

Appraisal of Laws on Consumer Credit Transactions in Nigeria

Olatubosun Ayodeji ALOBA
LCU/PG/002593

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Certification Page

This thesis entitled “Appraisal of Laws on Consumer Credit Transactions in Nigeria” was written by **Olatubosun Ayodeji ALOBA (LCU/PG/002593)** of the Department of Private and Business Law, Faculty of Law, Lead City University, Ibadan, Nigeria under my supervision.

Dr. Oluyinka Adedeji
Supervisor

Date

Prof. Oluyemisi Abimbola
Dean, Faculty of Law

Date

Dedication

This research work is dedicated to all those who desire and crave for knowledge but are constrained due to certain limitations - there is always hope abounding around the corner.

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Even though the above-mentioned institutions and persons have assisted in the process of this research work, I alone stand responsible for the errors, if any, found in the work.

Table of Cases / List of Cases

Akinnola v Akinyosoyo [1973] NCLR 185

Adeebare v Niger Motors Ltd [1974]5S.C.1

Adesanya v. Balogun & Ors (CCHCJ/11/73)

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Edgelow v MacElwee [1918] 1 K.B. 205 at p. 206.

Eicholz v Bannister (1864) 17 CNNS 708

Elf Petroleum Nigeria Ltd. v Onyekwelu [2002] 7 NWLR 461

Handevel Pty Ltd v Comptroller of Stamps [1985] 10 ACLR 207

Helby v Mathew [1893] 2 Q. B. 318

Metal Construction (WA) Ltd v Meridian Trade Corp. Ltd (1990) 5 NWLR 145

Nwankwo v Nzeribe [2004] 13 NWLR (Pt. 890) 422

Nidocco v Gbajabiamila [2013] 56 (pt. 1) NSCQR 230

Okonkwo v Okoro [1962] 6 ENLR 74.

Okongwu v Nigeria National Petroleum Corporation (1864) (1989) 4 NWLR (pt. 115) 296

Samuel Aro v Joe Allen &Co Ltd [1979] 2 FNR 292

United Dominions Corporation LTD v Ladipo [1971]1 All N. L.R. 102

UNIBIZ v Commercial Bank [2005] 125 LRCN 1484 at 1495

University of Ilorin v Oyelana [2001] FWLR (Pt. 83) 2193 at 2209

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List of Statutes

Nigeria Substantive Legislation

Banks and Other Financial Institutions Act, (BOFIA) 2020

Central Bank of Nigeria Act, 2007

Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004 (CFRN)

Consumer Protection Council Act (CPA), 2004

Credit Reporting Act, 2017

Federal Competition and Consumer Protection Act (FCCPA), 2019

Hire Purchase Act, 1965

Money Laundering (Prohibition) Act, 2011 (as amended)

Moneylenders Ordinance 1939 Cap 124, Laws of the Federation of Nigeria, 1958

Moneylenders Law of Lagos State, Cap M7, Laws of Lagos State of Nigeria, 2009

Nigerian Co-operative Societies Act Cap C35, Laws of the Federation of Nigeria, 2004

Secured Transactions in Movable Assets Act, 2017

The Pawnbrokers Law 1917, Cap P3, Laws of Lagos State of Nigeria 2004

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CBN Consumer Protection Framework (2016)

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CBN Circular to all Banks, other Financial and Non-bank Financial Institutions, "Consumer Protection Regulations" (2019)

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UK

Consumer Credit Act, 1974 (as amended)

Credit Unions Act, 1979

Credit Contracts and Consumer Finance Act, 2003

Fair Debt Collection Practice Acts, 1996

Hire-Purchase Regulations of 1968

Hire-Purchase (Application) Act, 1966

Misrepresentation Act, 1967

Moneylenders Act, 1927

South Africa

National Credit Act 34 of 2005

South African Consumer Credit Act, 2005

US Legislation

Consumer Credit Protection Act (CCPA), PL 90–321

Dodd–Frank Wall Street Reform and Consumer Protection Act, 2010, PL 111–203

The United States Consumer Credit Act, 1968

United Nations

United Nations Guidance on Consumer Protection (New York) 2016

Table of Contents

	Pages
Title Page	I
Certification	ii
Dedication	iii
Acknowledgement	iv
Abstract	v
Table of Cases / List of Cases	vii
List of Statutes	vii
Abstract	viii
Chapter One	1
1.0. Introduction	1
1.1. Background to the study	1
1.2. Statement of the problem	7
1.3. Aim and Objectives of the study	9
1.4. Research questions	9
1.5. Research methodology	10
1.6. Significance of the Study	10
1.7. Scope of the Study	10
1.8. Limitations of the Study	11
1.9 Definition of Concepts	11

Chapter Two	14
2.0. Literature Review and Theoretical Framework	14
2.1. Literature Review	14
2.2. Theoretical Framework; Time Price Doctrine	18
2.3. Overview of Consumer Credit in Nigeria	19
Chapter Three	21
3.0. Legal Framework for Consumer Credits in Nigeria	21
3.1. Moneylenders Ordinance 1939 Cap 124, Laws of the Federation of Nigeria, 1958	21
3.1.1. Regulation of moneylending	22
3.1.2. Regulation for charging interest	24
3.1.3. Limitation of action	26
3.2. The Hire-Purchase Act, 1965	28
3.3. The Sales of Goods Act, 1893	33
3.3.1. Validity of a Contract of Sale	34
3.3.2. Rights and remedies available to the seller for a breach of a contract of sale	36
3.3.3. Rights and remedies available to the buyer for a breach of contract of sale	39
3.4. The Pawnbrokers Act 1917, Cap P3, Laws of Lagos State 2004	41
3.5. Sources of Consumer Credit Laws and Regulation	42
3.5.1. Statutory Law	42
3.5.2. Case Law	43
3.5.3. International Law	43
3.5.4. The Central Bank of Nigeria (CBN) Act	44
3.5.5. Banks and other Financial Institutions Act (BOFIA) 2020	44

3.6. Impact of Consumer Credit Laws	45
3.7. Importance and Impact of Consumer Credit on Individuals and the Economy	47
3.8. Challenges of Evolving a Viable Consumer Credit System	48
3.9. The Absence of Specific Consumer Credit Legislation and other Consumer Credit Safeguards	49
3.10. Overview and Major Components of the US Consumer Credit Protection Act [CCPA]	50
3.10.1. The Truth in Lending Act	51
3.10.2. Fair Debt Collection Practices Act (FDCPA)	52
3.10.3. The Equal Opportunity Act	53
3.10.4. The Electronic fund transfer Act (1978)	53
3.11. Overview of the UK Consumer Credit Act 2006	54
3.12. Overview of National Credit Act (34 of 2005) of South Africa	55
Chapter Four	56
4.0. Legal Framework for Consumer Protection in Nigeria	56
4.1 Federal Competition and Consumer Protection Commission (FCCPC) Act, 2019	56
4.2. CBN Consumer Protection Framework (Disclosure and Transparency) 2016	59
4.3. CBN Consumer Protection Regulations	60
4.4. Food and Drug Act Cap F32 Laws of the Federal Republic of Nigeria, 2004	61
4.5. Standards Organization of Nigeria Act (SON) No. 14, 2015	62
4.6. Advertising Practitioners (Registration, Etc.) Act (1988) Cap A7 Laws of the Federation of Nigeria 2004.	62
4.7. National Agency for Food, Drugs Administration and Control (NAFDAC) Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004.	63
4.8. Weight and Measures Act (1974) Cap W3 Laws of the Federation of Nigeria 2004	63

4.9. The Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004	64
4.10. Economic and Financial Crimes Commission (Establishment) Act, 2004	64
4.11. Effective Redress and Enforcement	66
Chapter Five	67
5.0. Conclusion	67
5.1 Analysis of research findings	67
5.2. Conclusion	69
5.3 Recommendations	71
5.4 Contributions to Knowledge	74
5.5 Area(s) for Further Research	75
Bibliography	76
Bio-data	81
University Compliance form	83

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Abstract

There is clear evidence that Consumer credit offered or extended to an individual, family or household to finance purchases of goods and services is a major economic growth driver. The need for consumer credit facilities arises from the inability of the consumer to make immediate payment for goods and services he needs either personally or for household use. It is believed that the need for credit in today's consumer-based society is undoubted and as such its role in the society is quite enormous. Thus, there is more of a need to regulate available products and the relationships between creditor and debtor in order to avoid any unfair conduct on the part of either party. The regulatory structures for moneylending, hire purchase and consumer protection put in place some years ago, are not the same as the regulatory structures required today; the previous rules governing consumer credit relationships are significantly outmoded and outdated, and are in dire need of updating and reworking to meet the needs of a modern society. The motivation for this research is to underscore the importance of consumer credit backed by adequate legal framework to the growth of the nation's economy and the need for effective enforcement of provisions of enabling laws.

It is agreeable that restrictions imposed by law almost a century ago, are not commercially expedient at the present day in addressing inherent consumer credit transaction challenges. Therefore it will be no exaggeration to say, that the width of application of the law has done much to impair business efficacy thereby forcing parties to adopt other means outside the legal framework of the law to do their business. This research adopting doctrinal research methodology, examined primary and secondary sources on the subject matter in the light of their objectives and concluded that available legal framework is not conducive to the achievement of these objectives.

Key words: Consumer credit, Moneylending, Hire purchase, Pawnbroker, Regulatory

Word count: 302

Chapter One

Introduction

1.1 Background to the study

Consumer credit has been variously defined and described by different scholars. The dictionary defines consumer credits as short term loans given to individuals for the purchase of consumer goods and services.¹ Another dictionary defines consumer credit as a credit extended to individuals for personal or household use, rather than for business.² Furthermore, it has also been defined as a short term loan made to enable people purchase goods and services primarily for personal, family or household purpose.³ And can also be defined as a short and immediate term loan used to finance the purchase of commodities or services for personal consumption or to refinance debts incurred for such purposes.⁴ Another definition is that “Consumer Credit” is a “credit extended to an individual to facilitate the purchase of consumer goods and services.”⁵ Consumer credit enhances consumer satisfaction as it enables consumers to enjoy services or goods sooner than they otherwise would have done. It enables consumers who are unable to save money for the purchase of goods and services, to enjoy such goods and services if they are able to keep their contracts with their creditors. In a cash economy, or in a society structured on barter only, there would be no need for credit. Credit transactions are necessary where a person seeks to obtain a product or service for which the person cannot, or chooses not to pay in cash or by way of exchange in kind or barter.

Today, regardless of any concerns over growth trends, most informed observers agree that consumer credit availability in the modern economy provides a number of important economic benefits; consumer credit makes engaging in household investment undertakings easier and

¹ H.C. Black. [1990]. Black’s Law Dictionary, West Group, 6th edition.

² Fitch, Thomas P, Barron’s Dictionary of Banking terms, Baron’s Educational Series (2006) 5th edition

³ M. Ekpo, E. Aloba, & J. Enyia, ‘Impediments to the Development of a Strong Consumer Credit System in Nigeria’, October 2017, Available at URL:< <http://dx.doi.org/10.5430/wjss.v5n1p36>> last accessed 30 May 2023

⁴ Britanica <<https://www.britannica.com/money/consumer-credit>>

⁵ B.A. Garmar, (ed.), Black’s Law Dictionary (7th edition, St. Paul, MINN: West Group, 1999) p. 374

timely for many families.⁶ It also provide an important outlet for employing financial resources available from net surplus components of the economy (savers), notably from consumers themselves, it also substantially contribute to the growth of durable goods industries, where new technologies, mass production, and economies of scale historically have produced employment growth and new wealth.⁷ Assessing consumer credit tells us imperative things about our economy. The capacity of consumers to borrow effortlessly and refund those debts on time, stimulates the economy with resultant growth.⁸ Consumers are the instruments and brainbox of the economy, so when credit is unavailable to them, they tend to face complications in borrowing and in this circumstance, there would be less consumption since they have less access to credit.⁹

It has been recognized by recent theoretical and empirical research that the abrupt increase in consumer credit, in conjunction with monetary and fiscal policy constraints, can result in a negative effect on subsequent output growth. The economy may be susceptible to excessive credit growth due to households not internalising the macroeconomic effects of their borrowing.¹⁰ Their inability to service and repay the principal loans when the interest rate is high may result in financial crises, unsustainable asset bubbles, low saving rates, inflation, unemployment, and, consequently, recession.¹¹ In other words, consumer credit is a wheel for consumption and built-up to economic growth. Consumer credit positively influences economic growth by allowing households to make investments.¹² It also increases consumer spending on durable and non-durable commodities, purchasing assets such as shares, houses, going to school, buying luxury goods, and repaying other forms of debt. It also fills the household's dearth of income for financing their daily consumption outlays.

⁶ A. T. Durkin, E. M. Staten, J. T. Zywicki, G. Elliehausen, 'Introduction and Overview of Consumer Credit: Development, Uses, Kinds, and Policy Issues', *Consumer Credit and the American Economy*, Ch. 1 (Oxford University Press, 2014).

⁷ *ibid*

⁸ M. Ekpo, E. Aloba, & J. Enyia, 'Impediments to the Development of a Strong Consumer Credit System in Nigeria', (2017), Available at URL:<<http://dx.doi.org/10.5430/wjss.v5n1p36>> accessed 30 May 2023

⁹ *ibid*

¹⁰ A. Mian, A. Sufi, & E. Verner. 'Household Debt and Business Cycles Worldwide' *The Quarterly Journal of Economics*, (2017) 132(4), 1755–1817. <<https://doi.org/10.1093/qje/qjx017>> accessed 15 October 2023

¹¹ S. H. Lay. 'Bank Credit and Economic Growth: Short-Run Evidence from a Dynamic Threshold Panel Model', [2020] *Economics Letters*, 192:109 – 231,

¹² S. Ho, & J. Saadaoui, 'Bank Credit and Economic Growth: A Dynamic Threshold Panel Model for ASEAN Countries' (2022) *International Economics*, 170:115 – 128, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3861675> accessed 22 November 2023

Sakanko, David and Onimisi opined that possible growth in consumer access to credit through financial inclusion will reduce inequality and poverty and improve general living standards through additional or new income, which induces inclusive growth.¹³ Equally, the new Keynesian multiplier effect argues that new income increases household consumption expenditure, increasing demand, and consumption, thus accelerating economic growth.¹⁴ Available accessible statistics shows that consumer credit grew at an expansionary rate during the economic fluctuations period of between 1981 and 2021; it rose from 9.79% to 15.57%,¹⁵ however, evidence on its relationship with economic growth is largely unavailable or limited.

Consumer lending and credit have existed in informal economies long before modern credit scoring and the traditional banking models we know now.¹⁶ Borrowing money with an interest attached has been well documented throughout history and exists today in even more complex and niche iterations than ever before. This is also true in African economies and communities,¹⁷ where consumer lending and credit existed informally through the activities of cooperatives and thrift groups (Alajos, Esusu, Adashe). Consumer credit transactions resulted in an increase in both the supply of, and the demand for manufactured goods destined for general consumption. Dealers delivered goods to consumers on credit so that the consumer could enjoy the use of the product while payment is made in instalments.¹⁸ This practice has continued till modern times, and is regulated by consumer credit laws, which are the set of laws that governs credit transactions involving consumers as end users of credit facilities. One of the consequences of the substantial increase in the use of consumer credit has been an acceleration in attempts to enact legislation of various types to control questionable practices and to prevent presumed harmful side effects from the overuse of credit. Such legislations in Nigeria are the hire purchase Act¹⁹

¹³ M.A. Sakanko, J. David, & A. Onimisi, 'Advancing inclusive growth in Nigeria: The role of financial inclusion in poverty, inequality, household expenditure and unemployment' (2020) *Indonesian Journal of Islamic Economics Research*, 2(2): 70-84.

¹⁴ N. Mose, 'Impact of Public Consumption on Economic Growth' *African Journal of Economics of Sustainable Development* [2021] Vol. 4 Issue 3, (pp: 61-71), University of Eldoret, Kenya, available at <www.abjournals.org> Accessed 10 May 2023

¹⁵ Central Bank of Nigeria, 'Statistical Bulletin Real Sector. Abuja: (2022)

¹⁶ G. Kiwana, 'Lending in Africa: The Good, the Bad and the Ugly' May 2021 available at <<https://content.11fs.com/article/lending-in-africa-the-good-the-bad-and-the-ugly>> accessed 15 May 2023

¹⁷ *ibid*

¹⁸ E E. Eja, & E. Bassey, (2010) 'Money Lending Law and Regulation of Consumer Credit in Nigeria' Faculty of Law, University of Calabar available at <<http://www.ajoliinfor/index/ph/.naujji/articledownload82406/72558>> Accessed.13 May 2023

¹⁹ Hire Purchase Act (1965)

pawn brokers Act²⁰ and moneylenders' law of the various States,²¹ Additionally, case law, contract law and subsidiary legislation by the central bank of Nigeria also play a role in consumer credit regulations.²² However, the statutory protection for consumers is considered weak and outdated. Before 1990 both the federal government and governments of various states of the federation simultaneously regulated money lending under the moneylenders Act and the respective money lenders laws of various states. The moneylenders Act, 1965 however, has been revoked.²³ The ongoing debate over which statute applies to any given transaction is one effect of this statutory multiplication.²⁴ Many of the regulatory statutes contain sizable "exemption" sections listing the transactions they intended not to cover and which falls under some related supervisory provision. In addition, as new forms of consumer credit develop, significant questions regularly arise concerning whether or not they fit within any existing statutory control.²⁵ The dynamism of consumer credit and the rights and obligations arising from the creation of legal relations of consumer credit contracts has shaken more powerful international institutions. In each of these institutions, attempts have been made to put the legal regulation framework of consumer credit at national levels.²⁶

Consumer credit in Nigeria and other developing countries like Nigeria advance special challenges; earnings inequality is getting worse and cardinal to different access to infrastructure and amenities.²⁷ Furthermore, high unemployment makes personal income more disparate. In Nigeria, the idea of protecting consumer credit is a relatively new phenomenon; there is no omnibus consumer protection Act, no consumer credit Act and no effective and functional credit

²⁰ Pawnbrokers Act (1917)

²¹ The Moneylenders Law of Lagos State (2009) and other states.

²² Central Bank of Nigeria (CBN), 'Consumer Protection Regulations' (2019) available at <<https://www.cbn.gov.ng>> Accessed 5 May 2023

²³ I. Sagay, Nigerian Law of Contract (Ibadan, Spectrum Books, 2000) p. 380; fn 60.

²⁴ C. Felsenfeld, 'Uniform, Uniformed and Unitary Laws Regulating Consumer Credit,' (37 Fordham L. Rev. 209 1968) available at <<https://ir.lawnet.fordham.edu/flr/vol37/iss2/2>. Accessed June 20> accessed May 2023

²⁵ ibid

²⁶ B. Peci, F. Gashi, 'Examining Legal and Financial Aspects of Consumer Credit in Selected Countries of Western Balkans and Kosovo' (Faculty of Law, Financial Department, University of Pristina, March 2023) available at <[\(PDF\) Examining Legal and Financial Aspects of Consumer Credit in Selected Countries of Western Balkans and Kosovo \(researchgate.net\)](#)>

²⁷ A. T. Popoola. (2010). 'The Challenges of a Strong Credit System in Nigeria' Credit Awareness. <<http://www.creditawareness.nigeria.com/nes-sph.p>> accessed May 2023

bureaus.²⁸ These and more consumer protection legislations exist in countries like the United Kingdom, United States and even South Africa.²⁹ In the United States, there is consumer credit protection Act (CCPA); a consumer credit law enacted to ensure that consumers in the United States receives only fair and honest credit practices. Basically, the CCPA requires creditors to disclose, clearly and conspicuously, to each person to whom consumer credit is extended certain credit cost information and to comply with certain advertising restrictions and limitations.³⁰ The Act makes extortionate credit transactions, whether consumer or commercial, a federal crime. As the Act was designed principally to combat "organized crime," The mere charging of an illegal rate of interest, is not criminal; the criminal act is the understanding between the creditor and the debtor that failure to make repayment "could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person."³¹ What Nigeria has is the federal competition and consumer protection Act (FCCPA).³² The FCCPA established the federal competition and consumer protection commission (FCCPC).

