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The Legal Framework for Sale of Goods in Nigeria: A Critical Analysis

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Abstract
There is a need to revisit the current legal framework for the sale of goods in Nigeria. This is in view of the fact that the law has numerous pitfalls as a result of its stagnant nature. The economic background that dictated its emergence has evolved over time. Thus, given the above background it has become important to critically access the current legal framework to determine the extent of its relevance. This paper looked through the historical aspect of trading activities in Nigeria which led to the development of the extant laws. The paper also focused on the appraisal of international instruments such as the CISG and also carried out a comparative analysis of the laws of both the United Kingdom and that of Nigeria. Amongst all, the paper recommended that a complete overhaul of the Act is to be carried out in order to attend to recent developments and realities in the commercial world.

Keywords: Sale of goods, Contract, Merchantable quality, Consumers, CISG

1.0 Introduction
In the last couple of decades, the Sale of Goods Act 1893 has increasingly proven to be problematic in its application and has generated enormous confusion and controversies resulting in discordant court decisions. Sale of goods in Nigeria is regulated by the Sale of Goods Act, 1893[1] an English Law adopted in Nigeria long before independence as one of the Statutes of General Application in the country.[2] It has become clear that this statute has got out of touch with the current realities of business and contractual transactions and this gives rise to injustice and confusion. This paper seeks to examine just how out of touch this statute really is, in what areas and what can be done to remedy the current realities.

2.0 Historical Background
Trading is said to be one of man's very first activities, in fact it is believed that trading is as old as mankind.[3] Yet as integral as trading is to human existence and the growth of every society, the law regulating trading in Nigeria which is the Sale of Goods Act is more than one hundred and twenty years old. When Britain colonized Nigeria, English law was thereupon introduced to apply to all the territory constituting what later came to be known as Nigeria. The received English law comprised of the Common law, the doctrines of Equity, Statutes of General

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[1]The Sale of Goods Act 1979 consolidates the Sale of Goods Act 1893. The primary source of law of sale of goods in the former territories of the British Empire and Commonwealth is the English Sale of Goods Act 1893 (Canada is an exception which has adopted hybrid legislation incorporating elements of the United States Uniform Commercial Code). In Nigeria, it has been held to be a statue of general application and so applicable in the country. See Lawal vs. Younan (1961), All N.L.R.245 at 255. The Sale of Goods Law in the Southern States of Nigeria is a verbatim reproduction of the 1893 Act. States in the northern Nigeria have their Sales of Goods Law with some variations.

[2]Obilade, O.A. (1979). The Nigerian Legal System. Ibadan: Spectrum Books Ltd.

[3]Tom Burns, (1996), "Better Late than Never: The Reform of the Law on the Sale of Goods Forming Part of a Bulk", *The Modern Law Review,* Vol. 59, No. 2, pp 260-271 https://www.jstor.org/stable/1097417

Application (SOGA) in force in England on 1st January 1900, English Statutes, and Subsidiary legislation on specific matters, and the general law of England that was introduced, or received into Nigeria before 1st of October, 1960 such as English Statutes, Orders in Council which applied directly to Nigeria, a number of which remained in force having not been repealed.[4] Equally inclusive and indeed significant were laws made by the local colonial legislature and which were necessarily treated as part of the Nigerian legislation. They only applied to Nigeria to the extent that local statutes had not been made by the Nigerian legislature in the areas concerned.[5]

Trading is in fact based on contract. A contract is an agreement between two or more parties to perform a service, provide a product, or commit to an act and is enforceable by the law. It is a promise or set of promises that the law will enforce or recognize as affecting the legal rights and duties of the parties.[6] According to Nwogugu,[7] a contract is an agreement which is binding on the parties thereto and which may be enforced by the courts against the defaulting party. The law of contract therefore is the body of laws that govern such agreements which suffuse all spheres of human activity particularly in the areas of sale of goods, agency, hire-purchase, employment and labour relations, company law, partnership, banking relations, and the general administration of business organizations.

