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**LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE
PROTECTION OF E-COMMERCE CONSUMERS IN NIGERIA**



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UUM
Universiti Utara Malaysia

**DOCTOR OF PHILOSOPHY
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**LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE
PROTECTION OF E-COMMERCE CONSUMERS IN NIGERIA**



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**A Thesis Submitted to the Ghazali Shafie Graduate School of Government
in fulfilment of the requirements for the Degree of Doctor of Philosophy
Universiti Utara Malaysia**



Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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DEDICATION

This thesis is dedicated to the following deceased members of my family:

1. Grandfather: Mallam Muhammad Sani;
2. Grandmothers: Hajiya Zulaihatu (Mai Kosai) and Hajiya Halima (Mai Koko);
3. Father: Muhammad Baba Salihu (Baba Na Yaya);
4. Uncles: Alhaji Muhammad A. Muhamad (Liman) and Rabi'u Muhammad Sani
5. Aunty: Aishatu Muhammad Sani;
6. Sister: Aishatu Muhammad Sani (Mimi); and
7. Brother: Sani Muhammad Sani (Dattijo).

May the Almighty Allah have Mercy on your souls and grant you Jannatul Firdaus, Ameen.



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ABSTRAK

Kemunculan Internet menjadikan transaksi perdagangan ke arah yang lebih moden dikenali sebagai "perdagangan elektronik (e-dagang)". Pembeli dikenali sebagai pengguna elektronik (e-pengguna) manakala penjual pula dikenali sebagai pedagang elektronik (e-peniaga). Kecenderungan ke arah amalan perdagangan yang tidak adil dan eksploitasi terhadap pengguna oleh e-peniaga adalah membimbangkan. Keperluan untuk melindungi e-pengguna terhadap perlakuan yang membawa kepada kemudaratan menjadi sangat penting. Oleh itu, kajian ini bertujuan untuk menganalisis kerangka perundangan dan institusi terhadap perlindungan e-pengguna di Nigeria. Kajian ini menganalisis kecukupan kerangka perundangan dan institusi dengan tujuan memberi cadangan untuk pembaharuan. Kajian ini mengumpul dan menganalisis data yang diperolehi menggunakan kaedah kajian kepustakaan dan temu bual secara semi-struktur. Kajian ini juga meneroka amalan di peringkat antarabangsa bagi mendapat analisis yang lebih baik dan kesesuaian terhadap permasalahan dari sudut perundangan dan institusi yang menjejaskan e-pengguna di Nigeria. Keputusannya, kajian mendedahkan bahawa perundangan sedia ada berkaitan dengan e-dagang dan perlindungan pengguna sangat tidak memadai. Kajian mendapati bahawa terdapat kekurangan khususnya dalam peruntukan Perlembagaan Nigeria 1999, Akta Jualan Barang 1893, Akta Majlis Perlindungan Pengguna 1992, dan lain-lain. Sebagai tambahan, kajian mendedahkan bahawa kekurangan kerangka perundangan terhadap perlindungan e-pengguna turut diburukkan lagi oleh institusi perlindungan pengguna yang tidak berkesan di dalam negara ini. Institusi tersebut termasuklah Majlis Perlindungan Pengguna dan Mahkamah. Pengguna di Nigeria mengalami menerima tekanan yang banyak dan biasanya tidak diberi galakan apabila mereka berhasrat untuk mengambil tindakan ke institusi perlindungan pengguna. Sistem penguatkuasaan hak pengguna di Nigeria adalah mahal, seringkali lewat, penuh dengan ketidakpastian dan sangat teknikal. Oleh itu, kajian ini mencadangkan agar dilakukan pembaik pulih yang sistematik melibatkan kerangka perundangan dan institusi terhadap e-dagang dan perlindungan pengguna di Nigeria. Kajian ini selanjutnya mencadangkan penguatkuasaan mahkamah/tribunal yang khusus untuk mendengar kes-kes kepenggunaan. Bahagian yang dicadangkan dalam mahkamah tersebut perlu dikendalikan oleh pakar dalam bidang undang-undang e-dagang dan perlindungan pengguna. Ini adalah untuk memastikan pengendalian yang berkesan terhadap sebarang aduan melibatkan e-pengguna dalam negara.

Kata kunci: E-dagang, Perlindungan pengguna, Institusi undang-undang, Nigeria

ABSTRACT

The advent of the Internet has brought about a modern way of conducting commercial transactions known as “electronic commerce (e-commerce)”. The buyers are called electronic consumers (e-consumers) while the sellers are called electronic traders (e-traders). The tendency of unfair trade practices and consumer exploitations by the e-traders is eminent. The need to protect the e-consumers against such inimical conducts becomes paramount. Therefore, this study seeks to analyse the legal and institutional frameworks for the protection of e-consumers in Nigeria. The study analyses the adequacy of the legal framework as well the institutional framework with a view to making recommendations for reform. The study collects and analyses its data using a library-based research and a semi-structured interview. The study also explores international practices for better analyses and appreciation of the legal and institutional problems affecting e-consumers in Nigeria. As a result, the study reveals that the existing laws governing e-commerce and consumer protection are grossly inadequate. The study finds the inadequacy particularly in the provisions of the *Nigerian Constitution 1999*, the *Sale of Goods Act 1893*, *Consumer Protection Council Act 1992*, etc. Additionally, the study reveals that the inadequacy of the legal framework for the protection of e-consumers is further compounded by ineffective consumer protection institutions in the country. Such institutions include the Consumer Protection Council and the Courts. A Nigerian consumer suffers a lot and often gets discouraged when he/she intends to enforce his/her rights before the said consumer protection institutions. The system of enforcing consumer rights in Nigeria is expensive, delay-prone and full of uncertainties and technicalities. Thus, this study recommends a systematic overhaul of the legal and institutional frameworks for e-commerce and consumer protection in Nigeria. The study further recommends the establishment of a specialised consumer court/tribunal. A section of the proposed court/tribunal should be manned by experts in the fields of e-commerce law and consumer protection. This is to ensure effective handling of e-consumer grievances in the country.

