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ANALYSIS OF EFFECTIVENESS OF THE LAW OF AGENCY ON
ELECTRONIC COMMERCE IN ZAMBIA: A STUDY OF ZAMPOST-
NDOLA BRANCH

BY

HENRY SABOI AONGOLA

LLMCCL 1421613

SUPERVISOR:

DR. CHARLES MBITA

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DECLARATION OF AUTHORSHIP

I, Henry Saboi Aongola, do hereby declare that this work is my own and that the work of other persons utilised in this dissertation has been duly acknowledged. This work presented here has not been previous presented at this or any other University for similar purposes.

I hereby bear the absolute responsibility for the contents, errors, defects and any omissions therein.

Date:

Signature:

DEDICATION

This dissertation is dedicated to my beloved parents: my father Mr. Robison Aongola Mutakatala who unfortunately did not live to witness his love and sacrifice for me bear wonderful fruits. My Mother Mrs Florence Likando Saboi Aongola for her constant love, comfort and encouragement.

This dissertation is also dedicated to my beloved children: Faith Likando Aongola, Henry Saboi Aongola Jr and Blessings Mwangala Aongola. May this study be your source of inspiration in your respective chosen careers. Beloved children always remember Romans 8:35, "*who shall separate us from the love of Christ*".

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MAY GOD ABUNDANTLY BLESS YOU ALL!!!!

LUSAKA 2016

HENRY SABOI AONGOLA

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Female	20	67
Total	30	

Source: field data 2016

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Age	Frequency	%
18 - 25	3	10
26 - 35	9	30
36 - 45	15	50
46 - 55	3	10
Total	30	100

Source: field data 2016

Table 5.3: Highest education level of Respondents

Highest education level	Frequency	%
GCE	3	10
Certificate	6	20
Diploma	20	67
Degree	1	3
Total	30	100

Source: field data 2016

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Total	30	100

Source: field data 2016

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Reduces transaction time	12	40
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Total	30	100

Source: field data 2016

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Swift cash	10	33
Total	30	100

Source: field data 2016

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Total	30	100

Source: field data 2016

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Low turn over	9	30
Total	30	100

Source: field data 2016

LIST OF ACRONYMS/ABBREVIATIONS

CCPC	Competition and Consumer Promotion Commission
CEC	Copperbelt Energy Company
CEP	Consumer Premises Equipment
E.D.I	Electronic Data Interchange
ECOM	Electronic Commerce Promotion Council
E-Commerce	Electronic Commerce
EITO	European Information Technology Observatory
GDP	Growth Domestic Product
ICPEN	International Consumer Protection and Enforcement
ICT	Information Communication Technology
LLM	Master of Laws
OECD	Organisation for Economic Co-operation and Development
PSTN	Public Switch Telecommunication Network
RTSA	Road Transport and Safety Agency
SLA	Service Level Agreements
SME	Small Medium Entrepreneurs
SOGA	Sale of Goods Act
TRA	Theory of Reasoned Action
UNILUS	University of Lusaka
UPU	Universal Postal Union
ZAMPOST	Zambia Postal Services Corporation
ZAMTEL	Zambia Telecommunications
ZNBC	Zambia National Broadcasting Corporation

ABSTRACT

The law of agency is a area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person called the agent in this case Zambia Postal Services Corporation (Zampost), that is authorized to act on behalf of another person called the principal in this case a customer to create legal relations with a third party. Succinctly it may be referred to as the equal relationship between Zampost and a customer whereby the customer, expressly or implicitly, authorizes Zampost to work under the customers control and his/her behalf .Zampost is, thus, required to negotiate on behalf of the customer or bring the customer and the third party into contractual relationship of electronic commerce (e-commerce).

The reciprocal rights and liabilities between the customer and Zampost reflect commercial and legal realities .Zampost as an e-commerce agent often relies on customers to conduct its business .In the case of Zampost, being a corporation it is a fictions legal person, it can only act through human agents. Zampost is bound by the commerce contracts entered into by its human agents, so long as the human agents perform their responsibilities within the scope of the agency. It is not very clear how effective the Zampost agency services on e-commerce in Ndola District of the Republic of Zambia are.

Customers on e-commerce may rely in good faith on the representations by Zampost human agents and it is not always cost effective to check whether human agents have authority to act on behalf of Zampost. Consequently, if Zampost human agents acted without authority, Zampost will generally be liable. The perceptions of Zampost customers on e-commerce cannot be overemphasized in the light of inadequate legislation and regulatory framework on e-commerce in Zambia coupled by the increase in cyber crimes.

KEY CONCEPTS: Law of Agency, Effectiveness, Electronic Commerce, customer, Zampost, Agency services, perceptions, third parties, legislation and cyber crimes.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

This chapter introduces and lays down the background to the study. The chapter includes the statement of the problem, research questions, research objectives, the significance and scope of the study as well as chapter organization for the whole study.

The Law of Agency allows one person to employ another to do his/her work, sell goods and acquire property on his/her behalf as if the principal were present and acting in person. In support of the above statement, Malila (2006:56) and other authors¹ define Law of Agency as:

“an area of commerce law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationship that involve a person, called the agent and is authorised to act on behalf of another (called the principal) to create legal relations with a third party”.

The Supreme Court of Zambia have well elaborated the responsibility placed on an agent as fiduciary in the case of **Covemont Merchant Bank v Amaka Agricultural Holdings Limited**², that, *“it is trite law that where an agent in making a contract discloses both the interests and names of the principal on whose behalf he purports to make the contract, the agent as a general rule is not liable on the contract to the other contracting party, he will be held personally liable even if he names his principal.”*

It is clear from the definitions above that in an agency relationship, there will always be three people involved; thus the principal, the agent and the third party. An agent has to disclose the interests and names of principal in order to avoid liability in a contract. A contract has been well defined by Mvunga *et al.*, (2001:1) to constitute, *“an offer, acceptance, consideration and intention to be legally bound in order to be enforceable and leave a claimant with the remedy in the courts of law.”* Electronic

¹Malila M(2006) Commercial Law in Zambia: Cases and Materials, page 56 and <https://en.wikipedia.org/wiki/lawofagency> accessed on: 28/08/2016 and www.lawteacher.net accessed on: 28/08/2016

² SCZ Judgment Number 12 of 2001

Commerce is defined by Treese *et al.*, (2013:27) as, “*the use of the global internet for purchase and sale of goods and services, including services and support after the sale*”. Electronic commerce therefore, is carried out by buying and selling goods and services from a website or by contracting using email. However, no matter how an electronic contract is created, the basic principles of offer and acceptance in contract law will always apply. Practically, the principal or customer may authorize an agent (human person, company or corporation) to make an offer which must then be unconditionally accepted by the third party (seller or supplier)

The foregoing presupposes the presence of an intermediary in electronic commerce contracts to enable customers buy goods and services promptly from the third party through internet. It is not known how effective this intermediary operates in executing instructions from the principal to the third party and vice versa. Yet payment for electronic commerce services rendered by the intermediary is made in accordance with performance and the relationship is based on trust. One such intermediary offering electronic commerce services is Zambia Postal Service Corporation (Zampost) situated in the Ndola District of the Republic of Zambia.

Effectiveness is not only perceived from the intermediary or agent point of view, but also from a customer’s need for minimisation of risks associated with internet use and the enabling environment created by the agent to ensure that electronic commerce contracts are transparent, secure and reliable.

1.1. Historical background of postal services in Zambia

The history of postal services in Zambia dates back to the 1896 when the first post offices were established at Abercon, now Mbala, Fort Jameson now Chipata and Kalungwishi near Lake Mweru but these post offices did not enjoy international recognition until 1926 when the government department was admitted to the general membership of the Universal Postal Union (UPU). In 1975 by an Act of Parliament, a statutory body was established to run both postal and telecommunications. In 1986 the organization was incorporated into Public Limited Company and became known as Postal and Telecommunications Corporation Limited although the shares were held by the holding company Zambia Industrial and Mining Corporation, on behalf of the

government. This was the status until July 1, 1994. The above information is in accordance with Zampost Website (<http://www.zampost.com/agency.html>).

In July 1994 the Zampost was created under the Postal Service Act Number 24 of 1994 after the dissolution of the Posts and Telecommunication limited, which basically separated the postal activities from the telecommunications activities. In August, 2009 the Postal Services Act Number 24 of 1994 was repealed and replaced with Postal Service Act³ which provides for the regulation of the postal and courier services, continues the existence of the postal Services corporation and provides for the operation of postal banking and financial services. Currently, Zampost exists as a public postal operator established by an Act of Parliament and mandated to provide postal and courier services.⁴

In order to broaden its services and increase its capital base, Zampost as a subject agent of this study has introduced agency services: firstly, Salary Payments of which the vision of this project is to provide convenience to many civil servants especially those serving in the rural parts of the country where there are no banking services. It is also intended to provide an alternative salary payment service in urban areas. Secondly, Zampost is a Road Transport and Safety Agency designated agent such that the partnership with Rtsa is bringing convenience to motorists. This service facilitates buying and renewal of road licences at post offices country wide. Thirdly, bill collection and payments system, Zampost collects revenue and pays pensions and salaries on behalf of other organizations such as Workers Compensations, African life Assurance, Public Pensions and Food Reserve Agency, Zambia National Broadcasting Corporation (ZNBC)Television levy and Multi choice DSTV are also paid through Zampost. Lastly, Zampost has a Process of Agency Application Service.

1.2. Statement of the problem

In commercial transactions the principal employs an agent for instance, Zampost Ndola District Branch to carry out transactions on his/her behalf through the electronic systems referred to as electronic commerce. In the case of a corporation like Zampost, since a corporation is a fictitious legal person, it can only act through human

³ Act Number 22 of 2009

⁴<http://www.zambpost.com/agency.html>

agents. The principal is bound by the contract entered into by the agent, so long as the agent performs within the scope of the agency.

It is not always cost effective to check whether someone who is represented as having the authority to act for another actually has such authority. If it is subsequently found that the alleged agent was acting without necessary authority, the agent will generally be held liable. In electronic commerce, the principal through the agent transacts with the third party through a device that is connected to the internet. It is not known how effective this agency relationship is on electronic commerce transactions done by Zampost. Zampost exists as a public postal operator established by an Act of Parliament and mandated to provide postal and courier services through electronic commerce. As information communication technologies progress so do new media technologies such as the internet. Many individuals and businesses have moved towards such means as an opportunity for expansion in business transactions. Due to this Information Communication Technologies (ICT) revolution, information held by businesses can now be accessed by a wider group of customers due to the availability of the internet.

The principles of Law of Agency that govern online transactions continue to progress as businesses that are based online change and grow. Transactions can be simple as clicking on a box to agree to purchase terms. As it continues to grow, electronic commerce maintains its roots in traditional contract law however, as a result of the old and new complexity there are some challenges that electronic commerce poses to the traditional model such as issues regarding offer and acceptance.

There is legislation dealing with e-commerce contracts in Zambia such as Electronic Communications and Transport Act No.21 of 2009 but it is not known how effective these laws are on electronic commerce transactions that are conducted at Zampost Ndola. Zambia also has limited legislation dealing with electronic records including the Electronic Communications and Transactions Act Number 21 of 2009 which provides for admission of electronic evidence. The technological advancements, growing increase in electronic commercial transactions and the National ICT policy of 2007 which government seeks to promote which shows its commitment towards e-governance and e-commerce in Zambia, justify the need for Zambia to adopt an appropriate legal framework to govern and regulate electronic transactions. In an

effort to diversify on product portfolio, Zampost introduce electronic business products such as importation of Motor vehicles, Western Union money transfer, swift cash and many more other products as noted Zampost Website page. However, the effectiveness of Law of Agency on these electronic commerce transactions is not known. Therefore, the study seeks to analyse the effectiveness of Law of Agency on electronic commerce at Zampost, Ndola.

