

**PRINCIPLES OF CONTRACT UNDER CUSTOMARY AND
ISLAMIC LAW IN NIGERIA: A COMPARATIVE ANALYSIS OF
ITS CONSTITUENTS**

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Abstract

This study provides an extensive comparative analysis of contract law as applied under Customary and Islamic legal systems in Nigeria. It examines the fundamentals of contract and its constituents through the lens of customary and Islamic law. By engaging with judicial decisions, academic literature, and selected case studies, this study inquires into the evolving practice of contract law in commercial and personal matters across diverse Nigerian regions. The analysis synthesises theoretical and practical perspectives, highlighting the convergences and divergences between customary and Islamic contract norms. Emphasis is placed on the interpretative challenges and remedial options available in Nigerian courts, with a particular interest in regional variations that inform legal outcomes.

Keywords: Customary Law, Islamic Law, Capacity, Terms, Breach, and Remedies

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1. INTRODUCTION

Nigeria's legal system is characterised by the coexistence of multiple legal traditions, most notably the Customary Law and Islamic Law. Islamic law is derived from the Holy Quran, sayings and actions of the Prophet Muhammad,¹ consensus of scholars,² and analogical reasoning.³ Contracts under Islamic law must comply with these sources and adhere to the principles of fairness, transparency, and mutual benefit. One of the key principles in Islamic contracts is the prohibition of usury or interest, which means that any contract involving interest is considered void.⁴ Additionally, excessive uncertainty⁵ is prohibited, which means that the terms of the agreement must be clear and certain. Customary law, on the other hand, emerges from the traditional usage and practice of a people in a given community that has been mutually acquired, adopted, and practiced to the extent that it has gained compulsion and force of law with reference to the community.⁶ Following the compulsion and force of law, such traditional usage and practice has gained in a community, it attracts sanctions of different kinds and is enforceable. Enforcement of native laws and customs under the Nigerian law is not automatic. The enforcement of native laws and customs is only achievable in courts in Nigeria when they exist and are not repugnant to natural justice, equity, or good conscience.⁷ It has been settled by judicial authority in Nigeria that Islamic law is distinct from

¹ SAW (Hadith)

² Ijma

³ Qiyas, Liaquat Ali Khan Niazi, *Islamic law of contract* (Research Cell, Dyal Sing Trust Library, 1991)

⁴ *ibid*

⁵ Gharar

⁶ *OGBUJI v. AMADI* (2022) 5 NWLR (PT. 1822) 99 SC

⁷ *Per Osborne, C.J. in Lewis v. Bankole* (1908) 1 N.L.R. 81 at 100-101

customary law.⁸ This assertion is premised on the ratio that Islamic law does not belong to any particular tribe and that it is a complete system of universal law, which is more certain and permanent, and universal than the English common law.⁹ Customary law is organic in nature and, as a reflection of accepted usage and culture of a given people, is not static but dynamic in nature.¹⁰ This research examines the philosophy behind this assertion and its application to the foundational components of contract formation and enforcement under customary and Islamic laws in Nigeria. Additionally, this research also examines capacity, terms, breaches, and the available remedies under customary and Islamic laws in Nigeria. In doing so, the study examines both doctrinal differences and practical implications of their application in both commercial and personal contexts.

Doctrinal analysis and empirical case studies are used in this study to measure the influence of historical legal practices, regional customary norms, and the infusion of Islamic principles into Nigerian contract law. Judicial pronouncements from diverse jurisdictions are also examined to illustrate the dynamic interplay between statutory provisions, judicial interpretation, and traditional practices. The methodology adopted in this study is primarily qualitative, drawing on a wide range of secondary sources like academic journals, contemporary textbooks, and online sources.

⁸ Alhaji Ila Alkamawa v. Alhaji Hassan Bello & Anor (1998) LPELR-424(SC)

⁹ *ibid*

¹⁰ Barainam, FJ., description of customary law in *Owonyi n v. Omotosho* (1961) 1 ALL NLR 304.

2. CONSTITUENTS OF CONTRACT FORMATION: A COMPARATIVE ANALYSIS

In both Customary and Islamic legal traditions, the elements of a contract are crucial in determining its validity and enforceability. The constituents typically include an offer, acceptance, consideration, meeting of the minds, and intention to create a legal relation. However, the underlying philosophical and procedural approaches for their validity and enforceability under customary law and Islamic law in Nigeria are not essentially the same.