On the one hand, is the freedom to contract and on the other hand is the law that seeks to regulate this relationship, protect the vulnerable party, sanction and remedy. It is however unfortunate that the law is out of touch with reality and can no longer effectively regulate this relationship thereby placing judges in the role of making laws as each case may require.

3.0 Comparative Analysis of the Nigerian Sale of Goods Act and that of the United Kingdom

One similarity between both laws is that English law does not impose any requirements in relation to price such as the method or place of payment leaving this to be agreed between the parties. In Nigeria, section 1 (1) of the Sale of Goods Act clearly states "for a money consideration". Section 8(1) however states that price could also be determined "in a manner thereby agreed...between the parties".

It is important to note that while Nigeria got her Sale of Goods Act from the United Kingdom, the United Kingdom has since amended their law and in fact have a new Act, the Sale of Goods Act, 1979.

The Sale of Goods Act is quite different from that of the United Kingdom. Apart from the age difference, there is not enough consumer protection under the Nigerian Sale of Goods Act. In fact, it may be said that the provisions of the Sale of Goods Act apply indiscriminately to consumer transactions in Nigeria.[8]Statutory reforms in the UK protect the consumer within the

[4]Uchechukwu Nwosu, (2017), "Business Law in Nigeria: Contemporary Issues and Concepts", Accessed from https://www.researchgate.net/publication/333220012 on 5 October, 2020.

[5]Ibid.

[6]Sagay, I.E., Nigerian law of Contract, Ibadan: Spectrum law Publishing, 1985, 1

[7]Nwogugu, E.I. Law of Contract" in Okonkwo, C.O., (ed.) Introduction to Nigerian law, London: Sweet& Maxwell, 1980, 271.

[8]Rufus Akpofurere Mmadu, (2014), "Application of Implied Terms in the Sales of Goods act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts", Journal of

Sale of Goods Act. Although many of the cases dealing with implied conditions arise from commercial situations, the provision for consumer protection can be important in consumer transactions. The limitation imposed by the Act in the UK prohibiting a seller from excluding or limiting his liability in relation to the implied conditions,[9] clearly supports the position that those implied conditions are applicable to consumer contract of sale as they apply to commercial transactions.

The position of the law in Nigeria is that if a manufacturer or supplier of goods applies to his goods a false or misleading description, the buyer or user of the good has a remedy for breach of implied conditions under section 13 of the Sale of Goods Act 1893 or if the goods fail to comply with its description, or under section 14 if their quality is defective or not fit for its normal purpose. The shortcoming of the law in this respect lies in the fact that these implied conditions may not apply in most cases. This is because the Act permits a large measure of freedom of contract. Thus, the parties are still at liberty to exclude their liability. In practice, most manufacturers and suppliers readily exclude their liability with the use of standard form. Such exclusion clauses are subject to the usual rules of constructions, but on the other hand, in the UK, the Act prohibits exclusion or restriction of manufacturer's or supplier's liability. In this sense, liability under the Sales of Goods of UK is strict. This means that the seller is liable for an occurrence, which could not have been avoided, however much care had been taken by all parties in the chain of supply. Such a provision in our law is highly desirable.

4.0 The Shortcomings of the Sale of Goods Act

In 1954, section 4 relating to contracts for the sale of goods of the value of £10 or upwards was swept away.[10] This gave rise to thoughts even as at then about how the Sales of Goods Act here in Nigeria may need a bit of upgrade too.[11] The Sale of Goods Act, 1893 reflects the end of an era when contracts of sale were made between customers and retailers with special terms incorporated in them to meet the needs of the particular parties concerned. From this era, business moved to one of price lists, catalogues and order forms and now, business can be contracted without physical presence.[12]

4.1 Overview of Terminologies

In the Sale of Good Act, some definitions are constricting. Trading has evolved, and as such some definitions have become obsolete such that they no longer apply in day-to-day trade anymore. Unfortunately, some of these definitions do more harm than good. On the other hand, some terms are not defined which is equally as harmful.

Business Law and Ethics December 2014, Vol. 2, No. 2, pp. 63-106 ISSN: 2372-4862 (Print), 2372-4870 (Online). American Research Institute for Policy Development DOI: 10.15640/jble.v2n2a3 URL: http://dx.doi.org/10.15640/jble.v2n2a3.

