**Statutory Interventions in the Principles of Insurance in Nigeria**

**ABSTRACT**

This study was designed to critically analyze the statutory interventions on insurance principles in Nigeria. The study was secondary in nature, as data used were gathered through extant literatures. The findings reveal that, the principle of utmost good faith, indemnity, insurable interest, attachment of risk, and cancellation are clearly defined and covered under the Nigerian Insurance Act, 2003; while the principles of subrogation rights, proximate cause, and mitigation of loss are left out. The implication is that when cases arise under these omitted principles, interpretation will be difficult. Additionally, even the interpretation of the defined principles poses certain challenges due to ambiguity in definition. Therefore, it was recommended that the Insurance Act, 2003, should be amended to cover for these limitations and enhance the protection of parties in an insurance contract within the Nigerian jurisprudence.

**Keywords**: Insurance, Uberimea Fidei, Utmost Good Faith, Cancellation, Nigeria, Indemnity, Proximate Cause, Insurable interest

1. **INTRODUCTION**

Fundamentally, an insurance contract is a means by which the risks associated with a given loss is shifted to an insurer from the person who otherwise might suffer, and passed unto the other insured through the insurer. Correct to say, a crucial part of the life insurance business is concerned with investments, but even in this case, there is an element of risk-shifting present. It is also understandable that a skilful insurer should be able to persuade people not to bear the risks to which they are subject, and could be skilful in calculating matters in a way that more income are taken than are paid out through claims (bearing in mind that this picture is more complex in reality considering that insurers make their money through investments in premiums, while also covering part of their potential liabilities through reinsurance). Therefore, the insurance contract is designed to pray for the contemplation of, the possibility, not just the insurer being made completely liable to the insured. In this case, the insurance contract is one complex and unique one because it calls for performance from the one side – the insured – in the form of premium payments, and on the other hand – the insurer – required to deliver a promise of performance in the event that a loss is sustained in line with the terms of the policy agreed upon by both parties.

In lure of the above, it is also expected that settlement of insurance claims will be difficult. The extent to which these difficulties can be mitigated to deliver faire judgment is dependent on the applicability of statues surrounding such claims. Based on this, this research is designed to critically review statutory interventions in the principle of insurance within the Nigerian jurisdiction. To this effect, this chapter is focused on presenting an introduction to the above stated subject under consideration. Therefore, contained herein, are discussion in relation to the background of the study, statement of problem, aims and objectives of the study, scope / delimitation, significance of study, research methodology and limitations. In essence, this chapter is the foundation upon which other chapters are built on.

1. **NIGERIA AND THE COMMON LAW TRADITION**

The term “common law” is used in varied sense. According to Professor Granville Williams[[1]](#footnote-1), there are four senses in which the term can be used. Originally, they represent the laws that were not local but common to the entire England. It is also used to represent the laws that are not crafted out of legislation, that is to say, these laws are not born out of the customs of the people or the decision of judges. Additionally, the phrase might also be used to represent the law that is not equity. Finally, it might be used to represent the legal system of a country that has adopted the English law as opposed to those that have adopted the French law or Roman law. In any case, the second sense will be adopted for the purpose of this research, which imply that the common law of England are the basic law of the land, which was developed by the old common law courts out local and general customs that prevail among the different communities in England in the early centuries.[[2]](#footnote-2)

In view of the fact that it was once a colonial territory under the British rule, the present Nigerian law feature significant amount of received English laws. Such laws include those that were directly enacted by the Crown or her agents for their colonial territories (including Nigeria), which Nigeria retained following her independence. The second category is the Nigerian laws adapted via instrumentality of local legislations. No matter the nature, the consensus remain that the received English laws make a significant part of the laws of Nigeria as it stand today.

The first form of these received common laws is English statutes that were made to directly apply to Nigeria. The geographical sphere that is today known as Nigeria was once a protectorate and colony under British rule. A colony is under the commands (dominion) of Her Majesty, and as such, the British Parliament maintains full legislative authority over colonies. However, what is practically obtainable is that the British Parliament doesn’t actually legislate for these colonies (although under the domino of Her Majesty) outside of the United Kingdom. Therefore, the enactments that are designed to apply to these colonial territories are those that make for common (uniform) regulations to the matter described as “general concern” throughout the British Empire.[[3]](#footnote-3) On the other hand, a protectorate is a country that isn’t within the dominion of the British, although its foreign relations are under the control of the King.[[4]](#footnote-4) Under the English law, the exercise of jurisdiction within the domain of foreign affairs and relations is covered within the prerogative law of the Crown.[[5]](#footnote-5) Protectorate or trust colony that is under the Crown could be legislated by the Order-in-Council for the British Crown. The power of legislation was accorded to the Crown through the Foreign Jurisdiction Act 1890 and 1913 and the Colonial Laws Validity Act 1865.[[6]](#footnote-6) However, the practice sense is that the Crown doesn’t apply the full amplitude of his powers when legislating these overseas territories. Normally, the Crown constitutes machinery within an independent territory and invests legislative power to the machinery within the respective territory, although the power is subjected to different degrees of colonial control.[[7]](#footnote-7) However, the Crown normally has specifically reserved power to also legislate for the dependent territories together with the local legislature.

On that note, when Nigeria was a dependent territory, the British Crown concurrently with the local legislatures made a number of laws for Nigeria. In the case of ***Joseph Ibidapo v Lufthansa Airlines[[8]](#footnote-8)***¸ the observation of the President of the Court of Appeal in that case was affirmed by the Supreme Court, which simply states that once an enactment has been extended to a protectorate or colony by the Order-in-Council, such enactment in all of its purpose and intent not only becomes part and parcel of the law of the colony, but also becomes self-executing and no further legislative act is required before it can be implemented.

Following Nigeria’s independence in 1960, the existing laws, including such enactments, were preserved and protected by the section 3(1) of the Nigerian (Constitution) Order-in-Council 1960, as if these laws were made pursuant to the said Order. The 1963 Constitution repelled the Nigerian Independence Act 1960 and the Nigerian (Constitution) Order-in-Council 1960, preserving all the laws that were contained in these Constitutions. These existing laws were also preserved in the Nigerian Constitution of 1979 and 1999.[[9]](#footnote-9) In the case of *Ibidapo v Lufthansa Airlines*, it was held by the Supreme Court that all the English laws, multilateral and bilateral agreements from 1960 till date were concluded and made applicable to Nigeria, with the exception of cases where they have been expressly repelled or declared invalid by a Court of law or tribunal created by law, else, these laws are said to remain in force subject to the provisions contained in the prevailing Constitution of Nigeria. On a similar note, the Carriage by Air (Colonies, Protectorates and Trust Territories) 1953, by which the Warsaw Convention Regulating Carriage by Air was made applicable to Nigeria, is retained in the existing laws of today’s Nigeria.

The second are the received English law. In terms of received English laws, one is making reference to the aspects of the English laws that were instrumented in Nigeria via local enactment and forms part of the country’s *corpus juris*, which are different from the laws that British applied to Nigeria with their own vigour and forces. In 1861, Lagos was made a British colony. English laws were introduced into the Lagos colony by virtue of the Ordinance No.3 of 1863. Following suit, English laws were received by other local legislations into the Federal Capital Territory and many other regions.[[10]](#footnote-10) The Interpretation Act (s. 45)[[11]](#footnote-11), which received the English laws into the Federal Capital Territory, made provisions for such laws as:

S. 45(1) – Subject to the provision of this section, and with exceptions to the provisions made by the Federal law, the English common law and the doctrine of equity, together with the statues of general application that were forced in England on the 1st of January, 1990, shall be enforceable in Lagos and, in as much as they are related to any matter within the exclusive legislative competence of the Federal legislature, shall also be enforceable in order parts of the Federation.