1.3. Research questions

1. How effective is the Law of Agency on electronic commerce in Zambia?
2. What are the legal challenges that are faced by Zampost on electronic commerce transactions?
3. What are the perceptions of customers on electronic commerce relating to cyber crimes at Zampost?
4. Are customers satisfied with the quality of electronic commerce services provided by Zampost?

1.4. Objectives of the study

The general objective of the dissertation is to analyse the effectiveness of the Law of Agency on electronic commerce in Zambia. The specific research objectives include;

1. To determine the effectiveness of the Law of Agency on Electronic commerce in Zambia.
2. To find out the legal challenges that Zampost is faced with as a result of electronic commerce transactions.
3. To find out the perceptions of customers on electronic commerce relating to cyber crimes at Zampost.
4. To investigate customers level of satisfaction regarding electronic commerce services provided by Zampost, Ndola.

1.5 Significance of the study

The aim of this dissertation is to enable business entities and customers alike acquire some additional knowledge on the effectiveness of the Law of Agency on electronic commerce in Zambia. This study will not only add to the existing body of knowledge. The research may also help those who intend to carry out a research on the similar topic.

1.6 Scope of the study

This study looked at the effectiveness of the Law of Agency on electronic commerce at Zampost in Ndola District, Copperbelt Province of the Republic of Zambia. The study is limited to Zampost Ndola due to time constraints, financial resources and the UNILUS academic calendar. Therefore, the findings of the study may or may not be generalised to other Zampost branches.

1.7 Chapter organization

The document has six chapters, which include the following:

Chapter One - This chapter introduced and gave a general overview of the study. It outlined the problem statement, objectives, significance, limitations and scope of the study, as well as chapter organization.

Chapter Two - This chapter reviewed the literature and other relevant publications done regarding the effectiveness of Law of agency on electronic commerce.

Chapter Three - This chapter provided the theoretical and conceptual framework. It provides the linkages between the concepts of the study.

Chapter Four - This chapter is a detailed exposition of research methodology on collection of data used to meet the research objectives.

Chapter Five – This chapter discussed, analyzed and interpreted the research findings, and further made presentations on the findings of the research study.

Chapter Six - This chapter evaluated research questions from which conclusions and recommendations were drawn.

1.8 Conclusion

This chapter has introduced the research topic; **an analysis of effectiveness of the law of agency on electronic commerce in Zambia**. The chapter has brought out the background to the study, the aims and objectives of the study, research questions, scope and the significance of the study. The chapters in the study are organized as stated above.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

In this chapter the principal researcher reviews what other authors, researchers and organizations have written in text books, magazines, publications, journals, statutes, cases, websites and other relevant information to the study. This chapter reviews the Development of the internet and information technology in Zambia, the development of e-commerce, perceptions of customers on e-commerce, formation of electronic contracts, jurisdiction and enforcement of e-commerce contracts as well as e-commerce contracts and cyber-crimes.

2.1 Development of the internet and information technology

The transformation of the global economy from an industrial focus to one anchored on knowledge and information poses a number of opportunities and challenges to countries in the world. This inevitable development has narrowed the global market in terms of time and distance due to the use of information and communication technologies (ICTs). However, inadequate laws and regulatory regime on electronic commerce, lack of infrastructure, prohibitive costs of access to infrastructure where it is available, poor quality of infrastructure, shortage of relevant skills, low levels of literacy and inadequate investment in technological development are hindering progress towards exploiting the new generation of ICTs in developing countries such as Zambia as observed by Chandia (2002:1).

The increasing pace of technological revolutions, such as the rapid integration of the internet and other telecommunications based activities into nearly every sphere of business has given rise to new ways of communicating, learning and conducting business. The internet has facilitated the establishment of a “borderless” world for communication and the electronic delivery of certain services. Electronic commerce (E-commerce) is a major driving factor contributing to the exponential growth of ICTs in accordance with Chandia (2002:1).

The internet is the world wide public access network of computers. It has no owner, though of course each of the individual pieces of hardware on which it runs has an owner. It relies for its operation on mutual comprehensibility between those various pieces of hardware. This is achieved by voluntary adherence to a single protocol to use a human metaphor; the various machines all speak the same language. The use of the internet for buying and selling, which is simply known as e-commerce is gaining its place in the commercial market. Many people believe the internet to be full of natural anarchy, so that a system of law and regulation for the internet seems contradictory⁵.

2.2 The development of e-commerce

Electronic commerce has been defined differently by various authors, researchers and organizations. According to the Electronic Commerce Association,⁶ “*E-commerce is doing business electronically ... across the extended enterprise*”. Clarke⁷ defines E – Commerce as, “*the conduct of commerce in goods and services, with the assistance of telecommunications and telecommunications based tools*”. Sharpe (2012:2-23) defines electronic commerce as, “*sharing business information, maintaining business relationship and conducting business transactions by means of telecommunications network*”. The Organization for Economic Co-operation and Development (OECD) defines E-commerce as, “*all forms of transactions relating to commercial activities including both organization and individuals that are based upon the processing and transmission of digitized data, including text, sound and visual images*”.⁸ The European Information Technology Observatory (EITO) states that, “*electronic commerce is the carrying out of business activities that lead to an exchange of values across telecommunications networks*”.⁹

“Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfer, electronic share

⁵ Fuller K(2005) E-Commerce Dealings, pp 40 -50 and <http://www.lawteacher.net/e.commerce>

⁶ www.eca.ca

⁷ <http://www.anu.edu.au/people/rogerclarke/EC/ECDefns.html>

⁸ OECD, 1997- Policy Paper on Electronic Commerce

⁹ EITO - 1997

trading, electronic bills of lading, commercial auctions, collaborative design and engineering, online sourcing, public procurement, direct consumer marketing and after sales service. It involves both products (for example, consumer goods, specialized medical equipment) and services (for example, information services, financial and legal services); traditional activities (for example, health care and education) and new activities (for example, virtual mails),” this is a comprehensive definition by European Commission-1997.

Electronic Commerce Promotion Council of Japan (ECOM) maintains that, “*electronic commerce supports an entire range of activities-product design, manufacturing, advertising commercial transactions, settlement of accounts-using a variety of kinds of computer networks*”¹⁰. In this research the principal researcher will adopt the European Commission definition of electronic commerce as a foundation for this study on the basis that it is all encompassing and has taken into consideration all other definitions.

E-commerce is therefore one of the most exciting and has far-reaching uses of the internet and new ICT technology. Consumers now have a world of products available to them and businesses have new opportunities to reach customers, sell products and develop new markets. However, the existing legislation and regulatory framework in Zambia was developed in a paper-based economy. The legislation gives special treatment to documents and documented evidence. It has been acknowledged by the National ICT policy makers in Zambia that there are inadequate laws and legal system to support E-commerce.¹¹ Even though Section 15 of the Electronic Communications and Transaction Act¹², has broadened the powers of the police to search, seize and admit electronic evidence, this relate merely to procedural issues as opposed to earlier legislation before it.

Twaambo Chuulu of Competition and Consumer Protection Commission in Zambia¹³ espoused the benefits and dangers that the consumers are likely to face and how to prevent the problems that come with buying goods and services online. The Competition and Consumer Protection Commission has been receiving a number of

¹⁰ ECOM – 2000 Market Survey of Electronic Commerce in Japan

¹¹ See chapter 2.7 of the National ICT Policy 2007 in Zambia

¹² Number 21 of 2009

¹³ Zcomp@ccpc.org.zm on 25/05/15

complaints which border on E-commerce and it is envisaged that these complaints are likely to increase because more and more Zambians are using the internet to purchase goods and services from within and outside the country. Consumers tend to use the internet to buy products as trading online is seen to be quicker, cheaper and provides customers with a variety of choices, further buying online allows consumers to shop in many places and conduct quick comparison of products and facilitates competition which results in substantial discounts. However, with all the highlighted benefits which come with e-commerce, there are some challenges. Examples of complaints the Commission received included purchasing of defective, bad quality products and the supply of false information. Other challenges include the lack of provision of sufficient information of a company such as contact details, information about the right of withdrawal and non-receipt of the item purchased. In addition, information and essential terms and conditions, costs that come in form of duty, value added tax and an import declaration fee as different countries have different measurements for their tax¹⁴.

Most of e-commerce complaints prove challenging to resolve because of jurisdiction challenges as consumer protection laws can only be enforced in Zambia. In Europe however, because of the Distance Sale Legislation, consumers are protected even when they buy products online from another European country. This was highlighted at the last International Consumer Protection and Enforcement Network (ICPEN) conference. ICPEN is an organization composed of consumer protection authorities to which CCPC in Zambia (the commission) is a member. Its aim is to protect consumer's economic interests around the world, share information about cross-borders commercial activities that may affect consumer welfare and encourage global competition among law enforcement agencies, (<http://www.ccpc.org.zm>).

However, most of the laws in Zambia, the Competition and Consumer Protection Act¹⁵ inclusive are only enforceable within the country. This means that complaints that have to deal with traders outside the country tend to be challenging because there is recently no legal framework to deal with consumer protection related complaints outside Zambia. As such the CCPC can only effectively investigate cases where complaints have local representation in Zambia.

¹⁴ Ibid p1

¹⁵ Chapter 417 of the Laws of Zambia

For instance, the CCPC investigated a case involving a complainant who ordered goods from Wisconsin, United States of America (USA) on 29th January, 2014 and the package was delivered to the USA agent for the local online shopping company. The complainant alleged that his package took three weeks for it to be shipped to Zambia despite the company assuring him that it would take five to seven days to be delivered to Zambia. Further, the complainant alleged that he was charged an amount more than what was indicated when he was making a contract with the respondent. In this case, the CCPC intervened and the complainant was given a refund to that effect.

The CCPC also intervened in another case when the complainant engaged a local online shopping agent to help her procure goods from the USA in September, 2013. In this case, the online shopping agent made adverts which purported that goods take three to four days to arrive from the USA and the complainant entered into an agreement with the agent based on the information she was given. However, it took more than a month for the goods to be delivered to her. In this case, the respondent to the case was warned to desist from supplying a service beyond the reasonable time as agreed with the complainant, (<http://www.ccpc.org.zm>).

Therefore, the Principal is in agreement with Twaambo that in order to avoid problems regarding online transactions or purchases, customers should take the following precautions. Firstly, ensure they get sufficient information or details about the credibility of the company they want to buy their products from. Secondly, ensure that the payment system is credible enough to an extent where they could be refunded. Furthermore, the consumer ought to thoroughly read the terms and conditions and understand them before entering into a purchase agreement. The CCPC will continue to sensitize customers in their customer rights and obligations with regards to online shopping and e commerce.

2.3 Zambia's Challenges

The utilization of ICTs has been a major government concern in Zambia and the Government fully appreciates and recognizes the role that ICTs can play in national development. The government of the Republic of Zambia, through the line Ministry of Transport and communication, is therefore determined to fully utilize ICTs in the social and as well as economic sectors of development. The implementation of ICTs

has never been, and will continue not to be, an easy task without the involvement of all key stakeholders - from the individual user, the Government, market players and those that are charged with regulating such services. There are challenges and opportunities that need to be understood by all. These should then be carefully tackled to get a lasting solution for the benefit of all players such that there is a win-win situation for stakeholders, Munsaka (2009:1).

