

**COURSE
GUIDE**

**CLL 818
LAW OF COMMERCIAL AND CONSUMER
PROTECTION LAW II**

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CONTENTS

Introduction	iv
Course Objectives	iv
Working through this Course	v
Course Materials	v
Study Units	v
Textbooks and References	vii
Assessment	vii
Tutor-Marked Assignments	vii
Final Examination and Grading	vii
Course Score Distribution	viii
How to get the most from this Course	ix
Tutors and Tutorials	x

INTRODUCTION

Welcome to CLL 818: Law of Commercial and Consumer Protection Law II. This course is one of the LL.M courses in National Open University of Nigeria available to LL.M students. This course is offered in the second semester of your study and it is a 3 credit unit course.

This second semester of Law of Commercial Transaction and Consumer Protection II course dealt basically with the agency, consumer protection law and consumer credit. The first aspect on agency examined: definition and types of agency, competency of parties, authority of and agent, formalities and creation of agency. The relationships in agency, duties of the principal to the agent remedies available to the parties, and the termination of agency were all covered. The second part on consumer protection law dwelt on the definition and the philosophy of consumerism, legal framework for consumer protection in Nigeria, consumers' responsibilities, consumers' rights, duties of an undertaking and enforcement. The final part on consumer credit examined the historical development and definition of consumer credit; definition of money lender and regulation of money lending; requirements and procedure for obtaining a money lenders license and major obligations of money lender

COURSE OBJECTIVES

In order to achieve the aims stated above, some general as well as specific objectives have been designed in this regard. The specific objectives are indicated at the beginning of each unit.

The general objective will be achieved at the end of the course material. At the completion of the course material you should be able to:

1. Understand Agency and Related Terms Distinguished
2. Identify and discuss the Types of Agency
3. Competency of Parties, Authority of an Agent, Formalities for the Creation of Agency
4. Relationship with Third Party; Disclosed Principal
5. Relationship with Third Party; Undisclosed Principal
6. Relationship between Principal and Agent
7. Duties of the Principal to the Agent
8. Remedies Available to the Parties
9. Termination of Agency by Acts of the Parties
10. Termination of Agency by Operation of Law
11. Incidence of Termination of Agency
12. The Definition and the Philosophy of Consumerism
13. Legal Framework for Consumer Protection in Nigeria

14. Consumers' Responsibilities
15. Consumers' Rights
16. Duties of Manufacturers, Importers, Distributors and Suppliers of Goods and Services
17. The Enforcement of Consumers' Rights And Consumer Protection Legislation
18. Historical Development and Definition of Consumer Credit
19. Definition of Money Lender and Regulation of Money Lending
20. Requirements and Procedure for Obtaining a Money Lenders License
21. Major Obligations of Money Lender

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 17 weeks to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

COURSE MATERIALS

The major components of the course are:

- a) Course guide.
- b) Study Units.
- c) Textbooks
- d) Assignment file/Seminar Paper
- e) Presentation schedule.

STUDY UNITS

We deal with this course in 21 study units divided into 6 modules as follows;

Module 1 Definition and Types of Agency, Competency of Parties, Authority of and Agent, Formalities and Creation of Agency

- | | |
|--------|--|
| Unit 1 | Definition of Agency and Related Terms Distinguished |
| Unit 2 | Types of Agency |

Unit 3 Competency of Parties, Authority of an Agent, Formalities for the Creation of Agency

Module 2 Relationship in Agency

Unit 1 Relationship with Third Party; Disclosed Principal
 Unit 2 Relationship with Third Party; Undisclosed Principal
 Unit 3 Relationship between Principal and Agent
 Unit 4 Duties of the Principal to the Agent
 Unit 5 Remedies Available to Parties

Module 3 Termination of Agency

Unit 1 Termination of Agency by Acts of the Parties
 Unit 2 Termination by Operation of Law
 Unit 3 Incidence of Termination of Agency

Module 4 Consumerism, Legal Framework and Consumer Responsibility

Unit 1 The Philosophy of Consumerism
 Unit 2 Legal Framework for Consumer Protection in Nigeria
 Unit 3 Consumers' Responsibilities
 Unit 4 The Enforcement of Consumers Rights and Consumer Protection Legislation

Module 5 Consumer Credit

Unit 1 Historical Development and Definition of Consumer Credit
 Unit 2 Definition of Money Lender and Regulation of Money Lending
 Unit 3 Requirements and Procedure for Obtaining a Money Lender's License
 Unit 4 Major Obligations of Money Lender

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous Units.

Each study unit consists of one week's work and includes specific objectives, directions for study, reading materials and Self Assessment Exercises (*SAE*). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

TEXTBOOKS AND REFERENCES

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

TUTOR MARKED ASSIGNMENTS

There is a Tutor Marked Assignment at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three performances will be used for assessment. The assignments carry 10% each.

Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your self assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four count at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

Course Overview and Presentation Schedule

Module 1	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide		
Unit 1	Definition of Agency and Related Terms Distinguished	1	Assignment 1
Unit 2	Types of Agency Transactions.	1	Assignment 2
Unit 3	Competency of Parties, Authority of an Agent, Formalities for the Creation of Agency	1	Assignment 3
Module 2 Unit 1	UNIT 1 - Relationship with Third Party; Disclosed	2	Assignment 5
Unit 2	Relationship with Third Party; Undisclosed Principal	2	Assignment 6
Unit 3	Relationship between Principal and Agent	2	Assignment 7
Module 3 Unit 1	Unit 1 – Duties of the Principal to the Agent	3	Assignment 8
Unit 2	Remedies Available to the Parties	3	Assignment 9
Module 4 Unit 1	Unit 1 – Termination of Agency by Acts of the	4	Assignment 11

	Parties		
Unit 2	Termination of Agency by Operation of Law	4	Assignment 12
Unit 3	Incidence of Termination of Agency	4	Assignment 13
Module 5 Unit 1	Unit 1 - The Definition and the Philosophy of Consumerism	5	Assignment 14
Unit 2	Legal Framework for Consumer Protection in Nigeria	5	Assignment 15
Unit 3	Consumers' Responsibilities	5	Assignment 16
Module 6 Unit I	Consumers' Rights	6	Assignment 19
Unit 2	Duties of Manufacturers, Importers, Distributors and Suppliers of Goods and Services	6	Assignment 20
Unit 3	The Enforcement of Consumers' Rights And Consumer Protection Legislation	6	Assignment 21
Module 7 Unit 1	Historical Development and Definition of Consumer Credit	7	Assignment 22
Unit 2	Definition of Money Lender and Regulation of Money Lending	7	Assignment 23
Unit 3	Requirements and Procedure for Obtaining a Money Lenders License	8	Assignment 24
Unit 4	Major Obligations of Money Lender	8	Assignment 25
		8	

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace,

and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, you study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

TUTORS AND TUTORIALS

There are 15 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if;

- You do not understand any part of the study units or the assigned readings;
- You have difficulty with the self-assessment exercises;
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

COURSE GUIDE

CONTENTS

Module 1	Definition and Types of Agency, Competency of Parties, Authority of an Agent, Formalities and Creation of Agency	1
Unit 1	Definition of Agency and Related Terms Distinguished	1
Unit 2	Types of Agency	6
Unit 3	Competency of Parties, Authority of an Agent, Formalities for the Creation of Agency	11
Module 2	Relationship in Agency	19
Unit 1	Relationship with Third Party; Disclosed Principal	19
Unit 2	Relationship with Third Party; Undisclosed Principal	23
Unit 3	Relationship between Principal and Agent	34
Unit 4	Duties of the Principal to the Agent	40
Unit 5	Remedies Available to Parties	44
Module 3	Termination of Agency	48
Unit 1	Termination of Agency by Acts of the Parties	48
Unit 2	Termination by Operation of Law	52
Unit 3	Incidence of Termination of Agency	58
Module 4	Consumerism, Legal Framework And Consumer Responsibility	62
Unit 1	The Philosophy of Consumerism	62
Unit 2	Legal Framework for Consumer Protection in Nigeria	67
Unit 3	Consumers' Responsibilities	72
Unit 4	The Enforcement of Consumers Rights and Consumer	

	Protection Legislation	74
Module 5	Consumer Credit	78
Unit 1	Historical Development and Definition of Consumer Credit	78
Unit 2	Definition of Money Lender and Regulation of Money Lending	81
Unit 3	Requirements and Procedure for Obtaining a Money Lender's License	86
Unit 4	Major Obligations of Money Lender	89

**MODULE 1 DEFINITION AND TYPES OF AGENCY,
 COMPETENCY OF PARTIES,
 AUTHORITY OF AND AGENT,
 FORMALITIES AND CREATION OF
 AGENCY**

Unit 1	Definition of Agency and Related Terms Distinguished
Unit 2	Types of Agency
Unit 3	Competency of Parties, Authority of an Agent, Formalities for the Creation of Agency

**UNIT 1 DEFINITION OF AGENCY AND RELATED
 TERMS DISTINGUISHED**

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcomes (ILOs)
- 1.3 Definition of Agency
- 1.4 Related Terms
 - 1.4.1 Agent and Trustee
 - 1.4.2 Agent, Servant, and Independent Contractor
 - 1.4.3 Agent and Bailee
- 1.5 Summary
- 1.6 References/Further Readings/Web Resources
- 1.7 Answers to Self – Assessment Exercises

1.1 Introduction

The complexity of business transactions and contemporary commercial relation make it practically impossible for people to do everything by themselves. Business men often engage people to represent and act for them. Corporate entities being an artificial being act through employees in their relationship with clients and customers. Agency law is concern with how authority is delegated and the regulation of same. This unit examines the meaning of agency and distinguishes it from related terms.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- define agency
- differentiate between agency and related terms.

1.3 Definition of Agency

Agency is a relationship which exists between a person (called the Principal) and another (called the Agent) in which the agent has undertaken to act for and on behalf of the principal with authority to create binding legal relation between the principal and a third party. According to Etomi, “agency involves a person acting through another, the latter considered as the legal representative of the former” (Etomi, 2014).

In *Iyere v. Bendel Feed and Flour Mill Ltd* (2008) 18 NWLR (PT1119) 300 Muhammad JSC stated thus:

Who can be described as an ‘agent’ or a ‘principal’ in the Law of Agency? In the Law of Agency, the relationship which arises when a person called ‘agent’ acts on behalf of another called ‘principal’, whereby the latter undertake to be answerable for the lawful acts the former does within the scope of his authority, is what amount to agency.

The above definition is instructive in that it emphasised the need for the act of the agent not only be lawful but must be within the scope of his authority. Thus, not all the legal act of the agent may be binding on the principal, such act must be within the agent’s scope of authority.

The elements deducible from above definitions are that for there to be an agency relationship in law, the following must be in place:

- (a) The agent must possess authority to act;
- (b) The agent must stand in place of the principal and act for the principal in a lawful manner.
- (c) The result must be to create binding legal relationship between the principal and a third party.

1.4 Terms Related to Agency Distinguished

The concept of agency in commercial transaction has in most cases been mistaken to be the same with some other relationship of similar nature and character. A preliminary way of understanding the typical features of agency relationship is to compare an agent with some other functionaries and relationships which appear similar but invariably are distinct and different. Such functionaries include trustees, servants, bailees, and independent contractors.

1.4.1 Agent and Trustee

For certain purposes, an agent may be treated as a trustee of his principal. An example of this in cases of money had and received on behalf of the principal. Equally, a trustee may for certain purposes be treated as an agent of the beneficiary (*cestui que trust*). There is also the historical antecedent between them in that at some point in time, the concept of agency looks its root from that of trusteeship. The consequence is that certain principles of law are thereby applicable to both, such as the doctrine of fiduciary relationship with its attendant incidents. Both functionaries are nonetheless distinguishable on the following grounds:

- 1) the relationship of principal and agent is generally consensual in origin, whereas and except in minor cases, a trust is created without the consent of the beneficiary (*cestui que trust*) or the trustee.
- 2) when an agent is appointed, this is invariably done by the principal himself, whereas, in a trust situation, the trustee is never appointed by the beneficiary (*cestui que trust*).
- 3) the agent is for all purposes, the representative of his principal in dealing with third parties whereas, the trustee is not in any way the representative of the beneficiary (*cestui que trust*).
- 4) d) actions between the principal and the agent may be barred by lapse of time under the limitation Acts whereas, no such limitation is imposed on actions between the beneficiary (*cestui que trust*) and the trustee.

1.4.2 Agent, Servant, and Independent Contractor

Basically, an agent is distinguishable from both a servant and an independent contract. The essential feature of the master servant relationship is that the master always has the right to control the diligent performance by the servant of the terms of his employment while a servant merely works for his master, an agent acts for and in place of his principal to effect legal relations of his principal with third parties.

The distinguishing features of an agency relationship are its representative character and derivative authority which give the agent a degree of discretion in the performance of the terms of its agency which a servant would not ordinarily have.

An independent contractor on the other hand renders services to his employer in the course of an independent occupation or calling. He contracts with his employer only as to the results to be achieved, but not as to the means whereby the work is done.

Accordingly, he employs his own means and skill and is entirely independent of control and supervision of his employer.

Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailor) to another person (bailee) under an agreement that the property can be returned to the owner (bailor) or transferred to a third party or dealt with in any other way indicated by the owner (bailor). The bailee is not an agent of the bailor strictly speaking since he has no authority to deal with the property in any other way except in accordance with the instructions of the bailor. The bailee does not render any service at all to the bailor which is an essential purpose of agency.

Some of the important distinguishing features between an agent and a bailee include:

- 1) The agent is the representative of his principal but the bailee does not thereby become the representative of the bailor.
- 2) The agent has authority to contract for and on behalf of his principal and can make him liable in tort. A bailee essentially has no authority to bind the bailor in contract except perhaps to preserve the property the subject of the bailment and can rarely make the bailor liable in tort.

SELF-ASSESSMENT EXERCISE 1

Define agency and discuss the essential distinguishing features of an agent, trustee, servants, independent contractor and bailee.

1.5 Terms Related to Agency Distinguish

This unit has revealed the basic nature and characteristics of agency vis-à-vis the authority of an agent and the differences between the concept of agency, trusteeship, servant, independent contractor and bailment. All these are basically common law concepts but now more relevant and applicable to issues arising from commercial transactions

1.6 References/Further Readings/Web Resources

Kingsley, Igweike (1993). *Nigeria Commercial Law: Agency*. Jos: Nigeria. FAB Educational Books. .

American Restatements, Second, Agency, Article.

G.H.L. Friedman (1984). *Law of Agency*. (7th ed.). London: Butterworths.

Geoge, Etomi (n.d.). *An Introduction to Commercial Law in Nigeria: Text, Cases and Materials*. MIJ Professional Publisher Limited 52-s9.

E. A. Akanki (2007). *Commercial Law in Nigeria*. University of Lagos Press) 221-262.

1.7 Answers to Self-Assessment Exercise

SAE 1 The answer should provide a definition of agency and draw a clear distinction between the essential features of an agent and trustee, agent and servants, agent and independent contractor, and agent and bailee.

UNIT 2 TYPES OF AGENTS

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcome**
- 2.3 General and Special Agents
- 2.4 Distinction between General and Special Agent
 - 2.4.1 Commission Agents
 - 2.4.2 Mercantile Agents
 - 2.4.3 Factors
 - 2.4.4 Brokers
 - 2.4.5 Del Credere Agents
- 2.5 Summary
- 2.6 References/Further Readings/Web Resources
- 2.7 Answers to Self-Assessment Exercises

2.1 Introduction

In view of modern developments in trade and commerce and changing need for specialisation certain types of agents have distinguished themselves by name, character and function. Consequently, they have been invested with varying degrees of authority and power arising from the customs, trade, business or profession in which they belong or operate or simply from their distinct peculiarities. It has therefore been realised that there is need for such types of agents to be specifically distinguished and examined in some detail here for proper understanding and assimilation.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- identify and thoroughly examine the various types of agents that exist
- attempt a through comparison of them with the aim of bringing out their peculiar features as they relate to modern commercial transactions.

2.3 General and Special Agents

Agents are classified as either “general” or “special” agents. The primary distinction between the two types lies in the nature of the authority given or accorded to each and the extent to which their exercise affects the position of the principal.

A general agent is one who is authorised to act for and on behalf of his principal in all his affairs in connection with a particular kind of business, trade or profession or who represents him in the ordinary course of his own trade, business or profession, as agent.

An example of a general agent is a director of a limited liability company who acts for the purpose of the company's business. In the same vein, a solicitor, broker or auctioneer who is engaged to perform in the ordinary course of his own business is a general agent of his employer in relation to that employment.

A special agent on the other hand is one authorized to act for and on behalf of his principal on or for special occasion. Such an agent may also be required to handle a particular transaction or to do a specific act which is not within the ordinary course of his trade, business or profession. An example of this is a dealer in goods taken on hire-purchase for the purpose of executing the necessary hire-purchase documents, paying the initial deposits, taking delivery of the goods and in some cases receiving the periodic payments.

2.4 Distinction between General and Special Agents

The distinguishing feature between the two classes of agents lies in the nature and character of the authority given or accorded and its scope in relation to third parties. In this connection, the court observed in *Buller v Maples* (1869)9 Wall 766 that:

“The purpose of (a special agency) is a single transaction or a transaction with designated persons Authority to buy for the principal a single article of merchandise by one contract, or to buy several articles from a person named, is a special agency. But authority to make purchase from any persons with whom the agent may choose to deal, or to make an indefinite number of purchases is a general agency”.

2.3.2 Commission Agents

A commissioned agent is the one to whom certain goods have been consigned for a foreign principal. This type of agent belongs to recognized class of commercial agents whose rights and obligation are superimposed between the ordinary relationship of principal and agent on the one hand, and a buyer and seller on the other.

A commissioned agent is therefore saddled with dual responsibility. The first being an agent to his principal with equal rights and obligation like any other agent. The second is that he does not bind his principal

contractually to third parties. Instead, he stands in his own right in the position of principal to such third parties.

The peculiar feature of this category of commercial agents was identified by Lord Blackburn in *Ireland v. Livingstone* (1872) A.C. 395. In that case he stated that a person who supplies goods to a commissioned agent has no authority to pledge the credit of his principal for them.

2.3.3 Mercantile Agents

A mercantile agent is an agent having in the course of his business, as such agent, authority to sell or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods. In essence, when one is dealing with a mercantile agent, it becomes pertinent to enquire whether in the “customary course of the agent’s business he has authority to sell, consign for sale or to buy or raise money on the security of goods in his possession as such agent.