Keywords: E-commerce, Consumer protection, Legal institution, Nigeria

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TABLE OF CONTENTS

| | |
|---|----------|
| CERTIFICATION OF THESIS | II |
| DEDICATION | IV |
| PERMISSION TO USE | V |
| ABSTRAK | VI |
| ABSTRACT | VII |
| ACKNOWLEDGEMENTS | VIII |
| TABLE OF CONTENTS | IX |
| LIST OF STATUTES | XVI |
| LIST OF CASES | XX |
| LIST OF TABLES | XXIII |
| LIST OF FIGURES | XXIV |
| LIST OF ABBREVIATIONS | XXV |
| | |
| CHAPTER ONE: INTRODUCTION | 1 |
| 1.1 Background of the Study | 1 |
| 1.2 Problem Statement | 6 |
| 1.2.1 Legal Framework for Privacy and Data Protection | 7 |
| 1.2.2 Legal Framework for Unfair Trade Practices | 8 |
| 1.2.3 Institutional Framework | 9 |
| 1.3 Research Questions | 10 |
| 1.4 Research Objectives | 11 |
| 1.5 Significance of the Study | 11 |
| 1.6 Research Methodology | 12 |
| 1.6.1 Research Design | 12 |
| 1.6.1.1 Doctrinal Methodology | 13 |
| 1.6.1.2 Empirical Methodology | 14 |
| 1.6.2 Research Scope | 16 |
| 1.6.3 Types of Data | 16 |
| 1.6.4 Data Collection Methods | 18 |
| 1.6.5 Analysis of Data | 20 |
| 1.6.5.1 Analysis of Legal Materials | 20 |
| 1.6.5.2 Analysis of the Interview Data | 21 |
| 1.6.5.3 Comparative Analysis | 22 |
| 1.7 Limitations of the Study | 22 |
| 1.8 Literature Review | 23 |

| | |
|---|-----------|
| 1.8.1 Definition of Operational Terminologies | 24 |
| 1.8.2 Issues Surrounding Legal and Institutional Frameworks for the Protection of E-commerce Consumers in Nigeria | 26 |
| 1.8.2.1 Inadequacy of Legal Framework | 27 |
| 1.8.2.2 Problems Associated with Institutional Framework for E-commerce and Consumer Protection: CPC in Focus | 32 |
| 1.8.2.3 E-Consumer Disputes Settlement Through the Nigerian Courts | 33 |
| 1.8.2.4 Infrastructural Issues | 34 |
| | |
| CHAPTER TWO: CONCEPTUAL FRAMEWORK FOR E-COMMERCE AND CONSUMER PROTECTION IN NIGERIA | 40 |
| 2.1 Introduction | 40 |
| 2.2 The Concept of the Internet | 40 |
| 2.2.1 Definition of the Internet | 41 |
| 2.2.2 Brief Historical Evolution of the Internet | 43 |
| 2.2.2.1 Pre-1969 Developmental Activities | 43 |
| 2.2.2.2 The ARPANET Project 1969-1989 | 46 |
| 2.2.2.3 Discovery of World Wide Web, Browsers and Search Engines | 47 |
| 2.2.2.4 The Internet Commercialisation, Social Media Platforms and E-Mobile Devices | 49 |
| 2.2.2.5 Internet Governance and Regulations | 52 |
| 2.3 The Concept of E-commerce | 53 |
| 2.3.1 The Various Conceptions about the Definition of E-commerce | 54 |
| 2.3.1.1 Broad Approach (BA) | 54 |
| 2.3.1.2 Narrow Approach (NA) | 55 |
| 2.3.1.3 Subject Matter Based Approach (SMBA) | 57 |
| 2.3.1.4 Location Based Approach (LBA) | 59 |
| 2.3.1.5 Working Definition of E-commerce | 60 |
| 2.3.2 E-commerce in the Nigerian Context: A Brief Historical Perspective | 61 |
| 2.3.2.1 E-commerce prior to the Advent of the Internet | 61 |
| 2.3.2.2 Development of the Modern E-commerce | 62 |
| 2.3.2.3 The Modern E-commerce in Nigeria | 63 |
| 2.3.3 Classification of E-commerce Transactions | 68 |
| 2.3.3.1 Business-to-Consumer (B2C) | 68 |

