AN EXAMINATION OF THE FACTORS VITIATING CONTRACT IN NIGERIA

NJOKU CHISOMAGA GLADYS

REG NO:GOU/U21/LAW/371

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FILFILLMENT OF THE REQUIREMENT FOR THE AWARD OF BACHELOR OF LAWS DEGREE (LL.B) OF GODFREY OKOYE UNIVERSITY

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DECLARATION

I NJOKU CHISOMAGA GLADYS declare that this long Essay is original research carried out by me as part of the requirements for award of Bachelor of Laws (LL.B) during the 2025/2026 academic session. All errors are entirely mine and not intented.

……………………………………………………..

19TH JUNE, 2026

Njoku Chisomaga Gladys

CERTIFICATION

This is to certify that this research was carried out by **Njoku Chisomaga Gladys,** an undergraduate Student in the Faculty of Law, Godfrey Okoye University with Registration Number, GOU/U21/Law/371, who has completed this Long Essay for Award of the Degree of Bachelor of Laws.

Save for reference which have been duly acknowledged, this work is original and has not been submitted in part or full for Award of any Degree in this or any other Institution,

……………………….. ……………………...

DR AJEBO DATE

………………………… ……………………

Dean Faculty of Law DATE

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EXTERNAL EXAMINER

…………………………………………

DATE

DEDICATION

To:

Dedicated to God and the people of Nigeria affected by the laws of contract.

ACKNOWLEDGMENT

First and formost, I give my deepest gratitude to God Almighty for His endless love, guidance and strength. Without His blessing, this journey would not have been possible. This Long Essay would not have been accomplished without the support, encouragement, assistance, inspiration, guidance and prayers of superiors, lecturers, friends and well-wishers.

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AC - Appeal Cases (England)..

ACB - African Continental Bank

ADR - Alternative Dispute Resolution.

CA - Court of Appeal.

CAMAC - ompanies and Allied Matters Act.

Cap - Chapter.

CBN - Central Bank of Nigeria.

Cf - Compare.

Ch D - Chancery Division (England).

CLR - Commonwealth Law Reports (Australia).

Edn - Edition.

FCCPA - Federal Competition and Consumer Protection Act.

FCCPC - Federal Competition and Consumer Protection Commission.

FSC - Federal Supreme Court (Nigeria).

HCA - High Court of Australia.

HL - House of Lords.

Ibid - In the same place (used to refer to a previously cited source).

JCA - Justice of the Court of Appeal.

KB - King's Bench (England).

LFN - Laws of the Federation of Nigeria.

LJQB - Law Journal, Queen's Bench.

LR - Law Reports.

LRL - Legal Reform (Contract) Law of Lagos State 2015.

LRN - Law Reports of Nigeria.

MR - Master of the Rolls.

n - Footnote (used in cross-references, e.g. ‘n 4’).

NALT - Nigerian Association of Law Teachers.

NAFDAC - National Agency for Food and Drug Administration and Control.

NIALS - Nigerian Institute of Advanced Legal Studies.

NLR - Nigeria Law Reports.

NMLR - Nigerian Monthly Law Reports.

NWLR - Nigeria Weekly Law Reports.

OSCOLA - Oxford Standard for Citation of Legal Authorities.

OUP - Oxford University Press.

PC - Privy Council.

PDP - Peoples Democratic Party.

Pt - Part.

QB - Queen's Bench (England).

RLCE - Revised Law of Contract of Enugu State 2004.

S - / ssSection / Sections.

SC - Supreme Court (Nigeria).

SCNLR - Supreme Court of Nigeria Law Reports.

SEC - Securities and Exchange Commission.

UK - United Kingdom.

UKHL - United Kingdom House of Lords.

UNCITRAL - United Nations Commission on International Trade Law.

V - Versus.

WACA - West African Court of Appeal.

WLR - Weekly Law Reports (England).

WNLR - Western Nigeria Law Reports.

WRN - Weekly Reports of Nigeria.

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ABSTRACT

This study examines the factors vitiating contracts under Nigerian law, with particular emphasis on mistake, misrepresentation, duress, undue influence, illegality, and incapacity. The law of contract is fundamental to commercial and social relations because it provides the legal framework through which parties create enforceable obligations. However, for a contract to be valid and enforceable, the consent of the parties must be free, genuine, and informed. Where consent is affected by certain defects or improper influences, the contract may be rendered void or voidable. These defects are commonly referred to as vitiating factors. The study adopts a doctrinal research methodology, relying on primary and secondary sources of law, including statutes, judicial decisions, textbooks, journal articles, and other scholarly materials. It examines the legal principles governing vitiating factors in Nigeria and analyzes the manner in which Nigerian courts have interpreted and applied these doctrines. The study further considers the impact of technological developments, particularly digital and electronic contracts, on the operation of traditional contract law principles. Findings reveal that although Nigerian law recognizes various vitiating factors as mechanisms for protecting contractual fairness and preventing injustice, their application is often characterized by inconsistencies, judicial uncertainties, and inadequate adaptation to contemporary commercial realities. The study also finds that emerging challenges such as online transactions, electronic communications, unequal bargaining power, and limited access to justice have exposed weaknesses in the existing legal framework. The study concludes that while the doctrines of mistake, misrepresentation, duress, undue influence, illegality, and incapacity remain essential safeguards of contractual integrity, there is a need for legislative and judicial reforms to enhance clarity, consistency, and responsiveness to modern commercial practices. It recommends the codification of key principles, stronger protection for vulnerable parties, greater recognition of digital contracting realities, and improved access to alternative dispute resolution mechanisms. These measures will contribute to a more equitable, predictable, and effective system of contract law in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The law of contract occupies a central position in the Nigerian legal system, serving as the foundation upon which commercial transactions, employment relationships, and everyday social agreements are built. A contract is a legally binding agreement between two or more parties that creates obligations which the law will enforce.[1] However, in every legal contract, there are certain structural factors known as "vitiating elements" these factors which can undermine are also critical for the enforceability and validity of a contract under Nigerian law.[2] If present, these elements can render a legal contract void or voidable at the option of one of the parties.[3] The Nigerian law of contract is precipitated on the foundation of the English common law and is governed by the Contract Act of 1872. In developing nations and within a developing economy such as Nigeria's, contractual relations affect virtually every aspect of socio-political, and economic life of the citizens; ranging from tenancy agreements, employment contracts and agreements up to banking transactions and commercial supply arrangements. The laws of contract are instrumental in defining rights, obligations and are effective when there is a breach of contract. Hence without a solid lgal structure regulating contractual obligations, economic activities would face distrust, absence of legal protection for parties going into agreement especially those who rely on promises and agreements would be marked by uncertainties[4]

Under Nigerian law, a contract is generally described as an agreement between two or more parties which the law recognizes as binding and enforceable. This definition reflects the classical

[1] The Contract law, Cap 26 (Revised laws of Enugu state 2004).
[2] Olawoyin, *the law of contract in Nigeria* [2013], p. 12.
[3] Afolabi*, vitiating elements in Nigerian Contract law* [2017], p 2
[4] I Sagay, *Nigerian Law of Contract* (Spectrum Books Ltd, 2004) .

position inherited from English common law, which Nigeria adopted during the colonial era.[5] The reception of English law into Nigeria took place through Ordinances such as the Supreme Court Ordinance of 1863 and the Interpretation Act, which provided that where no local statutes existed, English Common Law, Doctrines of Equity, and Statutes of General Application would apply.[6] As a result, Nigerian contract law developed largely in line with English common law principles, although it has evolved through legislative interventions and judicial interpretation to reflect local realities and circumstances.

For a contract to be valid and enforceable, certain essential elements must be present. These include the following; offer, acceptance, consideration, intention to create legal relations, and capacity.[7] Where any of the above mentioned elements is found lacking or not properly formulated, the enforceability and validity of contract is greatly affected. More so that in situations where these essential elements appear to exist, the court may render that certain factors may render the contract voidable. And these factors are known as vitiating elements. They include the following: mistake, duress, misrepresentation, illegality, undue influence, and lack of capacity. These elements which usually strike at the very foundation of any given agreement do not merely also affect the performance of any contract thery by undermining the free and informed consent of the parties.

Also, in every contract law, the legal concept of *consensus ad idem* which is interpreted as meeting of the minds is a key principle[8] It presupposes that parties must be in genuine agreement regarding the terms and nature of the contractual relationship. However, where a party is deceived by false statements, compelled by threats, influenced through undue pressure, or

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[5] B O Nwabueze, *Machinery of Justice in Nigeria* (Hodder and Stoughton, 1963) 34.
[6] Supreme Court Ordinance 1863; Interpretation Act Cap I23 Laws of the Federation of Nigeria 2004.
[7] R Okany, *Nigerian Law of Contract* (Sweet & Maxwell, 1987) 2.
[8] G H Treitel, *The Law of Contract* (13th edn, Sweet & Maxwell 2011) 16

mistaken about essential facts, true consent cannot be said to exist. The law, in recognition of this reality, provides several doctrines through which contracts affected by these factors may be set aside in order to protect the integrity of the contracting process and ensure fairness between the parties.

Misrepresentation is one of the most frequently encountered vitiating elements in contractual relations. It arises where one party induces another into a contract by making a false statement of fact, which the other party relies upon. Under Nigerian law, misrepresentation may be innocent, negligent, or fraudulent, and each form carries different legal consequences.[9] In many instances, judges have persistently insisted the resulting contract cannot be regarded as an expression of free will especially where that consent is obtained through deception. The strength of the element of misrepresentation is more profound in situations where the parties rely upon representations about services, goods, legal statuses and financial capacity.

On the other hand, Mistake has to do with situations where parties do not have a comprehensive understating of the essential aspect of the contract. The court in its stead makes a distinction between mutual mistake, common mistake, and unilateral mistake.[10] The courts in Nigerian have adopted the principles of mistake that are based on the principles of the English common law especially when it comes to determining whether a mistake is sufficiently fundamental to render a contract void and unenforceable. The doctrine of mistake operates as hardcore mechanism of fairness where contractual appearances do not reflect the true nature of the parties in a contract or agreement.

The doctrine of duress and undue influence on the other hand is directed at protecting parties that want to go into agreement or contract from coercion and exploitation. The act of duress involves

[9] *Okelola v Boyle* [1998] 2 NWLR (Pt 539) 533.
[10] *Bell v Lever Bros Ltd* [1932] AC 161.

the use of threats, compulsion or unlawful pressure while undue influence involves the use of interpersonal relationships and familiarity such as solicitor-client, guardian-ward, spiritual adviser-follower relationships or the use of improper persuasion to influence a contract.[11] These doctrines reflect the courts reinforcement to tackle contracts that are formed through intimidation or domination. In Nigeria, allegations of duress can be found eminent in issues of family property transactions while undue influence can be seen in contracts that involve elderly or illiterate individuals who may be easily manipulated.

Illegality, as a vitiating element, focuses with the purpose to which a contract is not in relation to public policy or contrary to the law. For instance, a contract that is aimed at committing a crime, violate lay down regulations a defraud a third party is termed unenforceable regardless of the willingness of the parties involved.[12] It is on this basis that judges in Nigeria have repeatedly emphasized that they will not enforce contracts tainted by illegality, be it illegality arising from common law or statutes. This doctrine prevents the courts from being used as instruments of injustice and it also serves as a tool for preserving the integrity of public policy.

Another factor that is often considered when forming an agreement and is closely connected with illegality is the issue of capacity to contract. This principle is of the opinion that minors, persons of unsound mind, and intoxicated persons do not possess the legal ability to enter into binding agreements and are generally regarded as lacking full contractual capacity, subject to certain exceptions.[13] This doctrine therefore protects the vulnerable especially persons of the above mentioned category from being exploited thereby acknowledging that legal responsibility must align with mental and legal competence.

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[11] *Royal Bank of Scotland v Etridge* [2001] UKHL 44; followed in Nigerian courts.
[12] *Pan Bisbilder (Nig) Ltd v First Bank of Nigeria Ltd* [2000] 1 NWLR (Pt 642) 684.
[13] *Labinjo v Abake* [1924] 5 NLR 33.

Despite the courts efforts to enforce these well-established principles, there remains a lacuna in the application of vitiating elements in Nigeria due to its complex and inconsistent structure. In most cases, there arise issues of conflict involving judicial decisions most especially in cases involving misrepresentation and mistake. Also, most contemporary commercial practices that involve digital and online contracts now pose new challenges to traditional doctrines which were initially developed within a rigid common-law framework.

All these and more reasons culminate towards the need for a renewed doctrinal and scholarly examination of vitiating factors in Nigeria especially with the increase in the use of electronic and automated contracts, and online representations. It begs the question of whether contract law in Nigeria is strategically equipped to deal with contemporary realities.

1.2 Statement of the Problem

There are certain concerns that the elements that mark up the legal framework for the enforcement of a contract and agreement may not be adequately enough to address the legal complexities of modern transactions thereby leaving room for potential exploitation and injustice. Although these elements have been recognized as fundamental in safeguarding against maltreatment and injustice in contractual agreements and are crucial in ensuring fairness and protecting the interests of contracting parties, their application in Nigeria is marked by severe uncertainty and inconsistency. Also, the lack of a concrete jurisprudential analysis and up to date comprehension of these vitiating elements has made it intrinsically difficult for legal practitioners and scholars to fully have a grasp of their scope and implications.

To avoid predictability and reliability of the legal system, there is therefore a major need for an understanding of the various vitiation elements and their interactions with each other. Parties must be able to have a clear cut understanding of the distinction between mistake and misrepresentation, or the interplay between duress and undue influence, which create ambiguity in certain situations, leading to inconsistent judicial interpretations and outcomes.

Currently, there is a rise in online contract which goes beyond the traditional formations of a contract. These advances in digital contracts have introduced new complexities into the realm of contract law and may need to be examined. This study will examine these issues, by examining the power dynamics in contractual relationships as well as the problems posed by new inventions of contracts while drawing on comparative insights from other jurisdictions.

1.3 Research Questions

This study seeks to address the following research questions:

i. What are the main vitiating elements recognized under Nigerian contract law?

ii. How have the courts interpreted and applied the various vitiating elements, (mistake, misrepresentation, duress, and undue influence) ?

iii. What are the key challenges and gaps in the current legal framework for addressing vitiating elements?

iv. What challenges affect the effective application of vitiating factors in Nigeria, particularly with regard to proof, access to justice, and modern commercial practices?

v. How can the legal framework be adapted to address emerging issues such as the impact of technology on contract formation and the need to protect vulnerable parties from exploitation?

1.4 Aim and Objectives of the Study

Aim of the Study

The aim of this study is to critically examine the factors that vitiate contracts under Nigerian law,

Objectives of the Study

The specific objectives of this study are to:

i. To provide a thorough and up-to-date analysis of the jurisprudence surrounding vitiating elements in Nigerian contract law.

ii. Analyze the nature and scope of misrepresentation, mistake, duress, undue influence, and illegality as factors vitiating contracts in Nigeria.

iii. To address the impact of emerging issues, such as the influence of technology on contract formation and the evolving dynamics of power imbalances and vulnerability in contractual relationships.

iv. Provide a comparative analysis of the approaches to vitiating elements in other jurisdictions, such as the United Kingdom, the United States, and other Commonwealth countries.

v. Contribute to the development of a more robust, equitable, and transparent system of contract law in Nigeria.