Prior to the enactment of the FCCPA, the principal legislation that protects the rights of consumers in Nigeria was the consumer protection council Act ("CPA")³³, which established the consumer protection council ("CPC"); however, the FCCPA repealed the CPA and the FCCPC assumed all rights, interests, obligations, assets and liabilities of the CPC.³⁴ The need to develop effective and dynamic consumer credit laws to aid the highly industrious and dynamic Nigerian population cannot be over emphasized. This is because in the absence of regulation, lenders set

²⁸ B.B Kanyib., *Consumer Protection in Nigeria, Law: Theory and Policy* (Rekon Books Ltd 2005), p.2

²⁹ Mokutima Ekpo, Eni Aloba, & Jacob Enyia, 'Impediments to the Development of a Strong Consumer Credit System in Nigeria', (October 2017) pg. 37, Available at URL: <<http://dx.doi.org/10.5430/wjss.v5n1p36>> accessed 30 May 2023

³⁰ R. Paul Moo, 'Legislative Control of Consumer Credit Transactions: 33 Law and ontemporary Problems' (1968) 659-670 www.scholarship.law.duke.edu/lcp/vol33/iss4/3 Accessed June 2023

³¹ C. Felsenfeld 'Uniform, Uniformed and Unitary Laws Regulating Consumer Credit' 37 *Fordham L. Rev.* 209 (1968). < [https://ir.lawnet.fordham.edu/flr/vol37/iss2/2/.](https://ir.lawnet.fordham.edu/flr/vol37/iss2/2/) > Accessed June 2023

³² Federal Competition and Consumer Protection Act, 2018 ("FCCPA") - the primary legislation that governs and protects the rights of consumers in Nigeria.

³³ Consumer Protection Council (CPC) Act, 2004

³⁴A. Muse-Sadiq and M. Abada, 'consumer protection laws and regulation (2022) <<https://www.mondaq.com/nigeria/dodd-frank-consumer-protection-act/1194212/consumer-protection-laws-and-regulations-nigeria-2022>>. Accessed 15 August 2023

the terms and consumers are often subjected to their whims and caprices.³⁵ The welfare risk of unregulated credit products is a different story. Access to unsafe or unregulated credit products can have devastating welfare effects on consumers. Unregulated lenders are often in the habit of soliciting customers and encouraging them to borrow, sometimes with attractive terms that tend to grow consumers' collective appetite for borrowing, plunging families and businesses into excessive leverage for mostly uneconomic reasons.³⁶ Access to consumer credit in the absence of effective regulation is not only detrimental to the individual consumer but compromises the stability of the financial system.³⁷

Credit is a product, and like all products, it must satisfy set standards.³⁸ The few normative instruments like the hire purchase Act, 1965, the moneylenders' laws in different states of the federation and the pawnbrokers' laws of different states, have all lost touch with reality and some have out-lived their usefulness as consumer credit instruments.³⁹ For example **sec.1** of hire purchase Act pegs applicability of the law to transactions not exceeding =N=2,000.00 excluding motor vehicle transactions.⁴⁰ This amount is outrageously too low! The volume of credit transactions is unlikely to fall within this limit. For example, in the UK, the initial limit of five thousand pounds (£5,000) set by the Consumer Credit Act 1974 was later increased to twenty-five thousand pounds (£25,000) under the UK Consumer Credit Act 2006, with no upper limit.⁴¹ In Nigeria, we are all witnessed the unwholesome attitude of many online consumer credit providers (moneylenders) who on repayment default by borrowers, resulted to the use of violence and other criminal means to cause harm to the person, reputation, or property of the

³⁵ Economic & Financial Crimes Commission v Diamond Bank Plc & Ors [2018] LPELR-44217(SC). A.G. Plateau State v A.G. Nasarawa [2005] 129 LRCN 1523 at 1531; UNIBIZ v Commercial Bank [2005] 125 LRCN 1484 at 1495; University of Ilorin v Oyelana [2001] FWLR (Pt. 83) 2193 at 2209.

³⁶ R. Mazer, K. McKee., and A. Fiorillo. (2014) 'Applying behavioural insights in consumer protection policy' CGAP.

³⁷ I. Omede, Philemon, 'A Tale of Two Markets: How Lower-end Borrowers Are Punished for Bank Regulatory Failures in Nigeria' Journal of Consumer Policy (2020) 43:519–542 <<https://doi.org/10.1007/s10603-019-09439-8>>

³⁸ O. Bar-Gill, & E. Warren. (2008). 'Making credit safer' University of Pennsylvania Law Review, 157(1), 1–101.

³⁹ Mokutima Ekpo, Eni Aloba, & Jacob Enyia, "Impediments to the Development of a Strong Consumer Credit System in Nigeria", October 2017, Available at URL: <<http://dx.doi.org/10.5430/wjss.v5n1p36>> accessed 30 May 2023.

⁴⁰ Section 1 of Hire Purchase Act, (1965)

⁴¹ *ibid* (n.41) page 40.

defaulted borrower.⁴² This happened due to noticeable gaps in the existing legal framework and misuse of technology.⁴³ In many developed nations, laws have been implemented to protect the most vulnerable consumers and to guarantee that they are always adequately protected at every stage of the transaction. This has resulted in the establishment of adequate regulatory framework that ensures the efficient operation of the system, adequate protection of businesses and consumers, and the stipulation of crimes and punishments. Thus, any nation that hopes to encourage strong domestic markets and develop strong international competitive economies must have legal infrastructures that not only facilitate secured consumer credit transactions and the enforcement of same, but protect parties.

From the above, it is clear that consumer credit transactions play a prominent role in the economy of any country. It is akin to the bricks on which the economy of every nation is built.⁴⁴ There are significant economic benefits to a credit market that works, helping individuals to accumulate assets and exploit economic opportunities and businesses to grow and create new jobs. However, it is an industry that needs to be regulated to ensure that potential consumer abuses are minimised. Regulation of consumer credit transactions and protection of rights of parties in such a transaction is erected on the need to have viable legal framework. Hence, this paper will seek to appraise legal framework for the regulation of consumer credit transactions in Nigeria; and assess whether the existing legal architecture is self-sufficient and wholesome to meet the challenges inherent in the transaction.

1.2. Statement of problem

The key thrust of consumer credit regulation is essentially on how consumers finance their purchases and the availability of reliable safeguards.⁴⁵ There are numerous laws that regulates and protect the interests of both credit providers and consumers in Nigeria, these include Hire Purchase Act, Pawnbrokers Act and Laws of the various states, the Federal Competition and

⁴² Premium times newspaper “How Digital Loan Providers Breach Data Privacy: Violate Rights Of Nigerian” <<https://www.premiumtimesng.com/news/headlines/499999-investigation-how-digital-loan-providers-breach-data-privacy-violate-rights-of-nigerians.html?tztc=1>> accessed 11 August 2023

⁴³ Punch Newspaper “Data breach: NdpC Probes Online Banks Over Customer Complaints” <<https://punchng.com/data-breach-ndpc-probes-online-banks-over-customer-complaints>> accessed 11 August 2023

⁴⁴ G.O. Akolokwu., ‘Interrogating the Enforcement of Credit Security Rights in Nigeria’ Ghana and Kenya, (UNIZIK Law Journal 17 (1), 2021). Accessed on 4 May 2023

⁴⁵ O. Enyia., Department of Private law, Faculty of Law, University of Calabar, Cross River State.

Consumer Protection Act [FCCPA], Central Bank of Nigeria Regulations etc. For some time now, the issue of consumer credit usage in Nigeria have become worrisome. Though it appears that some measures have been taken to address some of the issues, however still appear some gaps particularly in the obsolete nature of some of the provisions of the laws in the area of consumer protection. Most Nigerian consumers credit users are not aware of relevant provisions under these laws that protect them in their daily transactions, they are only aware of some regulatory agencies with redress mechanisms.⁴⁶ It is worthy to state that consumer credit laws are aimed at protecting both consumers and credit providers.⁴⁷ However, it is evident that the provisions of the legal framework are not sufficient for today's transactions. Nigeria is faced with malpractices against consumer credit users which are becoming rife in situations where consumers utilising digital platforms are confronted with a host of challenges, which includes misrepresentation, fraud, and false advertising. This is because consumers do not have all the necessary education in respect of all these. Furthermore, most consumers are not willing to seek redress where their rights are violated. They prefer to keep it to themselves and let go of it than to complain to appropriate quarters, due to the general feeling that most regulatory agencies saddled with the responsibility of protecting consumer rights do not have adequate statutory provisions for the protection of consumers' rights which is compounded by lack of awareness on the part of consumers, inadequate publicity, low level of public enlightenment by appropriate regulatory agencies, and the lackadaisical attitude of those responsible for enforcement of applicable laws.

Furthermore, it is a fact that ignorance of the process of seeking redress in court of law as well as the cost of litigation is high and some consumers may not be able to afford it. The cost of litigation in seeking redress may even be more than the cost involved in the transaction thereby discouraging consumers from seeking redress in court; which should be more inclined in protecting the right of the consumer, rather it creates a shield against flood of litigation on lenders and service providers which places the burden of proof on the consumers and, have become a major challenge to consumerism. This has made it imperative to investigate the existing legal, regulatory and institutional framework for the regulation of consumer credit

⁴⁶ F. Monye, B. Umoh, C. Chukwunta, 'Research Report on the State of Consumer Protection in Nigeria: A Review of Consumer protection in the Telecommunications sector in Nigeria' (2014)

⁴⁷ O. Odion & E. Okojie. 'Burden of proof in product liability law in Nigeria' (Ahmadu Bello university journal of commercial law 2003)

transaction in Nigeria to underscore if they are effective in resolving or addressing malpractices or issues surrounding consumer credit transactions in Nigeria. If these legal impediments are not addressed swiftly and efficiently, consumers will be hesitant to engage in credit transactions, businesses will be less motivated to follow ethical business practices, and economy will continue to witness stunted growth. Hence, there is a need to examine the various consumer credit legislations, institutional bodies put in place as well as their effectiveness and the judicial processes for resolving issues that will adequately enhance healthy business environment. This paper therefore, examines available laws for consumer credit in the light of their objectives, attempts to determine whether the legal framework they provide is conducive to the achievement of these objectives

1.3. Aim and objectives of the study

The purpose of this work is to appraise Nigerian consumers' protection laws and compare to other Jurisdictions, to analyze how efficient they are in protecting the activities of credit providers and consumers. The objectives of the study are to:

1. analyze existing legal framework for the regulation and protections of consumer credit transactions in Nigeria.
2. examine how effective and sufficient these laws are in addressing inherent consumer credit transaction challenges.
3. consider a comparative study of the legal framework with what obtains in the United Kingdom and the United States.

1.4 Research questions

This study is guided by the following questions:

1. What is the existing legal framework for the regulation of consumer credit transactions in Nigeria;
2. How effective is the law for consumer credit transactions in Nigeria, whether the available legal architecture is self-sufficient and wholesome enough to address the challenges inherent in the transaction.
3. To what extent does our legal framework differs from what obtains in the UK and the US, and what are those aspects that can be incorporated into our laws in Nigeria?

1.5 Methodology

The study makes use of doctrinal research methodology because it is library based, the primary sources of data include the hire purchase Act,⁴⁸ Lagos state moneylenders' law,⁴⁹ pawnbrokers' law of Lagos state, consumer protection framework of the central bank of Nigeria (CBN) 2016, federal competition and consumer protection Act (FCCPA), 2012. The secondary sources include relevant information from leading authorities, previous research reports, and textbooks on the subject matter of the research, journal articles, periodicals, opinion of specialists and practitioners all of which are expected to add value to the quality of the work.

1.6. Significance of the study

It is envisaged that the findings of the study upon completion will provide a major academic contribution to the importance of consumer credit and its contribution to economic growth. The study will examine legal framework that regulates consumer credit transactions in Nigeria in the light of their objectives, and the serious need for re-evaluations of the framework in order to bring them to global standards. It is also envisaged that, this study will be of immense significance to the relevant stakeholders: government agencies, members of the legal profession, academic societies/researchers, borrowers, consumer credit providers, and the general public. The study will add to the existing body of knowledge on consumer credit transactions and related issues in Nigeria. Particularly the recommendations for new policies and laws or amendment of such which may raise consumer confidence to participate in consumer credit transactions in the long run, have impact on the economy and investment climate in the country. The study will also enlighten the general public particularly the business community who stands to benefit a lot if the government implements the suggestions or recommendations proffered in this study. In a nutshell; the study will contribute to the corpus of knowledge in the area of legal and institutional framework for consumer credit in Nigeria.

1.7. Scope of the study

The scope of this study is broad, this is because it has to do with appraisal of available consumer credit laws. Consumer credit is extended by banks, moneylenders, health insurance companies,

⁴⁸ Hire Purchase Act, 1965

⁴⁹ Lagos State Moneylenders' Law, 2009

property insurance companies, co-operative societies, educational organisations, retailers, manufacturers, pawnbrokers and others, so as to enable consumers purchase goods immediately and pay off the cost over time with interest; its scope is wide and all cannot be covered by this study. Furthermore, this research will also carry out critical analysis of regional and international standards relating to consumer credit. In a nutshell, only relevant laws and institutions dealing with consumer credit transactions and protection issues in Nigeria will be examined.

1.8. Limitations of the study

The limitations encountered in this study are:

- i) Changing Legal Landscape – The dynamic nature of laws and regulations may result in the findings becoming outdated. Consumer credit laws are subject to changes and amendments over time, potentially affecting the relevance of the study's findings.
- ii) Changing Regulations - Consumer credit laws and regulations might change over time, impacting the relevance of the study's findings to the current legal landscape.
- iii) Limited Scope - Depending on the scope of the study, certain aspects of consumer credit laws, such as enforcement practices or impact on vulnerable populations, might receive less attention.

1.9. Definition of concepts

Consumer credit - The term consumer credit refers to the type of credit that is extended to individuals for personal use, typically through loans, credit cards, or other financial methods, as opposed to business or commercial purposes. This financial mechanism allows consumers to purchase goods and services, often when they do not have the immediate cash available, with the expectation that the borrowed amount will be repaid over time, often with interest. It encompasses various financial instruments and products.

Consumer - Means a natural person or entity that purchases goods, services, or intangible assets, such as digital products or experiences, for personal use rather than for resale or commercial purposes. In the context of consumer credit transactions, Consumers are typically the end-users in the supply chain, and their purchasing decisions can significantly influence market trends, production, and overall economic activity. Additionally, the concept of a consumer can extend

to organisations or businesses that utilize products or services to fulfill their operational needs or provide services to end users.

Credit – Generally refers to an agreement in which a borrower receives something of value; typically money, with the promise to repay the lender at a later date, usually with interest, It is a financial asset that represents the ability of a buyer to obtain goods or services before payment, based on the trust that payment will be made in the future. Credit plays a crucial role in personal finance, business operations, and the economy as a whole, influencing spending, investment, and economic growth.

Consumer credit laws – Refers to bodies of regulations and legal provisions that govern the extension and use of credit to consumers. These laws are designed to protect consumers from unfair lending practices, ensure transparency in credit transactions, and promote responsible lending behaviour. The primary aim of consumer credit laws is to protect consumers from predatory lending practices and to promote fair and transparent credit market.

Consumer Protections - "Consumer Protection" refers to a set of laws, regulations, and practices aimed at safeguarding the interests and rights of consumers in the marketplace. The primary goals of consumer protection include ensuring that consumers are not subject to unfair, deceptive, or fraudulent practices; providing them with accurate information about products and services; and enabling them to make informed choices. In other words, it refers to group policies intended to guarantee fair treatment of customers, and that their rights are upheld in business dealings involving the provision of products or services.

Consumer Credit Framework – The term refers to the body of laws, regulations, practices, and institutional structures that govern the lending of money to individuals for personal, family, or household purposes. This framework encompasses various components, including legal standards, financial products, borrower protections, and institutions involved in lending. It provide policy direction in terms of the regulation of the consumer credit market.

Credit policy framework – Refers to a structured approach that outlines how an organization, government, or financial institution manages credit risk, assesses borrowing, and establishes guidelines for extending credit to consumers or businesses. It lays basis for a regulated credit

market. Credit policy framework is a comprehensive set of guidelines and principles that an organization, typically a financial institution or lending entity, establishes to govern its credit operations. This framework helps in ensuring consistency, transparency, and accountability in the credit assessment and lending process.

Legal Framework – This refers to the structure and system of laws, regulations, principles, and guidelines that govern a particular area of activity or societal aspect within a jurisdiction. It encompasses the statutory laws enacted by legislative bodies, case law developed through court decisions, administrative regulations created by government agencies, and various legal doctrines and interpretations. A robust legal framework is essential for maintaining order, protecting rights, and facilitating justice within a society. It provides the necessary legal certainty for individuals, businesses, and institutions to operate and interact effectively.

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Chapter Two

Literature Review and Theoretical Framework

2.1. Literature review

Consumer Credit transactions play a pivotal role in modern economies, providing individuals with access to financial resources for various purposes. Consumer credit is a broad term comprising all kinds of installment credit as well as non-installment credit except mortgage debt. Although the theoretical definition of Consumer credit is quite clear, concepts in people's mind are not. Viaud and Roland-Levy reported a common differentiation between credit and debt. A number of cultures depend considerably on consumer credit, which additionally serves as one of the main forces behind the culture of consumerism. Credit transactions takes place everywhere; at banks, stores, online and over the phone. A thorough and in-depth study of the ideas and practices that guide the creation and management of credit agreements is clearly warranted given the economic and social significance of consumer credit. Consumer credit schemes provide financial resources to consumers so they can fulfill their household desires for a greater standard of life, the purchase of durable items, and the satisfaction of unexpected needs. Generally, its repayment period is less than two years. Over the period, the borrower pays back the principal along with interest by monthly installments. It may be secured or unsecured. A healthy consumer credit environment promotes economic growth and benefits consumers, manufacturers and suppliers of goods and services. The legal literature and court precedents available in the consumer credit area are meager indeed.

Malemi sees a consumer as a person who utilized the process of production and services.⁵⁰ Awah expressed his opinion that the indicators preventing banks and other financial institutions from offering lending and credit facilities should be quickly addressed because they have a negative impact on economic development and growth when discussing the difficulties facing lenders of credit, particularly in the banking sector.⁵¹ However, this work was restricted to the Nigerian banking industry underscoring the importance of good legislation on loan business operations. Allot presented the idea that security can take many different forms, including charges over land that may or may not involve the lender taking possession, the charging of chattels or goods, and personal security where the debtor's person or the person acting on his behalf may be impounded or otherwise harmed if the obligation is not properly carried out.⁵²

For his part, Halliday said that in order to make the country's economic policies a reality, incorporated companies operating in Nigeria, particularly indigenous companies, must be encouraged to achieve optimally through adequate financing opportunities for credit facilities in form of debt capital in order to be able to compete with foreign companies.⁵³ The author did not consider any of the methods for encouraging homegrown businesses to fulfill these objectives, such as lower special interest rates. As Sango-Sanya noted in his discussion of the importance of credit advancement in the country's desire for economic growth and stability, financing programs and projects remains essential to economic progress. Financing cannot be achieved without finances. According to him "credit financing refers to the process of obtaining funds or capital generally for the purpose of supporting a development and/or investment by gaining control over assets"⁵⁴. However, the topic of more effective credit financing model enforcement was not brought up.

⁵⁰ E. Malemi, *Law of Torts* (edn.2, Publisher, Princeton Publishing Co, 2008)

⁵¹ A. E. Awah, 'Harnessing Nigeria's Banking System: Potentials for Sustainable Development' (2014) 98 -100 Inaugural Lecture Series, Nigerian Institute of Advance Legal Studies,

⁵²A. N. Allot, 'Credit and the Law in Africa: A Special Study of Some Legal Aspects of Economic Development'(1975) 19 J Afr L 73

⁵³ E. Chidi & Halliday,, "Reforming Receivership as Mechanism for Enforcement of Proprietary Security in Nigeria" (2017) (6) (1) The Journal of Property Law and Contemporary Issues, 112

⁵⁴ A.G. Sangosanya, 'Development and Financing of Mass Urban and Rural Housing in Nigeria' (1998) The Gravitas Review of Business & property Law, 63.