[9] Section 11 (3), Sale of Goods Act, 1979

[10] Law Reform (Enforcement of Contracts) Act, 1954, s. 2. See also Craxfords (Remsgate) Ltd. V. Williams & Steer Manufacturing Co., Ltd. (1954) 1 WLR 1130.

[11] Olarenwaju Olamide, "General Overview of the Sales of Goods", accessed from https://djetlawyer.com/general-overview-sales-goods/ on 2 October, 2020.

[12] E.R.H. Ivamy, (1956), "7 Revision of the Sale of Goods Act", *Current Legal Problems*, Vol. 9, Iss. 1, pp 113-131. https://doi.org/10.1093/clp/9.1.113 on 2 October, 2020.

Notably, conditions are not defined in the Act. In *Chave NV v. Bremer Handels Gasellschaft,*[13] approving its earlier decision in *Hong Kong Fir Shipping Co. Ltd. vs. Kawasaki Kisen Kaisha,*[14] the court found that an Act with definitions was not exhaustive on the divisions of terms, conditions and warranties.[15] The 1893 Act has not given the meaning of the word 'condition'.[16] The Sale of Goods Law Kaduna State,[17] Northern Nigeria is helpful when it defines the word as:

"A term which goes directly to the substance of the contract for the sale of goods and so essential to it very nature that it non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all and so gives him the right to repudiate the contract and reject the goods, in addition to a claim for damages"[18]

There is no definition for the word "consumer". Courts have had to make recourse to The Black's Law Dictionary which defines 'consumer' as a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.[19] The Nigerian Consumer Protection Council Act defines a consumer as an individual, who purchases, uses, maintains or disposes of products or services.[20]

4.2 Meaning and Interpretation

Another issue for consideration is the meaning and interpretation of merchantable quality, which has posed challenges to both students and academia as the definition has varied and continues to vary depending on who and where the decision is given.[21] The available definition equally does not do justice to modern day transaction. Whether further terms needs to be implied into a contract of sale of goods is also an avenue to be considered.

Numerous judicial definitions point to the controversial nature of the phrase "merchantable quality". The difficulty stems from the fact that the phrase is a complex concept, which can only be determined on the merit of each particular case. As a result of the difficulty in forging a single definition of merchantable quality, the phrase has been replaced under the Sale of Goods Act 1979, (UK) with 'satisfactory quality'.[22] Section 14 (2) of the Act as amended by the Sale and

[13](1975) 3 All E.R. 739.
[14](1962) 1 All E.R. 474.
[15]Other terms are innominate and fundamental terms.
[16]Rufus AkpofurereMmadu, (2014), "Application of Implied Terms in the Sales of Goods act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts", Journal of Business Law and Ethics December 2014, Vol. 2, No. 2, pp. 63-106 ISSN: 2372-4862 (Print), 2372-4870 (Online). American Research Institute for Policy Development DOI: 10.15640/jble.v2n2a3 URL: http://dx.doi.org/10.15640/jble.v2n2a3.
[17]Section 3 (1)
[18] Ibid
[19]B.A Garner; Black's Law Dictionary, 8th Edition (St Paul Minnesota: West Publishing Co.
[20]Section 32 of the Consumer Protection Council Act Cap C25, LFN 2004.Section 32 of the Consumer Protection Council Act Cap C25, LFN 2004.
[21]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (Ll.M).
[22]Rufus Akpofurere Mmadu, (2014), "Application of Implied Terms in the Sales of Goods act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts", Journal of Business Law and Ethics December 2014, Vol. 2, No. 2, pp. 63-106 ISSN: 2372-4862 (Print), 2372-4870

Supply of Goods Act, 1994 (UK), is an implied term that the goods supplied under the contract are of satisfactory quality. The UK Act provides an objective test to determine 'satisfactory', taking into account any description of the goods, the price (if relevant) and other relevant factors. By section 14 (2)(b), the quality of goods includes their state and condition and other factors such as: (a)Fitness for all the purposes for which the goods of the kind in question are commonly supplied, (b) appearance and finish, (c) freedom from minor defects, (d) safety, and (e) durability.[23]

