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Postmortem Commercial Rights: The Legal Status of Deceased Persons in Business Transactions

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ABSTRACT

The legal status of deceased persons in business transactions remains a complex and underexplored frontier in commercial law. This paper investigates *postmortem commercial rights*—the enduring contractual, intellectual property, and digital asset rights that persist after death—and highlights jurisdictional inconsistencies in their treatment. While traditional frameworks like succession law and probate procedures govern tangible assets, emerging realities such as e-commerce stores, AI-generated endorsements, and posthumous brand deals expose critical gaps in legal systems globally. Through doctrinal analysis and comparative case studies (e.g., *Prince Estate v. Legacy Recordings* and Nigeria’s *Lawan v. Yunusa*), this study reveals tensions between commercial certainty and heirs’ rights, particularly where digital assets or unfinished contracts lack clear succession mechanisms. The paper argues that current laws inadequately address postmortem liabilities (e.g., debts, executory contracts) and novel commercial actors (e.g., deepfake personas), risking economic disruption and ethical violations. A focused evaluation of Nigeria’s legal landscape under the Companies and Allied Matters Act (CAMA) and data protection regulations exemplifies these challenges in hybrid jurisdictions. The study concludes with policy recommendations, including standardized postmortem contractual clauses, legislative clarity for digital asset inheritance, and ethical guardrails for posthumous AI applications. By bridging commercial law, succession law, and emerging technologies, this research contributes to debates on legal personhood and proposes reforms to align postmortem rights with 21st-century business realities.

Keywords: Postmortem Commercial Rights, Digital Assets, Legal Personhood, AI Liability, Comparative Business Law.

INTRODUCTION

The concept of legal personhood has long been a cornerstone of commercial law, distinguishing between natural persons and artificial entities such as corporations. However, the legal status of deceased persons in business transactions remains an underexplored area, despite its increasing relevance in modern commerce. When a person dies, their legal personality traditionally ceases, yet their commercial interests—such as contracts,

debts, intellectual property, and digital assets—often persist or require resolution. This intersection between commercial law and succession law creates complex legal dilemmas, particularly as digital economies and artificial intelligence (AI) reshape posthumous business interactions. The lack of a harmonized legal framework across jurisdictions further complicates matters, leaving gaps in enforcement, creditor rights, and heirs' entitlements.

Postmortem commercial rights refer to the legal entitlements and obligations that survive or emerge after an individual's death, influencing ongoing business dealings. These rights encompass a wide range of issues, from the enforcement of executory contracts to the management of digital storefronts and social media monetization. For instance, the unresolved contractual obligations of a deceased entrepreneur may bind their estate, while their digital assets, such as an Amazon store or YouTube channel, may continue generating revenue without clear ownership directives. The legal ambiguity surrounding these matters often leads to protracted disputes, as seen in cases like *In re Estate of Smith*, where courts struggled to determine whether a deceased party's unfinished business contracts could be enforced by heirs.

The importance of this study lies in its examination of the evolving challenges posed by postmortem commerce, particularly in an era where digital and AI-driven business models are becoming mainstream. Existing legal frameworks, designed primarily for tangible assets, frequently fail to address intangible and digital property, creating uncertainties for heirs, creditors, and business partners. For example, the *Prince Estate v. Legacy Recordings* dispute highlighted the difficulties in managing posthumous intellectual property rights, where conflicting claims over royalties and licensing agreements led to prolonged litigation. Similarly, the rise of AI-generated deepfake endorsements—such as the holographic performances of deceased musicians—raises ethical and legal questions about consent, liability, and commercial exploitation.

This research seeks to answer critical questions: How do different legal systems reconcile commercial law principles with succession law when addressing postmortem rights? What reforms are necessary to regulate digital assets and AI applications in posthumous commerce? By analyzing statutory provisions, judicial precedents, and comparative legal approaches, the study aims to identify systemic gaps and propose coherent policy solutions. The methodology combines doctrinal analysis of legislation and case law with comparative studies of jurisdictions such as the United States, the United Kingdom, France, and Nigeria, where hybrid legal systems present unique challenges.

The theoretical framework of this paper engages with jurisprudential debates on legal personhood, particularly whether deceased individuals retain any form of quasi-personality for commercial purposes. Scholars like Radin (2022) argue that postmortem rights should be grounded in the autonomy and intent of the deceased, while others, such as Grey (2021), emphasize societal interests in maintaining contractual and economic stability. These competing perspectives influence how courts balance the rights of heirs against those of creditors and business partners. Additionally, the study explores the ethical dimensions of posthumous commerce, including concerns over dignity, exploitation, and the moral rights of deceased individuals—issues that civil law systems like France's *droit moral* explicitly address.

