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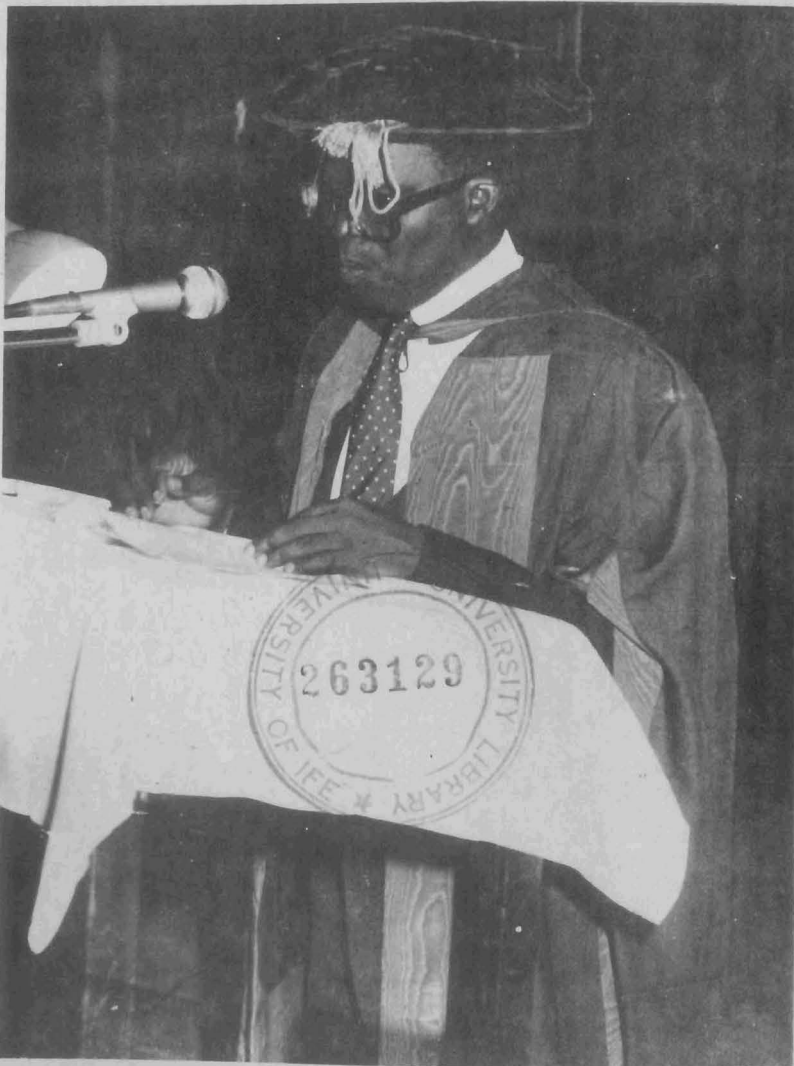
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**COMERCIAL LAW
IN
THE CONTEXT
OF
ECONOMIC DEVELOPMENT;
THE NIGERIAN EXPERIENCE**

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By J. O. Fabunmi

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**COMMERCIAL LAW IN THE CONTEXT OF ECONOMIC
DEVELOPMENT: THE NIGERIAN EXPERIENCE**

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**Inaugural Lecture Delivered at the Obafemi Awolowo
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Commercial activities persist endlessly in time of peace and war. Government may be overthrown in coups, wars may break out, national disasters may occur but somehow commercial activities continue on a regular basis.¹ Merchants have always found a way of continuing business relationships in any given situation. Their ingenuity in formulating new techniques to meet the challenges of changing economic climates is unparalleled. One significant example of this ingenuity is the fashioning of a distinct body of rules derived from customs and usages to govern the transactions of merchants.

Evolution of Law Merchant

The birth and the development of the Law Merchant is one of the most remarkable events in the history of English law.² In Europe, the usages, customs and practices of merchants administered in courts presided over by merchants were the foundation of commercial and maritime law.³ These Mercantile customs and usages were observed by the traders of several states of Medieval Europe and were enforced by the courts of sea-port towns, quite apart from the principles of any definite system of law. The Law Merchant was developed by a distinctive class of international merchants who traded in Europe and Eastern countries.⁴

This Law Merchant called *Lex Mercatoria* was not law in the formal sense. It consisted of customs which merchants recognised as binding. The Law Merchant may be described generally as a system of substantial justice and equity based upon trade usages which had prevailed from the earliest times in various parts of the mercantile world.⁵ But Law Merchant was not based on customs and usages alone. It consisted of the early written codes which formed part of the most ancient Law Merchant.⁶

In the Middle Ages, it was a highly prized privilege obtained by royal franchise to have mercantile transactions between merchants, whether native or foreign decided on the basis of mercantile custom. As for internal trade of the

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Kingdom, it was an incident of the right to hold a fair with its attendant court. Such a right might be enjoyed by a judicial body or by a corporation. By applying Law different from the local law in these market courts, England was simply following the development in Western Europe. And by the reign of Henry I, a court had become an ordinary appurtenance to a fair.⁷ Such courts became commonly known as piepowder, so called because of the speed with which justice was administered.

Apart from the courts of fairs and boroughs, there were also courts of the staple. Foreign trade was conducted in certain areas which were termed staple towns. The courts of staple were mainly concerned with disputes arising from foreign trade. The foreign merchants enjoyed a special status guaranteeing their safety within the Kingdom. This protection was enshrined in the provision of the Magna Carta as follows:

All merchants shall have safety and security in coming into England and going out of England, and in staying and travelling through England, as well by land as by water, to buy and sell without unjust exactions, according to ancient and right customs, excepting in time of war, and if they be of a Country at war with us, and if such are found in our land at the beginning of a war, they shall be apprehended without injury to their bodies and goods until it be known to us, or to our Chief Judiciary, how merchants of our Country are treated who are found in the Country at war with us: if ours be in safety there, the others shall be in safety in our land.

The common law courts regarded with suspicion mercantile or maritime courts which administered bodies of law derived from international usages of merchants and seamen whose origin and development were distinct from that of common law. Common law courts therefore attempted to limit the activities of these courts. During the Chief Justiceship of Sir Edward Coke, these were pressed with great vigour. Coke was anxious to attract the increasingly important commercial business into the common law courts. This

was done by the common law assuming jurisdiction over mercantile matters. Courts of common law permitted the fiction that a contract made abroad had been made in London in order to withdraw the suit from the Court of Admiralty. The incorporation of the Law Merchant into the common law was effected by Sir John Holt and Lord Mansfield, both Chief Justices. Holt was Chief Justice from 1689 till his death in 1710 while Lord Mansfield was Chief Justice from 1756 to 1788. Holdsworth had this to say of Holt:

Holt was the first judge to appreciate the modern conditions of trade, and the importance of moulding the doctrines of the Common Law to fit them. Instances of his work in thus developing the doctrines of the Common Law are his invention of the modern principle of the employer's liability for the torts of his employee,⁸ his settlement of very many rules relating to negotiable instruments⁹ and his settlement in the case of *Coggs v. Bernard*¹⁰ of the various forms of the Contract of bailment.¹¹

However, it was Lord Mansfield who carried out the full incorporation of the Law Merchant into the common law. A learned scholar has observed:¹²

The reform which Lord Mansfield carried out when sitting with his special jurymen at Guildhall in London was ostensibly aimed at the simplification of commercial procedure but was, in fact, much more, its purpose was the creation of a body of substantive commercial law, logical, just, modern in character and at the same time in harmony with the principle of the common law. It was due to Lord Mansfield's genius that the harmonisation of commercial custom and the common law was carried out with almost complete understanding of the requirements of the commercial community, and the fundamental principles of the old law and that marriage of ideas proved acceptable to both the merchants and Lawyers.