The implied term of merchantable quality has remained a subject of discourse as to what constitute its true meaning. Despite a considerable body of judicial decisions and academic debate, a degree of uncertainty remained. Some common law countries law reform commissions have suggested that the concept was unsatisfactory in its current statutory form. In Britain, a definition was introduced in 1973, in the following form: Goods of any kind are of merchantable quality...if they are as fit for purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regards to any description applied to them, the price (if relevant) and all other relevant circumstance.[24]

First, the concept itself, being firmly rooted in the 18th century commercial practices is outdated in a modern sales context and particularly so with respect to consumer transaction.[25] Secondly it has been a subject of such extensive and varied interpretation that its meaning is unclear.[26] Thirdly, it relies extensively on the question of the purpose for which the goods were bought.[27] Fourthly, the reliance on purpose has led to uncertainty on the question of whether or not minor defects can amount to a breach of the implied term.[28] Having considered the weakness in the existing operational concept of merchantable quality, the commission in Britain came to the provisional conclusion that one word was not adequate in qualifying the standard of quality to be implied in instances of sale of goods,[29]they also felt that the word merchantable quality was sufficiently burdened with.

4.3 Multiplicity of Laws

The inadequacies of the Sale of Goods Act have led to the enactment of Sale of Goods Laws by various states. Unfortunately, rather than ameliorate the struggles, it has served to multiply it. Some states that adopted the Sale of Goods Laws have varying provisions as to what a condition is and what a warranty is. Remedies for breach of condition and warranty have been blurred and a single remedy of damages available, this poses challenge to an aggrieved party in a sale

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[23]Rufus Akpofurere Mmadu, (2014), "Application of Implied Terms in the Sales of Goods act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts", Journal of Business Law and Ethics December 2014, Vol. 2, No. 2, pp. 63-106 ISSN: 2372-4862 (Print), 2372-4870 (Online). American Research Institute for Policy Development DOI: 10.15640/jble.v2n2a3 URL: http://dx.doi.org/10.15640/jble.v2n2a3.

[24]Sale of Goods Act 1979, sec 14(6)

[25]Working paper No 85,Consultative Memorandum No58(1983) Sale and Supply of Goods, par 1.18

[26]Ibid at par 2.6 and 2.7

[27]Ibid at para 2.10-2.12

[28]Working paper No 85,Consultative Memorandum No58(1983) Sale and Supply of Goods, par 2.13

[29]Working paper No 85,Consultative Memorandum No58(1983) Sale and Supply of Goods, par 4.3

transaction.[30]Yet again, this begs the question of whether the law is truly detached from the English Act and truly Nigerian in Content and character; or whether it is a reproduction of the English law being a case of old wine in a new wine skin.[31]

4.4 Classification of Terms

The view that the law should provide greater or different protection for consumer as opposed to non-consumer (commercial parties) is a familiar one.[32] This view is not without justification as a distinction is seen in the belief that the consumer's inexperience and inequality of bargaining power may put him at a disadvantage at the stages of a sale. Most times the buyer being unaware of the existence of some clauses or with no knowledge of their consequences fall prey.[33]

The Sale of Goods Act[34] classifies the implied obligations in the contract as conditions and warranties and stated the remedies attached to each in case of a breach. Not only has there been considerable debate as to the meaning of these terms, the said classification as one or another has been doubted.[35] If the sale of Goods Act did not classify the implied terms as conditions of the contract, a court today would not so classify them in the absence of a clear indication that this was what the parties to the particular contract intended."[36]

It has been observed that where the breach which is termed a condition, is of such a minor nature the court is caught holding that there was no breach as an acceptance of the existence of a breach would result in an automatic termination of the contract or other harsh remedies available to breach of a condition in a contract of sale[37] as seen in a certain case.[38]