This is so because there are many kinds of agents who receive or are in possession of goods, yet it is not their duty to sale or consigns them for sale or to raise money on them. It is important therefore, that when one is dealing with an agent in possession of goods, one has to consider what sort an agent he is and what his customary course of business would be when he is getting in the capacity of an agent.

In *Oppenhiemer v. Attenborough* (1708) 1 K.B 221, Lord Buckley drew a distinction between “customary case of business “and “ordinary course of business”. According to the learned judge, a customary course of business speaks of the arrangement made between the owner of goods and his agent. It contemplates that the principal has given possession of the goods to the agent in the course of business which the principal knows or believes the agent carries on as a mercantile agent. It deals with the situation under which the agent gets his authority.

On the other hand, in ordinary course of business, has to do with the stage at which the agent is going to deal with the goods in his possession with reference to some other person. There are three types of mercantile agents, namely Factors, Brokers and Del Credere Agents.

2.3.4 Factors

The term “Factor” has not been defined in many statute books, both foreign and local. However, under the common law it has been defined as referring to a mercantile agent who has been entrusted with the possession of goods for sale only. In *Barring v Corrie* (1818)2

B & AID. 137, Abott C. J., described a factor as a person to whom goods are consigned for sale by a merchant residing abroad or at a distance away from the place of sale and who sells in his own name without disclosing that of his principal.

This definition was qualified in *Stevens v Biller* (1884)25 CH. D. 31 where it was held that an agent does not lose his character of factor by reason of his acting under special instruction from his principal to sell the goods at a particular price and to sell in the principal's name.

2.3.5 Brokers

A broker is a mercantile agent who, in the ordinary course of his business is employed to make contact with third parties for the purchase of goods, or property or for the sale of his principal's goods or property of which he is not entrusted with possession or document of title thereto. He has been described under the common law as an agent employed to make bargains and contact between persons in matter of trade, commerce and navigation. He is a mere negotiator between such persons with no possession of the goods. He lacks the power or authority to determine whether the goods belong to the buyer or seller and no legal or power to determine whether the goods should be delivered to the one or be kept by the other.

In essence, a factor is not entrusted with the possession of the goods and has authority to sell them in his own right or name possession or control of the goods of the principal by the factor distinguishes him from a broker and he is personally liable when contracting for a foreign principal, while the broker incures no personal liability if he does not exceed his authority or instruction.

2.3.6 Del Credere Agent

A *del credere* agent is defined as one who, in consideration of extra remuneration called a *del credere commission*, guarantees to his principal that third parties with whom he enters into contract for and on behalf of the principal shall duly pay any sums becoming due under those contracts. The element of extra remuneration by way of *del credere* commission is indispensable to the establishment of a *del credere* agency and it is this feature that mainly distinguishes it from any other agent.

Therefore, where there are no words in an agency contract from which it can be held that a higher reward is being paid to the agent in consideration of his assuming liability for any amounts due from third parties and there is nothing in the course of conduct between the agent

and the principal from which such arrangement can be inferred, the agent is not in del credere agent.

SELF-ASSESSMENT EXERCISE 2

- 1) Examine and discuss the classification of agents.

2.6 Commission Agents

This unit examined and discussed types of agents, to wit: general and special agents, commission agents, mercantile agents, brokers and del credere agents. The classification of agents is necessary for a thorough understanding of the concept of agency. Agents are classified into three: general and special, commissioned agent and mercantile agent. A clear understanding of these classifications is necessary because it helps in determining the authority of the agent.

2.7 References/Further Readings/Web Resources

Kingsley, Igweike (1993). *Nigeria Commercial Law: Agency*. Jos, Nigeria: FAB Educational Books.

Sir William Holdsworth (n.d). *A History of English Law* Vol. IV. American Restatements, Second, Agency, Article.

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Companies and Allied Matters Act 2020. Laws of the Federation of Nigeria.

2.8 Answer to Self-Assessment Exercises

SEA1: Agents are classified into general and special agents, commission agents, mercantile agents (brokers, factor and del credere agents). The

classification of agents is necessary for a thorough understanding of the concept of agency. Agents are classified into three: general and special, commissioned agent and mercantile agent. Student is expected to discuss them in details.

SAE 1

UNIT 3 COMPETENCY OF PARTIES, AUTHORITY OF AN AGENT FORMALITIES AND CREATION OF AGENCY

Unit Structure

- 3.1 Introduction
- 3.2 Intended Learning Outcomes
- 3.3 Competence of the Principal
- 3.4 Competence of the Agent
 - 3.4.1 Legal Practitioners
 - 3.4.2 Insurance Agents and Brokers
 - 3.4.3 Auctioneers
- 3.5 Authority of an Agent
 - 3.5.1 Express Authority
 - 3.5.2 Usual Authority
- 3.6 Formalities for Creation of Agency
- 3.7 Creation of Agency
 - 3.7.1 Agency by Agreement or Contract
 - 3.7.2 Agency of Estoppel
 - 3.7.3 Agency by Ratification
 - 3.7.4 Agency by Necessity
- 3.8 Summary
- 3.9 References/Further Readings/Web Resources
- 3.10 Answer to Self-Assessment Exercise

3.1 Introduction

The most important step in determining whether the agent's act or omission will in law bind the principal is to establish whether an agency relationship actually exists between the supposed principal and a given agent. This type of relationship may be created or established in any of the ways to be discussed under various heads in this unit. This unit will highlight the basic factors or elements required in the creation of agency.

3.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- explain the creation of agency.

3.3 Competence of the Principal

The principal must be competent to give such authority. However, to every rule, there is always an exception. In this instance where delegation of that said power is prohibited by law, the general common

law rule that powers could be delegated will be of no effect. See section 72 of the Companies and Allied Matters Act of 1990.

The principle usually applied is often expressed in the maxim “*nemo potest facere per alium, quod per se non potest*” which means that “no one can do through another what he cannot do himself”.

Three categories of persons, due to natural or legal disability are either totally or partially incompetent to be principals are:

- 1) Infants: Generally, an infant is incompetent to appoint agent except necessities.
- 2) Mentally ill Persons: As in the case of an infant, a mentally ill person cannot appoint an agent.
- 3) Corporations: A corporation registered under the Companies and Allied Matters Act of 2004 is competent. See sections 37, and 63 (1), 65 of the CAMA 2004

3.4 Competency of the Agent

The rules governing the competency to be a principal are quite different from that governing the competency to be an agent. The general rule here is that any person of age and of sound mind may act as an agent of another person. Therefore, the competence of a person to act as an agent of another is not limited by the competence of that person to act for him in that regard. However, in some instances, particularly in business, trades and professions, the law has placed limitations on the right to be or act as an agent. This is primarily to protect the general public from loss or damage at the hands of unscrupulous, unqualified and inexperienced persons who may take advantage of the ignorance of the consuming public. The limitation applies to the following set of professionals.

3.4.1 Legal Practitioners

The competence to be or do this is regulated by the Legal Education (Consolidation, e.t.c.) Act Cap L10 LFN 2004, as amended. The requirement must be met before one can be appointed as legal practitioner.

3.4.2 Insurance Agents and Brokers

Like the legal profession, insurance business is also regulated by a law. See Insurance Act Cap 117 LFN 2004

3.4.3 Auctioneers

Generally, an auctioneer is a person who conducts a sale by auction. Apart from the requirement of application and obtaining a license from

the appropriate licensing authority, on the payment of any prescribed fee or such other fee as may be prescribed, no special qualification is required by statute of one who wishes to carry on the business of or act as an auctioneer.

3.5 Authority of an Agent

The word, “Authority” is used to mean the ability of the agent to bind the principal. This authority is entangled with the creation of agency by the principal and agent agreeing to the creation of the agency. That agreement will embody the authority of the agency.

Generally, the principal is bound only by those acts of the agent that are within the scope of that agent authority and every action carried outside that authority will be that of the agent unless the principal ratifies it. Types of authority of an agent are examined below.

3.5.1 Actual Authority

Generally, it is only if an agent acts within actual authority that he is able to claim an indemnity from the principal for any expenses incurred or remuneration under the agency contract with the principal. In the same vein, an agent who acts outside this actual authority may be liable to the third party for breach of the implied authority. The actual authority of an agent is determined by the agreement between the principal and the agent. It is a matter of content construction. Two types of actual authority exist.

1) Express Actual Authority

This is the authority, which the principal expressly gives to the agent. An example is where the agent is instructed to sell a particular property for the principal. See: *ELECTRONICS LTD V AKHTER COMPUTER LTD (2001)1/BCLC/433*

2) Implied (or Incidental) Actual Authority

In addition to express actual authority, the agent may have implied actual authority. However, implied authority cannot contradict express actual authority because it is only a way of filling the gaps in the agency agreement. It is not a means of altering that agreement. An agent may have implied authority of his principal in the following ways:

- (a) To do things that are necessarily incidental to the execution of the express actual authority.
- (b) To undertake that which is implied from the particular circumstance of the relationship between him and the principal such as where there has been a previous course of dealings.

- (c) Such authority as is customarily enjoyed by dealings in the particular market. A custom must be uniform certain, notorious (generally known), recognised as binding and reasonable.

Usual Authority of an Agent

The usual authority of an agent first came up for consideration in the case of *Watteau v. Fenwick* (1893) 1 Q.B.346. In that case F owned a hotel where he appointed a manager, Humble. Humble was expressly forbidden from buying goods other than mineral water and bottle of beer. Humble had previously owned the hotel and his name remained above the door as the license was held in his name. Humble ordered cigars from W, who believed he was the owner of the hotel. F was held liable for the price of the cigars.

Usual authority can therefore be likened to implied authority which an agent has in respect of his dealings with innocent third parties who are not aware that he lacks the authority to enter into such transaction on behalf of the supposed principal.

3.6 Formalities for Creation of an Agency

Generally, no specific formalities are required for the creation of agency relationship. Consequently, the principal-agent relationship may be established by words of mouth, by mere conduct or by writing and may also be inferred from the circumstances of a particular case. However, some appointments are required by law to be in writing or evidenced in writing or in any other particular manner. Thus, a power of attorney or the instrument of appointment of an agent who is required to execute a deed must be in the form of a deed. Agents, such as solicitors, are sometimes, desirable to be appointed in writing so that the effect of agency and the extent of the authority conferred may easily be ascertainable. Apart from such appointments, the law does not require formal evidence of the existence of an agency relationship. In *Heard v Pillay* (1869) 4 Ch. App 548, it was held that a contract of purchase of land made by an agent will be enforced although the agent was appointed by parole. See *Davis v Sweet* (1962) 2 Q.B. 300.

3.7 Creation of Agency

Agency may be created by the following ways.

3.7.1 Agency by Agreement or Contract

It can be created by contract. Agreement or contract is the consensus of the contracting parties to the terms and conditions of the proposed contract. The same principle applies to the formation of an agency agreement by express agreement or contract of the terms thereof. In commercial transactions, an agreement is the revelation of the intention of both the agent and the principal unequivocally to constitute such a relationship. See *Ayua v. Adasu & Ors* (1992)3 N.W.L.R. 598 Akanbi JCA.

3.7.2 Agency by Estoppel

The general position of the law in this area is to the effect that where a supposed principal intentionally or otherwise causes a third party to believe that another person is his agent and the third party so relies in dealing with the supposed agent, the principal will be estopped from denying the existence of an agency relationship between him and a supposed agent. See *Lukan v. Ogunnusi* (1972) 5 S.C. 40; *Didigun v. R.T. Briscoe Ltd*; *Saul Raccah v. Standard Company of Nigeria Ltd* (1938) 4 W.A.C.A 162.

The essential elements of agency by estoppel are

- 1) Representation
- 2) Reliance on Representation
- 3) Alteration of Position

3.7.3 Agency by Ratification

Ratification has been described as equivalent to antecedent authority and has been defined as the affirmation by a person of a prior act which was done or done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him. The doctrine of ratification was explained in *Wilson v Tunman* (1843)6 MAN & G 236 as follows:

“That an act done, for another, by a person not assuming to act for himself, but for such other person, though without any antecedent authority whatever, becomes the act of the principal if subsequently ratified by him, is the known and well-established principle of law.”

Essential Elements of a Valid Ratification: These elements include:

- (i) act must be on behalf of the principal;
- (ii) there must exist a competent principal;
- (iii) the act must be of a legal quality.

On mode of ratification, generally, ratification requires the manifestation by the principal in some way, of his intention to be bound by a prior unauthorized act of an agent. This, in most cases may be supplied by a clear and unequivocal adoptive act or by conduct amounting to acquiescence. See *Mutual Aids Society Ltd v. Akerele* (1965)1 ALL A.L.R. 336.

Positive acts provide the clearest and most satisfactory evidence of ratification. Accordingly, a voluntary acceptance or retention by the principal of the benefits of a transaction purportedly entered into by the agent for and on his behalf but without authority will generally establish ratification.

On effect of ratification, generally, ratification is retrospective in nature. The only exception to this principle of relation back is that ratification would not have this effect where to do so will prejudice an innocent third party who has, in the interim acquired a right or benefit under the transaction.

Ratification strictly speaking is not a method of appointing an agent but a means whereby an agency relationship may arise. It therefore relates only to past acts and does not thereby become a license or further authorization to perform similar or even the same act in the future.

It does not thereby constitute the agent into a general agent of the principal. Consequently, no formal termination of such agency relationship is called for, required or necessary.

3.7.4 Agency of Necessity

1) What is agency by necessity?

Generally, the courts are reluctant to find that an agency of necessity exists because it imposes obligations on someone who has not given consent to the supposed agent to so act. The agency of necessity may arise where certain condition are fulfilled. For instance:

- (a) Tolu's property is in Ike's possession as the result of an existing legal relationship, such as a contract of bailment. This will also include claims by strangers such as someone who finds the goods.
- (b) Ike is unable to obtain instructions from the Tulu.
- (c) An emergency threatens the property.
- (d) Ike takes action in good faith and that action is commercially reasonable, proportionate and in the interest of Tolu.

See *Sachs v. Miklos* (1948)2 K.B.23; *Prager v. Blastpiel, Stamp and Hsacock Ltd* (1924)1 K.B 566. It is therefore pertinent to state that since it is a characteristic of an agent that they can affect the legal relations of the principal, it might be argued that those agents who only have the right to claim expenses or to defend an action are not true agents of necessity and that the only true agency of necessity is the master of a ship who acts to save the ship or its cargo in an emergency.

Doctrine of deserted wife's agency of necessity

Another classical example of agency of necessity arising out of an existing or subsisting legal duty concerns a deserted wife. A deserted wife is an agent of necessity endowed by law with authority to pledge her husband's credit for necessities. The locus classicus in respect of this point of law is the case of *Phillipson v Hayter* (1870) L.R.6 C.P.38 where Wiles, J, while explaining the rule stated as follows: "What the law infers is this, that his wife has authority to contract for things that are really necessary and suitable to the style in which the husband chooses to live, in so far as the articles fell fairly within the domestic department which is ordinarily confined to the management of the wife."

This principle was applied and approved by the Court of Appeal (North Central State) Kaduna, in the Nigerian case of *Hutchinson v. Madam Olaide* (1970) N.N.L.R. 31 where it was held that a wife whose husband's cruelty forced her to leave him was entitled to pledge his credit for necessities. It was further held that this is subject to the wife's own means and earning power and that it was limited to pledging the husband's credit for goods supplied or services rendered but not extended to borrowing money.

There are certain conditions that are required by law before a deserted wife can successfully set up an agency of necessity. These conditions are:

- (a) That the husband (Principal) and the wife (agent) were legally married and cohabiting as husband and wife at the material time.
- (b) That there was an actual or constructive desertion of the wife by the husband.
- (c) That the credit pledged by the wife was for chattels other than money and for the domestic requirements.
- (d) That such expenditure was suitable for her style or situation in life or for what she was used to while she was living with her husband.

- (e) That there was no other credit available to her for her maintenance either through her own earning power or under a court order.
- 2) Conditions for necessity of agency**
The existence or otherwise of an agency of authority is dependent on the fulfillment of the following conditions by the supposed agent. These are:
- (a) That there is an emergency situation necessitating instantaneous action.
- (b) That it was impossible for the claimed agent to communicate with the presumed principal at the material time.
- (c) That the action taken was reasonably necessary having regard to the circumstances in the case.
- (d) That the claimed agent acted bona fide and in the interest of the presumed principal.

A claimed agent must prove the existence of all these conditions cumulatively.

SELF-ASSESSMENT EXERCISE 3

1. The decision in *Watteau v. Fenwick* is confusing and does not relate to the usual Authority of an agent. Discuss.
2. Examine in brief what you understand by competency of parties in an agency relationship.
3. Creation of agency follows a particular form. Do you agree?
4. What are the distinguishing factors of the various modes of creation of agency?

3.8 Summary

This unit exposed you to the various ways by which an agency relationship can be created. A valid agency will be held to subsist where any of the foregoing situations is proved to exist. Also, this unit examined competence of parties in agency relationship, formalities for the creation of agency, authority of an agent, and the various ways by which an agency is created.

3.9 References/Further Readings/Web Resources

Sir William Holdsworth, "A History of English Law," Vol. IV.

Walker, D.W. (1980). *The Oxford Companion to Law*. London: Butterworths).

American Restatements, Second, Agency, Article..

G.H.L. Friedman, (1984). *Law of Agency*. (7th ed.). London: Butterworths.

Companies and Allied Matters Act Cap C20 Laws of the Federation of Nigeria.

3.10 Answers to Self-Assessment Exercises (SAEs)

Student answer and discussion should address:

1. The decision in *Watteau v. Fenwick* and state how it relates to the usual Authority of an agent.
2. Competency of parties in an agency relationship.
3. Creation of agency and whether any a particular form is to be followed. No particular form is required.
4. The distinguishing factors of the various modes of creation of agency

MODULE 2 RELATIONSHIP IN AGENCY

Unit 1	Relationship with Third Party; Disclosed Principal
Unit 2	Relationship with Third Party; Undisclosed Principal
Unit 3	Relationship between Principal and Agent

**UNIT 1 RELATIONSHIP WITH THIRD PARTIES -
DISCLOSED PRINCIPAL****Unit Structure**

- 1.1 Introduction
- 1.2 Intended Learning Outcomes
- 1.3 Relationship with Third Parties - Disclosed Principal
 - 1.3.1 Contracts by Agents
 - 1.3.2 Principal and Third Party
 - 1.3.3 Effect of Agency on Disclosed Principal
- 1.4 Summary
- 1.5 Tutor-Marked Assignment
- 1.6 References/Further Reading/Web Resources
- 1.7 Answers to Self-Assessment Exercises
- 1.8

1.1 Introduction

Under the law of agency, the principal is generally responsible to third parties for any decision, act or omission of his agent which was performed or taken while executing the terms of the agency. This is the hallmark of the law of agency on a disclosed principal.