Era of Codification

At the beginning of the nineteenth Century, codification of commercial law in Europe had begun. Indeed, it was the

Napoleonic Codification¹³ which opened the era of codification.¹⁴ The development in Europe greatly influenced the attitude and thinking in England. With the incorporation of commercial law into the body of common law, the way was paved for the codification of commercial law. For one thing, the rules of commercial law had become fairly settled in the precedents; for another, the rules had become certain. "The province of a code, I venture to think is to set out, in concise language and logical form, those principles of the law which have already stood the test of time."¹⁵ Since merchants preferred to organise their business in a way to avoid disputes, it was necessary for them to know the rules that govern their transactions.

In England, the codification process was started by M.D. Chalmers.¹⁶ It followed a different pattern from that in Europe and America. Instead of codification of the entire Law or branch of law, specific areas of law were codified. The Companies Act was passed in 1862 and by 1882, the Bill of Exchange Act had been enacted. This was followed by the Partnership Act 1890, Sale of Goods Act 1893 and Marine Insurance Act 1906. These Commercial legislation served the commercial community well, a community that was more concerned with organising business activities in a way that would avoid disputes. With the rules well settled in a codified form, it was possible for business men to inform themselves about the Law governing their transactions. Some of these codifying acts¹⁷ have remained unamended through the years. This was due largely to the skill of the drafters of the Codes. Appreciating this quality, Denning L. J. said,¹⁸ "We no longer credit a party with the foresight of a prophet, or his lawyer with the draftmanship of a Chalmers." This codification has to some extent been extended to Nigeria, especially former Western Nigeria and Lagos State.¹⁹

Reception and Development

By virtue of the various reception legislation,²⁰ The common law, Doctrines of Equity, and Statutes of General Application that were in force in England as at 1st January, 1900 were received into Nigerian Law. In the former Western State (now Ogun, Oyo, Ondo and Bendel States), and to some extent in Lagos State, only Common law and doctrines of equity are applicable. English statutes of General Application were re-enacted as local legislation. Indeed, one major reason for the reception was that it was thought that customary law could not cope with the new economic order introduced by the colonial masters. Since its reception, commercial law has considerably influenced economic development in Nigeria.

The Law of Contract is the foundation of commercial law. It proceeds on two principles,²¹ freedom of contract, which assumes equal bargaining power of the parties and the sanctity of contract (*Pacta Sunt Servanda*). This was largely influenced by the *Laisser-Faire* economic philosophy of the time. Consequently, once there is a contract – an offer, acceptance, consideration and intention to create legal relations – parties to such contract are bound by the terms of the contract,²² even if they never read it and are ignorant of its terms.²³

The assumption of equal bargaining power of parties to a contract has been questioned. Lord Denning expressed his view in this way:

Oh what abuses were not covered by this Catchword 'freedom of contract'. It mattered not to the judges of the day that one party had the power to dictate the terms of a contract and the other had no alternative but to submit. If he had submitted to it however unwillingly, he was bound.²⁴

Lord Diplock, some years later, while delivering judgment in a contract in restraint of trade case said:

It is in my view salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party

agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the Court is implementing is not some nineteenth century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is stronger to enter into bargains that are unconscionable.²⁵

On the basis of the present societal objectives, it is clear that a changed conception of, and attitude towards the law of contract,²⁶ which underlies all the branches of commercial law, is inevitable. The law of contract should therefore be seen as encompassing new social relationships not contemplated by the traditional doctrine, retaining its private character in relations between individuals and the state, but subject to regulations imposed in the public interests.²⁷ Because of the inequality of bargaining power of the parties and the need to protect the weaker party, there have been judicial as well as legislative interventions in various areas of commercial law. Investors need to be protected against the management of companies, employees against employers, buyers against sellers of goods, etc. This development is one of the characteristic features of commercial law at the present time.²⁸ After all, law has social responsibilities to the weak and the strong, the rich and the poor, the young and the old. This approach, if vigorously pursued, will lead to social justice²⁹ as against formal justice which sometimes works hardship and hampers economic development.

Commercial Legislation

Progressive measures were taken in various areas of commercial law in aid of economic development. Various legislation were enacted. The Hire-Purchase Act³⁰ was enacted in 1965 but it came into operation in 1968; the Companies Act³¹ in 1968; the Petroleum Act³² in 1969; the Nigerian National Petroleum Corporation Act³³ in 1977; the Nigerian Enterprises Promotion Acts³⁴ in 1972 and 1977; Securities

and Exchange Commissions Act³⁵ in 1979; the Insurance Act³⁶ in 1979; Insurance Companies Act³⁷ in 1961 and Banking Act³⁸ in 1969, to mention a few.

Hire-Purchase System

Hire-purchase transactions were governed exclusively by common law as there was no English statute of general application which applied to Nigeria.³⁹ It was in 1965 that the first Hire-Purchase Act was enacted but it did not come into force until 1968. Before then, the common law which applied was not only inadequate but worked untold hardship on the buyers of goods under the system in Nigeria.⁴⁰ As there was no regulation governing the rate of interest payable on the loan, the owners of goods had an unfettered discretion to fix the interest payable on such. Harsh and onerous terms were included in the hire-purchase agreements which enabled the owner to seize the hire-purchase goods whenever there was default in the payment of instalments regardless of what percentage of the price had been paid;⁴¹ to compel the hirer to insure the vehicle with a particular insurance company or to service hire-purchase vehicles with a particular garage. The situation of a hirer was so precarious that a learned writer has said, "in the first place probably no commercial activity with the exception of money-lending presents such opportunities for the economically strong to exploit the economically weak."⁴² Surely this naked exploitation is not conducive to economic development. The Hire-Purchase Act was therefore passed to regulate hire-purchase transactions.

The Hire-Purchase Act which has altogether 21 sections may be described as the hirer's Act, revolutionary and highly protective. Most of the injustices which characterised the hire-purchase system at common law were eliminated. The Act covers all hire-purchase and credit-sale agreements, other than agreements in respect of motor vehicles, under which the hire-purchase price does not exceed two thousand naira, and all such agreements in respect of motor vehicles,

irrespective of the hire-purchase price or total purchase price⁴³ For a hire-purchase agreement to be valid, there must be a note or memorandum in writing setting out the terms of the agreement and signed by the hirer and by or on behalf of all other parties to the agreement. The owner is required to state separately, in writing to the prospective buyer, the amount for which the good can be purchased. The owner may not do this if the buyer inspects the goods and there is a price tag indicating the purchase price or if the hirer has selected the goods by reference to a catalogue price list or advertisement in which the price is indicated.⁴⁴ Non-compliance with the provisions of S.2(1)(a) & (b) incurs a severe penalty. The owner can not enforce the agreement against the hirer or guarantor,⁴⁵ neither can he recover the goods which form the subject matter of the hire-purchase agreement.