| | |
|---|-----------|
| 2.3.3.2 Business-to-Business (B2B) | 70 |
| 2.3.3.3 Consumer-to-Consumer (C2C) | 71 |
| 2.3.3.4 Consumer-to-Business (C2B) | 72 |
| 2.3.3.5 Business-to-Government (B2G) | 72 |
| 2.3.4 Advantages and Disadvantages of E-commerce | 73 |
| 2.4 The Concept of Consumer Protection in Nigeria | 74 |
| 2.4.1 Who is a Consumer? | 75 |
| 2.4.2 The Meaning of Consumer Protection | 78 |
| 2.4.3 The Consumer Rights | 79 |
| 2.4.4 Duty to Protect the Rights of Consumers | 81 |
| 2.4.4.1 The Principle of <i>Caveat Emptor</i> and Free Market Theory | 81 |
| 2.4.4.2 Producers Versus Information Disclosure Philosophy | 83 |
| 2.4.4.3 Collective Responsibility Ideology | 84 |
| 2.4.4.4 The Paternalism Ideology | 87 |
| 2.4.5 The Philosophy behind Consumer Protection in Nigeria | 89 |
| 2.5 Summary | 91 |
| | |
| CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORKS FOR E-COMMERCE AND CONSUMER PROTECTION: AN APPRAISAL OF INTERNATIONAL BEST PRACTICES | 93 |
| 3.1 Introduction | 93 |
| 3.2 The United Nations Commission on International Trade Law (UNCITRAL) | 94 |
| 3.2.1 Notable Points about the UNCITRAL | 95 |
| 3.2.2 The UNCITRAL Model Law on E-commerce and Consumer Protection | 97 |
| 3.2.2.1 Protecting Consumers in E-commerce Transactions | 98 |
| 3.2.2.2. Recognition of Electronic Communication for Commercial Transactions by States | 102 |
| 3.2.2.3. Recognition and Admissibility of Electronic Evidence | 106 |
| 3.2.2.4 Salient Issues about the Model Law on E-commerce <i>vis-à-vis</i> Consumer Protection | 112 |
| 3.3 Protecting E-commerce Consumers: An Examination of the OECD Guidelines for Consumer Protection in the Context of E-commerce 1999 | 118 |
| 3.3.1 The Guidelines for Consumer Protection in the Context of Electronic Commerce 1999 | 122 |

| | |
|--|-----|
| 3.3.1.1 The Transparency Principle | 123 |
| 3.3.1.2 The Principle of Fairness in Business | 124 |
| 3.3.1.3 The Disclosure Principle | 126 |
| 3.3.1.4 The Purchase Confirmation Principle | 132 |
| 3.3.1.5 The Payment Principle | 133 |
| 3.3.1.6 The Dispute Resolution and Redress Principle | 134 |
| 3.3.1.7 The Privacy Principle | 135 |
| 3.3.1.8 The Consumer Education and Awareness Principle | 140 |
| 3.4 Summary | 141 |

CHAPTER FOUR: LEGAL FRAMEWORK FOR THE PROTECTION OF E-COMMERCE CONSUMERS IN NIGERIA

| | |
|--|------------|
| 4.1 Introduction | 142 |
| 4.2 Legal Framework Governing E-commerce and Consumer Protection in Nigeria | 142 |
| 4.2.1 Privacy and Data Protection of E-commerce Consumers in Nigeria | 143 |
| 4.2.1.1 Constitution of the Federal Republic of Nigeria 1999 | 147 |
| 4.2.1.2 Freedom of Information Act 2011 | 154 |
| 4.2.1.3 Cybercrimes Act 2015 | 158 |
| 4.2.1.4 National Information Technology Policy 2001 vis-à-vis Guidelines on Data Protection 2013 | 165 |
| 4.2.2 Protection of E-consumers against Unfair Trade Practices in Nigeria | 174 |
| 4.2.2.1 Consumer Protection Council Act 1992 | 176 |
| 4.2.2.2 Sale of Goods Act 1893 | 188 |
| 4.2.3 Nigerian Electronic Transactions Bills | 197 |
| 4.2.3.1 Electronic Transactions Bill 2015 | 199 |
| 4.2.3.2 Electronic Transactions Bill 2016 | 210 |
| 4.3 Reasons for Lack of Requisite Legal Framework for E-commerce and Consumer Protection ⁿ in Nigeria | 212 |
| 4.4 Summary | 214 |

CHAPTER FIVE: INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF E-COMMERCE CONSUMERS IN NIGERIA

| | |
|---|-----|
| 5.1 Introduction | 215 |
| 5.2 The Consumer Protection Council of Nigeria | 216 |
| 5.2.1. The CPC and the Rights of E-consumers in Nigeria | 221 |

| | |
|--|------------|
| 5.2.1.1. The Right to Safety | 222 |
| 5.2.1.2 The Right to be Informed | 223 |
| 5.2.1.3. The Right to Choose | 225 |
| 5.2.1.4. The Right to be Heard | 227 |
| 5.2.2 The CPC Act, the CPC and the Enforcement of E-consumer Rights in Nigeria | 229 |
| 5.2.2.1 Limitation of Powers | 229 |
| 5.2.2.2 Consumer Awareness | 231 |
| 5.2.2.3 Apathetic Attitudes of the Consumer Toward Seeking for Redress ... | 234 |
| 5.2.2.4 Complaints Handling and Staff Training | 237 |
| 5.2.3 The Role of the CPC in Protecting the Rights of Consumers through Adequate Provision of E-commerce Infrastructure in Nigeria | 245 |
| 5.2.3.1 Electricity Supply | 245 |
| 5.2.3.2 Internet Connectivity and Affordability | 247 |
| 5.2.3.3 Delivery System of Goods and Services | 250 |
| 5.3 Protecting and Enforcing the Rights of E-consumers through Judicial Process | 252 |
| 5.3.1 Types and Hierarchy of Courts in Nigeria | 254 |
| 5.3.2. Enforcement and Protection of E-consumers' Rights by the Nigerian Courts | 256 |
| 5.3.2.1 Cost of Litigation | 257 |
| 5.3.2.2 Technicalities and Delay in Proceedings | 260 |
| 5.3.2.3 ICT Literacy Level of the Judges | 267 |
| 5.4 Summary | 273 |
| CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS | 275 |
| 6.1 Introduction | 275 |
| 6.2 Summary | 275 |
| 6.3 Findings on the Legal Framework for the Protection of E-commerce Consumers in Nigeria | 279 |
| 6.3.1 Legal Framework Concerning Privacy and Data Protection of E-Commerce Consumers | 279 |
| 6.3.1.1 Constitution of the Federal Republic of Nigeria 1999 | 279 |
| 6.3.1.2 Freedom of Information Act 2011 | 280 |
| 6.3.1.3 Cybercrimes Act 2015 | 282 |