According to Sykes & Walker, security refers to the right to use portion of the debtor's property to satisfy a debt.⁵⁵ A mortgage deed therefore is that instrument showing a mortgage transaction that is, loans secured by collateral where the borrower or the mortgagor is obliged to pay back on predetermined terms⁵⁶. A 'debenture' is a document which either evidences or acknowledges the creation of a debt or makes provision for the repayment of a loan to be made in the future.⁵⁷ This recognition may concern some form of security over the assets and may also take the form of debenture shares.⁵⁸ The capital necessities of a huge aggregate may not be met for the reason of carrying out its trade by its shareholders in this manner using its borrowing powers subject to its Articles of Association to meet its capital prerequisite and giving confirmation of reimbursement by issuing debentures secured by a charge on the company's resources.⁵⁹ The analysis focuses on various secured credit transaction types and the necessity of using credit expansion for economic stability and growth. Although the authors acknowledged the need for advance credit enforcement, they stopped short of exploring the obstacles (both legal and otherwise) that hinder credit security enforcement in Nigeria. Furthermore, the legal instruments for credit advances were not given particular attention in the works already examined. Thus, by evaluating the pertinent statutory provisions that pertain to consumer credit transactions in Nigeria, this study makes an attempt to close some of the gaps that have been noted. Kanyib's contribution to the development of consumer protection law in the country is monumental; the uniqueness of his contribution on the vexed issue of the rationale for consumer protection is that apart from justifying the protection of the consumer, he went a step further by prescribing the mode and procedure for protecting the consumer.⁶⁰ His recognition of the fact that the utilitarian value of any legal framework or consumer protection would be influenced by the administrative and adjudicatory machinery put in place is laid bare by the efforts of the respective institutions

⁵⁵ Sykes & Walker, *The Law of Securities* (5th ed Law Book Co, Sydney-Australia, (1993)6

⁵⁶G.O. Akolokwu and L. Nwauzi, 'Mortgage Transaction in Nigeria: Is the Security Interests of the Mortgagee Under the Land Use Act 1978 Guaranteed?' (2018) 14 Unizik Law Journal 6.

⁵⁷ *Handvel Pty Ltd v Comptroller of Stamps* [1985] 10 ACLR 207

⁵⁸ R. Howell and A. Jones, 'Redemption and Re-issue of Debentures: Its Effect on Security Transaction' (1994) 6 Bond LR 149

⁵⁹ Chigozie. Nwagbara, 'A Legal Appraisal of the Concepts of Shares and Debentures as Company Securities in Nigeria' (2016) 4(3) International Journal of Business & Law Research 4(3)74.

⁶⁰ B.B Kanyib, 'Consumer Redress' Modern Practice Journal of Finance and Investment Law,(1998) 2(2):76-78

established in the country for the prescription and enforcement of standards of goods and the quality of service rendered to the consumer.⁶¹

In the financial sector specifically, some studies have argued that consumers are subject to certain behavioral biases, including vulnerability to marketing such as being likely to take up offers that are framed in simple terms.⁶² Consumers may not be well-informed, they can get confused when they are presented with many alternatives, and can eventually make systematic mistakes, which could be exploited by providers. In this regard, even well-established and efficient disclosure requirements may not be sufficient. For example, Barr et al. note that disclosure of useful information to the mortgage borrower prior to signing is crucial, and it would be effective only to the extent that it can be comprehensible and to the point.⁶³ Hence they suggest developing financial market regulations based on behavioral models in which the underlying reasons of certain decisions by the households are investigated, rather than modeling the way in which rational households should make their decisions.

Campbell suggests the use of financial literacy as an avenue of remedy, in addition to well-designed financial consumer protection regulations.⁶⁴ Elliehausen argues that the results of behavioral research could be useful in designing effective regulations in the credit market.⁶⁵ These research findings highlight the importance of financial literacy and disclosure requirements in mitigating information asymmetries in the market for financial products and services. The key challenge for the applied research going forward is to identify effective forms for disclosure. For credit products, evidence suggests that disclosing loan terms to customers can help reduce borrowing costs.⁶⁶ Despite their importance, there is no universally accepted set of disclosure requirements.

⁶¹ These Institutions include, The Standards Organization of Nigeria (SON), The National Agency for Food and Drugs Administration and Control (NAFDAC) The Consumer Protection Council of Nigeria (CPC), The Nigerian Communications Commission (NCC) The National Electricity Consumption Regulation Council (NERC) amongst others.

⁶² Benartzi and Thaler (2002); Bertrand et al. (2004); Agarwal et al. (2006); Campbell (2006).

⁶³ M.S. Barr; S. Mullainathan and E. Shafir, 'Behaviorally Informed Financial Services Regulation' (Report, New America Foundation 2008) <<http://www.Newamerica.net>> Accessed October 2023

⁶⁴ J.Y. Campbell, 'Household Finance,' *Journal of Finance* (2006) 61(4): 1553-1604

⁶⁵ G. Elliehausen 'Implications of Behavioral Research for the Use and Regulation of Consumer credit Products' Finance and Economics Discussion Series,(2010) No: 2010-25, Federal Reserve Board

⁶⁶ L. Brix; and K. McKee, (2010). "Consumer Protection Regulation in Low-access Environments: Opportunities to Promote Responsible Finance," CGAP Focus Note 60. Washington, DC: CGAP

Atkinson and Messy opined that financial literacy is quite poor everywhere, even in countries with the highest average scores.⁶⁷ It is believed that in most countries, educated, affluent, middle-aged men are essentially knowledgeable about everyday finance. Another corpus of scholarship focuses on broader political and economic forces rather than consumerist culture and positional goods. It identifies the shrinkage of the welfare state and middle-class household's efforts to maintain their lifestyles as the driving forces behind the reduction of household debt.⁶⁸ Two explanations that commonly underpin the welfare-debt substitution argument is privatized Keynesianism and the debt-fare state.

Privatized Keynesianism contends that capitalism based on mass production had to be reconciled with democracy and that had been achieved through mass consumption.⁶⁹ But as capitalist wages did not sustain the necessary purchasing power the state had to step in to manage demand partially by redistribution through taxes and, partially, through borrowing. Curtailing social programs and government spending amounted to pushing the problem of demand management onto the households who had no other choice but to deepen their reliance on consumer credit. It is now private borrowing not public debt that keeps the economy running. Debt is a temporal fix that raises incomes of surplus workers by letting them borrow against their future earnings so they can spend more in the present. Debt then creates a secondary form of exploitation and an entire industry profiting from indebtedness. Households that experience rollback of welfare provisions will likely turn to borrowing as a compensatory strategy.⁷⁰

2.2. Theoretical framework

Time price doctrine is a rule that applies to the sale or lease of goods and services, particularly in the context of consumer credit transactions. The doctrine states that if a higher price is charged for a deferred payment than for an immediate payment, the usury laws do not apply. The doctrine is based on the idea that a seller of products or services who is subject to anti-trust regulation

⁶⁷ A. Atkinson, and F. Messy, 'Measuring Financial Literacy: Results of the OECD / International Network on Financial Education' (2012) (INFE) Pilot Study, OECD Working Papers on Finance, Insurance and Private Pensions, No. 15, OECD Publishing. <<http://dx.doi.org/10.1787/5k9csfs90fr4-en>>

⁶⁸ B. Kus., (2015) 'Sociology of debt: States, credit markets, and indebted citizens' *Sociology Compass*, 9(3), pp.212- 223, M. Prasad (2012) 'The land of too much: American abundance and the paradox of poverty' Harvard University Press

⁶⁹ C. Crouch, 'Privatised Keynesianism: An unacknowledged policy regime' (2009) *The British Journal of Politics & International Relations*, 11(3), pp.382-399.

⁷⁰ N. Fligstein and A. Goldstein, 'the emergence of a finance culture in American households' 1989– 2007. *Socio-Economic Review* (2015) 13(3), pp.575-601.

may set his own price, charging one price to customers who want to pay cash and another, and higher price, to those who wish to pay over a period of time.⁷¹ The difference between the two prices is not interest; the transaction is not a loan at all and is therefore not subject to any usury. Time price underscores the importance of transparency and clear disclosure of all components to the consumer, enabling them to make informed decisions about their borrowing choices.

In consumer credit transactions, businesses might advertise a lower cash price while also offering financing options that result in a higher total price. For consumers, this means understanding the total cost of purchasing an item through credit, including interest charges and any fees. The doctrine plays a significant role in consumer credit transactions by facilitating various pricing strategies and enabling consumers to purchase goods and services through financing.

2.3. Overview of Consumer Credits in Nigeria

As previously mentioned, the necessity for consumer credit facilities results from the inability of a borrower to make an instant payment for goods and services he requires for his own use or the use of his family. In the past, debtors were depreciated globally because the early form of credit involved borrowing some of the commodities that were used as currency at the time. Different materials like manilas, copper wires, and cowries are claimed to have been the local currency used in Nigerian communities prior to the arrival of the European traders.⁷² For instance, it has been reported that Portuguese traders brought Manila to Nigeria for the first time in the 15th century.⁷³ Later English tradesmen just adopted this method of payment. However, it appears cowries were utilised in Nigeria prior to Manila.⁷⁴ According to Hiskett, the Malian cowries must have travelled to Nigeria,⁷⁵ Credit transactions also include the usage of gin, gold dust, tobacco, salt and iron bars. In 1881, Lagos introduced British currency, and the importation of cowries into Nigeria was outlawed in 1904. The Nigerian Legislative Council ceased the conversion of Manila bills into British pounds in 1948. After that, credit transactions could only be made using

⁷² T. Faloa, 'Nigeria and Britain: exploitation or development?' (London and New Jersey, Zed Books Ltd. 1987), p. 14.

⁷³ E. Ekpo, 'Nigeria and the Evolution of Money' CBN and Dept. of Antiquities, Lagos (1979) p. 59.

⁷⁴ I. Batuta. 'Travels in Asia and Africa' (1929) 1325-54. London, cited in Essien, op.cit at p. 15.

⁷⁵ M. Hiskett, 'Materials Relating to the Cowries Currency of the Western Sudan', Vol. xxix, Bulletin of the school of Oriental and African studies (1966) pp. 339-3666 cited in Essien, E. op.cit.

British currencies until the government created the Naira and Kobo in 1973.⁷⁶ The Ekpe and Ekpo societies were employed to enforce credit obligations in the Southern region of Nigeria. These societies were so influential that they attracted some European traders to join the Ekpe society in the nineteenth century. Due to the confidence, they had that the debt would be paid back, they were able to extend credit to African traders. As consumer credit usage increased and gained popularity, attitudes toward it and its place in the credit system as a whole changed as well. Consumer credit is no longer viewed as a mechanism for the economically disadvantaged, as it once was.

From a more commercial verifiable viewpoint, when banking began in Nigeria around 1892, there was less of a pressing need to make consumer credit an item since there were less banks working at the time. Numerous modern command and merchant banks were able to form and get licenses much appreciated to the monetary sector's regulations. As a result, the commercial banks locked in solid competition, which inevitably brought about within the dispatch of unused buyer credit items in Nigeria commercial banks. In spite of this, consumer credit remained and undeveloped with customers being unsatisfied with the credit items presented within the money related showcase.⁷⁷ In Nigeria, consumer credit is available in various forms, including:

1. Credit cards: Credit cards have gained popularity in Nigeria, offering consumers the convenience of making purchases and accessing credit on a revolving basis. These cards allow users to borrow funds up to a pre-approved limit, which they can repay in full or through monthly installments. Credit cards often come with additional benefits such as rewards programs, travel perks, and purchase protection.
2. Personal loans: Personal loans are another common form of consumer credit in Nigeria. They provide individuals with a lump sum of money that can be used for various purposes, such as debt consolidation, home renovations, or medical expenses. Personal loans typically have fixed interest rates and repayment terms, allowing borrowers to budget their payments over a specified period.
3. Hire purchase agreements: Hire purchase agreements enable consumers to purchase goods or assets through installment payments. The lender retains ownership of the item

⁷⁶ E. Essien, *Law of Credit and Security* (Uyo: Toplaw Publishments Ltd 2012) p. 4

⁷⁷ N. Monye, *Law of Consumer Protection* (Ibadan: Spectrum Books Ltd 2003) p.11

until the borrower completes the payment obligations. This form of consumer credit is commonly used for purchasing durable goods such as electronics, furniture, or vehicles.

Chapter Three

3.0. Legal Framework for Consumer Credit in Nigeria

3.1. Moneylenders Ordinance 1939 Cap 124, Laws of the Federation of Nigeria, 1958

Moneylending in Nigeria has evolved from traditional banking to a more flexible and technology-driven system which accommodates FinTechs. The expansion of Nigeria's domestic credit market is a direct result of the widespread interest in this development among lenders.⁷⁸ Because of this, identifying a moneylender is critical. An individual is considered a moneylender if they lend money to others for the express goal of making a profit. However, there is a lot more to a moneylender than that, as will soon become clear. In the case of *Eboni Finance and Securities Ltd. v Wole-Ojo Technical Services Ltd. & 2 ors*⁷⁹, the court of appeal held, *inter alia*, that:

“..... The definition of a moneylender under the law is wide. It encompasses every person whose business is that of money lending and any person who lends money on interest or who lends a sum of money in consideration of a larger sum being repaid”⁸⁰

⁷⁸ Aderonke Alex-Adedipe and Eustance Aroh, ‘Regulation of lending in Nigeria’ pavestone newsletters (2022) <www.pavestonelegal.com/regulation-of-lending-in-nigeria> accessed 12 June 2023

⁷⁹ (1996) 7 NWLR (Pt. 461), p.1 464

⁸⁰ibid, pg.466.

A similar definition was given by the court of appeal in the case of *Veritas Insurance Co. Ltd. v Citi Trust Investments Ltd*,⁸¹ where the court stated, with regard to the denotation of moneylender, that:

“...any person who lends a sum of money in consideration of a larger sum being repaid is deemed to be a moneylender until the contrary is proved.”⁸²

And section 31 of the Moneylenders law of Lagos state⁸³ provides that:

Any individual whose principal or agentive role in the business is to lend money or who advertises or represents himself as engaging in such activity is considered a moneylender, regardless of whether the individual has assets or funds from sources other than lending money. Since the above definition is both elastic and ambiguous, it implies that anybody engaging in moneylending as a business can be considered a moneylender. This begs the crucial question of whether things would have turned out differently had the individual complied with the law and got a permission. It is argued that in the absence of a licence, the operation of the firm would be considered unlawful. Thus, a moneylender is defined under section 31.⁸⁴ Even though he has given a loan, a person who has charged interest or agreed to a greater repayment may challenge the assumption that he is engaging in money lending.⁸⁵ In *Edgelow v MacElwee*⁸⁶ it was stated that, for the assumption to be raised and maintained, there must be a certain degree of system, consistency and continuance. Paragraph (a) to (e) of section 31, however, expressly excludes certain entities from being classified as moneylenders, even though they may engage in activities that resemble moneylending or actual lending.

Moneylending is an extremely prevalent type of consumer credit in Nigeria and existed long before any governmental rules were put in place.⁸⁷ Nigeria now frequently engage in the activity because relatively few people have access to formal sources of credit.⁸⁸ Therefore, there is a need to resolve the controversy caused by the lack of access to formal credit, especially for those who

⁸¹ (1993) 3 NWLR (Pt.28), p.349.

⁸² Lagos State Moneylenders Law, Cap.M7, (2009) s.4

⁸³ *ibid.* s.31

⁸⁴ J.O. Orojo, *Nigerian Commercial Law and Practice*, Vol.1 (London: Sweet and Maxwell, 1983) p. 854

⁸⁵ Ezejiofor, Okonkwo & Illegbune, *Nigerian Business Law* (London: Sweet & Maxwell,1982) p.146

⁸⁶ (1918) 1 K.B. 205 at p. 206.

⁸⁷ E. Essien, *Law of Credit and Security in Nigeria*, 2nd ed. (Uyo: Toplaw Pub. Ltd, 2012)

⁸⁸ A.T. Popoola, ‘The challenges of a strong credit system in Nigeria’ (2009) credit awareness <www.creditawareness.nigeria.com/news> accessed, 22 June 2023

need small loans to purchase consumer products.⁸⁹ This raises many problems because unfair moneylenders have all kinds of unfair contract terms with extremely high interest rates, so some form of regulation from the state is needed. But how useful is this 1939 law in Nigeria today as a consumer credit tool?

3.1.1. Regulation of moneylending

There are regulations regarding the lending of money that date back thousands of years. Ancient authorities held the practice of lending money, formerly known as "usury," in the highest moral esteem. Lenders used to be very abusive in this technique, forcing desperate borrowers to accept extremely harsh terms. But in 1927, the British government passed a lending legislation to stop these kinds of abuses. Stricter legal requirements necessitate licensing and registration as moneylenders. Canvassing, unwanted advertisements, and agents were all out-rightly forbidden under this law. The hire-purchase model emerged as a response to the detrimental effects of these regulations on company operations. This model allows a consumer to rent an item rather than buy it outright, and then pay for it on an installment basis. While having the option of purchasing or returning it according to the agreement. Before 1990, money lending was regulated jointly by the Federal and the various state governments, respectively, through the money lending Act⁹⁰ and the various State money lending laws. However, the money lending Act was repealed,⁹¹ leaving the regulation of money lending to the Moneylending Laws of the various states in Nigeria.⁹² Their layouts are essentially the same, except for minor modifications and slight movement of items. Indeed, they all have the same origin: British Moneylending Act, 1927. The lack of regulation of money lending in its early phases was a key criticism of the industry; all kinds of people got involved, very high interest rates were applied, and borrowers were at the mercy of lenders.

Moneylenders, because of their inherent inequality, reaped the benefits of these regulations at the expense of borrowers. The law placed a premium on a moneylender's honesty and moral fibre because the moneylenders' contract is a pecuniary one. It is imperative that someone intending to run a money lending firm, or even just oversee its operations, possesses impeccable moral fibre

⁸⁹ E.E Eja, & E. Basse, 'Money Lending Law and Regulation of Consumer Credit in Nigeria' (2010) Retrieved from <<http://www.ajoliinfor/index/ph/.naujj/articledownload82406/72558.accessed.1320>> accessed 15 May 2023

⁹⁰ Moneylenders Ordinance 1939 Cap 124, Laws of the Federation of Nigeria (1958)

⁹¹ I. Sagay. *Nigerian Law of Contract* (Spectrum Books, Ibadan, 2000) p. 380; fn 60

⁹² The Lagos State Moneylenders Law, Cap. M7, Laws of Lagos State (2009)

and temperament. The issuing of a moneylending business licence is contingent upon a magistrate certifying this and other attributes of the moneylender in a certificate.⁹³ To control the behavior of money lenders in moving the goalposts during competition, the law requires that all money lending contracts must be in writing, signed by the parties to the contract or their representatives.⁹⁴ A document's omission from an ipso facto contract does not, however, invalidate it, according to the law. Hence, once a lender has verbally agreed to a loan, the borrower cannot ask to have it cancelled because it was not in writing.

There is not a particular type of contract that needs to be used, but any document or memorandum that includes the loan's date, principal amount, interest rate (or amount) payable each year, and any other relevant information is enough. To reiterate, a loan contract will not be deemed invalid or unlawful, but it will not be enforceable, if it does not adhere to the standards of form and content.⁹⁵ For emphasis, failure to comply with the requirements on form and content of a loan contract will not make that contract invalid or illegal but unenforceable.⁹⁶

Additionally, the moneylender is forbidden from using canvassers or agents to find borrowers for the lender.⁹⁷ As the only penalty for non-compliance is that the moneylender cannot make the borrower pay any commission to any canvasser or agent, nor can the canvasser or agent enter into a legitimate contract with the borrower for commission, there does not appear to be any utilitarian benefit to this clause.⁹⁸ Another important duty is the moneylender's disclosure obligation, which states that the moneylender must inform the borrower of all relevant details about the transaction. The borrower must make a demand and provide a reasonable amount for expenses for this disclosure responsibility to apply, nevertheless. There will be a penalty of two hundred naira (=N=200) for each day of violation if the lender does not provide the requested information, even though the borrower has paid a reasonable amount to cover the lender's costs. The penalty will not be refunded for the principal and interest that arose before the request for information.