1.5 Research Methodology

The research method used in this study is doctrinal legal research. It is the research method adopted as it entails a detailed study of the concept, principles, statutory provisions and judicial decisions on vitiating elements in Nigerian contract law. The research is library-based and focuses on an extensive review of relevant legal literature, it involves primary and secondary sources of law. Primary sources are statutes, cases and legislation. The secondary sources include textbooks, journal articles, and other academic works to build up a comprehensive knowledge of the previous works and juries of the vitiating elements in Nigeria's contract law. The study will carefully review the provisions of relevant statutes in Nigerian contract law including the

Contract Act and other relevant laws to gain a better understanding of the legal framework of vitiating elements.

A critical review of the relevant case law of the Nigerian courts will also be carried out in order to grasp the meaning of various vitiating elements in different scenarios. This will include a careful examination of court decisions to identify trends, inconsistencies and gaps in the judicial approach. The study will also utilize a comparative analysis, by which the study will compare other jurisdictions where issues of vitiating elements would be found in contract law, like the United Kingdom, the United States and other countries that are part of the Commonwealth. This will give useful information and scope for improvement in Nigeria. The study will integrate the result of the literature review, the statutory analysis and the analysis of the case laws, to give an overall picture of the situation of contract law in Nigeria with regard to vitiating elements. This will be the foundation for the analysis, conclusions and recommendations of the study.

The Doctrinal Research Method is appropriate for this study because it involves a comprehensive and systematic investigation of all the legal principles, statutes and case laws that are relevant to the study of vitiating elements in Nigerian Contract Law. This will enable the researcher to give a holistic and authoritative analysis that will aid in the creation of a stronger and fairer contract law mechanism in Nigeria.

1.6 Scope and Limitation of the Study

This study emphasises the examination of those factors that have a tendency to vitiate a contract under Nigerian law, including misrepresentation, mistake, duress, undue influence, illegality and lack of capacity. The study will start by clearly identifying each of the main vitiating factors known by Nigerian law to give them a common understanding of the meaning and application of all of these elements. A major area of the study will be to analyse the application of the different vitiating elements in particular cases before the Nigerian courts. This means a careful review of the relevant case law, and a study of trends, inconsistencies and gaps in judicial interpretation.

The study has several limitations, though. First, decisions made which are not reported and informal contractual practices are not analyzed. Secondly, the study is limited due to the fact that there is a lack of recent case law on emerging issues like digital and electronic contracts in Nigeria. Thirdly, because of the wide scope of contract law, the study does not consider all of the invalidating doctrines, such as frustration or discharge, unless they are directly relevant. Despite these qualifications, the study is a very detailed and targeted examination of the main causes of the failure of contracts under Nigerian law.

1.7 Significance of the Study

The study is notable because it helps to shed light on vitiating elements in contract law in Nigeria. It will also offer a wider viewpoint and highlight any areas for reform, the study will make a comparative assessment of the way other jurisdictions, including the United Kingdom, the United States and other Commonwealth countries work. The cross-jurisdictional analysis will focus on good practice, innovative solutions and lessons learned. The study is also relevant in the sense that it will seek to examine how emerging issues e.g. the influence of technology on formation of contract, and shifting nature of power imbalances and vulnerability in contractual relationships will affect the application of vitiating elements. This will include identifying possible areas where the existing legislation does not adequately address a need and suggesting amendments to the legislation. The study will make recommendations on how the vitiating elements in Nigerian contract law can be improved in terms of its clarity, consistency and fairness. These recommendations can be either in the form of legislation, policy or guidelines for judicial interpretation.

As a practical guide, the study gives the practitioners, judicial officers, law students and policy makers valuable information on the operation and effect of vitiating elements in contractual relationship under Nigerian law. The results could be used to help guide judicial decisions, legal practice, education of the justice profession, and legislative or policy changes that would help make the contracting process and its enforcement more fair, more predictable, and more just.

1.8 Literature Review

The talk of "vitiating elements" has been much discussed by scholars, especially in common law contract theory. The principle of genuine consent freely given has long been a fundamental requirement of the classical contract scholars. Treitel's view is that vitiating factors serve to “affirm the integrity of consent” through the relaxation of the party that was induced to enter an agreement by a fundamental defect of will.[14] This emphasises the philosophical basis of vitiating factors as doctrines of protection rather than only of economic transactions, from which they protect against injustice caused by a lack of consent. In the Nigerian legal literature, the same views have been expressed, and it has been generally accepted that vitiating elements are the exceptions to the strict principle of pacta sunt servanda (agreements must be fulfilled) on a basis of fairness and equity.

The basic vitiating elements under Nigerian Law have been extensively explained by Sagay in his authoritative work Nigerian Law of Contract.[15]

He divides the factors into misrepresentation, mistake, duress, undue influence, illegality, and capacity and points out that contracts that are “covered” by these factors are either void or voidable, depending upon the nature of the defect. Sagay also contends that such doctrines are not only English concepts but have also been developed in Nigeria by the judiciary. He argues,

[14] G H Treitel, The Law of Contract (14th edn, Sweet & Maxwell 2015) 299.
[15] I Sagay, *Nigerian Law of Contract* (Spectrum Books Ltd 2004) 153–210.

however, that the Nigerian courts have not been able to create an independent jurisprudence to adapt these doctrines to the Nigerian context, especially in the case of illiterate people, customary transactions, and informal commercial activities.

The book is further a comprehensive discussion on vitiating elements in Nigerian contract law. The fact there is misrepresentation or mistake impacts on the element of intention to create legal relations and thus on the enforceability of the contract, he explains. In relation to undue influence, Okany notes that the Nigerian court has tended to adopt English fiduciary presumptions without considering the influence of the other factors at play including cultural factors like familial hierarchy and traditional authority.[16] He therefore suggests a more liberal approach to the concept of undue influence in Nigeria, based on local circumstances. This observation is very important and points out the drawbacks of transplantation of foreign legal concepts without adaptation.

There has also been much academic writing on the doctrines of duress and undue influence. Atiyah has said that duress must not be confined to physical force, but also include economic pressure that can be "overcome by consent.[17] Nigerian courts have, however, not been very enthusiastic about the application of this as it is understood in English law. In English law, for example, The *Siboen and The Sibotre*[18] extended the definition of duress to commercial pressure, but Nigerian courts have been more conservative, looking for physical pressures or undue compulsion. This judicial ambivalence has inspired disapproval from scholars that the Nigerian contract law is unable to capture the reality of economic dependence and financial vulnerability of commercial relationships in Nigeria.

The question of mistake has been much debated in the academic literature as to the conditions when mistake makes a contract a nullity. Cheshire, Fifoot and Furmston argue that such a

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[16] M C Okany, *Nigerian Commercial Law* (Africana-FEP Publishers 1987) 113.
[17] P S Atiyah, *An Introduction to the Law of Contract* (5th edn, Clarendon Press 1995) 277.
[18] [1976] 1 Lloyd's Rep 293

mistake only vitiates a contract if it at the root of the transaction.[19] In the case of *Best (Nig.), Ltd v Blackwood Hodge (Nig.)*,[20] the Nigerian courts have taken this stance that the word mistake does not invalidate the contract because it does not relate to the substance of the contract. But critics say that Nigerian courts have taken the narrowest interpretation of the term mistake, leaving injustice in agreements that parties have signed with a high level of misunderstanding.

The doctrine of misrepresentation has been dealt with extensively in Nigerian legal literature. Sagay makes a distinction between innocent misrepresentation, negligent misrepresentation and fraudulent misrepresentation and argues that the Nigerian judicial practice gives them all the same classification for rescission purposes. But the problem is to determine inducement, particularly in casual or informal transactions involving representations. It has been noted that the Nigerian courts have not yet completely adopted statutory remedies, in particular, damages in lieu of rescission, which are available under English law, thereby restricting the scope of remedies available to victims.[21]

This has led to extensive scholarly discussion about the illegality and public policy, especially the Cameroons judicial attitudes that are too rigid. Inflexibility and injustice of the common-law doctrine of illegality was critiqued by Glanville Williams who noted that courts often punish the parties instead of crime.[22] The Nigerian courts have generally maintained this strict attitude. Academic discussion argues that the courts should embrace a more flexible proportionality/fault doctrine, particularly when the one party is far more innocent than the other. There is no discretion as to how illegality is applied and, according to scholars, that has led to injustice being entrenched, not prevented.

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[19] M P Furmston, *Cheshire, Fifoot and Furmston's Law of Contract* (15th edn, Oxford University Press 2007) 287.
[20] [2011] 5 NWLR (Pt 1239) 95
[21] I Sagay (n 2) 235.
[22] G Williams, *Joint Torts and Contributory Negligence* (Stevens & Sons 1951) 45.

Capacity to contract has not been studied as extensively as other vitiating factors. Some authors, like Cheshire and Fifoot, argue that the rule on capacity has been introduced to safeguard the vulnerable, but not for any other reason.[23] It is observed that the awareness of the minors and mentally ill persons, and access to justice is lacking, thus limiting the effectiveness of enforcement mechanisms in Nigeria. In Nigeria, it is noted that lack of awareness and access to justice limits the effectiveness of the enforcement mechanisms relating to minors and mentally ill persons. The disparity between law and practice has made capacity rules in Nigeria less practicable. There are many books and articles on vitiating factors, but very few focus on vitiating factors as they relate to the doctrines. In the scholarly sphere, there has been a limited effort to develop a comprehensive framework with a unified approach that is specifically tailored to Nigerian socio-economic realities. A number of writers rely on the law of England without asking the question of its fitness for Nigeria. In addition, most of the academic literature do not address issues of emerging concerns like online misrepresentation, online consent and economic vulnerability in Nigeria.

Hence, this study is distinguishable in that it is able to bring together all vitiating factors into one analytical framework and assess the significance of these elements in the current commercial environment in Nigeria. It aims to transcend the statement of principles and to unmask how these principles are applied in practice and the need for reform if they are to be relevant to current circumstances. The study also brings a fresh experience to the literature of Nigerian contract law, connecting the theory and practice to the socio-economic realities.

[23] M P Furmston (n 5) 581.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Concept of Contract under Nigerian Law

A contract is a key mechanism in private law through which corporate entities and individuals regulate their commercial and social relationships. Relevant studies on Nigerian contract law indicates that two separate sources of contract law exist in Nigeria, that is, contractual obligations governed by customary law and a general law of contract enshrined in statutes derived from English law.[24] English statutory laws of contract apply to Nigeria as statutes of general application supplementing locally enacted legislation.

Evidently, the impact of customary law on the general law of contract in Nigeria is summed up in the following passage:

> In Nigeria there are two distinct sources of the law of contract. Customary law rules recognize certain types of contracts, for instance, cooperative labor contracts and contracts of agistment. However, these rules are not developed and have to a large extent been relegated to the background as unsuitable for modern commercial transactions.[25]

In *Kabo Air v. Tarfa*, Galadima, J.C.A., held that a contract must be an agreement which is legally binding on the parties to it and which, if broken, may be enforced by action in court against the defaulting party.[26] For an agreement to constitute a contract, the following ingredients must be present: offer, acceptance, intention to enter into legal relations and consideration. "All ingredients must be present. If one of these is absent, there can be no valid contract". [27] A contract can also be defined as a promise or set of promises the law will enforce.[28] Although not

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[24] C. O. Okonkwo, *Introduction to Nigerian Law* ss 271-235 (Sweet & Maxwell 1980).
[25] C. O. Okonkwo, *Introduction to Nigerian Law* s 271 (Sweet & Maxwell 1980).
[26] [2004] 6 WRN 135 at 149.
[27] *Kabo Air v. Tarfa* p. 149.
[28] Treitel, *The Law of Contract* (5th ed., 1979). 1

all agreements will be enforced by law. For example, social and domestic agreements are generally not binding in law. Also, the court will not, except in special cases, enforce an agreement, unless it is supported by consideration. In *Oyewale v. Lawal*, Fabiyi, J.C.A., adopted the following definition of contract from pages 291 – 292 of the 5th Edition of *Blacks Law Dictionary* "… an agreement between two or more persons which creates an obligation to do or not to do a particular thing".[29]

Tobi, J.C.A., as he then was, has defined a contract as an agreement between two or more parties which creates reciprocal legal obligations to do or not to do particular things. For a contract to be valid, "there must be mutuality of purpose and intention".[30] "It should be pointed out, however, that strictly speaking, there can be no contract between more than two parties at a time. Where it appears that there are more than two parties involved, what it means is that, either groups of parties belong to one side, or there is more than one contract involved. For example, a contract of guarantee, usually involves 3 parties and two contracts, namely (i) the contract of guarantee between the lender and the guarantor, and (ii) the loan contract (or credit agreement) between the lender and the debtor whose debt is being guaranteed.

Two types of contracts exist under Nigerian contract law as under common law, i.e, a contract udder seal and a simple contract. A contract under seal is one which is signed, sealed and delivered. Such a document is typically referred to as a deed or a covenant. This type of contract is found more in the area of conveyancing or grant of property.

A simple contract is not under seal, .and may be oral or written. However, Nigerian law requires simple contracts dealing with bills of exchange,3 promissory notes, and transfer of stock or

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[29] *Joseph Effiong Inua v. First Bank of Nigeria Plc.* [2016] 2

[30] *Orient Bank (Nig.) Plc v. Bilante International Ltd.* [1997] NWLR (Pt. 515) 37 at 76

shares in a public corporation to be in writing.4 Furthermore, contracts for the sale of land and guarantee are not enforceable in Nigeria unless their terms are evidenced in writing.5

2.2 Sources of Contract Law

The law of contract in Nigeria cannot be tied to one particular source due to the plural nature of the countries legal system. These sources form the basis for the validity, enforcement, regulation and most importantly, the formulation of contracts in Nigeria. Thus the sources of contract law include the following: English common law, doctrines of equity, statutes, judicial precedents, and customary law

2.2.1 English Common Law

The English common law is the foundation of Nigerian contract law. The English common law and its principles of offer and acceptance, consideration, intention to create leagal relations, and privities of contract, that form the basis of the Nigerian contract law were adopted in January 1900 and have continued to apply in Nigerian jurisprudence except where modified by statute or judicial interpretation.[31] Judges and courts in Nigeria often depend on English authorities, especially where local precedents are limited. However in *Okoya v Santilli*, it is proven that such reliance is persuasive rather than binding, and Nigerian courts have shown increasing willingness to depart from English decisions where they conflict with local circumstances or public policy.[32]

2.2.2 Doctrines of Equity

One of the most significant sources of contract law in Nigerian jurisprudence particularly in relation to fairness and justice is equity. Equity practiced alongside common law, with the aim at

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[31] A O Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 27.
[32] *Okoya v Santilli* [1990] 2 NWLR (Pt 131) 172.

softening the inflexibility associated with strict legal principles. In the area of contracts, equity acts in issues surrounding misrepresentation, undue influence, duress and specific performance. Such doctrines allow the courts to step in where the contractual consent is flawed or where the enforcement of the contract would result in injustice.[33] Equity, is quite relevant, in the study of vitiating factors. Most, of such doctrines stem from equity, aimed at the protection of the weaker or more vulnerable party, fairness in the contract, and equity in dealing.