2.3.1 Service Provider Challenges

The biggest challenge faced by service providers is the high cost of broadband, largely due to limited access available through satellite communications, the only means of accessing broadband. The delivery of broadband by providers to other sites is through terrestrial systems owned by party partners, since most service providers do not own their own infrastructure. This increases their costs which are in turn passed onto their clients, Munsaka (2009:2).

The fibre networks that have been built in the country are owned by third parties and the service providers have to buy space on the cables. The cables are currently owned by CEC on the Copperbelt. ZESCO and ZAMTEL have plans to install nationwide fibre networks at a very high cost, which will result in them on-selling at the same high costs in order to recoup their investments. There may therefore be little financial advantage in opting for the fibre option as compared to using the private satellite networks. Access to the Essay cable will still require delivery via neighbouring countries which will once again increase the landed cost of the capacity and lead to increased costs for those who will need to buy bandwidth from ZAMTEL, Munsaka (2009:3).

The market is largely limited to the rail corridor and major road networks, with few or no major markets outside these corridors. Most clients are based in Lusaka and the Copperbelt, as are most industries, with some clients in towns such as Livingstone in the Southern Province. Large-scale farmers are found in areas such as Mkushi and the southern region of Zambia. Tour operators have recently emerged as a potential market but this is still in its infancy. The regulatory regime has been a major stumbling block, particularly the issue of technology neutrality. The long lag times before certain technologies are allowed e.g. VOIP, have resulted in a stalemate

situation. To offer it one has to have a Public Switch Telecommunication Network (PSTN) license which costs about US\$ 12 million. It should be noted that most communication equipment that comes into the country has VOIP capabilities.

A second issue is the annual 5% commission operators have to pay to the regulator on their annual gross income, which sometimes overshoots the dividends that shareholders receive (<http://www.ccpc.org.zm>)

The third issue that was raised by Munsaka (2009) was whether there is enough market demand to warrant the number of service providers currently operating in the country. There are questions about whether the regulator should put a hold on the issuing of licenses. Zambia has more than 20 Internet Service Providers, but it is questionable whether there is sufficient market demand to generate profits for themselves as well as shareholders and still be able to provide quality services. Most of the local service providers do not have the capacity to take up major multimillion dollar projects to roll out infrastructure and are dependent on third party services for such operations. The danger they face is that they may be unable to compete against multinationals such as MTN and Airtel. There is pressure on the regulator to protect local companies from hostile take-overs by the multinationals. It is hoped that the lobbying by local operators will result in this being addressed in the new ICT Bill. The development of a national fibre backbone is underway but the pace is slow and there is little collaboration between stakeholders resulting in the same areas being covered rather than a broader rollout plan which would see most of the country covered (Munsaka 2009:3-5)

2.3.2 Consumer Challenges

The biggest challenge that consumers face is the high cost of broadband and peripherals required to gain access to the internet. At about US\$ 100 per month personal broadband services in the home are beyond the reach of most clients (compare this to the same services costing about US\$ 20 in Europe and the USA). The high costs have meant that only the wealthy have access through their homes and office environments. The initial cost of Customer Premises Equipment (CPE) is also high. The cheapest modem on the market averages about US\$ 500 and does not include the monthly subscription fees which range from about US\$100 for an

individual user to US\$ 5 000 for corporate users. The high costs have led most customers to opting for dial-up services and the excessive costs for using ZAMTEL lines (Munsaka 2009:3-5)

Computers cost on average about US\$ 1 000, a figure beyond the reach of the average Zambian and which would require a loan to purchase such equipment for home use. The consumer is not protected by the regulatory regime as no ISP has as yet been punished for shoddy or unsatisfactory service. Corporate clients have recently started signing Service Level Agreements (SLAs) with service providers - this was based on a gentleman's agreement in the past. The issue of direct consumer protection is now being addressed by the regulator who has set up consumer protection groups in several cities. The service providers are protected by the regulator through their license and service agreements.

Furthermore, Munsaka lamented that there is little consumer awareness regarding acceptable quality of service. This area requires serious attention as most customers have been duped into paying vast amounts of money for a substandard service. An independent body is required which can monitor the quality of service delivery to customers. Mobile connectivity is not yet an option as the average Zambian cannot afford a mobile phone which has the required functionality. However this is a potential growth market that should be revisited in the future as mobile rollout in rural communities is mushrooming.

2.3.3 Regulatory Challenges

(a) Universal Access

The accepted definition for universal access in Zambia is defined much as it has been elsewhere, namely that all people should have access to information and telecommunication which is affordable and available, within reach and with a minimum effort of travel to access such services. The issue of universal access is an important regulatory challenge in terms of how broadband services are made available to underserved communities (<http://www.ccpc.org.zm>)

(b) Resource Sharing

The issue of resource sharing has been debated for some time but has not yet been promulgated into law. Issues under debate include the need for compulsory resource sharing, spectrum management and standardization in service delivery. The norm has been to have a gentlemen's agreement, with fees and other related issues agreed between players without necessarily involving the regulator. Dispute resolution has been difficult in the absence of arbitration (<http://www.ccpc.org.zm>)

(c) Monitoring

The regulator has no capacity to monitor the performance of operators, and no mechanism together information beyond what it can obtain from consumers. This is addressed by the regulator and hopefully this situation will improve as noted on the website above.

(c) Power Supply

In areas not connected to the national grid, it is very difficult to roll out ICT services. Alternative energy sources such as solar panels are beyond the reach of rural communities. The World Bank has supported solar installations at schools but this is purely for the use of the schools. Without any sustainability measures in place, it is likely that this will eventually grind to a halt. Wind energy is harnessed mainly to supply water and not on a commercial basis. This form of energy could be used in areas with high winds but is not feasible throughout the country.

2.4 Zampost as an Agent on e-Commerce

Flowing from the role agents play in facilitating electronic commerce transactions, it becomes inevitable to determine the effectiveness of the law of agency on electronic commerce in Zambia. It is also not in dispute that Zampost Ndola branch is an agent

of many customers engaged in e-commerce transaction. To be effective as an agent, Zampost must be subject to appropriate legal framework to govern and regulate e-commerce transactions that it is engaged to handle. However, it has been noted that prior to 2011, Zampost was embroiled by inefficiency and corruption¹⁶, Zampost suffered from serious operational problems, lack of innovation and it failed to reposition itself in the highly technologically advanced business environment. In December, 2011, by then the Communication Minister, Honourable Yamfwa Mukanga revealed that Zampost was mired in corruption and mismanagement. For instance, it had wasted K2 billion (old kwacha) on Postmaster General's office when the company was operating at a loss. The Minister fired the Postmaster General Paul Simfukwe who was subsequently arrested for alleged abuse of K1.1 billion (before rebasing) in March 2012.¹⁷

Apart from the above challenges, Zampost customers on e-commerce have fear of being scammed. This fear is legitimate in the sense that it has been observed that there is certainly a lot that remains to be done. Zampost still has to clear huge backlog of unpaid retirees and outstanding payments for some employee scheme loans contracted with other banks and financial institutions¹⁸. Therefore, if Zampost is struggling to pay its employees, what of a customer on e-commerce who may be pressing for a refund? Zampost also faces challenges in the development of e-commerce which include; lack of effective ICT infrastructure to support widespread use of e-commerce solutions from the ICT industry that can promote the spread of e-commerce and lack of supportive and integrated investment in ICT, energy and other social infrastructure projects to increase uptake, access and demand for e-commerce.

It is very encouraging to note that Zampost's introduction of agency services relating to e-commerce have scored some achievements that include; easier buying and selling procedure, as well as easy to find products, buying and selling is done twenty four hours every week day, more access by customers to suppliers of goods and services as such there is no theoretical geographic limitation, low operational costs and better quality of services, there is no need of physical company set ups by customers, easy to

¹⁶ Parliamentary Committee Report 2008

¹⁷ <http://www.zambian-economist.com/2015/05/zampost-rising.html>

¹⁸ Ibid note 16

start and manage a business and customers can easily select products from different providers without moving around physically.

The bigger question is whether Zampost as an agent of customers on e-commerce can develop trust as soon as they can and prove that buying and selling online is advantageous. Furthermore, Zampost must enlighten its customers that electronic payment systems are the cornerstone of e-commerce development in Zambia by ensuring convenience and flexibility when undertaking commercial transactions and trade. It is clear that Zampost is indebted to good telecommunications infrastructure, widespread use of e-commerce related services, awareness creation and development of e-commerce solution.

2.5 Customers perceptions on Electronic Commerce

Customers who participate on electronic commerce should be afforded transparent and effective customer protection that is not less than the level of protection afforded in other forms of commerce. Online shopping has become very popular for customers. Its attractions include the opportunity to search for goods and services, compare their prices, read reviews made by customers who have purchased the same goods or service, order and pay for them and have them delivered, all from the comfort of one's home. Other attractions include the "cooling off" period which applies to most online purchases, discount, promotions and the freedom from being pressurized by a sales person into buying expensive (sometimes unwanted) extended warranties. A customer observed on the 7th of June, 2015 that a lot more Zambians should access the vital information and note that e-commerce is the way to go and has potential to contribute to the Growth Domestic Product (GDP) in Zambia¹⁹.

Customers on e-commerce have legitimate expectation that Zampost and other businesses in Zambia must ensure that e-commerce transactions are safe and customers are protected. Besides, the customers have fear of a number of threats to the continued growth of e-commerce such as security, theft of intellectual property, fraud, invasion of privacy, lack of internet access, return on investment and legal jurisdiction as well as taxation, Chimpala (2015)²⁰ wondered just how secure e-commerce is in Zambia. She observed that with business migrating to improve their presence online,

¹⁹ <http://www.tectrends.com.zm/mobile-apps/just-secure-ecommerce-zambia>

²⁰ Ibid note

they attract new customers and provide services or products from afar ,there is need to know just how safe e-commerce is in Zambia. There are many who fear being defrauded of their money especially if they pay before they receive the product or service, which has forced many e-commerce businesses such as Zampost to offer cash on delivery services or emphasis on a refund policy if the customer does not like the product. This is coupled with a lack of proper ICT infrastructure, lack of proper payment gateways or financial systems in place, general ignorance by potential customers on how to use the internet, load shedding meaning customers may have no access to the internet if their devices are down, lack of purchasing power by the majority poor and a general dependence on face-to face trade and the general use of actual cash compared to credit /debit cards to make payments in the Zambian society.

There are however laws in place to protect both businesses and customers online in Zambia. The Government has set straight measures to allow for business to happen online with serious repercussions for those who break the law.²¹

How then can e-commerce sites protect themselves from hacking incidents? Hacking is defined in section 2 of the Electronic Communications and Transactions Act to mean access to a computer illegally from a remote location, or without the authority of the owner. Firstly, they should make sure all their data is encrypted, this makes it hard for hackers to penetrate the site and obtain information. All data should be backed up to a remote server in case there is ever a website crash for some reason. E-commerce sites should set up system alerts that go off if there is ever a security threat to their site. They should urge customers to set up longer, safer passwords and change them regularly. E-commerce businesses should also set up firewalls on their sites and educate trusted employees on the security procedures or measures. E-commerce is growing fast globally, with more people having less time to run errands and spending more time on mobile devices or other gadgets, making it easy for them to ‘run these errands’ and have items delivered at minimal fees wherever they need it to go at the click of a button.