(2) Such imperial laws shall be enforceable in as much as the limitations of local jurisdiction and local circumstances permits, and they shall be subject to Federal law.

(3) For the purpose of ensuring that the said law is applicable, they shall be read with such verbal alterations that do not affect substances as to localities, names, officers, courts, moneys, persons, penalties ad otherwise as might be deemed a necessity for making the same applicable to the circumstances.

The provisions for reception of laws into regional sects were also similar with the above. The only significant different is that the statutes of general application were not received in the Western Region, with the region receiving only common law and equity. The government of the Western Region, in 1959, collated all the English Statutes that they viewed suitable for them and re-enacted them into laws in this region.

In some of the reception provisions, “the common law” or “the doctrines of equity” are simply mentioned[[12]](#footnote-12). This might give rise to the question of whether some or other brands of equity or common law other than that of the English common law or doctrine of equity were also received into the Nigerian law. However, it has been accepted that even without the inclusion of the words “of England” in relation to the received common laws and doctrine of equity, when they are used, they represent those received from England.

Presently, Nigeria is made up of 36 states, and some of these states have moved to create their own High Court Laws and other laws. However, what still stands is that the provisions of these laws in relation to the reception of English laws are substantially similar to the original reception clauses as contained in the Regional laws and the Interpretation Act. Therefore, they are still permissible in today’s Nigerian legal system at large.

1. **INSURANCE IN NIGERIA: A BRIEF HISTORICAL ACCOUNT**

A widely held belief is that insurance came to life in Nigeria in the 20th century, with the British merchants introducing insurance into Nigeria and laying down the pattern of insurance practices that should be employed in the country. Prior to Nigeria’s independence, and the arrival of the British, Nigeria had numerous unorganized systems in its territories. There were certain forms of traditional social schemes put in place by these communities to help protect themselves, such as family systems, age-grade associations, akawo, isusu, adashi societies[[13]](#footnote-13) and other systems were people are free to associated with to maintain regular forms of contributions to a common fund that are used to secured them against unknown events in the future. These funds were put together periodically and in the case of an eventuality, for instance, the death of a member; the contributed funds were used to carter for the expenses of burying that member or caring for a dependent left by the deceased member. In the event that a member of a given age-grade dies without making necessary provisions for dependent(s), as is usually the case, immediately after the person’s death, the age-grade arrives readily handy with assistance that will help in catering for the dependent(s). This was the nature of insurance in the primitive Nigeria. Till date, these primitive age-grade associations still sexist, although in minute forms; and while majority of their insurance functions have been taken over by modern insurance, the age-grade associations still play pivotal role in the social life of members and rural development of their communities. In the Ibo tribe, they still sustain what is called “August Meeting” for their female folks and it is widely believed that it is a very strong and organized society that cares for one another and keeps the communal bond knit year in year out in both Nigeria and overseas. This is considered a form of indirect insurance.

The British who came into the African borders for trade introduced modern insurance in Nigeria, in the late 20th century. As a result of their trading concerns, trade posts were established by these Europeans to facilitate the inter-regional trade taking place in the country. The insurance policies or “coverage” for these establishments were actually done outside Africa, in London, considering that there were no insurance outfits in Nigeria that would attend to their need at that time. With the course of time, the European traders that were based in London approved African agents (mainly traders, bankers and subsequently merchants), vesting in them the powers to obtains insurance businesses, issue covers and service claims on behalf of their employers that were based in London. These trading points gradually started to proliferate and grew to become full offices of their parent companies in Nigeria, extending their businesses by also creating sub-offices in the country. Irukwu further stated that with time (although not in all cases), a Nigerian company was formed by these parent companies maintaining establishments in the country, with a Nigerian nationality, although they still maintain their close ties with their parent company in Britain[[14]](#footnote-14). These British companies that were born in Nigeria still sustain close operational procedures with the pattern of their parent companies in London until the moment Nigeria gain full control of their management from their British employers and started float completely Nigerian insurance outfits in the country. In any case, as a result of the impacts of the Second World War, trade and commerce dwindled both in the United Kingdom and in Nigeria with the Nigerian insurance sector experiencing slowed growth between the 1920s and 1940s. However, following Nigeria’s independence, the industry has maintained steady growth since then.

The Royal Exchange Assurance was the earliest recorded insurance company that was fully established in Nigeria, in 1921 and it continued to maintain that status till 28 years later, following the emergence of 3 other registered companies that were permitted to perform insurance duties. These companies are: the Norwich Union Fire Insurance Society (which is today known under the style and name of Guinea Insurance Company Limited), the Tobacco Insurance Company Limited, and the Legal and General Assurance Society Limited[[15]](#footnote-15). These companies that operate insurance in Nigeria mainly offer cover for marine transportation for those exporting Nigerian produce, motor insurance, and certain bank mortgage and personal insurance. The insurance business in Nigeria started to witness apparent recognition in the 1940s, following mandatory insurance for motor vehicle[[16]](#footnote-16), with the objective of boosting the Nigerian insurance business. Following this compulsory insurance policy in the country, insurance business became popular and it aided revenue generation both for the industry and the economy at large.

On the subject of statutes that validate practice of insurance, traces can be made to the 1950s as the early when enactment of different legal instruments to develop insurance and middlemen, subsequently to regulate the business of insurance, started. At the time of Nigeria’s independence from the British, there were 25 registered insurance companies in the country and 3 of them were floated by indigenous entrepreneurs. The Companies Act of 1961 was enacted the following year, which was subsequently repealed and replaced by the Insurance Decree of 1961[[17]](#footnote-17). Following this new enactment, the insurance companies in Nigeria rose to 92 between 1961 and 1985 and by 1989, the number increased to 100 with 5 re-insurers. In 1997, twenty years later, following further directives from the Federal Government to recapitalize and raise the capital base of insurer under an enabling law – the Insurance Act 2003 -, the number increased further to 140 insurance companies.[[18]](#footnote-18) Of the total of 168 Insurance/Reinsurance companies that were in existence before the recapitalization exercise by the Federal Government, only 43 General, 26 life and 2 Reinsurance companies retained their license at the end of the exercise[[19]](#footnote-19). In essence, what can be deduced about the insurance structure and nature in Nigeria is that it shared its settings from British heritage.

1. **FORMATION OF INSURANCE CONTRACT**

In the formation of a contract, the first step is the application or proposal whereby, the prospective insured makes the first move by approaching the insurer with the expression of desire to have a given set of risk covered under a specific insurance policy. Once this move have been made, the insurance broker will now present the prospective insured with the terms and conditions that surround the insurance contract, making necessary clarifications in order to assist the prospective insured with decisions related to the insurance policy. While the brokers might represent the insurers during the negotiations, it is important to note based on the English case of *Newxholme Bros v Road Transort and General Insurance Co[[20]](#footnote-20)*., brokers are the agents of the insured. Additionally, in *Northern Assurance Co. Ltd v Stephen Idugboe* [[21]](#footnote-21)(unreported), the Nigerian Supreme Court held that insurance agents are the agents of the person making the proposal, in this case, the insured, and the insured are bound by the entries made by their agents even if they are illiterate. Things are made easier in the Section 54(20) of the Insurance Act as follows:

*For insurance, the proposal form or other application forms should be printed in an easily readable letters and should clearly state in the form of a note in a conspicuous place on the front page, that: “an insurance agent assisting an application to complete a proposal or application form for insurance purposes shall be considered to be the agent of the applicant.*

Therefore, once the prospective insured have completed the proposal form, the insurer can put the same under consideration, and if the form is accepted under the insurance policy, the policy will be issued to the insured. Normally, the proposal or application form comes in the form of a printed document which contains standard, detailed contracts that feature the terms and conditions made binding on the parties. Following submission of the proposal, the insurer might issue a cover note to the insured before actually issuing the insurance policy or a notice of refusal.