2.2.3 Statutory Law

In Nigeria, statutes represent an essential source of contract law. While a statute is a law made by a governing body (in contrast, a contract law is a law made by the parties themselves), contract law in Nigeria is not comprehensively codified; a number of statutes do regulate some specific components of contractual relationships. This includes, among others, Sale of Goods Act, Hire Purchase Act, Consumer Protection Council Act, and some state statutes in relation to tenancy and commerce. These state law statutes, as a rule, supplement and in some instances, may contend the common law.[34] Statutes may also directly impact the legality and enforceability of contracts, especially in terms of public policy. Judges apply common law principles in harmony with the statutes.

2.2.4 Judicial Precedents

The body of judgements in a legal system is a fundamental component, and contract law in Nigeria is no exception. Nigeria, as a common law country, operates with the doctrine of judicial precedent (stare decisis), and therefore, the lower courts are bound by the decisions of the higher

[33] I Sagay, *Nigerian Law of Contract* (Spectrum Books Ltd 2004) 185.
[34] Sale of Goods Act, Cap S1 Laws of the Federation of Nigeria 2004; Hire Purchase Act, Cap H4 LFN 2004.

courts. This is the only way a country can have a unified, well-defined, and developed body of law. Through case law, the courts have been able to articulate principles of contracts and rules of law relating to vitiating factors and have been able to align the rules of law with the dynamics of society in social and commercial relations.[35] The Supreme Court, in particular, has been shaping the Nigerian Contract law by giving binding explanation on the principles of law. Thus, judicial precedent serves as a source of law, and also as a tool for the advancement of the law.

2.2.5 Customary Law

The indigenous source of contract law in Nigeria is Customary law and this still governs contractual relationships in several communities especially in non-commercial spheres. Typically, contracts under customary law are informal, and underscore good faith, mutual trust and community. However, customary contracts are also unenforceable if they are against the natural justice, equity and good conscience, or are contradictory to any written law. [36]It is true that Customary law has a limited scope in the modern day commercial contracts, but it has a big scope in the understanding of the pluralistic aspect of the Nigerian contract law and also the wider aspect of contractual consent

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2.3 Essential Elements of a Valid Contract

The validity of a contract under Nigerian law depends on the presence of certain legally recognized elements. These elements work together to turn a simple agreement into a legally binding obligation that the courts can enforce. The elements of a valid contract are generally

[35] *Rossek v ACB Ltd* [1993] 8 NWLR (Pt 312) 382.
[36] T O Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 170.

listed as offer, acceptance, consideration, intention to create legal relations, capacity, consent, and legality of purpose.

However, these elements can also be examined in terms of validity, enforceability, and the relationship between common law and equity. This perspective helps clarify how vitiating factors affect Nigerian contract law

2.3.1 Validity

This contractor defense deals with the validity of a contract at the time of its inception. For a contract to be valid, all the substantive requirements of the law must be fulfilled, and such a contract must be capable of creating legislative consequences. In Nigeria, the area of the law that deals with validity is concerned with the elements of the presence of real focus, lawful purpose, and legal power. The most important element of a valid contract is a genuine agreement (consensus ad idem). This means that the parties must be in agreement to the same contract in the same sense. A contract is deficient on its face sin qua non, where the meeting of the minds is absent. Nigerian judges have pointed out that the agreement has to be more than a mere appearance. In the case of *UAC Ltd v Macfoy*, the judges asserted that, in the absence of an agreement, a contract is legally inadequate, void, and does not give rise to legal consequences.[37]

Another important factor in determining validity is consideration. Consideration is the value exchanged between parties and separates enforceable contracts from free promises. Nigerian law follows the traditional common law rule that consideration must exist but does not need to be adequate. This was confirmed in *Bilk Construction Co Ltd v Union Bank of Nigeria Plc,* where the court stated that the law cares about the presence, not the adequacy, of consideration.[38] Absence of consideration, except in specific cases like deeds, makes an agreement invalid.

[37] *UAC Ltd v Macfoy* [1961] 3 All ER 1169.
[38] *Bilk Construction Co Ltd v Union Bank of Nigeria Plc* [2006] 4 NWLR (Pt 971) 587.

Capacity also influences validity. Nigerian law recognizes that certain people, including minors, individuals with mental disabilities, and intoxicated persons, may not have the legal ability to enter into binding contracts. Contracts made by these individuals may be void or voidable based on the circumstances and the type of contract. This rule aims to prevent exploitation and promote fairness in contracts.[39]

2.3.2 Enforceability

While validity refers to the legal existence of a contract, enforceability deals with the courts' power to compel performance or provide remedies for breach. A contract may be valid in its substance yet unenforceable due to procedural, statutory, or equitable issues. One significant factor affecting enforceability is adherence to statutory requirements. Certain contracts, like those related to land or guarantees, must be in writing or shown in writing as required by law. If these formalities are not met, the contract may be unenforceable, even if the underlying agreement is valid.[40] This highlights the difference between legal existence and judicial enforceability.

Another key issue is the doctrine of privity of contract, which limits enforceability to parties involved in the contract. Nigerian courts traditionally uphold this doctrine, stating that only parties to a contract can sue or be sued on it. However, exceptions have gradually developed, especially in commercial and insurance areas.[41] Enforceability is also impacted by vitiating factors like misrepresentation, mistake, duress, and undue influence. These factors do not always make a contract void; they often make the contract voidable at the choice of the affected party.

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[39] I Sagay, *Nigerian Law of Contract* (Spectrum Books Ltd 2004) 95–100.

[40] Law of Contract Act, applicable statutes on land transactions; see R Okany, *Nigerian Law of Contract* (Sweet & Maxwell 1987) 212.

[41] *Ikpeazu v ACB Ltd* [1965] NMLR 374.

Until the contract is canceled, it remains valid and enforceable. This reflects the law's attempt to balance certainty in contracts with fairness.

Equitable factors furthermore influence enforceability. Even if a contract is legally valid, a court may refuse to enforce it if doing so would be unjust or inequitable. Remedies like specific performance are discretionary, and courts may deny them if enforcement would cause hardship or injustice.[42] This shows that enforceability is not automatic but depends on judicial discretion. Ultimately, enforceability decides whether the legal system will actively support the contract. It represents the real aspect of contract law, where formal rules meet judicial judgment.

2.3.3 Legal Relations

One of the fundamental requirements for the formation of a legally enforceable contract is that the parties must have intended their agreement to create legal relations. Although early academic opinion questioned whether such intention should be a separate requirement, arguing that parties should generally be bound by their promises, the courts have firmly settled the position that intention to enter legal relations is indispensable to contractual enforceability.[43]

A promise, however morally compelling, will not attract legal consequences unless the promisor, judged objectively from words or conduct, can be said to have intended to be legally bound.[44] The requirement operates through rebuttable presumptions, which vary according to the nature of the agreement. In commercial agreements, the presumption is that the parties intend legal consequences to flow from their promises. Conversely, in domestic and social agreements, the presumption is that no such intention exists.[45] These presumptions are not conclusive and may be displaced by evidence to the contrary.

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[42] *Afolayan v Ogunrinde* [1990] 1 NWLR (Pt 127) 369.
[43] G.H. Treitel, *The Law of Contract* (Sweet & Maxwell, London)
[44] *Smith v. Hughes* [1871] LR 6 QB 597.
[45] *Edmonds v. Lawson* [2000] QB 501.

In domestic and social arrangements, the courts presume the absence of intention to create legal relations, largely on grounds of public policy and common sense. The law is reluctant to intrude into the ordinary incidents of family and social life by converting informal promises into legally enforceable obligations. Thus, where a man promises his brother payment for sweeping a room, or a husband promises to support his wife in the course of marital cohabitation, the courts ordinarily assume that such promises are not intended to be legally binding.

The classical authority is *Balfour v. Balfour*,[46] where a husband promised to pay his wife a monthly allowance while they were living apart temporarily due to her ill health. When the promise was not honoured and the wife sued, the court held that the agreement was unenforceable, as it was a domestic arrangement lacking intention to enter into legal relations. Similar conclusions were reached in *Spellman v. Spellman*[47] and *Jones v. Padavatton*,[48] reinforcing the presumption that ordinary family arrangements are not contractual.

However, this presumption may be rebutted where the surrounding circumstances demonstrate a clear intention to create legal relations. Nigerian and English courts have recognised three principal situations in which domestic agreements may become legally binding: (a) where the parties are separated or estranged, (b) where the agreement is reduced into writing, and (c) where one or both parties have acted to their detriment by making substantial sacrifices in reliance on the agreement.

In *McGregor v. McGregor*,[49] a separated couple entered into an agreement settling pending assault proceedings, under which the husband undertook to make maintenance payments. The court held the agreement binding, emphasising the parties' separation and the formal nature of

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[46] *Balfour v. Balfour* [1919] 2 KB 571.
[47] *Spellman v. Spellman* [1961] 1 WLR 921.
[48] *Jones v. Padavatton* [1969] 1 WLR 328.
[49] *McGregor v. McGregor* [1888] 21 QBD 424.

the arrangement. Similarly, in *Merritt v. Merritt*,[50] an agreement between estranged spouses concerning property and mortgage payments was enforced, the court holding that the presumption against legal intention no longer applied once the marriage had broken down.

Substantial reliance or sacrifice may also rebut the presumption. In *Parker v. Clark*,[51] the defendants induced their nephew and his wife to sell their house and move in with them on the understanding that the property would eventually be shared. When relations soured, the defendants sought to deny legal liability. The court enforced the agreement, holding that the plaintiffs' sale of their house constituted sufficient evidence of intention to enter into legal relations.

2.4 Factors Vitiating Contract

The principle of freedom of contract presupposes that parties enter contractual relationships voluntarily, with full knowledge and genuine consent. Nigerian contract law, however, recognizes that not all agreements are formed under ideal conditions. In certain circumstances, the apparent consent of a party may be defective due to external pressures, false representations, fundamental misunderstandings, or illegality. In such cases, the law intervenes by recognizing specific factors that vitiate, or invalidate, contractual consent. These factors operate as safeguards against injustice and abuse, ensuring that contracts are not enforced where they are tainted by unfairness or impropriety.

Factors vitiating contract do not operate uniformly. Some render a contract void ab initio, meaning it has no legal existence from the outset, while others merely make the contract voidable at the option of the aggrieved party. The distinction is significant because a void contract is incapable of ratification, whereas a voidable contract remains valid until it is

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[50] *Merritt v. Merritt* [1970] 1 WLR 1211.
[51] *Parker v. Clark* [1960] 1 WLR 286.

rescinded. The principal factors vitiating contracts under Nigerian law include misrepresentation, mistake, duress, undue influence, illegality, and lack of capacity.

2.4.1 Misrepresentation

During contractual negotiations, parties often make statements which influence the decision of the other party to enter into the agreement. Where such statements do not form part of the contractual terms but nonetheless induce the contract, they are regarded as representations. Where a representation is false, it constitutes a misrepresentation, which may vitiate the contract.

A misrepresentation is an untrue statement of fact, made by one party to another, before or at the time of the contract, which induces the other party to enter into the contract.[52] A misrepresentation may give rise to liability in contract, tort, or equity, depending on the circumstances. Where the false statement is incorporated as a term of the contract, an action may lie for breach of contract. Where it merely induces the contract, liability arises under the law of misrepresentation, and in some cases, in the tort of deceit.[53] Misrepresentation may also operate to create a mistake, thereby preventing the formation of a valid contract.

In *Couturier v. Hastie*,[54] the subject matter of the contract had perished unknown to both parties, rendering the agreement void. Similarly, in *Leaf v. International Galleries*,[55] a mistaken belief induced by misrepresentation concerning the authorship of a painting affected the validity of the contract. Misrepresentation is governed by both common law and equity. At common law, damages are recoverable for fraudulent and negligent misrepresentation, while equity traditionally provides the remedy of rescission, particularly for innocent misrepresentation.[56]

What Constitutes Misrepresentation?

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[52] *Udokwu v. Oki* [1978] 8–10 SC 243.
[53] *Derry v. Peek* [1889]14 App Cas 337.
[54] *Couturier v. Hastie* [1856] 5 HL Cas 673.
[55] *Leaf v. International Galleries* [1950] 2 KB 86.
[56] *Redgrave v. Hurd* [1881] 20 Ch D 1.

The essential elements of misrepresentation were clearly articulated in *Udokwu v. Oki*[57]A misrepresentation must be:

a. a false statement of fact;

b. made by one party to the other;

c. relating to an existing or past fact;

d. which induces the other party to enter the contract; and

e. which does not form part of the contractual terms.

As a general rule, statements relating to future intentions do not constitute misrepresentation. However, where the maker of the statement never intended to carry it out, or could not reasonably have held such intention, the statement becomes a misrepresentation of fact. Bowen LJ affirmed this principle in *Edgington v. Fitzmaurice*, stating that a false statement as to a person's state of mind may amount to a misrepresentation of fact.[58]

2.4.2 Mistake

Mistake is one of the recognised vitiating factors capable of depriving a purported contract of its binding force. Where a mistake goes to the root of the agreement, the law may relieve a party of contractual obligations on the basis that genuine consent was absent. However, the legal meaning of mistake is significantly narrower than its everyday usage. Not every erroneous assumption or misjudgment will suffice to invalidate a contract.[59]

In law, mistake refers to circumstances in which one or both parties entered into an agreement under a fundamental misapprehension of fact such that, had the true position been known, the contract would not have been concluded. The classic exposition of this restrictive common law

[57] *Udokwu v. Oki* (supra).
[58] *Edgington v. Fitzmaurice* [1885] 29 Ch D 459.
[59] *Bell v Lever Bros Ltd* [1932] AC 161 (HL).

position was articulated by Lord Atkin in *Bell v Lever Bros Ltd*, where His Lordship illustrated situations that, though apparently mistaken, do not amount to mistake in law.[60]

Thus, where a buyer purchases a horse believing it to be sound, or acquires a picture believed to be the work of an old master, or leases a dwelling house later discovered to be uninhabitable, the buyer is nonetheless bound in the absence of any representation or warranty.[61] In such cases, the law is indifferent to mistakes concerning quality or desirability, so long as the subject matter itself exists and corresponds with what was contracted for. Mistake will only be legally relevant where the subject matter has ceased to exist, never existed, or cannot legally be transferred.[62]

While the common law adopts this restrictive approach in the interest of commercial certainty, equity intervenes to mitigate its harshness. Where one party is labouring under a mistake known to the other, equity may render the agreement void or grant appropriate relief. This equitable principle was demonstrated in *Cundy v Lindsay*, where goods obtained by a rogue through impersonation were recoverable because the contract was void for unilateral mistake as to identity.[63]

2.4.3 Duress

As a general principle of contract law, a party who has freely accepted an offer is bound by the resulting agreement. However, the law recognises certain vitiating factors which may entitle a contracting party to escape what would otherwise be a binding contractual obligation. Among the most significant of these factors are **duress** and **undue influence**, both of which negate the voluntariness essential to contractual consent.[64]

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[60] Ibid.
[61] Ibid.
[62] *Couturier v Hastie* [1856] 5 HL Cas 673.
[63] *Cundy v Lindsay* [1878] 3 App Cas 459 (HL).
[64] Chitty on Contracts (31st edn, Sweet & Maxwell) para 8-001.