How then can customers protect themselves when making payments? They need to set up a strong password. Never using the same password for different accounts .They should also only use trusted sites or shelters with the most reviews on the site they

²¹ The Electronic Communications and Transactions Act, Number 21 of 2009

decide to use. Use the cash on delivery method if too scared of prepayments. They should never give out very personal information such as bank accounts, password or even the logging details to site. Opt for cash on delivery if it is available as a payment option. Mobile money is another option that mobile operators and other service providers are depending on to provide safer e-payments in Zambia .These include swift cash by Zampost, Airtel money, MTN money, Zoono, Shoprite cash transfer to name a few.

Zambian e-commerce needs legislation to provide confidence for growth according to Timothy Kasolo of Zambian ISP CopperNet solutions²².He argues that Zambia could be in the electronic commerce business but it needs proper legislation that will build people's confidence in it, writes Timothy Kasolo. Presenting a paper on the challenges and opportunities of e-commerce in Zambia CopperNet Solutions Operations Manager Thomas Musaluke said e-commerce needs proper legislation for Zambia businesses to succeed. Musaluke said there is need to have a legal and regulatory framework that will control online business like taxation of Information Technology applications. He said Zambia needs e-commerce for marketing, supply and procurement of goods and services so as to allow people conduct their businesses through e-commerce.

Musaluke further observed that e-commerce plays a role in ensuring that companies enter into partnership with global business partners in order for them to extend their reach in business. He added that CopperNet Solutions is one of the companies that is providing e-commerce and other selected banks in the country. Although e-commerce in Zambia is existing, there are some loop holes that have led to e-commerce stagnation. Musaluke said one of the major problems is that Zambia as a country has got no local credit cards insurance and that the Zambian economy is only cash driven hence goods are very expensive .He also said that there is lack of policy direction to instill confidence in the consumers by introducing different modes of payments (*ibid*).

There is always the potential for abuse and arguably the anonymity afforded by the internet that has done much to damage the level of trust customers are willing to place in it. The customer needs to be protected as they have no face to face interactions with the suppliers and have no way of inspecting the goods or service before entering into

²² <http://www.balancingact-africa.com/news/en/issue-no-188/internet/zambian-e-commerce-n/en>

the contract .These laws stress the importance of transparency and information disclosure by the service provider. The Electronic Communications and Transactions Act provides in the long heading that it is “*an Act to develop safe ,secure and effective environment for the consumer business sector and the Government to conduct and use electronic communication ;promote legal certainty and confidence and encourage investment and innovation ,in the electronic communications industry; facilitate the creation of secure communication systems and networks; establish the central monitoring and coordination centre and define its functions; repeal the Computer Misuse and Crimes Act,2004; and provide for matters connected with or incidental to the foregoing*”.

2.6 Formation of Electronic Commerce Contracts

The rights and obligations of parties come into existence when the contract is formed. In Electronic Commerce contracts however, it is sometimes difficult to determine “where and when” the contract is concluded. There is a view that a contract is concluded where the customer becomes bound to buy something and the business becomes bound to supply it. However, section 15(2) of the Electronic Communications and Transactions Act, has settled the issue of “where and when” the contract is concluded, “*an agreement concluded between parties by means of data messages shall be concluded at the time when and place where, the acceptance of the offer is received by the offeree*”. Data message is defined by the Act in section 2 to mean, “*data generated, sent, received, or stored by electronic means and includes; (a) a voice, where the voice is used in an automated transaction; and (b) a store record*”.

Nevertheless ,Article 6(5) of the United Nations Convention on the use of Electronic Communications in International contracts states that “*the sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.*”²³

The basic concept of effective communication in contract formation is the concept of offer and acceptance. Ecommerce poses a major problem in relation to this issue .It is

²³ Article 6 (5) of the United Nations Convention on the use of Electronic Communications

important to identify the offer and acceptance because they fix the prices times and place of agreement, this determining which transaction is relevant.²⁴

Often in E-commerce transactions parties never meet each other face to face. This is an immediate issue and challenge to the traditional form of contract as it makes it difficult to ensure the parties act lawfully and the transaction itself is legal and has undergone the steps necessary to regard it a contract. When speaking of bilateral contracts, an offer is a clear statement of the terms in which a person (the offeror) promises to be bound and the other party (offeree) accepts the offer and it is through acceptance of this offer that a contract is created. On the internet, it is difficult to determine whether a webpage is considered an offer or an invitation to treat. However, section 15(2) of the Electronic Communications and Transactions Act quoted earlier states that, “*a message is deemed sent when it ‘enters a single information system outside the control of the originator’*”, thus deemed sent.²⁵

The words used in an online offer can often be considered misleading and different legal system may have different approaches to these problems. An acceptance is a final unqualified agreement to the terms of the offer. Generally, it must be communicated to the offeror and the parties are free to vary by agreement. Email is a common method of acceptance in e-commerce environment. Acceptance of an offer becomes effective at the moment the indication of assent by the offeree reaches the offeror. Whilst E-mail is a common method of acceptance in the e-commerce it proves to be problematic.

2.7 Jurisdiction and Enforceability of E-Commerce Contracts

Jurisdiction refers to the power and authority of a government to legislate, adjudicate and enforce its laws.²⁶ Jurisdiction is dependent on the sovereignty of the government and therefore is usually territorial and is bound by territorial limits and usually does not extend beyond the territory. In order for a court to adjudicate in a case, the court must have authority over the subject matter in dispute (subject matter jurisdiction) and authority over the parties before the court (subject jurisdiction). This in turn makes it difficult to be sure that the offer has been ‘accepted’ as one is unsure if the acceptance

²⁴ Ibid note 23

²⁵ Ibid note 23

²⁶ <http://www.lawteacher.net/free-law-eassys/commercial-law/effecitive-consumer-protection> 26/08/15

has reached the information. Jurisdiction is often subjected to territorial limits whereby, activities that occur on the internet, by their very nature, are worldwide. It is no matter of where the website is hosted from or built as it may be accessed from anywhere in the world. This could indicate that the individual as business who contracted the website may be subjected to a personal jurisdiction anywhere in the world. Because bilateral contracts are face-to-face it is simple to determine what jurisdiction the exchange took place and what laws apply.

The question of internet jurisdiction can be simplified into a debate between those who support the jurisdiction being the residence of the customer, and those who support it being the location of the business. However, jurisdiction is an issue to e-commerce as it is difficult to identify what jurisdiction laws need to be enforced. This can be a problematic since unlike traditional contracts, the person being contracted with is not physically present, and so their identity may be uncertain.²⁷

Written contracts which have been figured and accepted are considered to be binding however enforceability of internet contracts is questionable. Although the internet is just emerging, the contracts formed over the internet are generally well-governed by the principles set out for written contracts. Two or more parties must mutually assent to the terms of the contract and the contract itself must be supported by some consideration.

Often, the user of a commercial website is asked to read a set of terms and conditions governing the activities and then asked to agree to those terms and conditions before making a purchase or obtaining the service offered by the website. Agreements entered into in this fashion are referred to as 'click-wrap' agreement because the user typically indicates his or her agreement to the terms and conditions by clicking a button or hyperlink marked "I agree". Such contracts are generally binding, subject to traditional contract law principles.²⁸

Subject to traditional contract principles, click-wrap agreements are generally enforceable and browse wrap agreement are very difficult to enforce. Shrink-wrap agreements lie somewhere in between, though recent case law supports their

²⁷ Ibid p 11

²⁸ Ibid P 12

enforceability in the case of **Hotmail Corporation v Van & money Pie Inc**²⁹, the court found from this case that click wrap agreements were enforceable, it goes to show the difficulties associated with online agreements and not all people who click ‘I agree’ on the terms and conditions online entailed.

2.8 Electronic commerce contracts and cybercrimes

Zambia had no specific legislation meant to deal with cybercrimes until the year 2004 when the legislature passed the Computer Misuse and Crimes Act No.13 of 2004 which has now been repealed and replaced by the Electronic Communications and Transactions Act Number 21 of 2009. The Act was passed against the background that while technological advances have brought immense benefits to society, there are also some negative developments that have come with the computer age. The legislature recognized this and it was felt that existing legal framework at the time could not keep pace with new moral and ethical dilemmas that technology has posed and there was need for legislative interventions according to Simusokwe (2009:10).

The need to have specific cybercrime laws was also justified by an incident that earlier occurred in 1999 where a young Zambian hacked onto the State House website and replaced the portrait of the Head of State President Fredrick Chiluba with an image of a cartoon. The perpetrator was arrested and charged with defaming the President of the country to section 69 of the Penal Code³⁰, but the case failed to succeed in court because there was no law in Zambia that dealt with cybercrimes.³¹ The above example also goes further to give good reason for constantly keeping the law up to date so as to counter new forms of criminal acts that come with technological advancements.

Cybercrimes are specified within Sections 98 to 109 of the Electronic Communications and Transactions Act. It is very important to note that the application of the Acts is very broad, particularly Section 107 and 108 in relation to citizens, non citizens and corporate bodies. However, the Act does not make

²⁹(1998) WL388389(N.DCal.)

³⁰ Chapter 87 of the Laws of Zambia

³¹ See Mail and Guardian Newspaper July 29, 2004 from <http://www.mg.co.za>

distinction between corporate bodies registered and domicile in Zambia and those outside as it has does with natural persons.

Forgery of electronic data or documents is one area that has not been legislated against in many jurisdictions including Zambia. South Africa is one of the few countries that has specifically criminalized computer related forgery. The production of fake data with the internet that it be considered or acted upon as if it were authentic is an offence under South Africa laws.³² Under the Council of Europe Convention on Cybercrime of 2001,³³ computer related forgery has been criminalized and creates a parallel offence to the forgery of tangible documents. The Article aims at filling gaps in criminal law related to traditional forgery, which requires visual readability of statements, or declarations embodied in a document and which does not apply to electronically stored data.

Zambia has not updated its laws to deal with computer related forgery. The Penal Code, particularly section 344 still provide for forgery in terms of tangible documents. This area requires legislative intervention in view of the technological advancements that have been made. In addition, Theft on the electronic Frontier raises two major challenges that conventional criminal laws cannot adequately address.

The definition or interpretation of what constitutes property for purposes of committing the offence of Theft is problematic. Theft as an offence stems from the common law position that only tangible things can be stolen as noted in **R v Absalom**.³⁴ This is problematic in view of the fact that computer technological now makes it possible and easy to steal intangibles such as data or information. The other main challenges are the new phenomenon of identity theft. Identity theft describes criminal acts where the perpetrator fraudulently obtains and uses another person's identity using internet technology. Theft of identity on the internet is not only a new phenomenon but is on the increase therefore justifies legislature response as noted by Simusokwe (2009:22).

Although Zambia's copyright law does not explicitly address offences committed via the electronic frontier, copyright infringement perpetrated through the internet or

³² Section 86(2) of the electronic communications transaction Act Number 25 of 2002

³³ Article 7 of the Convention

³⁴ (1979) 68 Cr App R 183

other electronic devices may still be captured³⁵. In Zambia, theft of information or intangible property may not necessarily be a subject of Theft. This is so because the law does not specifically prohibit theft of intangibles and is couched in the sense that theft should involve the physical taking and moving of someone's property.³⁶ This area requires legislative intervention so that property may be specifically defined to include intangible things such as data and information.