The Ontario law Reform Commission expressed the same concerns over the distinction between conditions and warranties[39] in the context of consumer transaction, it stated that the distinction between conditions and warranties be abolished with respect to consumer sales and be replaced by the single concept of warranty".[40] This was similar to the case of caveat emptor which means buyers beware. As a codification of the then English law, the Sale of Goods Act 1893 restated the principle of caveat emptor[41] before detailing exceptions to it. In view of the development of

[30]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (LL.M).
[31]Op cit.
[32]J.A Jollowicz, 'Protection of the Consumer and Purchaser of Goods Under English law'(1969) M.L.R.J, vol. 32.iss No. 1 pg 2
[33]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment ofthe Requirements for the Award of the Degree of Masters of Laws (LL.M).
[34]Sec 10(1) 1893
[35]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (LL.M).
[36]Working paper No 85,consultative memorandum No58(1983) sale and supply of Goods at para 2.37
[37]Op cit.
[38]Millars of falkirkv.Turple
[39]Ontario law Reform Report on consumer warranties and guarantees in sale of Goods (1972)
[40]Ontario law Reform Report on consumer warranties and guarantees in sale of Goods (1972)
[41]Uniform Sale of Goods Act sec 44-45

the exceptions to the principle and of the current approach to consumer transaction, the continued place of such a notion must be questioned in a modern context.[42]

The principle was a source of confusion to a layman and thus inappropriate in the consumer sphere[43] the position of the Sale of Goods Laws as it relates to conditions[44] and warranties.[45]

Perhaps a re-arrangement will suffice as in Britain[46] the Law Reform Commission recommendation that the implied warranty of merchantable quality should appear before the implied warranty of fitness for purpose was implemented. This new format was implemented in the 1979 Act.[47] The change reflects the wider application of the provision on merchantable quality and the belief that the new, refined definition will result in less reliance on fitness for purpose.[48]

4.5 Consumer Protection

It has been suggested[49] that implied term should, be formulated as flexible standard coupled with a clear statement of certain important element included within the areas of quality (e.g. freedom from minor defects, durability and safety) and with a list of the most important factors (e.g. Description and price) to which regard should normally be had in determining the standard to be expected in any particular case.[50]

It is submitted that they were quite correct and I support this approach. While the implied term of quality provides a broad spectrum of protection for the buyer, the implied term on fitness for purpose will often provide separate, additional protection.[51]

In a contract of sale of goods certain basic provisions are implied by statute to regulate sales transactions. Consumers are provided same protection under the statute as any other commercial participant. The protections available covers the following circumstance where the seller does not have the right to sell the goods, where the goods are sold by description there is an implied term that the goods will correspond to that description, businessmen must ensure that the goods they sell, are of merchantable quality and fit for their purposes, where goods are sold by sample, there is an implied term that the goods will correspond with the sample. These protections are in the form of statutory implied terms. This means that the Sale of Goods Laws will put these terms

[42]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (LL.M).

[43]Ontario law Reform Report on consumer warranties and guarantees in sale of goods (1972) pg31-33

[44] Section 40, Sale of Goods Act, 1893.

[45] Section 43, Sale of Goods Act, 1893.

[46]Working paper No 85,Consultative Memorandum No58(1983) Sale and Supply of Goods, par 2.13

[47]Sale of Goods Act 1969 sect 14

[48]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (LL.M).

[49]Working paper No 85,Consultative Memorandum No58(1983) Sale and Supply of Goods, par 4.84.12

[50]Ibid at par 4.7

[51]Onyekwena Pheela Ifeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty Of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (Ll.M).

into all contracts for the sale of goods no matter what the parties themselves have agreed in the contract as terms and condition of sale.[52]

It has therefore become evident that there are various shortcomings and thus reasons to have a more proactive Sale of Goods Act in Nigeria.