Historically, the doctrine of duress at common law was narrowly circumscribed. It was confined primarily to situations where a contract was entered into as a result of threats of physical harm or unlawful imprisonment directed at the contracting party or members of his immediate family.[65] Matters falling outside this narrow scope were traditionally addressed by equity through the doctrine of undue influence.

With the evolution of commercial relations, the ambit of duress has expanded beyond threats to the person to include **duress of goods** and **economic duress**, reflecting the courts' increasing sensitivity to coercive pressure in commercial transactions. As a general rule, duress exerted by a third party does not invalidate a contract unless the party seeking enforcement was complicit in, or aware of, the coercion. This position was illustrated in *Latter v Braddell*,[66] where a housemaid submitted to a medical examination at the insistence of her employer. Although her consent was reluctant and obtained under pressure, the court declined liability on the part of the hospital, holding that the duress did not emanate from it.

2.4.4 Illegal and Void Contracts

Courts may refuse to give effect to certain agreements where the contract involves the commission of a legal wrong or is contrary to public policy. The concept of illegality in contracts is wide and imprecise, often overlapping with the notion of voidness. Anson defines an illegal contract as one which is invalidated either expressly or impliedly by statute or by rules of the common law.[67] Where the law refuses to assist a party whose cause of action is founded upon

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[65] *Barton v Armstrong* [1976] AC 104 (PC).
[66] *Latter v Braddell* [1881] 50 LJQB 448.

[67] Anson, *Law of Contract* (28th edn) 343.

such an agreement, the contract is rendered void and unenforceable. In this sense, illegality and voidness are closely related, though not identical.

An illegal act has been described as an unlawful act forbidden by law, such as the commission of a crime or obstruction of a highway,[68] while a void contract refers to an act or transaction which the law does not recognise as capable of giving rise to enforceable rights.[69]Thus, a contract which is ultra vires is void but not illegal, while a contract founded on immoral consideration is void and devoid of legal effect.

The crucial distinction lies in the consequences. A void contract merely confers no rights or obligations, whereas an illegal contract is usually accompanied by sanctions, whether civil or criminal. A void contract may offend no moral standard but conflict with economic or administrative policy. A clear illustration is section 9(1) of the Sale of Goods Act 1893, which provides that where the price of goods is to be fixed by the valuation of a third party who fails to act, the agreement is void.[70]

The distinction between void and illegal contracts was lucidly articulated by Akanbi JCA (as he then was) in *Thirwell v Oyewunmi*, where his Lordship stated that while the law refuses to assist parties to an illegal contract, a contract declared void by statute is not necessarily illegal unless a penalty is attached.[71] The imposition of a penalty, it was emphasised, is what renders a contract illegal.

2.5 Digital Contracts

The emergence of digital technology has significantly transformed the manner in which contracts are formed, negotiated, and executed. Digital contracts, also referred to as electronic contracts or

[68] Osborn, *Concise Law Dictionary* (10th edn).
[69] ibid.
[70] Sale of Goods Act 1893, s 9(1).

[71] *Thirwell v Oyewunmi* [1990] 4 NWLR (Pt 144) 384.

e-contracts, are agreements concluded through electronic means, such as the internet, email, mobile applications, and automated online platforms. In contemporary commercial practice, digital contracts have become increasingly prevalent in areas such as online banking, e-commerce, telecommunications, and service subscriptions. Nigerian contract law, though rooted in traditional common law principles, has gradually adapted to accommodate this modern mode of contracting.

It is primary knowledge that there is generally no specific form in which a contract may be entered into. The court succinctly puts it this way: "It is elementary law that a contract may be demonstrated by the conduct of the parties as well as by their words and deeds or by the documents that has passed between them."[72] Thus a contract may be entered into either orally, in writing or indeed by conduct. By extension, a contract may also be brought into existence electronically by online communications, a process which we call digital contract. An online or digital contract has been defined as "... a contract created wholly or in part through communications over computer networks."[73] Examples are contracts entered into by email, through websites, via electronic data interchange etc.[74]

2.5.1 Formation of Digital Contracts

Contracts may be formed online where the parties exchange emails which consist of an offer and acceptance Aboki, JCA said that acceptance must be manifested in a positive way either by words, in writing or by electronic means such as email or by conduct.[75] It is also possible for the ingredients of the contract to be partly by exchange of emails or other forms of electronic communications, paper documents, faxes and oral discussions, phone calls and text messages etc.

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[72] U.B.N. Plc. v. Ogunsiji [2013] 1 NWLR (Pt. 1334) 1 at p. 13 para. F.
[73] E. S. Perdue, "Creating Contracts Online" in T. J. Smedinghoff (ed.) Online Law, (New York: Addison-Wesley Developers Press, 1996), p. 79.
[74] Ibid
[75] *Metibaye v. Narelli Int'l Ltd*. [2009] 16 NWLR (Pt. 1167) 326 at p. 348

Contracts may also be formed via websites and similar online services.[76]An example is where a website advertises goods or services for sale and the customer completes and transmits an order form which is displayed on the website. A contract then ensues as soon as the vendor accepts the order, which is the offer.[77] The same rules that apply in cases of display of goods for sale equally apply.[78] This means that the display of goods on websites constitute an invitation to treat.[79] It is not an offer and cannot create a contract when accepted. In BFI Group Corp. v. B.P.E.[80] the Supreme Court clearly stated that:

> An offer must be distinguished from an invitation to treat. Invitation to treat is the first step in negotiations between the parties to a contract. It may or may not lead to a definite offer being made by one of the parties to the negotiation. An invitation to treat is not an offer that can be accepted to lead to an agreement or contract.[81]

The goods which are the subject of the contract will then be physically delivered, or for electronically distributed products like softwares or other digital contents directly to the purchaser's computer from the vendor's computer. In the latter case, there is usually a user licence which governs the customer's right to use the content. It is trite that a contract can be formed by conduct. A contract may come into existence by conduct where the parties have by consistent course of previous dealings understood themselves that in the present situation a contract is presumed to exist by tacit understanding of the parties and is valid in the eyes of the law. [82]This is also possible in online contract. An example is where an electronic content is

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[76] Perdue, note 3 at p. 80.

[77] Ibid.

[78] *Sencho Lopez v. Fedor Food Corp*. [1961]211 NYS (2nd) 953 (New York) US.

[79] UN Convention on the Use of Electronic Communications in International Contracts 2005, Art. 11. 10

[80] [2012] 18 NWLR (Pt. 1332) 209.

[81] Ibid., at p. 246 para. G – H per Adekeye, JSC

[82] *Brogden v. Metropolitan Railway Co* [1877] 2 AC 666.

offered online and a user downloads such content, a contract then comes into being without a formal agreement.[83]

2.5.2 Challenges to the Enforcement of Electronic Contracts in Nigeria

Generally, for any contract, whether oral, paper-based or electronic, to be valid there must be mutuality of purpose and intention and the contracting parties must agree on the terms of the contract.[84] Thus, a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law.[85] A legally enforceable agreement which a contract is, has the following necessary ingredients: offer, acceptance, consideration; intention to create legal relationship and the capacity to contract. It has been repeatedly held that these five necessary requirements must co-exist and a contract cannot, in law, be formed in the absence of any of the five ingredients.[86]

In a digital world, conventional contractual principles are generally disrupted and insufficient. When contracts were developed by the exchange of letters or through offline contact, conventional contractual principles evolved from business practices. Traditional principles of contract presume that most of the contracts take the form of an offer written to a person who accepts, rejects or extends the terms. When a contract is formed electronically, there is no requirement that the contract must be in writing. Even under the general law of contract there is no requirement for traditional, conventional or paper-based contracts to be in writing and the same rule applies to electronic contracts.[87] When a document exists in an electronic environment

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[83] Perdue, above note 3 at p. 80.
[84] *African International Bank Ltd v. Integrated Dimensional System Ltd* [2012] 17 NWLR (Pt 1328) 1
[85] *B.A.T. (Nig.) Ltd v. Ogunseye* [2010] 4 NWLR (Pt. 1194) 343

[86] *Amana suits Hotels Ltd v. PDP* [2006] NWLR (Pt. 1031) 453 at 476; *Obaike v. B.C.C. Plc*. [1997] 10 NWLR (Pt. 525) 435
[87] Christensen, S. et al, Electronic Contract Administration—Legal and Security Issues: Literature Review, Report No 2005-025-A [2006] [17].

without taking a physical form, the issue is whether such an document could be considered a contract in writing as required under the Statute of Frauds.[88]

In reality, the electronic document is a series of numbers stored in the memory of the computer. The content of such an electronic document seen on the computer screen is a translation of the numbers by the computer after the application of coding convention and this ultimately appears as a form of words to the reader on the computer screen. These are understandable to a person only after appropriate coding convention translates these numbers into words. Therefore, an electronic contract by nature has a dual form. There are a series of stored numbers and code and the contract takes visible form as a translation of the numeric code when it is transmitted to a computer screen. It is this dual nature of the electronic contract that has led to the uncertainty as to whether it can be regarded as a contract in writing.[89] It is elementary principle of law that where parties have reduced the terms of a contract between them into writing, they are bound by the contract they voluntarily enter into and cannot act outside the terms and conditions contained in the contract and neither of the parties to a contract can alter or read into a written agreement a term which is not embodied in it.[90] The agreement represents the intention of the parties and stipulates the benefits each should derive from the agreement.[91]

2.6 Theoretical Foundations of Contract Law

The law of the contract is based on a series of theoretical frameworks that discuss why the agreements should be legally enforceable and in what considerations the contractual obligations can be canceled. These theories offer the jurisprudential rationale to the application of contracts as well as identification of the factors that lead to vitiating contractual consent. These theories

[88] Cunliffe, I. and J McLachlan, J. 'International Transactions Involving Financial Information' [1990] Current Developments in Intellectual Property and Trade Practices 19, 19–25
[89] Reed, *C. Digital Information Law*: *Electronic Documents And Requirements of Form* (1996)
[90] *Union Bank of Nigeria Plc v. Ozigi* [1994] 4 NWLR (Pt. 333) 385
[91] *Lagos State Government v. Toluwase* [2013] 1 NWLR (Pt. 1336) 555

are critical to the study of the philosophical foundation of the Nigerian contract law, and the justification of the misrepresentation, mistake, duress and undue influence doctrine.

2.6.1 Classical Theory of Contract

The classical theory of contract is based on liberal economic thinking and individualism that has evolved in the nineteenth century. It is based on the principle of freedom of contract that presupposes that parties are rational individuals who can protect their own interests based on voluntary bargaining. According to this theory, contractual requirements are based on the stated desire of the parties, and the court has the principal role of imposing contracts as provided in the agreements.[92]

The classical contract theory is concerned with certainty and predictability. When all the necessary components of the offer, acceptance, consideration, and intention to form a legal relationship are in place, then a contract is considered as valid and enforceable. Vitiating factors are considered as exception although limited rules that allow non-enforcement only in cases where consent is obviously faulty. This treatment has been observed historically in the courts of Nigeria especially those involving objective intention and strict contractual interpretation.[93]

2.6.2 Promissory Theory

Promissory theory, also known as the most famous Charles Fried, considers contract to be a moral institution entailed by the ethical duty to fulfill promises. Under this theory the contract is considered binding in the sense that one party has freely made a promise that the other party has a right to trust.[94] The reason why contracts should be enforced is therefore not only based on the economic efficiency but also the moral responsibility. Promissory theory is based on consent. An

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[92] P. S. Atiyah, *An Introduction to the Law of Contract* (6th edn, Oxford University Press 2005) 7–10.
[93] *B.F.I. Group Corp v Bureau of Public Enterprises* [2012] 18 NWLR (Pt 1332) 209.

[94] C. Fried, *Contract as Promise* (Harvard University Press 1981) 1–3.

offer that has been caused by cheating, coercion or through duress, is morally invalid and must not be enforced. The misrepresentation and duress are therefore part of vitating factors that make it impossible to succeed with this theory since the promise was not made voluntarily. Promissory principles are implicitly reflected in the Nigerian law of contract since it permits the contract with a defective consent to be rescissioned by remedies e.g. rescission.[95]

2.6.3 Consent Theory

The consent theory is focused on joint and knowledgeable agreement as the basis of a contractual obligation. This theory argues that a contract can be considered valid only in cases when both parties agree with each other freely and fully know the terms of the contract. Contractual enforcement is justified by the quality of the consent and not by the formal adherence to contractual requirements. [96]

Element of vitiation can be found at the centre of the consent theory. Mistake undercuts common understanding, misrepresentation perverts making informed decisions, and duress and excessive influence undermine voluntariness. The Nigerian courts have actively maintained that an authentic consent is essential in the validity of a contract and in the event that the consent is affected, the contract is voidable at the behest of the aggrieved party.[97]

2.6.4 Economic Theory of Contract

Economic theories of contract perceive contracts as the main tool of encouraging efficiency and market exchange. In this view, contracts provide efficient allocation of resources and minimization of transaction costs, which is a factor in the economic development. It must be so enforced as to foster certainty and productive economic performance.[98]

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[95] E. McKendrick, *Contract Law: Text, Cases, and Materials* (8th edn, Oxford University Press 2020) 287.
[96] R. Stone and J. Devenney, *The Modern Law of Contract* (14th edn, Routledge 2020) 19.

[97] *Solanke v Abed* [1962] 1 SCNLR 371.
[98] R. Posner, *Economic Analysis of Law* (9th edn, Wolters Kluwer 2014) 88–90.

Nevertheless, economic theorists are open to the consideration that there are vitiating factors that warrant non-enforcement. Misrepresentation portrays false market information, error causes inefficient transactions and duress causes involuntary transfers of resources. The awareness of vitiating elements in the commercial environment of Nigeria will assist in correcting market failures without losing faith in contractual transactions.[99]

2.6.5 Critical Contract theory

The critical contract theories argue against the belief that contracts are always of free and equal bargaining. According to these theories, contractual relationships are frequently affected by social and economic and structural inequalities in the context of consumer, employment and standard form contracts.[100]

In this view, conventional ideologies of the freedom of contract can conceal exploitation and inequality. Vitiating elements are thus necessary instruments of safeguarding weaker sides as well as advancing substantive justice. Critical theories in Nigeria are applied in favor of wider judicial examination of consent and fairness in the contractual relations because inequality in bargaining power is known to be high in this country.[101]

2.6.6 Legal Realism.

Legal realism also denies that the contract law is law enforcement involving the application of abstract rules in a mechanical manner". Rather, it focuses on judges, social context, and policy factors in influencing contractual outcomes. In the eyes of legal realists, courts tend to utilize the concept of fairness and pragmatism in resolving contract disputes.[102] What is vitiated according to the realist viewpoint, will be a flexible term that allows the court to address the realities of

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[99] S. N. Fekumo, 'Commercial Law Development in Nigeria' [1996] 8 *African Journal of International and Comparative Law* 412.
[100] D. Kennedy, 'Form and Substance in Private Law Adjudication' [1976] 89 *Harvard Law Review* 1685.