The note or memorandum must also contain the hire-purchase price and cash price of the goods, the amount of each of the instalments, the date at which the instalment is payable, the deposit paid and the rate of interest. The owner must send a copy to the hirer within 14 days of the making of the agreement.⁴⁶ Some of these requirements may be waived subject to any conditions the court may impose where the court is satisfied that failure to comply is not prejudicial to the hirer.⁴⁷

Section 2 of the Hire-Purchase Act ensures that the hirer is supplied with a written document containing essential and relevant information which will help the hirer to make a proper assessment of the hire-purchase agreement.

Certain provisions contained in the hire-purchase agreement are rendered void by the provision of the Act.⁴⁸ Any provision in the hire-purchase agreement which empowers the hirer or his agent to enter the premises of the hirer for the purpose of taking possession of the hired goods is void and unenforceable.⁴⁹ Similarly, any provision which restricts or limits the right of the hirer to determine the hire-purchase agreement or which requires the hirer or buyer

to avail himself of the services, as insurer or repairer or in any other capacity whatsoever, of a person other than a person selected by the hirer or buyer in the exercise of his unfettered discretion is void.⁵⁰

The Act further protects the hirer by implying certain conditions and warranties into hire-purchase agreements⁵¹ to ensure that the owner has title, the hire-purchase goods are not defective and the hirer enjoys quiet possession of hire-purchase goods. The hirer has a right to determine the hire-purchase agreement after giving due notice in writing to the owner.⁵² He is further protected in that there is a restriction on the recovery of goods by the owner otherwise than by action in a court of law,⁵³ when a relevant proportion of the hire-purchase price has been paid. Relevant proportion⁵⁴ means, in the case of goods other than motor-vehicles, one half, and in the case of motor-vehicles, three fifths. Once the relevant proportion is paid, the owner can only recover possession by action, failure to do so will lead to the determination of the hire-purchase agreement⁵⁵ with serious consequences.

Hire-purchase system is not fully developed here in Nigeria. In the sixties there were few companies dealing in hire-purchase business, but most of the companies have wound up. The result is that the hire-purchase system is almost non-existent. This is unfortunate, for hire-purchase system can be a potential instrument of economic development if properly utilised. The system provides lucrative avenues for investors while at the same time it enables prospective buyers to acquire goods which they would otherwise have been unable to acquire. As a matter of fact in industrialised countries, the system is used to a great advantage. Governments utilise it to control the economy. If expansion in the economy is desired, the rate of interest payable on hire-purchase loan is reduced; if contraction is desired, the rate is jacked up. There is need to revitalise the hire-purchase system in Nigeria. Quite apart from the advantages stated above it will relieve governments of the burden

of car and furniture loans to public servants. In a depressed economy where the value of goods has shot up, the role which hire-purchase may play in bringing the goods within the reach of the masses cannot be over-emphasised.

Sales Transactions

Sales transactions have national as well as international dimensions. Sales may be confined within national boundaries, or may cut across them. Those within the national boundaries may be governed by national law. In Nigeria, such transactions are governed by the English Sale of Goods Act 1893⁵⁶ and the Sale of Goods Laws.⁵⁷

Sale of Goods was dominated in the sixteenth century by the Common Law doctrine of *caveat emptor*⁵⁸ – buyers beware. By this doctrine, a buyer of good is deemed to take it with all its defects. A buyer of defective goods was therefore without any remedy. The effect of *caveat emptor* has been cut down by the implied warranties⁵⁹ and conditions⁶⁰ of the Sale of Goods Act⁶¹ and Laws. It is implied in favour of the buyer that in a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have a right to sell the goods at the time when property is to pass.⁶²

A thief who has stolen goods and sold them to a third party has no right to sell the goods, nor can he pass title in the goods to the purchaser, **title remains in the owner.**⁶³ However, the purchaser is not without a remedy for he can always sue for damages for breach of contract and recover the full purchase price even though he has enjoyed the use of the goods.⁶⁴

But the right to sell is wider than the right to pass property. Accordingly, if a seller can be stopped by process of Law from selling, he has not the right to sell.⁶⁵ In a sale by description there is an implied condition that the goods will correspond with the description.⁶⁶ The term “sale of

goods by description” applies to all cases where the purchaser has not seen the goods but is relying on the description alone.⁶⁷ Also implied into contract of sale are conditions of merchantable quality, or fitness for a purpose.⁶⁸

These implied conditions and warranties give efficacy to sales transactions, ensuring that buyers obtain what they bargain for under the contract of sale. However, these conditions and warranties may be excluded.⁶⁹ But the courts have consistently interpreted exclusion clauses restrictively.⁷⁰ They have even gone further by developing the doctrine of the fundamental term, breach⁷¹ of which cannot be protected by the exclusion clause. Lord Denning put it thus in *J. Spurling Ltd. v. Bradshaw*:⁷²

These exempting clauses are now-a-days all held to be subject to overriding proviso that they only avail to exempt a party when he is carrying out the Contract, not when he is deviating from it or is guilty of a breach which goes to the root of it. Just as a party who is guilty of a radical breach is disentitled from insisting on further performance by the other, so also he is disentitled from relying on an exemption clause...

Accordingly, a party to a contract cannot rely on an exemption clause however widely drawn if he is in breach of a fundamental term of the contract. But the House of Lords in *Suisse Atlantic Societe D' Armement Marina S.A.G.M. v. Rotherdamshe Kolen Centrale*⁷³ denied the existence of such principles contending that whether a breach of fundamental term would operate to deny the efficacy of an exemption clause was a matter of construction of the contract and the exemption clause itself. Since the discussion on the exemption clause in that case was obiter, the practical result of the decision in relation to the sale of goods exemption clause is likely to be very slight. Subsequent decisions, rather than clarify the situation, have tended to confuse it.⁷⁴ However, the Supreme Court and the other Nigerian Courts have consistently held that a breach of fundamental term operated to deny the efficacy of an exemption clause.⁷⁵ But recently, the Court of Appeal in

Niger Benue Transport Co. Ltd. v. Narumal & Sons Nigeria Ltd.,⁷⁶ relying on the English case of *Photo Productions Ltd. v. Securicor Transport*,⁷⁷ held that whether a breach of fundamental term would operate to deny efficacy of an exemption clause was a matter of construction of the contract and the exemption clause.

In England, statutory enactments⁷⁸ have reduced the impact of exemption clauses. As these statutory provisions are not applicable in Nigeria, the problem remains unsolved as the law applicable is the common law as well as Sale of Goods Act 1893 and Sale of Goods Laws. Happily, the Nigerian Law Reform Commission has just concluded a comprehensive review of English Statutes of General Application and it is hoped that an authentic Nigerian legislation will emerge which will take care of these problems.