1.2 Intended Learning Outcomes (ILOs)

By the end of this unit, you will be able to:

- determine the peculiar relationship between a principal and an agent
- identify its effects on a contract executed by the third party in favour of the principal with a third party where the principal is disclosed by the agent to the third party at the time of the contract.

1.3 Relationship with Third Parties - Disclosed Principal

The main content of this unit on the nature of contracts executed by the agent in favour of the principal with a third party who, at the time of the contract was aware to the existence of the said principal.

1.3.1 Contracts by Agents

Generally, issues in contracts by agents raise the fundamental problem of who can sue and who can be sued between the principal and the agent. In either case, the rights and liabilities attaching to each depend on the following factors:

- 1) Whether the agent acted within the scope of his authority; express or implied.
- 2) Whether the principal is disclosed or undisclosed.
- 3) Whether the principal is a national as opposed to a foreign principal.

Where the agent acted within the scope of his authority, or if without authority, it has been subsequently ratified by the principal, and the identity of the principal disclosed, the latter alone is generally the true party to the contract and bound thereby. The agent incurs neither right nor liability under such a contract unless otherwise expressly made a party thereto.

Lord Erskin stated the position of the law clearly in *Ex Parte Hartrop* (1806)12 Ves 349 when he said:

“No rule of law is better ascertained or stands upon a stronger foundation than this; that, where an agent names his principal, the principal is responsible, not the agent; but for the application of that rule, the agent must name his principal as the person to be responsible.”

It is, however, not necessary that the agent must specifically have stated that he was acting for and on behalf of his principal in order for the latter to be disclosed. It is sufficient if the third party knows or ought to have known that the person he was dealing with was acting for another specific person.

However, where the principal is undisclosed, that is, where the fact of agency as well as the identity of the principal are not known to the third party, the contract may, as a general rule, be enforced by or against the principal if and when disclosed provided that the agent's act was authorized. See *Watteau v. Fenwick* (1893)1 Q.B.D 346.

1.3.2 Principal and Third Party

The general rule is that where a person contracts as agent for a principal the contract is the contract of the principal and not that of the agent, and prima-facie, at common law the only person who may sue is the principal, and the only person who can be sued is the principal.

In other words, everyone is liable for his contract even where he acts for another unless it can be shown that this liability is removed by the operation of that contract.

The relationship between the disclosed principal and the third party will be brought to life and the principal could take advantage therefrom only under the following situations:

- 1) The agent discloses, names or unnamed the existence of a principal on whose behalf the contract was negotiated.
- 2) The agent acts within actual authority.
- 3) The agent acts without authority but the principal subsequently ratifies same.

Generally, the principal may be sued on the contract if the agent acts within apparent authority but the third party cannot be sued without firstly ratifying the act of the agent.

In response to a claim by the disclosed principal, the third party has the defense.

- 1) He can set up and use any defense or claim arising from the contract.
- 2) He may also use any defense available against the principal.

It is however to be noted that a defense or claim available against the agent and unconnected with the contract cannot be used against the principal.

1.3.3 Effects of Agency on Disclosed Principal

In *Barwick v. English Joint Stock Bank* (1967) L.R, 2 Exch. 259. Wiles. J. stated the rationale behind this issue thus: “The principal put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in.”

The principal is only liable for those decisions, acts or commissions which fall within the scope of the real (actual) or apparent (ostensible) authority of the agent.

The crucial test is therefore whether a particular decision, act or omission falls within the scope of the agent's authority and done or taken in the course of that agent's employment.

Therefore, in as much as the third party dealt with the agent in good faith, the principal does not cease to be liable by reason only of the fact that the agent was acting fraudulently or otherwise to the detriment of the principal.

Generally, the effect of an agency relationship created by an agent on behalf of a disclosed principal with a third party is that the disclosed principal is bound on all fours in respect of the contract so created.

SELF-ASSESSMENT EXERCISE 4

- 1) Who is a disclosed principal?
- 2) State the rights available to both the principal and a third party in a disclosed principal's agency situation.
- 3) Contracts entered into on behalf of a disclosed principal are enforceable against the principal.

1.4 Summary

The unit examined the nature of contracts entered into by agents with a third party on behalf of a disclosed principal; the extent of the liabilities or otherwise of the principal in a disclosed principal's contract entered into by an agent on the principal's behalf with a third party; and the effect of such contract on all the parties concerned.

1.5 References/Further Readings/Web Resources

Kingsley, Igweike, (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Pollock & Maitland. "The History of English Law," Vol. 11.

Walker, D.W. (1980). "The Oxford Companion to Law." London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency, (7th ed.)*. London: Butterworths.

Companies and Allied Matters Act 2020

1.6 Answer to Self-Assessment Exercise 1

Answer should explain

- 1) Who a disclosed principal is in detail.
- 2) State the rights available to both the principal and a third party in a disclosed principal's agency situation.
- 3) Whether contracts entered into on behalf of a disclosed principal are enforceable against the principal.

UNIT 2 RELATIONSHIP WITH THIRD PARTY – UNDISCLOSED PRINCIPAL

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcomes
- 2.3 The Doctrine of Undisclosed Principal
 - 2.3.1 Exceptions
- 2.4 Personal Liability of the Agent
 - 2.4.1 Where the Agent Contracts Personally
 - 2.4.2 Where the Principal is Foreign
 - 2.4.3 Where the Principal is Fictitious or Non-Existent
 - 2.4.4 Where the Principal is Unavowed
 - 2.4.5 Where the Contract is in Writing
 - 2.4.6 Where the Contract is a Deed
 - 2.4.7 Where the Contract is a Negotiable Instrument
 - 2.4.8 Where there is Implied Warranty of Authority
- 2.5 Torts Committed by Agents
 - 2.5.1 Liability of the Principal
 - 2.5.2 Liability of the Agent
 - 2.5.3 Exceptions
 - 2.5.4 Who may be Sued
- 2.6 Crimes Committed by Agents
 - 2.6.1 Personal Responsibility of Principal and Agent
 - 2.6.2 Vicarious Responsibility of Principal
- 2.7 Summary
- 2.8 References/Further Readings/Web Resources
- 2.9 Answer to self-Assessment Exercise

2.1 Introduction

This unit deals with the agency situation where the principal is not disclosed by the agent when dealing with a third party albeit on behalf of the principal. This is also known as Undisclosed Agency. Up to this point, the law of agency in respect of third parties seems relatively consistent in that it involves representations made by the principal to the third party. The consistency vanishes at the realm of undisclosed principal because the existence of an agency is not disclosed. The above and the legal implication is the focus in this unit. The relationship of agent with third parties in a situation of undisclosed principal can be explained by the following illustration:

Tutu believes the contract entered into is with Gbemi. Tutu is unaware that Gbemi is acting for Jafa. Jafa is entitled to intervene and enforce the contract.

This is the nature of the relationship that will be dealing with in this unit.

2.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- examine the consequences of agreement entered on behalf of an undisclosed principal by an agent with a third party as well as the rights, obligations, liabilities and duties of all the parties concerned in this type of contract.

An undisclosed principal is one whose existence and identity are unknown to the third party at the time of entering into a contract with an agent. Under the doctrine of undisclosed principal, it is permissible, in appropriate circumstances for such principal on whose behalf a contract has been entered into by an agent to sue and be sued on the contract. Although it is a well settled principle of law, the doctrine has been described as an anomaly in the sense that it offends the doctrine of privity of contract and it is in this respect that it is often regarded as an exception to the doctrine of privity of contract rule.

2.3 The Doctrine of Undisclosed Principal

The rights and liabilities of the principal may be expressly excluded by a term of the contract itself or implied by a custom, or usage of the particular trade, business or profession to which the agent belongs or in which he operates. This is subject to the provision that these are not inconsistent with the express term of the contract and not reasonable or unlawful.

2.3.1 Exceptions

The rights and liabilities of the principal on contracts negotiated by the agent on his behalf are subject to certain general exceptions. These are:

- 1) No principal can validly sue or be sued on any contract purported to have been entered into on his behalf by the agent unless with his consent or authority.
- 2) At common law, no principal may sue or be sued on any deed, even if it was expressed to have been executed on his behalf unless he was described as a party thereto and it was executed in his name.

- 3) Where the contract in question is a negotiable instrument, for example a bill of exchange, cheque or promissory note, the principal is not liable unless his signature appears on it. He needs to sign by himself to be liable.
- 4) Where the principal is a foreign principal, there is a presumption that the intention was to bind the agent and not the foreign principal. This may, however, be contradicted by clear terms of the contract itself or circumstantial evidence from the surrounding circumstances of the case.

2.4 Personal Liability of the Agent

In situations where the principal cannot be sued on a contract entered into on his behalf by the agent, the question may arise as to whether the third party can sue the agent who negotiated the contract. The common law rule is expressed in the maxim “QUI PER ALIUM FACIT PER SEIPSAM FACERE VIDETUR” which means “he who does an act through another is deemed in law to do it himself. That is why a person cannot escape liability merely because he has done what he did through an agent. However, an agent may also personally liable in some circumstances. These circumstances are:

2.4.1 Where the Agent Contracts Personally

In this situation, the agent will be held liable if he enters into the contract in his name instead of in the name of his principal, with or without disclosing the fact of his agency or the identity of his principal. It is generally presumed that he intended to contract personally. In *Calder v Dobell* (1871) L.R 6 C.P. 486 a broker contracted in his own name to purchase goods from the plaintiff, having previously disclosed to him that he was an agent of the defendant. In an action for the price of the goods, it was argued for the defendant that there is a distinction between the case where one party was not aware when entering into the contract that the other was acting as an agent and the case where he was aware of that fact but nevertheless the contract was entered into by the agent in his own way. It was submitted that the principal could be sued in the former case but not in the latter. This argument was rejected by the Court of Common Pleas which unanimously held that the plaintiff was entitled to sue the defendant on the contract.

See; *West African Shipping Agency (Nig.) Ltd & Anor V Kalla* (1978)3 S.C. 21. *Jammal engineering (Nig.) Ltd. V Nigeria Ports Authority & Ors* CCHCJ/1/731.

2.4.2 Where the Principal is Foreign

The general rule is that where an agent contracts on behalf of a foreign principal, there is a presumption that the intention was to bind the agent and not the principal. The practical consideration concerns the necessity to avoid the difficulties arising from the foreign element present in such circumstances. However, there would be no presumption where the intention to bind the principal was clear from the contract itself or from the surrounding circumstances of the particular case.

2.4.3 Where the Principal is Fictitious or Non-Existent

In cases where an agent professes to contract on behalf of a fictitious or non-existent principal, he may sometimes be presumed to have intended to be bound by the terms of such contract. The leading judicial authority on this point is *Kelner v. Baxter & Ors* (Supra) where an agent purported to enter into a written contract on behalf of a company not yet incorporated. It was held that the agent was personally liable on the contract, even if he expressed himself as contracting for the future company.

2.4.4 Where the Principal is Unavowed

Where a person professes to contract as an agent and it subsequently established or revealed that he is in fact the real principal and that he was merely acting for himself, he is personally liable on the contract.

This situation is however, not an instance of undisclosed principal in the sense that the fact of agency and the existence of the principal are acknowledged but what was not known or apparent is the fact that the principal and the purported agent are one and the same person.

It is important to state here that there is no general principle of law prohibiting a person from acting as both as an agent and the principal in one and the same transaction. The only proviso is that where the identity of the principal is immaterial to the other contracting party, the agent would be entitled to sue and be sued on the contract.

2.4.5 Where the Contract is in Writing

The question whether an agent, who on behalf of his principal, purportedly enters into a written contract other than a deed or negotiable instrument is personally liable thereon depends on a number of factors.

He will be personally liable if he signs his name absolutely and without qualification.

For such an agent to escape liability, the document so signed must unequivocally show that he contracted as agent and did not undertake any personal responsibility. In *Gadd v. Houghton* (1876) 1 Exq. D. 357, Mellish, L.J, had this to say on the matter:

“When a man signs a document in his own name, he is prima facie a contracting party and liable and there must be something very strong on the face of the instrument to show that liability does not attach to him.”

For this rule to be applicable, it will not be sufficient that the person should have described himself in the relevant document as an agent, director, secretary, accountant, broker, or words of similar nature. If it is stated in the document that he signs the same “as agent for” or “on behalf of” a simply “for” a principal or words of that kind, he escapes liability unless it was clearly evident from the body of the document that he intended to bind himself. See *West African Shipping Agency (Nig.) Ltd & Anor v. Alhaji Kala* (Supra)

2.4.6 Where the Contract is a Deed

In cases where an agent appends his signature to a deed or document under seal and executes it in his own name, he is personally liable even if he is described in the document or deed as an agent acting for and on behalf of a named principal.

This rule is strict and operates even if that agent subsequently executes the document or deed on behalf of his principal. In *Schalff v Anthony* (1813) 1 M.B. & S 573, a shipmaster, executed by deed, a charter party in his own name describing himself as the agent of the ship-owner. It was held that notwithstanding that description, the ship owner, as principal, was not entitled to sue for the freight but only the ship-master because the owner was not a party to the deed.

This principle is premised on the rule that no one can add to or contradict the terms of a deed. To escape liability, however, the agent must have executed the deed as the principle’s deed. In such instance, the agent will not incur personal liability.

2.4.7 Where the Contract is a Negotiable Instrument

Where an agent signs his own name on an ordinary bill of exchange, a cheque or promissory note, or endorses or accepts such an instrument by signing his own name, he is personally liable on the instrument notwithstanding that he added to his signature words describing himself as an agent or as filing a representative character.

Where he signs as drawer, endorser or acceptor, adding to his signature words indicating that he signs not only as agent for a principal but also as agent for a specified principal; he will incur no personal liability.

Where the agent signs per pro (per procuracy) he can only bind his principal for acts within his limited authority or capacity. However, he will be personally liable for any excess. He will equally be liable if he signs in a trade name or his own name.

2.4.8 Where There is Implied Warranty of Authority

Where an agent purports to act on behalf of a principal, and it turns out that he was acting without authority or in excess of his authority, the principal cannot be held responsible in the absence of ratification by him. The agent alone is responsible irrespective of whether he knew, or ought to have known, or inadvertently thought that he had the authority he was supposed to have professed. For responsibility to be placed on the agent, the law requires that the third party should have relied on the warranty of the agent in entering into the contract. Therefore, the agent will not be liable if the third party knows or was aware of the fact that the agent was mistaken as to his own authority.

It has been duly acknowledged that this principle is a well-established exception to the general rule that an action for damages will not lie against a person who honestly makes a misrepresentation which misleads another see: *Starkey v. Bank of England* (1903) A.C.114: *Mcneal v. Hawes* (1923)2 K.B.539.

It is however pertinent to point out that in most cases, the basic understanding of the agent's warranty is that the agent has his principal's authority to enter into the transaction in question. He is not however understood thereby, to warrant that his principal is solvent or will perform the transaction entered into. On the other hand the law would not allow implied warranty in some instances. These are:

- a) Where the assertion of representation is one of law as distinct from one of fact;
- b) Where the principal subsequently and effectively ratifies the transaction; and
- c) Where the third party knows or ought to know that the agent had no authority.

2.5 Torts Committed by Agents

Under this doctrine, a principal is held answerable for torts committed by his agent in the course of executing the terms of his agency. The

matter does not only affect the vicarious responsibility of the principal for such acts and omission but also the personal responsibility of the agent himself. Thus, a third party injured by the wrongful act or omission of an agent may proceed against the principal vicariously, and or the agent directly, as the perpetrator of the wrongful act.

The liability of the principal for a wrongful act of his agent is under the common law founded on the doctrine of “RESPONDENT SUPERIOR” which means “Let the Principal Be Answerable.” Under the law, several rationales of vicarious liability have been suggested in tort cases. Some of these have been imported into the principal-agency relationship. Some of these are:

- 1) that the master (principal) has a fictitious control over the behaviour or is servant (agent);
- 2) that the master (principal) has selected his servant (agent) and trusted him and should therefore suffer for his wrongs, rather than an innocent stranger or third party.
- 3) that it is a privilege granted by law for a person (principal) to be allowed to employ another (agent) and that for that privilege there should be a corresponding responsibility;
- 4) those tort losses are placed upon the employer (principal) because he is better able to prevent them through careful hiring and better able to bear them.

2.5.1 Liability of the Principal

The liability of the principal under the doctrine of respondent superior is strict and the principal is so responsible notwithstanding his exercise of due care and diligence in selecting the agent or supervising him or probing the act or omission concerned. The principal is only liable in contract for things done or actions taken within the actual (real) or ostensible (apparent) authority of the agent.

In tort, he is liable for all wrongs committed by the agent whether within his actual or ostensible authority or not. In *Construction Industry Co. Ltd v. Bank of North* (1968) N.C.L.R. 194, a driver waiting to be served at a petrol station, struck a match on his cigarette. This action set a petrol station ablaze. It was held that his employer (principal) was liable for the damage caused thereby.

However, to make the principal liable, the act of the agent must have been committed in the course of the agent’s employment. Thus, where it was established that the agent was on a frolic of his own, it was held that the agent was not in the course of his employment and therefore the principal was not liable.

See: *Navarro v. Moregrand Ltd. & Anor* (1951)2 T.L.R. 674.

The principal will also be held liable in the following circumstances.

- 1) where he authorized the wrongful acts. See: *Pan Brothers Ltd. v. Landed Property Ltd & Anor* (1982)2 All N.L.R. 22 *Adesuloye v. Martin & Anor* (1978)10-12 CCHCJ 345.
- 2) where the principal ratified the wrongful acts. See: *Inoma Russel v. Niger Construction Coy* (1987)3 N.W.L.R. 298.
- 3) where there is a misrepresentation by agent See: *Imersel Chemical Co. Ltd. v National Bank of Nigeria* (1974)4 E.C.S.L.R. 355.

2.5.2 Liability of the Agent

In situations where a third party suffers a loss, damage or injury as a result of the wrongful act or omission of the agent, the latter remains liable to him personally. The agent is liable directly as the perpetrator of the wrongful act or omission and jointly with his principal. His liability exists notwithstanding that he was acting with the express authority or instruction or order of the principal or for the benefits of the principal.

In *Baschet v. London Illustrated Standard Co.* (1900)1 Ch. D. 73. It was held that an author whose copyright has been infringed was entitled to recover separate damages against every infringer, whether principal, agent or servant.

Unless the action of the agent is ratified by the principal, the agent will be personally liable. The same applies to a situation where the agent departs from the scope of his employment.