2.1 Offer and Acceptance

As applicable under common law, the principles of offer, acceptance, and consideration are fundamental to the formation of a valid contract under customary contracts. Customary contracts, like other contracts, require some elements of a contract to establish a legally binding agreement. Under customary law in Nigeria, the principles of contract are deeply rooted in the traditions and practices of the various ethnic groups. Customary law contracts are generally informal and may not require the formalities associated with contracts under common law.¹¹ However, they are recognised and enforceable provided they meet certain criteria. An offer under customary law is a proposal made by one party, who is the offeror, to another party, who is the offeree, indicating a willingness to enter into a contract on certain terms. The offer must be clear, definite, and communicated to the offeree. The offeror must intend to be bound by the offer once it is accepted by the offeree. Acceptance under customary law must be unequivocal and communicated to the offeror. It signifies the

¹¹ *Ahmadu Tatu v. Estate of Late Isah Alh. Adamu & anor* (2014) LPELR-24160(CA)

offeree's agreement to the terms of the offer. The acceptance, however, must correspond precisely with the terms of the offer.

Under Islamic law, a contract is formed when there is a clear offer and acceptance, which is consistent with the principles of Shariah. The offer and acceptance must be explicit and unequivocal, leaving parties to the contract in no doubt as to the mutuality of the agreement and the terms of the contract.¹² An offer in Islamic law is a proposal made by one party to another, indicating a willingness to enter into a contract on specific terms. The offer must be clear and definite, leaving no room for ambiguity. It should specify the subject matter of the contract, the price, and any other essential terms.¹³ The offer can be made verbally, in writing, or through conduct, as long as it is communicated to the offeree. Acceptance must correspond exactly to the terms of the offer without any modifications.¹⁴ Acceptance can also be verbal, written, or implied through conduct.¹⁵ Acceptance must be communicated to the offeror for the contract to be valid. Furthermore, for an Islamic contract to be valid, parties must consent to the contract willingly and without coercion; they must have the legal capacity to enter into a contract, that is, they must be of sound mind and of legal age. The subject matter of the contract must be lawful and not prohibited by Islamic law, and the terms of the contract must be clear and certain, leaving no room for ambiguity. Thus, where the parties to the

¹² Abdul Jalil 'Islamic Law of Contract is Getting Momentum' (2010) 1(2) International Journal of Business and Social Science

¹³ Razali S.S., Islamic Law of Contract. United Kingdom: (Cengage Learning Asia Pte Ltd 2010). pp. 1, 27;

¹⁴ *ibid*

¹⁵ *ibid*

contract are ignorant of the subject matter of the contract, such a contract is invalid under Islamic Law.¹⁶

2.2 Consideration

Consideration under customary law may not always align with the common law understanding of consideration, which typically involves a benefit to the promisor or a detriment to the promisee. Customary law often emphasises the communal and relational aspects of agreements, where the focus is on mutual respect, trust, and the maintenance of social harmony rather than strict legal formalities. In customary law, consideration may not always involve a tangible exchange. It can be symbolic, involving the use of symbolic items or gestures that hold cultural significance. For example, the exchange of kola nuts or traditional drinks during marriage ceremonies. One of the types of customary contracts where this type of consideration is prominent in Nigeria is the Kola tenancy. It is a traditional landholding arrangement where a landowner, often referred to as the overlord, grants land to a tenant in exchange for a symbolic gift, typically kola nuts, which signifies the commencement of the tenancy.¹⁷ This form of tenancy is prevalent in various parts of Nigeria, particularly among the Igbo and Yoruba communities. Other types of considerations under customary law are the Social Consideration, which involves social obligations and responsibilities, such as the duty to support family members or community members in need, and the Moral Consideration, which is based on moral obligations and the expectation to act in accordance with community values and ethics.

