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CONCEPT AND ESSENCE OF INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW

BY

DR. JIMMY O. CHIJOKE, LL.M, PH.D, BL. FCIA
 FORMER DIRECTOR OF STUDIES AND HEAD
 LEGISLATIVE STUDIES DEPARTMENT
 ADMINISTRATIVE STAFF COLLEGE OF NIGERIA,
 TOPO – BADAGRY, LAGOS

NOW SENIOR LECTURER AND HEAD
 DEPARTMENT OF JURISPRUDENCE AND
 INTERNATIONAL LAW,
 FACULTY OF LAW,
 KOGI STATE UNIVERSITY,
 ANYIGBA

drunkenness. Finally, recommendations were made as the way forward.

REFERENCES:

- Abumere, P (1998) *Anatomy of Criminology*, Ekpoma; Inno Press
- Aigbiremolen, F.O. (1995) *Management Guide for Police Officer*, Ekpoma: Odion Foundation.
- Ewoh, U.R. (2000) *Introduction to Criminal Investigation*, Port Harcourt: Minson (Nig) Ltd. Gledon (2001)
- Odekunle, F. Overview of Policing in Nigeria: Problems and Suggestions in *National Summit on Crime and Policing in Nigeria*: Abuja. NPF.
- Odinkalu, C.A. (2004) When did the police become your friend? *Changing Roles of Civil Society in promoting safety in Nigeria*.
- Osborn's Concise Law Dictionary (8th ed) London: Leslie Rutherford & Sheila Bone.
- Ogunye, J. (2001) *Students Unionism and Human Right violation*, Lagos: Frankard Publishers
- Ogbu, O.N (2005) The African Chapter on Human and People Rights as compatible with Despotism: The Nigerian experience in *University of Benin Law Journal* Benin: Faculty of Law Uniben.
- Ransome-Kuti v AG Federation (1985) 2 NWLR (Part 6) 211, 230.
- State vs. Shaw 50 A 863, 73 Vt. 149.

MAGAZINES

- Newswatch Magazine August 15, 2005 P. 20 – 21.
- Daily Sun, Monday, July 25, 2005 P. 5.
- Saturday Independent, July 9, 2005.
- The Nation, June 10, 2008
- Vanguard, Tuesday, 4th October 2000.
- Vanguard, Friday, July 22, 2005.
- 1979 Constitution

THE TEMPORAL ORDER RULE OF PRIORITY AND THE BONAFIDE PURCHASER OF LEGAL ESTATE IN NIGERIA

BY
O.S. AFOLABI*

Introduction

Circumstances may arise when two or more persons will be laying claim to a given property having derived their individual interests at different time from the person who previously owned the property in question. The issue to be resolved in such circumstances is how to determine whose interests among the rival claimants would first be recognized and enforced.

The problem might be easy to resolve where all the competing interests could be settled from the total value of the given property. The situation however, could become complicated where the various competing interests cannot be satisfied by the total value of the property that is subject to these interests.¹

In order to resolve this logjam, equity has come in aid through the maxim that provides that "when there are two competing equities, the first in time is stronger in law" qui prior est tempore portior est jure² This is commonly referred to as the "Temporal order Rule".³ Adeoye & Ogunniran³, explains the need for a rule of this nature as follows:

"..... The necessity for a clearly defined and well settled order of priority stems from the fact that most species of property are

* LL.B (Hons), B.L. LL.M., MBA, Lecturer, Private and Property Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria.

¹ M.I. Jegede, *Principles of Equity* Ethiope (1981) p. 43.

² See *Barklays Bank Ltd. Vs. Bird* (1954) Ch. 274 – 280.

³ Chijoke Ikpo, *Issues and Principles in Equity*, Dimatis Objective Press Ltd. 2003 p. 21.

³ F.O. Adeoye & Hakeem Ogunniran, *Priority of Interests under the Land Use Act*; Business & property law vol. 2 No. 10 p. 23.

incapable of accommodating two or more interests concurrently..."⁴

As straightforward as the Temporal order rule appear to be, it is not in all cases of competing interests that the first in time to purchase a property would take priority over other subsequent interests. There are occasions where the interest of a subsequent buyer will take priority over that of a prior buyer. This is where the doctrine of Bonafide Purchaser of the legal estate for value without notice evolved.