An agency relationship is created by the consent of both the agent and the principal; no one can unwillingly become an agent for another. Although this relationship can be created by a contract between the parties, a contract is not necessary if it is clear that the intention of the parties can be expressed by their words or implied by their conduct. Three renowned scholars Keith *et al.*, (2012:24) noted that, "*an agent is a person who is used to affect a contract between his principal and a third party. Whatever the type of agent the distinctive characteristic of the relationship is that the agent has power to make a binding contract between a principal and a third party without himself becoming a party to the contract*". It is clear from the above quote that the authors are indicating that an agent has power to make a binding contract between a principal and a third party. However, it is not always that an agent will have prior consent to bind the principal.

Consequently, a person who acts as an agent of necessity has authority to bind the principal. To this effect in the case of **Great Western Railway Company V Swaffield**³⁷, is a good example of a person acting as agent of necessity and it was held "*that the plaintiffs were agents of necessity to incur expense in looking after the horse which they could not deliver.*" According to Ashley (2015:2), "*all agency relationships are fiduciary relationships*". This means that the relationship involves a certain level of trust and confidence. The agent is obliged to act in the best interests of the principal because the agent's actions will create legal obligations for the principal.

It is important to note that Ashley is correct on the fact that the agent owes fiduciary duties to his/her principal. However, in the case of a corporation like Zampost it is necessary to highlight that Zampost as a factious legal entity acts by the median of

³⁵Kanja. G (2006) Intellectual Property Law, Lusaka

³⁶ Section 265 and 272 of the Penal Code, Chapter 87 of the Laws of Zambia

³⁷(1847) LR. 9

human beings called Directors as noted in section 215 of the Companies Act³⁸. This view was agreed to by the House of Lords in case of **Garnac Grain Company v VMF Faure and Fairclough Limited**.³⁹ Therefore, the directors owe fiduciary duties to Zampost but not directly to the customer who engages Zampost as an agent.

According to Malila (2006: 56) agency is *“a relationship that arises when one person called the agent has legal authority to bind another person called the principal into a contracting relationship with others on the principal’s behalf. The common law position that he who can act for himself may act through an agent is summed up in the latin maxim qui facit per alium facit perse”*. This author’s definition is comprehensive enough to cover the electronic commercial transactions. The internet is a worldwide public access network of computers. It has no owner, though of course each of the individual pieces of hardware on which it runs has an owner. It relies for its operation on mutual comprehensibility between those various pieces of hardware.⁴⁰

The dependency of Zampost on the internet poses challenges in reality to electronic contracts. This is so because electronic contracts are contracts that are executed and enacted by a software system in the sense that they are not concluded by face to face communications, that is to say the “seller and buyer” or “supplier and consumer” do not meet in person to form, negotiate and execute the terms of their contract. A contract is well defined by Denis (2010: 54) as: *“an agreement enforceable by the law between two or more persons to do or abstain from doing some act or acts, their intention being to create legal relations and not merely to exchange mutual promises.”* Sharpe (2012:3-23) defines electronic commerce as: *“sharing business information, maintaining business relationships and conducting business transactions by means of telecommunications network”*.

Zampost faces challenges in the area of infrastructure, services, products and structures which are vital in the transactions of electronic business. To corroborate the above observations the Minister of Transport, Works, Supply and Communications Yamfwa Mukanga lamentably said that, *“government is seriously looking for a solution that will help Zampost continue operating effectively. I know that Zampost is having a few constraints here and there and we are doing all we can to ensure that*

³⁸ Chapter 388 of the laws of Zambia

³⁹(1967) 2 ALL ER. 353

⁴⁰ Fuller, K (2005) E-commerce dealings, London p8 and www.lawteacher.com

*we turn things around, government will continue to push for better communication infrastructure to enhance growth in the Information and Communication Technology (ICT) sector”.*⁴¹

In electronic contracts there is usually a dilemma sometimes as to when an offer is said to be made and when acceptance has been communicated back to the offeror. As noted in the case of **Carlill V Carbolic Smoke Ball Company**⁴², where it was stated that, “*an offer is an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted by the offeree.*” In electronic contracts there is a further challenge in determining whether the website advertisements are an “invitation to treat” or an offer. In the case of online contracts, is it when the supplier advertises their products on website? This is called an invitation to treat and when the customer goes ahead to place an order, that is when an offer is said to have been made to the supplier and if the supplier accepts the order having in mind that he can decide not to accept the order.

According to Paul (2014:1-2) “*acceptance of electronic commerce is noted from intention to transact and online transaction behaviour.*”⁴³ Consequently, once it is established that there is intention to create legal relations between the supplier and the customer, and then the supplier provides the customer with the necessary steps that are needed to conclude the contract.

Formations of electronic contracts have a challenge to ascertain when a contract is actually formed, acceptance has been communicated and a contract has come into existence to the extent of binding both parties. In the case of **Entores V Miles Far East Corporation**⁴⁴, Lord Denning as he then was stated that “*general rule is that acceptance must be communicated to the offeror, until and unless the acceptance is so communicated, no contract comes into existence.*”

According to Malila (2006:6) at common law, the courts as a result of the predominant laissez-faire philosophy with its offshoot principles of caveat emptor⁴⁵ were reluctant to entertain buyers who discovered subsequently that goods they had

⁴¹<https://www.daily-mail.co.za> p33, accessed on: 28th August, 2016

⁴²(1893) 1 QB. 256

⁴³ Rose and Frank Company V Crompton Brothers limited (1925) AC. 445

⁴⁴ (1955) 2 ALL ER 493

⁴⁵ Meaning “let the buyer beware” by Chris T (2006) Contract law, p 7

bought belong to a third party. Under section 12(1) (9) of the Sale of Goods Act (SOGA)⁴⁶ the buyer is guaranteed that the seller is the owner of the goods he/she is selling. Section (1) of the SOGA provides that, “*a contract of sell of goods is a contract whereby the seller transfers or agrees to transfer property in the goods to the buyer for a money consideration called the price.*”

The law governing the sale of goods in Zambia is contained in SOGA and supplemented by common law principles where they have not been expressly altered by statute.

The Factors Act⁴⁷ also applies to them. The two Acts are applicable to Zambia by virtue of the English Law (Extent of Application) Act.⁴⁸ Order 53 Rule 1 defines commercial actions as, “*any cause arising out of any transaction relating to commerce, trade, industry or any action of business nature.*”⁴⁹ Customers using electronic commerce have an opportunity to search for goods and services, compare their prices, read reviews made by customers who have purchased the same goods or services, order and pay for them and have them delivered, all from the comfort of one’s home. As noted by James (2014:3), “*electronic commerce research serves as a catalyst for new research and a forum for disseminating the latest findings in all facets of electronic commerce.*” From the foregoing interim literature review it is clear that the authors have not over emphasized the effectiveness of the Law of Agency on electronic commerce in the manner the principal researcher intends to extend it to the operations of Zampost Ndola in Zambia.

2.9 Operational definition of key terms

- (a) **Agent:** is a person who is authorized to act on behalf of another to create a legal relationship with a third party.
- (b) **Customer (client/buyer/purchaser):** is the recipient of goods, services, products or ideas obtained from, a seller

⁴⁶ Sale of goods Act of 1893

⁴⁷ Factors Act of 1889

⁴⁸ Chapter 11 of the laws of Zambia

⁴⁹ Order 53 of the High court rules of the high court act, chapter 27 of the laws of Zambia as amended by statutory instrument number 29 of 1999

- (c) **Effectiveness:** is the degree to which objectives are achieved and the extent to which targeted problems are solved. It is also the capability of producing a desired result.
- (d) **Electronic Commerce:** Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfer, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, online sourcing, public procurement, direct consumer marketing and after sales service. It involves both products (for example, consumer goods, specialized medical equipment) and services (for example, information services, financial and legal services); traditional activities (for example, health care and education) and new activities (for example, virtual mails).
- (e) **Laissez-faire:** is an economic system in which business transactions between private parties are free from government interference such as regulations, privileges, tariffs and subsidy.
- (f) **Law of Agency:** is a consensual relationship created by contract or by law where one party, the principal, grants authority for another party, the agent to act on behalf of and under control of the principal to deal with a third party.
- (g) **Qui facit per alium facit perse:** he who can act for himself/herself may act through an agent
- (h) **Seller (supplier):** a person that makes offers or contracts to make a sale to an actual or potential buyer.

2.10 Conclusion

This chapter has extensively reviewed publications done by others the works on the effectiveness of the law of agency on electronic commerce in Zambia and other countries. This chapter has also identified the lacunas that exist in the legislation and regulation framework on e-commerce. It has also identified the challenges of the Zampost as an e-commerce agent and the perceptions held by customers on e-commerce as well as the legal issues of formation, jurisdiction and enforcement of e-commerce contracts.

CHAPTER THREE

THEORETICAL AND CONCEPTUAL FRAMEWORK

3.0 Introduction

This chapter discusses the theoretical and conceptual framework of the study. Electronic commerce is trade and aids to trade that are done in the cyberspace. This kind of trade uses an electronic device that is connected to the internet. Trade in this case can be defined as buying and selling of goods and services through an electronic device connected to the internet. Trade is divided into home and foreign trade. Home involves the retailer and the wholesaler while foreign trade is between countries and involves imports and exports. It is referred to as international trade because it is between nations. However, this research focused on import and exports and the effectiveness of the Laws of agency that governs such. These imports and exports depend squarely on the principal-agent relationship. The theory that has been borrowed and used in this research is the agency theory because it deals with the principal - agent relationship.

3.1 Theoretical framework

3.1.1 Agency theory

The agency theory suggests that electronic commerce transactions can be viewed as a nexus of contracts between the principal and third parties. Agency relationship arises whenever; one or more individuals called principals, hire one or more other individuals, called agents, to perform some service and then delegated decision making authority to the agents.

Electronic commerce has already been defined in this research in literature review. However, commerce is the exchange of goods or services for money or in kind, usually on a scale large enough to require transportation from place to place or across cities, state or national boundaries⁵⁰. Commerce therefore involves aids to trade which include advertising, banking, communication, insurance, transport and warehousing.

⁵⁰ Eistenstein , e tal (2002) trust and loyalty on electronic commerce, an agency theory perspective: journal of consumers marketing online, Vol 31, issue 5

The absolute number of business activities executed by agents, rather than by principals directly cannot but increase as electronic commerce gains ascendancy. Presumably, the share of electronically supported enterprises that employ delegated authority (and presumably the revenue share of such enterprises) will also increase, when measured as a percentage of total commerce. It is towards supporting this relative increase in agent-executed commerce with sophisticated contracting technology, monitoring and incentive schemes that this paper is directed.⁵¹ Artificial agents, while an important subset that deserves much attention in the research literature, are not our principal focus, instead, we concentrate on the monitoring of human agents, engaged in electronic commerce on behalf of some principal, operating under (possibly incomplete) incentive contracts rather than by either fully complete contracts or an employment relationship.

Even as monitoring of traditional tasks becomes easier or less costly in a wired world, the explosion of delegated tasks makes the proper combination of monitoring and contracting technology an essential area of research. As Eisenhardt⁵² points out that agency analysis becomes useful whenever delegation of authority within a hierarchical relationship is necessary to complete a task.

We shall argue both that the existing theoretical framework of traditional “agency costs” will mislead when agency relationships are mediated by changes in technology and that the resulting prescriptions will likely be inefficient even when the cost of monitoring becomes very small. In particular, investing in technology to reduce the amount that principals pay to agents who are shirking, that is deliberately underperforming on tasks that are difficult to measure and then claiming full payment nonetheless.

