



**NATIONAL OPEN UNIVERSITY OF
NGERIA**

SCHOOL OF LAW

COURSE CODE:LAW 100

COURSE TITLE:INTRODUCTION TO LAW

tertiary student; the second, a simple example of a small family business. Both passages highlight the numerous areas of law that may affect our personal and business activities.

With the exception of contract law, and to a lesser extent torts, students are not expected to have a detailed knowledge of the various areas of law identified below. Nor should it be taken that the discussion in this module represents a complete treatment of the law. It is purely to illustrate the impact of law generally.

2.0 OBJECTIVES

By the end of this Unit you should be able to:

- acquire broad view of the notion of law
- understand that virtually everything one does each day, all the year always has some legal implication
- explain the impact of law in many areas of life.

3.0 MAIN CONTENT

3.2 Instructions

Read the following passages and for each, underline or highlight what you consider to be key words, which suggest to you that some legal issue is involved.

3.1.1 Passage 1

An hour in the life of Bayo Bada an undergraduate of Criminology and Security Studies' NOUN.

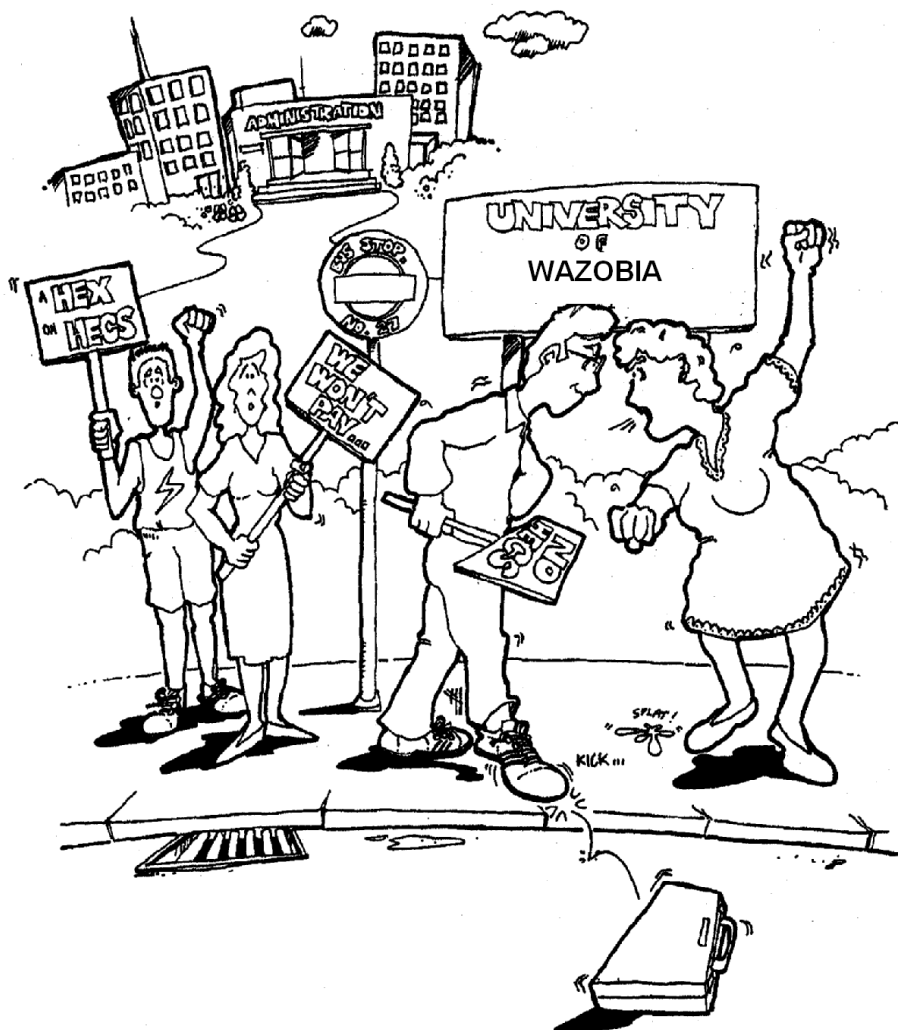
Bayo Bada ('Bee-bee' to her friends) peers at her electric alarm clock, shouts obscenities (the window is open and the neighbouring house is only three meters away), shuffles to the toilet (biodegradable type), then to the bathroom for a shower.

While breakfasting, Bee-bee listens to the daily state news which *inter alia* catalogues traffic offences, break-ins, mysterious fires in four local schools and objections to a proposed juvenile detention center for wayward wenches and uncouth youths. Taking pride in being an informed citizen, Bee-bee, between bites of barley bread layered with made in England cheese, flips from the headlines 'UN Funding Fouls' to State news demanding jobs in an area designated for World Heritage. A snippet on tertiary fees and delayed payment to the government catches her attention, which reminds her that her first tutorial looms soon.