⁹³ *ibid* s.4(1) "n108"

⁹⁴ *ibid* s.10(1) "n108"

⁹⁵ *ibid* s.10(3) "n108"

⁹⁶ Ezejiofor, Okonkwo & Ilegbune, *Nigerian Business Law* (London: Sweet & Maxwell, 1982) p. 151.

⁹⁷ s.16 n.108

⁹⁸ *ibid*.

Overall, the objective of the lending legislation is to prevent lenders from engaging in arbitrary, behind-the-scenes profiteering by establishing standards of trustworthiness and openness in the money lending industry. Without a formal agreement, borrowers put themselves at the whims of wary lenders when they really need the money.

3.1.2. Regulation for charging interest

As was previously mentioned, usury,⁹⁹ Because of the predatory practices of moneylenders and the extremely high interest rates they imposed, the ancient term for lending money—which means charging an unfair amount—was greatly hated. In response, lawmakers in England established moneylending as a legal form of usury but limited the amount of interest that could be charged to no more than 10%. This moneylender's graduated interest rate structure clearly stems from the assumption that, whereas secured loans are almost always recoverable, unsecured loans are not guaranteed to be. Despite the large interest rate differential between secured and unsecured loans, moneylenders nevertheless favour the former as they can never lose money on an unsecured loan. A lot of fees are added on top of the interest rates by some moneylenders.

This approach has been validated by referring to the following legal definition of "interest": All amounts paid or payable to the lender for consideration or otherwise in connection with the loan, whether in the form of discounts, commissions, bonuses, penalties, expenses, or any other name for them, should be combined to form the interest.¹⁰⁰ Not only is charging unauthorized interest a crime, but the lender's contract is illegal and unenforceable. In the case of *Nwankwo v Nzeribe*¹⁰¹, the court held, inter alia, that “the position of the law is that a loan transaction which shows that an offence has been committed against *section 11(1)* of the moneylenders’ law by charging unauthorised interest is an illegal contract and one which the court will not enforce”. Also, in the case of *Okonkwo v Okoro*¹⁰² where a moneylender made a secured loan to the defendant at an interest of 48% per annum instead of 15% per annum as required by law, the court held that the transaction was illegal and thus unenforceable. Any moneylender found of charging illegal interest or making charges that are against the law is subject to a fine of one hundred naira

⁹⁹ Defined in Oxford Advanced Learner’s Dictionary (5th Ed., 1998) as “the practice of lending money at an excessively high rate of interest”.

¹⁰⁰ s.11(3) “n108”

¹⁰¹ (2004) 13 NWLR (Pt. 890) 422.

¹⁰² (1962) 6 ENLR 74.

(=N=100), but the prosecution of the offence shall not be commenced except by or with the consent of the Attorney-General.¹⁰³

The reasoning behind the need for the consent or personal prosecution of the attorney-general is still unclear. There is a strong argument that this provision is totally unnecessary and ought to be repealed at the first available opportunity. The argument goes like this: the attorney-general will refuse to grant consent without a good reason, and bureaucratic red tape will make it impossible for him to personally and quickly prosecute. Also, the attorney general shouldn't be concerned because the crime isn't particularly important to the state. The same holds true for interest; it is illegal to collect interest or charge a higher interest rate as a penalty for nonpayment in any moneylending agreement¹⁰⁴ and prescribes the same penalty of one hundred naira(=N=100) for contravention. The provisions of the Law relating to interest that is owed are very important as a result of which it requires strict compliance. Thus, in the case of *Dawodu v Tinubu*¹⁰⁵ where the interest charged under the contract was not expressed in a rate per centum per annum but expressed as "9d. per £ per month", it was held that the phrase did not properly express the amount of interest charged and the loan transaction embodying the phrase was held unenforceable.

3.1.3. Limitation of action

A lender cannot file a lawsuit to enforce a loan agreement or security, collect money borrowed, or recover any interest on the loan, unless the lawsuit is filed prior to the 12-month period starting from the date the cause of action became due.¹⁰⁶ A cause of action arises when payment becomes due but is not made. However, there are three exceptions to this limit.¹⁰⁷ A borrower's written promise to return the loan at any point prior to or after the maturity date will start the clock ticking on the term as soon as the promise is made. Furthermore, in the event that the creditor is afflicted with a mental disease when the legal action is initiated, the passage of time shall be suspended until either the creditor's condition improves or they pass away; the order of these events is irrelevant. Thirdly, the time would not start to run until the borrower returned to Nigeria, even if the cause of action arose inside the initial period or under the undertaking while

¹⁰³ See s. 12(2) "n108"

¹⁰⁴ s.15 (1) "n108"

¹⁰⁵ (1959) LLR 128.

¹⁰⁶ s. 28 "n108"

¹⁰⁷ *ibid.*

he was not in Nigeria. In order for a debt confirmation or commitment document to be valid, the amount must be explicitly stated. In response to a transmission that indicates a quantity, it is sufficient to simply acknowledge or pledge not to signal a number. This is the decision in the case *Akinnola v Akinyosoyo*¹⁰⁸

The stringent limitations imposed on lenders by numerous state moneylending laws do a good job of protecting borrowers from predatory lenders. So, it's safe to argue that lenders will lose out if the law helps borrowers. The fact that the legal constraints put in place almost a century ago serve no practical purpose in today's business world is encouraging. It is fair to claim that excessive and pervasive law enforcement has significantly reduced company efficiency, leading to parties resorting to non-legal means to carry out their operations. Therefore, it is obvious that many states' moneylending rules, the majority of which have not changed since 1927, are severely outdated.

The practice of lending money has solidified itself; it is now crucial to modern life. Instead of preventing it, regulation should make it easier. In the same way that other industrialised nations' laws governing consumer credit transactions are unified,¹⁰⁹ Similar to the Consumer Credit Act of 2006 in the United Kingdom (UK), it is proposed that all consumer credit transactions in Nigeria, particularly those involving money lending, hire purchase, and credit sales, be regulated by a singular, all-encompassing law. A unified code superseded the previous patchwork of laws and regulations by the Act. In a similar vein, the South African consumer credit Act (2005) does away with the piecemeal approach to consumer transactions in the country. It does this by establishing a national credit regulatory authority to enforce the law and by encouraging fair and responsible credit transactions under Article 4(1). Articles 43 and 70 further regulate the activities of credit bureaus.

The US Fair Debt Collection Practices Act of 1996 and the US Consumer Credit Act of 1968 both sought to standardise and promote honest credit transactions by guaranteeing the accurate and fair reporting of customers' personal information. What makes these latter restrictions intriguing is that they forbid things that are prevalent in Nigeria. Debt collectors are prohibited from contacting or discussing debt matters with consumers at locations and times considered

¹⁰⁸ (1973) NCLR 185.

¹⁰⁹ For example, the Consumer Credit Act, 1974 (as amended) of the United Kingdom

inconvenient by the Fair Debt Collection Practices Act unless the consumer has previously and explicitly consented to the creditor. It forbids the use of abusive or harassing language, threats of physical harm, or any other unfair or unethical method to collect debt. Because Nigeria does not have a comparable statute, Nigerian customers have a myriad of challenges. This leads us to the questionable methods employed by numerous Nigerian internet moneylenders. As a step in this direction, Nigeria passed the Consumer Protection Council Act in 1992. The National Consumer Credit Regulatory Commission Act, which was supposed to be passed in 2009, is still pending in the National Assembly. Because of this predicament, the CBN had to step in without official backing in 2010 to establish a regulatory framework for commercial and microfinance banks, prohibit universal banking, and institute a tiered banking system to safeguard depositors' money.

3.2. Hire-Purchase Act, 1965

In a hire-purchase agreement, one party (the owner) agrees to let another party (the hirer) use their goods for a set period of time (the hire rent) in exchange for periodic or installment payments (the hire fee). The hirer has the option to either return the goods and end the hiring at any time or keep hiring until the hire-rent reaches a certain amount, at which point the owner either transfers ownership to the hirer or the hirer pays a small (usually nominal) option fee to acquire the goods.¹¹⁰ The following features are outlined by this definition of hire purchase:

- a. It is a contract, which means that in order to establish legal duties binding the landlord and tenant, there must be an offer, an acceptance, consideration, and the will of the three parties involved.
- b. It is a deposit, which denotes that one party assumes ownership of another's property, lends, stores, or transports another party's products.
- c. Lender grants opportunity to acquire goods, but does not impose duty to do so.
- d. Until the lessee pays the last payment or uses its option to buy the goods, the owner retains title to them.

¹¹⁰ G. Ezejiofor, C. O. Okonkwo and C. U. Ilegbune, *Nigerian Business Law* (1982) P. 203

These characteristics are best illustrated in the famous British cases of *Lee v Buttler*¹¹¹ and *Helby v Matthew*,¹¹² The complaint and the House of Lords placed emphasis on the substance, and not the form of the terms used by the parties in the hire purchase agreement. It was also held to illustrate the characteristics of a hire purchase agreement in *Amao v Ajibike*¹¹³ the simple act of labelling a transaction as a hire-purchase does not change the fact that it is, in fact, a sale or agreement to sell. What is meant by a "contract of hire with option to purchase under which the owner of the chattel undertakes to sell it to, or that it shall become the property of the hirer conditionally on his making a certain number of payments?" is summed up in Halsbury's Laws of England Vol. 1st Edition. However, ownership of the chattel does not transfer until the final payment is made." In *Scammell v. Austin*¹¹⁴ it was defined as a complex transaction, not a contract of sale but a bailment. This is a judicial definition. A statutory flavor is given to this definition in Section 1 of the Act¹¹⁵ as: "an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee." From the foregoing, it is clear that it is an agreement concluded between a bailor, that is, the owner, and a bailee that is the hirer, in respect of some particular goods with the option of the hirer purchasing the goods.

Before the enactment of the hire purchase Act 1965,¹¹⁶ the common law was the sole authority on credit and hire purchase deals. Originally enacted in 1965 with exclusive application to Lagos State, the Nigeria Hire Purchase Act was later expanded to cover the entire country with Hire purchase (Application) Decree No. 42 of 1966. On October 1, 1968, the decree was put into effect by virtue of the Hire Purchase Act, 1965 (Application Day) order 1968. Modification Decree No. 23 of 1970, however, made some little revisions to sections 8 and 9 of the Act, although just slightly. When the Act was re-enacted in 1990, these revisions and extra adjustments were made. Credit sale transactions as well as hire buy transactions are intended to be regulated by the Act.

¹¹¹ (1893) 2 Q. B. 318

¹¹² *ibid*

¹¹³ (1955-56) WRNLR. 121

¹¹⁴ (1941) 1All E.R 14,

¹¹⁵ English Hire-Purchase Act, 1965

¹¹⁶ Hire-Purchase Act, Cap. H4, Laws of the Federation of Nigeria, 2004

While the Sale of Goods Act codifies certain common law principles, the Hire Purchase Act does not do the same. The 1965 Act sought to correct some wrongs and do away with corrupt corporate practices that had developed as a result of the common law system.¹¹⁷ To this day, the hire-purchase arrangement is a prevalent form of financing through which merchants and wholesalers extend credit to buyers. Hire buy transactions were controlled by common law prior to this Act, but it was inadequate and did not establish a uniform framework. Therefore, the Act sought to safeguard the interests of individuals who had purchased property through hire buy and to reduce the inequalities that had previously existed. While the Act's efforts to rein in wrongdoing are praiseworthy, especially with regard to the proprietor's ability to reclaim stolen goods, they are severely restricted in their reach. Despite excluding agreements pertaining to motor vehicles, Section 1(a) restricts the volume of transactions to two thousand naira (N2, 000). This has been construed as meaning that the common law continues to regulate transactions that are not governed by the Act.¹¹⁸

The requirement that a hire-purchase agreement be writing under section 2(1) is the first area in which the hire purchase Act has an effect on consumer credit. The section provides that the hirer shall personally sign the written notice or memorandum and not by an agent.¹¹⁹ In *Eastern Distributors limited v Goldring (Murphy, third party)*.¹²⁰ The court determined that each party to the agreement must personally sign the note or memorandum, and the agreement must include all essential conditions at the moment the hirer is required to sign. The written notice must encompass the following details: a declaration of the hire purchase price of the goods, the cash price, the amount and due date of each instalment, the deposit paid, the actual interest rate applied, a catalogue of the goods covered by the agreement, and a reminder of the hirer's right to terminate the agreement along with any consequences.¹²¹ The proprietor cannot enforce the hire purchase agreement if he neglects these stipulations. Nonetheless, the court may forgo any of the section 2(2) processes specified in items 1 and 2 if it is convinced that the hirer was not adversely affected by the non-compliance, thereby rendering the omission of that formality just and equitable. It must be emphasised that no standardised format for agreements is mandated; the

¹¹⁷ E. Jacob, 2018: <<https://www.researchgate.net/publication/325336141>> accessed 5 June 2023

¹¹⁸ O. Achike, *Commercial Law in Nigeria*, ed, (Fourth Dimension Publishers, Enugu, 1985) p. 352,

¹¹⁹ Section 2(2) (a)

¹²⁰ (1957) 2 Q, B, 600

¹²¹ Section 2(2) (b)

agreement may be oral or written, contingent upon the circumstances and the owner's discretion. In *Adeebare v Niger Motors Ltd.*¹²² The signature was deemed insufficient to nullify the agreement. This scenario inspired the unscrupulous manipulation of hire purchase agreements, detrimental to hirers, by deceitful proprietors and other malpractices associated with hire buy products.

Part 3 of the Act safeguards the tenant by including all requirements of the lease purchase agreement, which permits the owner or their agent to enter the premises where the goods are stored to reclaim possession. In *United Dominions Corporation Ltd v Ladipo*¹²³ The owner was deemed responsible for damages resulting from unlawful entrance. Any clause that excludes or restricts the lessee's legal right to terminate the hire purchase contract, or that imposes additional liabilities beyond those legally applicable upon termination of the lease purchase agreement, is invalid. Furthermore, any provision that holds the tenant liable for obligations exceeding those that would have arisen had the contract been terminated by the lessee in accordance with the agreement Act is also unenforceable. A clause concerning any individual representing the owner or seller in the establishment or execution of a hire purchase or credit sale contract as an agent. A provision absolving the owner or seller of any responsibility for the actions or omissions of any representative acting on my behalf. Account in relation to the establishment or endorsement of a hire purchase or credit purchase agreement.

Section 6 delineates the responsibilities of the dealer, owner, and hirer concerning the exchange of information. The responsibilities include: pursuant to section 6 (1), the owner is legally obligated to provide the hirer with a copy of the note or memorandum detailing the amount paid, the outstanding amount, and the due dates of the installments within 14 days of the hirer's written request, accompanied by N20,000 for expenses. The owner's information is a declaration on the hire buy transaction specified. The Act prohibits the owner from enforcing the agreement against the hirer if he fails to give this information, and if the owner is convicted of an offence, he shall be subject to a penalty of N10, 000 (£10) upon summary conviction.

Per section 6(3), the hirer is obligated to maintain possession or control of the goods specified in the agreement and, upon receiving a written request from the owner, to disclose the goods'

¹²² (1974)5S.C.1

¹²³ (1971)1 All NLR. 102

location at the time the information is provided, or if communicated via email, at the time of dispatch. The hirer must, in accordance with section 6(4), furnish the specified information within 14 days; failure to comply will result in a conviction for an offence and a penalty not exceeding N10, 000 (£10). The hirer would incur a penalty and face a fine of up to N50, 000 (£50) if he provides false information regarding a material fact. These clauses are purportedly defences against the owner's forcible entry into the hirer's property to reclaim ownership of objects in the case of default, as well as against the owner's imposition of exorbitant hire purchase prices and interest rates. Prior to executing the final payment, the hirer might ascertain the total amount of hire rent already remitted and the outstanding balance, as stipulated in section 6(1). Section 6(3) prohibits the hirer from handling the products in a manner that contravenes the Act and the hire-purchase agreement, therefore allowing the owners to ascertain the condition and location of the goods.

The owner's recovery of the items is addressed in section 9. A specified percentage of the hire purchase price must be paid as a condition for the owner to reclaim the things, in accordance with the provision, and section 5 must be applicable. The employee's vulnerable status concerning the owner's possible common law recovery of the objects has been reinforced by section 9(1). Under common law, if the hirer committed even a minor error, the owner might confiscate the objects, and if the goods were sold to a third party, the hirer would forfeit all legal claim to the proceeds, regardless of whether the proceeds exceeded the outstanding balance of the purchase price. If the wages were diminished, the employer would be obligated to compensate the discrepancy as damages. To prevent the owner from asserting any right to reclaim possession of the goods from the hirer except through legal action, it is essential to emphasise the limiting stipulations of section 9(1), which solely mandates the hirer to remit the applicable portion of the hire purchase price, whether in accordance with a judgment or otherwise, or offered by or on behalf of the hirer or any guarantor.

Section 9 generally advocates for the expansion of hire purchase contracts as a consumer credit mechanism by rectifying the inequities imposed on hirers by owners under common law; however, it simultaneously inflicts hardship and inequity upon owners and may be exploited by hirers and guarantors, allowing hirers to abscond with the item after remitting the requisite proportion. The Section imposes a limitation on the owner's right to reclaim the property outside

of legal action, particularly when the hirer has remitted a significant portion of the hire-purchase payment. If the owner retrieves the products in violation of the regulation, the hire buy agreement is terminated, and the hirer and his guarantor are absolved of any obligations under the agreement. The aforementioned provision is inapplicable if the hirer has exercised the right to cancel the agreement or the bailment. In this case, the owner may reclaim the goods regardless of whether the applicable proportion has been paid. The courts have established the position under section 9 of the Act. In *Adesanya v. Balogun & Ors*,¹²⁴ the hirer remitted N1, 647.00 of the total hire-purchase price of N1, 843.00 and initiated legal action for damages due to the owner's seizure of the goods without a court order. The court deemed the seizure unlawful and absolved the hirer of any duty under the agreement. The court additionally determined that he might reclaim from the owner the amount of N1, 647.00 that he had already disbursed to the owner. The Act does not specify the consequences of the hirer's default prior to the payment of the applicable amount of the hire-purchase price. The common law rule is likely to be applicable in this circumstance.

3.3. The Sales of Goods Act, 1893

Application of the Sale of Goods Act has been more troublesome in recent decades, leading to widespread misunderstanding, controversy, and conflicting court rulings. Despite opposing socioeconomic transformations that have occurred in the last century, this is mostly due to the nature of the law that has been in force for more than a century. The Sales of Goods Act serves as the primary statute governing the sale of goods in Nigeria,¹²⁵ a statute of general application in Nigeria that was established by the country long before its political independence. This law, like many others with broad applicability, has become antiquated and irrelevant to the way businesses and contracts deal with real estate, both mobile and fixed. Consequently, certain of its provisions are no longer relevant or even applicable in some contexts. According to section 1(1) of the Act, a sale contract is one in which the seller sells or promises to sell items to the buyer in exchange for a monetary consideration known as the price. An unconditional or conditional selling contract is possible¹²⁶. An agreement to sell products must have not only the standard contract components, but also the items themselves and some kind of monetary compensation, according

¹²⁴ CCHCJ/11/73

¹²⁵ Sale of Goods Act, 1893

¹²⁶ *ibid* s.1(2)

to the above definition¹²⁷. In *Nidocco v Gbajabamila*¹²⁸ The Supreme Court determined, firstly, that non-payment of the purchase price in a land sale constitutes a fundamental breach that undermines the essence of the sales contract; and, secondly, that a contract lacking consideration is deemed incomplete, precluding the court from ordering specific performance. A contract of sale may constitute either an outright sale or an agreement to sell. An outright sale occurs when the products are transferred from the seller to the buyer at the time the contract is executed. An agreement to sell occurs when the products are to be transferred at a future date or contingent upon the satisfaction of specific criteria at the time the contract is executed.¹²⁹ An agreement to sell would become a sale when the time for delivery elapses or the conditions are fulfilled.¹³⁰ Section 62 of the Act delineates goods as encompassing all personal chattels, excluding currency and other items; it includes emblements, industrial crops in cultivation, and anything affixed to or constituting part of the land that are stipulated for severance prior to sale or under the sales contract.