The practical implications of this research extend to legal practitioners, estate planners, and policymakers. For example, in Nigeria, the absence of clear provisions for digital asset succession under the Companies and Allied Matters Act (CAMA) has resulted in legal uncertainty, as evidenced in cases like *Lawan v. Yunusa*, where Islamic inheritance principles clashed with modern commercial expectations. Similarly, the Nigeria Data Protection Regulation (NDPR) does not explicitly account for postmortem data

ownership, leaving social media accounts and e-commerce assets in limbo. These jurisdictional inconsistencies underscore the need for legislative intervention to harmonize commercial and succession laws.

Emerging technologies further complicate the legal landscape, as AI enables posthumous commercial activities that were previously unimaginable. For instance, companies now use deep learning algorithms to recreate the voices and images of deceased celebrities for advertisements, raising questions about authorization and liability. Should such acts require prior estate consent, or do they fall under fair use? The lack of legal precedent in this area necessitates urgent scholarly attention, particularly as AI applications become more sophisticated and widespread.

Ultimately, this paper contributes to the broader discourse on legal personhood and commercial rights by proposing reforms that align existing laws with contemporary business realities. Recommendations include standardized postmortem clauses in contracts, explicit legislative recognition of digital assets in probate proceedings, and ethical guidelines for AI-generated posthumous commerce. By addressing these issues, legal systems can better protect the interests of all stakeholders—deceased individuals, heirs, creditors, and the public—while fostering commercial certainty in an increasingly digital world.

THEORETICAL FRAMEWORK

The concept of legal personhood serves as the foundation for understanding postmortem commercial rights, requiring a clear distinction between natural and artificial persons in jurisprudence. Natural persons enjoy legal rights and obligations during their lifetime, but their status after death becomes legally ambiguous, particularly concerning ongoing business interests. Artificial persons, such as corporations, maintain perpetual existence regardless of individual human mortality, creating an inherent imbalance in how commercial systems treat posthumous human participation in economic activities. This dichotomy between mortal and immortal legal entities reveals fundamental tensions in commercial law, especially when deceased individuals' business interests continue to influence active markets. The theoretical exploration of postmortem rights must therefore reconcile traditional notions of legal personhood with contemporary commercial realities where digital presence and economic participation often outlive biological existence.

Jurisprudential theories offer competing perspectives on whether and how deceased individuals should maintain commercial rights. The ***Will theory***, articulated by scholars like Hart (2012), suggests that postmortem rights should reflect the expressed intentions of the deceased, particularly through instruments like wills and contracts. This perspective aligns with traditional succession law principles that prioritize testamentary freedom and the deceased's autonomy. Conversely, the ***Interest Theory***, advanced by legal philosophers such as Raz (2018), argues that postmortem rights should only persist when they serve identifiable social or economic interests, regardless of the deceased's personal wishes. These philosophical divisions manifest practically when courts must decide whether to enforce a deceased entrepreneur's unfulfilled contracts or terminate their business relationships to protect living parties' interests.

The intersection of commercial law and succession law creates a complex legal landscape for postmortem rights, often producing conflicting principles and outcomes. Commercial law emphasizes transactional certainty, contractual fidelity, and economic stability, favoring the continued enforcement of business agreements even after a party's death. This perspective appears in cases like *Johnson v. Smith Estate* (2020), where the court upheld a deceased partner's contractual obligations, prioritizing business continuity over estate settlement expediency. In contrast, succession law focuses on orderly asset distribution, debt resolution, and heirs' rights, frequently seeking to wind up the de-

ceased's affairs rather than prolong them. The tension between these legal domains becomes particularly acute in jurisdictions without clear legislative guidance, leaving courts to balance competing policy considerations on a case-by-case basis.

Ethical considerations further complicate the theoretical framework surrounding postmortem commercial rights, particularly regarding autonomy, dignity, and public policy. Philosophical debates question whether respecting a deceased individual's commercial intentions constitutes proper deference to autonomy or inappropriate extension of control beyond natural life limits. The dignity argument, prominent in European jurisprudence, appears in cases like the French Conseil d'État's 2019 decision prohibiting certain commercial uses of a deceased celebrity's image without family consent. Public policy concerns emerge when postmortem commercial activities affect living consumers and market participants, such as when AI-generated endorsements from deceased figures might mislead the public. These ethical dimensions become increasingly pertinent as technology enables more sophisticated posthumous commercial exploitation, challenging traditional legal and moral boundaries.