Catching the municipal bus, she pays only half fare despite being eighteen years of age. Because her rent is due tomorrow she takes the opportunity to write a cheque to the landlord. Alighting, she posts the cheques. A large group of students just off campus on the footpath of the main road are demonstrating about inadequate infrastructure in the University. To show her displeasure, Bee-bee expectorates on the footpath. Focusing on the ring-leader she shouts, 'Dele, you are a dim-witted No Hoper!' Dele responds by kicking Bee-bee's briefcase. Other students threaten her physically. Not wishing to be late for her favourite tutorial session she decamps without further ceremony.

SELF ASSESSMENT EXERCISE 1

1. Give a suitable title to the picture below
2. Describe the scene depicted in the picture
3. Identify the legal impact of what you see.



3.1.2 Analysis of Passage 1

Now check your attempt at identification of key words relating to the legal issues against a lawyer's response:

3.1.3 'NOUN'

Universities operate under the provisions of their own individual statute, in this case the National Open University, Act 1983.

(a) Bayo Bada (Bee-bee)

One may change one's name by common usage or by Deed Poll.

(b) 'Electric Alarm Clock'

Bee-bee to have electricity say, Power Holding Corporation of Nigeria (PHCN), She would need to contract for this service.

A body such as the PHCN is a statutory board under a Federal Government Act.

(c) 'Shouts Obscenities'

Note the proximity of neighbours. Possible tortious action (ie involves law of torts) for interference with the private rights of her neighbour. Calling for an injunction, ie here a prohibition against doing such acts.

(d) 'Toilet'

The Local Government Bye-law will give sufficient power to each municipal council 'to make local laws for, and otherwise ensure, the good rule and government of its territorial unit...' The toilet in question would need to meet local government standards and approval.

(e) 'To Shower'

If the service (here water) is provided by some local authority, legal obligations will exist between the contracting parties, eg water rate charge on annual rate notice from the local council to the landlord, the owner of the premises.

(f) 'Radio News'

Control will be exercised broadly under the Constitution and specifically under the *Broadcasting and Television Acts*. Whether the station is commercial or not.

(g) 'Traffic Offences'

These are governed in Nigeria by the *Road Traffic Act 1999*. Such offences would be heard in the magistrate court. Nigeria has a codified system laws for criminal offences. This means an attempt has been made to cover as fully as possible all law relating to crime in a piece of legislation known as the Criminal Code or Penal Code. Specifically, 'break-ins' may be referred to in the Code Burglary: Housebreaking: and like offences.

(h) 'Fires'

See the note above on the Criminal Code but refer specifically this time to such offence as Arson. Barley bread, cheese, because these products are imports, they come under the aegis of NAFDAC.

(i) 'United Nations'

International law as opposed to State (or 'Municipal') law.

(j) 'Logging and World Heritage'

Constitutional law. If an inconsistency should arise between the law of the state and a law of the international law, the international law prevails, to the extent of the inconsistency, see section 109 of the 1999 Constitution.

(k) 'Municipal Bus'

Again contract law: Bee-bee paid for the ride. Further, State standards contained in regulations are relevant to the bus.

(l) 'Eighteen Years of Age'

In Nigeria this indicates full legal capacity, i.e she is seen as and accorded the rights of an adult. She is *sui juris*. Under eighteen years of age she would be classed legally as a minor.

(m) 'Rent'

The payment of rent indicates a lease of some kind and leases fall within property law or Rent Control Laws. Further, a lease is another form of a contract.

(n) 'Cheque'

This is another example of the way in which contract law is vital to the business world. Here a contract is formed between the customer and the bank for the use of a negotiable instrument.

(o) 'Student Gathering'

Where? Footpath which is a public thoroughfare. Therefore a blockage of pedestrian traffic may be interpreted as a public nuisance. Regulation of gatherings on public byways may also be subject to administrative law, e.g. the municipal council is empowered generally to pass by-laws concerning matters with the municipality. Meetings and processing permits are required under the Public Order Legislations.

(p) 'Name Calling'

This falls within a sub-branch of the Law of torts: Defamation. Slander concerns a spoken attack on one's reputation.

(q) 'Kicking'

This is a direct interference with the property of the student. In law this is a 'trespass to property' and falls within the law of torts. Further, under the Criminal Code there is an assault.

r) 'Threats'

Again, both criminal law and the law of torts may be involved here. Under the Criminal Code a threat is viewed as an 'assault'. In torts, an action could be raised for assault as well.

3.2 Passage 2

Adamu, an electrician, together with his wife Mariam, who is a businesswoman, wishes to establish a family business in the sale and repair of electrical household goods. To establish their business they wish to lease space in a major shopping center complex in Abuja.