| | |
|---|-----|
| 6.3.1.4 Guidelines on Data Protection 2013 | 283 |
| 6.3.2 Legal Framework Concerning Unfair Trade Practices against E-consumers | 284 |
| 6.3.2.1 Consumer Protection Council Act 1992 | 284 |
| 6.3.2.2 Sale of Goods Act 1893 | 287 |
| 6.3.2.3 Electronic Transactions Bill (ETB) | 289 |
| 6.3.3 Findings on the causes of Lack of Adequate Legal Framework for the Protection of E-consumers in Nigeria | 293 |
| 6.3.3.1 Laziness and Reckless on the Part of the Nigerian Legislature | 294 |
| 6.3.3.2 Corruption | 294 |
| 6.3.3.3 Lack of Expertise on the Part of the Nigerian Legislature | 294 |
| 6.3.3.4 Non-involvement of the Legislative Arm of Government ^t in the Deliberations and Execution of International Agreements | 294 |
| 6.3.3.5 Rigorous Procedure of Passing a Bill into Law | 295 |
| 6.4 Recommendations in Respect of the Inadequacy of the Legal Framework for the Protection of E-commerce Consumers in Nigeria | 295 |
| 6.4.1 On Privacy and Data Protection of E-consumers | 295 |
| 6.4.2 On Unfair Trade Practices in the Conduct of E-commerce Transactions | 296 |
| 6.4.2.1 Consumer Protection Council Act 1992 | 297 |
| 6.4.2.2 Sale of Goods Act 1893 | 301 |
| 6.4.2.3 Electronic Transactions Bill (ETB) 2016 | 303 |
| 6.4.2.4 General Recommendations on how to Address the Lack of Adequate Legal Framework for the Protection of E-commerce and Consumers Nigeria | 305 |
| 6.5 Findings on the Institutional Framework for the Protection of E-commerce Consumers in Nigeria | 308 |
| 6.5.1 Consumer Protection Council | 308 |
| 6.5.1.1 The Challenges Facing the CPC in Protecting the Rights of E-consumers in Nigeria | 309 |
| 6.5.1.2 The CPC and Infrastructural Challenges affecting the Rights of E-consumers in Nigeria | 311 |
| 6.5.2 Judicial Process of Enforcing and Protecting the Rights of E-consumers in Nigeria | 312 |
| 6.5.2.1 High Cost of Litigation | 313 |

| | | |
|---------|--|------------|
| 6.5.2.2 | Technicalities and Delay in Proceedings | 313 |
| 6.5.2.3 | Unethical Conducts of Lawyers | 313 |
| 6.5.2.4 | Lack of Enough Judges | 314 |
| 6.5.2.5 | Over Congestion of Courts | 314 |
| 6.5.2.6 | On the Competence of the Nigerian Judges to Adjudicate on E-commerce and Related Disputes | 314 |
| 6.6 | Recommendations in Respect of the Problems Associated with the Institutional Framework for the Protection of E-commerce Consumers in Nigeria | 315 |
| 6.6.1 | Recommendations in Respect of the CPC | 315 |
| 6.6.1.1 | Expanding the Powers of the CPC | 316 |
| 6.6.1.2 | Creation of Awareness among the E-consumers in Nigeria | 316 |
| 6.6.1.3 | Changing the Apathetic Attitudes of the Consumers | 317 |
| 6.6.1.4 | Creating E-commerce Consumer Complaints Unit/Department, Recruiting Experts and Regular Staff Training | 318 |
| 6.6.1.5 | Embracing Cheap, Simple and Expeditious means of Handling E-consumer Complaints | 318 |
| 6.6.2 | Recommendations in Respect of Consumers' Challenges in the Pursuit of their Rights before the Nigerian Courts | 319 |
| 6.6.2.1 | Recommendation in Respect of High Cost of Litigation and Delay Issues | 319 |
| 6.6.2.2 | Regular Training for Members of the Judiciary | 320 |
| 6.6.2.3 | Seeking for Guidance from International Organisations on Proper Interpretation of E-commerce and Consumer Protection Statutes | 321 |
| 6.6.3 | Recommendations in Respect of Infrastructural Challenges affecting the Rights of E-consumers in Nigeria | 321 |
| 6.6.3.1 | On the Issue of Electricity | 322 |
| 6.6.3.2 | On the Issue of Internet Connectivity and Affordability | 322 |
| 6.6.3.3 | On the Issue of Delivery System of Goods and Services | 322 |
| 6.7 | Suggestions for Further Study | 322 |
| 6.8 | Conclusion | 323 |
| | REFERENCES | 326 |
| | APPENDIX 1: INTERVIEW GUIDE/TEMPLATE | 343 |
| | APPENDIX 2: DATA COLLECTION LETTERS | 346 |