International Sales

The *Lex Mercatoria* which originally consisted of the practices and usages developed by the international merchant community was truly international. Explaining this international character of the *Lex Mercatoria*, a learned writer said:

“...the old *Lex Mercatoria* was truly international. It consisted of practices and usages which the international merchant community developed in Europe. These usages became in course of time Customary Law. They were the same all over Europe because the merchants applied them whenever they transacted business, whether it was in London, Rheims, Cologne or Milan. The old *Lex Mercatoria* was thus cosmopolitan and intrinsically different from the local law applied to other strata of the population.”⁷⁹

This international character of *Lex Mercatoria* was gradually lost as States took measures to incorporate the *Lex Mercatoria* into their legal systems. The process of integration took different forms. In Europe it was through codification, while in England it was done by the Courts. Never-the-less, its international character was not entirely lost.

One important consequence of the nationalisation of *Lex Mercatoria* is that when there is a contract involving two or more nationals or two or more different states, the problem of which law is applicable arises. This problem is solved by either the parties indicating in the contract the law which is to govern the transaction or by applying the rules of conflict of laws.⁸⁰ The complexity and uncertainty associated with this situation generated concern not only among the international business community but also among national governments as well as international agencies. It was strongly felt that there should be a uniform law applicable to international sales, just as there is a national law which applies to domestic sales.

International Conventions

The International Institute for the Unification of Private Law (UNIDROIT) had prepared a draft uniform law for International Sale of Goods, and a uniform law for the formation of contract. By April 1964, a diplomatic conference of 28 States met at the Hague and finalised the two conventions, one set forth uniform law for the International Sale of Goods (ULIS) and the other a uniform law on the formation of contracts for the International Sale of Goods (ULF). The two conventions came into force in 1972 after they had been ratified by five States, mostly European.⁸¹

In spite of the success of these conventions, the conviction grew that success on a worldwide scale called for worldwide participation and sponsorship.⁸² Consequently in 1966, a resolution by the General Assembly of the United Nations provided for the establishment of a worldwide representative body to promote “the progressive harmonisation and unification of the law of International trade.” A body, the United Nations Commission on International Trade Law (UNCITRAL) was set up. Membership was limited to 36 and was allocated among the regions of the world.

The 1964 conventions did not receive adequate adherence because of inadequate participation or representative of different legal backgrounds in the preparation of the conventions. UNCITRAL therefore established a working Group of 14 States (a cross section of UNCITRAL's World-wide representation) and requested the working Group to prepare a text that would facilitate "acceptance by countries of different legal, social and economic systems". The working group submitted a draft convention on sales based on the 1964 Hague Sales Convention (ULIS) and draft convention on formation based on the 1964 Hague Formation Convention (ULF). In June 1978, the full commission completed the review of the two draft conventions and combined them into a single draft convention on International Sale of Goods. And by September 30, 1981, the convention had been signed by twenty-one states,⁸³ thus bringing the convention into force.⁸⁴

Under article 1, the convention applies only if two basic requirements are met: (1) the seller and the buyer must have their "places of business in different states" and (2) the sale must have a prescribed relationship with one or more states that have adhered to the convention. The convention deals extensively with the formation of contracts, the rights and obligation of the parties to the contract of sale and remedies for breach of contract. The unsatisfactory state of the domestic law on issues relating to offer and acceptance, delivery of goods and handing over of documents, passing of property and risk, examination and acceptance of goods have been adequately dealt with. However, parties may exclude the application of the convention or derogate from or vary the effect of any of its provisions.⁸⁵ The convention now provides the international business community with a legal framework from which they can draw from time to time to meet their legal requirements. Certainly this endeavour is bound to hasten the pace of economic development worldwide.

Company Law and Indigenisation

In the areas of economic activities, Companies are the major instruments of commercial organisation. The Companies Act 1968 allows two or more persons to incorporate a company, with legal personality distinct from those of its members.⁸⁶ But a more sensitive and vital issue of foreign participation in Nigerian companies is not addressed by the Companies Act. While regulatory controls⁸⁷ exist, these are not far reaching enough. Consequently, the Nigerian economy was dominated by foreign capital and personnel even after independence on October 1, 1960.

A 1963 industrial survey showed that 68% of the paid up capital of Nigerian companies were of foreign origin, 22% came from Nigerian governments and only 10% represented indigenous interests.⁸⁸ By 1970, the hold of multinational Companies on the Nigerian economy had become total.⁸⁹ The need to wrestle the economy from foreign domination became very compelling. This led to the increasing demand for "Nigerianisation" of the economy. The Federal Military Government accepted the principle that the Nigerian economy should be controlled by Nigerians. Government policy on indigenisation was stated in the Second Development Plan as follows:

Nigerian ownership and control of Industrial Investments are extremely low. Indigenous ownership and control of strategic industrial areas are essential in order to maximise local retention of profits, increase the net industrial contribution to the national economy and avoid explosive socio-political consequences that are bound to arise in future with foreign absentee control of the nation's industrial sector. The government is convinced that the drive for greater Nigerian participation should proceed simultaneously with attracting foreign investment on mutually beneficial terms. Local and foreign investors can only work together when the interest of the nation is assured at all times.⁹⁰

The mechanism for concretising this policy is declared in the plan as follows:

The government will seek to acquire by law – equity participation on a number of strategic industries from time to time. In order to ensure that the economic destiny of Nigeria is determined by Nigerians themselves, the government will seek to widen and intensify its positive participation in industrial development.⁹¹

Legal Framework

The Nigerian Enterprises Promotion Act⁹² was passed in February, 1972. The Act categorised all the affected enterprises into schedules 1 and 2. All enterprises contained in schedule 1 are reserved for Nigerian citizens or associations. Aliens can no longer establish such enterprises and those already established are required to be sold or transferred to Nigerians.⁹³ As regards enterprises specified in schedule 2, aliens are allowed limited participation in certain circumstances.⁹⁴

The Act established the Nigerian Enterprises Promotion Board⁹⁵ which has power to advance and develop the promotion of enterprises on which Nigerian citizens are required to participate fully and play a dominant role.⁹⁶ The Board has power (a) to advise the Minister on policy guidelines for the promotion of Nigerian enterprises; (b) to determine any matter relating to business enterprises in respect of commerce and industry that may be referred to it by the Minister and to make such recommendations as may be necessary and (c) to perform such other functions as may be determined by the Minister. The Act also established for each state a Nigerian Enterprises Promotion Committee⁹⁷ whose principal functions are (a) to assist and advise the board on the implementation of the Act and (b) to ensure that the provisions of the Act are complied with by aliens resident or carrying on business in the state.

Inspectors of enterprises are required to be appointed.⁹⁸ They have power to enter buildings or premises to inspect

such premises or buildings or business in order to determine whether or not the building or premises are used or the business is carried on for the purpose authorised by the Act.⁹⁹ They may require the production of all books of account and other documents and inspect them for ensuring that the provisions of the Act are carried out. The Act creates offences and imposes penalties to ensure compliance.¹⁰⁰ There is a right of appeal from the decision of the Board to the Minister who may, subject to the approval of the Federal Council of Ministers, confirm or reverse the decision of the Board, or take such further measures which he may think reasonable.¹⁰¹

The 1972 Act was inadequate in many respects. The definition of Nigerian citizens or associations as contained in S.16(1) was too wide.¹⁰² The powers granted to the Minister were excessive and the rationale incomprehensible and were liable to abuse. Because of these inadequacies the objective of the 1972 Act was only partially realisable. The 1972 Act was progressively amended and updated in the light of changing realities and experiences by the Nigerian Enterprises Promotion (Amendment) Act 1973, the Nigerian Enterprises Promotion (Amendment) Act 1974 and the Nigerian Enterprises Promotion Act 1976. All these Acts were repealed and replaced by the Nigerian Enterprises Promotion Act 1977 which made significant improvements upon the previous Acts.