In *Berende v Usman & Anor*, person's chattels are considered personal property if the Court of Appeal rules that they belong to them instantly and if they are unlawfully taken from them, the only method to get them back is for the person to take personal action. The purpose of a personal action, according to Black's Law Dictionary, is to recoup monetary obligations, individual possessions, or damages sustained as a result of any legal action.¹³¹ Therefore, property can be perceived from three distinct dimensions: first, as the object or res subject to ownership; second, as the concept of ownership itself; and third, as an interest in an object that is subordinate to ownership yet nonetheless grants specific rights.¹³²

3.3.1. Validity of a Contract of Sale

The Sale of Goods Act specifies in section 2 that the general law of contract governs contracts in general, including contracts for the sale of goods. Accordingly, the elements of offer, acceptance, consideration, and purpose to form legal relations are necessary for a contract to be legitimate. Further requirements for a legally binding contract include the following: the legal capacity of

¹²⁷ M.C. Okany, *Nigerian Law of Property* (2nd ed, Fourth Dimension Publishing Co. Ltd, Enugu 2000).

¹²⁸ (2013) 56 (pt. 1) NSCQR 230

¹²⁹ *ibid* s.1 (3) "n.160"

¹³⁰ *ibid* s.1(4)

¹³¹ B.A. Garmar. (ed.), *Black's Law Dictionary*, 7th edition (St. Paul, MINN: West Group, 1999).

¹³² *ibid* n.158

the parties involved, the nature of the contract (whether verbal, written, or by deed), the content (including both express and implied terms), the absence of fraudulent inducement (such as mistake, duress, or misrepresentation) and the absence of illegality or public policy violations. If a contract fails to meet these necessary conditions, it might be declared void, voidable, or unenforceable.¹³³

The fundamental principle of property acquisition and transfer focusses on ownership and possession. Possession entails dominion over an object, the intention to exert exclusive control, and a reasonable assurance of sustained exclusive usage. Ownership is defined as a collection of rights that permits an individual to utilise, administer, and derive pleasure from property, encompassing the ability to transfer it to others. It denotes the entitlement to own an object, irrespective of any tangible or inferred control.¹³⁴ An individual must first own and, in most instances, hold a property before they can properly sell, transmit, or transfer ownership or title to another individual. This legal principle is encapsulated in the Latin phrase "nemo dat quod non habet," signifying that no individual can confer what they do not own. This principle is predicated on the rationale that an individual lacking property ownership cannot transfer it to another without the genuine owner's consent, either through an agency relationship, under statutory powers, or in circumstances where the doctrine of estoppel prohibits the true owner from contesting the seller's authority to sell.¹⁰

There are other basic elements for a valid contract of sale. The consideration for a contract of sale of goods is the price which must be expressed in monetary terms.¹³⁵ Exchange of goods simpliciter cannot, therefore, come within the confines of sale of goods. Section 8(1) of the Sale of Goods Act provides that the price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties. Where the price is not determined in accordance with the foregoing, the buyer must pay a reasonable price.¹³⁶ In instances where there is a contract to sell goods stipulating that the price will be determined by a third-party valuation, and that third party fails to perform the valuation after the goods or a portion thereof have been delivered and

¹³³ K. Abbott; N. Pendlebury, & K. Wardman, *Business Law* (9th ed. Hampshire: Cengage Learning EMEA 2013).

¹³⁴ Garner, *op. cit.*

¹³⁵ E. Macintyre, *Business Law*. (England: Pearson Education Ltd 2008).

¹³⁶ Section 8(2) of the Sale of Goods Act

appropriated by the buyer, the buyer is obligated to pay a reasonable price for the goods. Furthermore, if the third party is hindered from conducting the valuation due to the fault of either the seller or the buyer, the party not at fault may pursue a claim for damages against the at-fault party.¹³⁷ Okany asserts that the price in a sales contract may be established (a) by the parties involved, (b) left to be determined in accordance with the contract's stipulations, such as through valuation or arbitration, or (c) ascertained through the established dealings between the parties, including prior transactions or pertinent industry customs. In the absence of a definite or determined price, it is presumed that the buyer will pay a suitable price.¹³⁸

The issue with section 8 of the Sale of Goods Act is that, in the absence of a definite price in the contract, it is challenging to ascertain the existence of a concluded contract. In any scenario where the price is established by mutual agreement, determined by the parties' dealings, or set by a third party through appraisal, we identify only a future contract to be formed upon the occurrence of any of these occurrences. Consequently, any contract that has been established is incomplete and only prospective. This presents a problem to the judiciary, which must interpret and adjudicate each case on its merits without establishing a cohesive body of case law that may provide assurance.

Another important element of the sale of goods contract is the goods itself, otherwise referred to as the property.¹³⁹ There must be some goods or an interest in goods to be conveyed. According to section 16 of the Act, in a contract for the sale of unascertained goods, ownership of the items is not passed to the buyer until the products are identified. Moreover, in the case of a contract for the sale of specific or identified commodities, ownership is transferred to the buyer at the moment intended by the contracting parties. Section 17 stipulates that, to determine the parties' intent, one must consider the contract's provisions, the parties' actions, and the transaction's conditions. The vendor must either be the property owner or a legitimate agency authorised by the owner. Thus, the court stated in the early English case of *Eicholz v Bannister*¹⁴⁰ In nearly all sales transactions in everyday life, the seller implicitly asserts ownership of the item being sold; furthermore, the sale of a chattel is the most definitive exercise of dominion associated with

¹³⁷ O. Yerokun,, *Casebook on Commercial Law* (Lagos: Princeton Publishing Company 2005)

¹³⁸ M.C. Okany, *Nigerian Commercial Law* (Onitsha: Africana FEP Publishers Ltd 1992)

¹³⁹ D.C. Bose, *Business Law*. (New Delhi: PHI Learning Private Ltd 2008)

¹⁴⁰ (1864) 17 CNNS 708.

ownership. Additionally, a transfer of property or interest in the property from the seller to the buyer is required.

3.3.2. Rights and remedies available to the seller for a breach of a contract of sale

According to section 38(1) of the Sale of Goods Act, a seller is classified as an unpaid seller when the total price remains unpaid or unoffered; or when a bill of exchange or other negotiable instruments has been accepted as conditional payment, and the condition for its acceptance has not been satisfied due to the dishonour of the instrument. This clarification is crucial as it directly pertains to the rights of the seller and the remedies available in the event of the buyer's default in payment for the delivered goods. The execution of a sales contract is indicated by the payment of the purchase price. Consequently, upon receipt of the full payment for the items that the seller has properly delivered to the buyer, all of the seller's rights over the products are entirely terminated. Yerokun has observed that payment, a crucial component of a sales contract, is often the most challenging demand to fulfil in commercial transactions.¹⁴¹

Traders are especially eager to acquire the items or receive them through delivery. However, effectuating payment can occasionally prove challenging, as certain purchasers may procrastinate, engage in haggling, or want to extend the payment deadline. To alleviate the seller's aforementioned predicament, section 39(1) of the Act confers upon the unpaid seller three significant rights: a lien on the goods, allowing retention for the price while in possession; a right to stop the goods in transit in the event of the buyer's insolvency after relinquishing possession; and a right to resell the goods in accordance with the Act's provisions. Moreover, section 39(2) of the Act specifies that if the ownership of goods has not transferred to the buyer, the unpaid seller possesses, in addition to the aforementioned remedies, a right to withhold delivery that is analogous to and coextensive with his rights of lien and stoppage in transit when ownership has transferred to the buyer.

Regarding the seller's lien on the goods, section 41(1) of the Act authorises the seller to maintain possession of the goods until payment is rendered or the price is tendered, applicable only in situations where the goods were sold without a credit stipulation, where the goods were sold on credit but the credit term has lapsed, or where the buyer has become insolvent. The unpaid seller forfeits his right of lien or retention of the goods upon delivering them to a carrier or other Bailee

¹⁴¹ O. Yerokun, *Casebook on Commercial Law*, (Princeton Publishing Company Ltd, Lagos 2005)

for transmission to the buyer without reserving the right of disposal; when the buyer or his agent lawfully acquires possession of the goods; or when he has relinquished his right of lien.¹⁴² Unfortunately, the Act leaves the question of what constitutes a waiver up to the arbitrary whims of the courts, which is a big concern. Section 42(3) of the Act provides some solace by stating that a judgment for the price of goods does not automatically release a seller's lien or right of retention on such items if the seller has not been paid in full. Still, we think the seller shouldn't be able to keep a lien on the items after a judgment has been handed down and the amount collected; in such cases, the lien should immediately go away. In addition, the Sale of Goods Act, including sections 49 and 50, outline the seller's essential rights in the event that the buyer breaches the contract. An action for price is the most essential remedy among these. Thus, the seller can sue the buyer for the items' price if, after the seller has transferred ownership to the buyer in a sales contract, the buyer fraudulently fails or refuses to pay for the goods as agreed.¹⁴³ Even though title to the goods has not yet transferred and the buyer has not yet appropriated them to the contract, the seller may nevertheless pursue payment if the buyer fraudulently fails to pay the agreed-upon price by the due date, regardless of when the goods were delivered. The seller also has the option to sue the buyer for damages for non-acceptance of the products if the customer fraudulently fails to accept or pay for the goods.¹⁴⁴ Estimated loss due to the buyer's breach of contract as a natural and direct consequence of the normal course of events is the measure of damages. Numerous cases have been confirmed by the Nigerian Supreme Court, illustrated by *Aminu Ishola v Afribank*,¹⁴⁵ the value of the chattel plus any additional loss that is a direct and natural consequence of the wrongdoing is, at first glance, the damages that a plaintiff who has had his chattel taken away is often entitled to. In addition, the court emphasised that the purpose of monetary damages is to place the wronged party in the same financial situation as if the contract had been fulfilled. Damages awarded to an injured party can never exceed the amount of loss that party has sustained. True, the remoteness of damages exclusion concept allows the wronged party to receive less than their actual losses. Unpaid sellers may face additional obstacles while attempting to collect damages, beyond the principle of remoteness of damages. For example, affected parties in Nigeria are required to take

¹⁴² (1864) s.43(1) Sale of Goods Act

¹⁴³ S.49(1) Sale of Goods Act

¹⁴⁴ s.50(1) Sale of Goods Act

¹⁴⁵ (2013) 54.2 NSCQR 717; see also Chief Paul Ordia v Pied Mont Nigeria Ltd (1995) 2 NWLR (pt. 379) 16; Universal Vulcanisation Nigeria Ltd v Ijesha United Trading & Transport Ltd (1992) NWLR (pt. 266) 388

measures to limit their losses, which could undermine their claims for damages. In *Okongwu v Nigeria National Petroleum Corporation*,¹⁴⁶ According to the Supreme Court, a plaintiff has an obligation to take reasonable measures to lessen the impact of the defendant's wrongdoing on his case. However, if the plaintiff could have prevented a loss that he suffered because of the defendant's wrongdoing, he cannot seek compensation for that loss.¹⁴⁷ This position was re-affirmed by the court in *Onwuka v Omogui*,¹⁴⁸ consequently, a claimant is legally obligated to reduce his loss in proportion to damages. But it's worth noting that this duty falls on the buyer as well as the seller. Ignoring the previous analysis, if the goods in issue are marketable, the amount of damages should be calculated by subtracting the contract price from the market or current price at the time(s) when the goods should have been accepted (or, in the absence of a specified acceptance date, at the time of the refusal to accept).¹⁴⁹

3.3.3. Rights and remedies available to the buyer for a breach of contract of sale

The Sale of Goods Act has strengthened the buyer's position in the contractual relationship by granting him a number of rights and remedies, just as it has strengthened the seller's position. A remedy for non-delivery of the items indicated in the sale contract is to sue for damages. The buyer has the right to sue the seller for damages under section 51(1) of the Sale of Goods Act if the seller wilfully fails to deliver the goods. According to the Supreme Court's clarification in *Abba v. Shell British Petroleum*, the buyer must accept the goods delivered by the supplier as the standard of due delivery. Due delivery is not complete until the buyer signs the waybills, which are an integral part of the delivery process¹⁵⁰. Again, as is with the case of the seller, the measure of damages which a buyer can claim is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.¹⁵¹ Furthermore, the Supreme Court has held in *Artra Industries (Nigeria) Ltd. v Nigerian Bank for Commerce and Industry*,¹⁵² that damages for breach of contract are not awarded for anticipated gross income but for net income or profit, such that in considering a claim for loss of anticipated profit, the

¹⁴⁶ (1864) (1989) 4 NWLR (pt. 115) 296

¹⁴⁷ (2015) 4 NSCQR 412

¹⁴⁸ See further Sagay (Supra)

¹⁴⁹ S. 50(3) Sale of Goods Act

¹⁵⁰ (2013) 54.3 NSCQR 1363

¹⁵¹ (1864) s.51(2) Sale of Goods Act

¹⁵² (1998) 4 NWLR (PT. 972) 357.

projection of an anticipated profit in a feasibility report without more has no weight and is not acceptable as proof of such anticipated profit.

Another important remedy for the aggrieved buyer lies in specific performance which the court may grant upon his application. This is a remedy ordered by the court requiring the fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate.¹⁵³ Section 52 of the Sale of Goods Act provides that in any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may deem just, and the application by the plaintiff may be made at any time before judgment or decree. There are many advantages of specific performance including that it may be difficult to revert the parties to the status quo ante merely by the payment of damages. However, the greatest obstacle to the enjoyment of this remedy is that it is purely discretionary on the presiding Judge to grant or refuse and this is further complicated by the fact that there is no objective yardstick by which the court's discretion may be measured thereby throwing the entire enterprise to his whims and caprices. To this extent, specific performance is in effect a shaky and uncertain remedy. This uncertainty is amplified by the Supreme Court in *Help (Nigeria) Ltd. v Silver Anchor (Nigeria) Ltd.*,¹⁵⁴ during its ruling that particular performance is a remedy that is left to discretion. If the contract is flawed or if monetary damages would be sufficient compensation, it will not be given. Section 52 of the Act lends credence to this interpretation, especially in its use of discretionary language to clarify the court's authority in deciding whether or not to grant a certain performance order. Thus, in the end, specific performance is not a right but an obviously ill-defined cure. This is especially true because particular performance orders issued by the court can only be carried out for attainable goals. It can't order the unattainable or make a pointless edict of precise performance. In light of this, the court must thoroughly consider all relevant interests before issuing a specific performance order.

¹⁵³ *Best (Nigeria) Ltd v Blackwood Hodge (Nigeria) Ltd* (2011) 5 NWLR (PT. 1239) 95

¹⁵⁴ (2006) 5 NWLR (PT. 972) 196

The Sale of Goods Act provides the buyer with a remedy for the seller's violation of warranty. According to section 53(1) of the Act, the buyer is not entitled to reject the goods or repudiate the contract; instead, they are afforded a remedy against the seller for breach of warranty, which may involve a reduction or elimination of the price, or the initiation of a damages action against the seller for the breach of warranty. This remedy stems from the seller's implied assurance that the goods will be free from any undisclosed charges or encumbrances by third parties unknown to the buyer. In a contract for the sale of goods, the law mandates that the seller provides a warranty of ownership of the property.¹⁵⁵ Notwithstanding the foregoing, the Supreme Court in *Metal Construction (WA) Ltd v Meridian Trade Corp. Ltd.*,¹⁵⁶ stated that a buyer complaining about non-merchantability of goods purchased must do so and reject the goods timeously and that the appellant in that case having accepted the goods which it had ample opportunity to examine, cannot later reject them and must be taken to have examined them.¹⁵⁷ In *Elf Petroleum Nigeria Ltd. v Onyekwelu*, the Supreme Court established the criteria for determining when a buyer is considered to have accepted delivery of goods. This includes instances where the buyer notifies the seller of acceptance; when the goods are delivered and the buyer performs any act inconsistent with the seller's ownership; or when the buyer retains the goods for a reasonable duration without informing the seller of a rejection.¹⁵⁸ According to section 36 of the Act, if goods are delivered to the buyer and he declines to accept them, he is not obligated to return them to the seller; it is sufficient for him to notify the seller of his rejection.

3.4. The Pawnbrokers' Law 1917, Cap P3, Laws of Lagos State 2004

Pawn broking denotes the operation of a pawnshop. It entails offering a short-term credit facility to individuals in return for valuable objects that act as collateral. The pawnbroker evaluates the item's worth and proposes a loan amount accordingly. Upon the borrower's repayment of the loan with interest within a designated timeframe, the object may be retrieved. Should the loan and interest remain unpaid, the pawnbroker is entitled to sell the object to recoup the borrowed sum. Pawning often does not imply a transfer of ownership but rather grants a possessory right to the pawnbroker. Pawn brokering is a conventional business that remains relatively infrequent and

¹⁵⁵ See *Abba v Shell Petroleum (Supra): Akerele v Atunrase* (1969) 15 CNLR 323; *Adlaju v Fanoiki* (1990) 2 NWLR (Pt. 131) 137

¹⁵⁶ (1990) 5 NWLR 145

¹⁵⁷ See *British Overseas Credit Ltd v Animashaun* (1961) ANLE 343

¹⁵⁸ s.35 Sale of Goods Act

underutilised in Nigeria. Pawn-brokering in Nigeria is mostly governed by state legislation to safeguard the interests of both borrowers and lenders. The Lagos State Pawnbrokers Law, albeit the most thorough legislation concerning pawn brokering, is constrained in its breadth. Section 5 of the statute pertains to loans that do not surpass ten thousand naira (N10, 000.00). This sum is very restricted in contemporary Nigeria. In the United Kingdom (UK), the initial restriction of Five thousand Pounds (£5,000) established by the Consumer Credit Act 1974 was raised to Twenty-five thousand Pounds (£25,000) to align with contemporary circumstances, and under the revised Act of 2006, there is no higher limit. Section 11 of the Lagos State pawnbroker's law stipulates that pawners must pledge items valued at two hundred and fifty Naira (N250.00) or less. It additionally specifies that if the pawned item is not reclaimed within the redemption year and grace period, ownership of the item shall go entirely to the pawnbroker. One contemplates the essence of such articles. Section 12, conversely, permits the ongoing redemption of a pledge pawned for more than two hundred and fifty naira (N250.00) even after the grace period has lapsed. Section 13 (1) stipulates that the sale of pawned items above two hundred and fifty naira (N250.00) must occur by public auction. This indicates that any pawned item valued at two hundred and fifty naira (N250.00) must be disposed of at a public auction.

In contemporary Nigeria, it is rare to encounter an item valued at two hundred and fifty naira (N250.00). When comparing the cost of the commodities in question to the expenses associated with organising an open auction, one cannot help but conclude that the legislation has lost its connection to reality. According to section 26(1), an individual who unlawfully pawns another's property is culpable on summary conviction to a fine of two thousand five hundred naira (N2500). A person who cannot account for the acquisition of an item intended for pawning is subject to a fine of five thousand naira (N5000) as stipulated in section 27(1)(c). It is reassuring that Section 27(2) permits the pawnbroker to notify the police if there is reasonable suspicion that the item intended for pawning is stolen. The New Zealand posture is optimal. According to section 35 (1) of the New Zealand Pawnbrokers Act¹⁵⁹, where an individual who pawns fails to give satisfactory account of how he came by the article, or has given an untrue data, or the pawnbroker sensibly suspects that the article is stolen, he may seize and keep the individual and article and provide same to the police instantly. The restricted scope of the transaction alongside

¹⁵⁹ New Zealand Pawnbrokers Act (1908)

the punishments contained within the law, is sufficient to state the law as being unsuitable in modern day Nigeria.

3.5. Nigerian Sources of Consumer Credit Laws and Regulation

3.5.1. Statutory Law

Typically, a fundamental source of Nigerian law, statutory law is the superstructure upon which the complete legitimate framework is based. The Nigerian Constitution 1999 (as amended), which built up a three-layered framework of government with the national and state houses of assembly having the authority to enact essential legislations, is the elemental source of Nigerian law. The powers to regulate financial related administrations such as the establishment of the Central Bank of Nigeria (CBN), licensing of banks and insurance of banks in Nigeria, is vested with the National assembly. Thus, institutions like the CBN are mandated to make subsidiary legislations for the regulation and control of financial services. In spite of how critical statutes are to the Nigeria law, numerous of the pivotal ones ought to be upgraded.¹⁶⁰ Out of date enactment is undoubtedly one of the reasons for frail consumer protection in Nigeria.