LIST OF STATUTES

NIGERIAN STATUTES

- Constitution of the Federal Republic of Nigeria 1979
- Constitution of the Federal Republic of Nigeria 1999
- Constitution of the Federal Republic of Nigeria 1999 (the 3rd Alteration) Act, 2010.
- Consumer Protection Council Act 1992
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UK

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Uniform Electronic Transactions Act 1999

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LIST OF TABLES

| | | |
|-----------|---|-----|
| Table 1.1 | Table of Respondents | 19 |
| Table 2.1 | Internet Connections and Users across the Globe from 1997-2000 | 50 |
| Table 2.2 | A Survey on the Patronage of e-commerce shop in Nigeria | 67 |
| Table 2.3 | B2B E-commerce Sales Shares Worldwide, by Region, 2013-2018 | 69 |
| Table 3.1 | Information about the Handset in Figure 3.1 | 129 |
| Table 3.2 | Information about the Handset in Figure 3.2 | 130 |
| Table 3.3 | Sample of Terms and Conditions in respect of the Handset Offered for Sale in Figure 3.1 | 131 |
| Table 3.4 | Sample of Terms and Conditions in respect of the Handset Offered for Sale in Figure 3.2 | 131 |
| Table 3.5 | The Privacy Principles in the context of E-commerce | 136 |
| Table 4.1 | List of 46 Bills Passed by the NA in 10 minutes | 209 |
| Table 4.2 | Similarities of the Provisions of the ETB 2015 and ETB 2016 | 211 |
| Table 5.1 | Frequency of E-commerce Complaints Received by NCCC in 2014 | 252 |
| Table 5.2 | List of the Superior Courts of Record in Nigeria | 254 |
| Table 5.3 | An Upward Review of Court Charges (Osun State) | 259 |
| Table 6.1 | Example of Conducts Considered as Unfair in the Context of Trade | 297 |
| Table 6.2 | A Summary of How the Research Objectives of this Study Were Achieved | 324 |

LIST OF FIGURES

| | | |
|------------|--|-----|
| Figure 3.1 | Front, Back and Rear view of a Handset Offered for Sale online at lazada.com.my (29/12/16) | 128 |
| Figure 3.2 | Front, Back and Rear view of a Handset Offered for Sale online at Jumia.com.ng (29/12/16) | 129 |
| Figure 4.1 | Types of Personal Data | 144 |
| Figure 4.2 | The GDP Principles | 169 |
| Figure 5.1 | Organisational Structure of the CPC | 218 |
| Figure 5.2 | Reason for Reluctance (Apathy) of Consumers to seek for Redress | 237 |
| Figure 5.3 | The Council's Channel of Handling Consumer Complaint | 240 |
| Figure 5.4 | Hierarchy of Courts in Nigeria | 256 |
| Figure 5.5 | Causes of Delay and Technicalities | 261 |



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LIST OF ABBREVIATIONS

| | |
|---|----------|
| Accuracy and Updating Principle | AUP |
| Advanced Research Projects Agency | ARPA |
| Amended Turkish Constitution | ATC |
| America Online | AOL |
| Automated Teller Machines | ATMs |
| Bayero University Journal of Public Law | BUJPL |
| Bolt, Beranek and Newman | BBN |
| Broad Approach | BA |
| Business-to-business | B2B |
| Business-to-Consumer | B2C |
| Business-to-Government | B2G |
| Case Law on UNCITRAL Texts | CLOUT |
| Certificate of Occupancy | C of O |
| Children's Online Privacy Protection Act | COPRA |
| Collection Limitation Principle | CLP |
| Commercial Internet Service Providers | CISPs |
| Constitution of the Federal Republic of Nigeria | CFRN |
| Consumer Protection (Electronic Trade Transactions) Regulations | CPR |
| Consumer Protection Council of Nigeria | CPC |
| Consumer-to-Consumer | C2C |
| Court of Appeals of England and Wales Civil Division | EWCA Civ |
| Cybercrime (Prevention, Prohibition, etc.) Act 2015 | CA |
| Data Adequacy Principle | DAP |
| Data Retention Principle | DRP |
| Data Security Principle | DSP |
| Directive on E-commerce | DoE |
| Directive on Privacy and Electronic Communication | DPEC |
| Doctor of Philosophy | PhD. |
| Domain Name System | DNS |
| Electronic Data Interchange | EDI |
| Electronic Funds Transfer | EFT |
| Electronic Transactions Act | ETA |
| England and Wales High Court | EWHC |
| European Convention on Human Rights | ECHR |
| European Laboratory for Particle Physics | ELPP |
| Federal Trade Commission | FTC |
| Federation Weekly Law Report | FWLR |
| Food and Agriculture Organisation | FAO |
| Freedom of Information Act | FOIA |
| Ghanaian Electronic Transactions Act | GETA |
| Global Mobile Commerce Forum | GBCF |
| Guidelines for Data Protection | GDP |
| Indian Information Technology Act | IITA |
| Information Communication Technology | ICT |
| Information Integrity Principle | IIP |
| Information Processing Techniques Office | IPTO |