2.5.3 Exceptions

- 1) If the wrongful act or omission complained of will not be tortious as regard his principal who has ratified it.
- 2) If the wrongful act or omission complained of requires a specific state of mind at the time of its commission, and he did not have that state of mind at the time, e.g. innocent misrepresentation.
- 3) If the agent is personally immune from suit on the wrongful act or omission complained of even though the principal may remain liable.

2.5.4 Who May Be Sued

The third party may sue either the agent or the principal separately or both jointly since they are both generally jointly and severally liable.

Any judgment obtained against either of them bars any further action against the other.

However, section 8(1)(a) of the Civil Liability (Miscellaneous Provisions Act) of 1961 has overruled this common law position as it forbids judgments obtained against a party from standing as bar to an action against any other person who is liable as a joint tort-feasor in respect of the same damage.

2.6 Crimes Committed by Agents

It is pertinent to state from the onset that crimes committed by agents in the course of executing the terms of their agency have a dual aspect. In the first place, it refers to the personal responsibility of the agents and the principal respectively. Secondly, it refers to the vicarious responsibility of the principal for the crimes committed by the agents

2.6.1 Personal Responsibility of Principal and Agent

The general rule relating to crimes committed by an agent is that as the perpetrator of any act or omission constituting a crime, he is personally responsible whether such crime was committed in the course of his employed or not. Therefore, to be criminally responsible for such an act or omission, the prosecution must prove as against the agent, all the essential elements or ingredients of criminality. The agent must be proved to have:

- 1) attained the age of criminal responsibility.
- 2) been in possession of the relevant mens rea (i.e. the criminal intent) of the particular crime or offence at the time of its commission or omission and
- 3) performed the actus reus i.e perpetrated the act or omission constituting the particular offence or crime.

In *Mandillas and Caraberis & Anor v Inspector General of Police* (1958)3 F.S.C. 20, the second defendant was the Area Manager of the first defendant company, from whose workshop two lorries, the subject-matter of the prosecution were allegedly stolen. The prosecution submitted that the second defendant, being the Area Manager for the shop, were in personal possession of the lorries. He must therefore, be held criminally responsible for any offence committed in relation to the lorries. Ademola F.C.J., delivering the judgement of the Supreme Court held that, whatever the position of a manager may be in cases of absolute liability, he could not be convicted of an offence involving mens rea except in respect of his own act or omission.

2.6.2 Vicarious Responsibility of Principal

The general rule in common law is that the principal is not ordinarily vicariously responsible for a crime committed by his agent in the course of his employment. This principle of law has raised the issue of when a statute should be considered as having created a strict liability offence.

The general test that has been applied is whether the duty or offence created is or has been rendered absolute thereby. If it has or is, the principal is in the same vein made responsible, whether he has expressly delegated his duty under the statute to his agent or not and regardless of any intent, knowledge or mens rea. In *Gammon Hong Kong Ltd & Ors. v Att. General of Hong Kong* (1984) 3 W.L.R. 437 - the Judicial Committee of the Privy Council set out the law relating to vicarious responsibility of a principal where crime is committed as follows:

- 1) that there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence.
- 2) that the presumption is particularly strong where the offence is truly criminal in character.
- 3) that the presumption applies to statutory offences and can be displaced only if this is clearly or by necessary implication the effect of the statute.
- 4) that the only situation in which the presumption can be displaced is where the statute is concerned with social concern and public safety is such an issue.
- 5) that even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability is effective to promote the object of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

SELF ASSESSMENT EXERCISES 5

- 1) Distinguish between the liability of an agent and a principal to a third party in tort.
- 2) Under what conditions will a principal be held liable for crimes committed by his agent while contracting with a third party?
- 3) The doctrine of undisclosed principal in an agency relationship is without exceptions. Discuss

2.7 Summary

This unit deals with the doctrine of undisclosed principal in an agency relationship and its recognized exceptions. Learners have been exposed

to rudiments of this doctrine as applicable both under the common law and statute.

2.8 References/Further Readings/Web Resource

Kingsley, Igweike, (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesinis & Munday, (1986). "An Outline of Agency." (2nd ed.). Pollock and Maitland. "The History of English Law," Vol. 11. Sir William Holdsworth, "A History of English Law," Vol. IV.

Walker, D.W. (1980). "The Oxford Companion to Law." London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, (7th ed.). London: Butterworths.

2.9 Answers to Self-Assessment Exercise

The answers should include

- 1) Agent is personally liable and the principal is also vicariously liable to a third party in tort.
- 2) Under what conditions will a principal be held liable for crimes committed by his agent while contracting with a third party? It must be crime committed in the course of business of the agency.
- 3) The meaning of doctrine of undisclosed principal in an agency relationship and the exceptions are
 - If entered into on his behalf by the agent unless with his consent or authority.
 - At common law, no principal may sue or be sued on any deed, even if it was expressed to have been executed on his behalf unless he was described as a party thereto and it was executed in his name.
 - Where the contract in question is a negotiable instrument.
 - Where the principal is a foreign principal

UNIT 3 DUTIES OF AN AGENT TO A PRINCIPAL

Unit Structure

- 3.1 Introduction
- 3.2 Intended Learning Outcome
- 3.3 Duties of an Agent to a Principal
 - 3.3.1 Duty to Perform
 - 3.3.2 Duty of Obedience or Loyalty
 - 3.3.3 Duty of Care and Skill
 - 3.3.4 Duty of Personal Performance
 - 3.3.5 Duty to Act in Good Faith
 - 3.3.6 Duty to Account
- 3.4 Summary
- 3.5 References/Further Readings/Web Resources
- 3.6 Answers to Self-Assessment Exercises

3.1 Introduction

In modern commerce, the relationship of principal and agent is primarily consensual. Consequently, the rights and duties arising from such relationship are discernible from the express or implied agreement between the parties. The relationship is often described as fiduciary in the sense that it arises out of the trust or confidence reposed upon the agent by the principal. Hence, there exist rights and obligations with attendant duties on both parties to one another. The focus of this unit is on the duties of an agent to his principal.

3.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the major duties of an agent to his principal when such relationship is established to exist.

3.3 Duties of an Agent to A Principal

In commercial transaction it is necessary that a principal may sometimes engage or appoint an agent who belongs to a particular trade, business or profession or may be required or instructed to operate at a particular place or locality. In some of the cases, the principal is not always with the agent and this requires the agent to perform some basic duties to the satisfaction of the said principal. These duties are examined below.

3.3.1 Duty to Perform

The primary duty of an agent particularly where he was appointed under an agreement with the principal is to execute his agency in accordance with the terms of such agreement. In *Otto Hamman v. Senbanjo & Anor* (1962) 2 All N.L.R. B9 Adefarasin. Ag. J., aptly stated the position thus: “It is the duty of an agent to carry out the business he had undertaken. This was his obligation unless he had in his contract expressly excluded responsibility.”

However, where the agent fails to perform his duties or to do so in accordance with the terms of his contract, he is generally liable only for the breach of his agency agreement. If he performs such duties carelessly or in an imperfect manner and thereby causes loss to his principal, he may in addition become liable in negligence. Such liability may take the form of an action for damages for the loss suffered by the principal, or an indemnity or contribution from the agent in favour of the principal.

However, his duty to perform is not absolute. If he was unable to perform his duty, he must promptly inform his principal or any other person having authority to receive such information.

Also, if the duties are illegal, he is not bound to perform them. If he is also a gratuitous agent, he will not be liable for breach of duty to perform.

3.3.2 Duty of Obedience or Loyalty

When an agent is executing the terms of his agency, he is obliged to carry out such instructions as may be given to him by the principal relating thereto. In *Eso West African INC. v. Ali* (1968) N.M.L.R 414 an Ibadan High Court held, inter alia, that it is the duty of an agent to carry out any instructions that may be given to him by the principal and cannot depart from such instructions even though he reasonably believed that in doing so he was promoting the interest of the principal.

Exceptions

- 1) Where no definite instructions has been given to the agent, or where such has been given, but this leaves the agent a measure of discretion, he would only be expected to be guided by the reasonable and honest exercise of his own judgment and the interest of the principal. If he is therefore so guided, he incurs no liability even if the principal suffers a loss by their exercise.

- 2) If the principal's instruction is ambiguous, the agent is put to election and provided he acted fairly and honestly, he would not be in breach of his duty of obedience and honesty even if the course chosen by him is less favorable to his principal.
- 3) If the agent is a professional agent the principal's instruction may be subject to any custom or usage of the particular trade, business or profession to which the agent belongs or within which he operates.

3.3.3 Duty of Care and Skill

In the course of executing the terms of his agency, an agent is bound to exhibit such care, skill and judgment as are required under the circumstances of the particular situations. In *Spiropolous Co. Ltd. v Nigeria Rubber & Co. Ltd* (1970) N.C.L.R. 94, a High Court in Benin held that the prudence which an agent is expected to show in the affairs of his principal requires that he should not involve the principal in a heavier financial burden where there is available means of involving him in a lower financial burden. Accordingly, it was held that an agent who undertook to effect a policy of insurance on behalf of his principal is under a duty to do so at the most economical rate.

The degree of care, skill or diligence required of an agent may sometimes depend on whether he is a gratuitous agent or acting for reward. If he was acting for reward, a higher standard of care, skill or diligence is required of him. If he was a professional, agent or holds himself out as possessing a professional qualification, he must exhibit such care, skill or diligence as is usual or necessary or for the proper conduct of the trade, business or profession in which he is employed.

However, if he holds himself out to the principal as possessing a special skill or knowledge, then he is obliged to exhibit such care, skill or diligence as would normally be shown by one possessing such skill or knowledge.

3.3.4 Duty of Personal Performance

The basic principle of law in this regard is covered by the maxim "*Delegatus Non Potest Delegare*" which means a delegated power cannot be further delegated. Agency relationship is one of confidentiality of principal and the agent, and the agent is generally expected to perform his duties as an agent, personally.

In the realm of agency, an agent cannot entrust to another person or a sub-agent the exercise of an authority or duty entrusted to him by his

principal without the latter's express or implied authority to do so. In *Bamgboye v. University of Ilorin & Ors* (1991)8 N.W.L.R. 1, the Court of Appeal affirmed that an agent to whom power is delegated cannot further delegate it without the express authority of the principal or authority derived from statute.

Exceptions

The recognised exceptions to this general rule include:

- 1) Where the transaction is required by statute to be evidenced by the signature of the principal himself.
- 2) Where the competency to do the act arises by virtue of holding some public office or by virtue of some power, authority, or duty of a personal nature and requiring skill or discretion for its existence.
- 3) Where a statute imposes on a person a duty which he is not free to delegate to another.
- 4) Where the agent has the express or implied authority of the principal to do so.
- 5) Where no personal confidence is reposed on the agent by the principal or by the terms of his agency.
- 6) Where the function or duty of the agent does not require any particular skill or discretion or is purely ministerial.
- 7) Where a custom or usage of the trade, business or profession of the agent or within which he operates allows.
- 8) Where an emergency has arisen requiring immediate or instantaneous action in order to preserve or protect the interest of the principal or the agency itself.
- 9) Where the nature of the agency itself necessitates a partial or total delegation, without which it would be superfluous or unreliable.
- 10) Where the principal ratifies the act of the agent in appointing a sub-agent or an act or omission of the supposed sub-agent either directly or otherwise.
- 11) Where the authority to delegate is derived from a statutory or legislative provision or enactment.

3.3.5 Duty to Act in Good Faith

This duty of an agent arises principally from the fiduciary nature or character of the principal-agent relationship. Agency relationship, as a whole, is based essentially on the trust reposed on the agent by the principal. The principal employs an agent normally because he requires that agent's personal service or expertise. He will usually depend on the agent for the due performance of those services. The law imposes on the agent the duty to show good faith in his dealings on behalf the principal.

The duty of good faith has many corollaries. These are:

- 1) The agent must avoid class of personal interest with that of his principal.
- 2) The agent should not make any secret profit or other benefit from his position as agent in excess of his agreed commission or remuneration.
- 3) The agent is under an obligation not to take a bribe while executing his agency.
- 4) In cases where the giving or receiving of bribe is established against the agent, the principal could exercise the following options:
 - a) dismiss the agent immediately and without notice.
 - b) refuse to pay the agent any salary or commission payable or accruing.
 - c) recover any salary or commission already paid on the particular transaction.
 - d) recover the amount of the bribe paid to the agent.
 - e) claim damages from the agent or the third party for any loss occasioned by the bribe.

3.3.6 Duty to Account

It is a fundamental obligation of every agent to keep and to render appropriate account of his stewardship to his principal whenever he is called upon to do so. Thus he must be willing and ready at all times to render an account of all transactions undertaken by him for and on behalf of his principal. This duty is more particularly important where money or property has been received for and on behalf of the principal. In *Majekodunmi v. Joseph Daboul Ltd.* (1975) 2 C.C.H.C.J. 161 a Lagos High Court held, inter alia, that once the relationship of principal and agent is established, and the agent fails to keep proper account or fails to account to the principal for monies or properties received by him in the cause of his agency, he is accountable to such a principal and can be compelled to render such account by an action in a court for an account.

However, some individual obligations of the agent to his principal relating to the duty to account flow from the general duty to account. These are:

- 1) duty to keep proper account.
- 2) duty to make books and documents in his possession relating to the execution of the agency assessable to his principal.
- 3) duty to keep his personal monies separate from his principal's money.
- 4) he is under a duty, if he holds money or property on behalf of his principal, to pay over or account for such money or restore such property to his principal notwithstanding claims made by third parties provided that the money or property was not received in respect of a void or illegal transaction or that the agency itself is not void or illegal.

SELF-ASSESSMENT EXERCISES 6

- 1) Discuss the various exceptions to the general rule contained in the maxim, "*Delegatus Non Potest Delegare*"
- 2) The duty of an agent to perform his duties based on the terms of the contract is absolute. Discuss.
- 3) What is the extent of obedience or loyalty required of an agent to his principal.
- 4) What is duty of care and skill?
- 5) The duty of an agent to act in good faith is qualified. Discuss.
- 6) The basic duty of an agent is to render account to his principal. Do you agree?

3.4 Summary

This unit has dealt with the different duties which an agent owes his principal and these include duty to perform, duty of obedience or loyalty, duty of care and skill, duty of personal performance, duty to act in good faith and duty to account.

3.5 References/Further Readings/Web Resources

Kingsley, Igweike (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesini & Munday, (1986). "An Outline of Agency." (2nd ed.). Pollock and Maitland. "The History of English Law," Vol. 11.

Sir William Holdsworth, "A History of English Law," Vol. IV.

Walker, D.W. (1980). "The Oxford Companion to Law." London: Butterworths.

Friedman, G.H.L. (1984). *Law of Agency*, (7th ed.). London: Butterworths.

3.6 Answers to Self-Assessment Exercise

The answers should address

- 1) The various exceptions to the general rule contained in the maxim, "*Delegatus Non Potest Delegare*"
- 2) The duty of an agent to perform his duties based on the terms of the contract is absolute.
- 3) The extent of obedience or loyalty required of an agent to his principal.
- 4) Explain what the duty of care and skill means.
- 5) The duty of an agent to act in good faith and any qualification.
- 6) Yes, the basic duty of an agent is to render account to his principal. Explanation of this duty should be provided by the student.

UNIT 4 DUTIES OF THE PRINCIPAL TO THE AGENT

Unit Structure

- 4.1 Introduction
- 4.2 Intended Learning Outcome
- 4.3 Duties of the Principal to the Agent
 - 4.3.1 Duty to Remunerate
 - 4.3.2 Estate Agent’s Commission
 - 4.3.3 Duty to Re-Imbursement and Indemnity
- 4.4 Summary
- 4.5 References/Further Readings/Web Resources
- 4.6 Answers to Self-Assessment Exercises

4.1 Introduction

As discussed in the preceding unit, parties to an agency relationship have corresponding duties which they owe one another failure of which either of them could make valid claims in the law court for breach of contract. The failure to perform any of these duties of or performing some negligently which result into one of the other parties incurring loss is a ground for an action in damages.

4.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- explain those duties a principal owes his agent which are either express or implied.

4.3 Duties of the Principal to the Agent

The major duty a principal owes his agent is premised on the issue of money and pecuniary advantages accruable to the agent in the event of an effective discharge of his own duties under the contract. This also includes carrying out the principal’s instructions under the terms of the agency in respect of his dealings with third parties on behalf of the principal.

4.3.1 Duty to Remunerate

The primary duty of a principal to his agent is to remunerate him for the services rendered. Such duties arise whenever the agent is employed under such circumstances as would reasonably justify the expectations that he should be paid.

The remuneration may take the form of an agreed commission or wages or other benefit agreed between the parties such as some share of the benefits accruing to the principal from the agency.

However, the duty to remunerate is not absolute for the agent's right to receive it accrues only if he is entitled to it in accordance with the agency agreement which will also include the amount payable, the conditions under which it becomes payable and the time of payment.

The right to reasonable remuneration may sometimes be implied from the express terms of an agreement, the custom and usage of the particular trade, business or profession of the agent. Where the parties operate and the surrounding circumstance including any dealings between the parties may also determine remuneration.

However, even when the duty to remunerate has arisen expressly or by implication the agent's right to it is further subject to certain conditions. These include:

- 1) the agent must have earned the remuneration. That is, when the agent has done all or substantially all he was obliged to do under the circumstances.
- 2) the agent must be the effective cause of the transaction from which the remuneration accrues.
- 3) the agent must fulfill the conditions, if any, upon which the remuneration accrues.
- 4) the agent must fulfill the conditions, if any, upon which the remuneration accrues.

4.3.2 Estate Agent's Commission

Estate agents are a peculiar type of agents whose rights, duties and obligations are often spelt out in an agreement, mostly Power of Attorney. They present a peculiar problem with regard to payment of commission or entitlement from their principals. This is primarily because there is normally no obligation on the estate agent to do anything for the principal. The contract with the latter is merely a promise binding on the principal to pay a sum of money upon the rendering of specified service by the estate agent.

In some cases, an instruction or agreement as to when any commission becomes payable may be given or concluded in one of various ways:

- 1) on the estate agent introducing a buyer.
- 2) on finding a buyer or someone to buy.
- 3) on introduction of a person who signs or enters a binding contract to purchase.

4.3.3 Duty of Re-Imbursement and Indemnity

In every agency relationship, there is by implication, a duty on the principal to indemnify the agent of all loses, damages or liabilities sustained by the agent in the course of discharging his authorized duties. This implied duty is subject to any subsisting agreement or declared intention of the parties. All reasonable expenses incurred by the agent and any incurred by him when he engages the services of a sub-agent or substitute with the approval of the principal are payable.