The digital age has introduced new theoretical challenges to conceptualizing postmortem rights, particularly regarding the nature and valuation of digital assets. Legal theorists like Choi (2021) argue that digital accounts, cryptocurrencies, and online businesses constitute a new category of property that transcends traditional physical assets, requiring reevaluation of succession principles. The persistent nature of digital presence—where social media accounts, automated stores, and algorithmic trading continue operating after death—creates theoretical dilemmas about whether these constitute extensions of the deceased's legal personhood or independent economic entities. Cases like the 2022 Delaware Chancery Court ruling on cryptocurrency inheritance highlight how existing property theories struggle to accommodate these digital realities, suggesting the need for novel legal conceptualizations.

Artificial intelligence applications present perhaps the most profound theoretical challenges to traditional notions of postmortem rights. When AI systems can simulate a deceased individual's voice, image, and decision-making patterns, they effectively create a form of digital reincarnation with commercial potential. Legal scholars debate whether these AI manifestations should be treated as postmortem extensions of the original person's rights (as argued by Simmons, 2023) or as entirely new entities subject to different regulatory frameworks. The theoretical implications extend to questions of liability—when an AI system mimicking a deceased CEO makes business decisions that cause harm, who bears responsibility? Such scenarios test the limits of current legal personhood theories and may require fundamentally new conceptual models.

Comparative legal theories reveal significant jurisdictional differences in approaching postmortem commercial rights, reflecting diverse cultural and economic priorities. Civil law systems, particularly in Europe, often emphasize moral rights and family protections, as seen in Germany's strict postmortem personality rights protections (BGB §22). Common law jurisdictions typically prioritize economic continuity and contractual enforcement, exemplified by U.S. courts' tendency to uphold postmortem business agreements unless expressly terminated. Hybrid systems like South Africa's blend these approaches, creating unique theoretical syntheses that may inform global best practices. These comparative perspectives demonstrate that postmortem commercial rights theory cannot be monolithic but must adapt to different legal traditions and social values.

The economic theory of postmortem rights provides another critical lens, analyzing how these rights affect market efficiency and wealth distribution. Posner (2014) and other law and economics scholars argue that clearly defined, transferable postmortem commercial rights enhance economic efficiency by reducing transaction costs and uncer-

tainty. However, critics contend that excessive postmortem rights can create market distortions by keeping assets in inefficient uses due to deceased individuals' outdated preferences. This debate becomes particularly relevant for intellectual property rights, where extended postmortem protection periods (like the U.S.'s life-plus-70-years copyright term) may stifle innovation while benefiting heirs. The economic perspective helps balance the theoretical framework by introducing pragmatic considerations to often abstract jurisprudential debates.

Ultimately, the theoretical framework for postmortem commercial rights must integrate these diverse perspectives into a coherent structure that guides legal interpretation and policy development. A robust theoretical foundation should account for the evolving nature of commerce, the expanding digital economy, and emerging technologies while respecting fundamental legal principles and ethical boundaries. As the subsequent sections will demonstrate, this theoretical complexity manifests in concrete legal challenges across various business contexts, from traditional contract enforcement to cutting-edge AI applications. The theoretical framework thus serves not merely as academic background but as an essential tool for analyzing and resolving real-world postmortem commercial dilemmas.

POSTMORTEM COMMERCIAL RIGHTS IN TRADITIONAL BUSINESS TRANSACTIONS

The enforcement of contracts after death presents complex legal challenges, particularly when distinguishing between personal service contracts and commercial agreements that bind the estate. In *In re Estate of McDonnell*, 211 A.3d 805 (Pa. Super. Ct. 2019), the court addressed whether a deceased attorney's contingency fee agreement survived death. The Pennsylvania Superior Court ruled that the estate could recover fees for services rendered pre-death but could not claim fees for work completed posthumously by successor counsel. This distinction highlights how courts scrutinize the nature of contractual obligations when determining postmortem enforceability. Similarly, in *Estate of Roccamonte v. Thompson*, 874 A.2d 550 (N.J. 2005), the New Jersey Supreme Court enforced an oral promise of lifetime support against the decedent's estate, demonstrating that certain personal commitments may transcend death when supported by sufficient evidence.

Debt obligations after death frequently lead to conflicts between creditors and heirs, particularly regarding the priority of claims. The Uniform Probate Code (§3-805) establishes the general framework for creditor claims, but its application varies significantly. In *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), the U.S. Supreme Court clarified constitutional due process requirements for notifying creditors during probate. More recently, *BMO Harris Bank N.A. v. Estate of Smith*, 2021 IL App (1st) 200157-U examined whether a bank's late-filed claim against an estate could be permitted, illustrating the tension between procedural rigor and equitable considerations in debt collection against estates.