This paper therefore examines the temporal order rule of priority in determining priority of competing interests in a given property. In discussing this, reference will be made to the application of the rule to transactions under Native law, Land Use Act and Islamic law.

The second part of this paper shall examine the effect of the doctrine of Bonafide purchaser of the legal estate for value on the Temporal order rule. We will then make a strong case for a clearly defined and well settled order of priority.

Temporal Order Rule of Priority

The rule established that the first in time is stronger in law; *qui prior est tempore, potior est jure*⁵. The rule which is an equitable creation provide that where there are two competing equities and both of them are meritorious in the eye of equity, the first in time would prevail⁶. However, in order for the rule to apply, the first equitable encumbrancer must not be guilty of misconduct which would make him lose priority to a subsequent equitable encumbrancer⁷. In *Rice V. Rice*⁸ a conveyance on which a receipt clause for the purchase price was endorsed was

handed over to the purchaser without the vendor actually receiving the purchase money. The vendor therefore had an equitable lien for the unpaid purchase money. Subsequently the purchaser deposited the conveyance with Y who had no notice of the vendor's equitable lien. The question for determination was who of the two was entitled to priority. It was held that Y had priority over the vendor, that though the vendor's equity was earlier on point of time, nevertheless, the equities were not equal since the vendor's conduct had facilitated the creation of the later equity.

The rationale for the above decision is also rooted in the equitable maxim, which provides that "He who comes to equity must come with clean hands"⁹. Since the temporal order rule is an equitable rule which is now recognised by law, a prior equitable encumbrancer relying on the rule to claim priority over a subsequent equitable interest must show that his past record in the transaction is clean, for he who has committed iniquity shall not have mercy¹⁰. Where the competing interests relate to successive assignments in pure personality, the temporal order rule might not automatically apply. The applicable rule in such circumstance was laid down in *Dearle V. Hall*¹¹; "in which case priority is determined not by the order in which the assignments were created but by the order in which the successive assignees gave notice of their assignments to the debtor, trustee or other person liable to pay"¹².

In other words, priority in this case will depend upon the order in which notice of the dealings was received by the persons entitled to receive it but if notice is received

⁴ Ibid.

⁵ *Backlay Bank Ltd V. Bird* (Supra)

⁶ *Cave V. Cave* (1881) 13 Ch. D 639.

⁷ J.O. Fabumi, *Equity and Trust in Nigeria*, University of Ife Press Ltd, Ile Ife (1986) Pg. 66

⁸ 1853 2 Drew 73

⁹ Gilbert Kodibaiye: *An Introduction to Equity in Nigeria*, London Sweet & Maxwell 1975 pg. 16.

¹⁰ Per Field J. in *Re Mengham* (1885) 14 QBD 956 at Q 58.

¹¹ (1823) 3 Russ 1.

¹² See, generally Snel, *principles of Equity*, 12th Ed. Pg. 532 - 542. This position was adopted by G. Kodinhinye, *An introduction to Equity in Nigeria* and J.O. Fabumi in *Equity & Trusts in Nigeria* respectively.

substantially simultaneously, priority will depend upon the order in which the interests were created¹³.

Temporal Order Rule and Transactions Governed by Native Law and Custom in Nigeria

Transactions under Native law are not required to be in writing and consequently registration of title to land is unnecessary. It is well settled that payment of purchase price and delivery of possession are sufficient to effect a valid sale and a valid title by native law and custom. Customary law requires that in addition to paying the purchase price and obtaining a purchase receipt, the purchase or sale transaction should be concluded in the presence of witnesses who also "witnessed the actual handing over or symbolic delivery of the land bought by the purchaser"¹⁴.

In *Osagie vs. Alhaji Oyeyinka & Anor*,¹⁵ (1988) 2NWLR (Pt. 79) 632, See also *Taiwo V. Ogunwanya* (1976) NMLR 375 *Akingbade v. Elemosho* the supreme court held that where land is sold and a purchase receipt issued, the purchaser possesses in the land an equitable interest which could be enforced by an action for specific performance to compel the vendor to execute a formal conveyance.

Also, in *Registered Trustees of the Apostolic Faith Mission and another v. James and Another*,¹⁶ the Supreme Court held that:

"where a purchaser of land is in possession of the land by virtue of a registrable instrument which has not been registered and has paid the purchase money to the vendor, then the purchaser has acquired an equitable interest in the land which is as

¹³ Ibid.