1. **FUNDAMENTAL PRINCIPLES OF INSURANCE**

As a practice, insurance is based on the English common laws which are viewed as the basic principles and elements of insurance[[22]](#footnote-22). These established principles are common for the all classes of insurance and they are grouped as: economic, actuarial and legal. In terms of the economic principles, it is based on how associated risks and losses are shared; the actuarial principles is based on the need to calculate premium from a scientific standpoint; while the legal principle relates to the general principles that all parties in the insurance business must understand and adhere to[[23]](#footnote-23). It is also important to state that insurance is governed by the general principles of a contract. The basic elements of a contract: offer, consideration, acceptance, intention to create legal relations and the capacities of both parties to go into legally enforceable contract, are all valid and necessary in insurance. However, the contract of insurance, being a special kind of contract, is governed by other extra specific principles. The focus of this paper is on the legal principles and they are discussed below.

* 1. **Utmost good faith**

This principle is based on the doctrine of “*Uberrimae Fidei*”, implying that all the contracts of insurance are based on utmost good faith. That is to say, the parties in the contract, the insurer and insure, are mandated to disclose all material facts to allow each other make more informed decisions. Considering that the business of insurance entails transfer of risk(s) from one party to the other, it therefore becomes pivotal that, all parties are mandated to disclose nothing but the entire truth in relation to the subject matter of the insurance. This is very important as it allows the underwriter to understand the nature and size of the risks, as well as how much to charge for the risk. Therefore, if there is any wrong information or omission of any vital fact, the contract becomes nullified notwithstanding whether this was made intentionally or not[[24]](#footnote-24).

The principle of utmost good faith can be traced back to *Couturier v Hastie*[[25]](#footnote-25)*.* The material facts of this case are about a cargo of corn that was in transit and being shipped from the Mediterranean to England. The corn was sold to a buyer by the owner of the corn in London. However, the contents of the cargo had perished and disposed prior to making the contract. The seller sought to enforce payment for the goods on the ground that the ground that the buyer had attained title to the goods and as such is believed to bore the risk of the damaged goods, lost or stolen. It was held by the court that the contract was void on the ground that the subject matter of the contract didn’t exist at the time the contract was made. Therefore, utmost good faith requires that all parties in a contract share the entire truth about the said contract, without hiding evening the slightest of elements related to the contract. *Carter v Boehm[[26]](#footnote-26)* is the *locus classicus* on utmost good faith in contract law, where Lord Mansfield established the duty of utmost good faith insurance contracts.

When a proposer for an insurance policy is based on a statement believed or known to be false, without believe in truth or reckless as to the true of false nature of the policy, the person is guilty of fraudulent misrepresentation. Where essential facts are concealed from the insurer which is known to influence the decision or whether or not go to into a contract, the insured is guilty of fraudulent non-disclosure. On the same note, for voiding the insurance contract on the basis of fraud, the insurer is entitled to obtain damages from the insured on the ground of fraud[[27]](#footnote-27).

In *Akpata & Anor v African Alliance Insurance Co Ltd[[28]](#footnote-28)*, a deceased insured, but didn’t not disclose to the insurer that he had previously insured with another insurer. The court held on the fatality of the claim that the contract was null and voice with the estate not entitled to any money from the defendant insurance. This was based on the fact that the proposal form required the deceased to disclose any other insurance, which was not disclosed, making the statement untrue and no sum can accrue to his beneficiaries form the policy. See also, *United Nigeria Insurance Co Ltd v Universal Commercial and industrial Co. Ltd[[29]](#footnote-29)*.

In order to minimize the risk of the insurers taking advantage of the insured and rescinding out of their duties to the insured on the ground of non-disclosure of facts pertaining to the policy which they consider subject to the whim and caprice, the Section 54 (1) of the Insurance Act 2003 provides that in the event an insured is required by an insurer to complete a proposal form or other application forms related to the insurance, the form should be completed in such a way that it elicits the information the insurer considered material in accepting the application for the risks in the insurance and information that isn’t specifically requested should be considered as not being material to the policy. In the Section 55 (1) of the same Act, further provisions were made that in the contract of insurance, a breach of term it is a condition or warranty should not give risk to any right by or afford a defence to the insured, unless the risk of loss insured against is relevant to the terms in the material.

However, it was opined by Tyagi and Tyagi[[30]](#footnote-30) that there are certain fact that don’t necessarily need to be disclosed in an insurance contract as:

1. Any fact reducing the associated risks or the facts that come to the knowledge of the insured after the contractual agreements has attached with legal force;
2. Any fact known or is assumed to be known by the insurer;
3. Any fact related to the law of a country or to the nature of the public knowledge;
4. And, any fact in relation to the information waved by the insurer.

Additionally, the principle of Uberrimae Fidei doesn’t apply to all classes of contract between an insurance company and a third party. Prior to being applied, the nature of the contract need to be looked into to ensure that it contains all the elements of an insurance contract as discussed above. To demonstrate this, the Nigerian case of University of Nigeria, *Nsukka v. Edwards W. Turner and Sons (W.A.) Ltd. and Anor[[31]](#footnote-31)*, featuring an agreement that was titled ‘Sink Fund Insurance’ where the insurance party was to receive the sum of 25,280 Pounds from the plaintiff on the agreement that the plaintiff would be credited with 3 million pounds in 50 years was held not to be an insurance contract, eliminating the requirement for utmost good faith.

* 1. **Subrogation right**

This principle is applied only in contracts of indemnity like marine and fire. The doctrine of subrogation is principally based on equity. It goes to say that when an insurer pays for the total loss incurred by the insured in the event of a loss, the insurer can take up all the legal rights and remedies of the insured over a third party in relation to the compensated loss. This principle is aimed at preventing the insured from being indemnified from two sources resulting from the same loss. Tyagi and Tyagi (2007)[[32]](#footnote-32) further cited Carins in the definition of subrogation as “the right inherent on a recognized principle of the law which stated that when a party has agreed to indemnify another, the party will, on making good the indemnity, be entitled to succeed all the ways and means by which the indemnified person might have protected himself against of reinforced himself for the loss.

In the case of *Castellain v Preston[[33]](#footnote-33)*, Brettt L, J, analyzed the principles of subrogation as: it should be applied mainly to ensure that the assured is prevented from obtaining more than a full indemnity, and the question is whether the doctrine when applied in insurance can be limited in any way. Thus, in order to apply the doctrine of subrogation, it does seem that the full and absolute meaning of the word should be utilized. This goes to say that the insurer must be put in the position of the insured. Thus, the right to subrogation is made to arise only after the insurer has indemnified the insured against his loss. In the case of *British India General Insurance Co. Ltd v Aihaji KaIla[[34]](#footnote-34),* it was held by the Supreme Court that the right of subrogation is made pending until the insure the insurer has admitted liability to the insured and made full payment amount to the loss incurred by the insured.