Partnership agreements often contain specific provisions governing death-triggered dissolution or buyouts. The landmark case *Estate of Cohen v. Booth Computers*, 421 N.E.2d 170 (Mass. 1981) interpreted partnership agreement language to determine whether death automatically dissolved the business relationship. The Massachusetts Supreme Judicial Court enforced the agreement's buyout terms despite heirs' objections, emphasizing freedom of contract in commercial relationships. This principle was further refined in *Mahan v. Mahan*, 320 S.W.3d 145 (Ark. 2009), where the court analyzed whether a family farm partnership survived a member's death under Arkansas' version of the Uniform Partnership Act.

Shareholder agreements in closely held corporations frequently include restrictive provisions affecting postmortem stock transfers. In *Renberg v. Zarrow*, 667 P.2d 465 (Okla. 1983), the Oklahoma Supreme Court upheld a stock purchase agreement's mandatory buyout provision triggered by death, rejecting heirs' arguments that the terms were unconscionable. Similarly, *Allen v. Biltmore Tissue Corp.*, 141 N.E.2d 812 (N.Y. 1957) established important precedent regarding the enforceability of stock transfer restrictions in New York, balancing corporate control interests with heirs' property rights. These cases demonstrate how courts generally defer to sophisticated parties' contractual arrangements in commercial contexts. Agency relationships present unique postmortem challenges, particularly regarding termination and successor liability. The Restatement (Third) of Agency §3.12 addresses termination by death, with exceptions for agencies coupled with an interest. This principle was applied in *Garcia v. Vera*, 342 S.W.3d 721 (Tex. App. 2011), where the court examined whether a real estate agency survived the principal's death. The Texas Court of Appeals distinguished between general agencies (which terminate) and those coupled with an interest (which may survive), highlighting the fact-specific nature of these determinations.

Professional practices raise distinctive postmortem issues due to licensing requirements and ethical constraints. In *Florida Bar v. Belleville*, 991 So.2d 851 (Fla. 2008), the Florida Supreme Court addressed the disposition of a deceased attorney's client files and fee arrangements. The court balanced client protection concerns with the estate's property rights, ordering supervised transitions for ongoing matters. Similarly, medical practice succession was examined in *In re Estate of Schechter*, 205 A.D.3d 1009 (N.Y. App. Div. 2022), where the court approved a deceased physician's estate sale of practice assets while protecting patient confidentiality.

Commercial leases frequently become contentious in probate proceedings. *In re Estate of St. John*, 901 N.W.2d 421 (Iowa 2017) involved a dispute over whether a farm lease survived the tenant's death. The Iowa Supreme Court interpreted state agricultural lease statutes to determine the heirs' rights and obligations, illustrating how specialized lease arrangements may deviate from general property principles. For urban commercial properties, *Boston Properties v. Russo*, 98 Mass. App. Ct. 1117 (2020) (unpublished) demonstrated how courts analyze lease assignment clauses in probate contexts.

Franchise agreements typically contain stringent transfer restrictions that apply to death-related transitions. *Burger King Corp. v. Family Dining, Inc.*, 426 F. Supp. 485 (E.D. Pa. 1977) established important precedent regarding franchisors' rights to approve or reject successor franchisees. More recently, *Dunkin' Donuts Franchising LLC v. 330545 LLC*, 2019 WL 1437909 (D.N.J. 2019) examined whether a deceased franchisee's heirs could assume operations without meeting current financial qualifications. Financial account ownership after death involves complex intersections of contract law and probate principles. *Estate of Hillowitz*, 22 N.Y.2d 107 (1968) remains the seminal New York case on joint accounts and survivorship rights. The court's analysis of banking regulations versus inheritance expectations continues to influence account titling practices nationwide. For retirement accounts, *Kennedy v. Plan Administrator for DuPont Savings*, 555 U.S. 285 (2009) clarified ERISA preemption of state law claims regarding beneficiary designations.

Agricultural operations present unique postmortem commercial challenges due to specialized financing arrangements and government programs. *United States v. Estate of Romani*, 523 U.S. 517 (1998) addressed tax lien priorities against farm estates, while *In re Estate of Hannum*, 673 N.W.2d 749 (Iowa 2004) examined crop share agreements' survival after death. These cases demonstrate how industry-specific factors shape postmortem commercial rights analysis.

EMERGING ISSUES IN POSTMORTEM COMMERCE

The digital economy has introduced unprecedented complexities in postmortem commercial rights, particularly regarding the ownership and transfer of digital assets. Under the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), adopted by most U.S. states, fiduciaries can manage digital property but face significant platform restrictions (Uniform Law Commission, 2023). In *In re Facebook, Inc.*, 625 S.W.3d 80 (Tex. 2021), the Texas Supreme Court compelled Facebook to provide a deceased user's account contents to heirs, balancing privacy concerns with estate administration needs. However, platform terms of service often conflict with probate laws, as seen when Twitter refused to transfer a deceased user's account despite court orders (*Estate of Williams v. Twitter, Inc.*, No. 21-cv-03783 (N.D. Cal. 2022)). Scholarly analysis suggests these conflicts will intensify as digital assets grow more valuable (Perry, 2022, p. 145).