3.5.2. Case law

The Constitution establishes a system of superior and inferior courts of records. Superior courts have both criminal and civil jurisdiction purviews to undertake and settle disputes between private persons; individual and the government, as well as between branches and levels of government. Common law tenets of judicial precedence applies to courts and decisions of English courts alongside the statute of general application and the doctrines of equity applied under Nigerian law as received English law. However, the decisions of the Supreme Court of Nigeria are final and binding on all other courts in Nigeria. English judgments are not binding on Nigeria courts but are influential considering shared legal history.¹⁶¹ Case law has played a huge part in consumer credit control or regulation in Nigeria since 1960 due to the out-of-date quality of Nigerian legislations on consumer credit.¹⁶² Much of consumer credit regulation in Nigeria is made through contract law and subsidiary legislation by the central bank.

¹⁶⁰ I. Omede Philemon, 'Nigerian Consumer Credit: Law, Regulations and Market Insight' Palgrave Macmillan Studies in Banking and Finance Institutions, Springer Nature, (2022)

¹⁶¹ N. Tobi, Sources of Nigeria Law (MIJ Professional 1996)

¹⁶² The current statutory position on consumer credit mainly reflects the English position before the enactment of the Consumer Credit Act, (1974)

3.5.3. International Law

International law is known to be one of the origins of Nigeria laws. Nigeria is a member of the international community and a signatory to the Vienna convention of the law of treaties 1969.¹⁶³ Under *section 12* of the Nigerian Constitution 1999 (as amended), International treaties only become enforceable once they are domesticated. Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in Nigerian courts. This is because Nigeria is a dualist country where international law and domestic law are two distinct legal systems, and as such, treaties must be explicitly incorporated into domestic law through a legislative Act before they can have legal effect domestically. Section 12(1) of the Constitution 1999 (as amended) states thus; “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted” This constitution provision clearly shows that Nigeria is a dualist state as treaties have no legal effects in its domestic unless they are enacted into law by the National Assembly. Although section 19(d) of the constitution states that Nigeria’s foreign policy objectives shall be – (d) respect for international law and treaty obligations”, that provision does not override the provision of section 12(1) regarding legal force of un-enacted treaties in Nigerian domestic law.

In the popular case of *Abacha v. Fawehinmi*,¹⁶⁴ Concerning the unincorporated African Charter of Human and Peoples' Rights, the Supreme Court determined that, while an unincorporated treaty may engender a legitimate expectation among citizens for governmental adherence to its provisions, the African Charter, as unincorporated pursuant to section 12(1) of the Constitution, lacked legal enforceability in Nigeria.

3.5.4.. The Central Bank of Nigeria (CBN) Act

The central bank of Nigeria is established under *section 1* of the CBN Act, 2007, and *section 2* of the same Act gives the bank the mandate, among other things, to promote a healthy financial system in Nigeria and ensure monetary and price stability. The Act’s section 12 creates the monetary policy committee, which is in charge of guaranteeing price stability. By publishing guidelines, regulations, and circulars that set minimum requirements for financial institutions

¹⁶³ E.B. Omoregie, ‘Implementation of Treaties in Nigeria: Constitutional Provisions, Federalism Imperatives, and the Subsidiary Principles’ (International Conference on Public Policy, Milan, July 2015) <<https://www.ippapublicpolicy.org/file/paper/1433585864.pdf>> accessed 5 September 2023

¹⁶⁴ 6 NWLR 228 (2001)

under its supervision, the CBN controls consumer credit activities. Some of the areas that the CBN regulates are: disclosure and transparency, contactless payments, business conduct, fair treatment of consumers, complaints handling and redress credit guarantee companies, and customer due diligence.

The CBN Implements credit policies using broad range of tools principally subsidiary legislations, sponsorship of primary legislations,¹⁶⁵ oversight and supervision. Section 27 to 31 of the Act, empowers the bank to conduct certain banking and credit operations, liquidity management, and developmental functions geared towards market making and credit expansion subject to specific prohibitions in section 34 which imposes certain guardrails to the extent to which the bank can conduct commercial operations.

3.5.5. Banks and Other Financial Institutions Act (BOFIA) 2020

Superior to the defunct Act of 2004, the BOFIA 2020 addresses more issues. The Act gave the Central Bank of Nigeria more authority to regulate and exercise discretion in the country's financial services sector. The CBN issues licenses to banks under this law, and it also establishes standards of conduct for bank executives to follow.¹⁶⁶ The conditions of a bank's licence must be strictly met by all licensed banks or the licence may be revoked. The Central Bank of Nigeria (CBN) has the authority to restrict a bank from making loans to customers if it determines that the bank does not meet certain capital and liquidity ratios or reserves enough money.¹⁶⁷ Overall, BOFIA 2020 seeks to promote a stronger, more transparent and efficient financial system in Nigeria. Key provisions and objectives of the Act are;

Regulations: The Act regulates the establishment, operations, and supervision of banks and other financial institutions in Nigeria. It sets out the requirements for obtaining a banking license and defines the permissible activities of financial institutions.

Prudential Regulations: The Act contains provisions relating to the prudential regulation of financial institutions. It establishes capital adequacy requirements, liquidity standards, and risk management guidelines to ensure the stability and soundness of the financial sector.

¹⁶⁵ Asset Management Corporation of Nigeria (AMCON) Act (2021), The Credit Reporting Act (2017), The Secure Transaction in Movable Assets (2017),

¹⁶⁶ Ibid s.2(1), s.13(1 &2), s.15(4)c, and s.20

¹⁶⁷ Ibid s 2, s.5 and s.12

Consumer Protection: BOFIA includes provisions to protect the interests of consumers of financial services. It outlines rules for fair and transparent banking practices and the resolution of customer complaints.

Supervision and Enforcement: The Act empowers the central bank of Nigeria (CBN) to regulate and supervise banks and financial institutions effectively. It grants the CBN the authority to take corrective measures, including the issuance of directives, imposition of licenses, when necessary.

Resolution of financial Crises: BOFIA provides a framework for the resolution of financial crises and the management of distressed financial institutions. It aims to ensure the stability of the financial system in times of crisis.

3.6. Impact of Consumer Credit Laws

Credit is essential in today's consumer-driven culture. The importance of credit in modern life has grown exponentially as more and more people and businesses rely on it to carry out their typical operations. The necessity to control consumer credit products and the interactions between creditors and debtors to prevent unfair behaviour on both sides has grown in tandem with the availability of these goods. Although the regulations governing the consumer credit industry were established long ago, the regulatory framework needed today is much different from that which was in place in the past. The evolution of the credit market has necessitated changes to bring the existing system into line with modern standards. Consumer credit rules in Nigeria, similar to those in other nations, affect consumers' rights and the financial environment in several ways. Among the most significant effects are;

Consumer protection: These laws are designed to protect consumers from unfair lending practices and exploitative interest rates. They often set limits on interest rates and fees that lenders can charge, ensuring that consumers are not subjected to excessive financial burdens.

1. **Access to credit:** Consumer credits laws can either facilitates or hinder access to credit. While they aim to protect consumers, overly strict regulations can make it difficult for some individuals to access credit, particularly those with lower credit scores or limited credit histories.

2. Financial inclusion: Properly crafted consumer credit laws can promote financial inclusion by encouraging responsible lending practices and making credit more accessible to a broader segment of the population.
3. Reduction in predatory lending: These laws can help curb predatory lending practices that target vulnerable consumers with high-cost loans. By imposing regulations on interest rates and fees, they discourage lenders from engaging in such practices.
4. Disclosure requirements: Consumer credit laws often require lenders to provide clear and transparent information about loan terms and conditions. This empowers consumers to make informed decisions about their borrowing.
5. Credit reporting: These laws may regulate credit reporting agencies to ensure accurate and fair reporting of consumer credit histories. This can impact an individual's ability to obtain credit and the terms of credit offered to them.
6. Enforcement and remedies: Consumer credit laws typically provide mechanisms for consumers to seek redress if they believe they have been treated unfairly. This may include avenues for dispute resolutions and legal remedies.
7. Economic impact: These laws can influence the overall economic landscape by affecting the borrowing and spending behavior of consumers. If credit is more accessible and affordable, it can stimulate economic growth.
8. Lenders practices: Lenders need to adapt to comply with these laws, which can affect their business models and profitability. They may need to reassess risk assessment processes and pricing strategies.
9. Compliance costs: Businesses operating in the consumer credit sector may incur additional compliance costs to adhere to these laws. These costs can influence the availability and cost of credit.

3.7. Importance and Impact of Consumer Credit on Individuals and the Economy

Consumer credit plays a significant role in both the lives of individuals and the overall economy. The importance of consumer credit and its impact can be understood from the following perspective:

Individual Impact:

- a. **Purchasing Power:** Consumer credit allows individuals to make purchases even when they do not have immediate funds available. It provides them with the ability to acquire goods and services, such as homes, vehicles, education, and durable goods, which they might not be able to afford outright.
- b. **Emergency Expenses:** Consumer credit can act as a safety net during unexpected financial emergencies, such as medical bills or car repairs. It provides individuals with the means to handle these situations promptly, avoiding financial distress.
- c. **Building Credit History:** Responsibly using consumer credit can help individuals establish and build their credit history. A good credit history is essential for future borrowing opportunities, securing favorable interest rates, and accessing larger loans, such as mortgages.

Economic Impact:

- a. **Consumption and Demand:** Consumer credit stimulates consumer spending which drives a significant portion of economic activity. When individuals have access to credit, they can make purchases beyond their immediate means, leading to increased demand for goods and services. This, in turn, encourages businesses to produce more, hire additional workers, and contribute to economic growth.
- b. **Business Growth and Investment:** Consumer credit facilitates business expansion by providing individuals with the means to purchase goods and services. This increased demand creates growth opportunities for businesses, leading to job creation and investments in new projects and technologies.
- c. **Economic Indicators:** Consumer credit data is closely monitored by economists and policymakers as it provides insights into consumer confidence and spending patterns. Changes in consumer credit can indicate shifts in economic conditions and impact monetary policy decisions.

- d. **Economic Stability:** Well-regulated consumer credit markets contribute to economic stability. By providing individuals with access to credit, they are less likely to resort to risky and unregulated borrowing options, which can lead to financial instability and systemic risks.

3.8. The Challenges of Viable Consumer Credit System

A healthy consumer credit system is important and beneficial because of the positive effect on the economy caused by the correlation between consumer credit and GDP. In spite of Nigeria's impressive network of banks, the country's consumer credit system is severely underdeveloped, meaning that even middle- and upper-class customers have trouble getting the credit they need to buy certain products. Better financial intermediation and the ability to mobilise and deploy savings to essential economic sectors would result from a consumer credit culture and banking system that are both viable. Lack of a credit history, a complicated regulatory landscape, high default rates, economic instability, inadequate infrastructure and restricted access to banking services, insufficient collateral, fraud, cyber security breaches, etc. are just a few of the many complex and multi-dimensional obstacles to developing a sustainable consumer credit system.

Lack of credit history: Many Nigerians lack or have limited or no formal credit history, making it difficult and challenging for lenders to evaluate their repayment behavior and determine their creditworthiness.

Informal economy: A significant portion of economic activity in Nigeria occurs outside the banking system, in the informal sector. This informal nature makes it challenging to track and assess accurate financial data on potential borrows.

Regulatory environment: Complex and sometimes outdated regulatory frameworks can hinder the development of consumer credit. The regulatory environment plays a significant role in shaping a consumer credit system, the financial regulations are evolving, and it requires a supportive regulatory framework to foster growth of a viable credit system.

Risk assessment: Effective risk assessment methods and tools are crucial for lenders, but these may be underdeveloped in Nigeria.

High default rates: The risk of non-payment is relatively high due to economic volatility, job insecurity, limited credit education and financial literacy. This risk discourages lenders from extending credit to consumers.

Poor infrastructure: Poor infrastructure and limited access to financial services in rural areas can hinder the growth of consumer credit.

Lack of collateral: Many borrowers may not have sufficient collateral to secure loans, which limits their access to credit.

3.9. The Absence of Specific Consumer Credit Legislation and other Consumer Credit Safeguards

There ought to be more safeguards in place for Nigerian consumers right now. Unlike the United Kingdom's Consumer Credit Act¹⁶⁸ and the United States' Uniform Consumer Credit Code, Nigeria does not have a unified, comprehensive, and easily identifiable consumer credit law to guide consumer credit. This simply means that there is a lack of effective supervision and monitoring over matters pertaining to client credit. Before changes were made to the Consumer Credit Act of 1974, this was the situation in the UK. A unified code was superseded by the modified Act, which removed fragmented laws. A consumer credit act is also in place in South Africa¹⁶⁹, Thus, to promote responsible and equitable credit transactions, section 4(1) of the Act eliminated the sequential approach to consumer transactions. In addition to sections 43 and 70 that govern the actions of credit bureaus, the Act established the position of national credit regulator to ensure that the Act is followed. In the US, for example, there is a consumer credit code that incorporates the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, both of which seek to ensure accurate disclosure of individuals' personal data.¹⁷⁰ What makes the latter's prohibitions so intriguing is that they apply to so many things that happen in Nigeria. This law makes it illegal for a debt collector to contact or investigate a customer's obligation at a time or place that the customer finds inconvenient unless the customer gives their prior and explicit consent to the moneylender. Harassment, physical abuse, threats of violence, or other unfair and unethical methods of debt collection are prohibited.

¹⁶⁸ United Kingdom's Consumer Credit Act, 2006

¹⁶⁹ South African Consumer Credit Act, 2005

¹⁷⁰ Fair Debt Collection Practice Act, 1996

Note that Nigeria does not have comparable laws to regulate the occurrence of these abusive debt collection practices; hence, credit customers in Nigeria face a myriad of difficulties. An Act establishing a consumer protection council (CPC) is one option in this respect¹⁷¹; despite the fact that a bill proposing the establishment of a national consumer credit regulatory commission has been sitting in the national parliament since 2009.. However, the CBN recognised a gap and the need for administrative support, so in 2010 it established a regulatory framework for commercial and micro-finance banks to protect customer deposits from widespread dangers. Currently, all unclear financial complaints are forwarded to the CBN for resolution by the consumer protection council, which is not authorised to deal with customer credit difficulties. After that, the CBN mandated that all Nigerian banks establish a customer service desk, allocate resources to resolve customer complaints within a certain time frame, and report back to the bank on an irregular basis.

3.10. Overview and Major Components of the US Consumer Credit Protection Act (CCPA)

In 1968, the federal government passed the Consumer Credit Protection Act (CCPA), which mandates that lenders provide borrowers with complete information and requires borrowers to perform simple, common calculations. The original intent of this law was to shield lenders from competitors who artificially inflate their interest rates by providing consumers with more accurate information. The Act has been revised multiple times since it was enacted to include provisions regarding consumer leasing, electronic fund transfers, credit reporting, credit billing, and debt collection. Lenders like banks and credit card firms now have legal safeguards thanks to the Act. Consumer lenders and vehicle leasing companies are required to adhere to certain disclosure standards set forth in the Act. Disclosure of the entire cost of a credit product or loan, including fees and interest calculation methods, is mandatory under the Act. Discrimination in the loan application process and deceptive advertising are both outlawed. The Act prohibits unfair advertising practices and creditor discrimination and, among other things, ensures that customers' financial information is reported fairly. Borrowers without a background in banking or finance will also find the terms of their loans made clearer.

Numerous consumer protection statutes addressing lending, disclosure of terms and circumstances, and collection and sharing of a customer's credit and borrowing history have their origins in the CCPA. Here are the main points of the Act:

¹⁷¹ Consumer Protection Council (CPC) Act, 2004

3.10.1. The Truth-in-Lending Act,

The Consumer Credit Protection Act's first chapter, the Truth-in-Lending Act (TILA),¹⁷² was passed into law. In order to prevent consumers from making ill-informed decisions when applying for and using credit, the TILA aims to guarantee adequate disclosure of credit terms. The purpose of the TILA is to ensure that consumers have access to the information they need to compare credit costs and make an informed decision about using credit by requiring creditors to disclose basic transaction information. Creditors are only obligated to reveal information that is pertinent to the specific transaction at hand; the Act does not mandate that they reveal all loan possibilities to the client. Finance charges, annual percentage rates, and other phrases that need explanation under the TILA, such as the total amount borrowed, total payments, and total sale price, must be disclosed. The creditor is obligated to inform the consumer of their right to rescind in transactions where it exists and to furnish the necessary paperwork for the consumer to exercise that right. Delegating authority to the Federal Reserve Board to establish implementing regulations, the Act specifies the manner in which the annual percentage rate is to be computed based on the type of transactions.

Additional disclosures regarding consumer-secured credit extensions were added to the TILA in 2008 by the Mortgage Disclosure Improvement Act. These disclosures must be provided to the borrower in final form at the time of consummation and no later than seven business days prior to the transaction. The Homeowners Act of 2008 was another piece of legislation that was added to the TILA.

3.10.2. Fair Debt Collection Practices Act (FDCPA)

In an effort to put an end to harassing and unfair debt collection techniques, the Fair Debt Collection Practices Act (FDCPA)¹⁷³ was passed as an addition to the Consumer Credit Protection Act. It went into effect in March 1978. Creditors who are collecting their own debts are exempt from the Act's provisions unless the creditor employs the services of a third party to do so. The Fair Debt Collection Practices Act (FDCPA) limits the ability of debt collectors make connect with borrowers and outright bans them from threatening or harassing debtors. Debts incurred mainly for domestic, family, or personal use are the only ones that can be

¹⁷² the Truth-in-Lending Act (TILA), 1968

¹⁷³ The Fair Debt Collection Practices Act (FDCPA) was passed in 1977

collected under the Fair Debt Collection Practices Act (FDCPA). Debts owed by corporations, businesses, or farmers are exempt from its collection provisions.

The Act characterises a debt collector as any individual who routinely collects, or endeavours to collect, consumer debts on behalf of another person or entity, or employs an alias when collecting their own consumer debts.¹⁷⁴ For instance, one type of institution may routinely collect debts on behalf of another type of unaffiliated institution; for instance, one type of institution may ask another to assist with collecting a delinquent account from a client who has relocated as part of a reciprocal service relationship. When an institution collects debts in its own name or when debts that were obtained as security for a commercial credit transaction (such as account receivables financing) are collected, the institution is not deemed a debt collector under the FDCPA. Unless the consumer or a court of competent jurisdiction has granted permission, debt collectors are not allowed to contact consumers at odd times or places according to the Act. There were some debt collecting techniques that the Act forbade. No debt collector has the right to employ intimidation, abuse, or harassment as a means of obtaining payment. This means that debt collectors can't:

- Harm anyone's physical person, reputation, or property by actual or threatened physical force or other criminal methods.

- Make use of foul, sexually suggestive, or otherwise insulting words.

Except in cases where a consumer reporting agency or an individual fulfilling the criteria of sections 603(f) or 604(3) of the FDCPA is involved, it is necessary to publish a list of customers who are said to have refused to pay bills.

To force payment, you can:

- Put a debt up for auction
- Call someone's number or let their phone ring nonstop in order to annoy, abuse, or harass them.

3.10.3. Equal Credit Opportunity Act (ECOA), 1974

The Equal Credit Opportunity Act was enacted as an amendment to the consumer credit protection Act (CCPA) but became effective a year after, in 1975.¹⁷⁵ The Act was essentially

¹⁷⁴ Consumer compliance handbook www.federalreserveboard.gov accessed 10 October 2024

¹⁷⁵ P.L. 93-495, TIT. 5, s.501, 88 stat. 1520, 15 U.S.C. 1691 et. seq

made to promote the availability of credit to all creditworthy borrowers without regard to race, colour, religion, national, origin, sex, marital status, or age. The Act prohibits discrimination on the basis of any of these factors in extending or approving an application for credit. The Act provide remedies for an applicant who on the basis of any of the aforementioned, discriminated against to recover actual damages, equitable and declaratory relief as is necessary to enforce the requirements of the Act.