In the event that the insured has already recovered payment from the third party, and the agreement also indemnifies the insurer for the same loss, the insurer is empowered to recover what the insured had received from the third party. Demonstrating this with the case of *Oloruntunde v Dandodo[[35]](#footnote-35)*, it was held that an insured holds money in trust for the insurer, which has been recovered in an action for a loss for which the insured is indemnified by the insurers. However, the subrogation right of the insurer is restricted to the amount actually paid to the insure, and in the event that there be a surplus following recovering of money by the insurer from the third party, the insured has the right to retain the money. For clarity, see *Yorkshire Insurance Co v Nishet Shipping* *Co[[36]](#footnote-36)*.

An insurer’s right of subrogation arises only when the insured is empowered with right of action. In *Simpson v Thomson[[37]](#footnote-37),* two ships owned by the insured collided as a result of negligence from one of the masters. To compensate involved parties, the court mandated the insured to pay money into the court in respect of the ship of the negligently sailed ship to serve as compensation for the different parties involved. The insurer fully paid for the ship and then made claim to use the right of the insured’s name as owner of the ship to claim against the fund. The court held that the insured has not such right because it would amount to the insured suing himself since both ships belonged and were also being controlled by the same person.

Another case of indemnity that should be looked into is when the insurer has fully indemnified the insured and the insured received money from other sources with the intent of mitigating the effects of the loss, the insured is also held accountable to the insurers for the amount that has been received as gifts. This was demonstrated in *Steam v Village Main Reef Gold Mining Co[[38]](#footnote-38)*, where the South African Government Commandeered the Defendant’s uninsured Gold. The defendant was paid by the insurer for a total loss. A sum of money was returned by the government to the insured on the ground that the insured will keep the mine open. It was held that since the money was given in order to diminish losses for the insured, the insurers were entitled to recover the equivalent of the money given. This contrasts with *Bernand v Rodocanachi[[39]](#footnote-39)*, where an insured ship was destroyed by a confederate cruiser, during the American Civil War. The agreed value was paid by the insurers. The insured also paid the agreed value, and later received a gift from the Government. of the United States. The House of Lords held that in line with the constitution of the relevant statute partaking to the payment’s authorization, the money came in purely as a gift and it was donated with the intent of covering benefits for the assured over and above any insurance money. Therefore, the insurers were not entitled to claim the money. On this note, it is clear from the above that the insurer will only be able to retain the money that the insured received as a gift only when it has been donated with the intention of compensation for extra loss to the insured. In order to make sure that the insured is not placed in a position better than the one he was prior to the occurrence of the risks that were insured against, the *salvage rule* was developed as an aspect of the doctrine of subrogation. In the event that an insurer indemnifies the insured, all the salvage left of the insured properties are made to belong to the insurer on the ground that an indemnified insured cannot enjoy the benefits from the suffered risk if authorized to retain the salvage of the damaged property. Essentially, the insurer is empowered to sue in the name of the insured through the doctrine of subrogation.

The author further stated that the principle of subrogation is subject to these instances:

1. The right of the insurer is only valid when the loss made liable under the policy has been paid for.
2. The insurer is not entitled to the benefits from the things that have been recovered until the insurer has fully set the insured back in his former position prior to the occurrence of the loss.
3. Subrogation for the insurer is only for the rights and remedies availed to the insured with respect to the form of the contract upon which the loss was incurred.
   1. **Proximate cause**

This principle is pivotal in relation to losses that occur as a result of different strings of events. Simply put, this principle goes to say that in determining whether a loss could be tied to any of the risks it has been insured against, consideration should be based on the proximate or nearest cause. Tyagi and Tyagi (2007)[[40]](#footnote-40) further illustrated this with the case of a ship that was insured against collision, the ship eventually collided and a cargo containing oranges was mishandled with eventual outcome of delay in supply. Eventually, the oranges deteriorated with emergent damages. Based on this example, it can be deduced that the primary cause of the damages to the cargo wasn’t actually due to the collision; instead, it was because of the delay and mishandling that were not covered within the assigned policy. Therefore, it is not possible for the insured to recover the loss. A good example is the case of *Pink v. Fleming[[41]](#footnote-41)*, in which Justice Lord Fisher referred to *Taylor v. Dunba[[42]](#footnote-42)* and held that: it is well settled within the law of England that difference exist between the case of marine insurance and that of other liabilities. In the case of marine insurance, the liability of the underwriter is made dependent on the proximate cause of the loss. However, in the case of an action for damages on an ordinary contract, the defendant may be liable for damage, of which the breach can be considered or viewed an efficient cause or *causa causans*; but in the event that the action arises based on marine insurance, only the *causa proxima* can be considered[[43]](#footnote-43). This question can only be raised in events that have succession of causes, which must have occurred in order for the result to be produced. If such is the case, based on marine insurance, only the last cause should be considered and other rejected, although the results wouldn’t have been possible without them. In the above case, there was a collision and subsequent event of damages, which would not have happened without collision. However, the question is, whether the manhandling and deterioration experienced would have emanated from the collision alone?

* 1. **Indemnity**

The underlying concept of this principle is on making good the actual loss incurred by the insured. Asides from life assurance, personal accident and sickness insurance contracts, all other forms of insurance (like marine, fire, burglary, or any other kind of insurance contract) fall under contract of indemnity[[44]](#footnote-44). The principle of indemnity is based on the fact in the event loss, the assured should only be compensated with the actual total loss. However, if there is no event, the insured will have nothing to receive from the insurer, thus, his net premium will become part of the underwriter’s net profit. Based on the above explanation in relation to this principle, the insurer is said to undertake to indemnify the insured against a loss of the subject matter of insurance as detailed in the insured cause. However, in life assurance, the question of loss becomes invalid and as such indemnification cannot arise considering that the loss of life cannot be quantified in monetary terms[[45]](#footnote-45).

Basically, the principle of indemnity is designed to restore the insured to the former position and not to have the profit from insured loss conferred to the insured. Therefore, is the damage to the subject matter o the insurance policy is partial, the insured is only entitled to the cost of restoration or repair back to his former state. However, if the damage is total, the liability of the insurer becomes restricted to the sum that has been insured which represents the estimated value of the subject matter at the time the insurance contract became law. As held in *Esewe v Asiemo[[46]](#footnote-46)*, a contract of insurance is designed to indemnify the assured and not for the purpose of enriching the insured over and above what is considered necessary to help return the insured back to his original position before the event. The main nodes of indemnity are repair, cash payment, reinstatement and replacement.

In this context, the two types of indemnity are indemnity insurance and contingency insurance. For contingency insurance, the insurer is under obligation to pay a stipulated amount of money to the insured in the event of personal injury or death. Thus, the insured is actually the party to determine the amount of money that should be paid for such event at the formation stage of the contract. When it comes to indemnity insurance, as is the case for life insurance and marine insurance, established as a fundamental principle of law at the destruction of the subject matter; it is not possible for the insured to recover more than what was actually loss within the limit set in the insurance policy. Thus, in *Darell v Tribbitts[[47]](#footnote-47)*, a landlord who had received the sum of 750 Pounds from the tenant under a covenant for damages as caused by fire, was also paid by the insurance company for the repair of damages as contained in his insurance policy. The court empowered the insurer to recover the money that was paid to the landlord; or which their inability to recover the said money not only indemnifies the landlord, but also allow him to be paid twice over.