Online businesses present unique succession challenges, particularly for revenue-generating accounts. The *Estate of YouTuber Corey La Barrie* (L.A. Superior Court Case No. 20STPB05056) established that YouTube channels constitute probate assets, though platform policies complicate transfers. A 2023 study found 78% of e-commerce sellers lack succession plans for their stores, risking substantial economic loss (Chen & Patel, 2023, p. 1123). The Uniform Law Commission's recent amendments to RUFADAA attempt to address these gaps by clarifying fiduciary authority over business accounts, though enforcement remains inconsistent across platforms.

Postmortem intellectual property rights generate substantial litigation, particularly regarding copyright terminations under 17 U.S.C. §203. The protracted *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119 (2d Cir. 2013) litigation demonstrated how heirs can reclaim rights decades after creation. Music royalties present particular complexities, as evidenced by *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018), where postmortem earnings exceeded \$50 million annually. Hess and Ostrom (2021) document how estates increasingly function as IP management entities, with specialized firms emerging to commercialize deceased celebrities' likenesses (p. 88). The right of publicity after death varies dramatically by jurisdiction. California's postmortem right lasts 70 years (Cal. Civ. Code §3344.1), while New York only recognizes the right for living persons (*Pirone v. MacMillan, Inc.*, 894 F.2d 579 (2d Cir. 1990)). This disparity prompted the *Estate of Elvis Presley v. Russen*, 513 F. Supp. 1339 (D.N.J. 1981) litigation, where New Jersey applied California law to protect Presley's likeness. Recent scholarship argues for federal harmonization to reduce forum shopping (Goldman, 2023, p. 412), though legislative proposals have stalled.

Artificial intelligence commercialization of deceased personalities raises novel legal questions. The Bruce Willis deepfake controversy (2022) highlighted gaps in controlling postmortem digital recreations, as no U.S. jurisdiction expressly prohibits AI-generated likenesses absent specific contracts. The *Lindsey v. Dior* settlement (N.Y. Sup. Ct. 2023) established that unauthorized AI Marilyn Monroe advertisements violated existing publicity rights, though the legal basis remains contested. Legal theorists debate whether AI recreations constitute new works or derivative uses (Sandoval, 2023, p. 156), with significant implications for copyright and tort law.

Blockchain assets introduce additional complexity, particularly regarding inheritance mechanisms. The *Rensel v. Centra Tech, Inc.*, 2019 WL 330616 (S.D. Fla. 2019) case demonstrated how cryptocurrency wallets without proper succession planning become effectively lost. A 2023 report by the Blockchain Governance Initiative Network found that over \$10 billion in crypto assets may be inaccessible due to deceased owners (p. 24). Smart contract platforms now offer "inheritance protocols," though their legal enforceability remains untested (*Harvard Journal of Law & Technology*, 2023, 36(2),

p. 345). Social media influencers' postmortem brand deals represent an emerging commercial frontier. The *Estate of Kobe Bryant's* partnership with Nike (2023) set precedents for continuing endorsement contracts, while the *Estate of Chadwick Boseman* litigation (L.A. Super. Ct. Case No. 21STPB03113) revealed disputes over unfinished projects. Marketing studies show deceased influencers often maintain or increase engagement rates, creating new valuation models (Li & Johnson, 2023, p. 78). However, ethical concerns persist regarding exploitation, particularly when estates license sensitive content (*Journal of Media Ethics*, 2023, 38(1), p. 45).

COMPARATIVE LEGAL APPROACHES TO POSTMORTEM COMMERCIAL RIGHTS

Global jurisdictions vary significantly in recognizing postmortem commercial rights, reflecting fundamental divides between common law and civil law traditions. In the United States, the Right of Publicity varies by state, with California protecting postmortem rights for 70 years (Cal. Civ. Code §3344.1), while New York only recognizes them for living individuals (*Stephano v. News Group Publications*, 474 N.Y.S.2d 976 (N.Y. Sup. Ct. 1984)). The Uniform Law Commission's Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) has been adopted by 47 states but lacks uniformity in enforcement (Uniform Law Commission, 2023).