Advertising as an aid to trade fills the knowledge gap and it solves the difficult of information. Exchange of goods and services is possible only if the producers can bring the products to the consumers. Advertising helps the electronic commerce customers to know about the various brands manufactured by several manufacturers.

⁵¹ Ibid note 50

⁵² Ibid note 50

The media used to advertise products are radio, newspaper, magazines, television, the internet and many others.⁵³

Banking solves the problem of finance. Businessmen receive money and also pay money in large amounts. It is risk to carry large amounts of cash from one place to another. Hence banking becomes a solution. However, for businessmen and customers to send and receive money via banks, they need to have trust in the banks as an aid in electronic commerce. A safe, secure, efficient and effective electronic commerce system guarantees confidence in the users. Therefore, banking and financial institutions solve the problem of payment and facilitate exchange between buyer and seller. The businessmen may also require short-term and long-term funds. Banks provide such finance to businessmen. Banks also advance loans in form of overdrafts, cash-credit and discounting of bills of exchange.

Communication means transmitting or exchange of information from one person to another. It can be oral or in writing. It is necessary to communicate information from one to another to finalize and settle the terms of sales such as price of goods, discounts allowed, facility of credit and so on. Modern means of communication like telephone, telex, telegram, email, and teleconference and so on play an important role in establishing contracts between businessmen, producers and customers.

Insurance reduces the problem of risk. The business is subject to risk and uncertainties. These are inevitable in the field of business. Risks may be due to fire, theft, accident, cybercrimes or any other natural calamity. Insurance companies who act as risk bearers cover the risks. Insurance tries to remove many risks by spreading them out over a greater number of people. The rate of premium depends upon the type of risks and the period for which the risk is covered.

Transport is an important component in electronic commerce transactions. In modern times there is vast distance between centres of production and the centres of consumption. This difficult is removed by an important aid to trade known as transport. Transport therefore creates place utility.

⁵³ Kalyan –city.blogspot.com/2011/03/what are aids to trade in commerce. html

There are several transportation means such as the water and land transport. the geographical distance between producers and consumers is reduced with the help of transport.

Finally, warehousing helps to solve the time gap between production and consumption. In other words, goods such as umbrellas and woolen clothes are produced throughout the year but are demanded only during particular seasons. Therefore, goods need to be stored in warehouses till they are demanded. Warehousing creates time utility by supplying the goods at the right time to the consumer.

E-commerce adoption can be defined as a systematic usage of the internet for ordering and purchasing goods and services, Mahrieian (2012). The introduction of the internet and e-commerce most often is preceded by a succession of incremental inventions. Hence, the acceptance of such technologies is usually not a binary procedure rather; it is one which encompasses numerous stages Chen *et al.*, (2002)

From another point of view, e-commerce looks at the business transaction using the internet and this includes buying and selling of information, products and services, Bauer (1960). Finding from Watch (2007) shows that tourism intensive region worldwide is in the Europe region. Recently, the incessant growth in tourism industry has proven to be higher than that of the overall world economy. This is an indicator that this industry is one of the fast growing industries of the worldwide. Nonetheless, the European Union worldwide has been declared the most tourism-intensive area. In other studies, there are three dimensions that can provide importance points when studying e-commerce adoption namely firm, environment and technology.

Proactive government policy and efficient legal system are essential in determining e-commerce adoption in environment perspective. These policies include e-commerce strategy, training, promoting and enhancing the telecommunication infrastructure and online fair tax policy for user. Essentially, active government policy and the adoption of e-commerce create positive relationship as shown by a few studies which were reviewed in southern Italy, Pakistan, China and Singapore, Scupola (2003).

3.1.2 Electronic Commerce Models in Non-Tourism Industry

An electronic commerce model in non-tourism industry was also done extensively in the past. Among the studies setting taken into considerations were banking and financial, Mohr and Shooshtari (2003); SMEs online shopping. Five models were reviewed in non-tourism setting. The outcome reveals similar pattern of fragmentation, in the non-tourism setting. For instance, Mohr and Shooshtari, (2003).analyzed electronic commerce toward banking by having perceived usefulness as the indirect path (perceived enjoyment, online banking information, privacy and security and internet banking quality) towards electronic commerce adoption.

The internet's World Wide Web can be an important source of competitive advantage for most business organizations. It is definitely the prime drive of modern e-commerce in small and medium sized businesses. Large firms have no doubt about the potential advantages of e-commerce. Despite that, there is a lack of e-commerce adoption in SMEs in Malaysia. This can be verified by a survey by Verizon Atlas (2003) who discovered that 37% of small businesses launched web site principally to promote their sales and production.

Studies in the past have shown that even though e-commerce is important, large firms adopt electronic commerce more rampantly than SMEs, Raven *et al.*, (2007). This is because generally SME's do not have large resources and technology capabilities, Hong *et al.*, (2008).

3.1.3 Perceived Usefulness and E-Commerce Adoption

Perceived usefulness is defined as the possibility in which a person feels that using a particular system will improve his/her performance, Cox (1967). The rationale for using the perceived usefulness is as an antecedent to adoption based on Theory of Reasoned Action (TRA) which has been found in electronic banking (*ibid*). In the context of internet banking, perceived usefulness might refer to convenience, efficiency, time saving, easy accessibility and cost effectiveness. From the perspectives of e-commerce in tourism perceived usefulness may be defined as the prospective traveler's that using the internet will facilitate his/her purchasing tourism and travel service/product Davis (1989).Consumer generally have favorable attitudes towards products or services that they believe have an adequate level of desirable

attributes. The low costs of information search online also contribute to perceived usefulness of shopping from an online store. For example, AirAsia.com allows consumers to save time and search for flight information online. Purchase online can provide convenience, and the ease of comparisons across options to select the most useful option. Based on the above discussion, this study proposes hypothesis 2 as:

H2: Perceived usefulness will have a significant positive relationship with e-commerce adoption.

3.1.4 Innovation Research: Exploitation and Exploration

Looking at a conceptual framework for E-Commerce Innovation in Chinese SMES, Innovation refers to the generation, development, and adaptation of new processes, products or services aiming at increasing competitiveness of organizations (Damanpour, 1996). In innovation research, two approaches once dominated -- a firm's internal capabilities as the primary drivers of innovation (Dosi, 1982) and the effect of the demanding environment as the major drivers (von, 1988). The first approach believed that a firm's knowledge to innovate is usually drawn from exploitation of internal sources and existing capabilities. The second approach holds that innovation is the response to the demand in environment and enabled through exploration of external sources (Su, Tsang, & Peng, 2009). Using the theoretical framework of exploitation and exploration (March, 1991), the integrative model argued that a balanced attention be given to both internal capabilities and external partnerships to provide a comprehensive picture of what determines innovation performance. Since knowledge creation, transmission, and relocation is partly determined by the institutional infrastructure in some emerging markets, more attention should be drawn toward the role played by the national and local governments in promoting knowledge transfer and innovation when studying the external factors. As technologies become more sophisticated and the institutional transition gets deeper, a firm's innovation requires the collaboration with others and becomes a collective effort (Su, Tsang & Peng, 2008; Zhang & Li, 2008).

The integrative view to firm level innovativeness that emphasizes both internal capabilities and external partnerships (Laursen & Salter, 2006; Lu, Tsang, & Peng, 2008; Su, Tsang, & Peng, 2009) is similar to the balanced approach revealed in the

perceived e-readiness model (PERM) developed by Molla and Licker (2005a; 2005b). Molla and Licker (2005a; 2005b) argued that EC implementation in developing countries is a dynamic process which experiences different stages, and each stage is in need of both internal and external e-readiness. Specifically, the success of EC in an organization depends on the company's perceived e-readiness in e-commerce, managerial, organizational, and environmental contexts. These four contexts are covered by two major constructs in their PERM: perceived organizational e-readiness (POER) of awareness, commitment, resources and governance, and perceived external e-readiness (PEER) in the form of EC support by government and other supporting agencies and the readiness of market forces to conduct EC. Further, the importance of e-readiness in a specific context may vary with each level of EC sophistication. One important implication is that investment in infrastructure development by governments and other agencies should go hand-in-hand with schemes for business development and managerial improvement at the organizational level. The PERM model enables horizontal comparison across firms and industries and is believed to be most suitable for EC analysis in developing countries (Tan, Tyler, & Manica, 2007). However, this model lacks of innovative element, weak in its power to provide practical guidance in a context under special social, cultural, and economic impacts. Further, connections and relationships as a critical business resource in China are not covered, either.

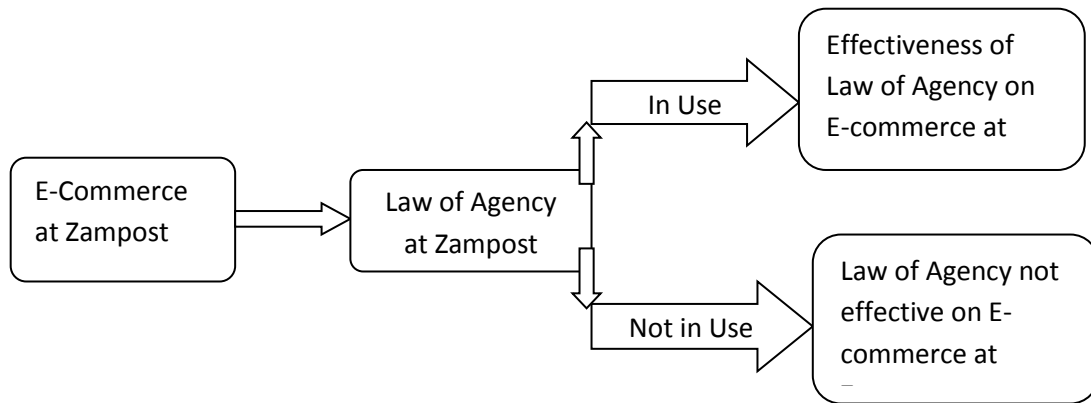
3.1.5 Independent and dependent variables

This study has two variables that is the independent and dependent variables. The agents are the independent variables in this research while electronic commerce is dependable. For electronic commerce to take place it depends on the availability of agents. A variable is a characteristic number or quantity that increases or decreases over time or takes different values in different situations. Independent variables is one that can take different values and can cause corresponding changes in other variables and dependant variable is any that can take different values only in response to an independent variable.⁵⁴ The law of agency is enacted, modified amended or replaced in response to fast changes in modern electronic commerce. Similarly,

⁵⁴ www.businessdictionary.com/definition/variable.html

electronic commerce depends on an efficient and effective agent so that they are not tainted with cybercrimes.

3.2 Conceptual Model



Source: Author 2016

According to the conceptual model above effectiveness of law of agency on electronic commerce is dependent on the use of available laws governing principal – agent relationships. If these laws are not in use then we can effectively deduce that the laws of agency are not effective at Zampost, Ndola.

3.3 Conclusion

In conclusion this chapter has brought out pertinent theoretical and conceptual issues of the study. It is evident from the theory that electronic commerce is dependent on agency services. Without agents electronic commerce cannot be there.

The analysis was based on E-Commerce services offered by Zampost such as salary payments, bill collection and payments, RTSA services and processing of agency applications.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.0 Introduction

This chapter presents the research methodology. According to management college of Southern Africa (MANCOSA) quoting Hussey and Hussey (1997:54) point out that methodology refers to the overall approach in the research process from the theoretical foundation to the strategies that are used in the collection and analysis of the data.

The chapter discusses the research design used; the population, sampling method and procedure employed in the research. The research instruments and data collection tools that were used came from the two sources of data vis-à-vis primary and secondary, data analysis and presentation is also outlined.

