

## TRANSACTIONAL LAW IN ZIMBABWE

### Introduction

The doctrine of freedom of contract provides that one is free to enter (or not to enter) into a contract without interference or restriction. A person has the freedom to choose with whom to contract, whether or not to contract, and on what terms to contract.

In ***Printing & Numerical Registering Company v Sampson (1875) 19 Eq 462***, the court underscored the doctrine of freedom of contract when it held as follows:

***“If there is one thing more than another that public policy requires, it is that man of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider - that the courts are not likely to interfere with this freedom of contract.”***

In ***Chanakira v Mapfumo & Anor HH-155-10***, the court established that public policy upholds - as a fundamental principle - the freedom and sanctity of contract and requires that commercial transactions should not be ‘unduly trammelled by restrictions on that freedom.’

Ergo, transactional law is an important branch of law, as it helps protect those who are entering into contracts and enables them to be fully aware of what they are getting themselves into.

### What is transactional law?

Transactional law refers to the various substantive legal rules that influence or constrain planning, negotiating, and document drafting in connection with business transactions, as well as the law of the deal (not to be confused with ‘the Art of the Deal’ - a book by former United States of America President Donald J. Trump).

Transactional practice involves researching, preparing and reviewing the documents that bring individuals and companies together: from contracts for large corporate mergers and acquisitions to the final documents for the purchase or sale of any asset.

Ensuring compliance with relevant regulations and laws also falls under transactional law. This is cardinal due to the fact that freedom of contract is

limited by the requirement that all contracts should be legal. This means that any contract which is entered into freely and voluntarily but which contravenes some legal rule in statute or public policy in common law cannot be enforced at law based on illegality. It would be tragic for one to lose out on a contract due to it not being enforceable due to an illegality that could have been foreseen and addressed beforehand.

Lawyers engaged in transactional practice hardly have to litigate. Their main work involves research, drafting, negotiating, and advising.

### **Who benefits from transactional law?**

If you own a business, then a transactional lawyer can help you make the best deals possible. We advise that all business owners engage a transactional lawyer before entering into any kind of contract. **DO NOT TAKE CHANCES!!!**

There are concepts such as the principle of *caveat subscriptor* which stipulates that a signature appended on a written contract binds the signatory to the terms of the contract. **Muchabaiwa v Grab Enterprises (Pvt) Ltd 1996 (2) ZLR 691 (S)** established that 'the general principle, commonly referred to as *caveat subscriptor*, is that a party to a contract is, in general, bound by his signature, whether or not he read and understood the document.

Bearing this in mind, it is advisable that your lawyer handles the contractual issues on your behalf so you can focus on what you truly care about - your business.

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