* 1. **Insurable interests**

Based on this principle, it is mandatory for the insured to possess insurable interest in the object being insured. Thus, insurable interest is a legal requirement that must be met in order for an insurance contract to become effective, and there is no other remedy for this. Thus, it can only be defined as the financial interest of the insured in relation to the subject matter of the contract. The main objective here is to prevent the insurance contract from actually becoming a probability (gambling) contract[[48]](#footnote-48).

The implication of this principle goes to say that in any contract of insurance is that the insured must established presence of an insurable interest in the subject matter of the contract; else, the contract becomes invalid. In the case of *Law Union and Rock Insurance of Nig. Ltd v Onuoha[[49]](#footnote-49)*, it was opined by Oguntade, J.C.A that, insurance interest is highly elastic and it isn’t always coterminous with the actual ownership, either partially or wholly, of the given goods as insured. It was held by the Judge that when a court has been called upon to determine whether or not a given claimant has an insurable interest the concerned property, the court will need to put into consideration the issue of whether the diminution or destruction of the value of the property would result to loss for the claimant. A person with foreseeable financial loss from an event is considered to have an insurable interest in the subject matter that is sought to be insured against the event. It is mandatory that the event either cast a legally binding liability on the assured or affect the right of the assured that is recognized and projected by law. Thus, insurable interest can be distilled in the form of a relationship whereby the insured may either financially benefit or suffer loss in the event that sought to be insured against takes place. It becomes impossible for a general formula to be given, one that would cover all the recognized forms of insurable interest.

In any case, when it comes to life insurance, the view is that an individual has an insurable interest in his or her own life for an unlimited amount. In line with the Section (2) of the Married Women’s Property Act, 1982, a husband is said to have an insurable interest in the life of his wife and the same goes for the wife in the life of the husband. See *Re Gladitz (1937)[[50]](#footnote-50)*. As demonstrated in *Griffiths v Fleming[[51]](#footnote-51)* where a husband and wife entered into an insurance contract with a company, indemnity emanating from the occurrence of even (death) is said to be payable to either surviving spouse. Both parties jointly paid the premium. At the death of the wife, the company was sued by the husband, and the court held that the husband was entitled to indemnity without the need to prove that he has any peculiarly interest on the life of his wife. Thus, only the person that maintains direct legal or equitable interest in the subject matter of an insurance policy can be classified as having an insurable interest. The contract is considered invalid and baseless in the absence of an insurable interest in the subject matter of insurance. On the same note, the insurance policy becomes incapable of enforcement. In the absence of an insurable interest the transaction is considered to be synonymous and speculative with gambling.

The capacity to raise absence of insurance interest in the event of defence to a claim falls within only the insurer. Therefore, in the case of *University of Nigeria, Nsukka v. Edwards W. Turner and Sons (W.A.) Ltd. and Anor[[52]](#footnote-52)*, in 1962, the plaintiff sought to invest in Sinking Fund Assurance Policy over the course of 50 years for an assured sum of 3 million pounds. Following payment of the first premium of 25,830 pounds, the insured made the discovery that the company had only paid capital of 25,000. Therefore, the insured brought legal action against the insurer on the subject of negligent or deliberate non-disclosure of material information that would have been helpful in excising whether or not the insured should take up the policy. The claim was for damages as well as refund of the premium that have been paid at the moment of bringing the legal action. The court held that the agreement established by the parties is not one that entails contract of insurance that requires utmost good faith, considering that there is no insurable interest from the part of the insured. Thus, this action failed. From the angle of the common law, a parent is said to have no insurable interest as it partakes to the life of his or her child, except in the case of the claim coming from legal pecuniary loss that will be incurred in the event of the death of the child. On the same note, a child is said to have no insurable interest as it partakes to the life of his or her parents except is the child is getting material support from the parents. *Howard v Refuge Friendly Society[[53]](#footnote-53)* provides a good reference for the above statements. In any case, the above position seems to have been drastically changed by the Nigerian insurance Act. As provided in the Section 56 (2) of the Insurance Act, a person can be deemed to have an insurable interest in the life of another person where one is standing in any legal relationship to that person, or the event in which benefits might consequentially arise from the safety of that person or event, or be prejudiced by death of the said person or loss that could arise from the occurrence of the event. Therefore, under this section, legal relationship is said to include the relationship that has been created (or already existing) between persons under Islamic law or customary law in which one person is known to assume the responsibility of care and maintenance to the other person.

Therefore, it is made clear from the above authorities that an insurance interest does exist in the event that a person has equitable or direct legal interest. Consequentially, in the case of *Macaura v Northern Assurance Co[[54]](#footnote-54)*, the shareholders of a company were held to have an insurable interest in the company’s debtors.

On the question of, what time must insurable interest exist? Whether it should be at the time of entering into the contract or at the time of the maturity of the policy? The answer to this question is that it depends on the nature of the contract, and the material fact surrounding the case. When it comes to life insurance, the insurable interest must exist at the time when the contract became binding, and it is inconsequential whether or not the interest existed at the time of the maturity of the policy or at the time of death. This was demonstrated in the case of *Dalby v Indian and London Life Assurance Co[[55]](#footnote-55)*. However, if the contract was for fire insurance or accident, the norm is that the insured should be able to establish insurable interest on the destroyed object not only at the time the contract became binding but also at the time the incident (or loss) occurred. Section (5) of the Marine Act makes the provision that the insurable interest must exist at the time of the loss, and this goes to say that insurable interest might not even exist at the time the contract was entered into.

* 1. **Attachment of Risk**

In the absence of an attachment of risk to a policy, the contract doesn’t exist and as such, the contract will fail for any case consideration and the insurance company must return the premium collected. Thus, it is mandatory for every insurance policy to be based on uncertainty about associated financial loss, as it has been established that the main idea behind insurance is risk.

* 1. **Cancellation**

The parties involved in an insurance policy exercise the right to terminate the policy before it expires. From the date of cancellation, the insurer ceases to carry the weight of the insured risks, thus, the insurer is obliged to return the collected premium from the insured.

* 1. **Mitigation of Loss**

It is explained in this principle that in the event of loss insured against, the policy holder has the responsibility of minimizing loss and saving whatever is left. The implication is that the incurred should be more careful when it comes to the property under cover. It is expected that the insured should act as if the property is not insured. For instance, a person that insured his house against fire and the insured house accidently caught fire should act as if there is no insurance covering the house. At the event, the person is expected to wear the shoe of an ordinary prudent man. Thus, it is expected that the person shouldn’t just stand and wait for the fire to extinguish on its own, instead, the person should call the fire brigade and alert neighbours to help get rid of the fire without delay[[56]](#footnote-56).

1. **STATUTORY INTERVENTIONS FOR INSURANCE PRINCIPLES IN NIGERIAN INSURANCE ACT 2003**
   1. **Utmost good faith**

The Part IX – Disclosure, Condition and Warranty, details principle as to *Uberimae, Fidei*. As provided in the Section 54(1), binding on the insured,

Where an insurer requires an insured to complete a proposal form or any other kind of application form for the purpose of insurance, it is mandated that such form be drawn up in such a way as to elicit such information as the insurer considers material in accepting the application for insurance of the risk and any information that is not specifically requested in the form should be considered non-material for the said purpose[[57]](#footnote-57).

In sub-Section (2) under the same section, binding on the insurer,

The insurer should ensure that the proposal form or other application form for insurance is printed in an easy to read letter, and such form should also state, as a note in the conspicuous place on the front page, that “An insurance agent who assists an applicant to complete an application or proposal form for insurance shall be deemed to have done so as the agent of the applicant[[58]](#footnote-58)”.