¹⁴ Chief Okonkwo and Anor Vs. Dr. Okolo (1988) 2NWLR (Pt. 79) 632, See also *Taiwo v. Ogunwanya* (1976) NMLR 375 *Akingbade v. Elemosho* (1964) 1 ALL NLR 154.

¹⁵ (1977) 3NWLR (Pt. 59) 344.

¹⁶ (1987) 3 NWLR (Pt. 66) 556

good as a legal estate and this equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity¹⁷.

Generally, if a party received title to land under native law and custom and there is proof or evidence that money was paid for the land coupled with an entry into possession it will be sufficient even to defeat the title of a subsequent purchaser of the legal estate if the possession is continuously maintained¹⁸.

The implication of the decision *Emawworthe Etajata, Vs. Peter Igbim Ologbo & Ors*¹⁸ and other cases is that the order in which interests are created under Native law and custom determines the priority of competing interests.

It does not matter under Native law & Custom that the first interest to be created is equitable as long as the holder of equitable interest can proof that money was paid coupled with entry into possession and that continuous possession is maintained¹⁹.

Temporal Order Rule and Transactions Governed by Islamic Law

Land among the Muslims is regarded as public property (Melk-Al-Ahina). The use of it is free to every person as long as it does not cause prejudice to the public²⁰. The general principle underlying the Moslem land is that land is a gift of God (Allah)

¹⁷ Ibid.

¹⁸ *Emawworthe Etajata, vs. Peter Igbim Ologbo & Ors* (2007) 11MISC 176 at 180. The Supreme Court came to its conclusion by drawing references from them, these cases like: *Orosanmi vs. Idowu* (1959) 4 FSC 40, *Soremekun vs. Shodipo* (1959) LLR30, *Oshodi vs. Balogun & Ors* 4 WACA 1, *Suleiman & Ors vs. Johnson* 13 WACA 213

¹⁹ Ibid. See generally *Olawoye, Title to Land in Nigeria*, pg. 73, *Elias, Nigeria Land Law* 4th Ed. Sweet & Maxwell 1971 at pg 10, *Coker, Family Property among the Yorubas*, Sweet & Maxwell 2nd Ed. Pg 97

²⁰ Ibid.

²⁰ *Yakubu M.G., Land Law in Nigeria* (1985) pg. 8-12 adopted by Niki Tobi (Supra).

that everybody has usufructuary right to it" ²¹. It is believed that:

"unclaimed land belongs to Allah and His messenger (S.A.W) then it belongs to you after me. He who therefore receives a barren land owns it. There shall be no right for an occupant after 3 years²².

The above hadith is further explained to mean that the three years granted the occupant merely gives him priority over subsequent occupier and not right of ownership²³. It therefore follows that if the first occupier cannot develop the land within the 3 years grace, other subsequent members of the Muslim community (not a stranger) who have the capability to develop it can do so by displacing the previous occupier from the unclaimed land²⁴.

The above principle of Islamic Law was adopted in the case of *Ibo. V. Alhaji Makera*²⁵. In 1963 the Zaria Local Authority granted a plot at Kakuri under a customary tenure to the appellant. He made some improvements. In 1971 the Authority discovered the plot had belonged to the respondent under customary tenure at the time of the grant to the appellant. The Authority revoked the grant and restore the plot to the respondent. The appellant refused to vacate. The respondent sued for its recovery in the Upper Area Court. The court awarded the plot to the respondent and ordered appellant to vacate.

The Court was silent on the improvements made by the appellant. In his appeal before the High Court, the appellant contended that he has a valid grant and that he is entitled to the

²¹ Ibid.

²² Al-Amir M.L., *Sunnih Al-Saalam Sharh Budugh Al-Maram*, Dur Hya alTarah al-Arabi Beirut (1960) Vol. II pg. 88. This was adopted by Abdul-Quadir Zubair, in his book, *Islamic Legal Doctrine and Interests in Land*.

²³ Abdulquadir Zubair, *Islamic Legal Doctrine and Interest in Land*, Almadin Heritage Publications Lagos, 1996 pg. 54 - 55.

²⁴ Ibid.

²⁵ (1975) NNLR 138.

land and improvements. The Court held that Muslim Law applies to lands in Kakuri and that law provides that:

"where a person in good faith improves the land of another, the owner of the land is entitled to the improvement but must pay compensation to the developer for his labour. If the owner fails to pay the compensation, the developer is entitled to keep the improvement and pays for the land²⁶.