¹⁶ JILAWA V. SULE (2001) 32 W.R.N. 65 at 69

¹⁷ UDENSI v. MOGBO (1976) LPELR-3294(SC)

Under Islamic law, consideration is not a mandatory requirement for the validity of a contract as it is in common law systems. Instead, Islamic law focuses on the mutual consent of the parties involved and the lawful nature of the subject matter of the contract.¹⁸ The concept of consideration in Islamic law is replaced by the principle of offer and acceptance,¹⁹ which is fundamental to the formation of a contract. Under Islamic Contracts, Monetary Consideration is one of the recognised considerations.²⁰ This involves the exchange of money for goods or services; the money must be derived from prohibited activities. Consideration may also be Non-Monetary Consideration.²¹ This can include goods, services, or any other form of benefit that is permissible under Islamic law.²² For example, exchanging goods for services or bartering goods. Consideration may be deferred in some Islamic contracts, such as in a 'Murabaha' contract, where the buyer pays the seller over time.²³ Regardless of the nature of the consideration, consideration under Islamic law must be free from any form of interest and must not involve any element of usury.

2.3 Intention to Create Legal Relation

Under customary law, contracts are often established through oral agreements and traditional practices. Unlike formal common law contracts, the intention to create legal relations is not always explicitly stated but is

¹⁸ Muhammad Tahir Mansuri, *Islamic Law of Contracts and Business Transactions* (Dar Ul Thaqaah 2023)

¹⁹ Ijab and Qabul

²⁰ ibid

²¹ Syed Faiq Najeeb, 'Trading in Islam: Shari'ah Rules and Contemporary Applications in Islamic Financial Transactions' 2014 2(2) *Journal of Emerging Economies and Islamic Research*

²² ibid

²³ ibid

inferred from the behaviour of the parties, the context in which the agreement is made, and prevailing customary norms. the intention to create legal relations in customary contracts is determined by a combination of the parties' conduct, the cultural context, and the recognition of the agreement by the community. The Supreme Court in Nigeria affirmed in the case of *OKONKWO & ANOR v. OKOLO*²⁴ that transactions made orally under customary law are valid, provided they meet the requirements of the customary practices of the community involved. Furthermore, Section 70 of the Evidence Act (2011) provides that in deciding questions of customary law, the opinions of traditional rulers, chiefs, or other persons with special knowledge of the customary law are admissible. This means that the intention to create legal relations in customary contracts can be established through the testimony of those familiar with the customs and practices of the community. This provision of the law provides a mechanism to ensure that customary contracts are evaluated within the framework of the relevant customs and traditions, while also adhering to the principles of contract law.

In Islamic contract law, the notion of intention to create a legal relation is embedded within a broader framework of Shariah principles that infuse ethical, religious, and social considerations into contractual relations.²⁵ In Islamic jurisprudence, a contract is not merely a private agreement but a covenant that must align with divine guidance. The intention (*niyyah*) behind entering into a contract is therefore evaluated not only based on manifest assent but also on the fundamental requirement that the transaction

²⁴ (1988) LPELR-2481(SC).

²⁵ Khaled El-Gamal, *Islamic Finance* (Princeton University Press 2006) 45

must comply with Islamic ethical norms.²⁶ This perspective diverges from the purely secular notion of intention in common law and emphasises communal welfare, fairness, and justice. Islamic contracts, or 'aqd', require mutual consent and a clear intention to enter into a binding agreement. The Quran and Hadith provide the foundational texts for Islamic contract law, emphasising the importance of fulfilling promises and agreements. For instance, the Quran states in Surah Al-Ma'idah (5:1), "*O you who have believed, fulfill [all] contracts.*" Islamic law distinguishes between different types of contracts, such as sales (bay'), leases (ijara), and partnerships (mudaraba and musharaka), each with specific requirements for intention and consent.²⁷ The intention must be free from coercion, fraud, or undue influence, as these factors can invalidate a contract.²⁸

The principles of Islamic law on the intentions of parties to create a legal relation was emphasised by Per Bate, S.P.J. in the case of *Dan Tanko v Maiduka*²⁹ where he held as follows:

We are advised by the Judge of the Sharia Court of Appeal who is a member of this Court that under Islamic law where a man agrees to sell properly to another but then in breach of his agreement, sells the property to another but then in breach of his agreement, sells the property to a third party, the vendor may properly be ordered to implement the agreement for sale which he has-broken and to give possession of that property to the person with whom he made the agreement. We therefore find that the trial Court made no error in law except in so far as it ordered the

²⁶ Mohammed Awais Anwar, 'Islamic jurisprudence: the law of contracts and natural justice' (2021) International Company and Commercial Law

²⁷ *ibid*

²⁸ *ibid*

²⁹ (Vol. 1) S.L.R. 33 at 34.

respondent to pay £400 for the house. The price stipulated in the agreement was £300 and this is the agreement which may be enforced. It was not open to the trial Court to vary that agreement. We find nothing in this contrary to natural justice."