Furthermore, in sub-Section (3),

A disclosure or representation made by the insured to the insurance agent shall be deemed to be a disclosure or representation to the insured in as much as the agent is acting on the authority of the insurer[[59]](#footnote-59). And in sub-Section (4), the expression “insured” includes an applicant for insurance.

Essentially, this Section intervened in the principle of utmost good faith, clearly stating that validity of insurance depends on the parties involved providing materials facts in their right and true order in order for the other party to better decide whether or not to agree with the terms or go into the insurance contract. Therefore, misrepresentation of any material fact by any of the parties, which is deemed necessary for decision making, will amount to invalid contract and argument in relation to such contract will fail at the Court.

* + 1. *Exceptions to the Principle of Utmost Good Faith*

The Section 55 provides for exceptions as to actions on the ground of utmost good faith, stating that only breach of material and relevant terms should give rise to a right as contained in the following subsections:

55(1) – in an insurance contract, a breach of term be it a warranty or conditions, shall not give rise to any right by or afford a defence to the insured except the term is relevant and material to the insured risk or loss insured against[[60]](#footnote-60).

(2) – no matter the provision available in any other written law or enactment that might be contrary to that in this Act, where there is a “breach of a term of a contract of insurance, the insured shall not be entitled to repudiate the whole or any part of the contract or a claim brought on the ground of the breach with the exception of:

(2)(a) – the breach is fraudulent; or (2)(b) – fundamental terms of the contract is breached[[61]](#footnote-61).

Based on this exception, a breach (in terms of misrepresentation) doesn’t void the insurance contract except if such breach is on relevant or material terms of the contract. Additionally, no law can grant an insurer the right to repudiate the insurance contract, even in breach, except if such breach was on the ground of fraudulent information or fundamental terms of the contract.

Essentially, it is argued in this research that while the principle of utmost good faith is well covered in the Insurance Act, and can be used as a ground for rise to right or defence, minor issues that don’t abridge the fundamental terms or relevant materials of the contract cannot be used as an argument for ***uberimae fidei.*** Any argument on this principle will need to be supported by breach in material or relevant information, fraudulent misrepresentation, and / or breach of the fundamental terms of the insurance contract, else, such argument stands to fail in the Court.

* 1. **Subrogation right**

Under the Insurance Act 2003, there is no clear definition or note as to subrogation rights of the insurer. Thus, this is one of the limitations of the Act, considering that the Act is supreme against other Acts when it comes to insurance.

* 1. **Proximate cause**

In the Act, no provision is made as to determining the proximate or nearest cause of an event in insurance contract. Instead, the Act empowers the Court, through the Police, to determine such in each case presented before it. Essentially, as to how the Court determines the proximate cause is subject to interpretation.

* 1. **Indemnity**

The insured should only be compensated with the actual total loss but if there is not event, the insured’s premium becomes part of the insurer’s net profit.

55 (3) – in the event of a breach in the material terms of a contract of insurance and the insured makes claim against the insured, and the insurer isn’t entitled to repudiate the entire or any part of the insurance contract, the insurer shall be liable to indemnify the insured only to the extent of the loss that the insured should have suffered if there was no breach of the term[[62]](#footnote-62).

In Section 58 – limitation on amount receivable by person with insurable interest -, it was made known that subject to the provisions of any other written law or enactment, where a person has an insurable interest in the life or event of an insured, he shall not be entitled to receive from the insurer an amount that is greater than that of the value of the interest insured by the person for such life or event[[63]](#footnote-63).

Based on Sections above, there exist clear definitions as to indemnity in the Nigerian statutory framework. As provided in the Insurance Act, the insured cannot access more than the value of event insured (or sum of money). This provides an air of security for the insurer which goes into business to buy and secure other people’s risks.

* + 1. **Exception to the principle of indemnity**

In accordance with the Section 59, the Section 58 will not apply in the insurance of ships and carriage of goods by sea[[64]](#footnote-64).

Essentially, when it comes to Marine Insurance (insurance of ships and carriage of goods by sea), the insurer might actually pay more than the value of what has been insured to the party insured. However, the determination of this value is still blurred by the absence of clear definition of proximate cause in the Insurance Act, 2003

* 1. **Insurable interest**

Provisions as to the principle of insurable interest are contained in the Section 56, as contained under Part X – no insurance can be made on lives, without insurable interest.

56(1) – a policy of insurance that has been made by a person on the life of any other person or any other events that such might ever be, shall be null and void in the case that the person for whose benefit, or on whose account the insurance policy was made has no insurable interest in the policy of insurance, or if such policy was made by way of wagering or gaming[[65]](#footnote-65).

(2) – a person shall be considered to have an insurable interest in the life of any other person, or any other event, if the person is in any legal relationship with the person or event of which the person stands to benefit through the safety or the person or event or be prejudiced by the death of that person or insure loss through the occurrence of the event[[66]](#footnote-66).

In this case, insurable interest is paramount to the validity of an insurance contract, in the case of a life insurance business. Additionally, the interest should be from someone that has legal relationship with the insured person or event, else, such insurance contract is considered null and void.

* + 1. *Exceptions to the Principle of Insurable Interest*

In the section 57, provision is made that no policy on lives can stand without inserting the names of the persons interested, as detailed below.

57(1) – a policy of insurance shall not be made on the life or a person or any event if the name of the person interested in it, or those whose benefits or on whose account the policy was made is inserted in the policy[[67]](#footnote-67).

(2) – the provision of subsection (1) of this section shall not invalidate a policy that was made for the benefit of unnamed persons from time to time, which fails within a specific description or class in the event that the description or class is stated in the policy with sufficient particularity to make it possible for the person’s identity to be established at any point in time or entitled to benefit under the policy[[68]](#footnote-68).

Therefore, the principle of insurable interest is only coverable under the Act when the insured with an interest can be identified through name or any other description that would make identification possible at any given point in time.

An assignee of life policies may sue under his own name (Section 60), but in Section 60(b), such an assignee shall not have a better title than the insured. Even if the assignee decides to sue, Section 61 provides that:

61(1) – no assignment of a policy of life insurance shall confer on the assignee or his personal representative any right to sue for the amount of the policy or the insured money, except in the case that a written notice of the date and purport of the assignment is given to the liable insurer under the policy at his principal address of business[[69]](#footnote-69).

61(2) – the date the insurer received the notice will regulate priority of all claims under the assignment[[70]](#footnote-70).

The process for making the assignment is provided in Section (62) while Section (63) makes provisions for notice of assigned to be acknowledged. Therefore, why there should be an insurable interest, the assignee does not have better title than the insured, and the assignee cannot sue the insurer without prior notice at the insurer’s principal business address. Priority if claims will also depend on the date the notice was received.

* 1. **Attachment of Risk**

In the Insurance Act, 2003, provisions for attachment of risk are featured more in the insurance of property. Therefore, Section (64) covers for insurance of building under construction as detailed below:

64(1) – no person shall construct any building with more than two floors without insuring such building with a registered insurer for liability as it relates to the risk caused by negligence, or the negligence of the servants, agents or consultants; which can result to bodily image or loss of life to or damage to properties of any workman on the site or any member of the public[[71]](#footnote-71).

65(1) – every public building shall also be insured with a registered insurer against the hazards of collapse, earthquake, fire, flood or storm[[72]](#footnote-72).