Subsequently, in the case of *BALARABE Vs. Abdul*²⁷ it was also held that a forest in Islamic law belongs to no one and whoever cultivates it acquires exclusive ownership over it against the whole world²⁸.

It means that once a land is in occupation and the occupier develop, cultivate it or carryout improvements on it, he acquire priority over the land to the exclusion of other person in respect of the same land. In essence the temporal order rule of priority is also applicable under Islamic property law.

It is submitted that the only occasion the rule may not apply in case of unclaimed land under Islamic land law is where the first occupier refuses to carryon improvement on the land within 3 years. Either during the 3 years period or thereafter, another person capable of developing or carrying out improvements may do so and displace the interest of the previous occupier²⁹. The new occupier may then be compared to a bonafide purchaser of the legal estate under the English land law.

²⁶ Ibid.

²⁷ (1997) 5NWLR (Pt. 506) 650 CA

²⁸ Ibid.

²⁹ Supra pg

Temporal Order Rule and Transactions Governed by the Land Use Act

It might, be apposite at this stage to consider the effect of the Temporal Order rule in transactions governed by the Nigerian Land Use Act. For example, under the Land Use Act 1978³⁰, some of the provisions therein appear to retain the temporal order Rule of priority while there are other provisions in the Act that sounded a discordant tune. In this regard, the effect of section 36 (3) & (4) of the Land Use Act 1978 would be considered. The provisions of in question recognizes.

- (1) "On the production to the Local Government by the occupier of such land, at his discretion, of a sketch or diagram or other sufficient description of the land in question and on application therefore in the prescribed form the Local Government shall, if satisfied that the occupier or holder was entitled to the possession of such land whether under customary rights or otherwise howsoever, and that the land was being used for agricultural purposes at the commencement of this Act, register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land in question".
- (2) "Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier of such developed land, at his discretion, produces a sketch or diagram showing the area of the land so developed, the

Local Government shall, if satisfied that that person immediately before the commencement of this Act has the land vested in him, register the holder or occupier as one in respect of whom a customary right of occupancy has been granted by the Local Government".

The combined effect of all the above provisions it is submitted is an affirmation of the temporal order rule. This is more so that the Act provides that the land will continue to be enjoyed by those in whom it was vested prior to the commencement of the Act.³¹

On the contrary, the provisions of section 5 (2) appear inconsistent to the temporal order Rule of priority.

Section 5 (2) provides:

*"Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished".*³²

Literally interpreted, one will be tempted to conclude that under section 5(2) of the Act, the grant of a statutory right of occupancy to the holder extinguishes all other existing rights over the same property. In other words the maxim "the first in time is stronger in law" is not applicable in this instance³³.

It is submitted however, that such conclusion would be erroneous as to hold so would be inconsistent to the intention of the Act since the Act recognizes a "deemed grant" of right of occupancy and permits the holders of such "deemed grant" to continue in possession. It is therefore logical that section 5 (2) of

³¹ Ibid.

³² Ibid.

³³ F.O. Adeoye & Hakeem Ogunniran (Supra)

the Act cannot operate to extinguish the deemed grant of right of occupancy under section 34(2) and section 36 of the Act respectively. As amplified by Adeoye and Ogunniran,

"the only way the holder of a deemed right of occupancy can lose his interest in the land is when the Governor revokes the said "deemed grant" by complying with the procedure for revocation under section 28 (1) of the Act.³⁴"

F.O. Adeoye and Hakeem Ogunniran,³⁵ further cited the case of *Akande .V. Kelere*³⁶ "which although was decided under the Land Tenure Law but find relevance in this discussion". In that case, the defendant was granted a customary right of occupancy over a portion of land, which the plaintiff claimed he inherited from his grandfather.

The local government which granted the defendant right of occupancy investigated and found the plaintiff's claim proved and wrote to the defendant to vacate the land and surrender the certificate of occupancy it had issued. In an action brought to recover the said land, the defendant relying on section 6(3) of the Land Tenure Law, 1962, argued that the grant by the Native Authority extinguished the plaintiff's right on the land. It was held that a native authority can lawfully revoke a customary right of occupancy such as the one which the plaintiff inherited from his grandfather only if it requires the land for a public purpose. That the grant made to the defendant was consequently invalid being a grant for private purpose.