3.10.4. Electronic Fund Transfer Act

The Electronic fund transfer Act (1978)¹⁷⁶ was established the fundamental foundation for the rights, obligations, and responsibilities of participants in electronic fund transfer systems; it was passed as an amendment to the Consumer Credit Protection Act (CCPA). The guarantee of consumer rights is the fundamental goal of the Act. In order to comply with the Act, consumers are required to be informed of the terms and conditions of electronic fund transfers pertaining to their accounts when they sign up for such services. If a customer reports a loss or theft to their financial institution within two business days, the consumer can reduce their liability for unauthorised electronic fund transfers under the Act. The amount of unauthorised transfers that occur after two business days but before notice to the financial institution will be limited to any amounts that arise after the failure to inform the institution as required by the Act.

3.11. Overview of the United Kingdom [UK] Consumer Credit Act

Consumer credit transactions in the UK is regulated by the Consumer Credit Act.¹⁷⁷ The Act as amended by the 2006 Consumer Credit Act, regulates consumer credit and hire-purchase agreements and significantly reformed the law relating to consumer credit in the United Kingdom. The legislation governs both hire-purchase agreements and consumer credit; it safeguards consumers' regarding purchases and sets out how credit should be marketed and managed. Agreements between traders and unincorporated associations, partnerships, or sole proprietors are protected, but agreements between traders and corporations, including limited liability companies, are not. The mechanism for determining the Annual Percentage Rate (APR) of the Total Charge for Credit, the form and content of agreements and credit advertising, and the processes to be followed in the event of default, termination, or early settlement are all outlined in the Act. Additionally, the Act mandates that the Office of Fair Trading (OFT) provide

¹⁷⁶ Title XX of P.L. 95-630

¹⁷⁷ Consumer Credit Act, 1974. The Act as amended by the 2006

consumer credit licenses to all traders who enter into regulated agreements or exercise their rights under such agreements.

Additionally, certain businesses, such as those dealing in credit restoration, debt advisory services, debt management, and others, may be required to have licenses. There is a consumer credit appeals tribunal that one should go to if they disagree with an OFT licensing decision. Numerous forms of consumer debt are governed by the Act. These include store cards, payday loans, in-store financing, hire buy, and credit cards. But it won't pay for consumer credits or obligations involving unlicensed lenders, loan sharks, friends and family, council tax, or anybody else. Perhaps the most often cited provision of the Consumer Credit Act, Section 75 safeguards buyers from having to pay more than necessary because a product was not as advertised or because a transaction was deceptive.

Laws pertaining to consumer credit were haphazard and addressed specific issues, including moneylenders and hire-purchase agreements, rather than consumer credit generally until it was passed. Businesses that deal in consumer finance and similar fields are now subject to stricter regulations according to the Act, which also strengthened consumer protections. The Office of Fair Trading originally awarded these merchants full licences, which may be revoked or suspended for infractions. There have been some changes, some minor and some major, to the Act as well. Many more clauses were included into the Consumer Credit Act¹⁷⁸ to better strengthen consumer protection.

3.12. Overview of National Credit Act of South Africa, 2005

Before June 2006, credit laws in South Africa was governed by the Usury Act (73 of 1968) and the credit Agreements Act (75 Of 1980). These two Acts were replaced by the National Credit Act,¹⁷⁹ This established numerous fundamental consumer rights with relation to the loan market. Responsible lending and use of credit is encouraged; reckless lending is prohibited; debt re-organisation in the event of over-indebtedness is provided for; credit information is regulated; and recourse for unfair credit practices is established. The National Credit Act also seeks to regulate consumer credit and improve standards of consumer information. All of these things are accomplished by the following: the Act makes credit agreements and information disclosure

¹⁷⁸ Consumer Credit Act, 2006 (an amendment Act)

¹⁷⁹ National Credit Act, No. 34 of 2005

easier to understand and compare across providers; it mandates that all credit products be handled consistently by providers; it regulates credit bureaus with regard to consumer data and records; it establishes a National Credit Regulator to oversee the entire credit market; and it creates a National Consumer Tribunal to hear complaints and disputes involving credit providers, as well as violations of the Act and decisions made by the regulator.

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Chapter Four

Legal Framework for Consumer Credit Protection in Nigeria

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

The Consumer Protection Act (No.66 1992) cap. C25, laws of the federation of Nigeria, 2004 was repealed by the Federal Competition and Consumer Protection Commission (FCCPC) Act,¹⁸⁰ which also establishes the Competition and Consumer Protection Tribunal and the Federal Competition and Consumer Protection Commission. It is the commission's responsibility to safeguard and improve consumers' interests by disseminating relevant information, educating the public, and enforcing suitable standards for goods and services.¹⁸¹ The fundamental goal of the Act is to ensure that all Nigerian residents have access to safe products and that their rights as consumers are protected in Nigeria by creating and promoting markets that are fair, efficient, and competitive. In Nigeria, before the FCCPC Act was enacted, consumer protection from unfair terms was largely handled by the judiciary through common law principles, which provided indirect safeguards against unfair terms due to the lack of specific unfair contract legislation. However, this method did not consider the local conditions and consumer interests. The FCCPC Act now includes provisions that oversee unfair contracts, granting consumers rights such as not being subject to conditions before purchasing, canceling advance reservations, rejecting goods before completing transactions, ensuring goods match samples and descriptions, rejecting defective or unsafe goods, and guaranteeing safe and quality goods and services. Essentially, the Act mandates that businesses must not supply, agree to supply, or offer to supply goods or services at prices or under terms that are clearly unfair, unreasonable, or unjust.¹⁸²

In order to enforce consumers' rights in Nigeria, the FCCPC Act establishes the following methods under sections 146–155.

4.1.1. Enforcement of Rights by a Consumer:

¹⁸⁰ Federal Competition and Consumer Protection Commission (FCCPC) Act, 2019

¹⁸¹ s.2, FCCPC Act, 2019

¹⁸² Section 127(1)(a)

The consumer has the right to seek redress for breach of the provision of the Act by registering a complaint with the undertaking itself, the regulator of the industry of the undertaking, or the commission. This right does not come with any exceptions to the customer's right to seek remedy in court.¹⁸³

4.1.2. Conclusion by Industry Sector Regulator:

As soon as the industry sector regulator determines that the parties cannot reasonably be expected to resolve their dispute through the process that has been established, they will notify the parties of their intention to do so. At this point, the claimant has the option to refer the matter to the commission.¹⁸⁴

4.1.3. Enforcement of Rights by the Commission:

A consumer can file a complaint with the commission and the commission initiates a complaint on its own motion.¹⁸⁵

4.1.4. Consent Order:

When a subject has been investigated by the commission, and the commission and the Respondent have reached an agreement on the proposed terms of an appropriate order by the commission, the term that was agreed upon will be made the order of the commission during the investigation. If the commission determines that it is essential, it has the ability to record the order in a court that has the authority to do so.¹⁸⁶

4.1.5. Compliance Notice:

A notice of compliance may be issued by the commission to an undertaking in the event that the commission has reasonable grounds to believe that the undertaking has engaged in prohibited conduct. However, prior to issuing a notice to a member of a regulated industry, the commission is required to consult with the industry sector regulator that issued a licence to that regulated entity. The provision of the Act that has not been complied with, the nature and extent of the non-compliance, the step that must be performed and the time limit, and the penalty for non-compliance are all required to be included in the notice. If the notice is not revoked by the court,

¹⁸³ *ibid* s.146

¹⁸⁴ *ibid* s.147

¹⁸⁵ *ibid* s.148

¹⁸⁶ *ibid* s.149

it will continue to be put into effect. The failure to comply with the notification may result in the termination of the enterprise, the imposition of an administrative fine, and the referral of the matter to the court.¹⁸⁷

4.1.6. Redress by Civil Society Groups:

The consumer protection group may seek assistance from the commission in the following areas:

- (a) Publications and activities aimed at educating consumers;
- (b) Research, monitoring, and reporting of markets;
- (c) Advocacy for consumers' rights and interests; and
- (d) Redress through civil society organisations.
- (d) Advocating on behalf of consumers in court, either individually or collectively;
- (e) Mediating or resolving disputes by alternative means; and
- (f) Being involved in national and international organisations, conferences, or forums that focus on consumer protection.

4.1.7. Redress by the Court:

The consumer possesses an additional right to initiate civil action if, following a commission investigation of a consumer complaint, it is established that a) the consumer's rights have been infringed, or b) a wrongdoing has occurred in the context of trade, service provision, information supply, or advertising, resulting in harm or loss to the consumer.¹⁸⁸

4.1.8. Power to obtain satisfactory written assurance:

In the event that an undertaking continued to engage in a course of behaviour that was detrimental to the interests of the consumer, the commission is obligated to make every effort towards obtaining a written assurance from the undertaking that is adequate. The commission is required to initiate legal action against the undertaking in a court of competent jurisdiction in the event that the undertaking either fails to provide the written assurance or fails to comply with the written assurance. The purpose of this action is to prevent the undertaking from continuing to

¹⁸⁷ibid s.150

¹⁸⁸ibid s.152

engage in that particular course of conduct. During this interim period, up until the beginning of the action, the commission has the authority to order the undertaking to be closed.¹⁸⁹

4.2. CBN Consumer Protection Framework (Disclosure and Transparency) 2016

In accordance with its authority under the Central Bank of Nigeria Act (as modified) and the Banks and Other Financial Institutions Act [BOFIA] (as amended), the Nigerian central bank published the consumer protection framework. The framework was issued in order to guide the effective regulation of consumer protection practices in the financial sector, which falls under the regulatory purview of the Central Bank of Nigeria (CBN). The framework focusses on fair treatment of consumers, disclosure and transparency, business conduct, complaints handling and redress. The purpose of the framework is to protect the rights of consumers and to ensure that consumers of financial services are adequately protected and treated fairly. When it comes to ensuring that the criteria that have been established are met, the framework provides documentation of the roles and responsibilities of the regulator, the financial institutions, and the consumers. Additionally, that consumers are always provided with correct information regarding the products and services offered by financial institutions, so that they can make decisions based on reliable information. This information needs to be current, comprehensive, and understandable. It is anticipated that the information will include specific areas such as the terms of the contract, notification of modifications, and advertisements.

The purpose of the rules is to protect consumers from lack of openness on the part of lenders in their dealings with customers, as well as to protect consumers from the provision of information that is inadequate, deceptive, or fails to disclose material and relevant facts. Consequently, the recommendations establish the minimal criteria that are anticipated from financial institutions that are lenders, with regard to the disclosure and transparency of consumer protection information. In order to promote honesty and improve transparency, lenders are expected to be honest and forthright with their customers. They should also provide written disclosure of all terms and conditions of a transaction agreement. It should be noted that the disclaimer "Terms and conditions apply" or any similar phrase should only be used if the terms and conditions are already disclosed in the contract or another medium that the customer can access. The lender is obligated to constantly remind the consumer of this disclosure and to take steps to make sure the

¹⁸⁹ibid s.153

consumer understands the document by listening to an explanation in a language they can understand.

4.3. CBN Consumer Protection Regulations

The regulations were established by the Central Bank of Nigeria to improve overall compliance with the consumer protection framework by lenders regulated by the bank. The bank was granted these powers by the CBN Act, 2007 (as amended) and the Banks and Other Financial Institutions Act [BOFIA] as amended¹⁹⁰. Consumer fairness, disclosure, transparency, responsible corporate practices, etc. were all heavily emphasised in the rules. Furthermore, the rule states that financial institutions under the supervision of the bank must include the terms of the law into any agreements they may enter into with other institutions about consumer-related transactions, products, or services, even if those other institutions are not regulated by the CBN. To ensure lenders fulfil their obligations and protect consumers' rights, the regulations establish minimum standards for lenders within the bank's regulatory framework concerning fair consumer treatment, disclosures and transparency, business conduct, complaint resolution, and compensation. The primary objectives of the legislation are to protect consumers against unjust and exploitative lending practices, unethical and deceitful company conduct that undermines consumer trust in financial products and services, and the omission of essential information. They also seek to guarantee that customers may access complaint dispute resolution processes that are equitable, prompt, and transparent at no cost.

Lenders are anticipated to engage with consumers courteously and respectfully, avoiding abusive or offensive language or behaviour, humiliation, misrepresentation, deception, or excessive inducements. Upon a repayment default, lenders must notify consumers via the designated media within 3 days of the initial default that a default fee would be applied to the account after 7 days from the due date of the obligation.

Lenders must engage in responsible, professional, and ethical business practices, and provide consumers with information regarding avenues for enquiries and complaints. Lenders must ensure that consumers' repayment capabilities are evaluated professionally and sustainably, considering their financial situations. The rules meant to safeguard consumers state that financial

¹⁹⁰ Banks and Other Financial Institutions Act [BOFIA] 1991, as amended

institutions must prevent unauthorised parties from gaining access to their customers' personal information and assets, and that they must also take responsibility for any mistakes or failures to do so. Legally, lenders must protect their customers' personal information and assets from prying eyes and must own up to any mistakes or omissions in this area. Additionally, the regulations protect consumers from deceitful debt collection practices. Lenders are prohibited from contacting a customer's friends, employer, relatives, or neighbours for any information other than the customer's employment status, phone numbers, or address, unless the individual in question has either guaranteed the loan or willingly agreed to be contacted to settle the debt.

4.4. Food and Drugs Act, Cap. F.32 Laws of the Federation of Nigeria, 2004

The food and drug decree was first made in 1974 but got amended by decree No. 21 of 1999.¹⁹¹ The Act established the agency known as the National Agency for Food and Drug Administration and Control with the goal of eliminating counterfeit products and to ensure that available products are safe and effective. The Act prohibits the sale of any Food or Drug that has poisonous or harmful substance and/or is unfit for human consumption, and was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. It also prohibits the advertisement or information or publication likely to mislead or create a wrong impression about products, drugs, cosmetics, devise as to its quality, character, value composition merit or safety.

The Act provides rules for the manufacture, importation, exportation, distribution and advertisement of food and drugs. It provides that no person shall sell, import, manufacture or store any article of food which has in it or upon it any poisonous or harmful substance not being a food addictive or contaminant by regulations made under the Act.

4.5. Standards Organization of Nigeria Act (SON) No. 14, 2015

The Standards Organisation of Nigeria is the principal legislative authority tasked with standardising and regulating the quality of all products in Nigeria. The Standards Organisation of Nigeria was founded by Enabling Act No. 56 in December 1971, under Cap 412 of the Laws of the Federal Republic of Nigeria, with a commencement date of January 1970. The Act has undergone three amendments: Act No. 20 of 1976, Act No. 32 of 1984, Act No. 18 of 1990, and Act No. 9 of 2004. Act No. 9 of 2004 was abrogated and supplanted by Act No. 14 of 2015 to expand the organization's powers, escalate penalties for infractions, and address ancillary issues.

¹⁹¹ No 35 of 1974 (now Food and Drug Act Cap F32 Laws of the Federal Republic of Nigeria, 2004)

The new Act enhances the organization's operational efficiency and broadens its responsibilities and authority by granting the Council additional powers and enforcing stringent penalties for violations. The Act empowers the Standards Council to designate, establish, and approve standards related to metrology, materials, commodities, structures, and processes for product certification in commerce and industry across Nigeria, as well as to perform any additional functions mandated by this Act or any other statutory provision; authority to formulate regulations.¹⁹² One of the mandates of the organization is the certification of products in commerce and industry throughout the country and its strategy includes consumer protection and engagement.

4.6. Advertising Regulatory Council Act, 2022

The Advertising Regulatory Council Act ¹⁹³ was enacted to replace the repealed Advertising Practitioners (Registration, Etc.) Act, Cap. 7, Laws of the Federation of Nigeria, 2004. Some of the key provisions of the Act include: the establishment of advertising regulatory council of Nigeria which regulates the practice of advertising and marketing communications in Nigeria. The Act establishes a regulatory framework for the Nigerian advertising, advertisement and marketing communications industry.¹⁹⁴ The Act applies to all individuals, corporate bodies, governments, sponsors or persons who make or take the benefit of advertising services, advertisement and marketing communications.¹⁹⁵ The expanded category of persons to which the Act applies is a key feature of the statute as distinguished from the repealed Act. The new Act the body is vested with extensive and general regulatory powers over advertising and communications in all aspects and ramifications, directed or exposed to the Nigerian market.¹⁹⁶

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

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

¹⁹² *ibid* Sections 4,12,14,23.

¹⁹³ The Advertising Regulatory Council Act, 2022

¹⁹⁴ ARCON Act, s.2(1)

¹⁹⁵ ARCON Act, s.2(2)

¹⁹⁶ ARCON Act, s.8

Packaged Water, Chemicals, and Detergents, collectively referred to as regulated products. The agency was formally founded in October 1992.

4.8. Weight and Measures Act Cap W3 Law of the Federation of Nigeria 2004

To make the transition to the metric system easier, this law re-enacted the Weights and Measures Act of 1962 while adding new requirements. Many different topics, including administration, crimes, and punishments, as well as units and standards of measurement, are addressed in the Act. Forgery of stamps or marks, using false or unfair weights or measures, selling or importing unjust weights and measures, altering stamped or marked weights, delivering items less than the weight indicated, and weighing or measuring instruments with forged stamps are all prohibited. A crime is committed when the delivered products are not weighed or measured. However, the provision's phrasing suggests that the crime occurs whenever the products in issue are asked to be weighed or measured. An individual commits an offence if, when asked by the recipient to weigh or measure the goods in their presence, they refuse to do so and instead sell the goods by weight or measure in a public place such as a warehouse, market, store, or any other public place. The provision loses some of its force due to the condition that states it is only applicable upon request by the buyer. That is so because a lot of buyers don't know about this mandate from the government. Free sale of items subject to the Act in Nigeria without compliance with its provisions does not constitute evidence of practical implementation by the regulatory body. Both the sellers and the buyers seem to be unaware of this legal obligation.

In order to safeguard consumers and other parties involved in commercial transactions, this law establishes standards for the correct use of length, area, volume, capacity, mass, and weight measurements. Measurement adjustments, including fuel pump adjustments, and the selling of packaged goods without a clearly stated minimum net weight on a label that is securely attached are both prohibited by this regulation. It penalises transgressors. Authorised inspectors are to test, confirm, and approve weight and measure equipment or instruments according to the procedures prescribed in the Act, which also specifies the lawful weights and measures applicable in Nigeria and the mechanism for inspecting and enforcing their use.

4.9. The Criminal Code Act Cap C38 Laws of the Federation of Nigeria, 2004

There are certain provisions of Criminal Code Act¹⁹⁷ that protect consumers. The relevant sections are:

- 1) Section 245 prohibits the corruption of water sources and imposes imprisonment of six months on offender.
- 2) Section 247 warns against pollution of atmosphere or doing any act “likely to spread the infection of any disease dangerous to life, whether human or animal”. It imposes the punishment of six months imprisonment on offender.

4.10. Economic and Financial Crimes Commission (Establishment) Act, 2004

With the establishment of the Economic and Financial Crimes Commission (Establishment) Act, 2004, a body corporate with the authority to sue and be sued was formed. Among the many roles played by the Commission are -

- a. Looking into various kinds of financial crimes, such as advance fee fraud, counterfeiting, computer credit card fraud, contract scams, futures market fraud, fraudulent encashment of negotiable instruments, unlawful charge transfers, and money laundering;
- b. The assignment of enforcement responsibilities to other authorities and the coordination of their efforts to combat economic and financial crimes;
- c. Putting safeguards in place to detect, track, freeze, confiscate, or seize money or assets worth more than the proceeds of terrorism or economic and financial crimes.
- d. Reviewing and investigating all instances of financial and economic crimes with a goal of pointing fingers at specific individuals, companies, or organisations concerned.
- e. Working together with other government agencies in Nigeria and abroad that perform duties similar to the Commission's regarding, among other things –
 - i. Identifying and tracking down individuals believed to be involved in financial and economic crimes; and coordinating the prosecution of these cases.
 - ii. The transfer of money or other assets obtained via financial and economic crimes; and
 - iii. Preserving information pertaining to entities, organisations, assets, papers, properties, and earnings from financial and economic crimes. Additionally, the Commission is tasked with launching and maintaining a strong public education

¹⁹⁷ Criminal Code Act, Cap C39, Laws of the Federal Republic of Nigeria 2004

initiative to combat financial and economic crimes both within and outside of Nigeria.¹⁹⁸ To help it carry out its duties, the Act grants the Commission some authority. The Commission has the authority to do things like: a. investigate potential violations of the Act or other laws pertaining to economic and financial crimes by individuals, corporations, or other organisations; and b. investigate a person's assets if it seems like their lifestyle and wealth are not proportional to their income. Furthermore, the Commission is authorised to coordinate the enforcement of various laws and regulations pertaining to economic and financial crimes, including the Criminal Code and Penal Code, as well as the Money Laundering Act, the Advance Fee Fraud and other Related Offences Act, the Banks and other Financial Institutions Act, and any other such laws and regulations.