They intend to advertise and trade under the name of ‘Live Wire’, but are uncertain as to whether they should incorporate a family owned company to conduct the business or trade as a partnership.

Adamu and Mariam are prepared to sign a three year lease for the ‘right’ shop in the center. And although their monetary savings will be sufficient to purchase initial stock for the business they have no ready capital to buy fittings and equipment essential for the sale and repair of electrical items. Consequently, they intend to lease certain fittings and equipment and to purchase other equipment under hire-purchase.

They also intend to employ one junior in the business on a full-time basis.

3.2.1 Analysis of Passage 2

Again, check your attempt at identification of key words and concepts relating to the legal issues against a lawyer’s interpretation.

Suggested response:

3.2.2 Adamu and Mariam Wish to Establish a Family Business’

(a) Company Law

If Adamu and Mariam, perhaps on the advice of an accountant, intend to incorporate a **company**, this process will be governed by the requirements of the *Companies and Allied Matters Act (CAMA, 1990)*. Incorporating a company means the creation of an artificial legal person (ie the company) with an identity separate from Adamu and Mariam. This company will be able to own property, sue and be sued. It will have perpetual succession and a common seal. It may even commit criminal offences, and be persecuted.

The company will be a party to all contracts associated with the business. The company will no doubt be limited by shares, which means that Adamu and Mariam, as shareholders, will have limited liabilities. Their liability will be limited to the unpaid amount of the nominal value of their shares.

(b) Partnership Law

If Adamu and Mariam decide to form a partnership this **partnership** will be controlled by the provisions of the *Partnership Act 1891 and CAMA, 1990*.

The hallmark of a partnership is the fact that the partners (Adamu and Mariam) are the principals and agents of each other. Consequently, the law of principal and agent permeates the whole area of partnership law and the acts of any partner (eg entering into a contract) which are done in the usual way for carrying on business of the kind, which is carried on by the firm (the collective name for the partners) binds the other partners even if they were not aware of that partner's acts.

In the formation of the partnership, the partners can agree as to the rights and duties between them, but if they don't, then the *Partnership Act/CAMA* provides rules governing rights and duties between partners.

(c) Sale of Goods Act 1893

If Adamu and Mariam form a **partnership** then the sale of electrical goods to consumers will be controlled by the provisions of the *Sale of Goods Act*.

This Act 'cuts across' the old rule of *caveat emptor* (let the buyer beware) and provides for certain terms to be part of every contract for the sale of goods. These terms require, in certain circumstances, that the seller (Adamu and Mariam) provide goods that are of merchantable quality and which are reasonable fit for the purpose made known to the seller. Remedies are available to the purchaser against Adamu and Mariam should they breach such terms.

(d) Trade Practices and Fair Trading Legislations

If Adamu and Mariam decide to **incorporate** rather than form a partnership they will be subject in their business transactions to the provisions of the Restrictive Trade Practices Legislations. Part of these provisions related to the protection of consumers both with respect to misleading or deceptive conduct by the corporation (eg false advertising) in trade or commerce and with respect to transactions between the consumer and the corporation. For example, in every contract between Adamu and Mariam's company and a consumer, for either the sale of electrical goods or the repair of electrical items, there will be certain terms implied by law (whether or not the parties to the contract agreed to such terms). These terms, which relate to the quality of the services and the goods supplied, and to their fitness for the purpose, will if breached by the corporation provide a remedy to the consumer against the corporation.

As a result of constitutional limitations on the powers of the National Assembly, the Trade Practices Legislation will not apply to natural persons whether trading alone or in partnership provided such trade is

confined within a State. Some State Assembly have legislation, which apply to sole traders and partnerships.

3.2.3 'Trade under the Name Live Wire'

(a) Business Names Act 1961 and CAMA, 1990

Whether or not Adamu and Mariam incorporate or form a partnership, since they wish to trade under the name of 'Live Wire' it will be necessary for them to register the business name under the *Business Names Act/CAMA*.

Registration would not be required if Adamu and Mariam in partnership traded under their individual names or if after incorporation the company traded under its incorporated name. It is only where a person trades under a name other than his/her own that registration is required.

(b) Taxation Law

It is necessary for Adamu and Mariam to contract the Commissioner for Taxes to indicate that they have commenced business and they would have an option either to have group tax registration or to purchase tax stamps.

If Adamu and Mariam are selling goods subject to sales tax they should apply to the Commissioner of taxes for registration under the *Sales Tax Act*.

3.2.4 'Wish to Lease'

(a) Retail Shop Leases

Adamu and Mariam's **lease** of premises in the shopping complex in Lagos will be subject to provisions of the Retail Shop legislation, which give certain protections to tenants of retail shops against onerous clauses imposed in standard form leases.

The legislations prohibit certain conditions being imposed in retail shop leases and also require that in specified circumstances certain implied conditions shall be part of the lease. Both these measures are designed to protect the tenant.