Under the 1977 Act enterprises are reclassified into three schedules. Enterprises in schedule 1 are exclusively reserved for Nigerian citizens or associations.¹⁰³ Aliens are prohibited from being owner or part owner of any of the enterprises contained in schedule 2 unless the equity participation of Nigerian citizens or associations in the enterprise is not less than sixty per cent.¹⁰⁴ Similarly, aliens are prohibited from being owner or part owner of any of the enterprises specified in schedule 3 unless the equity participation of Nigerian citizens or associations in the enterprise is not less than forty per cent.¹⁰⁵ In order to

be all embracing, item 39 of schedule 3 provides that all other enterprises not included in schedule 1 or 2, not being public sector enterprise, must also comply with the provisions of S.6 of the 1977 Act. The 1977 Act, unlike the 1972 Act widens the scope of indigenous participation since there is no single enterprise that can be wholly owned by any alien.

Under the 1977 Act, the Nigerian Enterprises Promotion Board was retained as the principal organ of the implementation process, supplemented by the Capital Issues Commission and Enterprises Promotion Inspectors. The powers and functions of the Board as contained in the 1972 Act were substantially incorporated into the 1977 Act.

One important improvement made by the 1977 Act is the recognition of workers' right to the ownership of shares in enterprises. Accordingly, at least 10% equity participation of schedule 2 and 3 enterprises are reserved for workers.¹⁰⁶ Of this, not less than 50% is to be reserved for non-managerial staff. The Act lays down general guidelines regarding approval of sales or transfer by the Board or commission.¹⁰⁷ Specifically, it stipulates that ownership of enterprises should be widely spread and deliberate effort must be made to prevent concentration of ownership in a few hands. Towards this end, no individual is to be allowed to have control of more than one enterprise and the maximum interest that any Nigerian, with the exception of owner-manager, could possess in any enterprise was limited to ₦50,000 or 5% of the equity, whichever was higher.¹⁰⁸

There was considerable improvement in the mechanism of sale and transfer of enterprises under the 1977 Act. The Board must approve the terms and condition of sale of enterprises in schedules 1, 2 and 3. The Capital Issues Commission¹⁰⁹ must approve the price at which shares are to be sold or transferred, the timing of sale and the terms and conditions of sale or transfer of shares or enterprises covered by schedules 1, 2 and 3 operated as public companies.

Recently the Court of Appeal had the unique opportunity of considering the supervisory powers of the Nigerian Enterprises Promotion Board under the Enterprises Promotion Act 1977 in *Nigerian Enterprises Promotion Board v. Metal Construction (W.A.) Ltd.*¹¹⁰ The Nigerian Enterprises Promotion Board had, after due consideration, declared null and void "all increases in the company's share capital after June 29th 1976 since they were neither approved by the Nigerian Enterprises Promotion Board nor valued by the Nigerian Securities and Exchange Commission and directed that they (the Plaintiff/Appellant) should submit proposal to indigenise additional 20% of the Company's capital including 10% mandatory workers participation."

The Court of Appeal held that the Nigerian Enterprises Promotion Board could not exercise such powers as Private Companies were excluded by S.9 (1) of the 1977 Act, while S.9(2) applies to sale or transfer of enterprises and not to sale or transfer of shares. Kutigi J.C.A. said:¹¹¹

Having come to the conclusion that sub-section 1 does not apply to the creation of new capital, or to the sale or transfer of shares and does not apply to a private company, it, in my view, follows that section 11 (1) (d) of the Act which provides for 10% workers participation when an enterprise is being sold or transferred does not apply to the appellant herein. In the same vein I am also of the view that section 7(1) of the Securities and Exchange Commission Act 1979 which relates to the issue or sale of Securities cannot be said to apply to the appellant. The increase of shares is one thing while their issue or sale is another.

The 1977 Act incorporated the offences and the penalty provisions in the 1972 Act, although there were more severe penalties provided in SS.13 and 14 which empowered the Board to seal up, take over or sell any defaulting enterprise.

The oil industry was also affected by the indigenisation policy, not only by the Nigerian Enterprises Promotion Act but also by the Petroleum Act 1969,¹¹² and the Nigerian National Petroleum Act.¹¹³ The result is that the oil

industry was rescued from foreign domination in terms of institutional control, ownership and participation.¹¹⁴ Further measures were taken in other areas of the economy to advance the indigenisation policy. The Companies Act 1968¹¹⁵ requires all companies operating in Nigeria to register as a Nigerian company. The Banking Act¹¹⁶ requires banking business to be undertaken by companies incorporated under the Companies Act with a valid licence granted by the Minister. These requirements ensure some government control over these institutions.

The Nigerian Enterprises Promotion Act 1977 indigenises equity ownership in Nigerian Companies. By the provision of the Act, Nigerians are entitled to the ownership of the majority of the shares in companies operating in Nigeria. Currently, the Act does not guarantee the Nigerians the exercise of management control over companies with foreign share-holders. It is, therefore, possible for foreign share-holders in Nigerian Companies to control the company even though Nigerians hold the majority of the company shares.

The issue came up for determination in the case of *Kehinde v. Registrar of Companies*.¹¹⁷ Honda Manufacturing Company of Japan entered into a joint venture agreement with some Nigerians to establish a branch of the Japanese Company in Nigeria. The 1977 Act requires Nigerians to hold 60% shares in such a company. The proposed company had 100,000 shares and by the articles of association of the company, Nigerians were to hold 70,000 shares while the Japanese would hold 30,000. The article further provided that the Japanese shares would carry 3 votes per share while the Nigerian shares would carry one vote per share when matters concerning the management of the company were being considered. The result is that management control of the company was in the Japanese share-holders. Their minority share-holding of 30,000 gave them a majority vote of 90,000 as against the Nigerian majority share-holding of 70,000 which gave a minority vote of 70,000. The Registrar of Companies refused to register the

company on the ground that the Japanese management control is contrary to the spirit of the 1977 Act. On an application to the Federal High Court, the Court issued a writ of Mandamus compelling registration on the ground that there was no legal justification for refusing registration.

The Companies Act 1968 and the 1977 Act should be interpreted consistently with a view to achieving the economic objective of the Federal Military Government. In this regard, sharp company law practices must be checked so as to enable Nigerians control their economy. This calls for a change of judicial attitude towards the interpretation of these legislation.¹¹⁸

Settlement of Commercial Disputes

In the complex network of commercial activities, disputes are bound to arise and parties to such disputes may resort to the regular courts. The High Courts have unlimited jurisdiction in civil matters¹¹⁹ and therefore have power to try such disputes. Any party who is dissatisfied with the judgment of the High Court can appeal to the Court of Appeal and then to the Supreme Court. But trials in the regular Courts are cumbersome and often unduly prolonged.