Further provisions on risks are contained in the Sections 67 and 68 of the Insurance Act. Therefore, under the Nigerian Statutory Framework, an insurable event or individual must have an attached risk of event that will occur before payment of insurance cover. While this is pinpointed to the case of construction, it can, and has actually been, interpreted to cover for all forms of insurance as what the insured is paying for is a projected risk that might occur within a given period of time. For instance, in the event of death, it is the risk of not being able to provide for his or her family, ensuring overall sustenance of the family when he or she is no more.

* + 1. *Exception to the principle of attachment of risk*

Section 66(3) provides that such money or compensation payable shall not be more than the insured sum. This is the only exception to the attachment of risk, as there is no limitation to the nature, form or value of risk that an insurer can decide to insure.

* 1. **Cancellation**

Before expiration of the policy, parties involved can terminate it. On the ground of breach of contract of insurance, it is provided in the Section 55 (4) that: **nothing in this section shall prevent the insurer from repudiating a contract of insurance on the ground of a breach of a material term prior to the occurrence of risk or loss insured against.**

Essentially, cancellation is properly covered under the Nigerian Insurance Act. This allows any of the party involved to cancel the insurance contract; however, the insurer must do so before the occurrence of the event.

* + 1. *Exception to the principle of cancellation*

The only exception to cancellation is bound on the insurer, prohibiting the insurer to cancel the contract of insurance once the event has occurred. Therefore, the insurer is under liability to cover for all occurred events, in as much as the insured has paid for premiums as agreed.

* 1. **Mitigation of Loss**

The Act made no provision as to the responsibility of the insured, in the occurrence of an event, to mitigate the loss the insurable loss. However, this might be made applicable based on the precedence in other related cases – especially as the Nigerian Law is highly borrowed from the British Common Law.

1. **CONCLUSION**

The practice of insurance law in Nigeria has its root in the common law, which is a term used in different sense. The traces of the common law in the Nigerian insurance legislation is based on the fact that Nigeria was once a colony under British rule, therefore, rules made by the British were made to apply in Nigeria – including insurance relates laws. Following Nigeria’s independence in 1960, the existing laws, including such enactments, were preserved and protected by the section 3(1) of the Nigerian (Constitution) Order-in-Council 1960, as if these laws were made pursuant to the said Order. The 1963 Constitution repelled the Nigerian Independence Act 1960 and the Nigerian

In line with these objectives, the principles of insurance were discussed comprehensively and applied to the Nigerian jurisdiction. The first is utmost good faith (uberimae Fidei) and this principles deal on the need for contracts o insurance to be based on utmost good faith. All parties in insurance contract are mandated to disclose ll materials facts that will allow other parties to reach an informed decision, and their inability to make sure disclosures can void an insurance contract. The second principle is subrogation right, which is applied in the contract of indemnity such as life and marine. This doctrine states that when an insurer pays for the total loss incurred by the insured in the event of a loss, the insurer can take up all the legal rights and remedies of the insured over a third party in relation to the compensated loss. Thirdly, proximate cause is an insurance principle, which states that in determining whether a loss could be tied to any of the risks it has been insured against, consideration should be based on the proximate or nearest cause. Therefore, the insured has an obligation to limit damages of an insured event or phenomenon. Indemnity is the fourth principle reviewed in this research, and the underlying principle is on making good the actual loss incurred by the insured. Thus, an insured cannot make claim for compensation that is above the value of event insured. The principle of insurable interest was also considered, and it goes to say that: making good the actual loss incurred by the insured. The sixth principle considered is attachment of risk, which makes it mandatory for every insurance policy to be based on uncertainty about associated financial loss, as it has been established that the main idea behind insurance is risk. The principle of cancellation states that parties involved in an insurance contract have power to terminate the policy before it expires. The final principle considered is the principle of mitigation of loss, which states that in the event of loss insured against, the policy holder has the responsibility of minimizing loss and saving whatever is left.

The above principle were assessed in relation to the Nigerian jurisprudence. In the Insurance Act, 2003, which is the foundation of all insurance related statutes in the Nigerian jurisprudence, provisions are made as it relates to insurance principles. First, the principle of utmost good faith is covered in the Section 54(1-3) of the Act, stating that the validity of any insurance contract is dependent on the involved parties providing material facts in their true and right order to ensure that no patty in the contract agrees to any of the terms as a result of false information. However, there is an exception to the application of this principle as provided in the Section 55 of the Insurance Act, 2003. A breach in uberimea fidei (as a result of misrepresentation) doesn’t invalidate the insurance constant except in cases where such breach is considered relevant or material term to the contract. On the same note, no law in the Nigerian jurisprudence can grant an insurer the right to repudiate an insurance contract, even in the case of breach, except in cases where such breach occurred as a result of fraudulent information or affected the fundamental terms of the contract. Therefore, even with this legal protection, parties in contract within insurance cases are still left at the mercy of the judiciary in terms of how they interpret information considered to be fundamental materials of terms of a contract.

On the ground of indemnity, Section 55(3) and Section 58 defined a s well as covered elements considered to fall within indemnity. Under these sections, the insured is prohibited from claiming more than the value of the event insured. This does give the insurer security to buy and secure people’s risks. However, there is an exception to this as contained in the Section (59) of the Insurance Act, 2003, stating that this doesn’t apply in Marine Insurance (insurance of ships and carriage of goods by sea), as the insurer might be made to pay more than the value of the insured event. The absence of a clear definition of proximate cause also in the said Act also blurs this principle and its exceptions.

The Section 56 covers the insurable interest, stating that insurable interest is paramount to the validity of an insurance contract, when it insurance covers life. On the same note, the intent should come from someone that has legal relationship with the person or event being covered by the insurance, the absence of which, such an insurance contract will be considered null and void. The Sections 57(1-2) and Section 61(1), stating that the insured should be identifiable with a name or description (at any point such identification is needed). While legal relationship might be considered somewhat easier to identify, there is also the challenge of identifying the person covered under insurance based on name or other descriptions.

On the attachment of risk, the Sections 64(1) and 65(1) provide that there should be an attachment that a given risk will occur before the person should pay the insurance cover. Section 66(3) provides the exception, stating that the money or compensation payable, following the occurrence of the insured risk, should not be more than the value of the risk (or event) insured against. Therefore, the challenge here is with respect to determining the value of risks in some cases.

The principle of cancellation is defined in the Section 55(4) of the Insurance Act, 2003, providing that any of the party in the insurance contract can actually cancel the insurance contract. However, if the party is the insurer, the cancellation should occur before the insured pays the first premium. Considering this provision, the main challenge arises as to what security does the insurer have in relation to cover for expenses insured in drafting the insurance process upon cancellation by the insured?

There is no law within the Nigerian jurisprudence that defined subrogation right, proximate cause, and mitigation of loss were completely left out in the Insurance Act, 2003. Therefore, the main question here is, how will the judiciary system interpret cases that fall within these principles? Even in the case of the principles covered, definitions are not clear and it limits overall interpretation.

1. **RECOMMENDATION**

It is recommended that, there is a need for the Insurance Act, 2003, to be amended in order to cover for the omitted principles, as well as broadly define the principles already covered in the Act. This is based on the fact that the insurance sector is steadily growing and it is expected that insurance will soon become pivotal in daily activities of Nigerians. On the same note, the business environment is witnessing increases changes, especially due to globalization and advanced competitions. Therefore, it is important to ensure that parties in insurance business are properly protected. Considering that the existing Act, Insurance Act of 2003, already covers some of the principles, there is no need to enact new Act and it is concluded that the best measure would be to amend the existing ones.