While the principle of intention to create legal relations is recognised under both Islamic and customary law, its application is deeply rooted in the cultural, religious, and social contexts of the parties involved. Islamic law requires a lawful intention aligned with Sharia principles, while customary law relies on traditional practices and communal relationships.

3. Capacity to Contract: Traditional Norms versus Islamic Doctrine

Under both Islamic and customary law, the capacity to contract is influenced by various factors, including age, mental state, and social status. Both Customary and Islamic Law provide frameworks dictating who is competent to contract, but with differing underlying principles.

3.1 Age, Mental Capacity, and Autonomy under Customary Law

Customary Law historically permits a degree of flexibility in determining capacity based on social constructs and communal roles. Traditional societies may deem certain individuals as capable by virtue of their familial or communal standing, even if statutory definitions by modern standards might suggest otherwise. For example, adolescents who have reached a stage of traditional recognition as “mature” may be seen as having sufficient capacity to contract in matters that affect their social standing. The capacity to contract under customary law generally depends on the customs of the community involved, and it may differ significantly from the statutory requirements for contractual capacity.

3.2 Capacity under Islamic Law

Under Islamic law, the capacity to contract is governed by specific principles that are distinct from those in customary and common law systems. The capacity to contract under Islamic law is primarily based on the principles of Sharia, which are derived from the Quran, sayings and actions of Prophet Muhammad,³⁰ consensus of scholars³¹ and analogical reasoning.³² Islamic law requires that a person must have legal capacity³³ to enter into a contract. This capacity is divided into two main categories: Capacity for rights and obligations,³⁴ and the capacity to execute acts.³⁵ A person must have both types of capacity to engage in contractual obligations. The age of majority in Islamic law is typically the age at which a person reaches puberty.³⁶ However, the specific age can vary depending on the interpretation of Islamic law in different jurisdictions. In many Islamic countries, the age of majority is set at 18 years, aligning with international standards.

4. TERMS AND CONDITIONS: EXPRESS, IMPLIED, AND THE ROLE OF CULTURAL NORMS

The content and formulation of contractual terms serve to regulate the obligations and rights of the parties involved. Across both Customary and Islamic Law in Nigeria, the terms can be categorized into express and

³⁰ (SAW)Hadith

³¹ Ijma

³² Qiyas

³³ Ahliyyah

³⁴ Ahliyyah al-Wujub

³⁵ Ahliyyah al-Ada

³⁶ Dörthe Engelcke and others 'Underage Marriage: Legal and Social Practice in Muslim Jurisdictions' 2025 1 (49) Arab Law Quarterly

implied conditions, with important variations in their interpretation and enforceability.

4.1 Express Terms in Customary Contracts

In Customary Law, express terms are often derived from oral or informal agreements. These agreements are frequently hinged on communal consensus and validated by local customs rather than explicit written documentation. As a result, the contractual terms are interwoven with cultural symbolism and local lexicons that extend beyond the narrow confines of modern contract doctrine.

The case of *Oyewunmi & Anor v Ogunesan*³⁷ is illustrative; the court in this case recognised the binding nature of the contract through the testimony of respected community figures. Customary adjudicators often rely on oral histories and customary records to reconstruct the intentions of the contracting parties, thus allowing for a broader interpretative latitude.

4.2 Express Terms in Islamic Contracts

Islamic contract law, however, places considerable emphasis on clarity and precision in articulating express terms. The faith's doctrinal perspective mandates that terms should not be ambiguous and must be communicated with sufficient detail to prevent potential disputes. Islamic contracts customarily include detailed stipulations regarding the rights and obligations of the parties, thereby reducing the scope for subsequent disagreement.

³⁷ (1990) LPELR-2880(SC).

In *Jilawa v Sule*³⁸ the court held that Islamic law does not validate a sales contract where the parties to the agreement are ignorant of the subject matter of the sale. Additionally, the court further held that as an essential requirement of a valid contract under Islamic law, there must be consensus by parties, there must be an agreement on price, and the subject of the contract must be ascertainable. This implies that ambiguously worded or vague terms of contract under Islamic law directly contravened the Islamic requirement for clarity in agreements. This requirement is less stringently enforced in customary practices.