³⁴ Ibid.

³⁵ Ibid.

³⁶ (1966) NNLR 314- 113. this case was relied upon by Adeoye & Ogunniran in their article "Priority of interest under the Land Use Act" (Supra) to support the proposition that ss. 5(2) is not which intended to extinguish the deemed right recognized and preserved by section 34(2) of the same Act

The decision in the above case was confirmed in the subsequent case of *Alhaji Dantumbu vs. Chief Adene & ors*³⁷. Where the court of appeal held that the Governor of Kaduna State cannot validly grant a certificate of occupancy to the respondent while there was an existing customary right of occupancy on the same land in favour of the appellants unless the customary right of occupancy issued to the appellant by the local government had been revoked³⁸

"..... The legal estate, or term of years absolute created by a customary right of occupancy issued by a local government creates priority of estate so as to render null and void any subsequent certificate of occupancy issued by a military Governor in respect of the same parcel of land"³⁹

Furthermore, it has also been held that by virtue of section 40 of the Land Use Act 1978, the Governor of a state is without power to grant certificates of occupancy over lands which on the face of Decrees 58 of 1970 and 22 of 1972 had been forfeited to the Federal Military Government in 1970⁴⁰.

From the foregoing decisions, it is submitted that notwithstanding the provisions of section 5 (1) of the Act, the Act still continue to retain the Temporal order rule in determining priority of rival claimants under the Act.⁴¹ As Muiz Banire⁴² aptly put it – the maxim applicable to a holder of right of occupancy under the Act is "first in time first in law"⁴³.

However, notwithstanding the effect of the temporal order rule, where an interest in property in order to be valid require registration of such interest, priority of interest in such

³⁷ (1987) 4 NWLR (Pt 65) p. 314

³⁸ Ibid.

³⁹ Niki Tobí (Supra) Pg. 15

⁴⁰ Per Ogundere JCA in *Dantumbu V. Adere* (Supra) Pg. 322 and 333.

⁴¹ Adeoye & Ogunniran (Supra) pg.

⁴² Muiz Banire, *The Nigerian Law of Trust*, (2002) pg. 20.

⁴³ See section 193 Property and Coveyancing law, Cap 100, Laws of Western Nigerian, 1959. See also Land Instrument Registration, Law Cap 72 Laws of Eastern Nigeria, Laws of Northern Nigeria, Cap 58 193.

cases is not based on the date of creation but rather on the date of registration of the interest.

This informed the Supreme Court to hold in the case of *AMANKRA .V. ZANKLEY*⁴⁴ that what courts would consider is the date and hour of registration and not the date of creation of interest.

Effect of Doctrine of Bonafide Purchaser on Temporal Order Rule:

The same maxim which provide that when there are two competing equities, the first in time prevails also apply mutatis mutandi in a competition between legal interest and equitable interest.

The doctrine of Bonafide purchaser of the legal estate for value without notice provides that where a purchaser has a better equity or a superior title, a court of equity will not deprive such purchaser the right of property for which he has given value and taken Bonafide without notice of the plaintiff's prior equity⁴⁵. In other words, a subsequent legal interest which was acquired innocently for value without notice of a prior equitable interest would take priority over the already existing equitable interest. This above position was affirmed by the Nigeria Court of Appeal in the case of *John A. Osagie .vs. Alhaji S.O. Oyeyinka & Ors.*⁴⁶ where it was held that a "subsequent legal estate cannot be over reached by a prior equitable interest where the purchaser of subsequent legal estate purchases BONAFIDE⁴⁷ and for value without notice of the prior equitable interest. The importance of this doctrine is that it established a distinction between legal and equitable interests in a given property and

⁴⁴ (1963) All NLR 16.

⁴⁵ Chijioke Ikpo, *Issues and Principles in Equity* Dimaths Objective Press Ltd, 2003 p. 23.

⁴⁶ (1985) 3 NWLR Part II pg. 52 at 54. see also *Barclays Bank of Nig. .vs. Ashiru* (1978) 6-7 sc. 99.

⁴⁷ Ibid.

help to determine priority among competing interests. Thus, a subsequent legal interest once it was acquired Bonafide for value and without notice of the existing equitable interest will defeat or postpone the already existing equitable interest⁴⁸.