Exceptions

- 1) where the parties provide in their agency relationship for the payment of some kind of remuneration the right to indemnity or re-imburement may be superseded.
- 2) where the right of the agent to indemnity or re-imburement is expressly provided for by the parties in their agency agreement. The agent will not be entitled to this right in any of the following conditions:
 - a) where the agent acted without express or implied authority, unless the transaction is subsequently ratified by the principal or any other person authorized by him to do so.
 - b) where the agent incurred the expenses, loss or liability in consequence of his own negligence, default or insolvency.
 - c) where the agent has acted in breach of his duty, including violation of any principal’s lawful or reasonable instructions.
 - d) where the agent acted in respect of a transaction that is to his knowledge unlawful or contrary to public policy.
 - e) where the agent acted in respect of any transaction rendered null and void by any statute.

SELF-ASSESSMENT EXERCISES 7

- a) It is an absolute right that an agent is entitled to his remunerations. Discuss.
- b) Estate agent’s commission are payable as of right. Discuss.
- c) An agent is entitled to re-imburement of his incurred expenses and indemnity in all situations. Do you agree?
- d) The major duty of a principal to an agent under an agency relationship is premised on the monies accruable to the agent under the contract of Agency. Discuss

4.4 Summary

As noted earlier, the basis of any agency is for the principal and the agent to perform their respective duties both expressly and impliedly. The duty of a principal is to pay the various monies accruable to the agent on the fulfillment of the agency conditions provided his action does not fall under any of the known exceptions.

4.5 References/Further Readings/Web Resources

Kingsley, Igweike, (1993). "Nigeria Commercial Law: Agency."

Markesinis & Munday, (1986). "An Outline of Agency." (2nd ed.)
Pollock and Maitland. "The History of English Law," Vol. 11.

Sir William Holdsworth, "A History of English Law," Vol. IV.

Friedman, G.H.L. (1984). *Law of Agency*,. (7th ed.) London:
Butterworths.

4.6 Answers to Self-Assessment Exercise

- a) It is an absolute right that an agent is entitled to his remunerations.
Discuss. No it is not an absolute right, for the agent's right to receive it accrues only if he is entitled to it in accordance with the agency agreement which will also include the amount payable, the conditions under which it becomes payable and the time of payment.
- b) Estate agent's commission are payable as of right. Discuss. The contract with the latter is merely a promise binding on the principal to pay a sum of money upon the rendering of specified service by the estate agent.
- c) An agent is entitled to re-imburement of his incurred expenses and indemnity in all situations. No. Not in all situation. Remuneration already provided in the agreement. Negligence, disobedience to principal's instruction, null and void act, illegal act
- d) The major duty a principal owes his agent is premised on the issue of money and pecuniary advantages accruable to the agent in the

event of an effective discharge of his own duties under the contract. This also includes carrying out the principal's instructions under the terms of the agency in respect of his dealings with third parties on behalf of the principal.

UNIT 5 REMEDIES AVAILABLE TO PARTIES

Unit Structure

- 5.1 Introduction
- 5.2 Intended Learning Outcome
- 5.3 Remedies Available to Parties
 - 5.3.1 Remedies Available to the Principal
 - 5.3.2 Remedies Available to the Agent
- 5.4 Summary
- 5.5 References/Further Readings/Web Resources
- 5.6 Answers to Self-Assessment Exercises

5.1 Introduction

In every contractual situation there exist the likelihood of infringement of the rights of the parties by themselves. This comes in the form of breach of the terms of the agreement between the contracting parties. It is usually followed by action in the law court other dispute resolution system.

5.2 Intended Learning Outcome

By the end this unit, you will be able to:

- analyse the available remedies to the parties under an agency relationship where there is a breach of any of the terms of the agreement by any of the parties.

5.3 Remedies Available to Parties

Breach of an agency relationship may give rise to a claim for damages or other remedies available to the innocent party which may either be the principal or the agent. The remedies available to either party may depend on the terms of any relevant agreement, the type or nature of the breach and the surrounding circumstances.

5.3.1 Remedies Available to the Principal

In situations where the agent by some misconduct or otherwise commits a breach of a term of his agency relationship with the principal, the latter may avail himself of one or more of a number of remedies stated below.

- 1) **Dismissal:**
The principal may determine or bring the agency relationship to an end or otherwise dismiss the agent from his employment without notice.

Rescission and Damages:

The principal may also rescind any contract made on his behalf by the agent without authority or in breach of his duty and this may include claims for damages.

- 2) **Action for Account:**
The principal may take an action to compel the agent to render an account for all his dealings on his behalf, in respect of their agency relationship. This may also include an account for all money or property of the principal in his possession.
- 3) **Action in Tort:**
The principal may in addition sue the agent for conversion where the latter has received property on his behalf and has misappropriated or misused it. He may also institute an action for negligence where such is in contravention of the agency agreement.
- 4) **Private Prosecution:**
The principal may be entitled to and may take out private summons against the agent where the latter’s conduct, act or omission is criminal.

5.3.2 Remedies Available to the Agent

Where the agency relationship is established by contract and the principal commits a breach of a term of his agency contract, the agent has most of the remedies ordinarily available to a contracting party under the general law of contract.

The law may imply certain remedies from the facts and circumstances of a particular agency case in some cases. Generally, in a case of a breach of an agency contract or a term thereof. Both the principal and the agent are entitled to and may claim one or more of the following remedies:

- 1) **Damages:**
The agent may sue the principal to recover any loss or injury he may have suffered as a result of the principal’s failure to perform any of his duties under the agency arrangement. This may include his right to indemnity or re-imbusement and damages unless

the parties agreed otherwise or the agent has waived or otherwise lost his right to sue.

2) Right of Set-Off:

Whenever the principal institutes an action in a court of law against the agent, the latter may claim a right of set-off or counter-claim of engagement due to him from the principal by way of remuneration, indemnity or re-imbusement. This he must specifically do in his defense to the claims by the principal.

3) Right of Lien:

The agent also has a right of lien on the property, goods or chattels of his principal in his lawful possession or custody in respect of and up to the amount of his claim for remuneration, losses, liabilities and expenses incurred lawfully and for advances made in favour of the principal. This is however subject to any agreement between the parties. The law recognizes only two types of lien; the general and particular lien.

4) General Lien:

This enables the agent to retain his principal's property, chattel, or goods until any sum due to him from the principal is paid.

5) Particular Lien:

- 6) This only enables the agent to retain such property, chattel or goods pending payment of any sums due in respect of that property, chattel or goods.

7) Right of Stoppage in Transitu:

Where the agent stands towards his principal in the position of an unpaid seller of goods, he may exercise this right against the goods of his principal. This will arise where he bought the goods for his principal with his own money or otherwise incurs a personal liability to the seller for the price.

5.3.3 Other Remedies

- 1) The agent may demand an accounting by the principal where there is reciprocal indebtedness by the parties to each other.
- 2) The agent may be entitled to withhold further performance of the terms of his agency where there has been a continuing breach by the principal.

- 3) Where the agent becomes possessed of property, goods or chattels or money to which conflicting claims have been made by the principal and a third party, he may claim relief by way of inter-pleader summons.

SELF-ASSESSMENT EXERCISES 8

1. Discuss the various remedies available to an agent against his principal where there is a breach of agency agreement by the principal.
2. The general rule that Remedies follow breach is applicable in an agency agreement. Do you agree?

5.4 Summary

This unit examined the remedies available to both the principal and an agent under an agency agreement. The remedies available to the principal include action for dismissal, damages, rescission, negligence, account and private prosecution. On the part of the agent, he is entitled to seek for damages, set-off, Stoppage in Transitu, account, withhold performance etc. The available remedies, to both parties under an agency situation have been well explained in this unit.

5.5 References/Further Readings/Web Resources

Kingsley, Igweike (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesinis & Munday. (1986). "An Outline of Agency." (2nd ed.). Pollock and Maitland. "The History of English Law," Vol. 11.

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American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*,. (7th ed.) London: Butterworths.

Answers to Self-Assessment Exercise

1. The remedies available to an agent against his principal include damages, set-off, Stoppage in Transitu, account, withhold performance.
2. The general rule that Remedies follow breach is applicable in an agency agreement is a truism. There are remedies available to both the agent and the principal. Remedies available to the principal include action for dismissal, damages, rescission, negligence, account and private prosecution. On the part of the agent, he is entitled to seek for damages, set-off, Stoppage in Transitu, account, withhold performance etc. The available remedies, to both parties under an agency situation have been well explained in this unit.

MODULE 3 TERMINATION OF AGENCY

- Unit 1 Termination of Agency by Acts of the Parties
- Unit 2 Termination by Operation of Law
- Unit 3 Incidence of Termination of Agency

UNIT 1 TERMINATION OF AGENCY BY ACTS OF THE PARTIES

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcome
- 1.3 Termination by Acts of the Parties
 - 1.3.1 Agreement between Principal and Agent
 - 1.3.2 Revocation by Principal
 - 1.3.3 Renunciation by Agent
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Answers to Self-Assessment Exercises

1.1 Introduction

Agency relationship between a principal and an agent is purely contractual. Generally, parties to an agreement usually state the modes by which their contractual relationship may come to an end. Failure of any of the parties to adopt any of the modes stated under the contract may actuate the other contracting party to sue for damages and other remedies available to him. This rule is also applicable to agency contract.

1.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- state and analyse the general modes by which an agency agreement is terminated by the acts of the parties.

1.3 Termination of Agency by Acts of the Parties

Subject to the operation of the principle of irrevocable authority, an agency relationship may be terminated by an act of the principal or and the agent. Such an act may be an agreement between the two parties or a unilateral act of either of them. A unilateral act of the principal

terminating his relationship with his agent is referred to as revocation and that of the agent with the same effect is renunciation. These three aspects of termination require further elucidation for better assimilation of their nature, effect and significance.

1.3.1 Agreement between Principal and Agent

The general nature of relationship of principal and agent is primarily consensual. It is generally considered as good sense to allow the parties the freedom to be able to terminate their relationship when it is no longer beneficial to them or fulfilling their purpose.

This freedom to terminate an agency relationship accruing to the two principal parties exists irrespective of the previous or original agreement by which the agency relationship was established or in any subsequent constituted agreement.

In *Esso West African INC. v. Alli* (Supra) an agency agreement provided for termination of the relationship at the end of six months or thereafter by one month's notice. An Ibadan High Court held that the agency relationship constituted by that agreement could be terminated by either party at the end of six months without notice.

1.3.2 Revocation by Principal

An agency relationship is generally presumed to have been created, formed or established for the benefit of the principal. It therefore follows that he is generally also free at any time to revoke the agency or any authority granted to the agent when he considers that the object or purpose is no longer attainable or when that benefit is no longer accruing to him.

Such revocation may constitute a breach for which an action may lie. While a revocation may be valid and effective and the authority granted to an agent terminated, the principal may also be liable in damages to the agent or a third party who has dealt with the agent for any loss, injury or damage sustained as a result of such revocation.

In spite of this general rule, a revocation is subject to the principle of irrevocable authority and the giving of reasonable notice.

See *Alexander Logios v. Att. General of Nigeria* (1938)4 W.A.C.A. 163.

Formality

Generally, no formality is required in respect of mode of revocation of an agency relationship. It is effective if the principal informs the agent or the third party who may be affected as a result, personally or if they independently learn of the event which revokes the agent's authority.

It may also be effected orally or simply by the principal intervening during the course of any negotiation by the agent and inferring the parties concerned.

Where the agent is appointed via a written authority or a deed, any revocation by the principal is required to be recorded in like manner to be valid and effectual.

Revocation may be implied or inferred where the principal has withdrawn all necessary facilities originally provided to the agent for the proper execution of his agency or such facilities as will render the effectual operation of the agency untenable.

1.3.3 Renunciation by Agent

Renunciation occurs where the agent unilaterally terminates his relationship with his principal. This right is implied in every agency relationship if the agent so wishes except in cases of irrevocable authority. The agent is contractually bound to perform his agency and any renunciation by him may constitute a breach of contract which may expose him to liabilities in damages. This would however not prevent the renunciation from being valid and effective to terminate his authority and duties as an agent.

Renunciation by the agent is also subject to the giving of notice by the agent to the principal. However, the agent may renounce his authority without notice where the principal is equally guilty of misconduct or breach of duty to the agent.

Modes of Renunciation

- a) by a written instrument
 - b) by words of mouth.
 - c) by simply refusing to act.
 - d) by an unequivocal abandonment of the object of the agency.
- Where the renunciation is wrongful, the agent may be liable to the principal in damages for injury sustained by the principal consequent upon the renunciation.

Consequences of Renunciation

The agent may forfeit his right to receive commission or renunciation or compensation for services rendered but not for those due prior to the renunciation. In other words, he may be entitled to a reasonable value of such services or a reasonable proportion of any agreed commission or remuneration after taking into consideration any damage or injury sustained by the principal as a result of the agent's action.

SELF-ASSESSMENT EXERCISES

- 1) The right of revocation of agency by the principal is exercisable without regard to the rights of the agent and third parties. Do you agree?
- 2) This right of renunciation by an agent is exercisable without any consequences – Discuss.
- 3) Examine the termination of agency by the parties to the agency.

1.4 Summary

The various means of bring an end to the principal- agent relation by either party were examined. The two modes are via revocation and renunciation. Termination of agency by acts of the parties has been discussed under the foregoing heads. The right of the parties to put an end to their relationship may be express or implied as shown above. The consequential effect of failure to comply with the laid down procedures as contained in the agency agreement by either of the parties has also been discussed. Therefore, parties must follow laid down procedure terminating agency relationship.

1.5 References/Further Readings/Web Resources

Kingsley, Igweike (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesinis & Munday (1986). "An Outline of Agency." (2nd ed.) Pollock and Maitland. "The History of English Law," Vol. 11.

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American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*. (7th ed.). London: Butterworths.

1.6 Answers to Self-Assessment Exercises

- 1) The right of revocation of agency by the principal is exercisable without regard to the rights of the agent and third parties. Where the authority is irrevocable, notice is required and damages may arise.
- 2) This right of renunciation by an agent is exercisable without any consequences – Where the authority is irrevocable, notice is required and damages may arise.
- 3) Examine the termination of agency by the parties to the agency. By agreement, revocation and renunciation.

UNIT 2 TERMINATION BY OPERATION OF LAW

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcome
- 2.3 Termination by Operation of Law
 - 2.3.1 By Performance
 - 2.3.2 By Effluxion of Time
 - 2.3.3 By Frustration
 - 2.3.4 By Death of Principal or Agent
 - 2.3.5 By Insanity of Principal or Agent
 - 2.3.6 By Bankruptcy of Principal or Agent
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources

2.1 Introduction

Agency is terminated by operation of law at the occurrence of any of the points discussed in this unit. These are situation where parties will be relieved of their obligation under the agreement. The agency relationship automatically comes to an end at such occurrence except where prior claims are yet to be made.

2.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- examine the termination of agency relation by the operation of law.

2.3 Termination by Operation of Law

Below are various ways an agency relationship can be terminated by the operation of law and their peculiarities in relation to termination of agency by operation of law.

2.3.1 By Performance

In cases where an agent is given an authority to accomplish or achieve a specific result, reason demands that the authority terminates upon the object of the power being accomplished.

Generally, there are some difficulties that can be identified with regard to the practical operation of this method of agency determination. Firstly, there may be initial difficulty of ascertaining the point in time

when an agent's authority ceased or object of the agency has been executed. An example is the authority of an estate agent.

Secondly, it may be possible for the express or implied authority of an agent to have ceased while his apparent or ostensible authority continues. In this situation, an agent may validly assert his apparent or ostensible authority when his express or implied authority has been fully executed. In such circumstances, the agency under which he was exercising express or implied authority might have terminated. In its place, an agency of estoppel might have been created or subsisting. Such apparent or ostensible authority or agency by estoppel would cease or terminate, as the case may be, whether by performance, revocation or renunciation in the ordinary way.

2.3.2 By Effluxion of Time

It is also generally expected that the authority of an agent which was conferred on him for a specific period of time terminates or ceases automatically upon the expiration of that period of time. The agency relationship terminates at the expiration of such period of time irrespective of whether the task or object contemplated by its creation or formation has been accomplished or not.

Where no time is specified or agreed upon by the parties in their agency arrangement, a reasonable time is implied by the parties and the authority terminates at the expiration of such reasonable time or period.

What constitutes a reasonable time or period depends upon the facts and the surrounding circumstances of the particular case. The period of time may also be fixed or agreed to by the parties to the agency arrangement or implied into their relationship by custom or usage of the particular trade, business or profession to which the agent belongs or profession to which the agent belongs or in which he or she operates. It can also be presumed from the nature and circumstances of the agency itself or the authority given or granted to the agent.

2.3.3 By Frustration

Where an agency agreement exists between the principal and the agent, it may be terminated by the operation of the doctrine of frustration. This doctrine operates in situations when two people enter into a contract of agency which is dependent for the possibility of its performance on the continued existence or availability of a specific thing or matter. When the subject matter comes to an end by reason of circumstances beyond the control of the parties, that contract of agency is regarded as prima facie dissolved.

An agency relationship will automatically terminate if its object or subject matter or the authority of the:

- a) agency becomes unlawful or illegal;
- b) agency ceases to exist by reason of government expropriation or compulsory acquisition or requisition;
- c) principal or agent becomes an alien enemy; or
- d) agency becomes impossible to be executed or to be executed strictly in accordance with the arrangement between the principal and the agent

2.3.4 By Death of Principal or Agent

Death is inevitable to every living being. Save in cases of irrevocable authority, the death of a principal or agent terminates the agency relationship unless there is an express or implied stipulation to the contrary in their arrangement. In *Phillips v. Jones* (1888)4 T.L.R.401, It was held that the authority of a broker, express or implied, terminated on the death of the principal.

The effect of the death of the principal is that it deprives the agent of that person for whom or on behalf of whom he should act while the death of the agent deprives the principal of the person through whom he should act.

Where the principal or agent is a limited liability company, an agency relationship to which they are parties terminates upon the dissolution of the company. In *Nzom & Anor v. Jinadu* (1987)1 N.W.L.R. 533, the Supreme Court held that a dead person ceases to have legal personality from the date of his death and as such can neither sue nor be sued either personally or in representative capacity. In essence, termination of agency relationship by death of the principal or agent is automatic. It does not depend on the principal or agent and indeed on any other party involved, acquiring knowledge or receiving notices of such death of the deceased party.