[101] I. O. Smith, *Practical Approach to Law of Contract in Nigeria* (2nd edn, Ecowatch Publications 2010) 214
[102] K. N. Llewellyn, *The Bramble Bush* (Oxford University Press 1930) 12.

contractual injustice. It has been observed that in cases where there is an undue influence and unconscionable transaction, Nigerian courts were realistic and could not depend on the mere formal consent, but instead looked at the circumstances around the transaction.[103]

All the theories of contract provide justification as to why the vitiating factors were and are still relevant under the Nigerian law. Classical and economic theories are based on certainty and efficiency whereas promissory, consent, critical theories and realist theories focus on fairness, voluntariness, and social context. The Nigerian contract law represents a blend of these theoretical point of view as agreements are enforced as long as the consent is valid and remedies are enforced in situations where the contractual validity is destroyed by the vitiating factors.[104]

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[103] *Savage v Uwaechia* [1972] 3 SC 214.
[104] B. Markesinis, *The Theory and Practice of Contract Law* (Cambridge University Press 2013) 56.

CHAPTER THREE

LEGAL REGIMES AND ANALYSIS OF FACTORS VITIATING CONTRACTS IN NIGERIA

3.0 Introduction

This chapter will provide a doctrinal analysis of the applicable legal regimes and the specific vitiating factors that affect the validity and enforceability of contracts in Nigeria. The chapter is divided into two parts. In the first part, the study will criticaly examine two of the most significant state-level legislative principal instruments which are; the Law Reform (Contracts) Law of Lagos State 1961 and the Revised Law of Contract of Enugu State 2004. in what follows, the second part will undertake a systematic analysis of the vitiating factors that affect the validity of contracts in Nigeria. Cases decided by Nigerian courts, as well as relevant English authorities adopted by those courts, are examined throughout.

3.1 The Legal Framework Governing Contracts in Nigeria

As early stated in the afore chapters repeatedly, Laws of contract in Nigeria are guided by the received English common law and the doctrines of equity, as preserved by the Interpretation Act.[105] This is as a result of a clearly unified federal statute regarding the general law of contract.However, State governments have, created legislative reforms that domesticate and modernise contract law within their respective jurisdictions. This study will examine two of the most significant legislative reformsas a working template.

[105]The Interpretation Act, Cap I23, Laws of the Federation of Nigeria (LFN) 2004, s 32(1); see also Lawal v G.B. Ollivant (Nig) Ltd [1972] 3 SC 124.

3.1.1 The Law Reform (Contracts) Law of Lagos State 1961

The Law Reform (Contracts) of Lagos State 1961, was one of the first legislative attempts in Nigeria to reform and codify key aspects of the general law of contract. It was later consolidated as 'Chapter L63 of the Laws of Lagos state in the year 2003.[106] This reform was enacted at a time when Lagos state glorified as the Federal capital of Nigeria and commercial hub of the country. The Laws of Lagos are an attempt to create a more solidified legal structure that is progressive and accessible than the inherited English common law could offer in isolation.

Constituted in The Law Reform (Contracts) of Lagos State is broad wide narrative of contractual matters ranging from the requirements for the validity and enforecability of law, 'the legal consequences of misrepresentation, the rules governing mistake, and the doctrines of duress and undue influence'.[107] In addition, the Law brought about reforms on the doctrine of consideration, rendering certain types of contracts and agreements enforceable without consideration where they are contained in a written deed.[108] Also, it provided rules on 'privity of contract, the rights of third parties, the effect of incapacity, and the consequences of illegal contracts'.[109]

Overly, the Law Contracts of Lagos state have been interpreted and applied by Nigerian courts in a numerous of significant decisions, and it continues to serve as the principal statutory reference point for contract law in Lagos State. The provisions of its structure is not merely declaratory of the common law; its informs judicial reasoning on vitiating factors, particularly where the

[106]Law Reform (Contracts) Law of Lagos State, Cap L63, Laws of Lagos State 2003 (originally enacted as the Law Reform (Contracts) Law 1961).

[107]Law Reform (Contracts) Law of Lagos State 1961, s 4.

[108]Ibid, s 5.

[109]Law Reform (Contracts) Law of Lagos State 1961, s 6; Revised Law of Contract of Enugu State 2004, s 6.

common law principles require statutory modification. In many instances, the Law makes a departure from or refines English rules to accommodate local commercial realities.

3.1.2 The Revised Law of Contract of Enugu State 2004

Just like the Laws of Lagos state, the The Revised Law of Contract of Enugu State (RLCE) 2004 came to bear as a major legislative apparatus against the backdrop of the overarching provisions of the Interpretation Act and the received English common law. Although, The Revised Law of Contract of Enugu State (RLCE) 2004 represents a more recent and contemporary legislative attempt to systematise the law of contract in South-Eastern Nigeria.[110]It is pertinent to note however that the provisions of the RLCE 2004 draw substantially from the English common law and relevant English statutory precedents, while also incorporating locally applicable rules.

The RLCE 2004 was enacted as part of a broader law revision exercise undertaken by Enugu State and constitutes a comprehensive codification of contract law principles applicable within that jurisdiction. Its provisions addresses all the recognised vitiating factors in explicit legislative language. It provides definitions, sets out the legal consequences of each vitiating factor, and specifies the remedies available to affected parties. Compared to the Lagos Law of 1961, the Revised Enugu Law is more comprehensive in its treatment of certain doctrines, particularly in relation to mental incapacity and the legal position of corporations.[111] The RLCE also contains provisions on illegality and contracts contrary to public policy, giving legislative clarity to principles that would otherwise rest entirely on common law foundations.

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[110]Revised Law of Contract of Enugu State (RLCE) 2004, enacted pursuant to the Enugu State Laws Revision Exercise.

[111]RLCE 2004, s 20; *Ogwurike v The State* [1964] NMLR 11.

Where the statutes are silent on a particular issue, courts in both jurisdictions routinely resort to common law principles, and in many cases, English authorities are applied by way of analogy or persuasive authority. This hybrid legal framework gives Nigerian contract law its distinctive character: partly codified, partly common law, and informed by equitable principles.[112]

3.1.3 The Legal Reform (Contract) Law of Lagos State 2015

Within the Lagos State jurisdiction, The Legal Reform (Contract) Law of Lagos State 2015 is one of the most recent legislative developments in the statutory regulation of contracts.[113] This reform was enacted to address the eminent limitations of the 1961 Law and to make room for the demands of modern commercial practice. The law operates alongside the received English common law, the doctrines of equity, and the Interpretation Act, and applies to all contracts formed within the jurisdiction regardless of their commercial or personal character.[114]

In relation to vitiating factors, the 2015 Law introduces several reforms of considerable doctrinal significance. On misrepresentation, the Law adopts a tripartite classification into fraudulent, negligent, and innocent misrepresentation, and confers a statutory right to damages in all three categories. It expressly codifies liability for negligent misrepresentation by imposing responsibility on any party who makes a false statement without reasonable grounds for believing it to be true, thereby giving statutory expression to the principle derived from *Hedley Byrne & Co Ltd v Heller & Partners Ltd* and extending its reach into the contractual sphere

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[112]I.E. Sagay, *Nigerian Law of Contract*,(Spectrum books ltd,3rd edn,Sweet and Maxwell,2018.

[113]Legal Reform (Contract) Law of Lagos State 2015, Cap L63A;Laws of Lagos State 2015 (hereinafter 'LRL 2015'); see also Law Reform (Contracts) Law of Lagos State, Cap L63, Laws of Lagos State 2003.

[114]LRL 2015, s 1(1); Interpretation Act, Cap I23, LFN 2004, s 32(1); Lawal v G.B. Ollivant (Nig) Ltd [1972] 3 SC 124.

without the need to establish a pre-existing special relationship in tort.[115] On mistake, the Law provides an accessible statutory test for operative common mistake, and on duress, it expressly recognises economic duress as a vitiating factor, specifying the criteria by which illegitimate pressure is to be assessed.[116]

The treatment of undue influence under the 2015 Law is particularly noteworthy. The Law codifies both actual and presumed undue influence and extends the list of relationships attracting a presumption of influence to include religious advisers and followers, employers and financially dependent employees, and careers and elderly or infirm persons.[117] These additions encompass the commercial and social realities of contemporary Lagos and goes materially beyond the categories recognised at common law. The contract also addresses incapacity and illegality in terms broadly consistent with the common law, whilst introducing a qualified doctrine of severability for illegal contracts and updating the rules on minors to encompass digital goods and services.[118]

The 2015 contract reforms the remedial framework applicable to vitiating factors. It empowers the court to award damages in lieu of rescission where the primary remedy has become unavailable, and provides for the variation of unconscionable terms as an alternative to outright

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[115] LRL 2015, s 7(1)-(3); *Derry v Peek* [1889] 14 App Cas 337 (HL); *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL); *Akintola v Solano* [1986] 2 NWLR (Pt 24) 598.

[116] LRL 2015, s 9(1); *Bell v Lever Brothers Ltd* [1932] AC 161 (HL); RLCE 2004, s 25; LRL 2015, s 11(1)-(2); *Barton v Armstrong* [1976] AC 104 (PC).

[117] LRL 2015, s 12(1)-(3); *Allcard v Skinner* [1887] 36 Ch D 145 (CA); *Inche Noriah v Shaik Allie bin Omar* [1929] AC 127 (PC); *Mubarak v Mubarak* [1964] 1 All NLR 58.

[118] LRL 2015, s 14(1)-(2); *Holman v Johnson* [1775] 1 Cowp 341; *Eke v Ogbonda* [2006] 18 NWLR (Pt 1010) 53; LRL 2015, s 17; *Nash v Inman* [1908] 2 KB 1 (CA); Companies and Allied Matters Act (CAMA) 2020, s 37 and s 43.

avoidance of the contract.[119] Taken together, these provisions establish the 2015 Law as a model of comprehensive state-level legislative reform, and its provisions are referred to throughout the analysis that follows as an illustration of how statutory intervention can meaningfully strengthen the law governing vitiating factors. Its limitation, however, lies in its territorial scope: as a Lagos State enactment, its benefits are not available to contracting parties in other Nigerian states, underscoring the continuing need for harmonised federal legislation.

3.2 Vitiating Factors Under Nigerian Law

When talking of Vitiating factors, we are referring to the general circumstances that undermine the genuineness of consent or the legality of the agreement, thereby affecting its validity . These circumstances which, do not prevent the external appearance of a contract from being formed, can affect its validity and enforceability.Nigerian courts and law recognises the following vitiating factors: mistake, misrepresentation, duress, undue influence, illegality and public policy, and incapacity. Each factor operates differently and attracts distinct legal consequences. Some render a contract void ab initio, while others render it voidable at the election of the innocent party.

3.2.1 Mistake

The doctrine of mistake in contract law concerns situations where one or both parties enter into a contractual relationship under a fundamental misapprehension of fact or law. It is important to observe at the outset that not every mistake will vitiate a contract. The law demands that the

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[119]LRL 2015, s 22; Cheshire, *Fifoot and Furmston's Law of Contract* (17th edn, OUP 2017) 720-730; I.E. Sagay, *Nigerian Law of Contract* (2nd edn, Spectrum Books 2000) 3.

mistake be of sufficient gravity so as to render the agreement fundamentally different from what the parties intended. As the House of Lords confirmed in *Bell v Lever Brothers Ltd*,[120] only a mistake which is fundamental and operative at common law will render a contract void. The court must be satisfied that the mistake goes to the very root of the contract.

3.2.2 Common Mistake

Common mistake arises where both parties share the same erroneous belief concerning a fundamental fact at the time of contracting. This may relate to the existence of the subject matter, its quality, or its ownership. In *Cooper v Phibbs*,[121] the House of Lords set aside an agreement for the lease of a fishery on the ground that, unknown to both parties, the plaintiff already had a legal interest in the property. The court held that the mutual mistake as to ownership rendered the agreement void in equity.

Under Nigerian law, the principle has been applied in cases involving the sale of goods or property that has already perished or been destroyed prior to the contract. The courts have consistently held that where the subject matter of a contract is non-existent at the time of contracting, and both parties were unaware of this fact, no binding contract can arise. The RLCE 2004 codifies this principle, providing that a contract entered into on the basis of a common mistake as to the existence of the subject matter is void.[122]

3.2.3 Mutual Mistake

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[120] [1932] AC 161.

[121][1867] LR 2 HL 149.

[122]*Ogwurike v The State* [1964] NMLR 11; *Benson v Rational Finance Ltd* [1962] WNLR 1.

Mutual mistake arises where the parties are at cross purposes, each labouring under a different misapprehension about the subject matter or the terms of the contract. In such cases, there is no true consensus ad idem, and the contract may accordingly be held void. The courts will apply an objective test to determine whether a reasonable person would have understood the parties to be in agreement. Where objective analysis discloses no agreement, the contract fails for want of consent. Nigerian courts have applied this analysis in property and commercial disputes where the parties were found to have intended entirely different things by the words of their agreement.

3.2.4 Unilateral Mistake

Unilateral mistake, as the name suggests, occurs where only one party is mistaken and the other is aware of the mistake, or in some cases, is responsible for it. The law generally does not regard a unilateral mistake as a sufficient ground to vitiate a contract, unless the other party was aware of the mistake and took advantage of it, or where the mistake relates to the identity of the contracting party. In *Cundy v Lindsay*,[123] the House of Lords held that a contract induced by a fraudulent misrepresentation as to identity was void for unilateral mistake. The principle has been adopted in Nigerian courts in cases involving identity fraud and mistaken contracting parties.

The distinction between common, mutual, and unilateral mistake is of practical significance in determining the remedies available. Common mistake at common law renders a contract void; equity may, however, grant relief by setting aside the contract on terms. Mutual mistake prevents consensus from arising. Unilateral mistake, where operative, can render the contract void, but this is a higher threshold than mere inadvertence. The Law Reform (Contracts) Law of Lagos

[123] [1878] 3 App Cas 459 (HL); *Kings Norton Metal Co Ltd v Edridge, Merrett & Co Ltd* (1897) 14 TLR 98.

State and the RLCE 2004 supplement the common law position on mistake, particularly in relation to written instruments, where they provide for rectification as an equitable remedy.[124]

3.3 Misrepresentation

Misrepresentation is one of the most frequently litigated vitiating factors in Nigerian contract law. It occurs where a party to a contract makes a false statement of existing fact which induces the other party to enter into the contract. The statement must be one of fact, not of law, opinion, or future intention. Three requirements must be satisfied: first, that a false representation of fact was made; second, that the representation induced the contract; and third, that the representee suffered loss or entered into the contract as a result of relying on the false representation.[125]

3.3.1 Fraudulent Misrepresentation

Fraudulent misrepresentation was authoritatively defined by the House of Lords in *Derry v Peek*,[126] as a representation made knowingly, without belief in its truth, or recklessly as to whether it be true or false. This remains the governing standard in Nigerian law. Where a party is induced to enter a contract by a fraudulent misrepresentation, the contract is voidable at the option of the innocent party, who may rescind the contract and additionally claim damages in the tort of deceit. The remedy of damages in deceit is wider than that in contract, as it covers all direct losses flowing from the fraud, regardless of foreseeability.