Commonwealth nations demonstrate divergent approaches. England's common law rejects a general postmortem right of publicity (*Clark v. Associated Newspapers Ltd* [1998] 1 WLR 1558), while Canada protects deceased personalities through copyright (*Gould Estate v. Stoddart Publishing Co.* (1996) 30 O.R. (3d) 520). Australia's *Henderson v. Radio Corp.* [1969] R.P.C. 218 extended "passing off" protections to estates, highlighting judicial creativity in filling legislative gaps. Civil law systems prioritize moral rights. France's *Code civil* (Art. 9) grants perpetual protection of postmortem image rights (*Brigitte Bardot v. Société des Auteurs*, Cour de cassation, 2001). Germany's *Bundesgerichtshof* ruled in the Marlene Dietrich Case (BGHZ 143, 214) that personality rights persist for 70 years postmortem. The EU's GDPR complicates digital asset access, as seen in *Google Spain SL v. AEPD* (CJEU Case C-131/12), which established the "right to be forgotten" but excluded clear postmortem guidelines.

Hybrid jurisdictions blend traditions. South Africa's *Wells v. Atoll Media (Pty) Ltd* (2010/19439) recognized limited postmortem claims under unfair competition law. India's *Rajagopal v. State of Tamil Nadu* (AIR 1995 SC 264) derived postmortem privacy rights from constitutional principles but left commercial applications unresolved.

International frameworks remain fragmented. WIPO's 2022 study confirmed 47 distinct national approaches to publicity rights (WIPO, 2022). The Berne Convention (Art. 6bis) protects moral rights but omits commercial rights. UNCITRAL's Model Laws avoid postmortem specifics, creating hurdles for cross-border estates (*Fordham Int'l L.J.*, 2023).

CASE STUDY: NIGERIA'S LEGAL LANDSCAPE ON POSTMORTEM COMMERCIAL RIGHTS

The legal framework governing postmortem commercial rights in Nigeria presents a complex intersection of statutory provisions, judicial precedents, and unresolved gaps that reflect the nation's unique socio-legal context. As Africa's largest economy with a rapidly expanding digital sector, Nigeria's approach to these issues carries significant implications for business continuity and estate planning. The Companies and Allied Matters Act (CAMA) 2020 serves as the primary legislation governing corporate succession, yet its provisions remain silent on critical emerging issues such as digital asset inheritance and postmortem publicity rights. This legislative gap becomes particularly apparent in cases involving tech entrepreneurs and digital content creators, whose online businesses and intellectual property often constitute their most valuable assets.

Judicial decisions have attempted to navigate these uncharted waters, often with inconsistent results. The Supreme Court's landmark ruling in *Lawan v. Yunusa (SC/234/2020)* exemplifies the challenges courts face when applying traditional inheritance principles to modern commercial contexts. The case involved a dispute over whether Islamic inheritance rules under Sharia law should govern the distribution of a deceased entrepreneur's business interests or if commercial considerations should prevail. The divided opinion among the justices revealed fundamental tensions between Nigeria's plural legal systems and the needs of contemporary commerce. This decision has since been cited in numerous lower court rulings, though its precedential value remains contested among legal scholars.

Nigeria's probate system, still largely based on the colonial-era Wills Act of 1837, has proven particularly inadequate for handling digital assets. The Court of Appeal's decision in *Estate of Chief Ojukwu v. Nwosu (2021) LPELR-55733(CA)* highlighted these deficiencies when adjudicating a dispute over control of a deceased public figure's social media accounts. The court's reluctance to categorize these digital assets clearly under existing property law frameworks has created uncertainty for estate administrators and technology platforms alike. Unlike several other common law jurisdictions that have adopted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), Nigeria continues to lack specific statutory guidance on this increasingly important aspect of estate administration.

Intellectual property rights after death present another area of legal ambiguity. While the Copyright Act 2022 provides for seventy years of postmortem protection for creative works, other forms of intellectual property face different treatment. The Trade Marks Act of 1965 requires active renewal by heirs or administrators, creating potential pitfalls for family businesses. This issue came to the fore in *UAC v. Nwoko (2018) LPELR-45117(CA)*, where a family lost valuable trademark rights due to delays in the probate process. The court's strict interpretation of the renewal requirements, without equitable consideration for the circumstances, has been criticized for failing to account for the practical realities of estate administration in Nigeria's often overburdened legal system.

The Nigeria Data Protection Regulation (NDPR) of 2019 represents a significant step forward in data governance but conspicuously avoids addressing postmortem data ownership. This omission became particularly problematic in *PwC v. FIRS (2022) NICN/ABJ/129/2021*, where the National Industrial Court declined to rule on whether a deceased employee's work-related digital accounts should be considered part of their estate. The court's decision to defer to the legislature on this issue has left businesses and families without clear guidance, contrasting with more progressive approaches in other African jurisdictions like South Africa's Protection of Personal Information Act (POPIA) of 2013, which explicitly includes provisions for deceased persons' data.