Where the death takes the form of dissolution of a limited liability company, the principal or agent's knowledge of the fact is necessary to effect the termination. Any transaction by the agent after the termination by the death of the principal is not binding on the latter, his personal representation or his estate.

2.3.5 By Insanity of Principal or Agent

One of the basic ingredients of a valid contract is that the parties to such an agreement must be of sound mind. In an agency situation, this rule is also applicable and where the insanity or mental incapacity of the principal or the agent occurs, the relationship is terminated except in cases of irrevocable authority.

In *Drew v Nunn* (1879)4 A.B. 661, the defendant had given his wife authority to deal with the plaintiff, who was a trades man, and had held her out as his agent and as entitled to pledge his credit. The defendant became insane shortly afterwards and while his insanity lasted, his wife ordered goods from the plaintiff, who accordingly supplied them. At the time of supplying the goods, the plaintiff was not aware that the defendant had become insane. The defendant afterwards recovered and then refused to pay for the goods supplied to his wife by the plaintiff. It was held that the defendant was liable for the price of the goods supplied to his wife during the period of his insanity.

This decision would have been otherwise but for the fact that there appears to be in existence the wife's agency of necessity which apparently was not determined by the supervening insanity of the husband.

The incidence of knowledge or notice of insanity or mental incapacity of a party appears to be apparent in various judicial decisions. In *Drew v. Nunn* (Supra) Brett, L. J. opined as follows:

"...It seems to me that the person dealing with the agent without knowledge of the principal's insanity has a right to enter into a contract with him, and the principal, though a lunatic is bound so that he cannot repudiate the contract assumed to be made upon himself."

An authority may be given to an agent which has been determined without his knowledge by insanity of the principal. If the agent in the principal, and subsequently, the agent in the belief that he was acting in pursuance thereof made a contract or transacted some business with another representing that in so doing, he was acting on behalf of the principal; the agent is liable as having impliedly warranted the existence of the authority which he assumed to exercise to that other person, in respect of damages occasioned to him by reason of the non-existence of that authority. In *Younge v. Tonybee* (1910)1 K.B. 215 it was held that a solicitor was liable for breach of warranty of authority when without knowledge he continued with the litigation for a client, who had in the meantime become insane.

2.3.6 By Bankruptcy of Principal or Agent

The agency relationship of principal and agent ordinarily terminates at the bankruptcy of either the principal or agent. Where the principal

becomes bankrupt his estate by law falls to be administered by his trustee in bankruptcy.

The effect of this is that the authority of an agent appointed by him automatically terminates for a different principal is created in the trustee in bankruptcy. The new principal may however re-appoint the agent but until he does so the authority of the agent in respect of the original principal is assumed to have lapse.

Where the new principal re-appoints the agent, a new agency relationship is thereby constituted in which the parties are the trustees in bankruptcy and the original agent.

SELF-ASSESSMENT EXERCISES

- a. Discuss various ways agency relationship may be terminated in Nigeria.

2.4 Summary

This unit examined and differentiated the various differences inherent in the foregoing factors and situations that put an abrupt end to a subsisting agency relationship via the operation of law. They are performance, frustration, effluxion of time, insanity, bankruptcy, and death. Generally, termination of agency by operation of law depends on the various circumstances of each or any given agency relationship. In the absence of notable exceptions, the happening of any of the above noted situations automatically put an end to the agency relationship between the principal and the agent.

2.5 References/Further Readings/Web Resources

Kingsley, Igweike (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesinis & Munday (1986). "An Outline of Agency." (2nd ed.).

Pollock & Maitland. "The History of English Law," Vol. 11.

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American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, (7th ed).. London: Butterworths.

2.6 Answer to Self-Assessment Exercise

The answer should cover

- a. Performance
- b. Frustration
- c. Effluxion of time
- d. Insanity
- e. Bankruptcy
- f. Death
- g. Operation of law

UNIT 3 INCIDENCE OF TERMINATION OF AGENCY

Unit Structure

- 3.1 Introduction
- 3.2 Intended Learning Outcome
- 3.3 Incidences of Termination of Agency
 - 3.3.1 Doctrine of Irrevocable Authority
 - 3.3.2 Notice of Termination
 - 3.3.3 Effect of Termination
- 3.4 Summary
- 3.5 References/Further Readings/Web Resources

3.1 Introduction

Apart from the generally recognized situation by which an agency relationship could be brought to an end, there is need to examine the incidence of termination of agency *vis a vis* the doctrine of irrevocable authority which both party to the agency relation must strictly observe where it exists in the agency agreement. Notice of termination and effect of termination are the other incidents of termination of an agency agreement.

3.2 Intended Learning Outcome

By the end of this unit, you will be to:

- analyse the incidence of termination of agency *vis a vis* the doctrine of irrevocable authority, notice of termination and the effect of termination.

3.3 Incidences of Termination of Agency

The three major incidents of termination of agency to be discussed under this unit have so well been discussed sparingly in the body of this work. Hence, minimal reference shall be made to irrelevant facts.

3.3.1 Doctrine of Irrevocable Authority

The general rule that an agency agreement could be brought to an end by an agreement of the parties, by a unilateral action of any of the parties or by operation of the law, is not absolute.

There exist certain situations in which the authority of the agent cannot effectively be revoked or renounced at will by the principal or the agent, as the case may be, nor can the relationship be terminated by death, insanity or bankruptcy of either the principal or the agent. These involve

cases in which the agency relationship was created for the benefits of either the agent or a third party rather than for the principal. In such situations, the authority of the agent is considered irrevocable.

To be irrevocable, however, the power or authority must:

- a. be created by deed and for a valuable consideration
- b. be granted in order to effect a security or protect the title or interest of the agent or some third party.

In the same vein, a power of attorney expressed to be irrevocable and either given for a valuable consideration or for a period not exceeding one year in favour of or purchase for value is irrevocable.

The most common form of irrevocable authority is one coupled with an interest in the subject matter. The mere existence of a right to earn a commission is not an interest. In *First v. Firth* (1906) A.C. 254, it was held that the ordinary case of an agent employed for pecuniary reward in the share of a fixed salary without more, though confers upon him a benefit is not irrevocable.

The reason given was that the appointment of a salary contained no reference to any special interest in the subject matter of the agency and was not intended to be subservient or dependent on the continuance of such interest.

The fact that the agent subsequently acquires an interest in the subject matter of the agency also does not thereby render his authority irrevocable. To be irrevocable, the authority of an agent must have been conferred as a protection or security for the agent's interest.

Where an agent has incurred personal loss or liability such that the principal is obliged to indemnify him in respect of such loss or liability, his authority cannot be revoked by the principal solely to avoid his obligation to indemnify the agent.

3.3.2 Notice of Termination

This is another incidence of termination of agency and in fact a pre-requisite in some cases. The general rule as to notice of termination of agency relationship is that an agent's authority continues until any purported termination is communicated to him.

For a notice under this rule to be valid and effective in law, it must be reasonable notice which to all intent and purposes depends on the facts of the particular case and the surrounding circumstances.

In *Alexander Logios v Att. General of Nigeria* (SUPRA), a Solicitor was appointed by the appellant to represent him in certain negotiations with the Government of Nigeria. The West African Court of Appeal held that the respondent was entitled to assume that the solicitor was still the agent of the appellant in as much as no step was taken to inform the government that the solicitor had exceeded his authority or that his agency had been revoked and warning them not to deal with him any longer.

In general, no form of notice is required. Therefore, notice is equally effective if the principal informs the agent or the third party directly or if they independently learn of the event which terminates the agent's authority. Notice may be given orally or in writing or by an overt act or omission, except that if the authority of the agent was ordinarily given in writing, notice of termination should invariably be given in writing.

On the other hand, where the written authorization indicates specific conditions upon which the agent's authority will terminate and the agent or third party learns that such conditions have occurred, no further notice is required.

If the principal gives the required notice or if the agent or third party independently learns of the termination, the principal incurs no further liability if the agent continues to act for him.

3.3.4 Effect of Termination

The incident of termination of an agency agreement is the consequential effect of that termination. Where the agency is revoked by the principal, the agent's act for the principal does not terminate until notice of revocation is given or received by the agent.

Upon the receipt of the notice, the agent ceases to have authority to bind the principal but without prejudice to any rights and liabilities subsisting or accruing prior to the giving or receipt of the notice.

The same applies in other instances where notice of termination might be required as in cases of insanity, bankruptcy or dissolution of a limited liability company.

In instances where notice of termination is not required, e.g. where the act of termination is involuntary, as in the case of death of a party, or frustration or where termination is effected by performance, effluxion of time of the authority of the agent ceases automatically. The rights and liabilities of the principal, the agent and any affected third party are

discharged forthwith except as they stood at the time of such termination.

In case of death or bankruptcy of the principal, his legal representative or trustee in bankruptcy, as the case may be, could elect to continue the agency or to ratify particular transactions effected by the agent. Where the agent dies or becomes bankrupt, the principal cannot compel the agent's legal representative or trustee in bankruptcy, as the case may be, to perform the services rendered by the agent instead.

SELF-ASSESSMENT EXERCISES

- 1) Discuss the Doctrine of Irrevocable Authority in relation to termination of agency agreement.
- 2) Termination of agency agreement with notice is required to follow a particular form oral or written. Do you agree?
- 3) Critically examine the various effects of termination of an agency agreement.

3.4 Summary

This unit examined doctrine of irrevocable authority, notice of termination and effect of termination are fundamental in any agency relationship as incidence of termination of agency relation. Doctrine of Irrevocable Authority, Notice of Termination and Effect of Termination are the three incidents of termination of agency which the learner must have in mind. Even at the time of entering into an agency agreement, parties do have these factors at the back of their minds so that rights and liabilities could be easily ascertained.

3.5 References/Further Readings/Web Resources

Kingsley, Igweike (1993). "Nigeria Commercial Law: Agency." Jos, Nigeria: FAB Educational Books.

Markesinis & Munday (1986). "An Outline of Agency." (2nd ed). Pollock and Maitland. "The History of English Law," Vol. 11.

Sir William Holdsworth, "A History of English Law," Vol. IV.

Walker, D.W. (1980). "The Oxford Companion to Law." London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, (7th ed.). London: Butterworths.

Companies and Allied Matters Act 2020.

3.6 Answer to Self-Assessment Exercises

1. To be irrevocable, however, the power or authority must:
be created by deed and for a valuable consideration
be granted in order to effect a security or protect the title or
interest of the agent or some third party.

In the same vein, a power of attorney expressed to be irrevocable and either given for a valuable consideration or for a period not exceeding one year in favour of or purchase for value is irrevocable.

2. Generally no form required but is appointment is by writing, termination should be by writing.
3. See 3.3.4 for detailed answer. Where notice is required it takes effect from date of receipt. Where involuntary, it is discharge instantly except cases of election to continue by personal representative.

MODULE 4 CONSUMERISM, LEGAL FRAMEWORK AND CONSUMER RESPONSIBILITY

Unit 1	The Philosophy of Consumerism
Unit 2	Legal Framework for Consumer Protection in Nigeria
Unit 3	Consumers’ Responsibilities
Unit 4	The Enforcement of Consumers’ Rights and Consumer Protection Legislation

UNIT 1 THE PHILOSOPHY OF CONSUMERISM

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcome
- 1.3 The Philosophy of Consumerism
 - 1.3.1 Definition of Consumerism
 - 1.3.2 Areas of Consumer Exploitation
 - 1.3.3 Consumer Rights
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Answers to Self-Assessment Exercise

1.1 Introduction

The issue of consumer protection is as old as commerce, but the significant development of law in this area began in the last decade. Globalization of trade, market-dominated economy, information communication technology revolution and emergence of e-commerce are major contributory factors to this development. This unit focuses on the definition consumerism and consumers rights.

1.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the concept of consumerism and customers rights.

1.3 The Philosophy of Consumerism

1.3.1 Definition of Consumerism

The term “Consumerism” refers to the promotion and protection of consumers. It is concerned with protecting consumers from all

organizations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organizations and concerned consumers that are designed to protect the rights of consumers (McMillan Dictionary).

Agbonifoh, et (2007) define consumerism as the organized efforts of consumers aimed at promoting, protecting and enforcing the rights of consumers in their exchange relationships with all organization and individuals. This definition is defection because such effort is not limited to consumers alone. Ibeh (1999, p. 306) defines consumerism as an organized effort of concerned citizens, business and government to equate the balance of power between parties to an exchange and redress and remedy injustices done to the consumers in the pursuit of a standard living. This definition is more encompassing and covers the efforts of other stakeholders.

Consumerism is the combination of the outcome of consumer unrest, consumer awareness, consumer rights and consumer action. It is a mechanism aimed at exposing the bad practices of manufacturers and service providers in connection with products and services not conforming to the consumer expectations or regulatory standard in order to protect the consumers of such products and services.

Globally, there has been a shift from the traditional principle of '*caveat emptor*', a good olden day principle which meant buyer beware to the protection of the consumer. The need for consumer protection is becoming more compelling now than ever due to the emergence of e-commerce. In the era of open markets buyer and seller came face to face, seller exhibited his goods, and buyer thoroughly examined them and then purchased them. There was a presumption then that the buyer would use all care and skill while entering into transaction. This scenario is often not play out in e-commerce.

Therefore, the need for consumer protection is hinged on the following:

- 1) In the modern market system it is now impossible for the buyer to examine the goods beforehand and most of the transactions are concluded online or via correspondence;
- 2) The complexity of the modern goods, often it is only the producer/seller who can assure the quality of goods;
- 3) The organised nature of manufacturing activity has led to the producers / sellers becoming stronger and organised while the buyers are still weak and unorganized
- 4) The emergence of digital age (revolutionized information technology) and the e-commerce related innovations the consumers are further deprived to a great extent unlike in the open market system.

- 5) The global market has led to wider inequalities of power and knowledge between the supplier and consumer. The adjustment of power relations between consumers and producers is the core of consumer protection.

Government has the regulatory role via administrative agencies and adjudicatory institutions to see to the protection of consumers by preventing or remedying the exploitation by manufacturers, providers or seller.

1.3.2 Areas of Consumer Exploitation

The common areas of exploitation of the consumer include disparity of bargaining power between the supplier of goods or services and the consumer; disparity of knowledge concerning the characteristics and technical components of the goods and services; and disparity of resources between the producer and consumer which often hinders a consumer's from obtaining redress for a legitimate grievance.

The common consumers compliant of problems as regards goods and services include fake and adulterated products, defective and dangerous products, poor quality products, foreign particles in food and drinks, extortionary and inflationary prices, delay in supply of paid goods or services, non-supply of service already paid for.

The benefits of consumer protection apply to both individuals and the society. Presently, consumer protection in a State is a reflection of its social and economic development, legal values, sense of justice, political sophistication and maturity, system of government, politics, policy making and priority settings (Kanyip 2005).

Consumerism is all about ensuring affordability and quality.

1.3.3 Consumer Rights

The term "consumer" has been defined to include "any person (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or (b) to whom a service is rendered" (s 167 of the Nigerian Competition and Consumer Protection Act, 2018).

Right is defined as "a power, privilege or immunity guaranteed under a constitution, statute or decisional laws or claimed as a respect of long usage"(Black's Law Dictionary). In *Afolayan v. Ogurinde* (1990) NWLR (p. 127), P. 369 the Supreme Court held that the right is an

interest recognized and protected by law and that every right involves a threefold relation in which the owner of it stands. They threefold are a right against some person or persons; a right to some act or omission of such person or persons or a right over or to something to which the act or omission relates. Rights are things we can assert, demand or stand on.

Therefore, consumer rights are the assertion, things and demand which a customer can stand on which are recognised by the society or trade usage.

On the scope of these rights, in 1962, the USA President John F. Kennedy listed four rights now known as the Consumers' Bill of Rights to include; the right to safety, the right to choose, the right to be heard, and the right to be informed.

The United Nations demonstrated its commitment to the importance of consumer rights on 9 April 1985, when the General Assembly adopted specified guidelines on consumer protection which include:

- 1) Physical safety;
- 2) Promotion and protection of consumer economic interest;
- 3) Standard of quality and safety of consumer goods and services;
- 4) Distribution facilities for essential consumer goods and services;
- 5) Measures enabling consumers to obtain redress;
- 6) Education and information programs;
- 7) Advancing consumer interest, particularly in developing countries;
- 8) International cooperation between government on regional and sub-regional basis.

Flowing from the above, the International Organization of Consumer Union (IOCU) in 1983 approved eight basic rights that consumers worldwide are expected to enjoy. They are the rights to: basic needs, safety, a healthy environment, not to be exploited, redress, consumer education, and be informed and be heard. These rights are provided for in varying degree in national laws of various countries of the world.

SELF-ASSESSMENT EXERCISE 12

Examine consumerism and consumers rights.

1.4 Summary

The unit examined the philosophy of consumerism with particular focus on the definition of consumerism, consumers' common complaints and areas of exploitation, and consumers rights Consumerism is primarily aimed at ensuring affordability and quality of goods and services

available to the consumers. It is a bundle of efforts by consumers, other members of the society, and the government at protecting the interest of the consumers. This struggle has led to consumer bill of right, international recognition of these rights and domestication of these rights at national levels.

1.5 Reference/Further Reading/ Web Resources

Ibeh, K. I. N. (1999). *Introduction to Business Administration*. Owerri: Avan Global Publishers

Kanyip B.B (2005). *Consumer Protection in Nigeria, Law, Theory and Practice*, Reckon Books Limited, Abuja, Nigeria,.

Agbonifoh, B. A., Ogwo, O. E., & Nnolim, D. A. (2007). *Marketing in Nigeria: Concept, Principles and Decisions*. Aba: Afrtowers LTD Publishers

Nigerian Competition and Consumer Protection Act, 2019

Black's Law Dictionary

McMillan Dictionary (1985)

1.6 Answers to Self-Assessment Exercises

The term "Consumerism" refers to the promotion and protection of consumers.

The United Nations demonstrated its commitment to the importance of consumer rights on 9 April 1985, when the General Assembly adopted specified guidelines on consumer protection which include:

1. Physical safety;
2. Promotion and protection of consumer economic interest;
3. Standard of quality and safety of consumer goods and services;
4. Distribution facilities for essential consumer goods and services;
5. Measures enabling consumers to obtain redress;
6. Education and information programs;
7. Advancing consumer interest, particularly in developing countries;
8. International cooperation between government on regional and sub-regional basis.