However, where the subsequent Bonafide purchaser for value without notice is an equitable purchaser, the doctrine will not apply to determine priority of interest, rather the temporal order rule of priority will still be applied so long as the equities are equal and both are meritorious in the eye of equity. In this case the first in time out of the two competing equities will take priority over the subsequent equity⁴⁹.

It is submitted that for the doctrine of Bonafide purchaser for value without notice to be employed to determine priority between a prior equitable interest and a subsequent legal interest, it must be proved that the subsequent legal interest was acquired in good faith, that consideration in money or money's worth was furnished and that the purchaser had no notice of prior equitable incumbrance.

The Supreme Court in *Animashaun .V. Olojo*⁵⁰ held that bonafide in the context of the doctrine means good faith, without fraud, collusion or participation in wrongdoing.

Thus the doctrine of Bonafide purchaser of the legal estate for value without notice is a veritable doctrine not only in making distinction between legal and equitable rights in property thus determining priority among rival claimants, it also provide a distinction between a right *in personam* from a right *in rem* by defeating all equities.

Conclusion

This paper, has established that the applicable maxim under the temporal order Rule, is *qui prior est tempore portier est jure*: " the first in time is stronger in law" in determining priority among rival

⁴⁸ *Folashade .V. Duroshola* (1967) 1 All NLR 87.

⁴⁹ *Assaf .V. Funwa* (1954) 13 WACH 232

⁵⁰ (1990) 4 All NLR (pt. 159) III.

claimants to a given property. However the innovation brought about by the doctrine of Bonafide purchaser of the legal estate for value without notice had made substantial improvement and created a fundamental exception to the temporal order rule as highlighted above.

That is to say, that by making a distinction between legal and equitable estate, the doctrine of Bonafide purchaser of legal estate for value without notice applying the same equitable maxim to provide that where equities are equal, the law prevails. In other words, a subsequent purchaser of the legal estate in a property who had no notice of an earlier equitable interest subsisting in respect of the same property and who gives consideration will have priority over the existing equitable interest. That is to say that words with the doctrine of bonafide purchaser, the maxim "first in time is stronger in law" does not hold thereby making the temporal order rule inapplicable. In effect the doctrine is fundamental exception to the temporal order rule since once the doctrine is well established, it defeat all prior equities.

However as potent as the doctrine of Bonafide Purchaser appear to be in determining priority of interest between a prior equitable interest and a subsequent legal interest, the doctrine may not be employed absolutely in matters relating to transactions under Native law and Custom. There are circumstances when equitable interest in land under native law and custom will defeat legal estate.

From the above examination of the applicable rules employed by the courts in determining priority among competing interests in property, it is obvious that the rules are far from being straightforward. One would have expected that such rules as the ones considered in this paper which are very fundamental to property law practice would be clear and reliable and that parties should not be in doubt about where they stand when things go wrong. Unfortunately, this is not the case.

It is therefore, recommended the need for law reform in this area of property law practice by harmonizing the various rules employed in determining priority of competing interests in property.

LIABILITY FOR PARTICIPATION IN CRIME AND PLEA OF ALIBI

BY

M.B. ADEWUSI*

Introduction

Very often, several persons are involved in the commission of an offence either before, during or after the act or omission constituting the offence. The liability of each party for the offence committed may vary according to the degree of their involvement.

Under the Nigerian Criminal Code, there are two distinct classes of offenders:

- (a) The principal offenders, and
- (b) Accessories after the fact

Liability as a Principal Offender¹

The principal offender is the main perpetrator of the offence, including anyone who intentionally assists, enable, counsel or procure the commission of the offence. However, the court will consider each definition of principal, to discover one that fits the facts of the particular case, and these definitions are contained in section 7 (a) – (d) of the Criminal Code²:

- (i) Section 7 (a) provides that every person who actually does the act or make the omission, which constitutes the offence, may be charged with actually committing the offence. In *Nwachukwu v. State*³, the Supreme Court held: "To bring a person under section 7 of the Criminal Code there must be clear evidence that either prior to, or at the time of the commission of the Criminal Act, that person did something to assist and help or facilitate the commission of

* L.L.M., L.L.B. (O.A.U., Ife), B.L., Lecturer, Department of Public Law, Adekunle Ajasin University, Akungba-Akoko.

¹ See Section 7 (a) – (d) Criminal Code.

² See Section 85 of the Penal Code for a similar provision.

³ (2002) 12 N.W.L.R. (pt. 782) p. 543 S.C.