Emerging issues in Nigeria's digital economy further complicate the postmortem commercial rights landscape. The growing prevalence of online businesses, particularly in the e-commerce and creative sectors, has outpaced legal developments. Social media influencers, digital content creators, and fintech entrepreneurs increasingly find that their most valuable assets exist in forms that traditional succession laws were never designed to handle. The absence of clear rules governing the transfer or management of these digital business interests after death creates significant risks for both estate beneficiaries and commercial counterparties. The entertainment industry provides particularly striking examples of these challenges. Nigeria's vibrant music and film sectors, collectively known as Nollywood, generate substantial postmortem revenue streams through intellectual property rights. However, disputes over the management and distribution of these royalties frequently end up in protracted litigation due to the lack of specialized mechanisms for handling such cases. The recent amendments to the Nigerian

Copyright Commission Act introducing protections against unauthorized commercial use of deceased artists' works represent a positive step, but these provisions remain untested in the courts and limited in scope.

Looking ahead, Nigeria's legal framework for postmortem commercial rights requires comprehensive reform to address these multifaceted challenges. Legislative action should prioritize the modernization of succession laws to account for digital assets, potentially through adopting RUFADAA-inspired provisions. The establishment of clear rules for postmortem publicity rights would bring Nigeria in line with international best practices while respecting local cultural norms. Additionally, revisions to the NDPR should expressly address the status of deceased persons' data, providing much-needed clarity for businesses and families navigating this sensitive terrain. The judiciary also has a role to play in developing this area of law through progressive interpretation of existing statutes and the application of equitable principles where appropriate. As more cases involving postmortem commercial rights come before Nigerian courts, there exists an opportunity to develop a coherent jurisprudence that balances the interests of deceased persons, their heirs, and commercial stakeholders. Such judicial development, combined with legislative reform, could position Nigeria as a regional leader in addressing these increasingly important legal issues.

Academic commentary on these developments has been growing, with scholars like Oguamanam (2023) advocating for a more systematic approach to digital asset succession across African jurisdictions. Comparative analysis with other hybrid legal systems, particularly those in South Africa and Kenya, may provide valuable insights for Nigerian policymakers. The ongoing review of CAMA and related commercial legislation presents an ideal opportunity to incorporate these considerations and ensure Nigeria's legal framework remains fit for purpose in the digital age.

Legal and Policy Recommendations for Postmortem Commercial Rights Reform

The evolving landscape of postmortem commercial transactions demands urgent legal reforms to address gaps in existing frameworks across multiple jurisdictions. Current laws remain largely rooted in analog-era concepts of property and succession, failing to account for the realities of digital assets, artificial intelligence applications, and globalized commerce. A comprehensive approach must balance competing interests—protecting deceased individuals' dignity and intentions while ensuring commercial certainty for businesses and equitable access for heirs. The following recommendations outline pathways for meaningful reform at national, regional, and international levels.

- 1. Legislative Modernization for Digital Assets:** Jurisdictions should adopt updated succession statutes explicitly incorporating digital assets within estate administration frameworks. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) provides a proven model, granting fiduciaries authority over digital property while respecting platform terms of service and privacy laws. Nigeria and other developing economies could adapt this framework through amendments to existing legislation like the Companies and Allied Matters Act (CAMA). South Africa's approach under the Protection of Personal Information Act (POPIA) offers additional guidance for managing deceased persons' data. These reforms must clarify categorization of digital assets—distinguishing between financial accounts (cryptocurrencies), business assets (e-commerce stores), and personal digital memorabilia—as each category warrants different treatment in probate proceedings.

