the areas of taxation existing in Nigeria e.g. direct tax, indirect tax, value added tax, petroleum tax etc. Tax refers to payments made to the government by individuals, businesses or companies in exchange for the public services and social amenities provided by the government. Tax law regulates the application of existing tax laws on individuals, entities and corporations, in areas where tax revenue is derived or levied.

6. Employment/Labour Law:

² Black's Law Dictionary 2nd Edition.

³ <https://www.investopedia.com/terms/b/bankruptcy.asp>

Employment laws are laws that protect employee and employer, trade union etc from unlawful dismissal, summary dismissal and also protect the right and duties of the employee and employer. Any company with employees have a duty to have knowledge of current employment laws and apply them accordingly. Labour law is the body of law applied to such matters as employment, remuneration, conditions of work, trade unions, and industrial relations in Nigeria.

7. Intellectual Property:

Intellectual property law focuses on the legal protection and management of intangible assets that result from intellectual and creative efforts and abilities. Examples of intellectual property are: copyright, trademarks, patents, trade secrets etc. Intellectual property refers to any intellectual creation such as literary works, artistic works, invention, designs, name, images, computer etc. Intellectual property law comprises copyright law which protects original works of authorship, trademark law which also protects distinctive signs, symbols, and logos. Patent law protects inventions and innovations.

The scope of commercial and corporate law also includes the following

1) Contracts and Commercial Transactions:

- a) Sale of Goods: It regulates contracts for the sale and purchase of goods and services.
- b) Commercial Leasing regulates leases of commercial properties.
- c) Franchise Agreements: Regulates relationships between franchisors and franchisees.

2). Banking and Finance:

- a) Banking Regulation controls banking operations, financial institutions, and consumer protection.
- b) Securities Regulation governs securities markets, investments, and trading activities.
- c) Insurance Law: Regulates insurance contracts and companies.

3). Corporate Finance:

- a) Capital Markets oversees public offerings, securities trading, and disclosures.
- b) Venture Capital and Private Equity: Focuses on investments in startups and growth-stage companies.

4).Corporate Governance:

- a) Board of Directors: They control the roles, responsibilities, and fiduciary duties of directors.
- b) Shareholder Rights provides for the rights, duties, and protections of shareholders.

c) Corporate Social Responsibility (CSR): Regulates the ethical and social responsibilities of corporations.

1.4 COMMERCIAL AND CORPORATE LAW IN PRACTICE

Commercial and corporate law functions by regulating and facilitating business activities, protecting stakeholders' rights, and ensuring and enforcing compliance with legal standards. Below are the main functions of commercial and corporate law:

a) Commercial Law in Practice:

Commercial law in practice does the following:

1. **Business Transactions:** Commercial law provides the legal framework for regulating businesses that engage in transactions such as sales of goods, commercial contracts, and commercial agreements. It ensures the effective application of the laws in business dealings.
2. **Protection of the Rights of Consumers and Customers:** Commercial law makes provisions to protect consumers from unfair business practices, misrepresentation, misleading advertising, and fake products. It ensures that consumers have access to accurate information and resources to seek redress in the appropriate places and mediums.
3. **International Trade:** Commercial law makes provisions that facilitate international trade, harmonize trade regulations (domestic and international), and address international trade disputes. It propels commerce globally, economic integration, and cooperation internationally.
4. **Regulation of Financial Transactions:** Commercial law regulates banking operations, financial transactions and institutions, securities regulation, borrowing and lending practices and arrangement of credits. It promotes and encourages transparency, stability, and confidence in financial markets.
5. **Fair Competition:** Commercial law includes competition law provisions that regulate competitive practices, fights against monopolies, anti-competitive behavior, and unfair trade practices. It aims to promote fair competition in business, innovations, and efficiency of the market.
6. **Intellectual Property:** Commercial law governs the creation, protection, and enforcement of intellectual property rights. Intellectual properties include copyrights, patents, trademarks and trade secrets. Protection of intellectual property rights encourages creative innovations.
7. **Contractual Duties:** Commercial law ensures that contractual obligations are duly and diligently performed, the enforcement of contracts where necessary, business agreements between suppliers and customers etc. It provides remedies for breach of contract and protects the rights of the parties to a commercial contract.