UNIT 2 LEGAL FRAMEWORK FOR CONSUMER PROTECTION IN NIGERIA

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcome
- 2.3 Legal Framework for Consumer Protection in Nigeria
 - 2.3.1 The Criminal Code
 - 2.3.2 The Sales of Goods Act
 - 2.3.3 Food and Drugs Act
 - 2.3.4 Weight and Measures Act
 - 2.3.5 Standard Organization of Nigeria Act (SON)
 - 2.3.6 Advertising Practitioners (Registration, Etc.) Act
 - 2.3.7 National Agency for Food, Drugs Administration and Control (NAFDAC)
 - 2.3.8 Federal Competition and Consumer Protection Commission (FCCPC) Act
- 2.4 Summary
- 2.5 References/Further Reading/Web Resources
- 2.6 Answers to Self-Assessment Exercise

2.1 Introduction

The need to protect consumer existed since the existence of commerce. Prior to the arrival of the colonial master in Nigeria, sale of defective products were not only frowned at but severely punished. The enactment of consumer protection laws in Nigeria has grown over the years. This unit identifies these various laws aim at promoting and protecting the consumer from exploitation and where exploited provides remedies.

2.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- analyse the laws protecting consumers in Nigeria.

2.3 Legal Framework for Consumer Protection in Nigeria

2.3.1 The Criminal Code

There are certain provisions of Criminal Code Act (Cap C39, Laws of the Federal Republic of Nigeria 2004) that protect consumers. The relevant sections are:

- 1) section 245 prohibits the corruption of water sources and imposes imprisonment of six months on offender.

- 2) section 247 warns against pollution of atmosphere or doing any act “likely to spread the infection of any disease dangerous to life, whether human or animal”. It imposes the punishment of six months imprisonment on offender.

2.3.2 The Sales of Goods Act (1893)

There are provisions under the Sale of Goods Act that protect the interest of the consumer. Some of them are regarded as implied terms such as the seller must have the right/title to sell the goods at the time of sale, the goods should be free from encumbrances; the goods must be of merchantable quality. When goods are sold by description or sample, such goods must conform to that description or sample in quality. Also goods must fulfill the purpose which was disclosed to the buyer at the time of sale otherwise, the seller will be liable.

2.3.3 Food and Drugs Act (1974)

The Act established the body known as the Food and Drug Administration for the purposes of enforcing its provisions. The Food and Drug Act No 35 of 1974 (now Food and Drug Act Cap F32 Laws of the Federal Republic of Nigeria, 2004) prohibits the sale of any Food or Drug that has poisonous or harmful substance and/or is unfit for human consumption, and was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. It also prohibits the advertisement or information or publication likely to mislead or create a wrong impression about products, drugs, cosmetics, devise as to its quality, character, value composition merit or safety.

2.3.4 Weight and Measures Act (1974) Cap W3 LFN

This law is to ensure the appropriate use of measurement in terms of length, area, volume, capacity, mass or weight for purposes of protecting the consumer in particular and others in the business transaction. This law prohibits the adjustment of measurement such as fuel pump and sale of any packaged goods whose minimum net weight is not clearly stated on a label securely attached to it. It imposes punishment on offenders.

2.3.5 Standard Organization of Nigeria Act (SON) 1989 Cap 59 LFN 2004

The Act establishes SON. It was repealed by Standards Organisation of Nigeria Act, 2015 Act to make the operation of the organisation more effective. The Act expands the scope of duties and powers of SON by vesting the Council with additional powers and imposes strict punishments for offences. The Act gives powers to the Standards

Council to designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria and to carry out any other functions imposed on it under this Act or any other written law; power to make rules. (See Sections 4,12,14,23)

The SON has the following mandates.

- (a) Designation, establishment, approval and declaration of standards in respect of metrology, materials, commodities, structures and processes.
- (b) Certification of products in commerce and industry throughout Nigeria.
- (c) Quality control of products, weights and measures.
- (d) Matters relating to metrology- ensure reference standards for calibration and verification of measures and measuring instruments
- (e) Investigation of quality of products etc.
- (f) Enforcement of Standards.
- (g) Quality management.
- (h) Registration and regulation of standard marks and specifications etc.
- (i) Establishment and maintenance of Laboratories.
- (j) Compilation and publication of Scientific or order data.
- (k) Sponsoring national and international conferences.
- (l) Proferring professional advice to government of the federation or state on specific problems relating to Standards specifications.
- (m) Research.
- (n) Establishment of Standard Library.

2.3.6 Advertising Practitioners (Registration, Etc.) Act (1988)

The Act is now CAP A7 Laws of the Federation of Nigeria 2004. The Act regulates and defines who is qualified to practice advertising. It provides guidelines for registration of advertisers and punishment of quacks.

2.3.7 National Agency for Food, Drugs Administration and Control (NAFDAC)

The National Agency for Food and Drug Administration and Control (NAFDAC) was established by Decree No. 15 of 1993 as amended by Decree No. 19 of 1999 and now the National Agency for Food and Drug Administration and Control Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004 to regulate and control the manufacture, importation, exportation, distribution, advertisement, sale and use of Food, Drugs, Cosmetics, Medical Devices, Packaged Water, Chemicals

and Detergents (collectively known as regulated products). The agency was officially established in October 1992.

2.3.8 Federal Competition and Consumer Protection Commission (FCCPC) Act 2018

The Consumer Protection Act now FCCPC Act was originally enacted in 1992, but the physical establishment of the Commission occurred in 1999. The FCCPC Act repeals the Consumer Protection Act (No.66 1992) Cap. C25, Laws of the Federation of Nigeria, 2004 and establishes the Federal Competition and Consumer Protection Commission and Competition and Consumer Protection Tribunal. It provides for the transmission of the Consumer Protection Council to FCCPC.

The core focus of Act is the development and promotion of fair, efficient and competitive markets in the Nigerian economy in order to facilitate access of all citizens to safe products and secure the protection of consumers’ rights in Nigeria as well as related matters.

The commission has the duty to protect and enhance consumers’ interest through information, education and enforcement of appropriate standards for goods and services (see section 2).

On competition, prior to the enactment of the Act, the legislation regulating competition in Nigeria was in a piece mill approach. There were provisions of various laws such as the Investment and Security Act 2007; the Nigerian Communications Act 2003; the Electric Power Sector Reform Act 2005, etc. regulating competition in Nigeria. The new Act applies to all businesses in Nigeria and supersedes all laws on competition and consumer protection, subject to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<p>SELF-ASSESSMENT EXERCISE</p> <p>Examine the legal regime for consumer protection in Nigeria.</p>
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2.4 Summary

The unit examined the various laws on consumer protection in Nigeria. The law protecting the customers’ interest in Nigeria has grown over the years. The enactment of the FCCPC Act 2018 was a major shift in the regards. Nigeria upgraded the consumer protection law to cover

competition, consumer protection and establishment of competition and consumer protection tribunal.

2.5 References/Further Readings/Web Resources

Ebitu Ezekiel Tom, 'Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review'
<http://www.ccsenet.org/journal/index.php/ibr/article/view/42610>

Criminal Code Act (Cap C39, Laws of the Federal Republic of Nigeria 2004)

Food and Drug Act Cap F32 Laws of the Federal Republic of Nigeria, 2004

The Sales of Goods Act (1893)

Weight and Measures Act (1974) Cap W3 LFN Standard Organization of Nigeria Act (SON) 1989 Cap 59 LFN 2004.

Advertising Practitioners (Registration, Etc.) Act (1988) CAP A7Laws of the Federation of Nigeria 2004.

National Agency for Food and Drug Administration and Control Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004.

Federal Competition and Consumer Protection Commission (FCCPC) Act 2019.

2.6 Answers to Self-Assessment Exercises

The laws include

- a. Criminal Code Act (Cap C39, Laws of the Federal Republic of Nigeria 2004)
- b. Food and Drug Act Cap F32 Laws of the Federal Republic of Nigeria, 2004
- c. The Sales of Goods Act (1893)
- d. Weight and Measures Act (1974) Cap W3 LFN Standard Organization of Nigeria Act (SON) 1989 Cap 59 LFN 2004.
- e. Advertising Practitioners (Registration, Etc.) Act (1988) CAP A7Laws of the Federation of Nigeria 2004.

- f. National Agency for Food and Drug Administration and Control Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004.
- g. Federal Competition and Consumer Protection Commission (FCCPC) Act 2019.

UNIT 3 CONSUMERS' RESPONSIBILITIES

Unit Structure

- 3.1 Introduction
- 3.2 Intended Learning Outcomes
- 3.3 Consumers Responsibilities
- 3.4 Summary
- 3.5 References/Further Readings/Web Resources
- 3.6 Answers to Self-Assessment Exercises

3.1 Introduction

The task of protecting the consumer requires a collective effort. Its actualization requires input, not just from manufacturers, service providers and government, but also the consumer. This unit focuses on identifying the responsibilities of consumers.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss the responsibilities of a consumer in the actualisation of consumer protection regime.

3.3 The Consumer Responsibilities

The FCCPC identified the following as the core responsibilities of a consumer.

- 1) **Be Aware:** It the duty of a customer to gather all the information and facts available about a product or service and to keep abreast of changes and innovations in the market.
- 2) **Beware:** Be alert to the quality and safety of products and services before you purchase.
- 3) **Think Independently:** Make decisions about well-considered needs and wants.
- 4) **Speak Out:** Inform manufacturers and government of your needs and expectations.
- 5) **Be an Ethical Consumer:** Be fair and never engage in dishonest practices which affect other consumers negatively.
- 6) **Complain:** Inform businesses and appropriate regulatory authorities about your dissatisfaction with a product or service, in a fair and honest manner
- 7) **Share Experience:** Inform other consumers about your experience with a product or service.

- 8) **Respect the Environment:** Avoid waste, littering and contributing to pollution. Promote sustainable consumption by ensuring that what you consume does not impact on the environment negatively.

Self-Assessment Exercise

The consumers have no responsibility in protecting their rights

3.4 Summary

The unit identified and examined the responsibilities of a customer in the actualization of consumer protection in Nigeria. A consumer has a wide range of responsibilities to perform in actualizing his or her protection as protected under the law.

3.5 References/Further Readings/Web Resources

FCCPC, “Consumer Responsibilities” available at <http://fccpc.gov.ng/consumers/responsibilities/>

3.6 Answers to Self-Assessment Exercises

3.6 The Consumer Responsibilities

The FCCPC identified the following as the core responsibilities of a consumer.

- a. Be Aware
- b. Beware.
- c. Think Independently
- d. Speak Out: Inform manufacturers and government of your needs and expectations.
- e. Be an Ethical Consumer
- f. Complain
- g. Share Experience
- h. Respect the Environment

UNIT 4 THE ENFORCEMENT OF CONSUMERS' RIGHTS AND CONSUMER PROTECTION LEGISLATION

Unit Structure

- 4.1 Introduction
- 4.2 Intended Learning Outcomes
- 4.3 The Enforcement of Consumer Rights and Consumer Protection
- 4.4 Summary
- 4.5 References/Further Readings/Web Resources
- 4.6 Answers to Self-Assessment Exercises

4.1 Introduction

The ultimate aim of consumer protection is to the protection of the right of the consumers to quality goods and services and other consumers' rights discussed above. These rights as useless they cannot be enforced. Thus, the law makes provisions for mechanisms for the enforcement of these rights. This unit examines these various mechanisms.

4.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the mechanisms for the enforcement of consumers' right under the FCCPC Act.

4.3 The Enforcement of Consumer Rights and Consumer Protection Legislation

The FCCPC Act provides under sections 146-155 for the following mechanisms for the enforcement of consumers' rights in Nigeria.

1. Enforcement of rights by a consumer:

The consumer without derogating their right to seek redress in court, has the right to seek for redress for breach of the provision of the Act by filing a complaints to the undertaking itself, the regulator of the industry of the undertaking or the commission (Section 146 of FCCPC Act 2019).

2. Conclusion by industry sector regulator:

Where the industry concludes that there is no reasonable conclusion by probability of the parties resolving their dispute through the process provided for industry sector regulator, the sector regulator may terminate the process by notice to parties and the claimant may refer the matter to the commission. (Section 147 of the Act).

3. Enforcement of rights by the Commission:

A consumer can file a complaint with the Commission and the Commission initiates a complaint on its own motion. Upon initiating or receiving a complaint under this Act, the Commission may

- 1) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious or does not allege any fact which would constitute grounds for a remedy under this Act;
- 2) refer the complaint to an industry sector regulator with jurisdiction over the matter for investigation or resolution; or
- 3) direct an inspector to investigate the complaint as quickly as practicable. At any time during investigation, the Commission may designate one or more persons to assist the inspector conducting the investigation. Upon receiving a report of an investigation into a complaint, the Commission shall
 - a) issue a notice of non-referral to the complainant in the prescribed form;
 - b) make an order; or
 - c) issue a compliance notice.

See section 148 of the FCCPC Act.

4. Consent order:

Where the Commission has investigated a matter and the Commission and the Respondent agree on a proposed terms of an appropriate order by the Commission, the agreed term shall be made the order of the Commission. If the Commission deems it necessary, may register the order in court with competent jurisdiction. (Section 149 of the Act).

5. Compliance notice:

The Commission may issue notice of compliance to an undertaking where the Commission on reasonable grounds believes that an undertaking has engaged in prohibited conduct, provided that before issuing a notice to a member of a regulated industry, the Commission shall consult the industry sector regulator that issued a licence to that

regulated entity. The notice shall state the provision of the Act not complied with, nature and extent of non-compliance, step that must be taken and the time frame, penalties for non-compliance. The notice remain in force except set aside by the court. Non-compliance with the notice may lead to shut down of the undertaking, imposition of administrative fine and referral to court. (section 150)

6. Redress by civil society groups:

The Commission may collaborate, facilitate or support consumer protection group in (a) consumer advice and education activities and publications; (b) research, market monitoring, surveillance and reporting; (c) promotion of consumers' rights and advocacy of consumers' interests; Redress by civil society groups (d) representation of consumers, either specifically or generally, in court; (e) alternative dispute resolution through mediation or conciliation; and (f) participation in national and international associations, conferences or forums concerned with consumer protection matters. Section 151 of the Act)

7. Redress by the court:

The consumer has additional right of civil action where upon an investigation by the Commission of a complaint by a consumer, it is proved that a) the consumer's right has been violated, or (b) a wrong has been committed by the way of trade, provision of services, supply of information or advertisement thereby causing injury or loss to the consumer. (Section 152)

8. Power to obtain satisfactory written assurance:

where an undertaking persisted in a course of conduct which is detrimental to the interested of the interests of the consumer, the Commission shall use it best endeavour to obtain from the undertaking a satisfactory written assurance. If the undertaking refuses to give the written assurance or breaches the written assurance, the Commission shall cause proceedings to be commenced against such undertaking in a court of competent jurisdiction to refrain the undertaking from continuing that course of conduct. In the interim, pending commencement of action, the Commission may order closure of the undertaking. (Section 153 of the Act).

9. Compensation order:

Subject to the provisions of this Act, any person who contravenes any consumer right commits an offence under this Act and

- a) in the case of a natural person, is liable on conviction to maximum imprisonment of five years, or to payment of N10,000,000.00 or to both the fine and imprisonment;
- b) in the case of a body corporate, is liable on conviction to a fine of not less than N100,000,000.00 or 10% of its turnover in the preceding business year, whichever is higher; and
- c) in the case of a body corporate referred to in paragraph (b) of this section, each director of the body corporate is liable to be proceeded against and dealt with as specified in paragraph (a).

SELF-ASSESSMENT EXERCISE 14

Critically examine the enforcement mechanism of consumers’ rights under the FCCPC Act in Nigeria.

4.4 Summary

This unit examined the mechanism for the enforcement of the consumers’ rights in Nigeria. The mechanisms ranges from filing of complaints to the undertaking itself, to the regulator of the sector of the undertaking, redress by civil society group, to the Commission, compliance notice, consent judgment, redress by court, obtaining satisfactory written assurance from an undertaking by the Commission. The FCCPC Act made a robust provision for mechanisms for the enforcement of the right of consumers in Nigeria. The enforcement mechanism empowers the Commission to take both preemptive and reactive measures aim at protecting the consumers. It provides for both punitive and compensation for victims

4.5 References/Further Readings/Web Resources

FCCPA ACT 2019.

4.6 Answers to Self-Assessment Exercises

The FCCPC Act provides under sections 146-155 for the mechanisms for the enforcement of consumers’ rights in Nigeria.

MODULE 5 CONSUMER CREDIT

Unit 1	Historical Development and Definition of Consumer Credit
Unit 2	Definition of Money Lender and Regulation of Money Lending
Unit 3	Requirements and Procedure for Obtaining a Money Lenders License
Unit 4	Major Obligations of Money Lender

UNIT 1 HISTORICAL DEVELOPMENT AND DEFINITION OF CONSUMER CREDIT

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcome
- 1.3 Historical Development and Definition of Consumer Credit
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources

1.1 Introduction

Consumer credit is a component of commercial transaction. It affords consumers with insufficient or no fund to be able to get fund or the goods on deferred or installment payment. This practice has grown over the years and the concept also requires clarification. This unit therefore focuses on the development and definition of consumer credit

1.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the historical development of consumer credit and offer a clear definition of the concept.

1.3 Historical Development and Definition of Consumer Credit Law

The development of credit is old as man but the modern consumer credit is traceable to the wake of the nineteenth century industrial revolution when in Europe and North America there were demands for and the supply of manufactured goods for consumption by the public. Some persons had no money to pay at the time of the supply of the goods. As a result, dealers began to deliver goods to the consumer on credit to

enable the consumers to enjoy their use while he or she paid in installments. This practice has continued till modern times, and is regulated by consumer credit laws.

The consumer credit laws are the set of laws that govern credit transactions involving consumers as end users of credit facilities. Examples of such laws in Nigeria are the Hire Purchase Act, Pawn Brokers Act and Moneylenders Acts or Law of the various States of Nigeria on consumer credit. The two major divisions of Credit transactions are lending of money and credit sale. R. M. Goode expressed this distinction as follows:

...English Law divided up credit transactions into two separate, self-contained compartments, with the result that two parallel and distinct branches of law have developed, one to regulate lending, the other to regulate sales on credit, each branch having its own separate rules and transactions being slotted neatly into one set or the other.

The lending of money as a consumer credit facility is also known as the “lenders credit” or “money lending”. On the other hand, the exchange of goods for deferred or installmental payment is also known as the “vendor’s credit” or “hire purchase”.

The term “credit” is defined as, among other things, the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment⁴. Therefore, the term “consumer credit” is defined as “credit extended to an individual to facilitate the purchase of consumer goods and services”⁵. Our focus in other units in this module is on money lending.

SELF-ASSESSMENT EXERCISE

Examine the development and definition of consumer credit law.