| | |
|--|---------|
| Information Quality Principle | IQP |
| Instant Message Communications | IMC |
| International Ad-Hoc Committee | IAHC |
| International Atomic Energy Agency | IAEA |
| International Conference for Internet and Secured Transactions | ICITST |
| International Covenant on Civil and Political Rights | ICCPR |
| International Data Transfer Principle | IDTPA |
| International Labour Organisation | ILO |
| International Monetary Fund | IMF |
| Internet Engineering Taskforce | IETF |
| Internet Explorer | IE |
| Internet Network Information Centre | INIC |
| Internet Protocol | IP |
| Internet Service Providers | ISPs |
| Internet Society | ISOC |
| Internet2, | I2 |
| Laws of Malaysia | LOM |
| Laws of the Federal Republic of Nigeria | LFN |
| Location Based Approach | LBA |
| Malaysia Electronic Commerce Act | MECA |
| Narrow Approach | NA |
| National Agency for Food and Drug Administration and Control | NAFDAC |
| National Drug Law Enforcement Agency | NDLEA |
| National Information Technology Development Agency | NITDA |
| National Information Technology Development Agency | NITDA |
| National Information Technology Policy | NITP |
| National Physical Laboratory | NPL |
| National Science Foundation | NSF |
| New Brunswick Electronic Transaction Act | NBETA |
| New York State Law Reporting Bureau | NYSLRB |
| New York State Law Reporting Bureau | NYSLRB |
| Next Generation Internet Initiative | NGI |
| Nigerian Communications Commission | NCC |
| Non-governmental Organisations | NGOs |
| Online/Alternative Dispute Resolution | ODR/ADR |
| Organisation for Economic Cooperation and Development | OECD |
| Organisation for European Economic Co-operation | OEEC |
| Personal Computer | PC |
| Personal Data Protection Act | PDPA |
| Point of Sale | POS |
| Purpose Specification Principle | PSP |
| Rights of Data Subject Principle | RDP |
| Sale of Goods Act | SGA |
| Singaporean Electronic Transactions Act | SETA |
| Small Text Message | SMS |
| South African Constitution | SAC |
| Specialised Consumer Tribunals | SCT |
| Sri Lankan Electronic Transactions Act | SLETA |
| Standards Organisation of Nigeria | SON |

| | |
|--|----------|
| Stanford Research Institute, Stanford | SRI |
| Statutes of General Application | SOGA |
| Subject Matter Based Approach | SMBA |
| Sustainable Development Goals | SDGs |
| Transmission Control Protocol | TCP |
| UN Commission on International Trade Law | UNCITRAL |
| UN Conference on Trade and Development | UNCTAD |
| UN Convention on the Use of Electronic Communications in International Contracts | UNCUEC |
| UN General Assembly | UNGA |
| Unfair Commercial Practices Directive | UCPD |
| Uniform Electronic Transactions Act | UETA |
| United Nations | UN |
| United States Dollar | USD |
| United States of American Uniform Computer Information Transactions Act | UCITA |
| Universal Declaration of Human Rights | UDHR |
| University of California, Los Angeles | UCLA |
| University of California, Santa Barbara UCSB | UCSB |
| Working Group on E-commerce | WGE |
| World Intellectual Property Organisation | WIPO |
| World Trade Organisation | WTO |
| World Wide Web | www |
| Yet Another Hierarchical Official Oracle | Yahoo |



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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Electronic commerce (e-commerce) is of growing importance to countries, businesses and consumers. E-commerce is the buying, selling and even advertisement of goods and services electronically via the Internet.¹ E-commerce transactions take place 24 hours a day and seven days a week (24/7) for consumers worldwide.² E-commerce is rapidly increasing around the globe³ as consumers can now make online purchases of goods and services from their homes and offices.⁴ E-commerce affords consumers (e-consumers)⁵ the opportunity to compare products, information and prices conveniently.⁶ Above all, it affords thee-consumers have access to a wider global economic market at little cost.⁷

¹ Judy Pearsall, *Concise Oxford English Dictionary, English*, 10th ed., (New York: Oxford University Press Inc., 2002), 453; D. Chaffey, *E-Business and E-Commerce Management*, 2nd ed., (England: Pearson Education Ltd, 2003), 10; R. Kalakota and A. Whinston, *Electronic Commerce: A Manager's Guide*, 3rd ed., (Reading: Addison-Wesley, 1997), 69; V. Zwass, "Electronic Commerce: Structures and Issues," *International Journal of Electronic Commerce* (1996): 1.

² HN Ozuru, *et al.*, "Consumer Behaviour and Online Shopping Adoption in Nigeria," in *13th Annual International Conference on African Business and Development in a Changing Global Political Economy. Issues, Challenges and Opportunities*, ed. Emmanuel E. Obuah, vol. 13 (Casablanca, Morocco: International Academy of African Business and Development (IAABD), 2012), 436 and 443.

³ Chemzche Omar and T Anas, "E-Commerce in Malaysia: Development, Implementation and Challenges," *International Review of Management and Business Research* 3, no. 1 (2014): 291.

⁴ Tiwalade Adelola, *et al.*, "Privacy and Data Protection in E-Commerce: The Effectiveness of a Government Regulation Approach in Developing Nations, Using Nigeria as a Case," in *The 9th International Conference for Internet and Secured Transactions (ICITST) 8th-10th December, 2014* (London, 2014a), 234; Ozuru, *et al.*, (2012), 443; Omar and Anas, (2014): 291.