4.3 Implied Terms and the Role of Custom

Under customary law, the concept of implied terms is significant, especially when the expressed terms are minimal or when contracts are formed within the context of established customary law practices. Implied terms may arise from long-standing social norms or even from the customary expectations of the community. This fluidity reflects an interpretative tradition that values the spirit of communal fairness over rigid textualism.

Comparatively, while Islamic law does acknowledge the possibility of implied terms, it does so only insofar as they do not conflict with explicit provisions stipulated in primary sources. According to the principles laid out by Hanbali jurists, any term that affects the fundamental structure of the contract must be explicitly mentioned.³⁹

³⁸ 2001 W.R.N (32) Pg 65 at 69.

³⁹Habiburrahman Rizapoor, 'Fundamentals of contract law in Islamic law and Afghanistan Civil Law' (2024) 1 (1) Journal of Islamic Law and Legal Studies.

5. BREACH OF CONTRACT: DOCTRINAL DIVERGENCES AND PRACTICAL IMPLICATIONS

A critical area of comparative contract law is the treatment of breaches and the subsequent assessment of remedies. Differences in the underlying philosophies of justice, restitution, and moral rectitude mark the approach to determining breaches under Customary Law and Islamic Law.

5.1 Breach under Customary Law

Breach of contract under customary law is the failure to fulfill the terms of a contract that is recognized and enforceable under customary legal systems. The breach of such agreements can occur when one party fails to perform their obligations as agreed upon. To establish a breach of contract under customary law, there must be an existing contract, the terms of the contract must be clear, and one party must have failed to discharge their obligations. While customary law provides a framework for resolving disputes, it is important to note that the remedies available under customary law may differ from those under statutory law. Through Customary arbitration, Customary laws are used to promote reconciliation and community-based solutions rather than punitive measures⁴⁰ when there is a breach of contract.

5.2 Breach under Islamic Law

Islamic Law emphasizes the importance of fulfilling contractual obligations as a moral and legal duty. The Quran states, "*O you who have believed, fulfill all contracts*".⁴¹ A breach occurs when one party fails to perform their contractual obligations without a valid excuse. In the Islamic legal

⁴⁰ CHRISTIAN OKECHUKWU AMADI v. JACKSON OWHONDA (2021) LPELR-54590(CA)

⁴¹ Quran 5:1

framework, the concept of breach is taken very seriously, with a focus on both moral and legal accountability. Breaches are evaluated not solely in terms of compensation for loss but also in terms of the violation of trust inherent in the contractual relationship. The enforcement of penalties and the requirement for specific performance or restitution are common remedies in Islamic jurisprudence.

6. REMEDIES: ENFORCING CONTRACTS IN A DUAL LEGAL SYSTEM

The enforcement of contractual rights and the implementation of remedies represent the final, yet crucial, phase of contract law. Remedies may include damages, rescission, specific performance, or other forms of equitable relief.

6.1 Remedies under Customary Law

Under Customary Law, the enforcement of contracts is generally predicated on principles of negotiated restitution and community reparation. The customary remedy of compensation in kind is often preferred over monetary awards, as it better reflects local value systems and sustains local traditions of reciprocity. Remedies are typically designed not only to compensate the aggrieved party but also to reintegrate the breaching party back into the communal fabric after rectifying the breach.

6.2 Remedies under Islamic Law

Islamic jurisprudence emphasizes remedy through means that align with the ethical imperatives of the Sharia. Specific performance is often favoured over compensatory damages when a breach undermines the mutual trust essential to the contractual relationship. Additionally, remedies may involve corrective measures that serve both punitive and restorative

purposes, ensuring that the breach is redressed not only in economic terms but also in terms of moral accountability. Furthermore, when multiple claims of breach are present, Islamic law may permit a graduated approach to enforcement, where partial performance, coupled with remedial compensation, is recognized as a viable solution.⁴² This method has been favourably received by legal scholars who argue that it demonstrates a pragmatic blending of legal theory with socio-cultural imperatives.⁴³