1.4 Summary

This unit examined the development of consumer credit law and defines consumer credit laws as the set of laws that govern credit transactions involving consumers as end users of credit facilities. The two branches are money lending and credit sale. Even though the history of consumer credit is as old as man, the modern practice is traced to the industrial revolution. The development of consumer credit law in Nigeria is linked to English law on consumer credit.

1.5 References/Further Readings/Web Resources

The Holy Bible (King James Version), Book of Ecclesiastes, Chapter 10, verse 19

E.A. Farnsworth, "A Modern Installment Sales Law: A Comparative Survey" In: A. L. Diamond, (Ed.). *Installment Credit*. London: Stevens & Sons, 1970) p. 25.

R. M. Goode, 'The Legal Regulation of Lending' In: A. L. Diamond, (ed.) *Installment Credit* (London: Stevens & Sons, 1970) p.45.

B. A. Garner (Ed.). (1999) *Black's Law Dictionary*, (7th ed.) St. Paul, MINN: West Group, p. 374.

1.6 Answer to Self-Assessment Exercise

The development of credit is old as man but the modern consumer credit is traceable to the wake of the nineteenth century industrial revolution when in Europe and North America there were demands for and the supply of manufactured goods for consumption by the public

The consumer credit laws are the set of laws that govern credit transactions involving consumers as end users of credit facilities. Examples of such laws in Nigeria are the Hire Purchase Act, Pawn Brokers Act and Moneylenders Acts or Law of the various States of Nigeria on consumer credit. The two major divisions of Credit transactions are lending of money and credit sale.

UNIT 2 DEFINITION OF MONEY LENDER AND REGULATION OF MONEY LENDING

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcome
- 2.3 Definition of Money Lender and Regulation of Money Lending
 - 2.3.1 Definition of Money Lender
 - 2.3.2 Regulation of money lending
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources

2.1 Introduction

Money is said to be answer to all things (Ecclesiastes Chapter 10, verse 19.). Money being a legal tender is not picked on the street or anywhere, rather it is earned. When a person lacks money to buy goods, one of the options available to such person is money lending. The popularity of money lending is as a result and inability of some persons in need of credit facility to provide the required collateral or security which may include earning capacity as a primary guarantee of repayment. The unit focuses on the definition of money lender and the law regulating money lending in Nigeria.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- determine who a money lender is and the laws regulating money lending in Nigeria.

2.3 Definition Money Lender and Regulation of Money Lending

2.3.1 Who is a Money Lender?

A money lender could be defined and generally understood to mean a person who gives out money to individuals as his or her business, or for the purpose of making profit. Their trade is known as “money lending”. But from the legal perspective, the definition of a money lender seems wider. This indication was given in the case of *Eboni Finance and Securities Ltd. v Wole-Ojo Technical Services Ltd. & 2 ors* ((1996) 7 N.W.L.R. pt. 461, p.1 464) the Court of Appeal held, among other things, that:

The definition of a money lender under the law is wide. It encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of a larger sum being repaid.

Also, in *Veritas Insurance Co. Ltd. v Citi Trust Investments Ltd*, ((1993) 3 NWLR (pt.28), p.349) the Court of Appeal stated, on the meaning of money lender, that:

...any person who lends a sum of money in consideration of a larger sum being repaid is deemed to be a moneylender until the contrary is proved...

Section 31 of the Lagos State Money lenders Law provides thus: Moneylender includes every person whose business is that of money lending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business, whether or not he also possesses or owns property or money derived from sources other than the lending of money and whether or not he carries on the businesses as a principal or as an agent; but shall not include –

- a) any society registered under the Co-operative Societies Law; or
- b) any body Corporate, incorporated or empowered by special Law to lend money in accordance with such Law; or
- c) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money, or
- d) any person or body corporate exempted from the provisions of this Law by order of the Commissioner; or
- e) any pawn broker licensed under the Pawn Brokers Law where the loan is made in accordance with the provisions of the Pawn Brokers Law and does not exceed the sum of forty naira.

The above definition has been argued not only to be elastic, but somewhat ambiguous as it represents that every and all persons can be a money lender just so long as a person indulges in lending money as a form of business or advertises or holds himself out as carrying on the business of money lending. The question that arise is as to whether the situation will be the same irrespective of whether such a person obtains a licence in accordance with the law or not. While it would appear that unless a person holds a valid moneylender’s licence, he or she would not qualify as a money lender, implying that a licence is a requirement to becoming money lender. This position is weakened by the provision of section 1, subparagraph (3) of the Law which provides that:

Save as expected in Section 2 and in this Section, a person who lends money at interest or who lends a sum of money in consideration of a

larger sum of money being repaid shall be presumed to be a money lender until the contrary be proved.

The last part of this provision raises a rebuttable presumption of money lending. It is contended by Orojo that where there is no licence, the business would be illegal. But others submits that a person who has lent money at an interest, or in consideration of a larger sum being repaid, may rebut the presumption that he is carrying on money lending business notwithstanding that he has given a loan (Ezejiofor, Okonkwo & Illegbune, Nigerian Business Law (London: Sweet & Maxwell, 1982) p.146). Also, Mc Cardie, J. in the case of *Edgelow v MacElwee* ((1918) 1 K.B. 205 at p. 206) stated that:

A man does not become a moneylender by reason of occasional loans to relations, friends or acquaintances, whether interest be charged or not ... Nor does a man become a money lender merely because he may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of money lending; and the word 'business' imports the notion of system, repetition and continuity.

Therefore, the presumption can successfully be raised and sustained except there exist some degree of system, consistency and continuity in the business of money lending.

2.3.2 Regulation of the Money Lender

According to Goode the laws regulating the lending of money have existed for thousands of years. Money lending was originally called "usury" was morally disapproved by the early Jewish and Roman authorities and regarded as a breach of ecclesiastical law. Thus, the Bible condemns it in Exodus 22 verse 2 which reads thus: "If thou lend money to any of my people that is poor by thee, thou shalt not be to him as usurer, neither shalt thou lay upon him usury." This is reiterated in Leviticus 25 verse 35-37, in the following words: "And if thy brother be waxen poor; and fallen in decay with thee: then thou shalt relieve him ... Take thou no usury of him, or increase: ...Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase".

After many years the English law provided for exception to outright prohibition on usury by fixing a bench mark for interest not exceeding 10 percent on money lent. In 1854, the Usury Laws Repeal Act of that year was enacted and it led to an upsurge of money lending activities often at exorbitant interest rates. The need to regulate the abuse by money lenders led to the first Money lenders Act in 1900. The Act required registration for money lenders and empowered the court to dissolve "unfair" money lending agreements. The 1900 Act was

replaced by the Moneylenders Act 1927 which introduced more stringent conditions including the requirement of licensing and registration.

The English consumer credit regulation has grown over the years. In 1974, the United Kingdom legislations regulating consumer credit were harmonised into a single legislation called Consumer Credit Act 1974 as amended by the Consumer Credit (Amendment) Act 2006. This means that, money lending and other consumer credit transactions are no more regulated by separate legislations in the United Kingdom.

Prior to 1990, the regulation of money lending was concurrently by the Federal Government of Nigeria and the various State Governments through the Money Lenders Act and the Money Lenders laws of the various states respectively. However, since the repealed of the Money Lenders Act, the regulation of money lending is regulated by the Money Lenders Laws of the various States of Nigeria. Notwithstanding the repeal, the provisions of the Act are basically the same with the State Laws, except for slight modifications and displacement of sections. This is a result of the fact that they all have a common origin which is the Moneylenders Act 1927 of England.

The judicial attitude in Nigeria to reliance on the provisions of Money Lenders Laws to avoid the fulfillment of contractual obligations was expressed by the Supreme Court in *Chidoka and Another v First City Finance Co. Ltd* (2013)All FWLR (PART 659)1024. In this case, the Appellants took a loan from the Respondent at an interest rate of 132% per annum. They defaulted in repaying the loan and the interest and sought to rely on the Money Lenders Law in urging the court to declare the transaction as illegal. The Supreme Court, following the earlier decision of the Court of Appeal (Kaduna Division) in *Alhaji Abdullahi Ibrahim v Mallam Zangina Abubakar Bakori* (Suit No.CA/K/292/2066) upholding the decision of lower courts held that the Court would not allow the Appellants, after collecting money from the respondent to do business, to now turn around to plead the Money Lenders law in order to escape the refund of the loan.

SELF-ASSESSMENT EXERCISE

Examine who a money lender is and the regulation of money lender in Nigeria.

2.4 Summary

The unit examined the definition of money lender, the issues or arguments surrounding the definition under the law and the regulation of the money lending. The definition of a money lender is wide and covers those engage in lending without license subject to rebuttal. Also some entities expressly exempted under the law from being categorized as moneylenders even though they engaged in lending of money. The laws regulating money lending is now left to the State government.

2.5 References/Further Readings/Web Resources

J. O. Orojo, (1983). *Nigerian Commercial Law and Practice, Vol.1*
London: Sweet and Maxwell, p. 854.

Ezejiofor, Okonkwo & Illegbune (1982). *Nigerian Business Law*
(London: Sweet & Maxwell,) p.146.

2.6 Answer to Self-Assessment Exercise

A money lender could be defined and general understood to mean a person who gives out money to individuals as his or her business, or for the purpose of making profit. Their trade is known as “money lending”. But from the legally perspective, the definition of a money lender seems wider. This indication was given in the case of *Eboni Finance and Securities Ltd. v Wole-Ojo Technical Services Ltd. & 2 ors* ((1996) 7 N.W.L.R. pt. 461, p.1 464) the Court of Appeal held, among other things, that:

The definition of a money lender under the law is wide. It encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of a larger sum being repaid.

In *Veritas Insurance Co. Ltd. v Citi Trust Investments Ltd*, ((1993) 3 NWLR (pt.28), p.349) the Court of Appeal stated, on the meaning of money lender, that:

...any person who lends a sum of money in consideration of a larger sum being repaid is deemed to be a moneylender until the contrary is proved...

Student should discuss section 31 of the Lagos State Money lenders Law and the requirement, the issue of presumption and the need to exist some degree of system, consistency and continuity in the business of money lending.

Also the regulation of money lending in Nigeria is treated in 2.3.2 above. The court will allow a lender to rely on plea of illegality to refuse the refund of payment of loan.

UNIT 3 REQUIREMENTS AND PROCEDURE FOR OBTAINING A MONEY LENDERS LICENSE

Units Structure

- 3.1 Introduction
- 3.2 Intended Learning Outcome
- 3.3 Requirements and Procedure for Obtaining a Money Lenders License
 - 3.3.1 Requirements for Obtaining a Money Lenders License
 - 3.3.2 Procedure for Obtaining a Money Lenders License
- 3.4 Summary
- 3.5 References/Further Readings/Web Resources

3.1 Introduction

One of the introductions under the money lender law to regulate the activities of money lender and to protect the borrower is the requirement to obtain licence and there is laid down procedure for obtaining the licence. These are the focus of this unit. As earlier stated, the provisions of the various States of Nigeria on Money Lending are basically the same and as such the requirements and procedure for obtaining a license are the same in most States.

3.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- apply the requirement and procedure for obtaining money lender licence.

3.3 Requirements and Procedure for Obtaining a Money Lenders License

3.3.1 Requirements for Obtaining a Money Lenders License

The various State laws in Nigeria enumerate the requirements and the procedure for obtaining a money lending license. As usual, Lagos State has gone a bit higher over other States so its requirements and procedure in Lagos differs substantially from what is obtainable in other States.

In Lagos State, the documents required include the following:

- (a) Certified True Copy of CAC Form 2
- (b) Certified True Copy of CAC Form 7
- (c) Certified True Copy of CAC Form 1.1 (for a company registered in 2017 and afterwards)
- (d) Certified True Copy of the Memorandum and Articles of Association of the Company. (The memorandum must contain an

- object to the effect that the Company engages in the business of providing lending services to companies, individuals etc.)
- (e) Certified True Copy of the Certificate of Incorporation of the Company.
 - (f) Tax Receipt of the 2 Individual directors of the Company for the past 3 years.
 - (g) Evidence of Maintenance of current account under a licensed Bank
 - (h) Evidence of payment of company taxes for the past 3 years.
 - (i) Passport Photograph and proof of Identity
 - (j) Evidence of application for TIN (this Is for a newly incorporated company)
 - (k) Police Clearance of the 2 individual directors
 - (l) Police Clearance of the Corporate body

The (f)-(l) requirements above are only required in Lagos State. In other States, A-E are all the necessary requirements for obtaining a licence. However, Oyo State in addition to A-E, requires the Tax Receipts of 2 individual directors of the Company for the past 3 years.

3.3.2 Procedure for Obtaining a Money Lenders License

The procedure for obtaining a Moneylenders license in Lagos State is stated thus:

- (a) An application is made to the Chief Magistrate Court to issue a certificate in Form B and Form C to the proposed lender as a pre-condition for obtaining the license.
- (b) Upon obtaining the certificate in Form B and Form C, an application is made to the Lagos State Ministry of Home Affairs and Tourism for the issuance of the license.
- (c) Upon application to the Ministry as mentioned above and payment of relevant fees, a file is opened and a date set for the inspection of the registered office address of the prospective lender.
- (d) Upon visitation, if the Company is already engaging in lending business, the books shall be inspected in addition to the office premises and officers of the company, however, if the company is yet to commence business, the office premises and officers of the company will suffice.
- (e) Upon completion of the inspection on the set date, a report will be written by the ministry officials and the Money Lenders License Certificate will be issued. It takes a maximum of 8 weeks from the date of application to the date of approval. The validity of the licence is from 1st January to 31st December of every year.

Worthy of note is that just as with the requirements, the procedure in Lagos State goes further than what is obtainable in other States. In other States, the license is issued at the point of submission of all documents at the office of the Chief Magistrate Court. In Oyo State, there is no requirement of submitting an application to the Magistrate Court and the license is issued at the point of submission of all documents to the Oyo State Ministry of Trade, Commerce and Co-operatives.

SELF-ASSESSMENT EXERCISE

There is no requirement and procedure for obtaining money lending licence in Nigeria, Discuss.

3.4 Summary

The unit examined the requirements and procedure for obtaining money lending licence and the peculiarity of some States. There are requirements and procedure for obtaining a money lending licence. Lagos is ahead of other State with addition requirements and procedure. Oyo state has removed the requirement of certificate form the Chief Magistrate Court.

3.5 References/Further Readings/Web Resources

J. O. Orojo, (1983). *Nigerian Commercial Law and Practice, Vol.1* (London: Sweet and Maxwell,) p. 854.

Ezejiofor, Okonkwo & Illegbune, (1982). *Nigerian Business Law*. London: Sweet & Maxwell, p.146.

Nigeria: Money Lenders License in Nigeria by [Dayo Adu](#) and [Adeola Oyeola](#) Famsville Solicitors available at

PAYDAY & MONEY LENDING REGULATIONS IN NIGERIA Law Carenigeria <https://lawcarenigeria.com/payday-money-lending-regulations-in-nigeria-2/>

3.6 Answer to Self-Assessment Exercise

See 3.3.1 1 and 3.3.2 for the requirement and procedures.

UNIT 4 MAJOR OBLIGATIONS OF MONEY LENDER

Unit Structure

- 4.1 Introduction
- 4.2 Intended Learning Outcome
- 4.3 Major Obligations of Money Lender
- 4.4 Summary
- 4.5 References/Further Readings/Web Resources

4.1 Introduction

The non-regulation of the money lending at the early stages of its practice was a major challenge. The result was that all manner of persons got involved in the business, extremely high interests were charged, and the borrowers were at the mercy of the lenders as their weak bargaining position would make them succumb to unfair contractual terms. These prompted the necessity for regulation of the practice and because of the mischief the law sought to cure, the regulation was essentially of the moneylender imposing certain obligation on the lender. This unit examines the major obligation imposed by the law on the lender.

4.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- analyse the obligation of money lender.

4.3 Major Obligations of Money Lender

The law imposes certain obligations on every money lender but there are three main obligations. They are discussed below:

1) Duty to issue receipts:

It is the duty of every money lender to give a receipt for every payment made to him on account of a loan or any interest paid in respect of the loan, and such a receipt must be issued immediately the payment is made.

2) Duty to keep a book of records.

It is the duty of the moneylender to keep records of his transactions with the borrower. This record must be by way of a book which must be securely bound together. The book must contain records of every loan made by him which record must include the date on which the loan was made, the amount of the principal, the rate of interest payable and all sums received in

respect of the loan or the interest, with the dates of payment. Any moneylender who fails to comply with any of these requirements will not be entitled to enforce any claim in respect to any transaction in relation to which the default has been made.

3) **Duty to Renew Licence:**

It is the duty of the money lender to renew his or her licence in order for him or her to continue in the business of money lending. The license issued by the State must be renewed on a yearly basis. Apart for Lagos State, in other States the license is valid for 12 months commencing from the month it was obtained. For instance, a lending licence obtained in Oyo State in the month of June 2020 will be valid till June J. O. Orojo, *Nigerian Commercial Law and Practice*, Vol.1 (London: Sweet and Maxwell, 1983) p. 854; Ezejiolor, Okonkwo & Illegbune, *Nigerian Business Law* (London: Sweet & Maxwell, 1982) p.146. Nigeria: Money Lenders License In Nigeria by [Dayo Adu](#) and [Adeola Oyeola](#) Famsville Solicitors available at PAYDAY & MONEY LENDING REGULATIONS IN NIGERIA [LawCarenigeria https://lawcarenigeria.com/payday-money-lending-regulations-in-nigeria-2/2021](https://lawcarenigeria.com/payday-money-lending-regulations-in-nigeria-2/2021). But, in Lagos State, the license is valid from January to December every year regardless of when it was obtained. This means that a lending licence obtained in the month of March 2020 will expire in 31st December, 2020.

SELF-ASSESSMENT EXERCISE

What are the major obligations of a money lender

4.4 **Summary**

The unit examined the main obligations of the money lender in Nigeria. They are obligations to issue receipt, keep book of record and to renew the lending licence on annual basis. The regulation of money lending became imperative because of the abuse of the practice by money lender. Therefore, the law merely provided for the obligation of the money lender with little or no provision on the obligation of the borrower. These obligations are aimed at protecting the borrower.

4.5 **References/Further Readings/Web Resources**

J. O. Orojo, *Nigerian Commercial Law and Practice*, Vol.1 (London: Sweet and Maxwell, 1983) p. 854

Ezejiofor, Okonkwo & Illegbune, (1982). *Nigerian Business Law*. (London: Sweet & Maxwell, p.146.

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4.6 Answer to Self-Assessment Exercise

The major duties are

- i. Duty to issue receipt
- ii. To keep a book of records
- iii. To renew license