Merchants were dissatisfied with the procedure and remedies available at the regular courts.¹²⁰ Right from the beginning they had favoured a situation in which disputes involving merchants were settled within the merchants community but this was not favoured in England. An attempt was made following the decision in *Rose v. The Bank of Australia*¹²¹ to meet the demand of the merchants. The judges of Queen's Bench Division then resolved as follows: "that it is desirable that a list be made of causes to be tried by a judge alone, or by jurors from the city; and that a Commercial Court should be consisted of judges to be manned by judges of the Queens Bench Divisions." The *English Supreme Court Practice*¹²² stated the objective to be "to create a simplified procedure, more suited to the needs of the mercantile community, with briefer pleadings,

more expeditious trials before judges of special experience in such cases and reduced expenses.”

The expression “Commercial Court” is a misnomer as there is no Commercial Court in England. What exists is a special list for Commercial Cases. Even then, this special list does not include cases dealing with companies and bankruptcy which are tried in the chancery division.

In Europe the position is different. Merchants are represented in the Commercial Courts in France and Germany. The *tribunaux de Commerce* in France are staffed by merchants and *Handelsgerichte* in Germany consists of a professional judge as Chairman and two merchants as assessors. It has been suggested¹²³ that the difference in approach between England, France and Germany is due largely to the fact that Commercial Law in France and Germany is a clearly defined separate branch of Law, whilst in England it forms part of the law of contract. While merchants in Europe were satisfied with the machinery for settling their disputes, those in England were not. The result is that arbitration became popular among merchants as a process for settling their disputes. Arbitration was first put on statutory footing by the Arbitration Act 1698 but fundamental changes were effected by the English Arbitration Act 1979.

In Nigeria, it seemed that merchants were initially contented with settling their disputes in the regular courts. The reasons for this is not far to seek. Nigeria was basically an agricultural country providing for the needs of her citizens, so most of the disputes that arose were settled in the family courts. There was therefore less use of regular courts. When commerce was introduced, the situation changed and with its expansion and the gradual industrialisation of the economy, merchants began to complain, like their counterparts in England, that the ordinary courts are expensive, too slow, and unspecialised and could therefore not satisfy their aspirations. There was therefore a need to have other means of settling disputes apart from the regular courts.

Some attempt to meet this failing resulted in the establishment of the Federal High Court¹²⁴ with exclusive jurisdiction¹²⁵ in Federal fiscal and some other commercial matters.¹²⁶ However, this is apparently not far reaching enough and recourse has been made to the arbitral process.

Settlement by Arbitration

Arbitration is the “reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a Court of Competent jurisdiction.”¹²⁷ This definition has received judicial approval in Nigeria.¹²⁸ Arbitration was put on statutory footing by the Arbitration Ordinance 1914.¹²⁹ The Arbitration Ordinance has been adopted by the Arbitration Laws of the States.¹³⁰ Consequently, the law on Arbitration is practically the same throughout the country.¹³¹

Any dispute affecting civil rights in which only damages are claimed may be referred to arbitration.¹³² It is essential that parties must have agreed to refer their dispute to arbitration. Once there is a submission, unless a contrary intention is expressed, it is irrevocable except by leave of Court or by mutual consent.¹³³ But it is necessary to draw a distinction between an agreement which contains an arbitration clause and the arbitration clause itself. While the former sets out the obligations which the parties undertake towards one another, the arbitration clause merely embodies the agreement of both parties that in the event of a dispute arising from such agreement, it should be referred to arbitration. This distinction is important especially with regard to the remedies available in case of breach. If there is a breach of the agreement, damages is the appropriate remedy but for a breach of arbitration clause the appropriate remedy is an order of specific performance to compel performance of the arbitration clause.¹³⁴

Apart from its contractual nature, arbitration embodies a judicial element as well. The arbitrator once appointed must

observe the rules of natural justice. He has power to administer oaths, to take the affirmation of parties and witnesses,¹³⁵ to summon witnesses by subpoena¹³⁶ and to state an award in the form of a special case for the opinion of a court.¹³⁷ An arbitrator may refer a question of law to the High Court for an opinion. The opinion given in such a case is a decision from which there is a right of appeal.¹³⁸ When he gives an award, such can be enforced in the same way as a judgment of court.¹³⁹ All these show that an arbitrator performs judicial functions. The principle has been expressed thus:¹⁴⁰ "Courts and arbitrators are in the same business namely the administration of justice. The only difference is that the courts are in the public and the arbitrators in the private sector of the industry."

Since arbitrators perform a judicial function, are they entitled to immunity like judges? After an initial lukewarm judicial attitude, it has been established that an arbitrator enjoys immunity in respect of his actions in the course of the arbitration.¹⁴¹ The enjoyment of immunity is essential for the effective functioning of arbitrators.

The Doctrine of Ouster

The judicial attitude which became firmly established by the end of the eighteenth century was that agreement of parties could not oust the jurisdiction of courts.¹⁴² This idea seemed to have originated from the Court of equity which held that a party cannot by agreement deny himself of the right to Court of equity. But common law courts gave effect to the agreement of parties.¹⁴⁴ Thus, in *Scott v. Avery*¹⁴³ the House of Lords held that an agreement to refer a dispute to arbitration before resorting to a court of law did not oust the jurisdiction of Court. Similar conclusion was reached in *Agbizounon v. Northern Assurance Co. Ltd.*,¹⁴⁵ where an insurance policy contained a clause referring all disputes arising from the policy to arbitration with a provision that an award under the policy is a condition

precondition to litigation. It was held that the arbitration clause was valid and did not oust the jurisdiction of court. Judicial attitude towards ouster of jurisdiction has changed considerably. Judges are now taking restrictive view of the doctrine.¹⁴⁶

One important effect of arbitration clauses is that parties to it cannot bring an action in a court of law in respect of disputes arising from the agreement without first going to arbitration. Any attempt by a party to seek redress in court without invoking the arbitration clause will enable the other party to apply for a stay of proceeding pending such arbitration.¹⁴⁷

International Commercial Arbitration

The present stage of economic development worldwide necessitates interaction at national and international levels. This often gives rise to international contracts which are characteristically complex. Businessmen have therefore devised an international system of arbitration to settle disputes relating to such contracts which usually contain arbitration clauses. Nigeria has been involved in international commercial agreements ranging from sale of raw materials to industrial transactions in the form of supply of equipments and machinery or in the form of construction or transfer of technology.

The cement scandal of the middle seventies cannot easily be forgotten. As a result of sudden oil wealth and the failure of Government to plan, contracts had been entered into with foreign companies for the purchase of cement without regard to the country's need and capacity. The result was that these contracts were breached and the parties invoked the arbitration clause contained in the contracts. It is sad that most of these arbitration clauses made foreign law applicable and references were to either the arbitration of the International Chambers of Commerce in Paris or the London Court of Arbitration, London. Needless to say that Nigeria could ill survive of money on these transac-

tions.¹⁴⁸ The questions one may ask are, who negotiated these contracts? Nigerians? If they were, did they have national interest at heart when they negotiated these contracts? Were the contracts vetted by legal experts? Answers to these questions are crucial, not because they will enable us redo and replan our past activities (for the past is past), but because they will help reshape our future directions.