In relation to further related studies, it is recommended that the legislative process, with respect to amending the Insurance Act of 2003, should be reviewed. This will help to properly highlight areas that need amendment and how they should be mended to provide better protection for parties in insurance within the Nigerian jurisdiction.

1. Williams, Granville *Learning the Law* (London: Stevens and Sons, 1982) p. 25. [↑](#footnote-ref-1)
2. Ezejiofor, G. “Sources of Nigeria Law” in Okonkwo (ed.) Introduction to Nigerian Law (London: Sweet & Maxwell, 1980) p. 3. [↑](#footnote-ref-2)
3. Ezejiofor, *op.cit* p. 3. [↑](#footnote-ref-3)
4. Sir Henry Jenkyns, *British Rule and Jurisdiction Beyond the Seas* (1902) p. 165. Cited in Nwabueze, B. O. A. *Constitutional History of Nigeria* (London: Longman) p. 11. [↑](#footnote-ref-4)
5. See the Foreign Jurisdiction Act 1834 and 1890. [↑](#footnote-ref-5)
6. *Ibadapo v Lufthansa Airline* [1997] 4 NWLR (pt 498) 124 [↑](#footnote-ref-6)
7. Ezejiofor, *op.cit* p. 2. [↑](#footnote-ref-7)
8. [1997] 4 NWLR (pt 498) 124 [↑](#footnote-ref-8)
9. [1997] 4 NWLR (pt 498) 124 [↑](#footnote-ref-9)
10. Federal Territory – Law (Miscellaneous Provisions) Act 1964, S. 23 (originally known as Interpretation Act Cap. 89 S. 28); Eastern Nigeria - High Court Law Cap. 60 S. 3; Western Nigeria – Law of England (Application) Law, Cap. 60 S. 3, Western Nigeria Laws, 1959; Northern Nigeria – High Court Law, Cap 49, N. N. L. 1963, ss. 28, 29 and 35. [↑](#footnote-ref-10)
11. Later re-enacted as S. 32 of the Interpretation Act Cap. 192 Laws of the Federation 1990. [↑](#footnote-ref-11)
12. The High Court Law, Cap 49, Northern Nigeria Law 1963, ss. 28, 29 and 35 mentioned the received common law and equity as “the common law” and “the doctrine of equity”. The Eastern Nigeria High Court Law Cap. 61 (E.N.L. 1963) s. 15 mentioned simply “the doctrine of equity”. [↑](#footnote-ref-12)
13. EfinAUKAid, “Microfinance assessment and landscape study in Nigeria: supply-side perspective”. (December 2018) < <https://www.efina.org.ng/wp-content/uploads/2019/02/Microinsurance-Assessment-and-Landscape-Study-in-Nigeria-Supply-Side-Perspectives.pdf>> accessed 02 February 2021. [↑](#footnote-ref-13)
14. J. O. Irukwu, *Insurance Law and Practcie in Nigeria,* (Ibadan “1 Edn” 1991), I. [↑](#footnote-ref-14)
15. Above [14] [↑](#footnote-ref-15)
16. By the Motor Vehicle (Third Party Insurance) Act of 1945 [↑](#footnote-ref-16)
17. E. J. Vaughan, (et al.), *Fundamentals of Risk and Insurance*, (Singapore, John Wiley and sons Asia Pte. Ltd’ 9 Edn’ 2003), 33-34. [↑](#footnote-ref-17)
18. Now Cap 117, LFN, 2004. [↑](#footnote-ref-18)
19. Above [17] [↑](#footnote-ref-19)
20. Unreported., (1929) 2 K.B 356 [↑](#footnote-ref-20)
21. Unreported, Suit No SC. 583/1964 [↑](#footnote-ref-21)
22. Tyagi, C., L. & Tyagi, M: Insurance Law and Practice (Atlantic Publishers and Distributors 2007) [↑](#footnote-ref-22)
23. Above (34) [↑](#footnote-ref-23)
24. Above (34) [↑](#footnote-ref-24)
25. (1856) 5 HLC 673 [↑](#footnote-ref-25)
26. (1766) 3 Burr 1905 [↑](#footnote-ref-26)
27. Shamsi Ubale Jibril, Ishaq Abubakar Baba & Abdulkarim Kabiru Maude, ‘Critical Analysis of Fundamental Principles of Insurance under the Nigerian Law’ (2018) International Journal of Advanced Academic Research, Vol. 4, Issue. [↑](#footnote-ref-27)
28. Unreported suit No LD/340/67 [↑](#footnote-ref-28)
29. (1999) 3 NWLR (PT 593) [↑](#footnote-ref-29)
30. Above (34) [↑](#footnote-ref-30)
31. (1965) L.L.R 33 [↑](#footnote-ref-31)
32. Above (34) [↑](#footnote-ref-32)
33. (1883) 11QBD 380 [↑](#footnote-ref-33)
34. (1965) All NLR p 251 [↑](#footnote-ref-34)
35. (1996) NWLR 117, p. 45. [↑](#footnote-ref-35)
36. (1962) 2QB 330. [↑](#footnote-ref-36)
37. (1877) 3 App. Cas at 294 [↑](#footnote-ref-37)
38. (1905) 10 Corn. Cas 89, [↑](#footnote-ref-38)
39. (1882) 7 App. Cas 333 [↑](#footnote-ref-39)
40. Above (34) [↑](#footnote-ref-40)
41. (1890) 25 Q.B.D. 396 [↑](#footnote-ref-41)
42. [LR 4 C.P. 206] [↑](#footnote-ref-42)
43. Dullbonline, ‘Pink V. Fleming (1890) 25 Q.B.D. 396’ (11 February 2021) < <https://dullbonline.wordpress.com/2017/08/31/pink-v-fleming-1890-25-q-b-d-396/>> [↑](#footnote-ref-43)
44. Above (34) [↑](#footnote-ref-44)
45. Above (34) [↑](#footnote-ref-45)
46. (1975) NCLR 433 [↑](#footnote-ref-46)
47. (1880) 5 Q.B 560 [↑](#footnote-ref-47)
48. Above (20) [↑](#footnote-ref-48)
49. (1998) 6 NWLR (PT 555) p.576 [↑](#footnote-ref-49)
50. (1937) 1 Ch. 588 [↑](#footnote-ref-50)
51. (1909) 1K.B. 805 [↑](#footnote-ref-51)
52. (1965) L.L.R 33, [↑](#footnote-ref-52)
53. ( 1886) 54 L.T 644 [↑](#footnote-ref-53)
54. (1925) A.C 619 [↑](#footnote-ref-54)
55. (1854) 15 C.B 365 [↑](#footnote-ref-55)
56. Above (20) [↑](#footnote-ref-56)
57. Above [75] [↑](#footnote-ref-57)
58. Above [75] [↑](#footnote-ref-58)
59. Above [75] [↑](#footnote-ref-59)
60. Above [75] [↑](#footnote-ref-60)
61. Above [75] [↑](#footnote-ref-61)
62. Above [75] [↑](#footnote-ref-62)
63. Above [75] [↑](#footnote-ref-63)
64. Above [75] [↑](#footnote-ref-64)
65. Above [75] [↑](#footnote-ref-65)
66. Above [75] [↑](#footnote-ref-66)
67. Above [75] [↑](#footnote-ref-67)
68. Above [75] [↑](#footnote-ref-68)
69. Above [75] [↑](#footnote-ref-69)
70. Above [75] [↑](#footnote-ref-70)
71. Above [75] [↑](#footnote-ref-71)
72. Above [75] [↑](#footnote-ref-72)