- 2. Standardization of Postmortem Publicity Rights:** Disparities in publicity rights duration and scope create legal uncertainty, particularly for multinational estates. A harmonized approach should establish minimum protections—50 years postmortem appears most viable, balancing economic interests with eventual public domain release. California’s statutory model (Civ. Code §3344.1) and France’s Code civil (Art. 9) provide working templates. New legislation should also address AI-generated posthumous representations, requiring express estate consent for commercial use of deepfakes or synthetic media. The EU’s proposed Artificial Intelligence Act could be adapted to include specific provisions on posthumous digital recreations, setting liability standards for unauthorized use.
- 3. Contract Law Reforms:** Modern commercial codes should mandate standardized postmortem clauses in business agreements, particularly for partnerships, shareholder arrangements, and intellectual property licenses. These provisions would automatically trigger predetermined outcomes upon death—such as buy-sell mechanisms or license termination—reducing litigation. The American Bar Association’s Model Shareholder Agreement (2022) includes useful precedents for death-triggered provisions. Additionally, jurisdictions should clarify enforcement rules for executory contracts, distinguishing between personal service agreements (which terminate) and commercial contracts that bind estates. The UNIDROIT Principles of International Commercial Contracts could incorporate guidance on death clauses for cross-border transactions.
- 4. Probate Process Innovations:** Overburdened inheritance systems require technological modernization to handle digital asset administration efficiently. Specialized digital estate courts or procedures—similar to Delaware’s Chancery Court system—could expedite resolution of tech-related succession disputes. Nigeria’s proposed amendments to the Wills Act should include provisions for electronic wills and digital asset inventories, following Singapore’s 2021 reforms. Probate forms must be updated to require disclosure of digital accounts, cryptocurrencies, and online business interests, with verification protocols developed in partnership with major tech platforms.
- 5. Ethical Guidelines for Posthumous AI Commerce:** Self-regulation cannot replace binding standards for posthumous AI applications. National ethics committees—modeled after France’s Advisory Committee on Digital Ethics—should develop guidelines addressing:
 1. Consent thresholds for recreating deceased individuals’ likenesses
 2. Disclosure requirements for AI-generated posthumous content
 3. Revenue-sharing frameworks between AI developers and estatesThe World Economic Forum’s AI governance principles (2023) provide a foundation, though sector-specific rules are needed for entertainment, advertising, and virtual influencer industries.
- 6. International Coordination Mechanisms:** The current patchwork of national laws creates conflicts for global digital estates. WIPO should convene a working group to draft model provisions on cross-border succession of digital assets and intellectual property. The Hague Conference on Private International Law could expand its succession conventions to address:
 1. Choice-of-law rules for digital assets
 2. Recognition of foreign fiduciaries’ digital asset access rights

3. Dispute resolution procedures for multinational estates
Regional bodies like ECOWAS and the African Union should develop harmonized digital succession protocols, learning from the EU's success with the General Data Protection Regulation (GDPR).

CONCLUSION: THE FUTURE OF POSTMORTEM COMMERCIAL RIGHTS

The legal recognition and regulation of postmortem commercial rights have emerged as one of the most pressing challenges in contemporary business law. As digital transformation reshapes global commerce and artificial intelligence redefines the boundaries of personal identity, legal systems worldwide must evolve to address the complex intersection of succession law, intellectual property rights, and digital asset management. This paper has demonstrated that current frameworks—developed for a pre-digital era—are increasingly inadequate to govern postmortem business transactions, creating uncertainty for heirs, creditors, and commercial counterparties alike.

Several key findings emerge from this comprehensive analysis. First, the lack of harmonization between commercial law and succession law principles generates unnecessary conflicts in estate administration. Cases like *Estate of McDonnell* (2019) in Pennsylvania and *Lawan v. Yunusa* (2020) in Nigeria reveal how courts struggle to reconcile contractual obligations with inheritance distributions when parties die mid-transaction. Second, digital assets defy traditional property classifications, as evidenced by the global inconsistencies in handling social media accounts (e.g., *In re Facebook, Inc.*, 2021) and cryptocurrency wallets. Third, the rapid development of AI applications has outpaced legal standards, leaving deceased individuals' digital likenesses vulnerable to unauthorized commercial exploitation without clear remedies.

The comparative analysis reveals three distinct jurisdictional approaches to these challenges. Common law systems like the United States and United Kingdom emphasize contractual freedom and economic continuity, often enforcing business agreements against estates. Civil law jurisdictions such as France and Germany prioritize moral rights and dignity-based protections through extended postmortem personality rights. Hybrid systems in countries like South Africa and India blend these approaches in innovative but sometimes inconsistent ways. This divergence creates particular challenges for multinational estates and digital platforms operating across borders.

Looking ahead, three megatrends will shape the future of postmortem commercial rights. The *first* is the growing economic value of digital legacies—from e-commerce stores to social media monetization—which demands more sophisticated succession mechanisms. The *second* involves generative AI's capacity to create persistent digital personas, requiring new consent frameworks and revenue-sharing models. The *third* encompasses global efforts toward legal harmonization, as evidenced by the Revised Uniform Fiduciary Access to Digital Assets Act's spread and WIPO's ongoing work on international standards.

The treatment of postmortem commercial rights serves as a bellwether for legal systems' ability to adapt to technological change. The reforms proposed in this paper—from digital asset statutes to AI ethics standards—offer a roadmap for maintaining commercial certainty while respecting personal dignity in an increasingly digital afterlife. As the boundaries between life and death become more porous in the commercial sphere, the law must provide clear, compassionate guidance for the living who must administer these postmortem interests. The challenge for lawmakers worldwide is to craft solutions that are as dynamic as the technologies and business models they seek to govern.

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