3.2.5 ‘Shop’

(a) Factories Act

Adamu and Mariam are required to register their shop under this Act and to keep the premises registered as a shop. They cannot occupy or commence business in the shop until it is registered. Adamu and Mariam should also be familiar with the provisions of this Act which deal with safety, health and welfare.

(b) Local Government By-Law

Adamu and Mariam should be aware of local authority planning laws, which regulate the use of land (land includes buildings on that land, eg Adamu and Mariam’s shop).

Use of land falls into three categories:

- Those uses which are prohibited;
- Those uses which are available as of right; and
- Those that require the consent of the Council, or other authorized Body.

It is necessary for Adamu and Mariam to determine which category they fall into with respect to the proposed uses in their shop.

3.2.6 ‘Three Year Lease’

(a) Contract Law

The importance of contract law in commerce is highlighted in the establishment and conduct of the family business.

The initial **three year lease** of the shop is a **contract**. The lease of the fittings is a contract. The hire-purchase agreement for equipment is a contract. The agreement under which the junior is employed is a contract of service. Each time a customer buys an appliance or leaves an appliance for repair there is a contract. There is a contract relating to the advertisement of the business.

Despite the fact that the common law principles of contract in some of the above contracts may be overridden by the provisions of specific legislation, e.g. *Hire-Purchase Act*, the importance of basic contractual principles cannot be underestimated. Consequently in this course, you will make a detailed study of contract from its genesis in the English Common Law.

3.2.7 'Purchase of Other Equipment under Hire Purchase'

(a) Hire-Purchase Act

Adamu and Mariam wish to buy certain equipment but they have no funds available for this purpose. If they buy the equipment by method of **hire-purchase**, the transaction will be governed by the provisions of the *Hire-Purchase Act*.

In essence, a hire-purchase contract consists of two elements, namely, a hiring agreement with an option to purchase. The option is exercised by the person hiring the goods, making the final payment at the end of the agreed period of the hire. There is only a hiring or leasing until this final payment.

3.2.8 'Fittings'

Property Law

Though property law may affect one's business in various ways, a simple application of property law relates to the distinction between **fixings and chattels**.

Adamu's and Mariam's proposed three year lease may contain a clause, that all fixtures on the rented premises will at the termination of the lease become the property of the landlord. Even without such a clause, land includes fixtures on the land. Consequently, the building and fixtures form part of the land owned by the landlord.

It is therefore important for Adamu and Mariam to be able to distinguish between fixtures and chattels. Fixtures include those things, which are attached or fixed to the building which is itself a fixture. Movable items not affixed are referred to as chattels. For example Adamu and Mariam in fitting out the shop should be advised to keep the distinction in mind.

3.2.9 'Sale and ...of Electrical Household Goods'

(a) Law of Torts

Adamu and Mariam as the occupiers of premises to which the public are invited and as the **sellers of potentially dangerous products** should consider the implications of **tort law**.

The main body of tort law which has implications for Adamu and Mariam is the law of negligence as it relates to the occupier of premises and the supplier of potentially dangerous products.

Adamu and Mariam will have a **duty of care** cast on them as occupiers of the shop premises to take reasonable care to prevent damage from reasonably foreseeable risks to persons entering the shop.

If a customer is injured as a result of **negligence** by Adamu and Mariam with respect to the static condition of the shop (e.g. slippery floor) that customer may sue the occupiers and recover compensation.

Tort law may also cast a duty on Adamu and Mariam with respect to any dangerous items they may sell across the counter. For example where Adamu and Mariam are aware that the manufacturer has supplied no instructions with respect to the dangerous propensities of an item, and Adamu and Mariam are aware of those propensities but fail to warn a purchaser, they may be held liable to that purchaser for any injuries resulting from that dangerous propensity (e.g. risk of electrical shock when used in a certain way).

(b) ‘Repair of Electrical Household Goods’

The common law principles of bailment will apply to the repair side of Adamu and Mariam’s proposed business.

Each time Adamu and Mariam or their company contract for the repair of an electrical appliance there will be a bailment of those goods from the consumer to the repairer. The consumer is the bailor of goods for repair, to the repairer who is the bailee.

In **essence**, a bailment is a **temporary parting with possession of goods by their owner to a person called a bailee**, for a specified purpose (eg repair) with an implied understanding that the goods will be returned to the possession of the owner (bailor) when that purpose is fulfilled.

Where there is a bailment of goods (in this instance pursuant to a contract for repair) the bailee comes under a **duty to take reasonable care** in all the circumstances, of the goods of the bailor while they are in the possession of the bailee such that if they are damaged or destroyed or lost through negligence, while in the possession of the bailee, the bailor may sue for damages and recover the loss sustained from the bailee.