⁵ E-consumers here are referred to the purchasers of goods and services over electronic systems such as the Internet. This new group of consumers is increasing in number over the years as on-line shopping becomes a new way of life style today. Naemah Amin and Roshazlizawati Mohd Nor, "Online Shopping in Malaysia: Legal Protection for E-Consumers," *European Journal of Business and Management* 5, no. 24 (2013): 79.

⁶ Ozuru, *et al.*, (2012), 436 and 443; Omar and Anas, (2014): 291-292.

⁷ Gbenga Bamodu, "Information Communications Technology and E-Commerce: Challenges and Opportunities for the Nigerian Legal System and Judiciary," *Journal of Information Law and Technology* 2 (Nov.) (2004): 2

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APPENDIX 1: INTERVIEW GUIDE/TEMPLATE

Interview Guide/Template



Shahid Shafei Graduate School Government (GSGSG)
College of Law, Government and International Studies (COLGIS)
University Utara Malaysia (UUM)
06010, Sintok, Kedah Darul Aman

Interview Protocol/Template

Introduction and Purpose of the Interview

My names are Muhammad Nuruddeen (99215). I am currently conducting a PhD. research on "The Legal and Institutional Frameworks for the Protection of E-commerce Consumers in Nigeria." I am glad to inform you that you are selected to participate in this research. You have been selected because of your office, a wealth of knowledge as well the experience you have in this area of research. I believe you will add to my understanding in this area of study. I also believe that your contributions will assist with meaningful information that will help in achieving the targeted objectives of the research.

Confidentiality and Audio Taping

Your response and views are highly important and will be treated with utmost confidentiality. All the information you give will be used for the purpose of this research only.

I intend to record our conversation for thorough and better analysis. Sir/Madam, could I have your permission to tape record this interview?

Duration of the Interview

The interview is intended to last for about 30 minutes or at most one hour. This interview is divided into parts depending on the status of each respondent. The first part on issues concerning the state of the legal framework for e-commerce and consumer protection in Nigeria. This part will focus on issues bordering on privacy, data protection and unfair trade practices emanating from e-traders. The intended respondents for this part include legal officers from the National Assembly, Consumer Protection Council (CPC), a private legal practitioner and an academician from any of the faculties of Law in the Nigerian universities.

The second part will concentrate on the state institutional framework for the protection of e-commerce consumers in Nigeria. The intended respondents for this part include the officers from Consumer Protection Council (CPC), the National Information Technology Development Agency (NITDA) and the academician mentioned above. The third part will collect data from selected Nigeria e-commerce consumers and a consumer protection expert in Nigeria.

Meanwhile, the last part will concentrate on redress mechanisms and access to justice for e-commerce consumers in Nigeria. The intended respondents for this part include the officers from CPC, NITDA, National Assembly and the academician mentioned above.

How to reach me later

If you wish to contact me after the interview, I can be reached via my Nigerian number +2348063003991. In the event I go back to school, this is my handphone number in Malaysia +60143854867. I can also be reached through the followings:

E-mails: mnur74.mn@gmail.com and mnur74@yahoo.com

WhatsApp: +60143854867

Skype: nuruddeen74

Academic Supervisors

Dr Yuharif bint Yusof
Dr Nor Anita bint Abdullah,
School Law,
Ghazali Shafie Graduate School Government
College of Law, Government and International Studies
Universiti Utara Malaysia.
06010, Sintok, Kedah Darul Aman.

Part One: State of the Legal Framework for e-commerce and Consumer protection in Nigeria

A: Data Protection

- a) What is your opinion on the state of the Nigerian law on privacy and data protection?
- b) Is there stand-alone Nigerian legislation on privacy and data protection?
- c) To what extent do you think that the Nigerian law protects the data and privacy of e-consumers under the current legal regime?
- d) What efforts have the government made to ensure that relevant legislation is put in place to secure consumers' trust and confidence in e-commerce transaction?
- e) To what extent does the government domesticate international instruments dealing with e-commerce and consumer protection in Nigeria?

B Unfair Trade Practices

- a) What do you understand by the term unfair trade practices in the context of e-commerce?
- b) What measures in your opinion do the Nigerian government put in place to protect the e-consumers against unfair trade practices in the hands of the e-traders?
- c) How do you think the excesses and exploitations of e-traders through the insertion of unfair trade terms could be check-mated in Nigeria?
- d) It is usual for e-traders to choose applicable law and place of conflict resolution. Perhaps, at the expense of the e-consumer. How fair would it be for example for a US base e-trader to insist submitting complaint involving a Nigerian e-consumer to a court or agency in the US?
- e) To what extent does the government domesticate international instruments dealing with e-commerce and consumer protection in Nigeria?
- f) How can this issue of unfair trade terms and practices be addressed in Nigeria?

Part Two: State of the Institutional Framework for the Protection of E-commerce Consumers in Nigeria

- a) Within the framework of the Nigerian laws, are there regulatory bodies saddled with mandates to protect e-consumers?
- b) What in your opinion are the problems faced by these regulatory bodies?
- c) Is there any unit in your organisation that deals with e-consumer transactions complaints?
- d) Among your staff, is there anyone with expertise or requisite training on e-commerce consumer protection in your organisation?
- e) In your opinion how do you rate the e-consumers' knowledge and awareness of their rights in Nigeria?
- f) What is the prevalence of consumer rights violation complaints in e-commerce related transactions? And how do you handle such complaints?
- g) What effort is your organisation making sure that Nigeria has a comprehensive legal and institutional framework for e-commerce and e-consumer protection?