It is gratifying to note that the Federal Ministry of Justice under the able and dynamic leadership of Prince Bola Ajibola S.A.N. has recently conducted an international seminar on the drafting and negotiation of international contracts. This has led to the setting up of a Contract Review Committee of which this lecturer is a member. The Committee is, *inter alia*, charged with the responsibility of formulating guidelines which will assist in the negotiation and drafting of internal and international contracts to be entered into by our Governments, and to assist in vetting such contracts. Certainly the activities of this Committee will reduce, if not completely eliminate, glaring malpractices manifested in the contracts entered into by Federal and State Governments.

The machinery for settling disputes arising from international commercial contracts include the International Chamber of Commerce in Paris, the London Court of Arbitration, the UNCITRAL Arbitration Rules, and the Convention on The Settlement of Investment Disputes.

Enforcement of Awards

As regards awards made by an arbitrator governed by the Arbitration Law, such an award is enforceable in the same manner as judgment obtained in the law court.¹⁴⁹ An award can be enforced by application to court directly to enforce the award or by application to enter judgment in the terms of the award.¹⁵⁰ After obtaining judgment, the applicant can then levy execution under the Sheriff and Civil Process Law.

The enforcement of award made by International Commercial Arbitration is governed by the Convention on Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June, 1958. The convention applies only to contracting states. Art. III provides:

“Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this convention applies than are imposed on the recognition or enforcement of domestic awards.”

Nigeria ratified the convention on 17 March, 1970 as a contracting party subject to the following reservations:

“In accordance with paragraph 3 of Article 1 of the Convention the Federal Military Government of the Federal Republic of Nigeria declares that it will apply the convention on the basis of reciprocity to the recognition and enforcement of awards made only in the territory of a state party to this convention and to differences arising out of legal relationships, whether contractual or not, which are considered as Commercial under the Laws of the Federal Republic of Nigeria.”

For a treaty to have the force of Law within Nigeria, the Constitution of the Federal Republic of Nigeria 1979 requires such treaty to be specifically enacted into law.¹⁵¹ This treaty has not been so enacted, it is therefore not applicable within our domestic jurisdiction. But it is binding when the treaty is applied by international tribunals because internal procedural defect will not provide a defence before an international tribunal. A foreign award may however be enforced if an action is brought in the terms of the award in the Law Court and judgment is obtained. Execution can then be levied on the judgment under the Sheriff and Civil Process Law.

Conclusion

Commercial law has played and continues to play a significant role in the economic development of Nigeria. It constantly puts the economy into shape, cutting down excesses and adding necessary trimmings. In the permissive areas of the economy, the impact of commercial law has been greatly felt. The unequal bargaining powers of parties to a contract which led to the exploitation of the weak by the strong and the rich by the poor has been considerably reduced. A changed conception of contract is gradually emerging either through legislation or judicial intervention. A conception, which not only recognises the limitation of the parties but also affords protection so that hardship and injustice are not perpetrated. These efforts are clearly evident in contract, hire-purchase, sale of goods, company law, etc.

It is distressing to know that the legislation applicable in many areas of commercial law are statutes of general application, mostly statutes enacted in the nineteenth century in England, but which have undergone several amendments in England. For example, the English Sale of Goods Act 1893 is still the law applicable to Sale of Goods in Nigeria.¹⁵² Evidently, an Act passed in 1893 would be inadequate to meet the challenges of modern economy. Accordingly, in England, the 1893 Act had undergone several amendments until 1979 when all the amendments were brought together under the Sale of Goods Act 1979.

The Federal Attorney General and Minister of Justice, Prince Bola Ajibola S.A.N., in his address to the Centenary Celebrations of Legal Profession in Nigeria held at the National Theatre, Lagos on February 16-22, 1986, promised that all the Statutes of General Application would be reviewed and enacted into Nigerian Law as did the former Western Nigeria in 1959. The review has been completed and a national workshop has in turn, been conducted on the review. The Law Reform Commission has submitted a report to the Honourable Federal Attorney-General.¹⁵³ The efforts of the Honourable Federal Attorney-General are highly

commendable. I would like to urge him to pursue the project to the logical conclusion by ensuring that these English Statutes of General Application are replaced as soon as possible by Nigerian Legislation which will take into account our peculiar circumstances.

Arbitration as a process of settling commercial disputes is gradually gaining importance and recognition. Long delay, cumbersome procedure and high expenses which litigation involves are detested by businessmen. They are therefore making use of national and international arbitral tribunals. The New York Convention on the enforcement of Arbitral Awards, 1958 which was ratified by Nigeria in 1970, is still to be enacted into Law in accordance with S.12(1) of the Federal Republic of Nigeria Constitution of 1979. Nigeria has not ratified the Geneva Convention on uniform law for international sale either. As a result, Nigerian businessmen are not able to take advantage of these important conventions. However, I am aware that the Federal Ministry of Justice is taking urgent action on these matters.

The depressed state of the economy is due not only to the oil glut but also to the colonial waste perpetrated through the award of contracts. It is in this connection that the setting up by the Federal Attorney-General and Minister of Justice of a Contract Review Committee consisting of experts from the universities, industries and civil service is praise worthy.

Finally, in order to promote economic development, it is essential to inculcate discipline, raise moral ethos and excite self-restraint in our body polity. It is therefore necessary to set standards for society, standards of discipline, morality and frugality.

Recommendations

1. A Commercial Division should be created in the High Court to adjudicate on commercial disputes. This Commercial Division should be presided over by judges who are experts in Commercial Law. An Arbitration Commission can

sit with a judge where this is necessary having regard to the nature of the subject-matter of the dispute.

2. Legislation on commercial law should be periodically reviewed and up-dated in line with current economic realities of the nation.
3. To concretise the recommendation in 2 above, the Nigerian Bar Association should set up a Law Reform Committee as a standing Committee of the Association whose function would be to review legislation on commercial law from time to time and forward recommendations to the Honourable Federal Attorney-General. The law Faculties of the Nigerian Universities should also forward the results of their researches and reports of conferences to the Honourable Federal Attorney-General whose office would collate the reports and utilise them in reviewing legislation on commercial law.
4. Urgent action should be taken to complete the revision and re-enactment of Statutes of General Application as Nigerian legislation.
5. The Contract Review Committee recently set up by the Honourable Federal Attorney-General and Minister of Justice should be statutorily recognised. A similar body should be set up in the states. I believe that this will eliminate the enormous waste in the contract award system.
6. The Hire-Purchase system should be reorganised and modernised and businessmen encouraged to incorporate companies to engage in hire-purchase business. The facilities provided by these companies will enable public servants to buy motor vehicles and other articles on hire-purchase. Governments will then be relieved of these burdens.

7. The Federal Military Government should set as societal objectives, discipline, morality and frugality. These objectives should form a course of study in primary and secondary schools and institutions of higher learning.