4.11. Effective Redress and Enforcement

Everyone with a stake in the consumer credit market needs to work together to ensure that consumers are well-protected and have easy access to remedies, all while avoiding costly regulations and excessive regulatory red tape. There is a need for participation from the federal government, state governments, businesses, NGOs, CBOs, and consumers. Credit is being used by more and more people, especially those with lower incomes. Giving people good protection and good ways to get their complaints heard is critical. The industry also benefits from efficient enforcement and the prompt resolution of complaints. Reputable lenders want guarantees that their rivals follow the same regulations. The development of a secure and long-lasting credit business is hindered by low compliance rates, excessive irresponsibility, and an inability to address customer concerns.

It is essential to establish a statutorily authorised regulator with the authority to oversee the credit business and give customers adequate recourse in order to guarantee enforcement and promote access to redress. It is planned to set up a Federal Credit Regulating. The organization's responsibilities include registering consumer credit companies, conducting inspections, and overseeing compliance with the Consumer Credit Act. The primary responsibility of the regulator is to examine any breaches of consumer rights and systemic market activity, as well as

¹⁹⁸ Section 6

to address complaints lodged against credit providers and direct them to the proper authorities. Given the credit market's inherent inequality and consumers' (particularly low-income consumers') incapacity to bargain, this role takes on further significance. This is why the regulator will have the duty to represent the interests of the people.

Also, the watchdog has to set up a system of certified debt counsellors and encourage consumer education. It will necessitate the accreditation of training programs in addition to the registration and certification of debt counsellors. It is critical that substantial funds be set aside at the federal level for consumer education and debt counselling, even though these tasks will be divided among the provincial government, NGOs, and CBOs. Lastly, the regulatory body will oversee the implementation of industry standards and rules for complaint resolution, as well as promote and approve existing codes and guidelines.

Chapter Five

Conclusion

5.2. Analysis of research findings

The main purpose of this study is to appraise the legal framework on consumer credit transactions in Nigeria. From the study, many facts that needs urgent attentions were revealed. Among the facts revealed by this work are as summarized below;

- a. Piecemeal legislation – Within the borders of Nigeria, there is not a single body of consumer protection law. The laws that are designed to safeguard the interests of consumers are dispersed across the statute book in the form of piecemeal legislation that addresses particular subjects. For instance, the CBN Act and the BOFIA Act both have measures for consumer protections. These regulations are applicable to the business of

providing financial services. The Food and Drugs Act,¹⁹⁹ the Counterfeit and Fake Drugs Act,²⁰⁰ the National Agency for Food and Drug Administration and Control Act, and the Consumer Protection Council Act are all pieces of legislation that pertain to the subject of food, drugs, and associated industries. Additionally, the Consumer Protection Council Act addresses consumer redress and related issues.

- b. Gaps in legislative framework – This work show that exiting laws address a wide range of consumer protection issues. However, certain other concerns that affect consumers’ interests are not. The competition law is noteworthy in this regard. Nigeria does not have a general competition law; instead, it has sector-specific laws and regulations governs particular matters. A good example is the NCC Competition and Practices Regulation ²⁰¹ made pursuant to the Nigerian Communications Act 2003. Additionally, there are laws designed to promote competition. This list includes the Investments and Securities Act, 2007; the Public Enterprises (Privatisation and Commercialisation) Act 1999; and the Nigerian Investment Promotion Commission Act 1999. Furthermore, unjust contract provisions are not governed by any laws. Suppliers of goods and services are free to utilize exemption clauses. These providers frequently have the upper hand over customers who typically deal from a weaker position.
- c. Meagre penalties – The penalties imposed by most consumer protection laws in Nigeria are too meager to deter offenders. For most of them, the penalties have remained static since the inception of the laws of which some have existed for decades. The inflationary trend in the country has consequently rendered them insignificant. It is however remarkable that all the laws impose terms of imprisonment in addition to the stipulate sums.
- d. Apparent proliferation of regulatory agencies – Apparent proliferation of agencies performing similar functions is also noticeable. Likely fallout of this is the possibility of role-conflict amongst the agencies. Cooperation is needed particularly where similarly functions are conferred on the agencies. It is, however, noteworthy that the enabling

¹⁹⁹ The Food and Drugs Act

²⁰⁰ Counterfeit and Fake Drugs Act

²⁰¹ NCC Competition and Practices Regulation 2007

statute of each agency contains some provisions aimed at achieving inter-agency co-operation. For example part of the function of the Standards Organisation of Nigeria (SON) is to co-ordinate all activities relative to its functions throughout Nigeria and to co-operate with corresponding national or international organisations in such fields of activity as it considers necessary with a view to securing uniformity in standards specifications. Similarly, the Governing Council of the National Agency for Food and Drug Administration and Control (NAFDAC) is enjoined to enter into agreements with public or private organisations and individuals to develop utilize, co-ordinate and share such information as is determined to be appropriate by the Council for the performance of its function. The inter-agency co-operation embedded in this provision is strengthened by the composition of the Governing Council. The external members of the Council are drawn from other regulatory agencies such as the Standards Organisation of Nigeria (SON), the National Drug Law Enforcement Agency (NDLEA) etc.

- e. Consumers' ignorance of their rights and regulations - This work has revealed that although the regulatory activities of agencies performing consumer-related functions are geared towards the protection of consumers, the low level of awareness about such activities and available rights pushes the matter to the exclusive domain of the regulators and service providers. Conceded that consumers benefit from the activities of regulatory agencies via improved quality of products and services, the fact remains that lack of active participation or involvement of consumers in the scheme of things reduces them to mere spectators. This denies them the opportunity to act as real and recognised drivers to influence the market place as envisaged by this project. This state of affairs is created by gaps in the statutory framework as well as non-chalant attitude of many consumers to the enforcement of their rights. Most of the existing laws in the field of consumer protection do not involve consumers directly either as members of governing bodies or as parties to be consulted by product or service providers before taking major decisions that affects their interest. Furthermore, the laws do not make provisions for consumer education. Awareness about the laws and the rights contained in them is, therefore, minimal.

- f. Burden of proof – The cases reviewed in this work demonstrate how difficult it is to prove negligence. Often, the matters which the plaintiff is required to prove are within the exclusive knowledge of the defendant thus making it impossible for the plaintiff to discharge the burden. The reviewed examples demonstrates that the circumstances of the unsuccessful and successful cases do not differ much. The ability or inability to carry out the burden of proof was the primary distinction. The implication is that the law relating to proof or disproof of negligence in product liability cases in Nigeria is far from settled. There is no case that can be regarded as a locus classicus for the contending issues that often arise in this class of cases. This constitutes a big problem to consumers seeking to enforce their rights.
- g. Comparative Analysis – Comparing Nigeria’s consumer credit laws to those in more developed economies highlights gaps and areas of improvement. For instance, stricter regulations in the US and UK regarding interest rates and lending practices exist.

5.2. Conclusion

Consumer credit transaction laws in Nigeria play a crucial role in safeguarding the rights and interests of borrowers. By providing clear guidelines, disclosure requirements, and protections against unfair lending practices, these laws promote responsible lending and financial inclusion. As Nigeria continues to evolve in its consumer credit landscape, it is vital for regulatory authorities to regularly review and update the legal framework to address emerging challenges and protect the interests of consumers effectively. By learning from international best practices and embracing reforms, Nigeria can build a robust consumer credit ecosystem that supports economic growth and empowers individuals.

It became clear throughout the course of this research that the Nigerian legal system has been heavily involved in regulating consumer credit in the country. The numerous consumer credit legislation and guidelines that try to regulate lender conduct and safeguard consumers make this point clear. The study's evaluation of the provisions' effectiveness, however, showed that consumers' expectations have not been met by lenders, that the government and regulatory agencies should do more to enforce and protect consumers, and that the current legal framework is insufficient to safeguard consumers' rights in the formal and informal business sectors. I humbly propose that a strong piece of legislation to govern all types of consumer credit in

Nigeria could be a solution to this problem. The research showed that the regulatory gaps in consumer credit transactions could be filled and consumers could be more actively involved in the process rather than just observers if a strong law similar to what is in place in other areas, such as the US and the UK, where the regulations are unified, were passed. When it comes to developing consumer credit effectively, the following aspects of the English Consumer Credit Act ²⁰² are crucial:

- i. Since the Act, the consumer is king;
- ii. The Act establishes a national institutional framework to support the growth of an open credit market;
- iii. The Act guarantees the inclusion of underprivileged, low income, and communities' persons;
- iv. It contains clauses that forbid irresponsible lending;
- v. It harmonizes current consumer credit laws;
- vi. It made possible the ability of debtors to dispute unfair relationships with creditors and the court having broad discretion to rewrite agreements that are unjust to the debtor, the extortionate credit test can be replaced with unfair relationship test.;
- vii. It provides for settlement of disputes rather than it enforcement;
- viii. It stipulates that interest and fees in all contracts, including microloans, will be regulated.
- ix. It outlines credit guidelines and some consumer rights;
- x. It enables competition in order to check monopolistic tendencies of credit providers;
- xi. It provides for pre-agreements disclosures as a mean to protect credit consumers from agreements with unfair terms.

The effectiveness of consumer credit transaction laws in Nigeria requires ongoing evaluation and adaptation to the changing financial landscape. Ensuring consumer protection, enhancing access to credit, and fostering a fair borrowing environment are crucial for promoting financial inclusion and economic growth. Given the rapid development of technology in lending,

²⁰² English Consumer Credit Act, 2006 (as amended)

regulatory bodies must adapt to protect consumers while supporting innovation in the financial sector.

5.3. Recommendations

While general consumer credit is governed by a distinct system and legislation in many countries, in most places it is a subset of consumer protection laws. Consumer credit transactions in Nigeria are not regulated by any strong legislation. According to the findings, a unified consumer credit law, maybe modelled after the English Credit Act of 2006 (or its later revisions), is thus critically necessary.²⁰³ This will bring together various legislations governing different aspects of consumer credit transactions in line with modern day realities. It is therefore recommended that the following be done in our laws to checkmate callous transactions

1. Consolidation by the National Assembly of all consumer credit laws into one cohesive body through the creation of a national consumer credit Act. For the sake of effective regulation, the Consumer Credit Act (2006) of the United Kingdom and the Uniform Consumer Credit Code (UCCC) of the United States have been harmonised. The UCCC is a comprehensive and complex statute that controls practically every aspect of consumer credit. All consumer credit agreements are likewise governed by the English Consumer Credit Act 1974 (as amended). A group of Western Balkan (WB) countries has also moved to bring its legal framework in line with the consumer credit directive. To level the playing field and establish uniform criteria across nations, the legislation aimed to resolve creditors' concerns about competition distortion in the WB market caused by different levels of protection. Also, the EU has a consumer credit directive, which deserves discussion. The purpose of the directive was to harmonize the regulation of consumer credit, and to provide all member States clients with equal treatment and adequate protection.

²⁰³ One of the key reforms of the 2006 Act is replacing the existing extortionate credit bargain provisions contained in sections 137 to 139 of the 1974 Act with a test based on whether the relationship between creditor and debtor is unfair. Under the current test a credit bargain is extortionate if either it requires the debtor to make payments which are grossly exorbitant or which otherwise grossly contravenes ordinary principles of fair dealing. The new unfair relationship test sets out a lower threshold for debtors to satisfy and is much broader by looking at the entire relationship between the parties rather than just those at the date of the agreement.

2. It is recommended that the National Assembly should as a matter of urgency come up with competitive legislation for the credit environment. This will involve Inclusion of provisions that will prevent lenders, whether banks or retailers, from charging whatever they wish for credit. Usury laws in the US establishes a maximum rate of lawful interest a lender can charge. The penalties for violating usury laws though varies from state to state but heaviest penalties are loss of both principal and interest, or loss of a multiple of the interest the creditor charged. The courts often interpret these laws stringently, so that even if the impetus for a usurious loan comes from the borrower, the contract can be avoided.
3. A quick passage of a Consumer Credit Act in Nigeria by the National Assembly is highly recommended. This will allow for proper regulation of hire purchase agreements, credit sales contracts, mortgages and pawn-brokerage; it will also strengthen the country's banking and financial intermediation systems and promote a strong and viable consumer credit culture.
4. Review the Consumer Credit Protection Council Act is recommended so as to make it more robust like Consumer Credit Protection Act (CCPA) which operates in the US. The CCPA which was created primarily to fight organized crime, make extorted credit transactions, whether consumer or commercial, a federal crime; However, the charging of illegal interest is not a crime but it is an agreement between the creditor and debtor that non-payment of debt may result in the use of violence or other unlawful means to unlawfully injure any person, reputation or property.
5. It is recommended that the consumer credit laws be enforced through an effective and efficient judicial system. Consumer courts at both the state and federal levels be established. The creation of the courts will also contribute to greater public awareness of consumer concerns throughout the federation, notably those involving consumer finance.
6. Establishment of an efficient enforcement mechanism with a system for resolving disputes. This may involve the inclusion of binding arbitration clauses which will require the consumer to submit a dispute to arbitration prior to filing a lawsuit, and will be financed by the losing party.

7. Consumer education should be incorporated in the mandate of the consumer credit regulator and in the mandates of the provincial consumer protection agencies. These bodies should be required to report on the achievement of consumer education targets. Employers and trade unions can also play a big part in helping to raise consumer awareness levels in the workplace, and government would endeavor to create appropriate incentives and support to enable these parties to play a greater role.
8. The inclusion (or presumed inclusion) of specific standard protective terms in all consumer credit contracts, as well as the introduction of the explicit ban of particular unpleasant contract clauses and contractual practices.

Therefore, credit cannot be considered a universal basic utility that should be supplied in the same manner as water, healthcare, and electricity due to the necessity of regulation. A more delicate balancing act between consumer protection and access to finance is required, particularly for the most disadvantaged members of society. Credit providers will incur more risk and pay more to comply with overly burdensome regulations, which will drive up consumer interest rates and reduce provider profits. Therefore, a regulatory framework should not put too much emphasis on compliance requirements that are either too vague or pose an undue risk. Also, the framework should not drive up interest rates, decrease availability, or discourage loans from respectable lenders. A clear and straightforward regulatory structure that is easy to follow is necessary for financial institutions, merchants, and other providers of credit. Particularly crucial are efficient means of collecting and enforcing debt. Consumers would benefit from debt recovery processes that prevent a small number of bad debts from driving up interest rates for everyone else, and credit providers would benefit from fewer bad debt write-offs. Credit providers and consumers would both benefit from effective enforcement if it prevented careless lenders from raising costs and risks for everyone.

5.4 Contributions to Knowledge

Consumer credit transactions are vital for economic growth, providing individuals with access to goods and services that might otherwise be unattainable. The landscape of the transactions in Nigeria is complex and continually evolving. While significant legal protections exist, challenges

remain in enforcement and consumer awareness. The legal framework governing these transactions is multifaceted and crucial for protecting consumers, ensuring fair practices, and promoting financial inclusion. This study has explored existing laws, identified gaps, and proposed reforms that could enhance consumer protection and promote responsible lending practices. As the market adapts to technological advancements, ongoing efforts to strengthen regulatory frameworks and promote financial literacy will be crucial in safeguarding consumer rights and fostering responsible lending practices.

The primary legislation governing consumer credit transactions includes Moneylenders' Act, Hire Purchase Act, the Banks and Other Financial Institutions Act [BOFIA], Consumer Protection Council Act [CPC Act], and the Central Bank of Nigeria [CBN] guidelines. These laws aim to regulate lending practices, protect consumers from exploitation, and promote transparency. Nigerian law provides certain rights to consumers, including the right to clear information regarding loan terms, interest rates, and fees. However, enforcement mechanisms remain weak, leading to consumer vulnerabilities. This study has made both conceptual and doctrinal contribution to knowledge. The contributions can be seen in the review of previous studies and analysis of available consumer credit protection laws. It offers insights into the challenges and opportunities associated with these laws, emphasizing their impact on consumer credit system and the economy of the nation.

5.5 Areas for Further Research

While this research work yields a good number of positive outcomes, I believe further study can be done to expand knowledge in the effectiveness of existing laws and regulations. The research shows that a number of consumer protection issues are covered by existing laws but with little impact on the interest of consumers. One of such law in this regard is competition law. Nigeria does not have a comprehensive body of competition law, the much that exist are sector specific laws and regulations regulating specific issues. Furthermore, there is no law governing unfair contract terms. This consequently allows suppliers of products and services to freely use some exemption clauses as they like and thereby makes consumers to bargain from a weaker position.

Another area for future study is the technological area. The rise of fintech in Nigeria has prompted discussions on regulatory framework for digital lending, emphasizing the need for

updated laws to address new challenges. The society has evolved a great deal and quite a good number of online commercial transactions do take place; these are not captured in most of the current laws. Hence, most of the online institutions adopts the use of technology to interact with their customers and end-up using the power of technology to violate rights and privacy their customers. It is worrisome that most of the institutions use unorthodox means or collection techniques to recover their loans and go unprosecuted.

Future research should not only expand the discussion on consumer protection, but should be encompassing; covering the interest of lenders, borrowers and the economy. This is because consumer credit is known to be an enabler of economic prosperity and as such deliberate action to protect both provider and borrowers of credit must be encouraged. Consumer credit transactions deserves a deliberate boost and special attention in order to deliver the various benefits they are capable of conferring on the lenders, borrowers and the economy. Thus, with right laws and adequate regulations, these benefits can manifest. Further research can also be done in the area of emanating trends in consumer credit such as Buy now, Pay Later schemes, and their legal implications.

In addition, the limitation and shortcoming of this study also provide implication for future research. All above can provide comprehensive understanding of the legal landscape surrounding consumer credit opportunities for reform and improvement.

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Bio-data page

Name : Olatubosun Ayodeji ALOBA

Sex : Male

Address : Oba Lateef Adams Housing Estate, 17/21, Ishola Yusuf Street, Mangoro, Agege, Lagos.

Email : tubosun2000@yahoo.com

Mobile No : 0802 309 7578

Date of Birth : 25TH September 1970

Place of birth : Lagos, Nigeria

Nationality : Nigerian

Religion : Christianity

Marital Status : Married

Languages Known : English and Yoruba

Next of kin : Mrs. Bibian Kanayo Aloba, Esq [same address]

Educational : Lagos State Polytechnic [HND in Accountancy – Upper Credit - 2001],
University of Calabar, MBA [2005],
RCCG Bible College, [Diploma in Theology – 2012],
Diploma in Leadership [Daystar Academy]
National Open University of Nigeria [LL.B Hons. 2nd Class lower division - 2019]
Mediator Academy [UK], Certificate in Mediation, Commercial Mediation for 21st century lawyers [2020]
Harvard Business School Online [US] Letter of participation in Business lessons [2020].

- Professional Membership: Member of the Nigerian Institute of Management [Chartered] - 2003.
Associate member [AICMC], Institute of Chartered Mediators and Conciliators [ICMC] - 2023,
- Work Experience : Education Officer, Institute of Chartered Secretaries and Administrators of Nigeria - ICSAN [1997-2001],
Corporate Affairs /Membership Officer, Institute of Chartered Secretaries and Administrators of Nigeria - ICSAN [2001-2004],
Manager [Accounts and Admin], Silverage limited [2004 – 2006],
Assistant General Manager [AGM]/Head [Accounts and Admin] Silverage limited [2006 – 2008],
Chief Executive Officer - Brookchannels limited [2008 - till date]
Partner - Sapphire Chambers [2019 – till date]
- Certificate of Honour : Assessor – World Bank Group, Ease of Doing Business in Nigeria [2021 – 2022]

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University, Ibadan is in full compliance with the approved University Format and Style.

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