Part Three: Consumer

- a) Do you read the terms provided by e-traders before concluding any commercial transactions on the internet?
- b) What did you buy on the internet and from which site?
- c) How did you make payment for the product you bought from the site?
- d) Was the exact product supplied to you in good time?
- e) What problem(s) have you experienced in the course of conducting online purchases?

- f) How was the problem resolved?
- g) Are you aware of your rights as an e-consumer?
- h) What challenges do you face in protecting your rights as an e-consumer?
- i) Are you comfortable with the state of the legal and institutional framework for the protection of e-commerce consumers in Nigeria?

Part Four: Redress Mechanisms/ Access to Justice for E-commerce Consumers in Nigeria

- a) How does the e-commerce consumer accesses justice in Nigeria?
- b) In your opinion are the ordinary courts appropriate for settling e-consumer disputes?
- c) What is your opinion on the establishment of consumer /small claims court/ tribunals in Nigeria for the settlement e-consumer disputes?
- d) Are there compensatory mechanisms for e-consumer? (e.g., filing a complaint for possible damages/compensation.) Are these compensatory tops only for the individual or for a group of individuals?
- e) How active are Nigerians as consumers? How did they reach that level of activity?
- f) In your opinion, what are the problems faced by e-consumers in accessing justices in Nigeria?

Part Five: Conclusion:

With gratitude, this is the end of the interview. But if you have any additional information that will enhance the quality of this research, I will be glad also to take it. Thank you very much for the info and your time. I appreciate.



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Universiti Utara Malaysia

APPENDIX 2: DATA COLLECTION LETTERS

Data Collection Letters



GHAZALI SHAFIE GRADUATE SCHOOL OF GOVERNMENT
Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
Universiti Utara Malaysia
06010 UUM SINTOK
KEDAH DARULAMAN
MALAYSIA



Tel 604-928 7751/7752
Faks (Fax) 604-928 7799
Laman Web (Web) www.gsgsg.uum.edu.my

KEDAH AMAN MAKMUR•BERSAMA MEMACU TRANSFORMASI

Reference No.UUM/COLGIS/GSGSG/99215

Date: February 28, 2016

The Clerk
National Assembly Three Arms Zone
Abuja Nigeria
Sir/Madam,

DATA COLLECTION FOR PHD THESIS

This is to certify that **Muhammad Nuruddeen (Matric Number: 99215)** is a full time PhD student at Universiti Utara Malaysia, Sintok, Kedah.


He needs to collect data for his research paper in order to fulfil the requirement of his PhD programme.

We duly hope that your organization will be able to assist him in getting the necessary information for his research paper.

Thank you.

"KNOWLEDGE, VIRTUE, SERVICE"

Yours faithfully,


(JAMILAH BINTI SAMSUDIN)
Principal Assistant Registrar,
On behalf of Dean

Ghazali Shafie Graduate School of Government
E-mail: sjamilah@uum.edu.my
Tel: 04-9287752/ fax:04-9287799





GHAZALI SHAFIE GRADUATE SCHOOL OF GOVERNMENT
 Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
 Universiti Utara Malaysia
 05010 UUM SINTOK
 KEDAH DARULAMAN
 MALAYSIA



Tel: 604-928 7751/7752
 Faks (Fax): 604-928 7799
 E-mail: www.gsg@uum.edu.my

KEDAH AMAN MAKMUR BERSAMA MEMACU TRANSFORMASI

Reference No.UUM/COLGIS/GSGSG/99215
 Date: February 28, 2016

The Director General
 Consumer Protection Council
 Plot 1105 Dar-es- Salaam Street
 Off Aminu Kano Crescent
 Wuse II Abuja Nigeria



Sir/Madam,

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"KNOWLEDGE, VIRTUE, SERVICE"

Yours faithfully,


 (JAMILAH
 BINTI ISAMSUDIN)

P | Assistant Registrar,

On behalf of Dean

Ghazali Shafie Graduate School of Government
 E-mail: sjamilah@uum.edu.my
 Tel: 04-9287752/ fax:04-9287799

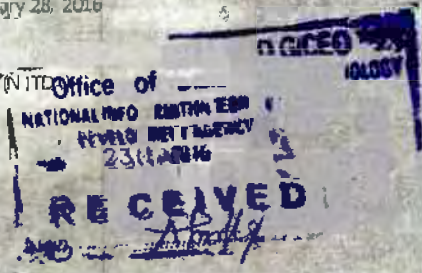




KEDAH AMAN MAKMUR • BERSAMA MEMACU TRANSFORMASI

Reference No: UUM/COGIS/CSGG/199/115
 Date: February 28, 2016

The Director General,
 National Information Technology Development Agency (NITDA)
 No. 28 Port Harcourt Crescent
 Off Gimbiya Street Area II Garki Abuja Nigeria



Sir/Majidam,

DATA COLLECTION FOR PHD THESIS

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"KNOWLEDGE, VIRTUE, SERVICE"

Yours faithfully,


 (JAMILAH BINTI SAMSUDIN)
 Principal Assistant Registrar,
 On behalf of Dean
 Ghazali Shafie Graduate School of Government
 E-mail: sjamilah@uum.edu.my
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Reference No.UUM/COLGIS/GSGSG/99215
 Date: February 15, 2016

TO WHOM IT MAY CONCERN

Sir/Madam,

DATA COLLECTION FOR PHD THESIS

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