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[124] RLCE 2004, s 25; Law Reform (Contracts) Law of Lagos State 1961, s 16.

[125] *Leaf v International Galleries* [1950] 2 KB 86; *Smith v Land and House Property Corp* (1884) 28 Ch D 7.

[126] [1889] 14 App Cas 337 (HL).

Nigerian courts have consistently applied the *Derry v Peek* standard in commercial disputes. In *Akintola v Solano*,[127] the Court of Appeal upheld the rescission of a property transaction where the vendor had knowingly misrepresented material facts regarding the title to the land in question. The court affirmed that where fraud is established, equity will intervene to set aside the transaction and restore the parties to their original positions to the extent practicable.

3.3.2 Negligent Misrepresentation

Negligent misrepresentation occupies an intermediate position between fraud and innocent misrepresentation. Following the landmark decision of the House of Lords in *Hedley Byrne & Co Ltd v Heller & Partners Ltd*,[128] the law recognised that a negligent misstatement may give rise to liability in the tort of negligence where a special relationship exists between the parties such that the representee reasonably relied on the representor for information or advice. Nigerian courts have adopted this principle, holding that professional advisers, financial institutions, and other parties in positions of expertise owe a duty of care in making representations to those who rely on them.The Lagos Law of 1961 and the RLCE 2004 both contain provisions dealing with misrepresentation.[129]

3.4 Duress and Undue Influence

Duress

In Nigerian courts, a contract is rendered void by duress if a person was physically threatened or confined to physical. However, the common law has evolved significantly to recognise economic

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[127] [1986] 2 NWLR (Pt 24) 598*; Okonkwo v Ogbogu* [1996] 5 NWLR (Pt 449) 420.

[128] [1964] AC 465 (HL).

[129] RLCE 2004, s 26; Law Reform (Contracts) Law of Lagos State 1961, s 17.

duress as a distinct and actionable form of coercion. In *Universe Tankships Inc of Monrovia v International Transport Workers Federation*,[130] the House of Lords confirmed that illegitimate pressure of an economic nature, which leaves the victim with no practical alternative but to submit, can constitute duress sufficient to vitiate a contract.

Nigerian courts have recognised both physical duress and economic duress as vitiating factors. The courts have emphasised that the pressure must be illegitimate, meaning that it must go beyond hard commercial bargaining.[131] In determining whether duress is established, the courts inquire into whether the victim protested at the time, whether any adequate legal remedy was available, and whether the victim subsequently affirmed the contract upon being freed from the pressure. The RLCE 2004 and the Lagos Law both contain provisions which affirm that a contract procured by duress or compulsion is voidable, and that the aggrieved party may seek rescission within a reasonable time of the removal of the pressure.[132]

3.4.1 Undue Influence

Undue influence differs from duress in that it operates through the abuse of a relationship of trust, confidence, or dominance, rather than through overt threats or coercion. In the English case of *Allcard v Skinner*,[133]it was established that claimant must prove to reasonable doubt and specificity, a level of specific improper conduct, measured under presumed undue influence, and where the nature of the relationship raises a presumption that influence was exercised. This case gives light to the broad contours of the doctrine, distinguishing between actual undue influence.

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[130] [1983] 1 AC 366 (HL);*Barton v Armstrong(1976)AC 104 (PC)*

[131]*Oluwole v Lagos State Development and Property Corporation* [1983] 5 SC 1; *Bello v Eweka* [1981] 1 SC 101.

[132]RLCE 2004, s 29; Law Reform (Contracts) Law of Lagos State 1961, s 20.

[133][1887] 36 Ch D 145 (CA).

Presumed undue influence arises in relationships such as solicitor and client, doctor and patient, religious adviser and follower, and parent and child. In *Inche Noriah v Shaik Allie bin Omar*,[134] the Privy Council held that a gift of substantially all of a donor's property to her nephew, who had managed her affairs, was voidable for undue influence. Nigerian courts have applied this principle frequently, particularly in cases involving elderly women who transfer property to relatives or associates who manage their affairs. In *Mubarak v Mubarak*,[135] the court found that the presumption of undue influence had not been rebutted, and accordingly set aside the impugned transaction.

The RLCE 2004 provides statutory reinforcement for the equitable doctrine of undue influence. It specifies that where a party to a contract proves that the other party occupied a position of dominance over them, and that the contract was manifestly disadvantageous, a presumption of undue influence arises which the dominant party must rebut by demonstrating that the transaction was entered into after full, free, and informed consent, preferably evidenced by independent legal advice.[136]

3.5 Illegality and Public Policy

`The doctrine of illegality reflects the principle that courts will not enforce contracts which are contrary to law or public policy. As Mansfield CJ observed in *Holman v Johnson*,[137] no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. The doctrine

[134] [1929] AC 127 (PC); *Etim v Ekong* [1978] 1 LRN 14.

[135] [1964] 1 All NLR 58; *Ezeabasili v Ezeabasili* [2007] 12 NWLR (Pt 1048) 309.

[136]RLCE 2004, s 29; Law Reform (Contracts) Law of Lagos State 1961, s 20.

[137][1775] 1 Cowp 341RLCE 2004, s 35; Law Reform (Contracts) Law of Lagos State 1961, s 26.

in Nigerian law encompasses two broad categories: contracts that are illegal by statute, and contracts that are void at common law as being contrary to public policy.

Contracts illegal by statute are those expressly or impliedly prohibited by legislation. Where a statute prohibits a particular type of transaction, any contract formed in breach of that prohibition is void and unenforceable. Nigerian statutes in areas such as banking, foreign exchange transactions, and professional licensing frequently render contracts made in contravention of their provisions unenforceable. Contracts to commit criminal offences, such as an agreement to carry out a robbery or to facilitate a fraudulent scheme, are equally void.[138]

Contracts contrary to public policy cover a wider range of agreements which, while not necessarily prohibited by any specific statute, are considered inimical to the interests of society. These include contracts in restraint of trade, contracts that tend to corrupt public officials, contracts that undermine the administration of justice, and contracts to deceive third parties. Nigerian courts have consistently refused to enforce contracts tainted by illegality, regardless of whether the parties have performed part of their obligations.[139]

The consequence of illegality depends on whether the contract is entirely illegal or only partially so. Where the illegal element is severable from the rest of the contract, the courts may enforce the lawful portion. However, where the illegality permeates the entire transaction, the contract is void in its entirety and neither party can enforce it.

3.6 Incapacity to Contract

[138] *Everett v Williams* [1725] (The Highwaymen's Case); *Foster v Driscoll* [1929] 1 KB 470 (CA).

[139] *Eke v Ogbonda* [2006] 18 NWLR (Pt 1010) 53; *Aliyu v Okulaja*[2001] 8 NWLR (Pt 714) 223.

The principals of the law of contract are precipitated on the premise that parties going into an agreement must poses the legal capacity to bind themselves. Where a party lacks the requisite legal or mental capacity to contract, the resulting agreement may be void or voidable depending on the nature and degree of the incapacity. Nigerian law identifies three principal categories of persons whose contractual capacity is limited or absent: minors (infants), persons of unsound mind, and intoxicated persons. Corporations constitute a separate category whose capacity is defined and limited by their constitutive documents and governing legislation.

3.6.1 Minors (Infants)

In Nigerian law, a minor is a person who has not attained the age of eighteen years. The general rule is that contracts entered into by minors are voidable at the option of the minor. The law takes this position in order to protect minors from the consequences of their immaturity and inexperience. The Infants Relief Act 1874, as received into Nigerian law, renders certain contracts absolutely void when made with a minor, while others are voidable.[140]

Contracts for necessaries are an important exception to the general rule. A minor is liable to pay a reasonable price for goods or services which are necessaries suited to the minor's condition in life and actual requirements at the time of supply. In *Nash v Inman*,[141] the court held that a tailor who supplied fancy waistcoats to a Cambridge undergraduate could not recover, as he failed to show that the waistcoats were necessaries having regard to the minor's existing supply. The principle has been applied in Nigeria to prevent exploitation of the exception. Necessaries are not

[140]Infants Relief Act 1874 (UK) as received into Nigerian law; RLCE 2004, s 40; Law Reform (Contracts) Law of Lagos State 1961, s 30.

[141] [1908] 2 KB 1 (CA).

limited to bare essentials; they may include items appropriate to the minor's station in life, but they must be genuinely needed at the time of the transaction.

Contracts that are beneficial to the minor, such as apprenticeship contracts or contracts of service that are on the whole advantageous, may also bind the minor. However, purely executory contracts, contracts for the supply of non-necessary goods, and contracts that impose onerous obligations on the minor without corresponding benefit are unenforceable against the minor. Upon attaining majority, a minor may ratify a previously voidable contract, thereby rendering it binding. Such ratification must be express or clearly implied from conduct.[142]

3.6.2 Persons of Unsound Mind

The contractual capacity of persons of unsound mind is addressed under both the common law and the relevant state statutes. The general rule at common law, as established in *Imperial Loan Co v Stone*,[143] is that a contract made by a person of unsound mind is voidable, not void, unless the other party was aware of the mental incapacity at the time of contracting. Where the other party knew of the incapacity and nevertheless sought to take advantage of it, equity will readily set aside the transaction.

The RLCE 2004 provides that a person of unsound mind who lacked the mental capacity to understand the nature and effect of the transaction at the time of contracting may avoid the contract on grounds of incapacity, unless the subject matter of the contract consisted of necessaries. The same rules regarding necessaries that apply to minors apply, with appropriate

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[142] Cheshire, *Fifoot and Furmston's Law of Cont*ract (17th edn, OUP 2017) 498; Sagay (n 4) 410.

[143] [1892] 1 QB 599 (CA).

modification, to persons of unsound mind.[144] Where a person has been adjudicated mentally incapacitated by a court and placed under guardianship, any contract entered into by such a person is void, as the court order effectively removes their capacity to contract.

Nigerian courts have dealt with capacity challenges in a number of family law and property cases where transactions have been impugned on grounds of mental incapacity. The courts have consistently emphasised that the burden of proving incapacity lies on the party asserting it, and that mere eccentricity or intellectual weakness is insufficient to establish unsoundness of mind for the purposes of the law of contract. The incapacity must be such as to prevent the person from understanding the nature of the transaction.

3.6.3 Intoxicated Persons

The law treats intoxicated persons in a manner broadly analogous to persons of unsound mind. A contract entered into by a person who, by reason of intoxication, was incapable of understanding the nature of the transaction at the relevant time is voidable at the option of that person.[145] The law requires proof that the intoxication was of such a degree as to deprive the person of the ability to understand what they were doing, and additionally, that the other party was aware of the intoxication. Where these conditions are satisfied, the intoxicated party may avoid the contract upon regaining sobriety, provided they act promptly and before affirming the transaction.

The rationale for protecting intoxicated persons is that genuine consent cannot be attributed to a person whose mental faculties have been impaired to the point where they cannot appreciate the transaction they are entering into. However, the courts approach such claims with caution,

[144]RLCE 2004, s 37; see also *Matthews v Baxter* [1873] LR 8 Ex 132; *Gore v Gibson* [1845] 13 M & W 623.

[145]Ibid.

recognising the ease with which intoxication might be feigned or exaggerated. In practice, Nigerian courts require cogent evidence of incapacitating intoxication, and will not readily accept bare assertions of drunkenness as a defence to contractual liability.

3.7 Corporations

The contractual capacity of corporations in Nigeria is governed principally by the Companies and Allied Matters Act (CAMA) 2020, which regulates the formation, constitution, and powers of corporate bodies.[146] Unlike natural persons, a corporation derives its legal personality and capacity entirely from the law, and it is therefore capable of entering into contracts only to the extent permitted by its constitutive documents and the legislation under which it is incorporated.

The ultra vires doctrine historically restricted a company to acts falling within its stated objects clause. Acts beyond those objects were void and incapable of ratification by the shareholders. The House of Lords affirmed this rule in *Ashbury Railway Carriage and Iron Co v Riche*,[147] holding that a contract made by a company beyond its memorandum of association was void. While subsequent legislative reforms in England have largely abolished the operation of the ultra vires rule in relation to third parties acting in good faith, CAMA 2020 in Nigeria has introduced significant modifications. Under CAMA 2020, a company is now empowered to carry on any lawful business, and the capacity of a company is not limited by its constitution.[148]

However, internal irregularities in corporate contracting remain a concern. Where a contract is entered into by an officer without the requisite authority, questions of actual authority, apparent

[146]Companies and Allied Matters Act (CAMA) 2020, s 37 and s 43; *Salomon v Salomon & Co* [1897] AC 22 (HL).

[147][1875] LR 7 HL 653; *A-G v Great Eastern Railway* [1880] 5 App Cas 473CAMA 2020, s 43(1).

[148]*Trenchard v Federal Government of Nigeria* [1990] 4 NWLR (Pt 141) 52; CAMA 2020, s 43.

authority, and the indoor management rule become relevant. Nigerian courts have applied the rule in *Royal British Bank v Turquand*, which protects a third party who contracts with a company in good faith, without notice of internal procedural irregularities. CAMA 2020 further reinforces the position of bona fide third parties, providing that a company is bound by the acts of its officers acting within their apparent authority.[149]

[149]RLCE 2004, s 42; CAMA 2020, s 37(1).

[39][1856] 6 E&B 327

CHAPTER FOUR

ISSUES, CHALLENGES AND REFORMS IN THE LAW OF VITIATING FACTORS IN NIGERIA

4.0 Introduction

This chapter undertakes a critical examination of the issues and challenges that attend the law and practice of vitiating factors of contractual obligation in Nigeria. These include:doctrinal ambiguity, institutional deficiencies within the justice system, the inadequacy of existing legislative frameworks, the vulnerability of certain classes of contracting parties, and the emergence of new forms of commercial dealing that existing rules were never designed to regulate. The study proceeds to propose a range of reforms directed at addressing identified lacunae and strengthening the overall integrity of Nigerian contract law.

4.1 Judicial and Regulatory Approaches to Vitiating Factors; The Role of the Judiciary

The Nigerian judiciary sits at the centre as the primary interpreter of both the statutory provisions and the inherited English common law principles. The courts are principal in the validation, application and development of the vitiating factors of a contract. They are vested with the responsibility of determining when a contract is vitiated, enforeceable, what remedies are appropriate, and how existing doctrines should be appropriated to meet evolving commercial and social realities. The role of the judiciary in this is not merely declaratory; "through the process of judicial reasoning and incremental development of the law, the courts have in many instances expanded or refined the scope of recognised vitiating factors beyond what the inherited common law strictly required".[150]

Despite the fact that the Court of Appeal and the Supreme Court are the appellate courts in Nigeria, numerous contract decisions have reiterated the requirements for establishing vitiating factors and have affirmed the remedies available to affected parties; most times their decisions have generally followed the path of English common law precedents. Although on most occasions, the courts have often departed from the English position where local circumstances or justice demanded a different outcome.[151]However, there exist evidence of uneven judicial development especial in areas such as;"the distinction between rescission and damages in cases of misrepresentation, or the precise threshold for economic duress where there remains a paucity of authoritative Nigerian decisions, leading to excessive reliance on foreign authorities and a degree of unpredictability in outcomes".[152]

Another evident challenge is the delay in the resolution of contractual disputes at the judicial level. In many commercial hubs and big cities in the country such as Lagos, Kano, Abuja, Enugu and Port Harcourt, years of congested court dockers have piled up resulting to delay in final determination. This delay is particularly prejudicial in cases involving vitiating factors, since the availability of rescission as a remedy depends on the innocent party acting promptly and before the contract has been affirmed or substantially performed. Where judicial delay prevents timely

[150]I.E. Sagay, *Nigerian Law of Contract* (2nd edn, Spectrum Books 2000) 201; *Bello v Eweka* [1981] 1 SC 101.