4.1 Research Design

The research methodology used in this study was comprised more of qualitative and less of quantitative approaches. This study was exploratory in design, which aims at classifying ambiguities. It took a form of case study for the Zampost services in Ndola, Zambia.

4.2 Population of Study

The targeted population of the study was Zampost employees and customers at Ndola branch. Zampost offers agency services such as salary payments, bill collection and payments, road transport and safety agency service and process of agency applications.

4.3 Sample Size

The sample size was composed of thirty (30) respondents to whom 30 questionnaires were administered. Out of 30 respondents, two persons were drawn from Zampost management; eight were ordinary employees and twenty (20) Zampost customers.

4.4 Sample Method and Procedure

Stratified sampling was used to determine the sample size. Respondents were grouped in strata. Purposive sampling was used in each strata to get the information from the sample unit. Simple random sampling was applied to limit on the biasness of purposive sampling.

However, the sampling technique of this study was ideal due to the fact that it gives proper representative to all sub-groups in the population, easier to apply and to identify groups of participants, easier to get prior knowledge of the true composition of population, lower cost and accuracy.

4.5 Data Collection and Source

To collect data for the study, both the primary and secondary data sources were utilized to satisfy the objectives of the study. Primary data was collected using the form of a questionnaire referred to in appendix 'A'. Secondary data collection involved the review of both the published and unpublished data sources. This was a desk study involving going through the literature drawn from text books, magazines, publications, journals, statutes, cases websites and other relevant information to the study.

4.6 Data Analysis

The data was summarized manually and with the aid of Microsoft Excel. The quantitative data was evaluated quantitatively in the form of tables and percentages. To test and operationalize the hypothesis, a simple average were compared in order to come up with the reliable and valid conclusion.

4.7 Research Hypotheses

Ho: Law of Agency is not effective on electronic commerce at Zampost in the Ndola District of Zambia

Ha: Law of Agency is effective on electronic commerce at Zampost in the Ndola District of Zambia

4.8 Ethical Consideration of the Study

Since the research involved field work to Zampost Ndola premises, permission was sought. The principal researcher therefore had an introductory letter from UNILUS stipulating the objective and purpose of the research. The principal researcher covenanted that the findings of this study would remain and used purely for academic purposes at UNILUS and would not be disclosed to other persons without prior authority of Zampost and customers respectively

4.9. Conclusion

This chapter has thoroughly discussed the research design used, the population, sampling method and procedure, data collection and analysis, hypothesis and ethical consideration of the study.

CHAPTER FIVE

FINDINGS, DATA ANALYSIS AND DISCUSSION

5.0 Introduction

The chapter presents the main findings of the study in detail. The chapter further gives the meaning to the findings that were set relating to the variables under study.

5.1 Data analysis and findings

5.1.1 Gender of Respondents

The respondents were asked to indicate their gender by ticking the appropriate column they belonged. The purpose was to find out the number of males and females who actually participated in the study. Table 5.1 shows that out of the 30 respondents who participated in the study, majority 20 of the respondents representing 67% were females, while the remaining 10 respondents representing 33% being males. Naturally, males and females have different attitudes and views toward events at the work place (Singer, 1996).

Table 5.1: Gender of Respondents

Gender	Frequency	%
Male	10	33
Female	20	67
Total	30	

Source: field data 2016

5.1.2 Age of respondents

Table 5.2 depicts the age distribution of respondents who participated in the study. The purpose was to find out the average age of the employees who are actively involved in the operations within the organisation. A close look at the Table shows that 3 respondents representing 10% fall within the age brackets 18-25 years; 9 representing 30% fall within the age brackets 26-35 years. Fifteen respondents representing 50% fall within 36-45 years while the remaining 3 representing 10% fall within the age brackets 46-55 years. The data shows that majority of the employees in the organisation fall within 36-45 years.

Table 5.2: Age of respondents

Age	Frequency	%
18 - 25	3	10
26 - 35	9	30
36 - 45	15	50
46 - 55	3	10
Total	30	100

Source: field data 2016

5.1.3 Highest education level of Respondents

The respondents were asked to indicate their highest level of education. The purpose was to find out the educational/academic qualifications of employees who participated in the study. Table 5.3 shows responses elicited, 3 respondents representing 10% have obtained GCE- O level school certificates; 6 representing 20% have obtained Certificate; 20 representing 67% have obtained Diploma Level while the remaining 1 representing 3% have obtained the degree. The data shows that majority of the employees have attained some level of education whose opinions and views are guided and well informed.

Table 5.3: Highest education level of Respondents

Highest education level	Frequency	%
GCE	3	10
Certificate	6	20
Diploma	20	67
Degree	1	3
Total	30	100

Source: field data 2016

5.1.4 Electronic commerce transaction sought by respondents at Zampost

The respondents were asked to indicate the e-commerce services provided by Zampost. The purpose was to establish the actual e-commerce services at Zampost. Table 5.4 shows responses brought out, 3 respondents representing 10% sought salary payments; 6 representing 20% bill collection and payments; 15 representing 50% RTSA services while the remaining 4 representing 13% sought out process of agency application. The data shows that customers are aware of the services at Zampost. However, the electronic commerce services are very limited. Zampost has to increase

product portfolio on electronic commerce for instance insurance in order to fully satisfy the customers.

Table 5.4: Zampost agency e-commerce services

Service	Frequency	%
Salary payments	3	10
Bill collection and payments	8	27
RTSA service	15	50
Process of agency application	4	13
Total	30	100

Source: field data 2016

5.2 Perceptions of Zampost customers on e-commerce relating to cyber crimes

Results show that all the respondents do understand the meaning of e-commerce. Some understanding came out as transmission of information and conducting business online, and the buying and selling of goods and services electronically. The data shows that the respondents do understand the study subject matter so well and their contributions were valid. However, in the event of cyber crimes and electronic system failure, customers perceive electronic commerce contracts as being difficult to enforce due to jurisdictional challenges.

The respondents were asked to indicate with reasons whether e-commerce is important. The purpose was to find out the value of the Zampost e-commerce service transactions. Table 5.5 shows responses elicited, 12 respondents representing 40% said e-commerce reduces transaction time; 10 representing 33% said its easy, cheaper and convenient transaction; 2 representing 7% the business can run for 24 hours the whole week while the remaining 6 representing 20% indicated that there is a wide market or range of goods and services on offer. The data shows that customers perceive e-commerce as important as the business itself.

Table 5.5: Importance of e-commerce to respondent's day to day business

Importance	Frequency	%
Reduces transaction time	12	40
Easy, cheaper and convenient transaction	10	33
Business can run 24/7	2	7
There is wide market or range of goods and services on offer	6	20
Total	30	100

Source: field data 2016

In support of the above findings, this is the reason why online shopping has become very popular for customers⁵⁵. Customers who participate on electronic commerce should be afforded transparent and effective customer protection that is not less than the level of protection afforded in other forms of commerce. Its attractions include the opportunity to search for goods and services, compare their prices, read reviews made by customers who have purchased the same goods or service order and pay for them and have them delivered, all from the comfort of one's home.

Other attractions include the “cooling off” period which applies to most online purchases, discount, promotions and the freedom from being pressurized by a sales person into buying expensive (sometimes unwanted) extended warranties. A customer observed on the 7th of June, 2015 that a lot more Zambians should access the vital information and note that e-commerce is the way to go and has potential to contribute to the Growth Domestic Product (GDP) in Zambia⁵⁶.

On the other hand, customers on e-commerce have legitimate expectation that Zampost and other businesses in Zambia must ensure that e-commerce transactions are safe and customers are protected. Besides, the customers have fear of a number of threats to the continued growth of e-commerce such as security, theft of intellectual property, fraud, invasion of privacy, lack of internet access, return on investment and legal jurisdiction as well as taxation. This is the main reason why Chimpala (2015)⁵⁷ wondered just how secure e-commerce is in Zambia. She observed that with business migrating to improve their presence online, they attract new customers and provide services or products from afar, there is need to know just how safe e-commerce is in Zambia. There are many who fear being defrauded of their money especially if they pay before they receive the product or service, which has forced many e-commerce businesses such as Zampost to offer cash on delivery services or emphasis on a refund policy if the customer does not like the product. This is coupled with a lack of proper ICT infrastructure, lack of proper payment gateways or financial systems in place, general ignorance by potential customers on how to use the internet, load shedding meaning customers may have no access to the internet if their devices are down, lack of purchasing power by the majority poor and a general dependence on

⁵⁵ <http://www.tectrends.com.zm/mobile-apps/just-secure-ecommerce-zambia>

⁵⁶ <http://www.tectrends.com.zm/mobile-apps/just-secure-ecommerce-zambia>

⁵⁷ Ibid note 56

face-to face trade and the general use of actual cash compared to credit /debit cards to make payments in the Zambian society.

The Government has enacted Law to allow for business to happen online with serious repercussions for those who break the law.⁵⁸

5.3 Effectiveness of the law of agency on e-commerce at Zampost

The respondents were asked to indicate the kind of e-commerce transaction they had with Zampost. The purpose was to actually confirm the customer’s consumption of the Zampost e-commerce services. Table 5.6 below show the responses elicited, 20 respondents representing 67% said they purchased the road tax and 10 representing 33% said they sought out swift cash service. The data shows that majority of the customers are established with RTSA services at Zampost.

Table 5.6: The satisfaction of customers with quality of electronic commerce services provided by Zampost

Electronic commerce transaction sought	Frequency	%
Purchase of road tax	20	67
Swift cash	10	33
Total	30	100

Source: field data 2016

Respondents were, further, asked if they were satisfied with the e-commerce transaction service sought. The purpose was to establish the effectiveness of service delivery by Zampost. Results show that all the respondents were satisfied because the service was fast, representing 80% of the respondents, and also the customers, representing 20%, were fully furnished with information about the transaction number in the case of swift cash transaction. The data shows that the law of agency on e-commerce is effective at Zampost. The law of agency on e-commerce is effective at Zampost because majority of customers were able to complete transactions. The complete transaction is the legal criteria which show that the agency relationship is effective. Without completion of the task payment cannot be made.

This is supported by Hong et al (2008), indicating that the internet’s World Wide Web can be an important source of competitive advantage for most business organizations.

⁵⁸ The Electronic Communications and Transactions Act, Number 21 of 2009

It is definitely the prime drive of modern e-commerce in small and medium sized businesses. Large firms have no doubt about the potential advantages of e-commerce.

According to Cox (1967), in the context of internet banking, perceived usefulness might refer to convenience, efficiency, time saving, easy accessibility and cost effectiveness, Davis (1989). Consumers generally have favorable attitudes towards products or services that they believe have an adequate level of desirable attributes. The low costs of information search online also contribute to perceived usefulness of shopping from an online store.

5.4 **The legal challenges that are faced by Zampost on electronic commerce transaction**

The research question sought the views of management and employees on the challenges associated with e-commerce in the organisation. The objective was to identify the challenges of e-commerce transactions in the organisation.

The results show that there were challenges for Zampost during the implementation of e-commerce services. Table 5.7 shows the responses elicited, 12 respondents representing 40% said there is system failure; 3 representing 10% mentioned little knowledge among the general public on use of ICT; 9 representing 30% said that the network is slow at times; 3 representing 10% indicated that there is lack of technology in rural areas while 3 representing 10% stated the challenge being Zampost products interfacing with the banking system.