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91. *Ibid.* at p. 289.
92. No. 4 of 1972; for a detailed discussion, see J. O. Fabunmi, "Indigenisation Law as a Means of Economic Control: The Nigerian Experience", Paper presented at the 10th Annual Conference of the African Law Association held at Heidelberg, Western Germany Nov. 1984; Published in (1984) *5 Year Book of African Law* pp. 13-33; D.A. Ijalaye, "Indigenisation Measures and the Multinational Corporations in Africa", *Lectures delivered at the Hague Academy of International Law*, published in 171 *Recueils des Cours*; Jegede M. "The Nigerian Enterprises Promotion Decree No. 4 of 1972" (1973) 7 *Nig. L.J.* 153 Goel, "Indigenisation, Corporate Control by Nigerians; A plea for Company Law Reform" (1982) N.C.L.R. 252; Asante S. *Transnational Investment Law and National Development* (1981) University of Lagos Press; Barnes K, "Incorporating Foreign Control Over Nigerian Companies, The Registrar's Refusal Examined" (1984) 1 & 2 J.P.P.L. 53.
93. Nigerian Enterprises Promotion Act 1972, s.4(3).
94. *Ibid.*, s.5(1).
95. *Ibid.*, s.1(1).
96. *Ibid.*, s.1(2).
97. *Ibid.*, s.3(1).
98. *Ibid.*, s.6(1).
99. *Ibid.*, s.6(3)(b).
100. See *Ibid.*, ss. 10 & 11.
101. *Ibid.*, s. 4.

102. See *Lasisi v. Registrar of Companies* (1976) 7 S.C. 73 for an interpretation of s.16(1).
103. 1977 Act S. 4(1)
104. *Ibid.*, s. 5.
105. *Ibid.*, Ss. 6.
106. *Ibid.*, s. 11(1) (d).
107. *Ibid.*, s. 11.
108. *Ibid.*, s. 11.
109. No. 14 of 1973.
110. [1986] 2 N.W.L.R. 2377.
111. For a Review of the case, See O.A. Osunbor, "The Court of Appeal Decides on the NEPB's Powers" *The Business Times* July 28, 1986 p.10
112. No. 51 of 1969.
113. No. 33 of 1977.
114. See generally, J. O. Fabunmi, "Legal Framework of National Control of Mineral Oil Resources in Nigeria," a paper presented at the National Workshop organised by the department of Jurisprudence and International Law; University of Lagos, May 29-June 2, 1984 Published in (1986) 1 & 2 *Univ. Ife L. J.*, pp. 40-57. See also S.K.B. Asante *Transnational Investment Law and National Development*, (Lagos University Press, 1981).
115. No. 51 of 1968.
116. No. 1 of 1969.
117. (1979) 3 L.R.N. 213; See also Barnes K, "Incorporating Foreign Control Over Nigerian Companies, The Registrars Refusal Examined" (1984) 1 & 2 JPPL 53; *Lasisi v. Registrar of Companies* (1976) 7 S.C. 13.
118. See J. O. Fabunmi, "Indigenisation Law as a Means of Economic Control: The Nigerian Experience" (1984) 5 *Year Book of African Law* p. 13 at pp. 29-32.
119. S.11(1)(a) High Court Law Cap. 52, *Laws of Lagos State* 1973; See also S. 236 of the Constitution of the Federal Republic of Nigeria 1979.
120. See Lord Viscount Kilmur, "The Future of Commercial Court" (1961) J.B.L. 8 at p. 10.
121. [1894] A.C. 687.
122. *The Supreme Court Practice*, 1973 Vol. 1, note 72/1/1.
123. Clive. M. Schmitthoff *op. cit.* at p.10.
124. See The Federal Revenue Act 1973 as amended by S.230 of the Constitution of the Federal Republic of Nigeria 1979.
125. See s.8 *Ibid.*; but see now *Savannah Bank v. Pan Atlantic* unreported Suit No. SC. 139/1985 of 30/1/87 delivered by D.O. Coker J.S.C.
126. See s.7(1) *Ibid.*
127. See *Halsbury's Laws of England* Vol. 2 (3ed.) at p. 2.

128. *Mitr (Nig.) Ltd. v. Oyedele* (1966) A.L.R. 191 at p. 194.
129. Cap. 13, *Laws of the Federation of Nigeria*, 1958.
130. See Arbitration Law Cap. 10 *Laws of Lagos State* 1973; Arbitration Law Cap. 10, *Laws of Bendel State* 1976; Arbitration Law Cap. 7 *Laws of Northern Nigeria* 1963; Arbitration Law Cap. 2 *Laws of Eastern Nigeria* 1963; Arbitration Law Cap. *Laws of Ogun State* 1978; Arbitration Law Cap. 9, *Laws of Oyo State* 1978; Arbitration Law Cap. 8, *Laws of Ondo State* 1978.
131. Orojo: *Nigerian Commercial Law and Practice* 1983 Vol. 1 p. 215.
132. *Russel on Arbitration* Eight Ed. p. 20.
133. S.8 Arbitration Law, Cap. 10, *Laws of Lagos State* 1973.
134. *Royal Exchange Assurance v. Benthworth Finance (Nig.) Ltd.* (1976) 6 U.I.L.R. 193.
135. S.8 Arbitration Law Cap. 10 *Laws of Lagos State* 1973.
136. *Ibid.* S.9
137. *Ibid.*, s. 8
138. See *The Automatic Telephone and Electric Co. Ltd. v. Federal Military Government of the Republic of Nigeria* [1968] 1 All N.L.R. 429.
139. S. 13 Arbitration Law Cap. 10 *Laws of Lagos State* 1973.
140. Per Donaldson J. in *Bremer Vulkan Schiffbau Und Maschinenfabrik v. South India Shipping Corp. Ltd.* ([1979] W.L.R. 471 at 479.
141. Clive. M. Schmitthoff *op. cit.* at p. 68.
142. See *Bello v. Alowonle* (1968) 2 A.L.R. 118; *Lee v. Showmens Guild of G. B.* [1952] 2 Q. B. 329
143. *Ibid.* at p. 63.
144. [1856] 5 H.L.C. 811.
145. (1934) 11 N.L.R. 177; see also *Compagnie Miniere et Metallurgique v. Owners of M.V. Hereon* unreported suit no. W/74/70 of 9/7/70; *Obembe v. Wemabod Estates* (1977) 5 S.C. 115.
146. See *Pioneer Shipping Ltd. v. B.T.P. Toxide Ltd. The Nema* [1980] 3 W.L.R. 326.
147. See *Owners of M.V. Hereon' case supra Obembe's case supra*, also *Murmak State Steamship Line v. Kano Oil Millers Ltd.* (1974) 12 S.C.L.
148. See *Trendtex Corp. v. Central Bank of Nigeria* [1977] 2 W.L.R. 365; *Texas Trading Milling Corp. v. Nigeria; Pele International Inc. v. Nigeria, Verhinden v. Central Bank of Nigeria*; reported (1981) 20 *International Materials* 618.
149. S. 13 Arbitration Law Cap. 10, *Laws of Lagos State* 1973, See also Bola Ajibola, "Arbitration Proceedings," (Paper presented at a Seminar Organised by the Nigerian Institute of Advanced Legal Studies, Lagos on 6 May 1985) p. 16.
150. *N.A. Kuforji v. Nigerian Railway Corporation* (1972) 2 U.I.L.R. 29 at pp. 31-32.
151. S.12(1) Constitution of the Federal Republic of Nigeria, 1979.

152. Except Lagos, Ogun, Ondo, Oyo and Bendel States.

153. See *The New Nigerian* of Wednesday 4 March, 1987, p. 1.