[151]*Cehave NV v Bremer Handelsgesellschaft mbH* (The Hansa Nord) [1976] QB 44 (CA); applied in Nigeria in *Owoniboys Technical Services Ltd v John Holt Ltd* [1991] 6 NWLR (Pt 199) 550.

[152] [2006] 18 NWLR (Pt 1010) 53; *Okonkwo v Ogbogu* [1996] 5 NWLR (Pt 449) 420.

adjudication, the innocent party may find that rescission has become unavailable through the passage of time, leaving only the inadequate remedy of damages.[153]

4.1.1 The Role of Regulatory Bodies

Beyond the courts, regulatory bodies play an increasingly important role in policing contracts and protecting parties from the consequences of vitiating factors, particularly in specialised sectors of the economy. The Central Bank of Nigeria (CBN) exercises supervisory authority over financial contracts and has issued directives governing the conduct of banks and financial institutions in their dealings with customers, including requirements relating to disclosure, transparency, and fair dealing that are directly relevant to the prevention of misrepresentation and undue influence.[154]

The Federal Competition and Consumer Protection Commission (FCCPC), established under the Federal Competition and Consumer Protection Act 2018, has an explicit mandate to protect consumers from unfair, unconscionable, and deceptive trade practices.[155] The Commission is empowered to investigate and sanction conduct that falls within the ambit of what would traditionally be addressed by the doctrine of misrepresentation or undue influence in private contract law. In this sense, regulatory intervention through administrative channels supplements and, in some cases, provides a more accessible avenue of redress than litigation before the civil courts.[156]

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[153] *Aliyu v Okulaja* [2001] 8 NWLR (Pt 714) 223; *Ogwurike v The State* [1964] NMLR 11.

[154] Nigeria Deposit Insurance Corporation Act, Cap N102, LFN 2004; Central Bank of Nigeria Act, Cap C4, LFN 2004.

[155] Federal Competition and Consumer Protection Act 2018 (FCCPA).

[156] FCCPA 2018, ss 114–130; see also the Securities and Exchange Commission Rules 2013, r 420.

The Securities and Exchange Commission (SEC) similarly exercises regulatory oversight over securities transactions, requiring issuers and intermediaries to provide accurate and complete disclosure of material information, failure of which may give rise to regulatory sanctions as well as private civil liability for misrepresentation. The presence of these regulatory bodies such as the 'Nigerian Communications Commission (NCC)' represents a significant development in the governance of contractual relationships in Nigeria, though their effect efforts, there has been limited capacity constraints, funding inadequacies, and challenges of enforcement.[157]

4.2 Clarifying the Scope of Vitiating Elements in Nigerian Law

One of the underlying issues surrounding the application of vitiating factors is the uncertainty about the scope, requirements and limitation of each vitiating doctrine. This issue arises out of the different overlapping categories, fluctuating articulations of the applicable tests, and the incomplete receptions of the English common law into Nigerian jurisprudence developments. Each vitiating factor presents its own particular area of ambiguity, and a focused analysis of these ambiguities is necessary as a precondition for reform.

4.2.1 The Scope of Mistake

The doctrine of mistake in Nigerian law is characterised by considerable doctrinal complexity, much of which derives from the tension between the common law position as articulated in *Bell v Lever Brothers Ltd* and the equitable approach pioneered in *Solle v Butcher*.[158] At common law, only a mistake that is fundamental and operative will render a contract void. The threshold is

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[158][1932] AC 161 (HL);[1950] 1 KB 671; *Great Peace Shipping Ltd v Tsavliris Salvage (International)* Ltd [2003] QB 679 (CA).

high, and the courts have repeatedly declined to grant relief for mistakes that, while significant, do not go to the root of the contract. This uncertainty is detrimental to parties seeking to rely on mistake as a vitiating factor and underscores the need for legislative clarification of the requirements and remedies for operative mistake in Nigerian contract law.

4.2.2 The Scope of Misrepresentation

The law of misrepresentation in Nigeria similarly suffers from gaps and ambiguities that have not been fully resolved by the courts or legislature. The principal areas of uncertainty include the distinction between a statement of fact and a statement of opinion, the requirements of inducement and reliance, and the remedies available in different categories of misrepresentation. While the general principles derived from *Derry v Peek* and *Hedley Byrne* are accepted in Nigerian law,[159] the courts have not always applied them consistently, and there is no statutory provision in Nigerian law that directly mirrors the comprehensive reforming effect of the Misrepresentation Act 1967 of England.[160]

The Lagos Law of 1961 and the RLCE 2004 contain relevant provisions on misrepresentation,[161] but these do not address all the difficulties that arise in practice. For instance, under the Nigerian courts, there is not clear settlement as to whether the question of whether silence can be considered to constitute misrepresentation in commercial dealings beyond contracts. Also, the availability of damages for negligent misrepresentation under a statutory cause of action (as

[159][1889] 14 App Cas 337 (HL);[1964] AC 465 (HL).

[160]Misrepresentation Act 1967 (UK), s 2(1); see Cheshire, Fifoot and Furmston's Law of Contract (17th edn, OUP 2017) 312.

[161]Revised Law of Contract of Enugu State (RLCE) 2004, ss 25–26; Law Reform (Contracts) Law of Lagos State 1961, ss 16–17.

opposed to in tort), and the extent to which misrepresentation by conduct is actionable, and requires clearer legislative articulation.

4.2.3 The Scope of Duress and Undue Influence

One of the issues of duress under the Nigerian law remains ill-defined contours of the doctrine. Although well defined under the English common law, the precise contours of duress have remained under-explained, and one of such areas is the boundary between legitimate commercial pressure and illegitimate economic duress.[162]there is no laid down criteria for establishing these sets of duress as well as the absence of any practical alternative for the victim.

On the other hand, there has been extensive development in the area of undue influence through judicial decisions. What is lacking in Nigerian courts are the eminent categories of relationships that give rise to a presumption of undue influence. The English law position, developed through cases such as *Allcard v Skinner*[163] and the line of authorities culminating in *Royal Bank of Scotland Plc v Etridge (No 2)*,[164] provides a more sophisticated framework than currently exists in Nigerian law. The adoption of a statutory framework modelled on these developments, adapted to reflect Nigerian social and commercial relationships, would greatly enhance the clarity and predictability of the law.

4.3 Codifying the Doctrine of Unconscionability

[162]*Barton v Armstrong* [1976] AC 104 (PC); *Universe Tankships Inc of Monrovia v International Transport Workers Federation* [1983] 1 AC 366 (HL); RLCE 2004, s 29.

[163] [1887] 36 Ch D 145 (CA)

[164]*Lloyd's Bank Ltd v Bundy* [1975] QB 326 (CA) per Lord Denning MR; see also *Louth v Diprose* [1992] 175 CLR 621 (HCA).

The doctrine of unconscionability represents one of the most significant developments in the common law of contract in the second half of the twentieth century. At its core, the doctrine empowers courts to refuse to enforce, or to modify, contracts that are so one-sided or oppressive as to shock the conscience of the court, particularly where one party has exploited a position of superior bargaining power or has taken advantage of the vulnerability of the other party. Whilst English equity has long possessed jurisdiction to set aside unconscionable bargains, the doctrine has been most comprehensively developed in jurisdictions such as Australia, Canada, and the United States, where it has been given both judicial and statutory expression.[165]

In Nigeria, there is no freestanding statutory doctrine of unconscionability. The equitable jurisdiction to set aside unconscionable transactions exists in principle, but it is poorly defined and inconsistently applied. Courts have occasionally invoked notions of conscience and equity in setting aside transactions involving vulnerable parties, but they have done so primarily through the established categories of undue influence and duress, rather than through an independent doctrine of unconscionability.[166] This limits the court's ability to intervene in cases where a transaction is manifestly unfair but does not fit neatly within the existing categories of vitiating factors.

The case for codifying a doctrine of unconscionability in Nigerian contract law is compelling. Lord Denning MR's formulation in *Lloyd's Bank Ltd v Bundy* of a general principle of inequality of bargaining power, though rejected by the House of Lords in *Photo Production Ltd v Securicor*

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[165]Australian Consumer Law 2010 (Cth), s 20–22; Unfair Contract Terms Act 1977 (UK), s 2; Consumer Rights Act 2015 (UK), s 62.

[166]Federal Competition and Consumer Protection Act 2018, s 127; see also Allcard v Skinner [1887] 36 Ch D 145 (CA).

Transport Ltd,[167] reflects a legitimate concern that the law should respond to systematic power imbalances in contracting. In Australia, the High Court has developed the doctrine of unconscientious dealing as an independent equitable doctrine, distinct from undue influence and duress, applicable wherever one party takes advantage of a special disadvantage suffered by the other.[168]

A codified doctrine of unconscionability tailored to Nigerian circumstances would need to address several design questions: the categories of disadvantage that trigger its operation, the standard of conduct required to constitute unconscionability on the part of the stronger party, the remedies available (rescission, variation, or refusal of enforcement), and the relationship of the doctrine to the existing categories of undue influence and duress. International models, including the Australian Consumer Law and the Uniform Commercial Code of the United States, provide useful comparative reference points.[169] The Nigerian Law Reform Commission and the National Institute for Advanced Legal Studies (NIALS) have both identified the reform of the law on unfair terms and unconscionable conduct as a priority area for legislative attention.[170]

In the interim, the courts should be encouraged to develop the existing equitable jurisdiction more robustly in appropriate cases, making explicit use of the language of unconscionability where a transaction is one-sided, exploitative, or manifestly contrary to good conscience, rather than straining to bring such cases within the established categories of undue influence or economic duress. A more expansive judicial approach would not only provide justice in

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[167]Lord Denning MR in *Lloyd's Bank Ltd v Bun*dy [1975] QB 326, 339; see further *Patrick Atiyah, Essays on Contract* (OUP 1986) ch 10.

[168] *Commercial Bank of Australia Ltd v Amadio* [1983] HCA 14.

[169] N. Enonchong Duress, *Undue Influence and Unconscionable Dealing* (Sweet & Maxwell).

[170]Commercial Law Reform Committee (Nigeria), Working Paper on Unfair Contract Terms (2019); Nigerian Institute of Advanced Legal Studies (NIALS) Policy Brief No 3 [2021].

individual cases but would also lay the doctrinal foundations for the eventual legislative codification of the doctrine.

4.4 Strengthening Protections for Vulnerable Parties

4.4.1 Minors and Persons of Unsound Mind

A recurring theme in the analysis of vitiating factors in Nigerian law is the inadequate protection of vulnerable contracting parties. The existing law addresses the needs of some of these groups through established doctrines of incapacity, undue influence, and misrepresentation, but the protection offered is frequently incomplete and poorly enforced in practice.[171]

As examined in the previous chapter, the set of rules governing the contractual capacity of minors and persons of unsound mind provides to a greater extent a degree of protection admits practical limitations. There is a pressing need for a dedicated piece of Nigerian legislation on minors' contracts that takes account of modern commercial realities, specifies with greater precision the categories of beneficial contracts enforceable against a minor, and provides appropriate remedies for both parties.[172]

The position of persons of unsound mind is similarly inadequate. The reliance on the common law rule in *Imperial Loan Co v Stone*[173], which makes the contract merely voidable and places the burden of proving the other party's knowledge of the incapacity on the person of unsound mind, is particularly problematic in a context where mental health awareness is limited and medical

[171] *Nash v Inman* [1908] 2 KB 1 (CA); *Imperial Loan Co v Stone* [1892] 1 QB 599 (CA); Infants Relief Act 1874 as received into Nigerian law.

[172] *Imperial Loan Co v Stone* [1892] 1 QB 599 (CA)
[173] [1892] 1 QB 599 (CA)

documentation of incapacity may be difficult to obtain. Legislative reform should consider reversing the burden of proof in cases involving persons with certified mental disorders, or requiring that certain classes of significant transactions entered into by such persons be accompanied by a capacity assessment or be countersigned by a guardian or next of kin.

4.4.2 Illiterate and Economically Vulnerable Parties

A significant proportion of the Nigerian population lacks formal education and is functionally illiterate in the English language in which most commercial contracts are drafted. The Illiterates Protection Act remains the primary legal instrument protecting illiterate persons in contractual dealings, but its provisions are frequently flouted in practice, and the consequences of non-compliance are inadequately enforced by the courts.[174] Traders, tenants, agricultural smallholders, and domestic workers routinely sign contracts whose contents they do not understand, and which have been misrepresented or incompletely explained to them by the other party or their agents.

Reform in this area should operate on multiple levels. First, the Illiterates Protection Act should be strengthened by prescribing mandatory disclosure requirements for contracts involving illiterate parties, including a requirement that the contents of any contract be explained in the party's own language by a qualified and independent person. Second, a doctrine of plain language obligation should be developed, requiring standard form contracts in consumer and employment contexts to be drafted in clear, simple, and accessible terms. Third, the courts should be empowered to set aside or vary contracts on grounds of procedural unconscionability

[174] *Inche Noriah v Shaik Allie bin Omar* [1929] AC 127 (PC); *Etim v Ekong* [1978] 1 LRN 14.

where an illiterate or educationally disadvantaged party was not adequately informed of the nature and consequences of the transaction.[175]

4.4.3 Women and Gender-Based Vulnerability

Women in Nigeria are disproportionately represented among those who suffer the adverse consequences of vitiating factors, particularly undue influence and unconscionable dealing, in the context of property transactions, marriage settlements, and family financial arrangements. Cases involving the transfer of property by a wife to a husband, by an elderly woman to a male relative, or by a female congregant to a religious leader, recur with frequency in the case reports.[176] The structural power imbalances that give rise to such transactions are often deeply embedded in social and cultural norms that the law has been slow to confront.

A gender-sensitive approach to the law of undue influence would recognise that the categories of relationship giving rise to a presumption of influence must be understood in their social context, and must encompass the relationships that characterise the lives of Nigerian women. This may require legislative or judicial extension of the presumed undue influence categories to include certain types of marital, familial, and religious relationships that are not presently covered. The Federal Competition and Consumer Protection Act 2018 contains provisions on unfair practices that have potential relevance in this context, but they have not yet been developed through litigation to address gender-specific patterns of unconscionable dealing.

4.5 Promoting Access to Justice in Contract Disputes

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[175] Sagay (n 1) 411; T.O. Dada, *General Principles of Law* (2nd edn, T.O. Dada & Co 2006) 112.

[176] *Mubarak v Mubarak* [1964] 1 All NLR 58; *Ezeabasili v Ezeabasili* [2007] 12 NWLR (Pt 1048) 309.