6.3 Case Study: MAIDARA v. HALILU (Supra)

The case primarily revolves around the interpretation and enforcement of contracts under Islamic law, which is a critical aspect of legal proceedings involving Muslim parties in Nigeria. In this case, the Court of Appeal was tasked with determining the validity and enforceability of a contract that was purportedly entered into under Islamic law. The principles of Islamic contract law, or 'Sharia', are distinct from conventional contract law, as they are based on religious tenets and ethical considerations. One of the key principles in Islamic contract law is the concept of Ijab and Qabul, which translates to offer and acceptance. For a contract to be valid under Islamic law, there must be a clear offer and acceptance, mutual consent, and the subject matter of the contract must be lawful and permissible under Sharia. The judicial reasoning in the case focused on whether these essential elements were present in the contract in question. The court examined the intentions of the parties, the clarity of the terms, and the compliance with Islamic legal principles. One of the practical challenges highlighted in this case was the interpretation of contractual terms that may have been ambiguous or not explicitly stated, which is a common issue in contracts

⁴² Nabil Saleh, 'Remedies for Breach of Contract under Islamic and Arab Laws' (1989) 4 (4) Arab Law Quarterly 269.

⁴³ *ibid*

governed by Islamic law. The court also considered the role of uncertainty and usury, which are prohibited under Islamic law. Contracts that involve excessive uncertainty or interest are deemed void. The court's decision in this case highlighted the importance of ensuring that contracts are free from these elements to be enforceable under Islamic law. Furthermore, the case highlighted the judicial reasoning process in balancing the principles of Islamic law with the need for fairness and justice in contractual disputes. The court's decision was guided by the need to uphold the sanctity of contracts while ensuring that the principles of Islamic law were not violated. This case serves as a critical reference point for understanding the application of Islamic contract law in Nigeria. It emphasizes the need for clarity, mutual consent, and compliance with Sharia principles in contracts involving Muslim parties. The case also illustrates the challenges faced by courts in interpreting and enforcing such contracts, particularly when there are ambiguities or conflicts with conventional legal principles.

6.4 Case Study: TATU v. ESTATE OF LATE ADAMU & ANOR⁴⁴

The case is a significant decision in the context of applying principles of contract law to customary law in Nigeria. This case illustrates the complexities and challenges involved in harmonizing customary law with the established principles of contract law. The Court of Appeal in the case was tasked with determining the validity of a contract under customary law. The appellant, Tatu, claimed that there was a valid customary contract between him and the deceased, Adamu, which entitled him to certain benefits from Adamu's estate. The respondents, representing the estate, contested this claim, arguing that the alleged contract did not meet the requirements of a valid contract under customary law. The court examined

⁴⁴ (2014) LPELR-24160(CA)

the principles of contract law, such as offer, acceptance, consideration, and intention to create legal relations, in the context of customary law. The court emphasized that while customary law is recognized and respected, it must align with the fundamental principles of contract law to be enforceable. This approach is consistent with the provisions of the Evidence Act 2011,⁴⁵ which allows for the opinions of traditional rulers and other knowledgeable persons to be considered in determining customary law. The court's reasoning highlighted the need for clarity and consistency in applying customary law principles. One of the challenges identified was the lack of written records and formal documentation in customary contracts, which often rely on oral agreements and traditional practices. This can lead to disputes over the terms and existence of a contract. The court also addressed the issue of repugnancy, ensuring that customary law does not contravene principles of natural justice, equity, and good conscience. The decision in the case serves as a reminder of the dynamic nature of Nigerian law, where customary practices must be reconciled with statutory and common law principles. It also illustrates the judiciary's role in ensuring that customary law evolves in a manner that respects traditional practices while adhering to the broader legal framework.

7. CONCLUSION

The comparative study of contract law under Customary and Islamic legal systems in Nigeria reveals a multifaceted arrangement of legal traditions, each informed by its own historical, cultural, and doctrinal antecedents. With the evolution of Nigeria's legal system since 1960, the coexistence and occasional convergence of these paradigms have enriched the jurisprudence on contract formation, capacity, terms, breach, and remedies.

⁴⁵ S. 70

While Customary Law emphasises communal values, informal consent, and flexible remedies rooted in local practices, Islamic Law mandates a formalist and morally rigorous approach, particularly in terms of clarity, capacity, and ethical performance. Nigerian courts have, over time, evolved their interpretative techniques to accommodate this pluralism, thereby ensuring that contractual disputes are resolved in a manner that is both just and contextually sensitive.