b) Corporate Law in Practice:

1. **Business Growth and Innovation:** Corporate law creates a legal framework that propels business growth, attracts investment (local and foreign investments) protects intellectual property rights, and nurture and regulate entrepreneurial activities. This gives rise to economic developments.
2. **Shareholders Rights:** Corporate law defines and protects the rights of the shareholders, such rights include; dividend entitlements, right to information, and remedies in the event of shareholder disputes. It promotes transparency and accountability in the corporate areas of expertise.
3. **Regulating Corporate Finance:** Corporate law governs the issuance of shares, fundraising through means such as debt instruments and equities, mergers, acquisitions. Corporate law protects the interests of the shareholders.
4. **Managing Corporate Liabilities and Dissolution:** Corporate law provides remedies for the legal liabilities of corporations for issues such as contractual obligations, bankruptcy proceedings etc. It provides procedures for winding up or dissolution of corporations with respect to the provisions of the law.
5. **Corporate Governance:** Corporate law regulates the establishment and management of corporations. Corporate law provides for the fiduciary duties of directors, officers, and shareholders.

1.5 Comparing Corporate and Commercial Law

Corporate Law provides for the establishment, governance, management, and dissolution of corporations or other businesses. Corporate law provides for directors' duties, mergers and acquisitions, corporate finance, shareholders rights and obedience to the rules of corporate governance on the one hand, while commercial Law covers areas such as law of contract, sales of goods, consumer protection, banking and finance, intellectual property and international trade regulations on the other hand.

Corporate Law regulates corporations (both public and private), limited liability companies (LLCs), and partnerships. Corporate law provides law that regulates the internal affairs and operations of these establishments while commercial Law regulates business entities, such as corporations, partnerships, sole proprietorships etc. Providing the legal framework regulating transactions and relationships among businesses, consumers, suppliers etc.

Corporate Law focuses on corporate governance principles, rights of shareholders, fiduciary duties of directors, issuance of shares, corporate finance, obedience to with regulations controlling securities, mergers and acquisitions, and restructuring of corporations but commercial

Law covers the law of contract, sales of goods, negotiable instruments, banking and finance, intellectual property rights, law of competition, consumer protection, and international trade laws.

Corporate law deals with establishment of corporations, registration under the Corporate Affairs Commission, governance of the corporation, financing, mergers and acquisitions, and dissolution of corporations. Corporate law has provisions which vary by jurisdiction, such as the Companies and Allied Matters Act in Nigeria. These regulations promotes transparency, accountability, and fairness in corporate operations. However, commercial law is governed by laws such as common law, statutes, international treaties etc.

In the area of corporate law disputes may be resolved through internal mechanisms, shareholder agreements, or litigation in courts such as the National Industrial Court in Nigeria while commercial law affords legal remedies and mechanisms for resolving disputes arising from breach of contract, consumer and supplier disputes, intellectual property infringement etc. Dispute resolution methods involved in this area negotiation, mediation, arbitration, and civil litigations

1.6 The Legal Framework for Commercial and Corporate law

In Nigeria, the legal framework for commercial and corporate law is primarily governed by several key statutes and regulations. Here are the primary sources:

1. Companies and Allied Matters Act (CAMA)⁴: This is the principal legislation regulating the formation, operation, and governance of companies in Nigeria. It provides for the incorporation i.e registration under the Corporate Affairs Commission (CAC), management, and winding-up of companies, as well as the duties and responsibilities of directors and shareholders. The effects of registration under the Corporate Affairs Commission according to the Companies and Allied Matters Act 2020⁵ includes the following:

1. The company becomes a body corporate by the name contained in the memorandum (document of the registration)
2. The company wields the powers of the companies⁶ and exercises the functions of a body corporate
3. The company develops perpetual succession and a common seal.