5.0 International Instruments

The United Nations Conventions on Contracts for the International Sale of Goods (CISG)[53] is recognized globally as an innovative instrument adopted to foster the harmonization and unification of international commercial law.[54]

A harmonised and unified law of international sales under CISG would appear to be valuable tools to close the vacuum still not covered by the standard terms and usages and even where such law does not exist in some domestic legal framework such as in e-commerce and mobile equipment.[55]

Nigeria is currently not a contracting party to the United Nation Convention on Contracts for the International Sale of Goods (CISG), which governs transactions and sales of goods globally. Sadly enough, the current legal framework regulating the sale of goods in Nigeria remains the 18th century Sale of Goods Act 1893 which is arguably obsolete and out of touch with modern day business reality.[56]

Again, in view of the business complexities across-borders, special concerns apply to international sales that demand special legislations. Arguably, a harmonised law of international sales under CISG is important to reduce the need for frequent forum shopping.[57]

5.1 Structure and Contents of CISG

CISG as a multilateral treaty for uniform international sales law is a binding document to all the member parties although reservation is permissive in the Convention.[58]

The CISG is divided into four main parts: Part one (articles 1-13) contains rules on its sphere of applications (chapter 1, articles 1-6), and a number of general provisions. Chapter II, (articles 7-13); Part two (articles 1424) deals with the formation of the contract; Part three (articles 25-88) deals with the rights and obligations of the parties and it is subdivided into (five) chapters. Part four (articles 89-101) contains the details on ratification, with possible reservations against

[52]OnyekwenaPheelaIfeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment of the Requirements for the Award of the Degree of Masters of Laws (Ll.M).

[53]United Nations Convention on Contracts for the International Sale of Goods, April 10, 1980 [hereinafter 'CISG']

[54]United Nations Convention on Contracts for the International Sale of Goods, April 10, 1980 [hereinafter 'CISG']

[55]UNCITRAL Model Law on Electronic Communications in International Contracts (2005); UNIDROIT Convention on Security Rights in Mobile Equipment, Cape Town, 2001.

[56]Kenneth I Ajibo, (2013), "Facing The Truth: An Appraisal Of The Potential Contributions, Paradoxes And Challenges Of Implementing The United Nations Conventions On Contracts For The International Sale Of Goods (Cisg) In Nigeria". *AfeBabalola University: Journal of Sustainable Development Law and Policy* Vol. 2 Iss. 1 (2013), pp. 175-189

[57]F Juenger, ''What's Wrong With Forum Shopping?'', (1994).16 Sydney L. Rev 5-13

[58]CISG (n 1), arts 89- 101.

certain parts or provisions of the Convention and with the entry into force of the Convention.[59] Article 1 of the Convention makes it applicable between parties who have their place of business in different States which are contracting states or when the rules of private international law lead to the application of the law of a contracting state.[60]This means that where just one state is a contracting state and the other is not, the CISG would not be applicable to the case.[61]

Thus, it could be argued that the drafters of the CISG have succeeded in creating a set of rules, which is fairly simple, yet complex enough to deal adequately with the intricacies of international trade which has helped to modernise commercial transactions.[62] Arguably, there is no doubt that the international trade field is a fairly complex environment and therefore needs refined rules to deal with such complexity.[63]

6.0 Recommendations

Nigeria, the most populous black state and sometimes referred to as the largest economy in Africa[64] has its transactions regulated by a law that is more than a hundred and twenty years old, the Sale of Goods Act, 1893. Not only is this law old and ancient, it is in fact not mindful of our peculiar commercial attributes as it was drafted by the British and adopted as one of the Statutes of General Application.[65] Notably, some of the recommendations are being re-echoed as it has consistently been emphasized by numerous scholars.

1. In order to strengthen the Act, an amendment of section 8 should be done to avoid issues of unshaped contracts where price is not fixed on the contract of sale.
2. Section 39(2) and 39 (1) should be merged to avoid repetition.
3. Section 43(1) should be amended to prescribe what constitutes a waiver rather than abandon it to the vagaries of judicial interpretation.
4. The phrase "merchantable quality" should be well defined.
5. An amendment to the Act should prohibit the exclusion or restriction of liability under sections 13 and 14 of the Sale of Goods Act, 1893, in the case of consumer sales.
6. A complete overhaul of the Act to attend to recent developments and realities in the commercial world.