Table 5.7: Challenges at Zampost during implementation of e-commerce

Challenges	Frequency	%
System failure	12	40
Little knowledge by general public on use of ICT	3	10
Network is slow at times	9	30
Lack of technology in rural areas	3	10
Zampost products interfacing with banking system	3	10
Total	30	100

Source: field data 2016

The data shows that there were some key challenges facing the organization in e-commerce transactions as noted from challenges identified by the respondents in relation to the implementation of e-commerce services by Zampost.

As observed from the findings, system failure is apparent and also network being slow at times. The biggest challenge faced by service providers is the high cost of broadband, largely due to limited access available through satellite communications, the only means of accessing broadband. The delivery of broadband by providers to other sites is through terrestrial systems owned by party partners, since most service providers do not own their own infrastructure. This increases their costs which are in turn passed onto their clients, Munsaka (2009). It is also not in dispute that the Electronic Communication and Transactions Act is not comprehensive enough to solve the legal challenges associated with electronic commerce transactions. The legal challenges are compounded by the fact that the Act in question does not make any distinction between corporate bodies registered and domiciled in Zambia and those outside as it does with natural persons.

Apart from the above challenges, Zampost customers on e-commerce have fear of being scammed. This fear is legitimate in the sense that it has been observed that there is certainly a lot that remains to be done. Zampost still has to clear huge backlog of unpaid retirees and outstanding payments for some employee scheme loans contracted with other banks and financial institutions⁵⁹. Zampost also faces challenges in the development of e-commerce which include; lack of effective ICT infrastructure to support widespread use of e-commerce solutions from the ICT industry that can promote the spread of e-commerce and lack of supportive and integrated investment in ICT, energy and other social infrastructure projects to increase uptake, access and demand for e-commerce.

In support of the notion about lack of technology in rural areas, Munsaka (2009), noted that the market is largely limited to the rail corridor and major road networks, with few or no major markets outside these corridors.

⁵⁹ Ibid note 16

On the other side, four operators have recently emerged as a potential market but this is still in its infancy. The regulatory regime has been a major stumbling block, particularly the issue of technology neutrality. The long lag times before certain technologies are allowed e.g. VOIP, have resulted in a stalemate situation. To offer it one has to have a Public Switch Telecommunication Network (PSTN) license which costs about US\$ 12 million. It should be noted that most communication equipment that comes into the country has VOIP capabilities. When the above proposition is taken into account Zampost can resolve the issue of technology neutrality.

The study further reviews that there were some consequences of these challenges. Table 5.8 shows the impact of challenges to the organization. Findings show that 6 respondents representing 20% said there are low levels of the service appreciation by the public; 12 representing 40% said there are loss of customers to next available competitor; 3 representing 10% not every customer has access to the services while the remaining 9 representing 30% indicated that there is loss of turnover.

Table 5.8: Impacts of the challenges at Zampost

Impact	Frequency	%
Low levels of appreciation of the service by public	6	20
Loss of customer to the next available competitor	12	40
Not every customer has access to the services	3	10
Low turn over	9	30
Total	30	100

Source: field data 2016

This is the more reason why it was noted that prior to 2011, Zampost was embroiled by inefficiency and corruption⁶⁰, Zampost suffered from serious operational problems, lack of innovation and it failed to reposition itself in the highly technologically advanced business environment. Consequently in December, 2011, new Communication Minister Yamfwa Mukanga revealed that Zampost was mired in corruption and mismanagement. For instance, it had wasted K2 billion (old kwacha) on Postmaster General's office when the company was operating at a loss. The

⁶⁰ Parliamentary Committee Report 2008

Minister fired the Postmaster General Paul Simfukwe who was subsequently arrested for alleged abuse of K1.1 billion (before rebasing) in March 2012.⁶¹

5.5. Conclusion

This chapter exhaustively presented the findings of the study as espoused by the research questions. The research questions were answered by the data analysis that followed respectively in order to achieve the stated objectives of the study. Furthermore, the presentation of findings, data analysis and discussion was corroborated by the information contained in the respective tables.

⁶¹ <http://www.zambian-economist.com/2015/05/zampost-rising.html>

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

This chapter gives a brief account of what the research project set out to establish which was actually established. Finally, the recommendations have been derived within the confines of the study discussion.

6.1 Conclusions

Basing on the data analysis, findings and discussion it is therefore concluded that the law of Agency is effective on electronic commerce at Zampost in Ndola District of Zambia. Therefore, the researcher rejects the null hypothesis and accepts the alternative hypothesis that the law of agency is effective on electronic commerce at Zampost, Ndola. This conclusion is anchored by the fact that table 5.6 in chapter five has established that majority of customers approve that law of agency is effective on electronic commerce transactions at Zampost Ndola. Apart from being effective, Zampost is efficient in the case of swift cash transactions where customers were fully furnished with information about transaction number.

This study has thoroughly discussed and established that Zampost is not spared from legal challenges in the field of electronic commerce. The study has noted in literature review that Zampost is a corporation with separate legal personality. Yet it has legal challenges operating within the pillars of corporate governance. It is on this account that the Minister of Communication and Transport Hon. Yamfwa Mukanga had to dismiss the Postmaster General.

The legal challenges faced by Zampost are compounded by the fact that the Electronic Communication and Transactions Act does not make any distinction between corporate bodies registered and domiciled in Zambia and those outside as it does with natural persons. This legal challenge has far reaching consequences on the fight against cyber crimes perpetuated by the corporate bodies. The fight against cyber crimes is worsened by the fact that fibre networks in Zambia are currently owned by CEC, Zesco and Zamtel and

Zampost buys space on the cables. This is a consequence of legal regulatory regime that does not enhance the issue of technology neutrality. As established in this study, this legal challenge has limited the number of persons ready able and willing to access information hence reducing Zampost customer base, due to fears entertained by customers who do not have adequate information on electronic services at Zampost.

The study has established that majority of customers are satisfied with the quality of electronic services provided by Zampost as noted from Table 5.6 in chapter five. It is also not in dispute that there are very few cyber crimes associated with Zampost electronic commerce services hence the positive perception of customers. The study has noted that customers find it expensive to access electronic commerce transactions by Zampost because it does not own a fibre network and buys space on cables from other third parties like CEC, Zesco and Zamtel. The quality of services and the perceptions of customers relating to cyber crimes are heightened by the established fact that the Electronic Communication and Transactions Act is not comprehensive enough to enable Zampost and other service providers fully fight cyber crimes.

6.2 Recommendations

Firstly, Research question number one sought to determine the effectiveness of the law of agency on electronic commerce in Zambia.

This study recommends that Zampost suggests to the Government of the Republic of Zambia to enact legislation that will enhance the issue of technology neutrality. Technology neutrality enables service operators establish their own fibre network. This measure will enable Zampost establish its own fibre network that will connect its branches dotted all over the nation and hence improve the effectiveness of electronic commerce transactions. This measure will also answer the sky rocketing cost of doing business at Zampost. The reduced cost of broadband as a result of available access to satellite communication will enable Zampost expand service delivery from the traditional rail corridors and road network areas to rural places hence increase customer base and profitability.

Secondly, the research question number two sought to find out the legal challenges that Zampost is faced with as a result of electronic communication transactions. This study recommends that Zampost operates squarely within the pillars of corporate governance just like other artificial entities do. The study also recommends that Zampost suggest to Government of Zambia to amend the Electronic Communication and Transactions Act comprehensively to enable the corporation and other service providers have an enabling legislation and regulatory regime to do electronic commerce transactions and eliminate the possibility of cybercrimes. This measure will provide answers to limited customers' access to information and telecommunications due to the prevalence of cybercrimes.

Thirdly, research question number three sought to find out the perceptions of customers on electronic commerce relating to cyber crimes at Zampost. This study has already recommended the amendment of Electronic Communication and Transactions Act. This measure will enhance the fight against cyber crimes by corporate bodies registered and domiciled outside Zambia. In addition, the study recommends that Zampost persuades government to amend the Competition and Consumer Protection Act to expand its jurisdiction to corporate bodies and natural persons outside Zambia in as far as complaints are concerned. Besides, enable the CCPC institute prosecutions and seek compensatory damages for injured customers as opposed to the current situation.

Fourthly, research question number four sought to investigate customers' level of satisfaction regarding electronic commerce services provided by Zampost Ndola. This study recommends that Zampost takes advantage of the fact that it has branches dotted all over the nation to increase its product portfolios in electronic commerce for instance to include insurance and payroll administration to enable people be paid at Zampost and not the banks. This measure will answer not only Zampost need to increase profitability and customer base but also enhance the satisfaction of customers. Finally, the study also recommends that Zampost intensifies customer awareness and promotion of electronic commerce services using flyers and brochures.

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APPENDIX A: QUESTIONNAIRE FOR TARGET POPULATION AT ZAMPOST IN THE NDOLA DISTRICT OF THE REPUBLIC OF ZAMBIA.

Tick where applicable and fill in the spaces provided.

GENERAL INFORMATION

- i) Gender Male [] Female []
- ii) Nature of occupation:

PART A: PERSONAL DATA

- 1. Indicate your age range
 - a. 18 – 25 []
 - b. 26 – 35 []
 - c. 36 – 45 []
 - d. 46 – 55 []
 - e. Above 55 []
- 2. Would you please indicate the highest level of education you have attained?
 - a. GCE []
 - b. Certificate []
 - c. Diploma []
 - d. Degree []
 - e. Masters and above []
 - f. Other, state []
- 3. Please tick as appropriate and number of E-commerce transactions with Zampost

Position / occupation	Zampost agency services	Number of transactions
Zampost employee	Salary payments	Not yet
Customer	Bill collection and	1 -3 transactions

		payments			
Prospective customer		Road Transport and Safety Agency service		4 – 6 transactions	
Other, specify		Process of Agency Application		7 – 9 transactions	

PART B: PERCEPTION OF ZAMPOST CUSTOMERS ON E-COMMERCE

4. What do you understand by term electronic commerce?

.....

5. Is it important to our day to day business? Give reasons for your answer

.....

PART C: EFFECTIVENESS OF THE LAW OF AGENCY ON ELECTRONIC COMMERCE AT ZAMPOST

6. What kind of electronic commerce transaction, under questions 3 did you transact with Zampost?

.....

7. Were you satisfied with the electronic commerce service under question 6? Give reasons

.....

PART D: ENHANCEMENT OF LAW OF AGENCY ON ELECTRONIC COMMERCE AT ZAMPOST.

8. State the challenges Zampost is facing in implementation of electronic commerce services

.....

9. What are the impacts of such challenges on Zampost and Customers?

.....

10. What efforts and procedures can be put in place to manage these challenges

.....
.....

Thank you!!!!!!

APPENDIX 'B' WORK SCHEDULE AND ESTIMATED BUDGET

WORK SCHEDULE:

Activity	3 rd & 4 th Sept 2015	October, 2015	November, 2015	December, 2015	January, 2016	6 th – 8 th February 2016	11 th – 12 th April, 2016	29 th May, 2016
Proposal presentation								
Data collection								
Data analysis								
Result compilation and report writing								
Submission of spiral bound dissertation for marking								
Dissertation defence								
Submission of final report to UNILUS								

ESTIMATED BUDGET

No.	Items	Unit Price (K)	Qty	Total (K)
1	Questionnaire construction and printing	Lump sum		1,000
2	Ream of paper	50	2	100
3	Transport (10 trips)	100	10	1,000
4	Stationary	200	1	200
5	3 meals per day	150	10	1,500
6	Field assistants	500	2	1,000
7	Airtime for communication	Lump sum		300
8	Report printing, binding	Lump sum		1,000
	Total			6,000