The substantive law of vitiating factors, however well-developed, can only fulfil its protective function if the legal system through which it is enforced is accessible to those who need to invoke it. Access to justice in contract disputes in Nigeria is severely constrained by a combination of factors, including the cost of litigation, the delay in judicial proceedings, geographical barriers to court access, the complexity of the law, and the limited availability of legal aid. These constraints fall most heavily on the categories of person — minors, persons of unsound mind, the illiterate, the poor, and the economically vulnerable — whom the law of vitiating factors is primarily designed to protect.[177]

4.5.1 Legal Aid and Public Interest Litigation

The Legal Aid Act, as revised and consolidated, provides for the provision of free legal services to indigent persons in certain categories of proceedings. However, the scope of legal aid in Nigeria is severely limited in practice. The Legal Aid Council is chronically underfunded, its personnel are insufficient for the scale of need, and its coverage does not extend to many of the contractual disputes in which vitiating factors are most commonly raised. Reform should include a substantial increase in funding for the Legal Aid Council, an extension of its mandate to cover civil contract disputes, and the development of pro bono obligations for legal practitioners.

Public interest litigation has played an important supplementary role in expanding access to justice in Nigeria, particularly in constitutional and human rights matters.[178] The development of a similar tradition of public interest litigation in contract law, supported by non-governmental organisations and civil society bodies, could provide a mechanism for challenging systemic

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[177] Legal Aid Act, Cap L9, LFN 2004; Legal Aid Council of Nigeria (Establishment) Act 2011.

[178] *Gani Fawehinmi v Inspector General of Police* [2002] 7 NWLR (Pt 767) 606; *Fawehinmi v Abacha* [1996] 9 NWLR (Pt 475) 710.

patterns of unconscionable contracting, such as the widespread use of unfair standard form contracts in the banking, telecommunications, and insurance sectors. The courts have, in some cases, been willing to entertain such challenges, and this willingness should be further encouraged.

4.5.2 Alternative Dispute Resolution

Alternative dispute resolution (ADR) mechanisms, including mediation, conciliation, and arbitration, offer significant potential for improving access to justice in contract disputes. They are generally faster, cheaper, and less adversarial than litigation, and they allow parties to participate meaningfully in the resolution of their disputes regardless of the technical complexity of the legal issues involved. The Arbitration and Mediation Act 2023, which has modernised and consolidated the legal framework for arbitration and mediation in Nigeria, provides an important legislative foundation for the expansion of ADR.[179]

The Lagos State Multi-Door Courthouse, established under the Lagos State Multi-Door Courthouse (Establishment) Law 2007, is a noteworthy institutional development, providing litigants with access to a range of dispute resolution processes under one roof.[180] Similar institutions should be established in other Nigerian states, with specific capacity to handle consumer contract disputes and disputes involving vulnerable parties. According to the Arbitration and Mediation Act 2023, it is believed that the "integration of ADR mechanisms into the resolution of disputes involving vitiating factors would reduce the burden on the courts,

[179]Arbitration and Mediation Act 2023 (Nigeria), ss 1–3; see also *Kano State Urban Development Board v Fanz Construction Co Ltd* [1990] 4 NWLR (Pt 142) 1.

[180]Lagos State Multi-Door Courthouse (Establishment) Law 2007; Arbitration and Conciliation Act, Cap A18, LFN 2004 (now superseded by the Arbitration and Mediation Act 2023).

expedite the availability of remedies, and ensure that the law's protective function is not defeated by the practical obstacles that have historically made litigation inaccessible to many Nigerians”.[181]

4.6 Challenges of Enforcing Contract Agreements and Proposed Reforms

4.6.1 Enforcement Challenges

The enforcement of contractual rights in Nigeria is beset by a range of systemic challenges that significantly diminish the practical value of even the most clearly established legal rights. The multiple stages of interlocutory proceedings that Nigerian procedural law permits, combined with the frequent adjournment of cases for reasons unrelated to the merits, result in disputes routinely remaining unresolved for years after they arise. This is particularly damaging in the context of vitiating factors, since the equitable remedy of rescission is subject to a requirement of promptness, and delay on the part of the innocent party, even where the delay is attributable to the congestion of the court system rather than to any lack of diligence, may be treated as affirmation of the contract.[182]

The enforcement of judgments obtained in contract cases is a further area of difficulty. Even where a party succeeds in obtaining a judgment, the practical realisation of the judgment may be frustrated by the judgment debtor's dissipation or concealment of assets, the reluctance of enforcement officers to execute against certain classes of defendants, or the procedural

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[181]Arbitration and Mediation Act 2023, ss 55–70 (mediation provisions); Multi-Door Courthouse Scheme, Lagos State.

[182] E.O Oloyede, *Nigerian law of Contract* (Sweet & Maxwell).

complexity of enforcement proceedings. The reform of enforcement mechanisms is thus an integral part of any comprehensive strategy for strengthening the law of vitiating factors.[183]

4.6.2 The Challenge of Standard Form Contracts and Unfair Terms

Popularly known as the take it or take-it-or-leave-it contracts, standard form presents a particular challenge for the law of vitiating factors especially in the Nigerian economy. These contracts usually contain terms that are ambiguous designed specially to exclude liability for conduct that would otherwise constitute misrepresentation or breach of duty. There is inadequate for weaker parties given that the weaker party's ostensible consent to the standard forms cannot be regarded as a meaningful exercise of his/her contractual freedom.[184]

Provisions have been made by the Federal Competition and Consumer Protection Act 2018 on unfair contract regarding consumer transactions,[185] but these provisions however are yet to be wholesomely incorporated or well understood by the courts and practitioners. Hence there is a need for more specific and detailed legislative guidance on the types of terms that are presumptively unfair in consumer contracts, the effect of unfairness on the validity of the affected term and the contract as a whole, and the procedural mechanisms through which unfairness may be established and remedied. Legislative models such as the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015 of England, as well as the Australian Consumer Law, provide instructive comparative reference points.[186]

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[183] Ibid.
[184] *Dunlop Pneumatic Tyre Co v New Garage and Motor Co Ltd* [1915] AC 79 (HL); applied in *Benson v Rational Finance Ltd* [1962] WNLR 1.

[185] FCCPA 2018, ss 110–112; National Agency for Food and Drug Administration and Control (NAFDAC) Act, Cap N1, LFN 2004.

4.6.3 The Challenge of Electronic and Digital Contracts

The growth of e-commerce which has given rise to digital contracting in Nigeria has created new challenges for the law of vitiating factors given that Nigerian legislature is not equipped enough to tackle these new challenges. With no Electronic Transactions Act, Nigeria lacks the tools and modalities to accurate address the specific requirements for the formation, validity, and enforcement of electronic contracts.[187]

The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 addresses certain aspects of online fraud, but does not provide a general framework for the regulation of electronic contracting. The enactment of an Electronic Transactions Act modelled on the UNCITRAL Model Law on Electronic Commerce, adapted to Nigerian circumstances, is an urgent legislative priority. Such legislation should address, amongst other things, the requirements for valid consent in electronic contracting, the legal status of click-wrap and browse-wrap agreements, the application of vitiating factor doctrines to digital environments, and the mechanisms for cross-border enforcement of electronic contracts.[188]

4.6.4 Proposed Reforms

On the basis of the foregoing analysis, the following legislative and institutional reforms are proposed for the strengthening of the Nigerian law of vitiating factors. First, the National Assembly should enact a comprehensive Contract Law Reform Act that consolidates, clarifies, and updates the rules governing vitiating factors at the Federal level, providing a uniform national standard applicable across all jurisdictions. This Act should incorporate clear statutory

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[187]UNCITRAL Model Law on Electronic Commerce 1996, art 5 and 11; Electronic Transactions Bill (Nigeria, proposed).

definitions of operative mistake and its sub-categories, provide for the award of damages in all categories of misrepresentation on a statutory basis, codify the requirements for establishing economic duress and undue influence, introduce a doctrine of unconscionability, and specify the remedies available for each vitiating factor.[189]

Second, the federal government should enact an Electronic Transactions Act providing a coherent legal framework for the formation, validity, and enforceability of contracts concluded by electronic means. Third, the Infants Relief Act 1874 should be replaced with a modern Minors' Contracts Act, drafted to address the full range of transactions that minors in contemporary Nigeria engage in, and providing balanced protection for both the minor and the third party who contracts in good faith. Fourth, the Legal Aid Council should receive significantly increased funding and an expanded mandate to cover civil contract disputes, with particular emphasis on disputes involving vulnerable parties in consumer, employment, and tenancy contexts.[190]

Fifth, the court rules in all Nigerian jurisdictions should be amended to introduce firm case management timelines for contract disputes, with strict limits on the number and duration of adjournments, and a mechanism for the expedited determination of claims involving vitiating factors where the remedy of rescission is at risk of being lost through delay.

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[189]Law Reform Commission Act, Cap L13, LFN 2004; Nigerian Law Reform Commission, Report on the Law of Contract [1993].

CHAPTER FIVE
SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The aim of this study was to carry out an examination of the factors vitiating contracts under Nigerian law. Across the preceding chapters, the study has undertaken a doctrinal and conceptual underpinnings of the subject, reviewed the existing scholarly literature, examined the applicable legal regimes, statuses and cases. A detailed analysis of each recognized vitiating factor was critically assessed with the challenges confronting their application and enforcement in contemporary Nigeria court.

The study uncovered that the foundation of the Nigerian contract law is precipitated upon a rather hybrid legal framework that drawn from three principal sources viz; the English common law which is made up of the doctrines of equity as received through colonial-era Ordinances and the Interpretation Act, the Law Reform (Contracts) Law of Lagos State 1961; and the Revised Law of Contract of Enugu State 2004. This tripartite foundation has served as the structure for the treatment of vitiating factors across Nigeria's diversified social landscape and commercial hub. It is however important to note that the unavailability of a concrete and a uniform federal contract statute create a lack of uniformity when it comes to the law governing vitiating factors across all states of the federation, thereby creating a level of legal that is seemingly inimical to the commercial certainty and predictability.

The study discovered that the pioneering contract of Lagos of 1961, was not comprehensively updated to reflect developments in English law neither did it cover the needs of the Nigerian commercial environment over the intervening six decades. And the Revised Law of Contract of Enugu State 2004 (RLCE 2004) on the other hand, though more recent and more detailed in its coverage, is only applicable within Enugu State and has not served as the basis for harmonised legislation in other states. Hence this study finds that legislative framework governing vitiating factors in Nigeria is in need of substantial reform and consolidation at the federal level.

It was discovered that many of the vitiating factors are characterized by significant doctrinal lacunas. For instance, the doctrine of mistake in Nigerian law is characterised by significant doctrinal uncertainties, particularly in the relationship between the common law and the equitable jurisdiction to rescind for common mistakes. The Nigerian courts have not been able to resolve this tension, and the result is a degree of doctrinal ambiguity that makes it difficult for practitioners and their clients to predict with confidence how a court will approach a claim based on operative mistake. Also, the study finds that misrepresentation which is the often most frequently used vitiating factor in Nigerian courts, is often accompanied with the prevalence of deceptive and misleading conduct in commercial dealings. The scope of actionable misrepresentation by silence, and the application of the doctrine to digital and electronic representations, are further areas in which the law requires development.

The study finds that the Nigerian law of duress has evolved beyond its historical confinement to physical threats, and now encompasses economic duress in principle, following the developments in English law. However, the precise boundaries of economic duress in particular, the distinction between illegitimate commercial pressure and hard but legitimate bargaining remain insufficiently developed in Nigerian case law. The study further finds that undue influence is well recognised as a vitiating factor, with both actual and presumed categories operative in Nigerian law. The doctrine has been most frequently applied in cases involving elderly or vulnerable persons who transfer property under the influence of a dominant party. The study identifies a need for legislative extension of the presumed undue influence categories to encompass relationships that are characteristic of Nigerian social and commercial life, including certain religious, familial, and gender-based relationships.

The study finds that the doctrine of illegality is well established in Nigerian law, both in its statutory and common law manifestations. Courts in Nigeria usually refuse to enforce contracts tainted by illegality, whether the contract arises from statutory prohibition, the contract's tendency to undermine public policy or the criminal nature of the contract's. the study also finds that the absence of a comprehensive Electronic Transactions Act in Nigeria is identified as a significant legislative lacuna.

5.2 Recommendations

From the foregoing, this study makes the following recommendations;

5.2.1 A Federal Contract Law Reform Act: The first and most important recommendation is that there should be a federal contract law reform by the National Assembly. A comprehensive federal Contract Law Reform Act that provides a uniform national legislative framework for the law of contract, including the law of vitiating factors. Such legislation should consolidate the existing common law and statutory rules governing mistake, misrepresentation, duress, undue influence, illegality, and incapacity into a single, accessible, and coherent legislative instrument.

5.2.2 A Modern Minors' Contracts Act: The study observes that the ‘’Infants Relief Act 1874’, as received into the Nigerian Law is out of purpose. Hence the study recommends that it be repealed and replaced with a modern Minors' Contracts Act specifically designed for the Nigerian legal and social context. The new Act should define the categories of contract that are enforceable against a minor including contracts for necessaries and contracts of employment or apprenticeship that are on the whole beneficial with greater precision and in terms that reflect contemporary commercial practices. It should address the position of minors in digital and electronic contracting environments, provide for the binding effect of ratification upon attaining majority, and specify the restitutionary obligations that arise upon the avoidance of a contract by a minor. The Act should also make clear provision for the circumstances in which a minor may be bound by a representation as to age.

5.2.3 Legislative Reform on Misrepresentation: The study recommends that the state legislatures of Lagos and Enugu, and by extension the National Assembly through the proposed federal Contract Law Reform Act, enact provisions modelled on the Misrepresentation Act 1967 of England. Such provisions should confer a statutory right to damages for negligent and innocent misrepresentation, in addition to the existing right to rescission; should provide a statutory discretion to award damages in lieu of rescission in cases where it would be equitable to do so; should clarify the circumstances in which silence or conduct may constitute actionable misrepresentation; and should address the application of the doctrine to representations made in digital and electronic form.

5.2.4 Enactment of an Electronic Transactions Act: the legislature as a matter of urgency should enact an ‘Electronic Transactions Act’, ne that is fashioned on the UNCITRAL Model Law on Electronic Commerce, strictly adapted for Nigerian circumstances. This act should address the legal requirements for the validity of an electronic contract. Although the Cybercrimes Act 2015, has in it provisions on deception and fraud in the digital space, it does not provide a legal framework upon which the validity and enforecebility of electronic contracts can be laid.

5.3 Conclusion

So far, this study has been able to show that the Nigerian contract law which is greatly influenced by the common law legal framework and its state-level statutory instruments, embodies principles that are sufficient in addressing situations where contractual consent is vitiated or contractual capacity is absent. Vitiating elements form a protective shield that mandates the law to ensure enforces only those contracts that represent the free, informed and genuine, agreement of legally capable and sane parties. The law of contract therefore upholds the values of the society and country it serves. A nation that holds all its citizens in fairness and equity must these commitments and be willing to punish the dishonest and give room for fair hearing. This study believes that the Nigeria's legal tradition is capable of building a strong foundation upon which these legislative experiment and judicial development can be built.

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