However this comes with the liability of the members to provide for the assets in the event of the company winding up as provided by this Act⁷

⁴ *Companies and Allied Matters Act 2020.*

⁵ *S. 37 Companies and Allied Matters Act 2020.*

⁶ *S. 38 ibid*

⁷ *S. 564 ibid*

2. Investments and Securities Act (ISA)⁸: This law regulates investments, securities, and capital markets in Nigeria. It covers issues such as public offerings, securities exchange operations, and investor protection.
3. Banking and Other Financial Institutions Act (BOFIA)⁹: BOFIA regulates banking and financial institutions in Nigeria, including licensing¹⁰, operations¹¹, and supervision by the Central Bank of Nigeria (CBN).¹²
4. Consumer Protection Council Act¹³: This Act establishes the Consumer Protection Council, which protects consumers from unfair trade practices and ensures compliance with product standards and safety.
5. Securities and Exchange Commission (SEC) Regulations: SEC issues regulations governing securities markets, including rules on public offerings, disclosures, and corporate governance for listed companies.
6. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act¹⁴: This Act regulates foreign exchange transactions and controls in Nigeria, including restrictions on foreign investments and repatriation of profits.
7. Tax Laws¹⁵: Various tax laws and regulations govern corporate taxation in Nigeria, including the Companies Income Tax Act and the Value Added Tax Act.
8. Arbitration and Conciliation Act¹⁶: This Act provides for the conduct of arbitration proceedings in Nigeria, facilitating alternative dispute resolution mechanisms for commercial disputes.
9. The Nigerian Labour Law¹⁷: The Labour Act, 2004, is the principal legislation governing employment relation in Nigeria. Its application extends to employees engaged under a contract of labour or clerical work in both the private and the public sectors. Nigerian labour law provides for and protects the rights of workers¹⁸, working conditions¹⁹, minimum wage²⁰, termination clauses²¹, and many other rules set by the government of Nigeria.

⁸ *Investment and Securities Act, Cap 29, Laws of the Federation of Nigeria (2004).*

⁹ *Banks and other Financial Institutions Act 2020.*

¹⁰ *S. 3(3) ibid*

¹¹ *S. 74 ibid*

¹² *S. 30 ibid*

¹³ *Consumer Protection Council Act Cap. C25 LFN 2004.*

¹⁴ *Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.*

¹⁵ *Federal Inland Revenue Services Act 2009.*

¹⁶ *Arbitration and Conciliation Act LFN 1990.*

¹⁷ *Labour Act Cap LI, Laws of the Federation of Nigeria 2004.*

¹⁸ *S. 12 Labour Act 2004.*

¹⁹ *S. 13 ibid*

These laws inter alia makes up the legal framework for the regulation of the corporate and commercial activities in Nigeria, providing the guidelines for business operations, protection of investors, corporate governance, and resolution of disputes. The knowledge and understanding of these regulations are pivotal to operation of businesses and investors within Nigeria's jurisdiction.

1.7 Conclusion

The understanding of the concept of corporate and commercial law to begin with, impacts an adequate knowledge of this area of law. The above written article x-rays the key concepts, tenets and practices applicable in commercial and corporate law. It gave a clear explanation of the meaning of corporate and commercial law, the scope of commercial and corporate law which includes mergers and acquisitions, employment/labour, insolvency/bankruptcy, dispute resolution, tax law, intellectual property etc. Sufficient insight into the duties performed by the commercial and corporate law in practice which includes promotion of fair competition, facilitation of business transactions, protection of the right of consumers and shareholders, managing corporate liabilities and dissolution etc was made known to the reader in this piece of writing.

Furthermore, to make it an authentic legal piece of writing, the legal framework controlling the area of corporate and commercial law in Nigeria was brought to the notice of the reader. Also, the distinction between corporate law and commercial law was made in the article.

Based on the analysis made above, the reader is expected to have understood what the concept of corporate and commercial law entails.

²⁰ S. 15 *ibid*

²¹ Ss. 11 (6) and (9) *ibid*.