[59]T Kiely, 'Harmonisation and the United Nations Convention on the Contracts for the International Sale of Goods' (2003) Nordic Journal of Commercial Law 4 at http://www.njcl.fi/I_2003/article3.pdf accessed on 21/08/13

[60]CISG (n 1) art 1(1)

[61]Roy Goode, Commercial Law (3rd edition London: Penguin, 2004) 914

[62]Kenneth I Ajibo, (2013), "Facing The Truth: An Appraisal Of The Potential Contributions, Paradoxes And Challenges Of Implementing The United Nations Conventions On Contracts For The International Sale Of Goods (Cisg) In Nigeria". *AfeBabalola University: Journal of Sustainable Development Law and Policy* Vol. 2 Iss. 1 (2013), pp. 175-189

[63]Elisabeth Patterson, 'United Nations Convention on Contracts for the International Sale of Goods: Unification and the Tension between Compromise and Domination' (1986) 22 Stanford Journal of International Law 278-9

[64] Accessed from www.oecd.org/publications.pdf on October 5, 2020.

[65]LemmyUghegbe, (2014), "Nigeria: 121 Years Sale of Goods Act- A Case for Reform", accessed from https://allafrica.com/stories/201411250558.html on 2 October, 2020.

7.0 Conclusion

The Nigerian Law Reform Commission (NLRC) was at the time the agency taking up the responsibility of reforming the aged law, which regulates transaction of goods in the country.[66]It is unfortunate that the Sale of Goods Act 1893 has in itself been repealed in the United Kingdom where it was first enacted.[67] The Sale of Goods Act, 1979 which is operational in the United Kingdom has introduced amendments including the regulation of the English contract Law.[68]

The essence of most of the recommendations in this study is to respond to the needs of commerce in the 21st century for both consumers, as well as traders. For consumers these recommendations will ensure a maximum standard of quality that can be applied to a wide variety of goods. It also provides new remedies that may be more adequate for certain types of non conformity with the contract. Traders and merchants are not left out of the benefit of these recommendations. However more can be done to protect the consumer from sellers who are purely private in business, who are steadily emerging into the market place through the explosion of the internet and e-commerce.

Furthermore in the course of this research, it was observed that different laws are applicable to different states because of the presence of different legislature on same subject matter. This evident in circumstances where a term is referred to as a condition in one state and a warranty in another. This has led to internal conflict of laws and confusion in judicial precedent. This is the major reason resort is been made to the Sale of Goods Act as it is the only single universally applied law on Sale. This would in turn defeat the purpose and spirit behind the Sale of Goods Law of various states.

Commercial activities are the fulcrum of every county's economy and the state of every economy is directly or indirectly dependant on the state of commercial activities in the country. It is without doubt that for developed society, caution is deliberately applied to ensure that the law which regulates their commercial activity is up to date. This is evident in the continuous amendments of their laws to accommodate present commercial activities. The case is different for developing countries like Nigeria who still struggles with laws born out of colonial heritages and in effect slowing down commercial activities in the country.[69]Needless to say, what was important and a subject of concern in 1987 may not so be in 2020, thus a dire need for a review.

[66]"FG to Reform 121 Year-Old Sale of Goods Law, Accessed from https://thecitizenng.com/fg-to-reform-121-year-old-sale-of-goods-law/ on 2 October, 2020.

[67]Tom Burns, (1996), "Better Late than Never: The Reform of the Law on the Sale of Goods Forming Part of a Bulk", *The Modern Law Review*, Vol. 59, No. 2, pp 260-271 https://www.jstor.org/stable/1097417

[68]LemmyUghegbe, (2014), "Nigeria: 121 Years Sale of Goods Act- A Case for Reform", accessed from https://allafrica.com/stories/201411250558.html on 2 October, 2020.

[69]OnyekwenaPheelaIfeyinwa, (2018), "Critique of Implied Terms in the Sale of Goods Laws in Nigeria", Being a Project Submitted To the Department Of Commercial Law, Faculty of Law, University Of Nigeria, Enugu Campus. In Partial Fulfilment ofthe Requirements forthe Award ofthe Degree of Masters of Laws (LL.M).